

A Theory of International Terrorism

Understanding Islamic Militancy

L. Ali Khan

Martinus Nijhoff Publishers

A THEORY OF INTERNATIONAL TERRORISM

Developments in International Law

VOLUME 56

The titles published in this series are listed at the end of this volume.

A Theory of International Terrorism

Understanding Islamic Militancy

L. ALI KHAN

MARTINUS NIJHOFF PUBLISHERS
LEIDEN / BOSTON

A C.I.P. Catalogue record for this book is available from the Library of Congress.

Printed on acid-free paper.

ISBN 10 90 04 15207 5

ISBN 13 978 90 04 15207 6

© 2006 Koninklijke Brill NV, Leiden, The Netherlands

Koninklijke Brill NV incorporates the imprints Brill Academic Publishers,
Martinus Nijhoff Publishers and VSP.

<http://www.brill.nl>

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher.

Authorization to photocopy items for internal or personal use is granted by Brill Academic Publishers provided that the appropriate fees are paid directly to The Copyright Clearance Center, 222 Rosewood Drive, Suite 910, Danvers MA 01923, USA.
Fees are subject to change.

Printed and bound in The Netherlands.

This book is dedicated to my grandfather Abdul Ghani and aunt Saeeda, who both nurtured me with love and kindness.

Table of Contents

A Theory of International Terrorism

Preface xi

Introduction 1

PART I

PHENOMENOLOGY OF TERRORISM

Chapter 1 AGGRIEVED POPULATIONS

1.1 Primary Grievances 19

1.2 Secondary Grievances 27

1.3 Objectification of Grievances 39

Chapter 2 SUPPORTIVE ENTITIES

2.1 Supporting the Right to Armed Struggle 59

2.2 Supportive States and International Organizations 70

2.3 Supportive Groups and Individuals 82

Chapter 3 SUPPRESSIVE ENTITIES

3.1 Suppressive Terrorism 94

3.2 Pain and Suffering of Suppressive Entities 112

3.3 Dehumanization of Aggrieved Populations 118

PART II

ONTOLOGY OF TERRORISM

Chapter 4 VALUE IMPERIALISM

4.1	Attributes of Value Imperialism	133
4.2	Secular Imperialism	143
4.3	Holy Imperialism	158

Chapter 5 PHENOMENOLOGY OF JIHAD

5.1	Islamic Law of Hijra	172
5.2	Forms of Jihad	177
5.3	Terrorism and Military Jihad	187

Chapter 6 THE ESSENTIALIST TERRORIST

6.1	Profiling Islamic Terrorism	211
6.2	HITLit Influence over Political Rhetoric	228
6.3	HITLit Proposals to Combat Muslim Militancy	232
6.4	A Critique of Essentialist Terrorism	243

Chapter 7 WAR ON TERROR

7.1	Characteristics of War	249
7.2	Corporatization of War	256
7.3	Lawlessness of War	268

PART III
PEACEFUL SOLUTIONS

Chapter 8 NEGOTIATED SOLUTIONS

8.1 Law of Negotiated Solutions	289
8.2 Barriers to Negotiated Solutions	299
8.3 The Concept of Durable Deal	312
8.4 The Québec Model	315

Chapter 9 FREE STATE SOLUTIONS

9.1 The Foundation of Free State	325
9.2 Beyond Territorialization of Islam	342
9.3 From Separatism to Free States	351

Bibliography	360
Index	367

Preface

Following the Quran's revelatory methodology, I have conceived this book in small portions over a period of several years. The Quran was revealed to the Prophet over a period of more than twenty years, in small portions, mostly in response to concrete issues that the Prophet faced in real life. The Quran provides the rationale for this gradualism. "We have delivered the Qur'an to you in this manner in order that it might strengthen your heart and We have arranged it in small components which form a whole." Even when employed to secular scholarship, such as this book, the Quran's methodology is highly efficacious in researching and contemplating the small pieces of a larger treatise. I have found this methodology refreshing and natural. Early morning, often before the morning-prayer, I would write a small excerpt and save it, not knowing whether it would be relevant to the thesis of the book. Eventually, all the pieces came together in sections and chapters. In writing this book, I have benefited from countless works written by others. Several colleagues at Washburn Law School read drafts of chapters and provided feedback. I want to thank Brad Borden, Bill Merkel, Robert Rhee, Aida Alaka, Peter Reilly, Gregory Pease, Bill Rich, and Myrl Duncan for each reading a chapter. Professor Hisham Ramadan read the chapter on Jihad for which I am thankful to him. Dominique Honea, class of 2006, brought countless books, law review articles, poems, internet stories, and other research materials for me to read and reflect before writing excerpts in the mornings. Special thanks to Mary Beth Bero for spending scores of hours in bringing the manuscript to order. Among family

members, in admitting affection for Dr. Lori Khan, Yahya, and Harun, I want to express special love for my little son Kashif, who makes me Abu Kashif, a name I like.

Ali Khan, May 2006
Topeka, Kansas

Introduction

One might hypothesize that international terrorism is too arbitrary, inhumane, and pathological to be studied in the realm of legal theory. Overly condemnatory characterizations of terrorism carry elements of truth for indeed terrorist violence, perpetrated by states and private groups, jolts elementary human consciousness. Shock and awe is frequently the anticipated response of victims of violence. Modern terrorism involves the heartless killing of children throwing stones at tanks, deaths of pregnant women at security roadblocks, suicide bombings carried out in buses and discotheques, the terrorizing of luminous cities at night with bombing sorties, and the incineration of worshippers at mosques. To dignify terrorism with a legal theory, one might pre-conclude, is wasting words; it is pontifical participation in madness; indeed, it is no more than an apologist's afterthought that confers legitimacy on blatantly illegal and morally vacuous violence. Not so, says this book. Terrorism is the violent consequence of a world divided into nearly two hundred nation-states. It is the inevitable outcome of the compulsive territorialization of human communities.

Terror Triangle

Part I of the book presents the phenomenon of the terror triangle, highlighting the nation-state's structural pathology that engenders violence both for its creation and preservation. The terror triangle consists of aggrieved populations, suppressive entities, and supportive entities. In the Middle East, for example, the Palestinians

constitute the aggrieved population, Israel is the principal suppressive entity, and all those who uphold the Palestinian liberation movement are supportive entities. Likewise, Chechens and Kashmiris are aggrieved populations, Russia and India are suppressive entities, and all states, international organizations, and individuals who provide moral, financial, or military assistance to the aggrieved populations of Chechnya and Kashmir are supportive entities. Although the phenomenology of terror triangle may be used to study diverse theatres of violence, this book focuses on Muslim militancy that has monopolized global attention.

A Theory of International Terrorism distinguishes phenomenological terrorism from retail terrorism. It avoids the mistake of studying terrorism under an overly-inclusive methodology that lumps drug-related violence with Muslim militancy, and both with retail terrorism that individuals perpetrate to vent their personal frustrations or anger. Gross studies of terrorism distort analysis and ignore the specific themes of violence. Violence perpetrated to make money by selling contrabands has little relationship with violence unleashed to secede from a nation-state. And a government's legal and moral claims to forcibly dismantle a criminal gang cannot be transferred to the government's brutal suppression of an aggrieved population that uses violence to protest its ill-treatment and human rights violations. Any examination of terrorism that refuses to see these distinctions cannot be taken seriously.

Focusing on phenomenological terrorism, the terror triangle studies the dynamics of violence involving Muslim militants, particularly in the context of the Middle East conflict over the occupation of Palestine. Part I demonstrates that the phenomenon of Muslim violence stems from concrete grievances. When a Muslim population (Chechens) is denied the right to self-determination or when its land and resources (Palestinians) are forcibly taken or when it (Iraqis) is invaded and occupied, it accumulates concrete grievances. This phenomenon of subjugation is further compounded when suppressive entities violate fundamental human rights of the aggrieved population. Extra-judicial killings, unlawful searches and seizures, disappearances, and security roadblocks worsen the misery of aggrieved populations. Vengeful members of the aggrieved population resort to violence, giving birth to what is known as Islamic terrorism. *A Theory of International Terrorism* studies Islamic terrorism in the context of the terror triangle, arguing that state terrorism perpetrated against aggrieved populations should not be ignored for analytical and normative purposes. Islamic ter-

rorism and state terrorism are the co-dependent forms of violence. This co-dependence becomes triangular when supportive entities provide moral, material, financial, and military assistance to aggrieved populations.

Part I recognizes that the causes of triangular violence are numerous and that no single narrative can capture its multi-faced complexity. It repudiates the overly broad caricatures or attempts at crude reductionism. Although the aggrieved populations discussed here are Muslims, one need not assume that these populations derive their grievances from the teachings of Islam. What they derive from the teachings of Islam is the spirit to fight against persecution. And although Islamic terrorism constitutes the phenomenological focus of the book, the terror triangle is not confined to religious terrorism in its context, scope, or purpose. As the theory develops in subsequent chapters, it incorporates ontological complexities that muddle the terror triangle. The ontology of Islamic terrorism, however, does not undermine the phenomenology of terror triangle. The concept of aggrieved populations transcends Chechens, Kashmiris, Palestinians, and indeed Muslim communities. The theory is not confined to Muslims. It is equally valid whether the aggrieved population is Irish, Tibetan, Sikh, or any other.

A Theory of International Terrorism was first presented in a law review article published in 1985. Since then, the world has dramatically changed. The most extraordinary event in this period involves the collapse of the Soviet Union. During the Cold War, terrorism carried an ideological overlay. National liberation movements, deriving moral and legal vitality from the concept of self-determination, invoked the right of armed struggle to fight against colonial rule, alien domination, apartheid, and occupation. Many such movements received moral and material assistance from the Soviet Union. Others secured support from the United States and its allies. During this period, the Palestinians relied on the Soviet Union to launch a violent campaign against Israeli occupation. And the Afghans obtained arms from the United States and its allies to fight the Soviet occupation of their country. In these times, the label of terrorism served as an ideological weapon to selectively condemn specified theatres of terrorism, but not others. The Palestinians were terrorists, and still are, in the eyes of Israel and the US. But they were freedom fighters in the eyes of many others, including the Soviet Union. By contrast, the Afghans were portrayed as freedom fighters in the Western literature but were

seen as terrorists in the Soviet official press. These conflicting characterizations of the same phenomenon of violence were part of the Cold War. They frustrated the attempts to define terrorism on a consensual basis.

The collapse of the Soviet Union transformed the ontology of terrorism. Ideological battles lost their inherent respectability. The romantic notion of militant violence perpetrated for a higher cause began to disappear. In absence of the Soviet support, several independence movements were orphaned. The Russian Federation, which inherited the international assets and liabilities of the Soviet Union, was too feeble and confused to offer any protection to national liberation movements. The Russian Federation was further forced to change its ideology of militant violence when the Chechens resorted to armed struggle to demand independence. Moscow ruling elites, who under communism had touted themselves as liberators of the oppressed, earned a new reputation in the world as brutal oppressors and human rights abusers. Facing armed resistance in its own backyard, Russia distanced itself from characterizing any phenomenon of violence as legitimate armed struggle.

Washington ruling elites regarded the Soviet Union's dismemberment as a unique opportunity to offer American leadership to the world. The combination of prosperous democracy at home and genuine respect abroad furnished the US a historic opportunity to arrest the phenomenon of violence by bringing it under the rule of law. The emergence of the US as the sole superpower was received as a good omen in most parts of the world, except perhaps in Afghanistan where al-Qaeda was assembling its own resources to further change the world. Despite threats from Afghanistan, the Clinton Administration wore the savior's cloak to resolve long-standing disputes that had spawned terrorism. It led an efficacious coalition of European states to save Bosnian Muslims from Serbian brutalities. It engaged Palestinians and Israelis in a credible peace process, inviting Yasser Arafat, who had previously been condemned as a master terrorist, to the White House. President Clinton even engaged India and Pakistan, seeking assurances that these nuclear rivals would undertake confidence-building measures to resolve the Kashmir dispute. The US criticism of Russia over its suppressive policies in Chechnya, though muted in tone, added consistency to the dynamics of consistent leadership.

This engaging US leadership collapsed after the September 11 attacks. The stunning assault on Twin Towers of the World Trade Center and the Pentagon caught the Bush Administration off guard,

though conspiracy theorists assert that the US government had ignored clear warnings of the coming calamity. Most surprisingly, the US constitutional democracy failed to absorb the terrorist attacks with legal grace. The Patriot Act was hurriedly promulgated to dramatically reduce civil liberties that had distinguished the US as a nation of liberties and freedoms. The invasion of Afghanistan, the home of al-Qaeda, began to unravel American commitment to the laws of war, a commitment that further deteriorated when the US occupied Iraq. The ill treatment and torture of Iraqi detainees exposed the inefficacy of the law of human rights to restrain a superpower from unlawful behavior. In sum, the September 11 attacks have exposed how the US, a nation of freedoms and liberties, when challenged with adversity, threw away its hard-earned values and began to see law as a barrier.

In addition to jolting American values, the September 11 attacks introduced Islamic militancy to the world in an unprecedented way. Islam was repainted in the global consciousness as a religion of violence. A new paradigm began to emerge in the non-Muslim world that Islamic militancy in the Middle East, Kashmir, Chechnya, and other places derives its unrelenting impulse for violence from the faith itself and that Islamic terrorism is unique and that it has nothing to do with concrete grievances, such as invasions, occupations, territorial appropriations, or human rights abuses. The September 11 attacks were interpreted as proof certain that Muslim militants would strike any nation to quench their thirst for violence. The September 11 attacks changed the ontology of Islamic terrorism. The Bush Administration argues that Muslim militants are inherently evil.

Ontology of Terrorism

Part II of the book presents the changing ontology of Islamic terrorism, that is, how terrorism experts understand, analyze, and explain Islamic terrorism to the world. It examines the concept of the essentialist terrorist to capture the gravitas of vast literature that US terrorism experts have produced under the rubric of “new terrorism.” New terrorism is a code phrase to describe violence associated with religions, but its main focus is on Islamic terrorism. A generation of terrorism experts is determined to persuade the world that Islamic terrorism is mystical violence that has little to do with concrete grievances. Most of this literature is manufactured

to minimize the geopolitical causes of Muslim militancy and to undermine the critical significance of liberation movements, especially the Palestinian struggle against Israeli occupation, theft of resources, and human rights abuses. Although this literature has been gradually surfacing years before the September 11 attacks, it gained new momentum and respectability after the attacks. Highly influential terrorism experts, many of whom had served in US National Security establishment, have been relentlessly pounding a common thesis that Islamic terrorism is addictive, metaphysical, and incorrigible, always finding new excuses to perpetrate violence. Heartless Muslim militants, these experts further warn, would use the weapons of mass destruction to annihilate Western cities.

Another theme related to the ontology of Islamic terrorism is value imperialism. It contends that Muslim militants wish to impose Islamic values on the non-Muslim world, particularly the West. The phrase "They wish to change our values and the way we live" exemplifies the political rhetoric used to combat Islamic terrorism. This fear is not completely groundless because the al-Qaeda leadership, in its communications through letters, audio, and video-cassettes, has invited the West to embrace Islam as its faith. This invitation to Islam has been interpreted to argue that al-Qaeda's primary goal is to spread Islam by means of terrorism, an interpretation that reaffirms the stereotypical thesis that Islam has always spread by force of the sword. Islamic imperialism reinforces the ontology of mystical violence that new terrorism finds in the doctrine of jihad. The two concepts are then combined to distinguish Islamic terrorism from conventional terrorism. Whereas conventional terrorism stemmed from geopolitical grievances, the ontological argument goes, Islamic terrorism is essentialist and imperial in its purpose. The notion of Islamic imperialism imposed through essentialist jihad also minimizes the critical significance of concrete grievances that Muslim communities carry in occupied Palestine, Chechnya, and Kashmir.

To further discredit Muslim militancy, the notion of jihad is being attacked and equated with terrorism. For fourteen hundred years, Muslims have used the Quran's concept of jihad to defend themselves against oppression, alien domination, and persecution. After the September 11 attacks, the US and its allies have launched a campaign to ban to the teaching of jihad in religious schools. This daring demand has gone nowhere, since Muslim governments know that jihad could not be severed from Islamic consciousness. Nor could the Quran be amended to eliminate the verses sanctioning

jihad. The chapter on jihad and hijra, that is “fight and flight,” presents the Quran’s prescriptions for fighting against persecution. Ordinarily, Muslims live in peaceful communities and the notions of jihad and hijra are non-operational. These strategies become relevant only if the Muslim community suffers persecution.

Jihad and hijra are reactive, not proactive, strategies. They are responses, not gratuitous initiations. Muslims are inspired by the notion of jihad to fight, but the reason for fighting is persecution and not jihad. Terrorism experts distort this fact to argue that Muslims are addicted to violence because jihad is the mystical prompting for killing. Nothing is farther from the truth. Even under persecution, jihad is not the only option. Muslims may opt for hijra (migration) if they lack the means to fight, as the Prophet himself did and left Mecca. They opt to fight if the enemy is relentless and would pursue Muslims wherever they migrate. Muslims use a combination of the two strategies to defeat treacherous enemies. Of course, some militants abuse the doctrine of jihad to perpetrate violence contrary to the Islamic laws of war. These abuses malign the notion of jihad, just as excessive collateral damage sullies the reputation of a professional army. Note, however, that jihad is not an end in itself. It is the means to fight persecution. Jihad is no longer necessary if the persecution has ceased to exist.

By shifting the focus from concrete grievances of Muslim communities to abstract notions of essentialist terrorism, value imperialism, and addictive jihad, the ontology of Islamic terrorism has persuaded the US government and its allies to take an unforgiving stand against Muslim militants. War on terror is the preferred prescription. Muslim militants are painted as incorrigible warriors in pursuit of martyrdom, who have no respect for life, property, or liberty. It is then proposed that they be treated mercilessly and wiped out. Extra-judicial killings and indefinite detention without any charges or trial are defended on the theory that Muslim militants must be eliminated or disabled without concerns for the rule of law. Some officials and experts even argue that the exceptionless law of torture is unrealistic in soliciting critical information from Muslim devotees of jihad.

Turning the September 11 attacks into a unique opportunity, the US has mobilized international institutions, including the United Nations, to wage a coordinated campaign against Muslim militants. The UN Security Council is emerging as a lead institution in the war on terror, primarily because the Council’s five permanent members share the fears of Muslim militancy. The United Kingdom and

France have substantial Muslim populations refusing to melt into Western culture. The London subway bombings in 2005 carried out by British Muslims and the violent protests by French Muslims spell out the dangers of homegrown Muslim militancy. Russia has every incentive to crush what it calls the bandits of Chechnya. China is facing a secessionist movement from Uighurs in its Western province. In 2003, China listed the East Turkestan Independence Movement as a terrorist organization, a decision that the US supported. Thus each permanent member has its own reasons to crush Muslim militancy. The five together will force the Security Council to take a stiff approach toward eradicating Islamic terrorism. The Security Council is already using its executive power to make decisions that otherwise might have been relegated to the treaty-making process.

Unlike the Security Council that sees the world through the eyes of the five permanent members, the UN General Assembly represents the world. Comprised of nearly two hundred nation-states representing the peoples of the world, including 57 Muslim states, the General Assembly interweaves more complex factors into its understanding of terrorism, expressed in yearly resolutions. On the surface, the General Assembly is moving towards an absolutist principle against all forms of terrorism, including state terrorism, declaring that nothing justifies terrorism. This overly inclusive condemnation of violence however is placed in the context of self-determination, a right that allows the peoples to seek liberation from alien domination, occupation, apartheid, and hegemony. The General Assembly does not ignore the phenomenon of aggrieved populations or their grievances. In fighting terrorism, the General Assembly is also committed to the protection of human rights. It reminds the international community that human rights cannot be abandoned in the global war on terrorism. One resolution reaffirms “that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.” The resolution further reminds the international community that under the International Covenant on Civil and Political Rights, certain rights and freedoms, such as the right to life and freedom from torture, cannot be suspended under any circumstances.¹

¹ GA Resolution 59/191 (2004). Protection of human rights and fundamental freedoms while countering terrorism

Consistent with General Assembly resolutions, *A Legal Theory of International Terrorism* rejects the ontology of Islamic terrorism and its prescriptive warfare. A lawless war on Muslim militants, waged within and across national borders, that throws away the constraints of international human rights and humanitarian law will contribute little to the maintenance of international peace and security within the framework of international law. Nor is it likely to eradicate violence. Concrete grievances will continue to engender violence. Focusing on the phenomenology of terrorism, the theory offers peaceful solutions deeply embedded in treaty and customary international law.

Peaceful Solutions

Part III offers two sets of solutions to minimize and possibly eradicate triangular terrorism. In many ways, the two sets are the opposite of each other. However, they both facilitate the emergence of Free State. In previous books, *The Extinction of Nation-States* (1996) and *A Theory of Universal Democracy* (2003), I have developed the concept of Free State, a socio-political entity that evolves out of the nation-state. Sharing many attributes with the nation-state, Free State is a territorial unit without sovereign borders. Free State, however, does have administrative borders, just as Kansas does. A world without sovereign borders is Free State writ large. Just as empires broke down into nation-states, nation-states will evolve into Free States. The emergence of Free State is uncertain, for Free State is no revolutionary entity that can be instituted through military coups, the peoples' revolutions, or other such dramatic reorganization of communities. Free State is a social organism that evolves with time under suitable conditions of peace and prosperity. On the way, communities elect intimate governments in accordance with local traditions and culture, sharing at the same time a global civilization founded on diversity and universal values. It is predicted that regional Free States will emerge before global Free States. The European Union has initiated a process that may lead to regional Free States.

The concept of negotiated solutions argues that the terror triangle constitutes a dispute under international law. The UN Charter and customary international law bind parties to resolve international disputes through peaceful means. Likewise, Islamic law encourages Muslims engaged in armed conflict to resolve disputes through peaceful means. It is further proposed that international

institutions recognize the critical significance of concrete grievances that generate violence, and refrain from accepting the ontology of mystical and metaphysical violence that distorts the phenomenon of the terror triangle. Relying on these norms, the chapter offers the concept of durable deal that requires parties to offer mutual concessions without preconditions. Principal suppressive states must grant the right of self-determination claimed by aggrieved populations such as Chechens, Palestinians, and Kashmiris. As a quid pro quo, the aggrieved populations must give up the right to armed struggle. International institutions such as the UN Security Council must move the parties to the triangle toward negotiated solutions. Instead of forcing supportive states to abandon aggrieved populations and join suppressive states in the war on terrorism, a more productive approach involves supportive states as partners in finding negotiated solutions. The isolation of Muslim militants might be useful for killing them, but such massacres are unlikely to wipe out the causes of militancy.

Finally, Free State solutions are offered on the theory that the phenomenon of the terror triangle is the pathology of the nation-state. The triangle is formed when the existing nation-states, such as India and Russia, refuse to relinquish territory or when aggrieved populations strive to secede and establish their own nation-states or when imperial or predatory nation-states engage in aggressive behavior to dominate smaller nation-states or take their resources. Free State solutions furnish a new way of thinking about organizing communities in the world. Territorial integrity, sovereignty, self-defense, secessions, national interests, and national liberation movements, these and related concepts constitute the language of nation-states, just as terra nullius, conquest, colonialism, white man's burden, etc., were the concepts of empires. A conscious, though not revolutionary, journey towards Free State minimizes the violent language of nation-states. As discussed in the previous books, Free State may never appear or mature if nation-states remain the primary mode of social organization. In that case, terrorism will remain a malady without cure and the world will unlikely emerge from the abyss of violence perpetrated in the name of the nation-state. In the Middle East, for example, Israeli and Palestinian nation-states will create more problems than they would solve. An independent Palestine will threaten the existence of Israel and a dependant Palestine will continue to generate militancy and triangular terrorism. If Israel and Palestine begin to develop as Free States with open borders within a regional community, the era of violence might gradually fall behind them.

PART I:

PHENOMENOLOGY OF TERRORISM

Chapter 1

Aggrieved Populations

*In moments the village was gone, not a single bread oven remained,
men and stones were powdered by enemy tractors.
But Zeita rises again as tulips do.*
Sulafa Hijjawi

Stories constitute and sustain aggrieved populations.¹ Grace Halsell, a renowned journalist and White House speechwriter under President Lyndon Johnson, wrote several narratives to capture life in Palestinian refugee camps. In her book *Journey to Jerusalem*, Halsell compares refugee camps with medieval ghettos in which narrow alleyways run in confluence with open sewage ditches. Small shelters indistinguishable from each other are stacked in rows on nameless streets with no sidewalks, patios, or trees. Occupants residing in these one- or two-room boxes are the uprooted, stateless, scattered people and their small children, the third generation of Palestinians, born here in the ghettos. “Someone has said that for every Jew who was brought in to create a new state,” quotes Halsell, “a Palestinian Arab was uprooted and left homeless.”

¹ Frank Pommershiem & Sherman Marshall, “Liberation, Dreams, and Hard Work,” *Wisconsin Law Review* 411 (1992) (In struggles for liberation, stories sometimes provide nurture and sustenance more important than food itself).

Halsell befriends a sixteen-year-old Palestinian girl in the camp and requests to live with her family. Her name is Nahla. The request is generously granted. Halsell enters Nahla's shelter and sees two women on their knees scrubbing a concrete floor. Blankets stacked against the wall serve as beds, and a hole dug in the floor as a toilet. The family living in this one-room house consists of seven members, four men and three women one of whom is pregnant. The additional two members of the family, Nahla's brothers, are in Israeli prisons. The United Nations provides funds to meet the basic needs, but men of the house do labor jobs to supplement income. In this grinding poverty, the hope of a bigger space and a fuller life seems, and is, elusive. Pointing out the differential of foreign help, Halsell mentions in a complaining tone that every year Americans give five hundred and twenty-eight dollars to each Israeli but allocate only three dollars for each Palestinian.

Living in crowded conditions is particularly hard for Muslim families who must respect gender privacy essential to the Islamic way of life. Small daily chores that one normally does without psychological hardship become a challenge in one-room houses where every member of the family is already present or might walk in. Teenage sisters must change their clothes while their brothers must train their eyes not to see. Any physical changes in bodies of the inhabitants, such as menstruation, cannot be kept as personal events. Not seeing or not acknowledging personal events that occur before your eyes become the tools to protect each other's privacy. Halsell makes these observations while she lives as a member of Nahla's family. The mother of the house cooks for the entire family, though the food cooked is often modest. Halsell reports how one evening after supper when hot tea is being served, due to an inadvertent clash of body motions, the kettle slips and the boiling tea pours down the mother's thigh. The mother screams, curses, and slaps the son who seemingly caused the accident. The mother writhing with pain orders Nahla to go and get the ointment. Nahla runs to a small cardboard box and brings back Crest toothpaste. Still grimacing in pain, reports Halsell, the mother lifts her skirt and Nahla applies the paste.

Eye of the Storm

Aggrieved populations, such as Palestinians, Chechens, and Kashmiris, are located at the center of terrorism. They are eye of the storm. When international institutions fail to resolve conflicts involving aggrieved populations, this systemic failure spawns violence in forms of terrorism. While aggrieved populations subjected to occupation, subjugation, and degradation suffer indignities of daily life, their militant members resort to armed struggle, attacking suppressive entities that engineer their servitude and deny political liberty. Militants form terror cells to avenge state terrorism.² They attack state soldiers who occupy their streets and demolish their houses. They also attack soft targets, expanding the sphere of vindictive violence. They blow up buses, abduct tourists, and behead contractors who apparently have come to build their water supplies, sewer systems, and roads. Locked in the spiral of violence and caught between the fight of militants and suppressive entities, aggrieved populations lose the normalcy of life.

Terrorism is a story of violence. It is the pathology of unresolved grievances. This chapter furnishes the narrative of grievances, called facts in the realm of law, facts that capture aggrieved populations' sufferings and existential abuses. Law, after all, responds to narratives. No theory of law may divorce itself from the narrative that it wishes to capture in the abstract. The enterprise of law is thus inseparable from facts and the sum of facts, called the narrative. But narratives can be distorted, falsely accentuated, or understated to deceive listeners or readers. The narrative of grievances presented in this chapter shuns distorted viewpoints. It simply tells the story of aggrieved populations. It captures the lens through which aggrieved populations see their misery, injustice, and oppression, and thereby construct their narratives. It explores genetic connections between narrative and violence. Narrative objectifies experience. "This is what gives narrative its communicative power; it is what makes narrative a powerful tool of persuasion and, therefore, a potential transformative device for the disempowered."³

² State terrorism is a term not recognized in international law. But many scholars have begun to use the term to describe violence that government perpetrates in the name of state. Noelle Quenivet, "The World after September 11: Has it Really Changed?" 16 *European Journal of International Law*, 561 (2005) (citing European scholars who acknowledge the concept of state terrorism).

³ Steven Winter, "Legal Storytelling," 87 *Michigan Law Review*, 2228 (1989).

Forms of Terrorism

Note the following two stories. On September 1, 2004, armed Chechen militants, men and women, burst into a school in the city of Beslan, in the North Caucasus of Russia, taking over a 1000 people as hostages, including parents, teachers and children – “depriving them of food and water for over 48 hours; issuing repeated death threats against them; and the subsequent deliberate killing of many hostages.” This is a story of militant terrorism. Compare February 5, 2000, when Russian security forces entered a Grozny suburb in Chechnya, and went from house to house executing residents. Some men and women were executed because they did not have enough money and jewelry to meet demands of the soldiers, others did not carry identity papers. “Several witnesses stated that the soldiers forcibly removed the victims’ gold teeth or stole jewelry from corpses.” This is a story of state terrorism.

If grief were the defining attribute of an aggrieved population, no morally meaningful distinction could be made between the residents of Beslan and those of Grozny because both populations were terrorized. In both cases, the torment fell on the innocent and unguarded. One might draw diagrams to display the brutality of soldiers exceeding that of militants, or vice versa. One might count numbers to aver that more innocent people have died in Grozny than in Beslan. The character and quantum of terrorism and the attendant loss of life and liberty expose the depth of violence, and numbers can tell the tales of horrors. The Western media may highlight the death of Europeans and the Islamic world may mourn the death of Muslims. These varied narratives affirm the same fact that intense grief engulfs a population whether the terror is the handiwork of Muslim militants or state soldiers. There exists no legal or moral superiority of one suffering over the other. The death of innocents in Beslan ought to be no more horrific than death of innocents in Grozny. Killing in name of the nation-state (Russia) is no nobler than killing on behalf of an aggrieved population (Chechens). State terrorism and militant terrorism are intertwined. For analytical purposes, however, not every grief-stricken population will be considered an aggrieved population.

Aggrieved Populations Defined

Aggrieved populations defined in this treatise have special meaning. They are the people fighting for self-determination.⁴ Here, however, the right of self-determination is not confined to colonial or occupation contexts.⁵ Nor is it confined to formalistic constraints of the definition of “people.” Such technical restrictions are the artifacts of outdated value imperialism; they do not recognize the expanding scope of self-determination under the law of human rights. If a population has been forcibly denied the right to shape its political, social, and religious life, and is seeking independence to do so, its struggle may be characterized as one for self-determination.⁶ If the population is engaged in a struggle to free itself from an external source, its struggle may be defined as one for external self-determination. If the population is seeking autonomy without any desire to break off and establish a separate nation-state, its struggle falls within the meaning of internal self-determination. In Kashmir, Chechnya and Palestine, the people are fighting for the right of external self-determination, since their struggle for independence is primarily to break off from the occupying state. In contrast, the people in Iraq are struggling to remove US occupation, overcome insurgency, and establish a democracy. Each struggle is for liberty and self-actualization. When a population is denied the right to political liberty, its grievances begin to form. These grievances multiply when suppressive entities resort to systematic brutality of the population. Sooner or later, the aggrieved population gives birth to an army of militants, called terrorists.

Construction of Aggrieved Populations

Constructed over a period of decades, even centuries, an aggrieved population undergoes at least two distinct ordeals of formation.

⁴ Zejnulla Gruda, “Some Key Principles for a Lasting Solution of the Status of Kosovo,” 80 *Chicago-Kent Law Review* 353 (2005) (problems in Kashmir, Palestine, Bosnia, Chechnya, and Kosovo embody the aspirations of a Muslim population for self-determination denied by the international community.)

⁵ Hurst Hannum, “Rethinking Self-Determination,” 34 *Virginia Journal of International Law* 23 (1993) (arguing for a restricted scope of self-determination).

⁶ Frederic L. Kirgis “The Degrees of Self-Determination in the United Nations Era,” 88 *American Journal of International Law* 304, (1994) (arguing for an expanded scope of self-determination).

The originative ordeal involves the denial of self-determination. Aggrieved populations are created through the process of invasion, occupation, alien domination, apartheid, mass dispossession, or forced exile. In all such ordeals the right of self-determination is asserted and denied. Here are a few examples of how an aggrieved population may originate. The 2003 United States invasion of Iraq was a dramatic originative ordeal that turned the population of Iraq into an aggrieved population. Although some segments of the Iraqi population, like Kurds and Shias, were released from the Saddam regime, almost the entire Iraqi population suffered the trauma of invasion and occupation.⁷ Once the Saddam regime was overthrown, the Iraqi population began to express its resentment against the US occupation, repudiating the virtues of transformative occupation that promises to transform a nation through benevolent aggression.⁸

The creation of Israel in 1948 and the consequent mass exodus of Palestinians from their villages and homes into refugee camps in neighboring states originated Palestinian grievances. The partition of British India in 1947, which ultimately led Hindu Prince Hari Singh of Jammu and Kashmir to accede his kingdom to India and the consequent failure of his predominantly Muslim population to exercise their right of self-determination originated Kashmiri grievances. The break-up of the Soviet Union in 1991 released several communities from its imperial rule, except for Chechnya that could not successfully secede to establish a separate nation-state. This failure to acquire political liberty has re-originated (since the Chechen struggle for independence is much older) Chechen grievances.

The second formational ordeal is punitive. It is unleashed when an aggrieved population in asserting its right of self-determination is subjected to gross human rights violations, including extra-judicial killings, torture, deportation, rape, demolition of houses, house to house searches, and indefinite detentions. The punitive stage lasts for decades, if not centuries, indeed as long as the originative cause of grievances is unresolved. If the aggrieved population gen-

⁷ Les Roberts & others, "Mortality before and after the 2003 invasion of Iraq," *Lancet* (November 20, 2004) (100,000 excess deaths happened after invasion; most excess deaths occurred due to air strikes from coalition forces).

⁸ Nehal Bhuta, "The Antinomies of Transformative Occupation," 16 *European Journal of International Law* 721 (2005) (distinguishing between belligerent and transformative occupation).

erates militancy that assaults persons and properties of the suppressive entity, the punitive ordeal thickens and state terrorism adopts unforgiving strategies. In most cases, the two layers merge and constitute a systematic degradation of the aggrieved population. The aggrieved population may then be defined as a population that has lost its right to self-determination, political liberty, and human dignity. Even when the punitive ordeal aims at crushing militants, the aggrieved population suffers direct abuse and loses the normalcy of life.

Once an aggrieved population is subjected to suppressive terrorism and once its militancy arises, vicious violence compounds the terror triangle. When state terrorism is unleashed to kill, detain, and torture militants, the grievances of the impacted population multiply because families experience the death and detention of their sons and daughters. This in turn deepens the cause of militancy. Militants fight not only for the original right of self-determination but also to avenge human rights abuses perpetrated on the entire aggrieved population. Even supportive entities broaden their criticism of the suppressive infrastructure, because now they not only support the aggrieved population's original right of self-determination but also condemn the suppressive entity's gross human rights violations. They may also sponsor militants to engage in a more effective armed struggle. Thus, state-sponsored violence interfaces with the violence of suppressive state and that of militants, spawning triangular terrorism. All these forms of terrorism are inextricably related to primary and secondary grievances of an aggrieved population.

1.1 PRIMARY GRIEVANCES

An aggrieved population constructed through originative and punitive ordeals accumulates corresponding grievances. Primary grievances emerge from the originative ordeal whereas secondary grievances accumulate during the punitive ordeal. With time, the two sets of grievances fuse with each other. However, it is important to note that triangular terrorism would not cease to exist unless primary grievances are resolved. Palestine, Kashmir, and Chechnya conflicts, which have been three major theatres of violence, provide examples of primary grievances. These conflicts share similarities in that each theater has produced massive violence;

each involves a Muslim population fighting for the right of self-determination; each faces a militarily strong suppressive state (Israel, India, and Russia respectively); each enjoys wide-spread international support for the independence or autonomy of the aggrieved population; and each is fully supported by the Muslim World including governments and peoples. Palestine, Kashmir, and Chechnya are stories of colonization, usurpation of land and resources, and, most important, of the failure of the nation-state to interweave diverse populations into a single polity.

Palestine and Kashmir

The primary grievances of Palestine and Kashmir are identical to the extent that they embody the unfinished business of the British Empire. In one case, the British left Palestine after creating two states on paper but one in reality, Israel. In the other case, the British left India after creating two states in reality but without finishing the paper work regarding princely states, including that of Kashmir. As a result, the paper state of Palestine could not come into existence, and the unfinished paper work plunged the future status of Kashmir in doubt and contention. In both cases, the newly formed United Nations was petitioned to resolve the colonial pathologies. In the case of Palestine, the United Nations Security Council passed a resolution to divide the colonial Palestine into two states. In the case of Kashmir, the Security Council passed a resolution demanding that a plebiscite be held to decide the territory's future in accordance with wishes of its people.⁹ These conflicts are still smoldering with violence because Security Council resolutions have not been implemented.

The following account furnishes insights in how an aggrieved population is constructed over time. Each aggrieved population carries a unique historical background and authors its own narrative of grievances, some genuine and some not. Historical accounts may differ, as the suppressive perspective is often radically different

⁹ Security Council Resolution 47 (1948). Paragraph B7 states: The Government of India should undertake that there will be established in Jammu and Kashmir a Plebiscite Administration to hold a Plebiscite as soon as possible on the question of the accession of the State to India or Pakistan.

from that of the aggrieved population. Chechnya provides a good case study for understanding the dynamics of an aggrieved population since its population has gone through centuries of subjugation and militant defiance. Russian Czars, communist politburos, and newly placed democratic institutions, all have failed to persuade the Chechens that they should give up their right to political liberty.

Chechens as an Aggrieved Population

In contrast to Palestine and Kashmir, Chechnya presents a more serious pathology of a failed international legal system founded on the concept of nation-states. Chechnya has been part of Russia for more than two centuries and the United Nations has passed no resolutions to grant Chechens any right of self-determination. As such, the primary grievances of Chechnya do not emerge from unfinished business of an Empire, as do those of Palestine or Kashmir. On the surface, the armed struggle in Chechnya is a separatist movement, challenging the territorial integrity of Russia as a nation-state that forces Chechnya to remain its constituent province. Below the surface, however, the Chechnya conflict too is a story of colonialism. The Russian Empire in the guise of the Soviet Union fell to pieces, but the nation-state of Russia still carries within its fold imperial accretions of territories and peoples. Some such accretions have lost their will to separate from parent Russia. Chechnya has not.

The Chechnya story furnishes profound insights into the dynamics of self-determination that gradually come into play: an historical process of subjugation, assimilation, and control on the one side, and an indomitable will to be free on the other. Russian efforts to erase Chechens' historical memories have been noticeably fruitless. Despite Russian propaganda and the cultural assaults of communism, Chechens have steadfastly held on to their religion, local traditions, customs, and laws. Sufi shrines scattered throughout Chechnya, some built on high hills covered with thick forests, almost all filled with stories of mysticism and heroic resistance to Russian imperialism, serve as congregation places where militants meet and plan new attacks on Russian soldiers who have destroyed the peace, security, homes, and villages of Chechnya.

Unlike some colonized peoples around the world, Chechens persistently refused to assimilate into the culture of their conquerors. Even the Soviet Union's communist philosophy failed to alter the Chechens' cultural self-awareness.¹⁰ In the words of Alexander Solzhenitsyn, "Only one nation refused to submit to the psychology of submission . . . the Chechens." This is so because once a community submits to Islam, it refuses to submit to any other idea, nation, or power. Islam is a religion of peace but not of cowardice. No Muslim community allows itself to be permanently conquered because Islam furnishes an indomitable frame of mind that submits to no god but One God. Suppressive entities often forget this simple fact. So has Russia.

Language Promotes Political Liberty

Two related factors have forged Chechnya's aspirations for political liberty from Russian domination: language and spiritual self-awareness. Successive Russian conquests, first spearheaded by Peter the Great, highlighted for Chechens the hitherto dormant forces of language and religion. Before, Chechens had lived in clans, spoke an unwritten language, and were tied to the land in common ownership. Anatol Lieven argues that Russia did not invent Chechens but Russia might have unwittingly consolidated the nation of Chechnya. In the 1920s, to consolidate its communist power and influence, the Soviet Union turned the Chechen language into a written language. Despite protests from Muslim clergy, the alphabetization of Chechen language was switched from Arabic to Latin, a move designed to weaken the influence of Islam that came through the learning of Arabic, the language of the Quran.¹¹ The written Chechen language might have weakened the study of Arabic but it further cemented the cultural-religious identity of Chechens who could now read and write the same language they spoke.

Sufi Islam

Chechnya's spiritual self-awareness began to take roots in the eighteenth century through Sufi Islam. Before, Chechens were mostly

¹⁰ Anatol Lieven, *Chechnya*, at 330–34 (1998).

¹¹ Valery Tishkov, *Chechnya*, at 22 (2004).

animists, though carrying mild traces of Christianity. Sufi Islam came in two overlapping waves. The first wave introduced the Naqshbandiya Sufi Order from Bukhara in Central Asia; the second wave, much stronger in intensity and influence, brought the Qadiriya Sufi Order that had originated in Baghdad in the twelfth century.¹² Both Sufi Orders emphasized the oneness of God through *zikr*, that is, the remembrance of One God through simple phrases, such as *Allah Hu*, repeated until the chanting person or the group experiences holy trance. Sufism, however, is not confined to verbal rituals or cult spirituality; its main purpose is to teach Islam. Whereas conventional teachings of Islam focus on law and theology, Sufism emphasizes interior development of the soul. In most cases, Sufism paves the way for theological and legal Islam. Eventually, both paths must merge for a fuller understanding of Islam, as they did in Chechnya.

Mysticism and Militancy

In Chechnya, however, Sufi Islam cultivated a unique trait. In view of Russian domination, Chechen Sufis began to combine mysticism with armed militancy. This combination was most effective in fighting Russian expansionism. Submission to One God alone, which both Sufi Orders emphasized, meant that Chechens would not bow to Russians as their masters. The mystical part of Sufism created a strong psychology among Chechens not to surrender to anyone but to One God. The militant part of Sufism taught that passive resistance amidst occupation was no longer sufficient to keep faith in One God. Inspired by militant mysticism, Muslim commanders fighting the Russians, such as Imam Shamil, came to be identified as both humble Sufis and fearless warriors at the same time. And the Chechens killed in the *ghazavats* (holy encounters) were both martyrs and *murids* (followers of Sufis). The proliferation of shrines in Chechnya bears witness to the success of Sufis in romanticizing mystical martyrdom in the cause of freedom from occupation and alien domination.

Here, witness a point that is often misunderstood. Sufi Islam in Chechnya is not teaching terrorism. It is teaching resistance and a determined refusal to submit to alien domination. Sufi militancy

¹² Carlotta Gall & Thomas de Waal, *Chechnya*, at 31–36 (1998).

is aggression against aggression, but not aggression per se. Ordinarily, Sufis are lovers in the realm of Islam, but not in Chechnya, because there successive Russian conquests have left little to love. When cruelty has taken over, Islam teaches hatred. Hatred is as much an Islamic value as is love. Muslims are taught to love and to hate, since the Prophet of Islam was emphatic in telling his followers that if they cannot correct a wrong, they at least must hate it. In teaching militancy to their followers, Chechen Sufis were showing that Islam has no place for unconditional love for the wrongdoer. It teaches ferocity and an eye for an eye, though always poised to forgive, when Muslims are subjugated and degraded. This spiritual militancy is indomitable under all forms of cruelty.

Communist Suppression of Sufism

Soviet communism, with its officially sanctioned atheistic propaganda against religion, was the new Russian offensive against Chechnya's spiritual roots. In the 1920s, Chechnya had nearly three thousand mosques and religious schools and around a thousand religious teachers. The communist authorities closed down the entire religious infrastructure and banished religion from Chechens' lives. Despite this outward suppression, Sufi Islam continued to inform Chechen consciousness. And despite prohibition of religious practices, social gatherings in Chechen homes continued to practice *zikr*, the remembrance of One God. Outwardly, Chechens were secularized and urbanized; inwardly, they remained a fiercely free people holding on to a militant spiritual consciousness.

The communist assault on Chechens was not confined to psychological warfare. In 1943, the Politburo under the leadership of Joseph Stalin decided to expel the entire Chechen and Ingush population to barren lands of Central Asia. Some members of the Politburo proposed to abolish the autonomous region of Chechen-Ingushetia. Others floated the idea of "liquidation." In 1944, mass deportation with genocidal intent was indeed carried out. The suffering was immeasurable. Thousands of Chechens and Ingush died on the forced journey to Kazakhstan. At least 100,000 deportees died of starvation and sickness. In 1957, Nikita Khrushchev reversed Stalin's deportation orders, allowing Chechens and Ingush to return home. Hundreds of thousands deportees came back to Chechnya, with a new generation of children born and raised in forced exile.¹³

¹³ Gall, *supra* note 2, at 57.

In the official press, deportations were presented as resettlements, the peoples' efforts to cultivate the "virgin lands." In reality, it was state terrorism.

Grievances Giving Birth to Aspirations for Liberty

The memories of mass deportation and its untold suffering, long suppressed by official propaganda, gradually came to surface and were emotionally expressed in poems, plays, short stories and other narratives. Youth pop songs played on local TV channels influenced a new generation of Chechens. One song captures the agony: "We were like cattle driven into freight trains/What woeful time we had to love through/Torn from our dear mountains of the Caucasus." A consensus began to emerge among Chechens that the forced exile amounted to genocide. Grievances grew, anger simmered, and the call for assuming control over the republic of Chechnya began to make resonance with the people. To end the nightmare and the Russian occupation of the land, the movement for independence couched in the right of self-determination began to take roots; it gathered momentum after the dismemberment of the Soviet Empire, frustrating the authorities in Moscow. Chechen leaders summed up the struggle in a simple slogan: "Chechnya was never part of Russia, and the Chechens never thought of themselves as citizens of Russia."¹⁴ The historical account of Chechnya's voluntary merger with Russia was rejected as imperial propaganda.

To the great dismay of Kremlin communists who wanted to preserve the empire, Mikhail Gorbachev's *perestroika* fueled the concept of self-determination. Radical Moscow democrats supported ethno-national identities as the basis of statehood. The empire was dismembered but Chechnya could not receive independence. In 1990, the Supreme Court of the Soviet of the Chechen-Ingush republic adopted a declaration of sovereignty and claimed North Ossetia as part of the republic. More radical Chechen groups asserted the right to return and demanded that Chechens deported out of the republic be brought back home. In July 1991, demonstrations for a separate Chechnya, held in the Sheikh Mansur Square of Grozny, had an air of festivities. Animals were sacrificed in the Square to feed demonstrators. Elder Chechens performed the Sufi dance and

¹⁴ Tishkov, *supra* note 3, at 49–51.

chanted in unison the names of God. Thus the zikr blessed the call for independence.¹⁵

Geopolitical Barriers to Chechnya's Freedom

After dismantling of the Soviet Union, Russia was determined to hold on to Chechnya, partly because of the geographically strategic importance of the land, partly because of its oil resources, partly because of the trans-Caucasus oil pipeline passing through it, and partly because of Russia's old imperial habits to bully conquered territories to submission even if brutal force has to be used. An additional reason was the Russian aversion to the establishment of a Muslim state in the heart of the Caucasus, an idea that few neighboring states would enthusiastically support. With regard to Russia's additional reason, even Western Europeans and Americans who criticized Russia's human rights violations in Chechnya were reluctant to support Chechens' right to self-determination and statehood.

Chechnya is not free partly because traditional arguments of international law available to evict Russia from Afghanistan are unavailable in the case of Chechnya. Even Muslim governments stood silently as Russia brutalized Chechens with overwhelming destruction. Several factors emboldened Russia to continue its policies of defeating what it called the "bandits" of Chechnya. Russia was a nuclear giant and a permanent member of the UN Security Council. Russia continued to have favorable ties with several Muslim states, including Iraq, Iran, and Syria. The principle of territorial integrity lay in the background to weaken the arguments for independence. After all, Chechnya has been part of Russia for more than two hundred years.

But the most important reason for the world to gradually minimize its criticism of Russian atrocities was the growing rhetoric of terrorism associated with Chechnya's guerillas. As long as the theatre of violence was confined to Grozny and other towns and villages in Chechnya, human rights groups highlighted the plight of Chechens and criticized Russia. But once the guerillas took the fight inside Russia, including Moscow, Chechnya began to lose sym-

¹⁵ Id. at 60.

pathy of Western human rights non-governmental organizations (NGO) and the Western press. The bombings in Moscow, the siege of the theatre, the death of children at Beslan, and other violent episodes turned the fight for self-determination into terrorism. After the 9/11 terrorist attacks, Russia joined other suppressive states to bless a global war on terror. Chechens, like Kashmiris and Palestinians, were to be suppressed by all means necessary.

1.2 SECONDARY GRIEVANCES

Primary grievances involving the right to self-determination are considered legitimate in colonial contexts, but not so when national liberation movements challenge the integrity of the nation-state. It is universally feared that if populations are allowed to break away from parent nation-states, the world will become chaotic. This unfounded fear ignores the fact that for centuries before the dawn of the nation-state, human beings had lived without sovereign borders. When national liberation movements, such as the ones in Chechnya and Kashmir, are suppressed in the name of territorial integrity, secondary grievances emerge in the form of human rights abuses. If primary grievances are the product of imperialism, secondary grievances are the handiwork of state cruelty. This section highlights human rights abuses, which aggrieved populations suffer on a daily basis, particularly after militants attack the persons and properties of suppressive entities. These abuses inflicted on the aggrieved population are also known as state terrorism.

State Terrorism

Zachistki

No part of Chechnya has been exempt from *zachistki* – a horror-filled, ugly Russian word that means house-to-house raids. It also means the surgical removal of dangerous terrorists, bandits, and criminals. In *zachistki* operations, entire villages are sealed off, every house is entered and searched, every person's identity is verified, every valuable household chattel is checked for documentation. To make matters worse, every household chattel is subject

to confiscation (official looting) while every household member is subject to detention. Mothers fear for their sons, wives for their husbands, sisters for their brothers. Almost all Chechen men – and now young women too – are terror suspects and therefore removable from homes and exportable to the dreaded prison of pits, that is, holes dug in the ground. Russian laws require that detainees be charged or released after 10 days. Some families bribe security forces to get their loved ones back. However, some detainees disappear without a trace even without being charged or released from detention. Many are summarily killed, officially in encounters with security forces, in reality with execution bullets shot in their heads or murderous daggers driven in their throats. Bodies retrieved from dump sites and unmarked graves confirm how some Chechen detainees, men and women, still wearing the same clothes in which they were last seen at the house, had been executed upon arrival at the pits. Some soldiers sell directions to unmarked graves, with a contract warranty to the relatives that money would be returned if bodies found are not theirs. Raiding, looting, detaining, disappearing, summary execution, selling maps to unmarked graves, all these and more are the horrors of *zachistki*.¹⁶

Vakha and His Folder

Anna Politkovskaya, a Russian journalist, writes in the vicinity of the Russian literary tradition, shared by Chekhov and Solzhenitsyn, which daringly exposes the horrors and atrocities unleashed in name of the motherland. In her book, *A Small Corner of Hell*, Politkovskaya describes the ordinary Chechen life in wartime. Though the book's narrative embodies fictional style and literary diction, the stories are told with pitiless honesty are nonetheless real. One telling story is that of Vakha found lying on "withered autumn grass" along with hundreds of other fleeing Chechens while Russian helicopters "fly so low that you can see the gunner's hands and faces." Women and children wail. With his mouth pressed to the ground and wearing a black suit with a white shirt and a black tie, Vakha tells his prostrating comrades, all folded up in the fetal position, how it is the folder that has saved his life. For "every time

¹⁶ Paul Quinn-Judge, "In the Ruins of Grozny," *TIME* (April 2, 2001); The "Dirty War" in Chechnya, *Human Rights Watch* (March, 2001).

the helicopters come, I take my folder, get out some paper, and pretend to write.” This way the pilots believe that I am not a terrorist. Those who can hear him laugh, finding fault with his naïve logic; says one, what if the pilots think “you’re taking down their license plate numbers.” Vakha equipped with his life-saving folder is hoping to join his mother, wife, two unmarried sisters, and six children, all of whom fled a week ago. As helicopters circle above and machine guns shoot mercilessly in nearby fields, the folder jokes begin to multiply: “Putin will wonder why all the Chechens are running around with folders.” “Vakha, what color should the folders be?” “You don’t know how lucky you are, man; they might think you’re counting us. And that means you’re on their side.” Relishing the folder jokes and believing in a happy future, Vakha and his new buddies are slowly crawling toward the checkpoint. A bit tired, Vakha concedes that “all is in Allah’s hands” but still insists that the folder has always helped him, in Russia’s first war against Chechnya, and this one. Perhaps exhausted from waiting in the long line, Vakha veers off into a nearby field infested with landmines. Within minutes, Vakha is dead in an explosion. He, however defined, is still lying on the ground but no more in the fetal position. His hands rest quietly several feet away from the shredded contents of his black jacket and his legs have vanished. His magic folder with its blank sheets has also turned into anonymous dust.

Operation Desert Scorpion

If *zachistki* is an ugly word for Chechens, the word operation has acquired a similarly dreaded meaning for Iraqis. Following the invasion of Iraq, the US military initiated its own benevolent *zachistki*, called operations, to search and kill Muslim militants. Operation Desert Scorpion, for example, was a manipulative mix of raid and aid. Show of force was theoretically aimed at insurgents while humanitarian goodies were reserved for the general public. Operationally, however, the line between raid and aid has been hard to draw, particularly because insurgents and civilians freely melt into each other and also because young soldiers equipped with war gadgets are looking for action. The search for targets assumes imminence when the need for military action is deliberately hyped. Psyched up on Wagner’s martial music and on the musical *The End* from the Vietnam War film *Apocalypse Now* (Kill,

kill, kill, kill, kill, kill, This is the end, Beautiful friend) American troops patrol sometimes deserted and sometimes overly crowded streets of Iraq. At nighttime, they crash metal doors and barge into Iraqi homes to catch “bad guys” and “subversives.” On entering houses, soldiers soil the hand-woven carpets and prayer rugs, shout and curse in English, order men to fall on the ground like butterflies. Seeing their houses invaded and men mistreated, women wearing Islamic head covers wail and invoke God’s wrath for America. In the morning, when American military engineers toil to clear garbage from rotting fields to build a new soccer stadium, to their great surprise, Iraqi children throw stones at them. The night’s search and seize operations turn into the morning’s ingratitude and resistance.¹⁷

Deaths that Are Not Counted

The US invasion of Iraq has generated countless stories of brutality and death. These stories that circulate over the internet, are published in newspapers, and told in family gatherings throughout the Muslim world. Robert Fisk, a renowned anti-war journalist from Great Britain, has made a commitment to tell the Iraqi side of pain and suffering.¹⁸ In September 2003, reacting to a New York Times article that highlighted the terrible toll of casualties, that is, 72 American soldiers, Fisk was struck by the quietude over the death and maiming of Iraqi civilians. Thereafter, he started to write a series of articles on excesses of war and the concomitant misery of Iraqi life under American occupation. The invasion of Iraq unleashed the forces of lawlessness, reports Fisk, increasing violence at all fronts. Family feuds, inter-tribal vendettas, depression, powerlessness, and killings by thieves, all surfaced to add to the brutalities of trigger-happy U.S. soldiers. Many Iraqi civilians are killed at US checkpoints either because the cars approach too quickly or soldiers come under fire and they respond without wasting time on investigating the direction of incoming fire, killing civil-

¹⁷ William Booth, “US Forces Mix Carrots and Sticks,” *Washington Post* (June 16, 2003).

¹⁸ Robert Fisk, “Terror in London: The reality of this barbaric bombing,” *Independent* (London) (July 8, 2005) (When Muslims die, it is collateral damage, when Westerners die, it is barbaric terrorism).

ians in the rush. Such shootings are rarely investigated to find out who the troops “shot down, who they killed, who they wounded.”

Many Iraqi civilians have been killed at wedding parties – repeatedly – because US forces take their celebratory firing in the air as an attack. An accurate reporting of civilian deaths or causes of casualties, however, is made difficult, reports Fisk, because journalists are rarely issued permits to visit hospitals and morgues. This absence of reporting has hurt the American image because even when Iraqis kill Iraqis, the blame is shifted to the US. Some Iraqis believe that Americans have deliberately caused insecurity so that criminals can harass civilians. Even less critical Iraqis, who shun conspiracy theories, generally believe that US troops have little regard for Iraqi lives. There are few takers of the proposition that Americans staked their lives in an altruistic way to liberate Iraq.

Western journalists interviewing Iraqis hear countless allegations of abuse by US troops. Kim Sengupta, another British journalist, reports the killings of unarmed civilians in Fallujah. Although exaggerations and even disinformation, as rightfully pointed out by US authorities, decorate the narratives of carnage, the refugees from Fallujah consistently paint scenes of pitiless American assaults on houses and hospitals. Sengupta reports the killings of patients in hospital beds despite assurances by doctors that clinics will not be attacked. A common complaint heard from diverse sources reveals a pattern of negligent killings by American snipers and soldiers patrolling in Humvees. American snipers have killed men, women, and children. “The youngest one I saw was a four-year-old boy. Almost all these people have been shot in the head, chest or neck.” Soldiers in Humvees often kill out of situational nervousness or because of lack of communication. The US does offer monetary compensation if someone is killed by mistake. However, the stories of Humvees blasting moving cars on the road and instantly blowing away their human contents spawn hateful memories that dig deeper into Iraqi consciousness than any stories of greenbacks tendered for mistaken homicides.

Sexual Torture of Muslim Men, Women, and Children

General Antonio Taguba, who investigated charges of torture in Iraq, reported numerous episodes of porno-torture. At Abu Gharaib, Muslim boys were sodomized, Muslim girls raped and Muslim men

stripped naked and stacked in pyramids. Some were forced to engage in oral sex with each other. Some were forced to wear female underwear. Reports from the Guantanamo gulag are no less pornographic. One prisoner was smeared with the menstrual blood of a prostitute. Another was led to believe, through long therapy sessions, that he was a closet homosexual – torture aimed at dismantling the detained person’s self-identity. Yet another prisoner reported: “Americans stripped me, hit me and beat me up. I pointed to where the pain was but they treated it as a joke. They laughed.”

Porno-torture is not defined in law. However, laws do define pornography and torture separately. Pornography is visual depiction, including photograph, film, and video, of actual or simulated sexually explicit conduct, such as lascivious exhibition of the genitals, sexual acts, sadistic or masochistic abuse. Torture is the intentional infliction of severe physical or mental pain for the purposes of punishment, intimidation or obtaining information or a confession. Porno-torture may therefore be defined as the intentional infliction of severe physical or mental pain for interrogative, punitive, or abusive purposes by forcing a person to engage in sexually explicit behavior, which is recorded, or staged before a live audience.

Note that porno-torture is not the same as porno conduct. What distinguishes the two is the element of consent. A person engaged in porno conduct may have consented to visual depictions of his or her actual or simulated sexual acts. By contrast, porno-torture forces the person against his or her will to engage in actual sexual acts for or before an audience. Like porno conduct, porno-torture is photographed, filmed, or videotaped for the gratification of others. At Abu Gharaib, for example, stacking naked prisoners in a pyramid was an act of torture. It turned into porno-torture when it was photographed. Recording of sexual torture, however, is not critical since it may be committed for the gratification of a live audience.¹⁹

Rape of Kashmiri Women

Sexual torture is by no means a practice exclusive to Americans. Rape is the premier method that Indian security forces use to sup-

¹⁹ L. Ali Khan, “The Invention of Porno Torture,” *Daily Times* (Pakistan) (October 3, 2005).

press insurgency in occupied Kashmir. Though not officially sanctioned, security forces use rape to bring shame and anguish to Muslim homes. Rape is employed as “a weapon to punish, intimidate, coerce, humiliate and degrade.” Rape is also justified on the assumption that raped households will teach others to restrain their male family members from joining militancy. Rape comes easy as Indian federal laws vest security forces with wide powers to cordon and search Muslim suburbs and villages in Kashmir. In these mop-up operations, men in the area are first detained and held for identification in parks and schoolyards, away from homes. Then soldiers search homes for hiding militants. Upon finding no terrorists, security soldiers display their rage and power by burning homes, ransacking some, and looting others. If women in the homes protest security searches or if they themselves are perceived to be militant sympathizers, they are gang-raped by the searching soldiers.

The Palestinians

Nothing evokes more passion than the Middle Eastern conflict between Jews and Muslims locked in an epic struggle in what was once Palestine. Muslims believe that the creation of Israel is the worst catastrophe that Muslims have ever faced. Jews believe that the world is inherently anti-Semitic and that it singles out Israel for condemnation. The world sees the Middle Eastern conflict with a torn consciousness. The conflict over historic Palestine has many similarities with Chechnya and Kashmir. Yet it is unique in that a native population has been occupied, forcibly exiled, tortured, and brutalized to make room for European immigrants; these immigrants assert title to the land under a complex set of claims derived from Judaism, British imperial edicts, and United Nations resolutions. The European immigrants' claim to historic Palestine is no different from that of earlier Europeans who dispossessed native populations in the Americas and Australia, claiming land under a composite rationale of conquest, the international law of terra nullius, Christianity, and a superior civilization.

Banishment and Forced Exodus

The expulsion of the indigenous population of Palestine carries the reality and perception of injustice and cruelty. The 1948 memories

of forced exile have been transmitted to succeeding generations of Palestinians. These memories carry massive depopulation and destruction of over 500 villages, done primarily to discourage the ousted populations from ever returning to their homes. Villages were entirely erased to obliterate pathways, road signs, homes, orchards, olive trees, shops, playgrounds, everything so that their expelled inhabitants could no longer trace tangible images of their memories. Once these villages were emptied, the occupying armed forces adopted “shoot to kill” policies to prevent the return of refugees. Shukri Salameh, an Anglican Christian Palestinian, who practiced law in Jaffa until April 26, 1948, reports in an eyewitness account of how a clandestine radio production urged the population of Jaffa to escape with their families before their houses were demolished. The broadcast also reminded the inhabitants of the events of Deir Yassin, a village destroyed on April 9, where over 100 Palestinians were massacred – an event that shook the Arab world.²⁰ Such stories, the veracity of which is contested, construct memories of expulsion and become folk narratives of oppression.

According to the United Nations Relief and Works Agency (UNRWA), around five million registered Palestine refugees live in Gaza, West Bank, Jordan, Lebanon, and Syria.²¹ UNRWA defines Palestinian refugees as persons whose normal place of residence between June 1946 and May 1948 was Palestine, and who lost their homes and means of livelihood as a result of the 1948 Israeli-Arab conflict. Palestinians were displaced because some fled their homes to avoid the conflict, others were expelled to make room for Jews immigrating to the newly established state of Israel. The UNRWA definition also covers the descendants of these refugees. The number of displaced Palestinians is significant considering that in 1967 Israel occupied Gaza (previously held by Egypt) and the West Bank (previously held by Jordan) where hundreds of thousands of Palestinians, already refugees since 1948, left the occupied territories and spilled over into neighboring countries, swelling the previous crowds of refugees. One third of registered refugees live in

²⁰ <http://www.deiryassin.org>. This website has been created to remember Deir Yassin. Irgun and Stern Gang, Jewish militant (terrorist) groups, perpetrated the massacre. Irgun was led by Menachem Begin, who later became Israel's Prime Minister and won Nobel Peace Prize.

²¹ <http://www.un.org/unrwa>. This UN website contains information about Palestinian refugees and the Relief Agency.

59 official camps – small pieces of land that the host states have placed under the UNRWA's jurisdiction.

For years, Palestinian refugees lived in make-shift tents. Most of them now live in shelters with some access to water and other utilities. The refugees living in shelters, however, acquire no property or ownership rights. Unregistered refugees not living in official camps are concentrated in areas (ghettos) near official camps or around big cities such as Damascus.

Joseph Donnelly of Caritas Internationalis visited the Jenin refugee camp in April 2002, after Israeli forces invaded the camp to flush out militants.²² As the Caritas delegation enters the refugee camp, echoes of grief mix and multiply in fluid Arabic and broken English – men telling stories of crushed houses, women and little girls sitting atop the remains of their homes, boys mourning their slain families in stunned silence. One woman says to the delegation in faltering English: “You see it now and it is so bad. It was worse while it was happening.” The delegation then visits an empty building turned into a makeshift mourning room filled with plastic chairs. Here men sit and hear each other groan and talk about martyrs of the Jenin community. Members of the delegation are invited to pray for the dead and drink bitter coffee from small cups. “This pause overwhelms many in the delegation as the essential human charity of walking with others in their pain and loss removes all barriers.”

Security Roadblocks

Suppressive barriers however share no such pain. Security soldiers in occupied Palestine use roadblocks to control entry to cities and villages. These roadblocks inflict unnecessary and sometimes cruel suffering on civilians waiting in lines. Pregnant Palestinian women, for example, have gone into labor on the ground near checkpoints with no medical care, exposing themselves and newborns to life-threatening risk. As a result, checkpoints have become psychological haunting places for many pregnant women who fear that they will be unable to give a normal birth. Due to similar delays, seriously

²² Caritas Internationalis is a confederation of 162 Catholic relief, development and social service organizations working in over 200 countries and territories. <http://www.caritas.org>

ill civilians have died at checkpoints, some in stranded ambulances. All young men are assumed actual or potential terrorists and treated with indignity. They are searched, insulted, cursed, and harassed. And, if someone makes a wrong move out of exhaustion or naivety, he or she can be instantly killed. In their less dramatic but equally harmful effects, extensive roadblocks chop up roads and pathways into numerous small zones of surveillance, reminding civilians that they are under occupation. At a more practical level, roadblocks infringe upon the civilian's freedom of movement – a human right protected in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. They also interpose barriers between student and school, effectively curtailing access to education. Families are afraid to send their children to schools and colleges for they might be detained or wounded at checkpoints. “Stopping at checkpoints has become a part of the daily routine for . . . going to work, visiting family, and even running errands or seeing a doctor. It has become commonplace, but it is not normal.”²³

Torture

Israel's Shin Bet has earned a reputation for inventing fine-tuned forms of “legally permissible” torture. As the counterespionage and internal security service, it monitors the activities of Palestinian militants. Picked up by Israeli soldiers patrolling occupied territories, including refugee camps, the detainees are handed over to Shin Bet for interrogations. Despite Israel's ratification of the Convention against Torture and the Israeli Supreme Court's rejection of operational exceptions to the Convention, Shin Bet continues to employ newer forms of torture as interrogation tools. The detainees are deprived of food, water, and sleep for days, they are violently shaken, and they are required to defecate in their own clothing. While Shin Bet uses torture to extract information from detainees, Israeli patrols enjoy their own legal authority to impose collective torture on Palestinian neighborhoods, the purpose of which is not to gather information but to punish. Bulldozing Palestinian houses is a favorite, though universally condemned

²³ www.miftah.org (July 1, 2003).

punishment meted out to neighborhoods and villages presumably connected to militants and suicide bombers.

House Demolitions

The Israeli policy of house demolition is a punitive measure that adds to grievances of the occupied Palestinian population.²⁴ It also reinforces the policy of settlements. The two policies of destruction of Palestinian homes and the construction of new homes for Israeli settlers go hand in hand with narrowing the space available for Palestinians. Exact figures of house demolitions are still unavailable. B'TSELEM, the Israeli Center for Human Rights in the Occupied Territories, established in 1989 by academics, attorneys, journalists, and Knesset members, has provided a count of houses that Israeli Occupation Forces have demolished since 1987, the year when the first intifada (resistance) began in the occupied territories Of Gaza and West Bank. This popular Palestinian uprising lasted for ten years (December, 1987–1997). During this period, Israel demolished around five hundred houses and sealed off almost an equal number. Most demolitions occurred in the first three years of the intifada. No demolitions were carried out in the years 1999 and 2000, a time of hope and partial reconciliation where Palestinians and Israelis attempted to negotiate peace with the assistance of then US President, William Clinton. The failure, however, of the peace process gave rise to the second intifada. The more militant Israeli government of Prime Minister Ariel Sharon reactivated the policy of house demolitions. In October 2001, riding on the 9/11 global wave against terrorism, Israel began to demolish a record number of houses (476) in the succeeding two years. In addition to demolition, hundreds of homes have been completely or partially sealed denying any habitation to their residents. The policy of house demolitions, however, is not tied to intifada. After the 1967 war, according to the International Committee of the Red Cross, Israel demolished over a thousand houses in the first five years of occupation of West Bank and Gaza. Per Palestinian sources, the count is much higher.

²⁴ Marco Sassoli, "Legislation and maintenance of Public Order and Civil Life by Occupying Powers," 16 *European Journal of International law* 661 (2005) – (occupying power may not impose its own values and interests on the occupied population).

Ironically, house demolition is a colonial practice registered into law in 1937 by the British government that held Palestine as a trust territory under the mandate of the League of Nations. (The British had used this punitive method of demolishing houses in South Africa and Ireland as well.) Successive Israeli governments have relied on this British legal authority, arguing that the Defense (Emergency) Regulations are part of the laws applicable to British Palestine. Rule 119 of these regulations authorizes troops in overly broad language to forfeit and demolish any house of which the inhabitants “have committed, or attempted to commit, or abetted the commission of, or been accessories after the fact to the commission of, any offence . . . involving violence or intimidation.” Although the British repealed Rule 119 prior to withdrawing from Palestine (and before Israel came into existence), the Israeli legal system nonetheless continues to assert the validity of the rule, asserting that the revocation of the rule was not officially published in the Palestine Gazette. Israel’s High Court has upheld the legality of Rule 119 on the theory that demolition of houses is efficacious deterrence.²⁵

In addition to reliance on Rule 119, Israeli governments have demolished homes built without valid permit obtained from Israeli authorities. Strict zoning laws have been enacted to deny permits. Permits are often denied in areas considered necessary to expand and protect Israeli settlements. These permits are also used to interrupt the natural expansion of Palestinian communities. Some homes built forty years ago by owners on their own lots have been demolished for failure to produce valid construction permit. Thus demolition of homes for lack of permit serves two distinct purposes. First, it clears real estate for the infrastructure supporting Israeli settlements, such as roads, shops, and recreational centers. Second, it acts as a deterrent to prevent the construction of new Palestinian homes for few owners would choose to spend their savings in building houses subject to swift demolition.

The Israeli Committee against House Demolitions, headquartered in Jerusalem, documents the stories of Palestinians whose houses have been demolished. These stories highlight human suffering of losing homes to striking bulldozers. The Committee lists

²⁵ John Quigley, “Punitive Demolition of Houses,” 5 *Saint Thomas Law Review* 359 (1993).

the story of Moussa and his family who built a house in 1989 on their ancestral land in Anata – a Palestinian village located in the West Bank but isolated and circumscribed all around by Israeli settlements. After the 1967 war, the Israeli government expropriated over half of Anata to build settlements and the supporting infrastructure. Most residents of Anata have few options but to work for Israeli factories. Moussa however made a living to support a family of eleven children (5 boys and 6 girls) by raising chickens. The poultry farm was attached to the house. To save their house and the chicken farm from demolition the Moussa family spent over \$10,000 in legal fees, but the attempt was unsuccessful. About 60 days after the notice of demolition, 30 cars of soldiers came to demolish the house. The family was given an hour to vacate the house. The soldiers demolished the house and the attached chicken farm. Moussa's children were shocked at the destruction of their home, household belongings, furniture, and chickens whose bones and feathers lay mangled in the midst of twisted metal and other debris. Now the Moussa family lives in a relative's small house, desperately trying to obtain a building permit.

1.3 OBJECTIFICATION OF GRIEVANCES

Aggrieved populations use complex strategies to objectify their primary and secondary grievances. They give birth to militants who vow to fight the injustices done to their families, villages, and the community. They plead to international journalists and scholars to tell their story to the peoples of the world. They fight and kill. They murder occupying soldiers. They bomb the infrastructure of oppression. They nurture suicide bombers who simultaneously die and kill. They negotiate with suppressive entities. They seek the help of international institutions such as the United Nations to demand political liberty and an end to human rights abuses. They express their anguish and sorrow through literature that in turn consolidates and deepens the feelings of shared struggle. They write poems, stories, and essays to expose and nurse their wounds.

Literary Resistance

Story tellers, poets, journalists, op-ed writers, and other intellectuals arising from aggrieved populations actively participate in objectifying, through diverse literary forms, the shared grievances of the larger community. This objectification stems from a profound human need to search for artistic beauty and romantic value under all forms of living conditions, including misery, occupation, degradation, and even outright slavery. Once objectified, stories, poems, slave songs, and other literary products and narratives serve to deepen the sense of grief and injustice. These literary treasures are, moreover, to a large extent immune from the wrath of the enemy. Militants can be killed, fugitives can be arrested, women can be raped, and houses can be demolished, but poems, folk stories, and narratives – highlighting the oppressor’s cruelty and the heroism of fearless children throwing stones at ferocious tanks – cannot be harmed. Material property is assuredly subject to confiscation and destruction, but intellectual property created under conditions of servility assumes the aura of mythic indestructibility.

Militant Fantasies

Salaam al Jubourie, a journalist and gifted linguist, describes how after the US invasion, the University of Baghdad, his alma mater, turned into a militarized campus of intellectual decay, shared frustration, and hatred. Guards with guns screen the entry of students while American helicopters flying at low altitudes over the campus provoke disgust and feelings of revenge. Explosions in the vicinity frequently disrupt lectures and cautious conversations. Despite security and screening, beggars and vendors end up roaming around on campus. “Students’ personalities have changed since the war.” They find no motivation to study, because many professors, particularly the most brilliant, have been assassinated. The College of Languages, with its lovely club and nice gardens, has lost its pre-war romance in the midst of flies feasting on a huge mass of rubbish beside the college’s gate. A female student accuses the interim government for the decay on the campus saying, “they are tools in the hands of the Americans, and the Americans like this situation. They want us to live in chaotic conditions and fight each other.” Unarmed students in the Arabic department express the

desire to shoot down the helicopter equipped with M 16s hovering over their heads. When students leave for the day, the empty campus filled with uncollected garbage and openly running sewage invite the evening dogs to explore with liberty, as the occupiers promised, a place reserved for higher education.

Occupied Voices

“My name is Shaaban, and I fear no one but God.” This is how a Palestinian introduced himself to Wendy Pearlman, a Jewish-American writer, who went to the West Bank and Gaza during the second intifada (2000–2005) to live with the Palestinians and record their experiences under occupation. Initially, Pearlman hid her Jewish identity but later found out that the Palestinians who welcomed her in their houses and lives knew who she was but feigned ignorance to make her feel comfortable. Pearlman’s book *Occupied Voices* consists of poignant human stories narrated with disarming honesty. “My name is Muna. My family is originally from Abbassia, a village near Lydda. We used to have a lot of property near what is now Ben-Gurion Airport. The documents and the key to the house, they’re all here.” Mahmoud’s story describes the pain of losing homes to bulldozers. “We had just gotten married so everything was new. I had new furniture, including a television, a refrigerator a bed and dresser, curtains, everything, everything. I had worked for eight years to get married and buy a house, and it was ruined in a single moment.”²⁶

Sana, a ninth grader, shares with Pearlman the fear of living in a house hit by shelling. “The shelling was coming from the Osama school, which is not far from our house. The Israelis took over the school because it was the tallest building in the neighborhood.” Sana’s school not far from her house is equally unsafe. “There are settlers living in the houses surrounding the school. They go up on the top floors and fire dum dum bullets down from above.” Ahmed, a clinical psychologist in Gaza, tells Pearlman that Palestinian children are undergoing social phobia. “They’re not safe at home, they’re not safe at school, they’re not safe on the streets.” In one incident, sixteen children on their way to school were injured when Israeli

²⁶ Wendy Pearlman, *Occupied Voices* 142 (2003).

settlers shot at all of them. Since the settlers use silencers on their guns, the children “suddenly found themselves on the ground in a pool of blood.” Soha whose brother was killed for throwing stones at the soldiers admits that “we have stopped having mercy.” Now if a suicide bomber kills their children, says Soha, few Palestinians would say “That’s terrible. What have these children done?”

Palestine Was Stolen from Us

Saber, a professor of Mathematics in Texas, who received his degrees from Emporia State University in Kansas, was born in Beersheba, five years before the creation of the state of Israel. “My parents and family were forced out in 1948.” Saber’s family moved to Gaza where he grew up in a refugee camp. But the memories of Beersheba, real and imagined, never left the family. During the 1967 war, Saber was studying in Kuwait. Under the new occupation laws, Saber could not return to Gaza because under the law he was “non-existent.” Saber, however, did return to Gaza as an American citizen on a Fulbright grant. After seeing the humiliations of occupation, checkpoints, identity cards, tear gas, bullets, the double occupation of Israeli soldiers and settlers, Saber is far from pessimistic about the future of his people. Saber told Pearlman. “This place, Palestine, was not lost because of anything we had done. It was stolen from us. The feeling of injustice will always be with me. It will never go away. I will never be able to forget it. I see the same thing in kids today, this longing for Palestine.”

But Zeita Rises Again

Palestinian poets living under Israeli occupation express complex emotions of helplessness, indignity, survival, defiance, and the need for action. Talha Muhammad Ali (b. 1931), whose native village (Saffouria) was razed to the ground in 1948, meanders through grief-laden determination in order to survive through hard times and tells the world that “a child I was when I fell into the abyss but I did not die.” Abd al-Latif Aql (b. 1942) laments the vacuous existence under occupation by pointing out that “the birds that once flocked to his house have disappeared but their abandoned nests still cling to the roof; and that though the Ramadhan is over, he cannot go out to sit in the café for the soldiers have silenced the gunfire that announces the feast.” Mureed Barghouthy (b. 1944)

captures the longing of a wife whose husband's "leather belt hangs on the wall and his scattered papers tell her that he will be gone a long time but she is there still waiting and at the end of the day reaches out to touch a naked waist." In pessimistic and predictive gloom, he alerts mothers and fathers "to store plenty of milk for children and prepare what light for them you can, for the night means to inhabit us for a longtime." Sulafa Hijjawi (b. 1934), a native of Nablus, mourns the destruction of her lovely village, Zeita. "In moments the village was gone, not a single bread oven remained, men and stones were powdered by enemy tractors. But Zeita rises again as tulips do."

Darwish's Diary

Mahmoud Darwish, one of the greatest living poets in the Arab world, was born in Birwe, an Upper Galilee village. Upon the creation of Israel in 1948, Darwish's family fled to Lebanon. Birwe, along with 400 other villages, was flattened and erased to make room for the new state's immigrant citizens. Darwish's family moved back to Israel but arrived too late to be included in the official census. Darwish thus lost his citizenship. He was no longer a legal resident either, because he had no certificate of residence. Having lost all legal rights to live in his homeland, Darwish raises an existential question; "Am I here, or am I absent?" Additionally, Israel placed the Arab population under emergency regulations designed to restrict their freedom of movement. Lacking identity papers but overflowing with memories of his village, the poet was imprisoned several times for traveling without a permit and writing "subversive" poems and songs. The poet raises the question: what crime did I commit to make you destroy me? But he is not about to lose his inspiration because, for the poet, what makes life worth living are indeed the tyrant's fear of songs and the invaders' fear of memories. Despite bravery shown in poems Darwish left Israel (his homeland) in 1971 and embarked upon a journey "over this endless road with nothing to lose but dust, what has died in me, and a row of palms pointing toward what vanishes." But there is no permanent leaving, for the poet has a firm conviction that "the further we move away, the closer we come to our reality and the boundaries of exile."

The shock of leaving the homeland acquires a permanent status of ideology in Darwish's poetry. "I have learned and dismantled all

the words in order to draw from them a single word: *Home*.” In expressing his longing for the lost homeland, the poet mixes reality with fantasy, just as poets do. Poems’ sorrow and militancy determined to retrieve the homeland, snatched by seagulls, are nurtured by memories solidly embedded in olive trees, saturated meadows, tents of prophets, fathers who fled at knife point, the Lady of Earth, mothers of all beginnings and ends. She was called Palestine. I belong there, says the poet. This belonging to the homeland draws its power not only from re-imagined memories but also from a re-invented consciousness that haunts the poet, constantly reminding him that he was deprived the opportunity to live his childhood fully by the olive trees. The poet laments that he did not yet know his mother’s way of life, nor her family’s, when the ships came in from the sea. The hurt is deep and the wounds are open. And there is no messiah. The longing for the homeland is both physical and spiritual. What has been taken away are not just villages but the songs of doves. And what has been inflicted are not just wounds, since no life can escape from them. What is new is the atrocity shown to the wounds. “When Christ walked in Galilee,” says the poet, “our wounds rejoiced in happiness.”²⁷

In addition to the love for the lost homeland, death is the other theme that persists in Darwish’s poetry. Death surfaces under many masks, in diverse contexts, sometimes as a sorrowful event, sometimes as an act of determination, sometimes emanating from the body of the freshly killed, and sometimes embodied in the killer’s indomitable will. “My longing (for the homeland) shoots back at me, to kill or be killed.” In the face of shackles that bind the life of Palestinians in occupied territories, in refugee camps, and in Diaspora, Darwish sees death as a force of liberation, not from life itself for that would be pessimistic plunge into fruitless nothingness, but in terms of options that death offers. Darwish cannot say with poetic integrity that Palestinians are entitled to live anyway they wish, because any such statement would be empty rhetoric, a jurisprudence of life bearing no relationship with reality. When the poet claims “We have the right to die any way we wish,” the statement is neither hollow, nor inconsequential. Because now inher-

²⁷ Mahmoud Darwish, *Unfortunately, It was Paradise* (Trans Munir Akash & Carolyn Forche) (University of California Press, 2003). All references to poems in this excerpt are taken from this publication.

ent in the statement is a meaningful freedom of choice. This freedom to die any way the oppressed wish “makes life worth living” for this freedom strikes fear in the oppressor’s heart. Death in the service of freedom has no comity with sorrow of any kind, personal or professional. “When the martyrs go to sleep,” says Darwish, “I wake to protect them from professional mourners.”²⁸

Spiral of Violence

In addition to producing poets and storytellers, aggrieved populations prepare their sons and daughters to fight suppressive entities. Violence is considered necessary to resist a mighty enemy that relies on its superior war machinery to deny primary and secondary demands of an abused population. This violence is known as terrorism. But *A Theory of International Terrorism* refuses to define terrorism in this narrow sense. It includes state violence in the definition and dynamics of terrorism, because state violence is inseparable from the violence of the aggrieved population.²⁹ This fusion of violence is most vivid in the tragic events of Sabra and Shatila. In September 1982, three months after the Israeli invasion of Lebanon, a massacre shook the Sabra and Shatila refugee camps located in a popular residential area of Beirut. Many of these Palestinian refugees had been expelled from their homes in Gaza and the West Bank in 1967. Many came in the 1950s. Others were driven out of Jordan in the 1970s, under pressures from Israel and the US.

Sabra and Shatila embodied the reality and symbols of Palestinian grievances comprising of statelessness, poverty, hopelessness, and powerlessness. Sabra grew out of a cemetery. Shatila originated as a town of tents. In strong wind, tents would swell out like balloons. Men would stretch out their chests against the wind to save the ceiling from flying away. Local laws prohibited concrete roofing,

²⁸ Barry Feinstein, “Operation Enduring Freedom: Legal Dimensions of an Infinitely Just Operation,” 11 *Journal of Transnational Law and Policy* 201 (2002) (showing how Palestinian literature affirms martyrdom and the sentiments to kill Jews).

²⁹ M. Cherif Bassiouni, “Legal Control of International Terrorism: A Policy-Oriented Assessment,” 43 *Harvard International Law Journal*, 83 (2002) (state terrorism includes genocide, torture, crimes against humanity, an war crimes).

because it symbolized permanence and continuity, ideas contrary to the rationale of refugee life and the right to return.

In subsequent years, however, as the Palestinian Command moved to Lebanon, the Lebanese camps, including Sabra and Shatila, began to evolve into centers of temporary permanence and even prosperity. Refugee tents were replaced with houses, dirt roads were paved, neighborhood shops mushroomed, and the life within the camps generated vibrant commerce in the vicinity. The Sabra and Shatila districts were still poor but no longer wretched as they had been before the arrival of the Palestinian Command.³⁰ Under the leadership of the Palestinian Command, the transformation of the refugee camps from wretchedness to respectable poverty was a mixed blessing since it spawned increased militancy fueled by an acute awareness of forced expulsions from Palestine, occupied territories, and “brotherly” Arab countries.

Hotbeds of Militancy

A new generation of refugee fighters was ready to pursue the right to return by use of violence. The refugee camps soon turned into hotbeds of militancy. The 1982 Israeli invasion was launched to expel the Palestinian Command from Lebanon, to crush camp militancy, and to prevent attacks on its people and settlements. Through a negotiated deal, sponsored by the US, the Palestinian Command left Lebanon. The deal assured protection to refugees in the Lebanese camps but no logistical machinery was put in place to effectuate the promised security. Asserting that the fleeing Palestinian Command had cheated and left behind over 2,000 fighters in the camps, the Israeli Occupation Forces under the military command of General Ariel Sharon contracted with the Lebanese Christian militias to “mop up the terrorists.” The assassination of the Lebanese Christian president added a further incentive to search for the assassins allegedly hiding among refugees. For many Lebanese and Israelis, Sabra and Shatila refugee camps had become synonymous with terrorist bases. As such, when the militia entered the camps, their residents were not seen as helpless refugees but as support-

³⁰ Bayan Nuwayhed al-Hout, *Sabra and Shatila* 27–35 (Pluto Press, 2004).

ers and protectors of terrorists. When killings began, the invading militia threw away constraints of discrimination and erred on the side of destruction.

Judeo-Christian Violence

Before “flushing out terrorists” from the camps, the Israeli Occupation Forces ringed Sabra and Shatila camps with armor and sealed off all escape routes. Loren Jenkins of the *Washington Post* filed a report with the following opening lines: “Troops from the Christian militia units that have been accused of murdering hundreds of men, women and children in Palestinian refugee camps here were seen moving into Israeli-controlled security areas and fraternizing with Israeli troops before, and during, the rampage of killing, reliable witnesses said today.” The witnesses included survivors, diplomats, and foreign medical workers. Robert Fisk of the *Times* reported that even 24 hours after the massacre, no one was sure how many had been killed but, down every alleyway, corpses were lying together, knifed or machine gunned to death. David Shipler of the *New York Times* reported that the massacre was made possible primarily because the refugee camps had lost the protection of the Palestinian Command and partly because General Sharon had opposed the presence of any multinational force on the theory that such force would stand in the way of “mopping up” operations. For many in the Muslim world, who resent the phrase Islamic terrorism, which in their view maligns Islam, the Sabra and Shatila massacre was an embodiment of Judeo-Christian terrorism, a term that might similarly capture the anguish of those who see nothing both good in the hyphenated tradition.

Memories of Judeo-Christian Terrorism

Ghada Khouri, a free-lance Arab journalist based in Washington, D.C., reported the story of the massacre through the memories of a Palestinian survivor, Munir, an eyewitness of the massacre at the camp, who now lives in the US. On that vengeful September night when the Christian militia entered the Shatila camp, Munir was 12 and lived with his family. Munir survived by faking death throughout the night, lying still amid a pile of dead and dying bodies. He could hear his mother’s moans and his baby sister’s cries, both of whom lay beside him. After a few hours, the moaning and

crying stopped and they both died. The next morning, Munir was pulled out of a heap of corpses and taken to a local hospital. When killings stopped, the estimates of the dead varied. The Israeli Occupation Forces under the leadership of General Ariel Sharon reported 600 deaths while Palestinian sources called it a genocide of around 3,000 men, women, and children – a loss of life roughly equal to the number of deaths in the 9/11 terrorist attacks on the twin towers in New York City.

In 1999, Yasmin Subhi Ali, a Palestinian-American medical student, toured several Palestinian refugee camps in Lebanon including Shatila. She reports that children in the camp are being raised with an overflowing and ever-present consciousness of a lost homeland. The children's library in Shatila shows the determination of memories to stay alive for years to come. Children have decorated the walls of the library with posters, drawings, hand-written accounts of the books that each student has read, and a "Wall Magazine" that consists of writings of Shatila children. Through these writings, tacked on the wall, children fantasize the virtues of the homeland that they have not seen. Subhi Ali reports that the following statements on the Wall Magazine are the most eye-catching: "Palestine is a very, very beautiful land . . . there is a sea of chocolate in Palestine . . . children are always happy in Palestine . . . women don't gossip in Palestine . . . the streets are very clean in Palestine . . . it is always *Eid* ["Feast Day"] in Palestine . . . parents don't die in Palestine." Singing the songs of homeland, the children study the culture of Palestine and learn about its poets and writers inside and outside the occupied territories. Each class of refugee students chant with zest the now famous song known as *Fed'ai* – a song that extols the sacrifice for the homeland and a song that might become the national anthem of the Palestinian state. Hanging by the wall is the slogan and the definition of Palestinian. "We are what we do, not what we say – Are you Palestinian?"

Palestinian Terrorism

We are what we do is the theme of the Palestinian terrorism. Inspired by nationalism and verses of the Holy Quran, and driven by bitter memories of dispossession, forced exile, torture, demolition of homes, massacres, the Palestinian violence has been strategic as well as indiscriminate, causing harm to Israeli men, women, and

children. Palestinian terrorism is reactive and proactive. It is reactive in affirming the paradigm that violence begets violence. It is proactive in reaffirming the right to armed struggle against an occupier who is determined to usurp more land and resources. Day after day, the Palestinian terrorism is becoming as sharp and creative as are the Palestinian poems that dispossessed poets write in middle of the night. Suicide bombings, for example, rattle an unprepared Israeli audience with the ferocity of a well-staged play. Violence fuses the victim with the victim, obliterating the distinction between the guilty and the innocent.³¹

Wafa Idris (1975–2002) is the paragon of Palestinian terrorism. She was born and raised in al-Amari refugee camp in occupied West Bank. In 2002, about 6,000 refugees lived in this dense and crowded camp where unemployment was high and life miserable. In 2002, many families waited for their sons to return from Israeli prisons. Wafa was ten years old when her brother, Khalil, was arrested on charges of militancy and sentenced to eight years imprisonment in an Israeli prison. She would travel once a month, bearing indignities at numerous security roadblocks, to see her beloved brother in the prison. Wafa was twelve years old when the first Palestinian popular rebellion (intifada) erupted in 1987 against the Israeli occupation of West Bank and Gaza. The first intifada was a war of stones, a low-tech mutiny, a shared civilian reaction against real and perceived Israeli atrocities, including extra-judicial killings, indefinite detentions, torture, deportations, home demolitions, settlements, raids, security blocks, searches, seizures, and miserable economic conditions. For twelve-year old Wafa, intifada was personal loss. A friend lost her eye. When Israeli Defense Forces imposed curfew on refugee camps, Wafa's other brother, a cab driver, lost his job, further distressing the family.

Life in al-Amari grinded on, but Wafa developed an optimistic personality, the one that inspires others not to quit when the going is tough. At 16, she married someone she loved. A supportive husband helped her graduate from college. Happiness continued to elude her. Social pressure at the refugee camp destroyed her marriage because Wafa, after giving birth to a stillborn, could have

³¹ Suicide bombing is not a Palestinian invention. Tamils practiced suicide bombings with explosive belts in 1970s. Killing and dying for the sake of an idea are common in human history that cuts across times, religions, and cultures. Achilles engages in battle knowing that gods would kill him. Socrates refuses to escape from the prison, change his views, or accept possible execution. He commits suicide.

no more children. This was particularly difficult because having children (future militants) is a commitment that Palestinian women have made to refugee camps. Determined to find utility in life, Wafa joined the local medical emergency service, the Red Crescent. There, she experienced the brutality of occupation from close and saw first hand what it means to be smashed by bullets. "There she saw men without limbs, children dying from gun wounds, and pregnant women who lost babies at military checkpoints." Wafa was ready to die and kill. But suicide bombing is no emotional outburst. It is a planned undertaking.

On January 27, 2002, Wafa detonated herself in a shopping mall in Jerusalem. One Israeli old man was killed, and many were wounded. "I saw the head of a girl with long black hair lying in the street. I didn't recognize it at first. I thought it was a chicken or some animal, but when I looked closer it was clearly a girl. The body I couldn't see anywhere, though," said an Israel witness. Under the laws of Israel, body parts of suicide bombers are not returned to the family. Wafa's remains have been buried in an unmarked grave in Israel.

Wafa was the first Palestinian female suicide bomber, the first *shahida* (martyr). American investigative journalist Barbara Victor visited al-Amari refugee camp to document the effects of Wafa's death. Nobody was home as her family had abandoned the house. "The house had been ransacked by the Israeli military. There were bullet holes in the walls, drawers had been tossed, beds turned upside down, and slashed cushions strewn around the floor of the living room." The only intact items were Wafa's pictures taken in various stages of her brief life. They were hung on the wall of the abandoned house. In narrow alleys of the camp, says the journalist, Palestinian children were playing and each wanted to be photographed.³²

Supportive Entities

While suppressive entities condemn suicide bombings as barbaric and morally blind, many in the Muslim world understand their logic and even need in the Palestinian context.³³ Note the response

³² Barbara Victor, *Army of Roses* (2003).

³³ Avishai Margalit, "The Suicide Bombers," *The New York Review of Books* (January 16, 2003) (Israelis see suicide bombings with an intense mixture of horror and revulsion).

that Wafa received in the Muslim world. Egypt's grand sheikh stressed that Wafa's suicide mission was an act of sacrifice. One newspaper compared Wafa's feminism with Western feminism, pointing out that Muslim feminists carry guns, and not lipsticks, in their purses. Another newspaper compared Wafa with Mona Lisa, registering her "dreamy eyes and the mysterious smile on her lips". A London-based Muslim newspaper interviewed a Muslim woman using the code-name Umm Osama, "the mother of Osama" Umm Osama praised suicide bombings and vowed to build a Muslim women's network of suicide bombers "that will make the US forget its own name." These reactions demonstrate that the dynamics of militant terrorism are not confined to aggrieved populations but encompass a wider support. The next chapter examines supportive entities that defend and assist aggrieved populations in their struggle for liberation and restoration of dignity.

Chapter 2

Supportive Entities

The United Nations General Assembly stresses the need for the realization of the inalienable rights of the Palestinian people, primarily the right to self-determination and the right to their independent State. (December 2004).

In re Terrorist Attacks on September 11, 2001, more than three thousand survivors, family members, representatives of victims, and insurance carriers brought action in US courts to seek monetary relief for suicide jet attacks on the World Trade Center in New York City, the Pentagon in Virginia, and the crash in Pennsylvania – the three nearly simultaneous acts of suicide terrorism in which thousands of people on the planes, in the buildings, and on the ground perished, countless others were injured, and property worth billions of dollars was destroyed. The lawsuit alleged that over two hundred defendants directly or indirectly provided material support to suicide jet attackers. These defendants included Osama bin Laden, al Qaeda and its members and associates; nation-states that sponsored the attacks; and individuals and entities, including charities, banks, front organizations, and financiers who provided financial, logistical, and other support to the perpetrators. The theories pleaded in the consolidated lawsuit varied from aiding and abetting to conspiracy, intentional infliction of emotional distress, negligence, survival, wrongful death, trespass, and assault and battery. The lawsuit casts a wide net in naming the defendants, some of

whom might not be blameworthy. It nonetheless makes a valid point that the September 11 attackers did not act alone, but were directly or indirectly supported by many others who seriously (though perhaps mistakenly) believed that the US had played a critical role in causing or perpetuating primary and secondary grievances in the Muslim world, including those of Palestinians.

A Theory of International Terrorism maintains that supportive entities are an essential party to the terror triangle. They are called supportive entities because they support an aggrieved population's primary and secondary demands. As noted in the first chapter, an aggrieved population's primary demands originate from the right of self-determination; their secondary demands are related to the restoration of human rights. Supportive entities include states, international governmental organizations (IGO) such as the United Nations (UN), regional communities such as the European Union (EU), and non-governmental organizations (NGO) such as Amnesty International. Supportive entities can also be corporations, churches, and citizen groups that directly or indirectly support the grievances of a population under occupation, alien domination, apartheid, or general surveillance. Even individuals are not excluded from the definition of supportive entities, for they too can be effective advocates for the rights of an aggrieved population. Journalists, lawyers, scholars, teachers, poets, artists, musicians, and producers of documentaries and movies, all contribute in disseminating information about hardships, misery, and sufferings of an aggrieved population. Some individuals support the militancy of an aggrieved population. In sum, any entity is a supportive entity if it furnishes moral, political, economic, informational, or military support to advance or defend the rights of an aggrieved population.

Legitimacy Test

Supportive entities facilitate the operational success of militants who resort to violence. They are critical for the legitimacy of an aggrieved population. If an aggrieved population is unable to garner the backing of supportive entities, the demands of the aggrieved population are suspect and its moral and legal claims to violence are accordingly weakened. But when an aggrieved population draws extensive support from states, IGOs, NGOs, businesses, and individuals, primary and secondary demands of the aggrieved population are vested with legitimacy. If these demands, particularly those

of a highly supported aggrieved population, remain unmet and the condition of oppression worsens, the population's claims to armed struggle gather legality and moral authenticity. The Universal Declaration of Human Rights captures this idea in its preamble, stating "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

The Palestinians, for example, meets the test of an aggrieved population because their grievances are supported by diverse entities across the continents. All Muslim nations along with much of the Western world support the Palestinian right to self-determination. The UN also recognizes Palestinian rights. This recognition is evident in the UN Relief Works Agency (UNRWA) for Palestinian Refugees in the Near East, which was established in 1948 and to this day provides continuous basic relief to over 4 million displaced Palestinians in the Middle East. In addition, the UN for years through its General Assembly and its Commission on Human Rights has passed resolutions in support of the Palestinian right to be free from Israeli occupation. Numerous human rights NGOs, such as Human Rights Watch and Amnesty International, regularly expose state violence of oppression and occupation that aggrieved populations, including Palestinians, suffer on a daily basis.

In the presence of this worldwide support, the Palestinians' grievances cannot be dismissed as frivolous or inauthentic. Influential individuals, such as journalists, artists, and international jurists, also support lawful demands of the Palestinians. Law professors Falk and Weston explain the Palestinian uprising (the first intifada) in the following words:

There are some obvious candidates for explanation: (1) cramped cities and towns as well as refugee camps made worse by high birth rates and restrictions upon Arab urban and rural expansion; (2) squalid social and economic conditions exacerbated by declining employment opportunities (among the Palestinian youth especially), by confiscated natural and financial resources, and by a consequent dependency upon an increasingly colonizing Israeli economy; (3) draconian governmental practices that have resulted in stifled cultural and political expression, and swollen detention centers and jails; and (4) a lethal mixture of humiliation, frustration, and anger from years of foreign rule (Ottoman, British, Egyptian, and Jordanian as well as Israeli), abetted by a profound disillusionment about the will and capability of the outside world – including, perhaps most importantly, the outside Arab world – to provide a solution. Few of the total Palestinian

population of the occupied territories have known anything other than these crabbed conditions. Almost none of the youth have known anything else.¹

This explanation of Palestinian uprising does not support violence. Nor does it sanction the right to armed struggle as the first or the only option available to solve the Israel/Palestine conflict. Falk and Weston simply highlight the wretched conditions of an aggrieved population, which generate violence. By highlighting Palestinian grievances, Falk and Weston assume the role of supportive entities, adding scholarly legitimacy to the proposition that Palestinians qualify as an aggrieved population.

The legitimacy test provides objective criteria to identify aggrieved populations. In the absence of such a test, any population may define itself as an aggrieved population claiming the right to armed struggle. Furthermore, the test distinguishes the violence of aggrieved populations from gang violence or drug-related violence. Any over-inclusive definition of terrorism that puts all acts of violence in the same pot is analytically fruitless, morally confusing, and legally misguided.² One key purpose of law is to make material distinctions that safeguard fairness and promote precision in solving problems. If international law were to treat all acts of violence alike, making for example no distinction between drug-masters and Palestinian militants, it is unlikely to succeed in finding durable solutions. *A Theory of International Terrorism* does not foreclose the study of drug-related, gratuitous, or other causes of violence. It however limits the scope of its own study to the terror triangle for finding meaningful solutions to international conflicts involving aggrieved populations, suppressive and supportive entities.

Important Caveat

One need not assume that all supportive entities aid and abet terrorism. In fact, most supportive entities that advance and defend the primary and secondary demands of aggrieved populations do

¹ Richard Falk & Burns H. Weston, "The Relevance of International Law to Palestinian Rights in the West Bank and Gaza: In Legal Defense of the Intifada," 32 *Harvard International Law Journal* 129, 132 (1991).

² Louis Rene Beres, "The Meaning of Terrorism – Jurisprudential and Definitional Clarifications," 28 *Vanderbilt Journal of Transnational Law* 239 (1995) (operative definitions of terrorism are overly broad).

not support the armed struggle of militants representing the aggrieved population. Some supportive entities publicly condemn militants and their resort to violence. Some supportive entities might support the militants' right to armed struggle and yet may disapprove of their tactics and targets of violence. Some supportive entities, however, do support militants and their right to use force against suppressive infrastructures. Such supportive entities provide financial, logistical, and military support and actively participate in the enterprise of armed resistance to occupation, hegemony, and theft of land and resources. Some individuals who are not members of an aggrieved population may join militants out of universal brotherhood or sympathy, to fight with them. The role of supportive individuals is much more flexible, as is seen in support varying from moral support to co-fighting. Thus the contribution of supportive entities varies from entity to entity, depending on the character and nature of the entity. Supportive IGOs, such as the UN, rarely fight on behalf of an aggrieved population. But they have formidable legal resources to support a liberation movement.

The Permanent Five as Single Entity

Of all intergovernmental supportive entities, the UN Security Council sits at top of the pyramid. When this institution supports a liberation movement, the problem is resolved and violence is minimized. Its inaction, on the other hand, complicates the dynamics of violence. *A Theory of International Terrorism* argues that militant violence seeking national liberation escalates when international institutions fail to resolve long-festered disputes. Of all international institutions, the UN Security Council has the primary responsibility to promote and restore international peace and security.

The UN Security Council is a unique international body empowered to use coercive means, including the use of force, to modify unlawful state behavior. Within the Council, the five permanent members, the United Kingdom, France, Russia, China, and the US, carry formidable power to influence decisions. The structural imperative of the Security Council contemplates a coordinated action of the permanent five. After the collapse of the Soviet Union, the US has attained a leadership position within the Security Council, and other permanent members defer to US wishes. Nonetheless, each

permanent member remains a veto-wielding barrier to concerted action. And even if casting veto is no longer as fashionable as it once was, each permanent member can influence the initiation and finalization of Security Council resolutions. For all practical purposes, the permanent five must serve as a single entity.

There is a growing perception among Muslims of the world that the permanent five act contrary to interests of the Islamic world. This perception is reinforced when the permanent five hasten to break up Muslim nations, such as Pakistan and Indonesia, but do little to support liberation movements involving Muslims, such as in Kashmir and Palestine. Each permanent member seems to have its own reasons to oppose Muslim liberation movements. China and Russia themselves are resisting Muslim liberation movements in their own territories. China crushes Muslim Uighars and Russia brutalizes Muslim Chechens. The United Kingdom has occupied Muslim Iraq. France is determined to secularize and marginalize French Muslims. The United States, the leader of the permanent five, is waging a global war on Muslim militants. Under the combined effect of these factors, the anti-Islamic perception of the permanent five generates frustration, cynicism about the rule of law, and feelings of helplessness among Muslim communities. This perception constructs the image of an unfair world, hostile to Muslim interests, a vexatious world led by the permanent five.

Liberation of East Timore

Nothing is more vexatious for Muslim communities than the swift liberation of East Timore, which the permanent five actively supported and successfully engineered. East Timore, a predominantly Christian community of a million people, had been a Portuguese colony since the middle of the 16th century. In 1975, eight years after the Israeli occupation of Palestinian territories, Muslim Indonesia occupied East Timore and later declared it as its province. By all standards, just like the Palestinians, East Timorese constituted an aggrieved population with primary and secondary grievances. Secondary grievances surfaced when Indonesian occupying army employed high-handed tactics to crush Timorese militants fighting for independence. While the press rightfully highlighted Indonesian brutality, the label of terrorism was rarely used to characterize Timorese militants.

In 1999, the permanent five welcomed the wishes of East Timorese to seek independence from Muslim Indonesia. To facilitate the liberation process, the permanent five established a UN body, called the United Nations Transitional Administration in East Timore (UNTAET) “to provide security and law and order throughout the territory of East Timore.”³ UNTAET was also empowered to support East Timore in its “capacity-building for self-government.” These benevolent measures were in complete accordance with international law, self-determination, human rights, and responsibilities of the UN Security Council. The permanent five committed no wrong in facilitating the independence process of East Timore in a safe and lawful manner. What was most ironic was the inaction of the permanent five in other parts of the world, including Palestine and Kashmir, where Muslims were seeking independence from the remains of colonialism, occupation, settlements, theft of land and resources.⁴

In January 2002, a few months after the September 11 attacks on the US, the UN Security Council anticipated, and proactively endorsed, the declaration of independence that the Constituent Assembly of East Timore were to make on May 20, 2002.⁵ Three days before the scheduled declaration of independence, the Security Council passed another resolution, “commending the courage and vision of the people of East Timore in bringing East Timore to the point of independence by peaceful and democratic means.”⁶ Recognizing that East Timore was fragile in its newly acquired independence, the Security Council established a UN Mission of Support in East Timore (UNMISSET) for the new nation’s internal and external security. Again, all these measures were consistent with the UN Charter, International Covenants of human rights, and the right of self-determination. Though lawful, these measures constructed a different perception of the permanent five in the minds of Muslim communities. It is a perception of double stan-

³ UN Security Council Resolution 1272 (1999).

⁴ Elias Davidsson, “The U.N. Security Council’s Obligations of Good Faith,” 15 *Florida Journal of International Law* 541 (2003) (Israel has invaded numerous neighboring countries without any legal UN action) (Elias Davidsson, a Jew born in Palestine, before the creation of Israel, is a persistent critic of Israeli policies and US support of Israel).

⁵ UN Security Council Resolution 1392 (2002).

⁶ UN Security Council Resolution 1410 (2002).

dards.⁷ It is an inference that the permanent five harbor ill feelings toward the Muslim world, an inference further reinforced when the US began to lead, with the assistance of the permanent five, a global campaign to kill Muslim militants, close down charities, and suppress any support of liberation movements in Kashmir and Palestine.

2.1 SUPPORTING THE RIGHT TO ARMED STRUGGLE

An aggrieved population's right to armed struggle, if such a right is recognized under international law, legitimizes its violence aimed at legally appropriate targets belonging to the principal suppressive entity. Great international effort is underway to reduce, and possibly eliminate, such a right. *Nothing justifies terrorism* has been the new paradigm of suppressive entities. In response, supportive entities are determined to make distinctions between lawful and unlawful forms of violence. Accordingly, they refuse to condemn violence associated with liberation movements as terrorism. A great debate is under way over the continuing validity of the right to armed struggle. It is unlikely that this debate will be settled in the foreseeable future. For a fuller understanding of the terror triangle, it is instructive to examine how supportive entities are determined to keep alive the right to armed struggle and suppressive entities to extinguish it.

Major new developments have confused the right to armed struggle. The global war on terrorism openly denies that any such right exists. The collapse of the Soviet Union has undermined the Marxist-Leninist concept of armed struggle, which overthrew numerous old regimes. Nations, such as Iran and Syria, which allegedly support the right to armed struggle, have been designated as terrorist states by the US. The US is building tactical nuclear weapons to incinerate caves and bunkers that might shelter any infrastructure of resistance and militancy. Despite these background developments, international law has not yet repudiated the right to armed struggle.

⁷ Carlos Ortiz, "Does a Double Standard Exist at the UN? A Focus on Iraq, Israel and the Influence of the United States on the UN," 22 *Wisconsin International Law Journal* 393 (2004) (Israel has been permitted to remain in violation of international law, but Iraq was swiftly punished for its occupation of Kuwait).

Given the ineffectiveness of international institutions to prevent aggression and resolve disputes peacefully, the right to armed struggle is considered indispensable to fight international wrongs against aggrieved populations. Otherwise, predatory states would be emboldened to subjugate weak nations. And if a people under occupation and alien domination have no right to seek and receive support from outside sources, they will be unable to engage in any effective resistance. Suppressive states wish to change the law and morality of armed struggle so that they can easily crush the will of the subjugated. Commenting on Israel/Palestine conflict, Richard Falk argues that Israel as an occupying power in the West Bank and Gaza has failed to discharge its responsibility under international law to safeguard the rights of Palestinians under their control. Israel has also defiantly refused to comply with numerous UN resolutions that call for an immediate withdrawal from territory occupied in 1967. These Israeli violations of international law, Falk says, validate Palestinian resistance, though under the constraints of international humanitarian law that forbids violence against civilians.⁸ Even the issue of civilians, he adds, is unclear with respect to Israeli “armed settlers” occupying Palestinian lands.

Supporting Liberation Movements

Great confusion exists regarding supporting liberation movements founded on the right to self-determination. Suppressive entities deny that states have right to support militants of a liberation movement. In fact, any such support of militants groups is considered aggression, justifying for the target suppressive state to invoke the right of self-defense and attack the supportive state. Even racist regimes such as South Africa and Southern Rhodesia invoked the right of self-defense to attack neighboring countries that housed militant groups fighting the apartheid.⁹ The rhetoric of terrorism appears to have diluted the right to armed struggle

⁸ Richard Falk, “Facts, Rights, and Remedies: Implementing International Law in the Israel/Palestine Conflict,” 28 *Hastings International & Comparative Law Review* 331 (2005).

⁹ Tom Ruys & Sten Verhoeven, “Attacks by Private Actors and the Right of Self-Defense,” 10 *Journal of Conflict and Security Law* 289 (2005).

and the right to provide assistance to aggrieved populations. This dilution of law, however, is unlikely to change the reality of armed resistance and supportive entities.

Definition of Aggression

In 1974, the General Assembly adopted the Definition of Aggression. Although the UN Charter forbids the use of force in conducting international affairs, it does not offer any details of the forbidden conduct. The Definition of Aggression, adopted to provide major details, expresses customary international law. It cannot be dismissed as mere political opinion. Under highly formalistic notions of international law, GA resolutions are treated as political statements carrying no legal obligations.¹⁰ This jurisprudence is changing to the extent that resolutions are now furnishing legal raw materials from which binding norms are harvested. Furthermore, not all resolutions are political. Some reaffirm the applications of legal rules in concrete situations. Some clarify and provide textual embodiment to customary international law. The Definition of Aggression is adopted through a GA resolution, and it itself is not a resolution.¹¹ It is an expression of customary international law¹² both in defining instances of aggression as well as in articulating the right to armed struggle.

The Definition, for example, prohibits attacks and invasions and forbids states and any coalition of states from “any military occupation, however temporary.” This norm is part of customary international law. Per the resolution, the US invasion of Iraq and its consequent occupation is illegal and a violation of the Charter. The Definition upholds the notion of territorial integrity, a principle enshrined in the UN Charter, by prohibiting the armed forces of any state from bombardments, blockades, or forced annexations,

¹⁰ Michla Pomerance, “The ICJ’s Advisory Jurisdiction and the Crumbling Wall between the Political and the Judicial,” 99 *American Journal of International Law* 26 (2005) (criticizing the ICJ’s Court’s expansive view of law and its reliance on UN resolutions to bolster its position on substantive as well as jurisdictional issues).

¹¹ GA Res. 3314, UN doc. A/9631 (1974).

¹² Case Concerning Military and Paramilitary Activities in and against Nicaragua (United States v. Nicaragua), ICJ (June 27, 1986), para. 195 (stating that the Definition of Aggression reflects customary international law).

which compromise or diminish the territorial integrity of another state. Even a declaration of war furnishes no legal basis to commit aggression. Article 5 of the Definition clarifies that no consideration, whether political, economic, military or otherwise, may serve as a justification for aggression. Any land acquisitions or special advantages received through aggressive acts have no legal validity. And acts of aggression are crimes against international peace. The Rome Statute, which established the International Criminal Court, lists aggression as a crime over which the Court may, in the future, exercise its universal jurisdiction.

The Definition of Aggression, however, provides an exception. Article 7 states: “Nothing in this Definition . . . could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the UN, particularly peoples under colonial and racist regimes or other forms of alien domination: nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the UN Charter and in conformity with the (resolution).” Although the text mentions “struggle” and not “armed struggle,” its contextual meaning includes both. Even logic yields such an interpretation. Since the Definition lists unlawful uses of force, the exception must refer to the lawful use of force. Accordingly, the people under occupation, apartheid, and alien domination may resort to armed struggle in pursuit of freedom and independence. They may also seek and receive arms and other support from external sources. This is the law of armed struggle.

Right to Independence

Article 7 of the Definition is the international law that supports militancy against external subjugation. It enshrines the law of revolutions. It allows armed struggle in pursuit of the right to self-determination, freedom and independence. In retrospect, the American Revolution against the British Empire was a lawful exercise of force. The use of force is particularly lawful if the oppressor state refuses to meet the aggrieved population’s legitimate primary demands of freedom and independence and even more so if it engages in gross and systematic violations of human rights.

Thus, Muslim militants fighting occupations, blockades, aggressive economic sanctions that harm the country's territorial integrity, theft of land and resources, and bombardments are not terrorists in the pejorative sense but lawful militants engaged in defending the right of self-determination, freedom and independence. In using this supportive rule of international law, however, Muslim militants must observe the laws of war that prohibit deliberate attacks on non-combatants. They may lawfully attack occupying forces, settlers, and other oppressive agents that forcibly deny the right of self-determination. However, they cannot lawfully harm civilians even if these civilians support the acts of aggression. Accordingly, Muslim militants fighting in occupied lands cannot pick and choose the rules of international law that favor them and discard the ones that do not.¹³ No legal system can function or survive on any such normative selectivity.

Furthermore, Article 7 allows Muslim militants fighting for self-determination to seek and receive support from supportive entities, including states, organizations, and individuals. This right to assistance is un-controversial if militants are fighting racist and colonial regimes. If the right to armed struggle for the actualization of self-determination is to be meaningful in evolving contexts, the aggrieved population must have the right against neo-colonialism under which an imperial force exercises occupation and control through puppet regimes. It has been argued that the Israeli occupation of Palestine is racist and colonial; therefore, Muslim militants fighting against Israeli armed forces and settlers have a protected right to seek and receive arms to put up effective resistance and thereby reverse Israel's ill-gotten gains of occupation. Of course, suppressive entities reject any such reading of the Definition of Aggression and have invented the label of terrorism to condemn all militant violence even when it is directed against soldiers who enforce occupation or theft of land.

Limitations on Armed Struggle

When read too broadly, Article 7 of the Definition becomes a freely available license of violence for seeking "liberty and independence"

¹³ The chapter on Jihad examines the Islamic laws of war, which place similar constraints on Muslim militants.

against any state. Accordingly, any aggrieved population might invoke Article 7 as a legal basis to justify violence against the state that allegedly opposes self-determination. To avoid any such inference, the scope of Article 7 must be limited. In no case does the right to self-determination automatically sanction violence as a lawful method. International law, just like any other legal system, prefers that all disputes be resolved peacefully. If a suppressive state is willing to negotiate questions of independence, the aggrieved population must do the same. Supportive entities must also facilitate the negotiation process and encourage parties to resolve their differences without using force. In real life, however, a suppressive state is rarely a pacifist state. Most often, it uses force to crush what it sees as threats to its territorial integrity and geopolitical goals. Often, a suppressive state engages in gross human rights violations to suppress an aggrieved population's primary demand of self-determination. When the joint burden of primary and secondary grievances is unbearable and blatantly unjust, supportive entities use international institutions to highlight the plight of the aggrieved population. If international institutions persistently fail to rescue the aggrieved population from its subjection, the right to armed resistance gathers increasing legitimacy.

Armed Struggle Not Limited to Colonialism

The right to armed struggle is most definitely available against colonial forces that are almost always alien entities and that occupy territories, directly or indirectly through puppet governments, to control the colony's vital resources, including strategically located land, natural resources, or economic assets. Armed with superior weapons, the colonial force has in the past exercised control through aggressive law enforcement and military power.

Neo-colonialism is more abstract, indirect, even hidden. It has shifted its strategy from occupation to control. Occupation requires physical presence whereas control is exercised through complex structures that involve no overt signs of physical presence. One way to exercise control is to entice, bribe, threaten, or blackmail local rulers to do biddings of the colonial power. Even officers of territorial militaries may be hired to impose the colonial regime. In all these arrangements, the purpose is to use the controlled territory, its resources, and even its labor force for the benefit of the colonial power. Neo-colonialism also fits the concept of alien domination that could be overt or hidden.

Ordinarily, hidden alien domination does not produce armed resistance. The people may notice the signs of alien domination, and may even resent it. But they do not resort to violence to change what they see and resent. Given increased interdependence of the world, no corner of the world is immune from foreign influence. In the evolving One World, crosscurrents of influence are natural and the peoples of the world are gradually coming to terms with new realities. Imperial entities may therefore exploit the dynamics of the evolving One World to implant neo-colonialism in near and distant lands. Predation, to some extent, is the natural condition of human civilization. So is pyramiding. Aggressive nations and peoples find ways to dominate others and position themselves on top of the pyramid.

Effect of Lack of Supportive Entities

If an aggrieved population's claim to self-determination obtains little or no support from foreign states and international organizations, the aggrieved population's status remains suspect and any violence on its behalf is not protected under the law of armed struggle. Article 7 allows a people fighting for self-determination to seek and receive support for its liberty. In reality, however, Article 7 functions backwards. External support appears to be a prerequisite or at least a co-requisite, for the legitimacy of a liberation movement. If no state or international organization supports a population's primary demands for independence, the population's right to armed struggle is rarely considered legitimate. The Abu Sayyaf Group, for example, claims to be fighting for the independence of western Mindanao and the Sulu Archipelago – Muslim areas in the southern Philippines. However, no Muslim or non-Muslim state supports the secession of these lands from the Philippines. No international organization supports this independence movement either. In the absence of international support, the Abu Sayyaf Group's use of violence does not fall under Article 7 of the Definition. The Group further loses its credibility because it uses violence for profit. Raising funds for an internationally supported right of self-determination is lawful, since no armed struggle can survive without money. But when personal profit is the primary motive of violence, the militant group lacks legitimacy even if the represented population has an internationally supported right of self-determination. When the represented population has no internationally supported liberty claims and the militant group uses violence for personal gains, the

entire enterprise is unlawful and, in such cases, the use of the term “aggrieved population” is inappropriate.

Re-Affirmation of Armed Struggle

A comprehensive definition of terrorism has so far eluded international law, as states view violence through different moral and pragmatic lenses. The concept of Article 7 however continues to be reaffirmed in successive international treaties. For example, the International Convention Against the Taking of Hostages (1979) outlaws the taking of hostages as an acceptable means to modify the behavior of a suppressive entity. In its preamble, however, the Convention reaffirms the principle of self-determination of peoples “as enshrined in the Charter and . . . other relevant resolutions of the General Assembly.” It is unclear whether the Convention bans hostage-taking under all circumstances, including alien domination, apartheid, racist regimes, and occupation. It appears that the international community is employing a piecemeal approach to ban specific acts of violence, thus creating exceptions to the right to armed struggle. If the treaty ban on hostage-taking allows no exception whatever, an aggrieved population is deprived of an important tool of resistance and self-defense. In that case, the right to armed struggle would be subjected to a suppressive entity’s unlawful acts of racial exploitation, domination, and occupation. In real life, such an unjust rule would be universally breached since fear of criminal sanctions is unlikely to deter militants fighting for liberation. It comes as no surprise that insurgents and other militants in Iraq have not obeyed the law of the Convention.

In the 1990’s, partly due to diplomatic pressure of suppressive entities, anti-terrorism treaties have become textually opaque in their recognition of self-determination and the attendant right to armed struggle. For example, the International Convention for the Suppression of Terrorist Bombings (1998) criminalizes any international detonation of explosive devices targeted at public places, government facilities, and transportation infrastructure. The Convention does not explicitly refer to self-determination although Article 19 has an indirect reference to the right, which states: “Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the UN Charter and international humanitarian law.” This language of exception

includes self-determination, a principle enshrined in the UN Charter. Therefore, one could argue that the Convention does not apply to bombings that target occupying soldiers and settlers. Bombing of civilians would still be prohibited because it would violate international humanitarian law. If this reading is correct, the Convention loses its prohibitive universality. If, on the other hand, the Convention allows no exception whatever, the right to armed struggle is seriously compromised, tilting international law in favor of occupation, alien domination, and racist regimes.

Armed Struggle Subject to Humanitarian Law

The right to armed struggle is subject to humanitarian law, that is, *jus in bello*. No aggrieved population may totally exempt itself from observing the laws of war, just as no suppressive state may use military force without legal constraints. For example, the laws of war, mostly codified in the four Geneva Conventions and Additional Protocols, prohibit willful attacks on non-combatants, extensive destruction or appropriation of property, torture or inhuman treatment, taking of hostages, mistreatment of prisoners of war, biological experiments, forcible transfers of population, settlements, practices of apartheid, unjustifiable delay in the repatriation of prisoners of war, and attacking historic monuments or works of art or places of worship or other places that embody cultural and spiritual heritages of peoples. Any such military undertaking is particularly forbidden if not justified by military necessity and carried out unlawfully and wantonly.

The laws of war are primarily designed for professional armies in combat against each other. Even professional armies invoke the doctrine of military necessity, sometimes unjustifiably, to inflict harm that otherwise is forbidden. Arguably, militants may also invoke the doctrine of military necessity. An overly strict application of the laws of war would completely weaken militants fighting on behalf of a population besieged by a professional army, thus taking away the aggrieved population's right to armed struggle. Though insurgents and guerillas have in the past mounted heroic resistance in many parts of the world, they are frequently unable to effectively combat and defeat a well-equipped professional army. The odds against militants worsen if they receive no external support. That is why perhaps the Definition specifically provides that an aggrieved population fighting a suppressive entity is entitled to

seek and receive support from outside sources. If contrary to the right to armed struggle all external support were withheld, the doctrine of military necessity would force militants to ignore the laws of war and fight the occupying force by any means necessary. Even under such dire circumstances, militants are not free to completely ignore the laws of war because a modicum of nobility in the conduct of war itself is an effective moral weapon that protects goodwill as well as the fighting spirit, and it also boosts the morale of the aggrieved population and that of supportive entities.

Normative Confusion within the Definition

The Definition contains a possible normative confusion regarding supporting militants. Article 7 of the Definition allows states to provide assistance to aggrieved populations fighting alien domination or racist regime. By contrast, Article 3(g) defines aggression as “the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State.” A superficial reading of this provision would conclude that any support of militants fighting a racist suppressive state, for example, would constitute aggression. But such a conclusion would be absurd under a plain reading of Article 7. There exists no confusion whatever if Article 7 is read as an exception, which it is, to entire Article 3, including its (g) provision. Supporting militant groups that carry out acts of armed force against another state is prohibited except if the target state falls into a category described in Article 7. Thus supporting a militant group fighting on behalf of an aggrieved population under colonial and racist regimes or other forms of alien domination is not an act of aggression prohibited under Article 3(g). The supportive acts are protected under the liberation language of Article 7.

Suppressive states have abandoned Article 7 in favor of Article 3(g). They invoke Article 3(g) to declare that any support of a militant group fighting any regime, whether the target regime is colonial or racist in character, is an act of aggression. The rhetoric of terrorism is so powerful and morally raucous that it has devoured the exception to aggression. Furthermore, suppressive states invoke the concept of self-defense to use force or threaten to use force against a supportive state that might invoke Article 7 to defend its assistance of a militant group fighting a wrongful regime. If the exception contained in Article 7 is abandoned or declared unlaw-

ful, aggrieved populations will lose the right to armed struggle and the law may force them to use non-violent means to seek redress.

Morality of Non-Violence

Supportive entities reject the hypocritical morality of non-violence. Critics of militancy argue that peaceful resistance is more effective in changing suppressive behavior. History is full of great reformers who shunned violence and yet revolutionized societies. Non-violent movements frequently emerge from aggrieved populations, for suppressive entities themselves maintain their subjugation through the use or show of force. The morality of non-violence is thus directed at the aggrieved population and not the principal suppressive state. Suppressive states promote the ethic of non-violence for it assures the safety of their life, liberty, and property while they contemplate change. Furthermore, concessions given through a non-violent campaign ennoble the suppressive state that claims moral superiority by ceasing to commit a wrong. In August 2005, the Israeli decision to remove settlements from occupied Gaza has been hailed as a great moral gesture, although the return of stolen land is a moral obligation; it is not a morally heroic act.

The right to armed struggle may not work in situations where the suppressive state is militarily strong and has no moral qualms in using violence to enforce its domination. In such cases, non-violent campaigns are equally ineffective. Ironically, a non-violent campaign is most efficacious when the alternative threat of violence is credible. In the absence of a believable threat of militancy, non-violent campaigns are taken as vacant reactions and they rarely change a suppressive entity's aggressive behavior. In British India, for example, Gandhi was effective not because his moral sermons persuaded the British to give up their empire, but because the possibility of India rising against colonial officers was too large a threat for the British government to ignore. In reality, therefore, an effective non-violent campaign to unseat a suppressive state is simply the first round in exercising the right to armed struggle.

2.2 SUPPORTIVE STATES AND INTERNATIONAL ORGANIZATIONS

Supportive States

Supportive states vary in their support of aggrieved populations. Some support both the primary and secondary demands of aggrieved populations. Some condemn only gross human rights violations perpetrated against an aggrieved population and yet they do not support the population's self-determination claims. Many European states, for example, criticize India for its brutal suppression of the Kashmiri people. At the same time, many European states do not support Kashmir's right to unilaterally secede from India. In contrast, some states not only support an aggrieved population's primary and secondary demands but, most important, they also support, consistent with the law of armed struggle, the population's right to use force in self-defense and for the realization of self-determination, liberation, and independence. These states may finance an armed struggle, furnish weapons, and provide sanctuary and free passage to militants who fight a suppressive infrastructure. These states may be called principal supportive states. In suppressive language, these states are called "terrorist states." The US, for example, has designated Syria and Iran (and pre-invasion Iraq) as terrorist states because they provide active assistance primarily to Palestinian militants.

Principal Supportive States

What distinguishes a principal supportive state from other supportive entities is its support of the armed struggle of an aggrieved population. Any state that by its deeds champions the cause of militancy against a suppressive infrastructure is a principal supportive state. In a given context, numerous states may be simultaneously principal supportive states. International law employs the doctrine of attribution to identify principal supportive states. If a state has effective control over the organizational structural or decision-making of a militant group, it is undoubtedly a principle supportive state.¹⁴ The developing doctrine of attribution, however, no longer

¹⁴ Case Concerning Military and Paramilitary Activities in and against Nicaragua

requires a showing of effective control.¹⁵ Lesser liaison would be sufficient to constitute control. In *Prosecutor v. Tadic*, the International Criminal Tribunal for Former Yugoslavia appears to have softened the doctrine of attribution. International law would assume the control to exist if a state plays a role in organizing, coordinating or planning the actions of a militant group, in addition to financing, training and equipping or providing operational support to that group.¹⁶ Once a state's ties with the militant group have been identified, suppressive states will invoke the right of self-defense, and may even attack the principal supportive state.

Suppressive states prefer to dilute the doctrine of attribution. A diluted doctrine strengthens the right of self-defense of suppressive states, and puts pressure on principal supportive states to sever the liaison with militants or risk invasion. It is becoming increasingly difficult for weaker nations to be principal supportive states even for authentic causes of liberation or independence. The global war on terrorism has increasingly de-legitimized any active support for Muslim militants fighting for the right of self-determination. As noted above, principal supportive states run the risk of being labeled as terrorist states. Perhaps under the lingering effects of the law of armed struggle, the concept of terrorist state is no part of international law. And no state has been declared a "terrorist state" under the international legal system. The concept is essentially unilateral in that individual states under its national laws or policies may designate a certain state as a terrorist state. Any such designation may or may not carry any international significance. Syria, designated a terrorist state under US laws, has been able to obtain sufficient votes in the UN to win a seat in the Security Council. Very few states exercise the "unilateral right" to declare other states as terrorist states. The US is most certainly at the forefront of exercising this unilateral right.

Because of US economic power, the designation of states as terrorist states has serious legal and economic consequences. In fact,

(Nicaragua v. United States of America), 14 ICJ Rep. para. 195, (Judgment of 27 June 1986).

¹⁵ Mary Ellen O'Connell, "Enhancing the Status of Non-State Actors through a Global War on Terror," 43 *Columbia Journal of Transnational Law* 435 (2005) (The international community attributed al Qaeda's actions to the Taliban, Afghanistan's de facto government in 2001, although evidence did not support that the Taliban "effectively controlled" al Qaeda).

¹⁶ *Prosecutor v. Tadic*, Judgment, No. IT-94-1-A, para. 137 (July 15, 1999).

the designation imposes limited economic sanctions, punishing both the terrorist state as well as US companies and individuals dealing with the designee state. A designee state cannot buy arms from American companies, nor can it import dual-use items, items that significantly enhance military capability, without an export license. Federal laws also prohibit US persons from entering into any financial transaction with the designee state without a prior authorization from the Treasury Department. Any income earned in a designee state does not qualify for tax credits. A terrorist state may also be unable to receive international loans from the World Bank, the International Monetary Fund, and other international financial institutions because federal laws require the US government to oppose any such financial assistance. Furthermore, the designee state loses its sovereign immunity under US laws, allowing the families of terrorist victims to file civil actions in US courts.

Intergovernmental Organizations

If an aggrieved population fails to receive the support of an IGO, its demands remain suspect. An IGO, as a formal association of numerous states, internationalizes the demands of the aggrieved population. Since states and international organizations are important players in the international legal system, their support legitimizes the conflict between an aggrieved population and a principal suppressive state, such as the conflict between Chechnya and Russia. Due to various geopolitical reasons and diplomatic concerns, states may be individually reluctant to champion the cause of an aggrieved population. International organizations provide the necessary cover for individual states to pool their support in a joint action. Furthermore, international organizations, as separate legal entities, have their own influence over international events. Support from an IGO doubly boosts the demands of an aggrieved population because the grievances are legitimized by both the organization and its member states. When several IGOs support an aggrieved population, an aggrieved population's demands draw even more legitimacy and the principal suppressive state comes under increased international pressure to settle the dispute and desist from human rights violations.

UN support for Palestinians

Each year, the UN passes resolutions supporting Palestinians' primary and secondary grievances. In 2004, the UN General Assembly passed over a dozen resolutions, covering various aspects of Israeli occupation and its detrimental consequences on the Palestinian people. These resolutions uphold the right of self-determination, and condemn settlements, destruction of natural resources, and Israeli practices affecting human rights of the Palestinians. They also call for a peaceful settlement of the question of Palestine, the application of the Geneva Convention relative to the protection of civilians in time of war, and providing assistance to Palestinian refugees and children. The US voted against all resolutions. All resolutions underscore Palestinians' just grievances, they all passed with a majority vote, and some are controversial and split the world. However, three resolutions are most telling in their universal approval.

Self-Determination

First, Resolution 59/179 reaffirms the right of the Palestinian people to self-determination, including the right to an independent State of Palestine. The resolution invokes the advisory opinion by the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, to acknowledge that the right to self-determination is *erga omnes*, that is, a universal right that cannot be compromised, diminished, or abandoned. The resolution specifically asserts that the construction of the wall impedes the right of self-determination. Moreover, the resolution is not simply an abstract approval of an abstract right. Inviting action, the resolution urges all States and UN specialized agencies and organizations to support and assist the Palestinian people in the early realization of their right to self-determination. This call for action might be taken as imposing no legal obligation under dubious formalism that General Assembly resolutions do not create law. They nonetheless generate moral pressure that cannot be dismissed. Most important, they express the will of the peoples of the world.

The voting record reveals an interesting story. Resolution 59/179 was passed by an overwhelming majority of nations, thus embodying the will of the peoples of the world. 179 nations voted for the resolution; 5 states (Federated States of Micronesia, Israel, Marshall Island, Palau, and the US) voted against it; and, three states

(Australia, Papua New Guinea, Vanuatu) abstained. The voting pattern shows that Israel, Australia, and the US were the only independent states that did not vote for the resolution. Others not voting for the resolution are dependent states that cannot afford to have an independent foreign policy. Israel's opposition to the resolution is understandable since it is a key party to the dispute and the resolution directly condemns Israel's activity in the occupied territories. In the complex and unknowable realm of causation, it is unclear whether Australia and the US voted against the resolution to show their displeasure over Islamic terrorism or whether Muslim militants earmark and attack these countries for defying the will of the peoples of the world and standing shoulder to shoulder with Israel in its occupation and construction of the wall. Australia's no vote in this and similar resolutions incites hatred that Muslim militants' actualized by bombing Australian tourists in Bali.

Natural Resources

Second, Resolution 59/251 drew wide international support as 156 states voted for it, with the same five states voting against it. The resolution reaffirms the inalienable rights of the Palestinian people over their natural resources, including land and water. It mentions that Israel is engaged in extensive destruction of agricultural land and orchards in occupied Palestine, including the uprooting of a vast number of olive trees. It also mentions the detrimental impact of the separation wall and Israeli settlements in occupied territories, since they are the tools to confiscate land, and divert natural and water resources that are critical for the social and economic development of the Palestinian people. Inviting concrete action, the resolution calls on Israel to stop exploiting, damaging, depleting or endangering the natural resources in the occupied territories. It also recognizes the Palestinians' right to claim restitution for any such loss of the resources. The resolution repeatedly refers to Israel as an occupying power, implying that Israel has no lawful claim to any such natural resources.

Protection of Civilians

Third, Resolution 59/122, passing with 160 favoring votes, supports the Palestinians' secondary grievances against the unlawful practices

of Israeli armed forces. It reaffirms the International Court of Justice's holding that the Geneva Convention relative to the Protection of Civilian Persons in Time of War applies to the Occupied Palestinian Territory, including East Jerusalem and that Israel is in breach of several of its provisions. The resolution demands that Israel accept the de jure applicability of the Convention in the occupied territories and that it comply scrupulously with its provisions. Furthermore, the resolution calls upon all signatory states to the Geneva Conventions to "exert all efforts to ensure respect for its provisions by Israel" in accordance with article 1 common to the four Geneva Conventions. Article 1 places an obligation on all states to respect as well as to "ensure" that the Convention is enforced "under all circumstances." The US, along with its customary client allies, voted even against this resolution.

European Parliament's support for Chechnya

The European Parliament, which represents the people of Europe, has passed several resolutions over the years to condemn "the appalling human rights situation in Chechnya." In July 2003, the Parliament adopted a resolution on the basis of facts gathered by an ad hoc European delegation that visited Chechnya a month earlier. The resolution highlights a number of Chechnya's grievances. It underscored the fact that "the Chechen Republic has been experiencing, for more than a decade, a situation of armed conflict, insecurity and instability in all spheres of life." It observed that the armed conflict between Muslim militants and Russian security forces lays its primary burden on the people of Chechnya who must bear disastrous living conditions since the water supply, the sewage system and electricity grid are severely damaged, unemployment is high, security is low, and more than 110,000 Chechen refugees live in temporary shelters. While both sides engage in lawless prosecution of the armed conflict, the resolution specifically criticizes the Russian security forces for their persistent and recurring mass violations of the law of war against the civilian population, which constitute war crimes and crimes against humanity. The resolution also mentions legal and logistical barriers that Russia has erected against international humanitarian relief reaching the people of Chechnya.

As noted elsewhere, supporting an aggrieved population or for that matter criticizing a principal suppressive state does not amount

to supporting violence. This distinction is most obvious in resolutions that the European parliament has passed to condemn military excesses of Russian security forces in Chechnya. The 2003 resolution unequivocally denounces acts of terrorism. It “condemns all terrorist attacks in Chechnya and considers that the total eradication of terrorism in the province is also part of the international fight against terrorism.” And yet, it does not adopt the linear suppressive logic that terrorism is the sole cause of all the problems in Chechnya. Taking a more wholesome and grounded view of the Chechen conflict, the resolution states that several causes, including “the struggle for independence, a deterioration in the rule of law leading to mounting crime, the emergence of a ‘failed state’, obscure economic activities, terrorism and violent repression” contribute to the armed conflict and its tragic consequences in the Chechen Republic.

Support of Secondary Grievances is More Common

International organizations, such as the European Parliament, are more likely to support the secondary grievances of an aggrieved population, which include mostly human rights violations. This support is relatively easier since all nations have vowed, through a complex network of regional and global treaties, to protect human rights. The primary grievances of a population, centered on the right of self-determination, are often supported in muffled language or not supported at all. A more robust support for the right of self-determination, it is commonly feared, would encourage secessions and unnecessary dismemberment of nation-states. The European Parliament, for example, does not seem to support the Chechens’ primary demand for secession. However, it does advise Russia, the principal suppressive state, to find a “political solution” to the armed conflict. Since nation-states strive for self-preservation, they prefer the autonomy solution to that of independence. Accordingly, the European Parliament advises Russia to engage “as many Chechen leaders as possible in a peace process” that might lead to a mutually acceptable autonomous republic of Chechnya within the Russian federation.

Organization of the Islamic Conference (OIC)

The OIC is the most vivid example of a supportive IGO that champions the cause of aggrieved populations and of militants engaged in liberation movements. The OIC is the official voice of the Islamic world. Composed of fifty-six Muslim states, the OIC represents Muslims of all faiths, of all ethnicities, and from all continents. It was established in 1969 while Muslims of the world were in a state of shock, over terrorist actions of the extremist Jews who attempted to set on fire the Al-Aqsa Mosque, the first Qibla and the third holiest Islamic shrine, located in occupied Jerusalem. Muslim states came together and formed the OIC entrusting it, “in absolute priority, with liberating Jerusalem and Al-Aqsa from Zionist occupation.” Though conceived in a state of shared terrorist trauma, the OIC has expanded its vision and multi-lateral activity beyond its initial, narrow goal of liberating Jerusalem. While it is still committed to safeguarding holy places and supporting the struggle of the Palestinian people, the OIC now confronts a much more complex mix of multifaceted terrorism that has swept through the Islamic world, including terrorism perpetrated by Muslims against Muslims.

OIC Convention on Combating International Terrorism

In 1999, the OIC drafted a Convention on Combating International Terrorism, the first comprehensive Islamic treaty on terrorism. The OIC Convention defines terrorism as “any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honor, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States.” This broad definition of terrorism is not confined to violence against civilians nor is it limited to non-state actors as the exclusive perpetrators of violence.

The OIC definition of terrorism contains both state terrorism and state-sponsored terrorism. Cherif Bassiouni makes an important distinction between state terrorism and state-sponsored terrorism. State terrorism is the employment of terror by the state itself.

When state instrumentalities including defense forces and law enforcement agencies use torture, genocide, and crimes against humanity either in attempts to defeat foreign enemies, including states, or to control specific groups within its own territory or abroad, such activity may be called state terrorism. Thus, state terrorism can be both national and international, directed at state or non-state actors. In contrast to state terrorism, state-sponsored terrorism occurs when “the actual perpetrators of terrorist acts are non-state actors operating with overt or covert support of a state.”¹⁷ The state sponsoring terrorism is still involved but its role is now to provide moral, financial, and military support to private groups who are now primarily responsible for carrying out the acts of terror against the persons, properties, institutions and instrumentalities of enemy states.

Under the OIC Convention, acts of violence “that threaten the stability, territorial integrity, political unity or sovereignty of independent states” refer primarily to state terrorism, although private groups are not excluded. The Israeli invasion of Lebanon and its attacks inside Syria, and the US invasion of Iraq in which all OIC members refused to be any part of the “coalition of the willing,” fall under the OIC definition of terrorism. The definition also includes state-sponsored terrorism such as the Israeli government’s support for Jewish settlers who “occupy and seize” private property in the Palestinian lands. Thus, what distinguishes the OIC Convention from other international treaties is that the Convention’s conception of terrorism contains both suppressive and supportive terrorism, that is, violence committed against an aggrieved population as well as *some* violence committed by Muslim militants. As discussed below, violence in the context of a liberation movement is exempted from the definition of terrorism.

Like the UN General Assembly resolutions passed in the 1990s, the OIC Convention accepts the emerging UN doctrine that “motives and intentions” are irrelevant to the definition of terrorism. This emphasis on the “nature” of terrorist crimes rather than on “motives or intentions” of their perpetrators expands the definition of terrorism, as it refuses to recognize political crimes as exceptions to terrorism. The OIC Convention lists a number of UN anti-terror-

¹⁷ M. Cherif Bassiouni, “Legal Control of International Terrorism,” 43 *Harvard International Law Journal* 83 (2002).

ist treaties that criminalize specific acts of terrorism directed at civil aircrafts, diplomats, and other internationally protected persons. It appears that Muslim militants engaged in liberation movements, though they may engage in armed struggle, are nonetheless prohibited from undertaking specifically prohibited acts of terrorism.

However, the OIC Convention does not seem to embrace the bolder version of the UN doctrine that “nothing justifies terrorism.” The OIC Convention specifically distinguishes terrorism from armed struggle in the pursuit of the right of self-determination. Article 2 states in unambiguous terms that “Peoples’ struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.” This allowance for armed struggle, however, is not unbridled. Militants fighting for liberation and self-determination must launch their struggle within the confines of international law. No terrorist organization is free to design its own rules for the conduct of warfare contrary to the mandates of international law. If private militant groups are free to define the parameters of their armed struggle, regardless of international law constraints, international law and order will likely collapse. The OIC Convention, therefore, allows armed struggle but places international law as a constraint on the conduct of liberation warfare. Muslim militants fighting in Palestine, for example, may not threaten the safety of civil aviation or engage in any other method of warfare specifically prohibited under international law.

Supportive Human Rights Organizations

Both intergovernmental and nongovernmental human rights organizations provide support to aggrieved populations. They do not advocate an aggrieved population’s primary demands involving self-determination. But they expose and disseminate to the world the gross and systematic human right abuses, the secondary grievances, which the aggrieved population suffers by the hands of suppressive entities. This exposure weakens the principal suppressive state’s will to crush the liberation movement. It also emboldens the aggrieved population to conduct fiercer resistance. Even supportive entities draw renewed inspiration to champion the aggrieved population’s fight for life against the principal suppressive state. In fact, nongovernmental human rights organizations, such as

Amnesty International, are often the first to expose and report human rights abuses. This, in turn, empowers supportive states to raise human rights issues in intergovernmental human rights institutions, such as the UN Commission on Human Rights. If supportive states are successful in gathering enough votes in the intergovernmental institution, often though not always a political body, to officially condemn human rights abuses, the combined pressure of intergovernmental and NGOs de-legitimizes the principal suppressive state's claims that the aggrieved population is engaged in a completely unjustifiable armed struggle.

In 2005, just as before, the UN Commission on Human Rights, in its 61st session, supported the Palestinians' primary and secondary grievances. In one resolution, it reaffirmed the Palestinian right of self-determination, and urged "all member states and relevant bodies of the UN system to support and assist the Palestinian people in the early realization of their right to self-determination." In another resolution, the Commission condemned "the use of force by the Israeli occupying forces against Palestinian civilians, resulting in extensive loss of life, vast numbers of injuries and massive destruction of homes, properties, agricultural lands and vital infrastructure." It requested the Commissioner to address the issue of pregnant Palestinian women giving birth at Israeli checkpoints owing to denial of access to hospitals. It demanded that Israel cease the construction of the wall and make reparation for all damage caused by the construction of the wall. These resolutions embodying the Palestinian's primary and secondary grievances show the success of supportive states in using an IGO to put pressure on a principal suppressive state to yield to an aggrieved population's primary and secondary demands. Suppressive entities dismiss these resolutions as a political product having dubious legal force.

¹⁸ Steve Charnovitz, "Two Centuries of Participation: NGOs and International Governance," 18 *Michigan Journal of International Law* 183 (1997) (tracing the historical involvement of NGOs in international governance); Martin A. Olz, "Non-Governmental Organizations in Regional Human Rights Systems," 28 *Columbia Human Rights Law Review* 307 (1997) (an entity is a human rights NGO if its work is guided by the idea of international human rights).

Nongovernmental Organizations

Nongovernmental organizations (NGOs) are highly active in disseminating information about primary and secondary grievances of aggrieved populations.¹⁸ IGOs, such as the UN Commission on Human Rights, may be accused of political bias and geopolitical maneuvering, as states use these institutions to advance their own values and influence and embarrass their foes. By contrast, NGOs are perceived to be neutral and credible. Even though most influential NGOs are Western in origin, and may thus analyze situations from Western perspectives, their findings and reports shape and influence opinions of national governments and international institutions. Some NGOs have formal links with international institutions, such as the UN Economic and Social Council, and submit their reports directly to decision makers.

Among NGOs, human rights groups are the most influential in exposing the abuses of occupation and human rights violations that suppressive states commit in the name of security. Suppressive entities are often critical of such human rights groups and see them tilting the empathy balance in favor of the aggrieved population. Some suppressive states ban such groups from investigating human rights abuses in the occupied territories or “disturbed areas.” Some deny the truth of investigative reports and some declare them one-sided. Despite such discounting, the reports of NGOs nurture a global moral environment that supports the primary and secondary grievances of an aggrieved population. These reports may also, to some extent, legitimize the armed struggle that militants have undertaken against the principal suppressive state.

In India, Hindu nationalist governments have denied access to Amnesty International (AI) to visit Kashmir and report the excesses of Indian security forces in suppressing Muslim militants. AI, however, has been persistent in its opposition to the Armed Forces (Special Powers) Act, a law that empowers Indian security forces to search, seize, and kill even when security soldiers are not at imminent risk. According to AI reports, the law has facilitated grave human rights abuses, including extrajudicial executions, disappearances, rape and torture. AI also condemns the criminality that Muslim militants perpetrate in Kashmir. It however repeatedly urges the government of India to repeal the Armed Forces (Special Powers) Act because its provisions contravene non-derogable human rights, such as the right to life. The Act empowers security forces

to fire upon an unlawful assembly of five or more persons, even if the firing causes death. This security authority is incompatible with the right to life that cannot be compromised under any conception of emergency. Indian civil society groups have also opposed the Act and the related anti-terrorism laws.

In Chechnya, AI has also compiled reports with the assistance of Russian NGOs that oppose human rights abuses. In a July 2005 report, AI estimates that between 3,000 and 5,000 people have disappeared in Chechnya. Due to fear generated by Russian security forces, journalists are reluctant to investigate and relatives are afraid to tell about missing persons. Search and seize operations “mostly take place at night, usually by armed men, in camouflage and often masked, who often arrive in a large number of military vehicles whose identification plates are covered, and in which one or more people are taken away in an unknown direction.” It is often difficult to attribute responsibility for these abductions and investigations under the Russian Criminal Code fail to identify the culprits. Under the prevailing climate of impunity, AI reports “very few effective measures have been taken. Only very few cases of disappearance, torture and ill-treatment or extrajudicial execution have reached the courts.”

2.3 SUPPORTIVE GROUPS AND INDIVIDUALS

Ad Hoc Militancy

It is inaccurate to assume that Muslim militancy has a well-defined, organized global network. The al Qaeda global network served as a vibrant force of resistance against the Soviet Union because it received moral, military, and logistical support from the US, Saudi Arabia, and Pakistan. But after the US invasion of Afghanistan, the network was to a large extent destroyed and dismantled, giving impetus to ad hoc militancy. Individuals, who feel they must do something to help their fellow brothers and sisters under suppression and occupation, may resort to violence on an ad hoc basis, which simply means, that the individuals plan and execute violence against targets that they choose. Ad hoc militancy may be the work of a single individual or groups of individuals without any ties to any international network. Individual acts of violence may be perpetrated against a suppressive home government or a

foreign government or institution, such as the UN. It may involve bombings, suicide missions, and even more powerful attacks depending on the resources that individuals might be able to bring to their ad hoc undertaking. Ad hoc militancy has been witnessed in all parts of the world against principal suppressive states. The US, which is perceived as to be the super suppressive state, is most often the favorite target of ad hoc missions of violence.

Isolated Acts of Terrorism

One need not conclude that every terrorist act perpetrated anywhere in the world by Muslims is part of some International Coalition of Muslim Militants. There are individual and even group acts of terrorism that are neither part of any international coalition nor are they inspired to air the plight of aggrieved populations. They are isolated acts of despair, revenge, hatred, or frustration. In April 2005, for example, an 18-year old engineering student blew himself up and killed three tourists in Cairo. Investigations revealed that the bomber acted alone out of personal frustration over the global state of affairs. Diaa Rashwan, a senior Egyptian political analyst, discounted the possibility that the act was the work of a militant organization. Whenever the US ignores the UN, or engages in unilateral actions that terrorize Arabs and Muslims, reported Al Ahram Weekly, such attacks increase. State-led violence against Muslim states or aggrieved populations provides the “climate for disturbed and frustrated young people to believe such operations might be the only way for them to express their anger and regain their lost pride.”¹⁹

International Coalitions of Muslim Militants

Just as the armed forces of nation-states pool their resources to launch or threaten to launch a collective attack, private armies of militants do the same. The 1999 annual report of the Canadian Security Intelligence Service captured this phenomenon in coining the phrase *an international ad hoc coalition of terrorists* who “have expressed the intention of causing harm to Americans and their

¹⁹ Al-Ahram, (April 14–20, 2005).

allies.” The word *ad hoc* in the Canadian phrase is also appropriate because the coalition is neither formal, nor for a fixed period of time. The purpose of the coalition, however, seems larger than to cause harm to the US and its allies. The coalition seems equally willing to fight on behalf of any Muslim aggrieved population, whether in Chechnya or Kashmir. Terrorist attacks on Russian and Indian national and international interests are perpetrated by a collection of militants extracted from the Middle East, South Asia, and North Africa. It appears that private armies have joined their resources to attack the suppressive infrastructure and to defend rights of Muslim aggrieved populations across the world.

It appears that there is not one but many *ad hoc* coalitions of militants operating in different areas of the world. This phenomenon of international coalitions of Muslim militants (ICMMs) is complex and cannot be reduced to any one structural framework. ICMMs come into existence without any formal or negotiated deals. An ICMM may or may not have a single leader at the head of the military chain. In fact, there may or may not be a military command as one expects from a regular armed force. Total flexibility is the ICMM’s organizing principle. In all its phases, including recruitment of militants, training, raising resources, planning attacks, methods of communication, operational coordination, the ICMM acts in an *ad hoc* manner. By virtue of its formless and flexible being, the ICMM is no efficient machine, nor is it necessarily effective, nor does it work in accordance with any timetable. Even its strategic and tactical goals are fluid and mutable. The ICMM’s own existence is not assured because it will dissolve in thin air if its operations have become impossible to perform or they no longer carry any terror value. Just as sand grains freely move in a desert swept by strong winds, so do private armies of militants.

Another distinction is worth noting. Whereas members of the national armed forces work full-time, militants of private armies may or may not. Some militants work part time for an ICMM, leaving most of their time for regular jobs and family affairs. Some contribute once or twice to the affairs of militancy, and live normal lives. In Iraq, for example, the US is facing a unique form of insurgency that it has never fought before. The ICMM operating in Iraq is disorganized, its goals and operations constantly vary, its militants are indistinguishable from civilians. It contracts with criminals and gangsters to seek abductions. All alliances within, and on behalf of, the ICMM are temporary. Nothing is written in stone except one thing that the ICMM would fight a slow and steady bat-

tle until the Americans are forced out of Iraq. Commenting upon the unpredictability and shifting alliances of the ICMM in Iraq, Bruce Hoffman, a RAND counterinsurgency expert who served as an adviser to Paul Bremer's occupation administration, admits: "Vietnam was not easy, but it was certainly far less complex and more straightforward."²⁰

Supportive Charities

Throughout the world, supportive charities raise funds for aggrieved populations. The line between financially supporting an aggrieved population and funding its militants is thin and disputed. Funds raised for peaceful purposes may or may not be diverted for militant operations. After September 11, major Islamic charities were closed down in the US for their alleged links to Muslim militants in occupied Palestine and elsewhere. In *Holy Land Foundation for Relief and Development v. Ashcroft*, US courts upheld the government's decision to designate the largest Muslim charitable foundation in the US as a terrorist charity and to block its assets. The courts formulated the issue in a rather provocative language, stating that "there is no constitutional right to fund terrorism." The Holy Land Foundation (HLF) allegedly supplied funds to Hamas, a Palestinian political organization, which supports suicide bombers in occupied territories. There is no evidence that Hamas has committed any terrorist act against the US. Blocking the assets of a US national for the benefit of a foreign suppressive state is indeed unprecedented legal action.

Suppressive US laws for blocking assets are written in sweeping language. They punish guilt by association. For example, "any person who is found to act for or on behalf of" or is "owned or controlled by" or "assist in, sponsor, or provide support for," or is "otherwise associated" with a designated terrorist is also considered a terrorist. Despite these broad provisions, the laws provide the humanitarian aid exception. In blocking assets of a designated terrorist organization, the President has no authority to prohibit donations of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering. The courts, however, have

²⁰ Jim Krane, *US Faces Complex Insurgency in Iraq* (Associated Press, Oct 4, 2004).

applied this exception to articles and not to money, concluding that monetary donations for the humanitarian aid may be lawfully blocked. When lawful channels for supporting an aggrieved population are blocked, informal methods of raising and transferring funds come into existence.

Informal Funds Transfer Systems

Militants fighting on behalf of an aggrieved population invent informal funds transfer systems (IFTS) to finance attacks on suppressive targets. These informal systems bypass legal payment systems such as promissory notes, bills of exchange, drafts, checks, credit cards, debit cards, letters of credit, wire transfers, and electronic transfer of funds. It would be inaccurate to assert that all financing of militancy is informal. If funds are moving from one country to another, the transfer is highly complex. Across international borders, funds are transferred through formal channels and later delivered to militant groups through an IFTS. In reality, therefore, the transfer system is far from linear. It is built upon a series of formal and informal transfers. The complexity of the transfer would depend upon the depth of the militant groups. If a group is large and scattered throughout a region or across the world, funds may transfer through several intricate steps, involving banks, businesses, charities, NGOs, and individuals.²¹

Suppose A transfers funds to B, B transfers to C, C to D, and so on, until funds reach M. In this series of transactions, C may not know how (formally or informally) funds were transferred from A to B, or what the quid pro quo (consideration) was for the transfer. A to B transaction may be a gift, a sale, or the payment of a debt. The transaction between A and B may be real or fake. C may or may not even know who A is or what A does or where A is located. A may be a Muslim, Christian, Jew, Hindu, or anyone. A may be a natural person or a corporation or a government. A may be a real

²¹ Terrorist financing is not the same as money laundering. Money laundering originates in illegal activity such as narcotics trafficking. Terrorist financing originates with lawful funds. John D.G. Waszak, "The Obstacles to Suppressing Radical Islamic Terrorist Financing," 37 *Case Western Journal of International Law* 673 (2005) (money laundering cleans dirty mean whereas terrorist financing dirties clean money; one is for greed, the other for revolution).

or fictitious person. C deals with B, having little or no knowledge about A or about the transaction between A and B. As funds reach B and move from B to C, A is irrelevant. Likewise when funds reach C, A and B are both irrelevant. This journey continues until funds reach M (the militant). M does not know, nor does he care, whether the funds originated in his own country or a neighboring country or a country far away from the place of final transfer. In this chain of transactions, it is highly probable that most parties are unaware of the origination and final destination of the funds. It is often fruitless to trace funds on the assumption that everyone in the chain is aware that funds are being transferred to a militant group.

In the Islamic world, the IFTS takes place in myriad forms that cannot be reduced to any concept, formula, or even a complex equation. This is so because moving parts can be numerous and time involved can be months and years for the loop of transactions to fully close. In many cases, an IFTS can be inefficient, dysfunctional, and may not even succeed in fully closing the loop, which occurs when a key party is unwilling or unable to discharge the debt. In the above example, even if D pays M, there is no guarantee that B would pay C. And thus, the loop of transactions would remain unclosed until B discharges his debt to A by paying to C. When D pays M, the cause of militancy has been served even though the funds end up coming from C who might be a non-Muslim or a Muslim who detests the use of force in solving problems related to occupation, alien domination, or hegemony. Any theory of terror financing that ignores the indeterminate complexity of the IFTS is likely to deter lawful transactions more than it would succeed in cutting off funds that grease the wheel of militancy. The closing down of Muslim charities in the US, for example, was such an overreaching attempt to solve the problem of terrorist financing.

Hawala System

Attempts have been made to explain the process of the IFTS through the concept of Hawala, an Arabic word for “transfer.” The hawala system provides a pipeline to transfer funds from one location to another through service providers – known as hawaladars. The system has developed over the centuries to finance a variety of business transactions, and it is still attractive to nations and peoples with minimal banking habits. It is particularly popular among Muslims of South Asia and the Middle East. Suppose A wants to

transfer \$500 to D. Instead of using banking services, A transfers \$500 to H, a person known as hawaladar. This transfer may be done using cash, cashiers check, or a personal check. A also supplies information about the particulars (name, address, etc.) of the payee, i.e., D. H instructs (by means of phone, email, or fax) his local agent (perhaps another hawaladar) to pay \$500 to D. No money is transferred from H to the local agent for this particular transaction to go through. The local agent can settle his accounts with H through a variety of means, including transfer of funds through the banking system. Now if D pays \$500 to M, the IFTS is blameless for neither H nor his local agent knew that the money was being transferred to finance a terrorist operation. Experts agree that the hawala system is simply an IFTS that competes with expensive, cumbersome, and slow international banking systems. "Economic and cultural factors explain the attractiveness of the hawala system. It is less expensive, swifter, more reliable, more convenient, and less bureaucratic than the formal financial sector."²²

If the hawala system were curbed to tilt the market balance in favor of formal banking, necessity of speedier transfers would invent other more convenient methods. The hawala system is not critical to funds transfer. Suppose A sells a carpet to B for \$500. B does not pay right away and so B owes \$500 to A. In some other transaction, D owes \$500 to C. A, B, C, & D do not know each other. By means of contacts that could be completely coincidental, A ends up instructing D to pay \$500 to M. D may or may not know M. When D pays to M, A owes \$500 to D. D instructs A to pay \$500 to C, a debt that D owes to C. A instructs B to pay \$500 to C, a debt that B owes to A. So D pays to M and B pays to C. These transactions may be removed in time. If all parties live in the same country, no foreign exchange is involved. However, if parties live in different currency areas, even then no funds may be transferred across borders. If D and M operate in the same currency area, no funds are directly transferred across borders for the cause of militancy. If B & C live in one currency area, no funds cross international borders in the entire series of transactions. In this example, no funds have crossed international borders and A has donated no funds to militancy. And even when funds are transferred across currency borders, the transaction involving the transfer could be perfectly legal

²² Mohammad Al-Qorchi, Hawala, 39 *Finance & Development* 4 (December 2002).

and above suspicion. In either case, A ends up donating a carpet to the cause of militancy. It is also quite likely that A had no intention of donating anything to any militant group at the time he sold the carpet to B. In these highly fluid transactions in terms of time, motive, and networking, any tracing of funds can lead to errors and false prosecutions.

Supportive Divestments

Divestments are efficacious supportive tools to defend and promote legitimate demands and rights of an aggrieved population. These strategies exert economic pressure on, and coerce businesses and institutions to cease cooperating with, principal suppressive states. The most successful use of these tools occurred to oppose apartheid in South Africa.²³ A case in the US captures the graphics of divestment protests. In *University of Utah Students Against Apartheid v. Peterson*, student groups petitioned the US District Court for injunctive relief against the university that had ordered the students to remove shanties erected on university grounds. Student groups erected shanties, which symbolized ghetto degradation that the white apartheid regime had imposed on the black majority, to protest the university's investment policies. These groups were acting as supportive entities. The university allowed the shanties to stand for six months, despite campus violence against them. Twice, the shanties were destroyed in nighttime attacks. However, the shanties protest failed to persuade the university's Institutional Council to withdraw funds from companies that contributed to the longevity of apartheid. As the Council voted against divestments, student groups were ordered to dismantle the shanties and clear university grounds.

In the court, the university made several arguments to seek removal of the shanties, including the attendant risk of physical harm and the increased expense of liability insurance. One argument was aesthetic in that the shanties spoil the beauty of the

²³ Kevin P. Lewis, "Dealing with South Africa: The Constitutionality of State and Local Divestment Legislation," 61 *Tulane Law Review* 469 (1987) (As state and local governments joined the divestment campaign against South Africa, some commentators challenged the constitutionality of state actions on the ground that the legislative campaign infringes upon the Executive plenary power to conduct foreign policy).

campus. Upholding the students' right to free speech, the court concluded that the students intended to convey a particularized message through construction and display of the shanties. The shanties were not mere dispensable structures. They embodied the message. Words and drawings embossed on outside walls of the shanties were designed to explain the anti-apartheid/pro-divestiture message of the protesters. To further air grievances of the black majority in South Africa, student groups, acting as supportive entities, maintained a constant vigil at the shanties to discuss the apartheid/divestiture issues and to further communicate their ideas to others. Removal of these shanties, said the court, would be tantamount to dismantling the message.

Divestments campaigns on American university campuses have also been initiated against Israel, despite the broad good will Israel enjoys in the US. Students and faculties in Michigan and Wisconsin universities are leading the way. In the Dearborn campus of the University of Michigan, students petitioned the Board of Regents to "investigate the moral and ethical implications of the university's investments in companies which directly support and benefit from the ongoing illegal Israeli occupation." In Wisconsin, the professional association representing the faculty and staff of all 25 University of Wisconsin campuses has called on the university system to divest from companies that help Israel "perpetrate human rights abuses against Palestinian civilians." Divestment drives have been launched at many university and college campuses, which are actively opposed by Jewish students groups.

The idea of anti-Israel divestments is not confined to university campuses. Even Christian churches that support Palestinians' lawful demands have begun to consider divestments.²⁴ In August 2005, the Presbyterian Church, which claims a membership of around 2.5 million and more than 11,000 congregations, announced that it would sanction five companies that contribute to violence in Israeli-Palestinian conflict. This action was taken in response to the Church's General Assembly resolution that the Church's investments carry moral responsibilities. Caterpillar was one the five targeted companies. The Church targeted Caterpillar because it

²⁴ Desmond Tutu, "Build Moral Pressure To End The Israeli Occupation Of The Palestinian Lands," *International Herald Tribune* (June 14, 2002) (proposing an international campaign of divestiture to end Israeli occupation).

“manufactures heavy equipment used for demolition of Palestinian homes, the uprooting of olive trees, construction of roads and infrastructure in the occupied territories for use only by Israeli settlers, and facilitating by the Israeli military.” Caterpillar is in the spotlight, ever since Rachel Corrie, an American student, while protesting house demolitions in occupied Palestine, was killed by a Caterpillar bulldozer. In addition to the Presbyterians, many other Protestant denominations are considering divestments as a moral strategy to oppose Israel’s suppressive policies. Pro-Israeli groups have labeled such moves as “New anti-Semitism.” But a spirited discussion of the Middle East conflict need not split on racial or ethnic fault lines.²⁵

Principled Rigidity

Edward Said, a supportive entity and a Christian Palestinian who spent most of his academic life teaching literature at Columbia University in New York, wrote copious resistance literature highlighting the degradation of Palestinians and their moral right to armed struggle. He deeply resented the cowardly silence of American intellectuals who recognize that a wrong is being committed in the Middle East but refuse to even study, analyze, and write about the Israeli-Palestinian conflict. At its core, Said’s work is a militant call to struggle against injustice without compromising the principles. Said captures the essence of Nelson Mandela – a clenched fist that Mandela raised in 1990 after walking out of twenty-seven years in captivity – in his writing. In prison, writes Said, Mandela “was able to convince the government of South Africa that he was not going to give up his principles, regardless of how much power the government brought to bear upon him, and regardless of how much he was made to pay for his position.”²⁶ Mandela refused to negotiate with apartheid because any such accommodation would have conferred elements of legitimacy on a morally empty concept. Mandela refused to renounce the principle of armed struggle even

²⁵ Annalisa Jabaily, “1967: How Estrangement and Alliances between Blacks, Jews, and Arabs Shaped a Generation of Civil Rights Family Values, 23 *Law and Inequality* 197 (2005) (Just as race consciousness may talk about race without advocating racism, so can a Middle East consciousness may talk about Israel without advocating anti-Semitism).

²⁶ Edward W. Said, *The Politics of Dispossession* 367 (Pantheon Books, 1994).

though white power in South Africa at the time was insurmountable and the label of terrorism was demeaning. In addition, Mandela did not appeal to the US on the theory that American influence would soften the cruelty of apartheid. Mandela showed no flexibility or pragmatism with regard to the need to dismantle apartheid, says Said. “There is even a hint now and then, especially in the US media, that maybe Mandela is a bit of a disappointment, that he remains in essence a hard, tough, unbending guerilla leader, not a saint or a sage like King or Gandhi.” Said also admired the “principled rigidity” of Vaclav Havel and Lech Walesa, the two East European leaders who fought against communism, for they too prevailed not by being clever at compromise but by “completely identifying with unchanging principles whose moral content in the end triumphed over their adversaries.”

Chapter 3

Suppressive Entities

The Israeli military has fostered a climate of impunity in its ranks by failing to thoroughly investigate whether soldiers have killed and injured Palestinian civilians unlawfully.
Human Rights Watch (June, 2005).

Suppressive entities along with aggrieved populations and supportive entities complete the triangle of terrorism. Suppressive entities may be states, corporations, groups, or individuals. While supportive entities generally support legitimate demands of the aggrieved population, suppressive entities do the opposite. All suppressive entities condemn the variant forms of militancy. But that is not their defining attribute. Even supportive entities may also denounce militant violence. What distinguishes suppressive entities is their own violence, either in the form of state terrorism or supporting state terrorism, primarily aimed at suppressing the primary and secondary demands of an aggrieved population. Suppressive entities are the source of grievances of the aggrieved population. They simultaneously cause and deny grievances of the target population, often propounding an ontological theory that the militants fighting on behalf of an aggrieved population are inherently evil or that they are addicted to violence or that they are motivated by their religion or culture – and not by their grievances – to perpetrate violence, a point developed in the chapter on essentialist terrorism.

3.1 SUPPRESSIVE TERRORISM

As already explained, primary grievances of an aggrieved population arise from the denial of political liberty including the right of self-determination; secondary grievances stem from gross human rights violations of the same population. Suppressing states, such as India, Israel, and Russia, deny that the people of Kashmir, Palestine, or Chechnya deserve political and territorial independence. In the name of suppressing bandits, fanatics, and terrorists, suppressive entities resort to organized violence, called state terrorism, and violate basic rights of these populations, including the rights to life, property, and physical safety, safeguards against torture, cruel, and degrading treatment. Every suppressive entity builds up a negative relationship with an aggrieved population, but depth of the negative relationship varies from entity to entity. Some suppressive entities simply deny the claims of an aggrieved population whereas others, mostly nation-states, are actively engaged in abusing and tormenting the same population.

State Terrorism

State terrorism is an emerging international term to characterize the nation-state's violence against an aggrieved population and its militants. The purpose of state terrorism is to terrorize a population into submission. States use several methods to perpetuate occupation, domination, apartheid, or hegemony over an aggrieved population. Indefinite detentions, torture, extra-judicial killings, searches, disappearances, roadblocks, invasions, and bombings are some tools of state terrorism. Private groups use terror to modify the behavior of suppressive entities. States use terror for not only modifying the behavior of an aggrieved population but also to crush militancy and to gain control over land and resources. State terrorism is thus the use of armed force to deter militants from armed struggle. It is also a tool to acquire material advantages. In traditional literature, terrorism is a term used to describe private violence. Increasingly, the term is being expanded to include all forms of terrorism, including state terrorism.

The UN General Assembly (GA) resolutions condemn terrorism in all its forms. State terrorism is not specifically mentioned in

these resolutions, but it is implied. The 2004 “Measures to eliminate international terrorism” GA resolution, for example, “strongly condemns all acts, methods and practices of terrorism in all its forms and manifestations as criminal and unjustifiable, wherever and by whomsoever committed.”¹ This language is broad enough to include state terrorism. However, few suppressive states would concede such a reading of the resolution. Rather, they would confine the text of the resolution to private terrorism in all its form. Such fundamental disputes about the definition of terrorism confuse international legal responses to terrorism. All nations condemn terrorism using broad language but each nation has different perpetrators in mind. *A Theory of International Terrorism* includes state terrorism within the definition because the terror that suppressive armies unleash on an aggrieved population cannot be morally distinguished from the violence of militants against the innocents of suppressive entities. Even if such an autoimmune distinction upholds the supremacy of state-centered international law, it serves no useful purpose in solving the international dynamics of violence.²

Justification for State Violence

State violence is defended and justified in the name of combating “terrorism.” Militancy waged against a nation-state reinforces the right to national security and provides a basis for suppression that otherwise would have been plainly unjust. An occupying entity, such as Israel, can assert no universally recognized claim that it has a right to occupation (even though some Israeli private groups claim such a right derived from history and religion). In fact, the law and morality are firmly on the side of the Palestinians. The shared will of the peoples of the world, expressed in UN General Assembly Resolutions, has repeatedly, year after year, affirmed the Palestinians’ right of self-determination. Even many Israeli organizations of citizens actively argue that the occupation of Gaza and West Bank is both illegal and immoral. Even Israeli governments, liberal and conservative, have begun to recognize the Palestinians’

¹ GA Resolution, A/Res/59/46 (2004).

² W.J.T. Mitchell, “Picturing Terror: Derrida’s Autoimmunity,” 27 *Cardozo Law Review* 913 (2005)(Terrorism is so reduced to an ideological slogan, a synonym for absolute evil, that it has become impossible to think clearly about it).

right to some degree of independence. Against these moral and legal odds, Israel has no valid basis to continue its occupation. The only credible argument that Israel makes for not relinquishing the occupied territories is the so-called national security justification.

The national security argument is the offspring of militancy. When an aggrieved population fights for its liberation and its militants take up arms to resist occupation or alien domination, the suppressive entity almost always invokes the right to security, for it cannot invoke the right to occupation or imperialism to suppress militancy, since no such right exists. Thus, militancy of the suppressed confers on the suppressive entity a right to security that does not exist in the absence of militancy. And in the absence of militancy, the wrong of occupation or alien domination is stark but receives little attention from the world. When the militants begin to attack the suppressive infrastructure, the right to security begins to emerge even though it lacks the moral strength often associated with law enforcement. When militancy becomes robust and when civilians sympathetic to the suppressive entity become the target of militancy, the suppressive right to security gathers moral mass, for now the right to security of civilians is as strong as the right of the aggrieved population to be liberated. This way, militant terrorism weakens its own moral rooting, for now the suppressive entity has gathered moral and legal claims to protect its civilians against murder and mayhem.

Definition Battles

In addition to punishing states that support militancy, suppressive entities engage in profound definition battles to de-legitimize the armed struggle of aggrieved populations. The label of terrorism itself is part of the definition battle. Gone are the days when nations were free to label some militants as terrorists, and the others as freedom fighters. Suppressive entities have launched a spirited campaign to root out “freedom fighters” from the legitimate vocabulary of international discourse. Even legitimate armed struggles against brutality and blatant injustice are called terrorism. The mythic Western revolutions that are celebrated as great events of human civilization, such as the American and French Revolutions, would be reduced to terrorist showdowns under current definitions. The purpose of the definitions battles is to broadly de-legitimize

armed struggle. More specifically, its purpose is to condemn the methods and weapons that militants use to attack suppressive entities.

For generations, suppressive entities have outlawed weapons that challenged their control and domination. The international law of warfare is to a large extent a persistent and continuing effort to ban the enemy's weapons, declaring them unlawful. During the colonial period, the Europeans made every effort to forbid the use of lances, the premium weapon that indigenous populations possessed to fight the colonists. In our own times, suppressive entities are making every effort to deny weapons to Muslim states, such as Iran, which support militancy – ironically, the same weapons suppressive entities own in abundance. Furthermore, suppressive entities make every argument under the sun to condemn suicide bombings that have breached their mighty fortresses. Aggrieved populations facing an otherwise indomitable enemy seem to condone the deaths of their sons and daughters who undertake suicide missions and kill soldiers and citizens of principal suppressive entities.

The battle over the characterization of suicide bombing furnishes telling insights into the use of language in the war on terror. Interestingly, though, suicide bombing is a controversial label for both suppressive and supportive entities, even though both systems recognize the same essential facts of the operation. Suicide bombing involves a person, male or female, who wears a belt of explosives around the chest area underneath his or her garments, walks into the target area, a bus, a checkpoint, a market, a soldiers' hangout, or a discotheque, and detonates the charge, killing himself and killing and wounding the people present at the target place.

Suppressive entities prefer to characterize suicide bombing as a "homicide bombing," a label that shifts the emphasis from the killers to the victims. Critics of the phrase "suicide bomber" argue that the phrase lends an air of undeserved romance to the bombers. In April 2002, White House Press Spokesman Ari Fleischer formally introduced the phrase "homicide bombing" into the suppressive lexicon to describe the phenomenon of suicide bombing. Fleischer explained this change of terminology as follows: "The reason I started to use that term is because it's a more accurate description. These are not suicide bombings. These are not people who just kill themselves. These are people who deliberately go to murder others, with no regard to the values of their own life. These

are murderers. The President has said that in the Rose Garden. And I think that is just a more accurate description of what these people are doing. It's not suicide, it's murder." Soon thereafter, several top administration officials, including the Secretary of State, some senators, some media personalities such as Larry King, and conservative Fox News Network and New York Post, discarded the phrase "suicide bombing" in favor of "homicide bombing." Even a professor of linguistics at Georgetown University praised the switch "as a step in the right direction." Unsatisfied even with this switch, a communication expert suggested that even the word bomber should be replaced, since the bombing of Afghanistan and Iraq that "we do" is not at the same moral footing as is the bombing that "they do." He suggested that the phrase suicide bombing be replaced with "suicide murderers." David Brooks, a suppressive journalist, describes suicide bombing as the "crack cocaine of warfare" because it inflicts death and terror on its victims but that also intoxicates the people who sponsor it.

Supportive entities prefer to call suicide operations as "sacred explosions" since suicide is forbidden in Islam. Nasra Hassan, a Pakistani journalist who interviewed the families, friends, and accomplices of suicide bombers in Palestine, discloses that many who support such operations are uncomfortable with the phrase suicide bombing. She reports: "They were not inclined to argue, but they were happy to discuss, far into the night, the issues and the purpose of their activities. One condition of the interviews was that, in our discussions, I not refer to their deeds as "suicide," which is forbidden in Islam. (Their preferred term is sacred explosions.) One member of (the militant group) said, "We do not have tanks or rockets, but we have something superior – our exploding Islamic human bombs. In place of a nuclear arsenal, we are proud of our arsenal of believers." The Arabic term for suicide bombing is *Shahadat*, which means an act of witnessing, that is, dying in a religious cause and thus testifying faith in God. Sacred explosions recognize the involvement of human beings and their certain death if the mission is accomplished. However, the label of sacred explosions avoids the apparent implications of illegality associated with suicide bombings and suicide in general. As noted elsewhere, the use of human beings as weapons – the arsenal of believers – is justified on the ground that Palestinian militants fighting Israeli tanks, helicopters and missiles have no other effective weapons. Since surrender is no option and since fighting is inevitable, Palestinian militants must invent deadly weapons from indigenous available resources.

Once a weapon has been successfully introduced into the war, others adopt it. Suicide bombing has now become a lethal weapon of choice for Muslim militants around the world. Regardless of its international legality or theological validity, suicide bombing will continue to rattle suppressive entities.

Nothing Justifies Terrorism

Suicide bombing will remain a controversial weapon in the realm of armed struggle. Suppressing states have waged a broader war on the right to armed struggle that liberation movements claim as part of the lawful struggle against occupation, alien domination, hegemony, and apartheid. They appear to have won a great victory at the UN General Assembly. Recent GA resolutions repeat a simple idea that nothing justifies terrorism. Former Israel Prime Minister, Benjamin Netanyahu, calls the idea “moral clarity.” The GA resolutions state “that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.”³

This pronouncement seems to ban the private use of force by any group for any reason. But there is nothing in the resolution that excludes state terrorism. On closer scrutiny, however, pertinent questions remain unanswered. For example, it is unclear whether liberation movements may use force against an occupying army. Will the killing of Israeli soldiers stationed in Gaza and West Bank amount to “criminal acts intended to provoke a state of terror in the general public?” If one places emphasis on the element of “provoking a state of terror,” even a brutal slaughter of occupying soldiers can terrify the general public. The public is terrified because it feels more vulnerable when highly armored soldiers are attacked and killed. On the basis of this logic, if the resolution prohibits any attacks on an occupying army, the occupied population is denied the right of self-defense. Furthermore, such restrictions on occupied populations’ right of self-defense tilt the international normative balance in favor of occupation. And if the occupier is a

³ GA Resolution, A/Res/59/46 (2004).

permanent member of the Security Council, this normative shift leads to oppression for now the international machinery will be unable to function and remove occupation without jeopardizing international peace and security.

On the other hand, if the occupied population retains the right of self-defense and may lawfully exercise it against an occupying army, the definition of terrorism undergoes a significant change. Now the emphasis of the definition is on the target rather than terror. The militants fighting an occupation may not attack the civilian population of a suppressive state, a prohibition consistent with the law of war, customary international law, and general principle of international law and morality. However, militants may lawfully attack occupying soldiers and their occupation machinery, even if these attacks provoke terror in the occupying military force or among state officials that the suppressive state has installed in the occupied lands. In fact, creating a state of terror in the hearts of a suppressive force is an efficacious way to resist and possibly reverse occupation. And by targeting occupying soldiers, if the state of terror is intentionally or coincidentally extended to the general public of the suppressive state, causing casualties, that too is lawful and might even be desirable since the general public might pressure its government to withdraw soldiers and end occupation. This legal justification is no different than the one embodied in the concept of collateral damage that professional armies invoke to defend unintended civilian casualties.

Private Suppressive Terrorism

Even those who wish to exclude state terrorism from the definition of terrorism concede that the definition must include violence committed by private groups or individuals who may or may not be officially affiliated with suppressive states. These groups or individuals are often the nationals of suppressive states. They want to contribute to the struggle in which their home state is engaged. Armed with feelings of revenge, anger, and hatred against the aggrieved population, suppressive terrorists commit violence to terrorize the aggrieved population. Their targets are not the militants of the aggrieved population but the population itself. And the purpose of their terror is no different than that of the militants fighting on behalf of an aggrieved population. Suppressive terrorists

want to reinforce in their private capacity the actions of the armed forces of suppressive states. Suppressive terror sends a message to the aggrieved population that not only the armed forces of the suppressive state but also its citizens actively support, defend, and preempt any attempts by the militants to inflict injury on the suppressive population. Thus suppressive terrorism is the opposite of militant terrorism. Its purpose is to negate what militant terrorism asserts; it denies rights of the aggrieved populations that militant terrorists espouse and promote.

Ethnic Cleansing

One vivid episode of suppressive terrorism took place in early 1994 in Hebron. Baruch Goldstein, a physician by profession, was a member of Kach, a militant group founded by Meir Kahana, an American Jewish rabbi. Kach, now part of an Israeli political party advocates that the entire Palestine including the occupied territories of the West Bank and Gaza (and even parts of Saudi Arabia, Syria, Jordan, Lebanon, Cyprus, Turkey, and Iraq) belongs to the Jews, and that Arabs must be expelled from every inch of the sacred soil, Eretz Yisrael. Kach further argues that democracy is incompatible with Judaism, and Israel has to choose one or the other. Embracing the Kach ideology of ethnic cleansing, and determined to do something about what he believed in, Dr. Goldstein decided to kill Muslim worshippers during the month of Ramadhan in the al-Ibrahimi Mosque (a place where Prophet Abraham is buried in a vault). Clearing Israeli check posts surrounding the mosque, Goldstein entered the premises of the mosque where about 500 Muslim worshippers were standing in the morning prayer. Goldstein, armed with a Galil semiautomatic rifle, waited for the worshippers to prostrate on the floor. As they did, Goldstein opened fire. Twenty-nine worshippers were killed and many others wounded. Goldstein was overpowered and killed by the enraged congregation.

The massacre was widely condemned in Israel. Baruch Goldstein however is a hero to many Jews. Some supporters see Goldstein as a man who engaged in preemptive self-defense on the theory that Arab militants were planning to destroy the settlement, Kiryat Arba, where Goldstein lived. Others minimize the significance of his massacre by matching it with another Hebron massacre in 1929 when Arabs killed Jews. Still others believe that the Goldstein massacre is unnecessarily emphasized to draw attention away from the

horrendous acts of Arab militants. For many Israelis and Jews outside Israel, Baruch Goldstein is not a terrorist to be condemned or compared with Arab terrorists. He is seen as an intellectual, a religious man, a man devoted to Israel and to its survival. Goldstein is buried in Kiryat Arba, the illegal settlement in Hebron. His grave serves as a shrine and a place of pilgrimage for many radical Israelis and Jews around the world. Israeli soldiers stationed at the settlement protect the grave and the pilgrims. The tombstone reads:

Here lies the saint, Dr. Baruch Kappel Goldstein, blessed be the memory of the righteous and holy man, may the Lord avenge his blood, who devoted his soul to the Jews, Jewish religion and Jewish land. His hands are innocent and his heart is pure. He was killed as a martyr of God on the 14th of Adar, Purim, in the year 5754.

Ironically, Baruch Goldstein was born and raised in the US, where the Ku Klux Klan's racist agenda also aims at ethnic purification.⁴ The Klan believes in the purity of the white race and advocates that America should be exclusively reserved for white Christians. Just like the Kach, the Klan would like to expel all non-white persons including Jews from America. In pursuit of its ideology, the Klan has done everything – from micro aggressions of verbal assaults to criminal acts of murder and lynching – to intimidate and terrorize its enemies, though African Americans have been the Klan's central target of hatred. In its historical context, the Klan's suppressive terror aimed to slow down the national movement that demanded that civil rights and liberties be extended to African Americans. In some Southern states, the Klan worked closely with state officials to perpetrate its suppressive terror, although state officials denied any such collusion and even claimed opposition to Klan activities. In other states, even the population at large sympathized with some goals of the Klan, such as legally-enforced segregation, even when they disapproved the larger Klan thesis of persecution and expulsion. However, the Klan began to lose its

⁴ Michael J. Whidden, "Unequal Justice: Arabs in America and United States Anti-Terrorism Legislation," 69 *Fordham Law Review* 2825 (2001) (The group was allowed to raise funds in the US since the government was afraid that by denying access, it would stigmatize Jews and Israel).

influence as the Civil Rights Movement matured and a fundamental cultural shift towards some semblance of equality and fair play began to be materialized in both law and fact.

Principal Suppressive Entities

In each major theater of violence, there exists a principal suppressive entity, almost always a nation-state, which suppresses the lawful demands of an aggrieved population. The principal suppressive state is usually the one that effectuates occupation, alien domination, apartheid, or general surveillance of an aggrieved population, and thus denies the right of self-determination. As a result, it is also the main target of terrorist attacks. Israel with respect to Palestinians, Russia with respect to Chechens, and India with respect to Kashmiris are the principal suppressive entities. Soldiers, lawmakers, courts, law enforcement agencies, prison officials, even ordinary citizens of a principal suppressive state, are all seen as parts of a huge suppressive infrastructure. Even journalists and scholars defend abusive policies of the principal suppressive state. They disseminate, defend, and intellectualize state terrorism as indispensable violence that, in their view, has no moral equivalency with the violence that militants perpetrate in the name of an aggrieved population. Alan Dershowitz of Harvard Law School and Thomas Friedman of the New York Times, for example, paint Israel as the undeserved victim of the Palestinian terrorism. They rarely blame Israel for its state terrorism that stirs the Muslim world's deepest anger.

For the Muslim world, the expulsion of the indigenous population of Palestine carries the reality and perception of Israel's injustice and cruelty. The 1948 memories of forced exile have been transmitted to succeeding generations of Palestinians. These memories include massive depopulation and destruction of over 500 villages, done primarily to discourage the ousted populations from ever returning to their homes. Villages were entirely erased to obliterate pathways, road signs, homes, orchards, olive trees, shops, playgrounds, everything so that their expelled inhabitants could no longer trace tangible images of their memories. Once these villages were emptied, the occupying armed forces adopted "shoot to kill" policies to prevent the return of refugees. Shukri Salameh, an Anglican Christian Palestinian, who practiced law in Jaffa until

26 April 1948, reports in his eyewitness account how in April, a clandestine radio was urging the population of Jaffa to escape with their families before their houses were demolished. The broadcast also reminded the inhabitants of the events of Deir Yassin, a village destroyed on April 9, where over 100 Palestinians were systematically massacred and many bodies, including those of pregnant women, were cast into the village well. According to another account, fifty-three orphaned children were dumped along the wall of the old city. Such stories, which may or may not be fully accurate, construct memories of expulsion and become folk narratives of oppression. Even though Muslims across the world sympathize with Kashmiris and Chechens in their struggle for independence, their heartfelt sympathies reside with the Palestinians who have been uprooted from their villages and scattered in the region and the world as permanent refugees and as a stateless population.

United States as Super Suppressive State

For a long time, Muslims have hated Israel the most. Now the US is fast approaching that dubious distinction. For Muslim militants, the US has earned the status of the super suppressive state. For decades, the US foreign policy has been overly biased in favor of anti-Muslim forces. The most vivid thorn in the heart of the Islamic world has been the US support for the Jewish colonization of Palestine. Muslims across the world believe that without US weapons and US vetoes in the UN Security Council, Israel would be more willing to lift its siege of the Palestinians. Several Islamic nations, including Iran and Syria, which actively opposed Israeli policies in the occupied territories and furnished support to Muslim militants, are placed on the US domestic list of terrorist states. In contrast, the US has supported friendly authoritarian governments in the Muslim world, such as the ones in Egypt and Algeria, which brutally suppressed dissidents, particularly Islamic political parties that advocated both for Islamic law and free elections. This support for secular, non-democratic governments, despite the US rhetoric for universal human rights and the rule of law, confuses ordinary Muslims and convinces Muslim militants that the US is an imperial force devoted to maximizing its national interests by all means necessary. Oil politics adds further complexity to US policies spawning conspiracy theories under which turmoil in the Middle East is seen as a deliberate plot to keep Arab populations engaged in

regional and domestic conflicts so that Arab governments remain vulnerable and in constant need of arms to defend themselves. Oil for arms is a policy that Muslims resent deeply.

Osama bin Laden's speeches delivered over a period of last ten years, the audience of which is primarily Muslims, paint Israeli and American policies as the "Zionist-Crusaders alliance." This characterization is designed to identify Israelis and Americans, on a continuous basis, with historically condemned movements disparaged in literature, religious and secular, Western and non-Western. The Zionist movement has lost its momentum and support since its fundamental tenet of ethnic cleansing has come under severe criticism, even among Jews themselves. Many Jewish and Israeli groups find it incompatible with their deepest faith that an immigrant population may lawfully evict an indigenous population, as it has been done in occupied Palestine. For the rest of the world, particularly Muslims, Zionism is a new form of colonialism that has dispossessed a native population in the name of residential rights derived from interpretations of the Bible. The term "crusaders" carries even more historical baggage of faith-based cruelty, undertaken by medieval Europeans, to defeat Muslims, slaughter Jews, and conquer Jerusalem. Crusades have been thoroughly condemned in the European literature, and few Christians find any redeeming value in these unfortunate adventures of bloodletting. Put together, the phrase "Zionist-Crusaders alliance" invokes the images of colonialism, barbarism, predation, and moral vacuity. It dehumanizes Israeli and American armed forces fighting in the Islamic world. More importantly, the phrase dehumanizes sympathizers of Israeli occupation and American foreign policy. These sympathizers, whether they are journalists, contractors, or civilians, are also perceived as "Zionist-Crusaders" and therefore legitimate targets of terrorist violence.

Before the September 11 attacks, US policies toward the Muslim world were much more complex than as portrayed in militant circles. By no means were they all anti-Islamic or anti-Muslim. They were not all anti-Islamic because millions of Muslim immigrants from all over the world have been free to build mosques, study and practice Islam, and even embrace new converts without fear or government scrutiny. In addition, they were not anti-Muslim because the US has championed many Muslim causes throughout the world. US support for Afghan fighters against the Soviet occupation, though anchored in the dynamic of Cold War, nonetheless benefited a Muslim nation. US support for Muslims in Bosnia against Serbian

atrocities was even more authentic in law and morality. The Russian mistreatment of Chechens has also been condemned in US political and military establishments. US toleration of Pakistan's nuclear capability indicates that the US is not determined to weaken the Muslim world at all costs and in all ways.

After September 11, however, US policies are perceived as being more anti-Islamic. While the invasion of Afghanistan and dismantling of the Taliban regime was carried out swiftly to avenge the September attacks, the reaction of the Muslim world was muted. In contrast, the unnecessary war on Iraq, however, shocked the Muslim world. When no weapons of mass destruction were found, the Muslim world re-interpreted the war as a lethal US policy to weaken the Middle East. US threats to invade Syria and Iran further reinforce Muslim doubts that the US is hostile to the Islamic world. While Muslims may still practice Islam in the US, their freedom of religion has been curtailed. Mosques and Islamic centers are under surveillance. Freedom of speech is also doubtful since Muslim preachers in US mosques cannot freely express their religious views about jihad. The US media and terrorism experts, as explained in the Chapter on essentialist terrorism, has unleashed a hostile propaganda war against Islam, arguing that Islam is inherently violent and produces essentialist terrorists who are addicted to violence. The growing perception that the US is both anti-Islamic and anti-Muslim is no longer a figment of imagination. The US war on terror, also discussed in later Chapter, has sown the seeds of a long conflict in the years to come. Muslim militants seem to have earmarked the US as the super suppressive entity hostile to both Islam and Muslims.

Coalition of Suppressive States

The September 11 attacks on the US furnished a golden opportunity for suppressive states to act together and reinforce suppressive infrastructures to clamp down on all liberation movements regardless of merits of their struggle or the misery of aggrieved populations. The emerging norm that nothing justifies terrorism received further impetus from international institutions including the UN Security Council. The Security Council passed a resolution on September 12, a day after the attacks, to call on "the international community to redouble their efforts to prevent and suppress terrorist acts." It also issued a threat of accountability "to those

responsible for aiding, supporting or harboring the perpetrators, organizers, and sponsors of terrorist acts.⁵ This threat was not aimed only at terror groups that committed the September 11 attacks. Its reach was broad and wide. It addressed the entire supportive infrastructure of terrorism operating throughout the world. Russia gladly voted for the resolution because its war against Chechnya received new international legitimacy. Israel who has been an unrelenting critic of the UN received the resolution with open arms. Even China, whose Western regions have experienced Muslim unrest, saw in the resolution an opportunity to suppress Muslim militants and their call for independence in its North-Western region of Xinjiang. It was a win-win day for suppressive states on the Security Council.

But to the chagrin of Muslim militants, more suppression was on the way. The US launched a global campaign to dismantle the al Qaeda organization that was allegedly involved in the perpetration of September attacks. The US attacked Afghanistan, home of al Qaeda, and toppled the Taliban government that allegedly sponsored terrorists. In pitched battles and aerial bombings, militants and innocent civilians alike were killed. Several hundred suspected terrorists were arrested and sent to the Guantanamo prison camp as enemy combatants, deprived of all rights and privileges available under the Geneva Conventions. The top al Qaeda leadership, however, has not yet been killed or captured.

America's vigorous pursuit of al Qaeda and the military attack on al Qaeda's supportive state, Afghanistan, established two points. First, suppressive states may hunt, attack, capture, and kill terror groups, including their political leadership, after massive attacks that kill innocent civilians and damage substantial property. Legal constraints that the suppressive state provide credible evidence for its allegations were weakened, as most of the world, particularly governments, accepted the US version of the story that blamed the Taliban and the al Qaeda for September 11 attacks. Some private groups, however, have challenged the US official story and blamed Israel and the Bush administration itself for engineering such sophisticated assault. Conspiracy theories continue to emerge and dispute the official truth that the al Qaeda was primarily responsible for September 11 attacks.

⁵ S/Res/1368 (2001).

The US invasion of Afghanistan opened a new chapter in the “war on terror.” This was the first time in international legal history that the government of a sovereign state, accused of sponsoring terrorism, was dismantled through the military means of a suppressive state. By dismantling Afghanistan’s government, the US enforced the September 12 Security Council resolution under which “those supporting and harboring” terrorists were to be held accountable. Governments worldwide seemed to support the invasion of Afghanistan, and even the Muslim world was quiet, resigned, and even willing to help the US in its efforts to punish the supporters of al Qaeda. Pakistan is an example of a Muslim country that threw itself behind the US. Pakistan had previously recognized the Taliban government, but after September 11, Pakistan abandoned its course. Under threats to its own survival, Pakistan reversed its foreign policy and provided the US moral, political, and logistical assistance in attacking Afghanistan, its Western Muslim neighbor.

Status Criminality

Suppressive states employ *status criminality* to punish designated supportive states as terrorist states. The US, for example, has enacted laws under which US nationals may seek money damages in US courts against foreign states if they suffer personal injury or death caused by the foreign state’s officials, employees, or agents, through criminal acts, such as torture and extrajudicial killing. One essential requirement for the availability of this remedy is that the US has designated the defendant state as a terrorist state. In *Alejandre v. Cuba*, the relief was granted to the plaintiffs because the defendant state, Cuba, had been designated a terrorist state. On similar facts, however, US nationals would have had no remedy under the same laws if the foreign state, whose officials engaged in torture or extrajudicial killing, had not been declared a terrorist state. Thus US nationals tortured by Iran and Syria, both designated as terrorist states, may lawfully seek money damages in US Courts, but US nationals tortured by Israel and Russia, which are not designated as terrorist states, would have no lawful claim to similar damages.

Exaggeration of Terror Threats

It is both in the interest of militant groups and suppressive entities to exaggerate the threat of terror to peoples' lives and properties, though the purpose of exaggeration for each contestant is different. Terror groups exaggerate the threat of terror simply because the purpose of the terror enterprise is to strike fear in the hearts of suppressive entities as well as general public. Destruction caused by terror attacks, despite its occasional ferocity, is almost always a secondary terror consideration. The primary purpose of terror is to create conditions of fear under which the imminence of attack looms larger than the attack itself, and the nightmare of possible destruction is far deadlier than actual damage. Since most terror cells can plan and execute small-scale attacks, exaggeration plays a central role in dramatizing the present and future effects of terror threats. Big attacks, such as the September 11 destruction of New York's high-rise trade towers, are rare but when successfully executed they deepen the fear among suppressive entities, making future terror threats even more credible.

Brian Havel offers credible insights into how governments manufacture public memory to influence legal processes. Ruling elites use public events such as September 11 to cultivate a new memory that redefines the past and that creates a new normative reality expressed through laws. The September 11 attacks gave birth to the redemptive ideology of state survival. The mythologized safety of the past was transformed into mythologized vulnerability in the future. The Bush Administration used the spectacular events of September 11 "as a new foundational moment in legal culture" to persuade the American public that a luxuriant republic founded on individual liberties and freedoms must now be reconstructed into a pragmatic nation that takes its survival seriously. The regime of civil liberties at home and of human rights abroad was no longer compatible with the mythologized need to protect the vulnerable nation from unknowable dangers of terrorism. The adoption of the Patriot Act, Havel points out, is a legal embodiment of the redemptive ideology that the ruling elites permanently affixed to the official memory of September 11 attacks.⁶ Mitchell points out a similar

⁶ Brian Havel, "In Search of a Theory of Public Memory: The State, the Individual, and Marcel Proust," 80 *Indiana Law Journal* 605 (2005).

phenomenon of fantasizing terrorism through the monumentalization of September 11.⁷

Further complicating the phantom of terrorism is the employment of counterfactual analysis.⁸ The concept of “what if” begins to define a dreadful future that unknowable terrorism can bring to destruct suppressive entities. Counterfactual analysis has been used to gain insights into historical events, posing questions such as: What if President Lincoln had dodged the bullet? Counterfactual analysis also informs law and its analytical techniques, sharpening the theories of causation. In the realm of terrorism, however, counterfactual analysis can lead to adopting policy choices that a more factual analysis would not even begin to suggest. Hypothetical facts are superb pedagogical tools but they are rarely reliable sources to make or enforce laws. And the actual use of force based on counterfactual analysis produces unnecessary violence.

The invasion of Iraq, for example, was justified on the basis of counterfactual analysis. The Bush Administration invaded Iraq to preempt the counterfactual possibility that Iraq might be developing the weapons of mass destruction. The evidence that Iraq was building nuclear weapons was insufficient for factual analysis but not for counterfactual analysis. The Bush Administration likewise toppled the Taliban regime in Afghanistan on the counterfactual assumption that a consortium of the Taliban and al Qaeda had engineered the September 11 attacks, even though no factual evidence was available to establish the hypothesis. The detention of thousands of Arab and Muslims men living in the United States was also carried out on the counterfactual basis that these men might have possible links with terrorism. Legal choices derived from counterfactual analysis may hit the jackpot. Often, though, they lead to misdiagnosis of the problem and wrong prescription for its resolution.

Counterfactual assumptions may also be made with respect to the kind of weapons that might be used in terror attacks. For example, the fear that terrorists might use the weapons of mass destruction, such as dirty bombs or anthrax, is real even though it is unclear whether any terror group has indeed acquired the capa-

⁷ Mitchell, *supra* note 2.

⁸ James Kraska, “Fear God and Dread Nought,” 34 *Georgia Journal of International and Comparative Law* 43 (2005) (Counterfactual analysis employs methodology constructed around fictional questions).

bility and mustered the resources to construct suitcase nuclear devices or chemical weapons. Terror groups have no reason to deny their capability or resources or willingness to use non-conventional weapons. In fact, they have every reason to spread counterfactual rumors about their technical proficiency in constructing and obtaining such weapons. Real or fantasized, the fact that terror groups might possess and use the weapons of mass destruction, if generally believed, exaggerates the fear of terror. In this case, the purpose of exaggeration is to obliterate the line drawn in the sand between fact and fantasy so that fact supports fantasy and fantasy deepens the dread.

Suppressive entities must develop sophisticated measurement of intelligence to accurately decipher the reality and severity of terror threats. The task is difficult. If suppressive entities are unable to detect the exaggerated elements of terror threats, they spend huge resources in combating a fantasized version of terrorism, resources that can be used for more productive public welfare causes. On the other hand, if they dismiss terror threats as mere exaggerations and propaganda devices, they expose state institutions and the general public to probable harm. It seems to be a no-win situation because suppressive entities must either take terror threats, real or exaggerated, on their face value and prepare credible defenses accordingly or leave open gaps of vulnerability. In order to study terror groups and correctly analyze their rhetoric to separate truth from falsehood, suppressive entities end up with huge and sometime unaffordable intelligence budgets.

Sometimes, suppressive entities themselves have vested interests in exaggerating terror threats. Intelligence bodies and law-enforcement agencies may exaggerate terror threats first to legitimize their existence and second to justify the receipt of more state funds. The dramatic September 11 attacks, for example, has been an occasion to increase the budget for homeland defense, directly benefiting federal instrumentalities that combat terrorism and its consequences. Even if the likelihood of another attack of the September 11 magnitude is minimal, the monies allocated to fund the homeland defense infrastructure will continue only if the threat of terror is both real and severe. Bureaucracies are known for perpetuating themselves by all means necessary and counter-terror bureaucracies would not be an exception. The US Department of Homeland has already been accused of "terrorizing" the public by periodically elevating the threat of probable attack. Such perceptions of exaggeration begin to gather legitimacy when no terror

attack occurs despite repeated elevation of terror threats by suppressive entities.

3.2 PAIN AND SUFFERING OF SUPPRESSIVE ENTITIES

No theory of terrorism may claim moral respectability that discounts or justifies the pain and suffering of suppressive entities. The populations of suppressive states, which become the soft targets of militant terrorism, suffer much of the same agony that an aggrieved population does due to state terrorism. In addition to living under a constant threat of terror, the populations of suppressive states suffer huge economic losses.⁹ Israel's economy, for example, has declined significantly during the second *intifada*, the popular Palestinian uprising in occupied territories of Gaza and West Bank. Terrorism-related economic decline has been most apparent in the tourism industry, causing a net loss of \$2 billion per year, which constitutes more than 2% of Israel's GDP. The number of jobs available in the tourism industry dropped from 45,000 before the *intifada* to around 12–15,000 in 2003. The psychological impact of *intifada* has also hit foreign investments hard, since foreign businesses are unlikely to invest in a terror-infested country due to increased uncertainty and cost of security. Higher costs of security not only shut out foreign investors but they also introduce inefficiencies in domestic businesses as funds are shifted from key business needs and promotions to providing security to the premises and employees against terror attacks. The cost of maintaining military defense forces to combat terrorism also drains resources from other sectors of the economy. The Israeli defense budget has been steadily increasing thereby distorting the balance of economic forces. Some of these distortions are compensated by reducing welfare and social security benefits. Israel's international credit rating also went down, making it difficult to borrow money at affordable rates and for longer periods of maturity. Israel's economy would have nosed down even more sharply had the US failed to provide the needed funds to sustain a more graduated decline.

⁹ Jason Mazzone, "The Security Constitution," 53 *University of California of Los Angeles Law Review* 29 (2005) (each time the terror alert in the US is raised from yellow to orange, the enhanced security measures cost \$1 billion per week).

Palestinian Bus Attacks

Since the second intifada erupted in September 2000, Israel has suffered relentless bombing attacks by Palestinian militants. Israeli buses, nightclubs, and shopping areas are often the chosen targets. The intifada's first bombing occurred in November 2000 when a car bomb exploded in Jerusalem's Yehuda market. In 2001, suicide bombings replaced car bombings, and city buses became the favorite targets. No city seems safe. Buses are blown up in Jerusalem, Haifa, Tel Aviv, Beersheba. The suicide bombers are both Palestinian men and women, complicating the equation of Israeli surveillance; for now all Palestinians are potential terrorists. Two days before the September 11 attacks on the US, history is made in Israel on September 9 for the first time as an Israeli-Arab carries out a suicide bombing attack at a crowded railway station in Naharia. The militancy is no longer confined to Palestinians locked out of Israel. It spreads into the citizenry of the suppressive state. On the receiving end, the equation is similarly complex. The victims of suicide bombings are Israelis, foreigners, Arabs, soldiers, civilians, men, women, and children. Dictated by the logic of such bombings, the number of the wounded almost always exceeds the number of the dead. The stories of terror, told by survivors, deepen Israelis' mistrust of Arabs in general and the Palestinians in particular.

Physical and Emotional Injuries

Though unique to each bus explosion, stories of shock and sorrow, which militant terrorism causes, have nonetheless a sense of universality that transcends the unique realities of a suppressive state. "The explosion was so strong that I fell to the floor," a passenger sitting behind the bus driver narrated. "I looked back and quickly got off the bus, then it burst into flames. We succeeded in getting one soldier off the bus. Two minutes after that, more explosions started . . . and we couldn't get on the bus because it was on fire. Some of the soldiers climbed out the windows and survived." A driver of the Egged bus company reported: "I opened the doors, the people asked me to, and I did it immediately. The first blast was on bus 6, and then about 15 seconds afterwards there was an explosion on my bus. I didn't see anyone suspicious. It came just out of the blue." The mayor of Ariel stated how passengers were helplessly trapped in a bulletproof civilian bus on fire because its doors, damaged in the explosion, could not be opened. "It was terrible, a

real massacre.” A passenger recalls that he was sitting next to the suicide bomber, who was young and had long hair, possibly a wig. But I got up to give my seat to a woman. “I’m sure that it was (the bomber). I saw his body, he was just parts, and beside him the body of the woman I gave my spot to.” Strung along eyewitness accounts of suicide bombings are jokes that circulate to minimize the shared pain. To cast a slur on driving skills of the Egged bus company, whose buses are mostly attacked, the joke runs as follows. A rabbi arrives in heaven. He notices that the Egged company’s driver is ahead of him in the queue. The rabbi complains loudly, “why should he go first?” “Because when you speak, people sleep. When he drives, they pray.” Hurt by jokes and explosions, Egged sued the Palestinian Authority in an Israeli Court for damages and obtained a default judgment of \$10 million.

Truce and Terror Strategies

Suppressive states may face sophisticated aggrieved populations, which pursue a complex strategy of truce and terror. Truce is made to solicit concessions, facilitate negotiations, obtains international respectability, or blunt and stop punitive counter-measures. Terror is unleashed to put pressure on the suppressive entity to take negotiations seriously and to meet demands of the aggrieved population. It also serves as a reminder that the aggrieved population is engaging in negotiations as an equal partner and cannot be forced to give up its demands out of weakness. The simultaneity of truce and terror is designed to reinforce the impression that not all groups within the aggrieved population support terror, that some are more reasonable than others, and that some favor negotiation over armed struggle. This pairing of truce and terror mimics the dynamics of hawks and doves within a state legislature or an executive cabinet.

The pairing of truce and terror may be a deliberate or collusive strategy among diverse groups of the aggrieved population. However, any collusive truce and terror strategy is bound to fail because it underestimates intelligence of the suppressive entity to figure out the plot. Suppressive entities spend huge resources to infiltrate political wings as well as terror groups of an aggrieved population and can discover even the most tenuous collusive elements. The Israelis refused to negotiate with Yasser Arafat, did everything to weaken his power, bulldozed parts of his Ramallah headquarters, virtually imprisoned him in remaining dysfunctional parts of the

building, severed him from the population he ruled, refused his requests to travel abroad, and constantly threatened to kill him. All this was done because the Israelis had reasons to believe that Arafat was pursuing a deliberate policy of truce and terror. As the Chairman of the Palestinian Authority, Arafat enjoyed formal powers to negotiate with Israeli governments. However, while Arafat was engaged in negotiations, Al-Fatah and its progeny, the armed wing of the Palestine Liberation Organization (PLO), was conducting terror attacks against Israeli soldiers, settlers in occupied territories, and sometimes civilians inside Israel. Obvious connections between Arafat and PLO's armed wings weakened Arafat's legitimacy to be what Israelis called "a serious peace partner." Even the US under President Clinton, who was playing the role of a mediator, abandoned Arafat and accused him as the reason for the failure of peace negotiations.

A more effective truce and terror strategy is put in action when diverse groups of the aggrieved population are in fact divided over the methods to deal with the suppressive infrastructure. This occurs when some groups are inclined to resolve the issues of self-determination through negotiation while others are engaged in armed struggle. Again, examples can be found in the Israeli-Palestinian conflict. After Arafat's death, the new political Palestinian leadership under Abu Mazen declared a ceasefire with Israeli and the stalled peace process was presumably re-started. The ceasefire presumably, and informally, included militants that traditionally fight with Israeli soldiers and settlers, though militant factions did not officially sign the ceasefire. A few days after the ceasefire, however, a suicide bomber detonated himself outside a nightclub in Tel Aviv, killed four Israelis and wounded about 50 people. None of the known Palestinian terror groups claimed responsibility for the attack. The Israelis accused the new political leadership for failing to stop terror. The Palestinian leadership accused outside terror groups, perhaps from Lebanon, maintaining the apparent commitment to ceasefire. Hezbollah, the well-known Lebanese terrorist group, denied the charge. Terror experts exhumed historical examples from the Arafat era to point out that the truce and terror strategy, under which all factions root for truce and none accept responsibility for terror, is not new in this part of the world.

In the triangulation equation, the truce and terror strategy reveals important stresses and triumphs. The fact that the suppressive entity has agreed to a ceasefire or to a peace process indicates that war on terror has failed to subdue militants and that a negotiated

solution is inevitable to resolves the issues. The truce part of the strategy shows political and even military weaknesses of the suppressive infrastructure. If truce is seen as a symptom of military weakness, the militants are further emboldened to continue their terror campaign. Politically, truce demonstrates that the suppressive entity is under tremendous domestic and international pressures to find peaceful solutions to demands of the aggrieved population. If supportive entities have been using pressure towards a ceasefire, they see the truce agreement as a triumph of their support for the aggrieved population if not for the militants.

By no means is truce a complete and exclusive victory only for militants. Truce also benefits suppressive entities. By agreeing to ceasefire or peace process, the suppressive entity comes across as a reasonable international player that respects the rule of law and has faith in pacific settlement of disputes, a norm now firmly entrenched in the UN Charter, General Assembly resolutions, and numerous regional and global treaties. A relentless war on terror or against supportive entities brings little goodwill to the suppressive state. If collateral damage is high, state terrorism begins to lose all legitimacy at least in the eyes of the world. If casualties are high, the suppressive government might lose domestic public support, a significant factor in genuine democracies. For all these reasons, therefore, truce with militants helps suppressive governments in consolidating domestic power and international reputation. If the suppressive military has actually weakened in its will and ability to fight militancy, truce brings a necessary timeout for rebuilding resources and morale.

Showcasing Injuries for Propaganda Purposes

While the pain and suffering that populations of suppressive states undergo are authentic, the terrorist damage is also used to discredit the larger movement of an aggrieved population fighting occupation, alien domination, apartheid, or hegemony. There is nothing wrong in highlighting one's injuries to expose the perpetrators. However, injuries may also be showcased for propaganda purposes or to win support for suppressive policies. The journey of Bus No. 19 is a remarkable story of real suffering and its dramatization for discrediting the Palestinian liberation movement in occupied territories.

On January 29, 2004, as the morning rush of commuters was subsiding around 9 A.M., a suicide bomber exploded Bus No. 19 in an upscale neighborhood near Gaza and Arlozorov streets in Jerusalem. The blast killed 11 people, wounded 50, and twisted the bus into mangled metal. The bomber was a Palestinian policeman. An eyewitness, who was on her way to have a rare Chagall print framed, heard “the enormous blast.” She saw the flames and the smoke and heard the whimpering. She rushed to help but the scene was horrendous. “I couldn’t look,” she says. “I realized that I didn’t have the stomach to help.” The day was important for other reasons as well. It was the day when Israel was releasing long-held prisoners, a deal brokered over a period of three years. It was the day when Americans were meeting Israelis and Palestinians to negotiate the easing of Israeli travel restriction imposed on Gaza and West Bank. But even the day earlier was no less tragic, for that day the Israeli army raided a Muslim militant group in Gaza and killed eight Palestinians, including at least three innocent bystanders. Contextually, the suicide bombing highlighted the controversy over the wall that Israel was building to separate the occupied territories from the mainland.¹⁰

To dramatize the horrors of terrorism and to possibly influence the hearings at the International Court of Justice considering the international legality of the separation wall, Bus No. 19’s charred skeleton was sent to the Hague. Christians for Israel International, a Holland-based suppressive group, donated the funds to transport the remains of the bus for display at the Peace Palace. Other suppressive Jewish and Christian groups joined the display rally. Suppressive Jewish students were flown from Israel to Holland to tell the stories of terror victims. Enlarged photos of carnage were placed on hand-held posters to augment the story of Bus No. 19. Suppressive Foreign Ministry Spokesman for Public Affairs Gideon Meir briefed the Knesset’s subcommittee on foreign relations about the plan to win the PR battle outside the Peace Palace. The aim of this publicity offensive, Meir told the committee, “is to make the Palestinians regret the day they ever sent the matter to the court.”¹¹

¹⁰ Hene Prusher, Bus No. 19, and hope, blasted in Jerusalem, *Christian Science Monitor* (January 30, 2004).

¹¹ David Parsons, Israeli PR more assertive as Hague hearing looms (*ICEJ News*, February 19, 2004).

Thereafter, Bus No. 19's wrecked remains acquired a celebrity status. An American suppressive organization, called the Jerusalem Connection International, which believes that God gave Israel exclusively to Jews, purchased the remains of the bus and brought them to the US to raise the consciousness of Americans about Palestinian atrocities committed against Israel. Sitting on the back of a flatbed trailer, Bus No. 19 made stops across America – including Washington D.C., North Carolina, Texas, Florida, California – to furnish visual effects of terrorism. A Berkley anti-terrorism rally featuring the bus turned briefly violent when a pro-Palestinian crowd showed up to neutralize effects of the bus. “Two, four, six, eight, we are martyrs, we can’t wait,” chanted the protest group, many wearing kaffiyehs – the male head-cover closely associated with Palestinian militants. An Arab man, who had come with his wife and four children to the counter-protest rally, said: “They (Israelis) stole our land, raped our women, destroyed our olive trees and destroyed our homes.” Other counter-protestors carried signs with faces of slain Palestinian children.¹²

3.3 DEHUMANIZATION OF AGGRIEVED POPULATIONS

Each era invents its own language of dehumanization. And in each era, dissenting voices are raised to criticize and condemn the language of dehumanization. But the success of the dehumanization language depends on its broad public approval, for the very purpose of such a language is to provide a moral coping mechanism to the public at large, on whose behalf violence is often justified, if not perpetrated. In our times, the process of dehumanization has become more sophisticated and more covert. The language used to denigrate the victims of violence is constrained in public; often, it is hidden in new metaphors; and sometimes it is confidential. These overt constraints on the rhetoric of dehumanization underscore some gains in the evolution of human civilization. Open contempt for racial, ethnic, religious, and national groups is no longer acceptable, particularly when expressed by state officials. Despite these

¹² Patrick Hoge, Violence flares briefly at anti-terrorism event, *San Francisco Chronicle* (January 17, 2005).

constraints, the process of dehumanization is live and well, for as long as there is resort to force, some form of accompanying dehumanization would continue to exist.

Human beings carry deep inclinations to defend and justify the harm they inflict. They need an intellectual cover to hide their atrocities. Dehumanization and sub-humanization are tested methods to create moral excuses to inflict pain. This strategy of dehumanization, an old warfare technique practiced in many parts of the world, is primarily aimed at creating a politically and morally acceptable climate to punish militants with minimal popular disapproval. In fact, dehumanization is part of psychological warfare designed to convert the humanity of the enemy into worthless thing because things have far less value than human beings and worthless things have no value. This process of conversion from valuable humanity into worthless nothingness facilitates destruction, by extinguishing moral anguish that one might experience at exterminating human beings.¹³ While dehumanization can occur in interpersonal cases in which one person wishes to punish another, its most horrendous use occurs when a suppressive entity aims at destroying an entire group, community, or nation. This mass dehumanization is targeted at racial, national, cultural, and religious groups.

Denial of Individuality

A profound trait of suppressive dehumanization is the denial of individuality. Dehumanization paints an entire population with a single brush in one color. It begins with denying individual dignity and uniqueness of the person and treating the aggrieved population as one big mass with no internal human distinctions. Before the genocide in Cambodia, the target population was driven out of their homes and brought into a vast open ground. This forced severing of each person from his or her unique familial and individual identity was the first step towards dehumanized homogenization. The persons so brought into the open space were treated as fungible individuals, doing the most ordinary chores of survival imposed by the suppressive army. Each person was substitutable by another. A similar homogenization occurred at the Nazi concentration camps,

¹³ Ashley Montagu & Floyd Matson, *The Human Connection* (1979).

where individuals, men and women, with their shaved heads and starved human bodies, looked alike. The suppressive infrastructure reduced all inmates to identical objects so that torture and cruelty would have to make no distinctions.

Intellectualization of Dehumanization

The process of dehumanization is not the work of the cruel few. It is an intellectual enterprise that attracts brilliant minds. Blind to their times, men and women with good intentions and noble thoughts end up denying others the essential characteristics of humanity. For example, the European colonists sincerely believed that indigenous populations of the Americas were “savages” far removed from the qualities of human civilization. Sepulveda announces that the Spanish have a perfect right to subjugate the barbarians of the New World for there exists between the two as great a difference as between apes and men.¹⁴ A French writer narrates the physical description of the inhabitants of the New World, alleging that their genitals are small, they have no activity of mind, and “their heart is frozen, their society cold, and their empire cruel.”¹⁵

Even the American Declaration of Independence, written by Thomas Jefferson, a man of letters and conscience, paints indigenous populations as “the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.” George Washington wrote that “Indians” “were wolves and beasts who deserved nothing from the whites but ‘total ruin’.”¹⁶ Reflecting the persistent ethos of its times, the US Supreme Court later joined the enterprise of dehumanization, stating that “the Indians were fierce savages . . . whose subsistence was drawn chiefly from the forest. To leave them in possession of their country was to leave the country a wilderness.”¹⁷ Even noted scholars, known for their ethics and morality, could not escape the prejudice of dehumanization. Oliver Wendell Holmes, an American jurist of great profundity and poetic temper, described native people as “a

¹⁴ Juan Gines de Sepulveda, *The Second Democrats* (1547).

¹⁵ Georges-Louis Leclerc & Comte de Buffon, *Histoire Naturelle, Générale et Particulière* (1749–89).

¹⁶ David Stannard, *The American Holocaust: The Conquest of the New World*, at 241.

¹⁷ *Johnson v. McIntosh*, 21 US 543, 573, 587, 590. Even the institution of slavery was justified by denigrating slaves to a non-human or sub-human species.

sketch in red crayons of a rudimental manhood,” defending why the white man is inclined to “hate” the Indian and to “hunt him down like the wild beasts of the forest, and so the red-crayon sketch is rubbed out, and the canvas is ready for a picture of manhood a little more like God’s own image.”¹⁸

In our own times, dehumanization is embodied in dubious psychoanalytical theses. Rex Hudson, in a report prepared for the Library of Congress, cites several studies to map terrorists’ mental configurations. Even though the study focuses on militants, its findings appear to be applicable to perpetrators of state terrorism. One mental need that impresses upon terrorists is the rationalization of violence – “moral disengagement” that terrorists use to insulate themselves from the human consequences of their actions. In this process of moral disengagement, terrorists see suppressive entities as “evil,” lacking the virtues of humanity. Others label, such as pigs, infidels, may also be used to dehumanize suppressive state officials and others who cooperate with them. By contrast, they see themselves as “members of a heroic community of generous people” fighting for a just cause. Most researchers agree that terrorists often see themselves as soldiers, liberators, martyrs, freedom fighters, and revolutionaries. This need for renaming and characterization of the struggle between good and evil, oppressed and oppressor, allows terrorists to see violence as a morally mandated weapon to blunt the will of a subhuman suppressive infrastructure.¹⁹

Violence as an Attribute of the Dehumanized Group

One persistent feature of dehumanization is the element of violence associated with dehumanized groups. It was customary for European colonists to describe indigenous populations of the New World as “violent beasts.” The metaphor carries the elements of dehumanization and violence. Drawing a parallel between Negro slaves and Indian tribes, Josiah Nott writes that both races are inherently intellectually inferior and cannot be civilized. Whereas Negro slaves are willing to wear the yoke of submission, Indian tribes cannot be tamed. Therefore, the solution is their exter-

¹⁸ David Stannard, *The American Holocaust: The Conquest of the New World*. Oxford University Press, 1992.

¹⁹ Rex A. Hudson, *The Sociology and Psychology of Terrorism*, Library of Congress.

mination.²⁰ But the violence associated with the target group is base, treacherous, unmanly, and ignoble. Mark Twain describes the Red Man (the Indian) as one whose "heart is a cesspool of falsehood, of treachery, and of low and devilish instincts." Calling him the scum of the Earth, Twain defines the violence of American Indians in the following words: "All history and honest observation will show that the Red Man is a skulking coward and a windy braggart, who strikes without warning – usually from an ambush or under cover of night."²¹

If the Arab represents the quintessential Muslim, Hollywood movies have successfully portrayed Arabs/Muslims as "brute murderers, sleazy rapists, religious fanatics, oil-rich dimwits, and abusers of women." Jack Shaheen, a professor of mass communications, has studied more than 900 films, released between 1896 and 2001, to document Arab stereotypes that have firmly occupied American movie plots over more than a hundred years. The distortions of the Arabs, their culture and religion have become even more grotesque as the Arab-Israeli conflict matured in years. Some Jewish producers have actively participated in the making of these grotesque images of Arabs, ignoring the fact that Jews themselves have been targets of Hollywood's stereotyping crusades of 1930s. Menachem Golan and Yoram Globus, for example, have produced more than 26 movies, including *Hell Squad* (1985), *Killing Streets* (1985), and *Delta Force* (1986) to vilify Arabs and portray them as heartless terrorists who understand no logic but that of brute force. In *Hell Squad*, Las Vegas girls terminate Palestinian terrorists who have kidnapped an American ambassador's son. The Palestinian terrorist group demands that the ambassador provide the secret formula to make the ultra-neutron bomb "or by Allah, your son will be returned to you, organ by organ." In *Killing Streets*, Americans kill dozens of Palestinians belonging to a terrorist group called "the Guardians of the oppressed." In *Delta Force*, an elite US military unit destroys Palestinian hijackers. The film is mostly shot in Israel and the F-16s used in the aerial dogfight were provided by the Israeli armed forces, though the movie documents no such credit. Rafi Bukaei, Israel's award-winning filmmaker, said, "I hate films like *Delta Force* – [They] don't show [Arabs as] human beings."²²

²⁰ Josiah Nott, *Types of Mankind* (1854).

²¹ Mark Twain, *The Noble Red Man* (1870).

²² Jack G. Shaheen, *Reel Bad Arabs* (Olive Branch Press, 2001).

In 2000, a year before the catastrophic attack on the World Trade Center and the Pentagon, *Rules of Engagement*, an anti-Arab thriller written by former Secretary of Navy James Webb, was released – one among many movies produced in cooperation with the US Department of Defense and the US Marine Corps. The plot involves a 30-year veteran Marine colonel who orders to shoot into the crowd surrounding the US embassy in Yemen. The crowd consists of veiled Muslim women, bearded men with missing teeth, children throwing rocks, and snipers on rooftops. When three marines are shot and killed in the embassy compound, the colonel orders his men to open fire and “Yes. Waste the mother-fuckers!” 83 dead men, women, and children fill the screen. At the bidding of an outraged world, the colonel is tried before a military tribunal. A fellow marine-lawyer who goes to Yemen to collect the evidence defends the colonel. An audiotape, a la Osama bin Laden, offered in the colonel’s defense contextualizes the mob’s motive in following words: “[This is a] declaration of Islamic jihad against the US . . . We call on every Muslim who believes in God . . . to kill Americans and their allies, both civilian and military. It is the duty of every Muslim, everywhere . . .”²³ The colonel is acquitted in the movie in line with sentiments of the moviegoers who stand up and cheer when marines kill Muslim protesters by the dozens. In its subliminal message, the movie “normalizes” the killing of Muslim men, women, and children.

Muslims as a Violent People

Walter Laqueur, an accomplished scholar who offers valuable insights into the terrorist phenomenon, writes from a unique Jewish perspective rooted in experiences of refugees who fled Germany. His work on Jewish history and holocaust is superb but his analysis of Islamic militancy suffers from the same bias that infests volumes of literature on terrorism. Laqueur, a suppressive intellectual, who wishes to protect his beloved state, Israel, uses two techniques, both diversionary, to minimize Israeli atrocities against the Palestinians. First, he throws everything in the sink to hide the filth that chokes the pipe. His book *No End to Terrorism* (2003), for example, expands the definition of terrorism to such an extent that it includes everything from the Fenians and the Russian

²³ Id.

revolutionaries to terrorists in the Indian state of Tripura. This deliberate stretching of the terrorism canvas is designed to demonstrate that for some bizarre and perhaps conspiratorial reasons, the international media overly highlights the Arab-Israeli conflict. "In our age the Palestinians received far more publicity than other nationalist terrorist movements, even though the number of victims in other terrorist campaigns (Algeria, Colombia, Sri Lanka, Central Asia, India, etc.) was much higher." If there were no such "curious imbalance," claims Laqueur, the people would not pay much attention to problems in the Middle East. This suppressive argument, which has been made by many other analysts, though not frivolous, contributes little to the understanding of terrorism. It seeks diversion and demands lesser exposure of a certain theatre of terrorism. Analytically, the argument misses the logic in that any focus by definition is an exercise in selectivity, whether the focus is on the atrocities of a suppressive state, on the misery of an aggrieved population, or on the injury that terrorists cause.

Laqueur's second analytical technique diverts the core blame from Israel to Muslims in general. Laqueur attacks all Muslims, not just militants, in a comprehensive manner, depicting them as a thoroughly violent people. Here are some of the statements he makes: "A review of wars, civil wars, and other contemporary conflict shows indeed a great incidence of violence and aggression in Muslim societies than in most others." "Muslims have a hard time living as minorities in Non-Muslim countries . . . Muslims find it equally difficult to give a fair deal to minorities." "For the Muslim world at large, Israel is a symbol and a catalyst of their rage rather than the cause." These statements are designed to show that Muslims are inherently violent and that Islam is a religion of conflict and aggression. Laqueur goes further to paint Muslim militants as incorrigible demons who would not stop violence even if Israel ends occupation of Gaza and West Bank. "The radical Islamists have a bigger fish to fry; they aim at the punishment and if possible destruction of America and Western civilization. Israel is a small Satan compared with the various big Satans on their political horizon." And as always, such authors speculate the reasons for which Muslim militants are so willing to die. Laqueur ridicules the Quran and those who die in jihad in the following words: "The martyrs will recline on thrones and eat and drink meat and fruit with happiness. Some seventy thousand servants will wait on the martyrs and seventy black-eyed women, all of them fair virgins, young and full-breasted with wide lovely eyes, will be at their call." This

description, partly taken from the Quran, is constructed to show that young men from Gaza and Jenin might be dying more for sexual gratification in the life hereafter, than for ending occupation.²⁴

Laqueur argues that Islamic terrorism is destined to burn out with time. Most fanatical movements, he observes, fade with time for it is hard to maintain the intensity through inter-generational changes. But before Islamic fundamentalism fades, Laqueur fears, massive terrorist attacks involving the use of weapons of mass destruction might occur. "By and large, therefore, the predictions about the impending demise of Islamism have been premature, while no doubt correct in the long run. Nor do we know what will follow."²⁵ If Laqueur's observation is correct, suppressive states can just wait out terrorist attacks but hang on to their territorial or other gains. In the Middle East, for example, Laqueur's reasoning would encourage Israel to hang on to occupied territories and settlements and wait for a time when the Palestinian resolve to fight has run its course. However, as Laqueur suggests, the waiting period might be too deadly to count on it. Furthermore, history also shows that unjust political and economic structures, such as apartheid and slavery, have been unable to perpetuate themselves even when armed resistance against them has been broken. Thus, the waiting period is rarely beneficial to suppressive states. A lingering injustice only increases the chances of massive carnage.

Moral Injuries of Wrongdoing

Much has been written, including in this book, about the misery of Palestinians, Kashmiris, and Chechens, and in fact of all the people who live under oppression, occupation, apartheid, and persisting persecution. However, what remains unexamined is the moral misery of the wrongdoer. A study of this unique form of misery is important to understand the helplessness, neurosis, and self-degradation of individuals, groups, governments, communities, even entire nations that are trapped in the vicious cycle of wrong-doing, not as victims of wrongdoing but as its perpetrators, sympathizers, legislators, and theoreticians. The moral cost of wrong-doing is often hidden in the benefits accruing to the wrong-doer, such as

²⁴ Walter Laqueur, *No End to Terrorism* (Continuum Publishing Group, 2003).

²⁵ Walter Laqueur, *The Terrorism to Come*, Policy Review (Hoover Institution, August–September 2004).

acquisition of territory, control over natural resources, more say in decision-making, or other benefits that wrongdoing may bring. Morally underdeveloped nations may derive sadistic pleasure in wrongdoing and find pride, feelings of superiority, self-esteem, etc. in acts such as occupation, invasion, conquest, or control.

The occupation of Palestinian villages, towns and cities, for example, furnishes many benefits to the Israeli government and its citizens. The Israeli government can appropriate the occupied land with or without compensation. It can demolish houses and clear the land for building new settlements for its own citizens. The occupation also renders more control over agricultural and water resources, and the government can shift these resources for the exclusive or predominant benefit of its own people. And since Palestinians are mostly dependent on a strangulated occupation economy, Israel gets cheap labor that contributes directly to its citizens' higher standard of living. In addition to these material benefits, Israeli citizens might enjoy a sense of pride and feelings of superiority since the Arabs, despite their individual and joint efforts, have failed over the decades to undo the occupation either through war or peaceful means. One can similarly identify material benefits that Russia receives by controlling Chechnya or India obtains by using force to hold on to the disputed territory of Kashmir. These tangible gains obtained through oppression leave indelible marks of guilt, shame, and self-hatred on the wrongdoer.

The cost of wrongdoing was most obvious to Socrates who roamed around the grimy streets of ancient Athens, advocating a life of virtue for the simple but not-so-obvious reason that "wrongdoing harms the doer." Socrates' argument, captured by Plato in *Gorgias*, is not "moralistic" in the sense that wrongdoing ought to be shunned because it inflicts harm on others. Nor is it altruistic in the sense that one should sacrifice benefits that flow from a wrongdoing. Rather the argument is anchored in enlightened self-interest in that one should avoid wrongdoing for self-protection. The argument acknowledges the harm suffered by the victims of wrongdoing. It further asserts, however, that wrongdoing is a losing game for the wrongdoers as well. Even if the benefits of wrongdoing are apparent and tangible, they conceal the moral harm that wrongdoers inflict on themselves. Nations or systems built on wrongdoing are eventually undone.

PART II:
ONTOLOGY OF TERRORISM

Chapter 4

Value Imperialism

You use women to serve passengers, visitors, and strangers to increase your profit margins.

You then rant that you support the liberation of women.

Osama bin Laden

We respect people of all faiths and welcome the free practice of religion; our enemy wants to dictate how to think and how to worship even to their fellow Muslims.

George W. Bush

Value imperialism is the imposition of one's values on other communities. These values can be social, political, economic, or religious. Two distinct versions of value imperialism influence international terrorism involving Muslim militants. One version, which may be called holy imperialism, asserts that Muslims wish to impose Islamic values on the rest of the world, particularly the West. The other version, which may be called secular imperialism, contends that the West, under the American leadership, is determined to undermine Islam by forcibly secularizing the Muslim world. Both versions assert that the West and the Muslim World are on a collision course. The clash is imperial in nature and purpose since each side is allegedly striving to dominate the other.¹ Islam's holy imperialism

¹ Samuel P. Huntington, *The Clash of Civilizations* (Simon & Schuster, 1997)

supposedly challenges Western freedoms and liberties derived from secularism, individualism, consumerism, and futurism. Secular imperialism supposedly supports Muslim communities' right to internal self-determination provided they do not establish Islamic state. But secular imperialism is determined to prevent Muslim nations from regressing into what it considers to be non-progressive and inherently intolerant Islamic orthodoxy that subjugates women and persecutes religious minorities.

Violence and envy are dominant components of value imperialism. Muslims employ terrorism, it is argued, to denigrate and modify Western values.² The West uses its superior military power to compel Muslim communities to adopt secular values. Envy compounds violence. Backward Muslim communities are allegedly envious of developed Western nations; and Muslim militants express this shared envy through violence. It is also contended that the West is envious of natural resources, such as oil, which the Muslim world has in abundance. Envy contributes to violence, as each side resents the resources the other has. If the West uses invasions and occupations to assure the availability of resources, Muslims employ terrorism to wound Western economies. Muslim militants and Muslim states such as Iran are accused of covertly acquiring weapons of mass destruction. It appears to be a preferred policy of secular imperialism to deny Muslim nations any acquisition of nuclear, biological, or chemical weapons, although secular democracies themselves have monopolized these weapons.

Value imperialism as the primary explanation of terrorism, however, fails to appreciate the phenomenon of terrorism. Part I has examined concrete grievances as the source of triangular terrorism. Occupation, invasion, the denial of self-determination, and gross human rights abuses constitute the phenomenon of terrorism, which impels aggrieved populations and suppressive entities to use violence against each other. The conflict in Iraq, for example, is imperial to the extent that America has unjustifiably occupied a weaker nation. This conflict, however, does not arise from a clash of civilizations, nor does it embody the uncontrollable will of

("The West won the world not by the superiority of its ideas or values but rather by its superiority in applying organized violence. Westerners often forget this fact – non-Westerners never do.")

² Kenneth Lasson, "Incitement in the Mosques: Testing the Limits of Free Speech and Religious Liberty," 27 *Whittier Law Review* 3 (2005) (the author mistakenly believes that Muslims are obligated to gain power over other nations).

Muslim militants to engage in jihad. Iraqi insurgents fighting the US occupation are Muslims and some use the concept of jihad to explain their insurgency. Yet, their resistance has little to do with Islam. Likewise, American armed forces are supposedly fighting to democratize Iraq and the war is wrapped in the cause of freedom. Yet, the invasion has little to do with democratization. Both invasion and resistance may be condemned in grandiose terms, such as secular imperialism or holy imperialism. The fact remains that Iraqi war is a fight over resources, geopolitical interests, and the right to self-determination. The war also reveals the powerlessness of the international legal system to restrain a superpower from invading another nation.

Contributory Role of Value Imperialism

Grandiose explanations obfuscate the obvious. They serve as diversionary strategies to minimize the significance of blatant wrongs. *A Theory of International Terrorism*, as a pragmatic theory grounded in reality, discards exclusivist ontological explanations of violence. It does not deny, however, that cultural differences between Muslim and Western societies are real. These differences undoubtedly compound, as well as confuse, the dynamics of violence. Reasonable analysts and policymakers may be distracted into believing that real roots of terrorism lie in diverse cultural visions and practices. Cultural misunderstandings deepen international conflicts, but they are rarely the original cause of violence. In the Middle East, violence does not sprout from any ontological conflict between Islam and Judaism. Muslims and Jews have lived peacefully for centuries in many parts of the world, sharing and building common civilizations. The Middle Eastern violence erupts from the clash of territorial interests between the immigrant and native populations of Palestine. Grandiose theories of the Middle East violence may be spun to blame Islamic fundamentalism, anti-Semitism, Arab barbarism, or, for that matter, Jewish domination of the world, or European-Jewish colonialism. The fact remains however that the Palestinians are fighting for their homes, farms, families, olive trees, and children; and the Jews in Israel, having been persecuted for centuries, are fighting to deepen the roots of their newly founded nation-state in the heart of a hostile Middle East. This clash of interests produces violence. A major part of the clash is tied to the

concept of the nation-state, as each population, Jews and Palestinians, is aspiring to construct a separate but sovereign nation-state. Each state poses a real and potential threat to the other, and is so perceived. Most important, the Middle Eastern violence persists and frequently escalates because international institutions have failed to find a durable solution.

Placing concrete grievances at its center, *A Theory of International Terrorism* nonetheless examines the dynamics of value imperialism to assess their contributory role in deepening the tensions between the West and the Muslim world. Suppressive governments invoke the language of holy imperialism to explain and condemn militant violence. They argue that Muslim militants are fighting to impose Islam on the rest of the world. A counter-claim of value imperialism is also asserted. Muslim militants fighting in various parts of the world allege that suppressive entities are determined to undermine the purity of Islam and subjugate Muslims as an imperial strategy. In the rhetoric of this epic battle, each side strongly believes in the universality of its own values. The West proposes to forcibly democratize the Muslim world because “free nations do not breed the ideologies of murder.” Muslim militants invite suppressive states to embrace Islam, the faith of peace and submission to One God. Value imperialism thus compounds the violent logic of concrete grievances.

If value imperialism is indeed a contributory cause of violence, the following discussion would provide guidelines in constructing a more healthy competition between the two great civilizations, the Western and Islamic, which have significantly defined, determined, and enriched human history in the past, and would continue to do so in the foreseeable future. Peaceful competition among diverse value systems of the world is beneficial for the entire human race, as each system learns from the other. What is objectionable is not the clash per se, but the means by which the clash is conducted. Honest and vigorous debate over clashing values is a medium of learning. But when violence is used to impose or defeat values, the clash threatens international peace and security. It is this pathology of the clash that needs to be cured. Otherwise, value competition between Western and Muslim civilizations need not be eliminated or even minimized. Each civilization ought to be free to promote its values for universal acceptance.

4.1 ATTRIBUTES OF VALUE IMPERIALISM

Value imperialism emerges from a sense of superiority and self-righteousness. Throughout history, distinct racial, religious, national, and social groups have believed that they are superior to the rest of the world in their intellect, piety, morality, or intelligence. While a moderate sense of pride is perhaps healthy for a nation's survival and development, excessive pride leads to aggressive behavior and disrespect for others. Value imperialists wish to universalize their values. Any challenge to the imperialist's own values, however, is taken as an attack worth avenging. Furthermore, imperial entities believe that their values ought to be universalized by any means necessary. This missionary zeal to manufacture the world in one's own normative framework is value imperialism. Its justification may be constructed from the need to maximize national interests to more benevolent explanations of saving or benefiting other peoples. While voluntary cross-cultural influences are natural and mutually beneficial, value imperialism is often overbearing and aggressive. While voluntary imitation of others is an ancient, if not an inherent, human trait, forced imitation is value imperialism.

Value imperialism may be distinguished from ideological imperialism, though they share numerous common elements. An ideology such as communism is indeed a set of values, carefully distilled, packaged, and exported. So is value imperialism. Often, there exists no difference between these two forms of imperialism. However, value imperialism may be less ambitious in its scope and mission. Instead of imposing the entire ideological package, value imperialism may choose to export part of the package. Value imperialism may also custom-design the package by varying its contents to suit target communities. Value imperialism is often a more sophisticated form of ideological imperialism. It is exported for both overt and covert purposes. In many cases, the exporter's strategic goals are to maximize its sphere of influence, create goodwill, expand investment markets, sell surplus products or labor, draw material benefits, or find military outlets.

Collaborative agents

Value imperialism often uses indigenous resources to prevail. Whereas colonial imperialism was effectuated through actual control of

target territories, value imperialism is imposed through collaborative agents in target communities. Direct control of target communities is rarely required to impose value imperialism. Soviet communist ideology was disseminated throughout the world by means of collaborative local leaders, students, scholars, and activists. Successful communist revolutions engineered by means of local assets, however, expanded the Soviet influence. The US is experimenting similar logistics to expand its value imperialism designed to entrench American domination. It is recruiting local leaders, journalists, scholars, and military professionals to promote American values of individual liberties, consumerism, secularism, democracy, and free markets. A Muslim head of the state vouching for American values serves as a collaborative agent, eliminating the need of any direct American action. Indirect control of foreign nations is also known as hegemony. Hegemonic dissemination of value imperialism is thus subtle, strategic, outwardly benign, less paternalistic, and perhaps more effective. Ironically, though, even subtle forms of imperialism may generate violent reaction.

Value Imperialism Distinguished from Reception of Values

If the world is willing to accept the American model of free market capitalism or the Islamic conception of One God, there is nothing wrong even with “value imperialism,” since in that case value imperialism is simply a pejorative name for a more positive concept called the reception of values, which is, borrowing values from other legal and cultural systems. All too often, values first emerge from specific civilizations and later become universal when nations and communities across the world accept them. Islam itself arose from a small town in the Arab desert and soon became a global idea, not riding on the sword, as it is falsely alleged, but by its inherent appeal for living a more fulfilling life. And yet billions of people do not accept Islam as their religion. Likewise, the idea of free market as opposed to state-controlled economy has prevailed in many parts of the world not because the US possess superior arms but because free markets are relatively, though not completely, more successful in creating plentiful and reliable supply of goods and services. The critics of the free market, however, disapprove its dynamics of distributive justice. Over the centuries, human communities have freely borrowed from each other and continue to do so. Reception of foreign values should not be confused with value

imperialism. Reception is a voluntary exchange of values. Value imperialism is coercive and imposes values on communities against their free will.

Imperial Values Distinguished from Suppressive Values

Imperial values may be distinguished from suppressive values. As discussed in Chapter 3, suppressive entities deny the legitimate demands of aggrieved populations, such as the right of self-determination. They may also advocate overly harsh treatment of Muslim militants so that aggrieved populations would effectively lose their demands for political liberty or territorial secession. Suppressive entities, however, may or may not assert that a deep imperial conflict drives the dynamics of violence. By contrast, value imperialism offers an ontological explanation of violence. It asserts that Muslims are opposed to the Western civilization, that even if legitimate demands of aggrieved populations are met, Muslim militants would continue to perpetrate terror because their goals are inspired by an expansionist, imperial vision of Islam, and that they wish to impose Islam on liberal societies. Likewise, Muslims see Western domination, invasions and occupations as the means to undermine Islam and impose liberalism on Muslim communities. Ironically, both sides articulate each other's imperialism in the following words: "They hate us not what we do but who we are." The response from each side may also be the same: "We do not hate you, but we fight you when you commit aggression against us."

Value Imperialism Generates Violence

The most objectionable form of value imperialism occurs when values are imposed upon a community through economic sanctions, diplomatic pressure, or violence. Take, for example, the denigration of prophets and holy books, which is protected under the laws of the United States. If the US were to dictate Muslim nations to show a similar secular tolerance when the Prophet or the Quran are desecrated, such a demand would be value imperialism. Pornography raises a similar issue. Sex magazines freely available in the US are often banned in Muslim nations. The US may demand that the ban be lifted to maximize individual liberty. Many Muslims

would consider any such demand as an attack on Islam that teaches a conservative sexual morality. They would not think any differently even if it were shown that some individuals or segments within a Muslim community prefer to have vigorous freedom of speech. Though the protection of individual preferences is a credible liberal goal, any such move would be considered value imperialism. Even if a weak or “Americanized” Muslim government were coerced into repealing blasphemy laws, the Muslim community at large would resent the US imposed secularism.³ The militants might choose violence to express their anger, particularly if no legal means are available to register dissent. This form of militant violence sprouts from value imperialism imposed through coercive means.

Likewise, Muslims are free to believe in One God who has no father or son. They are free to persuade the rest of the world, through peaceful dialogue, that the Islamic conception of One God is most sensible and rational. But if Muslim governments or Muslim militants resort to overt or covert force to impose this conception of One God on Americans or others, such an imposition would constitute violent value imperialism. The argument that by denying One God, Americans are living a spiritually wretched life does not justify holy imperialism. Such self-righteous arguments, no matter how credible they seem to their advocates, contain seeds of mischief and intolerance. Even One God would not allow any such holy imperialism. That is why the Quran instructed the Prophet to simply relay the message of One God, but to use no coercion or manipulation in promoting the message. Any Muslim entity that employs violence or threats of violence to impose the conception of One God on others is acting contrary to the letter and spirit of the Quran. Such entity is also engaging in violent value imperialism.

Imperial degradation

Value imperialism not only imposes its own values on others, it also degrades others’ values. Imperial imposition is inextricably tied to imperial degradation. Violence accompanies imperial degradation when economic or military force is used to degrade values.

³ Lama Abu-Odeh, “The Politics of (Mis)Recognition: Islamic Law Pedagogy in American Academia,” 52 *American Journal of Comparative Law* 789 (2004) (given the emotionally-charged offering between secularism and sharia, most Muslim communities would opt for sharia’h).

Violence may also be used to resist the degradation of values. An imperial entity may use violence to impose or degrade values. This may be called imperial terrorism. When a targeted entity employs force to resist imperial imposition or degradation, the use of force may be called counter-imperial terrorism. For instance, if the Iranian theocracy were forcibly dismantled, the force would exemplify imperial terrorism the purpose of which was to degrade a form of Islamic democracy. One need not assume, however, that imperial terrorism is always the handiwork of an empire or a superpower or even a state. Any entity, including private groups, such as the al Qaeda, may commit imperial terrorism if the purpose of violence is to impose its own values or degrade others' values. Any use of force to dismantle nightclubs or places of recreation is imperial violence if its purpose is to degrade a way of life that offends the perpetrator's self-righteousness.

Value imperialism degrades in yet another way. It presumes that target communities are intellectually deficient in choosing the right values. Secular imperialism, for example, presupposes that Muslim societies do not comprehend the benefits of separation of religion and state and that they must be so "taught." And when force is used to teach, value imperialists further degrade target communities. For now they presume that target communities are obstinate, brutish, or intellectually bankrupt. The US "benevolent occupation" of Afghanistan and Iraq are examples of teaching by the rod. Value imperialism becomes even more degrading when it aims to change an entire civilization. Imposing Western values on distant tribes and nations, an idea that originated in colonialism but that continues to be advanced through new institutions such as the World Bank and the International Monetary Fund, stems from a demeaning assumption "that peoples in the non-European worlds are lacking in their own ideas as to how their societies should be structured, and what values they should prescribe and adopt."⁴ Even under this dubious standard, imposing Western secularism on the entire Muslim world is overly ambitious. This crusade fails to recognize that the Muslim world has rich internal intellectual resources to weigh the costs and benefits of secularism.

⁴ Andrew Coleman & Jackson Maogoto, "Democracy's Global Quest: A Noble Crusade Wrapped in Dirty Reality?" 28 *Suffolk Transnational Law Review* 175 (2005). Antony Anghie, "Civilization and Commerce: The Concept of Governance in Historical Perspective," 45 *Villanova Law Review* 887 (2000).

International Law Prohibits Value Imperialism

For several centuries, international law has been the embodiment of value imperialism, sanctioning predatory norms such as *terra nullius* and the right to discovery, and derogatory norms such as civilized nations, Third World, North-South, etc. These norms were initially designed to “lawfully” colonize non-European populations and usurp their land. Colonization was most certainly predatory but it was not confined to the taking of natural resources. It also assaulted local cultures, languages, and religions, attempting to diminish their inherent worth and vitality. Colonialism was thus value imperialism, what Rudyard Kipling called the white man’s burden to harness “new-caught, sullen peoples, half-devil and half-child.” Edward Said equates colonialism with an “ideologies of lies” concocted for pillage and aggression.⁵ The effects of Western colonialism remain even though the emerging principles of international law empower the peoples of the world to shape a multicultural, multi-religious, multilingual, pluralist world, made in the image of no single civilization.

Value imperialism is incompatible with the emerging theory of international law, even though dominant nations continue to subvert the ideals of a free, pluralistic world. In theory, emerging international law rejects value imperialism and allows each nation to live its own vision of a shared life. Some of these emerging principles came out of the struggle against colonization of the past centuries that had placed the entire planet under a few Western empires. Several distinct principles of emerging international law repudiate value imperialism. The United Nations Charter offers the twin principles of territorial integrity and political independence. These principles may be superficially interpreted to mean the sovereignty of the nation-state. But they carry a profound paradigm of existential integrity. This integrity requires that each community, its people, its land, and its natural resources be physical safe from foreign invasions, attacks, and forced takings. The principle of territorial integrity forbids any usurpation of a community’s natural resources, thus preserving their primary benefits for the community. It accordingly assures the state’s physical integrity.

⁵ Edward Said, *Culture and Imperialism* (1993).

The principle of political independence further preserves the paradigm of integrity on the assumption that physical integrity is more meaningful when the community also has control over its social, political, economic, and intellectual resources. If a Muslim community is coerced to relinquish its traditions, its culture, its vision of law, and its literature, because secular imperialism has branded them inferior or regressive or reactionary, the Muslim community begins to lose authentic independence and existential integrity.

The international human rights movement has further fortified communities against value imperialism, although even this movement has not been immune from the pathology of dichotomies and domination.⁶ The Universal Declaration of Human Rights, in protecting rights of the individual, correctly emphasizes the individual's "duties to the community in which alone the rights and freedoms . . . can be fully realized." Thus, individual rights and freedoms, conceived under liberalism, cannot be used to forcibly open inlets for the importation of foreign values that distort the concept of duties and introduce confusion and subversion in Muslim communities. Human rights themselves provide sufficient guarantees against state machinery and social prejudice that may harm individuals in the broader cultural and moral contexts. In the name of protecting individual rights and freedoms, however, secular imperialism has no justified basis, much less through the use of military force, to change cultural practices of a Muslim community. Muslim communities are free to preserve and develop their own values and shun conflicting foreign values. No foreign entity has a legal basis to subvert, by military or economic force, a Muslim community's right to internal self-determination. Before its 2001 invasion of Afghanistan, the US condemned the Islamic veil for women as an odious imposition of the Taliban government, believing that the government's forcible removal would "liberate" Muslim women. After the invasion, however, the US has discovered that many Afghan women, just like many other Muslim women, including American converts to Islam, wear the veil out of conviction and choice, and not compulsion. This discovery, however, has not shaken American value imperialism.

⁶ Deborah M. Weissman, "The Human Rights Dilemma: Rethinking the Humanitarian Project," 35 *Columbia Human Rights Law Review* 259 (2004) (showing how cultural practices in Africa, such as female genital surgeries, are condemned as barbaric but cosmetic surgeries in the West are tolerated as deviations from the mainstream culture).

Even the rhetoric of universal human rights has been Americanized. The US has installed itself as the imperial enforcer of these rights throughout the world. Each year, the US Department of State releases *Country Reports on Human Rights Practices* “to hold governments accountable to their obligations under universal human rights norms and international human rights instruments.”⁷ While this monitoring policy seems elegant, its reality is repellent. The US has one set of standards for friendly governments, another for enemies. Negative reports provide pretexts to degrade and punish nations that refuse to cooperate with US foreign policies. US allies that brutalize human beings, however, suffer no visible consequences. The use of human rights concept begins to symbolize cultural dominance, the same way Christianity was used “to pacify indigenous Americans in the late nineteenth and early twentieth centuries.”⁸ Despite double standards and despite its own gross human rights violations pursuant to the war on terror, the US continues to rely on a self-proclaimed divine right to police the world. American ruling elites often present US hegemony “as a humanitarian gesture to aid less fortunate people.”

Understanding American Imperialism

Throughout the ages, one distinctive feature of value imperialism has been the construction of inherent faults in the people to be exploited, enslaved, conquered, colonized, occupied, or subjugated. The ontological concept of inherent flaw presupposes that certain people are naturally predisposed to a serious defect or abnormality such as violence or irrationality. America has expanded this ontology even further as it sees the whole world inherently flawed. Michael Hunt points out that a presumption of greatness informs American foreign policy. In separating from Old Europe infested with monarchies, violence, and intolerance, American elites have nurtured a celebratory ideology that America is destined to recreate a better world for itself and for others.⁹ This narcissist deter-

⁷ US Department of State Website for Monitoring Human Rights, *Bureau of Democracy, Human Rights, and Labor* <<http://www.state.gov/g/drl/hr/>>.

⁸ William Joseph Wagner, “Universal Human Rights, the United Nations, and the Telos of Human Dignity,” *3 Ave Maria Law Review* 197 (2005).

⁹ Michael H. Hunt, *Ideology and US Foreign Policy*, New Haven: Yale University Press, 1987.

minism leads the US to resort to economic sanctions, diplomatic pressures, and outright aggression when other nations assert self-rule, cultural self-determination, or refuse to accept American leadership. In order to fully understand American value imperialism, a brief account of Hindu and Greek imperial traditions might be illuminating. This account provides insights into how America first practiced value imperialism domestically against its own non-white populations, but has now externalized its race-based imperialism internationally against the peoples of the world.

In Hinduism, value imperialism is internal; it is confined to Hindus. Hindu imperialism has produced a caste system that degrades the untouchables, the lowest caste, allocating them a destiny to perform the meanest social jobs, such as cleaning the sewers and picking up the garbage. A holy hymn is invoked to assert that the four major Hindu castes started off from different body parts of Purusa, the original super being who was sacrificed and dismembered to create human beings. The highest caste of Brahmins originated from Purusa's mouth, the lowest caste came from his feet. This mythological origin of human beings rejects the notion of equality and places huge segments of population at different levels of the totem pole. Some Hindus are born noble whereas others are born as barbarians. "Early on, the untouchable child learns that he is unclean and impure, and that he cannot touch, let alone play with, the children of higher classes. He is forced to drink from separate wells and worship in separate temples."¹⁰ To further cement social hierarchy, Hinduism offers the concept of Karma under which one gets in the cycle of life what one deserves. Brahmins are entitled to good life not only because they are born superior but also because they have earned it under the dictates of Karma. Likewise, the lowest caste must accept their servitude under the combined force of birth and their Karma.

This remarkable construction of value imperialism supports Hindu social and economic hierarchies and justifies it by finding inherent faults in those who have been degraded. If the untouchables have been excluded from the notion of good life founded on dignity, opportunity, freedom and liberties, the theory of inherent flaw blames the untouchables. Degradation is their destiny because the untouchables are born inferior, and they deserve their destiny under the

¹⁰ Ali Khan, "The Dignity of Labor," 32 *Columbia Human Rights Law Review* 289 (2001).

dictates of Karma. And if the untouchables demand the same rights that privileged castes enjoy, they are engaging in a false and fruitless fight. And if the untouchables resist servitude, take up arms, resort to violence, and shatter the calm Brahmin life, they must be crushed for they disturb social order and choose terrorism over peaceful protests.

The theory of inherent flaw is not confined to Hinduism. The same theory, though in a different form, appears in the ancient Greek literature, a theory brilliantly captured and narrated by Aristotle, and one that would later contribute towards the construction of colonialism, American slavery, and general ideas about the superiority and inferiority of races. According to Aristotle, nature itself produces two kinds of people, the ruler and the ruled. The most distinguishable factor between the two groups, maintains Aristotle, lies in their respective physical structures. The slave race is born with sturdy bodies, most suitable for physical labor, whereas the ruling class is naturally equipped with intellect and powers to plan, organize, and “look ahead.” Therefore, the intellectually gifted becomes the master and one biologically designed for labor tasks becomes the slave.

In consonant with Hindu and Greek imperialism, American imperialism also creates inequality. However, American imperialism is unique. It invents an essential linkage between race and inequality. Hindu imperialism has imposed servitude on the basis of caste, but within the same race. Aristotle’s slavery is biological, but within the same race. Ironically, however, Aristotle, a non-Greek himself, reserves the best qualities for Greeks. American imperialism sees populations through the lens of race. In American mythology, race is the defining attribute of superiority or inferiority. If you are not white, you are inherently inferior. America was to be built as a nation primarily for white European immigrants. Racial imperialism provided the glue needed to construct a viable white nation. Poor whites accepted this false paradigm of pride as willingly as rich whites. This white imperialism, however, unleashed cruelty and inequality against non-white races, particularly blacks and Indians.

Despite sincere efforts to eradicate racial imperialism from American culture, white supremacy lingers. And although the overt language of racism is no longer part of American imperialism, a new domestic code has emerged to sustain racial hierarchies. Suburbs (whites), inner cities (blacks), reservations (Indians), illegal immigrants (Hispanics), test scores (racial differences), affirmative action

(unjustified handouts to non-whites), political correctness (muzzling white backlash), these and similar terms are racially loaded phrases that define life in America, which is superficially enshrouded in the equal protection of laws.

Externalization of American Imperialism

For most of its history, American racial imperialism has been aimed at domestic non-whites (Blacks, Indians, Hispanics, Chinese, etc.). America's overseas battles, for the most part, have been with other white nations (Spaniards, Germans, and Russians). Even when primarily engaged with white enemies abroad, American racial imperialism has treated non-white enemies more severely. In the Second World War, the US primarily fought white Germans who, ironically, were advocating a genocidal form of racial imperialism. However, America's severest treatment was reserved for the non-white Japanese. The internment of Japanese-American citizens at home and the atomic incineration of Japanese cities were not purely military operations. Race was a covert factor in these decisions. Likewise in the Cold War, white Russians were the primary focus of US policies and strategies but the War's massacres took place against non-white populations, including the Vietnamese. The US support of Israel as against Arabs might also be seen as part of racial hierarchies because Israel is considered part of the Judeo-Christian West.¹¹ The war on terror has not been cast in racial terms, but the concept of inherent flaw continues to inform the American understanding of Muslim militancy. As racial imperialism goes underground, since it is no longer acceptable to openly talk about racial ontology, America has begun to promote and export "freedom" in the form of value imperialism.

4.2 SECULAR IMPERIALISM

US policymakers and terrorism experts frequently argue that Muslim militants hate the Western culture of freedoms and that their violence embodies a preemptive methodology to block freedoms from

¹¹ See discussion of the mistaken notion of Judeo-Christian in Chapter 9.

reaching Muslim societies. Included in this explanation is the additional charge that Muslim militants are jealous of material successes, natural domination, and objective superiority of the Western civilization.¹² If militants are defeated, it is further assumed, Muslim nations will freely adopt Western values, improve their economies, abandon backward elements of the Sharia, and accept peaceful and prosperous values that have transformed Western and non-Western regions (Japan, South Korea, Taiwan) alike. Based on these assumptions, several strategies are offered to transform Muslim societies and to eliminate militant violence that allegedly opposes change. These strategies vary from forced democratization of Muslim nations to waging a lethal war against militants. The geopolitical goal of these strategies is to defeat and dismantle Islamic political parties and secularize legal systems in the Muslim world. The combined aims of these diverse transformative strategies are tantamount to secular imperialism.

Forced Democratization

The US has launched an expensive campaign to export liberal democratic values to the Middle East and beyond, hoping that an awareness of liberal democratic freedoms will persuade Muslim populations to reject the ideology of Muslim militants. It is also hoped that democratization would weaken the foundation of militancy, reducing terrorism. The idea of democratization is founded on an ontological assumption that all peoples of the world prefer individual freedoms and liberties. Even if this assumption is empirically valid, conceptions of freedom and liberties vary from culture to culture. Western freedoms make sense in the West but they threaten the social fabric of the Islamic world. Because of cultural differences, Western efforts at forced democratization of Muslim nations are interpreted as an imperial imposition.

Words such as freedom and liberty have negative connotations for traditional Muslims – just as the phrase “law and order” carries an ominous message for African Americans. American criminologists are well aware that white Americans hear the phrase “law

¹² Bernard Lewis, *The Crisis of Islam* (2003).

and order” as police efforts to prevent crime whereas African Americans associate the same phrase with police brutality. Freedom and liberty mean one thing in America, quite another in Muslim countries. Freedom and liberty are positive concepts for Americans who see in these words assurances for self-expression and self-development. For most Muslims, these words mean sexual promiscuity, disrespect for parents, selfishness, breaking away from social mores, ignoring religion, and pursuing irresponsible lifestyles.

Responsibility and not freedom constitutes the ethos of Muslim cultures. When Muslims hear that US elites wish to bring freedoms and liberties to their communities, they become instantly apprehensive and defensive. They infer that America is waging a cultural war to undermine their family and religious values. And they see alcoholism, abortion, pornography, high divorce rate, runaway children, and nursing homes where elders rot in grief and sorrow, all this and more that they associate with caricatured views of American life infiltrating and infesting their societies.

Despite their profound concerns about US-sponsored freedoms and liberties, Muslims nonetheless aspire to institute a conception of democracy under which governments are removable and accountable. Presently, however, corrupt and incompetent governments, many pro-American, rule the Muslim world. And they become abusive when the people challenge their power. Ironically, many Muslim populations blame the US for supporting, and now installing, sham democracies and puppet rulers. No one disputes that Muslims need democracy. Unfortunately, liberal imperialism confuses the process of democratization in the Muslim world. Rightly or wrongly, most Muslims see the US democracy initiative as part of a larger war against Islam.

Misgivings about US Intentions

Islam teaches Muslims to pay careful attention to intentions so as not to be fooled by deeds. Intentions and not mere deeds constitute Islamic critical consciousness. Due to mistrust of the West, Muslims seriously doubt that democratization project carries good intentions. Exportation of liberal democracy to Muslim nations, therefore, is feared as a Trojan horse. It is seen as an interest maximizing US strategy. The US Department of State, on its website, describes its efforts to support democracy in the world in the following words: “Democracy and respect for human rights have long

been central components of U.S. foreign policy. Supporting democracy not only promotes such fundamental American values as religious freedom and worker rights, but also helps create a more secure, stable, and prosperous global arena in which the US can advance its national interests.” This statement, a near perfect specimen of democratic imperialism, first claims ownership to certain democratic rights by calling them “American values,” as if no other culture or community has practiced religious tolerance or protected worker rights, and then boldly proposes to share these American values with other nations to promote US security and economic interests. Such assertions weaken the value of the democracy gift.

It is further asserted that liberal democracy creates and assures prosperity. The West is most certainly prosperous. Even Asian countries that emulate the Western model have become prosperous. Nonetheless, Muslims are unlikely to accept the argument that liberal/secular democracy is the only way to manufacture prosperity. Centuries ago and for centuries, and long before the rise of Western nations, Muslims were able to establish prosperous communities in compliance with Islamic principles. Muslim empires that ruled vast areas of the world for more than a thousand years were neither democratic, nor liberal, and nor secular. But they were successful in generating creative energies in all walks of life. Mathematics and algebra, for example, was non-existent in the world until Muslims invented them. Muslim communities also remember how they lost their way under Western colonization and domination. They also do not take the claimed virtues of liberal democracy seriously because they see how brutal slavery, theft of land, racism, apartheid, and discrimination have been part and parcel of Western democracy.

Islamic Democracy a Threat to US Interests

Muslim populations are also skeptical about the US commitment to free and vigorous democracy in Muslim nations. If Islamic political parties were allowed to contest elections, they are feared to win elections on anti-US and anti-Israel platforms.¹³ In Jordan and Egypt, for example, anti-Israel religious parties would easily sweep freely held general elections. If democratically elected Islamic par-

¹³ Arnaud de Borchgrave, “Jihad roots and ripples,” *Washington Times* (December 16, 2005).

ties come to power, they would denounce the peace treaties with Israel and adopt anti-US foreign policies. Knowing this, Israelis see an existential threat in democratization of the Muslim world. Since US national interests may diverge from those of Israel, a democratic Muslim world may drive a wedge between Israel and the US. If the US were to sacrifice its own interests for the sake of preserving the US-Israel alliance, a democratic Muslim world would be further estranged from the US. In either case, free democracy in the Middle East would pose new challenges to US military, security, and economic interests in the world. To avoid these developments, both the US and Israel support a distorted notion of democracy that suppresses religious parties from contesting elections and assuming power.

Forced Secularization

The democratization project proposed for the Muslim world is essentially secular. However, the proposed model of secularism is liberal. It is not the same as communist secularism, the one that the Soviet Union imposed on its client states. Soviet secularism was atheistic and anti-religious. Liberal secularism respects freedom of religion but it does not allow the fusion of church and state. Democracy alone does not assure that a nation would opt for secularism. The Iranian system, for example, contains elements of democracy and yet it is not secular. Only when secularism is combined with democracy and individual rights and freedoms do we have a liberal democracy. It is this model of democracy that secular imperialism wishes to impose on the Muslim world. Many in the Western world propose that Muslim nations adopt the Turkish model of democracy, under which the government is secular even though the people are free to practice Islam. In exporting secularism, Western nations draw conclusions from their own unique historical experiences, such as the Thirty Years War (1618–48) over religious conflicts between Catholics, Lutherans, and Calvinists, and wish to share their hard-earned lessons, such as benefits of secularism, to the Muslim world. But Muslims have had no such parallel history of sectarian slaughter, though the emerging Shia-Sunni conflict in Iraq and elsewhere appears to be genocidal. Shia or Sunni, however, each declines to accept the gift of Western secularism.

There are numerous reasons why democracy has failed to take root in the Islamic world, a topic I have examined at length in *A Universal Theory of Democracy*. Here, I would like to discuss how the West, in its efforts to promote secularism, uses the armed forces and bureaucracy of Muslim nations to promote secularism, to defeat and dismantle Islamic parties. In its commitment to secularism, West is prepared even to sacrifice democracy and political freedoms that it otherwise touts. Disenfranchised Muslim militants resent Western intervention and resort to violence against domestic institutions and public officials perceived to be Western agents. Domestic terrorism thus interfuses with international terrorism.

The tension of choosing between democracy and secularism arises when Islamic political parties participate in the democratic process.¹⁴ Secular imperialism colludes with oppressive military and hereditary governments to subvert the democratic process, because it fears that a victory for Islamic parties will be a victory for an Islamic state that would dismantle secularism and liberal values. Torn between democracy and secularism, secular imperialism almost always chooses secularism over democracy. A secular dictatorship is far more acceptable to advocates of liberal democracy than is a religious democracy, even though secular dictatorships rarely respect individual liberties and freedoms. Sacrificing democracy and individual freedoms in order to institute secularism, secular imperialism appears to be most hostile to the fusion of Islam and state. Muslims see this as more a war on Islam and less a crusade for democracy.

Most frequently, Islamic political parties offer to institute an Islamic legal system as well as to reform existing laws found to be incompatible with the Basic Code (Quran and Sunna). Islamic parties reject secularism, the separation of law and Islamic morality, and undue foreign influences. They are most suspicious of Westernized local elites who promote Western thought and see the Islamic state as a barrier to their way of life. Nostalgic and idealistic, Islamic parties draw inspiration from earlier periods of Islamic civilization when Muslims were inventors, explorers, and rulers of the world. They view the existing backwardness of Islamic societies as a direct consequence of straying away from the Islamic path and

¹⁴ John F. Murphy, "Brave New World: U.S. Responses to the Rise in International Crime – An Overview," 50 *Villanova Law Review* 375 (2005) (labeling Islamic political parties in Algeria and Egypt as terrorist organizations).

imitating the West that had colonized their communities, minds, and way of life.

In view of their opposition to liberal democracy, Islamic parties are excluded from the political process in many Muslim nations. In Algeria, for example, Islamic political participation was effectively foreclosed by national armed forces on the theory that if Islamic parties were allowed to contest elections, they would dismantle the democratic process upon winning the elections and institute an authoritarian theocracy. In Egypt, Islamic political parties are banned and their leaders have been incarcerated. In Turkey, the secular constitution prohibits any fusion of religion and state. Until recently, Islamic political parties have been banned and excluded from contesting elections or forming government. Even though secular provisions of the Turkish constitution cannot be amended, some de facto accommodation has been made to allow Islamic parties into the political process provided they vow not to upset the secular model of government.¹⁵

Distinct domestic constituencies advocate the exclusion of Islamic political parties. National armed forces, mostly trained in the Western tradition, are the mightiest foe of Islamic parties. Thus, the professional culture of the armed forces, the most organized institution in the state, is incompatible with the ideology of Islamic parties that wish to cleanse national institutions from undue foreign influence. When an Islamic political party is suppressed, banned, or forcibly excluded from the political process, a direct confrontation occurs between national armed forces and Muslim militants, causing what is known as domestic terrorism. The clearest example of this phenomenon occurred in Algeria. The suppression of Islamic forces in Egypt and newly independent central Asia states has similarly caused domestic unrest and killings.

In addition to national armed forces, the national bureaucracy is often opposed to Islamic parties as well. The reasons are somewhat similar. National bureaucrats are often trained in the Western tradition, some have studied at Western universities, and many interact with Western bureaucracies. If the dominant professional culture of the national bureaucracy is anchored in Western tradition, which indeed it is for the most part in most Muslim countries,

¹⁵ Susana Dokupil, "The Separation of Mosque and State: Islam and Democracy in Modern Turkey," 105 *West Virginia Law Review* 53 (2002) (arguing that freedom of religion strengthens secularism).

national bureaucrats dread Islamic political parties and see them as opponents of their privilege, power, and liberties. Westernized intellectuals, university professors, business leaders, and some human rights organizations also oppose Islamic political parties. Deprived of this support, Islamic political parties turn towards the poor, the disenfranchised, and the people who live in villages and small towns, away from big cities teeming under the Western influence.

The third constituency that opposes Islamic political parties consists of ruling cliques, royal families, or ideological parties that have entrenched their political monopoly through unaccountability, charisma, ideology, or brute force. The Bath party in Syria, royal families in Gulf emirates, military charlatans in Libya and Algeria, all these ruling elites have a vested interest in not allowing democratic institutions to emerge, develop, and challenge unaccountable regimes. Accordingly, they oppose any political force that threatens their hegemony, particularly Islamic political parties. Vested interests in maintaining power create fabulous contradictions. Even a highly religious regime in power, such as one in Saudi Arabia, opposes the emergence of Islamic political parties that believe in democracy and not inheritance as the source of political power.

Domestic terrorism in Muslim countries is often related to secular imperialism. When Muslim militants realize that foreign secular forces have won the support of national armed forces, bureaucracy, or ruling families, they turn their wrath against these domestic constituencies. Outside observers fail to understand why Muslim militants will attack their own people, reinforcing the ontological thesis that puritanical Islam is inherently violent.

Inventing Moderate Muslims

American value imperialism has invented the concept of moderate Muslims to undermine traditional Islam, which is perceived as a threat to democracy, world peace, and US global interests. The definition of moderate Muslims is elusive. However, Muslims who believe in the jurisprudential supremacy of the Quran and the Sunna are not considered moderate. Those who wish to institute an Islamic state are considered extremists. Moderate Muslims are not atheists. They believe in Islam. But they are secularists who advocate that religion is a private matter. They believe in the Westernized human rights, and promote a conception of female

freedom touted in the West. They see the traditional Muslim woman as an embodiment of oppression, false consciousness, and a symbol of Islamic orthodoxy. Some prefer individual freedoms to relational responsibilities that Islam teaches. Some would discard traditional jurisprudence embodied in the classical five madhabs. In America, the inventors of moderate Islam wish to subject American Muslims to US patriotism. They wish to create American Islam.

In the US, moderate Muslims would be constructed in ways similar to Anglicized Blacks. African slaves were denied their faith, languages, and historical consciousness. American value imperialism imposed on blacks was designed to cleanse descendants of the slave population from remembering the wrongs of their masters, and from nurturing any sentiments of counter-aggression. This imperceptible genocide and concomitant pacification of the black population, carried out over the centuries, has been highly successful in creating an imitation culture in which the dominated populations willingly adhere to Anglo-Saxon traditions. A similar genocide perpetrated against the descendants of Muslim immigrants would deny them their ethnic, linguistic, cultural, and religious traditions. American patriotism, which subsumes identities, would devour a universal religion that in its true state cannot be reduced to the confines of a nation-state. It remains to be seen whether the invention would succeed in its mission.

Islamic Cultural Barbarism

Just as the 18th century slave masters held that African slaves were essentially inferior, the inventors of moderate Islam tend to believe that Muslims in their natural state of faith are inherently barbaric. Muslim nations have been unable to evolve democratic institutions that assure governments are accountable and removable. Kingships, military dictatorships, one party rule, personal cults, and other authoritarian political structures frustrate Muslims' aspirations to participate in government formation. In an increasingly democratized world, and in view of material successes of democratic nations, the democratic deficit in Muslim nations causes confusion, anger, disenchantment, and violence among the people. This negativity impedes social and economic development and interposes a barrier to the release of creative energies and dynamism that keep nations alive and self-engaged.

Some Western experts argue that Islamic culture is inherently barbaric and unfit for democracy. It is ontologically inclined to produce violence. Most articulate, though by no means the most brilliant, American scholar who solidly manufactures and effectively communicates the clash between barbaric Islam and democratic West is Victor Davis Hanson. A military historian, a think-tanker at the Hoover institution, a teacher at Stanford, a raisin farmer, a controversial media figure, both revered and despised, Hanson has earned singular respect among American conservatives. Through his popular writings on culture and foreign affairs, Hanson has become an influential consultant after September 11. Value imperialism is an essential part of Hanson's thesis.

Hanson's most oft-repeated thesis highlights the seemingly irresolvable contradictions between the democratic West and the autocratic Islamic world, particularly the Arab countries. Examining root causes of terrorism, his imperial argument goes as follows: "instead of blaming Israel, the United States, or the man in the moon for Arab problems – sit down, take a deep breath and ask yourself, "Why is there no democracy, no equality of the sexes, no religious tolerance, no free press . . ." Hanson answers this question by pointing out that something is terribly wrong with the Arab/Islamic culture. In his view, Islamic terrorism sprouts from conditions of barbarism that exist in the Islamic world. The conditions of barbarism, however, are partly tied to lack of social, economic, and political development, but for the most what sustains and nurture Islamic barbarism is the "nature of the culture" that seemingly transcends economic prosperity. Under the covert, implied logic of Hanson's thesis, Islamic barbarism is not phenomenal; it is no mere reflection of socio-economic underdevelopment, as was the case in pre-Renaissance Europe, for such barbarism fades away when the people become prosperous. According to Hanson, Islamic barbarism is ontological. It emerges from a deeper immutable grammar of the Arab culture, a grammar that created the religion of Islam, incorporated its raw barbarism in the religious doctrine of jihad, and later exported the package to other regions and peoples. According to Hanson, Islamic terrorism reflects the inherent barbarism of the Arab culture that has been universalized in the form of Islam.

From a liberal democratic viewpoint, Hanson's critique of the Middle East, though exaggerated and unfair, has traces of truth.¹⁶

¹⁶ Maxwell O. Chibundu, *For God, For Country, For Universalism: Sovereignty*

Most Islamic and Arab countries have indeed failed to embrace notions of democracy. To fix the democratic deficit and to transform the Islamic world, two distinct approaches are offered. First, the benevolent approach argues that process democracy (holding periodic elections on the basis of universal suffrage) will change the Islamic culture of “religious intolerance, economic backwardness, gender apartheid, muzzled press, militarism, terrorism, etc., etc.” This faith in process democracy as a transformative agent is naive to the extent that it refuses to see the power of culture that can survive diverse forms of government. Second, the imperial approach, the one that Hanson adopts, asserts that the Arab/Islamic culture must be defeated, and not transformed. This is so because Arab/Islamic culture is inherently resistant to democracy. Therefore, the argument goes, process democracy will not work in the Muslim world, since it cannot bring about a fundamental transformation of the culture. Hanson prescribes a decisive battle that completely defeats Islamic resurgence and its militaristic terrorism.

Hanson’s imperial approach recognizes the power of Arab/Islamic culture beyond the democratic process, but he sees this power through an ontological lens, describing it as an inherent source of barbarism and terrorism. Skeptical at heart that Islamic culture can change through peaceful means, and certain that Arabs would continue to use terror as a tool of global harassment, Hanson delivers a tough message to the Islamic world. Few serious scholars would ordinarily employ fighting words, since a scholar’s task is to diagnose problems and prescribe solutions, and not to issue threats of a lethal war. As an activist scholar, however, Hanson sees no wrong in issuing the following ultimatum: “We must remind the Arab Islamic World that we wish to be friends and partners in their painful ordeal of change, but should they either send terrorists against us, or aid such killers for the psychological benefaction of ameliorating envy, we will make war so terrible that they will regret it in ways one cannot imagine.”¹⁷ Note Hanson’s phrases of “painful ordeal of change” and “ameliorating envy.” These phrases carry an ontological view of Arab/Islamic culture that is too stubborn to

as Solidarity in Our Age of Terror, 56 *Florida Law Review* 883 (2004) (arguing that an unreflective mix of blind patriotism and fear of terrorism produces aggressive policies).

¹⁷ Victor Hanson, Response to Readership, available at <www.victorhanson.com> (September, 2004).

change but too envious to be resigned to its own inner truth. If militarily superior Western governments were to take Hanson's thesis seriously, warfare is likely to escalate to a degree not seen before in the Middle East.

From a suppressive viewpoint, the accusation that Arab/Islamic culture generates terrorism seems highly credible, and useful for propaganda purposes. It shifts the focus from concrete grievances of aggrieved populations to their inherent existential/cultural barbarism. It also shifts the focus from the atrocities of suppressive states to their inherent cultural superiority. Hanson, for example, de-emphasizes Israel's cruelty towards occupied Palestinians and emphasizes that Israel is a democratic state with "a free press, open society, gender equality, and a vocal opposition." Hanson de-links terrorism from concrete grievances and ties it to a dubious ontology. It is not Israeli occupation of Palestine that generates terrorism, Hanson would say, but it is the inherent Arab/Islamic culture of Palestinians that forces them toward violence.

Imperial Carnage

Hanson frequently receives SOS calls from the White House and Pentagon. This remarkable political rise of a militant scholar reveals the popular attraction of the idea of clash of civilizations. Trapped in the clash paradigm to a point of no return, Hanson thrives on contradictions that he believes are beyond intellectual repair. He proposes strong militaristic strategies in dealing with Muslim militants. He openly advocates that the US must aggressively support Israel in the Middle East conflict. The West, he argues, must employ its traditional methodology of unrepentant carnage to wipe out Islamic fundamentalists.

In his book *Carnage and Culture*, Hanson offers a formidable theory of Western imperialism. Throughout the centuries, he argues, the West has won because its broader culture has been far more superior to that of its enemies. Leaving aside moral questions from the equation, Hanson's thesis studies the effectiveness of war as a killing machine. "My curiosity is not with Western man's heart of darkness, but with his ability to fight – specifically how his military prowess reflects larger social, economic, political, and cultural practices that themselves seemingly have little to do with war." Alexander defeated the Persians because the Greeks were cultur-

ally superior. Europeans defeated Asians, Africans, and Native Americans not because they were smarter or braver but because of “the singular lethality” of their culture. At Rorke’s Drift, 139 British soldiers held off 4,000 Zulus. “Can we envision the opposite?” When non-Western armies win in the battlefield, Hanson maintains, it is primarily because they successfully adopt “Western war practices” and use “Western weaponry.” The Vietminh defeated the French not with indigenous weapons but with weapons made in the West.

Hanson lists a number of cultural values that produce superior Western armies. In addition to military qualities, such as organization, discipline, morale, initiative, flexibility, and command, Western armies possess superior weapons, and benefit from the marriage of capitalism and finance. Constitutionalism, democracy, democratization of property, freedom of expression, and individualism, all these cultural values add to the lethality of the Western war machine. He does not mention international law as a Western value. Above all, Hanson surmises, the Western way of war is “lethal precisely because it is so amoral – shackled rarely by concerns of ritual, tradition, religion, or ethics, by anything other than military necessity.” This view is incompatible with the modern law of warfare that places considerable constraints on warring parties. Even the doctrine of military necessity is a legal concept and whether destructive force employed by armed forces was legitimate is not an exclusively military decision.

If American armed forces are following Hanson’s imperial model of warfare, many things begin to make theoretical sense in the US war on terror. Per Hanson, the war on terror is (and ought to be) amoral. Its focus is on its lethality rather than the law of warfare. It appears that the US has made every effort to minimize legal constraints on the conduct of war. The US war on terror is not completely lawless since the internal military code continues to be operative and binding. And yet, the US has thrown away many constraints of the laws of war. Even going to war in Iraq, in defiance of the world opinion and without a specific authorization from the UN Security Council, supports Hanson’s thesis of military necessity. The Bush Administration considered it prudent to take out Saddam even if Iraq possessed no weapons of mass destruction. Hanson’s logic might further dictate that Iran’s militant theocracy be dismantled, if need be by force, for such regimes add to, and not subtract from, terrorism directed at the US. If the US is serious about winning the war on terror, Hanson would suggest, the only

logic in the crosshairs be that of military necessity. Any other normative constraints are distractions and could be the causes for failure.

Discarding moral and legal constraints even with respect to *ius in bello* might advance Hanson's thesis of lethality. Extra-judicial killings, torture, civilian casualties, and destruction of towns and cities explain the amoral character of war and, possibly, the inherent immorality of liberal imperialism.¹⁸ Detaining "terrorists" without trial or due process and without benefits of humanitarian laws might highlight the heart of darkness but would be consistent with amoral lethality. Furthermore, the US has opted out of the International Criminal Court and has made bilateral agreements to preempt any prosecution of its soldiers and generals for war crimes and crimes against humanity. These legal maneuvers allow the US armed forces to conduct wars in the realm of amorality, dictated only by military necessity. Legal constraints of human rights, humanitarian laws, and international criminal law diminish the lethality of war.

While Hanson documents the amorality of Western warfare and finds it as its core strength, suppressive war propaganda paints Muslim militants as warriors without values. September 11 attacks are condemned as cowardice, the killing of the innocent, acts of evildoers. This criticism is valid because it incorporates a moral perspective, an ethical judgment. From an amoral viewpoint, September 11 attacks on the twin towers and their dramatic collapse before open eyes of the world were by all standards "a ghastly practice" that Hanson associates with Western warfare. In the Japanese and Islamic ways of war, says Hanson, surprise, sudden attack, and disgrace are designed to force the enemy to the bargaining table. Both warfare traditions, however, lack "the Western desire for continual and sustained shock encounters until one side was victorious or annihilated." Hanson believes that the Japanese attack on the Pearl Harbor was "brilliant" and yet the Japanese failed to bomb the island into submission, a fatal flaw in their theory of lethality. The same can be said about the September 11 attacks. They were isolated acts of "brilliance" but in Hanson's words, "there was no follow-up plan."¹⁹

¹⁸ David Luban, "Liberalism, Torture, and the Ticking Bomb," 91 *Virginia Law Review* 1425 (2005) (liberal ideology of torture amounts to intellectual fraud).

¹⁹ Victor Davis Hanson, *Carnage and Culture* 363 (2001).

Legitimacy of Democratic Terrorism

The most unsettling part of liberal/secular imperialism lies in its claim that liberal democracies use violence in the most legitimate and responsible way. Since in a democracy the decision to use violence is participatory, made in representative chambers by persons whom the people have elected in free elections, the decision is considered inherently lawful and profoundly moral, particularly if it is compared to a similar decision that a dictator makes either alone or with the help of subservient consultants. Riding on this logic, the Israeli violence against Palestinians, the Indian violence against Kashmiris, and the American violence against Muslim militants around the world, all this “democratic violence” is considered excusable, if not legitimate, since Israel, India, and the US are liberal democracies.²⁰ The Russian violence against Chechens might similarly be defended if democracy finds firmer roots in Russia. The most absurd claim of this thesis arose in South Africa where a white exclusivist democracy enforced a brutal apartheid against native black populations. Blacks fighting apartheid were labeled terrorists.

A related thesis of liberal democratic imperialism refuses to accord similar value to similar events of violence. If Muslim militants kill civilians, the act is considered blatantly immoral. If a liberal democracy kills civilians, the act is defended as collateral damage on the presumption that the armed forces of a democracy obey the rules of warfare and therefore when they slaughter civilians, their action is most frequently blameless under the doctrine of military necessity. More broadly, the thesis asserts that even an aggressive use of force by a democracy is morally superior to a similar aggression by others. The two acts are not considered morally equivalent. Thus if Palestinians kill an Israeli leader, the act is branded as completely inexcusable. But if Israeli defense forces assassinate Palestinian leaders, including political and spiritual heads, these acts of state violence are considered legitimate under the self-serving concepts of self-defense and just war.

²⁰ Arunabha Bhoomik, “Democratic Responses to Terrorism,” 33 *Denver Journal of International Law and Policy* 285 (2005) (criticizing the war model as inconsistent with civil liberties and too sweeping in its will to kill).

Muslim communities do not accept the legitimacy of democratic violence. Even international law makes no such distinctions. Under the UN Charter, democracies do not have a preferred right to self-defense, nor do they enjoy any exclusive international right to use proactive or preemptive violence. As a matter of documented reality, it is also inaccurate that democracies are restrained in the use of violence. Nazi Germany was democratic but turned demonic under humiliation imposed by the victors of the First World War. The two great World Wars were essentially European wars between states that had colonized the world under the pretext of imparting civilization. The US invasions of Vietnam, Korea, Panama, Grenada, Nicaragua, Afghanistan, and Iraq, and the use and threats of force against Sudan, Libya, and Iran, all in the past fifty years do not constitute a peaceful resume.

4.3 HOLY IMPERIALISM

An antithesis to liberal/secular imperialism, holy imperialism is an ideology that supposedly disseminates a religion by any means necessary, including violence. Many world religions, including Islam and Christianity, allow proselytizing. Numerous Christian denominations strive to spread the message of their faith to other nations and peoples of the world. Christian missions spend millions of dollars in propagating their religious views. The international law of human rights recognizes the right of individuals “to have or to adopt a religion,” a right which may legitimize missionary work. But when proselytizing is obtained through economic coercion or armed force, the mission acquires the attributes of imperialism. As discussed below, Islam forbids any coerced proselytizing. However, a charge has been made that al Qaeda has openly declared that it considers violence as a lawful means to spread Islamic laws and values. If the charge is correct, al Qaeda is engaging in holy imperialism.

A Letter to America

In November 2002, Osama bin Laden (OBL) issued a letter on the internet in which he explained the reasons for the conflict between

America and the Muslim world.²¹ No credible studies demonstrate whether the letter represents the views of militants or mainstream Muslims. It is also unclear from the letter whether OBL recommends the use of force to achieve all the goals he has laid out in the letter. Some western leaders, perhaps in response to this letter, conclude that al-Qaeda and other Muslim militants strive to forcibly impose their values on the West. After the London underground bombings in 2005, Prime Minister Tony Blair stated: "It's important that those engaged in terrorism realize that our determination to defend our values is greater than their desire to impose extremism on the world." Tony Blair's statement is a perfect example of Western inclination to interpret militant violence as holy imperialism.

In his letter, OBL frames the following two questions: Why are we opposing you? What do we want from you? In answering these questions, OBL lists a number of grievances including American support of Israel, India, and Russia against Muslims fighting for liberation in Palestine, Kashmir, and Chechnya. Thus, OBL presents al Qaeda as a classical supportive entity fighting on behalf of aggrieved populations. This support reaffirms the dynamics of the terror triangle discussed in Part I of this book. OBL sees the US as the super suppressive entity that discounts the primary and secondary grievances of Muslim populations.

In addition to mentioning grievances as the cause of fight, OBL makes two distinct references to value imperialism. One reference charges the US of value imperialism. OBL states that the US has imposed puppet governments in Muslim countries that "act as your agents." Agent or viceroy governments (perhaps a reference to Egypt, Jordan, and Pakistan, though OBL mentions no nation by name in the letter) defend and advance a number of imperial goals. They, under American "supervision, consent and orders," prevent the establishment of Islamic Sharia, thus degrading and compromising Islamic values. They suppress and subdue Muslim groups and political parties that wish to establish Islamic governments and enforce the Sharia. Advocates of the Sharia, charges OBL, are arrested and humiliated. And these imperial agents give away natural resources at "a paltry price." According to OBL, US imperialism

²¹ Full Text: bin Laden's 'letter to America,' *The Guardian/Observer* (November 24, 2002).

is not confined to the degradation of Islamic values; it is also exploitative and predatory.

The removal of viceroy governments that defend and promote US imperial designs, says OBL, “is an obligation on us. And our fight against these governments is not separate from our fight against you.” This statement clarifies that OBL permits the use of force against agent governments as he does against the United States. Al Qaeda’s assassination attempts against Pakistani President Pervez Musharraf are part of the fight to kill “American agents.” President Musharraf’s crackdown on Muslim militants and restrictions placed on madrasahs are perceived to be the doings of an American agent, and not that of an authentic Muslim. The perception, though larger than reality, is far from purely fictitious because the US has put diplomatic pressure on the Musharraf government to reform religious schools and to arrest or even kill Muslim militants who live in Pakistan but support various liberation movements in the Muslim world. The ensuing battle between local authorities and militants causes domestic terrorism. Domestic terrorism in Muslim nations is thus ideologically connected to international terrorism committed against foreign entities. In such cases, violence is perpetrated and justified as obligatory resistance to value imperialism that America is imposing on Muslim communities through its local agents.

The second reference to value imperialism is embodied in OBL’s invitation (D’awa) to Americans to accept Islam. OBL presents the conception of One God and draws attention to the Quran, “which will remain preserved and unchanged, (since) other Divine books and messages have been corrupted.” OBL calls on Americans to completely submit to God’s Laws and discard all contrary opinions, theories, and religions. More specifically, OBL points out a number of US laws and practices that contradict “righteousness, mercy, honor, purity, and piety.” Usury, prohibited under all religions, has become the foundation of American economy and investment. Immorality, says OBL, is being promoted in the guise of personal freedoms. Gambling, intoxicants and drugs are widely promoted. Women are used as trading tools to serve visitors, passengers, and strangers to increase profit margins. The environment has been destroyed with industrial waste and gases. OBL also points out that American values are anchored in duality, hypocrisy, racism, situational morality, and selectivity. “All manners, principles and values have two scales: one for you and one for the others.” To cap

it all, OBL declares, American civilization is “the worst civilization witnessed by the history of mankind.”

OBL is engaging in classical value imperialism. He is simultaneously promoting Islamic values and degrading those of America. As noted above, degradation is an essential part of value imperialism. Degradation is a degree more offensive than critique. Cross-cultural critiques can be the tools of learning, but degradation of cultures and civilizations is often based on unjustified contempt, anger, or frustration. Regardless of motivation, the degradation of an entire value system contributes little to an instructive discourse and the culture so attacked is likely to erect defensive barriers, learning nothing. Even for outsiders who have little stake in the clash, the degradation assault on an entire civilization is nothing more than spiteful vendetta. To this extent, OBL’s value imperialism is ineffective in both its message and methodology.

Outside the hateful realm of imperial degradation, OBL has every right to invite Americans to Islam. Such missionary invitations are protected under international law, Islamic law, and US laws. International law, specifically the universally subscribed International Covenant on Civil and Political Rights, protects the right to freedom of expression, which includes “freedom to seek, receive and impart information and ideas.” Under Islamic law, any invitation to Islam must be gentle, sincere, and non-coercive. The Quran prohibits imposition of Islamic faith on any individual, group, or nation against their will. Furthermore, it requires that invitation to Islam be suffused with wisdom, good manners, and fairness. The invitation is deeply anchored in the inviter’s personal humility, rejecting even the perception of value imperialism, because not even the Prophet was given the power to convert anyone to Islam. The Quran teaches the Prophet non-imperial humility in the following words: “Say ‘It is not in my power to cause you harm or to bring you to the Right Path (Islam).’”²² Islamic law allows missionary invitations but leaves open the options for non-Muslims to embrace or not to embrace Islam.

OBL’s invitation to Islam is protected under US laws as well. Under the First Amendment, OBL’s missionary invitation to Islam poses no legal question. The relaxed interpretation of the First

²² *Quran* 72:21.

Amendment might even protect OBL's methodology of imperialist degradation, since free speech in the US "invites dispute; it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." The government cannot suppress "the expression of an idea simply because society finds the idea itself offensive or disagreeable." In fact, OBL himself would reject many freedoms granted under the First Amendment since speakers and artists are allowed to make fun of prophets, holy books, religious leaders, and missionaries. It is quite ironic that US laws would vigorously protect OBL's value imperialism directed against Americans whereas Islamic law would severely limit his options in content, methodology, manners, and expectations.

Is Violence Part of OBL's Holy Imperialism?

It is unclear whether violence is part of OBL's missionary invitation to Islam. Muslims may invite non-Muslims to accept Islam. OBL has that right too. It is unclear how effective his invitation would be in promoting the faith of Islam since most non-Muslims associate his name and deeds with unlawful violence. OBL's invitation to Islam is part of the "fight" that he says he is engaged in with the Americans. Here, the word "fight" may have only metaphorical meaning in that OBL wishes to engage Americans in a moral discourse that includes discussions about One God, the significance of revelation in human affairs, and the role of traditional morality in shaping cultures and communities. Rational and peaceful "fight" over spiritual and moral issues can indeed be useful in cross-cultural contacts and mutual learning.

If by "fight" he means violence, OBL is charting new territory in the history of Islamic jurisprudence, since it would tantamount to imposing Islamic faith and laws on Americans. In that case, al Qaeda's armed struggle takes on ominous meaning since it would presumably continue until Islam fully prevails in the United States. It is perhaps on the basis of this understanding of OBL's speeches that US terrorism experts have manufactured the concept of essentialist terrorist, who fights not for rectifying worldly injustices and grievances, such as in Chechnya and Palestine, but for the imposition of Islam. As discussed above, any forcible imposition of Islamic faith, laws, and values is contrary to Islam's fundamental teachings. OBL's claim to be an Islamic scholar, qualified to issue decrees (fatwas), is seriously undermined if he has chosen the ways of vio-

lence to impose Islam on Americans. Violence as a tool of conversion is no part of Islamic jurisprudence. According to the Quran, the power to convert anyone to Islam has not been delegated to human beings, including the Prophet. Islam thus repudiates faith-based imperialism.

Satan's Extinction is Not God's Design

OBL finds serious satanic flaws in American culture ranging from the use of intoxicants, the commoditization of women, the fixation with profit and usury, to degradation of the environment. In Islamic theology, Satan plays a central role in confusing and corrupting human beings. Satan is the source of all mischief. Man is innocent and gullible. Satan is devious and clever. According to the Quran, it is the Satan who duped Adam and Eve and caused their eviction from the Paradise. Satan says to God, "My Lord, since You have willed that I go astray, I will surely entice them (human beings) on earth; I will send them all astray."²³ However, according to the Quran, Satan has no influence over those who worship, and believe in, One God. Accordingly, human acts of immorality, injustice, dishonesty, and aggression are perpetrated at the Satan's bidding. Immoral acts flourish in a Godless society. An atheistic culture where such acts are spawned in abundance is the Satan's success story. Seeing from this theological perspective, Muslim militants call the US as the Great Satan for they see nothing else but overt acts of immorality in this country. They rarely hesitate to add that even some Muslim nations are corrupt, woefully dishonest, and unjust.

Suppose that the US is indeed the Great Satan in that it represents everything that the Satan does to corrupt the world. Even this accusation does not warrant the use of violence to mobilize Americans away from the Satan and toward the fold of Islam. The Quran nowhere recommends any aggression against the Satan's representatives. Only three days out of the year have been allocated to throw stones at the Satan, at a designated place located in what is now Saudi Arabia. The stoning ritual, performed during the Hajj, celebrates the biblical story at a site where the Satan

²³ *Quran* 15:39.

appeared to Prophet Abraham, his wife Hegira and son Ishmael. Prophet Abraham and his family each cast seven stones at the Satan. The stoning ritual is confined to the designated site, the stones are small in size, and nothing theological has been derived from this ritual to conclude that Muslims are obligated to “cast stones” at the Satan or the Satan’s representatives.

If God had wanted to construct a pure world without evil, He would have created no Satan. But, according to the Quran, God lets Satan freely entice and corrupt human beings, with or without success, so that good and evil are engaged in constant dialogue and perpetual struggle. The design of creation, according to the Quran, is dialectical. It is neither all good, nor all evil. Creation is an ever changing design suffused with good and evil. Human beings develop moral intelligence to make good choices for their persons and communities. Any individual or community that fails to nurture moral intelligence may fall into the Satan’s trap and make evil choices. Thus, God has created a free world in which human beings may exercise options and choose ways of life, good, bad, or a combination of the two. No Muslim is empowered to tinker with God’s design. A Muslim may personally overcome the Satan’s enticement and live a morally elegant life. But no Muslim has been empowered to slay the Satan. This indeed is a core theme of Islam.

When this core theme is applied to the US, the option of violence as a tool to face the Satan’s chief representative appears to be misguided. In its alleged satanic role, the US may entice Muslims and other believers to leave their faith and embrace spiritually empty freedoms, separation of church and state, and laws that repudiate God’s singular sovereignty. The answer to enticement is not violence but spiritual strength. The US may even entice Muslim governments to shun the teachings of Islam and embrace the secular way of life. Such temptations are part of God’s design. The challenge for Muslims and other believers is to strengthen their communities and show moral resolve to stay the spiritual course. Only if a Muslim community is physically attacked does it have the right of self-defense. Otherwise, any enticement to an immoral life provides no justification for a violent response. Violence is totally prohibited to Islamicize the American way of life. No human being has been empowered to bring any person or community towards God’s path. Peaceful invitation to the fold of Islam, as discussed above, cannot be described as holy imperialism.

Islamic Madrasahs

Much controversy has generated around private Islamic schools, called Madrasahs, located in Pakistan and elsewhere. A common perception has thickened in the West that private Islamic schools are teaching hatred and violence in the guise of jihad. The 2005 bombings of London underground trains revealed that the bombers, though born and raised in the United Kingdom, had visited Islamic schools in Pakistan, further reaffirming the sensational theory that Islamic schools are inherently lethal and even minimal contact with them can turn normal persons into terrorists. Suppressive states, under the leadership of the United States, urge Muslim countries to close down these “schools of hatred” or at least reform them. This unprecedented request that Muslim countries forcibly restructure privately funded schools is a clear evidence of value imperialism. It will be equally unprecedented if Muslim nations request the US for closing down or reforming groups that spread the ideology of white supremacy.

Madrasahs are not a new concept. They have existed, in one form or the other, ever since the dawn of Islam, fifteen hundred years ago. The word madrasah is derived from the Arabic root word “dars” that means lesson or teaching. Since Islam places a very high premium on learning, and offers itself as the anti-thesis to the state of ignorance, dars has been a key educational tool. Over the centuries, dars has been incorporated into distinct institutions, such as the khutba (Friday sermon), the dars-ul-Quran (teaching of the Quran), the maktab (teaching to the illiterate), and majlis (congregation of scholars). Madrasahs are also related to khanaqahs. Khanaqahs were places of learning where Sufis taught the secrets of the Quran, whereas madrasahs have been more rigorous centers of learning where students learned religion but also history, logic, interpretive skills, and other analytical and normative methods to understand the epistemology of Islam in relation to secular subjects. However, since Islam teaches the unity of knowledge, derived from One God, no artificial separations are erected among diverse forms of knowledge. The separation of “church and school,” a communist idea that originated in the Soviet Union to teach scientific atheism, and a secular idea that public schools have been forced to practice in the United States, has no place under traditional Islam. In most Muslim states, private and public schools are required to teach the fundamentals of Islam.

After the Soviet invasion of Afghanistan, the madrasah underwent a significant logistical and conceptual transformation. Logistically, the madrasah was reduced to the maktab devoted to offering literacy and basic education to sons and daughters of millions of Afghan refugees stationed in Pakistan. Due to lack of funding and other resources, the intellectual rigor of the historic madrasah was no longer affordable. Whereas the historic madrasah was a place of comprehensive learning for all Muslims, the new madrasah came to be associated with minimal education for the indigent and the homeless. Additionally, the new madrasah was also conceptually transformed. In addition to teaching literacy and the fundamentals of Islam, it was geared towards inculcating a spirit of fighting the Soviet occupiers, a spirit that the Quran furnishes with irresistible power when there is a genuine need for jihad. All outside powers, including the United States, ought to have been aware of the contribution of madrasahs in the resistance movement against the Soviet Union.

Although the Soviet Union withdrew from Afghanistan, the madrasahs continued to function within the framework of minimal education and maximal spirit of jihad. The unresolved refugee problem continued to demand such schools. The rise of the Taliban, trained in madrasahs, further legitimized and ennobled the existence of these schools. Funding infrastructure and jobs created and services provided, all maintained a steady momentum for the survival of the new madrasah. Even global geopolitical context gave no clues that madrasahs should be closed down or ideologically modified. If anything, there was every need to prepare Muslim warriors to liberate Muslim populations from occupation, alien domination, domestic tyranny, and value imperialism.

After defeating the Soviets, therefore, Muslim militants as well as madrasahs turned their attention to other Muslim lands under occupation and found that the ideology of fighting for liberation was still needed. However, the new suppressive state was the yesterday's supportive state, the United States. Even though the US had not occupied any Muslim lands, its support of Israeli occupation of Palestine was blatant. The disappearance of the Soviet Union from the superpower scene further highlighted the significance of the US as the principal suppressive state. The US troops stationed in Saudi Arabia came to be equated with near-occupation. The first Gulf War and economic sanctions against Iraq added fuel to the fire, consolidating the perception that the US treats the Muslim

world as its new enemy. The placing of Iran, Syria, and Sudan on the US list of terrorist states was further evidence that the US foreign policy is thoroughly anti-Islamic. Thus in 1990s, Muslim militants around the world were ready to take on the US as their principal target.

The madrasahs that have so effectively served US policies in the past were now seen as the source of terror. After 9/11 attacks, the US demand for their closure was loud and clear. The Pakistani government was prepared to do its part in curbing extremism, but it was almost impossible to close down more than half a million madrasahs. Logistical barriers were formidable. Many million children attending these schools will have nowhere to go. Many jobs would be lost and the poor children occupying the streets would be no less dangerous. More important, no government could close down Islamic schools in a Muslim country, on the bidding of a foreign power, since that would unleash the people's wrath.

Furthermore, the teaching of jihad can be initiated more easily than it can be halted. As a Quran's concept, jihad is part of Islamic faith. Active recruitment for jihad, however, depends on actual need. There is no reason to prepare a huge army if there is no war. But if Muslim communities face military threats, most religious groups would fiercely resist any government ban on teaching jihad. In August 2005, Pakistan's government under pressure from the US issued a presidential ordinance requiring that all madrasahs be registered and that they submit their yearly income and expenditure accounts for governmental scrutiny. This financial accountability is sought to assure that no funds are transferred to militants. Most important, the ordinance demands that no madrasah "teach or publish any literature which promotes militancy or spreads sectarianism or religious hatred." However, the religious alliance of political parties that operate most madrasahs has refused to comply with the ordinance, arguing that they would accept no government restrictions on syllabus.

Intrusive policies toward madrasahs infuriate Muslim militants. It is unclear why some militants target Western nightclubs and discotheques. Muslim militants mistakenly believe that recreational places represent the Western culture. In one sense, bombing discotheques and nightclubs seems nonsensical because these places have little connection with the phenomenon of terrorism. In another sense, discotheque is the counterpart of madrasah. If the West is determined to forcibly close down religious schools, militants are

determined to destroy what they call places of sin. This tit for tat violence adds further complexity to the dynamics of terrorism.

Beyond Value Imperialism

The controversy over Islamic madrasahs raises a key international legal question. May a nation teach hatred to its children? The emerging human rights movement for children strongly prohibits any such brainwashing. The Convention on the Rights of the Child, a treaty that every nation except the United States has signed, provides guidelines. In its preamble, the Convention recognizes that a full and harmonious development of the child's personality needs a nurturing environment filled with "love and understanding." The preamble further requires that the child be brought up in the spirit of the ideals such as "peace, dignity, tolerance, freedom, equality and solidarity." In its substantive text, the Convention draws a balance between international ideals and national customs and religion. The child should be brought up with a strong sense of community "with other members of his or her group" so that the child may enjoy his or her own culture, to profess and practice his or own religion."

Applying the Convention principles to Islamic madrasahs, Muslim countries are under treaty obligation to raise children who appreciate the values of peace and tolerance. Muslim children must not be taught to hate non-Muslims, nor must they be taught that violence is permissible against other religious groups who do not profess the faith of Islam. Any such teachings are also contrary to the Basic Code (Quran and Sunna). The demand of the international community that madrasahs be supervised to assure that no hateful teaching is taking place cannot be dismissed as value imperialism. Families, communities, nations, and the international community, each has a right to hold educational institutions accountable for what they teach to children.

Non-Muslim countries also have an obligation not to teach their children to hate Muslims or Islam. American children, for example, must be protected from stereotypes about Islam and Muslims. They must also be brought up in the same spirit of ideals proposed for Muslim children. Nations in conflict with Muslim militants, including the US, Russia, India, and Israel, cannot use terrorism as an excuse to malign Islam or to paint an unreal picture of

Muslims or even Muslim militants. Proactive measures must be taken to shield children from prejudice and violence-prone bigotry. The next chapter examines the concept of the essentialist terrorist that has been created to persuade the people, including children, that something is inherently wrong with the faith of Islam, and that the Muslim militant is the product of an essentially violent faith.

Chapter 5

Phenomenology of Jihad

The Basic Code, consisting of the Quran and Prophet's Sunna, strongly disapproves a do-nothing, fatalistic approach to oppression. Stoic indifference to a state of servitude, occupation, tyranny, religious persecution, or any such wrong is not part of the Islamic way of life. Oppression is not God's Will. And acquiescence to oppression is not God's Way. Therefore, Muslims are obligated to find appropriate, and possibly peaceful, solutions to end persecution. This obligation to vacate the oppression of man against man is placed on individuals, families, communities, and nations. Prayers are helpful, but they alone are insufficient to lift the siege of oppression because God mandates Muslims to use self-help. In emphasizing the principle of self-help, the Quran states in candid terms: "God does not change the state of a people unless they themselves change."¹ Self-help, however, should not be equated with criminality or limited to violence. It includes peaceful resolution of disputes.

Islam is not a religion of compulsive warriors predisposed to resolve their conflicts only through the use of force.² Nor do teachings of the Quran allure Muslims to shun peaceful means of dispute

¹ *Quran* 13:11.

² Ahmed Z. Yamani, "Humanitarian International Law in Islam: A General Outlook," 7 *Michigan Year Book of International Legal Studies* 189 (1985) (claiming that Islam humanized the Grec-Roman brutality of war and transmitted this humanization to the Western world).

resolution and adopt violence. Muslims have no a priori, ontological commitment to violence. Islam is a religion of peace and teaches its followers to “show forgiveness”³ and “not to be cruel and hard-hearted.”⁴ Nonetheless, Islam is not a utopian ideology or a set of ideals that are easy to cherish but difficult to follow. Islam is a functional religion rooted in human reality. Accordingly, Islam guides its followers to deal with real situations in a practical manner. By allowing combat as an alternative under specific circumstances, Islam recognizes the phenomenon of brute force that some groups and nations use to take advantage of the powerless and impose harsh conditions on the helpless. Against such groups and nations, Islam does not teach non-violence or stoic tolerance. In fact, the language of the Quran acquires a stern tone: “And slay them wherever you catch them, and turn them out from where they have turned you out; for tumult and oppression are worse than slaughter.”⁵ The Quran’s preference for slaughter over oppression is rooted in the moral imperative that the phenomenon of brute force must be resisted and fought “without losing heart or falling into despair”⁶ until justice prevails and the oppression is vacated.

The Basic Code offers two basic approaches to dealing with existential danger, fight and flight – that is – *jihad* and *hijrah*. Offering yourself or your family or your community as a feast to the predator is not an acceptable Islamic option, nor is it always wise to engage in an armed fight with the enemy. In exercising the option between *jihad* and *hijra*, Muslim individuals, families, and communities may assess the strength of the enemy, their own resources, logistics, geography, long-term consequences, and the size of the population under persecution. They also may assess whether the persecution is religious, social, economic, ethnic, or comprehensive, and whether it is temporary or likely to be permanent. Decoding the intentions of the enemy is as important as devising a strategy to defeat oppression. After carefully considering all the relevant factors, Muslims choose a course of action. Sometimes, fighting is inevitable. At other times, migration is a better option.

³ *Quran* 7:199.

⁴ *Quran* 3:159.

⁵ *Quran* 2:191.

⁶ *Quran* 3:139.

5.1 ISLAMIC LAW OF HIJRA

Migration is a fundamental dynamic of Islamic history. The first Islamic state was founded after migration, called *hijrah*. In 622, the year of *hijrah*, the year that officially begins the Islamic calendar, Prophet Muhammad and his followers were forced to leave the city of Mecca, which had become a place of persecution and religious intolerance. In search of peace and freedom, Muslims moved to Medina, establishing migration as a principle of survival. The Medina Constitution, a social contract among Muslims, Jews, and pagans, drafted and signed in 622, launched the new state built on religious freedom for all. The remarkable features of the Medina Constitution repudiate the notion of the nation-state built on the exclusivity of tribe, faith, language, ethnicity, or any such criterion. All these identities are important and should not be rejected, disrespected, or forced to extinction. Any model of forced assimilation is contrary to the Islamic principle of diversity. The 622 Medina state was a multi-ethnic and multi-religious legal order in which the distinction between the native and the immigrant was also rejected, thus expanding the concept of Islamic citizenship. This remarkable first Islamic constitution established Free State, a concept that I have presented in *The Extinction of Nation-States*. Free State repudiates barriers to One Earth.

The Quran's flight principle is given in an exchange between angels and the oppressed at the time of the latter's death. The angels ask the oppressed about their lives, to which the oppressed reply, "We were weak and oppressed on earth." The angels say, "Was not the earth of Allah spacious enough for you to emigrate therein?"⁷ This verse captures the plight of a people who did nothing but passively suffered their existential condition of servitude and tyranny. They did not migrate. The lesson to be drawn from this prescription is that fleeing from an atrocious condition is a solution that Muslims must consider. In fact, the tone of the commandment is not simply permissive or suggestive, but mandatory. Muslims are obligated to migrate – to leave oppressive cities, towns, and countries and move to safer places. The flight principle is not a principle of convenience but one of affirmative obligation. Just

⁷ Quran 4:97.

like jihad, hijra is mandatory, particularly if the persecuted are being forced to abandon their faith. "To those who leave their homes in the cause of Allah, after suffering oppression, we will assuredly give a goodly home in this world; but truly the reward of the Hereafter will be greater if they only realized (this)!"⁸ And the people who refuse to exercise the option of *hijrah*, even though they have the opportunity and the means to do so, "will find their abode in Hell."⁹ The Quran's commandment of migration, however, is not without exceptions. While migration to alleviate a life of misery and forced conversion to another religion is mandatory for those who have the means, the Quran places no such obligation on "the weak ones among men, women and children who cannot devise a plan, nor are they able to direct their way."¹⁰ (4:98). Under the doctrine of necessity, the weak and the helpless may find other appropriate solutions to repel aggression and religious persecution.

Obligatory and Permissive Migration

While the Quran prescribes mandatory migration, the Sunna explains the concept of permissive migration. An authentic Hadith, the truth of which is fully established in Islamic sources, states diverse reasons for which Muslims migrate to foreign lands and countries. The second caliph, Ummar, heard Prophet Muhammad say:

Actions are but by intention and every man shall have but that which he intended. Thus he whose migration (*hijrah*) was for Allah and His Messenger, and he whose migration was to achieve some worldly benefit or to take some woman in marriage, his migration was for that which he migrated.¹¹

In addition to introducing the importance of intentions behind acts, the Hadith explains that Muslims may lawfully migrate from one place to another for various reasons. Many Muslims have migrated to the United States in order to provide a better standard of living for themselves and their families. Other Muslims, men and women, migrate to join their spouses. Some migrate to

⁸ *Quran* 16:42.

⁹ *Quran* 4:97.

¹⁰ *Quran* 4:98.

¹¹ *Al-Bukhari* 3:706.

disseminate the teachings of Islam (*d'awa*). The Hadith does not prohibit economic or marital migration. It simply offers migration as an example to teach the significance of intentions that generate acts.

The concept of migration mentioned in the Hadith must be distinguished from the one embodied in the Quran. Economic or marital migrations are primary examples of permissive, but not obligatory, *hijrah*. No Muslim is under any obligation to seek a foreign spouse or migrate to another country to achieve a more affluent life. But there is no harm if he or she does so.¹² And such migration might even be a preferred option if it improves the family's standard of living. Even marital migration is a preferred course of action if the alternative is to live without a spouse. Despite these advantages, such migrations are not mandated. Even migration for the sake of *d'awa* does not appear to be obligatory, though it will be an act of great service to the cause of Islam. Muslims are obligated to take care of their families, and any *d'awa* migration that distresses the family or places them in difficulty is beyond the call of duty.

These permissive migrations are not the same as the obligatory migration that the Quran commands in the context of oppression. If a Muslim individual or family faces oppression, and if they have the means to leave the place of oppression, then migration is mandatory. It might even be a preferred course if the only other alternative is to engage in *qital* – fighting and killing. In the face of oppression, *qital/jihad* is not an automatic response, nor is it a preferred response in each and every case of oppression. If oppressors are militarily strong, migration is a safer solution to avoid persecution. The Prophet migrated to Medina because at that time the enemies of Islam were much more powerful than Muslims, and a decision to resort to *jihad* would have been extremely harmful to the long-term interests of the Muslim community. The choice between *jihad* and *hijrah* is one based on common sense and strategy, informed by a full awareness of relative outcomes. That is why the Quran does not mandate migration for weak members of the Muslim community, because in their case, the loss from migration might exceed that of living under oppression and finding other means to alleviate the situation.

¹² Muslims, however, are ordinarily reluctant to migrate to a non-Muslim country where they are likely to lose their faith.

Hijrah Not Mandatory for Large Populations

While Muslims should prefer hijrah over jihad to avoid unnecessary bloodshed, the option of hijrah is not always available, nor would it be the right of course of action in certain situations. For example, the Palestinians living in Israel and the occupied territories may opt for hijrah and migrate en masse to other countries, leaving the entire land for Israelis. Those who dream of building a greater and purer Jewish Israel would welcome the prospect of Palestinians voluntarily leaving the land. Thus, hijrah is a possible solution to the Israeli/Palestinian conflict. Similarly, Russia would not mind if Chechens were to migrate to Muslim countries and leave the resourceful land for the Russians. India would also raise no objections if Kashmiri Muslims were to migrate to Pakistan. In all of these cases, migration is a possible solution to local and regional conflicts. Yet, Islamic law does not make it mandatory for these large populations under occupation and persecution to choose hijrah as the solution to their problems.

It appears that hijrah is a temporary, micro-solution to problems of persecution. Hijrah is a mandatory option only when the persecuted group is small in size. It is not applicable to large populations. In other words, the Quran does not mandate that an entire population migrate to avoid persecution. For any such rule will be exploited by persecutors and occupiers. It also appears that the hijrah is a temporary solution. Muslim refugees are entitled to return to their homeland, just as the Prophet and his followers returned to Mecca when they had accumulated the means to fight and overcome the persecutors. Mandatory *hijrah*, therefore, does not require an entire population to migrate to another place, nor does it require permanent migration, nor does it mandate a permanent relinquishing of all rights to the land or other properties left behind.

Hijrah Distinguished from Forced Exile

Mandatory migration must not be confused with forced exile, though the two might merge under some circumstances. Mandatory migration is a Quranic concept under which individuals and groups, fearing persecution, are required to migrate to a safer place even though persecuting authorities have not asked them to leave. By contrast, forced exile occurs when the authorities in control of an area put legal or de facto pressure on targeted inhabitants to leave their

homes and businesses. One could argue that persecution and threats to life and property constitute pressure that forces inhabitants to leave, even though the authorities have made no such overt demand. Likewise, individuals and groups who choose to leave an area of persecution are in fact forced to do so if the fear or fact of persecution leave no other meaningful options. In view of these merging realities, it should not be assumed that if Muslims opt to leave under intense pressure of persecution, that the persecuting authorities are blameless. The Quran provides a way out of persecution for the victims; it does not condone oppressors' acts and decisions of deportations, forced exile or transfer of populations.

Hijrah Compatible with International Law

From facts constituting the Prophet's hijrah and the law embodied in the Basic Code, hijrah emerges as a principle of compulsion and necessity, a concept similar to that of refugees. The international law of refugees binds states not to return persons who have fled their countries in legitimate fear of persecution. In this sense, the Medina constitution was a forerunner of the law of refugees. If no such protection exists in law, persecuted groups will have no option but to perish or accept some fundamental change in their lives. For example, if a certain group is being persecuted for practicing a certain religion, the group faces physical and spiritual extermination. The law of migration allows the persecuted group to leave the hostile land, and it obligates communities to open their doors and provide shelter to the refugees. A successful application of the law would preserve the group's physical and spiritual survival. In this sense, the protection of refugees is a fundamental critique of the nation-state. For if state borders were truly sovereign, the persecuted group would perish behind the curtain of sovereignty because no state would be obligated to lift the curtain and admit refugees.

The concept of Islamic hijrah is fully compatible with the emerging international law of human rights. For example, states are prohibited from forcing a population to leave a country so that their homes and businesses may be granted to another population. Under the Rome Statute, which establishes the International Criminal Court, an act of forcible transfer of population when committed as part of a widespread or systematic attack directed against any civilian population is a crime against humanity. In armed conflicts,

mass forcible transfers of populations are war crimes. The Fourth Geneva Convention, Relative to the Protection of Civilian Persons in Time of War, prohibits any individual or mass forcible transfers from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not. No motive can ever justify such transfers. The Universal Declaration of Human Rights grants individuals the right to seek asylum in other countries from persecution. But it also recognizes the right of these individuals to return to their home countries. In addition, the Declaration protects the property rights of all individuals, including refugees. Regional human rights treaties, such as the European Convention on Human Rights, ban the collective expulsion of aliens.¹³

5.2 FORMS OF JIHAD

Jihad, including the use of force in the cause of Allah, is an integral part of Islamic faith. Ever since the inception of Islam, about fourteen hundred years ago, Muslims have engaged in jihad to defend themselves against external aggression, to overthrow internal tyrants, to re-conquer lost lands, and to restore fundamental Islamic values ignored or set aside under secular regimes.¹⁴ The rapid expansion of Islam in the early period; the ensuing triumph over ancient civilizations such as Egypt, Mesopotamia, Persia and India; and the establishment of Muslim dynasties and empires in many regions of the world came about in part because Muslims were willing to use force, when inevitable, to defend their core objectives. Inspired by the example of Prophet Mohammad, who himself provided military leadership in armed expedition, Muslims understand the reality of force in human affairs. Generally, Muslims are a peaceful and forgiving people. However, they are prepared to die and to kill if their Islamic way of life is in extreme jeopardy. This militancy is a unique element in the realm of spirituality, which distinguishes Islam from the more pacifist religions of the world.¹⁵ The Quran states that “Allah has granted a grade higher

¹³ Protocol No. 4.

¹⁴ Shaheen Sardar Ali & Javaid Rehman, “The Concept of Jihad in Islamic International Law,” 10 *Journal of Conflict and Security Law* 321 (2005).

¹⁵ *Quran* 2:216 (fighting is obligatory).

to those who strive and fight with their goods and persons than to those who sit at home.”¹⁶ Accordingly, Muslims are continually obligated to spend their resources for good causes. But when a Muslim community is oppressed, occupied or subjugated, they are even more obligated to “fight with their goods and persons,” forging a fearless, non-submissive, militant resistance.

Peaceful Jihad

Peaceful jihad is the struggle for the cause of God, without resorting to violence. Conducted through peaceful means, the spiritual jihad is a primary Islamic duty as are the daily prayers and fasting.¹⁷ Accordingly, Muslim men and women are under a “legal” obligation to engage in jihad. It is important to bear in mind that Islamic jurisprudence does not adopt the positivist distinction between law and morality, often made in secular legal systems, by which the state has the exclusive authority to make and enforce laws even if they are incompatible with the norms of a generally shared morality. In Islam, injunctions of the Quran constitute law, placing a direct obligation on Muslims to behave accordingly; no state has any authority to repeal or modify the laws of the Quran. Some Islamic countries have formally adopted the Quran as the most superior source of legal norms and any legislation incompatible with the principles of the Quran is void *ab initio*. A few Muslim countries, however, contain the principle of secularism in their constitutions, and consequently the laws of the Quran are not enforced through the state system. In such countries, Islamic groups challenge the existing state institutions and demand that the legal system be subjected to the supremacy of the Quran. Invoking the label of Islamic Fundamentalism, secular governments reject these demands and sometimes suppress the groups. Although Islamic Fundamentalism is a controversial and fluid concept, its legal implication is clear: it requires that the Quran be the ultimate source of legal norms in every Muslim community. But even when a state refuses to formally incorporate the supremacy of the Quran in its

¹⁶ *Quran* 4:95.

¹⁷ ABUL A'LA MAUDUDI, TOWARDS UNDERSTANDING ISLAM 141 (1980).

legal system, many Muslims in that state continue to draw their inspiration directly from the text of the Quran and believe that they are obligated by its norms. Thus, the concept of jihad is a legal doctrine for millions of Muslims who elevate the obligations of the Quran to the highest status of law.

Conceptually, the spiritual jihad is a ceaseless effort to guide human civilization to “the straight path.”¹⁸ It is based on a fundamental presumption that the ultimate objective of human advancement is for the individual to become a spiritually free human being who submits to no one but God. At the individual level, the spiritual jihad begins with introspection and cleansing of the self. Only after the individual has mastered the self and overcome the forces of greed, impatience, revenge and deliberate falsehood can he or she embark upon the course of living a spiritually meaningful life. Being a practical religion, however, Islam does not encourage Muslims to renounce the world or embrace poverty – a materially enriched life is compatible with the Islamic faith. Islam proposes a middle path, striking a balance between worldly pursuits and spiritual freedom. A total devotion to God by discarding responsibilities towards the family and the community is not the purpose of spiritual jihad, because asceticism torn off from all communal obligations is not a preferred way of life.

At the community level, Muslim men and women work towards establishing and maintaining a just socioeconomic system conducive to maximum spiritual freedom for all including non-Muslims. The Quran mandates that Islamic society be a “community justly balanced.”¹⁹ Accordingly, the spiritual jihad seeks to establish equilibrium between the material and the spiritual needs of the people. A justly-balanced community constructs efficient and reliable institutions to provide basic necessities of life for all. The spiritual jihad generates a cooperative and compassionate moral psychology rooted in the teachings of the Quran.

Spiritual jihad shuns all forms of violence and instead conducts a peaceful struggle, without causing physical harm to anyone’s life or property. Its aim is to spread the good values of Islam and to challenge unjust civilizations by offering the concept of a justly-balanced community in which the material and the spiritual, the individual and the family, and the family and the community, are

¹⁸ *Quran* 1:7.

¹⁹ *Quran* 2:143.

all poised in harmony. Due to its unique and difficult nature, spiritual jihad is a significant form of jihad. It requires Muslim men and women to offer their material and personal resources, as specified in the Quran. But the use of such resources in the service of spiritual jihad involves creativity, strategy, and an unremitting faith to provide an example to non-Muslims that the Islamic character and its way of life are most conducive to achieving a balanced human evolution. Therefore, *qital* (armed fighting) should never be confused with spiritual jihad; offering life and property in *qital* is not the same thing as the contribution of these resources in waging an effective spiritual jihad.

Financial Jihad

The Quran commands: “Go forth, lightly or heavily (equipped), and engage in jihad with your property and your beings in the Cause of God. That is best for you if you but knew.”²⁰ This mandate addresses all Muslims and solicits varying contributions from them according to what they can afford. Two fundamental contributions are mentioned with great clarity: physical jihad and financial jihad. And the two contributions are by no means exclusive of each other. A Muslim can offer both, just as many companions of the Prophet engaged in jihad with their physical and financial assets. Financial jihad places no obligation on the poor who themselves are entitled to receive help. The obligation of financial jihad is placed on wealthy and middle class Muslims. There is no fixed formula for financial contribution, as Muslims donate for jihad causes according to need and their own capability.²¹ “Go lightly or heavily armed” is the part of the command that makes it clear that the jihad obligation is not equal but equitable. You give from what you have, and you give for jihad in the context of many other obligations that coexist. A Muslim, for example, is obligated to pay *zakat*; he is obligated to take care of his family; and he is obligated to help the needy and feed the

²⁰ Quran 9:41.

²¹ The Islamic law of wills places quantity constraints on the power of the testator to donate his or her property to charitable causes. For example, the law prohibits a testator with children to donate more than 1/3 of his or her net estate to charity. The Prophet said: “One-third (for charity) is sufficient, though one-third is too much also.” Al-Bukhari 4:7.

hungry. All of these obligations require financial resources. However, these obligations do not rest on the same legal footing. *Zakat* is obligatory in both a moral and a legal sense. Other financial obligations, including the one for jihad, are moral and spiritual, but not legal.

The concept of financial jihad must be placed in the larger Quranic framework of spending. The Quran repeatedly instructs Muslims to spend from what God has given them. The Quran's opening lines (Sura 2) identify the qualities of persons, men and women, who will benefit the most from its teachings. One essential quality of victorious Muslims is that they "spend out of what has been provided to them."²² This emphasis on spending is the antithesis of hoarding that the Quran condemns with no equivocation. They vie each other in hoarding, says the Quran, until they visit the graves. Islam's spending doctrine, of course, does not promote indulgence or foolish wasting of resources, because any abuse or misuse of resources is utter ingratitude, a behavior prohibited under Islam. Islamic spending is not blind or frivolous consumerism. Instead, the Quran promotes spending on good causes that serve family, enhance social welfare, and support liberation from slavery, difficulty, occupation, domination, and hegemony. Instructions against hoarding highlight the fact that funds lying under the carpet are dead money. Instructions for spending underscore the benefit that accrues when money circulates in the arteries of a dynamic and fruitful economy.²³

The doctrine of spending, including financial jihad, is not just a worldly doctrine to boost an economy or achieve freedom from an oppressive enemy. Its mainstay is spiritual self-development. Two Quranic words most associated with spending are *zakat* and *sadaqa*. Whereas *zakat* is an obligatory yearly tax, *sadaqa* is voluntary giving throughout the year. Whereas *zakat* is measured in terms of monetary value, *sadaqa* is a more flexible charity that includes giving money but is not confined to it. Rendering useful services and even good manners, such as a friendly smile, are manifestations of *sadaqa*. Both *zakat* and *sadaqa* are the lawful means of spending in God's way. Both forms of giving are retail in nature. Each Muslim

²² Quran 2:3.

²³ This spending doctrine read with the Quran's concept of *tijara* (contract freedom of business transactions) further strengthens the flow of money and the consequent prosperity.

gives something. No one is just the taker. Even beggars who receive *sadaqa* return the favor by wishing you well. And wishing someone well is *sadaqa*.

The etymology of *zakat* and *sadaqa* reveals their spiritual rooting. The word *zakat* is derived from *zakd*, which means both growth and purification. By giving *zakat*, Muslims purify their savings. And giving *zakat* does not diminish the value of property, but helps it grow. Paying *zakat*, therefore, is an antecedent condition for spiritual health and economic prosperity. The word *sadaqa* is derived from *sidq*, which means truth. *Sadaqa* as a concept is an inexhaustible reservoir of resources, for God is *sadiq*. *Sadaqa* as a practice is sharing one's resources with others and includes voluntary gifts. It is not merely help extended to others. It is also self-help. It benefits the giver as much as it benefits the receiver of *sadaqa*. Muslims in touch with the teachings of the Quran sincerely believe that *sadaqa* is essential for living a morally intelligent life. A life without sharing one's resources for good causes is stagnant and dirty. And a person who hoards property without giving *sadaqa* crosses the boundaries of healthy materialism, becomes warped, and loses touch with the truth.

It is in this spiritual context that financial jihad is related to *zakat* and *sadaqa*. All three are tied together with the same rope. At one level, monetary contribution towards a lawful jihad is a sure help to others. At another level, such contributions help the giver. If a Muslim community is under occupation, apartheid, hegemony, or alien domination, financial jihad obligates Muslims across the world to share the cost of liberation. Furthermore, Muslims around the world cannot in good conscience just sit and do nothing to eliminate the injustice. The Islamic way of life is neither stoic, nor selfish self-protection. It is permanently communitarian. As such, Muslims who live far away from the theatre of injustice would still feel obligated – an obligation arising from the deep spiritual structure of being a Muslim – to send food and medicine to the community under distress, and if need be, guns to the warriors who are engaged in military jihad with an unrelenting enemy.

Military Jihad

Arising from the colonial subjugation, the Islamic world has entered into a new era of self-assertion. In the past few decades, many

nation-states with predominantly Muslim populations have gained independence. Several such states achieved freedom by waging a successful armed struggle against the colonial ruler. The most heroic war against foreign occupation occurred in Afghanistan where the *Mujahedeen* launched a protracted campaign against the Soviet forces. In many parts of the world, Muslim communities still live under foreign occupation and oppression. In accordance with the Quranic injunction that mandates fighting “until there is no more tumult or oppression and until justice prevails,”²⁴ diverse groups and organizations have sprung to wage an armed struggle against the oppressor. The ethnic cleansing of Muslims in Bosnia including the forced starvation of incarcerated men, the organized rape of women and the random massacre of children, reinforces the Islamic belief that the oppressor shall trample over the powerless. The Quran therefore places an affirmative duty on every Muslim to be always prepared to fight for “men, women, and children whose cry is: ‘Our Lord! Rescue us from this (ruthless) town.’”²⁵

In Islam, the use of force is not the exclusive or even the primary means for attaining legitimate Islamic objectives. In fact, the military jihad is allowed only when the peaceful means of vacating oppression are unavailable or have failed. Islamic jurisprudence makes a functional distinction between “jihad” and “*qital*.”²⁶ Both words are found in the Quran and Hadith, and they are not synonymous. The word “jihad” means exertion or striving, and the word “*qital*” means fighting or killing. The Quran uses the word “jihad” to signify moral, intellectual and material activism in the name of Allah. Drawing a distinction between jihad (action) and *quud* (inaction), the Quran assigns the word jihad to the activity of believers who spend their material and personal resources in the cause of Allah. Accordingly, jihad is an existential struggle that each and every Muslim is duty bound to undertake for performing and promoting goodness.²⁷

²⁴ Quran 2:193.

²⁵ Quran 4:75.

²⁶ Abdulaziz A. Sachedina, *The Development of Jihad in Islamic Revelation and History*, in *ISLAM IN CROSS, CRESCENT, AND SWORD* 35, at 37 (James Turner Johnson & John Kelsay eds., 1990).

²⁷ *Ahkam al-Bughat* contains the rules regulating the treatment of religious and political dissidents who rebel against the Imam of the Islamic state. Khaled Abou El Fadl, *Ahkam al-Bughat: Irregular Warfare and the Law of Rebellion*, in *ISLAM IN CROSS, CRESCENT, AND SWORD* (James Turner Johnson & John Kelsay eds., 1990). The law of internal rebellion may be further distinguished from ordinary

In contrast to jihad waged with material and intellectual resources, *qital* is physical, as it requires killing and dying. The Quran not only allows but mandates *qital*, though under exceptionally oppressive circumstances, called *zulm*. The most legitimate use of *qital* is to fight a ruthless oppressor who unleashes *zulm* (oppression) on a Muslim city, nation or community. The Quran's injunction is clear: "Any why should you not engage in *qital* in the cause of Allah and of those who, being weak, are subjected to *zulm* – Men, women and children whose cry is – Our Lord! Rescue us from this town whose people are oppressors."²⁸ This Quranic verse captures a scenario under which a genocidal oppressor is determined to assault, rape, torture, mutilate and kill Muslim men, women and children; evict them from their houses; cut their supplies of food, medicine and drinking water; and prevent their access to schools and mosques.

Under such an extreme form of oppression, the Quran mandates *qital* on the theory that *zulm* is a greater evil.²⁹ Balancing competing values is the core logic of reasoning used in the Quran. For example, the Quran prohibits gambling on the theory that there is more loss than gain in this activity.³⁰ On the basis of similar reasoning, the Quran allows *qital* to fight *zulm* if the material and spiritual loss under *zulm* is greater than the loss suffered through *qital*. Thus *qital* is permissible when the *zulm* is unbearable and the *qital* is the only option to undo the suffering of the Islamic community.

According to the Quran, Muslims have a binding covenant with Allah to fight against the extreme forms of injustice, a covenant under which "they kill others and are killed."³¹ The covenant of *qital* is not limited to killing. It also imposes a duty on Muslims not to be afraid of dying. In addition to promising paradise to Muslims killed in *qital*, the Quran immortalizes them: "Do not say that those who are slain in the cause of Allah are dead; they are alive, although you are not aware of them."³² For skeptics who doubt the usefulness of the covenant of *qital*, the Quran's message

criminal activity. The law of rebellion applies to a *baghi* (rebel) who commits a *Khuruj* (an act of rebellion) with a *ta'wil* (reason) while enjoying *shauka* (power). *Id.* at 155. A rebel is treated as an ordinary criminal if he lacks a reason or power. *Id.*

²⁸ Quran 4:75.

²⁹ Quran 2:217 (*Fitna* is greater than *qital*).

³⁰ Quran 2:219.

³¹ Quran 9:111.

³² Quran 2:154.

is clear: “*Qital* is prescribed to you, even if you dislike it.”³³ Hence, the covenant of *qital* is not reserved for those who are naturally inclined to fight or kill. It imposes a duty on every able-bodied Muslim to die and to kill under exceptional circumstances of *zulm*.³⁴ Even women are allowed to join the battlefield, assuring food supplies and taking care of the wounded.³⁵

Although the covenant of *qital* is binding on all Muslims, it does not allow unrestricted personal brutality, nor does it mean that each Muslim is free to adopt violence at will.³⁶ Under the covenant, the decision to kill or die cannot be an arbitrary, revenge-based, emotional decision. *Qital* is a rational choice that only the Imam, the leader of the Muslim community, is authorized to make. Though the Imam exercises the formal power of making such a decision, even he must not order *qital* without careful deliberation. Under the *shura* (consultation) principle – a principle at the heart of Islamic life that demands consultation for any and all important decisions affecting the community – the Imam must consult with his advisers about the logistic and strategic ends of *qital*. After due consultation, if the Imam orders *qital*, Muslims are then under a legal obligation to carry out the Imam’s orders. Of course, Muslims may disobey the orders if they violate clear rules of the Quran.³⁷

The means and methods of *qital* are neither rigid, nor lawless, nor historically determined. They are deliberate, rational and always rooted in Islamic values. Of course, the best way to fight is to fight well and fearlessly. Open battle, ambush, and guerilla fighting, are all compatible with the notion of *qital*. The means and methods of *qital* reflect the needs of the time, the size and power of the enemy, and the logistical situation on the ground. In all cases, however, flexibility is the key of *qital* to the extent that Muslims should use the most effective means “to smite at their necks.”³⁸ This Quranic injunction does not advocate brutality or indiscriminate use of force, but demands a commitment to fight hard when the decision of *qital* is taken.

³³ *Quran* 2:216.

³⁴ No duty is imposed on the blind, the lame, and the sick. *Quran* 48:17.

³⁵ *Al-Bukhar* 4:134. During the battles led by the prophet, the women provided the people with water and brought the wounded and the killed back to Medina. (I’m not sure what this source is).

³⁶ Perfidy is also prohibited under Islamic law. See Yamani, *supra* note 2, at 202.

³⁷ *Al-Bukhari* 4:203.

³⁸ *Quran* 47:4.

Qital is mandatory only when peaceful means of jihad are unavailable or have become ineffective; *qital* for the sake of *qital* is prohibited. Even when summoned by the leader, *qital* is executed within the constraints of Islamic values including forgiveness and reconciliation. Once the fighting is over and the oppression is vacated, the Quran mandates that *qital* come to an end, without any more loss of life.³⁹ Muslims may even show generosity toward the defeated oppressor, once a binding treaty of peace and justice has been concluded.⁴⁰

The relationship between jihad and *qital* is both complex and flexible. *Qital* is a means of jihad, but certainly not the only means.⁴¹ Since the ultimate goal of jihad is to serve the cause of Allah, good sense dictates that Muslims choose the most effective means to disseminate Islamic values and use *qital* only when the oppressor is unrelenting and when the peaceful means to create and sustain conditions conducive to spiritual freedom are unavailable. The supreme jihad in the cause of Allah is ordinarily done through persuasion, moral examples, and taking moral positions.

Thus, jihad – not *qital* – is a fundamental Islamic value, as important as saying daily prayers and being good and dutiful to one's parents.⁴² The ultimate objective of *qital* is to vacate the extreme forms of oppression. The ultimate objective of jihad is to nurture peaceful conditions of spiritual freedom for all, including non-Muslims, so that every individual, man or woman, is released from servitude to other human beings.⁴³

The distinction between jihad and *qital* is essential for the understanding of Islamic faith. Jihad is a more comprehensive struggle that includes, but it is not limited to, mere *qital*. In fact, *qital* is a small part of jihad, undertaken only under exceptional circumstances. Thus, whereas *qital* is a rare effort, jihad is a perpetual activity. Whereas *qital* aims at vacating the badness of the oppressor, jihad strives to promote the goodness of the people. In other

³⁹ Quran 47:4.

⁴⁰ *Id.*

⁴¹ There are constraints even on *qital* as a legitimate means of jihad.

⁴² When asked "What is the best deed?" the prophet replied, "to offer prayers at their fixed times." When asked "What is next?" the prophet replied, "to be good and dutiful to your parents." When further asked, "what is next?" the prophet replied, "to participate in Jihad in Allah's cause." *Al-Bukhari* 4:41.

⁴³ Sayyid Qutb, MILESTONES 58 (Ahmed Zaki Hammad trans., 1990) (The first edition appeared in Cairo in 1964).

words, the obligation to die or kill arises under extreme forms of oppression; the obligation to do good with material and intellectual resources exists under all circumstances. Therefore, even when Muslims are engaged in *qital* with guns and grenades, jihad waged with money and mind does not lose its distinctive significance.

5.3 TERRORISM AND MILITARY JIHAD

In the past few decades, the notion of jihad has become synonymous with the concept of terrorism. Even though the term “terrorists” is used to designate and condemn diverse groups fighting for countless causes, terrorism is frequently associated with Muslim fighters. The slaughter of Israelis in Tel Aviv, the abduction of tourists in the Indian-occupied Kashmir, and the armed resistance in Chechnya, to name a few ongoing scenes of violence, present Islam as a religion that inspires its followers to use force instead of finding peaceful solutions to existing conflicts. This violence-drenched image of Islam is reinforced when Muslim groups fighting in the name of Allah turn their guns at each other, or against their own rulers, governments and home states. The United Nations General Assembly and Security Council have passed resolutions condemning the acts of violence that the Muslim groups have allegedly perpetrated. Even the Organization of Islamic Conference, a community of Muslim states of the world, has expressed concern over the growing world-wide identification of Islam with terrorism.

On the ontological assumption that Muslim warriors only understand the language of force, violence begets violence. The suppressive states, determined to root out “terrorism” directed against their property and persons, use both symbolic and massive force to punish Muslim groups and their infra-structure, a punishment that covers the globe. The United States, for example, bombed a pharmaceutical complex in the Sudan and Osama bin Laden’s secret networks in Afghanistan, both allegedly involved in the destruction of American embassies in Africa. The Soviet Union has waged a brutal war against the rebels in Chechnya, destroying the city of Grozny and forcing hundreds of thousands of Muslim women and children to flee from their homes. Israeli response to armed attacks from Muslim groups is often swift and sturdy. India’s security forces do not hesitate to use excessive force in suppressing Muslim warriors in Kashmir.

In addition to punishing the so-called acts of terrorism, suppressive states put diplomatic pressure on Muslim states to curb Muslim groups operating within their boundaries from waging any armed struggle or even engaging in any armed training. When Muslim states refuse to do so, they are declared “terrorist states,” thus losing international respect and trade benefits, as well as risking armed reprisals. The United States, for example, has placed several Muslim nations on its list of terrorist states, imposing economic sanctions. The United Nations Security Council has also imposed economic sanctions on some Muslim states for refusing to hand over persons accused of terrorism.

Not too long ago the right to jihad, in the context of a liberation movement, was fully compatible with the international right to self-determination, freedom and independence, a right that supported peoples under colonial and racist regimes or other forms of alien domination to struggle to that end. This right to liberation, available both under the dictates of jihad and international law, also allowed the oppressed groups to seek and receive support from friends and allies.⁴⁴

The new rhetoric, which brands Muslim groups fighting for the independence of Kashmir, Chechnya, and Palestine as terrorists, and Muslim states supporting them as terrorist states, is incompatible with the international right of self-determination through armed struggle. Yet, legal scholars and public officials defend the counter-measures of suppressive states as lawful responses to the violent acts of Muslim groups fighting for the liberation of their homelands. It appears that international institutions are now moving toward outlawing all forms of armed struggle by any group against any state, even if a state maintains unlawful occupation or alien domination in violation of international law. The new rhetoric that equates armed struggle with terrorism may indeed weaken or even terminate the right to self-determination through the use of force. But whether this change in law will also persuade Muslim fighters that their Quranic right to jihad has now been extinguished raises an important and difficult question.

Of course, no rule of international law will be inherently stable, nor perhaps enforceable, except at a very high cost, if it opposes a fundamental belief of one billion Muslims who inhabit almost every

⁴⁴ UN Definition of Aggression.

corner of the world, and who control more than fifty nation-states. The right to jihad, as explained later in this chapter, is a fundamental belief of Islamic faith, clearly stated in the Quran. Therefore, any arbitrary prohibition of jihad will be unacceptable to the Muslims of the world. In fact, violence will escalate if the right to jihad is suppressed as a matter of international law, without accommodating the legitimate aspirations of Muslims fighting against occupation, foreign domination and outright oppression.

This section examines the relationship between terrorism and jihad. Terrorism is a broad and controversial phrase; no one definition can capture the complexity of causes for which individuals use force to terrorize states, governments and communities. Muslim fighters active against Israel, the United States, Russia, and India have bombed army barracks, embassies, and trade centers. They have made hostages, hijacked planes, and abducted tourists. The target states condemn Muslims as bandits, cowards, and barbarians. But the word “terrorists” is the most common label to both characterize and reject the armed struggle of Islamic groups engaged in the liberation of Palestine, Chechnya and Kashmir.

Some Muslim and non-Muslim commentators argue that terrorism is incompatible with the Basic Code, and that Muslim groups engaged in violence distort Islam to serve their narrow political or ideological agendas,⁴⁵ which of course, some do. Furthermore, not every act of violence committed in the name of Islam is jihad. Over the centuries, Islam has restrained its followers from unleashing unlawful violence for which there is no clear basis in the teachings of the Quran. And whenever a ruler ordered unlawful *qital*, his orders were criticized and condemned.⁴⁶ This is so because the Quran orders Muslims “not to take life – which Allah has made sacred – except for just cause.”⁴⁷ The Quran also prohibits Muslims from forcibly converting anyone to Islam, for there is “no compulsion in religion.”⁴⁸

Under *zulum*, however, the Islamic message of peace yields to more militant behavior. Unlike Christianity, Islam’s love is conditional;

⁴⁵ David Aaron Schwartz, *International Terrorism and Islamic Law*, 29 *Columbia Journal of Transnational Law* 629 (1991) (concluding that Shari’ah strongly condemns acts of terror-violence).

⁴⁶ M. Khadduri, *The Islamic Conception of Justice* 166 (1984) (There is no justification for attacking a Christian city without any provocation).

⁴⁷ *Quran* 17:33.

⁴⁸ *Quran* 2:256.

it not only ceases to exist under *zulm*, but turns into belligerence, provoking among Muslims a stern and uncompromising response. A militant response to *zulm* is not a concoction of Muslim extremists, nor is it an artifact of the Arab culture. It is a response that the Quran demands from, and imposes upon, every Muslim under the covenant of *qital*. And it is in fighting *zulm* that the nexus between *qital* and terrorism becomes one, fused and inseparable.

The Quran, for example, states forcefully that the Muslims fighting *zulm* must strike “terror” in the hearts of their enemies.⁴⁹ This terror may be caused by a show of force, either of men willing to kill and die or of weapons that Muslim fighters are willing to use. The terror so produced is not simply directed at the enemies, but also at “others besides them whom you do not know but Allah does.”⁵⁰ These “others” include the overt and covert allies of the perpetrators of *zulm*. So, if terrorism means causing a credible fear of harm in the heart of the enemies – not any enemy but the one who perpetrates *zulm* – it is fully compatible with the teachings of the Quran. This is what the Muslim groups fighting *zulm* in Palestine, Chechnya and Kashmir believe they are doing. And if this is what suppressive states regard as Islamic terrorism, they are in no way defaming Islam. So in the realm of unvarnished truth, the word “terrorism” is an accurate description of the violence of Muslim groups engaged in *qital*.

If Muslim groups engaged in *qital* are spiritually trained to strike terror in the hearts of the enemies, the question remains whether they themselves can be deterred by a larger show and use of force. The armed struggle for the liberation of Palestine and Chechnya, for example, demonstrates that Muslim groups fight harder when the odds are high while *zulm* remains unabated. The Russian destruction of the cities of Chechnya failed to deter Muslim fighters from inflicting harm on Russian soldiers. The relentless Israeli bombing of Southern Lebanon could not mitigate the resolve of Islamic Jihad, an organization fighting for the liberation of Lebanon. In fact, the cycle of violence escalates when suppressive states use more force to resist Islamic *qital*.

Again, the determination to fight *zulm* under all odds is not simply the product of Islamic extremism. Any reader of the Quran can see that the militancy to fight *zulm* under all odds is the Quran’s

⁴⁹ Quran 8:60.

⁵⁰ *Id.*

irrefutable message. For example, the Quran prepares the Muslims for *qital* by discounting the strength of the enemy, promising that one Muslim freedom fighter is roughly equal to ten men fighting for the perpetuation of *zulm*.⁵¹ This is so, the Quran argues, because those fighting for the perpetuation of *zulm* “are a people without understanding.”⁵² For example, despite its superior strength, the Israeli army had to leave the occupied Lebanon because Muslim fighters were relentless in their acts of violence whereas Israeli soldiers (and citizens) began to question the wisdom of unlawful occupation and the consequent loss of life. Furthermore, the Quran eliminates the fear of death from the mind of a Muslim fighter. Of course, no soldier, secular or religious, can fight well unless he overcomes the fear of death. Yet, a Muslim soldier is much more prepared to give his life in the cause of Allah, and therefore, he is much more willing to undertake exceptionally dangerous acts that “strike terror in the hearts of the enemies.”⁵³

The Basic Code creates the institution of *shaheed*: the one who dies in a lawful *qital*. The Quran promises that the *shaheed* “shall be gathered together.”⁵⁴ Moreover, every *shaheed* is assured a high place in heaven. The Prophet said: “Nobody who enters Paradise likes to go back to the world even if he had everything on the earth, except a *Mujahid* who wishes to return to the world so that he may be martyred ten times because of the dignity he (the *shaheed*) receives (from Allah).”⁵⁵ Dying in a lawful *qital* is a source of pride not only in the life hereafter, but even in this life. The Islamic community highly values the courage of the *shaheed* and the sacrifice of his family. This is why many young men have been willing to undertake suicidal bombings in the heart of Israel. While a *shaheed* is a courageous man for an Islamic community, suppressive states have often called these suicidal bombers “cowards” and “terrorists.”

Islamic Law of Armed Conflict

The secular law of war makes a fundamental distinction between *jus ad bellum* and *jus in bello*. *Jus ad bellum* is the law of why

⁵¹ Quran 8:65.

⁵² Quran 8:65.

⁵³ Quran 8:60.

⁵⁴ Quran 3:158.

⁵⁵ *Al-Bukhari* 4:72.

nations go to war, and more importantly, whether the reasons for going to war are just or unjust. *Jus ad bellum*, however, is not confined to norms of morality. It is a legal concept and addresses the question whether a war is legal or illegal. The United Nations Charter, for example, prescribes an ambitious general rule under which any aggressive use of force is unlawful. However, the Charter still leaves open two distinct exceptions for *jus ad bellum*: (1) self-defense; and (2) the Security Council's decision to authorize an aggressive war. In addition, states have offered new lawful reasons to justify war. Humanitarian intervention, that is, the use of force to alleviate a situation of gross human rights violation, though controversial, has some support in the international community. In launching its invasion of Iraq in 2003, the United States introduced yet another basis to legitimize *jus ad bellum*. Called preemptive self-defense, the concept allows the aggressive use of force to preempt a future attack that the aggressor perceives to be coming. The idea of preemptive self-defense has been largely rejected as a dangerous exception available only to powerful states. The United Nations Secretary General declared the Iraqi war illegal.

Jus in bello is the law that regulates the conduct of warfare, once the war has begun. *Jus in bello* applies to all wars whether they are just or unjust, legal or illegal. In modern legal vocabulary, *jus in bello* is known as the "law of armed conflict," a substantial portion of which is codified in the four Geneva Conventions. Soldiers are obligated to follow *jus in bello*, for otherwise they are declared unlawful combatants. Impersonating the enemy by wearing its uniform, for example, is perfidy and is considered unlawful under *jus in bello*. The emerging law of human rights, encompassing *inter alia* prohibitions against torture, has furthered deepened the scope of *jus in bello*. Since some weapons are more inhumane than others, an attempt has been made to ban the use of certain weapons. However, the control of weapons is a more complex regime not simply inspired by humanitarian concerns. In a nutshell, the primary purposes of *jus in bello* are to humanize the war; save gratuitous destruction of enemy personnel and property; minimize suffering; and safeguard the rights of prisoners of war, the sick, the wounded, and civilians.

The most controversial aspect of contemporary jihad is the use of force against persons having only indirect connection with the oppressor. Often defined and condemned as terrorism, the indiscriminate use of force against noncombatant targets draws widespread criticism and is universally condemned. Even though it is

hard to precisely define an unlawful target, any defensible concept of jihad must distinguish between the permissible and the prohibited use of force. Critics of Islam often use negative labels to disparage even the legitimate armed struggle of the unjustly occupied Muslim populations. Semantic distortions are deliberately designed to confuse the people and in themselves constitute psychological warfare. Therefore, Muslims fighting oppression do not pay much attention to derogatory characterizations, nor do they give up their legitimate fight merely to avoid labels designed by the oppressor. Nonetheless, Islamic law does not allow any arbitrary use of force. Many radical groups have engaged in the imprudent use of force injuring and even killing innocent men, women and children. Any reckless use of force that puts at risk the life or property of the innocent has no place within the concept of permissible jihad.⁵⁶ The Quran rejects aggression and makes it clear that fighting is permissible “only against those who fight against you.”⁵⁷

In light of the Quran and the Sunna, Muslim militants would have no lawful basis to use highly destructive weapons that kill hundreds of thousands of innocent civilians. Great fear, however, exists among suppressive entities that Muslim militants would not hesitate to use weapons of mass destruction. Some terrorist experts are skeptical of such doomsday scenarios, for in their judgment terrorists are more in the business of scaring than killing. Others do not rule out the possibility. Some view Muslim militants as inherently lawless, capable of doing anything. For most educated militants, humanitarian restraint is an intrinsic value of military jihad. Before sending troops to the battlefield, Prophet Muhammad instructed them in the following words: “Go forward in the name of God. Do not kill an elderly person, nor a child, nor a woman, and do not exceed the bounds.”⁵⁸ Accordingly, the Islamic law of warfare prohibits poisoning wells, downing trees, destroying crops, and inflicting any unnecessary environmental injury with no military justification. As a broad guiding principle, any use of weapons of mass destruction would inflict great environmental damage prohibited under the Islamic law of warfare.

Furthermore, the Quran ordains the principle of proportionality in all punitive countermeasures. “And if you punish, then punish

⁵⁶ Karima Bennoune, “As-Salamu Alaykum? Humanitarian Law in Islamic Jurisprudence,” 15 *Michigan Journal of International Law* 605 (1994).

⁵⁷ *Quran* 2:190.

⁵⁸ Anis Malik, *Al Muwatta*.

with the like (*bi-mithli*) of that you were punished but if you show patience, that is indeed the best [course] for those who are patient.”⁵⁹ The Quran’s commandment prescribes reciprocal punishment only. Even here, under the constraints of reciprocity, it encourages a policy toward patience-based countermeasures rather than revenge-based retaliation. Additionally, the Quran mandates the cessation of military jihad when persecution has stopped. “And fight them on until there is no more persecution.”⁶⁰ Thus, the use of force cannot be lawfully continued once the oppressor has lifted the siege. Given the Islamic principles of mercy and decency and trust in God, Muslim militants use their good judgment and stop military operations upon reaching an appropriate and credible agreement with the enemies. Such an agreement is one under which the oppressor has agreed with good intentions to vacate occupation, restore the lost rights of an aggrieved population, or more generally mend its oppressive ways and amend its draconian laws. These are the teachings of the Quran, and if so educated, Muslim militants are unlikely to use weapons of mass destruction.

Terrorism, however, is the art of tactical deception. Creating a credible fear of mass destruction might be justified as an effective tool of behavior modification. If the oppressor will change its cruel behavior under high-powered threats, one might argue, the threat of the use of weapons of mass destruction should not be taken out of the toolbox. The Islamic law of warfare allows tactical maneuvers such as credible threats. It does not, however, allow a course of deception that destroys the normalcy of life for Muslims and non-Muslims. Even in times of war, Islam remains a religion of peace and submission to God. The principle of proportionality that the Quran prescribes applies to military threats as well, whether the threats are real or tactical. Under ordinary circumstances, therefore, any casual or calculated threat to use weapons of mass destruction breaches the Islamic law of warfare.

In his interviews with the media, Osama bin Laden has been elusive about the possession and use of weapons of mass destruction. In one interview, he was asked whether he was seeking chemical or nuclear weapons. Osama replied: “Acquiring weapons for the defense of Muslims is a religious duty. If I have indeed acquired these weapons, then I thank God for enabling me to do so.” In

⁵⁹ *Quran* 16:126.

⁶⁰ *Quran* 2:193.

another interview, he made a similar statement: "If I seek to acquire such weapons, this is a religious duty. How we use them is up to us."⁶¹ These statements made in 1998 embody terror effects but stop short of making any blatant threats to use them. Most experts agree that the Osama organization has lost its infrastructure to acquire weapons of mass destruction. Still, Osama's statements reveal the mind of Muslim militants. It appears that Muslim militants will continue to use the rhetoric of acquiring weapons of mass destruction to enhance terror effects. They will also not rule out the possibility of using such weapons, for any no-use public commitments weaken rather than strengthen the enterprise of fear. Whether Muslim militants will actually use the weapons of mass destruction is far from clear.

One might ask whether the use of weapons of mass destruction is ever justified under the Islamic law of warfare. It appears that if Islamic holy places in Mecca, Medina or Jerusalem are ever attacked by any national armed forces, Muslim militants (and governments) are likely to respond with all the weapons they have at their disposal to punish the aggressive state. If the destruction of holy places were brought about by private groups, it is unclear how Islamic governments would respond. Great pressure would likely be exercised on Islamic armed forces across the world to punish the national state of the perpetrators. Calls for private jihad would be made from every minaret and the response would likely be highly deadly and unmanageable. It is perhaps for such extraordinary eventuality that the Quran mandates jihad in the following words: "And kill them wherever you find them, and drive them out from whence they drove you out, and persecution is severer than slaughter, and do not fight with them at the Sacred Mosque until they fight with you in it, but if they do fight you, then slay them; such is the recompense of the unbelievers."⁶² Without fail, the level of cooperation among ordinary Muslims, national armed forces, and private militant groups will dramatically increase, reinforcing the infrastructure of supportive entities. That this coalition would be prepared to use weapons of mass destruction is a certain bet.

⁶¹ Kimberly McCloud and Matthew Osborne, *WMD Terrorism and Usama bin Laden*, CNS Reports (Center for Nonproliferation Studies).

⁶² *Quran* 2:191.

Policy of Ambiguity

Key questions that face the Muslim world are whether private jihad is authorized, and if it is, whether private jihad is compatible with international law. In any legally organized society, particularly in the era of nation-states, the private use of violence is prohibited for internal law enforcement needs as well as for external conduct of foreign affairs. Some nation-states allow individuals to possess and carry guns. But even these states impose heavy restrictions on the private use of force. In almost all states, the criminal justice system leaves little leeway, restrictively embodied in the concept of self-defense, for individuals to lawfully use violence. Outlawing letters of marquee and reprisal and raising national armed forces have likewise centralized the means of violence in state institutions. As discussed elsewhere, private entities continue to possess the means of violence, use violence with the consent of governments, and often assist regular armed forces in conducting warfare. Under the near universal model on the monopoly of force, however, the private use of force without the consent of government is considered unlawful.

On the surface, Muslim states seem to subscribe to the prevailing model. The fifty-six member states of the Organization of Islamic Conference (OIC) are active players of international law. They fully participate in international institutions, have ratified the United Nations Charter, and have institutionalized national armed forces and domestic law enforcement agencies. Even states that allow individuals to possess and carry guns, such as Pakistan, have placed legally sound restrictions on their use. If anything, Muslim states seem somewhat behind in the emerging practice of delegating warfare functions to private contractors and corporations. Despite this apparent adherence to the universal model, private jihadi groups exist and operate in many Muslim states. In resistance to the Soviet invasion of Afghanistan, many Muslim states openly and vigorously supported private jihadi groups with money, guns, and tactical and logistical support. The West did the same. After the September 11 attacks on the United States, most Muslim states seem to have reversed their public stance on private jihadi groups. Almost all deny that they support such groups. Some claim to actively oppose them. Some even go further and stage encounters with jihadi groups to demonstrate to the world that jihadi groups are no longer welcome. Some Muslim states claim that jihadi groups are unlawful not only under modern state laws, but also under traditional Islamic law.

The Taliban government in Afghanistan was a unique Islamic experiment whereby a Muslim state had openly given refuge to anti-American jihadi groups. This experiment might have succeeded in challenging the power of the United States had there been a superpower protecting the Taliban government. The collapse of the Soviet Union and the refusal of China to support any such jihadi groups left minor regional powers to support the experiment. Pakistan and Saudi Arabia helped until the September 11 attacks changed their supportive policy. The U.S. invasion of Afghanistan and the overthrow of the Taliban government have introduced a new dimension to state-sponsored private jihad. A state that openly sponsors anti-American jihadi groups is vulnerable to invasion. This development might also encourage other superpowers such as Russia and China, and even minor powers such as Israel and India, to attack states that openly support jihadi groups against them. The failure of the Taliban experiment has forced present and future jihadi groups to hide any relationships with Muslim states and governments.

As international opposition to jihadi groups solidifies, jihadi groups are likely to go underground. That is an obvious and expected survival response. However, the role of Muslim states toward jihadi groups might be especially intriguing. It is unlikely that they would opt to completely suppress jihadi groups. Several reasons dictate such an outcome. Any aggressive suppression of jihadi groups will fracture the social order, an outcome that no Muslim government would want. Since public support for some of the causes for which jihadi groups are fighting, including the liberation of Palestine, will remain high in most Muslim states, governments cannot defy these sentiments and eliminate jihadi groups. The presence of jihadi groups enhances the clout and negotiating postures of the resident Muslim state. The United States, for example, has extended monetary and military help to Pakistan and Afghanistan in the hope that they would suppress Muslim jihadi groups. Ironically, these assistance programs might prolong the life of jihadi groups, for these governments know that some jihadi presence is needed to justify a continual demand for foreign assistance.

Furthermore, jihadi groups serve as surrogate armies; they do what Muslim national armed forces cannot do. Since most Muslim states are militarily weak, they know that they will be unable to fight against the regular armies of suppressive states. Wars with Israel have shown that, as have the wars between India and Pakistan. The U.S. invasion of Iraq has further cemented the perception that military confrontations with suppressive states constitute a

losing proposition. Jihadi groups, on the other hand, continue to fight against and inflict harm on suppressive states. The insurgency in Iraq has been much more successful in resisting occupation than a regular army would have been. Israel's ouster from Lebanon was made possible by Hezbollah's private soldiers. Likewise, a slow bleeding of Israeli armed forces at the hands of Hamas has been much more effective than the Arab wars with national armed forces. The effectiveness of surrogate armies is an open secret for all to know, including Muslim governments. Out of necessity, most Muslim governments will keep jihadi groups in play since their elimination would shift the entire pressure on national armed forces to fight, or do something to stem the excesses of suppressive armies against Muslim communities.

Consequently, Muslim states appear to have adopted a "policy of ambiguity" toward jihadi groups. Rhetorically, this policy condemns terrorism and paints jihadi groups as extremists acting beyond the realm of Islam and state interests. Tactically, domestic law enforcement agencies, including the armed forces, are periodically summoned to stage encounters with jihadi groups, arrest a few "terrorists" and freeze accounts. These countermeasures are taken to convince suppressive entities that credible efforts are being made to eliminate terror cells. Strategically, however, jihadi groups are preserved, even supported through private channels as well as through "rogue elements" within the government. This policy of ambiguity is no different than the policy Israel has adopted toward Jewish settlers in the Palestinian territories. The government condemns some of the things the settlers do, even erases some of their "illegal settlements," but at the same time militarily protects these settlers and their properties erected on the stolen land. Even in the United States, during the period of segregation and lynching, state governments would both condemn and support private white vigilantes engaged in physically attacking vulnerable blacks and burning their houses and churches.

New Military Jihad

Islam has entered an era of Renaissance – the second period of *ijtihād* (legal creativity). For centuries, Islamic law and jurisprudence de-emphasized the distinction between original sources of law and commentaries of law. As a result, the *deen* of Islam was inextrica-

bly fused with the five *madhabs*. The rules of law embodied in the Quran and the Sunna constitute the *deen* of Islam. The Quran is the original source, and the rules are embodied in its immutable text, which has been preserved over the centuries. The Sunna includes the rules that the Prophet offered during his lifetime to explain the Quran or to otherwise prescribe behavior. The Prophet's rulings were collected with meticulous scholarly care, though several decades after his death. Each rule so collected was called a Hadith. These rules, or *ahadith*, emanating from the Prophet, are collectively known as the Sunna. The Quran and the Sunna constitute the Basic Code of Islamic law. Once the authentic *ahadith* was collected, the Basic Code was no longer confined to the Quran. Islamic scholars began to treat the Sunna as an authentic original source of Islamic law on the theory that the Prophet would know best what the Quran meant and how it ought to be applied.

Despite the use of the Sunna in solving problems and finding answers to an ever-unfolding complexity of life in communities established after the Prophet's death, more rules were needed to build a comprehensive legal system. The task of building such a system fell on Islamic scholars. Among hundreds of scholars who contributed to the evolution of legal methods and procedural and substantive rules, five Imams (Abu Hanifa, Malik, Shafi, Hanbal, and Ja'afer) successfully established the great Islamic schools of jurisprudence. A school associated with a particular Imam came to be known as a *madhab*. In subsequent centuries, Muslims began to identify themselves with one or the other of the five *madhabs*. The rise of *madhabs* was necessary to solve problems and offer solutions to legal problems for which there were no clear solutions in the Basic Code of the Quran and the Sunna. No one was allowed to change the Quran's words or ignore them or blatantly misinterpret them. Even the most pious and able followers of Islam were prohibited from changing the words of God as revealed in the Quran.⁶³ Without changing the text, however, the Quran authorizes and even encourages reflection over its text, inviting good faith interpretations. This permission to interpret the Quran, and by implication the Sunna as well, opened the gates of *ijtihad*, and Islamic law flourished in the fertile minds of scholars.

The second era of *ijtihad*, which began over a hundred years ago, is founded on the assumption that the rules developed within the

⁶³ Quran 10:64.

classical five *madhabs* are not sacred; only the Basic Code is sacred. The laws of God and his last Prophet are sacred, but the laws derived by scholars are subject to change. Very few Islamic scholars, however, take the extreme position that all rules developed within the five schools should be completely discarded. And very few individuals, having no following within the Islamic world, argue that the Quran and the Sunna themselves should be altered to modernize Islam. The critique of non-Muslim scholars of the Basic Code or classical *madhabs* carries little weight, since Islamic law is unlikely to change according to the wishes of non-Muslim scholars. Traditionally, only the believers of Islam have had the prerogative to propose changes. This exclusivity should come as no surprise since secular legal systems have even more rigorous self-protective structures. For example, no legislature other than Congress may make laws for the United States.

The most acceptable position within the second era of *ijtihad* accords due respect to classical *madhabs*, and their rules are considered generally binding. However, a designated national or international Islamic institution may overrule a classical precedent found in a *madhab* on the theory that a new rule is more suitable for present social, economic, political, or geopolitical reasons. The new rule, however, must be consistent with the Basic Code. Just like the first era of *ijtihad*, the second era empowers no national or international scholar or Islamic institution to construct rules contrary to the letter and spirit of the Basic Code. New legal methods may be constructed to interpret the Quran and the Sunna, but the supreme authority of the Basic Code cannot be undermined either directly or through interpretation. Any such development in Islamic law and jurisprudence will be ineffective.

It appears that the second era of *ijtihad* is already having a serious impact on the concept of military jihad. New rules are being constructed that define tactics, strategies, and uses of the military jihad. The most remarkable development in military jihad is the practice of suicide bombing, appearing across the Islamic world. Suicide bombers have attacked targets in occupied Palestine, Iraq, and Afghanistan. Although suicide is strictly prohibited under Islam, suicide bombing remains controversial. Classical *fiqh* (give English definition) has nothing to say about the legality of suicide bombing as a weapon against the enemy. It is a question that the second era of *ijtihad* must answer. Islamic scholars are divided, some arguing that suicide bombing is inherently unlawful since it involves the prohibited act of suicide, with others arguing that suicide bomb-

ing is a lawful attack on an otherwise impenetrable enemy. Of course, no Islamic scholar would contend that each and every suicide bombing is lawful. A suicide bombing that kills non-combatant civilians, without any military necessity, causing gratuitous collateral damage, cannot be defended under the Islamic law of warfare. It is also questionable whether suicide bombing is lawful when other means of fighting the enemy are more or less equally effective.

It is also unclear whether private jihad without the ruler's permission is lawful. The Basic Code presents two competing norms. One norm obligates Muslims "to obey those charged with authority among you."⁶⁴ Under this norm, Muslims must lay down guns if the ruler bans private jihad. The competing norm of the Basic Code solicits jihad from private parties. "Let there arise from among you a group inviting people to that which is good, commanding them to do what is good and forbidding them to do what is evil."⁶⁵ Although this command is not specifically aimed at military jihad, its scope is comprehensive. It also supports the Prophet's Sunna, under which the obligation to correct a wrong is placed on individuals. "Whoever among you sees what is wrong, let him change it by force. If he is not able to do that, then he must speak out. If he is not able to do that, then he must hate it in his heart. That is the weakest of faith."⁶⁶ Correcting a wrong with force is an individual obligation and the highest expression of faith. This *hadith* should not be construed, however, to mean that every wrong must first be corrected with force. Under the combined effect of the Quran and the Sunna, private jihad is allowed, particularly if the ruler has not proscribed it.

In the era of nation-states, the definition of the Muslim ruler has become geographical and secular. As such, no one ruler has authority over all Muslims. If Pakistan's ruler bans private jihad, the ruling has no obligatory effect on Muslims elsewhere. Not even the king of Saudi Arabia, the original home of Islam, has any universal authority over the entire Muslim world. Furthermore, rulers lack even local authority to change or legislate Islamic law. Ever since the end of the first four caliphs, Muslim rulers have lost their jurisprudential powers. They may manage executive affairs of the

⁶⁴ *Quran* 4:59.

⁶⁵ *Quran* 3:104.

⁶⁶ *Sahih Muslim* 1:79.

state, but the state's legislative and judicial functions are to be performed by other qualified people. Accordingly, local rulers are rarely seen as credible interpreters of the Basic Code, since for centuries now Muslim scholars, who devote their lives to the study of law, have been the exclusive guardians of the institution of *ijtihad*.

Accordingly, as a matter of history, Islamic law has been built through the accumulation of scholarly decrees (*fatwas*) rather than executive orders or legislative statutes. National laws made through secular legislatures, even if they are democratically elected, carry no religious authority. And if the national legislature, like the one in Turkey, is constitutionally bound to separate church from state, the gap between secular and religious laws widens even more. Religious forces see these legislatures and their secular laws as great deviances from Islamic jurisprudence. They continue to rely on *fatwas* to fashion their individual and social lives.

In non-democratic Muslim states, the legislative dynamic is no better. Many Muslim rulers have lost credibility with Muslim populations because they are seen as the agents of suppressive states. Hosni Mubarak of Egypt, Mohammar Gaddafi of Libya, Pervez Musharraf of Pakistan, the kings of Jordan and Saudi Arabia, the rulers of oil kingdoms in the Gulf, all lack a genuine following among the masses of their nations. They have installed themselves in power by undemocratic means. They remain in power through institutional coercion and with the backing of national armed forces. They are less than fully accountable to the people for their foreign policies. Finally, they enjoy no credibility with religious forces likely to engage in national and international jihad. If these rulers forbid private jihad by means of a secular statute or executive decree, the law will be derided as a suppressive tool installed on behalf of suppressive entities. Jurisprudentially, such laws have little anchoring in the Basic Code.

If an international organization of Muslim rulers, such as the Organization of Islamic Conference (OIC), were to ban private jihad, such a ruling would come close to having universal effect. Even so, one could dispute whether Muslim rulers constituting the OIC have the requisite jurisprudential background to engage in doctrinal *ijtihad*. But if the OIC assembly of rulers were to anchor its decision to ban private jihad on the *fatwa* of Islamic scholars, a new chapter of Islamic jurisprudence would come into being. If such a development is possible, suppressive entities would likely put pressure on the OIC to ban private jihad. It is, however, unlikely that the OIC would centralize the development of Islamic law, considering

that Islamic law respects local cultures and synthesizes customs with norms of the Basic Code.

Free Market of Fatwas

Since the classical concept of *fatwa* is still intact and has not been replaced by any effective national or international institutions (except perhaps in Iran), the second era of *ijtihad* is essentially a scholarly enterprise, as decentralized, fluid, and open as was the first era. In fact, there exists a free market of *fatwas*. Any scholar with real, fictional, or no following may issue *fatwas*. The qualifications of the *fatwa*-issuing scholar may or may not be adequate or meet the meticulous standards of tradition. It is all left to the discretion of followers who must decide whether they want to follow a particular scholar. Although a free market of *fatwas* is important for all issues facing Islamic communities, its contribution to the institution of military jihad has serious consequences.

The free market approach worked most effectively in the first era, as the best scholars were naturally selected almost on the basis of survival of the fittest. Imam Abu Hanifa became a great Islamic scholar not because he represented the caliphate, but because of his personal influence over the marketplace of *ijtihad*. In fact, Abu Hanifa turned down the caliph's request to assume the office of the chief *qadi* and for this refusal was thrown into prison. Likewise, Imam Malik, another great scholar of the first era of *ijtihad*, turned down a similar request from the local ruler of Medina. The rise of great jurists in the first era demonstrates the power of the free market of *fiqh*, as the people followed scholars who made the most sense, whose personal piety added good faith to their interpretations, whose lack of ambition for personal aggrandizement furnished credibility to their scholarly station, and whose knowledge of the Basic Code – the Quran and the Sunna – provided staying power to their opinions.

In the second era of *ijtihad*, the free market of scholarly activities is even more robust. Unlike the first era that was confined to the Middle East, the second era is truly global in its origin and impact. More than one billion Muslims span the earth, living on all continents, belonging to diverse cultures, speaking many languages, and celebrating various traditions. Since the Quran and the Sunna, originally available only in Arabic, have

been translated into dozens of other languages, non-Arabic speaking scholars are equal participants in the new global market of *ijtihad*. The competition among scholars is intense and of very high quality, primarily because translations of great works are readily available. The presence of millions of Muslims in the United States, Europe, and other developed countries has further opened up the scholarly market for a vigorous exchange of ideas with non-Muslims. The second era of *ijtihad* is thus highly informed about non-Islamic critical perspectives. A *fatwa* issued by an Islamic scholar is not only reviewed by other Muslim scholars but by non-Muslim jurists as well. This extensive review will make it impossible for weak opinions to survive in a robust and informed market.

While weak *fatwas* with little grounding in the Basic Code will be easily weeded out in the free market, controversial *fatwas* will nonetheless continue to exist. A controversial *fatwa* is one that has substantial grounding in the Basic Code but fails to obtain universal approval of scholars across the Islamic world. The existence of controversial *fatwas* does not in any way undermine the authority or integrity of the Basic Code. It simply indicates that reasonable and informed Muslim scholars see the issues differently. In secular jurisprudence, controversial opinions are common. In the United States, for example, the nine justices of the Supreme Court are often divided on issues. What five justices rule becomes the law, but their opinion may remain controversial.

Controversial *fatwas* regarding military jihad have indeed surfaced over the years. During the first Gulf War in 1990, Muslim scholars were divided over the U.S. invasion of Iraq. Some argued that the U.S. invasion must be resisted, while others reached the opposite conclusion and favored the forced eviction of Iraq from Kuwait. The controversy involved an important legal question of whether Muslims may lawfully support a non-Muslim army that attacks a Muslim state. The scholarly debate over the issue was not free from political bias and manipulation. The Islamic conference of scholars that convened in Iraq opposed the U.S. invasion, whereas the conference held in Saudi Arabia supported it. Perhaps scholars on both sides of the divide were acting in good faith.

Another example of controversial *fatwas* involves the killing of enemy civilians. Osama bin Laden and his men have issued *fatwas* urging Muslims to kill Americans “wherever and whenever you find them.” The classic Islamic law of warfare prohibits the deliberate killing of enemy civilians. However, bin Laden’s *fatwa* deviates from the classical rule on the theory that American armed

forces have little regard for civilian life in Muslim countries. Wrapped in the benign language of “collateral damage,” Muslim civilians have indeed been killed in large numbers in Afghanistan and Iraq. According to one estimate, more than 100,000 civilians have been killed in Iraq. However, the United States, while contesting the accuracy of these numbers, makes a rhetorical argument that killing civilians is not its military goal or policy. These rhetorical claims might be deceptive but they are nonetheless important, for they provide standards to critique inconsistent behavior. Rejecting the value of these rhetorical claims, bin Laden’s *fatwa* incorporates the ethic of an eye for an eye – a most fundamental human ethic that works when everything else fails. Even if tit for tat has some philosophical value or practical utility, the scope of the *fatwa* is so broad that it fails to recognize that millions of American civilians oppose U.S. foreign policies, as strongly as bin Laden himself does, and therefore, at least logically, they do not deserve to be killed.

Chapter 6

The Essentialist Terrorist

*Can the Ethiopian change his skin? The leopard his spots?
As easily would you be able to do good, accustomed to evil
as you are.*
Jeremiah 13:23

The essentialist terrorist is a violent monster that the Highly Influential Terrorist Literature (HITLit) has successfully invented and made real and believable. It is the new terrorist. It is dark and evil, part real and part phantom, part human and part animal, part man and part woman, part bearded and part veiled, part strategic and part crazy. A noted trait of this grotesque but cowardly creature is that it kills innocents. But this monster's most defining characteristic is that it is driven to violence by its nature, compelled by an ingrained mental/psychological/cultural/religious formation. Its violence has little to do with any outward political or geopolitical grievances. It hates Israel and America and the West. It loathes democracy and liberties and freedoms. It subjugates women. It is warped and jealous and vengeful. Addicted to violence, this monster resides in sleeping cells, prays to Allah, lurks in tunnels and airports, wears a belt of explosives, and craves traveling in buses, trains, and airplanes. One day it explodes, killing innocents. Amazingly though, even after dying a thousand deaths, it

does not die. It constantly reproduces itself into many more similar-looking monsters.¹ It must be obliterated.

The HITLit's essentialist terrorist is the Muslim militant who uses violence to terrorize governments and communities. He is a religious fanatic, raised in fundamentalism, trained in religious schools, made to memorize the Quran by heart, and recruited to unleash violence against the unbelievers – particularly Jews and Christians. He is in spiritual love with violence. The essentialist terrorist is new because he is distinguishable from the conventional terrorist who used violence to gain personal or communitarian goals. Whereas the conventional terrorist uses violence as a means to an end, the essentialist terrorist uses violence as an end in itself. According to HITLit, even when the essentialist terrorist justifies violence in political or geopolitical terms, the justification must not be taken seriously, for this monster's addiction to violence finds a legion of excuses. This HITLit thesis has been called the "new terrorism." The 9/11 Commission, summoned to study terrorist attacks on the United States, adopted the terminology of new terrorism, thus conferring validity on the HITLit.

The HITLit's new terrorism is intellectualized propaganda. It was written and published in the United States years before the September 11 attacks on the World Trade Center and the Pentagon. It is still being produced and published. The HITLit consists of academic books published by elite university presses, popular books, magazine articles, and syndicated columns. This literature is highly influential in that it shapes, defends, and justifies U.S. government policies towards the Muslim world. As referenced in this article, the 9/11 Report adopted many concepts that the HITLit has been spawning for years.

Most HITLit authors, known as terrorism experts, are research associates with influential think tanks such as RAND and the American Enterprise Institute, and some teach at Harvard University. Some have worked for the National Security Council and the U.S. Defense Department. These authors include Bernard Lewis, Bruce Hoffman, Steven Simon, Jessica Stern, Daniel Benjamin, and Richard Perle. They appear on National Public Radio and major radio and television networks to comment on terrorist events and

¹ Blaming the Victims: Spurious Scholarship and the Palestinian Question 149–58 (Edward W. Said & Christopher Hitchens eds., 1988).

disseminate their views to the general public. The HITLit themes of the essentialist terrorist are further disseminated through the views of collaborating journalists such as Thomas Friedman, Charles Krauthammer, David Brooks, and William Kristol.²

Studied in isolation, each HITLit theme seems credible. Collectively, HITLit themes are perilous propaganda. They are the half-truths that Cass Sunstein, himself a HITLit sympathizer, has in another context called “enclave deliberation.” HITLit authors have pooled their arguments, citing each other’s dubious research, to malign Islam, boldly painting it to be a violent religion, ignoring the canons of interfaith respect for a fourteen-centuries-old religion practiced by more than one billion people in all countries of the world. Yet in doing so, the enclave authors claim they wish to make a better world. The Quran describes such persons as *mufsidun*,³ which may be translated as mischief-makers. These *mufsidun* have successfully influenced U.S. foreign policy and are determined to further deepen the conflict between the United States and the Islamic world. They use essentialist terrorism as a wedge between civilizations.

The HITLit themes, specifically the distinction between conventional and essentialist terrorists, have played a critical role in shaping the George W. Bush Administration’s views with respect to Muslim militants. The rhetoric it employs to describe Muslim militants reveals how the Bush Administration has latched on to the HITLit’s new terrorism. While the conventional terrorist is a moral being, the new terrorist is evil. Repeatedly, Bush officials use the word “evil” to describe Muslim militants who fight U.S. occupation in Iraq and Afghanistan or commit violence elsewhere against U.S. interests. The word “evil” highlights the essentialist nature of the Muslim militant who is evil, not only because of what he does, but who he is. And perchance, the Old Testament furnishes a parallel to the HITLit concept of the essentialist terrorist: just as the Ethiopian cannot change his skin, and the leopard cannot change

² Other noted journalists spreading HITLit themes are Martin Peretz, Norman Podhoretz, and Judith Miller. They also add empirical news to the HITLit message that Islam is violent. Norman Podhoretz, the grandfather of neoconservatism, supports the preemptive use of force in international affairs. He received a Presidential Medal of Freedom, the highest civilian award, from President George W. Bush.

³ *Quran* 2:11–12. “When it is said to them: ‘Make not mischief on the earth,’ they say: ‘We are only ones that put things right.’ Of a surety, they are the ones who make mischief, but they realize (it) not.”

his spots, the Muslim militant cannot change his propensity to do evil.

The HITLit's new terrorism is not simply a rhetorical device to engage in propaganda war against Muslim militants or Islam. It also has serious consequences in the realm of law. The distinction proposes and defends that the law treats Muslim terrorists different from how the law treats conventional terrorists. Since the conventional terrorist is a moral being, his rehabilitation through law is possible; therefore, he is entitled to rights and legal protections. The essentialist terrorist has no claim to demand traditional legal rights and protections, because he is fundamentally immoral and irredeemable.

Consequently, the Muslim militant is humiliated, tortured, detained without charges or a trial, and even killed without any judicial process. Conventional terrorists are the subjects of the traditional criminal justice system, but essentialist terrorists are unlawful combatants who may be denied protections available under domestic and international law, including the prisoner of war status under the law of war. In addition to government lawyers, a cadre of law professors such as John Yoo, Ruth Wedgwood, Jack Goldsmith, and Alan Dershowitz propose and defend morally odious and legally questionable treatments of Muslim militants fighting against occupation, settlements, theft of land and resources, and for the right of self-determination. Although initially muted and bamboozled, the American legal academy has made vigorous protests to Bush officials' lawlessness. The HITLit authors' "clumsy and unconvincing exercise in conjecture,"⁴ however, has remained for the most part unexposed.

The HITLit conjectures and consequent prescriptions are genocidal and generally lawless. One proposed prescription for dealing with Muslim militants is to engage them in battle and kill them. No legal process is recommended to wipe them out. The other prescription is to capture Muslim militants and completely disable them. Disability rather than accountability must be the fate of essentialist terrorists. Accordingly, the Guantánamo prison embodies the concept of comprehensive disability, which suspends

⁴ Jonny Burnett & Dave Whyte, *Embedded Expertise and the New Terrorism, Journal for Crime, Conflict and the Media*, May 2005, at 1, 3 (2005), available at <http://www.jc2m.co.uk/Issue4/Burnett&Whyte.pdf>.

essentialist terrorists in legal limbo. Essentialist terrorists are guilty without proof. The proof of their monstrosity is in their being. But in law, they are neither charged with any crime nor released. They are neither tried in courts, nor declared innocent. They are neither criminals, nor prisoners of war. Their status defies existing legal categories. They are a category of their own. They are *sui generis*. They are unique. Therefore, the law or the lawyer cannot help them, should not help them.⁵ As the mantra goes, September 11 changed everything.

The legal outrage over the suspension of civil liberties is often doctrinal. It points out the betrayal of the U.S. Constitution, specifically the Bill of Rights, and the deeply entrenched case law. Although U.S. courts have begun to review and even modestly slash the President's executive powers to define the law of war on terror,⁶ the debate over treatment of essentialist terrorists has barely reached the doors of law. Important legal questions pertaining to treatment of Muslim detainees have not yet been conclusively answered as cases are still evolving and passing through the appellate process.⁷ Bush officials continue to argue that they are dealing with a new enemy who falls outside legal parameters of constitutional assumptions and precedents.⁸ Their aim is to create new law for the new enemy. They insist that critics and courts are still hanging on to old law and the old paradigm, refusing to appreciate the threat that essentialist terrorists pose to U.S. security at home and its interests abroad.

⁵ See *United States v. Stewart*, No. 02 CR. 396 JGK, 2002 WL 1300059, at *1 (S.D.N.Y. June 11, 2002) (Criminal defense attorney Lynne Stewart was arrested for communicating with Sheikh Rahman, an Egyptian Islamic scholar who had been convicted for terrorism. Stewart's law office was searched and documents, folders, ledgers, notebooks, address books, calendars, hard discs, and several other items were seized. Later, Stewart was convicted under terrorism laws.); see also Elaine Cassel, *The Lynne Stewart Guilty Verdict: Stretching the Definition of "Terrorism" To Its Limits*, FindLaw's Writ, Feb. 14, 2005, <http://writ.news.findlaw.com/cassel/20050214.html>.

⁶ See, e.g., *Rumsfeld v. Padilla*, 124 S. Ct. 2711 (2004) (plurality opinion); *Rasul v. Bush*, 124 S. Ct. 2686 (2004); *Hamdi v. Rumsfeld*, 124 S. Ct. 2633 (2004) (plurality opinion); *Detroit Free Press v. Ashcroft*, 303 F.3d 681 (2002).

⁷ See, e.g., *Padilla*, 124 S. Ct. 2711; *Rasul*, 124 S. Ct. 2686.

⁸ Memorandum from Alberto R. Gonzales to the President (Jan. 25, 2002), available at <http://www.nytimes.com/ref/international/24MEMO-GUIDE.html>; Memorandum from John Yoo & Robert J. Delahunty to William J. Haynes II, General Counsel, Department of Defense (Jan. 9, 2002), available at <http://www.nytimes.com/ref/international/24MEMO-GUIDE.html>.

It remains to be seen how U.S. laws will develop to deal with Muslim militants that the administration kills or detains without due process. In fashioning appropriate laws, some jurists side with the Bush Administration and some do not; the battle to define the Muslim militant under U.S. laws will be long and tedious. Much depends on whether there would be another massive attack on U.S. interests here or abroad. A security-conscious Congress has extended the life of the Patriot Act, which shows that the old law of civil liberties might have changed forever, formalistically for everyone, even though Muslims are the law's primary targets.

In addition to explaining HITLit theses girding the concepts of new terrorism and the essentialist terrorist, this article provides a historically-informed critique of the concepts. Note, however, that essentialist agendas have had a checkered history. In the United States, essentialist arguments were made to justify laws of slavery, segregation, and persecution of African Americans. The genocide of indigenous populations, labeled savages, and the theft of their land had essentialist dimensions. Likewise, under the inherited common law, the subjection of women was essentialist since laws reflected the fundamental "nature" of women. Globally, the Nazi philosophy grew from essentialist visions of racial superiority and Jewish stereotyping. HITLit authors are working hard to paint Muslims as Nazis and communists, and Islam as a murderous ideology. They have popularized the term "Islamism" that rhymes with Nazism and communism.

6.1 PROFILING ISLAMIC TERRORISM

Essentialist theories often rely on nature, genes, hard wiring, or innate formations to associate specific traits to specific groups. Aristotle, who was perhaps the first to articulate the concept of essentialism, relied on nature to argue that some persons are born as natural slaves, some as natural masters. Slaves, said Aristotle, are born with sturdy bodies to perform physical tasks; they also lack mental abilities to undertake complex intellectual functions.⁹ This description of the natural slave is an example of

⁹ Aristotle, *The Politics* 69 (T. A. Sinclair trans., Penguin Books 1992).

pure essentialism under which social factors play no role. The HITLit does not advocate a genetic view of Muslim terrorists for obvious difficulties;¹⁰ more than one billion Muslims, belonging to hundreds of racial, ethnic, and cultural groups, carry diverse genes, and not every Muslim commits terrorism. Furthermore, new converts to Islam do not automatically resort to violence. To the contrary, many hard-core criminals reform their lifestyle after converting to Islam. In the absence of these facts, the essentialist theory would have gathered credibility by establishing a connection between genetic inclinations to violence and attraction to Islam. HITLit authors are therefore restrained in labeling Muslim militants as genetic terrorists.

HITLit authors, however, do argue that Muslim terrorists are the products of essentially violent Islamic teachings, culture, theology, and pathos. They malign the aggregate, not just the individual. An essentialist terrorist derives his addiction to violence primarily from Islam, and not necessarily from his genes or individual life experiences. His essentialism is rooted in the teachings of Islam. The closer he gets to the puritanical version of Islam, the more likely he will embrace terrorism as an essentialist response to feelings of frustration and mal-adaptation. This is the core thesis that each HITLit author advocates from a different perspective.

HITLit authors offer numerous psychoanalytical perspectives to manufacture the essentialist terrorist.¹¹ These themes deny the

¹⁰ Alan Dershowitz denies that pro-Israeli advocates believe that Arabs and Muslims have terrorism in their genes. However, he claims that the Palestinian political and religious leadership glorify terrorism as part of their culture and religion. "They are responsible for its proliferation." ALAN DERSHOWITZ, *THE CASE FOR ISRAEL* 129 (2003).

¹¹ Carl Goldberg, *Terrorism from a Psychoanalytic Perspective*, in *Terrorism, Jihad, and Sacred Vengeance* 212, 213–15 (Jerry Piven, Chris Boyd, & Henry Lawton eds., 2004). This essay argues that Islamic fanatic violence is generated by self-hatred, feelings of worthlessness and inner evil. These people commit terrorist acts because they want to sacrifice their worthless lives for "good" and go to the promised paradise. *Id.* Jerry Piven argues that "Islamic terrorists often suffer from the absence of empathic psychological structures usually developed with loving and nurturing maternal care." Jerry S. Piven, *The Psychosis (Religion) of Islamic Terrorists and the Ecstasy of Violence*, in *Terrorism, Jihad, AND SACRED VENGEANCE*, supra at 62–63. Joan Lachkar argues that Islam is an "orphan" society in search of an idealized father, God. Joan Lachkar, *The Psychological Make-Up of a Suicide Bomber*, in *Terrorism, Jihad, and Sacred Vengeance*, supra at 127. "To escape the abandoned orphan syndrome," Lachkar concludes, Muslims become suicide bombers and terrorists. *Id.* Ruth Stein argues that Muslim terrorists are not pursuing secular political action, but are engaging in a mystical experience that turns "self-hatred and envy into love of God." Ruth Stein, *Evil as Love and as Liberation*, in *Terrorism, Jihad, and Sacred Vengeance*, supra at 45.

obvious that Muslim militants are fighting occupation, alien domination, hegemony, settlements, colonization, and the denial of the right of self-determination. Instead, they find fault in Islamic civilization, in Muslim cultures, and in calls for faith that invite Muslims to embrace the Quran and the Prophet's traditions. HITLit authors have invented the essentialist terrorist to divert attention from festering regional disputes. They go from the superficial to the deep, from Muslims' concrete grievances to their alleged mystical propensity towards violence. Their themes, as the following discussion demonstrates, denigrate Islam as a religion – unleashing powerful propaganda that an unknowing but trusting public embraces – and provide democratic support for proposed policies to wage war. The following discussion also shows how HITLit authors orchestrate their “findings” to assert that Muslim terrorists are the product of a defeated Islamic civilization and an intolerant and violent faith. Ironically, these authors prescribe exactly what they condemn. They prescribe violence to overcome violence. They propose to defeat a supposedly defeated civilization.

Islamic Defeatism

Eighty-six-year-old Bernard Lewis, the so-called doyen of Middle Eastern Studies, has nurtured the ground for blossoming HITLit theses. Lewis, a prolific writer, has studied the interaction between Islam and the West for nearly sixty years, often finding faults with Arab and Muslim cultures. He presents a broad thesis, though cleverly interwoven with *mal fide* compliments, that Islamic civilization is profoundly ill at its heart.¹² It is Lewis who coined the famous phrase “the clash of civilizations” that Samuel Huntington borrowed and made popular. Lewis presents the Muslim world as a defeated civilization that resents Judeo-Christian “Western paramountcy.” Lewis conjectures that all “these alien, infidel, and incomprehensible forces” such as loss of domination, “invasion of foreign ideas and laws,” and “emancipated women and rebellious children”

¹² Edward Said, a Christian Arab, was a vigorous critic of Lewis's historical scholarship, calling Lewis “a prolific neoconservative . . . polemicist” and his scholarship “shoddy” and “sleazy propaganda.” Edward W. Said, *The Politics of Dispossession* 337–40 (1994).

generate rage among Muslims, who express it through violence. Thomas Friedman, an influential journalist and HITLit disseminator, splashes Lewis's thesis across the world through various media outlets, suggesting that Muslim violence has little to do with occupation, hegemony, theft of land, and killings, but rather is caused by something deeper within Muslims' own "sick" socio-psychological formation.

In his popular book published after the September 11 attacks, Bernard Lewis provides a framework, a psychoanalytical narrative, a deeper understanding, for Americans and other readers to think about Islam. The rise of Islamic fundamentalism, proclaims Lewis, is a sour reaction to defeats that Muslims suffered at the hands of Western powers, on the battlefield as well as in the marketplace. The gradual demise of the Ottoman Empire forced Muslims to ask a basic question: "What did we do wrong?" The diagnosis that "still command[s] wide acceptance in the Middle East" is that Muslims have been defeated and have declined because they turned away from Islam and world domination. The corresponding prescription dictates that they can restore "the good old ways" by "a return to them." Lewis's thesis, which was adopted in the 9/11 Report, asserts that Islamic militancy against the West is Muslims' pathological nostalgia for old glory. It argues that Muslims hate the United States because of its leadership of the West.

The implications of Lewis's psychoanalytical thesis of Islamic defeatism, which analyzes the past to explain the present day behavior, are clear: (a) Muslims are envious of the United States because it embodies the highest achievements of the Western civilization; (b) the defeated, belittled, and humiliated Muslims have turned to Islam in search of old glory; (c) Islamic fundamentalism teaches violence against Jews and Christians; and (d) terrorism is the enraged response of Muslim militants. This mischievous thesis purports to furnish historical motivations for present day violence against the West and Israel. In his warped conception of the Judeo-Christian West, Lewis overlooks the expulsion of Jews from Spain, their massacre in the crusades, and their genocide as recent as sixty years ago. He fails to mention that there is little Islamic violence against most countries of "the West," including Canada, Germany, Greece, Italy, Austria, and Eastern Europe (except Russia, which occupies Chechnya).

More importantly, Lewis refuses to credit present day causes for present day violence. He does not mention that Muslims are angry over the colonization of their lands and resources. He does not

acknowledge that Muslims are irate because the United States has aided and funded the forced settlement of European immigrants in Palestinian towns and villages. He does not indicate that the United States has invaded and bombed major cities in Libya, Sudan, Afghanistan, and Iraq, spawning Newtonian terrorism. Finally, he does not point out that Muslims in Palestine, Iraq, Iran, Pakistan, and other Muslim nations want to determine their own political destiny without alien domination, occupation, foreign intervention, and U.S. sponsored puppet regimes. Going for contrived depth at the expense of what is obvious is neither respectable history, nor is it believable psychoanalysis.

Islamic Intolerance

Whereas Lewis diagnoses the ills of a defeated Islamic civilization, other HITLit propagandists claim that Islamic societies are violent and intolerant. Walter Laqueur,¹³ who greatly admires co-historian Lewis, and who popularized “new terrorism,” provides truncated empirical evidence to assert that “[a] review of wars, civil wars, and other contemporary conflicts shows indeed a greater incidence of violence and aggression in Muslim societies than in most others.” He recounts several incidents occurring after 1945 to support his claim. For example, according to Laqueur, the bloodiest war has been between two Islamic countries, Iran and Iraq, and the bloodiest terrorist campaign took place in Algeria between government forces and Muslim militants. His claim, however, excludes millions of soldiers and civilians killed in two World Wars and in genocides in Cambodia, Vietnam, and Burundi. Furthermore, Laqueur contends that Muslim states are hostile to minorities; Muslims find it hard to live as minorities; and even when Muslims are aggrieved populations – such as Chechens, Palestinians, and Kashmiris – the moment they get the opportunity, they turn against suppressive states with greater injustice. For example, according to Laqueur, the Palestinians want to destroy Israel. Laqueur seems to suggest that aggrieved Muslim populations should not be released

¹³ Walter Laqueur is a prolific writer who has written extensively on European and Jewish history. His best-known work is *The Terrible Secret*, a book that urges the world to properly disseminate the available information on the Holocaust.

from their oppression, because their freedom poses a great threat to suppressive states. Charles Krauthammer, a HITLit opinion maker, spreads Laqueur's thesis to the general public through pages of the *Washington Post* in the following words: "From Nigeria to Sudan to Pakistan to Indonesia to the Philippines, some of the worst, most hate-driven violence in the world today is perpetrated by Muslims and in the name of Islam."

The way Laqueur measures Islamic violence shows the bias of his thesis. He excludes millions of soldiers and civilians killed in deadly wars of the twentieth century. For example, the massacres in Vietnam, Korea, Cambodia, Laos, Angola, and Rwanda had nothing to do with Islam or Muslims. The nuclear annihilation of Nagasaki and Hiroshima was anything but Islamic. To win his spurious argument, Laqueur even excludes the genocide of six million Jews, a staggering number when compared to deaths in Muslim nations. Even if all Islamic violence of the last one hundred years is measured and counted, it would be much smaller than the violence perpetrated in Europe during the First or the Second World War. Ignoring facts and introducing arbitrary cut-off lines in the assessment of violence, Laqueur appears to have a different agenda. As a result, he discredits an entire Islamic civilization and denigrates the entire religion of Islam.¹⁴

In what appears to be orchestrated propaganda, Steven Simon¹⁵ and Daniel Benjamin,¹⁶ two cardinal HITLit authors, reinforce

¹⁴ Edward Said has criticized terrorism scholarship that uses truncated evidence. He asserts that such scholarship is spurious scholarship. In other words, it is disingenuous and inauthentic. According to Said, "[m]ost writing about terrorism is brief, pithy, totally devoid of the scholarly armature of evidence, proof, argument." *Blaming the Victims*, supra note 2, at 150.

¹⁵ Steven Simon is a senior analyst with RAND, a non-profit research organization in Washington, D.C. Prior to that, he worked at the International Institute for Strategic Studies in London. He also served as the Senior Director for Transnational Threats on the U.S. National Security Council, coordinating U.S. military operations in the Middle East and terrorism policy and operations. Simon worked at the State Department for twenty years in several high profile positions.

¹⁶ Daniel Benjamin, a well-connected journalist, opinion-maker, and terrorism expert, is a Washington, D.C. insider. He has held several positions in the federal government. He has published articles in major newspapers, including the *New York Times*, *Washington Post*, *Los Angeles Times*, *Financial Times*, and *New York Review of Books*. From 1994–97, he served as special assistant to President Bill Clinton and as National Security Council director for speechwriting. From 1998–99, he served the Council as a counter-terrorism director, dealing with international threats to U.S. security. Benjamin frequently appears on major news networks to disseminate his views on Islamic militancy. As of 2005, he is a senior fellow at the Center of Strategic and International Studies (CSIS).

Laqueur's thesis by arguing that Islam carries the seeds of violence. They contend that jihad is no spiritual undertaking as Islamic revisionists would have us believe, but that it is primarily warfare against the unbelievers. "Bernard Lewis made this case most famously," say the authors. Simon and Benjamin attack Islamic theological history by arguing that Muslims who follow the teachings of Ibn Taymiyya (1263–1328) and Sayyid Qutb (1906–66) are anti-Semitic and prone to violence.¹⁷ They conveniently assume that all Muslim militants who resort to violence are what they call the children of Ibn Taymiyya. Perhaps under the influence of Simon and Benjamin's distorted theological discovery, even the 9/11 Report scapegoats the thirteenth-century Ibn Taymiyya – a century when neither Israel, the United States, nor even a formidable Europe existed – as the source of modern Islamic extremism.

Distorting Taymiyya's and Qutb's complex theological works and reducing their comprehensive teachings to the singular concept of anti-West and anti-Jewish military jihad, Simon and Benjamin construct the following even more absurd thesis: the military jihad against unbelievers is the most important pillar of the Islamic faith, even more important than the traditional five pillars of the declaration of faith, prayer, charity, fasting, and pilgrimage. According to the authors, this obligation to engage in military jihad, which Taymiyya allegedly extracted from the scriptures, as if it were hidden, came to fruition when Qutb and other modern Islamic scholars provided the targets: Jews and the West. This thesis claims to locate the mysterious loaded gun in search of a target, and argues that Islamic terrorism is an ideology that has nothing to do with social, political, or geopolitical grievances, but that it is an ideology to fight the unbelievers and by force impose the Islamic way of life on them.

While the Bush Administration distinguishes Muslim militants from the majority of Muslims, Simon and Benjamin refute the

¹⁷ Ibn Taymiyya and Sayyid Qutb are revered theologians, but in the rich scholarly history of Islamic civilization, no single author has determined the course of events. The scholarly history of Islam is a constant struggle to go back to original sources. All Islamic political revolutions are towards the center and not away from it. Scapegoating any one or two scholars for modern ills of terrorism is a profound misreading of Islamic ethos. In Islam, all Muslim scholarly works are commentaries on the Islamic Basic Code consisting of the Quran and the Prophet's Sunna. Non-Muslim scholarly works on the Basic Code have had almost no influence. In Islam, all Muslim and non-Muslim commentaries are dispensable, particularly if they veer off the track. In Islam, all roads lead back to the Basic Code.

administration's "politically correct" distinction meant to appease the Islamic world. The Bush distinction states that although Islam is a peaceful religion and its followers are also predominantly peaceful, Muslim terrorists who constitute a minority are evil and are corrupting mainstream Islam. It is unclear whether the Bush Administration believes in the distinction or disingenuously draws it for pragmatic reasons. In its war on terror, the Bush Administration seeks support from Muslim states. The distinction provides a saving face for cooperating Muslim states and comforts Muslims in general. It would be a tactical mistake to connect terrorists with the essentialist violent nature of Islam. For in that case, friendly Muslim governments would refuse to cooperate with U.S. armed and intelligence forces that hunt, capture, and kill Muslim militants. Simon and Benjamin understand the utility of the distinction that the U.S. government draws for geopolitical reasons. They nonetheless want to tell the "truth" that Muslim militants are the product of an essentialist violent theology.

Whereas Simon and Benjamin dress their dubious thesis in veiled language, David Frum and Richard Perle, two neoconservative propagandists of the American Enterprise Institute, write the same thesis in a more robust prose aimed at winning over the general public. They argue that "militant Islam" is the cause of violence against Israel and the United States. These authors see symbiotic connections between Muslim militants and the larger Islamic world, thus refusing to draw what they perceive is a "politically correct" but bad faith distinction between militant and moderate versions of Islam. "And though it is comforting to deny it," they say, "all the available evidence indicates that militant Islam commands wide support, and even wider sympathy, among Muslims worldwide." Frum and Perle ridicule the U.S. and world leaders who "dread pronouncing out loud the enemy's name." The enemy, in their view, is Allah's radical Islam.

By shifting the spotlight from victims' grievances to victims' religion, Frum and Perle see Islam as the source of essentialist terrorism. They reject the notion that Muslim militants are fighting to liberate occupied Palestine from Israel's iron clutch or that they are fighting U.S. occupation of Iraq, a war that these authors actively advocated. Instead, Frum and Perle argue that militant Islam is striving "to overthrow our civilization and remake the nations of the West into Islamic societies, imposing on the whole world its religion and its law." But to do so, Muslim militants have no plans to ignite an intellectual debate in which they would highlight Islam's

virtues and the West's moral decadence. They are not planning seminars to propagate puritanical Islam. "To achieve [their] cosmic ambitions," say Frum and Perle, "Islamic terrorists wish – and are preparing – to commit murder on a horrific scale." In militant Islam, the authors assert, lies an "aggressive" and "opportunistic" ideology, no less perverted than that of communism or Nazism.

Addiction to Violence

Relying on themes fabricated by the Lewis-Laqueur enclave, other HITLit propagandists inform the world that Islamic violence is sacred and addictive. Bruce Hoffman,¹⁸ whom the media has portrayed as a world-renowned terrorist expert, traces the historical evolution of the definition of terrorism to conclude that religious terrorists are unique. While in his major HITLit work he does not single out Muslim militants as unique religious terrorists, his writings as a whole are devoted to analyzing Islamic terrorism. Hoffman offers a basic distinction between "secular" and "religious" terrorists. He seems to have a soft corner for secular terrorists and daringly posits the thesis that originally secular terrorism has been "closely associated with the ideals of virtue and democracy." One essential characteristic of secular terrorists is that they use violence to obtain political objectives. Even ethno-nationalist/separatist terrorism, some inspired by Marxism, and some supported by the Soviet Union during the Cold War era, was secular in nature and driven by the ideals of territorial and economic independence.

The anti-colonial terrorism against the British for the creation of the state of Israel, according to Hoffman, is the example of idealistic, secular, and "successful" terrorism.¹⁹ Furthermore, secular

¹⁸ Bruce Hoffman is the Director of RAND's office in Washington, D.C. He has worked for the U.S. Department of Defense and the U.K.'s Ministry of Defense. He writes extensively in popular journals to disseminate his views and regularly appears on the U.S. electronic media to comment on terrorist events.

¹⁹ Hoffman's doctoral dissertation at Oxford University explored more deeply Jewish terrorist activities against the British between 1939 to 1947. Hoffman also argues that the Palestinian Liberation Organization (PLO) has been a secular independence movement supported by the Soviet Union. Hoffman nonetheless notes a number of treacherous flaws in the PLO's organization and operations. The PLO actively pursued the accumulation of capital and wealth as a priority, which it did by mentoring terrorists for other nations. The PLO has violated its

terrorists are not indiscriminate killers on a massive scale because such carnage is “not consonant with their political aims and therefore [is] regarded as counterproductive, if not immoral.” They terrorize in a measured manner to make political points, since their objective is not to kill but to realize political dreams.

In contrast to secular terrorism, Hoffman contends, religious terrorism is inspired by theological demand and not by political concerns. Religious terrorists see violence as a “sacramental act or divine duty.” Whereas secular terrorists have an external audience, including aggrieved populations on behalf of which they are fighting against colonial or oppressive regimes, religious terrorists are their own audience. They speak to no human constituency but to God. They need no approval from external constituencies since they are spiritually self-sufficient. They can both perpetrate violence and justify it. And because they have no external audience, they are not restrained in the use of force. According to Hoffman, “[t]his sense of alienation also enables the religious terrorist to contemplate far more destructive and deadly types of terrorist operations.” Another characteristic of religious terrorists is their open-ended definition of the enemy; they would strike anyone who in their fancy is God’s enemy.

While these core characteristics are common to religious terrorists of all faiths, Hoffman argues that they are “most closely associated with Islamic terrorist groups.”²⁰ He traces the roots of modern Islamic terrorism back to the 1979 Iranian revolution that overthrew the Shah and installed the Shia theocracy. The rhetoric that the Iranian revolutionaries used to justify and perpetuate the establishment of the Islamic state was unfailingly universal in that the concept of One Muslim Community is vital to the teachings of Islam, regardless of Shia/Sunni cleavage.²¹ To this extent, Hoffman’s assessment is accurate. But from the universal rhetoric of Iranian

declared commitments not to expand the theatre of violence beyond occupied territories.

²⁰ The other religious group that Hoffman highlights is “American Christian White Supremacists” who use religion for racist and anti-Semitic purposes. Such American groups, says Hoffman, are bound together by vilification of Jews; they belie in the conspiracy theory that Jews control the government, banks, and the media; and they aim at overthrowing the U.S. or Zionist Occupation Government. They also mistrust state and federal governments and are obsessed with racial purification. Hoffman also briefly examines Jewish terrorism, primarily focusing on Rabbi Meir Kahane’s “virulent hatred of Arabs.”

²¹ The concept of One Muslim Community is contained in the word *Ummah*.

revolutionaries, Hoffman concludes a remarkable non-sequitur: “Violence and coercion are not only permissible to achieve the worldwide spread of Islamic law, but a necessary means to this divinely sanctioned end.” That the revolutionaries aim at spreading Islamic *law*, rather than Islamic *faith*, is a bizarre conclusion, in part because Islamic law to some extent has always been cultural and varies from nation to nation, and in part because Islamic law cannot exist without Islamic faith.

Hoffman’s view of Shia Islam is historically and theologically inaccurate because the Quran clearly states, “let there be no compulsion in religion.”²² Assuming, for the sake of argument, that Hoffman’s claim that Shia Islam sanctions violence for its own dissemination is theologically or historically correct, the claim refutes Hoffman’s previous assertion that religious terrorism is an end in itself and that it pursues no objective goal. If Shia militants are using violence to “achieve the worldwide spread of Islamic law,” their violence is didactic, purposeful, a means to an end. Ignoring these contradictions, Hoffman wants to have it both ways. On the one hand, he asserts that Muslim terrorists engage in violence for no other reason but to get a spiritual high. But he also wants to alarm the world that Shia terrorists are vying for world domination. It appears that he really wants to paint Iran-supported Shia militant groups, particularly the Hezbollah, which resists Israel in Lebanon, as illegitimate, cold-hearted killers.

Despite his focus on Iran as the theological source of modern Islamic terrorism, Hoffman also examines Sunni terrorism and zeros in on the Hamas, an Islamic militant group that resists Israeli occupation in the West Bank and Gaza. He points out that Hamas is committed to the extinction of Israel and that its leaders employ grandiose rhetoric of exterminating Jews from Palestine. These Hamas “commitments” are consistent with Hoffman’s archetypal religious terrorist who is always over-inclusive in defining the enemy. Just like the Iranians, says Hoffman, Hamas also wishes to establish an Islamic state in occupied Palestine. Hoffman seems to believe that Muslims who wish to establish an Islamic state are inherently prone to violence.

In discussing suicide bombings that Hamas has introduced in the Israeli-Palestinian conflict, Hoffman describes religious motives for which young Palestinian men and women die and kill Israelis.

²² *Quran* 2:256.

Embracing the HITLit's favorite thesis of ridicule, Hoffman argues that suicide bombers embrace death for pleasures of the afterlife, including alcohol and sex with virgins that Islam promises to martyrs. This ridiculing thesis discounts Israeli occupation as the primary source of violence in the occupied territories. It ignores a simple fact that many Palestinians kill and die because occupying soldiers in Gaza and the West Bank have brutalized their families. Ignoring grievances, Hoffman goes for a deeper explanation. It is the attraction of getting drunk and having sex in the afterlife, he concludes, which motivates religious terrorists to die and kill. This caricatured view of Islam is most surprising, coming from a "world-renowned" terrorist expert who has free access to U.S. media, the U.S. Defense Department, and academic circles.

Jessica Stern²³ is another enclave author. She dutifully toes the line that Laqueur, Benjamin, Simon, and Hoffman have drawn in the sand. She uses vivid language to describe Muslim militants as irrational pursuers of violence. The titles of her essays and articles – *Caliphate of Terror*, *Terrorism's New Mecca*, and *Explaining the Addiction to Jihad* – reveal the deeper connections she wants to interweave between violence and the Islamic faith. Affirming the HITLit thesis, Stern argues that Muslim militants are not just fighting for political goals, but they are responding with anger to "values like tolerance and equal rights for women that are supremely irritating to those who feel left behind by modernity." This picture of the Muslim militant as the guardian of backwardness minimizes the value of solving geopolitical oppressions and occupations – for the leopard cannot change his spots – and emphasizes the cultural re-engineering of Islamic societies.

Stern's explosive language of smear, along with that of the other HITLit authors, is highly influential because such language causes a visceral reaction among readers and listeners. As Said observed, terrorism has "spawned uses of language, rhetoric and argument that are frightening in their capacity for mobilizing opinion, gaining legitimacy and provoking various sorts of murderous action." The unnecessary but lethal war in Iraq, which HITLit authors

²³ Jessica Stern is a lecturer at Harvard University's John F. Kennedy School of Government. Under the Clinton Administration, Stern served at the National Security Council where she invented policies designed to reduce the threat of nuclear smuggling and terrorism with regard to Russia. She has written extensively on Muslim militancy.

actively promoted, demonstrates that the use of murderous language was highly purposeful.

Introducing a little twist, Stern concedes that a Muslim militant group might start with a moral purpose, but once in business the group becomes “professional.” Muslim terrorist organizations, Stern stresses, “alter their missions in many ways. Some find a new mission when the old one is completed. Some broaden the mission to make it attractive to a wider variety of potential recruits.” In this sense, jihad is an end in itself and Muslim terrorists are no longer fighting just for aggrieved populations. They resent modernity, Western domination, and humiliation. After interviewing Muslim militants,²⁴ Stern pretends to anchor her findings in facts and empirical knowledge that she correctly believes is more respectable than mere analytical inferences. But empirical knowledge is no conversational quackery. It is not talking to a few chosen terrorists. Undeterred by the frivolity of her methodology, Stern is determined to “find” something hidden in the terrorists’ hearts. Fusing jihad with violence, she shares with the readers that “one of the most chilling things [terrorists] have told me is that jihad becomes addictive.” This addiction to violence is so compelling and irresistible that “any action becomes acceptable, including cooperating with enemy terrorist groups and criminal rings, killing innocent Muslims, or attacking friendly forces.”

Just like Hoffman, Stern asserts that religious terrorists are more violent than their secular counterparts.²⁵ As an alarmist, Stern warns that Muslim militants are also more likely to use weapons of mass destruction.²⁶ The ultimate terrorists are thus Muslim

²⁴ Stern interviewed a “retired” terrorist, Firdous Syed, who once fought for the liberation of Kashmir. According to Stern, the retired terrorist realized the “spiritual error” of helping the Muslim community. He seemed to reject the faith of Islam, since it failed to make him understand the sufferings of all peoples. This retired terrorist admitted that Muslim militants initiated violence and destruction in Kashmir. He made the sweeping conclusion that “[w]ith each generation Islamic fundamentalism becomes uglier.” He also said, “[t]o hate is venom. When you hate, you poison yourself. This is the typical mentality of the fundamentalist movement today.”

²⁵ Hoffman’s *Inside Terrorism* and Stern’s *The Ultimate Terrorists* were published in close proximity in time. Their discussion of the historical evolution of the definition of terrorism is similar, as is their treatment of Muslim and Christian terrorist groups.

²⁶ In 1999, long before the U.S. invasion of Iraq, Stern made a case that Iraq possessed weapons of mass destruction, that it would likely use them perhaps against Israel or the United States, and that Iraq sponsored terrorism outside its borders. These are the same arguments that President George W. Bush made to justify the invasion.

fanatics²⁷ who, addicted to jihad, would kill for the sake of killing, and the more they can kill, the more their addiction is deepened, until they can kill with massive doses of chemical or biological weapons. This doomsday scenario is probable because Muslim fanatics possess the right recipe: they can obtain the weapons of mass destruction, they are addicted to violence, they are motivated by revenge, and they believe that God is with them. As is common in the HITLit enclave, Stern also believes that pure Islam is inherently violent. She compares “today’s violent Islamist extremists” with Muslim Assassins of past centuries (1090–1275) and concludes that a common thread binding these killers is their desire “to spread a purified version of Islam.” To make matters sound worse, Stern further insists that this purist, violent, and dangerous conception of Islam is infested with greed, power, and attention.²⁸ According to Stern, Muslim militants are fighting to promote and defend a “backward” way of life, and not to reverse occupations, settlements, theft of land, or military hegemony.

Promoting the enclave theme that Islam is a violent religion, Michael Ledeen,²⁹ a relatively less erudite but pungent HITLit author, draws his inspiration from Walter Laqueur whom he calls “one of the most astute analysts of terror” and from Bernard Lewis, whom he describes as “the greatest Western expert on Islam.” Ledeen alleges that Islam draws an ideological border between the world of Islam and the rest of the world; one is sacred and the other is profane. This allegation is problematic to the extent that Islam treats Judaism and Christianity with high respect and does not consider these faiths as profane.³⁰ Assuming that Ledeen’s

²⁷ Stern not only singles out ad hoc groups of radical Muslim fundamentalists, but also Christian Patriots as the most dangerous in that they would not hesitate to use weapons of mass destruction.

²⁸ Building on this assumption, Stern argues that suppressive states should “sow discord, confusion, and rivalry among terrorists and between terrorists and their sponsors.”

²⁹ Michael Ledeen was the first executive director of the Jewish Institute for the National Security Affairs, an organization that describes him as “one of the world’s leading authorities on contemporary history and international affairs.” Ledeen actively supports a regime change in Iran and has co-founded another organization called Coalition for Democracy in Iran. As of 2005, Ledeen is a resident scholar at the American Enterprise Institute. The Bush Administration has regularly consulted Ledeen for advice on foreign affairs.

³⁰ *Quran* 2:1–3 (describing that the *Quran* is a book of guidance for those who believe in this revelation and the revelation before, a reference to Old and New Testaments).

charge is accurate, the distinction that Islam allegedly draws is not unique in that all ethical and moral systems draw lines between adherents and non-adherents. What Ledeen asserts further, however, contributes to the HITLit thesis that Islam is inherently violent and its followers are accordingly addicted to violence. Whereas Jessica Stern identifies puritanical Islam as the source of violence, Michael Ledeen's Islam is "bloodthirsty" in all its forms and sects. He quotes Elias Canetti³¹ whom he calls "one of the great thinkers of the last century" to assert that Islam is a religion of war. He quotes Bernard Lewis to make an unsupportable claim that there exists only one verse in the Quran that praises peace and peacemakers, implying that the rest of the Quran supports warfare.³² This war-mongering ideology of Islam, contends Ledeen, forces Muslim militants, Shia and Sunni, to hate and kill Jews and Christians. Just like other HITLit authors, Ledeen does not believe that Muslim militants are fighting to reverse theft of land and resources, settlements, invasions, and occupations.

Denial of Grievances

The denial of others' suffering is perhaps a common defensive strategy. In offering intellectual profundity and psychoanalytical explanations, HITLit authors, who rightfully resent Holocaust denial and call it bigotry, vociferously deny that Muslim militants are

³¹ Elias Canetti (1905–1994), a Noble Prize Laureate in Literature, was a Jewish/German/English novelist. He was, however, no expert in Islamic history, theology, or law.

³² There are several verses that encourage Muslims to stop fighting when the enemy has stopped fighting; so either Ledeen misquoted Lewis, or Lewis was mistaken. Examples of verses of the Quran that belie Lewis's claim include: "Fight in the cause of Allah those who fight you but do not transgress limits; for Allah loves not transgressors." *Quran* 2:190; "And fight them on until there is no more persecution and the religion becomes Allah's. But if they cease, let there be no hostility except to those who practice oppression." *Quran* 2:193; "But if the enemy incline towards peace, do thou (also) incline towards peace, and trust in Allah: for He is the One that hears and knows (all things)." *Quran* 8:61; "Therefore if they withdraw from you but fight you not, and (instead) send you (guarantees of) peace, then Allah hath opened no way for you (to war against them)." *Quran* 4:90; and "Except those who join a group between whom and you there is a treaty (of peace), or those who approach you with hearts restraining them from fighting you or fighting their own people." *Id.*

fighting for concrete grievances such as theft of land, hegemony, and occupation. By painting Muslim militants as essentially violent crazies, having “religious grievances,” who are constantly looking to murder innocent victims, the HITLit minimizes the importance of political and geopolitical objectives for which Muslim militants are fighting. As mentioned above, the metaphor of addiction that Jessica Stern uses to describe Islamic militancy captures the HITLit linkage between essence and excuse. Essence comes from within, the excuse from without. Essence propels action, and excuse provides the exterior rationale. That Muslim militants are fighting to restore human dignity of the Palestinian people who have been dispossessed of their properties is an excuse. That Muslim militants are fighting to participate in the Algerian democratic process from which they are forcibly excluded is an excuse. That Muslim militants are fighting to resist U.S. occupation of Iraq is an excuse. That they would fight anyway against anyone is their spiritual essence. Their compulsion to fight is inexhaustible. Muslim militants’ need for violence is unlimited.

Driven by this profound essence, the HITLit maintains, Muslim militants continue to find excuses to feed their murderous instincts and when none are left, they begin to manufacture them. This compulsive behavior to seek violence is no different from that of a cocaine-addict who needs the fix come rain or shine. Journalist David Brooks, a HITLit disseminator, articulates the charge as follows: “Suicide bombing is the crack cocaine of warfare . . . it intoxicates the people who sponsor it. It unleashes the deepest and most addictive human passions – the thirst for vengeance, the desire for religious purity, the longing for earthly glory and eternal salvation.” This is perfect imaging of the essentialist terrorist and consummate denial of the terrorist’s personal and group grievances. Brooks denies that a Palestinian dies and kills because Israeli tanks have decimated her family or her village.

The HITLit’s essentialist terrorism benefits suppressive entities, such as Israel, for it diverts attention from oppression to resistance. Instead of condemning the occupier, it finds faults with the occupied. It minimizes the significance of injustice but highlights the cruelty of violence against injustice. It stands the issue on its head. It supports Israeli governments when they come under severe attack for their treatment of the Palestinians. It disagrees with the world community when it condemns Israel’s extra-judicial killings of Palestinian political and spiritual leaders. It blasts the International Court of Justice when it declares that the Separation Wall that

Israel has built is contrary to international law. It finds faults with Human Rights groups that are highly critical of the mistreatment of Palestinians at checkpoints. It dismisses the grievances that Palestinian militants invoke to justify their armed resistance. It pollutes the air of sympathy for the Palestinians. It even criticizes Israeli allies, including the United States, when they muster the courage to show disapproval of Israeli mistreatments of an occupied population. It charges the critics of Israel as anti-Semites.

The essentialist terrorism is designed to minimize the impact of these injustices. If the HITLit can successfully persuade the world that Muslim militants fighting oppressive infrastructure in occupied Palestine or Iraq are crazies who need violence to satisfy their essence, the world's focus might begin to shift towards the condemnation of compulsive terror. After all, the HITLit's strategy is to shift the focus from oppression to terror. It is unlikely that the world would simply forget or forgive Israeli atrocities perpetrated on the Palestinians, but it would begin to sympathize with the argument that no final settlement of the Palestinian problem can be reached unless crazies are first completely crushed.

The HITLit's denial of grievances is often accompanied by a related phenomenon, which may be called loss exceptionalism. All injury to noncombatants, including civilians, is unjustified. However, suppressive states minimize the injury inflicted on an aggrieved population and highlight a similar injury suffered by a suppressive state's own civilians. Palestinians often complain that the Western media allocate much less coverage to the injury they receive from Israeli occupying soldiers than to the injury that Muslim militants cause to Israeli civilians, which is splashed on the front pages of major newspapers. Likewise, the September 11 attacks on the United States in which two huge buildings collapsed and around 3,000 civilians died, though shocking and reprehensible, have nonetheless been immortalized as an exceptional loss, one that changed the world. This is true even though since then, the U.S. armed forces have destroyed scores of buildings and houses, and killed many thousands of innocent civilians in wars against Afghanistan and Iraq. A skewed measuring of loss and injury, though natural to some extent, as each injured group highlights its own injury, adds to the logic of violence.

6.2 HITLIT INFLUENCE OVER POLITICAL RHETORIC

The influence of HITLit theses over political rhetoric is vivid and tangible. Speechwriters for the U.S. President and cabinet Secretaries employ terrorism vocabulary that promotes and voices HITLit ideas. The U.S. official political rhetoric paints Muslim militants as heartless, immoral murderers and worse. The rhetoric is designed to defend aggressive policies against Muslim militants both at home and abroad. Official words prepare the public to think about Muslim militants as an unprincipled enemy who relies on a decadent version of Islam to attack the West's modern, civilized, and innocent way of life.

President George W. Bush employs the word "evil" to describe Muslim militants. Most often in his speeches, he uses the word evil as a noun and not as an adjective, implying the character and the internal formation of Muslim militants, and not their acts. Muslim militants are therefore inherently evil, and not merely because they commit evil acts. In his speech at the 2002 Graduation Exercise of the United States Military Academy at West Point, President Bush captured the morality of the war on terror in the following words: "We are in a conflict between good and evil, and America will call evil by its name."³³ Muslim militants are evil, the President said in this speech, because they target innocent civilians for murder and commit brutality against women. The charge that Muslims oppress women, a well-accepted thesis in the Western world, accentuates the moral depravity of "puritanical" teachings of Islam. It

³³ President George W. Bush, Graduation Speech at West Point (June 1, 2002), available at <http://www.whitehouse.gov/news/releases/2002/06/20020601-3.html>. Although the President did not use the words "Muslim militants" in his speech, the reference is obvious. The part of the speech that articulates the concept of good and evil runs as follows:

Some worry that it is somehow undiplomatic or impolite to speak the language of right and wrong. I disagree. (Applause). Different circumstances require different methods, but not different moralities. (Applause). Moral truth is the same in every culture, in every time, and in every place. Targeting innocent civilians for murder is always and everywhere wrong. (Applause). Brutality against women is always and everywhere wrong. (Applause). There can be no neutrality between justice and cruelty, between the innocent and the guilty. We are in a conflict between good and evil, and America will call evil by its name. (Applause). By confronting evil and lawless regimes, we do not create a problem, we reveal a problem. And we will lead the world in opposing it. (Applause). *Id.*

further the HITLit thesis that Muslim militants resort to violence because they oppose universal values of the modern world.

The focus of political rhetoric is not limited to “crazy militants.” It also highlights the murderous ideology that supposedly inspires Muslim militants to die and kill, a theme that the more radical HITLit authors, such as Perle and Frum, advocate. Speaking to soldiers at Fort Bragg, President Bush repeated the HITLit thesis in the following words: “The terrorists who attacked us and the terrorists we face murder in the name of a totalitarian ideology that hates freedom, rejects tolerance and despises all dissent.”³⁴ This was a reference to militant Islam that Frum and Perle and other HITLit authors have espoused in their books and articles. Furthermore, the President also embraced HITLit ideas that essentialist terrorists murder the “innocent,” despise free societies, and wish “to remake the Middle East in their own grim image of tyranny and oppression.” This portrait of the essentialist terrorist shifts the entire blame to the teachings of militant Islam as portrayed in the HITLit, and it refuses to recognize that Muslim militants might be fighting for less grandiose causes such as occupation, theft of land, settlements, home demolitions, or grief over the “collateral damage” that occupation forces have caused in Tikrit, Baghdad, or Falluja.³⁵

Believing that Muslim militants resort to violence because they are essentially evil, Secretary of State Condoleezza Rice embraces the HITLit thesis of grievances denial. “When are we going to stop making excuses for the terrorists and saying that somebody is making them do it? No, these are simply evil people who want to kill. . . . This isn’t about some kind of grievance. This is an effort to destroy, rather than to build.” However, she does not advocate that Muslim militants are indeed inspired by Islam. Instead, she embraces what the HITLit describes as “politically correct” language. Namely, that Muslim militants “want to kill in the name of a perverted ideology that really is not Islam, but they somehow

³⁴ Such rhetoric is not confined to the Bush administration. Senator John McCain used similar rhetoric in condemning the London attacks in July of 2005. He referred to “this cruel and despicable enemy” who wants to “destroy not only America but the West and our values and everything we stand for.”

³⁵ According to one study done by the United Kingdom’s leading medical journal, over 100,000 civilians have been killed in Iraq as a direct consequence of the U.S. invasion. This figure excludes Falluja, a city where civilian casualties were extremely high.

want to claim that mantle to say that this is about some kind of grievance.”

The HITLit theses have begun to shape some foreign leaders’ political rhetoric as well. Reacting to the July bombings of London, Prime Minister Tony Blair stated, “It is important . . . that the terrorists realize our determination to defend our values . . . is greater than their determination to . . . impose their extremism on the world.” This characterization of violence (assuming that the bombings were indeed the work of Muslim militants, for which no credible proof existed at the time of Blair’s statement) casts the bombing in grandiose terms. When translated, the statement means: Muslim militants bombed London because they desire to impose an extreme, purist version of Islam on the world. This characterization, which appears to be a non-sequitur, provides only the remotest accusatory logic to the effect that Muslim militants foolishly believe that the world, or London, would embrace puritanical Islam through sheer fear. It declines to acknowledge more mundane explanations for the bombings, such as that the militants were unhappy about the United Kingdom’s participation in the U.S. invasion of Iraq. It completely ignores Osama bin Laden’s famous statement: “If you bomb our cities, we will bomb yours.”

While political leaders continue to equate Islamic violence to Islam’s puritanical rooting, some U.S. military generals have taken the rhetoric even further. After the September 11 attacks, some American military generals launched a campaign of propaganda, using religious, national, and racial contempt to prepare soldiers to fight hard in Afghanistan and Iraq, and to win the support of Christian conservatives who see Islam as a global threat to notions of goodness and American power. General William Boykin, who believes God chose Bush for the White House to fight evil, attacked Islam in the clearest possible words. Speaking to a congregation of Baptists in Florida, the General narrated the story of a Muslim warlord in Somalia, who had boasted that Allah (God) would shield him from American soldiers. “I knew . . . my God was bigger than his. I knew that my God was a real God, and his was an idol,” General Boykin said. This religious contrast was drawn to persuade Christian conservatives that the war on terror is against the false faith of Islam. This was not just a one-time slip of the tongue. Beginning in January 2002, General Boykin traveled the nation in dress uniform, addressing religious-oriented events, staging a slideshow, displaying pictures of Osama bin Laden and Saddam Hussein, and saying to the audience, “Satan wants to destroy this

nation, he wants to destroy us as a nation, and he wants to destroy us as a Christian army.”

Boykin’s speeches drew unprecedented media attention for a number of reasons. He was the general charged with hunting Osama bin Laden and reforming Abu Ghraib prison. He also allied himself with the Faith Force Multiplier, a conservative group that advocates applying military principles to evangelism. Boykin’s sermons were perhaps designed to cheer American soldiers and their families into believing that they were fighting a dangerous faith, Islam, and that they were destined to prevail. It is unclear, however, how Boykin’s speeches were supposed to affect Muslims who serve in the U.S. armed forces.³⁶

The demonization of Muslim militants and the concomitant rhetoric continues to flow into the news, affirming the fact that the HITLit has penetrated deeper into the military. During a panel discussion in San Diego, General James Mattis, who commands the First Marine Division in Iraq fighting insurgents and who also fought in Afghanistan, said he relished the opportunities to kill people.

Actually, it’s quite fun to fight . . . you know. It’s a hell of a hoot . . . You go into Afghanistan, you’ve got guys who’ve slapped women around for five years because they didn’t wear a veil. You know, guys like that ain’t got no manhood left anyway, so it’s a hell of a lot of fun to shoot that.

The General’s message replays the HITLit thesis that puritanical Islam, which the Taliban was allegedly enforcing, produces impotent fighters who assert their manhood through the oppression of women. It also prescribes that such men may be eliminated without any moral quandary.

Political speeches made in the United States demonstrate that the HITLit theses have penetrated deeply into political consciousness. The public has been mobilized into believing that Islam preaches violence and that its followers hate the United States for its glory and dominance. The next step is to wipe out Muslim terrorists, dismantle governments that pay stipends to families of suicide bombers, forcibly change Islamic cultures, shut down parochial

³⁶ Commenting on Boykin’s statements, Secretary of Defense Donald Rumsfeld remarked that individuals are entitled to their views as “[w]e are free people.” However, on the recommendation of the Pentagon Inspector General, appropriate corrective action was taken against Boykin.

Islamic schools, and put an entire population of one billion Muslims on the defensive.

6.3 HITLIT PROPOSALS TO COMBAT MUSLIM MILITANCY

The HITLit proposes new approaches to combat Islamic militancy. Most proposed solutions carry an aura of lawlessness. Lawless responses – such as illegal war, extrajudicial killings, detention without trial, degrading treatments, torture, the suspension of client-attorney privilege, and renditions – to combat Muslim militancy are justified on the theory that essentialist terrorists are unique. It is asserted that conventional law-based approaches would not work. Karl Rove, President Bush’s top advisor, summed up the new approach in the following words: “Conservatives saw the savagery of 9/11 and the attacks and prepared for war; liberals saw the savagery of the 9/11 attacks and wanted to prepare indictments and offer therapy and understanding for our attackers.” Rove’s remarks ignited a huge controversy. Liberals insisted, though defensively, that they were not soft. The liberals’ defensiveness has further empowered the HITLit idea that “indictments” of militants and “understanding” of causes of their militancy are woefully inadequate responses to Islamic terrorism.

Before September 11, the United States employed the criminal justice approach to capture, indict, and punish terrorists both at home and abroad. For example, Congress enacted a broad hostage-taking statute to punish terrorists who seize any person, not just U.S. nationals, whether inside or outside the United States, to compel the behavior of a third person or a governmental organization.³⁷ The statute impinges upon the sovereignty of foreign states and asserts criminal jurisdiction over hostage takers who perpetrate their crime on foreign soil against foreign nationals. In light of this statute, the FBI engaged in international abductions to capture terrorists abroad.³⁸ Despite its jurisdictional overreaching, the statute nonetheless offers a legal approach to dealing with terror-

³⁷ See 18 U.S.C. § 1203(a) (2000).

³⁸ Under this statute, Fawaz Yunis, a Lebanese who hijacked a Jordanian airline, was arrested abroad in an FBI sting operation and brought to the United States. *U.S. v. Yunis*, 681 F. Supp. 896, 898, 903, 905–06 (D.D.C. 1988).

ists, an approach that assures a traditional trial within the framework of criminal justice restraints and defendants' rights. U.S. courts upheld the validity of this overreaching statute on the theory that if a foreign state is unwilling or unable to prosecute terrorists, "it is left to the world community to respond and prosecute the alleged terrorists."³⁹

The HITLit authors, such as Ruth Wedgwood, seemed unsatisfied with the criminal justice approach with its inherent restraints and rights. They urged the United States to adopt more aggressive policies, such as the ones that Israel has used in combating Palestinian resistance and terrorism. Even though they had been arguing the case for some time, the September 11 attacks furnished a perfect opportunity for HITLit authors to offer the closing argument. A sympathetic Bush Administration, baffled by the enormity of the attacks, succumbed to the HITLit advocacy. It embarked upon "a new paradigm" that would generate increasingly lawless policies, as one lawless policy triggered another, and yet another. Soon, the Administration was engaged in a questionable war in Iraq. It defied world opinion, mocked the United Nations, invaded Iraq, and ignored the UN Charter rules on the use of force. Ignoring prohibitions on extra-judicial killings, it began to murder suspected terrorists, even if they were U.S. citizens.⁴⁰ Muslim prisons were set up in Iraq, Afghanistan, Guantánamo Bay, and at secret places where detainees were interrogated contrary to customary and treaty-based international law. Some detainees were rendered to friendly Muslim nations for interrogation by means of torture. In Iraq, Muslim prisoners were tortured in a U.S.-operated prison. At home, hundreds of Muslim immigrants and citizens were detained without any legal process. Some were beaten in detention. Others were deported on technical violations of immigration laws. These stories were no different from the ones originating in Israeli-occupied territories, where Palestinian militants have been detained, tortured, killed, and expelled. The United States was being re-made in the image of Israel. But this was no mere coincidence; it was the result of the hard work that HITLit authors have put in for years.

³⁹ *Id.* at 907.

⁴⁰ Dana Priest, *CIA Killed U.S. Citizen in Yemen Missile Strike; Action's Legality, Effectiveness Questioned*, *Washington Post*, (Nov. 8, 2002), at A01, available at <http://www.commondreams.org/headlines02/1108-05.htm>. See also Alan Dershowitz, *They Don't Have to Wear Combats to Be a Fair Target*, *Times* (London), Apr. 22, 2004, available at 2004 WLNR 5495079.

Moreover, when the Bush Administration adopted legally questionable policies at home and abroad, a slew of legal experts began to defend these policies as legal and mandated by the new paradigm. Professors John Yoo, Ruth Wedgwood, Jack Goldsmith, and others published law articles in prestigious law journals defending violation of the UN Charter on the use of force, resorting to war, refusing to apply Geneva Conventions to captured Muslim militants, renditions, and even suspending civil liberties in the United States. These experts made the legal case for the justification of a questionable practice, but stated that they were not recommending that the U.S. government adopt the policy. Yoo, for example, argued that the United States may lawfully transfer detainees to foreign countries for interrogation, but would not say whether the government should indeed adopt the policy. The message of U.S. government lawyers, including John Yoo, Jay Bybee, and Robert Delahunty, was something like this: do it if you want to; we have done our job by making it sound legal.

Proactive Aggression

The invasion of Iraq was no sudden, existential leap of faith. For years, HITLit authors have been advocating proactive aggression to crush Muslim nations that support militancy against Israel and the United States. Arguing that essentialist terrorists cannot be reformed through punishment or rehabilitation, these authors have been proposing to kill them. The best way to kill Muslim militants is to engage them in wars fought in Muslim lands. These wars are proposed not only to kill militants, but to dismantle regimes that support Muslim militancy. President Bush has embraced the HITLit prescription of proactive aggression as follows: “U.S. troops are fighting to defeat these killers abroad before they attack us at home.” HITLit legal experts defend proactive aggression, turning lawlessness into law.

Michael Ledeen proposes proactive aggression and “massive defeat of the forces of Islamic fundamentalism throughout the Middle East.” If Iraq, Iran, and Syria are crushed and pro-Western governments are installed, says Ledeen, it would “have a decisive effect on the thinking of Islamic leaders and on the passions of the Islamic masses.” Ledeen’s proactive and effective aggression prescribes a complete behavior modification of Muslim militants, their leaders,

and the masses from which they emerge. After defeating governments and killing militants, Ledeen proposes that the United States use democratization as a tool to change Islamic culture and puritanical versions of Islam, including Saudi Arabia's Wahabbism, just as the United States rooted out the Nazi ideology from the German culture after defeating Hitler. And if radical Muslims seize Saudi Arabia, war may be extended to the Arabian Peninsula "because the West needs Saudi oil."

Ruth Wedgwood, commenting on the HITLit thesis that Muslim militants have no programmatic demands as conventional terrorists do, but rather fight to seek martyrdom, concludes that these operators "cannot be deterred in an ordinary fashion." "We face an adversary," she writes, repeating the HITLit mantra, "who really does not seem to care about earthly things, only about the triumph of an eschatological ideology." Criminal justice that looks backwards and presupposes that deterrence is possible, is therefore inadequate to deal with Muslim militants. "We need to think about the anticipatory moves that one makes in war."

Victor Hanson, who advises the U.S. Department of Defense, argues that war must be lethal and conclusive. Leaving aside moral questions from the equation, Hanson studies the effectiveness of war as a killing machine. "My curiosity is not with Western man's heart of darkness, but with his ability to fight – specifically how his military prowess reflects larger social, economic, political, and cultural practices that themselves seemingly have little to do with war." Alexander defeated the Persians because the Greeks were culturally superior. Europeans defeated Asians, Africans, and Native Americans, says Hanson, not because they were smarter or braver but because of "the singular and continuous lethality" of their culture. If the U.S. armed forces are following Hanson's analytical and ideological models, many things begin to make sense in the U.S. war on terror. Per Hanson, the war on terror is (and ought to be) amoral. Its focus is (and ought to be) on lethality rather than ethics or law.

U.S. lethality in Iraq has been effective in killing, but it has also served militant organizations by recruiting new fighters and suicide bombers. It was correctly anticipated that Muslim militants from all over the world would come to fight troops invading Muslim nations. But consequences of anticipatory moves are less certain. Suppressing states create battlefields to attract militants and to kill them. Muslim militants welcome legally questionable invasions as recruitment opportunities, for they present these invasions as

modern-day crusades.⁴¹ Israel tasted a bitter defeat in Lebanon when a coalition of militants from all over the world volunteered their services to fight the invading army. The U.S. invasion of Afghanistan was successful in killing a number of militants, though the best Taliban fighters and the al Qaeda leadership survived the war. The U.S. war against Iraq has been a lethal draw so far. Many militants have been killed, but many more have been recruited because most Muslims believe that the Iraqi war was unjust, and therefore, jihad is obligatory.⁴² The Iraqi war further lost its moral grounding when no weapons of mass destruction were found. If HITLit authors are successful in persuading the U.S. administration to invade Syria and Iran, new battlefields are likely to be even more complex and bloody. In all such invasions, the costs that Muslim civilians pay are enormous.

In pursuing the destruction of Muslim militants, HITLit authors care little whether wars are illegal. The U.S. invasion of Afghanistan was legal, but the invasion of Iraq was not.⁴³ The entire world supported the toppling of the Taliban, who sheltered al Qaeda, but the international community was highly skeptical of both the legality and the wisdom of the Iraqi war. Ignoring world opinion and the rule of international law, HITLit authors and their counterparts in the U.S. government were determined to pursue a policy of proactive aggression against Saddam's Iraq. President Bush originally defended the war as a measure to stop Iraq's dictator from furnishing weapons of mass destruction to terrorists. This rationale was the child of HITLit authors who had persuaded the Bush administration into believing the following: (1) that Iraq possessed weapons

⁴¹ Toppling the Taliban in Afghanistan was considered necessary to uproot al Qaeda, which allegedly perpetrated the 9/11 attacks. Toppling Saddam Hussein was considered necessary to cut off funding to families of suicide-bombers who attacked Israel. Likewise, Syria and Iran are accused of sheltering and supporting terrorists who mastermind attacks on Israel and reinforce insurgency in Iraq.

⁴² The Quran states as follows:

And why should ye not fight in the cause of Allah and of those who, being weak, are ill-treated (and oppressed)? – Men, women, and children, whose cry is: "Our Lord! Rescue us from this town. Whose people are oppressors; and raise for us from Thee One who will protect; and raise for us from Thee One who will help!"
Quran 4:75.

⁴³ Under the U.N. Charter, only two circumstances exist in which the use of force is permissible: (1) in collective or individual self-defense against an actual or imminent armed attack; and (2) when the Security Council has directed or authorized use of force to maintain or restore international peace and security. The U.S. invasion of Afghanistan fell under the second circumstance. However, the war in Iraq meets neither circumstance.

of mass destruction; (2) that Saddam Hussein would supply these weapons to essentialist terrorists; and (3) that essentialist terrorists had no moral qualms about using these weapons against the United States and Israel.

Extra-Judicial Killings

Daniel Benjamin and Steven Simon propose that the United States “consider targeted killing” of Muslim militants involved in conspiracies against the United States. The authors approvingly refer to Israel’s employment of extra-judicial killings to eliminate Palestinian militants, including political and spiritual leaders of Hamas. In targeted killings, the perpetrator state charges militants with crimes, collects and weighs evidence to prove alleged charges, convicts, and imposes the death penalty. This procedure involves no judicial trial and no opportunity for the targeted person to mount any legal defense. International law opposes extra-judicial killings. Ignoring international legal restraints, these two authors propose that the United States adopt the Israeli practice of targeted killings. They even suggest that such killings fall within the state’s right of self-defense. Not totally comfortable with the morality of their proposal, however, the authors concede that a policy of targeted killings “is unsavory and should be thoroughly debated.” “But in a new strategic context,” they conclude, “unsavory may not be the same as unacceptable.”

Despite this coaxing, the United States has been reluctant to undertake extra-judicial killings as a routine practice. However, the rules have been relaxed. In November 2002, for example, a “remote-controlled CIA Predator aircraft” shot “a five-foot long Hellfire missile” and destroyed a moving vehicle in a desert about “one hundred miles east of the Yemeni capital, Sanaa.”⁴⁴ In the vehicle six “terrorists” were incinerated, including one naturalized U.S. citizen. According to U.S. officials, the missile strike was executed with prior approval of the Yemeni government. In this lethal mission, the high value target was a senior al Qaeda leader, Abu Ali al-Harithi, accused of masterminding the October 2000 attack

⁴⁴ Priest, *supra* note 41.

on the military ship USS Cole. U.S. officials did not admit or deny that CIA operatives knew that one of the passengers in the target vehicle was an American citizen. It is unlikely that any such knowledge would have stopped the deadly strike.

Torture

Universal prohibition against torture has acquired the status of *jus cogens*. The Convention Against Torture is cast in absolute terms, leaving no room for exceptions. Article Four of the Convention specifically states, “Each State Party shall ensure that all acts of torture are offences under its criminal law.” Alan Dershowitz acknowledges the universal and absolute character of the prohibition against torture embodied in the Convention. And yet, he points out that the United States will remain in technical compliance with the Convention obligation if it resorts to mental and psychological torture to save lives, since the Eighth Amendment of the U.S. Constitution, and not the Convention, provides the ultimate standards of official conduct. Furthermore, Dershowitz challenges the conventional wisdom that torture does not work, arguing that torture has indeed produced truthful information. If torture were ineffective as an investigation tool, nations would have abandoned it long ago; but they have not. Dershowitz recognizes the moral pain that comes with allowing torture, but he concludes that allowing torture is a tragic choice that “we” will have to make in the age of weapons of mass destruction.⁴⁵

Dershowitz’s logic dictates that state officials may use torture, though it is morally uncomfortable, to seek information from Muslim militants because they will most likely use weapons of mass destruction. In discussing Muslim militants, Dershowitz compares them with Hitler. “There are indeed haunting and frightening similarities between what Hitler said he would do to the Jews and what many Islamic leaders are now saying they intend to do. . . .” This similarity is drawn to highlight the point that Muslim militants

⁴⁵ To limit official abuse of torture techniques, Dershowitz invents the concept of the torture warrant that officials must obtain from a court. Torture warrants, he argues, will protect the rights of the suspect. He also believes that most people misunderstand his stance on torture.

will use weapons of mass destruction to kill Jews and Americans because, just like Hitler, Muslim leaders mean what they say. And just as ordinary Germans were responsible for creating and sustaining Hitler, tens of millions of Muslims, says Dershowitz, support militants' threats "of slaughtering large civilian populations, including children, women, and elderly" as they have already done. In line with his HITLit peers, Dershowitz sees Islam as a basically violent religion in that tens of millions of its adherents support the annihilation of innocents.

In the realm of law, Alan Dershowitz has distinguished himself in promoting HITLit terror-related policies that do not fit with his public image as the protector of civil liberties for all, including the worst criminals. In advocating the HITLit thesis that Muslim militants seek violence for the sake of violence, Dershowitz appears to be less dogmatic than his HITLit peers. He draws a distinction between Palestinian terrorism and al Qaeda terrorism. Palestinians' terrorism has been changing its objectives to pressure Israel in giving more and more concessions, says Dershowitz, but al Qaeda's terrorism aims at destroying American symbols of power and the people associated with these symbols. "Like the religiously inspired terrorists of old, the means and the ends seem to be the same: mass murder for its own sake, based on religious zealotry." This rhetoric has no informative value, except that it puts down Islam as a source of violence and paints Muslim militants as bloodthirsty maniacs.

If Dershowitz is arguing that al Qaeda terrorism has no justification because it has no grievances of its own as Palestinians do, he has a point, though a small one. Even this small point loses significance if al Qaeda is seen as an ideological force of solidarity that assists regional Muslim militants fighting for legitimate grievances. It is unclear how Dershowitz would distinguish a coalition of suppressive states, such as the one that occupies Iraq, from a coalition of Muslim militants of different nationalities. Just as some Western states have pooled their resources to invade and occupy Iraq, so too have Muslim militants in resisting this occupation. The fault is not in the idea of coalition; it is in the morality of their action. The international dimension of militancy (terrorism) is viewed with horror because Muslim militants' shared goal of resisting occupation, settlements, hegemony, or alien domination is seen as illegitimate.

Suspension of Civil Liberties and Laws of War

Jack Goldsmith and Cass Sunstein, HITLit sympathizers, take a devious stand on the Bush Administration's suspension of civil liberties. They do not come out and say that the monitoring of attorney-client phone calls, the degrading treatment of the Guantánamo prisoners, the detention of American citizens as enemy belligerents, and the indefinite detentions and deportations of Muslims on technical immigration violations are constitutionally defensible. "We do not express a view on these practices," say Goldsmith and Sunstein.⁴⁶ However, they note that "compared to past wars led by Lincoln, Wilson, and Roosevelt, the Bush Administration has, thus far, diminished relatively few civil liberties." That might be so, but instead of appreciating the present legal culture that restrains the Executive branch from suspending civil liberties, the authors see "a potential danger" in the revolution. Invoking threats of weapons of mass destruction posed by al Qaeda and other terrorists, they caution against "the gravitational pull" of a liberties-protective legal culture that might "lead some to underestimate the threat we . . . face." Perhaps insensitive to the fact that a counter-revolution in the legal culture of liberties will disproportionately affect minorities, Goldsmith and Sunstein nonetheless are willing to trade off even more liberties for national security "in the context of asymmetrical warfare involving suicidal terrorists."

Social Engineering of Muslim Societies

In addition to recommending lawless approaches to crush Muslim militants, HITLit authors strongly advocate that the United States

⁴⁶ Jack Goldsmith & Cass R. Sunstein, *Military Tribunals and Legal Culture: What a Difference Sixty Years Makes*, 19 *Constitutional Comment* 261, 288 (2002). After completing this article, Jack Goldsmith took a leave of absence to serve as Special Counsel at the U.S. Defense Department. In another article that he co-authored after having served at the Defense Department, Goldsmith offers a new approach to justify indefinite detentions of enemy combatants. The traditional law of war requires that captured enemy combatants be released after the war is over. This rule, according to Goldsmith and his co-author Curtis Bradley, must be reread to mean that a captured terrorist may never be released if he continues to pose a security threat to the United States. Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 *Harvard Law Review* 2047, 2124 (2005).

undertake profound social re-engineering of Islamic societies. If the Muslim culture that produces militancy is fundamentally transformed, HITLit authors believe that Islamic terrorism would fall apart. Accordingly, they suggest changes in education, the eradication or dilution of the Quran's concept of jihad, and exportation of liberal freedoms and liberties. Even the democratization gift to the Islamic world is designed to reduce the influence of religion over Muslim populations. Contrary to the rhetoric that Muslim militants want to impose their values on the rest of the world, HITLit authors themselves are engaged in an ambitious enterprise of remaking Muslim societies through coercion and manipulation.

Daniel Benjamin and Steven Simon propose a "bargain" under which Muslim nations would receive "continued and perhaps expanded economic and military assistance" if they undertake reforms in their educational, economic and political systems aimed at ending anti-Americanism and anti-Semitism. The authors argue that democratization would lessen the appeal of jihad, and political competition would expose the incompetence of religious parties in running state affairs, since they would be unable to deliver a higher standard of living that citizens demand. Democratization, however, may not be useful for the United States, warn the authors, since it might bring anti-American and anti-Israel parties to power. In prosecuting the war on terror, say the authors, undemocratic regimes in Pakistan, Egypt, Yemen, Jordan, and Saudi Arabia have been highly cooperative in hunting down and handing over terrorists. This might change if governments are more accountable to the people.

Despite these short-term risks, Benjamin and Simon offer a number of strategies to alter the minds of Muslim populations. Pop music, chat shows, propaganda of good Muslim life in America, and news from the Western perspective – strategies adopted under the Clinton Administration – all have failed to mold Muslim opinion in the desired direction, say the authors, because Muslims believe the United States is "under the spell of Jews." The United States must engage the Muslim world in a more candid dialogue in which both parties can critique each other's values. After suggesting a more honest approach to problems facing the Muslim world, however, the authors slip back into more manipulative strategies. They suggest, for example, that Washington find "creative ways" to funnel monies to "moderate clerics and mosques" whose "voices we want to amplify." It is unclear how the authors believe that an honest dialogue can be constructed if the United States is funding views it likes "and disseminating them via cassette and the Internet to increase their audience."

While Benjamin and Simon are more cautious in their democratization proposals, Frum and Perle are more combative and straightforward. They disagree with Secretary Kofi Annan, who remarked that democracy could not be imposed by force. They give examples of Western Europe and Japan to rebut Annan's thesis. Outside help, and even outright war, is critical in transforming the Muslim world because "militant Islam is a lie. It proposes to restore the vanished glory of a great civilization through crimes that horrify the conscience of the world." Once militant Islam is dismantled with force, the authors believe that the road to liberal democracy may be more easily constructed. Ordinary Muslims "want to be like America," and only Iranian mullahs, Saudi Imams, and Palestinian would-be dictators dread "the excitement and appeal of American life." At another place in their book, however, Frum and Perle point out that even educated middle class Muslims – such as diplomats, engineers, and university professors – denounce the United States and show little sympathy for U.S. losses suffered in the 9/11 attacks. Ironically, these authors, who would impose democracy even with guns, "have good reason to pray for Pervez Musharraf," a military man who overthrew a duly elected government and seized power, because ordinary Pakistanis are anti-America and anti-Israel.

Similarly, Michael Ledeen draws on history to wage an ideological war against Islam. "We defeated the Soviet Empire both militarily and ideologically, and there was a dynamic interplay between the two." Building on this logic, Ledeen prescribes a combination of war and democratization to challenge the Muslim world. He proposes the following course of action: "hate-preaching schools and mosques must . . . be closed or fundamentally changed;" Iraqi Shi'ism should be used against Tehran for dismantling Iranian theocracy and promoting the separation of church and state; al Qaeda must be destroyed; and pro-Western governments must be brought to power in Syria, Iran, and Iraq. Ledeen is unsure whether democracy can be brought to Saudi Arabia, where puritanical "poison has penetrated very deeply into the body of the nation." Just like other HITLit authors, Ledeen's commitment to democracy is not absolute. If radicals win elections and come to power, says Ledeen, we might have to attack Saudi Arabia and defeat the radicals, because otherwise they will deprive the West of Saudi oil. To justify all this, Ledeen gives the last word to Machiavelli: "If you win, he tells us, everyone will judge the means you used to have been appropriate."

Jessica Stern proposes a more passive-aggressive warfare to engineer Islamic societies. Manipulation rather than violence is her

preferred method. Instead of killing militants, she wants to sow confusion and conflict among them so that they kill each other. Instead of shutting down religious schools (*madrassahs*), she proposes to establish alternative schools. Stern correctly points out that *madrassahs* are popular among poor Muslims because they provide free education. Whether Western-supported alternative schools providing free education would likewise attract the children of poor families is unclear. But surely, alternative schools will sow confusion in the values of the society. She rightfully points out that some of the values that are being preached to Muslims, such as glorification of vulgarity and violence, are abhorrent. Of all the HITLit authors, Stern appears to be the most respectful of human rights and refrains from proposing crass self-serving agendas. Since Stern is so preoccupied with psychological warfare as the method of transforming Islamic societies, Muslims are unlikely to trust her proposals. For example, Muslim families will not send their children to “alternative schools” that prohibit the study of the Quran.

6.4 A CRITIQUE OF ESSENTIALIST TERRORISM

Grievances Matter

A few select scholars and terrorist experts vigorously dispute the HITLit notion of essentialist terrorism. Michael Scheuer, who served in the Central Intelligence Agency for more than twenty years and was chiefly responsible for tracking Osama bin Laden and al Qaeda, vigorously opposes the HITLit thesis that Muslim militants, propelled by a violent religion, are waging an ideological war against the West. In his books, articles, and media interviews, Scheuer argues that Muslim militants are fighting hostile, exploitative, and disrespectful U.S. policies toward the Islamic world, and not, as the HITLit authors assert, “because Americans vote, have civil liberties, and allow women to drive cars.” In his book, *Imperial Hubris*, Scheuer points out several factors that turn Muslims against the West generally and the United States particularly: the U.S. support for Israel, the invasion of Afghanistan and Iraq, the stationing of troops in Islamic countries, the forcing of Muslim oil-producing countries to extract more oil and sell it cheaply, the U.S. friendship with countries such as Russia and India that deny the right

of self-determination to the Muslim populations of Chechnya and Kashmir, and the U.S. support for occupying and dismembering Muslim lands. All these factors paint the United States as a one-eyed giant that has turned its wrath against the Muslim world.

Likewise, Robert Pape, in his study of suicide attacks, concludes that concrete grievances rather than mystical addiction to violence drive persons to kill themselves and others. Nearly all suicide attacks are perpetrated to compel foreign military forces to withdraw from the “territory that the terrorists consider to be their homeland. Religion is rarely the root cause, although it is often used as a tool by terrorist organizations in recruiting and in other efforts in service of the broader strategic objective.” Contrast this grievances-centered view to that of the HITLit, which offers a mischievous and scandalous explanation to the effect that Muslim militants seek martyrdom so that they can enjoy sexual pleasure that the Quran promises in the life hereafter. Pape counters another HITLit thesis that Muslim societies ought to be re-engineered so that they discard the jihadist aspects of Islam. He warns that “any policy that seeks to conquer societies in order, deliberately, to transform their culture is folly. Even if our intentions are good, anti-American terrorism would likely grow, and grow rapidly.”

Similarly, Paul Craig Roberts, who served as Assistant Secretary of Treasury in the Reagan Administration, argues that a strategy of denying grievances is counterproductive. “Terrorism requires that grievances be acknowledged and addressed.” He is also skeptical of a military solution to the terrorist problem. “As we are belatedly learning in Iraq, there are no easy military solutions to terrorism. If there were, Israelis would have achieved security many years ago.” Roberts goes further to argue that U. S. military adventures in the Middle East constitute a strategic blunder and that history is unlikely to favorably view Bush Administration neoconservatives (including HITLit authors). “The neocon dream of conquering the Middle East for Israel and destroying Islam as a force is now in history’s trash heap of failed adventures along with such miscalculations as Hitler’s march into Russia and the Japanese attack on Pearl Harbor.”

The Two Faces of Essentialism

Essentialist terrorism is new in the sense that it is distinguished from traditional terrorism. But the linkage between essentialism

and terrorism was foreseeable because such is human history that almost all major movements come to be defined in essentialist terms. It is perhaps a human desire, a compulsive habit, or an urge to simplify that complex phenomena are broken down into essentialist terms and traits. Slavery, racism, sexism, colonialism, nationalism, discrimination based on sexual orientation, classism, dialectical materialism, and the martial character of a people, to name but a few, have all been explained, defended, and promoted in essentialist terms. Examples of essentialist statements include: slaves are intellectually deficient, whites are beautiful, women are emotional, and West civilizes the rest.

Essentialism has two faces: self-defining and other-defining. Self-defining essentialism highlights a group's own beneficial traits, demands certain social goods, and justifies certain undertakings. Racial superiority, for example, stems from self-defining essentialism. By claiming superior genes, a racial group may defend its hold on power, land, and other resources. It may justify its domination over other racial groups, and it may resort to abusive treatments of others to maintain its superiority. Other-defining essentialism defines others, mostly negatively. Racial inferiority is an example of other-defining essentialism. No racial group is likely to define itself negatively. By defining native Africans in essentialist terms as intellectually inferior, violent, or lazy, the white minority in South Africa defended its apartheid and justified its domination.

Often, though not always, the two faces of essentialism are congenitally joined. In racism, essentialist superiority demands that racial inferiority also be defined in essentialist terms, for one cannot exist without the other. When women are defined as essentially emotional, it implies that men are not. The HITLit advocates a similar two-faced terrorist essentialism. It defines secular terrorism as rational, purposeful, and limited in violence. By contrast, it defines Islamic terrorism as irrational, addictive, and unlimited in violence. In the HITLit, terrorist violence has two faces: one face is more ugly and lethal than the other.

For a clearer understanding of other-defining essentialism, one might ask who is defining whom, since the definer and the defined are two distinct entities.⁴⁷ The thesis that Muslim militants are essentialist terrorists obviously falls into the definition of other-defining essentialism. No Muslim culture, nation, or tribe has

⁴⁷ In cases of self-defining essentialism, the definer and the defined are the same entities.

defined itself as essentially violent. Nor have they defined Islam as an essentially violent faith. To the contrary, self-defining essentialism of Islam proclaims it to be the faith of peace, an essential meaning of the word "Islam." The HITLit that paints Muslim militants as essentially violent is the literature produced by non-Muslims. Likewise, the HITLit thesis is popular only among non-Muslims. Muslim governments, intellectuals, and lay people, even when they sincerely condemn the violence of Muslim militants, do not accept the HITLit thesis that Islam is essentially violent or that Muslim militants are the products of an essentially violent culture.

Other-defining essentialism is not merely an academic exercise. Nor is it merely political rhetoric. It almost always has concrete purposes. The HITLit's purpose in defining Muslim militants in essentialist terms has two interlocked goals. One goal is to heavily discount their grievances. The other is to furnish a justification for their harsh treatment in law and reality.

If the HITLit propaganda behind essentialist terrorism were to take a firm rooting, U.S. laws would dilute or abandon many civil liberties and human rights to deal with a fast growing Muslim population in the country. U.S. constitutional law would change fundamentally and for the worse as the paradigm of national security eats at the foundation of law. Even the First Amendment, the citadel of the U.S. Constitution, might be weakened to punish outspoken critics of the war on terrorism, because critics could be seen as terrorist sympathizers.⁴⁸ U.S. Muslim immigrants and citizens might face unprecedented official discrimination and social prejudice, producing more resentments and terrorism. This untoward development can be arrested only if policymakers, legislators, and judges reject the HITLit propaganda mounted behind essentialist terrorism. Regardless of whether the U.S. legal system slides into bias and persecution, Islamic terrorism is unlikely to go away unless concrete grievances are addressed and festering international disputes are resolved. Nothing is farther from the truth than the idea that Muslim militants are addicted to violence or that Islam is an

⁴⁸ University professors have drawn public attention and criticism for their comments. They have called for the death of U.S. troops in Iraq, blamed "American colonialism" for the September 11 terrorist attacks or jokingly praised the attack on the Pentagon. Universities are under government pressure to monitor professional research before publication, for it might contain "sensitive information."

inherently violent religion. By branding Islam, the faith of more than one billion people, as a violent and intolerant ideology determined to destroy Western civilization, HITLIt propagandists are forcing the United States to collide with the Muslim world in an apocalyptic war.

Chapter 7

War on Terror

Thou shall not kill – But we will.

In July 2005, Ahmed Ressay was sentenced to 22 years of imprisonment after a jury convicted him of an attempt to bomb Los Angeles International Airport on the eve of the millennium. Emphasizing the rule of law in punishing terrorists, US District Judge John C. Coughenour made the following comments during the sentencing hearing:

I would like to convey the message that our system works. We did not need to use a secret military tribunal, or detain the defendant indefinitely as an enemy combatant, or deny him the right to counsel, or invoke any proceedings beyond those guaranteed by or contrary to the US Constitution . . . Despite the fact that Mr. Ressay is not an American citizen and despite the fact that he entered this country intent upon killing American citizens, he received an effective, vigorous defense, and the opportunity to have his guilt or innocence determined by a jury of 12 ordinary citizens. Most importantly, all of this occurred in the sunlight of a public trial. There were no secret proceedings, no indefinite detention, no denial of counsel. The tragedy of September 11th shook our sense of security and made us realize that we, too, are vulnerable to acts of terrorism. Unfortunately, some believe that this threat renders our Constitution obsolete.

The war on terror is the antithesis of the criminal justice system that Judge Coughenour describes above. The criminal justice system is the peacetime legal infrastructure to arrest, indict, prose-

cute, and punish persons accused of committing terrorists acts. The war on terror is an undertaking to eliminate militants suspected of committing terrorist acts. The criminal justice system is a complex legal framework consisting of law enforcement, intelligence, lawyers, judges, and appeals to high courts. The war on terror primarily consists of military operations designed to kill with speed and efficiency. Although these military operations are not lawless killings, the urgency of the battlefield minimizes legal restraints. When the traditional constraints of the laws of war are set aside or diluted, the war on terror furnishes a more liberal license to kill.¹ The war on terror is thus a unique war with few legal constraints on suppressive governments in pursuit of Muslim militants. These minimal restraints against killing provide a vivid contrast to the criminal justice system, which is designed to assure a fair trial and conviction before a person is punished with capital punishment or life imprisonment.

In waging the war on terror, suppressive entities are adopting *aggressive* unilateral and multilateral policies against Muslim militants. Aggressive policies consist of surveillance of suspected terrorists, preventive detentions, renditions, torture, extra-judicial killings, deportations, convictions, indefinite imprisonments, and financial strangulation of businesses, charities, and any other organization allegedly involved in supporting terrorism. In exceptional circumstances, suppressive states invade, attack, and occupy supportive states to stem the tide of terror. These aggressive policies are collectively known as “war on terrorism” or “war on terror.”

7.1 CHARACTERISTICS OF WAR

This section examines three important dimensions of the war on terror. First, the war appears to be lawless, though it is not. The US, like a classical Western hegemon, obeys the laws of war and other rules of international law but in doing so it carves out exemptions and exceptions to serve its warfare interests. Second, the war

¹ Eric Posner, “Terrorism and the Laws of War,” 5 *Chicago Journal of International Law* 423 (2005)(arguing that laws of war do not apply to the conflict between the US and al Qaeda and that the US should continue to explore possibilities of normative restraints that promote US interests).

on terrorism is primarily a US war against Muslim militants. The US makes certain assumptions about the character of Muslim militants, which I call the ontology of war. These ontological assumptions portray Muslim militants as irrational and violent extremists who fight without rules. This portrayal allows the US to further manipulate international law to promote its hegemony. Third, the war on terrorism has been privatized, generating strong corporate interests. The corporatization of war may also have weakened the rule of international law, particularly by granting immunities to protect corporate participation in the armed conflict. The combined effect of these three characteristics of war has confused the regime of international law. Uncertainty prevails as new rules of behavior collide with old expectations.

US Hegemony

Following the classical behavior of past European hegemonies, the US is ambivalent toward the constraints that international law places on the use of force. History demonstrates that hegemonies are not inherently opposed to international law. A hegemon needs international law to predict the behavior of its competitors and enemies. But it also needs a freer hand to promote its interests that may not be consonant with international law. When a hegemon's vital interests conflict with the existing rules of international law, it seeks exemptions and exceptions to protect its deviant behavior. Even in its deviancy, a hegemon does not repudiate international law; it simply custom designs the law to fit its special needs. Thus, a hegemon is not a brute force without regard for international law. A hegemon remains a law-abiding entity, but the law it obeys is of its own choice and making.

Nico Krisch examines the historical conduct of Spain to explain hegemonic behavior.² In the 16th century, Spain did not renounce international law to expand its empire. It simply designed new international rules to legalize its territorial acquisitions. It invoked a general Christian right to rule the world, and sought papal bulls

² Nico Krisch, "International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order," *16 European Journal of International Law* 369 (2005).

to take lands from indigenous populations. It also relied on the secular rule of discovery to defend its imperial acquisitions, primarily because it was often the first to discover new territories. These rules however also benefited its rival, Christian Portugal. When another competitor, the Netherlands, asserted freedom of high seas, Spain opposed legal innovations and proposed a quasi-territorial order of the sea. In the realm of force, Spain “sought to establish rights to use force for itself, not to make war lawful for all states.”³ Thus in each case, Spain was acting as a law-abiding hegemon, sometimes by making self-serving changes to international law and sometimes by opposing changes that its rivals proposed to *serve* their own needs.

US behavior is no different from that of 16th century Spain. The US actively participates in the shaping of international law but signs few multilateral treaties, including human rights treaties. Multilateral treaties rarely serve interests of the hegemon because the solidarity of weaker states tips the balance of negotiation against the hegemon. A hegemon prefers the regime of bilateral treaties because it can obtain a better deal in bilateral negotiations. It is therefore perfectly understandable that the US is uncomfortable with the rules of international law that emerge through multilateral processes. The US rarely ratifies multilateral treaties, and even those that are ratified are rarely made self-executing or otherwise enforceable. The International Covenant on Civil and Political Rights, for example, though ratified, has no enforceability in US courts.

The US has adopted numerous attributes of a classical hegemon. The US advocates bringing terrorists to justice but it refuses to accept the multilateral jurisdiction of the International Criminal Court. The US defied the will of the international community and bypassed the UN Security Council to wage war against Iraq. And yet the US wrapped its invasion in the innovative doctrine of preemptive self-defense, imparting a legal dimension to its seemingly lawless conduct. It has ratified the Convention against Torture, which allows no exceptions for torture. And yet its commitment to the Convention wavers between holding the letter of the law and keeping its hands open. It is highly doubtful that the US would allow another state to engage in preemptive self-defense. It is

³ Id. Krish also examines the British conduct in the 19th century to further reinforce his thesis of self-serving but law-abiding hegemons.

equally doubtful that the US would allow an enemy state to lawfully invent an exception to the torture treaty to obtain information from US captured soldiers. These normative dualities leave the impression that the US is acting lawlessly in its international relations.

Professor John Yoo has emerged as a dominant legal scholar favoring the Bush Administration's hegemonic conception of international law. Yoo argues that criticisms of the US use of force are often doctrinal. International legal scholars, such as Thomas Franck and Richard Falk, show despair because, according to Yoo, they focus their ruminations on the wrong question. Any measurement of state behavior against the formal standards of the UN Charter, says Yoo, would lead to the obvious conclusion that violations are rampant and that the Charter itself had been slain. But if the focus is shifted to the "function of the rules on force," which is to minimize death and destruction from massive armed conflicts, the emerging rules of international law including preemptive self-defense make perfect sense. US conduct regarding the use of force is derived from functional rather than doctrinal jurisprudence. Viewed from a functional jurisprudential viewpoint, Yoo concludes, the US invasions of Afghanistan and Iraq were consistent with the purposes of the UN Charter, because these Muslim nations, and the terrorists they sponsored, if left unchecked, could have caused massive death and destruction.⁴

It is difficult to demonstrate that Yoo has inaccurately described the US international behavior. Yoo makes a credible case that successive US governments in the past twenty-five years have defended the use of force through functional rather than doctrinal interpretations of the UN Charter. Yoo might be criticized for defending, in addition to describing, the uses of force that deviate from doctrinal parameters of the Charter. However, the truth remains that the US acts as a hegemon that does not totally repudiate international law but draws different interpretations from it. Functional jurisprudence, which is inherently flexible, provides more room for stretching and narrowing the rules of law. Formalistic jurisprudence is much clumsier in providing flexibility. Thus Yoo simply provides more details to the legal literature on the behavior of hegemons. His analysis is neither innovative nor surprising. It offends

⁴ John Yoo, "Using Force," 71 *University of Chicago Law Review* 729 (2004).

those who demand strict normative equality and expect that hegemons should act within the same formalistic strictures as weak nations do. The US has not repudiated the notion of normative equality in international relations. It simply demands flexibility in its conduct of war that it is waging against an allegedly irrational and violent enemy, the Muslim militants.

Ontology of War

A unique attribute of the war on terror is its ontological assumptions. The war makes a priori assumptions that Muslim militants are inherently violent; that their addiction to violence is rooted in their religious fundamentalism; and that they keep finding newer pretexts to commit violence. These assumptions negate the phenomenon of concrete grievances such as invasion, occupation, territorial acquisitions, or human rights abuses inflicted on Muslim communities as the possible causes of militant violence. Based on ontological assumptions, the laws of war have been dramatically changed. In fact, the laws of war have been relaxed to the extent of lawlessness. What is unlawful is deemed acceptable in dealing with Muslim militants. Entrenched laws of war and universal human rights are put aside in combating Muslim militancy. Extra-judicial killings are forbidden under the law of human rights enshrined in regional and global treaties. Yet, suppressive states have openly killed what they call “terrorists” without any trial or conviction.

Lawless policies command the war on terror. In most suppressive states, the regime of civil liberties has suffered a great setback that not only affects declared terrorists, but harms innocent civilians who have nothing to do with terrorism.⁵ Muslim populations living in suppressive states are special targets of these policies, and their fundamental rights have been severely compromised on the a priori assumption that Muslim families protect and nurture terror cells. Young Muslim men and women are particularly vulnerable, as they all are seen as potential terrorists. These sweeping ontological generalizations about Muslim families and Muslim

⁵ Laura K. Donohue, “Terrorist Speech and the Future of Free Expression,” 27 *Cardozo Law Review* 233 (2005)(chilling effects of post-9/11 detentions on the willingness of American Muslims to voice their views).

youth cause bitterness, depression, anger, and sentiments of vengeance. In fact, these generalizations might serve as self-fulfilling prophecies, forcing Muslim youth living in suppressive states to embrace more lethal forms of militancy, thus further escalating the war between Muslims and suppressive entities.

The ontological war on terror is unlikely to persuade Muslim militants to give up their armed struggle. This conclusion is derived from the phenomenology of violence examined in Part I of this book. Concrete grievances and not ontological fixation with violence lie at the heart of Muslim militancy. Driven to fight worldly injustices and drawing the fighting spirit from the theology of jihad, Muslim militants are a breed of warriors who have overcome the fear of losing liberty, family, property, and life. Though highly pragmatic, strategic, and tactical, most hardcore militants have prepared themselves to lose everything in God's Way (*fi sabeel lil Allah*). They do not die easily or stupidly. The fear of death rarely persuades them to cease fighting for causes that they have determined are just and mandated by the teachings of the Basic Code (the Quran and the Sunna). The war on terror will also fail because the availability of Muslim militants is endless. If there were a fixed number of militants, the war on terror could succeed by physically eliminating them. But that will not work in the case of Islamic militancy, which produces a constant and inexhaustible flow of militants seeking martyrdom.

Two Prongs of War

Military Prong

The war on terror has many prongs. The most conspicuous and dramatic prong consists of aggressive military action against Muslim militants as well as against Muslim governments that allegedly support Muslim militants. These militants and governments are respectively known in the US legal vocabulary as foreign terrorist organizations and terrorist states. The 2001 invasion of Afghanistan, which ironically had not been designated a terrorist state, was a military action against the militant group al-Qaeda and its supportive government, the Taliban. The union of al-Qaeda and the Taliban is unique in the history of Islamic militancy, since no other Muslim government has been so intimately involved with a group

of Muslim militants. The 2003 invasion of Iraq, which the US previously designated a terrorist state, was aimed at dismantling a government that allegedly supported terrorist groups. Although Saddam Hussein's government had no effective relationship with al-Qaeda, Saddam Hussein's government did provide stipends to families of Palestinian suicide bombers. The invasion was also justified on the theory that the Iraqi government was developing weapons of mass destruction, which might end up in the hands of terrorists, posing a much greater threat to the US and its allies in the Middle East. The proposed invasions of Syria and Iran, both of which are listed in the US as terrorist states, are similarly based on allegations that these Muslim nations harbor terrorists and furnish them financial and other material support. The perceived danger is greater in the case of Iran, since Iran is accused of developing nuclear weapons under the guise of nuclear energy.

Business Prong

Next to military operations, the war on terror generates significant business ventures. Private military corporations are actively engaged in conducting the war and making profits. A terrorism economy has also surfaced, creating thousands of jobs. For certain sectors of the American economy, it is in the best interest of the businesses involved for the war to continue. Sectors such as defense, manufacturing, energy, logistics, security and risk management, and war technology are thriving on military spending. The energy sector has benefited from mixed perceptions about oil supply. Perceived disruptions to the oil supply generate volatile oil markets with concomitant price increases. US prospects of gaining favorable access to Iraqi oil reserves have boosted oil companies share prices. The stock price of Halliburton Company, for example, has quadrupled in the last three years (2003–2005).

The terrorism economy has specifically benefited insurance companies that have reaped enormous profits in the wake of September 11 attacks.⁶ Unforeseeable catastrophic events first cause big losses to the insurance industry. But they also create new insurance

⁶ Robert J. Rhee, "Terrorism Risk in a Post-9/11 Economy: The Convergence of Capital Markets, Insurance, and Government Action," 37 *Arizona State Law Journal* 435 (2005).

opportunities. Companies sell new insurance products to cover new risks. Before September 11, terrorism risk insurance was almost non-existent as a separately covered category. After the attacks, terrorism risk to life and property became a vivid reality and a source of premiums for the insurance industry. The industry further benefited from capital inflow when investors bought insurance stocks, predicting that they insurance stocks would outperform the general market, which they did. By enacting the Terrorism Risk Insurance Act of 2002, the US government assumed the responsibility against extreme terrorism risk. This federal backstop measure freed insurance companies to exploit the terrorism insurance market without fear of extreme losses. Thus, the war on terrorism, which maintains the threat of terrorism looming on the people and businesses, has generated a new opportunity for the insurance sector.

It is unclear whether the terrorism economy has benefited banks and other money transfer institutions. Within weeks after September 11, the US government issued Executive Order 13224, which imposes dramatic penalties on suppressive entities that provide financial support to terrorist organizations. Executive Order 13224 mandates that financial institutions of the world freeze terrorist assets. Foreign banks that refuse to comply with the Order are denied access to US markets. According to the US State Department, approximately 150 countries and independent law-enforcement jurisdictions, such as Hong Kong and Taiwan, blocked the assets of suspected terrorists and organizations. The US was able to obtain a UN Security Council Resolution to disrupt and block terrorist financing throughout the world. The UN Counter Terrorism Committee (CTC) has also been empowered to help improve the capability of countries to meet their obligations under the resolution to combat terrorist financing. In sum, the war on terror is no longer confined to the battlefield. It involves private sectors that manage and monitor the dynamics of militant violence.

7.2 CORPORATIZATION OF WAR

The rise of professional national armies with monopoly over the use of force is of relatively modern vintage. For centuries, warfare was the exclusive domain of private armies. Wealthy families maintained private armed forces to defend their property, land resources,

and even foreign trade. In the absence of a strong central government, private armies were the logical and pragmatic growth for self-protection and self-projection in the realm of power. A theoretical framework derived from natural law justified the maintenance of private armies. If the prince is unable or unwilling to offer meaningful protection, the theory asserted, individuals are presumed to have a natural right to self-help. Even governments, when unable to afford standing armies, used private armies to defend themselves.

The use of private commissions was so deeply entrenched in customary law that the US Constitution specifically empowers Congress to issue "letters of marque and reprisals," a practice deeply rooted in the English tradition of warfare.⁷ The provision was included to acknowledge and regulate the use of private force. Through letters of marque and reprisal, Congress as grantee, is able to authorize a private commission to use force against a foreign state that has inflicted wrongful injury against the US.⁸ These letters are an alternative to full-scale war. They are a legal tool and not an arbitrary license to use unlimited force. The force authorized under the letter is neither excessive, nor arbitrary. Force is subject to the doctrine of proportionality. If the grantee of the letter ignores legal constraints on the use of force, the target state can wage a full-fledged war against the granting state. In practice, letters of marque and reprisal, letters of marque and reprisal were issued only to responsible individuals and primarily against weak states that were unlikely to retaliate by war. Often, the target of the letter was a merchant ship belonging to a foreign nation. The grantee of the letter was known as a privateer, a word having linguistic connections with the word pirate. Operationally, it was sometimes difficult to distinguish between pirates and privateers, as both were engaged in seizing merchant ships.

The US constitutional provision of marque and reprisal reveals yet another international legal development. At the time of the

⁷ In the 16th century, Queen Elizabeth issued letters of marque to English pirates to harass Spanish trade ships. However, the Queen would react with feigned horror when the Spaniards complained that English pirates were terrorizing Spain's coastal cities. See Douglas R. Burgess, "The Dread Pirate Bin Laden," *Legal Affairs* (July-August 2005).

⁸ Jules Lobel, "Covert War and Congressional Authority: Hidden War and Forgotten Power," 134 *University of Pennsylvania Law Review* 1035 (1986) (tracing the history of the clause).

Constitution was drafted, private armies were in the process of being outlawed. Regulation by means of letters of marque and reprisal was one way to reduce their menace. It was a compromise. The authority to issue letters acknowledged the power of the nation-state to be the final arbiter of the use of force against international targets. And any private use of force against a foreign state or its nationals would be illegal if employed without the state letter. But the legal mechanism of letters fell short of completely outlawing private use of force. In fact, they recognized the right of individuals to use force against foreign states, their nationals, and their property. In modern language, any such private use of force will be regarded as state-sponsored terrorism.

In 1856, international law took yet another developmental turn by banning the letters of marque and reprisal. Considering that maritime law in the time of war had long been the subject of deplorable disputes, the 1856 Declaration of Paris abolished “privateering.” However, since international law at the time was rigidly based on explicit state consent, it was accordingly agreed that “the Declaration is not and shall not be binding, except between those Powers who have acceded, or shall accede, to it.” The US did not accede to the Declaration, as it would have required an amendment to the Constitution. However, Congress has refrained from issuing the letters of marque and reprisal. Thus the 1856 Declaration of Paris effectively abolished private armies as lawful tools in interstate conflicts. The use of force is now lodged in the exclusive sovereignty of the nation-state.

Private Military Corporations

While the international law of war is founded on the dynamics of nationalized armed forces and the corresponding de-legitimization of private armies, nation-states are increasingly outsourcing their key operations to private military corporations (PMCs).⁹ A PMC is a for-profit company organized under the law to provide military

⁹ Peter W. Singer, “War, Profit, and the Vacuum of Law: Privatized Military Firms and International Law,” 42 *Columbia Journal of International Law* 521 (2004).

services and personnel. PMCs are not new in concept or function since private companies have served for centuries as surrogates to advance and protect imperial and state interests. They were, for example, the front operators of colonization. The English East India Company and similarly organized French and Dutch companies were chartered to engage in colonial trade, but they were also granted broad powers to raise military forces, negotiate treaties, conduct war, and govern fellow nationals.” With the breakdown of colonial empires and with the rise of national armies deriving their exclusivist monopoly from the concept of the nation-state, PMCs suffered a market downtrend. But as the doctrine of efficiency made inroads in key human concepts, including that of sovereignty, PMC businesses started to flourish again. State management of military resources is now being outsourced to private companies that presumably furnish expertise, innovation, and savings. This PMC resurgence is different from colonial companies because PMCs enjoy no independent mandate or legal authority to initiate or engage in military conflicts. In theory at least, they serve states and do not compete with national armed forces. In reality, however, they might act contrary to the orders of national armed forces. In Iraq, for example, private contractors breached the law of war, sometimes with tacit approval of the US military command and sometimes on the assumption that the military leadership would not object to their operations.¹⁰

While PMCs defer to the authority of strong states, their interaction with weak developing countries is more daring.¹¹ PMCs have been recruited to suppress domestic terrorism. This enterprise of violence management is quite profitable. The most intriguing stories of combating terrorism are associated with Executives Outcomes (EO) and Sandline International (SI). Both companies are South African PMCs, launched by men who previously supported the South African regime of apartheid. These companies have provided military services to governments in Asia, Africa, and South America. EO and SI either have close corporate connections with natural resources companies, or they launch their own subsidiaries, doing

¹⁰ Joanne Mariner, “Private Contractors Who Torture,” *Find Law’s Writ* (May 10, 2004).

¹¹ Laura Dickinson, “Government for Hire: Privatizing Foreign Affairs and the Problem of Accountability under International law,” 47 *William and Mary Law Review* 135 (2005).

business in the areas of oil drilling and mining. SI contracted to provide military services to the government of Papua New Guinea to crush rebels, the Bougainville Revolutionary Army, which had waged a low intensity war against the degradation of its country's environment by mining companies. In 1993, EO was hired to fight rebels in Angola who refused to accept the outcome of UN-monitored national elections. Several international oil companies supported the hiring of EO. Upon successfully defeating the rebels, EO received a \$40 million oil exploration contract. In 1995, the government of Sierra Leone hired EO to crush the Revolutionary United Front (RUF), a guerilla organization fighting the government. For \$35 million, EO defeated the RUF, destroyed their headquarters, and recaptured key mines. The government paid the contract money primarily with mining rights. But just like in any other armed conflict, the involvement of PMCs in civil wars does not prevent injury to civilians. It is estimated that in the Sierra Leone conflict, close to 15,000 people were killed and around 1.5 million others were made refugees.¹²

A PMC does not have to be a multinational corporation, like Halliburton, even though active involvement of big companies in the future cannot be ruled out. A network of small PMCs essentially can provide the same services as a multinational corporation with numerous subsidiaries. The business of private violence (terrorist or corporate) needs obscurity and anonymity; it is most effective when planned and executed away from the public eye. Blackwater USA, for example, operated with little publicity until its four employees were burnt and hung on a bridge over the Euphrates River in Iraq. These shocking images forced the popular press to pay attention to the role of private contractors in the equation of state violence. Barry Yeoman reported in the *International Herald Tribune*: "Blackwater, which operates from a 5,200-acre, or 2,100 hectares, training ground in the Great Dismal Swamp of North Carolina, is a private military firm that provides an array of services once performed solely by military personnel." The company's website identifies its five subsidiaries and advertises its "most comprehensive private tactical training facility in the US." The website also identifies its major clients as federal law enforce-

¹² Eugene B. Smith, *The New Condottieri and U.S. Policy: The Privatization of Conflict and Its Implications*, *PARAMETERS* (Winter 2002).

ment agencies, the Department of Defense, the Department of State, the Department of Transportation, local and state entities from around the country, multinational corporations, and friendly nations from all over the globe. Yeoman further reports that Blackwater is hardly alone. Some 10,000 private contractors are fighting the war in Iraq. Ann Scot Tyson of the Washington Post reports that the role of private contractors in the war is “cloudy and controversial. They shoot to kill, but they aren’t legally considered combatants.”

PMCs have a special role in counter-terrorism. They offer private armies to fight private armies. They also provide obscurity and flexibility in fighting terrorism. Military adventures through private contractors are obscure, whereas they would be exposed using national armed forces. The death of state soldiers could be a media event, particularly in countries such as the US where each soldier’s death is honored through media recognition. In contrast, the death of private soldiers is rarely viewed as a loss to the nation, so body bags can be quietly sent to the families. Governments exploit this death discrimination by sending private soldiers on missions for which little public support exists. Furthermore, PMCs furnish tactical and legal flexibility. Private soldiers enjoy certain immunities not available to state soldiers. For example, abuses by private soldiers are not prosecuted under military law. Furthermore, private soldiers may be granted immunity from criminal jurisdiction of the territorial state in which they are operating. For example, Paul Bremer’s occupation government in Iraq granted immunity to private contractors, an immunity that continued even after the official occupation ended. Immunity from both the military code as well as from laws of the territorial state establish an iron bubble in which private contractors can fight the militants with few legal constraints. In this bubble, lawless actions against civilians are also immune from any legal prosecution.¹³

¹³ Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, U.N. ESCOR, 50th Sess., at 13, U.N. Doc. E/CN.4/1994/23 (1994)(documenting the cruelty of mercenaries).

Profiteers of Terrorism

In addition to PMCs, weapons manufacturers, arms dealers, and legion of benign industries profit from terrorism. They make money when suppressive states build up defense budgets. Their business is boosted when armed conflicts surface, fester, and worsen. As rational businesses, they have little interest in the resolution of armed conflicts. Such is the nature of their enterprise that they inevitably prefer war to peace. Terrorism is therefore a gift, and war on terror is a promise of profits to companies engaged in manufacturing combat aircrafts, bombers, missiles, bunker-busters, tanks, trucks, guns, boots, uniforms, medals, coffins, surgical instruments, gauze, artificial limbs for amputees, cosmetic gloves to cover prosthetic hands, and so forth. Even without going to war, a terrorized nation spends money on homeland security, and by doing so creates jobs in defense-related industries, a phenomenon that trickles down into the entire economy. High-tech surveillance, border checks, and airport safety – all material efforts to spot and catch terrorists – trigger jobs in sectors ranging from steel to software, just as the home-coming of the wounded brings more work for orthopedic surgeons, physical therapists, orthodontists, and psychiatrists. First by an unconscious compulsion and later by a deliberate design, a terror economy comes into being. As a terror economy spreads and deepens its tentacles, terrorism is embraced, if not welcomed as a necessary evil. When products are selling and the business is good, few profiteers wish terrorism to go away.

When chances of actual terrorism are slim, the threat of terrorism fills the gap and keeps the economy going. Preparing a nation for future terrorist attacks in a rational, deliberate, and calculated manner unleashes the same forces of production, invention, and distribution that a real attack does. A real attack of substantial severity is a godsend for the future of a terror economy. Frida Berrigan, a senior research reporter at the World Policy Institute, documents how companies “cashed in on the tragedy of September 11.” Defense stocks soared as the Pentagon asked for billions from Congress. Raytheon’s Tomahawk missiles were in high demand. Northrop Grumman, the manufacturer of F-14 fighter planes, B-52 bombers, AWACS (Airborne Warning and Control System) radars, and Global Hawks, had thousands of job openings due to increased demand for its war products. Lockheed Martin, the biggest giant in the defense market, the maker of F-16 fighter planes,

bunker-buster munitions, and missiles, had already obtained a \$200 billion deal by paying more than \$9.8 million on lobbying members of Congress and the President. September 11 simply opened more gates of bounty for this unmatched defense giant. Even Boeing, a company under pressure in its commercial aircraft division, got a boost when the government placed new orders for the company's smart bombs.

Terrorist Financing

Suppressive entities exploited the September 11 attacks on the US to stop "terrorist financing." For years, efforts have been made to generate an international agreement that would obligate states to monitor the flow of money to "terrorists" both inside and across borders. These efforts were based on a simple, though somewhat naive, concept that militancy in support of liberation movements would come to a jolting halt if it received no funds from internal or external sources. This concept has some merit since significant military attacks require money to make bombs, buy guns, and support related activities and persons involved. But this concept is naïve to the extent that it presumes militancy will stop by choking the money pipeline. It ignores the role of supportive entities, states, businesses, charities, non-governmental organizations, and individuals that would find "legal" and "criminal" ways to bypass suppressive restrictions.

In the absence of a universal definition of terrorism, Muslim states are reluctant to consent to any new international obligation regarding terrorist financing that includes drug monies, money laundering, monies obtained by arms smuggling, and kickback monies with monetary contributions to liberation movements fighting alien domination, occupation, apartheid, and hegemony in the Middle East, Chechnya and Kashmir.

A Failed Treaty

The 1999 International Convention for the Suppression of Financing of Terrorism, a global treaty drafted at the urging of France, is a huge failure. Very few states have expressed their consent to be

bound by it. The treaty is founded on the presumption that “the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain.” By implication, the treaty concedes that retail acts of militancy can still be carried out with little or no money. Sweeping broadly, the treaty defines funds as assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, letters of credit.

Article 2 of the 1999 treaty defines the crime of financing terrorism. A person commits a crime under the treaty if he “provides or collects funds” to intentionally or knowingly support a terrorist act. Terrorist acts are defined as those listed in the nine counter-terrorist treaties on the safety of civil aviation, taking of hostages, safety of maritime navigation, protection of diplomats, and so forth. Article 2 also prohibits the funding of any act intended to harm civilians or non-combatants when the act is designed “to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.” Again, the definition seems to make a distinction between financing a liberation movement that attacks the infrastructure of occupation on the one hand and alien domination, apartheid, and hegemony enforced through military means on the other hand. The treaty seems to allow the financing of liberation movements and the consequent attacks on suppressive soldiers. As discussed elsewhere, the definitions of civilian and non-combatant are becoming disputed since states are increasingly delegating military functions and operations to private contractors and corporations. It appears that any occupation, domination or hegemony carried out by means of “civilian contractors” will fall into the definition of armed conflict, and therefore, the funding of operations to harm such contractors will not be terrorist financing under Article 2.

Thus, the 1999 treaty fails to close important doors in the chambers of militancy. On an operational level in closing down the retail funding of militancy because supportive entities are simply unwilling or unable to suppress militancy at the micro level. If no monies are available to launch major attacks, micro-militancy will be further strengthened and escalated. The quality of attacks will yield to quantity. On a theoretical level, the treaty allows for the fund-

ing of liberation movements and insurgencies fighting occupations. For example, the funding of insurgency against the US armed forces and possibly US civilians contractors employed to assist military operations is not necessarily unlawful under the 1999 treaty.

Security Council Resolution 1373

After September 11, all of these financing loopholes in the suppressive infrastructure were closed. International lawmaking on terrorist financing moved away from the stalling process of negotiated treaties and was lodged in UN Security Council resolutions. What suppressive states could not achieve through universal consensus was imposed upon all states by means of a coercive resolution that the Security Council adopted less than three weeks after the September 11 attacks. Obtaining this resolution was a remarkable victory for the US – the super suppressive state and the victim of the most horrendous terrorist attack. The whole world sympathized with the US, first because the loss was indeed dramatic and mind-boggling, and second because the media successfully projected the event to the world as an unprecedented injury. In this moment of hyper crisis, the Security Council invoked its enforcement powers under Chapter VII of the UN Charter and passed resolution 1373.

Resolution 1373, adopted on September 28, 2001, aims at exterminating the financing of terrorism. In a remarkable assertion of institutional power, the resolution is addressed to “all states,” including suppressive, supportive, and neutral states whether or not they are members of the United Nations. Paragraph 1 of the resolution orders states to “prevent and suppress the financing of terrorist acts.” The resolution also requires states to “criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.” Furthermore, paragraph 1 mandates that all states “freeze” the financial assets of terrorists and supportive entities, including businesses that serve as terrorist fronts. The freezing rule is cast in expansive language, so that it reaches entities even if only remotely connected to terrorists. In somewhat convoluted language, paragraph 1 asks states to prohibit “financial or other related services” that facilitate the

flow of funds to terrorists and their supportive entities. This provision targets banks, exchange brokers, and *hawaladars* who assist in transferring funds from location to location and country to country.

Security Council's Expanding Authority

This unprecedented authority to force states to add new crimes to their national legal systems was perhaps justified under the Charter principle of peace and security that the Security Council has been empowered to maintain and restore. The resolution was a powerful step in weakening the traditional sovereignty of the nation-state. At the same time, the resolution poses a challenge to the theory of democracy because the Security Council is forcing domestic legislatures to enact criminal law, even if they have no electoral mandate to do so. The implementation of legislation pursuant to a treaty that a state freely ratified also adds to domestic law. But treaty-based legislation does not pose the same normative challenge as does legislative compliance with a Security Council resolution. The first is compatible with the democratic theory because a state that signs a treaty must implement it too; the second is incompatible because states that signed the UN Charter did not foresee that the Security Council would venture into legislating domestic criminal law.

Whether the US, the chief sponsor of the resolution, considers itself bound to make national laws in compliance with Security Council resolutions is an open question. Under prevailing jurisprudence, neither state and federal legislatures nor state and federal courts can make laws contrary to the US Constitution. Under the constitutional principles of federalism, the federal government has no explicit treaty power to shape the criminal law of the states. In ratifying human rights treaties, such as the International Covenant on Civil and Political Rights, the federal government often makes reservations to treaty provisions (such as capital punishment), the implementation of which would require changing state laws. It is unlikely that US legislatures and courts would give any more deference to Security Council resolutions than they do to properly ratified treaties. Furthermore, the US has been under no domestic obligation to provide implementing legislation even when a treaty it ratified cannot be domestically enforced without such leg-

isolation. Under these jurisprudential practices, it is highly unlikely that Security Council resolutions will have the binding domestic effect that Resolution 1373 envisions for all states.

Despite its apparently strong language, Resolution 1373 fails to define the boundaries of terrorism. Unlike the 1999 Terrorist Financing Convention, which leaves out attacks on non-civilians in armed conflicts from the definition of terrorism, the resolution fails to make any such distinctions. One could argue that Resolution 1373 establishes a new comprehensive definition of terrorism under which any attack on civilians or soldiers will be considered a terrorist act. This expansive definition of terrorism fits well with the emerging international doctrine that “nothing justifies terrorism.” Such an interpretation of the resolution, however, raises serious jurisprudential difficulty. It implies that even if the international community is divided over a definitional issue, the Security Council can preempt such controversies by furnishing the definition. If this line of argument is accepted, the Security Council will become much more powerful than the Charter envisaged. It would also undermine the rationale of lawmaking by means of treaties; what cannot be achieved by means of a treaty will be supplied by passing a Security Council resolution.

The Counter Terrorism Committee (CTC), established to monitor the implementation of the resolution, will enforce the scope and the substance of the resolution. It seems unlikely that Resolution 1373 will be read in a manner inconsistent with the 1999 Convention, because the resolution calls on states to become parties to the Convention. Therefore, it makes more legal sense to read the resolution in the context of the nine counter-terrorist treaties that have been universally accepted as well as in light of the 1999 Convention. An overly broad reading of the resolution would likely weaken its strength.

Implementation of the resolution is unlikely to be even across the world in part because the resolution requires states, and not the CTC, to implement legislation to prevent and suppress terrorist financing. States will most likely build appropriate distinctions into their domestic laws. Few will abandon the distinction between civilians and soldiers engaged in armed conflicts. No state is likely to embrace the thesis that any attack on occupying soldiers constitutes terrorism. Countries, such as members of the Organization of Islamic Conference, which draw distinctions between terrorism and armed struggle for liberation, will face a greater challenge to enforce the resolution without compromising their normative

viewpoints. Even the US, which financed Iraqi opposition groups against Saddam Hussein by providing them with military articles, defense services, and military education will be unable to embrace the full sweep of Resolution 1373.¹⁴

The 2004 CTC reports disclose that terrorist financing is highly complex and places huge monitoring costs on financial institutions. Monitoring is difficult because the origin of terrorist financing is often legal. Privacy laws hide international financial transactions, making the system less transparent. And states are unwilling to pass effective legislation to prevent inflows of criminal money. Even if the banking system cooperates, the CTC reports warn, terrorist financing cannot be prevented because some sources of financing are illegal; others are informal and cannot be effectively regulated. The CTC recommends that it should be possible to freeze funds at the initiative of third parties, including the Security Council or other states. This highly intrusive machinery, if ever authorized, may or may not prevent the transfer of terrorist monies but it will certainly add more confusion to the global banking system, making it subservient to the national interests of a few powerful states. In resisting intrusion, target states may refuse to cooperate with the CTC or simply adopt the lawless policy of running with the hare and hunting with the hounds.

7.3 LAWLESSNESS OF WAR

In pursuing Muslim militants, the US has created numerous exceptions and exemptions to the laws of war that the US has been accused of waging a nearly lawless military war on terrorism. Most suppressive states define hot pursuit of Muslim militants in a limited way. India captures and kills Muslim militants only in the disputed states of Jammu and Kashmir, territories technically located within India's national borders. Russia has similarly limited its hot pursuit of Chechnya to its own borders. Israel has adopted a more expansionist view of hot pursuit and has killed Muslim militants not only in occupied Palestine, but also in Lebanon and Syria. After the September 11 attacks, the US opened a new chapter in the hot pursuit of terrorists. The US started to wage a global war on

¹⁴ Iraq Liberation Act of 1998 (PL 105-338).

terrorism. Arguing that since al Qaeda, which perpetrated the attacks on the US, operates active cells in more than sixty nations, the US has the legal right to pursue terrorist enemies wherever they are. If the US claim is taken seriously, its war on terror is a war without borders. The war claims universal jurisdiction to pursue, capture, and kill Muslim militants anywhere in the world, with or without the permission of national and local governments. No such rule exists in international law that empowers a suppressive state to capture or kill persons that it considers terrorists. The US might claim to have universal jurisdiction, but it does not yield any such authority to its enemies, and perhaps not even to its allies.

Rhetoric and Reality of US War on Terror

The US war on terror challenges state sovereignty that lies at the heart of the international legal system. Will the US respect state sovereignty in conducting its war on terror? It appears that the US has undertaken two distinct approaches. One approach is the straightforward invasion of a state that the US believes is closely tied to terrorism. The invasion of Afghanistan under the Taliban and the invasion of Iraq under Saddam Hussein are examples of completely discarding the barrier of state sovereignty. The legally questionable invasion of Iraq added a new dimension to the US war on terror in that the US established a new norm that it would attack a terrorist state even if the Security Council does not sanction such an attack. This norm, if universalized, would dismantle the authority of the Security Council and the UN Charter. The second approach that the US adopted was to woo and coerce Muslim states into cooperating with the US in rooting out Muslim militants within their borders. The stark binary principle that “you are either with the US or with the terrorists” served as a reminder to reluctant Muslim states that the US would unleash its economic, diplomatic, and military power against a Muslim state unwilling to support the US war on terrorism. The periodic threats to Syria and Iran, the two Muslim states that resist cooperation with the US, are examples of the second approach to the war on terrorism.

Using its superior military strength and its status of superpower, the US was able to persuade the world into supporting its efforts to root out global terrorism. Initially, Muslim and non-Muslim states

cooperated with the US. But as US policies assumed overly aggressive unilateralism, nations of the world began to withdraw cooperation. In the US invasion of Iraq, for example, most nations refused to join. Muslim states in particular declined to participate in the occupation of Iraq, and no Muslim troops were sent there to assist the US in overthrowing Saddam Hussein or discovering the weapons of mass destruction that Iraq supposedly possessed. This nearly global non-cooperation on the part of states, Muslims and non-Muslims, seems to suggest that the international community refused to concede that the US invasion of Iraq was legal.

Despite the rhetoric, the US is not pursuing a global war on terror. For example, it has no interest in killing Muslim militants fighting other suppressive states such as India, Russia, or Israel. The US war is focused on al-Qaeda, a militant organization headed by Osama bin Laden. This organization is alleged to have engineered attacks on US ships, embassies, and later on the World Trade Center and Pentagon. Even though the US claims universal military jurisdiction to pursue enemy terrorists, its operations are confined to a few select terrorist outfits.

While U.S. military actions are limited abroad, it has cast a wider net in identifying and de-legitimizing Muslim resistance groups across the world. In addition to al-Qaeda, the US designated almost all Muslim organizations fighting in occupied Kashmir and occupied Palestine as terrorist organizations. The designations make it a criminal offense to provide any financial support to such organizations. Furthermore, US financial institutions must freeze the funds of designated groups. Members of the groups are ineligible for US visas and, if they are aliens, deportable. The 2001 Patriot Act empowered the government to declare other Muslim resistance groups as terrorist organizations. The President signed an Executive Order to block the assets of nearly 200 supportive entities, which include Muslim charities, individuals, businesses and banks. This domestic measure was considered necessary to match the rhetoric of global war, and to demand international cooperation from other states in suppressing the financing of Muslim militants.

Arguments for Lawlessness

In waging war on terrorism, the US reaps the benefits of war without accepting the burdens that the laws of war place on states

engaged in international armed conflicts. As discussed below, the war's greatest benefit is the opportunity to kill on the battlefield without legal blame. The legal burdens of war are placed on warring states to minimize the unnecessary brutality of war. One such legal burden is the humane treatment of prisoners of war and civilian detainees. Customary laws of war as well as laws codified in the 1949 Geneva Conventions and scores of human rights treaties require that prisoners of war and civilian detainees not be subjected to "cruel treatment and torture." They further assure that the "personal dignity" of all detainees will not be disrespected, thus outlawing "humiliating and degrading treatment." In offering these minimum protections to *all* detainees, the laws of war allow no exceptions on the basis of status, nor do they condition these protections on any doctrine of reciprocity. The law of human rights has further reinforced the availability of these protections to all individuals. Article 2 of the International Covenant on Civil and Political Rights, a treaty to which the US is a party, embraces a universal principle that civil and political rights are available to all individuals within a signatory state's territory or in a territory subject to its jurisdiction. In extending these rights, the Covenant prohibits "distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*." Legal protections embodied in the laws of war (called humanitarian protections) and laws of human rights (called human rights protections) are universal in that they are available under all circumstances and at all places. Any violations of Geneva protections are war crimes.

In waging war on terrorism, the US refuses to accept customary and treaty-based legal burdens. Under its declared policies, captured Muslim "terrorists" are not entitled to rights codified in the Geneva Conventions. The US has nonetheless promised to treat these prisoners in a humane manner, though out of no legal obligation. The discretionary rather than obligatory humane treatment of Muslim detainees empowers US officials to suspend Geneva Conventions protections with respect to all or some detainees. Furthermore, since the war on terrorism, due to its elusive nature, is unlikely to come to an end with some dramatic peace treaty or armistice, as does a traditional war, the release of any and all Muslim detainees is completely at the mercy of the US.

In refusing to extend humanitarian and human rights protections to Muslim "terrorists," the US makes several arguments. It argues that Muslim terrorists are not prisoners of war, mistakenly

embracing the “status argument” and consequently assuming that legal protections are available only to prisoners of war as defined by the detaining state. The Legal Advisor to the US State Department warned the President that “the structure of the Conventions” does not allow status distinctions, and that if a decision is made to adhere to the laws of war, Geneva Conventions would be “applicable to all persons involved in the conflict – al Qaeda, Taliban, Northern Alliance, US troops, civilians, etc.”¹⁵ The President and his administration ignored the State Department advice and seemingly opted out of the law.

The US also argues that the war on terrorism is a unique war, a new paradigm, which defies the rationale underlying humanitarian and human rights laws. The new paradigm argument builds on the theory that captured terrorists have valuable information about terrorist organizations, their ideology, tactics, and plans to commit future terrorist acts. The new paradigm “renders obsolete” Geneva prohibitions, which place strict limitations on interrogation of detainees, and it requires that US officials be able to extract valuable information from captured terrorists.¹⁶ The “valuable information” argument, however, is spurious. Even in a traditional war, captured army officers and generals may possess critical information that would save lives or defeat enemy battle plans. However, customary and treaty-based laws of war prohibit interrogating “traditional” information-rich detainees in violation of legal protections. Apparently rejecting this comparison, US authorities are determined to treat Muslim militants contrary to the laws of war.

Opportunity to Kill

The war on terror is not a metaphor, but a legal opportunity to kill. It empowers suppressive states to do what they cannot do in peacetime. For example, peacetime laws prohibit the killing of another person. In time of war, however, soldiers enjoy legal immunity if they kill enemy combatants.¹⁷ Thus, what is murder in peace-

¹⁵ William H. Taft, Memorandum to Counsel to the President (Feb. 2, 2002).

¹⁶ Alberto R. Gonzales, Memorandum for the President (Jan. 25, 2002).

¹⁷ Joanna Woolman, “The Legal Origins of the Term “Enemy Combatants” do not Support its Present Day Use,” 7 *Journal of Law and Social Challenges* 145 (2005)(tracing the origin of the term in the US Supreme Court case law).

time becomes lawful killing in time of war. Killing without legal penalty is the prize of war. In addition to killing, soldiers may rely on the doctrine of military necessity to destroy private and public property, human dwellings, and other structures. Bombing buildings from which enemy soldiers are fighting is a legally permissible act of war. Thus, war not only permits the killing of an enemy individual, it also allows the complete destruction of an entire group of enemy individuals. The laws of war do not furnish an unrestricted license to kill, but they do confer legality on deadly violence that would be illegal in peacetime.¹⁸

The language of war on terror is problematic to the extent that “war” in the traditional sense means an armed conflict between professional armies or other armed groups, called belligerents or combatants. The war on terror is an asymmetrical war between professional armies and Muslim militants who may or may not qualify as guerillas. Some militants are more organized than others. Some attack suppressive targets and hide among the civilian population. Some kill themselves in terrorist operations. This disorganization and intermittent warfare on the part of Muslim militants gives them an advantage since they act as an invisible private army whose formation, command, logistics, and strategies are in a perpetual state of fluidity and uncertainty. On the basis of these structural ambiguities, some legal scholars and governments argue that terrorists ought to be treated as ordinary criminals. Until the September 11 attacks, the US itself distinguished terrorism from armed conflict and accordingly treated terrorists as criminals and not as war combatants.

By declaring war on terror, suppressive states obtain the license to kill what they regard as terrorists. The advantages are numerous. In peacetime, terrorists would have to be arrested, charged with crime, and prosecuted within the due process of law. Furthermore, suppressive states must prove their guilt beyond a reasonable doubt to convict them, and if convicted must house them in appropriate prisons. Even in prisons, terrorists would have privileges consistent with the law of human rights. This entire legal infrastructure is instantly dismantled when war is declared. Terrorists are no longer criminals who may demand protections

¹⁸ Rosa Ehrenreich Brooks, “War Everywhere: Rights, National Security Law, and the Law of Armed Conflict in the Age of Terror,” 153 *University of Pennsylvania Law Review*. 675, 693 (2004).

that Judge Coughenour highlights under the constitutional scheme. They are enemy combatants with no protections under the laws of war. They can now be killed. The war on terror is thus a more efficient means of exterminating terrorists.

In fact, the war on terror empowers suppressive states in ways not available in traditional wars. In a traditional war, soldiers of opposite armies fight each other according to military strategies in battlefields. The concept of the battlefield provides logistical and psychological constraints on the scope of war. In such wars, the distinction between the battlefield and civilian neighborhoods is at least theoretically maintainable, a distinction that rarely survives when the war breaks out and turns nasty. The war on terror has no traditional battlefields, and therefore, even theoretical civil/military distinctions make little sense. Since terrorists are not traditional soldiers but civilians fighting a professional army, they operate from civilian neighborhoods. This forces a professional army to consider an entire country as a seamless battlefield. In fact, since Muslim militants live in almost all countries of the world, the US war on terror has turned the entire earth into one large global battlefield. Accordingly, Muslim militants can be killed anywhere in the world, with or without the permission of local or national authorities. In 2002, for example, a remote controlled CIA Predator aircraft fired a missile destroying a moving vehicle in a Yemeni desert. Five “terrorists,” including a naturalized citizen were killed in the inferno.

These killings highlight a number of points. They show that US authorities will use the war on terror as a legal medium to kill Muslim militants anywhere in the world. Friendly Muslim governments, such as Yemen, will actively cooperate – or at least permit – the completion of these missions. Reluctant governments will be pressured to cooperate with the US. Muslim governments that permit a foreign war machinery to kill Muslim militants within their territory will eventually face opposition from their own populations and Muslim militants. Unfriendly Muslim governments, such as Iran and Syria, will resist US moves to kill Muslim militants within their territory. But such governments run the risk of US invasion. Either way, Muslim governments will be torn and confused, complicating the war on terror for all parties.

Further complications are even more mind-boggling. Assume that the US had legally sufficient evidence to conclude that the perpetrator of the attack on the USS Cole was riding in the target vehi-

cle destroyed in the Yemeni desert. Killing him two years after the 2000 attack would add new flexibility to the war on terror. Temporal proximity, a requirement for exercising the right of self-defense, is no longer a legal restraint on lethal responses to terrorist attacks. Under the new rule, Muslim militants who harm a suppressive state can be killed even years after the terrorist incident. This uncompromising approach to kill Muslim militants might produce more deaths, but it might not end the war on terror. Facing the new rule, Muslim militants are likely to become more deadly and extremist in perpetrating terrorist acts since they know that suppressive states with the help of their own governments would surely kill them. If death is made certain, it further fuels the developing institution of suicide bombers.

Defying Peremptory Norms

In its lawless orientation, the US war on terror has defied peremptory norms of international law that cannot be derogated from under any circumstances, including public emergencies, wars, etc. The Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits torture, cruelty, and personal humiliation in absolute terms, both in peacetime and wartime. It specifically closes all loopholes and exceptions, stating that “no exceptional circumstances, whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” This total prohibition against torture embodies a larger legal commitment to nonbrutality and human dignity.¹⁹ Furthermore, the International Covenant on Civil and Political Rights provides a similar prohibition against torture and no pretext of public emergency is allowed to derogate from this prohibition. In fact, there exists a universal consensus that prohibition against torture has obtained the status of a peremptory norm, and all states are obligated to comply with the norm, regardless of their formal adherence

¹⁹ Jeremy Waldron, “Torture and Positive Law: Jurisprudence for the White House,” 105 *Columbia Law Review* 1681 (2005).

to treaties against torture. Prohibitions against torture are so deeply implanted in the international legal system that any official use of torture is a crime. In peacetime, any systematic use of torture against a civilian population is a crime against humanity. In wartime, when torture or inhuman treatment is committed as part of a plan or policy, it is a war crime falling within the jurisdiction of the International Criminal Court.

Ignoring these peremptory norms, the post-September 11 US has been determined to find a rationale to effectively interrogate Muslim militants. Driven by the “new paradigm” that valuable information must be extracted by all means necessary, torture surfaced as a possible tool. Government lawyers were asked to explore the effect of peremptory norms against torture and degrading treatment of Muslim militants detained by the US Armed Forces during the conflict in Afghanistan. The US Department of Justice prepared a legal brief, now popularly known as the “Torture Memo,” which concluded that Muslim detainees may be subjected to the intentional infliction of pain.²⁰ The memo invokes “necessity and self-defense” to justify harsh interrogation tactics and to eliminate any criminal liability. Relying on this memo, which was broadly approved within the Bush Administration’s legal and advisory circles, secret detention facilities were set up outside the US to interrogate Muslim detainees under newly approved tools of torture and degrading treatment. Several senior military lawyers, however, opposed new interrogation policies and challenged their legality under domestic and international laws.

Media reports on the treatment of Muslim detainees at Guantánamo, Abu Ghraib, and other prisons have been consistent with the Torture Memo’s proposed lawlessness. Extreme cases of torture and abuse – such as killing detainees by beating or suffocation, or sodomizing Iraqi boys – were perhaps isolated criminal events that occurred outside the parameters of official policy. Permissible interrogation tactics, such as hooding, sleep deprivation, standing or kneeling in painful postures, and waterboarding, have been used and defended as a matter of law. General Antonio Taguba’s report about Abu Ghraib prison abuses concluded that US soldiers have committed egregious acts and grave breaches of international law.

²⁰ Jay S. Bybee, Memorandum Re: Standards of Conduct for Interrogation (Aug. 1, 2002).

According to this report, questionable episodes of torture and degrading treatment included pouring phosphoric liquid on detainees, beating them with broom handles, using military dogs without muzzles to frighten and bite them, and sodomizing them with chemical light. It is unclear whether these abuses at any US-operated prison were effective in obtaining useful information from maltreated Muslim detainees.

Gratuitous degrading treatments of Muslim detainees have been both sexual and religious. Perhaps knowing that sex is sacred under Islam, Muslim militants, male and female, have been exposed to rape, sodomy, and degrading sexual treatment. The Taguba report exposed the following sexual indignities: some detainees were stripped naked and placed on top of one another to experience shared humiliation and shame; some were stacked on top of each other insuring that the penis of the man on the bottom touched the butt of the man above him; some were accused of being homosexual; some were forced to dance naked; some were asked to masturbate while being videotaped; some Muslim men were led to believe that they were indeed women; some were forced to wear female underwear; and some female Muslim detainees were raped. These sexual abuses were designed on assumptions that Muslim detainees are opposed to “abnormal” sexual behavior, homosexuality, dancing, or just being naked.

Religious torture was practiced on the belief that Muslims take their faith seriously. Attacks on God and the Quran were intended to inflict severe mental pain on detainees. Guards cursed God, to leave the impression on detainees that God is helpless in saving them from degrading treatment. Some guards urinated on the Quran or flushed its pages down the toilet. Some scratched an obscenity on its inside pages. Some stepped on it, and some kicked it. These acts of violence against the Quran were perpetrated to break the spirit of Muslim detainees, to show them that their religion was ineffective and disrespectful.

Unusual Weapons

The war on terror has employed unusual weapons, including cluster bombs and white phosphorous, which cause severe injuries to civilians at high rates. Cluster bombs are sophisticated weapons

designed for saturation coverage of an enemy area. They can carry explosives, chemicals, and biological agents. A conventional cluster bomb consists of tennis ball-sized bomblets packed in a metal dispenser or container. Each container, sometimes called a cluster bomb unit, holds several hundred bomblets, each of which is filled with several hundred metal fragments. A fully operative cluster bomb unleashes around 200,000 metal fragments, as packed bomblets detonate in orchestral unison, creating a killing field. Cluster bombs are usually dropped by aircrafts, but they can be delivered by rockets and artillery. A cluster bomb dropped on a small village comes down like a heavy downpour of cutting blades. Each fragment flying at a high velocity can penetrate a human body and destroy internal organs – the heart, lungs, kidney, or spleen. “This is not an unfortunate, unintended side-effect; these bombs are designed to do this.”²¹ Unexploded bomblets are no less deadly as they quietly wait for foot soldiers, tanks, terrorists, women, and children – indeed anyone who might step on their fury.

Suppressive states have used cluster bombs to pursue terrorists. When the US attacked Afghanistan in October 2001, it dropped scores of cluster bombs on presumed al Qaeda military camps. However, the use of cluster bombs was far from precise. According to UN officials, several US cluster bombs fell on villages and killed civilians. In addition to causing injury and death, dozens of yellow soda can-like objects (bomblets) scattered on the ground remained unexploded, sending a wave of fear and terror that forced villagers to remain in their homes. The factual irony that the US was simultaneously dropping yellow cluster bombs and yellow food packets further confounded the villagers.

The US is not alone in pursuing Islamic militants with cluster bombs. Israel has used cluster bombs to pursue Hezbollah militants in Lebanon. Russia has killed hundreds of Chechen civilians with cluster bombs. Documenting the use of cluster bombs in the Russia-Chechnya war, Virgil Weibe reported: A notable example early in the war was the January 3, 1995, cluster munition bombardment of Shali, Chechnya. Two Russian jets hit a roadside market first and then the hospital where wounded had been taken. Also hit were a Muslim cemetery (while a funeral service was in

²¹ www.itvs.org/bombies/bombs.html. (Independent Television Service).

progress), the village school, and a collective farm. At least fifty-five people were killed, and 186 were wounded.²²

Suppressive states often deny the use of unusual weapons. For months, the US denied using white phosphorous in the assault on Falluja, an Iraqi city. White phosphorous is an incendiary weapon that can be used to illuminate enemy positions. But it also burns to the bone and kills. Ex-marine Jeff Englehart says that he saw bodies of burnt children and women after the phosphorous use. An Italian television documentary shows that the US used white phosphorous shells in a massive and indiscriminate manner, killing scores of civilians. Although the US has admitted employing white phosphorous in Falluja, it still asserts that the use was not offensive but only for illuminating purposes. The truth remains unknown.

Propaganda and Perfidy

Information, according to the U.S. Air Force, is both a “potent weapon and lucrative target.” Just as armed forces protect persons and properties from harm, they also protect information, which is a critical asset in the conduct of war. Private armies of militants do the same. Both official armed forces and private armies understand that critical information about the movement of soldiers, strategies, tactical movements, plans of attack, and almost every other aspect of warfare ought to be protected from leakage. Both also understand the value of misinformation and disinformation as potent weapons that must be unleashed to confuse and distort, thus protecting critical information. Propaganda, half-truths, and outright lies are used as weapons by all sides in the war on terrorism. This information manipulation is part of the psychological war to defeat the enemy by all means available. When good information and false information are mixed together, the information pool becomes muddy and unreliable, raising the cost of information purification. Private armies are at a substantive disadvantage because official armed forces have many more resources to muddy the pool. However, the playing field is not completely tilted in favor of official armed forces, since private armies, due to their size and

²² Virgil Weibe, “Footprints of Death,” 22 *Michigan Journal of International Law* 85 (2000).

lack of bureaucratic constraints, enjoy more flexibility, and speed in distorting information. And the coalition of private armies carries a huge competitive advantage because the disinformation coming from disconnected multiple terror cells scattered around the world has an inherent muddying effect.²³

Suppressive infrastructure disseminates false and tainted information to perpetrate and defend its unlawful actions against terrorist cells and the aggrieved populations. Suppressive infrastructures also manipulates information to hide its own embarrassing and illegal activities. Suppressive entities often command more resources to advance and defend their particular viewpoint, and thus possess an advantage over aggrieved populations who either totally lack the resources to present their story or have an ineffective supportive infrastructure. For example, the number of scholars, journalists, politicians, think-thanks, artists, and lawyers supporting the cause of Israel is far greater than those supporting the cause of Palestinians. The intellectual, journalistic and legal inputs in favor of Israeli policies distort the truth against Palestinians, particularly in those information markets where pro-Israeli forces outnumber those of pro-Palestinian. Truth is sacrificed when huge resources are used to disseminate false or tainted information.

Supportive infrastructure also falsifies and spins information to exaggerate sufferings of the aggrieved population and to minimize the injury caused by terrorist atrocities. Supportive infrastructure paints suppressive entities as being devoid of moral values and disputes their peace gestures. Even aggrieved populations may engage in their own propaganda to highlight the injustices of suppressive states, although they often lack the means to do so effectively.

The print and electronic media are the most effective means to disseminate false and tainted information about terrorism. Manipulation is easier when national media are state-controlled, for in these countries the official news is the only news, and critical perspectives on terrorist stories are unavailable. But even where the media enjoys freedom of the press, such as in India, Israel, and the US, governments are often successful in manipulating information about terrorism. Journalists taint the truth because they are blinded by patriotism, peer pressure, and close ties with state officials. Still,

²³ Richard Aldrich, "The International Legal Implications of Information Warfare," *Airpower Journal* (Fall 1996, Maxwell Publishers).

as compared to a state-controlled press, a free press is harder to influence. But when a free press is successfully manipulated, it is the most effective means to engineer falsehood because the free press enjoys credibility and a presumption of fair reporting. People are often skeptical about state-controlled media; they know that the information is slanted in favor of the state and state officials. That skepticism does not exist in the case of free press. Ironically, therefore, information manipulation through free press serves the most severe blow to truth in reporting and analyzing the dynamics and theories of terrorism.

Is Disinformation Unlawful?

In the realm of international humanitarian law, disinformation raises difficult questions. Article 24 of the 1907 Hague Regulations concerning the Laws and Customs of War states: “Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible”. However, Protocol I to the Geneva Conventions states, “It is prohibited to kill, injure or capture an adversary by resort to perfidy.” Both ruses and perfidies are informational trickeries. Both serve to deceive the enemy, though a theoretical line can be drawn between the two. As in most cases, the law has set up binary criteria under which one type of informational deception is lawful, but the other is not. In the war on terror, suppressive entities appear to have abandoned even the theoretical distinction. Any informational trickery that would successfully capture, injure, or kill a “terrorist” is considered lawful. On the other hand, the lawful uses of ruses seem unavailable to private armies, since any informational deception that results in injury or death is considered an unlawful perfidy.

Article 20 of the International Covenant on Civil and Political Rights specifically mandates that signatory states prohibit by law any propaganda of war. It also prohibits “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” These prohibitions are designed to deter aggressive state policies promoted through disinformation and advocacy of hatred. Despite its categorical language, this provision of the Covenant is weak to the extent that a signatory state can invoke “public emergency that threatens the life of the nation” to derogate from its obligation. Thus, a state, such as Russia or the US, that has suffered a dramatic terrorist attack might officially

proclaim public emergency and then employ propaganda, even hatred of the enemy, to prepare its people for a possible war against terrorist groups or supportive states. And if the war on terrorism is perpetual and open-ended, so too is the state's inclination to use disinformation and hatred as the "military means" to defeat the enemy abroad and to seek support from the public at home. The Covenant prohibitions are reduced to empty norms if a signatory state makes a reservation to them, as has the US.

Imprudent Propaganda

After the September 11 attacks, American military generals launched vigorous propaganda to malign Muslim militants and to prepare US soldiers for the war on terrorism. This propaganda wooed Christian conservatives who support Israel and predict an apocalyptic war with Islam. General William Boykin painted Allah as an inferior and false god. The message was relayed to establish the US moral superiority in the war on terror. It was also aimed at US soldiers for the purpose of boosting their morale and fighting spirit. Foolishly, though, the message overlooks the fact that many US soldiers are Muslims. Another US general made a similar propaganda mistake when he told an audience in San Diego that US soldiers enjoyed killing Afghan militants who "ain't got no manhood." It is unclear how this propaganda or hatred was beneficial in winning the hearts and minds of Muslim populations.

Conclusion

The war on terror has killed thousands of Muslim militants in numerous countries. Some of these killings have been contrary to the laws of war. Other aspects of the war have been equally legally questionable. The use of torture has defied the preemptory norms of international law that places complete ban on the infliction of torture for punitive or information-seeking purposes. The lawless war on terror is being waged on the ontological assumptions that Muslim militants are addicted to violence and that they constantly find new excuses to commit violence and that Islamic fundamentalism is inherently violent. These ontological assumptions ignore the phenomenon of concrete grievances that Muslim populations of Chechnya, Palestine, Kashmir, and other regions have against suppressive entities. *A Theory of International Terrorism* rejects

the ontological assumptions about Muslim militancy and Islam, recognizing though that Muslim militants violate the laws of war. It focuses on concrete grievances involving the right of self-determination and human rights abuses to argue that Muslim militancy is the product of injustices, occupations, invasions, and other excesses. Submission to subjugation is not God's Way. The Quran teaches militancy to counter oppression and not to perpetrate aggression. It also teaches Muslims to resolve conflicts through negotiations and peace treaties.²⁴ The next Part of the book offers peaceful solutions to end the lawless spiral of violence called terrorism.

²⁴ Quran 9:4 (Muslims must fulfill treaties made with non-Muslims).

PART III:
PEACEFUL SOLUTIONS

Chapter 8

Negotiated Solutions

*No one suggests that it would be an easy set of negotiations.
Canada's Supreme Court*

The concept of negotiated solutions is based on a simple historical observation that violence rarely produces durable and just outcomes. Renouncing all forms of violence, *A Theory of International Terrorism* proposes that parties to the terror triangle (aggrieved population, suppressive entities, and supportive entities) repudiate violence and construct negotiated solutions to festering problems of occupation, hegemony, alien domination, and denial of self-determination. This move toward negotiated solutions means that suppressive entities such as Israel, Russia, and India must recognize the right of self-determination for aggrieved populations in Palestine, Chechnya, and Kashmir. It also means that aggrieved populations must relinquish their right to armed struggle, and supportive entities must stop providing moral, political and military assistance to the aggrieved populations. Thus, every party to the triangle must move in the direction of negotiated solutions. Additionally, international institutions such as the UN Security Council must facilitate and demand negotiated solutions, particularly when the parties to the terror triangle stall, stumble, or blatantly refuse to engage in the peace process.

But what do negotiated solutions mean? Conceptually, negotiated solutions constitute a comprehensive methodology that includes

settlement of disputes through direct negotiation, conciliation, mediation, arbitration, and judicial settlement.¹ It includes temporary ceasefires but consists primarily of durable solutions that effectively minimize the phenomenology of terrorism. Philosophically, the concept of negotiated solutions rejects the ontology of Islamic terrorism that finds the location of violence in Islamic consciousness rather than in injustice. According to this ontology, no negotiations will be fruitful because Muslim militants are essentialist terrorists pathologically oriented to violence in that they know violence as the only means of dealing with problems.² In rejecting ontological explanations of Islamic terrorism, the concept of negotiated solutions acknowledges the normal humanity of Muslim militants and considers them perfectly capable of resolving intricate disputes through peaceful methods.

Legally, the concept of negotiated solutions is derived from both international law and Islamic law. Both legal systems mandate that disputes that threaten peace and security be resolved through instrumentalities of negotiation, mediation, arbitration, and adjudication. International law is critical to the resolution of terrorism disputes because most entities involved in the terror triangle are nation-states that have accepted explicit obligations under the UN Charter to resolve disputes through peaceful means. This chapter examines Islamic law of negotiated solution to repel the ontological thesis that Muslim militants are driven to violence by Islamic theology that emphasizes violence as the primary method of settling conflicts. While the norms of both legal systems support pacifism, the barriers to negotiated solutions are formidable. Some of these barriers are removable, but some are embedded in the aggressive imperative of the nation-state. Finally, this chapter offers the example of Quebec to show that terrorism can be dramatically preempted if the principal suppressive state and the aggrieved population determine to resolve a self-determination dispute through peaceful solutions.

¹ Robert Mnookin, "When not to Negotiate: A Negotiation Imperialist Reflects on Appropriate Limits," 74 *University of Colorado Law Review* 1077 (2003) (US talks to terrorists but does not negotiate).

² *Id.* Mnookin makes ontological assertions about the credibility of the Taliban government and concludes that the Bush decision to wage war and not negotiate with the Taliban was "wise."

8.1 LAW OF NEGOTIATED SOLUTIONS

The law of negotiated solutions is part of every national and international legal system. Jurisprudentially, the very concept of law is a methodological substitution for violence and self-help. The acceptance of negotiated solutions, however, has been more successful in national legal systems than in the international legal system. National legal systems prohibit the use of violence and self-help to resolve disputes. They furnish courts and tribunals to hear and decide disputes. Most national legal systems also support dispute resolutions through alternative, non-judicial means. In the international legal system, judicial settlement of disputes is not a preferred method of dispute resolution. Nation-states often choose direct negotiation, mediation, and arbitration to settle disputes. Pacific settlement of international disputes however is still in the early stages of human civilization. Despite prohibition on the aggressive use of force, nation-states continue to find excuses to go to war. This inability to avoid aggression stems from the structural imperative of the nation-state. Empires and imperial nation-states resent the normative regime of peaceful resolution of disputes. Prone to aggression, their submission to negotiated solutions is reluctant and uncertain. Therefore, the entrenchment of negotiated solutions in the international legal system has been difficult.

International Law of Negotiated Solutions

The Emergence of Pacifism

The defining characteristic of post-1945 international law is its manifest pacifism. The road to pacifism, however, has not been easy. After the First World War, a number of attempts were made to renounce war and affirm peaceful settlement of disputes. These efforts, spearheaded by the League of Nations, failed primarily because well-established and newly emerging empires that occupied the world could not accept the constraints of negotiated solutions on their international conduct. Empires are structurally predatory and aggression is their chief weapon. Any firm commitment to peaceful settlement of disputes strikes at their foundation. That is why the 1928 General Act of Arbitration for Pacific Settlement

of Disputes had limited success. This treaty was designed to encourage nations to resolve disputes through conciliation, arbitration, and litigation before the Permanent Court of International Justice. A number of countries, including Germany, Japan, the United States, and the Soviet Union, refused to sign the General Act. Spain denounced the Act within a few years after accession. The eruption of the Second World War signaled the failure of the General Act. The demise of the League of Nations and the failure of the Permanent Court of International Justice provided clear symptoms that Pacific Settlement of Disputes could not be achieved in the era of imperialism. The General Act nonetheless continued to assert a dubious existence. In the 1970s, however, this dubious existence became even more precarious when the United Kingdom and France denounced the General Act. India followed suit and notified the world that it was “never” a party to the General Act since its independence in 1947. Other states, including Turkey and Australia, had also denounced the General Act.

These denunciations of the General Act did not spell the end of pacifism. The establishment of the United Nations in 1945 ushered international law into a new normative era – an era of organizational pacifism – which repudiates violence and institutionalizes peaceful settlement of disputes. The UN Charter specifically forbids the threat or use of force in international relations. It outlaws war as an acceptable instrument to promote national interests or values. Chapter VI of the UN Charter, specifically Article 33 states that “the parties to any dispute, the continuation of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” This sweeping language is designed to minimize pretexts for the use of violence.

The Charter empowers the Security Council to intervene in unresolved disputes that threaten international peace and security. The Security Council may recommend specific peaceful procedures to the parties, including adjudication by the International Court of Justice. In recommending any Article 33 procedures, the Security Council should respect the procedures that parties themselves have adopted for the settlement of the dispute. However, nothing seems to prevent the Security Council from recommending and even mandating new procedures if the parties are unable to resolve a long standing dispute through their bilateral efforts. A classical exam-

ple of such dysfunctional bilateralism is the almost 60-year old conflict between India and Pakistan over Kashmir, a stalemate discussed below.

Terror Triangle as a Dispute

The first question is whether the terror triangle is an international dispute that falls under the scope of Article 33 of the UN Charter. The Article's plain language is broad because it refers to "any dispute." It is unclear, however, whether "the parties to any dispute" must be states. A narrow interpretation of Article 33 would limit its scope to inter-state conflicts. Even under such a narrow interpretation, the terror triangle constitutes an Article 33 dispute given that it involves suppressive and supportive states on opposite sides of the terror triangle, holding opposite views about the primary and secondary demands of aggrieved populations. Once the scope of Article 33 is expanded to include entities that do not qualify as states, such as the Palestinian Authority, the obligation to resolve disputes through peaceful means extends to all parties to a terror triangle. This broad reading of who may qualify as a party with the expanding notion of international law that is no longer confined to nation-states. Customary international law also mandates that international disputes be resolved through peaceful means, regardless of whether parties to an international dispute are state or non-state actors. The international community's condemnation of terrorism in all forms, embodied in General Assembly resolutions, is in itself a call for resolving terror-related disputes through peaceful means.

Therefore, the existence of a terror triangle consisting of an aggrieved population, a supportive entity, and a suppressive entity constitutes a dispute under international law. It makes little sense to exclude the people whose grievances comprise the heart of the dispute. Such exclusion is akin to staging Hamlet, without Hamlet, the central character.

Such exclusion also defies reality. No single party to the terror triangle, not even an aggrieved population, is the exclusive source of all violence. In a terror triangle, each party produces violence. An aggrieved population produces militants who commit violence against suppressive entities. A supportive entity sponsors violence by furnishing moral, political, logistical, financial, and military support to the aggrieved population and its militants. A principal

suppressive entity produces violence against an aggrieved population in the form of state terrorism. Other suppressive entities produce violence by assisting the principal suppressive entity. As a result, a terror triangle is a complex mix of non-state violence, state-sponsored violence, and state violence. Since numerous international entities are involved in the production of triangular violence that threatens peace and security of the world, the dispute ought to be treated as an international dispute.

The popular understanding of terrorism distinguishes state violence from non-state violence. In Chechnya, for example, Russian violence against Chechens is state violence that not only responds to, but also incites Chechen violence. Both types of violence are terrorism. Even if state violence is distinguishable from non-state violence, and the concept of terrorism is limited to non-state violence, the parties to the terror triangle are nonetheless involved in an international dispute. Suppressive entities may claim, as they often do, that state violence is a lawful defense against “terrorism” and that what is unlawful is the violence of the aggrieved population and its supportive infrastructure. This claim by suppressive entities does not alter the nature of the triangular violence; it simply allocates a different legal value to each source of violence. Even under this discriminating view of violence, parties remain locked into an international dispute over the demands of the aggrieved population. Furthermore, the differing characterization of violence in the terror triangle itself becomes an essential part of the underlying international dispute.

As a general principle, a terror triangle must be treated as an international dispute. International law imposes obligations on key parties to the terror triangle, as well as on international institutions, specifically the UN Security Council, to resolve these disputes through peaceful means. Article 33 cannot be restricted in its application to inter-state conflicts, since any such restriction is contrary to the expanding scope of international law. No dispute that causes international violence is national. And no violence-filled dispute may be permanently relegated to dysfunctional bilateralism.

Dysfunctional Peace Process

States engage in bad faith peace process designed to maintain the status quo. For example, India and Pakistan have intermittently started the peace process to resolve their conflict over Kashmir.

Almost always, they disqualify aggrieved Kashmiris as a “party to the dispute.” India, a superior military power and also the principal suppressive state, takes a complex stand over the conflict. India recognizes the existence of the conflict over Kashmir. It is even willing to resolve the dispute. But it contends that bilateralism is the only acceptable peaceful means. But bilateralism has failed to produce any positive outcome since its establishment in the 1972 Simla Agreement. India refuses to submit the dispute to other peaceful methods, such as mediation or arbitration. It also demands that Pakistani-sponsored terrorism stop before a solution can be found. India’s restrictions and preconditions on a resolution to the Kashmir conflict has exacerbated the peace process, frustrating aggrieved Kashmiris and enabling Pakistan to support and sustain a level of violence in Kashmir, which keeps the dispute alive and dangerous at the international level.

Because of the bilateral clause in the Simla Agreement, international institutions such as the UN Security Council refuse to pressure India and Pakistan to adopt a more efficacious method of conflict resolution. Similarly, the International Court of Justice has reaffirmed the parties’ obligation to settle their disputes through bilateral negotiations. In 1999, Pakistan instituted proceedings before the International Court of Justice to demand reparations from India for shooting down an unarmed aircraft within Pakistan’s borders, killing 16 men on board. Pakistan relied on a number of bilateral and multilateral treaties, including the 1928 General Act, to argue that the Court had jurisdiction over the aerial incident. The Court declined to exercise jurisdiction on the theory that India and Pakistan have chosen bilateralism under the Simla Agreement. Moreover, the Lahore Declaration of 21 February 1999 reiterated the determination of both countries to implement the Simla Agreement. However, the Court reminded the parties “that its lack of jurisdiction does not relieve States of their obligation to settle their disputes by peaceful means.” The parties may choose peaceful methods of their choice but they remain, the Court said, “under an obligation to seek such a settlement, and to do so in good faith in accordance with Article 2, paragraph 2, of the Charter.”³

³ Aerial Incident of 10 August 1999 (Pakistan v. India) (1999–2000).

Powerful States Use Force as Part of Negotiation

The Court's message is clear. Even when international institutions decide not to intervene or they fail to provide leadership in resolving disputes, states remain bound to avoid war and use peaceful mechanisms to contain, manage, and resolve conflicts. Left to their own discretion, however, powerful states rarely sacrifice their interests. When international institutions stall, the law of negotiated solutions loses its efficacy and even normative validity. When powerful members of the international community refuse to comply with their obligations or carve out self-serving exceptions to negotiated solutions, war and violence raise their heads. Not surprisingly, the threat to the vitality of pacific norms embodied in the UN Charter comes from imperial entities that, driven by their structural need for expansion and domination, do not repudiate aggression in international affairs.

Presently, the US, which has acquired the attributes of an imperial entity, poses the most formidable threat to peaceful settlement of international disputes. While the US allows and even pressures other nation-states to resolve their disputes through peaceful means, the US does not practice what it preaches. The US has reserved the right to use force, not limited to self-defense, to promote its interests and values across the world. This assertion of power simply means that if the US is a party to a dispute with another entity, it may choose war if the other party rejects the solutions that the US offers. While many states choose not to defy the US, some Muslim states such as Iran and most Muslim militants across the globe refuse to submit to the US hegemony. This refusal escalates terrorism. This refusal, however, is interpreted as an ontological sign of Muslim addiction to violence, as if Islam embodies no concept of negotiated solutions.

Islamic Law of Negotiated Solutions

Throughout the world and in particular the US, the character of Muslim militancy is gravely misunderstood. American private and public sectors have manufactured massive literature to propagate a powerful but erroneous theory that Muslim militants are addicted to violence, and that the metaphysical and mystical drive of Islam, rather than geopolitical grievances, propels Muslims toward vio-

lence. The reason for this propaganda lies in the concerted effort to deny the phenomenon of primary and secondary grievances that generates militancy and resistance. The ontology of Islamic terrorism paints Islam as an inherently violent faith. It argues that Muslim militants are driven to violence by their deep and perhaps inalterable religious subjectivity. This dubious ontology undermines the concept of negotiated solutions. It also proposes war as the final solution. The invasion of Afghanistan and Iraq and threats of military intervention in Syria and Iran are direct effects of this ontology, which forcefully argues for the complete annihilation of Muslim militants all over the world, regardless of the suffering and human rights abuses of the aggrieved populations.

Contrary to the dubious ontology of Islamic terrorism, Islam is much more complex than it is presented in terrorism literature. Under conditions of justice, Islam is inherently peaceful. However, Islam is by no means pacifist under all circumstances. Islam teaches militancy, not surrender, under conditions of persecution, oppression, and subjugation. It also teaches Muslims to resist worldly gods and superpowers that conduct themselves in a cruel and unjust manner. Islam is most resilient under stress. Instead of giving up faith under adversity, Muslims embrace Islam even more closely when the worldly injustice is unbearable. As a result, the suppressive strategy of attacking Islam as the source of violence is rarely effective. The more oppression is perpetrated in Palestine, Chechnya, or Kashmir, the more Muslims will become militant in resistance to injustice. That has been the history of Islamic movements against alien domination. Jihad is an essential part of Islamic faith. No worldly force can outlaw it.

But military jihad is not a permanent condition of Islamic life. Military jihad is unnecessary if a Muslim community faces no external threat. Peace and submission are natural conditions of the Islamic faith. Furthermore, Islam does not prescribe military jihad as the only means to resolve conflicts. As the following discussion demonstrates, Muslims are obligated to make peace with the enemy and resolve conflicts through peaceful means. In the peace process, Muslims may offer great material concessions to the enemy to obtain a durable compromise. Islam does not recommend exploiting the weak bargaining power of the enemy to force upon him an unjust deal. However, the enemy that uses force to deal with Muslim communities fails to obtain a durable peace because Muslim militants will continue to fight, despite agreeing to intermittent, logistical cease-fires, until a solution is negotiated to mutual satisfaction.

Clever enemies know that the Islamic consciousness does not buckle but thrives under oppression. They also know that they can clench a good bargain through negotiation with Muslims because the authentic Islamic consciousness is supposedly most forgiving and generous when the peace process appears to be genuine. The following principles highlight the Islamic law of negotiated solutions.

Al Baqra Principle

Islamic law embodied in the Basic Code (the Quran and the Sunna) encourages, and in some cases mandates, Muslims to cease fighting and find negotiated solutions to disputes involving armed conflicts with non-Muslims. Sura al Baqra states: “Keep on fighting (qital) against them until mischief (fitna) ends and the way prescribed by God prevails. But if they desist, then know that the state of war (adawat) is only against the oppressors.”⁴ This Al Baqra principle does not allow perpetual fighting against non-Muslims, but prescribes fighting (qital) as a means to end mischief (fitna) and oppression (zulm). If the enemy is determined to perpetrate fitna and zulm, Muslims are obligated to engage in qital until the oppressor is defeated and authentic tranquility prevails. But qital is not the only option to end fitna and zulm. The other option is to find a negotiated solution to resolve the conflict. If the enemy desists from fitna or zulm, Muslims are obligated not only to stop killing (qital) but also end the state of war (adawat). Furthermore, the al Baqra principle is not reactive. It may not be interpreted to conclude that the enemy must first offer to end fitna before Muslims would cease qital. Muslims may proactively engage the enemy into finding a negotiated solution to end fitna and zulm. Of course, any proactive engagement with the enemy for finding negotiated solutions does not mean that Muslims would surrender and accept an unjust outcome. Any such surrender would violate “the way prescribed by God.”

Al Anfal Principle

The Islamic law of negotiated solutions is codified in the al Anfal principle. Sura al Anfal states: “And if they incline to peace, so you

⁴ Quran 2:193.

must incline to it. And trust in God, for He hears and knows all.”⁵ The al Anfal principle reinforces the al Baqra principle in important ways. It mandates that the enemy’s peace gestures be accepted. This obligation, however, must be read in light of the al Baqra principle. No enemy’s peace offer may be accepted if it is designed to perpetuate an injustice. Any negotiated solution, which fails to eradicate fitna or zulm, is contrary to the al Baqra principle discussed above. However, the al Anfal principle encourages Muslims to be proactive in accepting the enemy’s peace offers and not be overly suspicious of the enemy’s motives. This principle invites Muslims to “trust in God” while accepting the enemy’s peace offers, which simply means, that Muslims may be cautious in interpreting the enemy’s peace gestures but they cannot dismiss them out of unfounded fears that the enemy is seeking truce for less than noble reasons. The “trust in God” part of the al Anfal principle instructs against cynicism and dehumanization of the enemy. The al Anfal principle does not obligate Muslims to accept every peace gesture that the enemy makes. Muslims may assess the enemy’s intentions. If the enemy’s peace intentions are sincere, Muslims are obligated to respond in kind, end qital and the state of war. Again, one need not interpret the al Anfal principle in a reactive manner. Muslims may proactively seek peace with the enemy and if they find that the enemy is sincerely prepared to end fitna and zulm, they may initiate a negotiated solution to end the state of war.

Al Nasaa Principle

The Al Nassa principle mandates that Muslims cease hostilities if the enemy demonstrates a commitment to peace. Sura al Nasaa states: “So if they stand disengaged and do not commit qital, and they speak the language of peace, then God has given you no way (to fight) against them.”⁶ This al Nassa principle clarifies the conditions under which qital is no longer permitted. If the enemy by his deeds and words offer peace, Muslims are obligated to end fighting. Thus, the enemy must satisfy two distinct conditions. He must speak the language of peace. This verbal commitment to peace,

⁵ *Quran* 8:61.

⁶ *Quran* 4:90.

however, is a necessary but not a sufficient condition for Muslims to stop fighting. The enemy must also perform a disengagement act to reinforce his verbal offerings of peace. The disengagement act may be withdrawal of troops, surrender of occupied territory, removing weapons of war, or any such concrete conduct that embodies a convincing proof of the enemy's peaceful intentions. Once the enemy makes a disengagement act and verbalizes his intention towards peace, Muslims are obligated to cease all hostilities and respond these gestures by stopping all armed attacks on the enemy. This mandatory ceasefire paves the way for a negotiated settlement of the underlying conflict.

Peace Treaty of Hudaibiya

The Peace Treaty of Hudaibiya (628) furnishes a remarkable example of a negotiated solution that the Prophet himself initiated to end years of wars and hostilities. In 622, the Prophet and his followers had been forced to leave Makkah, the city of his birth. In the next six years, Muslims fought three wars (Badr, Uhud, Khandaq) with powerful forces of the Quraish who controlled Makkah. In 628, the Prophet and his followers decided to visit Makkah for the pilgrimage. They camped at a place called Hudaibiya before entering the city. There, the Quraish sent emissaries to persuade the Prophet not to enter the city for that would trigger another war. Although Muslims were in a much stronger position than before, the Prophet offered not to enter the city provided the Quraish would demonstrate their sincere commitment to peace. The Quraish sent Suhail ibn Amr to negotiate the terms of the treaty. The Prophet negotiated the terms of the treaty with Ibn Amr, even though he was a notorious enemy of Islam and of the Prophet. Furthermore, the Prophet gave generous concessions to obtain a ten-year no war pact with the Quraish. The Prophet agreed to postpone the pilgrimage for one year.

The Prophet also accepted unequal extradition provisions of the treaty under which any converts to Islam who would leave Makkah and join the Muslims would be extradited to Makkah but any Muslims who abandoned the Prophet and fled to Makkah would not be returned to Muslims. These unequal extradition provisions would most certainly stop the inflow of new converts from Makkah and possibly reduce the number of Muslims if many defected to join their families in Makkah. Many followers of the Prophet did

not like unequal terms of the treaty of Hudaibiya. But the Prophet was determined to end the era of warfare with Islam's strongest enemies, thus preferring peace to proselytism.

Failure of the Two Systems

Despite clear mandates for negotiated solutions to conflicts in both international law and Islamic law, terror triangles have failed to abandon violence. There are many reasons for this failure. Ontological explanations of Islamic militancy oppose the peace process, and promote war. By violating the laws of war in their use of force and choice of targets, Muslim militants sow confusion and mistrust. Muslim governments are too timid to actively advocate for the rights of aggrieved populations and demand effective mediation. Powerful suppressive states continue to employ the option of war. Major conflicts involving the right of self-determination and human rights abuses stem from the structural imperative of the nation-state that refuses to relinquish aggression. The barriers to negotiated solutions are raised higher when nation-states behave as empires, which are inherently predatory entities. An empire dictates solutions and is willing to use force to achieve its geopolitical objectives.

8.2 BARRIERS TO NEGOTIATED SOLUTIONS

Imperialism Knows No Compromise

Value imperialism is the greatest barrier to negotiated solutions. Subjugation and not compromise is the coin of imperialism. When an entity imposes its values on others, it has little interest in negotiating with the resisting population. For example, if al Qaeda wishes to impose its spiritual values on Americans, al Qaeda is unlikely to compromise. Americans would most likely resist such spiritual imperialism and would use force to counter any threats of violence accompanying such spiritual imperialism. Likewise, if American governments coerce Muslim nations into accepting liberal secularism or Judeo-Christian democratic values, Muslims will resist and fight to defend their faith-based civilization. Value imperialism invites submission but in reality breeds resistance.

Lack of Mutual Respect

Suppressive entities insert irrational barriers to negotiation that, upon scrutiny, are indefensible. First, there is the linguistic/psychological barrier. The phrase “terrorist” has been so thoroughly condemned that it invokes visceral feelings of repulsion and even hatred. Propaganda asserts that Muslim militants possess inhuman qualities, have no sense of morality, no respect for law, and that they have embraced a murderous ideology that kills the innocents without any rhyme or reason. This view of Muslim militants does not encourage negotiations. Successful negotiations depend on parties having some sense of mutual respect.

Negotiations presuppose that parties act rationally and that, despite their mutual distrust and differences on the issues, they would prefer to find a negotiated solution. Suppressive entities may overcome this barrier by treating Muslim militants as private armies fighting to obtain certain military, political, or geopolitical goals. While suppressive entities may still condemn the enemy in negative language and continue to use the label of “terrorism” for tactical reasons, they must negotiate with Muslim militants for strategic reasons. In other words, suppressive entities may treat Muslim militants as “terrorists” to obtain a tactical/psychological advantage, but they must not shut the door on the strategic utility of reconciliation through bargaining. This tactical/strategic split does not worry warring nations, which condemn each other’s armed forces for violating the laws of war, but use negotiation to secure a truce or peace treaty.

Respecting Muslim Militants

The second barrier to negotiation is somewhat formal in nature. It arises from the asymmetrical relationship between a professional suppressive army and an unconventional private army. Professional armies see no wrong in negotiating with each other. But they have not been inculcated to retain the same professional respect for private armies. Professional armies are distinguishable from unconventional private armies. Professional armies wear uniforms, use heavy weapons, and operate within the command structure of military ranks. In contrast, unconventional private armies such as Muslim militants, have more coded symbols of mutual identification. They wear no uniforms since part of their effectiveness against professional armies rests on their efficacy to conceal identity.

Unconventional private armies do not use heavy weapons, even though they try to obtain as many lethal weapons as they can. Muslim militants might also have a command structure, which may or may not be as defined as that of a professional army. As far as the laws of war are concerned, both armies may fight or accuse each other of fighting without rules. The asymmetry between the forces, however, should not be a real barrier to negotiation. History is replete with examples where huge armies have fought and negotiated with private armies, despite the imbalance in their respective numbers, quantity and quality of weapons, war traditions, military ethics, and tactical and strategic viewpoints. The tradition of negotiating with the armed enemy is much older than the emergence of uniformed armies.

The same argument can be made regarding adherence to the laws of war. Armies have fought and negotiated with each other long before the emergence of the law of warfare. One complaint against Muslim militants is the suppressive charge that they do not obey the laws of war in that they attack legally prohibited targets. This charge is partly suppressive propaganda, designed to dehumanize the enemy. It is partly true in that some Muslim militants do commit violations of the Islamic law of warfare that places stringent rules on the Muslim conduct in the battlefield, a law that is much older, and no less ethical and egalitarian, than the modern *jus in bello*. There is also collateral damage caused under the doctrine of military necessity, the types of damages that regular armed forces do not consider as violations of *jus in bello*. Collateral damage is associated with professional armies, conceding no such doctrine to militants. Suppressive propaganda refuses to accord any credit to Muslim militants that they fight within the constraints of the laws of war. Suppressive media report war stories on the unquestioned assumption that Muslim militants are lawless fighters and engage in mindless butchery. This well-established suppressive image of Muslim militants makes it harder for suppressive governments to explore the option of negotiation.

Militarization of the Negotiation Process

The concept of negotiated solutions is founded on the assumption that an aggrieved population's primary and secondary grievances may be rationalized, moderated, and met through a deliberate process of mediation and reconciliation. Several factors, however,

complicate the process of negotiated solutions. The most disturbing factor is the complex presence of violence.

Principal suppressive entities, such as Russia in Chechnya or Israel in Palestine or India in Kashmir, almost always deploy security forces to subdue militancy and maintain law and order. If security forces engage in gross human rights abuses, a scenario that most frequently occurs in combating militancy, military violence itself becomes part of the problem. Militancy adds its own violence to the equation. Engaged in liberation movements, Muslim militants invoke the right of armed struggle to resist occupation, invasion, and brutalization of the aggrieved population. When they take the fight to the territory of the principal suppressive state and attack its civilians, the spiral of revenge escalates violence. The dynamics of violence are further deepened when supportive entities furnish manpower, weapons, and other resources to Muslim militants. This multidimensional violence impedes the negotiation process, especially if a party to the conflict, suppressive state or militants, is determined to find a military solution.

Violence is also used as a deliberate pressure strategy to clinch a better deal on the negotiating table. This form of violence militarizes the negotiation process. In the Middle East, for example, both Israelis and the Palestinians employ a simultaneous strategy of violence and negotiation. While political leaders are engaged in talks, Israeli security forces kill Hamas operators, and Palestinian militants attack occupying soldiers and settlers or explode bombs inside Israel. A complete ceasefire or decommissioning of militants as a precondition to the negotiation process is often demanded but rarely granted.⁷ After a violence-prone stalemate of years, if not decades, it is unclear how a few more deaths of the enemy would facilitate the negotiating process. And yet, governments and groups of militants are unwilling to suspend violence while negotiations are under way. But when a ceasefire is held and violence suspended as a gesture of simultaneous goodwill, the peace process assumes a more positive orientation conducive to a durable deal.

⁷ Heidi L. Wushinske, *Politicians and Paramilitaries: Is Decommissioning a Requirement of the Belfast Agreement?* 17 *Temple International and Comparative Law Journal* 613 (2003) (the agreement provides each party what it wants and hence the agreement is ineffective and the stalemate continues).

Vacuous Presumptions of War

When the peace process is abandoned in favor of the war option, the terror triangle becomes even more violent. So far, the war against Muslim militancy has failed because it is founded on two questionable presumptions – deterrence and physical eradication of Muslim militants. Both presumptions are vacuous. The deterrence presumption fails because most Muslim militants are willing to die for their causes. Deterrence is most effective when perpetrators of violence place high value on their lives. But when militants willingly die, deterrence loses its rationale and power. The invention of suicide bombing is a clear proof that Muslim militants cannot be deterred by the threat or use of force against them or their families. The other presumption underlying the war on terror is the physical eradication of terrorists. This presumption fails because Islamic concepts of jihad and martyrdom are perpetual sources of recruitment. There is no shortage of new and young blood summoned to fight in the name of God. Once a militant movement is successfully defined in religious terms, the supply of private soldiers is assured. These voluntary armies summoned to protect “the causes of Islam” are more self-perpetuating than the Greek Hydra and Typhon, because more than a billion Muslims in the world can generate sufficient number of militants to replenish supplies exterminated in wars. These vacuous presumptions of war demonstrate that in dealing with Muslim militants negotiated solutions are superior strategies.

Phenomenal Militancy Distinguished from Retail Terrorism

One popular argument asserts that negotiation rewards terrorism. Abductions, hijackings, and other criminal actions would escalate if concessions were made to terrorists. This argument fails to distinguish between phenomenal militancy and retail violence. Phenomenal militancy is tied to an aggrieved population and it emerges from an unresolved clash of interests and values. By contrast, retail terrorism is akin to ordinary criminality with no roots in the plight of an oppressed population. Negotiating with retail terrorists who are fighting for their personal narrow demands might be objectionable as it rewards blackmailing. However, parties to a terror triangle must negotiate to resolve conflicting interests that directly affect millions of people. It is their moral and legal obligation. The negotiation process cannot be abandoned even if militants have

arisen from the aggrieved population and even if they target and harm persons and properties of suppressive states. Refusing to make concessions to a terrorist group pushing drugs is not the same as refusing to negotiate with leaders of a large population demanding the end of occupation or apartheid. Any broad collapsing of phenomenal militancy with other forms of terrorism into one grand category is an unacceptable legal strategy. Any over-inclusive definition of terrorism in itself is a suppressive ploy to de-legitimize the armed struggle of an aggrieved population.

Finding Negotiating Counterparts

There is another important distinction between phenomenal militancy and retail terrorism. In a retail abduction case, for example, negotiations must be conducted directly with the abductors. In a phenomenal militancy case, negotiations are done with the political leaders of an aggrieved population and not necessarily with militants engaged in armed struggle. This is similar to a case where political leaders of warring states negotiate with each other while their soldiers are fighting in the battleground. The warring states may of course agree to a ceasefire before they engage in negotiations or they may negotiate without halting the armed conflict. Both forms of negotiations are familiar in international affairs, and each can be effective in its proper context. A ceasefire could operate as a precondition for negotiations or it could be the result of a negotiated deal. Likewise, if political leaders of an aggrieved population have control over militants, a ceasefire may precede negotiations. But if militants refuse to give up armed struggle unless negotiations produce some tangible results, the parties may still negotiate. Any suppressive demand that no negotiations can take place unless militants first cease operations may, in some circumstances, be an unreasonable demand aimed at stalling the negotiation process.

Separation of Political and Militant Wings

Some aggrieved populations generate two separate liberation groups to fight for their demands. The political group composed of politicians, intellectuals and professionals operates in the civil world. In contrast, the militant group focuses on armed struggle and generates military pressure on the suppressive state. The two groups

belong to the same aggrieved population but they may differ with each other on strategy, tactics, ideology, methods of resistance, and liberation demands. In most cases, militant groups are more assertive and demanding than political groups. This separation works to the benefit of political groups who come across as more reasonable partners in negotiation. Some militant Palestinian groups, for example, argue for a complete dismantling of the state of Israel whereas political groups are more accommodating and willing to accept partition of the historic Palestine.

The dual demands between political and militant groups may be real or strategic. It is real when the groups genuinely disagree with each other, and it is strategic when the groups disagree with each other for negotiation purposes. Rarely do the two groups openly admit that their differences are strategic for the purpose of gaining advantage at the negotiation table. In most cases, different viewpoints are presented as authentic ideological splits. This is not surprising considering that in highly fractured and traumatized aggrieved populations, representatives of the group fighting suppression are likely to be similarly fractured and traumatized, some arguing for softer solutions and some pursuing harder, more militant options.

When a liberation organization, such as the Palestinian Authority or Hamas, contains both political and militant wings, the organization represents the aggrieved population more as a regular government. The organization's political wing serves as the civil government and its militant wing provides the armed forces. In such cases, the organization devises a unified negotiating position because its military and political wings cannot make different demands. In such cases, the suppressive state often demands that the organization's militant wing stop attacks before any meaningful negotiation can begin with the organization. International pressure may also be exercised over the representative liberation organization to shun the use of force, particularly so if the suppressive state has successfully cast the armed struggle as terrorism. Pressure is compelling because the organization's political wing may lose its negotiating mandate with the suppressive state if the organization fails to stop militancy. The organization may also lose credibility if it promises to restrain violence but does not do so in reality. The organization appears weak if its militants refuse to obey orders from its political wing.

Exclusion of militants impedes negotiated solutions

Suppressive entities have launched a vigorous international campaign to isolate Muslim militants and reduce their fighting capability. This campaign focuses on supportive entities and threatens to punish them. If a Muslim state openly supports a cause of liberation, it is branded as a terrorist state. Most Muslim governments are under intense military, economic, and diplomatic pressure to cease all assistance to militant groups. Muslim governments are being recruited by suppressive states to disrupt militant cells, arrest and kill fighters, their leaders, and any other aiders and abettors. This militaristic approach has alienated Muslim governments from militant groups, turning them against each others. This strategy to fight militancy supposedly weakens militant groups since they cannot operate openly. But such a strategy is rarely effective in the dissolution of militant groups. In most cases, militants simply go underground. Perhaps even worse, they plot covert operations. In some cases, they become more lethal out of frustration. In all cases, suppressive Muslim governments lose leverage over militants, since they are no longer seen as supporters. This forced cleavage between Muslim militants and Muslim governments, most of which are still sympathetic to the demands of the aggrieved population, does not facilitate resolution of the conflict through negotiations based on mutual respect and trust.

Forcibly isolated Muslim militants may be less organized but they are no less lethal. The destruction of militants' command and control may also lead to more sporadic and unpredictable attacks on suppressive entities. A highly organized militancy, if and when open to the negotiation process, is likely to function as a unit, just as a highly organized army, though lethal, is also more controllable. But when soldiers are forcibly severed from command and control, they are certainly less organized but by the same token their fighting is more chaotic and unwieldy. And if soldiers are independently committed to fighting, as most Muslim militants are, the destruction of command and control unleashes a decentralized lethal force. When fully charged militancy loses sponsors, it falls into rudderless extremism. It is harder to negotiate with a scattered militancy that has lost unifying leaders and supportive states. Therefore, the concept of negotiated solutions requires that militant leaders not be killed and the militant command structure not be destroyed, because a militaristic approach by suppressive entities shatters the very infrastructure needed for an effective negotiation process.

Using Supportive Entities as Negotiation Partners

Supportive entities may be used as negotiating partners. This can occur only if supportive entities, including influential individuals and states, enjoy credibility with an aggrieved population and its soldiers. Jordan's King Abdullah is generally seen as an American man. As such, he lacks the needed credibility to urge more militant Palestinians to turn to a negotiated solution with Israel. Instead of forcing King Abdullah to cooperate in crushing Muslim militants, a better approach would be to let him cultivate a close relationship of trust with the Hamas and other militant groups inside and outside the occupied territories. This close relationship would enhance the Kings' leverage and would later provide an effective medium to communicate with militants and possibly bring them to the negotiating table. Likewise, Pakistan can contribute substantially more to the negotiation process if it remains an openly supportive entity. A suppressive Pakistan loses its power in moderating Muslim militants and steering them towards negotiated solutions.

The emerging international consensus that no support should be given to terrorists is counter-productive in one important way. It pressures supportive entities to cut off all relations with Muslim militants. Instead of using supportive states as negotiating partners, the new trend forces them to deny that they have any links with militants. This forced separation of militants from supportive states is based on the premise that isolated fighters will eventually give up armed struggle. The premise is too optimistic because it underestimates the resourcefulness of a liberation movement. The international consensus is also superficial. Few supportive entities will abandon the cause of aggrieved populations espoused by militants, and many will find more secretive ways to provide material assistance. A more effective approach to negotiated solutions dictates that supportive states be used to facilitate the negotiation process.

Two Ways of Looking at Militancy

The negotiated solutions approach is the opposite of the militaristic approach. The militaristic approach loathes militants and sees them as the enemy. The negotiated solutions approach respects militants and sees them as peace partners. The militaristic approach focuses on degrading the militants' fighting capability by closing off all resources that feed militancy. Its exclusive focus is on the

isolation and destruction of Muslim militants. The militaristic approach kills the leadership, disrupts command and control, and punishes entities that support militants. The negotiation approach does not aim at isolating or destroying militants. It instead draws them into complex networks of interdependence with each other and supportive entities. A militant group that enjoys access to and respectability with Muslim governments is more likely to act as a political entity, willing to resolve issues through peaceful means and under the cover of law. The establishment of the Palestinian Authority in Gaza, for example, furnished an organized entity that can speak on behalf of the Palestinians. Any degradation of this entity might serve the cause of occupation but it would not contribute to the negotiation process.

Duality Toward Negotiation

Most suppressive entities take a dual stand on negotiation with Muslim militants. Publicly, they adopt a propagandistic policy of “make no concessions to terrorists.” Secretly, they talk, bargain, and trade concessions. This duality, however, is detrimental to the negotiation process, since its dynamics are anchored in disrespect, uncertainty, and reluctance. In Iraq, for example, an American team reportedly met in June 2005 with representatives of Iraqi insurgent groups including Ansar-ul-Sunna, a group that has masterminded suicide bombings and killed 22 American soldiers in the dining hall of an American base in Mosul. In the meeting, the American negotiating team acted under the gnawing pressure of duality. Instead of negotiating with insurgent leaders, the American team was asking questions about the group’s hierarchy and logistics, revealing a clumsy “attempt to discover more about the enemy than about finding solutions.” The meeting failed. According to an Iraqi insider, the tone of the Americans was offensive. “They were talking with a tone of more superiority, arrogance and provocation.”⁸ This disrespectful and consequently fruitless attitude toward negotiation tells more about dysfunction of duality rather than about Americans skills of negotiation.

⁸ The London Sunday Times, June 26, 2005.

Negotiation and Concessions

Often, negotiation is so closely tied to making concessions that a policy of no concessions may be understood to mean as a policy of no negotiations. Negotiation is unlikely to succeed where one party concedes everything while the other nothing. By necessity, negotiation implies making mutual concessions whether the concessions are cosmetic or real. Despite the proximity between negotiating and conceding, the two are nonetheless severable, at least in theory. A suppressive state may negotiate with terrorists without making any concessions. In this sense, negotiation means talking to terrorists, either directly or indirectly. Talking may contain threats of sanctions and moral persuasion. It may also help in buying time so that an effective strategy may be devised to counter terrorist actions. The business of any purposeful talking, however, is so tricky that the 'make no concessions' policy falls apart in a thousand ways. For example, if a suppressive state demands that hostages be released on Monday morning while the kidnappers insist on releasing them on Monday afternoon, no rational suppressive state will risk the lives of hostages killed by doggedly adhering to make no concessions to terrorists' policy. In real situations, such micro-concessions become inevitable as soon as suppressive states begin to talk to terrorists. In view of this inevitability, the 'make no concessions' policy might mean that suppressive states would concede to some but not to all demands of terrorists – a scenario that fits almost all cases of negotiation.

The "make no concessions" policy, though formulated in a grandiose and sweeping language that seemingly applies to all acts of terrorism, is predominantly applied to situations of hostage-takings, abductions, and aircraft-hijackings. In post-Saddam Iraq, for example, terrorists take foreigners as hostages and demand that their home state pay a sum of money, release certain prisoners, or recall occupying troops. Some hostages are beheaded whereas others are released. One may conclude that beheadings resulted because the home state either refused to talk, or talked but made no concessions, or made concessions but not enough to win the release of their captured nationals. One may similarly conclude that states whose nationals were released and not beheaded entered into some sort of successful negotiation, with or without making concessions. When a suppressive state refuses to negotiate, it often uses military means to seek the releases of hostages or to end a hijacking. Rarely does a suppressive state leave hostages to their fate by doing

nothing. One may, therefore, reasonably conclude that when no military action is taken but hostages are killed, the suppressive state probably entered into some sort of negotiation but failed to clinch concessions from terrorists.

Fate of Spies

Even Muslim militants refuse to negotiate with certain hostages whom they consider to be spies. In such cases, the “make no concessions” policy has little force since militants are unlikely to release captured spies. And worse, some such spies are swiftly beheaded. In 2002, Wall Street Journal reporter Daniel Pearl was abducted and killed in Pakistan. He was captured while working on an investigative terrorist story linking a Pakistani militant to “shoe-bomber” Richard Reid who attempted to sabotage in air an aircraft full of passengers. His captors first demanded that the US release Pakistani prisoners at Guantanamo. Under the ‘make no concessions’ policy, the US could not have met the demand. The no concessions policy began to lose its centrality, however, when the captors accused the Jewish reporter of being a spy. Now Pearl’s fate was sealed. Despite appeals from American and Pakistani governments, Pearl was murdered. The CIA denied that Pearl was a spy. But what matters in such cases is the evidence on which terrorists come to rely. And the evidence they count on is often hearsay and easily refutable. A negotiation approach to Pearl’s kidnapping would have required that the US supply credible evidence in a timely fashion to counter the accusation that Pearl was a spy. It is unknown whether any such attempt was made. And it is anybody’s guess whether an effort to refute the spying charge would have saved Pearl’s life.

Hegemonic Negotiations

Even if parties to the terror triangle agree to negotiate, the process might fail or produce unsatisfactory outcomes if stronger parties are determined to overwhelm their opponents. Negotiating with the US, for example, might seem fruitless, if not impossible, because of the enormity of power that American negotiators bring to the table. Americans possess effective and exclusive tools of pressure that Muslim nations or aggrieved populations cannot match. US

economic power is the most formidable tool that both facilitates and impedes negotiations. The US may threaten trade sanctions, oppose loan grants at international financial institutions, such as the World Bank and the International Monetary Fund, or persuade the UN Security Council to impose economic sanctions. US military power is no less effective. American bombings of Libya and Sudan and the US invasion of Afghanistan and Iraq have perpetuated a global perception that a frustrated US will use force to impose solutions on recalcitrant parties.

Add to these tools the hegemonic style of American negotiators. Although they are genuinely driven by a sense of fairness and enjoy a reputation of being tough but honest bargainers, most American negotiators tend to “persuade, sermonize, or browbeat negotiating counterparts into acceding to American positions.” They bring the power of multifaceted resources to the negotiating table, and create calculated and deliberate linkages between issues, incentives, costs, and benefits, to “convince their counterparts of the benefits of reaching an agreement on U.S. terms and the costs of failing to do so.” A group of senior diplomats, policymakers, and scholars unanimously concluded that, regardless of shifting policy priorities and differences in personalities, “U.S. negotiating behavior is fundamentally forceful and pragmatic. Individual negotiators may be genial, or moralistic, or pushy, but ultimately all share a business like concern to achieve results in the shortest time.”⁹

Despite US hegemonic power, style, and goodwill, the US has been unable to play an effective role in mediating international disputes that spawn violence. US engagement towards resolving the Kashmir dispute between India and Pakistan has been minimal, in part because India allows no third party to participate in the conflict. The US is engaged in the Middle East and enjoys tremendous leverage over Israel on whose behalf it has vetoed numerous Security Council resolutions. Successive US administrations, however, have failed to bring peace to the Middle East in part because the pro-Israeli lobby in the US has consistently been successful in scuttling bold initiatives. In the case of Chechnya, the US has vigorously exposed Russia’s gross and systematic violations of human rights. Since 9/11, however, the US has been more interested in

⁹ US Institute of Peace (Nigel Quinney & Emily Metzgar), Special Report 94, U.S. Negotiating Behavior (July 2000).

seeking Russian cooperation in its war on terror than pressuring it over Chechnya. When the US itself is a party to an international dispute, such as one in Iraq or Afghanistan, it is perceived as an uncompromising hegemon. It either refuses to negotiate with the enemy or fails to win a durable deal.

8.3 THE CONCEPT OF DURABLE DEAL

The purpose of negotiated solutions is to produce a durable deal that is genuinely acceptable to parties to the terror triangle, that is, the principal suppressive state, the aggrieved population, and supportive entities. Any deal extracted out of the suppressive state or imposed upon the aggrieved population is inherently unstable; it can even be dangerous, as the dissatisfied party will most likely sabotage the deal through non-compliance or engage in violence to undo the outcome. No party can be coerced, cajoled, tricked, or bombed into accepting a negotiated settlement. The issues must not be muddled, split, ignored, or left unresolved to obtain a partial deal or to draw an unfair advantage or to deceive one or the other party. A durable deal is the outcome of hard bargaining by legitimate representatives of the parties, after a deliberate, open, and bold examination of all the issues that constitute the heart of the conflict. Concessions given through such a good faith process are meaningful and the outcome is stable. Parties comply with the negotiated settlement and open a new chapter in their relations. These requirements of a durable deal apply to both direct and mediated negotiations.

Negotiating with Hawks

More specifically, a durable deal is one that is acceptable to conservatives within the suppressive state and militants within the aggrieved population for these two forces compose the hardest parts of the conflict. Stated differently, a durable deal is one struck between the hawks, and not the doves, of negotiating parties. Doves are idealistic, easy to work with, but they are usually incapable of delivering durable solutions. Hawks are pragmatic, sometimes overly obsessed with the use of force in resolving disputes, and have a tremendous ability to live with a festering dispute. A durable deal

invites hawks and doves, preferably hawks, to the negotiation table. This emphasis on the critical significance of hawks in the negotiation process does not diminish the value of doves. Doves are needed to prepare a moral climate and a humanistic dimension to the conflict, for they represent the idealistic and softer dimension of the human psyche. Without doves, hawks can lead a nation to barbarism, a ruthless course of vengeful atrocities. Doves and hawks constitute the psyche of a state community, and one without the other is incomplete and inadequate.

Sometimes, the demands of hawks on both sides are mutually exclusive and no genuine settlement can be reached. Any effort to reconcile their opposing interests might be a sheer waste of time. If hawks indeed represent a good portion of their respective populations, the conflict might indeed be irresolvable through negotiation. Consequently the conflict would fester until an effort is made to change the mindsets of hawks. In such a case, international input may be indispensable to educate conservatives and militants that their respective positions and interests must be softened before negotiations can begin to resolve the conflict. Any approach that dismisses the participation of hawks into the negotiation process is not conducive to a durable deal. Hawks can be ignored out of the negotiation process only if they represent extreme positions with little or no following in their respective populations.

Fruitless Assassinations

The war on terror commits a serious mistake when it kills the political leaders of militants, including radical members of the aggrieved population. Killing political militants of an aggrieved population satisfies nothing but bloodlust. Such extra-judicial murders exacerbate the conflict by creating hostility and resentment, and by pushing the negotiation process away from a durable deal. Killing Sheikh Ahmed Yassin, the spiritual leader of Hamas, and Yitzak Rubin, the political leader of the Likud party, are examples of senseless murders. The murder of Sheikh Yassin was more outrageous since it was carried out by state assassins after due deliberation, whereas Rubin's murder was private, though symptomatic of an ideological split within the Likud conservatives. These murders demonstrate a fruitless way of thinking that certain leaders have to be killed to win a negotiation contest. No militancy can succeed in its mission by killing conservative leaders of a suppressive

population nor can a suppressive state win a durable deal by physically eliminating conservative militants. If anything, there ought to be solidarity, a sense of sportsmanship, between hawks on all sides of the conflict, for they are the true bearers of peace and no durable resolution of the conflict can be found without their active and sincere participation.

Representative Legitimacy

A durable deal is achieved when persons engaged in negotiation are legitimate representatives of their respective constituencies. If the government of a suppressive state is democratically elected, it enjoys credibility not only with its own people but also with negotiating partners, and possibly with the aggrieved population as well. From the viewpoint of an aggrieved population, credibility should not be confused with likeability. A staunch Hindu government in New Delhi might not win the hearts and minds of the aggrieved people of Kashmir because staunch Hindu governments are opposed to any further dismemberment of India and they are unlikely to concede to the Kashmiri demands for independence. Despite their opposition to an independent Kashmir, staunch Hindu governments do not lose their credibility to negotiate on behalf of India. In fact, any decision by such a government to negotiate the Kashmir dispute is much more credible and of consequence than a more liberal government that has no resonance with staunch Hindu constituencies.

In the Middle East, a popularly elected Israeli government has much more negotiation credibility than would an un-elected, autocratic government. Even in democratic systems, all governments do not enjoy equal credibility at the negotiation table. Theoretically, all elected governments have institutional legitimacy to negotiate on behalf of the state. In the real world, however, some governments can deliver more legitimacy than others. A conservative Likud government in Israel comes to the negotiation table with much more credibility than does the Labor government. Part of this credibility comes from the fact that Likud party is much less willing to give concessions to the Palestinians. Thus if a Likud government cuts a deal with the Palestinians, it is likely to have more staying power because it has credibility with both doves and hawks. A deal made with doves is seen as a soft deal and hawks may sabotage it and even reverse it when they come to power. Accordingly,

it is better to negotiate with hawks of a suppressive state because they can deliver more, and more permanently, than would the doves.

Puppet Representatives

Lack of political legitimacy is a barrier to negotiated settlement, a barrier that might hold off suppressive states from negotiating with liberation organizations. If an aggrieved population does not view a government or an organization as its legitimate representative, no negotiated settlement is likely to win the people's approval. Suppressive states may like to negotiate with a "puppet government" that claims to represent an aggrieved population, but does not. It is easier to get a better deal from a puppet government than from one that represents legitimate aspirations of the people. For example, a pro-India local government in Kashmir is unlikely to be viewed with any legitimacy either by the people of Kashmir or by Pakistan and therefore any negotiated solution to the Kashmir problem reached between India and a local puppet government will not solve the problem. In fact, any such effort at negotiation demonstrates bad faith on part of the suppressive state.

8.4 THE QUÉBEC MODEL

While liberation movements in Chechnya, Kashmir, and Palestine produce triangular terrorism, the Quebec secessionist movement offers a counter-trend most consistent with the concept of negotiated solutions. It is unclear whether Canada would have behaved with the same prudence and understanding if the Québécois population were Muslims. The Quebec story nonetheless furnishes hopeful insights into preventing the dynamics of triangular terrorism through genuine negotiated solutions.

Recognition of Québécois Identity

Calling it a frozen wasteland and after keeping it for more than two hundred years, the French ceded Quebec to the British Empire. In 1774, while a revolution was brewing in American colonies, the British Parliament passed the Québec Act, a law that recognized the uniqueness of the colony of Quebec. The British law was enacted

“for the more perfect Security and Ease of the Minds of the Inhabitants of the said Province.” It allowed its inhabitants to “have, hold, and enjoy, the free Exercise of the Religion of the Church of Rome” and preserve its “System of Laws, by which their Persons and Property had been protected, governed, and ordered, for a long Series of Years.” Though couched in a language of generosity and understanding, the 1774 law was no act of British charity but a geopolitical chess move meant to mitigate French support for the American Revolution. The law was also a maneuver to grab land by stretching boundaries of the province southward to Mississippi/Missouri and Ohio rivers. The law made sense to inhabitants of the province because a number of Anglophone refugees, loyal to the British Crown, were fleeing north, first from the uncertainty of the separatist revolution (1776) and later from the fear-filled, written novelty of American constitutionalism (1791). Whatever the motivation behind its enactment, the law recognized the power of cultural differences and rejected the assimilation model that would define the philosophy of the newly-independent US in the centuries to come.

The 1774 Act (or the 1763 Royal Proclamation) did not create a separate Quebecois identity. It simply recognized the emerging facts of a distinct people. Inhabited by the French-speaking immigrants, Quebec, a colonial territory whose geographical boundaries would ebb and flow in vagaries of history, natural ambiguity of its location, and by statutory extensions, would continue to nurture its separate identity from three non-territorial sources: language, religion, and legal tradition. Quebec’s French language, its Roman Catholic faith, and its civil law tradition, the trinitarian identity continues to stir among its people paranoia and a longing for freedom. Periodically, fears of drowning mount when the people of Quebec realize the enormity of the Anglophone, Protestant culture all around them, including the American elephant they see in their living room. Strong feelings about a historically well-articulated but existentially threatened identity sets the Francophone population of Québec apart from other Canadians who speak English, predominantly subscribe to the Protestant faith, and have inherited the common law system (WASP). In its gradual unfolding, Quebec has become the largest geographical province of Canada and the second most populous. It is the only Canadian province where English is not an official language. This is a miracle considering the Quebecois identity came to near extinction in the 1840s.

Development of an Aggrieved Population

The assimilation model practiced in the US began to create a more viable single nation. The model invited, persuaded, and coerced European immigrants to voluntarily give up their histories, their languages, their cultures to become American, a disguised euphemism for the Anglicization of white immigrants. Partly inspired by the success of the US assimilation model, and partly concerned about inefficiencies that the dual Anglo/French systems had created in the province of Quebec, Lord Durham of the British Empire, in his 1839 report, proposed an assimilation model to forge a new unity between Anglo and French populations, a unity decidedly detrimental to the Francophone identity of Quebec. The proposal carried some subterranean, but gentlemanly expressed, racist motives in establishing, what the French call, the Anglo-Saxon domination. These are times in the British Empire when its Parliament enacted into law what the Lords demanded. Accordingly, Lord Durham's proposal was enacted into a statute, called the 1840 Union Act.

The Union Act united English and French constituencies under one Legislative Council and one Assembly. Each population was equally represented in the Assembly, even though the French constituted 60% of the provincial population. No person could run in elections unless he owned property worth 500 British pounds. The property qualification was more of a burden on the French who were poorer than the English. These democratic dilutions were intended to reduce the power of the French majority. Furthermore, the law dethroned the French language, declaring: "All official journals, entries and written or printed proceedings of the Council or the Assembly, all writs of summons and elections and all writs of public documents shall be in the English language only." French translations of proceedings, entries, and documents were allowed but lacked "the force of an original record." Although the Union Act preserved existing laws, the Assembly was empowered to change them. This meant that the civil law tradition was not to be annulled in a wholesale manner but its integrity was no longer assured. This legal and linguistic subordination was justified, in Lord Durham's report, to raise the standard of living of the poor French (the argument that a minority language in itself is a source of poverty continues to raise its head in many parts of the world). Ironically, however, the Upper Canada (the Anglophone) brought debt to the Union whereas the Lower Canada filled the joint treasury with credit. The popular reaction to the Union Act among the

French inhabitants was that of an imposition, a giant step towards the Anglicization of their laws and institutions. The Union Act of 1840 directly threatened the existential identity of the Quebec's francophone and gave birth to an aggrieved population.

Like any other aggrieved population facing a crisis of existential survival, Francophones in British North America began to think of liberty and independence. Unlike Palestinians or Chechens or Kashmiris, however, the historical predicament of the French-Canadians has been markedly different. Whereas existential identities of the Palestinians, Chechens and Kashmiris are tied to defined territories with claims of historical ownership of the land, the identity of French Canadians is far less territorial in its genetic formation. For the French Canadians, the crisis of existential identity has preceded that of territorial identity. In the United Province of Canada, created at Lord Durham's recommendation, it was one immigrant group threatened by another immigrant group in a foreign land that had belonged to marginalized and forgotten natives. The identity crisis of the French Canadians unlike the crisis of Palestinians was less aggravated by a lost sense of territorial ownership. This lack of territorial identity, however, began to correct itself as Quebec began to emerge as a distinct territorial unit, with vast but yet definable boundaries. As the guilt of stripping native populations of the ownership of land receded, the French-Canadians developed the same emotional sentiments with Quebec as other populations have over a period of time.

As Quebec's territorial definition evolved, particularly after the statutory partition of the Province of Canada into Ontario and Quebec, a Quebecois territorial identity associated with the French Canadian struggle for survival began to assert itself within the emerging concept of One Canada. The grievances of French Canadians, now tied to Quebec, began to gather multiple and diverse dimensions – expressing themselves in political, legal, linguistic, and economic formats. The underlying theme of these grievances has been the same. The French Canadians are not free, or free enough, to run their affairs according to their own wishes. The Anglo culture, its Protestant individualism, its materialistic pursuits distort and impede a genuine and luxuriant development of the Quebecois culture. Quebec must breathe fresh air free of Anglo domination that permeates the province. Such feelings are by no means universal among all French Canadians, but they shape the Quebecois identity. Just like the Chechens, the Quebecers ask the same fundamental question: whether they should fight to achieve

more autonomy within the existing Canadian federal system or whether they, exercising the right of self-determination, should opt for secession and become an independent nation-state.

Front de Libération du Québec

In the 1960s – a period of universal decolonization and proliferation of nation-states, a period of militant fronts and organizations launched to speed up the right of self-determination, and a period in which terrorism has not yet sullied liberation movements – the French Canadians, as an aggrieved population, also generated a militant wing, known as the Front de Libération du Québec (Quebec Liberation Front) (hereinafter referred to as FLQ), to reinforce the struggle for sovereignty. The FLQ did everything that terrorists do. The FLQ engaged in abductions, bombings, and political murders. The targets were the symbols of Anglo domination of Quebec, including English-Canadian businesses, English-Canadian homes in Montreal's wealthy suburbs, the Montreal Stock Exchange, a symbol of English-Canadian economic domination over the markets that have condemned the French Canadians to live as proletariats.

With its strong leftist leanings, the FLQ published manifestos that fused territorial independence with economic freedom from "Anglo-American capitalism." The Second Manifesto (June 1970) articulated the need for a "Common Front" against corporate monopoly of information, financial syndicates, big companies, and "the puppet French-speaking politicians." It rejected "the need to speak two languages because we are Quebecois." Rejecting racism and overly obsessive nationalism, the Manifesto welcomed immigrants: "We are with all the immigrant workers in Quebec, and it is alongside them that we want to fight the common enemy: Anglo-American capitalism." Most importantly, it vowed to fight violence with counter-violence, thus introducing "terrorism" into the liberation equation.

The Front's Manifesto was a great departure from the identity that the Quebecois had constructed over the centuries. There was no mention of Catholicism and the civil legal tradition, the two essential pillars of the Quebecois identity. The inclusion of non-white immigrants diluted even the third pillar, the ethnic identity of Quebecois. But the Manifesto was in line with other liberation movements across the world, including the Palestinian Liberation Movement, which joined Marxism with territorial independence.

Parti Quebecois

The political wing of the secession movement has been the Parti Quebecois (PQ), a provincial political machine that Rene Levesque launched in 1960s to demand sovereignty. The party have won several provincial elections and formed the government in Quebec. So far, the party has made two unsuccessful attempts at secession. In 1980, the PQ government under Levesque's leadership held the first referendum "to enable Quebec to acquire the exclusive power to make its own laws, levy its taxes and establish relations abroad – in other words, sovereignty – and, at the same time to maintain with Canada an economic association including a common currency." Though the question posed in the referendum was convoluted, almost 60 percent of voters defeated the move. The second referendum, held in 1995, garnered more support but still failed to gain a vote for secession. The PQ has not dropped the idea of secession retaining, though, some loose monetary and political association with the rest of Canada.

As the party in power, the PQ's major achievement was the consolidation of nationalist feelings. In its first government, the party emphasized enthronement of the French language, which emerged as the primary attribute of the Quebecois identity, particularly after the dilution of Catholic faith in the new generation. The people began to see the state as an instrument, and not a barrier, to the development of their distinct society. Logically, therefore, the state must be fused with the language, even if such a move compromises the rights of minorities or discourages businesses from entering or flourishing in the province. Seeing the language as the chief marker of the Quebecois identity, the PQ passed a law, titled *Charte de la Langue Francaise*, also known as Bill 101, making French the language of all matters in Quebec. Official records, school instructions, even billboards and commercial signs must be exclusively in French. The laws were to be enacted in French, though English translations are available. Thus the PQ turned the 1839 Durham report on its head. The francophones appreciate the law as an expression of nationalism. The Anglophones and other linguistic groups inhabiting the province see it as a move incompatible with their human rights. While the rest of Canada, governments and the people, reacted to this "language revolution" with dismay and concern, it made no overt attempts to sabotage the PQ or its attempts at the francization of Quebec.

In a recent decision, the Supreme Court of Canada upheld the constitutionality of Charter of the French Language, under which the children of the French speaking families are denied access to Quebec's publicly-funded English schools reserved for the children of Anglophone families.¹⁰ The Court rejected the argument that "equality requires that all children in Quebec be given access to publicly funded English language education." The Court further stated that the right to equality is not a trump right that defeats others; the protection of minorities, religious schools, and aboriginal rights are, by their nature, special rights that cannot be sacrificed in the name of equality.

Canada's Supreme Court Decision

In 1998, the Supreme Court of Canada delivered its opinion on two important questions: 1. Do the people of Quebec have the right of self-determination to secede from Canada? 2. Is Quebec's unilateral decision to secede effective and binding on Canada's other provinces?¹¹ Taking a dynamic view of constitutionalism, the Court ruled that no federal or confederal order is permanent or immutable; and an evolutionary view, which has been the basis of Canada's constitutional order, requires that changes be accommodated. Accordingly, the Court concluded: "a clear majority vote in Quebec on a clear question in favor of secession would confer democratic legitimacy on the secession initiative which all of the other participants in Confederation would have to recognize." In granting this right to secession, the Court declined to anchor its reasons in the international right of self-determination, arguing that Quebec does not meet the threshold of a colonial people or an oppressed people, for the people of Quebec had enjoyed the democratic right to govern itself, although under federal constraints.

While the people of Quebec may lawfully decide to secede and nothing in law prevents them to do so, still, the Court ruled, Quebec cannot unilaterally cut itself loose from Canada. Quebec must negotiate its withdrawal from Canada with other provinces and the

¹⁰ Gosselin v. Quebec, Supreme Court of Canada, 2005 SCC 15.

¹¹ Supreme Court of Canada, Reference re Secession of Quebec, 37 I.L.M. (1340) (1998).

federal government. This burden to negotiate, however, does not confer a veto power on other units or on the federal government to stall the process of secession. “The Canadian constitutional order,” the Court cautioned, “could not be indifferent to a clear expression of a clear majority of Quebecers that they no longer wish to remain in Canada. Consequently, other provinces and the federal government cannot deny the right of Quebec to pursue secession, “should a clear majority of the people of Quebec choose that goal, so long as in doing so, Quebec respects the rights of others.” Secession is not simply a political play among constituent provinces of a legal order. Any negotiations for secession must recognize the presence and protection of minorities in Quebec, whose rights cannot be sacrificed under any broad and unrestricted democratic right to self-determination.

Conclusion

Despite public assertions that suppressive states do not negotiate with “terrorists,” the reality is otherwise. Intense negotiations take place in all regions of the world to resolve terror-related disputes. In the Middle East, the rehabilitation of Yasser Arafat from a condemned terrorist to a recognized political head of the Palestinian Authority demonstrated that no region could be immune from negotiating with militant leaders. However, negotiated solutions fail to produce results if militant leaders are humiliated or killed. The decision of the Irish Republican Army to suspend the right to armed struggle provides another example of how violence can be substantially reduced when a militant organization fighting for political objectives on behalf of an aggrieved population is brought into a framework of negotiation.

Chapter 9

Free State Solutions

Free State promotes diversity without sovereignty

Consistent with the concept of Free State developed in *The Extinction of Nation-States* (1996) and *A Theory of Universal Democracy* (2003), triangular terrorism will be dramatically reduced as nation-states evolve into Free States. Free State is a territorial entity without sovereign borders, although it has administrative borders, just as Kansas does within the federation of the US. In the European Union, member nation-states are evolving into regional Free States as they shed their sovereign borders in favor of administrative borders. The fuller evolution of the world toward Free States is a distant eventuality, which may or may not occur, an eventuality pursuant to which the world will eradicate sovereign borders that nations have erected around themselves, freeing the planet as it once was, restoring One Earth for all the peoples of the world. Free States will begin to appear in a rudimentary form as nations and communities solve problems of extreme poverty, governments become local and democratic, and universal values inform international law. Terrorism in the realm of Free States will be an anomaly, just as human sacrifice is in our present condition of civilization. This chapter analyzes the possible reduction in triangular terrorism as nation-states move towards Free State.

Triangular terrorism discussed in previous chapters demonstrates that the concept of the nation-state embodies violence. Nation-states

perpetrate violence to safeguard their territorial integrity, sovereign borders, national security, and vital resources. They also employ aggression for predatory purposes, as did empires. Occupation, subjugation, and hegemony are the classical attributes of an empire. These imperial attributes, though not inherent to the concept of the nation-state, have nonetheless been embraced by powerful nation-states. Terrorism by militants is a violent response to these imperial impositions. Chechnya, Kashmir, and Palestine are examples of aggrieved populations determined to fight imperial impositions of powerful nation-states.

Russia brutalizes Chechens because a successful Chechnya secession would diminish the territorial size of the Russian nation-state. Furthermore, Chechnya's vital resources and geopolitical location are too important for Russia to let go. India suppresses Muslim Kashmiris because a successful Kashmir secession would shrink India's territorial borders. The secession would also deprive India of critical water resources that originate in Kashmir. The creation of Israel has grafted a seemingly irreconcilable nation-state in the Muslim Middle East. It forced hundreds of thousands of native inhabitants, Muslims and Christians, into neighboring lands as refugees, creating an irresolvable problem. The refugees wish to return to their country but Israel is determined to preserve the Jewish character of its nation-state by denying the Palestinians' right to return. Under various pretexts, Israel has expanded its borders beyond its initial territorial mandate under the British imperial decree. These moves invite terrorism by the militants.

Legally, the dynamics of the terror triangle are confusing. Both aggrieved populations and suppressive nation-states justify violence under the porous concepts of international law. Aggrieved populations defend violence invoking the right of self-determination. They also invoke the rights of armed struggle and self-defense to counter gross human rights abuses that suppressive states inflict on them. Suppressive nation-states perpetrate state terrorism in the name of national security and territorial integrity. Supportive nation-states assist aggrieved populations in their liberation struggle for a variety of geopolitical reasons including their own national self-interests. But, ironically, in the midst of this terror triangle, the ultimate goal of aggrieved populations is none other than to establish their own nation-states. Thus, the nation-state occupies the center of the triangular terrorism. Battles that produce terrorism involve the creation, preservation, predation, and aggrandizement of nation-states that resist secessions, territorial concessions, and open borders.

9.1 THE FOUNDATION OF FREE STATE

Free State acknowledges a new world beyond the sovereign confines of the nation-state. The social psychology of the nation-state builds upon the egocentric, proprietary, and exclusivist nature of man. In contrast, Free State recognizes that humans are generous, sharing, and interdependent. By focusing on mutual respect and empowerment, Free State allows diverse populations to exercise maximum autonomy and self-rule, thus removing many of the causes that spawn terrorism. For example, Israel and Palestine are unlikely to co-exist as peaceful nation-states since each doubts the intentions of the other. The evolution of Israel and Palestine as Free States thriving within a regional union, much like the example-setting experience of nation-states in the European Union, will make the wall of separation meaningless. Such evolution may propel these states to draw from each other's strengths and resources. However, the evolution of Free States in the Middle East faces formidable barriers. European Jews and Arabs may take decades to accept each other's right to live in peace and dignity. Furthermore, Free State does not come into being if geopolitical forces maintain the inertia of privilege, oppression, or injustice.

Beyond a Commitment to Inertia

Antonio Cassese coined the phrase, *a commitment to the is*, to describe deep-seated human inclinations across the world to maintain the status quo and resist change. A commitment to the is amounts to a commitment to inertia. In law, a commitment to inertia idealizes precedent and tradition. This commitment assures seamless continuity. It forces participants to find solutions without changing the law. A commitment to inertia is reactionary if it preserves a legal construct that has lost flexibility and ability to accommodate change, and that has failed to find adequate and acceptable solutions to problems plaguing the community, the region, and the world. When threatened, a commitment to inertia sanctions violence to resist change. It also furnishes a normative basis to suppress, fight, and defeat all those people and groups who strive to establish a new reality

When applied to nation-states, a commitment to inertia preserves the legal constructs of sovereignty and territorial integrity. It rejects secessions and independence movements. In some cases, it denies

even autonomy to regions within the nation-state, fearing that autonomy would become a launching pad for such regions to secede from the motherland. For example, India fears an autonomous Kashmir and Russia fears an autonomous Chechnya. Any such autonomy would unleash new energy, empowering the radicals in both Kashmir and Chechnya to organize and fight for national independence. A commitment to inertia could also mean the continuation of occupation of foreign lands and territories on the pretext that the occupied territories, when freed, would pose a threat to the territorial integrity or national security of the occupying nation-state. Israel is reluctant to allow the creation of an independent Palestine because Muslim militants determined to dismantle Israel would gather a formidable advantage in reinforcing their resistance and military power. Thus, the nation-state is an inert framework. It is founded on a commitment to inertia because its survival depends on such a commitment.

Toward Ceaseless Evolution

Free State rejects commitment to inertia. As a dynamic entity, Free State presumes that human communities experience ceaseless evolution and that any attempts to block human dynamism through inertial frames breed violence. With its focus on sovereign borders, patriotism, and national identity, the nation-state is a limiting as opposed to liberating structure. By contrast, Free State rejects the psychological and sociological limits of sovereign borders by letting each community experience vigorous connections with the rest of the humanity. This optimization of inter-cultural contacts gives birth to a One World that is diverse and yet undivided. Cultural diversity is celebrated and not seen as a barrier to social harmony or to the development of universal values. Free State communities seek intimate rather than secluded lives. Perpetual self-determination lies at the heart of Free State.

Perpetual self-determination

Dismantling Empires and Apartheid

Self-determination has been an efficacious tool to de-construct colonial empires. Its greatest champion has been none other than the

nation-state. The international institution that sharpened this tool to its maximum cutting power has been none other than the UN General Assembly, a congregation of nation-states. In 1960, General Assembly Resolution 1514 (XV), known as *Declaration on the granting of independence to colonial countries and peoples*, reaffirmed the principle of self-determination by acknowledging a universal value that all dependant peoples have “the passionate yearning for freedom.” Resolution 1514 further clarified that the notion of “inadequacy of political, economic, social, or educational preparedness should never serve as a pretext for delaying independence.” These groundbreaking formulations contained in Resolution 1514 repudiated the imperial theory, which held that the colonized peoples were presumptively unable “to stand by themselves under the strenuous conditions of the modern world.”¹ For centuries, European imperialism treated colonized peoples as children in need of adult supervision.

Resolution 1514 infused a new spirit into the UN Charter that in 1945 recognized the right of self-determination but could not completely cleanse international law of the imperial theory of dependence. The resolution unwittingly embraced the concept of “trust territories.” The trusteeship system embodied an imperial assumption that colonized peoples were not prepared for self-rule; and therefore, they must be placed under the administration of developed states until obtaining maturity.² Resolution 1514 did not propose to dismantle the trusteeship system but it rejected the notion of un-preparedness. It urged the taking of “immediate steps” toward the liberation of trust territories and other colonial holdings that had not yet attained independence. Under the energized principle of self-determination, numerous territories in Africa, America, Asia, and the Middle East emerged as independent nation-states out of dying colonial empires.

The right of self-determination gathered even more momentum, when the post-imperial world was drawn into the human rights movement. In 1966, the General Assembly adopted, and opened for signature, the two Human Rights Covenants that would challenge the inertial frame of the nation-state.³ Common article 1 of the

¹ Article 22(1), League of Nations Covenant (1919).

² Rosalyn Higgins, *Problems and Process* 111–28 (1994).

³ GA Resolution 2200 (XXI), International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional

Covenants recognizes the right of self-determination for all peoples. This lodging of the right of self-determination in global treaties eliminated all doubts about the right's positive legality. The right of self-determination could no longer be denied or disputed on formalistic grounds that rights embodied in General Assembly resolutions are political statements and not legal norms. In the same year, the General Assembly vigorously condemned South Africa's policies of apartheid. It also censured three of the five permanent members of the Security Council (France, the United Kingdom, and the US) for their increasing collaboration with the apartheid regime. The condemnation of apartheid paved the way for the invocation of the right of self-determination to reform the core of the nation-state, which had previously been immune from the reach of international law. National legal systems were no longer immune from the reach of human rights.

Post-Colonial Right to Self-Determination

Despite an emerging human rights movement across the globe, the right to self-determination began to lose ground, particularly after the colonial empires had been largely dismantled. The same nation-states that had used the concept of self-determination to gain freedom from empires began to oppose the concept to grant freedom to the peoples within their own borders. Large and heterogeneous nation-states expressed unease with any renewed vitality of the right to self-determination, which could be used to promote secessionist movements. Numerous nation-states, including Pakistan and India, carved out of colonial empires faced secessionist movements. A continued liberal grant of self-determination would have dismembered many newly emerged nation-states. Therefore, a more restrictive application of self-determination was in order. The right of self-determination was still needed to clean up the imperial remnants. But its denial was also indispensable to preserve the era of nation-states.

Opposing any unbridled expansion of the right to self-determination poses little theoretical difficulty. The principles of territorial integrity and political independence embodied in the UN Charter

Protocol to the International Covenant on Civil and Political Rights. (December, 1966).

are perfect counterweights to the right to self-determination. Nations may use the principle of territorial integrity to oppose secessions and they may invoke the principle of political independence to oppose any international scrutiny of their internal legal systems. In a dramatic shift, many new nation-states viewed any breach of these principles as neo-colonialism, especially if the sponsors of secession or intervention into their internal affairs were former colonial empires. Territorial integrity and political independence thus became the preservation tools of the newly independent nation-states.

In 1970, the UN General Assembly reinforced the concept of territorial integrity and political independence, in its first comprehensive post-colonial articulation of the fundamentals of international law, embodied in a resolution known as the 1970 *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* (2625/XXV). The Declaration's primary focus was no longer on de-colonization, even though apartheid in South Africa and a few lingering colonial matters still bedeviled the world. Rather, the Declaration's new focus was on the preservation of nation-states carved out of colonial empires. It therefore emphasized territorial integrity and political independence, and not the right of self-determination.

Confusion over Self-Determination

A year later, in 1971, the principle of territorial integrity embodied in the Declaration clashed with the right to self-determination, when East Pakistan sought independence. East Pakistan, though an ethnically distinct territorial unit, lay within the internationally recognized borders of Pakistan. A powerful secessionist movement that India supported challenged Pakistan's territorial integrity. Yet, the UN Security Council or the General Assembly made only half-hearted efforts to preserve Pakistan's territorial integrity. Under the "uniting for peace" resolution, the General Assembly called for withdrawal of Indian troops that had intervened on behalf of the secessionists. However, the secessionist movement thriving on the support of Indian armed forces was too strong to be reversed with resolutions. India's military success forced international institutions to accept Bangladesh's right to self-determination, without invoking any such language in any UN resolution. The Soviet Union,

with its vetoes in the Security Council, was at the forefront in advocating Bangladesh's independence, a consequence that would register an indirect defeat for the US that supported Pakistan's territorial integrity.

The Cold War confused the concept of self-determination, most evidently in General Assembly resolutions. The Cold War threatened the new nations' political independence and territorial integrity, as both the Soviet Union and the US forced newly emerged states to choose sides, fighting proxy battles in Asian and African nation-states. In this global context of superpower rivalry, the 1970 *Declaration on Principles of International Law* heavily supported by new states emphasized territorial integrity and state sovereignty. In a futile attempt to stem the hot wars of the Cold War reaching their lands, new states prohibited the use of force to resolve territorial disputes or to violate armistice borders. They also re-conceived the principle of self-determination. They cast the principle of self-determination as freedom from "external interference" so that they could freely pursue their economic, social, and cultural development. This re-conceptualization of the right to self-determination was aimed at protecting new nation-states from encroaching influences of the Cold War, an ideological warfare imposed on the developing world forcing it to choose loyalty to one or the other superpower.

The collapse of the bipolar Cold War world has further confused the right of self-determination.⁴ The US, as the sole superpower, claims the authority to democratize the world, even through force. This violent reformation of nation-states violates principles of political independence and territorial integrity. It may also violate the concept of external self-determination since the peoples of each state should be free to choose their own political system without foreign intervention. Ironically, however, violent democratization may promote the right of internal self-determination, if it dismantles domestic tyrannies imposed contrary to wishes of the people. Still, violence as a tool of reformation is a contradiction that Free State does not accept.

⁴ Thomas Lee, "International Law, International Relations Theory, and Preemptive War," *Law and Contemporary Problems* 147 (2004) (explaining why humanitarian intervention, and not self-determination, was the basis of scholarly discourse regarding Kosovo).

Nations Distinguished from Nation-States

In the transitional period, the devolutionary force of self-determination allows territorial units of the nation-state to freely determine their political, cultural, religious, and linguistic liberty. It welcomes the dissolution of large nation-states, such as the Soviet Union and Yugoslavia, into more cohesive political units with local governments. Overly large nation-states with mammoth populations, such as India and China, are essentially quasi-imperial nation-states that must eventually break down into smaller units. China as a nation may still survive to the extent that the Chinese people share a sense of commonality. But China as a nation-state is too large to evolve into Free State as a single unit. As explained in *A Theory of Universal Democracy*, Free State is an intimate political unit in which government is closely tied to the people. Free State would oppose the incorporation of Taiwan into China. Taiwan is an ideal single unit to evolve into Free State. Taiwan need not sever its profound ties with the nation of China, but it need not become part of the nation-state of China.

Federated nation-states, including the US and Australia, are likely to evolve into Free States through a prolonged process of devolution that shifts control from federal governments to states that would emerge as Free States. When devolution is completed, the federated nation-state is reduced to an empty shell that may be remembered as a nation. Devolution thus introduces a distinction between nations and nation-states. A nation-state is a legal construct; it is a territorial unit with sovereign borders, whereas a nation is fluid, symbolic entity with no borders. One or more Free States may identify themselves to be the parts of a single nation, but not the subunits of a single nation-state. Nations are likely to survive as symbolic entities while nation-states shun sovereign borders and gradually transform into Free States.

Pacific Evolution of Self-Determination

In its evolution, Free State does not forcibly break away from any parent nation-state. Secession is a conception of violence that belongs to the nation-state and not Free State. Likewise, Free State government is not the product of a violent revolution. Violence cannot establish Free State government. And no government established by means of violence is Free State government. No violence is needed to overthrow Free State government, which is always

accountable and removable. In every aspect, Free State is an evolutionary entity that originates and matures in the realm of self-determination. As a dynamic entity, Free State allows the people to constantly change and develop their political, cultural, religious, and linguistic institutions peacefully. In its evolutionary self-determination, Free State does not seek the exclusivity of sovereign borders. Free States are interdependent and acknowledge interdependence as a beneficial source of strength rather than detrimental constraint on their freedom. Accordingly, Free State exercises the right to self-determination within a framework of interdependence rather than within the failed notions of sovereignty, territorial integrity, and political independence. Violence is completely absent from Free State's constitutive and genetic structure.

Repudiation of value imperialism

Free State repudiates value imperialism in all forms. It allows communities of the world to live and develop freely consistent with their own moral, social, religious, and legal norms. As discussed in Part II, value imperialism is a source of violence. Its champions use force to impose values on unwilling communities and nations. Value imperialism is a source of additional violence because target communities use force to defend their religious traditions, customs, and cultural practices against value imperialism. Two models of value imperialism in direct conflict with each other are responsible for generating a huge amount of terrorism. Liberal imperialism proposes to change Muslim communities; and Islamic imperialism intends to transform Western communities. Both models use force to achieve their goals. However, each model contains precious values that must be respected and even borrowed. What Free State repudiated are not the values but violence as the driver of values.

Value imperialism must not be confused with cross-cultural influences. Value imperialism is coercive and combative, whereas cross-cultural influences are natural, healthy, and necessary for the forging of a human civilization founded on the combined norms of universality and diversity. In repudiating value imperialism, Free State does not seal communities from cross-cultural influences but develops proactive contacts among diverse religious, social, and cultural groups to promote respect for diversity and to facilitate learning from each other. If a community freely adapts itself to the values

of another through peaceful contacts, and without economic and military pressures, any such adaptation does not represent value imperialism. In fact, Free State allows vigorous contacts and conversations among communities for understanding and possibly borrowing each other's best values.

The evolution of Free State is a natural step away from value imperialism. Value imperialism is a tool of empires. Muslim empires, such as the Umayyad, the Abbasid, and the Ottoman, not only conquered lands and communities, they also propagated the message of Islam to the new peoples, thus fusing conquests with Islamic values. The fact that the Egyptians, the Iranians, and the Central Asians have embraced Islam furnishes powerful clues that empires impart and impose the values of the emperor and his ruling elites. European empires, such as the Spanish, the French, and the British, not only colonized non-European territories and populations, they also imparted their culture, language, customs, and laws to the colonies. The fact that the Indians speak English or that the Algerians speak French is no historical accident but a concrete product of value imperialism. Odd that it is, empires rule the people they conquer and exploit their resources but in the process they also end up sharing some of the best values that constitute the genius of the empire.

History also reveals that communitarian will is such that it opposes imposition of values and seeks normative development in the realm of freedom. The dismantling of empires in the twentieth century and the consequent rise of newly independent nation-states witnessed the demise of empires and the associated value imperialism, because distinct communities aspired to forge their own destiny. The principles of territorial integrity, political independence, and self-determination, embodied in the United Nations Charter, fortified the nation-state against value imperialism. The Charter's prohibition against the use of force as a tool of foreign policy repudiated violence as an acceptable method of disseminating imperial values. The human rights movement rejected the paradigms of racial, cultural, and religious superiority, striking at the roots of value imperialism promoted and imposed in past centuries. The establishment of nearly two hundred nation-states carved out of a few empires – European, Ottoman, and Mogul – was supposedly the defeat of value imperialism.

Yet, in the era of nation-states, value imperialism has not been successful in fully repudiated. The rise of the Soviet Union and its violence-ridden dissemination of communism was an imperial

enterprise. Technically, the Soviet Union was a nation-state. In reality, it acted as an empire. During the Cold War, the Soviet Union used violence to impose its brand of communism over Eastern Europe and in other parts of the world, including Afghanistan. The US, also a nation-state, acquired its own imperial attributes. The US countered Soviet imperialism not only by resisting it, but also by using violence to impose American imperial values, though not as consistently as the Soviet Union. The Soviet Union justified its domination in the name of communism, though its national interests lay in the background. By contrast, the US was less artful in its resistance to the Soviet Union. The US abandoned its democratic values to resist the Soviet imperialism. For example, the US overthrew several left-leaning democratic governments to preempt Soviet influence. The US also supported authoritarian and military governments to defeat communist totalitarian ideologies. The Cold War may be seen as a clash of two imperial models that collided with each other through proxy wars fought in poor countries, such as Viet Nam and Afghanistan.

The collapse of the Soviet Union signaled another defeat of value imperialism. It signified that even nation-states were unable to impose imperial ideologies over the world, and that ideological empires consisting of nation-states are bound to disintegrate. The dismemberment of the Soviet Union and Yugoslavia provided proof that no ideology is strong enough to prevent the evolution of Free State, a sociopolitical arrangement founded on cultural diversity and intimate governments. The implosion of the Soviet Empire also demonstrated that state violence, no matter how overpowering it is, fails to permanently support the reign of an ideology.

In recent years, the US has attempted to impose liberal imperialism through a global democratization campaign. The invasion of Iraq added violence to the theory of liberal imperialism. Among many shifting justifications for a failed Iraqi war, the US has also argued that violence employed to dismantle an authoritarian government and replace it with authentic democracy is morally, and perhaps legally, justified. The people of Iraq have been skeptical of American claims of bringing liberation through occupation. So has the rest of the world. Despite its unmatched armed force, the US has not obtained a swift victory as it had predicted. It appears unlikely that the US will be able to completely extinguish Iraqi counter-violence to what the US calls insurgency and terrorism. An American defeat in Iraq, however, is not necessarily the insurgents' victory. It is the repudiation of value imperialism. Not even a superpower

can impose values on a nation determined to preserve its identity.

The Iraqi experiment through violence-driven imperialism failed for two, among many, distinct reasons. First, the US failure to win the war confirms the relevance of international law. The Iraqi war was waged contrary to the world opinion, in defiance of international institutions such as the UN, and without a valid cause supported by international law. In a rare show of solidarity, Muslim states refused to assist the US. Even powerful European States did not support the war. Some states that originally supported the war, such as Spain, later withdrew their forces. All these factors weakened the legality and morality of the US invasion. The war further lost its credibility when it appeared that the US ignored the laws of war and resorted to torture and inhuman treatment of Iraqi prisoners, contrary to the provisions of the Four Geneva Conventions containing humanitarian law (*jus in bello*). It is now apparent that value imperialism promoted through lawless means authors its own defeat.

The second reason for the US failure to impose liberal imperialism over Iraq is the same reason that has always defeated value imperialism. That is the human will to repudiate alien domination, no matter how benevolently packaged. The promise of democracy, imposed through violence, is as offensive to self-respecting communities as is the promise of an egalitarian socio-economic system launched through barrel of the gun. The people of Iraq aspires to institute a democratic system but they prefer to do it themselves. The presence of Western occupying soldiers, belonging to a distinctly separate culture, has complicated the dynamics of the democratic process and has contaminated the air of freedom and self-determination needed to plant the roots of democracy. Despite the US occupation, Iraqi political leaders, some of whom are regarded as imperial agents, would not frame a constitution informed by the liberal separation of church and state. Instead, they recognized the Islamic foundation of the Iraqi constitution and state, to the great disappointment of advocates of liberal imperialism.

An American failure in Iraq is a good omen for the evolution of Free State that loathes all forms of value imperialism, particularly if it is imposed through violence. Violent efforts to impose Islamic values on the West will also fail because Islam itself does not allow any form of coercion to convert even a single individual to Islam, let alone the proselytization of an entire nation or continent. Promoting Islam on the fear of violence is a proposition with no future. It has no place in Free State that repudiates the jurisprudence

of fear and the modification of behavior brought about by the threat of sanctions.

Free State Jurisprudence

The nation-state embodies a coercive jurisprudence that ties law to violence. It is, structurally, an entity of fear in which the enforcement of rules carries a sanction or a penalty. Compliance with law is produced through fear of punishment. And violations of law are avenged through the loss of liberty, property, or life. The systemic threat of punitive responses for unlawful behavior is called deterrence. Specific deterrence is aimed at the individual violator. It is the infliction of punishment that supposedly deters the individual from repeating an impugned act. But general deterrence is aimed at the entire community. The individual is punished for a law violation to send a message to the community. This message of punishment has terrorizing effects on the community as it warns everyone in the community not to repeat the impugned act. Thus, violence permeates the notion of law and systemic terror is used to demand and shape behavior consistent with laws of the nation-state.

Free State is not a state of fear. In Free State people develop high moral intelligence. They obey laws because they appreciate laws' intrinsic utility and morality. Laws invite voluntary compliance. This is so because the law is no longer seen as unjust, oppressive, predatory, or absurd. A higher content of spirituality in the formation of laws facilitates voluntary compliance. This is no utopia. Consider the state of mind of a person who obeys God's laws revealed in a book, such as the Quran. He obeys God's laws, without questioning, and without fear of worldly punishments, and sometimes by forgoing worldly benefits. He draws pleasure and profound satisfaction from submission to these laws. From a secular viewpoint, one may disagree with God's laws. But no secular viewpoint can deny the existence of a spiritual state of mind that propels individuals to obey these laws for their intrinsic value, without any fear of worldly sanctions.

Free State gradually evolves into a normative stage where citizens experience a state of spirituality under which there is no tension between law and compliance. In such a realm of authentic freedom, violence as a reason for the institution of law or for the

law's compliance finds no room. Cannibalism, for example, is no longer practiced not because of fear of punishment but because human minds across the globe has attained a level of moral intelligence that automatically and voluntarily tell them not to engage in the practice. As human moral intelligence further develops, fear of law will no longer be the reason for its existence or compliance. Even the laws themselves will undergo transformation: nothing that demands violence, justifies violence, threatens violence, or punishes with violence will be regarded as law.

So informed and structured, Free State erases terror from the concept of law. It rejects the jurisprudence of violence embodied in sanctions, loss of liberty or property or life, threat of the use of force, and force. It rejects violence completely, discarding all distinctions between aggressive and defensive forms of violence. Free State repudiates violence in domestic affairs of the community in that the internal legal system rejects violence as a reason for law. *Free State* repudiates violence in international affairs in that the international legal system rejects violence as a reason for international law. At this stage of moral development, however, the nation-state suffers from a terrible form of duplicity. It makes violence illegal in domestic affairs but resorts to violence in international affairs. The US, for example, does not allow violence as a lawful means to resolve disputes under its domestic legal system. Nonetheless it proactively uses violence on the international scene. Free State embraces no such duality. Its concept of law is one and the same for both domestic and international purposes.

Free State Repudiates Aggression

Free State is the evolutionary product of human civilization anchored in high moral intelligence. *Free State* repudiates terrorism in all forms. It rejects private terrorism, state-sponsored terrorism, and state terrorism. Concepts of violence such as aggression, self-defense, preemptive-self-defense, humanitarian intervention, just war, institutional employment of force authorized under Chapter VII of the UN Charter are structural imperatives of the nation-state. Once the nation-state evolves toward Free State, these concepts of violence will begin to lose their morality and utility. Violence will gradually disappear not because the human civilization would enter into some utopian stage, but because it would transcend the formative

structure of the nation-state that legitimizes such concepts and cannot imagine a real world without them.

But history has witnessed the transformation of some aggressive forms of violence. Not long ago, the aggressive violence of conquest was morally and legally authorized. But it is no more. Just as conquest was the structural imperative of the empire, aggressive and defensive forms of violence are traits of the nation-state. And just as conquest has lost its moral and legal basis in the era of nation-states, aggression perpetrated for the sake of national interests will be morally and legally intolerable in the emerging era of Free States.

In setting up the International Criminal Court (ICC), nation-states have expressed a desire to criminalize aggression along with genocide, war crimes, and crime against humanity. The crime of aggression, however, has not yet been defined. Presently, the ICC has no jurisdiction to prosecute aggression. The international community's failure to define the crime of aggression provides insights into the defective concept of the nation-state, since powerful states, such as the US, refuse to cooperate in defining the crime of aggression and yielding jurisdiction to the ICC.

If the international community succeeds in defining the crime of aggression and subjecting the US, China and other holdout nation-states countries to the ICC jurisdiction, international law will take a step towards the evolution of Free State that condemns the theory and practice of all forms of aggression. A lack of definition of the crime of aggression does not confer legitimacy on aggression. The omission nonetheless provides a basis for imperial nation-states to use aggression as an instrument to increase or maintain their global or regional influence. In defining aggression, attention must be paid to at least three distinct types of aggression that the nation-state embraces but Free State completely repudiates.

Predatory Aggression

Predatory aggression is the first type that is incompatible with Free State. Empires and nation-states are both predatory. However, empires are inherently predatory since they expand the reach of their control and influence through conquests, colonization, slavery, and use of force. They need aggression to exert and maintain control. No empire has been built without aggression against other peoples, their territory and resources. Empires also employ value

imperialism as an additional tool of control, since values intellectualize the gains of predatory force and confer legitimacy on aggression. In slavery, for example, predatory force physically enslaves a people but the imperial values of racial superiority/inferiority create and maintain the institution of slavery. Predatory aggression, whether it is intellectualized or not, is the empire's inherent attribute.

As compared to empires, nation-states are conceived differently. In theory, the very concept of the nation-state is founded on repudiation of the imperial design. Empires are dismembered to create nation-states. The dismemberment of the Ottoman Empire initiated the process of Arab nation-states, a process completed after the European empires were too weak to hold on to Arab lands. Although the nation-state is an evolutionary stage away from imperialism, it nonetheless retains features of imperial aggression. Large and powerful nation-states such as the US and China behave as empires. They use aggression or the threat of aggression to expand their global control and influence. Even powerful nation-states situated in weak regions, such as Israel in the Middle East, behave as predatory empires.

The nation-state is prone to predation in permissive geopolitical contexts. Whereas the empire is inherently predatory, the nation-state is more opportunistic in its predatory ventures. The US has aggressed against weaker states such as Panama and Grenada but has refrained from using force against powerful enemies such as the Soviet Union. The US invaded Iraq not because Iraq had the weapons of mass destruction but because it did not. It is also unlikely that Israel would destroy Iran's nuclear plant, as it did that of Iraq, because Iran possess long range missiles that can hit Tel Aviv. The concept of mutual destruction serves as deterrence to opportunistic aggression. International peace and order are secured only when nation-states fear each other. The fear of opportunistic aggression also promotes survival. Nation-states are in a constant struggle to build their respective defenses to deter opportunistic aggression by each other. Thus, true peace that originates from a higher form of moral intelligence is unknown to nation-states.

Instrumental Aggression

Even though nation-states have vowed to resolve their disputes through peaceful means and the UN Charter officially forbids war as a means of conducting foreign policy, instrumental aggression

remains a fact of international life. Since the adoption of the Charter, powerful nation-states have asserted an expanded right of self-defense to use aggression as an instrument to resolve international disputes. The emerging concept of preemptive self-defense and the war on terrorism have further stretched the scope of violence in the conduct of international relations. This expansion of the right to use force has benefited powerful nation-states since they can use force against minor states and private groups to promote and defend their national and regional goals. Weaker states can rarely exercise the expanded right of self-defense because they lack the means to prosecute a successful war, particularly against a powerful offending nation-state.

Instrumental aggression shares some attributes with predatory aggression but the two are not the same. Instrumental aggression is a means of resolving an international dispute whereas predatory aggression is the proactive use of force to acquire new territory and resources that belong to another nation-state or non-state entity. The US invasion of Iraq, for example, is a mixture of predatory and instrumental aggression. It is predatory to the extent that the war is waged to control the Iraqi oil. It is instrumental to the extent that force was used to topple a non-cooperative Iraqi government that allegedly developed weapons of mass destruction. Likewise, Israeli aggression against the Palestinians in occupied territories is a mixture of predatory and instrumental aggression. It is predatory to the extent that it usurps Palestinian lands and resources. It is instrumental to the extent that force is used to crush the Palestinian resistance.

Territorial Aggression

A form of aggression rooted in the very structure of the nation-state may be called territorial aggression, a term coined to explain the aggressive behavior of caged animals.⁵ Scientific literature shows that animals living in restricted environment seek stimulation and develop aggression. Mice housed in isolation exhibit aggression. By contrast, rats exposed to an enriched environment containing playthings, tunnels, ramps, and platforms, were prone to less aggressive

⁵ K. E. Moyer, *Kinds of Aggression and their Psychological Basis*, *Communication in Behavioral Biology*, 2:65–87 (1968).

behavior. Likewise, dogs kept in sensory-restricted environment developed hyper-excitability. Animals reared in indoor pens with minimal contact with people were more excitable and difficult to load into trailers than those reared outside with frequent human contacts.⁶ Cage rage is caused when the animals are denied the option of “flight” and are forced to accumulate their energies in the form of potential aggression. Confinement of animals in a barren environment, with nothing to do, or having minimal contact with other animals or humans, is conducive to hyperactivity. Violence caused due to territorial confinement within rigid borders may be called territorial aggression.

The concept of territorial aggression applied to nation-states appears to be a great leap from the behavior of caged animals to that of human communities living within sovereign borders. No hard evidence is available to connect aggression with sovereign borders. Yet few should be surprised if a study of sovereign borders concludes that the nation-state is conducive to territorial violence. In fact, rigid sovereign borders may produce two distinct forms of territorial aggression. One form of aggression may be committed to challenge the sovereign borders of a territorial state, the other to protect them. The sovereign borders between Mexico and the US, for example, produce both types of territorial aggression. The US border forces use force to protect America from the entry of illegal immigrants from Mexico. But illegal immigrants constantly challenge the sovereignty of US borders. Thus both sides employ aggression directly related to territorial borders, though for opposite purposes.

The three main theaters recognized in this book, Palestine, Chechnya, and Kashmir, breed territorial aggression. Russia engages in territorial aggression because it wishes to keep Chechens within the cage of Russian territorial integrity. Israel is building a monumental physical wall to separate itself from the occupied territories and also to isolate Palestinians within disconnected patches of Palestinian territory. India is also contemplating building a fence on the Kashmir border with Pakistan. In response, the populations trapped in Gaza, the West Bank, Chechnya, and Kashmir engage in territorial violence of their own, and they see the suppressive states as captors. In each theatre of violence, both sides to the conflicts, the aggrieved population and the suppressive entity, engage

⁶ Temple Grandin, *Literature Review* (University of Illinois, 1989).

in complex forms of territorial aggression. In truth, terrorism is a product of territorial aggression. Terrorism is perpetrated to defend the territorial integrity of existing nation-states as well as to create new nation-states with sovereign borders. Territorialization breeds violence and divides peoples into mutually hostile national groups that sometimes belong to the same religion.

9.2 BEYOND TERRITORIALIZATION OF ISLAM

An Argument against Territorial Secessions

Consistent with the principles of the Quran and the Sunna, this section argues that Muslims should abandon their armed struggles to carve out separate nation-states. The argument below applies to both internal and external secessionist movements defined from an Islamic perspective. Internal secessionist movements, such as that of Kurds, aim at the dismemberment of Muslim states. External secessionist movements, including that of Chechens and Kashmiris, strive to carve out a Muslim state from a non-Muslim state. The argument requires that Kurds discard their ambition to dismantle several Muslim states to weld together one nation-state for themselves. Likewise, Muslims in Kashmir should cease their armed struggle to separate from Hindu India. The argument below does not prescribe that Muslims submit to alien domination or occupation or apartheid or hegemony. Nor does the argument promote a “turning the other cheek” doctrine to appease oppressors and predators, for any such doctrine is incompatible with Islamic teachings that clearly and vigorously articulate that “resort to slaughter is better than submission to oppression.”⁷ The argument is derived from a simple concept that Islam flourishes the most when Muslims freely interact with each other and with non-Muslims. Free and peaceful interaction is contrary to the notion of sovereign borders that place temporal and spatial restrictions on the fluidity of human experience. Muslim communities are weakened, not strengthened, when they are divided into nation-states. Islam promotes Free State that shuns violence and sovereignty but allows vigorous inter-cultural contacts.

⁷ *Quran* 2:191.

The nation-state is not critical for the protection or promotion of Islamic identity. For centuries, Muslim communities flourished without sovereign borders. Albert Hourani points out that ethnic nationalism or the concept of territorial nation did not exist within the world of Islam. Islamic countries and cities were defined and understood in terms of their natural gifts, Islamic history, heroes, martyrs, and saints. This fluid sense of cities and countries reached back beyond Islam to appreciate the wonders and traditions left from the ancient world, such as the Pyramids and Sphinx in Egypt.⁸

The nation-state, a seventeenth-century European creation, was imposed through colonialism against the Muslim world. It has profoundly distorted Islam's universality. Driven by territorial patriotism and national interests, Muslims are becoming increasingly tied to their nations, embracing and advocating new causes of strife. They have embraced territorial aggression stemming from structural imperatives of the nation-state. Ethnicity and nationality are replacing the bonds of Islamic faith. And faith-based identities are creating hatred between Muslims and non-Muslims. The Kurds living with Arab, Turkish, and Iranian Muslims want to establish their own nation-state, repudiating the bonds of faith. The Kashmiris are invoking their Islamic heritage to secede from Hindu India, even though millions of other Muslims live with Hindus throughout India. Due to unreflective acceptance of the nation-state, Muslims throughout the world have come to define themselves by means of territorial separatism. Muslim communities denied a nation-state of their own are resorting to violence to establish one. This territorialization of Muslims, and consequently of Islam, has been a major cause of triangular terrorism.

Of course, all blame cannot be placed on the imperatives of the nation-state. The phenomenology of terrorism involves numerous causes and actors. Violence is also produced when Muslim militancy across the world pursues the goals of genuine democratic elections. The movement demanding free elections in Algeria is a struggle for democracy rather than for the dismantling of the nation-state. The insurgency in Iraq is aimed at freeing the country from American occupation. A diffused international coalition of Muslim militants against the US, a coalition that might gain momentum

⁸ Albert Hourani, *A History of the Arab Peoples*, New York: Warner Books, 58 (1991).

in the years to come, is fueled by sentiments to challenge the policies of control and domination. Muslims are fighting for an international environment in which they can freely determine their social, political, and religious destiny. In this epic struggle for genuine independence, however, Muslims must invent new social and political structures. Past Islamic institutions cannot be thoughtlessly resurrected.

Caliphate Cannot be Resurrected

For centuries, Muslims were united under One Caliph, the chief ruler of the Muslim community. The Caliphate as an institution provided an outward sense of Islamic solidarity, even though ethnic and provincial rivalries simmered beneath the surface. Within a few decades after the Prophet's death, the institution of the Caliphate turned imperial in its glory, orientation, and form of government. The so-called golden period of the institution lasted only the first thirty years, that is, during the reign of the first four caliphs, when the emerging Islamic world was still small and manageable, and when the first four caliphs, who had been the Prophet's close companions, commanded respect. Even this period was filled with violence as Muslims themselves murdered three of the first four caliphs. Events of this period also sowed the seeds of the Shia-Sunni divide. Muslims at the time who demanded that the caliphate must remain within the Prophet's family would be later known as the Shias. By contrast, the doctrine that any Muslim, regardless of his genetic ties to the Prophet, could be the caliph was associated with the Sunnis. For all practical purposes, the Shia-Sunni divide is no more than a historical political dispute over succession, even though the split later gathered theological dimensions. Any fantasies of recreating the Caliphate to unify Muslims would indeed further deepen the historical wedge between Shias and Sunnis.

Islamic Jurisprudential Identities

With the expansion of the Muslim empire, the Caliphate was becoming increasingly remote from the people it governed. It was also rapidly losing the religious authority that the first four caliphs exercised to directly influence the development of Islamic law and jurisprudence. Caliphs soon became secular rulers. Some had min-

imal knowledge of Islam. Others resorted to spiritual corruption. Some engaged in acts and practices contrary to the teachings of Islam. As caliphs pursued worldly glory, conquest and expansion, Islamic law and jurisprudence retreated into the chambers of Islamic scholars. The people were more intimately connected with the scholar, whether he was the great Imam or the local jurist, because imams and jurists were answering their questions about appropriate Islamic behavior. Accordingly, despite living under One Caliph, Muslim communities inhabiting far reaches of the empire were developing jurisprudential identities. They identified themselves according to the five major schools of jurisprudence. Muslim communities were primarily Hanafi, Maliki, Shafi, Hanbali, and Jafari. Their ethnic identities as Egyptians, Syrians, and Iranians were subdued and weak. Each school of jurisprudence furnished detailed rules of religious and secular behavior. These schools respected each other, and no violence was permitted or employed to win jurisprudential points or to convert new Muslims to a particular school. This remarkable phenomenon of Islamic jurisprudential identities suffered irreparable damage with the advent of the nation-states that Western colonialism imposed on the Muslim world.

Proliferation of Muslim Nation-States

Western colonial empires, primarily the British, the French, and the Dutch, ruled huge parts of the Muslim world in the nineteenth and the early twentieth centuries. Colonization brought value imperialism, dynamism, and the spirit of Renaissance that had transformed Europe. European value imperialism sowed normative confusion, a sense of inferiority, and spiritual disorientation in the colonized Muslim lands, all carrying the same message: Islam means stagnation and backwardness. Under colonial pressures, Muslim ruling elites changed and imported Western social, economic, and legal models. They “were disposed, by experience of colonial rule, education, and acquaintance with Europe” to define the concept of liberation in national and ethnic terms.⁹

This importation of Western consciousness created a great gulf between the people and the ruling class. The ordinary Muslims in villages, towns, and cities across North Africa, the Middle East,

⁹ Ira M. Lapidus, *A History of Islamic States*, at 886 (1988).

South Asia, and Pacific Asia were still Islamic in the traditional sense, defining themselves through Islamic jurisprudential identities. The Muslim ruling elites, more and more educated in the universities of the colonial powers, embraced the new materialistic and secular ideologies of which the Muslim populace had little knowledge. The most remarkable consequence of this intellectual chasm between the people and the rulers was the quiet emergence of the Muslim nation-state, modeled after the European experience. The Muslim nation-state, however, had no indigenous roots in Islamic history, tradition, experience, politics, philosophy, or jurisprudence. The Muslim nation-state was Muslim not because it was derived from any Islamic heritage, but because it was a nation-state inhabited by Muslims.

In 1924, Mustafa Kemal (Attaturk), the Westernized secular founder of modern Turkey, dismantled the Caliphate and the attendant teetering Ottoman Empire, and officially introduced the concept of the nation-state to the Muslim world. The dismantling of the Caliphate effected a profound psychological shift in the social and political organization of Muslim communities. The loss of the Caliphate was perhaps a welcome change, since this archaic institution had played a nominal role in the development of Muslim communities. The transformation of the Ottoman Empire into the nation-state of Turkey was the triumph of ethnicity over diversity. The Europeans colonized the Arab lands, which were once parts of the Ottoman Empire. Colonization sharpened the ethnic and linguistic divisions between Turks and Arabs, thus striking at the foundation of Muslim unity. Furthermore, the Europeans, especially the British, encouraged micro-nationalism to dismember the Arab world into numerous nation-states, such as Iraq, Kuwait, Jordan, Syria, Yemen, and the Sheikdoms in the Gulf. The Muslims knew the European design of implanting micro-nationalism in the Muslim world, but the forces of history were uncontrollable. No one could arrest the proliferation of nation-states in the Muslim world, a development that would eventually cause militancy, separatism, and terrorism.

Muslim Separatist Movements

Two distinct types of separatist movements have surfaced in the Muslim world. One, which may be called internal movements, insists upon the dismantling of some existing Muslim states to create more

ethnically or linguistically cohesive nation-states. The break-up of Pakistan, separated from India in 1947, into Pakistan and Bangladesh shows how Muslims of the subcontinent refused to live together under the same national flag. The bond of Islamic faith proved insufficient to weld together ethnic and linguistic divisions and the geographical distance that separated the people of Bangladesh from the people of Pakistan. The independence of Bangladesh in 1971 was no velvet revolution. It was a bloody armed conflict, most assuredly inflamed by India whose leadership resented the partition of the subcontinent. The armed conflict between Pakistan's army and Bengali guerilla movement led to criminal atrocities on both sides. However, the violence on both sides stemmed from the concept of the nation-state, and not Islam. Pakistan justified its violence in the name of territorial integrity. The separatist guerillas justified violence in the name of self-determination. The creation of Bangladesh was the triumph of nationalism over faith, as it defeated the theory that a common faith could be the stable foundation of a Muslim nation-state. Linguistic and ethnic divisions in the remainder of Pakistan continue to put pressure on its unity, further challenging the concept of the faith-based nation-state.

Pakistan is not alone in its precarious predicament as a nation-state. Many other Muslim countries face similar threats to their territorial integrity and national unity. The Kurdish separatist movement threatens numerous Muslim states. The Kurds are Muslims and all the states from which they want to separate are Muslims states. If this separatist movement were to succeed in establishing a Kurdish nation-state, it would end up dismembering at least four major Muslim nation-states, Iraq, Iran, Turkey, and Syria. The Kurds want a separate nation-state not to establish a particular sect of Islam but to bring the Kurdish people under one national flag. The bond of the common faith, and even promised autonomy within the existing nation-state, seem inadequate to quench the Kurdish desire to have a separate nation-state of their own.

The second type, which may be called external separatist movements, challenges the territorial integrity of non-Muslim states. Major external movements exist in Russia, India, China, and Israel. These movements are determined to carve out Muslim nation-states out of existing non-Muslim states. The separatist movements in Chechnya and Kashmir are identical in that they wish to separate Muslim territories from Russia and India. The Muslim separatist movement in Northwestern China, in the province of Xinjiang,

receives little international attention but it will flare up in the years to come if the Turkic-speaking Uighars receive outside assistance from Muslim militant or neighboring Muslim states. In fighting for the separate nation-state for Chechnya, Kashmir, or Xinjiang, Muslim populations claim that their land had been occupied by unlawful force. The armed struggle for a separate Palestine raises complex issues of independence and lawless occupation. The separatist movement for Palestine is not simply nationalist, it is also militant resistance to occupation and territorial acquisition that an immigrant population has perpetrated through its superior military strength and effective international connections with powerful states.

External separatist movements against non-Muslim states are violent. But the nature of violence is confusing in its origin and justification. Are Chechens, Kashmiris, Uighars, and Palestinians fighting for national states or for Islam? Because they are fighting non-Muslims, it is easier to label their armed struggle as Islamic jihad. Undoubtedly, Muslim militants fighting in these territories justify their violence in the name of Islam. But their struggle is not religious. Islam does not favor the creation of separate nation-states. It simply furnishes a frame of mind to fight oppression. But living in a non-Muslim state per se cannot be regarded as oppression.

Erroneous Conclusions

When internal and external separatist movements are studied independently of each other, serious analytical errors occur. A study of only external movements may force the conclusion that Muslims are inherently exclusivist in that they cannot live with non-Muslims and, therefore, their militancy is evidence of their religious intolerance rather than love of liberty. Or, one may wrongfully conclude that Muslims are opposed to living in a secular state, a charge that India levies against Kashmiri militants in that they seek separation to establish a theocratic regime. Or, one may charge that liberties and freedoms available in liberal nation-states – a charge made in Western Europe against immigrant Muslim communities – threaten “the warped ideology of Islamic fundamentalism” and, therefore, Muslims are striving to carve out separate existence. Such explanations identify Islam as the cause of separatism, ignoring ethnic and linguistic aspirations and identities that constitute nationalism.

A study of only internal separatist movements yields different conclusions. It identifies ethnicity, composed of culture and language, as the primary motivating factor for separatism. Within the same Muslim state, one ethnic group resents the domination of the other ethnic group and therefore seeks a separate nation-state. In Pakistan, for example, the people of Sindh and Balouchistan (just like the people of Bangladesh before their independence) begrudge the domination of the people of the Punjab who dominate the federal bureaucracy, armed forces, and media. In Algeria, the Berbers rail against the domination of the Arabs. In Iraq, Iran, and Turkey, the Kurds feel they have been subordinated to Arabs, Iranians, and Turks. After the US invasion of Iraq, the powerful Shia-Sunni divide has not threatened the unitary state. There is no movement to break up the country on sectarian lines. These examples show that Islam is rarely a factor in internal separatist movements. But Islam surfaces as a dominant factor in explaining external separatist movements. Despite variation in these explanations, however, internal and external movements are seeking to establish sovereign nation-states.

Separatist movements belong to the fading, but not yet fully extinct, era of colonialism. They embody the unfinished business that colonists left behind. The British partition of One Palestine between Jews and Muslims, and the British decision to leave Muslim Kashmir in the hands of a Hindu prince, and the British decision to carve up the remains of the Ottoman Empire into discordant Arab nation-states are imperial decisions. The Russian determination not to let Chechnya go, and the Chinese desire to dominate the world geography as a gigantic one nation-state, have left their Muslim populations, like many other populations, stranded and trapped in nation-states that they do not wish to be part of. These populations, whether they live in Muslim states or non-Muslim states, feel that the international law of de-colonization has ignored their legitimate right to be independent and sovereign.

Violent Imitation

In nurturing national aspirations, Muslims are engaged in violent imitation of the European experience. They have unreflectively embraced the European concept of the nation-state that originated from concrete European experience. The irony is that while the European creators of the nation-state are moving away from the

nation-state, Muslims are engaged in intense violence to carve out new nation-states. The construction of the European Union is the repudiation of the concept of the sovereign nation-state. As discussed in *The Extinction of the Nation-State*, a nation-state evolves into Free State when its sovereign borders evolve into administrative borders. Within the European Union, citizens of the member states are free to move across borders, work, live, marry, raise children, invest, do business, own property, buy, sell, and travel while the train crosses what were once sovereign borders. Muslim separatist movements wish to do the opposite. They want to draw sovereign borders around Kashmir, Chechnya, Kurdistan, etc. Muslims kill Muslims because they do not wish to live in the same nation-state. Muslims kill and are killed because they are determined to break away from non-Muslim states. Instead of building regional communities, Muslims are splitting nations apart. Pursuit of diversity does not have to mean the creation of new nation-states.

Diversity Without Sovereignty

Islam recognizes ethnic and linguistic diversity but discourages nationality-based strife and bloodshed. Islam's conception of human diversity is fully compatible with Free State. The Quran reminds all the peoples of the world, including Muslims, "O people, We have created you from a male and a female and made you into races and tribes so that you may know each other."¹⁰ Furthermore, the Quran states it is one among many "God's signs" that He has created "variations in your languages and your colors."¹¹ These references to races, tribes, languages, and colors acknowledge the natural diversity that has been introduced into human condition. These characteristics may also be the bases of community formation. The Quran recognizes that races and tribes constitute social bonds so that "individuals may know each other." But race, tribe, language, or color cannot be a lawful basis for persecution, discrimination, hatred, or inhuman treatment. Thus, the Quran rejects the utopian notion that race, language, or cultural ought not to be the source of communal identity. The imposition of one culture or one language is oppressive as is the domination of one race over all others. In recognizing diverse identities, Islam teaches against social con-

¹⁰ *Quran* 49:13.

¹¹ *Quran* 30:22.

structions of superiority or inferiority derived from any racial, cultural, or linguistic characteristics. Neither homogenization nor sovereign separatism is a lawful Islamic means of achieving diversity. Diversity without sovereignty also lies at the heart of Free State. Muslims may organize themselves into Free States that protect their cultural and racial affinities. However, any violent pursuit of the nation-state – with its obsession with sovereign borders and its predatory inclinations to exploit foreign peoples and foreign resources for the betterment of its own people – is incompatible with Islamic ethos and faith that teaches ceaseless sharing with others. Violence will be dramatically reduced if Muslim militants across the world reject separatism and embrace the Quran’s principle of diversity without sovereignty, a principle that defines the core of Free State.

9.3 FROM SEPARATISM TO FREE STATES

Finally, *A Theory of International Terrorism* proposes that Israel, Palestine, Chechnya, and Kashmir must discard nationalist tendencies and begin their journey toward Free State. The proposal is idealistic but not utopian. The goal is difficult but not impossible. The shift from the nation-state enclaves to Free State liberty is a shift in mindset. It is a sociology waiting to happen. Fixation with sovereign borders, ethnic purity, territorial aggrandizement, exclusive exploitation of resources, aggression as a vehicle of value imperialism, all these macro-behaviors are mutable. These behaviors might reinforce the concept and reality of the nation-state, but they act as barriers toward the evolution of Free State that promises interdependence and a vision of law founded on high moral intelligence that is neither predatory, not self-confining. Israel and Palestine must move toward establishing Free States with open borders. Likewise, Muslim populations of Kashmir and Chechnya abandon their will to secede and create separate nation-states. Instead, they should serve as bridges between the Muslim and non-Muslim worlds. Kashmir may serve as a bridge between Hindus and Muslims. Chechnya is strategically located to serve as a bridge between Muslims and Russians. Xinxiang is a Muslim bridge to China. Once the orientation shifts from militant secessions to living as exemplary Muslim communities within the non-Muslim world, Kashmir or Chechnya or Xinxiang will no longer be places

of terrorism. They will be the provinces of Islam in its truest meaning: peace.

The following discussion focuses on Israel and Palestine as Free States. It examines the repeated expulsion of Jews from Europe to Muslim countries to show that, for the most part, immigrant Jews had lived well with host Muslims. However, the creation of Israel as a nation-state dissolved the historic Judeo-Islamic bond, because now the Jews came to Muslim lands as settlers claiming territorial sovereignty, and not as refugees seeking asylum. The creation of Israel as a nation-state unleashed violence since Palestinians, Arabs, and Muslims refused to recognize Israel, which was seen as a colonial graft by and for European Jews. The conflict was further compounded when Palestinians began to demand their own nation-state. This section finally argues that Muslims and Jews must work towards repairing the broken Judeo-Islamic bond. A construction of regional community in which Israel and Palestine are reoriented as Free States will reaffirm the principle of diversity without sovereignty. It might also set an example for other parts of the world to follow.

Israel and Palestine

For millions of Jews, the nation-state of Israel is a relief territory from the excesses of European civilization that for centuries refused to accept Jews as part of the communities in which they lived. Before the secularization of Europe, Jews were considered anti-Christian, and Judaism an antithesis to Christianity. There existed, in real life or in books, no such concept as the Judeo-Christian civilization, a phrase popular in the US that leaves the impression as if, throughout the centuries, the Western civilization has been a happy family of Jews and Christians. Nothing is farther from truth. Only bigots would deny the contribution of Jews to the world civilization, including Western civilization. But history does not support the assertion, and in fact refutes it, that the Western civilization has been built on a Judeo-Christian foundation. Periodic but persistent physical purges of Jews in Europe demonstrate that Western cultures were built and rebuilt on anti-Judaic sentiments.¹²

¹² During the crusades, Jews were expelled from England, France, and Germany.

By contrast, the Judeo-Islamic bond has been stronger throughout history. And when Jews were expelled from Europe, they most often sought refuge in Muslim countries. Even the establishment of Israel in the heart of the Middle East, after the extermination and expulsion of European Jews, is a continuation of the same phenomenon. The following historical narrative is presented to argue that Muslims should accept European Jews in the Middle East, as they had done before. This acceptance however will be more fruitful if Israel is transformed into Free State with open borders within the region.

From Muslim Spain to Muslim Turkey

The Muslim conquests of the Iberian Peninsula in 711 opened the European continent to the Jews of the Middle East. This Europeanization of Jews is most evident in the fact that more than half of the present-day Jewish population is Sephardi in origin, that is, Spanish. The bond between Jews and Muslims in Spain was mutually beneficial. Jews enjoyed freedom of religion, trade, intellectual pursuit, and physical security. Jewish intellectuals wrote in Arabic and greatly contributed to Muslim economy, culture, and arts. Some of the skills and professions associated with Jews, such as jeweler, diamond trader, and goldsmith, were developed in Muslim Spain. Maimonides (1135–1204), the greatest Jewish philosopher, was born in Muslim Spain, lived in Muslim Egypt, and wrote in Arabic, the language of the Quran. For nearly 800 years, the Judeo-Islamic bond remained healthy and powerful, even though some Muslim rulers were more tolerant of Jews than others.

The year 1492 witnessed three events of momentous importance. In January 1492, European Christians defeated Muslims at Granada, their last stronghold on the Iberian Peninsula, bringing an end to the Muslim kingdom in Spain, and restoring the whole of Spain to Christian rule. Two months later, in March 1492, a royal decree was issued to expel over 200,000 Jews from Spain. Jews were given four months to leave. In the meantime, active Christian proselytizing provided a stark choice between expulsion and conversion.

This migration brought Jews into Eastern Europe, including Poland and Russia. Expulsion from Spain in 1492 and the holocaust in 1940s are the momentous anti-Judaic events of the European-Jewish history.

Jews who chose conversion lost their faith. Jews who chose expulsion were placed in ships with no guarantee that Spanish captains would take them ashore, and not dump them in the middle of the ocean. Many Jews were killed before boarding ships as they were rumored to have swallowed diamonds. Christian Spain thus cleansed itself off a Judeo-Islamic civilization and its people. But this forced separation of Jews and Muslims was not the end of Judeo-Islamic civilization. Jews who successfully escaped the Christian Spain ended up in Muslim Turkey, then the Ottoman Empire, the place of the Islamic caliphate.

In welcoming Jews to Dar-ul-Islam (Muslim world), the reigning Muslim ruler of the Ottoman Empire, Bayazid II, acknowledged the contribution of Jews to world civilization and remarked that Ferdinand of Spain was not a wise king because by expelling Jews he had impoverished his own land and enriched the Ottoman Empire. Finally, in March 1492, King Ferdinand and Queen Isabella recruited Christopher Columbus to discover the Indies, thus taking the first step towards creating a superpower of the 21st century, the US, that would become the arch supporter of Israel against Muslim resistance to the Jewish nation-state.

From Secular Europe to Muslim Middle East

In 1940s, Jews faced another purge, this time in a highly secularized Europe, which had for the most part abandoned Christianity, let alone the Judeo-Christian civilization, in the name of enlightenment, rationality, and later dialectical materialism. This time the purge came in the form of a massive genocide, killing millions of Jews forcibly herded into various small places, called concentration camps. But even in secular Europe, extermination of the Jews was an act of faith. Adolf Hitler, in his book, *Mein Kampf*, claims that he “is acting in accordance with the will of the Almighty Creator: by defending myself against the Jew, I am fighting for the work of the Lord.” Building on a pervasive and powerful stereotype of the Jew as a precursor to genocide, Hitler proposes to save “a racially pure people” from the Jew who “ridicules religion, ethics, and morality.”¹³ Europe was not only racially distinct from the Jews,

¹³ Adolf Hitler, *Mein Kampf* (“My Struggle”), Houghton Mifflin, New York, 1969.

it was also ethically and religiously distinct from Judaism. Hitler saw the Jew as the invader not only in Germany but more broadly in Europe, including Russia. Hitler's murderous ideology, though extreme in its execution, captured a more pervasive European prejudice against Jews, which specifically denies the existence of any Judeo-Christian tradition.

After the holocaust, the expulsion of Jews from secular Europe to the Muslim Middle East took on a new form. It was not expulsion in the technical sense. It was exodus through emigration to a distant land, away from Europe, a land which would be called Israel, a historical name waiting to be affixed over a piece of land, any land. It seems historically natural that the nation-state of Israel would be affixed over a land where biblical prophets had lived, even though the land of the prophets had remained under the Muslim rule for more than thirteen centuries. It is also historically ironic that the Jewish nation-state would be superimposed over a land that was not too long ago part of the Muslim Ottoman Empire, the same empire that had welcomed Jews from a genocidal Christian Spain in the fifteenth century. This time, however, the expelled European Jews, after experiencing unprecedented degradation and extermination of families in Europe, were coming to the Muslim land not to seek protection but to claim a nation-state for their own exclusive control, a nation-state to which all Jews of the world would be legally entitled to immigrate as a matter of right.

Once again, the European Jews came to Muslim lands to live and prosper as a people. This time, however, the dynamics were different. This time the European Jews were unwelcome. Muslims did not open their arms to welcome the people of the Book. Now, Jews and Muslims were pitted against each other as enemies, fighting for the same land and the same resources. The Judeo-Islamic bond existed no more, primarily because a new conceptual entity, the nation-state, was injected into the relations between Jews and Muslims. The nation-state overturned the logic of fluid co-existence without barriers. It dismantled the historic Palestine, a porous and fluid entity with no sovereign borders, where Jews, Christians, and Muslims have peacefully lived together for centuries.

The nation-state of Israel was the co-creation of Europeans and European Jews, though they were motivated for different reasons. Europeans were motivated by an unarticulated but a historically well-nurtured sense of ethnic cleansing to be perpetrated by providing an attractive alternative, a separate nation-state for Jews, away from Europe, a nation-state to which European Jews would

flock, leaving Europe behind for the Europeans. European Jews, under the leadership of Zionist Federation, were motivated by a sense of territorial ownership, and a legitimate concern that Europe would never be Judeo-Christian in its orientation.

Colonial Origins of Israel

The creation of Israel as a nation-state was first conceived in the era of European colonialism, a paradigm of racial and cultural superiority. In 1897, when the first Zionist Congress launched the concept of Israel, the European colonial rule in the world was at its peak, as vast stretches of Asia, Africa, and the Middle East were under Dutch, French, and British domination. In 1917, in a letter written to the Zionist Federation, the letter known as the Balfour Declaration, the British colonial empire recognized European Jews' aspirations for "the establishment in Palestine of a national home for the Jewish people." In 1922, the League of Nations, an international institution created by European Empires, legitimized the Balfour Declaration in a Mandate for Palestine. The 1922 Mandate empowered the British Empire to enact a nationality law that would "facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine." Thus, the law was put in place to await fulfillment.

The fulfillment emerged from the shock of the holocaust. The ignoble slaughter of European Jews by Europeans conferred further legitimacy on, and added imminence to, the Balfour Declaration and the League of Nations Mandate. The creation of Israel as a nation-state was timely in yet another way. The Second World War unleashed a new era of nation-states as colonized communities all over the world were striving to exercise the newly articulated right of self-determination and have their own separate nation-states. Yet Israel would be unique among newly independent states. While other nation-states would be established on local lands for local populations, Israel was created primarily for European immigrants over someone else's territory. The creation of Israel as a nation-state was thus a simultaneous act of dismantling and constructing colonial rule. Europeans dismantled their own colonial rule in Palestine. But they transferred colonial rule to the European Jews. Europeans went to Asia, Africa, and the Middle East to colonize. So did the European Jews, though broken, degraded and dis-

heartened, to the Arab territory.¹⁴ The indigenous Jews, Muslims, and Christians of Palestine, who had lived together in previous centuries under Muslim empires, witnessed an epic inflow of European Jews to their land, some with bewilderment, some with shock and confusion, and some with helplessness.

Israel as a nation-state territorialized a nation of Jews.¹⁵ For centuries, Jews, Christians and Muslims alike inhabited diverse parts of the world. Although Jews were united through the medium of their common faith, their internal diversity was (and is) as rich as that of Muslims and Christians. Ethnically, culturally, and linguistically, Jewish populations living in Russia, Germany, Palestine, Ethiopia, and other diverse parts of the world were radically different from each, just as Muslims living in Chechnya, Egypt, Turkey, Indonesia, Chad, and Kazakhstan are different from each other. Collapsing ethnic identities, Israel was created as an all-encompassing nation-state in which all Jews, after abandoning their native countries, could come and live together.

The creation of Israel added a new definition to the concept of the nation-state, whereby diverse national and ethnic groups sharing the same religion could be brought together to live under one flag in a newly created religious state.¹⁶ Jews of the world might constitute one nation. But must they all have live in one and the same nation-state? The territorialization of multi-ethnic Jews in one Israel, however, was limited in scope. Jews, just like other religious groups, have retained the freedom to live anywhere in the world as loyal citizens of other states. Millions of Jews still live in diverse parts of the world with no intention of immigrating to Israel, thus adding further complexity to the idea of Israel as the exclusive nation-state for all Jews. The idea of Israel as a nation-state just for Jews is unreal since Muslims and Christians are citizens of Israel as well. Furthermore, the complex ethnic and religious

¹⁴ John Strawson, "Reflections on Edward Said and the Legal Narratives of Palestine, Israeli Settlements and Palestinian Self-Determination," 20 *Penn State International Law Review* 363 (2002) (Israeli-Palestinian conflict is a composite narrative of two communities wronged by Europeans).

¹⁵ Note the distinction between nation-state and nation, discussed before in this chapter.

¹⁶ Chaim Gans, *The Palestinian Right of Return and the Justice of Zionism*, 5 *Theoretical Inquiries in Law* 269 (2004) (distinguishing Jews' statist nationalism from civic nationalism).

composition of Israel has imported serious discrimination into the legal system. Despite the promise of plurality and democracy, the reality of Israel has been much less egalitarian. European Jewish immigrants have assumed dominance and control over Israel to the detriment of non-European Jews. Muslims and Christians living in Israel are still seeking real and effective equality. Much of this mischief has nothing to do with ethnic or religious divisions in Israel. It simply stems from the nation-state's inherent contradictions between exclusivity and plurality.¹⁷

Future of the Region

The concept of Free State proposes that Israel be gradually transformed into a Free State, which means that its sovereign borders be replaced with administrative borders a la a state in the United States. Initially, Israel as Free State will have open borders with Free States of Gaza and West Bank.¹⁸ The wall that Israel is constructing to isolate itself from the rest of the region will be dismantled, an act consistent with the ruling of the International Court of Justice, which has declared the security wall to be an illegal barrier and an encroachment on Palestinian lands. The security wall around a territory is the ultimate embodiment of the concept of the nation-state that takes a population and confines it in a defined territory. As Israel becomes a more respected and integrated part of the larger region, it will become a Free State within the Middle East a la the Netherlands in the European Union. Israel as Free State will be able to preserve its Jewish character if it so desires, for Free State has the option, but not the obligation, to embrace the separation of church and state at national or sub-national levels, a point that I have adequately discussed in *A Theory of Universal Democracy*.

Israel as Free State in the Middle East is a distant dream that may or may not be realized as the peoples of the region would con-

¹⁷ Aeyal M. Gross, "The Constitution, Reconciliation, and Transitional Justice: Lessons from South Africa and Israel," 40 *Stanford Journal of International Law* 47 (2004) (arguing that Palestinians and Jews are intertwined communities in both Israel and occupied territories and yet the discourse of separation overlooks the reality of living side by side).

¹⁸ Justus R. Weiner, "Coexistence without Conflict," 26 *Brooklyn Journal of International Law* 591 (2000) (offering confederacy as a structural solution to Israel and Palestine conflict).

tinue to see Israel as a colonial state of European immigrants; and, European Jews and their posterity settled in Israel would continue to experience a sense of cultural unease in dealing with Arabs inside and outside their new country. This mutual suspicion and the attendant violence may subside if Israel and Palestine abandon the notion of sovereign borders and open up their communities in the larger region for the establishment of an authentic Judeo-Islamic civilization, as they did before in Spain.

In constructing a new future, Arabs and Muslims must in good faith accept European Jews now inhabiting Israel, and treat them with generosity, forgiveness, and goodwill that Islam teaches. Muslims control vast areas of the Middle East, North Africa, and other parts of the world. Accommodating European Jews and their posterity in the Middle East will by no means diminish the Arab/Muslim culture or language. Nor will any such acceptance harm Islam. Israel with its highly talented and skilled population brings enormous intellectual property to the Middle East that Arabs and Muslims can use to enhance development. In response, European Jews in Israel must also accept the reality of living among Muslims, as did the indigenous Jews in Palestine. Israeli Jews must not segregate themselves, nor should they plan to live in the Middle East as a permanent alien-enemy population. They must live there as an ally. Just as Muslim Spain Europeanized the Jews of the Middle East, Israel must Middle Easternize European Jews. European Jews must make every effort, as immigrants do, to belong to the region, without assimilation. As an ally in the region, Israeli Jews do not have to repudiate Judeo-Christian connections but they must also repair and re-invigorate Judeo-Islamic bonds. If Jews and Muslims in the Middle East abandon the divisive concept of the nation-state fortified with soldiers and walls, and if they strive toward building Free States in a prosperous, multi-ethnic, and multi-religious region, they would set an example to be followed in other parts of the world, including Russia-Chechnya, and India-Pakistan-Kashmir.

Selected Bibliography

BOOKS

- Abel, L. Richard. *Politics By Other Means*. New York: Routledge, 1995.
- Anonymous (Scheuer, Michael). *Imperial Hubris: Why the West Is Losing the War on Terror*. Washington DC: Potomac Books, 2004.
- Aristotle. *The Politics*. Baltimore: Penguin Books, 1992.
- Benjamin, Daniel and Steven Simon. *The Age of Sacred Terror*. New York: Random House, 2002.
- Bindman, Geoffrey (ed.). *South Africa: Human Rights and the Rule of Law*. London: Printer Publishers Limited, 1988.
- Bergen, Peter L. *Holy War, Inc: Inside the Secret World of Osama Bin Laden*. New York: New York Free Press, 2001.
- Brownlie, Ian. *International Law and the Use of Force by States*. Oxford: Clarendon Press, 1963.
- Busailah, Reja-e. *We Are Humans Too: Poems on the Palestinian Condition*. Wilmette: Medina Press, 1985.
- Cassese, Antonio. *Self-Determination of Peoples*. New York: Cambridge University Press, 1995.
- Cohen, Michael J. *The Origins and Evolution of the Arab-Zionist Conflict*. Los Angeles: University of California Press, 1987.
- Daalder, Ivo H. and James M. Lindsay. *America Unbound: The Bush Revolution in Foreign Policy*. Washington, DC: Brookings Institution, 2003.
- Darwish, Mahmoud. *Memories for Forgetfulness*. Berkley: University of California Press, 1995.
- Dershowitz, Alan. *Why Terrorism Works*. New Haven: Yale University Press, 2004.
- *The Case for Israel*. Hoboken, NJ: John Wiley & Sons, 2003.
- Drache, Daniel and Robert Perin (eds.). *Negotiating With A Sovereign Quebec*. Toronto: Lorimer & Co., 1992.
- Emerson, Steven. *American Jihad: The Terrorists Living Among Us*. New York: Free Press, 2002.
- Fournier, Pierre. *A Meech Lake Post-Mortem: Is Quebec Sovereignty Inevitable?* Montreal: McGill-Queens University Press, 1991.
- Frum, David and Richard Perle. *An End to Evil: How to Win the War on Terror*. New York: Random House, 2003.

- Gall, Carlotta and Thomas de Waal. *Chechnya: Calamity in the Caucasus*. New York: New York University Press, 1998.
- Hayes, Richard E., Stacey R. Kaminski, and Steven M. Beres. "Negotiating the Non-Negotiable: Dealing with Absolute Terrorists." *International Negotiation: A Journal of Theory and Practice*. Vol. 8, No. 3 (2003).
- Hanson, Victor Davis. *Carnage and Culture: Landmark Battles in the Rise of Western Power*. New York: Doubleday, 2001.
- Hart, Alan. *Arafat: A Political Biography*. Bloomington: Indiana University Press, 1984.
- Higgins, Rosalyn. *Problems and Process: International Law and How to Use It*. New York: Oxford University Press, 1994.
- Hoffman, Bruce. *Inside Terrorism*. New York: Columbia University Press, 1998.
- Hourani, Albert. *A History of the Arab Peoples*. New York: Warner Books, 1991.
- Hunt, Michael. *Ideology and U.S. Foreign Policy*. New Haven: Yale University Press, 1987.
- Huntington, Samuel P. *The Clash of Civilizations*. New York: Simon & Schuster, 1997.
- Kadian, Rajesh. *The Kashmir Tangle*. Boulder: Westview Press, 1993.
- Khadduri, Majid & Ramazani, R. *The Islamic Conception of Justice*. John Hopkins University Press, 2002.
- Khan, L. Ali. *A Theory of Universal Democracy*. The Hague: Martinus Nijhoff Publishers, 2003.
- *The Extinction of Nation States*. Hague: Martinus Nijhoff Publishers, 1996.
- Huntington, Samuel. *The Clash of Civilizations and the Remaking of the World Order*. New York: Simon & Schuster, 1996.
- Kepel, Gilles. *Jihad: The Trail of Political Islam*. Cambridge: Harvard University Press, 2002.
- Khalidi, Rashid. *Palestinian Identity*. New York: Columbia University Press, 1997.
- Lapidus, M. Ira. *A History of Islamic Societies*. New York: Cambridge University Press, 1988.
- Laqueur, Walter. *No End to War, Terrorism in the Twenty-First Century*. New York: Continuum, 2003.
- Lewis, Bernard. *The Crisis of Islam: Holy War and Unholy Terror*. New York: Modern Library, 2003.
- *What Went Wrong? Western Impact and Middle Eastern Response*. New York: Oxford University Press, 2002.
- Lieven, Anatol. *Chechnya: Tombstone of Russian Power*. New Haven: Yale University Press, 1998.
- Ledeer, Michael A. *The War Against the Terror Masters: Why It Happened, Where We are Now, How We'll Win*. New York: St. Martin's Griffin, 2003.
- Lockman, Zachary and Joel Beinin (eds.). *Intifada*. Boston: South End Press, 1989.
- Netanyahu, Benjamin. *Terrorism: How the West Can Win*. New York: Farrar, Straus, Giroux, 1986.
- Pape, Robert. *Dying to Win: The Strategic Logic of Suicide Terrorism*. New York: Random House, 2005.
- Pearlman, Wendy. *Occupied Voices*. New York: Nation Books, 2003.
- Piven, Jerry (eds. et al.). *Terrorism, Jihad and Sacred Vengeance*. Giessen: Psychosozial-Verlag, 2004.
- Politkovskaya, Anna. *A Small Corner of Hell: Dispatches From Chechnya*. Chicago: University of Chicago Press, 2003.
- Rahman, Mushtaqur. *Divided Kashmir*. Boulder: Lynne Rienner Publishers, 1996.
- Reich, Walter (ed.). *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind*. Cambridge: Cambridge University Press, 1990.
- Said, Edward W. *The Politics of Dispossession: the Struggle for Palestinian Self-Determination 1969-1994*. New York: Pantheon Books, 1994.
- Said, Edward W. and Christopher Hitchens (eds.). *Blaming the Victims: Spurious Scholarship and the Palestine Question*. New York: Verso, 1988.

- Salinger, Pierre. *America Held Hostage: The Secret Negotiations*. Garden City, NY: Doubleday, 1981.
- Singer, Peter. *The President of Good and Evil: The Ethics of George W. Bush*. New York: Dutton, 2004.
- Smith, Sebastian. *Allah's Mountains: The Battle for Chechnya*. New York: I.B. Tauris, 2001.
- Stern, Jessica. *The Ultimate Terrorists*. Cambridge: Harvard University Press, 1999.
- . *Terror in the Name of God: Why Religious Militants Kill*. New York: Ecco, 2003.
- Tessler, Mark. *A History of the Israel-Palestinian Conflict*. Bloomington: Indiana University Press, 1994.
- Tibi, Bassam. *The Fundamentalist Challenge to the Secular Order in the Middle East*.
- Tishkov, Valery. *Chechnya: Life in a War-Torn Society*. Berkeley and Los Angeles: University of California Press, 2004.
- Thomas, Raju (ed.). *Perspectives on Kashmir*. Boulder: Westview Press, 1992.
- Ward, Richard J. (et al.). *The Palestinian State*. Port Washington: National University Publications, 1970.
- Wilson, Heather A. *International Law and the Use of Force by National Liberation Movements*. London: Clarendon Press, 1988.
- Wirsing, Robert. *India, Pakistan and the Kashmir Dispute*. New York: St. Martin's Press, 1994.
- Wright, Robin. *Sacred Rage: The Crusade of Modern Islam*. New York: Linden Press, 1985.
- Zartman, William I. *The Practical Negotiator*. New Haven: Yale University Press, 1982.
- Young, Robert A. *The Secession of Quebec and the Future of Canada*. Montreal: McGill-Queens University Press, 1998.

JOURNAL ARTICLES

- Berman, Ilan. "The New Battleground: Central Asia and the Caucasus," *The Washington Quarterly* (Winter 2004/05).
- Burnett, Jonny and Dave Whyte. "Embedded Expertise and the New Terrorism," *Journal For Crime, Conflict and the Media* (2005).
- Bradley, Curtis A. and Jack L. Goldsmith. "Congressional Authorization and the War on Terrorism," 118 *Harvard Law Review* 2047 (2005).
- Chermerinsky, Erwin. "Civil Liberties and the War on Terrorism." 45 *Washburn Law Journal* 1 (2005).
- Davidsson, Elias. "The U.N. Security Council's Obligations of Good Faith," 15 *Florida Journal of International Law* 541 (2003).
- Dershowitz, Alan M. "The Torture Warrant: A Response to Professor Strauss," 48 *New York Law School Law Review* 275 (2004).
- Goldsmith, Jack and Cass R. Sunstein. "Military Tribunals and Legal Culture: What a Difference Sixty Years Makes," 19 *Constitutional Comment* 261 (2002).
- Johns, Fleur. Guantanamo Bay and the Annihilation of the Exception, 16 *European Journal of International Law* 613 (2005).
- Khan, Ali. "A Legal Theory of International Terrorism," 19 *Connecticut Law Review* 945 (1987).
- . "Constitutional Kinship Between Iran and the Soviet Union," 9 *New York Law School Journal of International and Comparative Law* 293 (1988).
- . "Islam as Intellectual Property," 31 *Cumberland Law Review* 631 (2001).

- “The Kashmir Dispute: A Plan for Regional Cooperation,” 31 *Columbia Journal of Transnational Law* 495 (1994).
- Lewis, Bernard. “The Roots of Muslim Rage,” *Atlantic Monthly* (Sept. 1990).
- Luban, David. “Liberalism, Torture, and the Ticking Bomb,” 91 *Virginia Law Review* 1425 (2005).
- Margalit, Avishai. “The Suicide Bombers,” *The New York Review of Books* (Jan. 2003).
- Mayer, Elizabeth Ann. “Universal Versus Islamic Human Rights: A Clash of Cultures or A Clash With A Construct?” 15 *Michigan Journal of International Law* 307 (Winter 2004).
- McMillan, Joseph. “Apocalyptic Terrorism: The Case For Preventive Action,” *Strategic Forum* (Nov. 2004).
- Mearsheimer, John J. and Stephen M. Walt. “An Unnecessary War,” *Foreign Policy* (March 2003).
- Mnookin, Robert. “When Not to Negotiate: A Negotiation Imperialist Reflects on Appropriate Limits,” 74 *University of Colorado Law Review* 1077 (2003).
- Morgan, Matthew J. “The Origins of the New Terrorism,” 34 *Parameters* 1 (2004).
- Posner, Eric. “War, International Law, and Sovereignty,” 5 *Chicago University Journal of International Law* 423 (2005).
- Randazza, Marc J. “Getting to Yes With Terrorists,” *Law Review of Michigan State University* 823 (Winter 2002).
- Raphael, Vanessa M. “The US Policy of ‘No Concessions to Terrorists,” *Masters Thesis, The Fletcher School of Law and Diplomacy* (April 2001).
- Rubin, Jeffrey. “Can We Negotiate With Terrorists? Some Answers From Psychology,” *Working Paper Series, Harvard Law School* (1986).
- Seita, Alex Y. “Globalization and the Convergence of Values,” 30 *Cornell International Law Journal* 429 (1997).
- Singer, Peter W. “War, Profit, and the Vacuum of Law: Privatized Military Firms and International Law,” 42 *Columbia Journal of International Law* 521 (2004).
- Sunstein, Cass R. “Deliberative Trouble? Why Groups Go to Extremes,” 110 *Yale Law Journal* 71 (2000).
- Shaheen, Jack G. “Reel Bad Arabs: How Hollywood Vilifies a People,” *The Annals of American Academy of Political and Social Science* (July 2003).
- Simon, Steven and Jeff Martini. “Terrorism: Deny Al Qaeda Its Popular Support,” *The Washington Quarterly* (Winter 2004/05).
- Spann, Girardeau A. “Terror and Race,” 45 *Washburn Law Journal* 89 (2005).
- Wedgwood, Ruth. “Al Qaeda, Terrorism, and Military Commissions,” 96 *American Journal of International Law* 328 (2002).
- “After September 11th,” *Keynote Address, 36 New England Law Review* 725 (2002).
- Winter, Steven. “Legal Storytelling: The Cognitive Dimension of Agon between Legal Power and Narrative Meaning,” 87 *Michigan Law Review* 2225 (1989).
- Yamani, Ahmed Z. “Humanitarian International Law in Islam: A General Outlook,” 7 *Michigan Year Book of International Legal Studies* 189 (1985).
- Yoo, John C. and Will Trachman, “Less than Bargained for: The Use of Force and the Declining Relevance of the United Nations,” 5 *Chicago Journal of International Law* 379 (2005).
- Yoo, John C. “Transferring Terrorists,” 79 *Notre Dame Law Review* 1183 (2004).
- “War, Responsibility, and the Age of Terrorism,” 57 *Stanford Law Review* 793 (2004).
- “Using Force,” 71 *University of Chicago Law Review* 729 (2004).
- Zartman, William I. “Negotiating With Terrorists,” *International Negotiation: A Journal of Theory and Practice*, Vol. 8, No. 3 (2003).

NEWS ARTICLES

- Alden, Edward. "U.S. Watchdog Criticises Round-up of Aliens." *Financial Times* (London) 3 June 2003: 1.
- Barone, Michael. "Cultures Aren't Equal." *U.S. News & World Report* 15 Aug. 2005: 26.
- Beydoun, Tarek. "Group Promotes Accuracy in Media" *Arab American News*, 28 May 2005: 15.
- Brooks, David. "The Culture of Martyrdom." *Atlantic Online*. June 2002.
- Brownstein, Ronald. Bush Retools His Original Argument." *Los Angeles Times* 29 June 2005: Business Section.
- Bumiller, Elisabeth. "Base Closings Will Be Fair, Bush Tells Naval Graduates." *New York Times* 28 May 2005: A7.
- "White House Letter; Axis of Evil: First Birthday for a Famous Phrase." *New York Times* 20 Jan. 2003: A17.
- "White House Letter; Recent Bushisms Call for a Primer." *New York Times* 7 Jan. 2002: A14.
- Editorial. "The Lancet's Politics." *Washington Times* 23 June 2005: A20.
- Fisk, Robert. "Terror in London: The Reality of This Barbaric Bombing." *Independent* (London) 8 July 2005: 33.
- Friedman, Thomas L. "A Poverty of Dignity and a Wealth of Rage." *New York Times* 15 July 2005: A19.
- Herbert Bob. "Shopping for War." *New York Times*, 27 Dec. 2004: A17.
- Hernandez, Raymond. "Democrats Demand Rove Apologize for 9/11 Remarks." *New York Times* 24 June 2005: A16.
- Janofsky, Michael. "A Neocon Is Honored By a President He Reverses." *New York Times* 24 June 2004: B4.
- Jehl, Douglas. "Report Urged Action Against General for Speeches." *New York Times*, 4 Mar. 2005: A18.
- Khan, Ali. "Do Our Bombs Follow Newton's Law?" *Wichita Eagle* 3 Aug. 2005: 7A.
- Krauthammer, Charles. "Violence and Islam." *Washington Post*. 6 Dec. 2002: A45.
- Lewis, Neil A. "Military's Opposition to Harsh Interrogation Is Outlined." *New York Times* 28 July 2005: A21
- Lichtblau, Eric. "Threats and Responses: American Muslims; FBI Tells Offices to Count Local Muslims and Mosques." *New York Times* 28 Jan. 2003.
- Myers, Steven Lee. "Female Suicide Bombers Unnerve Russians." *New York Times* 7 Aug. 2003.
- Petre, Jonathan. "Lengthy Queue to Join Religion that Offers 'Sense of Direct.'" *Daily Telegraph* (London) 1 Aug. 2005: 18.
- Priest, Dana. "CIA Killed U.S. Citizen in Yemen Missile Strike; Action's Legality, Effectiveness Questioned." *Washington Post* 8 Nov. 2002: A01.
- Roberts, Paul Craig. "No Easy Solutions." *Washington Times* 13 February 2004: A19.
- Sanger, David E. "Bombings in London: The President; Bush Vows to Fight Until Terrorists' Defeat." *New York Times* 12 July 2005: A9.
- "Two Years Later: The President; President Urging Wider US Powers in Terrorism Law." *New York Times* 11 Sept. 2003: A1.
- Stern, Jessica E. "Terrorism's New Mecca." *Globe & Mail*, 28 Nov. 2003: A23.
- Stevenson, Richard W. "The Bombings in London: Summit, Bombings Rewrite Agenda for World Leaders in Scotland." *New York Times* 8 July 2005: A13.
- Zoll, Rachel. "Muslims Practicing Faith Behind Bars." *Deseret Morning News* 11 June 2005: E03.
- "G8 Leaders Condemn 'Barbaric' Attacks." *CNN* 7 July 2005.

INTERNET SOURCES

- Blum, Vanessa. "JAGs Fought DOJ on Terror Memo." *Legal Times*, 1 Aug. 2005, <<http://www.kuwaitifreedom.org/media/pdf/Legal%20Times%20-August%201,%202005.pdf>>
- Blumenthal, Sidney. "The Religious Warrior of Abu Ghraib." *Guardian*, 20 May 2004 <<http://www.guardian.co.uk/comment/story/0,,1220622,00.html>>
- Brooks, David. "The Culture of Martyrdom." *Atlantic Online*, June 2002 <<http://www.theatlantic.com/doc/prem/200206/brooks>>
- Cassel, Elaine. "The Lynne Stewart Guilty Verdict: Stretching the Definition of 'Terrorism' to Its Limits." *FindLaw's Writ* 14 Feb. 2005 <<http://writ.-news.findlaw.com/cassel/20050214.html>>
- Farrenkopf, Christine. "Cocaine and the Brain: the Neurobiology of Addiction." *Serendip* <<http://serendip.brynmawr.edu/bb/neuro/neuro-01/web1/Farrenkopf.html>>
- Khan, Liaquat Ali. "Friendly Renditions to Muslim Torture Chambers." *Counterpunch* 6 June 2005 <<http://www.counterpunch.org/khan0606-2005.html>>
- Krauthammer, Charles. "The Neoconservative Convergence." *Wall Street Journal*. 21 July 2005 <<http://www.opinionjournal.com/extra/?id=11-0006921>>
- Murphy, Dan and Howard LaFranchi. "Special Briefing: How Radical Islamists See the World." *Christian Science Monitor*. 2 Aug. 2005 <<http://www.csmonitor.com/2005/0802/p04s01-wogi.htm>>
- Roberts, Les et al. "Mortality Before and After the 2003 Invasion of Iraq: Cluster Sample Survey" *Lancet* 29 Oct. 2004 <<http://image.the-lancet.com/extras/04art10342web.pdf>>
- Roberts, Paul Craig. "Departing Iraq." *Counterpunch*, 28 July 2005 <<http://www.counterpunch.org/roberts07282005.html>>
- Roth, Ken. "War in Iraq: Not a Humanitarian Intervention." *Human Rights Watch World Report 2004*. <<http://hrw.org/wr2k4/3.htm>>
- Scheuer, Michael. "Throwing America a Life Preserver." *Anti War* 10 June 2005 <<http://www.antiwar.com/orig/scheuer.php>>
- Stern, Jessica E. "Caliphate of Terror." *Harvard Magazine* July-Aug. 2004 <<http://www.harvardmagazine.com/on-line/070480.html>>
- "Explaining the Addiction to Jihad." *Daily Star* (Lebanon), 5 Feb. 2004, <http://www.dailystar.com.lb/article.asp?edition_ID=10&article_ID=197&category_id=5>
- Watanabe, Teresa. "Academic Freedom Prevails, Panel Says." *Los Angeles Times* 17 February 2004 <<http://www.campus-watch.org/article/id/1031>>

STATUTES

- 18 U.S.C. § 1203(a) (2000).
22 U.S.C. § 2656(f).

CASES

- United States v. Stewart*, No. 02 CR. 396 JGK, 2002 WL 1300059 (S.D.N.Y. June 11, 2002).

Legal Consequences of the Construction of a Wall in the Occupied Palestine Territory,
ICJ (2003–04).
Ariel Incident of 10 August 1999 (Pakistan v. India), ICJ (1999–2000).

ISLAMIC BASIC CODE SOURCES

Quran (Translation by Abdullah Yusuf Ali).
Sahih Al-Bukhari (Translation by Muhammad Muhsin Khan).
Sahih Muslim (Translation by Abdul Hamid Siddiqi).

Index

1949 Geneva Conventions 271

A

A Theory of Universal Democracy 9, 323, 331, 358, 361

Afghanistan 4–5, 26, 71 n. 15, 82, 98, 106–108, 110, 137, 139, 158, 166, 183, 187, 196–197, 200, 205, 208, 215, 227, 230–231, 236, 236 nn. 42, 44, 243, 252, 254, 269, 276, 278, 295, 311–312, 334

Taliban 71 n. 15, 110, 197, 236 n. 42

Aggrieved Populations 1–3, 8, 10, 13, 15, 17–18, 27, 29, 31, 33, 35, 39–40, 45, 51, 54–55, 60–61, 68–70, 77, 81, 83–85, 93, 96–97, 101, 106, 114, 118, 130, 135, 154, 159, 215, 220, 223, 280, 287, 291, 295, 299, 304–305, 307, 310, 324

Chechens 15–16, 21–29

Kashmiris 15, 27

Literary Resistance 40

Palestinians 41–42, 44

Al Qaeda 4–6, 52, 71 n. 15, 82, 107–108, 110, 137, 158–160, 162, 236, 236 n. 42, 237, 239–240, 242–243, 249 n. 1, 254–255, 269, 270, 272, 278, 299

Annan, Kofi 242

B

Bush, George W. 129, 208, 208 n. 3, 223, 228, 232

Business of War 249

Private military companies
258–261

C

Canada

Supreme Court 287, 321, 321 nn. 10–11

Chechnya-Russia 359

Cold War 3–4, 105, 143, 219, 330, 334

Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment 36, 238, 251, 275

Convention on the Rights of the Child 168

Coughenour, John 248, 274

Counterfactual Analysis 110, 110 n. 8, 111

Cuba 108

D

Darwish, Mahmoud 43, 44, 44 n. 27, 45

Declaration of Paris 1856 258

Definition Battles 96

Dehumanization 118–121, 297

American Indians 122

Hollywood 122

Mark Twain 122, 122 n. 21

Deir Yassin 34, 34 n. 20, 104

Dysfunctional Peace Process 87, 114

E

Essentialism 211–212, 244, 245, 245 n. 48, 246

Other-defining 245–246

Self-defining 245, 245 n. 48, 246

- European Union 9, 53, 323, 325, 350, 358
 Exaggeration of Terror Threats 109
- F
 Forced Democratization 144
 Free State 172, 323, 325–326, 330–338, 342, 350–353, 358–359
- G
 Goldsmith, Jack 209, 234, 240, 240 n. 47, 353
 Goldstein, Baruch 101–102
 Grievances 8–9, 15, 17–19, 25, 27, 37, 45, 54–55, 64, 72, 80–81, 93, 162, 227, 229, 239, 243–244, 246, 318
 concrete grievances 2, 5–7, 10, 130, 132, 154, 159, 213, 217, 244, 246, 253–254, 282–283
 Denial of 225
 primary grievances 19, 27, 76, 94, 295, 301
 secondary grievances 19, 27, 39, 53, 73–74, 76, 79, 81, 94, 159, 295, 301
 Guantanamo 32, 107, 310
- H
 Hague Regulations 1907 281
 Halsell, Grace 13–14
 Hamas 85, 198, 221, 237, 302, 305, 307, 313
 Hanson, Victor Davis 152, 153, 153 n. 17, 154–155, 156, 156 n. 19, 235
 Highly Influential Terrorist Literature 6, 206–247
 Hijrah-Migration 171–176
 Human Rights 2, 4–6, 8–9, 17, 19, 26, 27, 28 n. 16, 36–37, 53–54, 62, 64, 70, 72–73, 75–76, 79, 80, 80 n. 18, 81, 90, 93–94, 104, 109, 130, 139, 139 n. 6, 140, 140 n. 7, 141 n. 10, 145, 150, 156, 158, 168, 176–177, 192, 227, 243, 246, 251, 253, 261 n. 13, 266, 271–273, 283, 295, 299, 302, 311, 320, 324, 327–328, 333
 Humanitarian Law 8–9, 60, 66–67, 156, 193 n. 56, 281, 335
- I
 Ibn Taymiyya 217, 217 n. 18
 Idris, Wafa 49
 Imperialism 21, 27, 96, 130, 132–137, 138 n. 5, 141–144, 150, 158–160, 163, 290, 299, 333–335, 339, 351
 Holy imperialism 129, 131–132, 158, 164
 Ideological imperialism 133
 Secular imperialism 129–131, 137, 139, 143–144, 148, 158
 Value imperialism 6–7, 17, 129–130, 132–137, 138, 138 n. 5, 139, 140–141, 143, 150–152, 159–162, 166–168, 299, 332–333, 335, 345
 International Covenant on Civil and Political Rights 8, 36, 58, 161, 251, 266, 271, 275, 281, 327 n. 3
 Iran 26, 59, 70, 97, 104, 106, 108, 130, 137, 147, 155, 158, 167, 203, 215, 221, 224 n. 30, 234, 236, 236 n. 42, 242, 255, 269, 274, 294–295, 339, 347, 349
 Iraq 5, 17–18, 26, 29, 30–31, 57, 59, 59 n. 7, 61, 66, 70, 78, 84, 85, 85 n. 20, 98, 101, 106, 110, 130–131, 137, 147, 155, 158, 166, 192, 197–198, 200, 204–205, 208, 215, 218, 222, 223 n. 27, 226–227, 229 n. 36, 230–231, 233–235, 236, 236 n. 42, n. 44, 239, 242–244, 246 n. 49, 251–252, 255, 259, 260–261, 269–270, 295, 308–309, 311–312, 334–335, 339–340, 343, 346–347, 349
 Islamic Jurisprudence
 Fatwas 162, 202–205
 Great Imams 199, 242, 345
 Islamic Martyrdom 7, 23, 235, 244, 254, 303
 Islamic Terrorism 2–3, 5–9, 47, 74, 125, 152, 190, 211, 217, 219–221, 232, 241, 245, 288, 295
 Addiction to violence 219, 223, 244, 253, 294
 Islamic defeatism 213–214
 Muslim militancy 2, 6–8, 82, 143, 232, 234, 253–254, 283, 294, 303, 343
 Israel 2–3, 10, 18, 20, 33–34, 37–38, 42–43, 58, 58 n. 4, 59 n. 7, 60, 74, 80, 90, 107–108, 113, 115, 117, 123–124, 125, 131, 143, 146–147, 152, 154, 159, 191, 197, 206, 212 n. 11, 214, 215, 217, 218–219, 221, 244, 268, 270, 278, 280, 282, 287, 302, 305, 307, 314, 324–326, 339, 341, 347, 351–359
 Israelis 37, 41, 50 n. 33, 105, 113–115, 118, 147, 175, 187, 221, 244, 302

J

- Jihad 6–7, 63 n. 13, 106, 123–124, 131, 146 n. 13, 152, 165, 167, 170–171, 174–175, 177 n. 14, 178–183, 183 n. 26, 184–185, 186, 186 nn. 41–42, 187–189, 193–198, 200–204, 212 n. 12, 217, 22–224, 236, 241, 244, 254, 295, 303, 348
 Military 182–183, 187, 193, 197–198, 200–201, 203–204, 217, 295
 Spiritual 179–180
Jus ad bellum 191–192,
Jus in bello 67, 191–192, 301, 335

K

- Kashmir-India 187, 302, 348
 Kipling, Rudyard 138
 Ku Klux Klan 102
 Annan, Kofi 242

L

- Literary Resistance 40

M

- Mecca 7, 172, 175, 195
 Medina 172, 174, 176, 185 n. 35, 195, 203
 Mona Lisa 51
 Muslim Militants 2, 5–7, 9–10, 16, 29, 57, 59, 63, 63 n. 13, 71, 74–75, 78–79, 81, 83–85, 99, 104, 106–107, 124, 129–132, 135–136, 143–144, 148–150, 154, 156–157, 160, 163, 167–169, 193–195, 208–209, 211–215, 217–219, 222–227, 228, 228 n. 34, 229–231, 234–241, 243, 245–246, 249–250, 253–255, 268–270, 272–277, 282–283, 288, 294–295, 299–303
 Muslims
 Violent people 123–124

N

- Nazism-Communism-Islamism 211, 219
 Negotiated Solutions
 Doves 44, 312–315
 Durable deal 10, 302, 312–314
 Hawks 114, 262, 312–315
 Nothing Justifies Terrorism 8, 59, 79, 99, 106, 267

O

- One God 22–24, 132, 134, 136, 160, 162–163, 165
 Ontology

Evil 5

- Ontology of Terrorism 4–5
 Operation Desert Scorpion 29
 Organization of Islamic Conference 187, 196, 202, 267
 Osama bin Laden 52, 105, 123, 129, 158, 194, 204, 230, 231, 243, 270

P

- Pakistan-India 293, 328, 347, 359
 Palestine-Israel 357 n. 14, 359
 Palestinians 1–4, 6, 10, 13, 15, 18, 27, 33, 34, 34 n. 21, 35–39, 41–42, 44, 45, 45 n. 28, 46–49, 49 n. 31, 50, 53–54, 55, 55 n. 1, 57, 60, 70, 73–75, 77–78, 80, 85, 90–91, 93, 95, 98, 103–104, 112–118, 123, 125–126, 131–132, 154, 157, 175, 198, 212 n. 11, 215, 221–222, 226–227, 233, 237, 239, 242, 255, 280, 302, 305, 307–308, 314, 318–319, 324, 340–341, 348, 352, 356, 358, 358 n. 17
 Patriot Act 5, 109, 211, 270
 Peace Treaty of Hudaiabiya 298
 Pentagon 4, 52, 123, 154, 207, 231 n. 37, 246 n. 49, 262, 270
 Phenomenology of Terrorism 288, 343
 Politikovskaya, Anna 28
 Private Military Corporations 255, 258
 Propagandists
 Boykin, General William 230, 282
 Dershowitz, Alan 103, 209, 212 n. 11, 233 n. 41, 238–239
 Frum, David 218
 Hanson, Victor 153 n. 17, 235
 Hoffman, Bruce 85, 207, 219, 219 nn. 19–20
 Ledeen, Michael 224, 224 n. 30, 225, 234
 Lewis, Bernard 144 n. 12, 207, 213–214, 217, 224–225
 Mattis, General James 231
 Others 3, 24, 32–35, 45, 49, 52–53, 65, 74, 90, 94, 96–97, 99, 101, 114–115, 120–121, 124, 126, 133, 136–137, 140–141, 157, 160, 190, 200, 225, 245, 260, 268, 273, 299, 306, 309, 314, 321–322, 345, 350–351, 353
 Perle, Richard 207, 218
 Simon, Steven 207, 216, 216 n. 16, 237, 241
 Stern, Jessica 207, 222, 222 n. 24, 225–226, 242

Q

- Quebec 288, 315, 316–320, 321, 321 n. 10, 11, 322
 Quebec-Canada 319, 321
 Qutb, Sayyid 186 n. 43, 217, 217 n. 18

R

- Refugees 31, 34, 34 n. 21, 35, 45–46, 49, 54, 75, 103–104, 123, 166, 175–177, 260, 316, 324, 352

S

- Sabra and Shatila 45, 46, 46 n. 30, 47
 Saudi Arabia 82, 101, 150, 163, 166, 197, 201–202, 204, 235, 241–242
 Security Council
 Unusual authority 266, 269
 Self-determination 2, 8, 10, 17, 17 n. 4, 25–26, 18, 19, 21, 25–27, 52–54, 58, 60, 62–67, 70–71, 73, 76, 79–80, 94–95, 103, 115, 130–131, 135, 139, 141, 188, 209, 213, 244, 261 n. 13, 283, 287–288, 299, 319, 322, 324, 326–329, 330, 330 n. 4, 331–333, 347, 356
 September 11 15 n. 2, 52, 85, 106, 108–109, 111, 152, 210, 232, 246, 248, 256, 262, 265, 276
 September 11 Attacks 4–7, 53, 58, 105–107, 109, 110, 113, 156, 196–197, 207, 214, 227, 230, 233, 255, 263, 265, 268, 273, 282
 Sexual Torture 31–32
 Sierra Leone 260
 State Terrorism 2–3, 8, 15–16, 25, 27, 45 n. 29, 77–78, 93–95, 99–100, 103, 112, 116, 121, 292, 324, 337
 House demolitions 37–38, 91
 Security roadblocks 1–2, 35, 49
 Sufi Islam and Violence 22–24
 Supportive Entities 1–3, 19, 50–53, 55–47, 59, 61, 63–71, 73, 75, 77, 79, 89–91, 93, 97–98, 116, 195, 263–266, 270, 287, 302, 306–308, 312
 Suppressive Entities 1–2, 4–5, 17, 22, 27, 39, 45, 50, 59–60, 63, 69, 79–81, 93–97, 99, 103, 109, 110–112, 114, 116, 121, 130, 132, 135, 193, 198, 202, 226, 249, 254, 256, 263, 280–282, 287, 291–292, 300, 302, 306, 308
 Principal suppressive state 69, 72, 75–76, 79–81, 83, 89, 97, 103, 166, 288, 293, 302, 312

T

- Taguba, General Antonio 31, 276–277
 Terror Triangle 1–3, 9–10, 19, 53, 55, 59, 159, 287–288, 291, 292, 303, 310, 312, 324
 Terrorist Financing Law 86 n. 21, 87, 256, 263–265, 267–268
 Terrorist Wrongdoing 125–126
 The Extinction of Nation-States 9, 172, 323, 350
 Truce and Terror 114–115

U

- UN Charter 9, 58, 61–62, 66–67, 116, 158, 233–234, 252, 265–266, 269, 288, 290–291, 294, 327–328, 337, 339
 UN Charter Principles 62, 66
 UN Counter-Terrorism Committee 256
 UN General Assembly 8, 73, 78, 94–95, 99, 327, 329
 Resolutions 9, 61 n. 10, 291, 328, 330
 UN Security Council 287, 292–293, 311, 329
 United Nations Relief and Works Agency 34
 United States 3, 18, 57, 59 n. 7, 61 n. 12, 71 n. 14, 102 n. 4, 104, 110, 135, 152, 160, 162, 165–166, 168, 173, 187–189, 192, 196–198, 200, 204–205, 207–208, 210 n. 6, 211, 214–215, 217–218, 223 n. 27, 227–228, 231, 232, 232 n. 39, 233–235, 237–238, 240–244, 247, 290, 358
 Executive Orders 256, 270
 Universal Declaration of Human Rights 36, 54, 139, 177
 USS Cole 238, 274

V

- Value Imperialism
 Imperial degradation 136, 161

W

- War on Terror
 Cluster bombs 277–278
 Extra-judicial killings 2, 7, 18, 49, 94, 156, 226, 233, 237, 249, 313
 Extra-judicial murders 313
 Opportunity to kill 271–272
 Perfidy 185 n. 36, 192, 279, 281

Rape 18, 31–33, 40, 80, 118,
183–184, 277
Torture 5, 7–8, 18–19, 31, 32, 32
n. 19, 36, 45 n. 29, 48–49, 67, 78,
81–82, 94, 108, 120, 156 n. 18,
184, 192, 209, 232–233, 238, 238
n. 46, 249, 251–252, 259, 271,
275–277, 282, 335
Unusual weapons 277, 279

Wedgwood, Ruth 209, 233–235
White House 4, 13, 97, 154, 230

Y

Yoo, John 209, 210 n. 9, 234, 252,
252 n. 4

Z

Zachistki 27–29

Developments in International Law

1. C.R. Symmons: *The Maritime Zones of Islands in International Law*. 1979
ISBN 90-247-2171-7
2. B.H. Dubner: *The Law of International Sea Piracy*. 1980
ISBN 90-247-2191-1
3. R.P. Anand (ed.): *Law of the Sea*. Caracas and Beyond. 1980
ISBN 90-247-2366-3
4. V.S. Mani: *International Adjudication*. Procedural Aspects. 1980
ISBN 90-247-2367-1
5. G.M. Badr: *State Immunity*. An Analytical and Prognostic View. 1984
ISBN 90-247-2880-0
6. R.St.J. Macdonald and D.M. Johnston: *The Structure and Process of International Law*. Essays in Legal Philosophy, Doctrine and Theory. 1986
ISBN (hb) 90-247-2882-7
ISBN (pb) 90-247-3273-5
7. M.E. Villiger: *Customary International Law and Treaties*. A Study of Their Interactions and Interrelations with Special Consideration of the 1969 Vienna Convention on the Law of Treaties. 1985
ISBN 90-247-2980-7
8. M. Sornarajan: *The Pursuit of Nationalized Property*. 1985
ISBN 90-247-3130-5
9. C.F. Murphy, Jr.: *The Search for World Order*. A Study of Thought and Action. 1986.
ISBN 90-247-3188-7
10. A. Cassese (ed.): *The Current Legal Regulation of the Use of Force*. 1986
ISBN 90-247-3247-6
11. N. Singh and E. McWhinney: *Nuclear Weapons and Contemporary International Law*. 2nd revised edition. 1989
ISBN 90-247-3637-4
12. J. Makarczyk: *Principles of a New International Economic Order*. A Study of International Law in the Making. 1988
ISBN 90-247-3746-X
13. O. Schachter: *International Law in Theory and Practice*. 1991
ISBN 0-7923-1024-1
14. K. Wolfke: *Custom in Present International Law*. 2nd revised edition. 1993
ISBN 0-7923-2009-3
15. G.M. Danilenko: *Law-making in the International Community*. 1993
ISBN 0-7923-2039-5
16. C. Tomuschat (ed.): *Modern Law of Self-Determination*. 1993
ISBN 0-7923-2351-3
17. A. Mouri: *The International Law of Expropriation as Reflected in the Work of the Iran-U.S. Claims Tribunal*. 1994
ISBN 0-7923-2654-7
18. L. Henkin: *International Law: Politics and Values*. 1995
ISBN 0-7923-2908-2
19. M.M.T.A. Brus: *Third Party Dispute Settlement in an Interdependent World*. Developing a Theoretical Framework. 1995
ISBN 0-7923-3423-X
20. L.A.N.M. Barnhoorn and K.C. Wellens (eds.): *Diversity in Secondary Rules and the Unity of International Law*. 1995
ISBN 90-411-0092-X
21. L.A. Khan: *The Extinction of Nation-States*. A World without Borders. 1996
ISBN 90-411-0198-5
22. J. Klabbers: *The Concept of Treaty in International Law*. 1996
ISBN 90-411-0244-2
23. S.A. Alexander: *Self-Defense Against the Use of Force in International Law*. 1996
ISBN 90-411-0247-7
24. R. Lafeber: *Transboundary Environmental Interference and the Origin of State Liability*. 1996
ISBN 90-411-0275-2
25. P.M. Eisemann (ed.): *The Integration of International and European Community Law into the National Legal Order*. 1996
ISBN 90-411-0269-8

26. S.P. Sharma: *Territorial Acquisition, Disputes and International Law*. 1997
ISBN 90-411-0362-7
27. V.D. Degan: *Sources of International Law*. 1997
ISBN 90-411-0421-6
28. Mark Eugen Villiger: *Customary International Law and Treaties*. A Manual on the Theory and Practice of the Interrelation of Sources. Fully Revised Second Edition. 1997
ISBN 90-411-0458-5
29. Erik M.G. Denters and Nico Schrijver: *Reflections on International Law from the Low Countries*. In Honour of Paul de Waart. 1998
ISBN 90-411-0503-4
30. Kemal Baslar: *The Concept of the Common Heritage of Mankind in International Law*. 1997
ISBN 90-411-0505-0
31. C.L. Lim and O.A. Elias: *The Paradox of Consensualism in International Law*. 1998
ISBN 90-411-0516-6
32. Mohsen Mohebi: *The International Law Character of the Iran-United States Claims Tribunal*. 1998
ISBN 90-411-1067-4
33. Mojmir Mrak: *The Succession of States*. 1999
ISBN 90-411-1145-X
34. C.L. Lim and Christopher Harding: *Renegotiating Westphalia*. Essays and Commentary on the European and Conceptual Foundations of Modern International Law. 1999
ISBN 90-411-1250-2
35. Kypros Chrysostomides: *Republic of Cyprus*. A Study in International Law. 2000
ISBN 90-411-1338-X
36. Obiora Chinedu Okafor: *Re-Defining Legitimate Statehood*. International Law and State Fragmentation in Africa. 2000
ISBN 90-411-1353-3
37. Rein Müllerson: *Ordering Anarchy*. International Law in International Society. 2000
ISBN 90-411-1408-4
38. Joshua Castellino: *International Law and Self-Determination*. The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial 'National' Identity. 2000
ISBN 90-411-1409-2
39. Oriol Casanovas: *Unity and Pluralism in Public International Law*. 2001
ISBN 90-411-1664-8
40. Roberto C. Laver: *Falklands/Malvinas Case*. Breaking the Deadlock in the Anglo-Argentine Sovereignty Dispute. 2001
ISBN 90-411-1534-X
41. Guido den Dekker: *The Law of Arms Control*. International Supervision and Enforcement. 2001
ISBN 90-411-1624-9
42. Sandra L. Bunn-Livingstone: *Juricultural Pluralism vis-à-vis Treaty Law*. State Practice and Attitudes. 2002
ISBN (hb) 90-411-1779-2
ISBN (pb) 90-411-1801-2
43. David Raic: *Statehood and the Law of Self-Determination*. 2002
ISBN 90-411-1890-X
44. L. Ali Khan: *Theory of Universal Democracy*. Beyond the End of History. 2003
ISBN 90-411-2003-3
45. Antony Anghie, Bhupinder Chimni, Karin Mickelson and Obiora Okafor (eds.): *The Third World and International Order: Law, Politics and Globalization*. 2003
ISBN 90-411-2166-8
46. Stéphane Beaulac: *The Power of Language in the Making of International Law*. The Word Sovereignty in Bodin and Vattel and the Myth of Westphalia. 2004
ISBN 90-04-13698-3
47. Sienho Yee: *Towards an International Law of Co-progressiveness*. 2004
ISBN 90-04-13829-3

48. C.G. Weeramantry: *Universalising International Law*. 2004 ISBN 90-04-13838-2
49. R.P. Anand: *Studies in International Law and History*. 2004 ISBN 90-04-13859-5
50. Gerard Kreijen: *State Failure, Sovereignty and Effectiveness*. 2004
ISBN 90-04-13965-6
51. Nico Schrijver and Friedl Weiss (eds.): *International Law and Sustainable Development*. 2004
ISBN 90-04-14173-1
52. Markus Burgstaller: *Theories of Compliance with International Law*. 2004
ISBN 90-04-14193-6
53. L.J. van den Herik: *The Contribution of the Rwanda Tribunal to the Development of International Law*. 2005
ISBN 90-04-14580-X
54. Roda Verheyen: *Climate Change Damage and International Law*. 2005
ISBN 90-04-14650-4
55. E. Milano: *Unlawful Territorial Situations in International Law. Reconciling Effectiveness, Legality and Legitimacy*. 2006
ISBN 90-04-14939-2
56. L.A. Khan: *A Theory of International Terrorism. Understanding Islamic Militancy*. 2006
ISBN 90-04-15207-5