

The Events of 11 September 2001 and the Right to the Truth

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Abstract

On 11 September 2001 approximately 3,000 people¹ were killed in the United States in what was variously designated as a terrorist attack, an act of war or a crime against humanity. It was also a gross violation of human rights. Yet, the truth on this event remains elusive. No person has been convicted for this crime. Part I outlines the moral and legal foundations for the right to the truth and the obligations of states to adequately investigate human rights violations. Part II examines whether the investigation of the events of September 2001 has been effective in terms of promptness, thoroughness, impartiality, independence and transparency. The author concludes that the investigation of this mass murder has been grossly deficient both in means and results: It failed to establish the identity of the perpetrators, the tools of the crime and the circumstances of death of most victims.

Introduction

Since 11 September 2001 the human rights community has faced a new challenge, namely the assault on individual freedoms in Western democracies in the name of the ‘war on terror’. Every day governments introduce new challenges to individual freedoms, including police powers to monitor private communications, mass surveillance methods and broadened search and detention powers.² While the human rights community has acted diligently and courageously in exposing this assault on individual liberties and the violations ensuing from, or justified by, the ‘war on terror’, others have begun questioning the very justification of that ‘war’.³ Since approximately 2003 a new constituency has emerged, particularly in the United States⁴ and more recently in Western Europe,⁵ that places the struggle for the truth on the events of 11 September 2001 (9/11) at the centre of their occupations. Most of those who participate in this struggle are not familiar with human rights concepts but act intuitively in the spirit of human rights values. They represent natural allies of the human rights community and a formidable potential of good will to the furtherance of the human rights cause.

The events of 9/11 have been generally considered as a terrorist act or as an act of war. Yet, from the perspective of human rights, they constitute gross violations of the right to life or

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¹ 11 September 2001 victims’ database. Available at <http://www.september11victims.com/september11victims>

² Collection of writings and documents under the heading ‘The Police State as the emerging form of governance’. Available at <http://www.aldeilis.net/english/index.php?option=content&task=section&id=21&Itemid=135>

³ Russel Dean Covey, ‘Why 9/11 may or may not constitute war, war crimes’, 25 September 2001. Available at

http://www.aldeilis.net/english/index.php?option=com_content&task=view&id=1045&Itemid=141;

Rohan Pearce, ‘Is al Qaeda really a “threat”?’ , *Green Left Weekly (UK)*, 10 September 2003; Elias Davidsson, ‘The “war on terrorism” - a double fraud on humanity’, June 2006. Available at

<http://www.aldeilis.net/english/images/stories/911/waronterror2.pdf>

⁴ See <http://en.wikipedia.org/wiki/Truther>

⁵ See www.911truth.eu

even a crime against humanity. It is the duty of states to investigate such violations, establish the truth on these violations and bring those responsible to justice. Impunity arises from a failure by States to meet their obligations to investigate violations.⁶ To this date, no person has been brought to trial for complicity in the mass murder of 9/11. This fact alone warrants an examination of the investigation of these gross violations. Thanks to the jurisprudence developed by human rights courts, and particularly that of the European Court of Human Rights (ECHR) and of the Inter-American Court of Human Rights (IACtHR), standards of adequacy permit the assessment of that investigation.

Part I: The Legal and Moral Basis for the Right to the Truth

1. The right to the Truth as a Democratic Right

The right to the truth regarding the circumstances in which offences against the public order and human rights have been committed is linked to the principle of democracy. The fact that a modern state possesses vast powers, including a monopoly on the use of force to repress crime and enforce the law, requires the existence of effective safeguards against potential abuse of state power. Accountability, of which the transparency of official conduct is an essential feature, aims to safeguard the public against arbitrary rule and the potential for corrupt and unlawful practices by public officials. Thus, the right to the truth, along the right to public trials and the right of access to government information, may be regarded as three types of accountability rights in a democratic society.

Although international human rights instruments do not explicitly refer to the right to the truth, this right has been referred to by human rights courts and in documents adopted by various bodies of the United Nations.⁷ This right is also regarded as implicit in existing provisions of human rights treaties,⁸ such as Article 8, 11, 14 and 25 of the American Convention of Human Rights.⁹

In 2005, the UN Commission on Human Rights (UNCHR) adopted an Updated Set of principles to combat impunity. The first subset of principles is entitled the Right to Know and includes the following principles¹⁰:

Principle 2: The inalienable right to the truth

Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations ...

Principle 5: Guarantees to give effect to the right to know

States must take appropriate action, including measures necessary to ensure the independent and effective operation of the judiciary, to give effect to the right to know. Appropriate

⁶ Updated Set of principles for the protection and promotion of human rights through action to combat impunity, *Commission on Human Rights*, 8 February 2005, UN Doc. No. E/CN.4/2005/102/Add.1, Principle I: General Obligations.

⁷ For an overview of references to the right to the truth, see Yasmin Naqvi, 'The right to the truth in international law: fact or fiction?' (2006) 88 *International Review of the Red Cross* 862

⁸ *Bámaca-Velásquez v Guatemala*, IACtHR, Judgment of 25 November 2000, Series C 70, Separate Concurring Opinion of Judge Hernán Salgado Pesantes

⁹ American Convention of Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978

¹⁰ Updated Set of principles to combat impunity, supra n. 6

measures to ensure this right may include non-judicial processes that complement the role of the judiciary. Societies that have experienced heinous crimes perpetrated on a massive or systematic basis may benefit in particular from the creation of a truth commission or other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent the disappearance of evidence. Regardless of whether a State establishes such a body, it must ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law.

The above principles reflect states' recognition of societies' right to know the truth about past grave violations to human rights. The UNCHR also requested that the Office of the High Commissioner for Human Rights prepare a study on the right to the truth, 'including information on the basis, scope, and content of the right under international law'.¹¹ The repeated invocation of this right by UN human rights organs and regional human rights courts indicates that it serves a purpose no other concept has yet fulfilled.

Truth is – philosophically – a tricky concept. In the present context, truth should be regarded as a social value rather than a metaphysical idea. The present study is based on the premise that the right to the truth is neither a fictional notion nor a frivolous demand, but a procedural and, arguably, legal right that serves an unique social purpose, particularly in relation to past gross violations of human rights.

2. The Right to the Truth as a Form of Individual Reparation

According to Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), victims of human rights violations are entitled to an 'effective remedy' including the right to learn the truth on these violations.

The United Nations adopted in 1989 the U.N. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions¹² (UN Principles) and in 1991 a Manual on the implementation of these principles.¹³ According to paragraph 9 of the UN Principles: 'the broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim.'

In 2005, the UN General Assembly affirmed the duty of states to provide victims of human rights violations with 'full and effective reparation ...which include[s] ...where applicable ...[v]erification of the facts and full and public disclosure of the truth' ...and '[i]nclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.'¹⁴

The Inter-American Court for the Protection of Human Rights (IACtHR) has through its jurisprudence given substance to the concept of the right to the truth: '[T]he right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25

¹¹ Cited by Naqvi, *supra* n. 7 at 248

¹² ECOSOC Res. 1989/65, UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, 24 May 1989

¹³ Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/12 (1991)

¹⁴ GA Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005, Articles 18 and 22

of the Convention.¹⁵ In 1998 the Inter-American Commission on Human Rights has for first time recognized that the right to the truth belongs to members of society at large as well as to the families of victims of human rights violations.¹⁶

A. The Duty to Investigate

In order to ascertain the truth, a human rights violation must be investigated. The Basic Principles (2005) set out the specific obligation to investigate violations in the context of the overall obligation to ensure respect for human rights: ‘The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law ...includes, *inter alia*, the duty to ...[i]nvestigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law.’¹⁷

Before the adoption of the Basic Principles (2005), the UN Human Rights Committee (UNHRC), in its General Comment no. 31, pointed out that states are under the duty to protect individuals subject to their jurisdiction

not just against violations of the [ICCPR] by [their] agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights ... There may be circumstances in which a failure to ensure Covenant rights ...would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.¹⁸

The ‘Minnesota Protocol’, which comprises Part III of the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions,¹⁹ lists desirable procedures of an inquiry into the circumstances surrounding a suspicious death. These include, *inter alia*, specific tasks to be accomplished at the crime scene, the processing of evidence, avenues of investigation and identification and interviews of witnesses. The ‘Minnesota Protocol’ also provides a guideline for the establishment of independent commissions of inquiry and the performance of autopsies.

While states possess wide discretionary powers to decide when an investigation of a violation of human rights is warranted and how the investigation is conducted, the principle of good faith provides, along with other criteria, a tool to gauge the adequacy of such an investigation.

B. Standards of Investigation

While states are under the obligation to investigate violations of human rights and international humanitarian law, they sometimes attempt to avoid investigations, which may

¹⁵ *Chumbipuma Aguirre et al. v Peru* (Barrios Altos Case), IACtHR, Judgment of 14 March 2001, para. 48

¹⁶ The Right to the Truth. Office of the Special Rapporteur for Freedom of Expression, IACHR, Available at <http://www.cidh.oas.org/Relatoria/showarticle.asp?artID=156&IID=1>

¹⁷ UNCHR Res. 2005/35, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, U.N. Doc. E/CN.4/2005/L.10/Add.11 (19 April 2005), Article 3; also GA Res. 60/147, *supra* n. 14

¹⁸ UNHRC, General Comment No. 31. Nature of the General Legal Obligation Imposed on States Parties to the Covenant. UN Doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004) para. 8

¹⁹ United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Part III, ‘Minnesota Protocol’, U.N. Doc. E/ST/CSDHA/. 12 (1991)

embarrass or implicate high officials. In order to cover up official complicity states sometimes stage an investigation designed to fail. The IACtHR explicitly warned against this possibility: ‘[T]he State has the duty to commence *ex officio* and without delay, a serious, fair, and effective investigation which is not undertaken as a mere formality condemned in advance to be fruitless.’²⁰

The notion that failure to *effectively* investigate arbitrary killings could itself be a violation of human rights has been confirmed in numerous judgments by the ECHR. In these judgments the court addressed five criteria that permit the evaluation of the effectiveness of an investigation, namely: promptness, thoroughness, impartiality, independence and transparency.

(i) Effectiveness of investigations

The requirement of effectiveness of investigations has been addressed by the ECHR in numerous court judgments. A review of these judgments reveals that the Court used the expression ‘effective investigation’ to mean the adequacy of an investigation. The Court considered that ‘the nature and degree of scrutiny which satisfies the minimum threshold of [an] investigation's effectiveness depends on the circumstances of the particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. It is not possible to reduce the variety of situations which might occur to a bare check-list of acts of investigation or other simplified criteria.’²¹ In determining whether effective investigations of alleged violations of human rights had taken place, the Court examined whether these investigations had been prompt, thorough, impartial, independent and sufficiently transparent.

While human rights courts generally avoid to imply that ineffective investigations of human rights violations represent deliberate obstruction or a cover-up by the state, the ECHR expressed its view in one case that ‘the astonishing ineffectiveness of the prosecuting authorities ...can only be qualified as acquiescence in the events’.²²

The ECHR has also considered that a violation by a government of the right to life can be inferred from the failure by the government to provide ‘a plausible explanation ...as to the reasons why indispensable acts of investigation have not been performed.’²³

(ii) Promptness of investigations

The duty of an investigation’s promptness had also been addressed by the ECHR in numerous judgments. The necessity of promptly investigating the use of lethal force ‘may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.’²⁴ The passage of time ‘will inevitably erode the amount and quality of the evidence available and the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the members of the family.’²⁵ A substantial delay in

²⁰ *Ximenes-Lopes v Brazil*, IACtHR, Judgment of 4 July 2006, para. 148

²¹ *Toteva v Bulgaria*, ECHR, Application no. 42027/98, Judgment of 19 May 2004, para. 80

²² *Musayev and Others v Russia*, ECHR, Applications nos. 57941/00, 58699/00 and 60403/00, Judgment of 26 July 2007, para. 164

²³ *Toteva*, supra n. 21, para. 82

²⁴ *Adali v Turkey*, ECHR, Application no. 38187/97, Judgment of 31 March 2005, para. 224

²⁵ *Trubnikov v Russia*, Application no. 49790/99, Judgment of 5 July 2005, para. 92

the investigation may constitute ‘a breach of the obligation to exercise exemplary diligence and promptness.’²⁶

(iii) Thoroughness of investigations

According to paragraph 9 of the UN Principles:

There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases in which complaints by relatives or other reliable reports suggest unnatural death in the above circumstances.... The Purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice, which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses...

In the case-law of the ECHR we find that that the lack of thoroughness (or effectiveness) was *inferred* from omissions by the state, such as failure by the investigating authorities to take reasonable steps to secure evidence;²⁷ ignorance of obvious evidence (failure to ‘connect the dots’),²⁸ failure to collect all the evidence that could have clarified the sequence of events;²⁹ failure to report troubling facts;³⁰ failure to interrogate certain people or to ask certain questions in interrogations;³¹ failure to ascertain possible eye-witnesses and failing to search for corroborating evidence;³² failure to ascertain whether certain reported documents in fact existed;³³ failure to clarify important inconsistencies;³⁴ failure to consider alternative hypotheses for unnatural death;³⁵ lack of explanations for irregularities;³⁶ failure to preserve evidence at the scene (of the crime) and taking all relevant measurements;³⁷ and failure to inquire about motives.³⁸

The aforementioned examples reveal the large range of means available to, and used by, states to undermine investigations into violations of the right to life.

(iv) Independence of investigations

The UN Human Rights Committee emphasizes the need for ‘administrative mechanisms’ to ‘investigate allegations of violations (...) through independent and impartial bodies.’³⁹

The UN Principles specify that

²⁶ Ibid.

²⁷ *Ahmet Özkan and Others v Turkey*, ECHR, Application no. 21689/93, Judgment of 6 April 2004, para. 312

²⁸ *Ülkü Ekinci v Turkey*, ECHR, Application no. 27602/95, Judgment of 16 July 2002

²⁹ *Nachova v Bulgaria*, ECHR, Applications nos. 43577/98 and 43579/98, Judgment of 26 February 2004, para. 138

³⁰ Ibid.

³¹ *Toteva, supra* n. 21, para. 79

³² *Aydin v Turkey*, ECHR, Application no. 57/1996/676/866, Judgment of 25 September 1997, para. 106

³³ *Buldan v Turkey*, ECHR, Application no. 28298/95, Judgment of 20 April 2004, para. 86

³⁴ *Sergey Shevchenko v Ukraine*, ECHR, Application no. 32478/02, Judgment of 4 April 2006, para. 67; *Nachova, supra* n. 29, para. 140

³⁵ *Ognyanova and Choban v Bulgaria*, ECHR, Application no. 46317/99, Judgment of 23 February 2006, paras. 109-112

³⁶ *Angelova v Bulgaria*, ECHR, Application no. 38361/97, Judgment of 13 June 2002, paras. 142-145

³⁷ *Nachova supra* n. 29, para. 132

³⁸ *Adali v Turkey, supra* n. 24, para. 231

³⁹ Human Rights Committee, General Comment no. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004, para. 15(d)

[i]n cases in which the established investigative procedures are inadequate because of a lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognised impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided in these principles.⁴⁰

Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.⁴¹

The UN Principles mention particularly the necessity to ensure that those conducting the autopsy be independent from ‘any potentially implicated persons or organizations or entities.’⁴²

The ECHR repeatedly mentioned the necessity ‘for the persons responsible for and carrying out the investigation to be independent from those implicated in the events’.⁴³ The Court added: ‘This means not only a lack of hierarchical or institutional connection but also a practical independence.’⁴⁴

(v) Impartiality of investigations

Impartiality requires that investigators examine with an open mind all relevant evidence, including that which contradicts their ‘firm conviction’⁴⁵ and include in the scope of their investigation the possibility of official involvement in the crime, particularly when they are put on notice about suspicious activities by official entities.⁴⁶ In order to ensure the impartiality of an investigation, witnesses ‘shall be protected from ...any ...form of intimidation’⁴⁷, particularly by state officials.

(vi) Transparency of investigations

According to paragraph 16 of the UN Principles ‘[f]amilies of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence.’⁴⁸

The reporting requirements of an investigation are also spelled out in the UN Principles:

⁴⁰ UN Principles, para. 11, (emphasis added), *supra* n. 12

⁴¹ UN Principles, para. 15, *supra* n. 12

⁴² UN Principles, para. 14, *supra* n. 12

⁴³ *Adali*, *supra* n. 24, para. 222

⁴⁴ *Ibid.*

⁴⁵ *Kaya v Turkey*, ECHR, Application no. 158/1996/777/978), Judgment of 19 February 1998, para. 90;

Semsi Önen v Turkey, ECHR, Application no. 22876/93, Judgment of 14 May 2002, para. 88

⁴⁶ *Tepe v Turkey*, ECHR, Application no. 27244/95, Judgment of 9 May 2003, paras. 179-180; *Buldan* *supra* n. 33, para. 86; *Finucane v United Kingdom*, ECHR, Application no. 29178/95, Judgment of 1 July 2003; *Kaya*, *supra* n. 45, para. 88, *Semsi Önen*, *supra* n. 45

⁴⁷ UN Principles, para. 15, *supra* n. 12

⁴⁸ UN Principles, para. 16, *supra* n. 12

A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.⁴⁹

The ECHR explicitly related the need for transparency of investigations to the democratic right of official accountability:

Remedies must be effective in practice, not just in theory, with a sufficient element of public scrutiny to ensure true accountability. In particular, alleged violations of the right to life deserve the most careful scrutiny. Where events lie wholly or largely within exclusive knowledge of the authorities...strong presumptions of fact will arise in respect of injuries and death, which occur. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.⁵⁰

Here is one example of the reasoning by the ECHR regarding the lack of transparency in an investigation:

The Court notes ...that throughout the investigation the applicant and the rest of the family were entirely excluded from the proceedings. Contrary to the usual practice under national law, they were not granted the official status of victims in criminal proceedings, a procedural role which would have entitled them to intervene during the course of the investigation. Even assuming that the family's participation could have been secured otherwise, this was not the case here. The terms of their access to the file were not defined. They were never informed or consulted about any proposed evidence or witnesses, including the appointment of posthumous psychological and psychiatric experts, so they could not take part in instructing the experts. The applicant did not receive any information about the progress of the investigation and, when it was discontinued on 10 October 2002, he was only notified five months later.⁵¹

Summary of Part I

States bear an obligation to establish the truth on gross violations of human rights committed within their jurisdiction. Moreover, internationally adopted standards exist which permit an objective assessment of the adequacy of official investigations into alleged gross violations of human rights. There exist, however, impediments to the right to the truth other than those resulting from inadequate investigations. Such impediments include: compensation schemes designed to prevent judicial discovery procedures⁵², plea bargains⁵³, statutes of limitations,

⁴⁹ UN Principles, para. 17, *supra* n. 12

⁵⁰ *Hugh Jordan v The United Kingdom*, ECHR, Application No. 24746/94, Judgment, 4 May 2001, para. 109

⁵¹ *Trubnikov*, *supra* n. 25, para. 93

⁵² Tim Harper, 'Families Sue U.S., Reject 9/11 "Bribe"', *Toronto Star*, 23 December 2004. Available at <http://www.commondreams.org/headlines03/1223-02.htm>;

⁵³ See, for example, Ilana Mercer, 'Truth obscured in Johnny Jihad's plea bargain', *WorldNetDaily*, 9 October 2002. Available at http://www.wnd.com/news/article.asp?ARTICLE_ID=29220; Scott Horton, 'The Plea Bargain of David Hicks', *Harper's Magazine*, 2 April 2007. Available at <http://www.harpers.org/archive/2007/04/horton-plea-bargain-hicks>; George Jonas, 'Truth is the first casualty of plea bargains', *National Post*, 29 May 2007. Available at http://www.georgejonas.com/recent_writing_cfm?id=538

State and official immunities, prohibitions of retrospective application of criminal law even when the conduct was criminal under international law at the time it occurred, political interference with decisions to investigate and prosecute and stipulations by which defendants and prosecutors agree to recognize certain facts, even if these facts are untrue or unproven. These additional impediments to the truth will not be examined in this article although some of these have been used to prevent the establishment of the truth on 9/11.

In Part II of this study, we will examine whether and to what extent the United States government fulfilled its international obligations to investigate the gross violations of human rights committed on 11 September 2001 and establish the truth on these events.

Part II Establishing the Truth on the Events of 11 September 2001

The events of 11 September 2001 ('9/11') were a gross violation of the right to life of approximately 3,000 human beings. It follows that the United States, as party to the International Covenant of Civil and Political Rights, is under the obligation to adequately investigate this gross violation and secure the prosecution and punishment of the violators. In order to conform to this obligation, the investigation of such a gross violation must be carried promptly, effectively, thoroughly, impartially and with an adequate degree of transparency. The expected goals of a murder investigation is (a) to positively identify the victims; (b) to determine the manner, cause, location and time of death; and (c) to identify those responsible for the death, including their accomplices.

In this Part we examine the investigation of this gross violation of human rights. In order not to encumber the terminology, we will in this section refer to the events of 9/11 as a crime.

It is true that violations by the United States of human rights treaties to which it is party, such as the failure to investigate violations committed within its jurisdiction, are not enforceable against the United States in any international court. The lack of international enforcement does not, however, void the international responsibility of the United States for its violations of obligations under international law⁵⁴ or its moral responsibility to establish the truth on human rights violations.

Terminology

- (1) When referring to the National Commission on Terrorist Attacks Upon the United States⁵⁵, we will use the shortcut 'the 9/11 Commission'.
- (2) When referring to the persons designated by the US authorities as the perpetrators of the crime of 9/11, we will designate them as the 'suspects' because their guilt has not been formally established.

1. The Facts

On September 11, 2001, the entire world witnessed on television the impact of an aircraft crashing on the South Tower of the World Trade Center in New York, the burning of the Twin Towers, their subsequent collapse and the sequels of explosions at the Pentagon and near Shanksville, Pennsylvania. Television and other media provided non-stop coverage

⁵⁴ Article 2 of the Draft articles on Responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its fifty-third session (2001). Available at http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf

⁵⁵ Available at <http://www.9-11commission.gov/>

about rescue efforts and presented live testimonies of survivors, eyewitnesses, rescue workers, fire fighters and law enforcement personnel. In addition to what was shown live on television, numerous people witnessed the events.

It was logical to conclude after a second aircraft impacted the World Trade Center that this was no accident, but a deliberate attack aimed to destroy and kill.

2. The Allegations

Approximately 25 minutes after the apparent aircraft crash at the South Tower of the World Trade Center, before anyone expected further attacks, President George W. Bush emerged from a school class in Florida where he listened calmly to children read a story about a pet goat, and announced that the United States was under attack.⁵⁶ In his TV address he said: ‘today we’ve had a national tragedy. Two airplanes have crashed into the World Trade Centre in an apparent terrorist attack on our country.’⁵⁷ Twenty-four hours later the US Congress unanimously declared:

- (a) That the events of the previous day had been ‘attacks against’ the United States;
- (b) That terrorists had ‘hijacked and destroyed’ four civilian aircraft;
- (c) That the attacks ‘destroyed both towers of the World Trade Center’; and
- (d) That the attacks clearly were intended ‘to intimidate our Nation and weaken its resolve.’⁵⁸

The evidence available to the Congress at that time contained few indications of the manner in which the crime had been committed, and certainly did not appear sufficiently ample to allow the conclusion to be drawn that foreign terrorists were responsible.⁵⁹

Mass media published from the first hour horrid details about the events – partly based on leaks from unidentified public and airline officials – and speculative theories about the identities of the perpetrators and their motives. The official account on 9/11 was established by political leaders and the media within less than 48 hours of the attacks. This account can be summarized in a few sentences:

Nineteen Muslims boarded four aircraft in the morning of 11 September 2001. Five boarded flight AA11 that departed from Boston; five boarded UA175 that also departed from Boston; five boarded flight AA77 that departed from Dulles Airport, Washington, D.C.; and four boarded flight UA93 that departed from Newark International Airport. These four groups of terrorists hijacked the aircraft in mid-air with knives, seized control over the aircraft and flew the aircraft into buildings, killing themselves, the passengers and the crew. They flew AA11 into the North Tower, UA175 into the South Tower, AA77 into the Pentagon and attempted to fly UA93 into the White House but did not succeed to carry out their plan due to the revolt of the passengers. The aircraft then crashed near Shanksville, Pennsylvania. The hijackers were swiftly identified as having links to al Qaeda. Osama bin Laden later admitted to have personally selected them for these specific attacks.

⁵⁶ See http://en.wikipedia.org/wiki/The_Pet_Goat

⁵⁷ CNN, Transcript of George W. Bush’s address to the nation. Available at <http://transcripts.cnn.com/TRANSCRIPTS/0109/11/bn.02.html>

⁵⁸ Joint Resolution 61 (by the Senate and House of Representatives), 12 September 2001. Available at http://www.house.gov/ryan/press_releases/2001pressreleases/HJRES61.html

⁵⁹ This formulation echoes *Tanrikulu v Turkey*, ECHR, Application no. 23763/94, Judgment of 8 July 1999, para. 108

C. Did the US Government Seek to Establish the Truth on 9/11?

On 12 September 2001 Attorney General John Ashcroft announced that the Department of Justice ‘has undertaken perhaps the most massive and intensive investigation ever conducted in this country.’⁶⁰ On the following day, FBI Director Robert Mueller promised: ‘We will leave no stone unturned in our quest to find those responsible and bring those individuals to justice’.⁶¹

Yet, while announcing a massive investigation, Attorney General Ashcroft made it also clear that the investigation was not FBI’s priority: The main task of the FBI, he said, was to ‘stop another attack’.⁶² In the same morning White House Press Secretary Ari Fleischer announced – citing undisclosed intelligence sources – that the risks of another attack were ‘significantly reduced’, because ‘the perpetrators have executed their plan’.⁶³

On 9 October 2001 the New York Times reported that John Ashcroft and Robert Mueller had ‘ordered [FBI] agents to drop their investigation of the attacks or any other assignment any time they learn of a threat or lead that might suggest a future attack.’⁶⁴

Asked in court to tell ‘what steps the FBI and the PENTTBOM⁶⁵ squad took to investigate the September 11 attacks’, FBI Special Agent James M. Fitzgerald answered: ‘In general steps, the FBI as well as the PENTTBOM squad obtained financial documents, bank records, e-mail accounts, hard drives from computers to review those, post office box information, car rental information, things of that nature, to attempt to determine – to determine the extent of the contacts of the hijackers when they were in the United States and the activities that they performed.’⁶⁶ His answer confirms that the investigation did not focus on what actually happened on the tragic day.

Shortly after 9/11, the Congress established a compensation mechanism for victims’ families,⁶⁷ who, in order to apply for compensation, had to sign away their ‘right to file a civil action ...in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001.’⁶⁸ The ostensible intent of this provision was to protect the airlines against legal suits by victims’ families, but an intended or unintended side-

⁶⁰ John Ashcroft, Media Briefing, 12 September 2001. Available at

http://www.yale.edu/lawweb/avalon/sept_11/ashcroft_briefing01.htm

⁶¹ Dan Eggen, ‘FBI Launches Massive Manhunt’, *Washington Post*, 13 September 2001. Cached at

<http://nucnews.net/nucnews/2001nn/0109nn/010913nn.htm#510>

⁶² Bob Woodward and Dan Balz, ‘We Will Rally the World’ [A review of the events of 12 September 2001], *Washington Post*, 28 January 2002. Available at <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A46879-2002Jan27¬Found=true>, mirrored at:

<http://www.aldeilis.net/aldeilis/content/view/1604/107/>

⁶³ Ari Fleischer, White House Morning Briefing, 12 September 2001, 9:57 AM. The transcript of this press briefing was removed from the White House website. Cached at:

http://www.aldeilis.net/english/index.php?option=com_content&task=view&id=464&Itemid=107

⁶⁴ Philip Shenon and David Johnston, ‘F.B.I. Shifts Focus to Try to Avert Any More Attacks’, *New York Times*, 9 October 2001. Available at <http://www.nytimes.com/2001/10/09/national/09INQU.html>, mirrored at <http://www.aldeilis.net/aldeilis/index.php?option=content&task=view&id=346&Itemid=107>

⁶⁵ PENTTBOM was the acronym given by the FBI to the 9/11 investigation.

⁶⁶ *USA v Zacarias Moussaoui*, Transcript of Jury Trial, 7 March 2006, 10:00 AM, p. 36. Available at <http://cryptome.org/usa-v-zm-030706-01.htm>

⁶⁷ Title IV of [Act of Congress] HR 2926 To Preserve the Continued Viability of the United States Air Transportation System, 22 September 2001. Available at http://www.yale.edu/lawweb/avalon/sept_11/hr2926.htm

⁶⁸ Ibid. Title IV, Section 405 (c) (3)

effect was to prevent victims' families from using court discovery procedures in their quest for the truth.⁶⁹

While 'investigations into past disasters and attacks such as Pearl Harbor, the Titanic, the assassination of President Kennedy and the Shuttle Challenger explosion were established in less than 10 days',⁷⁰ President Bush opposed a public investigation of 9/11. Due to pressure by victims' families, supported by members of Congress, he finally accepted after 411 days to form a National Commission of Inquiry. It is, however, the duty of a government to search for the truth on its own. This duty does not depend "on the procedural initiative of the victim or his next of kin."⁷¹ On 15 November 2002 the U.S. Congress approved legislation creating the National Commission on Terrorist Attacks Upon the United States mandated to 'examine and report on the facts and causes relating to the September 11th terrorist attacks' and 'make a full and complete accounting of the circumstances surrounding the attacks.' President Bush signed it into law on 27 November 2002. The very title of the Commission set its course of inquiry to conform with the fact determined by Congress on September 12, 2001, that the events of 9/11 were an attack from outside the United States.

The Commission was initially accorded \$3 million, a derisory sum in comparison to the \$40 million price of the Starr investigation⁷² or the \$112 million spent by NASA to support the investigation of the Columbia space shuttle tragedy in which seven people died.⁷³ When asked for an additional \$8 million for the 9/11 Commission's work, President Bush initially refused the request.⁷⁴ Most of its members had a conflict of interest.⁷⁵ The Commission's Executive Director, Philip D. Zelikow, hand-picked by President Bush, had huge conflicts of interest that prompted the Family Steering Committee (a group of victims' families) to repeatedly call for his removal.⁷⁶

Assigning a low priority to the 9/11 investigation, offering generous⁷⁷ compensation to victims' families on the condition that they will not seize the courts, efforts to prevent a public inquiry of 9/11 and establishing a Commission of Inquiry 'predestined to be ineffective'⁷⁸, were all indications that the US government did not want the American people to know the truth about the events of 9/11.

⁶⁹ Joe Taglieri, '9-11 Lawsuits: Saudis, Airlines, Bush Face Litigation', *From the Wilderness*, 27 August 2002. Available at http://www.fromthewilderness.com/free/ww3/082702_lawsuits.html; also Walter Gilberti, 'Bush administration moves to stifle discovery in 9/11 lawsuits', *World Socialist Web Site*, 2 August 2002. Available at <http://www.wsws.org/articles/2002/aug2002/bush-a02.shtml>

⁷⁰ Citizens critique of flawed 9/11 Commission process, 23 July 2004. Available at

<http://www.911citizenswatch.org/modules.php?op=modload&name=News&file=article&sid=353>

⁷¹ *The Ituango Massacres v Colombia*, Inter-American Court of Human Rights, Judgment of 1 July 2006, para. 296

⁷² Terry Frieden, 'Price tag for Starr investigation: \$40 million plus', *CNN*, 1 February 1999

⁷³ Paul Recer, 'NASA: Columbia Cleanup Cost Nears \$400M', *NewsDay.com*, 11 September 2003, at <http://www.newsday.com/news/science/wire/sns-ap-shuttle-investigation,0,7895931.story>

⁷⁴ Cited by Griffin, *The 9/11 Commission Report: Omissions and Distortions*, (Northampton: Olive Branch Press, 2005), p. 284, n. 12.

⁷⁵ 9-11 Research, *The Kean Commission: The Official Commission Avoids the Core Issues*. Available at <http://911research.wtc7.net/post911/commission/index.html>; 'Conflicts Of Interest On Sept. 11 Panel? 6 Of 10 Panel Members Allegedly Have Ties To Airline Industry', *CBS News*, 5 March 2003. Available at <http://www.cbsnews.com/stories/2003/03/05/eveningnews/main542868.shtml>

⁷⁶ Griffin, *supra* n. 74, at 8

⁷⁷ The average awards to families of victims exceeded \$2 million. Source: Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001. Available at http://www.usdoj.gov/final_report.pdf

⁷⁸ '[T]he State has the obligation to initiate *ex officio*, immediately, a genuine, impartial and effective investigation, which is not undertaken as a mere formality predestined to be ineffective.' *The Ituango Massacres v. Colombia*, *supra* n. 71

D. Was the 9/11 Investigation Thorough?

In order to be regarded as thorough according to the UN Principles mentioned in Part I, a murder investigation should determine the ‘cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses...’⁷⁹ As will be shown below, the investigation of 9/11 failed the test of thoroughness, as defined in the UN Principles, for it (a) failed to establish beyond reasonable doubt the identities of those responsible for the deaths; (b) failed to determine the time, location or manner of death of most victims; and (c) failed to adequately collect and analyse evidence and statements from witnesses.

(i) How was the crime perpetrated?

According to the official account, the actual execution of the crime occurred on board of four aircraft between approximately 8:20 and 10:00 AM EST, leaving no perpetrator, victim and witness alive.⁸⁰ The official account of what happened on board the aircraft is based almost entirely on contents of phone calls made by passengers and crew to various persons on the ground and the contents of a single retrieved cockpit voice recorder (CVR). CVRs are extremely sturdy devices recording conversations, radio transmissions and all others sounds in an airplane’s cockpit for the last 30 minutes of its flight. They are supposed to withstand an impact tolerance of 3400 Gs/6.5ms and 30 minutes of 1100C hot fire.⁸¹ According to the FBI and the National Transportation Safety Board (NTSB), the flight data recorders (FDRs) and the CVRs (‘black boxes’) of the aircraft, which crashed on the Twin Towers, were never found⁸² and the CVR from the crash site at the Pentagon was reported as unreadable.⁸³

Yet a thorough investigation would have to exercise particular care in authenticating the evidence in a case where all perpetrators, victims and witnesses are dead and where information regarding the scenario of the crime is relayed by electronic means. The following evidence regarding the phone calls should therefore have been authenticated: (a) the identities of those who received the calls; and (b) the reliability, consistency and credibility of the reported conversations; and (c) the location from where the calls were made.

The identities of those who received the calls

Approximately 20 people on the ground are said to have received phone calls from passengers and crew.⁸⁴ The names of all these phone call recipients have been published. No one has challenged their identities. A difficulty arose, however, to have some of these individuals

⁷⁹ UN Principles (1989), para. 9, see *supra* n. 12

⁸⁰ Staff Statement No. 4 (‘The Four Flights’) to the 7th 9/11 Commission Hearing held on 26-27 January 2004. Available at

http://www.9-11commission.gov/staff_statements/staff_statement_4.pdf

⁸¹ Cockpit Voice Recorders (CVR) and Flight Data Recorders (FDR) (Specifications). Available at

http://www.atlasaviation.com/CVR/about_cockpit_voice_recorders.htm

⁸² Dave Lindorff, ‘Missing Black Boxes in World Trade Center Attacks Found by Firefighters, Analyzed by NTSB, Concealed by FBI’, *CounterPunch*, 19 December 2005, quotes an official of the NTSB: ‘Off the record, we had the boxes ...we worked on them here.’ Available at

<http://www.counterpunch.org/lindorff12202005.html>

⁸³ Associated Press, ‘FBI analyzing voice, data recorders from two flights’, *St. Petersburg Times*, 15 September 2001. Available at

http://www.sptimes.com/News/091501/Worldandnation/FBI_analyzing_voice_.shtml

⁸⁴ See <http://911research.wtc7.net/planes/evidence/calldetail.html>

confirm their quoted statements. In one reported case, Michael Sweeney, the husband of flight attendant Amy Sweeney who died on 9/11, was prevented from talking to former American Airlines employee Michael Woodward, who was the last to talk to his late wife.⁸⁵ It is not known how many calls' recipients confirmed publicly their statements.

Reliability, consistency and credibility of the reported conversations

Information about most phone calls was publicized in mass media. Yet it is not known how many of these reports reflected direct testimonies by the recipients of the calls. In several cases, the published information on the phone calls was provided by a third party: A relative, a priest, a friend or another spokesperson of the recipient.⁸⁶ Contradictory and implausible accounts about the calls have also been reported. The 9/11 Commission has not disclosed whether the recipients of the calls have formally confirmed their reports.

According to one published account, flight attendant Amy Sweeney of flight AA11 provided in her phone call the following seat numbers of *three* suspects on flight AA11: 9G, 9D and 10B, respectively.⁸⁷ According to another published account, attendant Betty Ong of the same flight provided in her phone call the seat numbers of *four* suspects: 2A, 2B, 9A and 9B.⁸⁸ According to the Federal Aviation Administration (FAA), seat 9B was occupied by Daniel M. Lewin who was allegedly stabbed to death.⁸⁹ According to the 9/11 Commission, the seat numbers of *five* alleged hijackers on that flight were: 2A, 2B, 8D, 8G, 10B.⁹⁰ The Commission did not provide any explanation for these conflicting accounts.

According to the San Francisco Chronicle *four* separate phone calls were made by Thomas Burnett from flight UA93 to his wife Deena. She reported to have noted exactly the call times as 9:27, 9:34, 9:45 and 9:54.⁹¹ However a court document produced at Moussaoui's trial regarding Burnett's phone calls only lists *three* phone calls made to her at 9:30:22, 9:37:54 and 9:44:23.⁹² Neither the number of calls nor the timings match.

A telephone supervisor, Lisa Jefferson, working for Verizon Corporation, owners of GTE Airfones, reported that Todd Beamer, a passenger from flight UA93 unknown to her, called at 9:45 and talked with her for 13 minutes. Jefferson 'could hear shouts and commotion and then Beamer asked her to pray with him. They recited the 23rd Psalm. He got Jefferson to promise that she would call his family, then dropped the phone, leaving the line open...Then there was silence. Jefferson hung up at 10 a.m. EST, realizing that the plane had gone down. Officials

⁸⁵ Gail Sheehy, 'Stewardess ID'd Hijackers Early, Transcripts Show', *The New York Observer*, 15 February 2004. Available at <http://www.observer.com/node/48805>

⁸⁶ The following people provided information on some of the calls: Mareya Schneider was the *aunt* of CeeCee Lyles, <http://www.post-gazette.com/headlines/20010922gtenat4p4.asp>; Rev. Frank Colacicco was the *family priest*, of family Burnett <http://www.peoplesstory.com/lastwords.html>; Richard Makely was the *father-in-law* of Jeremy Glick; Doug MacMillan was a *friend* of Todd Beamer, <http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2001/09/17/MN40630.DTL>; Linda Campbell was a spokeswoman of a school, where the mother of flight attendant Renee May was working: http://www.reviewjournal.com/lvrj_home/2001/Sep-13-Thu-2001/news/16989631.html

⁸⁷ Gail Sheehy, *supra* n. 85

⁸⁸ Glen Johnson, 'Probe reconstructs horror, calculated attacks on planes', *Boston Globe*, 23 November 2001. Available at http://www.boston.com/news/packages/underattack/news/planes_reconstruction.htm
http://en.wikipedia.org/wiki/Daniel_M._Lewin

⁸⁹ Final Report of the National Commission on Terrorist Attacks Upon the United States, Official Government Edition. Available at <http://www.gpoaccess.gov/911/index.html>, p. 2

⁹⁰ Susan Sward, 'The Voice of the Survivors', *San Francisco Chronicle*, 21 April 2002. Available at <http://sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2002/04/21/MN190309.DTL>

⁹² <http://911research.wtc7.net/planes/evidence/docs/calls/Flight93/ThomasBurnett.jpg>

said it crashed at 9:58 a.m.’⁹³ Lisa Beamer, Todd’s wife, reporting a conversation she had with Jefferson, said her husband ‘told [Jefferson] about our family, and he told her about me. And she knew the boys names. And she knew we were expecting a baby in January.’⁹⁴ There is no evidence that this distress call was recorded, as might have been expected from a phone company. Jefferson did not go “through the routine questions in her distress-call manual. She had not connected this agitated man to his wife waiting anxiously at home...Mrs Beamer only learned of her husband’s final call four days later, when a representative of United Airlines got in touch.’⁹⁵

A detailed analysis of the phone calls from UA93 was made by John Doe II. He reveals at least 14 glaring contradictions, oddities and anomalies that were not investigated by the FBI or the 9/11 Commission.⁹⁶

The location from which the calls were made

According to media stories published shortly after 9/11, ten calls had been made from the aircraft with cellular phones.⁹⁷ At least one recipient, Deena Burnett, explicitly stated that she recognised her husband’s cell phone ID when he called.⁹⁸ Experimental and empirical evidence, however, indicates that cell phone calls are unlikely to succeed from aircraft flying above 8,000 feet.⁹⁹ If it was wrongly assumed that the calls had been made with cell phones, it would mean that they had been made with airfones fixed to the back of the seats¹⁰⁰. This fact could have been easily determined within days after 9/11, because each phone call generates a billing record and can be traced to the particular location and equipment. Such evidence has not been produced.¹⁰¹ An answer to this question is particularly important with regard to flight AA77, because airfones apparently were not available on this aircraft on 9/11.¹⁰² Should this absence be confirmed, it would mean that the calls reported from that aircraft were either made from another location or were fabricated. This, in turn, would raise questions about the reliability of the official account on the other phone calls.

The cockpit voice recorder

⁹³ Jim McKinnon, ‘The phone line from Flight 93 was still open ...’, *Post-Gazette.com*, 16 September 2001). Available at <http://www.post-gazette.com/headlines/20010916phonecallnat3p3.asp>

⁹⁴ ‘A Call of Courage’, *NBC News*, 18 September 2001. Available at <http://www.damien.tv/Terror/beamer.htm>

⁹⁵ Rowland Morgan, ‘Flight 93 was shot down’, *London Daily Mail*, 19 August 2006, cached at <http://www.prisonplanet.com/articles/august2006/190806shotdown.htm>

⁹⁶ John Doe II, ‘UA 93: Too Many Contradictions’. 12 March 2005, Available at http://www.team8plus.org/e107_plugins/forum/forum_viewtopic.php?24

⁹⁷ A detailed and annotated list of the phone calls is available at http://www.thewebfairy.com/killtown/chart.html#Edward_Felt

⁹⁸ Greg Gordon, ‘Widow tells of poignant last calls’, *The Sacramento Bee*, September 11, 2002. Cached at <http://holtz.org/Library/Social%20Science/History/Atomic%20Age/2000s/Sep11/Burnett%20widows%20story.htm>. Confirmed in a letter by Tom Burnett’s father to the *National Review*, 20 May 2002, cached at http://findarticles.com/p/articles/mi_m1282/is_9_54/ai_85410322

⁹⁹ *Wireless Review*, 1 Nov. 2001; A.K. Dewdney, ‘Project Achilles’: Final Report and Summary of Findings, April 19, 2003. Available at <http://physics911.net/projectachilles>

¹⁰⁰ Final Report of the 9/11 Commission, infra n. 144, Note 77 to Chapter I

¹⁰¹ The evidence presented at the Moussaoui trial is inconclusive and unsourced, see <http://911research.wtc7.net/planes/evidence/calldetail.html>

¹⁰² David Ray Griffin and Rob Balsamo, ‘Could Barbara Olson Have Made Those Calls? An Analysis of New Evidence about Onboard Phones’, *Pilots for 9/11 Truth*, 26 June 2007. Available at <http://pilotsfor911truth.org/amrarticle.html>

The CVR from Flight UA93 poses another problem. The FBI controlled the analysis of that CVR and initially opposed to have even family members listen to it.¹⁰³ Questions remain about the authenticity of this CVR: Transcripts of CVRs from other aircraft crashes mention various extraneous sounds in addition to conversation.¹⁰⁴ The transcript of Flight UA93's CVR does not mention any extraneous sounds¹⁰⁵ and particularly no crash sound at the end, as would be expected,¹⁰⁶ suggesting that the transcript does not faithfully reflect what is heard in the recording. Furthermore serious discrepancies have been revealed between what family members heard when the CVR was first played to them by the FBI on 18 April 2002¹⁰⁷ and what the 9/11 Commission reported to have heard from the CVR recording at a later date. These discrepancies suggest that the CVR recording has either been manipulated¹⁰⁸ or that two versions had been made from the CVR.

As the phone calls from the aircraft and the CVR from Flight UA93 constitute the main evidence on the actual scenario of the crime, only full transparency of such data can ensure the right of victims and the public to know the truth about what happened aboard the aircraft.

(ii) Who were the perpetrators?

The US government alleges that nineteen individuals whose names and photographs have been released by the FBI¹⁰⁹ and whom no one has seen since 11 September 2001, had booked seats on flights AA11, AA77, UA93 and UA175 for that same day, boarded onto those flights, hijacked the aircraft and deliberately crashed these aircraft with passengers and crew on the Twin Towers of the World Trade Center, the Pentagon and on a field in Pennsylvania.

The accusations against these nineteen individuals were based, for the most part, on what were described as lucky discoveries made on 9/11 by the FBI. The first was the discovery of two pieces of luggage allegedly owned by Mohammed Atta, the lead suspect, which were not loaded onto flight AA11. The reason for this alleged mistake at Logan airport was never disclosed. According to FBI Special Agent James M. Fitzgerald, who testified at the Moussaoui trial, the connecting flight from Portland which brought Mohammed Atta and Abdul Aziz Alomari to Boston, had 'arrived too late for the luggage to be loaded onto Flight 11'¹¹⁰ According to the 9/11 Commission, however, the flight arrived on time at approximately 6:45 A.M., one hour before the scheduled departure of Flight AA11.¹¹¹ The contents of the luggage enabled FBI agents to 'swiftly unravel the mystery of who carried out the suicide attacks and what motivated them'.¹¹²

¹⁰³ Reuters News Service, 'FBI refuses to release cockpit tape from hijacked flight', *Houston Chronicle*, 20 December 2001. Available at <http://www.chron.com/disp/story.mpl/special/terror/front/1181993.html>

¹⁰⁴ See EgyptAir 990 CVR Transcript: http://www.nts.gov/Events/EA990/docket/Ex_12A.pdf; SwissAir Flight 111 CVR Transcript: http://aviation-safety.net/inv....._sr111.php; TWA Flight 800 CVR Transcript: http://aviation-safety.net/inv....._tw800.php

¹⁰⁵ <http://i.a.cnn.net/cnn/2006/images/04/12/flight93.transcript.pdf>

¹⁰⁶ Released CVR recordings from aircraft crashes are available at <http://www.airdisaster.com/cvr/cvrwav.shtml>

¹⁰⁷ John Doe II, *supra* n. 96

¹⁰⁸ Ibid.

¹⁰⁹ FBI, Press Release, 27 September 2001. Available at <http://www.fbi.gov/pressrel/pressrel01/092701hjpgic.htm>

¹¹⁰ *United States of America v Zacarias Moussaoui*, U.S. District Court, Alexandria Division. Cross-examination of FBI Special Agent James M. Fitzgerald. March 7, 2006, 10:00 A.M. Transcript p. 38. Available at <http://cryptome.org/usa-v-zm-030706-01.htm>

¹¹¹ 9/11 Commission's Staff Report of 26 August 2004 (declassified), p. 3. Available at <http://www.archives.gov/legislative/research/9-11/staff-report-sept2005.pdf>

¹¹² Michael Dorman, 'Unravelling 9-11 was in the bags', *Newsday*, 17 April 2006. Available at <http://www.newsday.com/news/nationworld/nation/ny-uslugg274705186apr17.0.6096142.story?coll=ny-nationalnews-print>

Among the items reportedly found in Atta's bags were: a hand-held electronic flight computer, a simulator procedures manual for Boeing 757 and 767 aircraft, a slide-rule flight calculator, a copy of the Qur'an and a handwritten testament written in Arabic.¹¹³ According to later testimonies by former FBI agents, the luggage also contained the identities of all 19 suspects involved in the four hijackings, information on their plans, backgrounds, motives, al Qaeda connections and [a] folding knife and pepper spray.¹¹⁴ According to FBI Special Agent Fitzgerald, Abdul Aziz Alomari's passport was also found in one the bags.¹¹⁵

Other incriminating items of evidence were also swiftly found. The 9/11 Commission noted that a passport of one of the alleged hijackers was found near the World Trade Center where a 'passer-by picked it up and gave it to a NYPD detective shortly before the ...towers collapsed'¹¹⁶. Numerous observers found it difficult to believe that such a document could make it undamaged from the pocket of a dead suspect in the burning wreckage within the building to the street and be found within minutes. A Saudi Arabian driver's license of Ahmad al-Ghamdi, another suspect, 'was recovered at the World Trade Center crash site'. A 'four-page letter written in Arabic that was identical to the one recovered from the luggage of Mohammed Atta at Logan Airport', a cashier's check made out to a flight school in Phoenix, four drawings of the cockpit of a 757 jet, a box cutter-type knife, maps of Washington and New York, and a page with notes and phone numbers, were found in a Toyota Corolla registered to alleged hijacker Nawaf Alhazmi at Washington's Dulles Airport on 12 September.¹¹⁷ In a car rented by alleged hijacker Marwan Alshehhi discovered at Boston's Logan Airport, the FBI discovered an Arabic language flight manual, a pass giving access to restricted areas at the airport, documents containing a name on the passenger list of one of the flights, and the names of other suspects. The name of the flight school where Mohammed Atta and Alshehhi studied, Huffman Aviation, is also found in the car.¹¹⁸ A number of documents purporting to identify the suspects of flight UA93 were also reportedly found at that flight's crash site, where no wreckage was seen and no drop of blood.¹¹⁹ These included the passport of suspect Al Ghamdi,¹²⁰ Alnami's Florida Driver's License¹²¹, his Saudi Arabian Youth Hostel Association ID card¹²², a visa page from Ziad Jarrah's passport¹²³, and a business card of Jarrah's uncle.¹²⁴ At the Pentagon crash site, a "Kingdom of Saudi Arabia Student Identity Card" is discovered with alleged hijacker Majed Moqed's name on it.¹²⁵

¹¹³ FBI Affidavit, at <http://www.abc.net.au/4corners/atta/resources/documents/fbi affidavit1.htm>

¹¹⁴ Michael Dorman, *supra* n. 112

¹¹⁵ *United States of America v Zacarias Moussaoui*, *supra* n. 110

¹¹⁶ Susan Ginsburg (staff member of the Commission) at Public Hearing of the 9/11 Commission, 26 January 2004. Available at <http://www.sacred-texts.com/ame/911/911tr/012604.htm>

¹¹⁷ *U.S. v. Moussaoui*, *supra* n. 110, p. 39; Arizona Daily Star, 28 September 2001, Cox News Service, 21 October 2001.

¹¹⁸ Los Angeles Times, 13 September 2001

¹¹⁹ Robb Frederick, 'The day that changed Amereica', *Pittsburgh Tribune-Review*, 11 September 2002. Cached at

http://www.aldeilis.net/english/index.php?option=com_content&task=view&id=2263&Itemid=107

¹²⁰ Moussaoui trial exhibit PA00108, at

<http://www.vaed.uscourts.gov/notablecases/moussaoui/exhibits/prosecution/PA00108.html>

¹²¹ Moussaoui trial exhibit PA00110, at

<http://www.vaed.uscourts.gov/notablecases/moussaoui/exhibits/prosecution/PA00110.html>

¹²² Moussaoui trial exhibit PA00102, at

<http://www.vaed.uscourts.gov/notablecases/moussaoui/exhibits/prosecution/PA00102.html>

¹²³ Moussaoui trial exhibit PA00105.08, at

<http://www.vaed.uscourts.gov/notablecases/moussaoui/exhibits/prosecution/PA00105-08.html>

¹²⁴ Moussaoui trial exhibit GX-PA00109, at <http://www.rcfp.org/moussaoui/>

¹²⁵ 9/11 Commission Final Report, *infra* n. 144, p. 132

On September 12, 2001, the FBI was notified by a hotel owner in Deerfield Beach, Florida, that he found a box cutter left in a room left by alleged hijacker Marwan Alshehhi and two unidentified men. The owner said having found in a nearby trash a duffel bag containing Boeing 757 manuals, three illustrated martial arts books, an 8-inch stack of East Coast flight maps, a three-ring binder full of handwritten notes, an English-German dictionary, an airplane fuel tester, and a protractor.¹²⁶

The night before 9/11, after making predictions of an attack on America the next day, some of the alleged hijackers were reported to have left a business card and a copy of the Qur'an at the bar.¹²⁷

The amount and nature of all of that incriminating evidence impelled an unidentified former high-level intelligence official to suggest: "Whatever trail was left was left deliberately – for the FBI to chase."¹²⁸ Whatever the truth of this suspicion, it is important to remember that the discovery of these items does not prove that their alleged owners actually boarded any particular aircraft, hijacked that aircraft and crashed the aircraft at the known sites. In order to prove that the suspects actually boarded the aircraft and died at the known crash sites, at least three types of evidence should have been produced: Authenticated passenger lists, identification of the suspects as they boarded the aircraft and identification of their bodily remains from the crash sites.

(a) No authenticated passenger lists

Airline passenger lists are essential documents required for insurance purposes. This is why it is important for each airline to meticulously document and check the identities of passengers who board passenger airliners.

On 13 September 2001 Attorney General John Ashcroft said that '[b]etween three and six individuals on each of the hijacked airplanes were involved' in the hijackings.¹²⁹ On the same day FBI Director Robert Mueller said that a 'preliminary investigation indicated 18 hijackers were on the four planes -- five on each of the two planes that crashed into the World Trade Center, and four each on the planes that crashed into the Pentagon and in Pennsylvania'.¹³⁰ A day later the number grew to 19.¹³¹ Initially, the name of Mosear Caned (ph) was released by CNN as one of the suspected hijackers.¹³² His name disappeared a few hours later from the list of suspects when CNN posted a new list of suspects released by the FBI¹³³. It was never explained why Caned's name had appeared in the first place and why it was then removed.¹³⁴ Two other names, Adnan and Ameer Bukhari, whose names had also apparently figured on the original passenger list, disappeared and were replaced by other names.¹³⁵ A fourth person,

¹²⁶ Miami Herald, 16 September 2001; Associated Press, 16 September 2001.

¹²⁷ Associated Press, 14 September 2001

¹²⁸ The New Yorker, 8 October 2001

¹²⁹ 'FBI: Early probe results show 18 hijackers took part', *CNN*, 13 September 2001. Available at <http://edition.cnn.com/2001/US/09/13/investigation.terrorism/>

¹³⁰ Ibid.

¹³¹ FBI Press Release of 14 September 2001. Available at http://www.aldeilis.net/english/index.php?option=com_content&task=view&id=372&Itemid=107

¹³² Kelli Arena, *CNN*, 14 September 2001, 10:11 ET. Available at

<http://transcripts.cnn.com/TRANSCRIPTS/0109/14/bn.01.html>

¹³³ 'FBI list of suspected hijackers', *CNN*, 14 September 2001, 2:00 PM, EDT. Available at <http://edition.cnn.com/2001/US/09/14/fbi.document/>

¹³⁴ Xymphora, 'Analysis of the Mosear Caned mystery'. Available at

http://www.aldeilis.net/english/index.php?option=com_content&task=view&id=1993&Itemid=107

¹³⁵ Mike Fish, 'Fla. flight schools may have trained hijackers', *CNN*, 14 September 2001. Available at <http://edition.cnn.com/2001/US/09/13/flight.schools/>

Amer Kamfar, was also named as an initial suspect hijacker.¹³⁶ His name also disappeared from the subsequent lists of suspect hijackers. The Washington Post revealed that the original passenger lists did not include the name of Khalid Al Mihdhar who later appeared as one of the alleged hijackers. In its Final Edition of 16 September 2001 the paper explained that his name ‘was not on the American Airlines manifest for [Flight 77] because he may not have had a ticket.’¹³⁷ After that date ‘reports began emerging saying that al-Mihdhar was still alive.’¹³⁸

On 12 September 2001, various newspapers published partial passenger lists of the crashed flights. These reports included Jude Larsson, 31, and his wife, Natalie, 24, as passengers aboard flight AA11.¹³⁹ Yet on September 18, 2001, the Honolulu Star Bulletin reported that the newspaper had received an email from Jude, apparently alive, notifying of the mistake.¹⁴⁰ According to the paper, “a person claiming to be with the airlines” called Jude’s father, a person described as a “known sculptor” in his community, and informed him that his son and daughter-in-law had been passengers on flight AA11. The names of Jude and Natalie Larson then disappeared from publicized passenger lists. More bizarre is that the names of Jude and Natalie Larson, whose names are not anymore officially listed as flight AA11 victims, are still listed as dead on the National Obituary Archive.¹⁴¹

The aforementioned fluctuations in the number and names of the alleged hijackers (and two passengers) suggest that their identification was not based on the original passenger lists. While printouts purporting to be copies of passenger lists from 9/11 were presented as exhibits at the Moussaoui trial and posted in May 2006 on the web¹⁴², these printouts contain no authentication and were not accompanied by chain-of-custody reports. These lists were released discreetly, without comments or indication as to their source.

While the names of all passengers, crew and suspected hijackers were publicized shortly after 9/11 in the media, the FBI and the airlines have consistently refused and continue to refuse to release the authentic, original, passenger lists and flight manifests, of the four 9/11 flights: AA11, AA77, UA175 and UA93 that would confirm who checked in to these flights.¹⁴³ As the names of all victims are long known, privacy considerations cannot explain such refusal to produce the original documents.

(b) No testimonies of aircraft boarding

A second category of evidence to prove that particular individuals have boarded a particular airplane at a particular gate and a specific time, is eyewitness testimony and security video recordings.

¹³⁶ Wikipedia, http://en.wikipedia.org/wiki/Amer_Kamfar

¹³⁷ Khalid Al-Mihdhar, *Washington Post*, 16 September 2001, p. A06 (no author indicated)

¹³⁸ Wikipedia: Khalid Al-Mihdhar. Available at http://en.wikipedia.org/wiki/Khalid_al-Mihdhar

¹³⁹ CBS, 12 September 2001, <http://election.cbsnews.com/stories/2001/09/12/national/main310935.shtml>;

The Honolulu Star Bulletin, 12 September 2001, <http://starbulletin.com/2001/09/12/news/story1.html>;

Washington Post, 13 September 2001, <http://www.washingtonpost.com/ac2/wp-dyn/A18970-2001Sep12>;

CNN (undated), <http://edition.cnn.com/SPECIALS/2001/trade.center/victims/AA11.victims.html>.

¹⁴⁰ Honolulu Star Bulletin, 18 September 2001, <http://starbulletin.com/2001/09/18/news/story5.html>

¹⁴¹ National Obituary Archive: <http://www.arrangeonline.com/Obituary/obituary.asp?ObituaryID=64182329>;

<http://www.nationalobituaryarchive.com/donation/donation.asp?ObituaryID=64182329>;

<http://www.cemeteryonline.com/ctz/0Mem/20010911/AA11-2001.htm>

¹⁴² <http://911research.wtc7.net/planes/evidence/passengers.html>

¹⁴³ The refusal to release the original passenger lists, has typically taken an evasive form, illustrated in an exchange of emails between this author and American Airlines. See

http://www.aldeilis.net/english/index.php?option=com_content&task=view&id=2329&Itemid=107

According to the 9/11 Commission, ten of the nineteen suspects were selected on 9/11 at the airports by the automated CAPPS system for ‘additional security scrutiny’.¹⁴⁴ Yet no one of those who handled the selectees, or any of the numerous airline or airport security employees interviewed by the FBI or the FAA on or after 9/11 is known to have seen the suspects. As for flights AA11 and UA175, the 9/11 Commission found that “[n]one of the [security] checkpoint supervisors recalled the hijackers or reported anything suspicious regarding their screening.”¹⁴⁵ As for flight AA77, the 9/11 Commission wrote that “[w]hen the local civil aviation security office of the FAA later investigated these security screening operations, the screeners recalled nothing out of the ordinary. They could not recall that any of the passengers they screened were CAPPS selectees.”¹⁴⁶ As for flight UA93, the 9/11 Commission indicated that the “FAA interviewed the screeners later; none recalled anything unusual or suspicious.”¹⁴⁷ According to an undated FBI report, the ‘FBI collected 14 knives or portions of knives at the Flight 93 crash site.’¹⁴⁸ Yet no screener is known to have mentioned coming across a single knife that morning.¹⁴⁹

Airline personnel see off passengers as they board onto aircraft in order to tear off the stub of their boarding cards or simply to count the passengers. Under the circumstances of 9/11, one would have expected to see and hear media interviews with those who were the last to have seen passengers and crew alive, particularly airline personnel who observed the boarding process in the morning of 9/11. Yet no such interview apparently took place. The 9/11 Commission does not mention the existence of any deposition or testimony by these airline personnel. And even the identities of these employees remains secret: As a response to this author’s request to interview, for research purposes, American Airlines employees who saw off passengers of flight AA77, the airline responded that their identities cannot be revealed for privacy reasons.¹⁵⁰

As no person has testified to have witnessed the boarding process, did perhaps security cameras document it? Apparently none of the three airports from where the 9/11 aircraft reportedly departed had surveillance cameras above the *boarding gates*. Thus, there exists neither eyewitness testimony nor a visual documentation of the boarding process.

Yet public opinion remains convinced that surveillance videos of the boarding process had been shown on TV networks. In fact, what has been shown around the world was not the boarding process of any of the four aircraft but two video recordings, one of which is said to be from Portland airport and the other from Dulles Airport. The Portland video purports to show Mohammed Atta and alleged hijacker Alomari before they board onto a connecting flight to Boston. This video does not prove that they boarded any flight at Logan airport. The other video recording is said to be from the screening checkpoint at Dulles Airport from where flight AA77 allegedly departed.

¹⁴⁴ Final Report of the National Commission on Terrorist Attacks Upon the United States, Official Government Edition (“9/11 Commission Report”), Available at <http://www.gpoaccess.gov/911/index.html>, Chapter I, Note 2, p. 451.

¹⁴⁵ Ibid. Chapter I, p. 2. In support of this statement, the Commission refers to interviews with six named individuals.

¹⁴⁶ Ibid. Chapter I, p. 3. In support of this statement, the Commission refers to an interview made on April 12, 2004 with Tim Jackson, a person whose role is not indicated.

¹⁴⁷ Ibid. Chapter I, p. 4. In support of this statement, the Commission refers to an unreleased FAA report, “United Airlines Flight 93, September 11, 2001, Executive Report,” of Jan. 30, 2002.

¹⁴⁸ Ibid. Note 82, p. 457

¹⁴⁹ Staff Statement No. 3 to the 9/11 Commission made at the 7th Public Hearing, 26-27 January 2004, pp. 9-10. Available at http://www.9-11commission.gov/staff_statements/staff_statement_3.pdf

¹⁵⁰ Exchange of emails between the author and American Airlines, *supra* n. 143. See letter from American Airlines to the author dated 1 December 2005.

According to all known sources, Logan Airport in Boston did not have any surveillance cameras on 9/11, neither at the security checkpoints nor above the boarding gates.¹⁵¹ According to the 9/11 Commission's staff, the Newark International Airport did not either have such equipment¹⁵². But this claim has been contradicted by Michael Taylor, president of American International Security Corporation.¹⁵³ The only recording attempting to place the alleged hijackers at one of the three departure airports is a grainy surveillance recording purporting to show the alleged hijackers of flight AA77 pass through the security checkpoint at Dulles Airport, Washington, D.C. This recording was not voluntarily released by the US government, but was forced out in 2004 under the Freedom Of Information Act.¹⁵⁴ This video recording can be found on various sites on the Internet.¹⁵⁵ Jay Kolar, who published a critical analysis of this recording,¹⁵⁶ points out the absence of identifying data such as date, time and camera number. He also pointed out further anomalies, such as the unusually bright lighting (which suggest that the recording was not made in the morning) and the fact that a human operator had manipulated the camera in order to zoom on particular subjects (indicating foreknowledge of those subjects). His conclusion is that this recording was made deliberately and probably at another time than in the morning of 9/11. Adding to the mystery, the released recording does not show any passengers pass through the security checkpoint. Aside from the dubious source of this recording, it does not show who *boarded* the aircraft but only a handful of ill-recognizable individuals who passed a security checkpoint.

(c) No boarding passes

To ensure that all checked-in passengers actually board the aircraft, airline personnel usually tear a stub of the boarding pass and count these stubs. These stubs carry the names of the passengers. The 9/11 Commission Staff report,¹⁵⁷ which mentions specifically that Mohammed Atta received a "boarding pass" at Portland airport, does not mention at all boarding passes in connection with flights AA11, AA77, UA175 and UA93, as if such documents did not exist. The Staff report does not explain how the airlines checked who boarded the aircraft.

(d) No positive identification of the alleged hijackers' bodily remains

According to the official account, the 19 hijackers died in the crashes at the World Trade Center, the Pentagon and at the crash site near Shanksville, Pennsylvania. Yet, there is no positive proof that they did. There is no indication that a proper chain of custody between the crash sites and the final disposition of bodily remains had been established by the FBI, as required in criminal cases. The 9/11 Commission did not refer to any such documentation.

¹⁵¹ Staff Statement No. 3, *supra* n. 149. p. 18

¹⁵² Staff Statement No. 3, *supra* n. 149. p. 35

¹⁵³ Doug Hanchett and Robin Washington, 'Logan lacks video cameras', *Boston Herald*, 29 September 2001.

¹⁵⁴ Nick Grimm, 'Commission report finalised as 9/11 airport video released', *ABC.net.au*, 22 July 2004. Available at <http://www.abc.net.au/pm/content/2004/s1159804.htm>

¹⁵⁵ The video can be viewed here: http://www.whatreallyhappened.com/hijackers_video.html

¹⁵⁶ Jay Kolar, 'What we now know about the alleged 9-11 hijackers', in *The Hidden History of 9-11-2001, Research in Political Economy*, Vol. 23, 3-45, Elsevier Ltd. (2006), pp. 7-10

¹⁵⁷ Staff Report, *supra* n. 111

Unidentified officials spoken to by The Times (U.K.) in October 2001 *expected* that the bodies of the 9/11 suspects would be identified ‘by a process of elimination’¹⁵⁸. They did not explain on what grounds they did not envisage a positive identification of these bodies.

Chris Kelly, spokesman of the Armed Forces Institute of Pathology (AFIP), where the identification of the victims’ remains from flights AA77 and UA93 took place, said that the authorities were reluctant to consider releasing the hijackers’ bodies: ‘We are not quite sure what will happen to them, we doubt very much we are going to be making an effort to reach family members over there.’¹⁵⁹ He did not mention why AFIP could not use comparison DNA samples from known locations in the United States where the alleged hijackers had lived. While the AFIP announced to have positively identified the human remains of all ‘innocent’ passengers and crew from the flights, they did not identify the remains of any individual suspect. Kelly said later: ‘The remains that didn’t match any of the samples were ruled to be the terrorists’.¹⁶⁰ Somerset County coroner Wallace Miller said that the “death certificates [for the suspected hijackers] will list each as ‘John Doe’”.¹⁶¹

As for the remains of the suspects who allegedly flew AA11 and UA175 into the Twin Towers, a spokeswoman for the New York Medical Examiner’s Office, where the identification of the WTC victims took place, said to have received from the FBI in February 2003 “profiles of all 10 hijackers ...so their remains could be separated from those of victims.” She added: “No names were attached to these profiles. We matched them, and we have matched two of those profiles to remains that we have.”¹⁶² No explanation was given where and how the FBI secured the “profiles” of these 10 individuals, why it took so long to hand them for identification and why they could not be identified by name.

(e) Conclusion

As shown above, the US authorities have failed to prove that the 19 individuals accused of the mass murder of 9/11 had boarded the aircraft, which they allegedly used to commit the crime. No authenticated, original, passenger lists, bearing their names, have been released; no one is known to have seen them board the aircraft; no video recordings documented their boarding; no boarding pass stub exists to document their boarding; and their bodily remains have not been positively identified.

In the months following 9/11, reports appeared in mainstream media that some of the alleged hijackers were actually living in various Arab countries. These reports led to speculation that the identities of some of the hijackers were in doubt. Typical of such reports is an Associated Press dispatch of 3 November 2001, which states: “The FBI released the names and photos of the hijackers in late September. The names were those listed on the planes’ passenger manifests and investigators were certain those were the names the hijackers used when they entered the United States. But questions remained about whether they were the hijackers’ true identities. The FBI has not disclosed which names were in doubt and [FBI Director] Mueller

¹⁵⁸ Damian Whitworth, ‘Hijackers’ bodies set Bush grisly ethical question’, *The Times (U.K.)*, 6 October 2001

¹⁵⁹ Ibid.

¹⁶⁰ ‘Remains Of Nine Sept. 11 Hijackers Held’, *CBS*, 17 August 2002. Available at <http://www.cbsnews.com/stories/2002/08/17/attack/main519033.shtml>, mirrored at http://www.aldeilis.net/english/index.php?option=com_content&task=view&id=2264&Itemid=107; Tom Gibb, ‘FBI ends site work, says no bomb used’, *Post-Gazette News*, 25 September 2001. Available at <http://www.post-gazette.com/headlines/20010925scene0925p2.asp>

¹⁶¹ Tom Gibb, Flight 93 remains yield no evidence, *Post-Gazette News*, 20 December 2001. Cached at http://www.aldeilis.net/english/index.php?option=com_content&task=view&id=1060&Itemid=107

¹⁶² ‘Remains of 9/11 hijackers identified’, *BBC*, 28 February 2003

provided no new information on the hijackers' identities beyond his statement to reporters." The 9/11 Commission did neither address at all these doubts nor the reports about the "living hijackers".

On September 14, 2001, the FBI released the *names* of the 19 individuals "who have been *identified* as hijackers aboard the four airliners that crashed on September 11, 2001".¹⁶³ On September 27, 2001, the FBI released *photographs* of these 19 individuals "*believed* to be the hijackers of the four airliners".¹⁶⁴ Yet for most names no birth date, birthplace or specific residence is given despite the apparent availability of such data on visa application forms and other documentation possessed by the FBI. The webpage provides the following caveat: "It should be noted that attempts to confirm the true identities of these individuals are still under way." This statement still applies because the webpage has not been updated since it was initially posted and constitutes the US government's official listing of the alleged hijackers. Accordingly, a significant difference exists between the official position of the US government regarding the identities of the alleged hijackers of 9/11 and the popularized version promoted by politicians and the media to justify the aggression against Afghanistan and the "war on terror".

More than six years have elapsed during which the U.S. government had ample opportunities to prove the identities of the nineteen persons who allegedly boarded airplanes on 9/11 and committed mass murder. Any future release of evidence regarding these persons will have to be viewed with the greatest circumspection. As things stand today, there exists no evidence, whatsoever, that the 19 individuals designated as the hijackers of 9/11, boarded the four aircraft that reportedly crashed on that day. For this reason alone, they cannot be considered as suspects of the crime, let alone as its perpetrators.

(iii) Who were the victims?

The Armed Forces Institute of Pathology (AFIP) carried out the identification of the victims from the crashes of flights AA77 and UA93 after a 'behind-the-scenes tug of war' between the FBI and the Virginia Chief Medical Examiner, Dr. Fierro, whose department was legally responsible for such work.¹⁶⁵ Attorney General John Ashcroft had to formally relieve her department of its responsibilities in this case.¹⁶⁶ It was never explained why it was crucial for the Pentagon or the Department of Justice to have such identifications conducted under the authority of the armed forces. Unidentified officials quoted by The Times in October 2001 were confident that 'DNA tests would eventually identify all of the victims' from these crashes while the 'bodies of the [terrorists] would also be identified, if only by a process of elimination.'¹⁶⁷ According to the AFIP the human remains of all passengers and crew of flight UA93 were identified by 16 November 2001.¹⁶⁸ 'All but four who worked in the Pentagon were identified. AFIP identified all but one of the passengers of Flight 77.'¹⁶⁹

¹⁶³ <http://www.fbi.gov/pressrel/pressrel01/091401hj.htm> (emphasis added)

¹⁶⁴ <http://www.fbi.gov/pressrel/pressrel01/092701hjpgic.htm> (emphasis added)

¹⁶⁵ Avram Goldstein, 'Searchers Work and Scientists Wait for Bodies', *Washington Post*, 13 September 2001. Available at <http://www.washingtonpost.com/ac2/wp-dyn/A21056-2001Sep12>; US Dept. of Health and Human Services 7/2002, p. A-47

¹⁶⁶ Ibid.

¹⁶⁷ Damian Whitworth, 'Hijackers' bodies set Bush grisly ethical question', *The Times (U.K.)*, 6 October 2001

¹⁶⁸ Christopher C. Kelly, 'Experts ID 184 Pentagon Fatalities', *Mercury*, an Army Medical Department publication, January 2002. Available at http://911research.wtc7.net/cache/planes/evidence/afip_pentvictimid.htm

¹⁶⁹ Ibid.

The rate of victim identification in New York was much lower. The New York City Medical Examiner carried out the identification of the victims who died at the World Trade Center (WTC) in New York. By 2005, only 1595 victims of the 2,749 people known to have died at the WTC site – or 58 percent – were positively identified on the basis of recovered physical remains.¹⁷⁰ It has been difficult to identify the WTC victims because many bodies had been literally pulverized. In June 2006 human remains turned up on top of the Deutsche Bank Building, which stands about 400 feet to the south of the location of the former South Tower.¹⁷¹ According to the Associated Press most of the fragments were less than 1/16th inch in length.¹⁷² The location of this finding and the size of the fragments gave rise to questions that remain unanswered.

(iv) What were the tools of the crime?

According to the official account, the tools of the crime were: (a) weapons used within the aircraft to overcome passengers and crew, and (b) the aircraft themselves as missiles.

Weapons used within the aircraft

According to the 9/11 Commission the suspects used only knives, mace and pepper spray in the aircraft. Although a draft report by the FAA mentioned the use of a gun in one of the aircraft,¹⁷³ the Commission insists that this draft was based on a misunderstanding. The 9/11 Commission spent actually significant efforts to prove that no gun had been used in the aircraft.¹⁷⁴ The stakes, evidently, were enormous since a discovered failure to detect a gun before boarding may have cost the airlines huge sums in compensation.¹⁷⁵

According to the reported phone calls from the aircraft the alleged hijackers possessed and/or used knives, mace, pepper spray, a gun and a bomb, to threaten or attack passengers and crew. If we assume these phone calls as genuine and the callers as truthful, such reports would mean that these weapons had been taken aboard the aircraft past security check. This, in turn, would suggest either complicity of ground personnel in smuggling such weapons on board or a cover-up of security lapses.

While the investigators of 9/11 refuse to release the original evidence regarding the phone calls and fail to provide a plausible explanation for the callers' testimonies, the public is prevented from knowing the truth regarding the weapons used on board the four aircraft.

What aircraft crashed where?

For each of the four crashed aircraft, eyewitnesses have come forward who claim to have seen the aircraft fly towards the target. A few witnesses claim to have recognized the livery of an American Airlines plane fly towards the Pentagon, but most eyewitnesses did not identify the type of aircraft, which headed towards the crash sites and their testimonies conflict widely. Numerous independent researchers conclude, on the base of existing evidence, that no passenger aircraft crashed on the Pentagon. The dispute about what actually crashed there

¹⁷⁰ Phil Hirschhorn, 'DNA technology exhausted, New York officials say', *CNN*, 23 February 2005

¹⁷¹ USA Today, 'More human remains found on roof next to World Trade Center site', 6 April 2006. Cached at http://911research.wtc7.net/cache/wtc/evidence/usatoday_morehumanremains.html

¹⁷² Amy Westfeldt, 'More 9/11 bone fragments found', Associated Press, 13 April 2006. Cached at http://911research.wtc7.net/cache/wtc/evidence/usatoday_morewtcbonef.html

¹⁷³ Paul Sperry, 'Hijacker shot passenger on Flight 11: FAA memo', *WorldNetDaily.com*, 27 February 2002, http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=26626

¹⁷⁴ 9/11 Commission Staff report, *supra* n. 144, at pp. 16-17

¹⁷⁵ Paul Sperry, *supra* n. 173

continues. Some researchers believe that the aircraft which allegedly crashed in Pennsylvania was actually shot down, as attested by the fact that debris were found over many miles and by the absence of wreckage and bodies at the crash site. A few researchers who studied meticulously videos depicting the plane crash on the South Tower of the World Trade Center go as far as claiming that no plane crashed at all on the South Tower: They claim it was all video fakery.¹⁷⁶

There are at least six reasons for not assuming anything definite about the identities of the crashed aircraft and, by implication, the identities of the aircraft onto which the passengers and crew had boarded.

First, and crucially, the FBI did not produce any positive identification of the crashed aircraft. Yet, it should have been extremely easy to do so, because all aircraft parts carry serial numbers that can be traced to the aircraft's serial number.¹⁷⁷

Second, video evidence of the crashes do not prove what aircraft had crashed there. Judicial Watch, an organization describing itself as a "conservative non-partisan educational foundation [that] promotes transparency, accountability and integrity in government, politics and the law", filed a Freedom of Information Act request on December 15, 2004, seeking all records pertaining to September 11, 2001 camera recordings of the Pentagon attack from the Sheraton National Hotel, the Nexcomm/Citgo gas station, Pentagon security cameras and the Virginia Department of Transportation.¹⁷⁸ But the Pentagon refused to release what it possessed. Judicial Watch initiated therefore a lawsuit on February 22, 2006 arguing that there was "no legal basis" for the Defense Department's refusal to release the only tape the Pentagon said to possess. On May 16, 2006, the Pentagon finally accepted to release two tapes that it claims show American Airlines 11 striking the Pentagon on 9/11.¹⁷⁹ Both are taken from the almost the same angle and from far away; both are extremely blurred; both are undated (suggesting that the recording had been manipulated); and neither of them allows the determination of the aircraft that apparently strikes the Pentagon. The video recordings from the various other locations around the Pentagon have not been released. No video recording exists from the crash of flight UA93 near Shanksville. One blurred video recording is known to exist of the aircraft crash on the North Tower in New York.¹⁸⁰ Numerous video recordings were made of the aircraft crash on the South Tower (the second crash)¹⁸¹. None of these, however, allow a visual identification of the aircraft type.

Third, local residents who rushed to the crash site at Shanksville reported to have been surprised to see no signs of an aircraft crash, no jet fuel smell, no bodies, just a hole in the

¹⁷⁶ For an exposition of this theory, see Morgan Reynolds, 'We Have Some Holes in the Planes Theories', 5 March 2006. Available at http://nomoregames.net/index.php?page=911&subpage1=we_have_holes; for a refutation of this theory, see Eric Salter, 'A Critical Review of WTC "No Plane" Theories', 29 September 2006. Available at <http://www.questionsquestions.net/WTC/review.html>

¹⁷⁷ George Nelson, Col. USAF (rt.), 'Impossible to Prove a Falsehood True: Aircraft Parts as a Clue to their Identity', *Physics 911* (undated) Available at <http://www.physics911.net/georgenelson>

¹⁷⁸ Judicial Watch, Judicial Watch Obtains September 11 Pentagon Video, 16 May 2006. Available at <http://www.judicialwatch.org/5772.shtml>

¹⁷⁹ Judicial Watch, Defense Department Releases Two Videos of Flight 77 Crashing Into Pentagon, undated. Videos available at <http://judicialwatch.org/flight77.shtml>

¹⁸⁰ Scott Loughrey, A Review of '911' (9/2004) Available at http://www.media-criticism.com/Naudet_Brothers_09_2004.html; the Naudet Brothers' video can be watched at <http://www.youtube.com/watch?v=JYqEMBXC7mE>

¹⁸¹ A refutation of this claim is available at <http://www.livevideo.com/video/socialservice/6F393F4DE41C4CF798CBB438E6378129/september-clues-part1.aspx>

ground.¹⁸² According to the official account, the plane crashed almost vertically at more than 500 mph, sank entirely into the soft ground and disappeared. Yet debris were found far miles from the crash site. According to the FBI, however, about 95 percent of the aircraft was recovered from the crash scene.¹⁸³ The FBI did not forward the wreckage to the National Transportation Safety Board for a mandatory crash investigation but ‘since [it] had no more use for it’, turned it over, 12 days after the crash, to United Airlines¹⁸⁴. No photographs of the recovered wreckage exist in the public domain.

Fourth, it was discovered in 2003 by Gerard Holmgren and ascertained by the present author that according to the BTS database of the US Department of Transportation (DoT), flight AA11 and flight AA77 were not scheduled to fly at all on 11 September 2001 but were scheduled to fly on the preceding and subsequent days.¹⁸⁵ After Holmgren’s discovery was publicized, the DoT hastily added the records for AA11 and AA77 flights on the 9/11, thereby engaging in a fraudulent manipulation of official records. Another discovered anomaly is that according to the BTS database, the aircraft, which reportedly crashed on the Pentagon (flight AA77, tail number N644AA), did not depart from Dulles Airport, Washington, as officially reported.¹⁸⁶

Fifth, a group of six air traffic controllers working at the FAA center in Nashua recorded on tape what they had observed in the morning of 9/11. Their tape ‘was destroyed by a supervisor without anyone making a transcript or even listening to it (...) [He] crushed the cassette in his hand, shredded the tape and dropped the pieces into different trash cans around the building’¹⁸⁷ The controllers who recorded their stories were never identified or asked to re-record their impressions.

Sixth, the crash site of flight UA93 is the only crash site of 9/11 in which only aircraft passengers and crew members reportedly died. Yet Wally Miller, country coroner at Somerset County, who was one of the first to arrive at the crash site where flight UA93 allegedly crashed, said that he ‘stopped being coroner after about 20 minutes, because there were no bodies there.’¹⁸⁸ After weeks of combing the area, searchers found ‘about 1,500 mostly scorched samples of human tissue totalling less than 600 pounds’ or about 8 percent of the total combined bodily weight of the aircraft’s passengers, crew and hijackers.¹⁸⁹ Yet items, such as a wedding ring and other jewelry, photos, credit cards, purses and their contents, shoes, a wallet and currency, were among personal effects salvaged from the site.¹⁹⁰ Craig Hendrix, of Douglass Air Disaster Funeral Coordinators said: ‘We have some property for

¹⁸² Killtown, ‘Did Flight 93 Crash in Shanksville?’, <http://thewebfairy.com/killtown/flight93.html>

¹⁸³ Tom Gibb, *supra* n. 160/161

¹⁸⁴ Ibid.

¹⁸⁵ Gerard Holmgren, ‘Evidence that Flights AA 11 and AA 77 Did Not Exist on September 11, 2001’, 13 November 2003. Available at http://www.serendipity.li/wot/aa_flts/aa_flts.htm

¹⁸⁶ The Flight Path Study – American Airlines Flight 77 by the NTSB, 19 February 2002, http://www.nts.gov/info/Flight_%20Path_%20Study_AA77.pdf

¹⁸⁷ Matthew L. Wald, ‘FAA Manager Destroys Tape’, *New York Times*, 6 May 2004. Cached at <http://pilotsfor911truth.org/WTC1.html>; Also ‘Cassette Tape of 9/11 Controllers’ Recollections Destroyed’, *Air Safety Week*, 17 May 2004. Available at http://findarticles.com/p/articles/mi_m0UBT/is_20_18/ai_n6264639/pg_1

¹⁸⁸ Peter Perl, ‘Hallowed Ground’, *Washington Post*, 12 May 2002. Available at <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A56110-2002May8¬Found=true>. Mirrored at http://www.aldeilis.net/english/index.php?option=com_content&task=view&id=2262&Itemid=107

¹⁸⁹ Ibid. According to other reports (*Washington Post*, 12 May 2002, *Canadian Press*, March 28, 2004) the recovered human remains weighed 510 pounds.

¹⁹⁰ Steve Levin, ‘Flight 93 victims’ effects to go back to families’, *Post-Gazette*, 30 December 2001. Available at <http://www.post-gazette.com/headlines/20011230flight931230p3.asp>

most passengers'.¹⁹¹ Jerry and Beatrice Guadagno said that their son Richard's credentials and badge from the U.S. Fish and Wildlife Service had been found by the FBI at the crash site: 'It was practically intact,' Richard's sister, Lori, said of the credentials, which were returned in their wallet. 'It just looked like it wasn't damaged or hadn't gone through much of anything at all, which is so bizarre and ironic'.¹⁹²

As reported above, the FBI did not formally establish the identity (tail number) of the crashed aircraft, thus failing to determine the tool with which the more than 250 individuals listed as passengers and crew were killed. We have also shown that the FBI did not produce evidence documenting the boarding process at the various airports. It remains therefore unknown onto which aircraft (tail number) passengers and crew were asked to board.

(v) What caused the deaths of the victims?

As the investigation failed to determine the identities of the aircraft onto which passengers and crew boarded, it follows that it could not determine the cause of their deaths. We will now examine whether the cause of death of the other victims of 9/11 was determined.

Workers at the Pentagon no doubt perished as a result of an explosion and fire, both of which have been reliably documented. It is also probable that an aircraft crash caused the explosion and fire.¹⁹³

Occupants of the World Trade Center died from numerous causes. Some victims died from the impact of the aircraft, others from the ensuing fires and smoke. Some occupants jumped to their death, and some died from other incidental causes, including accidents. A substantial number of people, however, died when the buildings disintegrated. There is an ongoing dispute about the cause of disintegration, which prevents a final determination of what caused those deaths.

According to the official account, as presented in the Final Reports of the Federal Building and Fire Investigation of the World Trade Center Disaster conducted by the National Institute of Standards and Technology (NIST),¹⁹⁴ the Twin Towers collapsed due to structural failure caused by the fires and the damage from the aircraft's impact. Although other entities conducted similar studies, the \$20 million study by NIST, released in September 2005, represents the official position of the US government. NIST is an agency of the US Department of Commerce¹⁹⁵, it is 'the central government lab for fire'¹⁹⁶ and its director is a presidential appointee.¹⁹⁷

A growing number of independent researchers dispute the official theory presented by NIST. They argue that neither the fire nor the aircraft impact could have led to total structural failure, let alone in the short time that elapsed between the impact of the aircraft until the buildings disintegrated (South Tower: 56 minutes, North Tower: 102 minutes). They point out

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ 'Pentagon Witness Accounts'. Available at <http://www.geocities.com/someguyyoudontknow33/witnesses.htm>; 'Conflicting witnesses'. Available at <http://thewebfairy.com/killtown/flight77/witnesses.html>

¹⁹⁴ <http://wtc.nist.gov/pubs/>

¹⁹⁵ NIST website: <http://www.nist.gov/director/do2.htm>

¹⁹⁶ Alan Miller, 'Former Chief of NIST's Fire Science Division Calls for Independent Review of World Trade Center Investigation', *OpEdNews.com*, 21 August 2007. Available at http://www.opednews.com/articles/genera_alan_mil_070820_former_chief_of_nist.htm

¹⁹⁷ NIST, William Jeffrey, Director, <http://www.nist.gov/director/bios/jeffrey.htm>

that such buildings have never collapsed due to fire. Most of these skeptics suggest that the Twin Towers were demolished by explosives planted in the buildings in advance¹⁹⁸ or, as a few of them maintain, by more exotic methods.¹⁹⁹ Both groups of skeptics base their theory on observed facts, including the minute size of body fragments collected from Ground Zero²⁰⁰, the absence of body parts for hundreds of victims²⁰¹, the pulverization of a substantial mass of the buildings into extremely fine dust,²⁰² testimonies by more than 100 fire-fighters and rescue workers of pre-collapse, multiple explosions in the buildings, including in the sub-basement,²⁰³ photographic evidence of explosions,²⁰⁴ evidence that heavy steel beams were ejected at high speed from the buildings²⁰⁵, the quasi free-fall speed of the buildings²⁰⁶ and the unexplained presence of molten metal in Ground Zero weeks after the events.²⁰⁷ The sudden, total, free-fall collapse of WTC no. 7 in the afternoon of 11 September into its own footprint – a 47-floor steel-framed building that was not hit by an aircraft – is widely considered as the ultimate proof of pre-planned, controlled demolition.²⁰⁸

In response to growing doubts about the official theory of WTC collapses and particularly the unexplained implosion WTC no. 7, NIST issued on 30 August 2006 a document entitled Answers to Frequently Asked Questions (FAQ), which it posted on its website²⁰⁹. David Ray Griffin published a detailed rebuttal of the NIST study and its FAQ.²¹⁰ As these lines are written in January 2008, NIST has yet not published its own study on the collapse of WTC no. 7.

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- ¹⁹⁸ Tony Szamboti, 'The Sustainability of the Controlled Demolition Hypothesis for the destruction of the Twin Towers', *Journal of 911 Studies*, Vol. 11, May 2007. Available at <http://www.journalof911studies.com/volume/200704/SzambotiSustainabilityofControlledDemolitionHypothesisForDestructionofTwinTowers.pdf>
- ¹⁹⁹ Judy Wood and Morgan Reynolds, 'Star Wars Beam Weapons', 15 December 2006. Available at <http://drjudywood.com/articles/DEW/StarWarsBeam1.html>
- ²⁰⁰ N.J. Burkett, 'Inside the WTC remains DNA lab', *ABC Local*, 27 October 2006. Available at http://abclocal.go.com/wabc/story?section=9_11&id=4703667
- ²⁰¹ Dan Barry, 'At Morgue, Ceaselessly Sifting 9/11 Traces', *American Memorial Tribute* (probably July 2002). Available at http://werismyki.com/artcels/ceaselessly_sifting.html
- ²⁰² David Ray Griffin, 'The destruction of the World Trade Center: Why the official account cannot be true', 29 January 2006. Available at <http://www.globalresearch.ca/index.php?context=viewArticle&code=GRI20060129&articleId=1846>
- ²⁰³ Graeme MacQueen, '118 Witnesses: The Firefighters' Testimony to Explosions in the Twin Towers', *Journal of 911 Studies*, Vol. 2., August 2006. Available at http://www.journalof911studies.com/articles/Article_5_118Witnesses_WorldTradeCenter.pdf
- ²⁰⁴ Crockett Grabbe, 'Direct Evidence for Explosions, Flying Projectiles and Widespread Impact Damage', *Journal of 911 Studies*, Vol. 14, August 2007. Available at <http://www.journalof911studies.com/volume/200704/GrabbeExplosionsEvidence.pdf>
- ²⁰⁵ Kevin Ryan, 'High Velocity Bursts of Debris from Point-Like Sources in the WTC Towers', *Journal of 911 Studies*, Vol. 14, August 2007. Available at http://www.journalof911studies.com/volume/2007/Ryan_HVBD.pdf
- ²⁰⁶ Frank Legge, '9/11 – Acceleration Study Proves Explosive Demolition', *Journal of 911 Studies*, Vol. 5, November 2006. Available at <http://www.journalof911studies.com/volume/200611/911-Acceleration-Study-Proves-Explosive-Demolition.pdf>
- ²⁰⁷ 'Workers Reported Molten Metal in Ground Zero Rubble', *9-11 Research*. Available at <http://911research.wtc7.net/wtc/evidence/moltensteel.html>
- ²⁰⁸ <http://www.wtc7.net>; <http://www.studyof911.com/articles/winstonwtc701/>; <http://www.studyof911.com/articles/winstonwtc7collapse/>; <http://www.whatreallyhappened.com/wtc7.html>;
- ²⁰⁹ Final Reports of the Federal Building and Fire Investigation of the World Trade Center Disaster, *National Institute of Standards and Technology (NIST)* available at http://wtc.nist.gov/reports_october05.htm; Answers to Frequently Asked Questions, NIST available at http://wtc.nist.gov/pubs/factsheets/faqs_8_2006.htm; and Kevin Ryan, Response to NIST's FAQs available at http://stj911.org/ryan/NIST_Responses.html
- ²¹⁰ David Ray Griffin, *Debunking 9/11 Debunking: An Answer to Popular Mechanics and Other Defenders of the Official Conspiracy Theory* (Northampton: Olive Branch Press, 2007), pp. 143-206

Over 90 percent of 9/11 victims died at the World Trade Center alone. It is therefore of crucial importance to know what caused the unexpected disintegration of the Twin Towers. A satisfactory theory for the disintegration of these buildings must take into account all observed facts and be compatible with physical law. Until such theory is produced, the cause of death of most victims at the World Trade Center cannot be determined.

The fact that NIST's investigators did not attempt to explain the testimonies of the witnesses who reported to have seen, heard or experienced multiple explosions in the Twin Towers prior to collapse²¹¹, failed to explain the pulverization of the Twin Towers and the presence of molten metal under the ruins, failed to demonstrate that the Twin Towers could collapse at almost free-fall speed, and failed to explain the collapse of WTC no. 7,²¹² shows that NIST failed to conduct its investigation in accordance with established scientific principles but tailored its findings to fit the government's account.

(vi) Thoroughness of investigation as reflected in the Final Report of the 9/11 Commission

Introducing the Final Report of the 9/11 Commission, Chairman Kean and Vice Chairman Hamilton wrote that the Commission 'sought to be independent, impartial, thorough, and nonpartisan'.²¹³ In a scathing and detailed critique of the Commission's work,²¹⁴ David Ray Griffin demonstrates that the Commission was neither independent nor impartial. Griffin lists over 100 facts omitted from the Final Report because their inclusion would have undermined the official account on 9/11.²¹⁵ The present author is aware of still more omissions. The Commission, on the other hand, relied heavily on information obtained from alleged al Qaeda members in US custody that it was unable to verify. The Commission acknowledges that its 'access to [the detainees] has been limited to the review of intelligence reports based on communications received from the locations where the actual interrogations take place.' The Commission 'submitted questions for use in the interrogations, but had no control over whether, when, or how questions of particular interest would be asked.' Nor were Commission members 'allowed to talk to the interrogators ...to better judge the credibility of the detainees and clarify ambiguities in the reporting.'²¹⁶

According to the guidelines included in the 'Minnesota Protocol'²¹⁷, a Commission of Inquiry established to investigate gross human rights violations 'shall assess all information and evidence it receives to determine its relevance, veracity, reliability and probity.'²¹⁸ The 9/11 Commission failed to assess the veracity, reliability and probity of evidence it received from the CIA regarding the al Qaeda detainees and the evidence it received from the FBI regarding the identities of the alleged perpetrators, the tools of crime and the phone calls from the airplanes.

As for the thoroughness of the 9/11 Commission's work, Griffin writes: 'The [Commission's Final] report's lack of thoroughness is, in fact, one of its outstanding characteristics'²¹⁹. He cites a letter to the US Congress by 25 individuals 'who worked within

²¹¹ Ibid. p. 175; see in particular Graeme MacQueen, *supra* n. 203

²¹² Alan Miller, *supra* n. 196

²¹³ Final Report of the 9/11 Commission, *supra* n. 144 at p. xv

²¹⁴ David Ray Griffin, *The 9/11 Commission Report: Omissions and Distortions*. *supra* n. 74

²¹⁵ David Ray Griffin, 'The 9/11 Commission Report: A 571-Page Lie', 22 May 2005, *911Truth.Org*. Available at <http://www.911truth.org/article.php?story=20050523112738404>

²¹⁶ Final Report of the 9/11 Commission, *supra* n. 144 at p. 146 (box)

²¹⁷ 'Minnesota Protocol', *supra* n. 19

²¹⁸ 'Minnesota Protocol', *supra* n. 19, at Article 14

²¹⁹ Griffin, *supra* n. 74 at 12

various government agencies (FBI, FAA, DIA, Customs) responsible for national security and public safety' in which these authors designate '[o]mission [as] one of the major flaws in the Commission's report.'²²⁰

C. Was the Investigation Transparent?

The whole official approach to 9/11, including its investigation, has been characterized by secrecy. When challenged, this secrecy was justified by invoking the need to respect the privacy of victims' families, national security considerations and the need to withhold evidence until the trial of Zacarias Moussaoui. Yet, in order to maintain confidence in the justice system, particularly in a case of massive crime such as 9/11, the transparency of the investigation must be regarded as an overriding consideration. In none of the cases mentioned in this article were national security considerations invoked by the government. Zacarias Moussaoui's trial is over. The only remaining justifications for continued secrecy are privacy considerations. These only apply to some of the documents mentioned in this article and only to the extent that the concerned individuals would have asked to have certain documents sealed. But even if some individuals demand that documents be sealed to protect their feelings, courts would still have the duty to weigh such privacy considerations against the right of society to know the truth on major events such as 9/11.

We have already mentioned the failure by the US administration to produce the original passenger lists, authenticated security video recordings, documents identifying the crashed aircraft, depositions by recipients of phone calls from the aircraft and by air flight controllers, recordings of phone calls made from the aircraft, the contents of the CVR from Flight UA93 and evidence about the boarding process. The release of such documents would not have undermined national security, the "war on terrorism" or a fair trial. The following two examples illustrate the nature of official fear of disclosure.

On 18 April 2002, the FBI invited victims' families to listen to the CVR from Flight UA93. Department of Justice prosecutors 'exhorted families not to describe the tapes' contents because they will be played as evidence in the terrorism conspiracy trial of Zacarias Moussaoui.'²²¹ FBI agents 'asked the relatives to surrender all cell phones, palm pilots and pagers to prevent the recording of any of the day's proceedings.'²²² After the session, the family members left the session 'under the escort of New Jersey state troopers and federal agents, who walked them to their cars and shielded them from reporters.'²²³ The recording was played during the Moussaoui trial at the specific request of the Government.²²⁴ The trial judge decided, upon the request of an unidentified family member, to reseal the recording after it was played.²²⁵

In 2004, the FBI finally agreed to play for victims' families recordings of phone calls from the aircraft. They had to 'sign nondisclosure agreements and were not permitted to take notes. Civil attorneys and the media were barred. FBI agents filled the halls of the hotel [where the presentation took place] and took any camera or recording equipment before people were admitted to the [presentation]. Those who left the three-and-a-half-hour session to relieve

²²⁰ Griffin, *supra* n. 74 at 12-13

²²¹ Phil Hirschhorn and David Mattingly, 'Families say Flight 93 tapes prove heroism', *CNN*, 19 April 2002. Available at <http://edition.cnn.com/2002/US/04/19/rec.flight.93.families/>

²²² *Ibid.*

²²³ *Ibid.*

²²⁴ United States of America v Zacarias Moussaoui, Government submission regarding relevance of cockpit voice recorders. Available at <http://news.findlaw.com/hdocs/docs/moussaoui/usmouss92402gcvrsub.pdf>

²²⁵ See, http://capitaldefenseweekly.com/library/moussaoui/1_01-cr-00455/docs/72176/0.pdf

themselves were accompanied into rest rooms by agents.²²⁶ According to published accounts, the FBI possesses partial or entire recordings of phone calls made from the aircraft by five callers.²²⁷ Except for four minutes of the phone call made by flight attendant Betty Ong from flight AA11, played at a 9/11 Commission hearing, the other recordings have never been played publicly.

The FBI did not issue a public report describing its investigation.²²⁸ Its website provides virtually no information about the investigation which it entitled PENTTBOM.²²⁹

The above facts represent a small sample of attempts by the US administration to prevent the truth on what happened on the day of 11 September 2001 to be known.

D. Was the investigation independent?

According to international norms of human rights, investigators who are in any way dependent upon the subjects of their investigation are not competent to investigate their subjects. The FBI and NIST are agencies financially dependent upon the US government and their directors are presidential appointees.

Should the US government have been one of the subjects of the 9/11 investigation? According to over 100 senior U.S. military officers, intelligence services and law enforcement veterans, and former government officials, the answer is yes. These people have expressed their belief that the US government has not told the truth on 9/11 or is actually complicit in 9/11.²³⁰ Numerous survivors and victims' family members have demanded a new, truly independent, investigation of 9/11 because they do not trust the official investigation.²³¹ And according to a July 2006 poll conducted by Scripps News Service, one-third of Americans think the government either carried out the 9/11 attacks or intentionally allowed them to happen in order to provide a pretext for wars in the Middle East.²³² In the light of such extensive suspicions, an effective investigation of 9/11 could not be carried out by an agency of the government.

To the extent that Al Qaeda has been named as a prime suspect with regard to 9/11 and the fact that the FBI had previously attempted to obstruct investigations of Al Qaeda links, the impartiality of the FBI to investigate 9/11 could not be presumed.²³³ Substantial evidence

²²⁶ Gail Sheehy, '9/11 Tapes Reveal Ground Personnel Muffled Attacks', *New York Observer*, 20 June 2004. Available at <http://www.observer.com/pages/frontpage2.asp>

²²⁷ Ibid.

²²⁸ <http://www.fbi.gov/pressrel/penttbom/penttbomb.htm>

²²⁹ 9/11 Investigation (PENTTBOM) at <http://www.fbi.gov/pressrel/penttbom/penttbomb.htm>

²³⁰ Patriots Question 9/11. Available at <http://www.patriotsquestion911.com/>

²³¹ Survivors and Family Members Question 9/11. Available at <http://www.patriotsquestion911.com/survivors.html>

²³² Christopher Hayes, 'The 9/11 Truth Movement's Dangers', *CBS News*, 10 December 2006. Available at <http://www.cbsnews.com/stories/2006/12/08/opinion/main2242387.shtml>

²³³ Kim Bredesen, 'Was the FBI investigation blocked?', *Le Monde Diplo (Norway)*, August 2006. Available at <http://www.eurozine.com/articles/2006-08-28-bredesen-en.html>; Frederic Whitehurst, 'FBI Lab Whistleblower Testifying at the WTC Bombing Trial', 14 August 1995, at http://www.public-action.com/SkyWriter/WacoMuseum/death/tscr/whitehur/fw_test.html; also Richard A. Serrano, 'The man who caught Zacarias Moussaoui testifies that higher-ups blocked his efforts to determine whether there was a larger plot', *Los Angeles Times*, 21 March 2006. Cached at <http://www.commondreams.org/headlines06/0321-11.htm>; Phil Brennan, 'Congressman: FBI Ignored Repeated Warnings', *NewsMax.com*, 24 December 2001. Available at <http://www.newsmax.com/archives/articles/2001/12/23/113839.shtml>; Jerry Seper, 'Angry FBI agents joked about al Qaeda mole at HQ', *Washington Times*, 25 May 2002, Available at http://prisonplanet.com/Angry_FBI_agents_joked_about_al_Qaeda_mole_at_HQ.htm Jerry Seper, Angry

suggests that the lack of zeal by the FBI in going after Al Qaeda suspects did not originate from within the agency, but represented government policy and was dictated to the FBI.²³⁴ Taking into account the above record, the FBI could not be expected to carry out an impartial investigation of 9/11.

D. Was the Motive of the Crime Investigated?

When a building intended for demolition is suddenly consumed by fire and the owner subsequently collects a large insurance payment, he is justifiably suspected of arson. Identifying the underlying motives for a crime is one of the means to expedite a criminal investigation.

In the case of 9/11, it was not facially evident who instigated, planned, directed and financed the crime. When questions arise as to the identity of those who orchestrate a crime, investigators inquire into their possible motives. They would typically assess the benefits the suspects might have expected from the crime (*cui bono*). Such potential suspects would then be selected for a more detailed investigation. While there is no evidence that any Muslim or Arab organisation or State gained anything from the events of 9/11, there is ample evidence that the US government and a whole range of corporations and individuals gained from these events. The events of 9/11 allowed the US government to implement policies and measures which had already been on the drawing board, or where desired, including attacks on Afghanistan and Iraq, increased defense appropriations and the transformation of the military proposed by the Project for a New America Century.²³⁵ Yet the 9/11 Commission did not shed any light on the possible motives of the suspects, whoever they might have been.

E. Did the Investigation of 9/11 Result in Prosecutions?

The criminal investigation of 9/11 did not result in the prosecution of anyone who had instigated, planned, directed, facilitated or executed the crime of 9/11. The only person the U.S. government attempted to link with the events of 9/11 was Zacarias Moussaoui, a mentally disturbed person who was arrested before 9/11.²³⁶ After a long trial, marred by numerous irregularities,²³⁷ he was sentenced to life imprisonment, but not for facilitating 9/11.²³⁸ Although two alleged Al Qaeda leaders, Khaled Sheikh Mohammed and Ramzi

²³⁴ 'FBI agents joked about al Qaeda mole at HQ', *Washington Times*, 25 May 2002, Available at http://prisonplanet.com/Angry_FBI_agents_joked_about_al_Qaeda_mole_at_HQ.htm; Steve Fainaru and James V. Grimaldi, 'FBI Knew Terrorists Were Using Flight Schools', *Washington Post*, 23 September 2001, Page A24. Cached on http://www.prisonplanet.com/fbi_knew_terrorists_using_flight_schools.html; John J. Loftus, 'What Congress Does Not Know about Enron and 9/11', 31 May 2002. Available at <http://www.john-loftus.com/enron3.asp>; Martin Dillon, 'Tribute To John P. O'Neill – An FBI Agent Who Stood Tall', 27 May 2002, *Globe-Intel*. Available at <http://www.rense.com/general25/tall.htm>; Dana Bash, Kelli Arena and David Ensor, 'Hijackers' ex-landlord was FBI informant', *CNN*, 11 September 2002, at <http://edition.cnn.com/2002/US/09/11/ar911.hijackers.landlord/>

²³⁴ See, inter alia, Nafeez Mosaddeq Ahmed, *The War on Truth: 9/11, Disinformation and the Anatomy of Terrorism* (Northampton: Olive Branch Press, 2005), Chapter 4

²³⁵ See in particular, *Rebuilding America's Defenses: Strategy, Forces and Resources For a New Century*, Project for a New American Century, September 2000, at <http://www.newamericancentury.org/RebuildingAmericasDefenses.pdf>

²³⁶ 'Timeline: The Case Against Zacarias Moussaoui', *NPR Legal Affairs*. Available at <http://www.npr.org/templates/story/story.php?storyId=5243788>

²³⁷ Elias Davidsson, 'Is Zacarias Moussaoui's "admission of guilt" legally valid?', 17 July 2005; 'Open Letter to Judge Brinkema', 17 March 2006; and 'Moussaoui is innocent!', 4 May 2006. Available at http://www.aldeilis.net/english/index.php?option=com_content&task=view&id=1948&Itemid=107

²³⁸ 'Moussaoui moves to withdraw guilty plea', *CNN Law Center*, 12 May 2006. Available at <http://edition.cnn.com/2006/LAW/05/08/moussaoui.ap/index.html>

Binalshibh, officially accused of having masterminded the events of 9/11, have been in US custody for more than 4 years, they have neither been charged nor presented to a judge.

3. Conclusions

The events of 9/11 were the deadliest single attack on US soil for over a century. It will be recalled that FBI Director Robert S. Mueller promised in 2001 to ‘leave no stone unturned in our quest to find those responsible and bring those individuals to justice’.²³⁹ Six years have elapsed and no one has been charged, let alone convicted as an accomplice to the crime. The investigation of 9/11 must therefore be considered a dismal failure, even by FBI’s own standards.

The former chairmen of the 9/11 Commission, Tom Kean and Lee Hamilton, have belatedly admitted in a book they authored together that the American people have not been told the whole truth on 9/11.²⁴⁰

We set out to assess the investigation of 9/11 in the light of human rights norms as refined through the jurisprudence of human rights courts regarding criteria to assess investigations of human rights violations, particularly the deprivation of life.

Far from being effective, the investigators did not prove the perpetrators’ identities and guilt, did not positively identify the tools of the crime, did not establish the location where more than 200 of the victims died, and the reasons for the sudden disintegration of the skyscrapers that caused most deaths. The investigators also failed to bring to trial any accomplice to the crime. The lack of transparency during the investigation and the continuing concealment of evidence, six years after the events, have prompted wide and increasing distrust in the investigation and in the official account on regarding the events.

The truth on 9/11 is being held captive. Victims of 9/11 and civil society as a whole are entitled to the truth both on moral and legal grounds. There are additionally compelling political reasons to insist that the full truth be established. The events of 9/11 have provided an ideological justification for the erosion of constitutional rights and the rule of law. They have also been used to justify military aggression and foreign intervention. When a government is unwilling to properly investigate a mass murder committed on its own territory, civil society must take the initiative to establish the truth and restore the constitutional order.

END

²³⁹ Dan Eggen, *supra* n. 61

²⁴⁰ Christine Romans, ‘Lou Dobbs Tonight (Show)’, *CNN*, 9 August 2006. Transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/0608/09/ldt.01.html>

