STRATEGY RESEARCH PROJECT

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THE WAR ON TERRORISM AND CLASSICAL ISLAM

BY

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ABSTRACT

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With the leveling of the World Trade Center in New York City on September 11, 2001, the "War on Terrorism" officially began. This "war" will likely pit the United States against states, organizations, and individuals that adhere to, or will adopt for political purposes, a traditional view of Islamic law.

This paper will discuss international Islamic law as it pertains to armed conflict, concentrating on the classical form, often associated with Islamic fundamentalism, which believes there are only three options for non-Muslims: accept Islam, be subject to a jihad or holy war, or pay a poll tax. While the classical form is not the prevailing view of modern Islam, there are states, as well as non-state actors and organizations that adhere to or "adopt" these beliefs to further their objectives. This paper will demonstrate that this classical Islamic law poses a number of challenges to the United States military's involvement in the "War on Terrorism". First, it will show the need for the United States to consider fundamental Islamic law when employing military force. Second, the United States will need to understand how prisoners of war and non-combatants will be treated by states and organizations that follow classical Islamic law. Third, this paper will demonstrate a need to incorporate Islamic law into our operational law training.

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PREFACE

A complete analysis of Islamic International law is not possible in a paper of this length. Between the four legal schools of thought for the Sunni Muslims, and the differences between the Sunni and Shi'ite Muslims, the vast nuances of Islamic law are beyond the scope of this paper. This paper focuses on the classical approach to Islamic law, and it's impact and relevance in the United States' war on terrorism. Some would argue that this ignores centuries of history. That, to some extent, is true; but Muslims have struggled for centuries to reconcile the mandate of divine law with the reality of living in a world dominated by secular governments. While no Muslim state strictly follows classical Islamic law, there is increasing pressure on secular Muslim governments to return to a more classical or fundamental legal system. Moreover, extreme Muslim states and terrorists adhere to a more classical approach to Islamic law. With the advent of international Muslim terrorist organizations and the pressure that many secular Muslim governments are receiving from fundamentalists, it can be argued that this classical version of Islamic law may be the most relevant for the United States' war on terrorism. Further, since in the Islamic faith law flows directly from the God, it can also be argued that any true Muslim must follow classical Islamic international law, as contained in the siyar—the law of nations.

THE WAR ON TERRORISM AND CLASSICAL ISLAM

> And the world has come together to fight a new and different war, the first, and we hope the only one, of the 21st century. A war against all those who seek to export terror, and a war against those governments that support or shelter them.
>
> —President George W. Bush

> We kill the kings of the infidels, kings of the crusaders and civilian infidels in exchange for those of our children they kill. This is permissible in Islamic law and logically.
>
> —bin Laden

The horrific events of September 11, 2001, changed the way the United States responds to terrorism. In the words of Secretary of State Colin Powell, we are now using "all the tools in the toolbox." One of these tools, rarely used to any great extent in the past, is the United States military. After fixing responsibility, America and its coalition partners struck back on October 7, 2001 against al-Qaeda and its host—the Taliban government of Afghanistan. After the United States' strong response to September 11th, the rhetoric and acts of terrorism from Islamic fundamentalists continue to target the United States and other states supporting the war on terrorism. Their calls for jihad, or holy war, are not new; however, the events of September 11, 2001, and the accompanying response by America and its partners make these threats all the more real to the American people, its government and military.

In the United States' war on terrorism, there may be many sets of rules for our opponents. Some may be signatories to international treaties, such as The Hague and Geneva conventions, and honor those commitments. Others, out of conviction or for political expedience, will adopt a classical Islamic law approach to armed conflict; while Muslim terrorists will likely follow a third set of rules that will, based on tactics employed in the past, not resemble the western principles of just war, nor the concept of Islamic jihad. The United States is familiar and comfortable with opponents that follow the Law of Land Warfare. In this war on terrorism, we will need to understand the latter two entities.

The United States faces many threats from extremist groups who claim religion—Christianity, Judaism, or Islam—justify their actions. However, recent non-domestic events have focused our attention on Islam, and Muslim terrorists' calls for jihad. The use of this classical Islamic term tells the West that they intend their conduct to be judged under Islamic

law, as opposed to what fundamental Islam views as the West's international humanitarian law. This means that the rules of the game have changed, as demonstrated by Iran's holding American hostages in 1979, Saddam Hussein's call for a jihad against the West and his treatment of prisoners of war during the Gulf War, and the indiscriminate attacks against civilians in the World Trade Center. To effectively wage this war on terrorism, the United States must understand what motivates its opponent and the underlying basis for its actions.

In 1991, in the Khartoum, Sudan, Islamic leadership from 55 countries met to map out a strategy for the future of Islam within their respective countries.[1] The manifesto they issued following their conference provided some lip service to the idea of cooperating with the West and secular Muslim governments, but the underlying message was clear—when battling the West, and forces opposed to fundamental Islam, the ends justify the means.[2] The "means" used in battling the West have included, and will continue to include, the use of extreme Muslim organizations and terrorists.[3]

The State Department has identified seven countries as state sponsors of terrorism, and over 171 terrorists and terrorist organizations.[4] What binds many of these terrorist entities together is their religion, Islam.[5] This religious element is part of a new and transformed terror. Its predecessors fought their causes at a regional level for nationalistic or idealistic objectives.[6] While the tactics may be the same, this new terror is now global, and has moved from a secular to a religious foundation.[7] "The new terror has no borders, no front, no clear ideology, no state, no government, and no physical structure."[8] These new terrorists include Muslim terrorists that exploit classical Islamic law—by their calls for jihad—to justify their actions. From the recently converted Saddam Hussein's call for an Arab nationalist type of jihad during the Gulf War,[9] to Osama bin Laden's call for genocide against all Americans, wherever they are found, Muslim terrorists are promoting the idea of holy war against the West.[10] This call enjoys popular support with many Muslims who see the West as responsible for societal ills and seek to a return to fundamental Islamic values.

For many Muslims, the failures and defeats in this world can only mean that they are not practicing authentic Islam and their states are not true Islamic states.[11] Therefore, the answer to societal ills in the Muslim world is an abandonment of secular government and a return a true Islamic state, where God's law is supreme. Islamic law flows directly from God. Therefore, it is the supreme law for all of Islam, and for that matter the world. Since this law is divine, it cannot be "repealed or abrogated, supplemented or amended."[12] Muslim states are increasingly turning from secular law to Islamic law, either out of strong religious convictions, or simply for political expediency (i.e. to retain power and gain popular support). Thus, the *dejure*

requirement of following International Humanitarian law may well be replaced by a *defacto* use of classical Islamic law. Bernard Lewis summarized the pressure on Muslim states:

> In virtually every country in the Islamic world, as well as among Muslim minorities elsewhere, there were powerful and passionate movements of Islamic resurgence. Some of them were sponsored and directed by governments, as instruments of state policy; others—including some of the most important—arose from below and drew their strength from the mass of the common people. But all of them were driven by the same feelings of revulsion against the West, of frustration at the whole new apparatus of public and private life, inspired by or derived from or mimed after Western originals, and all of them were drawn by the same vision of a restored and resurgent Islam, through which God's law and those who uphold it would prevail over all their enemies.[13]

This paper's focus on the classical view of Islamic law ignores centuries of Islamic conduct in armed conflict. Focusing on classical Islamic law also discounts the fact that a number of Muslim countries, including some hostile towards the United States, are signatories to the same humanitarian conventions that the United States has signed, and that customary international humanitarian law will apply to any state that violates it, regardless of their religious beliefs. Glossing over these facts is not an attempt to demonize the Islamic faith, or sensationalize the war-like tendencies of early imperial Islam. Rather, it is an attempt to shed some light on how extremist, or fundamentalist Muslims, or Islamist—whichever term is most appropriate—whether they come in the form of non-state actors, like Osama bin Laden and his terrorist network, or in the form of a state facing the wrath of a United States led military coalition, are likely to conduct themselves during this war on terrorism.

CLASSICAL ISLAM *JUS AD BELLUM*[14]

The rise in Islamic fundamentalism[15] has had far reaching consequences in both the "Islamic" and "secular" states in the Muslim world. In Muslim states, there is a call from the general population for a more Islamic society and state. One by one, Muslim heads of state are receiving pressure to become more Islamic.[16] "In some, like Egypt and Jordan, [Islamic fundamentalists] are kept under uneasy restraint. In others, as in Algeria, they have been ruthlessly repressed. In two, Iran and Sudan, they have won power."[17] Samuel Huntington refers to this movement as "Islamic Resurgence" that touches upon all aspects of Muslim society—intellectual, cultural, social and political.[18] Inherent in this "rededication to Islam" is a

call to renounce secular "Western" style laws and return to Islamic law—the sharia or path of God.[19]

Islamic law divides the world into two spheres: the *dar al-Islam* (territory of Islam) and the *dar al-harb* (territory of war).[20] Under Islam, true world peace cannot be achieved until the *dar al-harb* is brought into the *dar al-Islam*. The *dar al-harb*, by definition, is the "sphere of war, disorder, and injustice."[21]

For Muslims all law flows from God and his Prophet, and, therefore, is divine and superior to any system of laws devised by man. At the core of this law is the concept of Islamic universalism. Failing to achieve this divine mandate required Muslims to find a way to interact with the non-Muslim world.[22] This was achieved through the siyar—the international law component of the sharia. The siyar was intended as a temporary legal device that would be used only until Islamic hegemony could be secured.[23] Centuries later—with Islamic hegemony not coming to fruition—the siyar has become a permanent part of classical Islamic law.

The siyar differs from Western, secular law in that it is an integral part of Islamic divine law, not a separate body of international law.[24] It is a component of the Sharia (Islamic divine law), which is composed of the Koran (Islam's holy book); the Sunna (customs, teachings and examples of the Prophet Muhammad); treaties entered into between Muslims, public issued orders to commanders from the Prophet's early successors, the Caliphs; and the opinions of great Muslim jurists.[25] Since the need for the siyar arose through conflict and war, it is largely a text about how Islam conducts itself during times of war. "The siyar is thus a specialized set of traditions and commentary on the conduct of war and affairs of state by the early, and—by virtue of their proximity to the Prophet—the rightly guided, Muslims."[26]

In classical Islamic law and polity, the state of relations between the Muslim world and the non-Muslim world is one of continuous conflict, for the ultimate and perfect society can only be achieved with Islamic hegemony.[27] The vehicle used to accomplish this religious mandate is jihad.[28] The Arab word "jihad" means to strive in the path of God.[29] This is accomplished by the heart, tongue, hand, and sword.[30] To strive or exert by the heart, tongue or hand is consider a major jihad; by the sword, a minor jihad.[31] Upon his return from battle, the Prophet Mohammad told his followers that they had just return from a lesser jihad. He then told his followers that it was time to engage in the greater jihad—that of the heart, tongue and hand.[32] However, it is the lesser jihad, commonly referred to as holy war, which concerns the United States, since terrorists and state-sponsors of terrorism have repeatedly used the term.

In classical Islamic thought, offensive jihad is the spread of Islamic faith by means other then persuasion or example.[33] Tradition in early Islam called on the Caliph (successor to

Muhammad) to wage offensive jihad at least once a year to expand the *dar al-Islam*.[34] Scholars of the classical school of Islamic law believe offensive jihad can only be waged when properly authorized. In modern times, an offensive jihad arguably cannot be invoked due to the secular nature of nation states, and the fragmentation of Islam.[35] Offensive jihad envisions a single Islamic state, with one Caliph at the top with the authority to call for jihad. The reality is that Islamic hegemony has never been achieved and the position of Caliph was abolished in 1924 with the fall of the Ottoman Empire.[36] While experts debate the authority to wage offensive jihad, most agree, under classical Islam, that defensive jihad is possible.[37]

While offensive jihad is a collective duty of Muslims when properly authorized by the Caliph, defensive jihad is an individual responsibility of every Muslim whenever the faith or territory of Islam is threatened. Each Muslim has the authority to wage jihad to return the *dar al-Islam* to a state of peace.[38] When the *dar al-Islam* is threatened, defensive jihad requires an increased effort by all Muslims. Thus, to speak in terms of defensive jihad also adds a sense of urgency to the jihad, and serves as a powerful tool for Muslim leaders seeking to rally popular support.[39]

For the Islamic states, the use of defensive jihad is similar to the right to self-defense under Article 51 of the United Nations Charter.[40] In fact, if the defensive jihad is waged strictly in defense of the existing borders of a Muslim state, such action could also be justified under the United Nations' Charter. However, due to Islamic resurgence, many Muslim leaders will prefer to wage war as a jihad to add religious legitimacy to the war effort. Moreover, a defensive jihad by its very nature will garner support from other Islamic nations, Muslims and Muslim terrorists.[41] Since the *dar al-Islam* is under attack, this defensive jihad becomes every Muslim's responsibility.

JUS AD BELLUM OF STATE ACTORS

Clearly, a Muslim state, like all states, has a right to defend itself. Whether jihad or the United Nations' Charter is used, the result is the same. However, the term jihad has come to be associated with terrorists and their state sponsors. Westerners envision fundamentalist Muslims calling for jihad against the West, Zionist and colonialist. While not entirely accurate for a majority of Muslims, this view has, nonetheless, been aptly earned by state-sponsors of terrorism. These self–proclaimed "men of God" need religious authority to wage their war against the West. Lacking the authority to call for an offensive jihad, contemporary Muslim terrorists must speak in terms of defensive jihad to achieve any level of religious authority for their cause. Is there actual authority for these calls for defensive jihad or is this simply a

perversion of Islamic law? Modern jurists, who look at how Muslim states have conducted their affairs in modern times, would claim that it perverts Islamic law.[42] However, for fundamentalists that use classical Islam for justification, authority can be crafted to meet their needs.

Fundamentalists cite a number of reasons for defensive jihad. These reasons could include the actual physical defense of Muslim land, the removal of secular (Western) influence, or to reclaim lost land of the *dar al-Islam* (i.e. Palestinian efforts in Middle East). The duty of defensive jihad has been interpreted to include territory that has been in the *dar al-harb*—in some cases for centuries—that was once in the *dar al-Islam*.[43] Considering the great territory that was possessed by imperial Islam, this is a large portion of North Africa, the Middle East and Europe.[44]

Recent conflicts involving Muslim states clearly show the reliance on classical Islamic law. In some cases, it is used because of legitimate religious conviction. In others, it is used for political expediency and to gain popular Muslim support. When the threat is serious, or if it comes from the West, the likelihood that Islamic law will be invoked is greater. Khomeini claimed the war with Iraq was in defense of Islamic territory against the secular Saddam Hussein [defensive jihad], rather than saying he had the right to defend his territory under Article 51 of the Charter of the United Nations. Saddam Hussein was characterized as a Muslim who had strayed from the faith—an apostate—so as to not offend the Muslim population of Iraq.[45] Ironically, in the Gulf War, when Saddam Hussein found himself opposite an international boycott and a large military force, this secular leader quickly became a devote Muslim and called for jihad.[46] Hussein's form of jihad combined elements of classical Islam, along with a call for Arab nationalism, in an effort to appeal to secular Arab nationalists, while still enjoying the support and potential havoc that could be brought by Islamic terrorists.[47] In his conduct of war, it was clear that he had no intention of fighting by international standards. While in Hussein's case, it may have had more to do with his character than his reading of classical Islamic law, the result is still inconsistent with international law. Whether jihad is stated or implied, when faced with a threat from the military power of the West, Muslim states, out of conviction, expediency, or force of popular Muslim opinion, will likely turn to Islamic law.

JUS AD BELLUM OF MUSLIM TERRORIST ORGANIZATIONS

There is no shortage of terrorist organizations that wish America harm. The State Department lists over 170 organizations and individuals that either engage in terrorism or support terrorists.[48] In the list compiled on September 23, 2001, six of the first ten listed terrorist organizations have the word "Islamic" or "Jihad" in their title.[49] State sponsors of terrorism

support these organizations.[50] Estimates have Iran's annual support to terrorism at $75 million, while less wealthy countries, like Sudan, provide terrorist training camps.[51] So why do these terrorist organizations hate the West, and the United States in particular?

Technology and its accompanying globalization have meant greater wealth and influence for Western countries. This, in turn, has caused fundamentalist Muslims to feel that they are again being subjected to colonialism and political domination. More and more, in their view, the world is forced to play by the rules established by the West. "Rather than controlling their own destinies, they have seen their laws, political structures, and social customs eroded and supplanted by Western influences."[52] They see the West as an evil force that has "invaded" the *dar al-Islam*, by inflicting Western culture upon Islam, and stationing military forces on Islamic land. Many Muslims feel a need to return to fundamental Muslim values. Bernard Lewis stated this desire as follows:

> Since for Muslims Islam is, by definition, superior to all other faiths, the failures and defeats of Muslims in this world can only mean that they are not practicing authentic Islam and that their states are not true Islamic states. The remedy, therefore, is a return to the pure authentic Islam of the Prophet and his Companions, a rejection and elimination of the accretions and innovations that had debased and corrupted the faith and enfeebled the Islamic society, making it incapable of resisting its external enemies.[53]

These fundamentalists, often referred to as "Islamist", are committed to removing secular governments in Muslim countries and replacing them with their understanding of classical Islamic rule and law.[54] "The Islamist proffered al-dawlah al-Islamiyya (Islamic state) as the true alternative to the nation-state, which was seen as an alien concept adopted from the West and imposed by Western powers."[55] In the past, leaders of Muslim countries have attempted to "Westernize" their societies, by adopting the West's laws and culture. However, in the last quarter century, as Samuel Huntington has opined, such a person would be a "lonely figure".[56]

Fundamentalists view any Muslim country that has adopted Western culture or laws—called innovations and seen as a form of apostasy—as a threat to Islam.[57] When considering the presence that Western states have in the Muslim world, the opportunities for "defensive jihad" to expel the West, or fight Muslim heads of state who have adopted any form of Western culture, is overwhelming. Saudi Arabia has been targeted by Muslim extremists for allowing the basing of United States military assets in its country. The fact that Saudi Arabia is home to the

two holiest cities in Islam—Mecca and Medina—makes this situation even more urgent to fundamentalist Muslims. Moreover, Muslim states are targeted for following Western secular law, rather than the Islamic law. This pressure has prompted traditional secular states, such as Egypt and Turkey, to incorporate aspects of sharia law into their legal codes. Using classical Islamic law to justify their actions, Muslim extremists seek to quiet the *dar al-harb*, evict the Western invaders, and cleanse the apostate Muslim rulers. With such a broad mandate, the potential targets for fundamental Islam's defensive jihad are without limits.

Terrorists preach that it is an individual Muslim duty to remove Western influences in all forms. Terrorists target both the West, for inflicting its values on Muslim countries, and the heads of secular Muslim countries, for going along with the West and ignoring the lessons of the Koran and Sunna. Terrorists use defensive jihad terminology to get around the requirement that only the Caliph can call for jihad (offensive). Since the defense of Islam is an individual Muslim's duty, requiring the supreme effort to fight against those that would harm the faith or the territory of Islam, the terrorists are justified in using violence. The fact that terrorist organizations are not signatories to international humanitarian treaties, coupled with their total disdain for secular law, the supreme effort can include just about any tactic that can be imagined—even the unimaginable tactic of flying planes into large buildings.

In at least one case—the Iranian revolution—a non-state actor successfully used the language of classical Islam to rise to power. During the 1979 revolution in Iran, the Ayatollah Khomeini claimed to defend Islam by overthrowing the Pahlavi dynasty, claiming that the shah had allowed a hostile take-over of Iran by the United States.[58] Words like "defend" and "hostile take-over" made this "defensive jihad" the responsibility of every Muslim.

CLASSICAL ISLAM *JUS IN BELLO*[59]

The rhetoric from the fundamentalists continues to cite classical Islamic law as a basis for conflict with the West. When considering the classical period—from the life of the Prophet to the Middle Ages—Islamic law in war was arguably more humane than Western law.[60] However, as compared to contemporary international humanitarian law, classical Islamic law does not rise to contemporary standards. Under international humanitarian law, numerous treaties and customary international law govern armed conflict between states. The Hague Convention of 1907 addresses the means and methods of warfare. The four Geneva Conventions of 1949 and the two 1977 protocols regulate the treatment of non-combatants and prisoners of war. The principles contained in these treaties are the result of years of Western thought on the concept of just war and are designed to limit the suffering inherent in War by

mandating proportionate military methods, discriminating between military and non-military objectives, and providing protections for both combatants and non-combatants.

Like Western thought on just war, classical Islamic law limits the carnage caused by war. However, the motivation for limiting the suffering caused by war and the *jus in bello* of Islamic law is not entirely consistent with international humanitarian law. Moreover, since classical Islamic law only looks back, unlike Western law that builds on the past and looks to the future, Islamic *jus in bello* has remained basically stagnant since the time of the siyar.[61] Herein lies the problem, for if any society were to look back hundreds of years to find its *jus in bello*, its conduct in war would not measure up to contemporary standards. Imagine if a European state looked to the Crusades to establish its *jus in bello*. Its resulting conduct in war, like classical Islam, would not measure up to contemporary standards. While no Muslim state truly follows classical Islamic law, with the rise of Muslim terrorists, and the Islamic resurgence, classical Islamic law may also make a comeback.

Since Muslim states adopted Western law in the 20th Century, there is very little *jus in bello* to glean from contemporary Islam. In regard to the *jus in bello* of modern Islamic states, looking to the past to predict the future can serve as a starting point. What form the actual *jus in bello* takes with future Muslim adversaries will depend how Islamic the state is; how it views its treaty obligations under international humanitarian law; and the size of the threat from the West. The larger the threat—like in a Gulf War scenario—the more likely a state will look to classic Islamic international law to justify actions that may be inconsistent with international treaties and customary international law.

TREATIES

Although all states are bound—either by being a signatory to international treaties, or by operation of customary international law—to the law of land warfare as embodied in the 1907 Hague and 1949 Geneva Conventions, when faced with a threat from the West, some states (and more likely all non-state actors) will likely invoke classical Islamic law. While Islam strongly encourages the adherence to contracts—such as treaties—the growing call by Muslims for more Islamic states may bring classical Islamic law in conflict with these treaties. Leaders of Islamic states are being forced to move from secular law to Islamic law to show their constituents that their leadership has religious legitimacy.[62]

The concept of Islamic universalism is the biggest obstacle in making the siyar compatible with customary international law. The fact that the siyar is divine law, which takes precedence over secular law, leads to potential problems in enforcing existing treaties. Some

Muslim jurists have argued that the siyar is compatible with the international law, as set out in the Statute of the International Court of Justice.[63] However, when considering fundamentalist Islam and classical Islamic law, it is difficult to reconcile the two forms of international law.[64]

The Statute of the International Court of Justice breaks down international law into four categories: 1) Treaty law; 2) Customs; 3) General Principles; and, 4) Case law and Publicists.[65] When analyzing this relationship through the lens of classical Islamic law, there are some major disparities. Disparities that in the eyes of fundamentalist Muslim states could affect the validity of the treaty. While it is true that Muslims value their contracts, believing God is a party to all valid contracts (analogous to the Western concept of *pacta sunt servanda*), the fact remains that without a unified Islamic state, there arguably is no one with the authority to enter into a treaty.[66] Further, the custom of the Prophet, which provides the authority to enter into treaties, envisioned that they would be of short duration, lasting no more then ten years, with the possibility of being extended for another ten years.[67] Moreover, since Islamic law is divine, and thus superior to all other forms of law, any inconsistency between Islamic law and International law would have to be decided (in the Muslim view) using sharia law.[68]

Considering the age of most international treaties that govern armed conflict, and the inconsistencies between classical Islamic and traditional humanitarian law, the possibility that a Muslim state would renounce a treaty obligation for religious reasons is a potential reality. In regard to international treaties, like The Hague and Geneva Conventions, Muslims following classical Islamic law could breach these "contracts" on the basis that they violate Islamic law. Since a Caliph on behalf of a unified Islam did not sign these recent treaties, they could be considered void. Moreover, treaties with non-Muslims were considered temporary measures, "subject to dissolution the moment Islam's conquest could profitably be resumed."[69]

TREATMENT OF DETAINEES

Islamic law, like its Western counterpart, provides some protection for persons detained during armed conflict. Many of the provisions are similar to the Geneva Conventions. However, there are important differences, as highlighted in recent conflicts between the United States and Muslims. One major difference is the lens in which the two versions of law view the same situation. Under classical Islamic law, enemy personnel—whether combatants or non-combatants—were considered "spoils of war" that received varying degrees of damage to their person, property and freedom, depending on the school of Islamic law that was followed.[70]

On the most humane end of the classical Islamic law spectrum, prisoners of war were "to be released without conditions, ransomed, or exchanged for Muslim prisoners held by the

enemy, or under some circumstances, enslaved."[71] On the other end of the spectrum, was the thought that all that refused the call to Islam (to convert) could be put to death.[72] The decision as to how to handle the prisoners rested with the commander of the Muslims after considering the cost and benefit to Islam and, to some extent, based on humanitarian principles.[73] Once a commander decided to kill the prisoners, the only way to avoid this death sentence was for the prisoner to convert to Islam.[74] Once a Muslim, the prisoner could not be killed, but, under classical Islamic law, he or she was still treated as booty and would most likely be returned to the *dar al-Islam* and enslaved.[75] In most cases individuals considered to be non-combatants, such as women, children, and elderly men, were also spared from death. Women were seen as the property of men, and thus received treatment more akin to property.[76] Children, it is believed, received special consideration since they had not yet reached an age where they could reject Islam.[77] However, the motivation for sparing the life of the prisoner had more to do with the benefit a slave could bring to the *dar al-Islam* than the humanitarian act of sparing a life.[78]

More troubling than the possibility of enslavement was the permissibility, under limited circumstances, for executing prisoners. While the Prophet condemned the killing of prisoners by one of his commanders, "it has been said that the Prophet himself killed prisoners" (However, it has also been said that this was only done for crimes committed prior to the start of hostilities and that combatant prisoners of war were never killed by the Prophet).[79] Further, if captives, whether combatants or noncombatants, became a burden to the Muslim army due to a lack of transportation, they should be forced to walk to the *dar al-Islam*.[80] If unable to walk, only the male prisoners were to be killed, while efforts were made to secure transportation for the women and children.[81] Again, the women and children were spared in part because of a belief that they were less of a threat to Islam, and would be of value to the *dar al-Islam*.[82] In any case, the treatment of prisoners of war in the siyar is very much akin to the treatment of property and animals. If the property can benefit the *dar al-Islam*, it is spared; if not, it may be destroyed.[83]

While we do not have a wealth of experience in how Muslim powers will treat prisoners of war in contemporary times, we have some experience from the Gulf war and can develop other scenarios based on classical Islamic law. During the Gulf War, Iraq's treatment of prisoners of war violated international law. Saddam Hussein's regime refused the Red Cross access to prisoners, reportedly used them as human shields, and publicly displayed prisoners on national television.[84] Other violations ranged from the physical abuse of American prisoners to the reported killing of Kuwaiti prisoners.[85] All these acts mentioned above are in violation of the 1949 Geneva Conventions, of which Iraq is a party.

While Iraq's conduct during the Gulf did not comport with International law, some of his actions could be justified under classical Islamic law. Hussein could claim that his seizure of private property was the legitimate spoils of war, and that the concept of a Red Cross, or protecting power is not recognized in Islamic law. "According to a frequently cited Muslim dictum, to forbid what God permits is no less an offense than to permit what God forbids."[86] In regard to the disparate treatment of prisoners, the obvious answer to this disparity is that the mistreatment of American prisoners would have resulted in a strong public outcry from the American population and the payment of a dear price vis-à-vis the American military. Even with this threat, the American prisoners were mistreated—beaten, tortured, and publicly displayed—all in violation of the Geneva Convention on the Treatment of Prisoners of War. Had the objective been the removal of Hussein, rather than the liberation of Kuwait, our soldiers could very well have received the same harsh treatment as the Kuwaitis. If Hussein had faced a serious threat to his regime, he could possibly become an even more devote follower of classical Islamic law and kill the unbelievers of the *dar al-harb*.

During the Iran-Iraq war—according to a United Nations Security Council report on prisoners of war—it was found that both Iran and Iraq violated international standards on the treatment of prisoners of war.[87] Moreover, participants in the conflict reported the murder of prisoners by both parties to the conflict.[88] In Iran's treatment of prisoners of war, disparate treatment based on religious conviction was apparent. Iraqi prisoners loyal to the Iraqi regime were dealt with much more harshly then prisoners who supported the idea of an Islamic polity (who were given special favors).[89] Other documents "confirm the execution of thousands of Iraqi POWs by the Guards Corps."[90] Further, neither Iraq nor Iran allowed the International Committee of the Red Cross (ICRC) to inspect the treatment of prisoners of war.[91]

Like Iraq, Iran's conduct in armed conflict violated international humanitarian law, but had some basis in classical Islamic law. Providing favorable treatment to more "Islamic" prisoners, while treating the Iraqi loyalist prisoner more harshly, would be consistent with the idea that Muslims should never be killed or mutilated. The reported executions, while difficult to verify due to no third party oversight, would have some basis in the most extreme classical form of Islamic international law, which allowed for the killing of all the unbelievers of the *dar al-harb*.

MEANS AND METHODS OF WAR

Similar to the law of land warfare, Islam placed restrictions on types of weapons used and how those weapons were targeted, commonly referred to as the principles of military necessity, humanity, proportionality and distinction. In his treatise entitled Kitab al-Siyar,

Muhammad ibn al-Hasan al-Shaybani relays some of the hadiths (a tradition or an account of an action or statement of the Prophet) of Mohammad that form the basis for the *jus in bello* of Islamic law.[92] "Al-Shaybani cites the following:

> He [of the enemy] who has reached puberty should be killed, but he who has not should be spared.
> The Apostle of God prohibited the killing of women.
> The Apostle of God said: "You may kill the adults of the unbelievers, but spare their minors—the youth."
> Whenever the Apostle of God sent forth a detachment he said to it: "Do not cheat or commit treachery, nor should you mutilate or kill children, women, or old men."[93]

Classical Islam also recognized the concept of double effect or collateral damage.[94] If women and children are killed during an attack on a city, the deaths of the non-Muslim children is considered the fault of those who resist Islam, while the deaths of Muslim children is consider unintentional killing and is excused.[95] While these general humanitarian principles are analogous to International humanitarian law, there are some significant differences in the specific ways they are carried out.

The general rule that a Muslim fighter shall not kill women, children or the elderly, has a number of specific provisions, based on tradition, that differ from the Geneva Conventions. Individuals in this "protected" class may be killed if they provide assistance to the enemy, such as giving advice.[96] Extreme fundamentalists, however, can find authority to kill all who reside in the enemy state. Various Islamic schools of thought have "argued that, among the polytheists, women and children were as guilty as adult men of polytheism and should also be killed."[97] Going as far as saying all inhabitants of the *dar al-harb*, who refuse the call to convert to Islam, could be killed.[98] For classical Sunni jurists, the act of killing in a jihad is justified when a people resist or otherwise stand in the way of Islamic goals.[99]

The means of war in classical Islamic law allowed for almost any available means of warfare to achieve the objectives of Islam. While Muslim jurists have opined that Islam's limitations on weapons and target were consistent with just war limitations, these limitations could be waived if to do so was in the best interest of Islam.[100] Al-Shaybani approved of the "use of arrows, lances, flooding, burning with fire, and mangonels, in situations where women and children would likely be killed."[101] In defending these means of war, Al-Shaybani stated that to limit attacks to spare the lives of women, children, and other noncombatants, would make it

untenable to "go to war at all, for there is no city in the territory of war in which there is no one at all of these you have mentioned."[102]

Even the killing of Muslims was excused as the unintended side effect of the means of war. As such, the Muslim soldiers were not held responsible for taking the life of another Muslim. This is not to say that all cities in the *dar al-harb* should be leveled. On the contrary, the concept of proportionality is followed, and only the harm required for victory should be used.[103] "But the necessities of the war effort motivated by religious considerations allow for considerable discretion."[104]

When looking at the conduct of war by Muslim states in recent conflicts, the presence of Islamic law cannot be missed, along with some of the principles of jihad under classical Islamic law. During the Iran-Iraq war, over 1,000,000 men, women and children—combatants and non-combatants—were killed.[105] During the so-called "war on cities", Iraq used over 150 Scud Missiles and Iran over 50, against population centers of little or no military significance.[106] Further, it is reported that Khomeini approved the killing of children, women and elderly men who cooperated with the "forces of evil."[107] There are also the reports of young children, without their parent's permission, being sent to war.[108] A practice only authorized in a defensive jihad. All of these actions violated international humanitarian law, while enjoying some legitimacy in a defensive jihad.

JUS IN BELLO OF MUSLIM TERRORIST ORGANIZATIONS

There is little written on the Muslim terrorist's *jus in bello*. That being said, with the push for more "Islamic" states in Muslim Countries, and the likes of Osama bin Laden calling for jihad against the West, it would be naive to not consider classical Islamic thought on war. While many terrorists and their organizations have written charters or manifestos for their organizations, they mainly deal with the *jus ad bellum*, paying little or no attention to the *jus in bello*. Hamas, the Islamic wing of the Palestinian movement, justifies their unconventional tactics based on the Jewish occupation of Palestinian lands.[109] Similarly, the Islamic Jihad, an Egyptian group responsible for the assassination of Anwar Sadat, stresses the fact that Islamic Armies have always been out numbered and, based on this fact, believes unconventional tactics are justified.[110]

From the World Trade Center to the suicide bombings at street-side cafes in Jerusalem, the terrorists continually violate the principles of military necessity, humanity, proportionality, and distinction. The Central Intelligence Agency summarized the threat's capabilities as follows:

> This perception among present and potential adversaries will continue to generate the pursuit of asymmetric capabilities against US forces and interests abroad as well as the territory of the United States. US opponents—state and such nonstate actors as drug lords, terrorists, and foreign insurgents—will not want to engage the US military on its terms. They will choose instead political and military strategies designed to dissuade the United States from using force, or, if the United States does use force, to exhaust American will, circumvent or minimize US strengths, and exploit perceived US weaknesses. Asymmetric challenges can arise across the spectrum of conflict that will confront US forces in a theater of operations or on US soil.[111]

The tactics used by terrorist organizations will not follow the traditions of just war or jihad. This presents a problem for combating terrorism since the United States, by tradition and policy, follows The Hague and Geneva conventions in all armed conflicts.[112]

In his book *Islam and War*, John Kelsay states:

> [a]s irregulars [terrorists] see it, the success or failure of their cause often depends on engaging in tactics that are beyond the bounds of the laws of war. They justify such nonconventional tactics as assassination, terrorism, and hostage taking as a way of dealing with the numerical and technological superiority enjoyed by the regular forces.[113]

Recent history has shown that small conventional forces, or even the large force employed by Iraq in the Gulf War, are no match for the West's smart weapons and air supremacy. With this lesson well learned by terrorists, they have pursued a campaign of unconventional warfare, aimed mainly at civilian populations.

Muslim extremists see the infringement from the West, and the corruption of Muslim leaders (by accepting Western ideas and laws) as creating an emergency situation that overrides the *jus in bello* requirements of discrimination, humanity and proportionality, found both in the Western and Islamic traditions of war.[114] Therefore, assassinations, hijackings and the indiscriminate killing of civilians are all justified as necessary during this "emergency situation". Considerations of humanity and discrimination are non-existent. While these tactics are strongly denounced by leading Muslim jurists, the fact remains that terrorists continue to enjoy both state sponsorship and popular support by promoting their form of jihad.[115] With this

in mind, those opposing Muslim terrorists need to have an understanding of how these groups will operate, based on their interpretation of Islamic law.

One need look no further then September 11, 2001, or watch the nightly news coverage of the events in the Middle East, to understand the *jus in bello* of non-state terrorist organizations. Women, children, the aged, and any other form of non-combatant are fair game to the terrorist. In their choice of weapons, there is absolutely no consideration given to the principles of military necessity, humanity, proportionality and distinction. Rather, the weapons and tactics employed are designed to inflict as much terror as possible, at the heart of the civilian population. In regard to the treatment of prisoners, we can only assume the worst. Colonel Charles J. Dunlap has labeled these tactics the "Neo-absolutes War", one "without rules or scruples" . . . using any available means to shatter the opponent's will, "including methods that defy recognized standards of acceptable behavior in war."[116] Terrorists from the Achille Lauro to the jungles of the Philippines have already shown that the lives of "hostages" are expendable. If this enemy captures any of our military men and women, or our civilians, we cannot expect any better treatment. The motivation may be based on classical Islamic law, or simply the act of a criminal. In either case, Muslim terrorists may well claim that Islam provided the authority.

OPERATIONAL LAW TRAINING

In fighting the war on terrorism, our military personnel need the best information available to carry out their mission. Besides timely and accurate intelligence, our men and women need to know what motivates their enemy. There is a big difference between fighting an army of conscripts and fighting an enemy motivated by a strong conviction in his religion, who believes paradise awaits if killed in "battle". This latter "enemy" fits the profile of the Muslim terrorists; while either could describe the state actor. Knowing which "enemy" we are currently up against will enable the United States to better prepare both its military and civilian populations for its war on terrorism.

As stated above, even a secular Muslim government may turn to classical Islam when confronted with internal and external threats. With this in mind, our soldiers need to understand that their status may change from "prisoner of war" to "war booty". As noted above, the treatment of prisoners could range from immediate repatriation, to being exchanged for Muslim prisoners, to enslavement, to death. A Muslim state hoping to retain power and international support is unlikely to ever consider the killing or enslavement of "Western" prisoners; however, extreme circumstances—like an overwhelming military threat from the United States—could

lead a radical Muslim state to adopt the most extreme options in dealing with enemy prisoners. A fundamental Islamic state that has tacitly, or explicitly, endorsed such actions from the terrorists they support, may consider a similar approach if the end of their reign, at the hands of the West, is imminent. To meet this threat, leaders will need to have an understanding of classical Islamic law.

LEADER TRAINING

To prepare to meet this enemy in the future, leaders, at all levels, need to understand how fundamental Muslim societies operate, especially those that follow Islamic law, such as Iran and Sudan, and those that are heading in that direction. Second, commanders and their Judge Advocates need to incorporate Islamic law into their Operational Law training plan. This is not to say that we should expect our enemies to follow classical Islamic law; we should expect and demand that they follow international humanitarian law. However, this expectation may not be the reality. And, if the United States is faced with this reality, we must be prepared to confront the Islamic fundamentalists.

At the strategic level, senior military and civilian officials need to educate military and civilian personnel about the threat posed by terrorist organizations. Colonel Charles Dunlap states that "troops and the public need to understand that however terrible the act, the military impact is almost certainly less than the psychological. Military leaders should, therefore, prepare both military forces and their citizenry to expect this kind of behavior and to expose it for what it is, a deliberate strategy designed to weaken U.S. will, create disruption, and erode discipline."[117] While Colonel Dunlap's words were written over three years prior to September 11, 2001, the need to educate the public and our military on Islam has now become obvious. Success in this area will go a long way toward changing attitudes that Islam is a religion of violence. For example, in its response to September 11th, the Bush Administration stressed that these were terrorist acts that were not a product of Islam as a religion, but rather an illegal act of a fringe extremist group. This distinction needs to be understood by our leaders and troops. Since the military runs the risk of meeting the enemy face-to-face, they must have an even greater understanding of the enemy than the general population.

When facing a Muslim threat, this "understanding" must include Islamic law and how it may apply to armed conflict. Professional military officers cannot wait for their next service school to learn the history, politics and law of their next adversary. Officers "must school themselves in the politics, economics, sociology, and anthropology of potential opponents."[118] This "education" will allow senior commanders to get past inherent biases and make culturally

appropriate decisions. Beyond self-education, the United States needs to establish institutional knowledge on the cultures of terrorists and state sponsors of terrorism. Just as we focus on the culture and legal framework of the Soviet Union during the Cold War, we now must turn our attention to terrorists—whether in the form of individuals, organizations, or states. The fact that the most dangerous terrorists today are Muslims means we must understand Islam and its affect on these terrorists. To this end, the United States' military needs "more political-military affairs officers skilled in analyzing the thinking of people from societies other than our own . . ."[119] As recently as the war in Afghanistan, we can see the value of these skills, when the original name of the operation—Infinite Justice—was changed to Operation Enduring Freedom since only God can provide justice to man.[120] In this day and age, commanders, political-military affairs officers, and Judge Advocates need to formulate a program of instruction as part of their organizations' operational law training that touches upon the politics, religion, and law, as it applies to armed conflict, of the Muslim opponent. And, beyond armed conflict, the military will also need an understanding of Islam to effectively deal with the aftermath of war.

For political reasons, and in deference to the religion of Islam, the United States needs to be sensitive to religious considerations in the post conflict phase of an operation. For us to "occupy" a Muslim state would play into the terrorists' hand and increase their defensive jihad rhetoric. On the other hand, we cannot bring down a regime that sponsors or shields terrorists and immediately leave the scene. We will inevitability be involved in the process of setting up a new government. To this end, we need to have an understanding of not only Islamic law in war, but also its law in peace. A basic understanding of Islam, and sharia civil law, will be necessary to participate in this rebuilding effort. To this end, commanders, public affairs officers, civil affairs officers, and judge advocates will have to be trained on the basics of Islamic traditions. In turn, our front line soldiers need training on how extreme Islam will conduct itself in war, and also how they should conduct themselves in times of peace.

SOLDIER TRAINING

When dealing with young soldiers that may find themselves in the front lines in the war on terrorism, it is crucial that they have a complete understanding of the laws of war. They must also know that the enemy in this war will likely not follow The Hague and Geneva conventions. "Troops should be taught that no matter how provocative the enemy atrocity, yielding to the passion it evokes and committing an illegal act of vengeance only serves the adversary's purposes."[121] Besides being the right thing to do, as a society with a free and active media, it is

even more important to conduct ourselves in accordance with The Hague and Geneva Conventions.

Arguably, we have not faced an opponent that has completely followed international law on the treatment of prisoners in the last fifty years. In this respect, fundamentalist Muslim opponents will not be unique. That being said, it would be disastrous for the United States to sink to the level of our adversaries when it comes to the conduct of war. It would be morally indefensible, and when facing an opponent that believes paradise waits if killed in conflict, maltreatment of prisoners could turn Muslim prisoners, one and all, into martyrs, prepared to die for their cause.

In the absence of binding law shared by both parties to a conflict, the concept of reciprocity can be a tool to provide safeguards to the casualties of war. Long before the enactment of The Hague and Geneva conventions, the principle of reciprocity has limited the negative aspects of war. In other words, we will treat your prisoners humanely if you [the enemy] do the same. This, in part, likely motivated the United States' decision to extend the protections of the third Geneva convention to the Taliban and al-Qaeda prisoners at Guantonamo Bay. Moreover, the concept of reciprocity is recognized in the siyar as an appropriate way to deal with enemy prisoners from the *dar al-harb*.[122] It could be argued that Saddam Hussein's treatment of Americans during the Gulf War may, in part, be due to the fact that his prisoners were treated humanely. While his treatment of Americans violated the law of war, with reports of beatings, torture, and public displays, it was much better treatment then any of Iraq's previous opponents had received. Bottom line, our soldiers need to understand that regardless of the enemy's conduct in war, following the law of war is in their best interest. Deviating from this standard, even a little, opens the military up to public criticism, risks the loss of public support, and increases the likelihood that our prisoners will be mistreated.

To adequately prepare for the war on terrorism, we must continue to stress the law of war in our operational law training, and incorporate training on classical Islamic law and the implication it may have on our conduct. While the United States Army does a good job of instructing our soldiers on the law of war, we most also do a good job of instructing our soldiers on the actual enemy they may face. As Sun-tzu said, "Thus it is said that one who knows the enemy and knows himself will not be endangered in a hundred engagements. One who does not know his enemy but knows himself will sometimes be victorious, sometimes meet with defeat."[123]

CONCLUSION

Experts in the field of Islamic International law disagree as to the relevance of classical Islamic law in modern times. In one camp there are the apologists, who attempt to make Islamic international law fit neatly into Article 38 of the International Court of Justice, and argue that there basically are no major differences between Islamic international law and international humanitarian law. On the other extreme, there are commentators who believe that true classical Islamic law is irreconcilable with Western international humanitarian law and will lead to an inevitable clash of civilizations. The unanswered question remains: Is true Islam a religion of peace, or one that requires the defense of the faith by any means, including the sword? The answer likely rests at both extremes and throughout the middle, depending on the particular Muslim state or group.

In this war on terrorism, we have Muslim states that are our partners. On the other end of the spectrum are states like Iran and Iraq that continue to support terrorism and have a history of not following the West's international humanitarian law. Based on their histories with the United States, and President Bush including these states in his "Axis of Evil", we should not be surprised if their conduct in any future confrontation with the United States does not fit our Western paradigm of just war. Moreover, when facing international terrorist organizations, it is unlikely that terrorists will follow the law of war.

Whether they have the religious authority for their defensive jihad or not will be answered by Muslim jurists, not the West. The fact remains that to fight this war on terrorism we will need to understand what motivates the terrorist. This understanding, coupled with support from the Muslim world, will go a long way towards separating the reactionary impulse to indict the entire religion, from the reality of what modern Islam stands for. As the Koran states: "I shall never worship what you worship, nor will you ever worship what I worship. You have your own religion, and I have mine."[124]

WORD COUNT = 9021

ENDNOTES

[1] Judith Miller, "The Challenge of Radical Islam," Foreign Affairs (March 1993): 43.

[2] Ibid.

[3] Ibid.

[4] The Office of the Coordinator for Counterterrorism, "Overview of State-Sponsored Terrorism", April 2001; available from <http://www.state.gov/s/ct/rls/pgtrpt/2000/index.cfm?docid=2441>; accessed 12 December 2001.

[5] HTTP://www.publicagenda.org/specials/terrorism/terror

[6] Yassin El-Ayouty, "International Terrorism Under the Law," ILSA Journal of International & Comparative Law 5 (Spring 1999): 486.

[7] Ibid.

[8] Ibid.

[9] John Kelsay, Islam and War (Louisville, KY: Westminster/John Know Press, 1993), 11.

[10] El-Ayouty, 489.

[11] Bernard Lewis, Islam and the West (New York: Oxford University Press, 1993), 137.

[12] Ibid., 43.

[13] Ibid., 40.

[14] *Jus ad bellum* is the right of a state to resort to armed conflict to settle disputes. Throughout history *jus ad bellum* has required states to meet certain conditions before engaging in hostilities, such as exhausting diplomatic efforts and delivering formal declarations of war.

[15] Islamic fundamentalist movement is one that seeks a stricter adherence to Islamic law. This value-laden term is often associated with Muslim terrorists. This perception is not completely correct since many in the Muslim world seek a return to Islamic values without resorting to violence.

[16] Lewis., 153.

[17] Ibid.

[18] Samuel P. Huntington, The Clash of Civilizations and the Remaking of World Order (New York: Touchstone, 1996) 110.

[19] Ibid.

[20] Ford, 502.

[21] Kelsay, 61.

[22] Ibid.

[23] Christopher A. Ford, "Siyar-iazation and its Discontents: International Law and Islam's Constitutional Crisis," Texas International Law Journal 30 (Summer 1995): 502.

[24] Karima Bennoune, "As-Salamu Alaykum? Humanitarian Law in Islamic Jurisprudence," Michigan Journal of International Law 15 (Winter 1994): 612.

[25] Bennoune, 613

[26] David A. Westbrook, "Islamic International Law and Public International Law: Separate Expressions of World Order," Virginia Journal of International Law 33 (Summer 1993): 828.

[27] Ford, 502.

[28] Ibid.

[29] Kelsay, 61.

[30] Bennoune, 615.

[31] James Turner Johnson, The Holy War Idea in Western and Islamic Traditions, (University Park, PA: The Pennsylvania State University Press, 1997), 19.

[32] Ibid.

[33] Kelsay, 61.

[34] Johnson, 155

[35] Ibid., 158.

[36] Bassam Tibi, "ISSUES & POLICY: The Fundamentalist Challenge to the Secular Order in the Middle East," Fletcher Forum of World Affairs 23 (Winter/Spring 1999): 191.

[37] Bennoune, 617.

[38] Johnson,156,157.

[39] Kelsay, 61.

[40] Robert L. Kurgis, Jr., ed., International Organizations in Their Legal Setting. (St. Paul, MN: West Publishing, 1993), 23.

[41] Lewis, 152.

[42]El-Ayouty, 489.

[43]Johnson, 151.

[44] N.J. Coulson, A History of Islamic Law (Great Britian: The Edinburgh University Press, 1964), 21.

[45] Ibid., 74.

[46] Ibid., 9.

[47] Ibid.,14.

[48] The Office of the Coordinator for Counterterrorism, "Comprehensive List of Terrorists and Groups Identified Under Executive Order 13224, 29 November 2001; available from <http://www.state.gov/s/ct/rls/fs/2001/index.cfm?docid=6531>; Internet;accessed 12 December 2001.

[49] Ibid.

[50] "The Global War on Terrorism: The First 100 Days", December 2001; available from <http://www.state.gov/s/ct/rls/rpt/6947.htm>; Internet accessed 24 January 2002.

[51] Tibi, 191.

[52] Johnson, 68.

[53] Lewis, 137.

[54] Tibi, 192.

[55] Ibid.

[56] Huntington, 213.

[57] Kelsay, 73.

[58] Kelsay, 38.

[59] *Jus in bello* regulates conduct during war to ensure it is conducted legally and morally. It provides protections for both combatants and non-combatants during times of armed conflict.

[60]Bennoune, 621

[61]Ford, 527

[62] William Samuel Dickson Cravens, "The Future of Islamic Legal Arguments in International Boundary Disputes Between Islamic States," Washington & Lee Law Review 55 (Spring 1998): 543.

[63]Kirgis, 45.

[64] Ford, 518.

[65]Kirgis, 45.

[66] Ford, 520.

[67] Ibid., 513.

[68] Ibid., 521.

[69] Ibid., 520.

[70] Bennoune, 633.

[71] Ibid., 634.

[72]Kelsay , 62.

[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Ibid., 63.
[77] Ibid.
[78] Ibid.
[79] Bennoune, 634.
[80] Johnson, 123.
[81] Ibid.
[82] Ibid.
[83] Ibid. 124.
[84] Peter R. Masterton, "The Persian Gulf War Crimes Trials," Army Lawyer 7 (June 1991):11.
[85] Bailey, 112.
[86] Lewis, 44.
[87] Bailey, 112.
[88] Ibid.
[89] Kelsay, 75.
[90] Mohammad Mohaddessin. Islamic Fundamentalism: The New Global Threat. (Washington D.C.: Seven Locks Press, 2001), 62.
[91] Bailey, 111.
[92] Kelsay, 59.
[93] Ibid. 59-60, citing, Al-Shaybani, as translated by Khadduri, in the Islamic Law of Nations, secs. 28,29,30, and 47.
[94] Kelsay, 63.
[95] Ibid.
[96] Bennoune, 629
[97] Ibid.
[98] Ibid., 630.
[99] Kelsay, 61
[100] Bennoune, 625
[101] Kelsay, 65.
[102] Ibid., citing, Al-Shaybani, sec.117.
[103] Ibid., 67.
[104] Kelsay, 67.
[105] Bennoune, 638
[106] Bailey, 110
[107] Mohaddessin, 62.
[108] Ibid.
[109] Ibid., 97.
[110] Ibid., 104.
[111] National Intelligence Council. "Global Trends 2015: A Dialogue About the Future With Nongovernment Experts"; December 2000, available from <http://www.odci.gov/terrorism/global_trends_2015.html>; Internet; accessed 11 January 2002.
[112] Department of Defense, DoD Law of War Program, DoD Directive 5100.77 (Washington D.C.: U.S. Department of Defense, 9 December 1998).
[113] Kelsay, 81.
[114] Ibid.
[115] Lewis,182.

[116] Charles Dunlap, Jr., "A Virtuous Warrior in a Savage World," USAFA Journal of Legal Study 8 (1997/1998): 78.

[117] Ibid., 87.

[118] Ibid., 81.

[119] Ibid.

[120] Associated Press, "Pentagon Now Calls it "Enduring Freedom"; 26 September 2001, available from <http://www.washingtonpost.com>; Internet; accessed 2 March 2002.

[121] Dunlap, 89.

[122] Johnson, 70.

[123] Sun-tzu, The Art of War, translated by Ralph D. Sawyer, (New York: Metrobooks 1994), 179.

[124] The Koran. Trans. N.J. Dawood (London: Penguin, 1999), 109:6.

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