4 International Humanitarian Legal Standards and the Principle of Global Ethics in the War on Terrorism

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The philosopher Jean-François Revel has said, "The ideologist twists the neck of reality to suit his ideologies, whilst the seeker of truth gives up his ideologies to understand reality." Revel's insight is worth pondering in the midst of the war on terrorism, because terrorism is at once about ideology and reality. Likewise, the place of law and norms in international politics is also a matter of ideology and reality. It is the nexus of the two that should particularly concern us today.

Since September 11, 2001, a quantum leap has occurred in our shared vulnerability and shared consciousness. We inhabit "one world and ten thousand cultures." However, unless the various actors, including the United Nations, non-governmental organizations, transnational corporations, civil society, and individuals, are given the opportunity to be understood, and unless lateral thinking develops between these many and varied entities, multilateralism will inevitably fall to unilateralism, both in ideology and in reality.

Law is critical to the articulation of an effective multilateralism. According to UN under-secretary-general for legal affairs, Hans Corell, "International law is theoretically about justice and the rule of law but, more immediately, it is about accommodation, not just political accommodation but accommodation of principles and values based upon the interrelationship, or interexistence, of humankind."[1] Here, ideology meets reality in a constructive sense, so that in this context, the United Nations is a necessary institution in world politics, which is, by nature, multilateral. Bulldozing this institution endangers sacrificing universalism at the altar of rogue imperialism.

Law and the War on Terrorism

The world's major faith traditions share the belief that the use of armed force may only be justified in self-defense, on behalf of a grave cause, as an option of last resort, and even then subject to strict limitations. Restarting the dialogue in international law is fundamentally about preserving the universality of the human values and ethical traditions that world religions have long championed and promoted.

In Islam, it is clear that the Qur'an is a pluralistic scripture, affirmative of other traditions as well as its own.[2] It is not only in the "West" that many are asking why it is that the understanding of the Divine is often distorted through the prism of violence.[3] Muslim jurists have historically reacted sharply

1. Hans Corell, "Developing the Rule of Law among Nations: A Challenge to the United Nations," The Steinkraus-Cohen International Law Lecture, London, July 7, 2003.

2. Karen Armstrong in *The Guardian,* June 20, 2002.

3. Akbar S. Ahmed, "Islam and the Rest of the World," speech to the Muslim Council in Washington, D.C., 2003.

against groups that were deemed enemies of humankind.[4] Those groups were designated as *muharibs* (literally "fighters") who spread terror in society and were not to be given refuge by anyone at any place. According to Khaled Abou el Fadl, Muslim jurists have historically argued that any Muslim or non-Muslim territory sheltering such a group is hostile territory that may be attacked by legitimate, mainstream Islamic forces. Most important, these doctrines were asserted as religious *imperatives*. Regardless of the desired goals or ideological justifications, the terrorizing of the defenseless was recognized as a moral wrong and an offense against society and God.

The debate within Islamic intellectual circles about the appropriate Islamic response to terrorism has also placed the question of suicide bombings at center stage. Authors such as Sohail Hashmi, for example, have discussed challenges to two fundamental principles of Islamic ethics: the prohibitions against suicide and the deliberate killing of noncombatants.[5] Suicide for any reason has been strongly condemned throughout Islamic history, and its practice is extremely rare in Islamic societies. In the context of war, however, the line between suicide and combat is often extremely fine and easily crossed. Nonetheless, Hashmi contends, the Prophet Muhammad sought to draw a clear line separating martyrdom in battle from suicide: "The Muslim fighter enters battle not with the intention of dying, but with the conviction that if he should die, it is for reasons beyond his control. Martyrdom is the Will of God, not humans."

Others have been even more Islamically unequivocal, stat-

4. See Khaled Abou el Fadl, "Islam: Images, Politics, Paradox," *Middle East Report* 221 (Winter 2001), in *Islam and the Theology of Power* (Los Angeles: UCLA Center for the Study of Religion, 2001).

5. Sohail H. Hashmi, "Not What the Prophet Would Want: How Can Islamic Scholars Sanction Suicidal Tactics?" *Washington Post*, June 9, 2002.

ing that the "religion" of Osama bin Laden has more in common with movements that arise out of a "cultic milieu," or "a parallel religious tradition of disparaged and deviant interpretations and practices that challenge the authority of prevailing religions with rival claims to truth."[6] The latter interpretation of jihad legitimizes violence and terror as a theological imperative—jihadism. Illusions thus come to dominate reality as sloganism takes hold among sections of disenfranchised and disgruntled populations.[7] Amid such an ideational reality, Ziaddun Sardar argues that "a persuasive moral God is replaced by a coercive, political one."

At the political level, the September 11 attacks have been described, among other things, as a violation of Islamic law and ethics. Neither the people killed or injured nor the properties destroyed qualified as legitimate targets in any system of law, especially Islamic law. That position was reinforced by public statements and communiqués, such as the Final Statement of the Emergency Conference of Islamic States' Foreign Ministers in Doha, Qatar, a month after the atrocities.

At a more fundamentally grassroots level, it is difficult to disagree with Muslim commentators, such as Sayyid Rida al-Sadiq: "One of the most painful spectacles for any principled Muslim to behold these days is that of enraged Muslim sentiment being paraded as Islamic 'Jihad.'" Indeed, it is paradoxical that "those who are most fanatical about the forms of the religion end up violating those very forms themselves: suicide and mass murder are alike illegal in any school of Islamic law.

6. Jean E. Rosenfeld, *The Religion of Usamah bin Ladin: Terror as the Hand of God* (Los Angeles: UCLA Center for the Study of Religion, 2002).

7. Khalid S. al-Khater, "Thinking about Arab-American Relations: A New Perspective," *MERIA* 7, no. 2 (June 2003).

A slippery slope leads from religious formalism to sacrilegious fanaticism."[8]

We cannot ignore the internal challenges that give rise to fanaticism. Lack of political freedom in many Muslim countries undercuts Islamic-Western engagement in numerous ways—from the restrictions it places on media and citizen activism to the ways in which it limits the full expression of the diverse views and cultures that exists in Muslim countries. This is one reason that Muslims *in* the West are a key to cultivating meaningful engagement and mutual respect. It also serves as a reminder of the importance of *intra*communal dialogue in Muslim countries.[9]

The relationship between Islam and Western international law has been uniquely affected by the terrorist attacks of September 11 and the subsequent consecutive "liberations" of Afghanistan and Iraq. But Islam is not a geopolitical entity. It is a universal message capable of integration with diverse and very different cultures, including American and European cultures. When we put aside the idea of a "clash of civilizations" and begin to examine religion, we find widespread agreement on principles and humanitarian aims, especially among the three great monotheistic faiths. Bridges of understanding need to be established between Muslim countries and the West, with emphasis on education, media, and young people. There is an urgent need to communicate about America to the Muslim world and for Americans to gain increased understanding of Muslim cultures. This must not to be done in the form of propaganda disguised as educational outreach. It should instead be done positively, honestly, and seriously, at a level

8. Sayyid Rida al-Sadiq, "At War with the Spirit of Islam," *Dialogue* (London) (August 2003).

9. Report of Partners in Humanity Working Meeting, Amman, Jordan, July 26–29, 2003.

fully commensurate with the challenges of the post–September 11 world—a world that has brought to the fore an array of complex issues relating to citizenship, foreign policy, and civil and political rights.[10]

In the aftermath of September 11, the overwhelming majority of Muslim individuals and organizations condemned the attacks unequivocally. Yet, in the minds of many Muslims in the West, a clear distinction was felt between the unacceptability of the act itself and the very genuine grievances it purported to represent. The media, however, and some leaders (notably Silvio Berlusconi of Italy and Margaret Thatcher of the United Kingdom) tended, in some cases, to blur the distinction. For the Muslim community, the immediate fallout from the attacks was dual: On the one hand was the community's explicit condemnation of the attacks. On the other was the fact that this community still faced a kind of public inquisition over its loyalty to the state, which later fed into the rekindling of debates relating to civil liberties. In polarized settings, social solidarity, the cornerstone of citizenship, may be embedded in racial—not civic—networks, affecting the way the public domain is governed.[11] This, one would argue, applies at both the international as well as the domestic level of policy making.

Do we want the world to collapse into a Hobbesian state of nature, which, if one believes humanity to be essentially good, is an unnatural state of affairs? That is the fear if multilateralism fails to hold sway against unilateralism in international law and order. Alongside the strident voices of the hawks in

10. Sayyed Nadeem Kazmi, "Educational Outreach in Muslim States: Implications and Responses," *The Conflict, Security and Development Group Bulletin*, Department for International Development, London (March–April 2002).

11. United Nations Research Institute for Social Development (UNRISD) Conference on Racism and Public Policy, September 3–5, 2001, Durban, South Africa.

Washington, crying for broader strikes against perceived targets in the Middle East, other voices are calling for more measured and culturally sensitive approaches that will provide security for the future—the "soft security" of human dignity, self-worth, and confidence. For instance, a Council on Foreign Relations report concluded that the long-term vision for Iraq, among other things, should "welcome the fullest possible involvement in peacekeeping, reconciliation, and reconstruction efforts by multilateral organisations, such as the United Nations, neighbouring states (especially the Arab world), non-Arab Muslim countries, and other Western partners."[12]

Amid what appears to be an increasingly hegemonic vision for the new world order, it is refreshing and consoling to see many in the United States paying heed to the purposes and principles of the UN Charter, which offers a multilateral approach to the challenges confronting international peace and security, emphasizing development of friendly relations and achievment of international cooperation in a variety of fields. It is during these windows of rational reflection in Washington that one might recall that the United Nations, the international institutions, and the system of alliances and treaty relationships formed in the aftermath of World War II were achieved in large part because of American leadership and engagement.[13] Those institutions and alliances succeeded not because of any specific threat that had emerged but because of a genuine spirit of international cooperation and respect. Isn't it time for all to comply with international laws and norms? A culture of compliance is necessary for our trou-

12. Edward P. Djerejian and Frank G. Wisner, *Report of the Independent Working Group*, under the auspices of the Council on Foreign Relations and James Baker III Institute, Washington, D.C., January 23, 2003.

13. Robert T. Grey, Jr., "Warmongering without Representation: Unilateralism Is Not the American Way," *San Francisco Chronicle*, January 15, 2003.

bled world. Any attempt to change the existing laws and norms should come from within the world's cultures, not from without.

American Realities

Today, American leadership appears to operate within a matrix of fear and isolation, resulting in unilateral militarism and cultural disengagement that are reflected in the passing of Resolution 1373 on September 28, 2001, as a direct response to the events of September 11. That resolution, which essentially accepted the American interpretation of terrorism and support for terrorism, was oblivious to the many far-reaching repercussions and unintended consequences of a measure whose ad hoc nature has since been questioned by human rights organizations, bodies, and personalities. One certainly cannot build good international law in a crisis atmosphere. Nowhere are the repercussions of such an international response (multilateral in ideology, unilateral in reality) more apparent than in the Middle East, where American strategic and economic interests have been articulated through President George W. Bush's proposed Middle East Free Trade Area and Middle East Partnership Initiative "to bring the Middle East into an expanding circle of opportunity."[14]

Expanding circles of opportunity in the Middle East is an exercise in futility as long as U.S. strategy in the region continues to operate according to the priorities of oil and security as opposed to humanitarianism. By 2020, the United States is expected to consume an additional 7.4 million barrels of oil per day, reaching approximately 27.5 million barrels per day (about 24 percent of the world's estimated daily consumption of approximately 112 million barrels per day). It is forecast

14. The quote is from President George W. Bush's speech of May 9, 2003.

that with the continued slow decline of U.S. domestic production over this period, the United States will become gradually *more* dependent on imported oil over the next twenty years.[15]

To articulate a positive vision for all, but to ignore one's own responsibilities to bring that vision about, is perhaps what leads some observers, like Javad Zarif, Iran's ambassador to the United Nations, to argue that Washington is "confusing unilateralism with leadership."[16] Zarif's position is that U.S. hegemonic ambition ignores "our common vulnerability to threats which require close cooperation among members of the international community." Some Americans have taken a similar approach. Senator Joseph Biden has aptly warned that foreign policy cannot be conducted at the extremes:

> What we need isn't the death of internationalism or the denial of stark national interest, but a more enlightened nationalism—one that understands the value of institutions but allows us to use military force, without apology or apprehension if we have to, but does not allow us to be so blinded by the overwhelming power of our armed forces that we fail to see the benefit of sharing the risks and the costs with others. We have to understand and be willing to accept that giving a bigger role to the United Nations and NATO means sharing control. The truth is that we missed a tremendous opportunity after 9/11 to lead in a way that actually encouraged others to follow. We missed an opportunity, in the aftermath of our spectacular military victory, to ask those who were not with us in the war to be partners in the peace.[17]

The irony, particularly in the context of the ideology/reality

15. J.A. Russell, "Searching for a Post-Saddam Regional Security Architecture," *MERIA* 7, no. 2 (March 2003).

16. H.E. Javad Zarif, "Indispensable Power: Hegemonic Tendencies in a Globalized World," *Harvard International Review* (Winter 2003).

17. Senator Joseph Biden, "National Dialogue on Iraq + One Year," The Brookings Institution, Washington, D.C., July 31, 2003.

dichotomy, is that while the United States sees itself as supporting freedom from oppression, in the region itself, the United States is, as Soumaya Ghanoushi has put it, "widely regarded by many . . . as a crucial obstacle in [the] struggle for freedom from oppression."[18]

The European Perspective

The European Union has recognized both the link among development, poverty, and conflict and the role of development cooperation in conflict prevention: "Violent conflict causes massive humanitarian suffering, undermines development and human rights and stifles economic growth."[19] Moreover, one might recall the 1999 Hague Appeal for Peace, which is dedicated to "the delegitimization of war, seeking to refocus on a world vision wherein violent conflict is publicly acknowledged as illegitimate, illegal, and fundamentally unjust." To ensure that conflict prevention and peace-building form a central part of development policy, the EU declares that it is important that the issue be further "mainstreamed" within EU policy.

The United States should perhaps follow the EU example in developing and integrating a civilian crisis management capacity in the Middle East. From a peace-building perspective, more attention certainly needs to be given to linking crisis management with longer-term conflict prevention strategies. In the Middle East, in particular, what is needed is a code of conduct, a "partnership for peace," an Eastern Mediterranean Treaty Organization, or perhaps a Middle Eastern

18. Soumaya Ghanoushi, "The Origins of Extremism: Theology or Reality?" *Islam* 21 (London) (December 2001).

19. "Ensuring Progress in the Prevention of Violent Conflict," priorities for the Greek and Italian EU presidencies 2003, April 2003.

version of the Organization for Security and Cooperation in Europe (OSCE).

An articulation of the relevant agenda for any such organization would include the need for a WMD-free zone; a clear definition of terror (both state and nonstate); concrete steps, adequately funded, to redress both manifestations and causes of terror; a humanitarian Marshall Plan (as opposed to a "martial" plan, the likes of which we still see in so many postconflict arenas); transparency guaranteed by government, with a focus on poverty alleviation; education; and interactive citizens' media whereby the people of the region can promote their own dialogue.

If the European Union is dedicated to true multilateralism and appreciates the impact of "soft power" in today's world, perhaps it will lead such a new architectural effort.

Breaking the Political Economy of Despair

As a member of the group of advisers to the UN Dialogue of Civilizations process, I was struck by the aptness of the phrase "the indignities of the 1990s." The aim was, of course, to counterbalance those indignities by creating a paradigmatic shift in our ideas about where we, as humanity, are and how we wish to move forward. Also, as a member of the high-level panel charged by the UN secretary-general to work with the high commissioner for human rights to follow up on the action plan of the 2001 World Conference against Racism, I believe this could be done by following "a humanitarian vision based on an 'ethic of human solidarity,' stressing the centrality of human dignity, respect for diversity and the importance of effective measures of protection for civilians," as emphasized by this panel. "A possible way to achieve this could be through the development of a 'Racial Equality Index' similar to the

'Human Development Index' developed and used by the United Nations Development Programme."

Perhaps thinking globally and acting regionally—which requires a sharing not only of ideas but also of the instruments and tools, including international law, that make such cooperation viable and successful—will help shift not only our entrenched ideological positions but the reality as well. The overemphasis on the military dimension has, in the past, given rise to what may be termed the political economy of despair. My late brother, His Majesty King Hussein, put it this way at Sharm el-Sheikh, Egypt, in 1996:

> The murder and torture of innocent people is not exclusive to one race or nation or to followers of any one religion. It is vital therefore that terrorism be tackled at the international level in a multilateral way, and not in a gung-ho partisan manner. Thus, there is an urgent need to develop a universally acceptable global ethic of human solidarity in which the term "ethics" ought not to be limited to the moral aspect only, but also cover the common sociocultural values that are universal and which have stood the test of time. Implicit within this ethic of human solidarity is the requirement for an overarching matrix of International Humanitarian and Human Rights Law.

The question is, will Washington limit itself to a merely punitive agenda to treat only the symptoms of crisis in the Muslim world? In the international coalition at this time, Muslim countries have to take the initiative and attempt to provide a solution rather than just follow America or Britain. The Organization of the Islamic Conference condemned the September 11 attacks but linked the fight against terrorism with the Palestinian situation. One cannot deny the centrality of Palestine to the wider question, but the Muslim world needs to build a coalition among its own states that will twist

the neck of current reality by moving toward the creation of integrated strategies that will delegitimize the terrorists, drain the proverbial swamp, *and* deal with its root causes. As seekers of truth, we owe future generations the legacy of a new reality based on global commons.