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Enhancing Security through Collaborative Research

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Abstract

Counter-terrorism policy should be based on a comprehensive analysis of the facts. A comprehensive survey of global neo-jihadi terrorism in the West shows that there were 60 plots over the past 20 years, perpetrated by 46 different networks. Of these only 14 successfully inflicted any casualty, and only two were perpetrated by al-Qaeda proper in the past 20 years. Over the past five years, global neo-jihadi and al-Qaeda terrorism in the West is in decline and the vast majority of the plots were perpetrated by independent homegrown groups, inspired by al-Qaeda but not linked to it or its allies. Since 9/11/01, none of the plots could be traced back to Afghanistan. Indeed, the detailed trial transcripts of the major plots in the West since 9/11/01 show that there was no al-Qaeda training in Afghanistan and that there is no Afghan among the perpetrators. There has been no global neo-jihadi terrorist casualty in the West in the past four years and none in the U.S. in the past eight years. This means that the U.S. military surge in Afghanistan will not help protect U.S. and Western homelands from a-Qaeda and its allies. The argument that the surge will prevent a return of al-Qaeda to Afghanistan to the same level of threat as prior to 2001 is based on many dubious assumptions. Counter-terrorism in the West has been very successful and the value added of an increased counter-insurgency campaign in Afghanistan is debatable.

Al-Qaeda is once again at the forefront of U.S. Government policy debate. Our strategic interest in Afghanistan is linked to the protection of the homeland and that of our Western allies against terrorist attacks. A moment's reflection will demonstrate this. Al-Qaeda found sanctuary in the Sudan for four years, from 1992 to 1996, when the Sudanese government expelled it. During this Sudanese phase, al-Qaeda developed its strategy to target the West, and especially the United States and trained potential terrorists there. Indeed, the planning of the simultaneous bombings of our Embassies in Nairobi and Dar es Salaam was done in Khartoum. Had al-Qaeda not been thrown out of the Sudan, I have no doubt that we would be discussing strategy options about the Sudan rather than Afghanistan.

Our ultimate goal of homeland security will be served through a better understanding of the threat confronting it in order to "disrupt, dismantle, and eventually defeat al-Qaeda and its allies." Let me describe this global threat through a comprehensive survey that I conducted of all the al-Qaeda plots in the West, all the al-Qaeda affiliate plots in the West and all the plots done "in the name of al-Qaeda" in the West since the formation of al-Qaeda in August 1988. It is necessary to expand our inquiry because al-Qaeda is now only one of the many actors in this global neo-jihadi terrorist threat against the West. I call it neo-jihadi because the terrorists have appropriated this contested concept to themselves much to the protest of respected Islamic scholars and the mainstream Muslim communities worldwide [2]. Terrorism for the purpose of this project is the use of violence by non-state collective actors against non-combatants in the West in pursuit of a self-appointed global jihad.
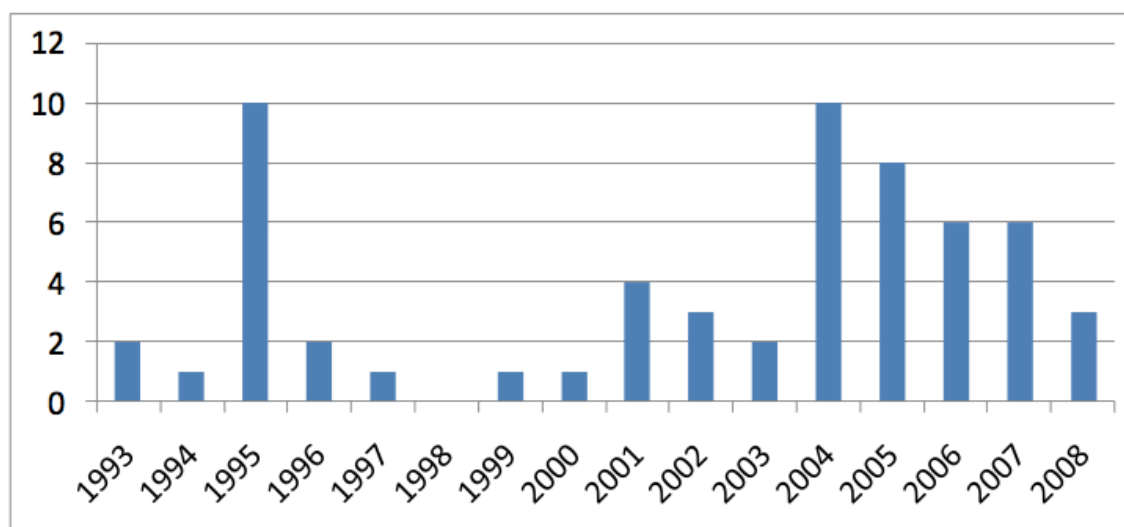
I conducted this survey when I spent a year at the U.S. Secret Service and an additional year at the New York Police Department as its first scholar-in-residence. Although both organizations helped me immensely, the following remarks are my own and cannot be read as their position or opinions. Because homeland security in the West essentially means population protection in the West, I have limited the inquiry to violent plots to be executed in the geographical territory of the West. By the West, I mean North America, Australia and Western Europe, with the exception of the civil war in the Balkans since terrorism is often a tactic of war, but wartime terrorism may not teach us much about terrorism during peace time. To be included in the survey, each plot had to have some loose operational or inspirational link to al-Qaeda or its affiliates; it had to reach a certain level of maturity, characterized by overt acts in furtherance; it consisted of *violent* acts targeting people in the West, and therefore excluded cases of purely financial or material support for terrorist acts committed elsewhere; some planning had to be done in the West; and terrorists had to initiate the plot. To accurately evaluate the threat, I of course included both successful and unsuccessful plots, which are the true measure of the extent of the threat, rather than just the successful ones. The global neo-jihadi terrorist threat includes plots under the control of al-Qaeda core; al-Qaeda affiliates like the Algerian Groupe Islamique Armé (GIA), Pakistani Lashkar e-Toyba (LT), the Uzbek Islamic Jihad Union (IJU), the Pakistani Tehrik e-Taliban Pakistan (TTP) as well as threats by autonomous groups inspired by al-Qaeda like the Dutch Hofstad network. I excluded lone wolves, who were not physically or virtually connected to anyone in the global neo-jihad, for they often carry out their atrocities on the basis of delusion and mental disorder rather than for political reasons.

My sources of information were legal documents, trial transcripts, consultations with foreign and domestic intelligence and law enforcement agencies, to which my position gave me access. Although all these plots are within the open source domain, I did corroborate the validity of the data in the classified domain.

The specified criteria yielded a total of 60 global neo-jihadi terrorist plots in the West, perpetrated by 46 terrorist networks in the past two decades, from the first World Trade Center attack on February 26, 1993 to the December 16, 2008 arrest of Rany Arnaud, who was plotting to blow up the *Direction Generale du Renseignement Interieur*, the French FBI equivalent, in a suburb of Paris. Although people associate al-Qaeda plots with airplanes or bombs, the plots were quite diverse: simple assassinations, attempted kidnapping and decapitation, car/truck bombs, airplane hijacking, and improvised explosive devices. Some operations were suicidal, but most were not. Of all the plots, only one is completely unsolved – the bombing of the Port Royal Metro station in Paris on December 3, 1996, which resulted in many casualties. Although completely unsolved, the timing, context and mode of operation seem to point to the GIA, trying to avenge its followers, who were put on trial around that time.

The following graph is the timeline distribution of the plots.

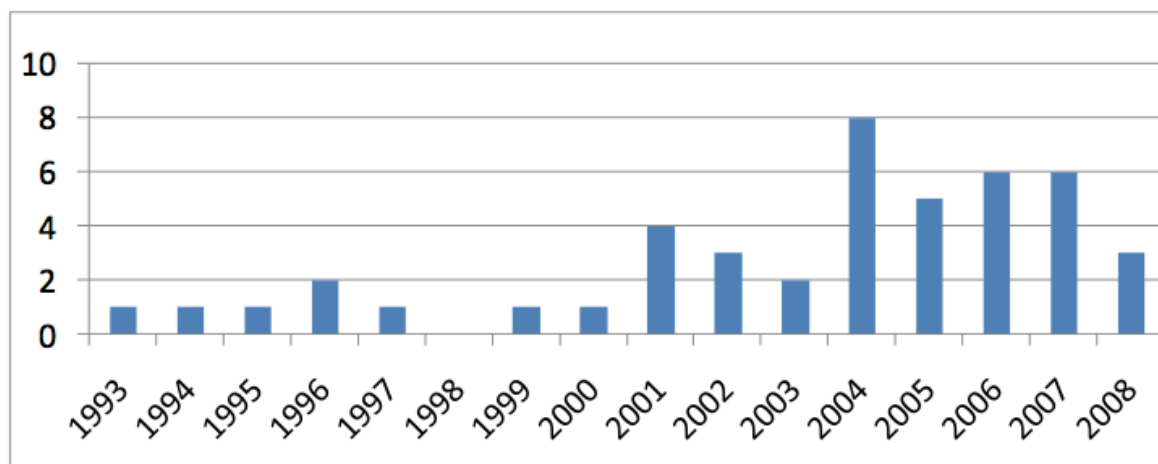**Figure 1: Timeline distribution of global neo-jihadi terrorist plots in the West**

We can see from the above graph that global neo-jihadi terrorist plots preceded the 9/11/01 attack when the Western public first started to appreciate the true extent of the threat confronting it. The first plot in the West was the first World Trade Center bombing in February 1993, or about four and a half years after the creation of al-Qaeda proper. The timeline distribution of the plots is bi-modal. The first peak consisted of raids by the Algerian GIA against France and stopped in 1996; the later plots were more widely geographically distributed and reached a peak in 2004, after which they declined. In the recent controversy over whether al-Qaeda (however defined, here I am using a more inclusive and therefore much wider definition of the threat in the West) is on the

move or on the run, we can see that the wider "al-Qaeda" threat or the global neo-jihadi terrorist threat is definitely on the run since its high water mark of 2004.

Some networks of terrorists, who temporarily escaped arrest, carried out multiple plots in the West. This is especially true of the 1995 wave of ten GIA plots against France, carried out by the same network in France. In order to understand the actual threat, as opposed to the inability of local police forces to disrupt existing networks, I also coded the global neo-jihadi threat to the West according to the specific terrorist networks carrying out operations (as opposed to plots).

Coding the data according to networks rather than plots gives the following graph.

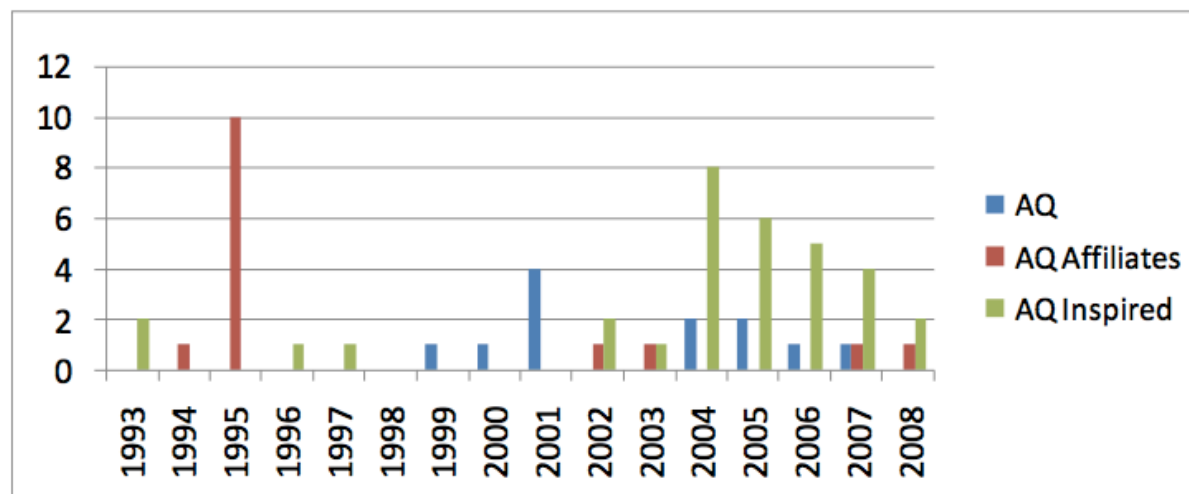**Figure 2: Timeline distribution of global neo-jihadi terrorist networks in the West**

What is most reflected in this coding is the collapse of the GIA wave of bombings in France in 1995, now represented by the same group rather than the ten separate plots. Again, loosely global neo-jihadi networks in the West preceded the 9/11/01 operation. Here, the graph indicates that global neo-jihadi networks in the West became more numerous in 2001, experienced a temporary small decline, and reached its 2004 high water mark, after which it declined, especially after 2007. So, here again, "al-Qaeda" is on the run and not on the move. I suspect the post 2003 bump in the number of networks threatening the West in the name of AQ was a reaction to the Western invasion of Iraq.

Although the press likes to call any militant Islamist plot an al-Qaeda plot, let us see how many are truly al-Qaeda plots. I coded the command and control of each plot according to the following classification (I did not code the 1996 Paris Metro plot because it is still unsolved):

- **AQ Core** means that AQ proper directed and controlled the operation.

- **AQ Affiliated** means that an international terrorist organization affiliated with AQ, such as LT or IJU, directed and controlled the operation.

- **AQ Inspired** means that there was no direction or control by any of the above organization for the plot. In other words, the plot was completely autonomous.

In this coding system, I leaned backward to give credit to a terrorist organization when there was any doubt about its command and control over an operation. I did this to increase the probability of detecting any coordination of global neo-jihadi terrorism by a single entity, a sort of neo-jihadi equivalent of the Comintern – the Communist International's Executive Committee in Moscow that tried to coordinate Communist activities worldwide.

Figure 3: Timeline of global neo-jihadi terrorist plots in the West: Command & Control

The result is:

- **12 AQ Core** controlled operations (**20%**)

  - LAX millennial plot (1999)

  - Strasbourg Christmas Market bombing plot (2000)

  - 9/11/01 attack (2001)

  - Paris Embassy bombing plot (2001)

- Belgian Kleine Brogel US Air Force base bombing plot (2001)

- Shoe bomber plot (2001)

- London fertilizer bomb plot (Operation Crevice, 2004)

- London limousine bombing plot (Operation Rhyme, 2004)

- London 7/7 bombings (Theseus case) (2005)

- London 7/21 bombing plot (Vivace case) (2005)

- London airplanes liquid bomb plot (Operation Overt) (2006)

- Danish Glasvej bombing plot (Operation Dagger) (2007)

- **15 AQ affiliated** terrorist organizations controlled operations (**25%**)

  - 11 GIA plots against France (1994-5)

  - German al-Tawhid bombing plots (Zarqawi group) (2002)

  - Sydney bombing plot (Brigitte-Lodhi, LT controlled) (2003)

  - German Sauerland bombing plot (IJU controlled) (2007)

  - Barcelona bombing plot (alleged TTP control) (2008)

- **32 AQ inspired** terrorist plots, carried out either on behalf of al-Qaeda or other transnational terrorist organizations (**54%**)

Al-Qaeda-inspired autonomous plots constitute the majority of all the plots, followed by al-Qaeda affiliated plots, with true al-Qaeda plots closing out the sample at only 20%. Viewing the graph chronologically, al-Qaeda Core did not start this terrorist campaign against the West. Indeed, all al-Qaeda Core plots in the West took place after bin Laden's 1998 *hukm* (his 'considered judgment,' not *fatwa* as is incorrectly reported in the West and which carries much less authority than a *fatwa*) [3]. Two attacks in New York City conducted by former Afghan Arabs inaugurated this worldwide wave of bombings against the West. They were conducted locally, and there is no evidence that there was any guidance, direction or control by al-Qaeda Core. If anything, they were more closely connected with the Egyptian Islamic Group than al-Qaeda or its ally, the Egyptian Islamic Jihad. These attacks were followed by a large wave of GIA attacks against France, which had to do with the internal dynamics of the Algerian civil war

in the 1990s; again these had no guidance, direction or control from al-Qaeda Core. The actual al-Qaeda Core plots in the West began in late 1999, as part of a wave of worldwide bombings to mark the dawn of the new Western Millennium, peaked in 2001, and decreased thereafter to about one plot per year, with a small uptick in 2004-2005 and fading over the next two years. Some commentators have suggested that the five al-Qaeda Central plots cluster in Britain in 2004-2006 is indicative of some kind of al-Qaeda infrastructure in that country. However, a close analysis of the most detailed data on these plots, namely the actual trial transcripts, show that there were very little connections among the plots: some members of the Theseus case had met half a dozen time with members of the Crevice case about a year and a half prior to the 7/7/2005 bombings. The evidence at the trial showed that, at the time of their respective meetings in late 2003 and early 2004, there was no intent or even plan to carry any bombings in Britain by the 7/7/05 perpetrators. One man in Luton loosely linked both sets of plotters in the summer of 2003, but there was no evidence that he knew about the plots themselves or was involved in their development. Similarly, an immigrant cab driver seemed to intersect the Vivace and the Overt plotters, but again his involvement was completely peripheral. Indeed, both are still free and living in Britain. To postulate that they constitute a local infrastructure is stretching the evidence beyond recognition.

Despite even recent claims that al-Qaeda is on the move, it is clear that al-Qaeda in the West has been on the decline since its apogee of 2001. When studying a phenomenon, it is important to count and look at the trend. When one relies on out of context anecdotal evidence, it is easy to make mistakes. I suspect that the recent advocates for a "resurgent" al-Qaeda were confused by the complexity of the 2006 London airplanes liquid bomb plot (Overt case) and mistook complexity for resurgence. The fact is clear that since its loss of sanctuary in Afghanistan in 2001, al-Qaeda proper has had trouble projecting to the West. It was able to operate locally in South Asia and Iraq, especially after al Zarqawi proclaimed a merger of his organization with al-Qaeda.

Let's look at the **past five years**:

- **6 AQ Core** plots (2004 Rhyme and Crevice plots; 2005 Theseus and Vivace cases; 2006 Overt case, all in Britain, and 2007 Dagger plot in Denmark)

- **2 AQ Affiliated** plots (2007 Sauerland & 2008 Barcelona Plots)

- **25 AQ Inspired** autonomous plots, conducted by homegrown perpetrators, with no connections whatsoever with any formal transnational terrorist organizations

The above statistics are crystal clear: **78%** of all global neo-jihadi terrorist plots in the West in the past five years came from **autonomous homegrown groups** without any connection, direction or control from al-Qaeda Core or its allies. The 'resurgent al-Qaeda' in the West argument has no empirical foundation. The paucity of actual al-Qaeda and other transnational terrorist organization plots compared to the number of autonomous plots refutes the claims by some heads of the Intelligence Community [4] that all Islamist plots in the West can be traced back to the Afghan Pakistani border. Far from being the "epicenter of terrorism," this Pakistani region is more like the finishing school of global neo-jihadi terrorism, where a few amateur wannabes are transformed into dangerous terrorists.

The graph also shows a sporadic involvement of al-Qaeda affiliated terrorist groups in plotting against the West in the past six years. These groups located in Pakistan are showing an increased ability to project against the West, although most of their operations are still confined to South Asia. However, in the internal rivalry among terrorist groups in South Asia, the quickest way to establish one's reputation is to demonstrate an ability to strike in the West. Although it is rare for al-Qaeda core to claim credit for its operations in the West, its rivals in South Asia have been quick to claim credit, even for failed plots. The Islamic Jihad Union claimed credit for the failed Sauerland group plot in September 2007 in Germany and Baitullah Mehsud, the deceased chief of Tehrik-e Taliban Pakistan claimed credit for the failed Barcelona Plot of January 2008 – although this last claim must be taken with a great deal of caution because he has claimed credits for mishaps in the West that had nothing to do with his organization, like the power outage in the U.S. Midwest in 2007 and the mass murder incident in Binghamton, New York on April 3, 2009. These empty self-promotions have been categorically refuted by U.S. federal authorities. The West may well find itself caught in this militant rivalry for global neo-jihadi supremacy.

My coding probably overestimated the importance of formal terrorist groups. Most of the recent plots coded as under al-Qaeda command and control, like the 2004 London fertilizer bomb plot, did not involve such frequent communication with al-Qaeda, but included instead a short meeting with a high level representative of al-Qaeda, where local Western terrorist wannabes *informed* al-Qaeda representatives, Abdal Hadi al Iraqi and his lieutenant, of their own initiative to conduct operations in the West. In such cases, it seems that the meeting with al-Qaeda leadership did not affect the desire of the local terrorists to conduct such operations. Here the role of the al-Qaeda was passive agreement with little influence on the plot.
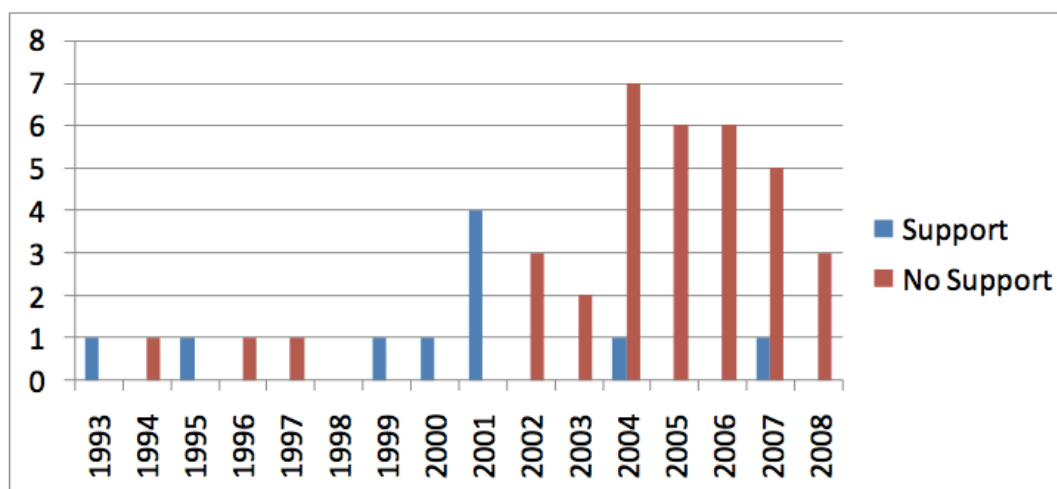
The dramatic increase in global neo-jihadi terrorism in the first decade of the 21st Century has come from al-Qaeda inspired autonomous groups with no link to formal transnational terrorist groups. This is especially true since the 2003 invasion of Iraq, which has inspired local young

Muslims to strike out against the West. It seems clear that this invasion has created more terrorists in the West, refuting the thesis that "we are fighting them there, so we don't have to fight them here." The fact that these plots peaked in 2004, one year after the invasion of Iraq, provides empirical support linking the two events. These scattered plots, not coordinated by any central terrorist body and constituting almost 80% of the plots against the West in the past five years, illustrate how the threat against the West is degenerating into a "leaderless jihad." [5] Far from being directed by a Comintern equivalent, global neo-jihadi terrorism is evolving to the structure of anarchist terrorism that prevailed over a century ago, when no such global coordinating committee was ever found despite contemporaneous belief in its existence.

Within this cluster of al-Qaeda inspired autonomous groups is a troubling emerging pattern of lone wolves, directly linked via the Internet to foreign al-Qaeda affiliated terrorist organizations: the 2004 Rotterdam Plot (Yehya Kadouri), the 2007 Nancy plot (Kamel Bouchentouf), the 2008 Exeter plot (Nicky Reilly) and the 2008 French *Direction Centrale du Renseignement Interieur* plot (Rany Arnaud) [6]. Although these young men are willing to sacrifice themselves for these affiliate terrorist groups, they have never met them face to face. This may become a trend that will increase in the future.

Another dimension of allied al-Qaeda involvement in plots against the West is financial support of these plots. Again, in examining each global neo-jihadi terrorism network for such support, I have erred on the side of inclusiveness of al-Qaeda support in this coding scheme.

Figure 4: Al-Qaeda Financial Support for Terrorist networks in the West

Out of forty-five global neo-jihadi terrorist networks in the West, **al-Qaeda at least partially funded ten**. But this overstates its importance in this regard. The funding of the 1993 World Trade Center plot was minimal, and consisted of Khalid Sheikh Mohammed sending a few hundred dollars to his nephew Ramzi Yousef. It is unclear where the money came from, but for the sake of this study, let us assume it came from al-Qaeda. The same goes for the GIA wave of bombings in France in 1995. Bin Laden funded the *Al Ansar* newsletter in London via Rachid Ramda, who funded the bombing campaign. I do not know where the money for this campaign (as opposed to the newsletter) came from. I suspect that it came from the GIA itself through its fund raising campaign throughout Europe. However, let us again assume that it came from bin Laden either directly or indirectly.

We can see that from 1999 to 2001, al-Qaeda either partially or fully funded its operations against the West. This was either in the form of seed money ($10,000 given to Ahmed Ressam for the 1999 LAX bombing plot or the 2000 Strasbourg Christmas Market bombing plot). In each case, the perpetrators were supposed to supplement their initial funds via their own means (robbery in Ressam's case; drug sales for the other). Sometimes, the funding was paid in full, as in the 9/11/01 plot. I assume that al-Qaeda at least partially funded the rest of the 2001 al-Qaeda plots since I came across no evidence that these perpetrators raised any money on their own. The two alleged al-Qaeda plots in 2005 were a departure from this pattern, as there is no evidence that the two London bombing plots of July 2005 received any money from al-Qaeda. The last alleged al-Qaeda plot, the Danish Glasvej (Dagger) case indicates that the main perpetrator, Hamad Khurshid, came back from Pakistan with $5,000 in cash. It is true that, except for the 9/11/01 operation, terrorist plots are not expensive to carry out. Autonomous terrorists had no choice but to raise the funds for their operation themselves.
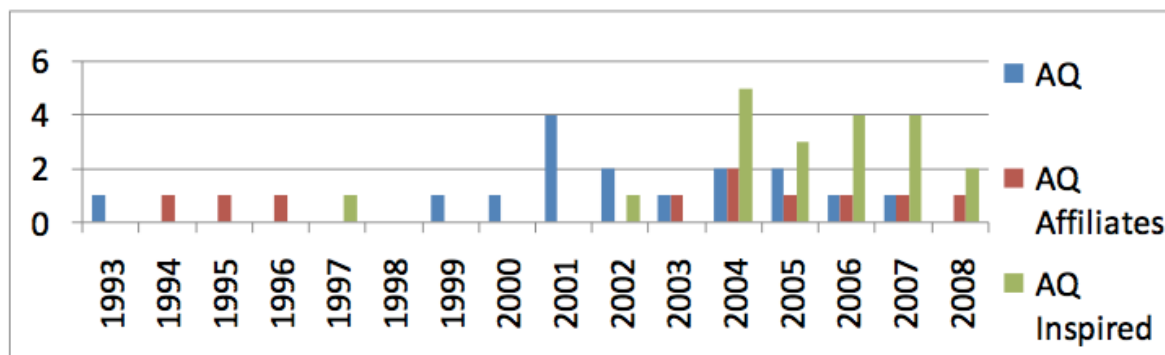
On the other hand, the al-Qaeda-affiliated transnational terrorist groups seemed to have funded their own operations. The GIA plots were fully funded from outside and none of the perpetrators were tasked with raising money for the plots. The 2002 German al Tawhid plot was probably funded by Zarqawi. LT funded the Sydney plot through money transfers to Willie Brigitte in 2003, and the IJU seemed to have funded the 2007 German Sauerland plot. It is unknown the degree of financial support that the potential perpetrators of the 2008 Barcelona plot received from Mehsud's organization.

For those who like to follow the money, only a very few plots have been funded from the outside in the past five years. Of the twenty-nine global neo-jihadi terrorist networks involved during that period, Al-Qaeda core funding has been implicated in only two – Hamad Khurshid and the London Rhyme case. Even if we add the non-al-Qaeda funded Sauerland case and possibly the

TTP Barcelona case, the total increases to only three or four out of twenty-nine cases (10% or 14%). Since the money involved was mostly in the form of cash, following the trail of money will not detect global neo-jihadi terrorism plots in the West. The vast majority these networks in the past five years have raised their own money.

It has been argued that training by a formal terrorist organization is critically important because it transforms amateurs into seasoned terrorists. Several Western intelligence leaders have stated that all significant global neo-jihadi terrorist plots lead back to the Federally Administered Tribal Areas of Pakistan (FATA). The next graph tests this claim. I plotted the overseas training for all the terrorist networks and coded them as receiving training from al-Qaeda, an al-Qaeda affiliate, or no training at all – just al-Qaeda inspired. Again, I erred on the side of over-inclusiveness of such training, even if just one person in the network, who might not have been involved in the planning of the plot, had simply undergone familiarization training, which did not teach any significant bomb making skills. For this graph, I coded Bouyeri as being separate from the Hofstad network because he carried out the assassination of Theo van Gogh on his own in 2004 and had not gone to any training camp

Figure 5: Global neo-jihadi terrorist overseas training

Out of 46 different networks attempting terrorist operations in the West,

- **16** had at least one member that underwent training at an **AQ Core** facility (35%)

- **10** had at least one member that underwent training at an **AQ affiliated** facility (22%)

- **20** had **no training** at all (43%)

Lumping the data together hides some important trends. First, more people have trained from al-Qaeda and al-Qaeda affiliates than are under the control of these respective organizations. Lately,

in the press and perhaps the intelligence community, there is a presumption that attendance in a formal terrorist organization training camp is equivalent to being under control of that organization. So, I included the 2004 London fertilizer plot (Operation Crevice) and the two 2005 London underground bombing plots as al-Qaeda controlled because the perpetrators had allegedly received al-Qaeda training. However, there was no evidence of extensive communication between the perpetrators in the field and al-Qaeda Core in Pakistan, unlike the 9/11/01 plot or the 2006 London airplanes liquid bomb plot, where the perpetrators were in almost daily communication with al-Qaeda core, or the 2007 Sauerland plotters, who were in constant e-mail contact with their IJU sponsors.

This equation of training camp attendance with foreign terrorist organization control was not presumed for the pre-2001 plots, when attendance in an al-Qaeda camp did not mean al-Qaeda control. For example, Ramzi Yousef, the bomb maker for the first World Trade Center bombing in 1993, never belonged to al-Qaeda, but had undergone extensive training at al-Qaeda funded camps and had taught at Abdal Rabb Rasul Sayyaf's University of Jihad. Likewise, members of the 2002 al Tawhid plot had been trained at al-Qaeda camps before joining Abu Musab al-Zarqawi's al Tawhid organization. Again, the two Ricin plots (the 2002 French Chechen network and the 2003 British ricin plot [Operation Earth]) included members who had trained in al-Qaeda camps, even though neither plot seemed to have been known or sanctioned by al-Qaeda as far as I know.

Al-Qaeda funded most of the training camps in Afghanistan before the U.S. invasion in the fall of 2001. Anyone who had traveled to Afghanistan for training at that time was bound to have been trained in an al-Qaeda funded camp. The cases just cited included members who had been in Afghanistan before the fall of the Taliban regime. The result was that graduates from al-Qaeda camps in the 1990s dominate global neo-jihadi terrorism from 1999 to 2002. By the time they were planning their operations in the West in 2002 or 2003, they no longer had any active link to al-Qaeda. Since 2002, al-Qaeda trained terrorists averaged just one plot a year.

As the availability of al-Qaeda training faded over time, al-Qaeda affiliated terrorist organizations in Kashmir or the Federally Administered Tribal Areas of Pakistan, such as Laskhar-e Toyba or the Islamic Jihad Union, began to fill in the gap starting in 2003 and the graduates of their camps also average about one plot a year. So, while terrorist networks that had training dominate the overall sample (57%), this trend has been reversed in the past five years as only 40% had such training. Indeed, all those who underwent training in the past five years, acquired it in Pakistan, not Afghanistan.

Although I use the generic term "training camp" to describe the place of training before and after 2001, the meaning of the term has since changed dramatically and overestimates the formality and sophistication of training received by global neo-jihadi terrorist networks in the West after 2001. Gone are the large formal camps like Khalden, Farooq or Darunta in Afghanistan, which could accommodate hundreds of novices and had a formal curriculum with increased levels of sophistication sometimes lasting up to a year for the select few (see Ahmed Ressam's training for the 1999 LAX millennium plot). After the 2001 U.S. invasion of Afghanistan, these formal training facilities were destroyed. People traveling to Pakistan afterwards either went to formal training facilities conducted by Kashmiri terrorist groups in Kashmir (see the legal judgment on Willie Brigitte for a description of such camps) or had to arrange for their training through hiring of a private trainer. These new "camps" were nothing like the former ones: they were small rented housing compounds or even two tents in a goat patch, where one instructor and his son gave private lessons to at most a dozen students, who directly paid for their instruction, the duration of which could be as short as two days to about three weeks (see the transcripts of the 2004 Crevice or the 2005 Theseus cases, which describe this process).
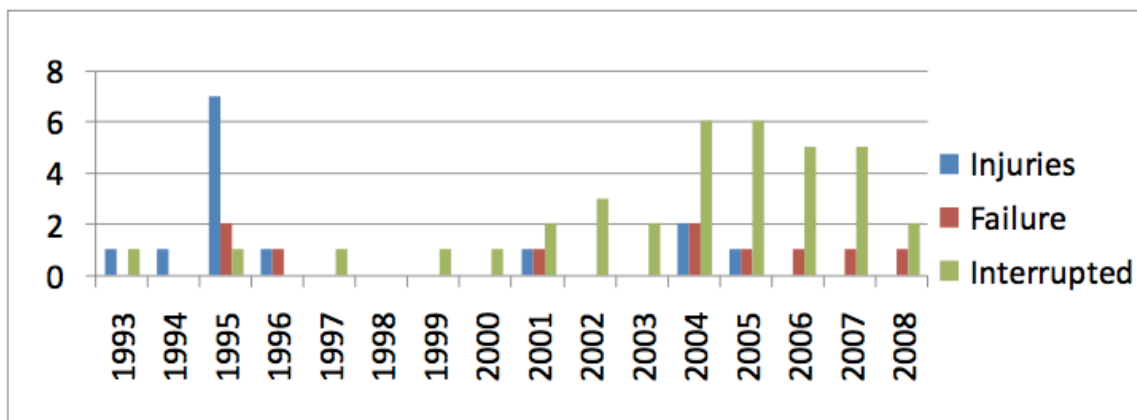
Later, after a series of truces signed between FATA tribal leaders and the government of Pakistan between 2004 and 2006, al-Qaeda or IJU provided more formal training in Waziristan, but they never reached the level of sophistication in instruction that prevailed before 2001. These new facilities in Waziristan were more visible than before and could accommodate up to about twenty trainees at a time. Indeed, the presence of these camps probably led to alarms that al-Qaeda was resurgent. Strangely enough, the presence of these new "camps" did not affect the frequency of al-Qaeda linked plots in the West. The slight bump in frequency of terrorist trained arrests or actual bombings in 2004 and 2005 was not due to these truces, because the training of the perpetrators preceded the truce agreements. Despite the widespread alarms in the West, the truces do not appear to have any effect on global neo-jihadi terrorism in the West.

In any case, the graph shows clearly that the majority of global neo-jihadi terrorist networks from 2004 onwards did not have any formal training from foreign terrorist groups (60%) - contrary to the statements of Intelligence agency chiefs on both sides of the Atlantic. They were purely homegrown and had no link to the FATA, which some have called "the epicenter of terrorism." Instead, they had to rely on themselves and the Internet for their acquisition of terrorist skills, consistent with the leaderless jihad argument.

How dangerous is global neo-jihadi terrorism? In other words, what is the result of global neo-jihadi terrorist plots in the West? I coded all 60 plots in the West in terms of whether they

caused any injuries; were carried out but failed (no explosion because of a technical error); or were interrupted through law enforcement arrests.

Figure 6: Extent of damages of global neo-jihadi terrorist plots

Result of AQ linked plots in the West

The results are as follows:

- **14 Plots** were **successful** in terms of incurring any injury and or death (23%)

  - **Only 2 al-Qaeda core plots in the West in the past two decades were successful** (9/11/01 and 7/7/05). Of course, they were among the most devastating, resulting in about 3,000 fatalities for 9/11 and 52 fatalities for 7/7.

  - **9 were GIA plots against France**, from 1994 to 1996 (I have counted the 1996 Paris Port Royal metro station bombing in this total. The total for all of these attacks is 17 fatalities)

  - **3** were al-Qaeda **inspired plots** (1993 World Trade Center bombing, resulting in 6 fatalities; 2004 Madrid bombing, resulting in 191 fatalities; 2004 Bouyeri's assassination of Theo van Gogh)

- **10 Plots** resulted in **failure to explode** (17%)

  - **3 failures** in networks that **had succeeded elsewhere** (2 by 1995 GIA network in France; and by 2004 Madrid network when bomb on the AVE train line near Toledo failed to detonate)

- **2 failures by al-Qaeda trained networks** (2001 Shoe bomb plot and 7/21/05 London underground bombing plot)

- **1 failure** in network of French Bosnian war veteran (Roubaix group)

- **4 failures** in networks that had no foreign terrorist organization training (2004 Rotterdam plot; 2006 Koblenz train plot; 2007 Doctors' plot; and 2008 Exeter bomb plot)

- **36 Plots** were interrupted through **arrests** (60%)

It is interesting to note that for all the fear of al-Qaeda, the organization managed only two successful plots in the West in the last twenty years! The fact that they were so deadly overshadows this truth. Indeed, successful independent plots outnumber successful al-Qaeda plots in the West. However, both are eclipsed by the GIA, which infiltrated a team of trained terrorists to France, whose wave of terror in the mid-1990s accounts for almost two thirds of all successful global neo-jihadi bombings.

This low rate of success (23%) should not be much comfort to intelligence or law enforcement agencies. In ten plots, the terrorists succeeded in setting their bombs down without being detected. The bombs simply did not detonate, which cannot be due to good intelligence or police work. So, the rate of a plot going to termination without being detected is 40%, a very high rate indeed, no cause for comfort. Lest the reader thinks that the cause for failure to detonate was the lack of training by homegrown wannabes, six out of the ten failures happened to groups that had been trained or been successful before. So, 60% of the failures to detonate were not due to poor training but to poor execution by experienced terrorists.

It appears that either we are getting luckier or this terrorist threat is diminishing. In the United States, the last casualty dates back more than eight years to 9/11/0 [7]. There has not been even one plot that went to termination since then. In the rest of the West, there has not been a single casualty in the past four years. The last casualty dates back to 7/7/05, the first London underground plot. However, in the past four years, Europe has witnessed a series of bombs that failed to detonate: the 2005 second London underground plot (Vivace case); the 2006 German Koblenz trolley bombs; the 2007 London and Glasgow Doctors' plot; and the 2008 Exeter bomb plot by Nicky Reilly. The last three plots have no physical link to any transnational terrorist groups.

How effective is formal terrorist training for the successful completion of a plot? Several critics have tried to downplay the recent surge of autonomous homegrown plots as less dangerous than those of formally trained terrorists. I analyzed the results of global neo-jihadi terrorist networks according to their type of training: al-Qaeda core training; al-Qaeda affiliates' training; or no formal training at all (al-Qaeda inspired). Excluding the unsolved 1996 Paris Port Royal metro bombing because of lack of information, this leaves forty-five networks. But an untrained member of the Hofstad network, Mohammed Bouyeri, carried out a successful assassination on his own. His "trained" colleagues, Jason Walters and Ismail Akhnikh, had not been aware of his plan and provided no guidance or help. Therefore, I decided to code Bouyeri's assassination of Theo van Gogh as a separate network, and as al-Qaeda inspired. The results are the following:

- **16 AQ Core trained** networks:

  - **3 succeeded** (1993 World Trade Center bombing; 9/11/01; and 7/7/05 London underground bombing) [**19%**]

  - 2 failed to explode (2001 Shoe bomber; 7/21/05 London underground plot)

  - 11 were detected and arrested before hand

- **10 AQ Affiliate** trained networks

  - **2 GIA networks succeeded** (1994 AF hijack; 1995 wave of bombing in France) [**20%**]

  - 1 failed to explode (1996 Lille plot)

  - 7 were detected and arrested beforehand (including Hofstad network)

- **20 AQ Inspired** networks (no formal training)

  - **2 succeeded** (2004 Madrid bombings & 2004 Bouyeri assassination of Theo van Gogh) [**10%, but only 5%** if we don't count the assassination, which requires no training]

  - 3 failed to explode

  - 16 were detected and arrested beforehand.

The above results seem to indicate that formal training matters. Both al-Qaeda core and al-Qaeda affiliate formal training resulted in an approximate success rate of 20%, while lack of training led to a success rate of 10%. So, training doubles the probability of success in a terrorist network. However, if the assassination of Theo van Gogh is eliminated from the sample, the resulting rate

of success of the untrained networks falls to 5%. In this case, training would quadruple the probability of success in a terrorist network.

Viewing the sample as a whole obscures the degradation of the importance of training in the past five years. During this period, of twelve trained terrorist networks, only one succeeded in causing any casualty, the 7/7/05 London underground bombing. Two untrained networks out of sixteen succeeded in inflicting casualties: the 2004 Madrid bombing – where the bombers got access to dynamite, det-cord and detonators, and did not have to manufacture their explosive – and the 2004 Bouyeri assassination of van Gogh.

I am sorry to have been so lengthy in the presentation of the survey, but the devil is in the empirical details to escape another round of hysterical rhetoric so common in discussion of global neo-jihadi terrorism. Now that I've laid down the facts, let me address some of the unexamined assumptions, myths and misconceptions about the "al-Qaeda threat" in Afghanistan.

1. The threat to the West has unfortunately expanded beyond al-Qaeda per se. The various terrorists attempting to carry out operations in the West for al-Qaeda allies or in its name clearly outnumber al-Qaeda operations. In the past five years, al-Qaeda core has been responsible for only 18% of these plots. 78% of these plots during this period have been carried out by homegrown terrorists, inspired by al-Qaeda, but with no connection with any formal transnational terrorist organization – evolving into a Leaderless Jihad. This survey does not include the new *al Shabaab* threat to the West, which has too recently surfaced to be included. But it stems from Somalia and not Afghanistan.

2. The dichotomy of the present policy options between counter-terrorism and counter-insurgency is a false one. The choice is not between counter-terrorism and counter-insurgency, but between counter-terrorism and counter-terrorism **plus** counter-insurgency. No matter what happens in Afghanistan, all Western powers will continue to protect their homelands with a vigorous counter-terrorism campaign against al-Qaeda, its allies and its homegrown progeny. The policy option really boils down to, what is the added value of counter-insurgency in Afghanistan to a necessary and continuing counter-terrorism strategy worldwide?

3. The proposed counter-insurgency strategy in Afghanistan is at present irrelevant to the goal of disrupting, dismantling and defeating al-Qaeda, which is located in Pakistan. None of the plots in the West has any connection to any Afghan insurgent group, labeled under the umbrella name "Afghan Taliban," be it a part of Mullah Omar's Quetta Shura Taliban, Jalaluddin Haqqani's Haqqani Network, or Gulbuddin Hekmatyar's Hezb-e

Islami. There has not been any Afghan in al-Qaeda in the past twenty years because of mutual resentment between al-Qaeda foreigners and Afghan locals. In the policy debate, there is an insidious confusion between Afghan Taliban and transnational terrorist organizations. Afghan fighters are parochial, have local goals and fight locally. They do not travel abroad and rarely within their own country. They are happy to kill Westerners in Afghanistan, but they are not a threat to Western homelands. Foreign presence is what has traditionally unified the usually fractious Afghan rivals against a common enemy. Their strategic interest is local, preserving their autonomy from what they perceive as a predatory corrupt unjust central government. They do not project to the West and do not share the internationalist agenda of al-Qaeda or its allied transnational terrorist organizations.

4. The second prong of the proposed counter-insurgency strategy in Afghanistan is the prevention of al-Qaeda's return to Afghanistan through a military surge. The assumption is that the return to power by the Taliban will automatically allow al-Qaeda to reconstitute in Afghanistan, complete with training camps and resurgence of al-Qaeda's ability to project to the West and threaten the homeland.

    a. The possibility of Afghan insurgents winning is not a sure thing. Twenty years ago, it took a far better armed and far more popular insurgency more than three years to take power after the complete withdrawal of Soviet forces from Afghanistan. Unlike 1996, when the Taliban captured Kabul, the label Taliban now includes a collection of local insurgencies with some attempts at coordination on a larger scale. The Taliban is deeply divided and there is no evidence that it is in the process of consolidating its forces for a push on Kabul. Local Taliban forces can prevent foreign forces from protecting the local population, through their time honored tactics of ambushes and raids. General McChrystal is right: the situation in the countryside is grim. But this local resistance does not translate into deeply divided Taliban forces being able to coalesce in the near future into an offensive force capable of marching on to Kabul. Command and control frictions and divergent goals hamper their planning and coordination of operations. They lack popular support and have not demonstrated ability to project beyond their immediate locality.

    b. Taliban return to power will not mean an automatic new sanctuary for al-Qaeda. First, there is no reason for al-Qaeda to return to Afghanistan. It seems safer in Pakistan at the moment. Indeed, al-Qaeda has so far not returned to Taliban

controlled areas in Afghanistan. Al-Qaeda's relationship with Taliban factions has never been very smooth, despite the past public display of Usama bin Laden's pledge of bayat to Mullah Omar. Al-Qaeda leaders seem intimately involved in the Haqqani network in North Waziristan, less so with Mullah Omar's Quetta Shura, and even less with Gulbuddin Hekmatyar's forces. Indeed, the presence of al-Qaeda in Afghanistan divided Taliban leaders before their downfall. Likewise, loyalty for Taliban leader Mullah Omar also divided al-Qaeda leadership. This complex relationship between al-Qaeda and Afghan Taliban factions opens up an opportunity for the U.S. Government to mobilize its deep understanding of local history, culture and politics to prevent the return of a significant al-Qaeda presence in Afghanistan through exploitation of internal rivalries and judicious use of political and economic incentives [8].

c. Even if a triumphant Taliban invites al-Qaeda to return to Afghanistan, its presence there will look very similar to its presence in the FATA. Times have changed. The presence of large sanctuaries in Afghanistan was predicated on Western not so benign neglect of the al-Qaeda funded camps there. This era is gone because Western powers will no longer tolerate them. There are many ways to prevent the return of al-Qaeda to Afghanistan besides a national counter-insurgency strategy. Vigilance through electronic monitoring, spatial surveillance, networks of informants in contested territory, exploitation of internal Afghan rivalries, combined with the nearby stationing of a small force dedicated to physically eradicate any visible al-Qaeda presence in Afghanistan will prevent the return of al-Qaeda in Afghanistan. The proper military mission in Afghanistan and elsewhere is sanctuary denial.

5. Counter-terrorism is working. The escalation from a more limited and focused counter-terrorism strategy to a larger combined counter-terrorism and counter-insurgency strategy (in a country devoid of the al-Qaeda presence!) is predicated on the assumption that the terrorist threat is either stable or increasing – meaning that counter-terrorism has failed. The timeline graphs clearly show that the threat is fading, from its high water mark of 2004. There has been no global neo-jihadi terrorist casualty in the United States in the past eight years and none in the West in general in the past four years. Of course, al-Qaeda is not dead as long as its top leadership is still alive. This cannot be attributed to a loss of intent from al-Qaeda and its militant rivals. From all indications, including recent debriefs of terrorist wannabes captured in Pakistan and the West, the respective leaders of

global neo-jihadi terrorism are still enthusiastically plotting to hit the West and do not hesitate to proclaim their desire on the Internet. Nor is this due to the counter-insurgency in Afghanistan because al-Qaeda and its allies all have their training facilities in Pakistan. It is due to effective counter-terrorism strategy, which is on the brink of completely eliminating al-Qaeda. A dead organization will not be able to return to Afghanistan.

6. The reasons for the effectiveness of the counter-terrorism strategy so far are multiple. First and foremost is al-Qaeda's inability to grow. Unlike the pre-9/11/01 period, al-Qaeda leaders have generally not incorporated new recruits among its ranks. The leadership of al-Qaeda still harks back to the fight against the Soviets in the 1980s. Because he has been hiding full time, Osama bin Laden has not been able to appoint and train a new group of top leaders and there is no evidence that he trusts anyone whom he has not known from the anti-Soviet jihad. In the 1990s, al-Qaeda incorporated the brightest and most dedicated novices who came to train in its network of camps in Afghanistan. They became its cadres and trainers. In the past five years, al-Qaeda has not been able for the most part to incorporate new recruits among its ranks. Western novices traveling to Pakistan in the hope of making contact with al-Qaeda have been turned around and sent back to the West to carry out terrorist operations. Meanwhile, the success of the Predator drone strike campaign on the Pakistani border has dramatically thinned the ranks of both al-Qaeda leaders and cadres. Now it appears that these strikes are also targeting al-Qaeda allies with a transnational agenda.

7. Protection of Western homeland involves an effective strategy of containment of the threat in the Afghan Pakistan area until it disappears for internal reasons. In the past five years, al-Qaeda or its transnational allies have not been able to infiltrate professional terrorists into the West, as Ramzi Youself did in New York in 1993 or the GIA did in France in 1995. None of the plots during that time involved any full time professional terrorist. This is probably due to good cooperation among intelligence agencies around the world, good intelligence databases and increased vigilance and security at airports around the world. To carry out operations in the West, these global neo-jihadi terrorist organizations are completely dependent on Western volunteers coming to the Pakistani border to meet terrorist groups or on inspiring young Western terrorist wannabes to carry out operations on their own without any guidance or training. These organizations are stuck with the people traveling to the border area to meet with them, mostly through chance encounters. These travelers are relatively few in number, totaling in the dozens at most. The emerging details from the terrorist trials and the interrogations of the

Westerners captured in Pakistan are quite clear on this score. Terrorist organizations can no longer cherry pick the best candidates as they did in the 1990s. There is no al-Qaeda recruitment program: al-Qaeda and its allies are totally dependent on self-selected volunteers, who come to Pakistan. Global neo-jiahdi terrorism also has no control over the young people who wish to carry out operations in the West in its names. The result is a dramatic degradation of the caliber of terrorist wannabes, resulting in the decrease in success of terrorist operations in the West despite the increased number of attempts. Containing those who travel to Pakistan for terrorist training is a counter-terrorism problem and is much easier problem to solve than transforming an adjacent nation through a national counter-insurgency strategy. The West has been doing well in this strategy of containment with Pakistan's active collaboration.

8. The decrease of global neo-jihadi terrorism in the last five years is testimony to the effectiveness of international and domestic intelligence as well as good police work. The timeline analysis of global neo-jihadi terrorism shows that the major threat to Western homelands is al-Qaeda inspired homegrown networks. Disrupting such homegrown plots has always been a domestic counter-terrorism mission through domestic intelligence and law enforcement. Indeed, there is a strong probability that the proposed counter-insurgency military surge may result in moral outrage in young Muslims in the West, who would take it upon themselves to carry out terrorist operations at home in response to the surge – just as the invasion in Iraq resulted in a dramatic increase in terrorist operations in the West. So, far from protecting the homeland, the surge may actually endanger it in the short term. After going through a learning process, Western law enforcement agencies, in coordination with their foreign counterparts, have done an effective job in protecting the homeland.

9. In conclusion, counter-terrorism works and is doing well against the global neo-jihadi terrorist threat. It consists of a combination of good domestic police work, good domestic intelligence, good cooperation with foreign domestic intelligence agencies, good airport security, good border control, keeping up the pressure on al-Qaeda and its transnational allies in Pakistan through arrests and Predator drone attacks, using political and economic skill to deny terrorist sanctuary in Pakistan, supporting the Pakistan military to dislodge foreign militants from Waziristan while sealing the border on the Afghan side, and continued sanctuary denial in Afghanistan. These are measures that will continue regardless of what is done in Afghanistan. There is definitely no necessity and very little value added for the counter-insurgency option, which is the most costly in terms of blood

and treasure, probably the least likely to succeed and may even make things worse in the short run in the homeland.

10. Counter-insurgency and nation building in Afghanistan may be important for regional reasons. But counter-insurgency in Afghanistan has little to do with global neo-jihadi terrorism and protecting Western homelands.

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Notes

[1] A modified version of this article was submitted as testimony before the U.S. Senate Foreign Relations Committee on October 7, 2009.

[2] For an analysis of the concept of jihad through Muslim jurisprudence and history, see Richard Bonney, *Jihad: From Qur'an to bin Laden*, New York, Palgrave Macmillan, 2004.

[3] See Lawrence, Bruce (Ed.). *Messages to the World: The Statements of Osama bin Laden*. London, Verso, 2005, p. 61.

[4] See Director of Central Intelligence Michael Hayden's speech at the Atlantic Council on November 13, 2008 at https://www.cia.gov/news-information/speeches-testimony/speeches-testimony-archive-2008/directors-remarks-at-the-atlantic-council.html

[5] See Sageman, Marc. *Leaderless Jihad: Terror Networks in the Twenty-First Century*. Philadelphia, University of Pennsylvania Press, 2008. After the Fort Hood tragedy of November 5, 2009, even those who had previously believed that homegrown terrorism was a myth (see Bruce Hoffman, 2008, The Myth of Grass-Roots Terrorism, *Foreign Affairs*, 87 (3): 133-138), admitted to the press that they had changed their minds about it.

[6] The latest of this series of physical "lone wolves" but members of a virtual protest counter-culture on Internet chat-rooms may be Major Nidal Malik Hasan, the alleged perpetrator of the Fort Hood tragedy of November 5, 2009.

[7] Since data collection was closed in December 2008, the Fort Hood tragedy of November 5, 2009 is not included in this survey. At this time, it is still not clear whether Major Hasan is part of global neo-jihadi terrorism as the investigation is still in its infancy.

[8] See Mountstuart Elphinstone, 1815, *An Account of the Kingdom of Caubul, and its Dependencies in Persia, Tartary, and India; Comprising a View of the Afghaun Nation, and a History of the Dooraunee Monarchy*, London: Longman, Hurst, Rees, Orme, and Brown, 1815; Olaf Caro. *The Pathans: 550 B.C. – A.D. 1957*, Oxford, University Press, 1958.

Somali Piracy: The Next Iteration
by Peter Lehr

Abstract

The article describes the escalation of acts of maritime piracy emanating from the coast of Somalia, comparing them to the wave of aerial hijackings in the 1960s and 1970s in terms of demands, including political demands. The advantages for the pirates to gang up with land-based al-Shabaab terrorists are discussed and likely developments sketched.

Introduction

Since the brazen attack of Somali pirates on the cruise liner *Seabourn Spirit* in November 2005, and in the wake of the successful hijacking of the French luxury yacht *Le Ponent*, the *M/V Faina* or the super tanker *Sirius Star* in 2008, scores of articles and op-eds have been published on the subject of modern piracy. These usually highlights the more spectacular aspects of this form of maritime crime, such as the brazen modus operandi of the pirates, the parachuting of huge sums of money on the hijacked vessels, or the operations of naval special forces against some of the pirate gangs.

Modern piracy is nothing new: [1] the phenomenon reemerged during the 1980s for a variety of reasons.[2] Piracy emanating from the coasts of Somalia is also nothing new. Somali piracy can be traced back at least to the mid-1990s when inshore and offshore fishing vessels started to be attacked at 'knife-point' – and occasionally at 'gun-point' as well. This initial wave of piracy emanating from Somali shores largely went unnoticed by the international community for a decade: only smaller, mostly local, vessels came under attack - various trawlers allegedly involved in illegal fishing activities in coastal waters, or tramp ships with no fixed schedule and other coast-huggers. For the latter category, the Kenyan-based Motaku Shipping Agency is an example: several of their vessels fell prey to pirates in 2005, prompting the company to call for outside help. International bodies such as the International Maritime Bureau (IMB), BIMCO and NUMAST also lobbied for an international initiative to tackle the worsening problem. However, these initiatives did not lead to robust action. The UN passed a series of resolutions, and general advice was given to stay as far away from these dangerous waters as possible – advice which is in any case less than helpful given the confined waters of the Gulf of Aden. Interestingly, even the attack on the *Seabourn Spirit* only managed to put Somali piracy on the international agenda for a short time: after a couple of weeks, international attention turned elsewhere – especially after it became clear that this attack was piracy pure and simple - not an attempted act of maritime terrorism.

Only the most recent wave of Somali piracy, triggered by the successful hijacking of the French luxury yacht *Le Ponant* in Spring 2008, prompted international actors to intervene. The fact that

the pirates netted a ransom of two million US dollars did not go unnoticed – neither by international media covering the story, nor by Somali militia men, clan fighters, and fishermen. In short, this act of piracy resulted in a kind of Somali 'gold rush', or 'feeding frenzy' (to use a more appropriate maritime simile): scores of willing recruits – young militia- and fishermen in the age-range of 20-35 years[3] – flocked to the pirates' lairs to get a piece of the action, or rather: a share of the booty. As a result, the frequency of acts of piracy – both successful and unsuccessful – rose from one or two attacks per month to several attacks per week. Somali pirates' milestones include the attack on the main battle tank-carrying *MV Faina* (captured 25 September 2008, released 6 February 2009; reported ransom US $ 3.2 m), the Saudi super tanker *Sirius Star* (captured 15 November 2008, released 9 January 2009; reported ransom: US $ 3m), the German-owned *Hansa Stavanger* (captured 3 April 2009, released 3 August 2009,;reported ransom: US $ 2.7m), and the US-flagged *Maersk Alabama* on 8 April 2009. However, this particular hijacking went less smoothly for the pirates. Faced with the determined resistance of an alert and prepared crew, the pirates had to abandon the ship rather hastily, holding its captain hostage in one of its life boats. After a stand-off lasting four days, US Navy SEAL snipers killed the three pirates holding the captain in the life boat while a fourth one was negotiating on board of the US Navy destroyer *USS Bainbridge*.[4]

International and Regional Responses

The pirate attack on the *Maersk Alabama* – one of very few US vessel targeted by pirates since the end of the Barbary Coast wars of the early 19th century – is noteworthy not only for the successful anti-piracy operation which ended it. In September 2008, for example, the French Navy *Commando Hubert* successfully retook a hijacked private yacht, killing one pirate and capturing six, while rescuing the two hostages, Jean-Yves and Bernadette Delanne.[5] The case of the *Maersk Alabama* is noteworthy for convincing the new US administration of President Obama that resolute and robust action was needed to combat this new scourge. This guaranteed the continuation of multinational anti-piracy operations launched in the wake of the *MV Faina* and *Sirius Star* hijackings of Autumn 2008, amongst them the newly formed NATO Combined Task Force (CTF) 151, the NATO Operation Allied Provider, and EU Operation Atalanta. Also, the most recent wave of piracy resulted in a flurry of diplomatic action such as the passing of several further UN resolutions, the formation of a UN Contact Group tasked to co-ordinate anti-piracy efforts, and the signing of bilateral agreements between several Western states and Kenya and the Seychelles in order to bring apprehended pirates to justice.[6]

Furthermore, a regional-based anti-piracy patrol conducted by Arab states under the lead of Saudi Arabia is under discussion at the time of this writing. As the case of the *Malacca Strait Patrol* (MSP)[7] in Southeast Asia shows, pooling one's scarce resources with those of one's neighbors suffering from the same problem makes eminent sense: the joint anti-piracy patrols of Indonesian, Malaysian, Singaporean and Royal Thai navy vessels led to a considerable decrease

of piratical acts – both with regard to overall numbers as well as in the severity of such attacks: from gun-point (organized piracy), back to knife-point (opportunistic piracy), so to speak.[8] Even more importantly with regard to long-term solutions to piracy, efforts are made to train and equip a Somali naval force and coast guard to be based in the more secure parts of the war-torn country. The intention here is to empower Somalis to re-establish a modicum of law and order at sea by themselves.

As such, enough initiatives to combat piracy seemed to be in place to make life more difficult for pirates: short-term 'quick-fix' solutions such as the various armadas patrolling the dangerous waters or the agreements with Kenya and the Seychelles to bring pirates to justice; medium-term solutions such as the Arabian anti-piracy task force; and long-term solutions to address the root causes of piracy on the shore by way of re-establishing law and order at least in parts of Somalia. However, medium-term solutions will take at least another year to come to fruition – if at all – and the long-term solutions mentioned above are even farther away. And with regards to the naval patrols on station at the moment, they appear to be out-maneuvered by ever more audacious pirate raids. The recent attack on the oil tanker *BW Lion* is an impressive case in point: the attack occurred at high sea, about 1,000 nautical miles (1,800 km) off the coast of Somalia.[9] Suspicious approaches have been reported off the coast of Oman as well as in the Mozambique Channel – about a 1,000 nautical miles away from their own shores. The waters of the Seychelles have seen several successful pirate attacks, such as the hijack of the British yacht *Lynn Rival* in October 2009.[10]

Securitization of Somali Piracy: Introducing the 'T-Word'

Thus, not everybody is happy with the seemingly sluggish pace of current anti-piracy operations. Some hardliners even lobby for preventive land strikes in addition to more robust action at sea. The objective of such strikes would be to destroy the pirates' infrastructure, and to eliminate known high-profile leaders of pirate gangs. Supporters of such strikes cite the targeted killing of al-Shabaab leader Aden Hashi Ayrow in May 2008 as an example or the September 2009 strike against Saleh Ali Saleh Nabhan, a Kenyan involved in the Mombasa hotel bombing of November 2002. The French land strike at pirates involved in the *Le Ponant* hijack is also mentioned in this regard. Broadening the scope of land strikes to include the destruction of pirates' infrastructure would be the next logical step: without suitable boats… no piracy – for the hardliners, it's as simple as that.

In this context, it needs to be pointed out that the phenomenon of Somali piracy has been successfully securitized during the last year from 'above' – i.e., the international community: first, a regional maritime crime problem was turned into an international security threat; and second, Somalia was depicted as yet another safe haven for Al Qaeda. Not surprisingly, some observers connected the dots by commenting on a possible nexus between Somali piracy and Al

Qaeda terrorism in the shape of maritime terrorism.[11] Mentioning the 'T-word' usually proves enough to put a problem on the international (Western) agenda. It also serves to justify calls for more robust actions – in the present case, strikes against the shore bases of the pirates, and probably even surgical air strikes against known pirate captains. Such a strategy would be roughly comparable to the actions taken against the North-African *Barbary Coast* pirates during the first decades of the 19th century: after having ransomed captured sailors for many years, a squadron of the fledgling US Navy bombarded the harbors used by the pirates in what is now known as the *First Barbary War* (1801-1805), culminating in a daring raid by then Lieutenant (later Commodore) Stephen Decatur in the famous *Battle of Tripoli Harbor* in July 1804.[12]

 'Doing a Decatur' would come with a considerable risk, however: it could drive the pirates into the arms of militant Islamists such as al-Shabaab – an outfit allied with Al -Qaeda aspiring to be the "Al Qaeda in the Horn of Africa". As such, a 'quick fix' in the shape of land strikes could create a problem much worse than piracy. True, so far there is only circumstantial evidence of contacts between pirates and al-Shabaab. With regards to an imminent wave of maritime terrorism emanating from the shores of Somalia, there is no evidence at all – although the country's geo-strategic location athwart major sea lines of communication (SLOC) and in the vicinity of a formidable maritime choke point, the Bab el-Mandeb, makes it a viable launching pad for such acts. One should keep in mind that two successful maritime suicide attacks already took place in the waters of the Gulf of Aden: the attack against the USS *Cole* in October 2000, and the attack on the super tanker *Limburg* in October 2002.

We do not need to speculate about the still farfetched possibility of Somali maritime terrorism at this point. It is, however, necessary to discuss the not so farfetched possibility of Somali piracy going through yet another iteration: a move from 'private' piracy (i.e. conducted for private gain only) towards a more politicized form of piracy – here loosely defined as acts of piracy according to the IMO definition given above but acts which also include some political demands aimed at achieving more than just 'private' gains. Such a development would have far-reaching consequences for international, regional and local efforts to curb piracy. At the time of writing, there is already enough evidence to suggest that this move towards political piracy is taking place right now.

Gradual Politicization of Somali Piracy: Demands other than Money

Consider the recent spat between Somali authorities and the government of the Seychelles, triggered by an obvious swap of hostages for prisoners: three Seychellois crew members who have been kept since February 2009 were released after two private planes returned 23 Somali prisoners held in the Seychelles for piracy to Mogadishu. Although the Seychelles are in denial, most observers agree that this was the first successful exchange of hostages for prisoners, thus establishing a precedent, comparable to the first multi-million US $ ransom – which, in fact,

triggered the current wave of piracy. It can, in any case, be taken for granted that this exchange was duly noted by other organized pirate groups operating from Somali shores – it was not only reported by major international media sources such as the Associated Press[13] but also by regional, Somali-language (online) newspapers.[14]

Here, it is important to recall that Somali groups – pirates being no exception – usually are tightly knit, clan-based 'ventures'. As such, and with regard to the scores of Somali prisoners in various – mostly Kenyan – prisons, it is plausible that this precedent will lead to more such demands, being made on top of the usual demands for money ransom. Demanding the release of fellow pirates in itself is not a political demand. However, it is safe to assume that it won't stop there: as soon as pirates learn that demands going beyond the usual exchange of money are negotiable – and acceptable – they may be tempted to press even further, using the hijacked vessel and the act of hijacking itself as a platform to air other, and more specifically political demands – not necessarily only on behalf of themselves – as we shall see below.

As it relates to kidnappings and hijackings carried out for political reasons, hostages-for-prisoners exchanges are not exactly a new phenomenon. The wave of politically motivated aviation hijackings from the late 1960s onwards is a case in point: apart from demanding amounts of money usually ranging in the million dollar range, aviation hijackers frequently demanded the release of prisoners from the hijackers' organization or prisonera from an allied group. Aviation hijackers were also very adroit at using the ongoing drama of the hijacking – during which scores of civilians were held in a confined space for days, sometimes weeks, besieged by police or armed forces – as platforms to communicate their political demands to an international audience. In cases of aviation terrorism, Wilson isolated five primary demands:

- The demand to travel as an end in itself (not to evade capture);
- The request for the release of specific, named prisoners;
- The request for the release of a general group of unnamed prisoners;
- The demand for publicity in a variety of forms; and
- The demand for money to be paid to the terrorists themselves. [15]

The primary demand "to travel as an end in itself" and not just to evade capture is rather peculiar to cases of aviation hijackings but does not apply in our case: It is obvious that 'being flown to Cuba' makes sense, but being 'shipped to Cuba' does not. With regard to demands for free passage, however, such demands are also made by Somali pirates since they are in the same boat (literally, here) as their hostages: slipping away into the night is quite difficult when the hijacked vessel is still at sea and shadowed by warships and helicopters. Of course, if the vessel has been forced to drop anchor near the pirates' home base, this demand may not feature high on the list. In any case, this particular primary demand seems to be self-evident enough for both politically and criminally motivated hijackings and requires no further discussion. The same is true with

regard to the money to be paid to the hijackers themselves: as we already established, this is, so far, the main driving factor behind piracy as maritime criminality. The Somali pirates are no exception. The demand for publicity is something else, though.

In the case of essentially politically motivated terrorist hostage situations, specialists such as Rubin and Friedland[16] argue that publicity is the main driving factor. In the case of hijackings with criminal intent, in our case the Somali shipjackings, the main driving factor is financial gain. Publicity does not seem to be particularly welcome since it potentially hampers smooth transactions between the hijackers and third parties negotiating on behalf of the ship owners. With the exception of the botched hijacking of the cruise liner *Seabourn Spirit* in November 2005 Somali pirates actually managed to stay largely outside the limelight of international public attention until the successful hijacking of the French luxury yacht *Le Ponant* in Spring 2008. Prior to that, nobody bothered too much about frequent acts of inshore piracy targeting tramp ships. As a result, early Somali piracy achieved what organized crime groups usually aspire to: "function completely under the radar screen of the state apparatus [since gaining] public attention is not part of their motivation."[17]

The *Le Ponant* attack and all the subsequent high-profile attacks more or less forced Somali pirates into the limelight. However, it is important to note that some pirate groups used this attention to gain publicity for their – or rather, the Somali fishing communities – grievances, such as illegal, unreported and unregulated (IUU) fishing and (alleged[18]) toxic waste dumping in their coastal waters and on their shores. Their attempts to sell themselves as something akin to maritime Robin Hoods has not been altogether unsuccessful, by the way. Even some Western newspapers have been taking a sympathetic stance. For this reason it may be a bit too hasty to dismiss their political declarations as mere acts of grandstanding by individual pirate captains only. Furthermore, names such as *Somali Marines* or *National Volunteer Coastguard of Somalia* adopted by certain pirate groups should also not be dismissed as pure irony: some pirate groups emerging in the early 1990s actually were formed on the behest of warlords controlling coastal areas in order to defend Somali maritime interests after the downfall of the central government and the disappearance of the 'official' Somali Navy. Thus, there may just be a kernel of truth behind these publicity stunts, and a sliver of political motivation behind the criminal acts.[19]

This leads us to the last of the primary demands remaining on Wilson's list above: those pertaining to the release of specified, named prisoners, and the release of a general, unnamed group of prisoners. So far, there is only one clear incident in the former category of (probably) specified prisoners, as described above. Two other recent cases seem to include demands for the release of prisoners as well: the case of Spanish fishermen captured on board of the tuna trawler *Alakrana*, and the British couple taken hostage on board of their yacht *Lynn Rival* in October. [20] At the time of writing, the British couple is still being held hostage. The crew of the *Alakrana,* however, has been released, and a ransom of US$ 3.5 million was reportedly paid.

However, the two Somali prisoners kept in a Spanish jail were not released. Thus, one of the pirates' key demands apparently went unheeded without any ill effect for the hostages. This begs the question whether demands other than money from pirates should actually be taken at face value. On the other hand, Spanish authorities announced that the two arrested pirates will be deported to Somalia to serve their prison sentence there after having been sentenced in a Madrid court.[21] Deporting the pirates to their home country after having sentenced them may well be a concession from those negotiating on Spain's behalf with the capturers of the *Alakrana* – but in the absence of evidence, all we can do is to speculate that the demands for the release of prisoners played a role in the protracted negotiations.

Again, it needs to be emphasized that Somali organized pirate gangs follow a very similar modus operandi: approaching vessels at high sea in wolfpack-style or 'swarming' attacks, forcing them to stop, boarding them, and forcing them to set course towards Somali pirate bases where additional pirates come aboard to reinforce the original boarding party. Crew members are kept captive either aboard their own vessels or somewhere at land until ransom monies are paid – which can take months. They clearly copied tactics from each other - launching ever more daring raids, demanding ever higher ransoms – currently in the 2-3 million US dollar range. Recently at least two groups apparently moved beyond mere financial objectives, demanding the release of imprisoned fellow pirates. Oter groups appear to be on the point of doing the same. Since pirates are learning from each other, it can be expected that more such demands will follow, driven by clan-based solidarity – as stated above.

Politicization of Somali Piracy: 'Mujahideen at Sea'

Interestingly, al-Shabaab also plays a role in politicizing Somalia's pirates, now even calling them "mujahideen because they are at war with the Christian countries"[22], defending "the coast against Allah's enemies".[23] Al Shabaab's politicization of piracy is reinforced by the impact of recent anti-piracy actions on the pirates themselves:

> "Ever since American snipers shot dead three pirates to rescue the captain of the US-registered freighter *Maersk Alabama* on Easter Sunday, the pirates have been calling for revenge – and they suddenly sound very much like the Islamists. The US is now 'our number one enemy', says Jamac Habeb, a pirate from Eyl. 'We are now out to get Americans,' says a pirate named Ismail from Haradhere. 'And when we have them, we'll slaughter them.'" [24]

Americans are not the only ones under threat: after a shoot-out between escaping Egyptian fishermen and their Somali capturers left several pirates dead, the pirates announced:

"'We have found seven of our dead colleagues floating in the sea,' said the associate, who gave his name as Farah, by telephone from one of the gangs' strongholds, Las Qoray. 'The Egyptian crew members killed them ... we used to welcome them and treat the Egyptians better than other hostages, but if we capture more of them we shall get our revenge.'" [25]

Of course that may be nothing more than grandstanding. After all, there is no profit in killing hostages. However, the stakes appear to be higher than before, and so is the likelihood of hostages getting murdered. For example, on 25 September Somali pirates killed the Syrian captain of a hijacked ship because he "refused the pirates' demand to turn the ship away from the port [of Mogadishu, t he ship's destination]." [26] Also, the North Korean master of the chemical tanker *MV Theresa VIII* hijacked on 16 November is said "to have died after being shot during the hijack" when he and the crew attempted to fight off the pirates.[27] Refusing pirates' orders used to be punished by non-lethal force, including savage beatings. All in all, the chance for crew members to survive their ordeal unharmed used to be quite good. This may have changed now. And as the chilling threat against the Egyptians as fellow Muslims indicates, belonging to an 'infidel nation' may not be the only criteria for getting killed in the future: anybody could be a target for a revenge killing in the context of a blood feud or vendetta – not uncommon in Somalia.

Having said that, ostentatiously fighting for a bigger cause in the shape of a maritime Jihad against the West obviously provides the pirates with at least grudging and temporary tolerance by al-Shabaab – Somalia's leading Islamist militia, allied with al-Qaeda. Selling themselves as Mujahideen is clearly in the interest of Somalia's pirate groups - at least those operating in al-Shabaab's zone of influence. Therefore, even if we still agree with Ignatieff that "[there] will always be a gap between those who take the political goals seriously and those who are drawn to the cause because it offers glamour, violence, money, and power"[28], there is considerable scope for a further politicization of Somali pirates and a move towards *political piracy*. That would be piracy still carried out mainly for financial gain, but for political ends as well – as serious or as imaginary as these ends may be.

Thus, it is plausible that the next wave of Somali pirates may well act in a more politically aware manner. They may even find out sooner rather than later that hostages are not only "money on two legs", or human shields, or bargaining chips to release imprisoned fellow pirates, but that they can also be instrumentalized for demands of a much more pronounced political nature. "Withdraw from our waters, or we will start killing hostages" for example would be a possible demand directed against Western – or "crusader" – warships, on behalf of their 'patron' al Shabaab. And for that reason, pirates could start to be more than just tolerated pro-forma allies by Islamist militias: they could be useful for al-Shabaab as their own maritime arm, waging a pirate's war not too dissimilar to the one along the so-called 'Barbary Coast' in the early 19th

century, where pirate groups acted on behalf of the political powers, but also as independent entrepreneurs who "used their connections with states to advance their interests at the same time as they have advanced those of their patrons and protectors."[29] Being the only Somali groups that are actually able to carry the fight to the so-called "infidels", "crusaders" or "Allah's enemies" at the moment – al Shabaab could only target the few remaining staff members of Western NGOs after having been hit by US air strikes like the ones mentioned in the introduction – the pirates could be crucial for al Shabaab's future. For example, captured crew members might end up in the hands of al Shabaab, to be used as political bargaining chips and/or human shields.

In this context, it needs to be pointed out that hostages essentially are a "commodity". At the time of writing, it still makes sense for the pirates to 'sell' them – both crew members and ships – back to their employers/owners. But if this money dries up due, say, to an enforced ban on paying ransom, it may make sense for the pirates to sell them to the highest bidder – al Shabaab, for example. Examples of such a behavior abound: organized crime groups in post-invasion Iraq sold hostages to various militias or to al Zarqawi's group; and so did North African tribesmen in January 2009: they captured a group of Western travelers to sell them to Al Qaeda in the Maghreb (AQIM). While most of the other hostages have been released, the British hostage was beheaded – most probably because no ransom was offered for him.[30]

Conclusion: Implications for International Shipping

It is quite obvious that such cooperation between organized crime (pirates) and terrorism (al Shabaab) would have serious implications for international shipping passing through the pirates' extended area of operation, which nowadays includes the coast of Oman, the Seychelles, and the Mozambique Channel. Until now, it made eminent sense not to resist boarding if the targeted vessel had no chance to outmaneuver or outrun the pirates: hardly any hostage was harmed, and although crew and ship were in the hands of pirates for weeks and sometimes even months, they had a good chance to eventually walk away to tell the story, after ransom had been paid. For the same reason, it also made sense not to arm one's vessel: that could have resulted in a counter-productive arms race between pirates and crews, and thus an increase in casualties on the seafarers' side.

It is doubtful whether this will still be true in the future. To begin with, the newest wave of Somali pirates appears to be more willing to resort to deadly force. Secondly, the thought alone of being handed over to al Shabaab is for a hostage quite a chilling one; as cases from Iraq or the Maghreb show, the risk of losing one's life in a gruesome way is considerable. Thus, not resisting to be boarded may not be the wisest tactic any longer. Whether some shippers like it or not, outfitting vessels with at least defensive devices such as rolls of razor wire, keeping an around the clock anti-piracy watch while in the Northern Arabian Sea, and staying close to warships –

i.e. sailing in a convoy – may well be the shape of things to come in the new pirates' season. In addition, employing armed security guards or even escort vessels from private security firms may well make sense - at least for vessels transporting high-value cargo. However, this is quite an expensive solution. Yet another option would be to form "specially trained security teams from the ship's crew, led by a highly trained licensed officer".[31] Many seafarers' organizations and bodies such as IMO are opposed to such an option for a variety of good reasons, be they legal, liability/insurance-related, or practical.[32] Still, ships of certain nations are known to be well armed; they are hardly ever attacked by pirates.[33] In the United States at least, some ship owners appear to be reassessing the risks involved in arming sailors. For example, the *Washington Times* reported the following:

> "Many ship owners appreciate that armed crews would protect their ships, cargo and personnel. In May 5 [2009] Senate testimony, Philip J. Shapiro, chief executive officer of Liberty Maritime Corp., said: "In light of the recent threats to U.S. merchant mariners, we respectfully request that Congress consider clearing the obstacles that currently block ship owners from arming our vessels.""[34]

Admittedly, arming sailors still is a very unpopular solution for most. However, against the backdrop of ever increasing risks to life and limb while sailing through the Arabian Sea, such a drastic course of action is starting to make sense – at least for some. And with regard to the usual counter-argument that this would lead to an escalation in violence: whether we like it or not, that has already happened. Now the ball is in our court….

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Notes

 [1] The United Nations Convention of the Law of the Sea, Article 101, defines piracy as: *"(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed (i) on the high seas, against another ship or aircraft, or against persons and property on board of such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State[…]*The text of the Convention is available at http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf (accessed 11/11/2009).

[2] A discussion of reasons for piracy can be found in Murphy, Martin N.: *Small Boats, Weak States, Dirty Money. Piracy and Maritime Terrorism in the Modern World.* London, Hurst 2009, pp. 24 passim.

[3] See, for example: Robyn Hunter, "Somali pirates living the high life", *BBC News, World, Africa,* 28 October 2008, at http://news.bbc.co.uk/1/hi/world/africa/7650415.stm (accessed 11/11/2009).

[4] "Hostage captain rescued; Navy snipers kill 3 pirates", *CNN.com/world,* 12 April 2009; at http://edition.cnn.com/2009/WORLD/africa/04/12/somalia.pirates/index.html (accessed 15 September 2009). The fourth pirate is currently in jail in New York, awaiting trial.

[5] The German Federal Police elite unit GSG9 was deployed to recapture the *Hansa Stavanger,* but the operation was deemed to risky and aborted. See "German Elite Troop Abandons Plan to Free Pirate Hostages", *Spiegel Online International,* 04 May 2009; at http://www.spiegel.de/international/germany/0,1518,622766-3,00.html (accessed 15 September 2009).

[6] See for example James Kraska. "Fresh Thinking for an Old Problem. Report of the Naval War College Workshop on Countering Piracy", *Naval War College Review,* Autumn 2009, Vol. 62, No. 4, pp. 141-154.

[7] Official name: Malacca Straits Coordinated Patrols (MALSINDO)

[8] For a critical view on MALSINDO and the Regional Cooperation Agreement on Anti-Piracy ReCAAP), see Catherine Zara Raymond: "Piracy and Armed Robbery in the Malacca Strait – A Problem Solved?" *Naval War College Review, Summer 2009, Vol. 62, No. 3,* at http://www.usnwc.edu/getattachment/7835607e-388c-4e70-baf1-b00e9fb443f1/Piracy-and-Armed-Robbery-in-the-Malacca-Strait--A-.aspx (accessed 11/11/2009)

[9] "Mid-ocean pirate attack on tanker", *BBC News, World, Africa,* 10 November 2009, at http://news.bbc.co.uk/1/hi/world/africa/8350850.stm (accessed 11/11/2009).

[10] "Government rules out ransom deal", *BBC News England,* 31 October 2009, at http://news.bbc.co.uk/1/hi/england/kent/8335810.stm (accessed 11/11/2009).

[11] See the interesting discussion on the securitization of Somali piracy in Tsvetkova, Bilyana: "Securitizing Piracy Off the Coast of Somalia", *Central European Journal of International and Security Studies,* Vol. 3, Issue 1, May 2009, at http://www.cejiss.org/assets/pdf/articles/vol3-1/Tsvetkova-Piracy_in_Somalia.pdf (accessed 29/09/2009).

[12] An easily readable description of this war can be found in London, Joshua E.: *Victory in Tripoli: How America's War with the Barbary Pirates Established the U.S. Navy and Shaped a Nation.* Hoboken, NJ, John Wiley and Sons, 2005.

[13] "Somalia, neighbouring Seychelles clash over pirates", see for example ABC News, 7 September 2009, at http://abcnews.go.com/International/wireStory?id=8506980 (accessed 11/11/2009).

[14] See, for example: "Puntland 'seizes Kenya-bound planes that transported pirate suspects'", *Garowe Online,* 6 September 2009, at http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_Puntland_seizes_Kenya-bound_planes_that_transported_pirate_suspects.shtml (accessed 29/09/2009).

[15] Margaret A. Wilson, "Toward a Model of Terrorist Behavior", *The Journal of Conflict Resolution,* Vol. 44, No. 4 (August 2000), pp 417.

[16] Rubin, Jeffrey Z./Friedland, ,Nehemia.: "Theater of Terror", *Psychology Today,* Vol. 20, No. 3, (March 1986), pp. 18-28.

[17] Dipak Gupta, *Understanding Terrorism and Political Violence. The life cycle of birth, growth, transformation, and demise.* London, Routledge, 2008, p. 148.

[18] The UN's rather perfunctory survey on Somalia's coasts – the environment simply is too hostile for a more detailed study at the moment – could not really establish the origin of the containers found: as a result of the Boxing Day tsunami of 2004, these containers could theoretically come from anywhere.

[19] If one applies the well-known definition for politics, "who gets what, when and how", the pirates' behaviour is eminently political in a very pragmatic sense in any case.

[20] It is however highly unlikely that Somali pirates would include a demand for the release of unspecified prisoners not belonging to their own clan or group: there is not much cooperation between the various pirate groups, hailing from different clans and sub-clans, with a high fluctuation of members.

[21] "Somali pirates free Spanish boat", *BBC News,* 17 November 2009, at http://news.bbc.co.uk/1/hi/world/africa/8364530.stm (accessed 19/11/2009).

[22] Sheikh Hassan Turki, leader of Hizbul Islam, as quoted in "Terror on the High Seas. Somali Pirates Form Unholy Alliance with Islamists"", *Spiegel Online,* 20 April 2009, at http://www.spiegel.de/international/world/0,1518,620027,00.html (accessed 15/09/2009).

[23] Muqtar Ali Robow, al-Shabaab, as quoted in "Terror on the High Seas".

[24] "Terror on the High Seas", op. cit.

[25] "Somali pirates find 7 bodies, blame Egyptians", *Garowe Online,* 17 August 2009, at http://www.garoweonline.com/artman2/publish/Somalia_27/Somali_pirates_find_7_bodies_blame_Egyptians.shtml (accessed 29/09/2009).

[26] "Pirates attack ship off Mogadishu", *BBC News,* 25 September 2009, at http://news.bbc.co.uk/1/hi/world/africa/8274030.stm (accessed 26/09/2009).

[27] Tristan McConnell, "Hijacked captain dies as pirates free trawler crew for £2m ransom", *The Times,* 19 November 2009.

[28] Michael Ignatieff. *The Lesser Evil: Political Ethics in an Age of Terror.* Princeton, NJ, University Press, 2003, p. 122.

[29] Martin N Murphy. *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World.* London, Hurst 2009, p. 10.

[30] "Al Qaeda 'kills British hostage'", *BBC News UK,* 3 June 2009, at http://news.bbc.co.uk/1/hi/uk/8080447.stm (accessed 19/11/2009).

[31] Jeffrey Kuhlmann. "Piracy: Understanding the Real Threat", *Counterterrorism. Journal of Counterterrorism & Homeland Security International* Vol. 15, No. 4 (Winter 2009/2010), p. 36.

[32] See, for example: "IMO worried about arming ships to fight piracy", *Reuters Africa,* 18 May 2009, at http://af.reuters.com/article/idAFJOE54H0HD20090518 (accessed 25/11/2009).

[33] Israel and Russia are usually mentioned in this context.

[34] Editorial: "Arming sailors. Gun-free zones are dangerous at sea", *Washington Times,* 11 May 2009, at http://www.washingtontimes.com/news/2009/may/11/arming-sailors/ (accessed 25/11/2009).

The Role of the Pashtuns in Understanding the Afghan Crisis
by Isaac Kfir

Abstract

 The paper reviews the current state of affairs in Afghanistan and argues that the failure to understand the nature and structure of Pashtun society is responsible for a lack of progress towards peace and security. The first section offers a review of Afghanistan and Pashtun society, the second an analysis of the situation in Afghanistan after 9/11, the third concludes with some recommendations as to how to progress.

The West's Afghan policy is in deep crisis, as eight years since the removal of the Taliban regime the country is experiencing rising violence. This is due to internal Afghan politics and history coupled with political and military mistakes made by the international community. The current situation has naturally led western politicians to suggest contradictory approaches to Afghanistan with some calling for talks with 'moderate' Taliban [1] which have largely been rejected, [2]whilst other call for a continued commitment to countering the Taliban and the other armed groups. In reality, the effect of the debate is to emphasize how rudderless the Afghan policy is, whilst the Afghan political system remains moribund. [3]

The international community, with America in the lead, has made Afghanistan and Pakistan key issues in world affairs, and despite rising costs (the US has annually doubled its official defense costs in respect to Afghanistan, moving from under US $21 billion in 2001-2002, to a projected US $ 180 billion in 2009-2010, [4]), there remains a deep failure to understand the underlying dynamics of the area. Policymakers seem to believe that as long as money and soldiers are 'thrown' at the problem it would eventually come to an end. In reality Afghanistan is a bottomless pit. This is something that the Soviets discovered - the more men and money they poured into Afghanistan, the more difficult it became to extricate themselves from the Afghan quagmire. [5]

The author argues that new efforts [6] are unlikely to succeed because of the Pashtun culture and the legacy of the Afghan Jihad. For this reason, the international community should - instead of trying to 'fix' the Afghan problem by sending more troops and money - adopt a policy of containment that calls for a redeployment of resources. It is abundantly clear that despite billions of dollars and massive international efforts, many Afghans do not feel connected to their state. [7] If anything, Afghans increasingly see the presence of the international community as an occupying force keeping a corrupt and decadent government in power. On the other hand, in the words of an Afghan man, "They [Taliban] collect 10% tax on all income, even from the government fields… So if you grow 100kg of wheat you pay 10kg and they give you a receipt

and never charge extra or more." [8] The *Guardian* journalist Ghaith Abdul-Ahad ,following a meeting with some tribal elders in Kunduz, Northern Afghanistan ,recounts what a local man had told him: "For 30 years we lived under the rule of war. Only in the last six years have we had some peace. The solution is not to send foreigners – the more foreign troops there are, the more resistance they create. The Afghan army and police should secure the villages." [9]

Understanding Afghanistan

The state known as Afghanistan emerged in the mid eighteenth-century, when a *jirga* of nine Abdali sub-tribes selected a tribal leader by the name of Ahmed Khan to serve as the successor of Nadir Shah. [10] Ahmed Khan was an effective military leader; he expanded and consolidated his dominion. However, Khan's legacy has been a double edge sword: although he forged a state, it was one with deep division between the Pashtun and the other groups that resided in the area such as Tajik, Uzbek, Hazara, and Turks. The Pashtun live mainly in the south and eastern parts of the country, with a large portion living on the Pakistani side. The Tajik, making approximately 25% of the Afghan population, inhabit in the northeast of the country and the urban centers. The Hazaras, around 13% of the population, reside in the central mountains area of Afghanistan. The final major group, the Uzbeks and Turkmen (less than 10%) is inhabiting the north-center. [11] Other important differences are linguistic with about half the population speaking Dari, around 35% speaking Pashtu while the rest converse in their own tribal dialects. [12] In addition to ethnic differences, Afghanistan also contends with continuous tensions between the centre (Kabul) and the countryside. This eventually brought down the Afghan monarchy in 1973. [13] Ironically the same situation is occurring nowadays as attempts at legitimizing the Kabul government have created angered in the countryside, where the capital is viewed Kabul as corrupt and decadent.

The second issue affecting Afghanistan's ability to exist, as a viable state is its strategic location with the Hindu Kush dominating its centre. [14] Afghanistan lies at the heart of the ancient silk route of China to the West, with the famed Khyber Pass located between Afghanistan and Pakistan allowing for movement from the Far East to Europe and vice versa. [15] Conquerors have found that to reach the wealth of India they must traverse Afghanistan, which is why they have repeatedly sought control of the country. In religious terms, Afghanistan was the conduit by which Buddhism reached China and Japan. Louis Dupree, the American expert on Afghanistan, described Afghanistan also as "…a bridge between the Persian and Indian worlds, transmitting elements of each to the other."[16] Thus, Afghanistan's importance is that to its north is Central Asia with its vast mineral resources, whilst to its South are Pakistan and Iran, providing access to the Arabian Sea and with it to the world. [17] Moreover, recently there are indications that Afghanistan itself may contain important minerals. The Aynak copper deposit, located 30 kilometers from Kabul is a good example; it has a solid level of grade ore (in November 2006, nine companies from Australia, Canada, China, India, Kazakhstan, Russia and the United States submitted tender offers for the deposits [18]). Thus, whereas in the past, Afghanistan's

importance was as a conduit, now it may have its own natural wealth, which may exacerbate tensions within the country, as individuals and groups will fight over its control.

The Pashtun Factor

The Pashtun inhabit the area between the Indus, Hindu Kush and the Syistan plateau in South Asia and Central Asia. The majority of them are residing along the Afghan-Pakistan border (a combined area of approximately 250,000 square miles) from Dir along the Indus, westward to Dera Ismail Kera and all the way south to Baluchistan. Interest in the Pashtun rose not only because they make up the largest single ethnic group in Afghanistan and play a central role in the Afghan Jihad and in the Taliban. In addition, among the various ethnic groups in Afghanistan, they are arguably the only ethnic group to have maintained a strong tribal identity. [19] Legend holds that the Pashtun are descended from a male ancestor known as Qais, making all Pashtun relatives. However, over time, kinship bonds have weakened, leading to a four-tier system. The first is the Pashtun ethnic group, which exists as a confederation that, when needed, operate *en masse*. This can, for example, be seen in elections when they vote for their 'Pashtun' candidate, opposing a Hazara or a Tajik. The second tier is the *quam* (tribe), which lives in a specific territory, with its own dress codes, laws, practices and politics. The next dividing element is the *Khel* (large lineages or clan) with a number of clans making up a tribe. The fourth tier is the *Khol* (smaller lineages / family groups). The latter is of immense importance for the Pashtun and explains why they have more than seventy kinship terms in Pashto. The head of each *Khol* is a *malik.* In theory, there is a *malik* at each group-level, though in reality they operate as *primus inter pares* ('first among equal') when it comes to the *jirga* (importantly different tribes will have different hierarchies [20]). Applying the four-grouping layer to the Pahstun, the system means that one owes allegiance, first to the family, then to the clan, followed by the tribe and finally to the confederation. [21]

The Pashtuns live by to a tribal code – *Pashtunwali* (Code of the Pasthun), and they generally subscribe to the Hanfi and Deobandi interpretations of Sunni Islam, though *Pashtunwali* dominates their way of life. [22] At the core of *Pashtunwali* is *badal* (honor, though some define it as revenge). *Badal* is mainly personal but it also has bearing on the group, as it mean that an offense of any form or magnitude demands retaliation, which is not only a personal duty, but a family one that also effects the sub-clan, the clan and the tribe. Characteristics of the *Pashtunwali* are: *melmastia* (hospitality) and *badragga* (safe conduct) and these are linked to *badal* in that they refer to how one treats one's guests; failure to treat one's guest properly amounts to an offence on one's honor. Syed Abdul Quddus, an experienced Pakistani civil servant with intimate knowledge of the Pashtun, recounts a story told amongst the Pashtun in which an old Pashtun woman loses her sons to a group of bandits who demand hospitality and sanctuary from her. She granted it because even though the bandits killed her only sons, she was honor bound to provide asylum once the bandits claimed it. [23]

The violent nature of Pashtun society is often attributed to the geography of their area, which has some merit especially when one applies the concept of *Tarboorwali* which refers to the enmity of brother's son / cousin rivalry. The *tarbur* concept has become synonymous with enemy and has contributed to making the Pashtun so conflict-oriented. [24] The *daftar* (tribal land) concept and *daftari* (an individual share of the tribal land) are central to understand *Tarboorwali*. *Daftari* means that only those that own land may have a say in the business of the village . A person without a land becomes a *faqir* – one without a voice. A *faqir* status affects an individual's position; reducing it to a position of servitude in the village from which it is very difficult to rise above – *faqirs* have no say in the *jirga*, which, in turn, prevents them from acquiring land. [25] *Tarboorwali* becomes a factor when it is time to divide the land. It is in such situations that cousins can become enemies; the family's land is divided amongst male heirs (and cousins tend to marry), and each male wants to acquire land for without it, they and their families are consigned to a *faqir* position. Thus, land disputes are often at the root of local conflicts leading to bloody feuds and the splitting up of a family line.

In sum, Pashtun society begins with a man, who is the head of the family (*malik*). The more wealth and land he has the greater the likelihood that he will have several wives. His sons most likely marry their first cousin (i.e. the daughters of his brother – patril-lineal parallel/cousin marriage), in order to ensure that dowries remain in the family. The son will receive a piece of land, making him into a *daftari,* giving him a say in the village *jirga*. When the family is small, it resides often in a single house or compound. After a generation or so, the family becomes too big and some members move out and establish their own *khol*, and the process repeats itself. After a few generations, the family is no longer a *khol* but a *khel* and so on (see Figure 1). It is also important to note, that at times, a large *Khol* or even a *Khel* would move *en masse* to a new area in search of land. [26]
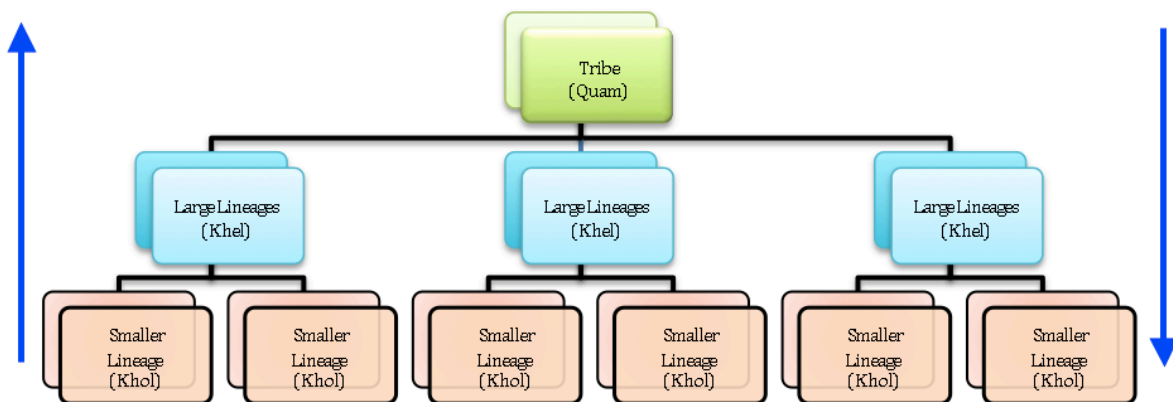

Figure 1 - The Breakdown of the Pashtun Structure

The Afghan Jihad Effect on the Pashtun Structure

The Soviet invasion of Afghanistan in December 1979 meant that millions of Afghans - mainly Pashtuns - sought refuge in Pakistan and Iran However, the process of crossing the Durand Line began prior to the Soviet invasion, with Afghan Islamists escaping the repressive policies of the Daoud regime. Once in Pakistan, they joined training camps and bases along the Pakistan-Afghan border, where they were trained to fight Daoud's Communist-leaning government. Islamabad supported these Afghan Islamists because Daoud since the 1950s rejected the Durand Line and advocated for Pukhtunistan – a homeland for the Pashtun. Daoud hoped that through Pukhtunistan, which would include the strategically important Khyber Pass, (inhabited by Pashtuns) Afghanistan would gain access to the sea. Daoud's policy of Pukhtunistan manifested itself in "officially organized demonstrations, symbolic postage stamps, and many tracts and other publications intended to further the cause." [27] Donald N. Wilber, an expert on Persian architecture and allegedly a CIA man, writing in 1953, claimed:

> "The Afghanistan Government maintains that the livelihood of as many as 5,000,000 nomadic tribesmen, who for centuries have moved seasonally between the high mountains of Afghanistan and the plains of the Indus, has been endangered by an artificial barrier that divides and restricts them. Muhammad Zahir Shah told the writer that Afghanistan feels an obligation to the tribes for the frequent help they have given his country in its struggle for freedom, and that Afghanistan's aim is to see that the Pakhtuns achieve autonomy… Underneath all of this there probably lies the Afghan fear that as a land locked state the national future is insecure; Afghans feel that an autonomous Pakhtunistan, in which Baluchistan was included, would give their country a friendly outlet to the sea." [28]

Once Daoud fell from power, Islamabad saw an opportunity in installing a government that would abandon the idea of a separate Pukhtunistan. Zia-ul-Haq, using the Inter-Service Intelligence Directorate (ISI), worked towards such a goal. Consequently, the refugee camps became important as they provided the mujahedeen with willing young men that wanted to return to their villages as well to resolve the boredom of the camps. Zia, a conservative Muslim, encouraged and permitted Islamic movements such as *Jama'at-i-Islami* (JI) to enter the refugee camps, where JI engaged in *da'wa* (conversion), mainly through the camp-based *madrasas* (religious schools), which provided basic religious instruction, with an emphasis on jihad and obedience to the cause. Marvin G. Weinbaum, who was in Peshawar in the late 1980s writes,

> "The presence on Pakistan's soil of large numbers of refugees, most of them cut off from their traditional leadership, economically dependent, and united in belief of the righteousness of their resistance cause, benefitted most the highly conservative

domestic religious parties… it was Pakistan's Jama'at-i-Islami that took the lead in assisting the displaced Afghans and promoting their cause…". [29]

The Soviet troop withdrawal in the late 1980s did not end Soviet intervention as Russia continued to provide its ally President Mohammad Najibullah with financial aid. But Soviet withdrawal meant that the Afghan-Pakistan border was left with well-armed, highly motivated, deeply religious men looking for a new cause. These men also believed that they defeated the Soviet Union. The Soviet withdrawal from Afghanistan came at a time when Pakistan itself was experiencing major internal change as the death of Zia-ul-Haq allowed the country to adopt tentative democratic process.

The 1990s were important for Pakistan as the country experienced major political turbulence with ephemeral civilian regimes whose key focus was with political survival. This gave the ISI much leeway in its Afghan policy as seen in the Peshawar Agreement of 1989 - a tentative power sharing agreement between the different mujahedeen groups. The rising level of violence in Afghanistan, the continuous interference of General Nasserullah Babar, who by the early 1990s was Pakistan's interior minister (in the 1970s he served as the Inspector General Frontier Corps [30]) and *Jami'at-i Ulema' Islami* (JUD) which replaced the JI as the favored Islamic group, [31] facilitated the rise of a new actor in Afghan politics, the Taliban. Pakistanis encouraged the Taliban as a way to promote stability and ensure a pro-Islamabad government in Kabul. Oliver Roy suggests that the Americans and the Saudis were happy to see the change because the mujahedeen groups (mainly the JI-affiliated Gulbuddin Hekmatyar) were becoming hostile towards the United States. [32]

Thus, the legacy of the Afghan Jihad was that it began when Islamabad was worried about Kabul's pro-Pukhtunistan stance. The Pakistani government used the opportunity of the Soviet invasion to nurture and foster resistance groups (*mujahedeen*). Islamabad took this position in the hope of undermining the Soviet-backed regime, which by its very nature of being pro-Communist offended and worried a conservative Muslim like Zia-ul-Haq. Hence Zia used the ISI to support, train, and prop up the Islamic resistance movements by involving Pakistan-based Islamic movements (mainly JI) to instill greater commitment amongst the refugees, while also ameliorating tribal divides in favor of the concept of an *umma* (Islamic community). Pakistan used the Afghan Jihad to enhance its ties with Saudi Arabia and the United States, who provided money for jihad. At the end of the conflict with the USSR in Afghanistan, Pakistan had to find something to do for the religiously instructed and motivated youth. Two options appeared: first, use them to establish a pro-Islamabad government in Kabul and begin to exploit the opening of Central Asia. [33] Second, use the youths against Pakistan's old nemesis India, by encouraging the groups to head to Kashmir and take on the cause of liberating its Muslim majority from Indian "occupation". The issue, however was that the mujahedeen were increasingly uncontrollable and hostile, as they fought over the spoils of Afghanistan. Therefore, the Pakistan

government, with the support of its allies – the United States and Saudi Arabia – turned to a new emerging Islamic player - the dogmatic Taliban.

When looking at contemporary Afghanistan, one must view it through the lens of the militarization and the Islamization of Pashtuns during the Afghan Jihad Although the Pashtun tribes adhered to a militant variation of Sunni Islam, the concept of Jihad weakened tribal ties and, coupled with *Pashtunwali,* made the Pashtuns more dangerous and unpredictable. Consequently, the Islamization process saw Pakistani-based Islamic groups promote a more strict Deoband/Wahhabi interpretation of Islam, in which the *umma* concept, made one not just a member of a tribe or clan, but of something bigger and with great history – a Muslim Empire. By referring to the great Muslim tradition, the *mullahs* played on the needs of uneducated, poor tribal persons, showing them that through religion and commitment greatness can be achieved. An important factor in the new Taliban organization was that it provided food and other essentials for the fighters. The mujahedeen did not have to stand in line to receive ration books, a demeaning process, especially to proud tribal men. By becoming a 'Soldier of God,' the men also won new respect; they became the new *maliks*. [34] Thus, Islam became a tool in weakening tribal bonds, but at the same time strengthened the larger Islamic 'tribe' – the *umma* (see figure 2). [35] This explains why Brigadier (ret.) Qadir declares, "Today Pakistan is faced with a revolt against traditional tribal leaders and an insurgency in Waziristan." [36]

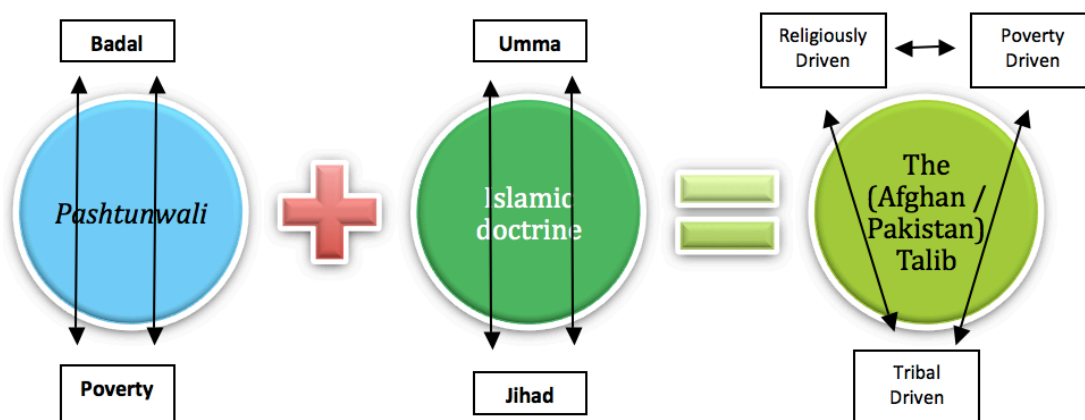**Figure 2: The effect of the Afghan Jihad; how it led to the creation of 'Soldiers of God'**

The Reconstruction Process

There is a general sense that reconstruction in Afghanistan has largely failed, as violence not only prevails but increases, with the Taliban controlling various provinces (mainly in the Southern part of the country). There are many explanations as to the current state of affairs with

scholars focusing on security, a lack of understanding of the challenge faced by the international community vis-à-vis Afghanistan, and so on. [37] There has been continuous rethinking in terms of strategy, whether in military terms, as seen with the way the 'Light Foot' (Afghan Model) approach gave way to the 'American Model' or when looking at the non-military reconstruction programs, moving from a Kabul-centric approach to the Provincial Reconstruction Teams (PRTs). Thus, since the international community first engaged Afghanistan in 2001, different policies have been adopted to attempt to deal with the challenges brought about by Afghanistan.

The Military Element in the Reconstruction

The campaign in Afghanistan rose out of the need for self-defense, the US had been attacked by Al Qaeda, which operated from Taliban-controlled Afghanistan. Following 9/11, the Taliban regime became a threat not only to US national interests but also to the maintenance of international peace and security, which justified the intervention. Due to the invocation of Article 5 of the Washington Treaty and the deployment of NATO forces in support of the American campaign to locate bin Laden, the initial focus was on a military solution. However, very quickly the, international force – ISAF – experienced major divisions as some began to waver in their commitments, with several refusing to station their troops in the more problematic areas in Afghanistan, such as the south; other members placed such demands that the operation was severely undermined. Secondly, NATO was unsure as to what sort of operation it was conducting - a post-conflict nation building operation or a peace-enforcement operation. The Americans, having adopted a 'Light Foot' ('Afghan Model' [38]) approach, focused on Al Qaeda and the Taliban (as well as Iraq) and provided very limited input. The US operation to capture bin Laden and other Al Qaeda operatives (Operation Anaconda) in March 2002 was conducted by Special Forces and heavily reliant on local forces (Northern Alliance). The strategy rose because there was no desire on the part of the US to re-impose a foreign force on the Afghans. [39] By 2004, having realized that the military approach was not bearing fruits since the Taliban were slowly reasserting itself, Washington changed US strategy to a more activist policy (known as the 'American Model'), demanding an increase in US troops. This led to a change in how the local community perceived the Americans. Astri Suhrke writes in respect to the 'American model' that,

> "…US forces created a measure of fear and antagonism that resonated beyond the inner circle of militants and fuelled recruitment to their cause. US soldiers were considered infidels in a countryside that was mostly tribal in social structure, culturally conservative, and closed to the uninvited. The Americans behaved on all accounts like an occupation force. They moved at will in any place their operational plans required and searched villages without asking permission or informing the local authorities." [40]

The year 2004 saw a further change in the international community's approach through the adoption of a unique civil-military program (Provisional Reconstruction Teams, PRTs) in northern and eastern Afghanistan whereby civil and military personnel would help expand the legitimacy of the Kabul government in the provinces. Second, the PRTs would enhance security, and finally facilitate the reconstruction processes. [41] More many reasons, the PRTs had many shortcomings, ranging from manpower and equipment shortages to an awkward agenda that at times was very difficult to implement. There was also a failure to appreciate varying local conditions as well as tensions within the actual PRT, with some problems arising between the civilian and the military wings of the PRT. Consequently, their effectiveness has become a contested issue and there are debates as to whether or not they should continue. [42]

The Tokyo Process and the Afghan Compact

The meeting that took place in Bonn in December 2001 laid down the roots for Afghanistan's reconstruction. The Bonn Accords ensured that Hamid Karzai was elected as head of the Interim government through a usage of a *Loya Jirga* (Grand Assembly). The *jirga,* though composed of different ethnic leaders, failed to reflect the realities on the ground in Afghanistan. A month later, in January 2002, the international community met in Tokyo with the participants pledging over $5 billion in aid to Afghanistan. Afghans, however, have emphasized that much of the aid, instead of going to reconstruction, ended up back in the donor countries through studies and research as to how to apply the funds, or went to international staff brought to Afghanistan to oversee the program. [43] Any massive reconstruction program has shortcomings and failures, as donors commitments to provide funds fall short of promises. In fairness, the commitments expressed at Tokyo were considerable and while donor countries may have fudged some of their responsibilities, they still provided much aid. Moreover, one needs to remember that there were at one point around 600 non-governmental organizations involved in Afghanistan; they too brought much money and assistance. Four years after Tokyo, and despite its obvious shortcomings, the international community adopted the Afghan Compact which in the words of B. R. Rubin and H. Hamidzada, provided a "…strategy for building an effective, accountable state in Afghanistan, with targets for improvements in security, governance, and development, including measures for reducing the narcotics economy and promoting regional cooperation." [44]When looking at each one of these elements, a near-total failure is discernable, with insecurity being pervasive, governance remaining poor and weak, development uneven and symbolic at the best, whilst the narcotic trade has remained substantial. [45]

The Bonn Process

The recent flurry surrounding Afghanistan's second post-Taliban election emphasized the many shortcomings of the Karzai administration. In 2001, Karzai won support from the international community because he came from an important family, he was a southern Afghan Pashtun, he had fought the Taliban, he was well-educated and spoke English which made it easy for him to

communicate with international leaders. When looking at the formation of the 30-members Interim Administration, it exhibited what the international community wanted to see in respect to Afghanistan rather than reflecting the realities in Afghanistan. Firstly, the Interim Authority – the government established by the *Loya Jirga* –faced some major challenges due to assassinations; Karzai's deputy, Abdul Qadir, died in July 2002 while Karzai himself narrowly escaped an assassination attempt in September 2002. The |Bonn Process demanded that the *Loya Jirga* ensure that Afghanistan abide by international obligations, whether in the realm of women's rights, human rights and other international agreements. This was achieved by reviving the 1964 Afghan Constitution, which had already caused major conflict within Afghanistan when it was first proposed in the early 1960s. [46] For a traditional society with a powerful religious class such obligations are unacceptable Many local *maliks* and *mullahs* viewed these demands as either foreign intervention or un-Islamic. The new constitution sought to find a balance between the religious aspect of Afghan society and the needs of a modern nation-state that is part of the international community. Secondly, the Bonn Process did not include the mujahedeen groups in the negotiation process, They rejected anyway, as they were determined to prevent its implementation either because they saw it as a Western-imposed process which also weakened their positions. Ultimately, the process of political reconstruction lacked a major component - support from the power-brokers.

From the Radical to the Less Radical: Some Options

As Afghanistan remains in a state of flux, certain questions emerge regarding the ongoing foreign presence in the country, with some voices calling for a withdrawal. Before examining some options, the author acknowledges that Afghanistan must remain a key foreign policy issue, and that it cannot become the safe-haven of Islamic terrorism.

Much has been said about the 2000-plus kilometer long Afghan-Pakistan border; it is porous and unmanageable especially as members of the same ethnic group reside on both side of the border. For this reason the border issue demands more attention, even if some solutions may not be palatable or politically correct. There are several options.

The first and most radical option calls for transforming Afghanistan from a single state to three or more states or entities. The reason why such a choice may work is that the divisions within Afghanistan are so pronounced that there are no deep relations and connections between, for example, the Uzbek-Tajik North and the Pashtu-dominated South. Due to Afghanistan's current state of affairs, the idea of redrawing its borders along national and ethnic lines becomes more conceivable than, for example, in the case of some of the more artificial African countries. [47] In the 1960s, Louis Dupree suggested an Afghan, Pakistan and Iranian Federation. For Dupree, such a Federation made sense in economic, social and political terms and would help reduce tensions. [48] In the twenty-first century, creating an Iranian, Pakistan and Afghan Federation is, however, not viable, as neither Iran nor Pakistan would accept such a process. However, turning

Afghanistan into a federal, or better still, a confederated political entity could bring down tensions, improve security and facilitate reconstruction. In its current form the country exists as a divided polity: Kabul has no significant influence over what takes place in a majority of the provinces. This means that transforming Afghanistan into a confederation (a group of independent states) or a federation (states operating within a large federal body, the less attractive option) means making the current situation de facto situation official. The attraction of a confederation is that in the relatively peaceful and secure areas, the international community could do better reduce the security costs, focus on building a stable political polity within a manageable area and facilitate the development of a strong infrastructure. It would also allow for greater participation by the international community as states that are not keen on sending their forces to the insecure areas could be given the responsibility for reconstruction. Ultimately, the new confederation - or a European-style federated entity - would be designed along at least three main lines (Uzbek-Tajik, Pashtun and Hazara). Such a system would also protect the transit routes from Central Asia all the way to the Arabian Sea, as each state (ethnic group) would benefit, and none would be able to seek to dominant areas where it lacks sufficient numbers. In other words, each large ethnic group would be responsible for its own political and social system. As the European Union has shown, one can devise an economic system whereby one drives through different countries while having thee same currency. Put simply, the new confederation would have to develop in a manner that allows for closer economic integration with the prospect that one day it might also lead to closer political integration. [49]

The second option for Afghanistan is to turn it into a federation, whereby instead of the 34 provinces of Afghanistan, the country becomes a United States of Afghanistan, whereby ethnic groups form their own state within a much larger federation. Each area would have an ability to legislate, with the center being responsible only for foreign and defense matters while education, health, and the economy would remain in the hands of each area or state. One must recall that this worked in Germany after the Second World War, whereby the Allies had redrawn West Germany's internal boundaries. Afghanistan's current structure might indicate that the federation approach was actually adopted as the country is divided into provinces with governors at the top. However, these governors are very much connected to the central administration in Kabul. This means that the federal experiment, which was envisioned in 2002 as a way to de-warlordise Afghanistan has not worked out. [50] There was no attempt by the international community to create state-based commitments of local people vis-à-vis their own province, as occurred in the United States, the classic and most successful example of a federation. In post-Bonn Afghanistan, the center was made strong, when in reality it needed to be weak.

The third option is derived from a RAND study into nation-building which Ambassador James Dobbins led. It noted that when it comes to nation-building, certain characteristics reappear again and again. The authors of the study argue that the reasons Germany and Japan proved successful was not due to their level of industrialization and their economic power (despite the devastating

aerial bombing campaigns), or even their homogeneity. Rather, it was based on the commitment of the United States to rebuild those states. When it comes to Afghanistan, it has been argued that the country did not receive, on a per capita basis, as much financial support as for example Kosovo. Nevertheless the Afghan commitment has been significant, especially when compared to those made for Haiti or Somalia. [51] The AfPak Strategy emphasizes the need for security prior to reconstruction. Such a policy is unlikely to work because of two key principles issues: first is corruption, which is endemic in Afghanistan; and, second, the Taliban will not simply fade into the distance. The Taliban will wait until the international force withdraws from the area and then reenter the village and do as they please. Astri Suhrke noted the situation in the Panjwai District (Kandahar) where the Canadians drove out the Taliban in September 2006 to great international applaud - only to see the Taliban's return to the district a year later. [52] AfPak, which calls for security and 'boots on the ground' is a newer version of the 'American Model' - with the only difference being that the Taliban will have to wait three years before returning to a province as they know that the foreign forces will eventually leave Afghanistan.

All three policy options require a policy of containment, beginning with the Afghan-Pakistan border, whereby troops are to be placed closer to the Pakistan-Afghan border, with patrols taking place along the border. However, at the moment helicopters, which are worth their weight in gold (indicated by the British experience), are not available in sufficient numbers to patrol the border since these are needed to ferry troops around Afghanistan in the hope of reducing IED-inflicted casualties. It would be more effective to use the helicopters to patrol along the Pakistan side as it is relatively safer (certainly when compared to the Afghan side). It would ensure that the Pakistani military and not the militias are located along the border but Islamabad is unlikely to allow Frontier Corps personal to work with international forces. Moreover, the recent campaigns in the North West Frontier Province and the Federally Administered Tribal Areas have shown that the military can better deal with the Taliban and the insurgents, something that the Frontier Corps has failed to do for several years. In addition, joint foot patrol along the Pakistan side of the border ought to be improved, with regular Pakistani troops operating in tandem with international troops to stem the tide on infiltration. The time for such a strategy is now, since Pakistanis increasingly see cross-border infiltration as a big problem - something that they refused to acknowledge for several years.

Conclusion

This paper aimed to show that the current approach to Afghanistan has fundamental flaws due to its failure to appreciate the complex nature of Afghanistan and its inhabitants. Moreover, the paper rejects the assumption that there is a military solution to the Afghanistan problem. The author maintains that a close look at Afghanistan emphasizes that the nature of the Pashtun makes it highly unlikely that they would cooperate with other ethnic groups for the sake of Afghanistan,. For several centuries they dominated the political system and with the election of

Karzai the international community has recognized their supremacy. Moreover, religiously they have unresolved issues with the Hazaras. Men such as Addal-Rab al-Rasul Sayyaf are seen as apostates whose militia killed Hazara civilians in western Kabul in 1993.

Given the Pashtun's tribal history, the legacy of three decades of brutal warfare, and the effects that the Afghan Jihad has had on tribal society, serious consideration has to be given to the idea of devising a Pashtun state within Afghanistan – but one that accepts the Durand Line. A Pashtun state should also accept that such a state (whether an independent entity or part of a confederation) has to co-exist with other ethnic groups. Failure to abide by such a formula would result in a reduction of international support for Afghanistan. Far too often, the international community has shied away from taking brave decisions under the guise of humanitarianism. This has meant that problematic entities have been allowed to continue to exist, causing immense suffering for their inhabitants. Within the field of humanitarianism, scholars have raised the notion that one must consider whether the intervention would cause more harm, which means that - horrid as it sounds - intervention must not be pursued when this is the likely outcome. [53] Afghanistan is not a natural state, and any attempt to make it one might be counter-productive and ensure that Afghanistan not only remains the 'graveyard of empires' but might also become the graveyard of multilateralism and 'nation building.' If the Afghan experiment completely fails, the international community will be hesitant to take on such a project again. In the early 1990s this was the legacy of Somalia, as once the US-led Unified Task Force (UNITAF) and its successor, the United Nations Operation in Somalia I (UNOSOM I) failed, Subsequently, the international community was reluctant to prevent the Rwanda genocide which, in turn, led to thee even greater slow motion disaster that is ongoing to this day in the Congo. [54] Policymakers would be well advised to read Robert Kaplan's "Afghanistan Post Mortem" . Kaplan who visited Kandahar in 1989, noted that what defeated the Soviets was not the military capability of the *mujahedeen* but rather the Afghans commitment to defend their land against foreigners. Kaplan puts it succinctly and crudely,

> "While the Soviets killed upwards of a million civilians in Afghanistan, they did it in such a boring, mechanical, impersonal way as to deflect sustained attention. In the end what "worked" in Afghanistan was not reason or negotiation or the advent of *perestroika* but the Afghans' willingness to die." [55]

A country inhabited by a people willing to endure a decade of brutal bombing, scorch-earth campaign and see a million dead and another third of its population subsisting in make-shift refugee camps, is a country that one should think twice before taking head on. This is why with such a country containment might work best.

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Notes

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[3] Ghaith Abdul-Ahad. "Face to face with the Taliban: 'The people are fed up with the government'." *The Guardian.* August 18, 2009.

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[6] President Obama has made military changes placing General David Petraeus as the commander of Central Command (CENCOM), which gives him responsibility for Afghanistan. He has appointed Richard Holbrook as the AfPak Czar and adopted a new framework for the region known as AfPak. - Thom Shanker, "Petraeus Steps Into New Role as Head of Central Command." *The New York Times*. November 1, 2008; Jodi Kantor, "Back on World Stage, a Larger-Than-Life Holbrooke." *The New York Times*. February 8, 2009; "Combating Terrorism: The United States Lacks a Comprehensive Plan to Destroy the Terrorist Threat and Close Safe Haven in Pakistan's Federally Administered Tribal Belt." *United States Government Accountability Office*. April 2008, (GAO-08-622) [http://www.gao.gov/products/GAO-08-622]; "Needed: A Comprehensive U.S. Policy towards Pakistan." *A Report by the Atlantic Council*. February 2009; "Ex-CIA Riedel to review Pak-Afghan policy." *Daily Times*. [Pakistan] February 12, 2009. [http://www.dailytimes.com.pk/default.asp?page=2009\02\12\story_12-2-2009_pg7_11]

[7] This is heavily influenced by the writing of Anthony Hyman. "Nationalism in Afghanistan." *International Journal of Middle East Studies*, Vol. 34, No. 2 (May 2002), pp. 299-315; Martin Ewans. *Afghanistan: A Short History of its People and its Politics*. (New York: HarperCollins, Perennial 2002).

[8] Ghaith Abdul-Ahad. "Face to face with the Taliban: 'The people are fed up with the government'." *The Guardian.* August 18, 2009.

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[10] Legend has it that it was the intervention of a noted *darwesh* (holy man), Mohammed Sabir Khan, that led the *jirga* to select Ahmed Khan who then became Badshah, *Durr-i-Dauran* (Shah, Pearl of the Age). Adapted from Martin Ewans. *Afghanistan: A Short History of its People and its Politics*. (New York: HarperCollins, Perennial 2002), p. 214; Anthony Hyman. "Nationalism in Afghanistan." *International Journal of Middle East Studies*, Vol. 34, No. 2 (May 2002), pp. 299-301.

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[12] The constitution recognizes Dari and Pashtu as the official languages; however, concessions were made to the Turkic languages (Uzbeki and Turkmen), Baluchi, Pashai, Nuristani and Pamiri (Alsana). These are official languages of the areas where those who speak them form the majority. - K. R. Singh. "Post-War Afghanistan: Reconstructing a Failed State." *Strategic Analysis* Vol. 28, No. 4 (2004), p. 557.

[13] Anthony Hyman. "Nationalism in Afghanistan." *International Journal of Middle East Studies*, Vol. 34, No. 2 (May 2002), pp. 299-315.

[14] Tim Youngs. "Afghanistan: The Culmination of the Bonn Process." House of Commons Research Library. Research Paper, 05/72 (October 26, 2005), p. 7. [http://www.parliament.uk/commons/lib/research/rp2005/RP05-072.pdf] .

[15] The international effort in Afghanistan is heavily reliant on the Khyber Pass as it allows supplies to be brought by land from Pakistan to Afghanistan. The campaign in southern Afghanistan would be severely hampered should the pass close, which explains why there have been attempts by the Taliban to control it.

[16] Louis Dupree. "A Suggested Pakistan-Afghanistan-Iran Federation." *Middle East Journal*. Vol. 17, No. 4 (Autumn 1963), p. 386.

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[22] *Pashtunwali* is more prevalent in the countryside than in the large urban centres.

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[24] Robert Lane Sammon. "Mullas And Maliks: Understanding The Roots of Conflict in Pakistan's Federally Administered Tribal Areas." Master Thesis, University of Pennsylvania, April 2008, p. 17; Syed Abdul Quddus. *The Pathans*. Lahore, Ferozsons Ltd., 1987, p. 83.

[25] Mukulika Banerjee. "Justice and Non-Violent Jihad: The Anti-Colonial Struggle in the North West Frontier of British India." *Études rurales*. No. 149/150, (January - June 1999), p. 185.

[26] Syed Abdul Quddus. *The Pathans*. Lahore, Ferozsons Ltd., 1987. pp. 78-79; Mukulika Banerjee. "Justice and Non-Violent Jihad: The Anti-Colonial Struggle in the North West Frontier of British India." *Études rurales*. No. 149/150, (January - June 1999), pp. 181-198.

[27] Anthony Hyman. "Nationalism in Afghanistan." *International Journal of the Middle East*, Vol. 34, No. 2 (May 2002), pp. 299-315.

[28] Donald N. Wilber "Afghanistan, Independent and Encircled." *Foreign Affairs*. Vol. 31, No. 3 (April 1953), p. 493.

[29] Marvin G. Weinbaum. *Pakistan and Afghanistan: Resistance and Reconstruction*. Boulder, Westview Press, 1994, p. 86

[30] Hussain refers to an interview that Babur gave in the *Defence Journal*. (Rawalpindi), April 2001. Rizwan Hussain. *Pakistan and the emergence of Islamic militancy in Afghanistan*. Aldershot, Ashgate, 2005, pp. 79-80.

[31] The JUD had close ties with Benazir Bhutto's Pakistani Peoples Party (PPP).

[32] Roy writes: "The United States and Saudi Arabia had belatedly realized that the Sunni Islamist networks they had supported against the Soviets were turning against them. These networks relied on the Jami'at Islami; 'Usama bin Laden, the rich Saudi since deprived of his citizenship who calls for jihad against the Americans; and Saudi and Sudanese organizations in Peshawar. Anti-American attacks after 1992 have been the work of members of these networks, who moreover have no connection to Iran: consider the 1993 bombing of the World Trade Center in New York." - Olivier Roy. "Rivalries and Power Plays in Afghanistan: The Taliban, the Shari'a and the Pipeline." *Middle East Report*. No. 202 (Winter 1996), p. 38.

[33] Ahmed Rashid. *Taliban: Militant Islam, Oil and Fundamentalism in Central Asia*. New Haven: Yale University Press, 2000; Olivier Roy. "Rivalries and Power Plays in Afghanistan: The Taliban, the Shari'a and the Pipeline." *Middle East Report*. No. 202 (Winter 1996), pp. 38-39.

[34] Louis Dupree. "Afghanistan in 1983: And Still No Solution." *Asian Survey*. Vol. 24, No. 2 (February 1984), pp. 233.

[35] This is developed from Albert Hourani. "Conclusion: Tribes and States in Islamic History." in Philip S. Khoury and Joseph Kostiner. (Eds.) *Tribes and State Formation in the Middle East*. Berkeley, University of California Press, 1990, pp. 303-304.

[36] Shaukat Qadir. "Pakistan's Waziristan Problem." *The RUSI*. Vol. 153, No. 2 (April 2008), p. 43, pp. 42-45. Fouad Ajami takes a similar view though in respect to the Arab world. He argues that the appeal of "Islamic fundamentalism" arose from the failed promise of the Arab regimes which have not delivered on their promised wealth. Fouad Ajami."The Arab Inheritance." *Foreign Affairs*. Vol. 76, No. 5 (September-October 1997), pp. 138-140.

[37] See, for example, Larry P. Goodson "Afghanistan in 2004: Electoral Progress and an Opium Boom" *Asian Survey* ,Vol. 45, No. 1 (January-February 2004), pp. 88-97; Barnett R. Rubin, Amin Saikal and Julian Lindley-French. "The Way Forward in Afghanistan: Three Views." *International Affairs*. Vol. 51, No. 1 (February-March 2009), pp. 83-96; Barnett R. Rubin and Humayun Hamidzada. "From Bonn to London: Governance Challenges and the Future of Statebuilding in Afghanistan." *International Peacekeeping*. Vol. 14, No. 1 (January 2007), pp. 8-25.

[38] The 'Afghan Model' refers to a strategy described as "…U.S. airpower degrades enemy communications throughout the theater of war. Then, U.S. Special Forces use light indigenous troops as a screen against enemy infantry and force the enemy to mass before calling in precision air strikes." Richard B. Andres, Craig Willis and Thomas E. Griffith Jr. "Winning with Allies: The Strategic Value of the Afghan Model." *International Security*. Vol. 30, No. 3 (Winter 2005-2006), p. 127.

[39] Paul L. Hastert. "Operation Anaconda: Perception Meets Reality in the Hills of Afghanistan." *Studies in Conflict and Terrorism*, Vol. 28, No. 1 (2005), pp. 11-20.

[40]Astri Suhrke. "A Contradictory Mission? NATO from Stabilization to Combat in Afghanistan." *International Peacekeeping*. Vol. 15, No. 2 (April 2008), pp. 214-236.

[41] Myriame T. I. B. Bollen, Eric T. Linssen, Ir. Sebastiaan J. H. Rietjens. "Are PRTs Supposed to Compete with Terrorists?." *Small Wars & Insurgencies*. Vol. 17, No. 4 (December 2006), p. 438.

[42] See for example the fascinating account of Touko Piiparinen, a Finish diplomat with the Foreign Ministry. Piiparinen served as the Political Representative of the International Security Assistance Force (ISAF) Provincial Reconstruction Team in Meymaneh, Afghanistan. - Touko Piiparinen "Clash of Mindsets? An Insider's Account of Provincial Reconstruction Teams." *International Peacekeeping*. Vol. 14, No. 1 (January 2007), pp. 143–157; Myriame T. I. B. Bollen, Eric T. Linssen, Ir. Sebastiaan J. H. Rietjens. "Are PRTs Supposed to Compete with Terrorists?." *Small Wars & Insurgencies*. Vol. 17, No. 4 (December 2006), pp. 437-448.

[43] James F. Dobbins. "America's Role in Nation-Building: From Germany to Iraq." *Survival*. Vol. 45, No. 4 (Winter 2003-2004), pp. 87-110; Peter Marsden. "Afghanistan: the Reconstruction Process." *International Affairs*. Vol. 79, No. 1 (January 2003), pp. 93-96.

[44] Barnett R. Rubin and Humayun Hamidzada. "From Bonn to London: Governance Challenges and the Future of Statebuilding in Afghanistan." *International Peacekeeping*. Vol. 14, No. 1 (January 2007), p. 10.

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[46] Hasan Kakar. "The Fall of the Afghan Monarchy in 1973." *International Journal of Middle East Studies*. Vol. 9, No. 2 (April 1978), pp. 195-198; Anthony Hyman. "Nationalism in Afghanistan." *International Journal of Middle East Studies*. Vol. 34, No. 2 (May 2002), 299-315; Eden Naby. "Islam and the Afghan Resistance." *Third World Quarterly*. Vol. 10, No. 2 (April 1988), pp. 787-805.

[47] The African Charter upholds the colonial borders, which arguably explains why Somaliland has yet to be recognized as an independent state.

[48] Louis Dupree. "A Suggested Pakistan-Afghanistan-Iran Federation." *Middle East Journal*, Vol. 17, No. 4, (Autumn 1963), pp. 383-399.

[49] See, for example, David Mitrany. "The Functional Approach in Historical Perspective." *International Affairs*. Vol. 47, No. 3 (July 1971), pp. 532-543.

[50] Larry Goodson. "Afghanistan's Long Road to Reconstruction." *Journal of Democracy*. Vol. 14, No. 1, (January 2003), p. 84.

[51] James F. Dobbins. "America's Role in Nation-Building: From Germany to Iraq." *Survival*. Vol. 45, No. 4 (Winter 2003-2004), pp. 87-110; James Dobbins et. al. *America's role in nation-building : from Germany to Iraq*. (Santa Monica: RAND, 2003); James Dobbins et. al. *The UN's role in nation-building: from the Congo to Iraq*. (Santa Monica: RAND Corporation, 2005).

[52] Astri Suhrke. "A Contradictory Mission? NATO from Stabilization to Combat in Afghanistan." *International Peacekeeping*. Vol. 15, No. 2 (April 2008), p. 231.

[53] Nicholas Wheeler. *Saving Strangers: Humanitarian Intervention in International Society*. Oxford , University Press, 2000.

[54] See for example Holly J. Burkhalter. "The Question of Genocide: The Clinton Administration and Rwanda." *World Policy Journal*. Vol. 11, No. 4 (1994), pp. 44-54; Michael N. Barnett. "The UN Security Council, Indifference, and Genocide in Rwanda." *Cultural Anthropology*. Vol. 12, No. 4 (November 1997), pp. 551-578; Alan J. Kuperman. "Rwanda in Retrospect." *Foreign Affairs*. Vol. 79, No. 1 (Jan. - Feb., 2000), pp. 94-118.

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Francis Lieber, Terrorism, and the American Way of War

by Erik Ringmar

Abstract
This article investigates the distinction between wars fought against "civilized states" and wars fought against "savages". It concludes that the United States has been disproportionately engaged in wars of the latter kind. This fact, the argument will be, has given a particular character to the way Americans deal with foreign threats. There is an "American way of war" of which the Bush administration's response to the terrorist attacks of 2001 is a characteristic expression.

On April 24, 1863, US President Abraham Lincoln signed "General Order No. 100", regulating the way in which the North's Union troops were to conduct the war against the Confederate Southern states.[1] The order ruled out certain actions as beyond the pale of civilized conduct, even during the heat of battle. These are actions which cannot be justified by reference to military necessity and include notably attacks on civilians, torture and inhumane treatment of prisoners of war, destruction of private property and cultural artifacts. Although war is terrible, the order insisted, it does not justify barbarism.

The General Order No. 100 was popularly known as "the Lieber Code" after its author Francis Lieber, professor of history and political economy at Columbia University. Lieber was a German immigrant who drew on contemporary European attempts to codify the rules of war, but whose work also greatly contributed to this tradition. All major subsequent writers on the subject have acknowledged Lieber's work which became a direct inspiration for a number of international agreements, not least the famous Geneva Conventions (1949) on the treatment of prisoners of war. Although the Lieber Code is not always adhered to in practice, it has provided a means of distinguishing legitimate acts of warfare from criminality, setting a standard by which the actions of soldiers and their commanders can be judged.

Some 150 years later, during the Bush administration's so-called "Global War on Terror", a number of Lieber's rules were explicitly and unapologetically broken.[2] Between 2001 and 2008, officials of the American government abducted innocent civilians, held suspects indefinitely without trial, tortured prisoners of war and subjected them to degrading treatment. In a practice known as "extraordinary rendition," they sub-contracted what in some cases amounts to war crimes to assorted unsavory regimes.[3] These techniques, said Vice President Dick Cheney, constituted "a tougher program, for tougher customers."[4]

If we juxtapose Francis Lieber and Dick Cheney we get the contrast between two different American world-views: a law-abiding, internationalist, institutionalist outlook, and a go-it-alone

attitude which is suspicious of international agreements and dismissive of anything that limits the freedom of action of the military.[5] During the Bush administration the latter perspective was dominant, but during Barack Obama's administration the former has made a spectacular comeback. On January 22, 2009, the new president signed an executive order banning torture and dismantling the clandestine network of prisons operated by the CIA. "We are not," Obama insisted, "going to continue with the false choice between our safety and our ideals."[6] "We intend to win this fight. We are going to win it on our own terms."

There are problems, however, with this liberal interpretation. As Lieber himself made quite clear, and as all major nineteenth-century international lawyers emphasized, the laws of war apply only to conflicts between what at the time was known as "civilized" enemies. That is, enemies who themselves respect the laws of civilized warfare. In cases of war with others — with "savages" — the rules explicitly not did apply. The laws of war are not universal, but they have limits. This, of course, was much the same conclusion which the Bush administration and its lawyers arrived at back in 2001. Terrorists, they argued, do not respect the laws of civilized warfare and the United States is for that reason not obliged to play by the rules. Rather than exemplifying two diametrically opposed perspectives, Lieber and Cheney seem to share the same outlook.

Francis Lieber and the Laws of Civilized Warfare

Francis Lieber was born in Berlin in the year 1800.[7] As a boy he was profoundly moved by Germany's defeat at the hands of Napoleon, and already as a 15-year-old he volunteered to join Blücher's army and he took part in the battle of Waterloo. To be a German nationalist at the time was to fight for liberal values and democracy against foreign as well as domestic oppression.[8] As a 21-year-old he left for Greece to lend support to the struggle against Ottoman occupation. Back in Prussia again the following year, Lieber attracted the attention of the conservative government, was put in prison, and barred from government employment. Continuously harassed by the authorities, he decided in 1826 to leave for England. The following year he continuing on to the United States.

In contrast to his adventurous youth, Lieber's American life was conspicuously quiet. For 20 years he was a professor in South Carolina, a state he regarded as an intellectual and cultural backwater. Through his extensive writings — including the editorship of Encyclopedia America — he made contacts with influential thinkers and politicians, including Charles Sumner, the statesman and lawyer, and Henry Wager Halleck, the general and law expert.[9] In 1858, Lieber accepted a professorship in history and political economy at Columbia College in New York. This was where in 1862 he was chosen to chair a commission charged with drawing up a set of rules that could regulate the conduct of Union soldiers in the ongoing Civil War. "[N]othing of the kind exists in any language," Lieber wrote to Halleck, "I had no guide, no ground-work, no

text-book."[10] The following year the committee presented a short manual of 157 paragraphs, signed by President Lincoln as the "General Order No. 100" on April 24, 1863.

It was Lieber's notion of "military necessity" which provided him with a way of separating acceptable from unacceptable actions. "Military necessity," simply put, "consists in the necessity of those measures which are indispensable for securing the ends of the war."[11] What is militarily necessary is also lawful, but what is not militarily necessary is by definition irrelevant to the outcome of the war. To the extent that these actions go against the principles of "modern civilized nations," they are to be banned. Thus, for example, "military necessity admits of all direct destruction of life or limb of armed enemies," and "of other persons whose destruction is incidentally unavoidable in the armed contests of the war."[12] But "[m]ilitary necessity does not admit of cruelty, that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions.[13]

The Code goes on to provide a list of unlawful actions. First of all, wars cannot be made on civilians. It is illegal to destroy or appropriate the property of civilians, their means of livelihood, or to violate their dignity: "all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death."[14] Since wars are fought between states and not between individuals, the only property an occupying army has a right to appropriate is the property of the opposing government.[15] Furthermore, the principle of military necessity means that soldiers, once *hors de combat*, should be given protection and be adequately fed and clothed. It is not permissible to take individual soldiers hostage, to put prize money on their heads, to poison them or sell them into slavery.[16]

Lieber's Code did not stop all excessive use of violence to be sure. There were inevitably differences of opinion regarding which actions constituted "military necessity." Still, the rules were applied on the battlefield and they did have a civilizing influence on the engagements of the American Civil War. It was thanks to the Code that actions such as general William Sherman's scorched earth tactics in Georgia and South Carolina in 1864-65, easily could be identified as transgressions. In addition, Lieber's code was copied into the military manuals of several European states, including Germany's at the time of the Franco-German war. Moreover, the Code had a far-reaching impact on the codification of international law. Leading European legal scholars used Lieber's work as the foundation for their own treaties, and it provided the groundwork of several international agreements, including the Hague Conferences in 1899 and 1907, and most famously, the Geneva Conventions of 1929 and 1949.[17]

The Problem of "Small Wars"

The Lieber Code, we said, made a sharp distinction between soldiers and civilians. The soldiers

of an opposing army are "public enemies" and as such they are legitimate targets for military action; civilians, however, are not. Only savage peoples, Lieber insisted, make war on civilians. Yet there is a problem of what to do with those who straddle the distinction — partisans and rebels, unofficial part-time soldiers, not on a government's payroll. In Europe this had been known as the problem of "small wars," in French "*les petites guerres*" or in Spanish "*las guerrillas*." As Lieber explained: "[t]he term *guerrilla* is the diminutive of the Spanish word *guerra*, war, and means petty war, that is, war carried on by detached parties; generally in the mountains."[18] First applied to the partisans who harassed French troops during the Spanish War of Independence, 1807-14, the term covered the *francs-tireurs* employed by France in 1870 during the Franco-German war, and, in the twentieth-century, various independence fighters in the colonies. In the American Civil War, too, there were many of such informal partisan groups. [19]

Lieber discussed this topic in his *Guerrilla Parties Considered with Reference to the Laws and Usages of War* (1862) and he mentioned it in his Code of the following year.[20] The traditional answer had been to treat these ragtag fighters as criminals, This, indeed, was how they had been regarded during the first years of the Civil War. Yet Lieber, a sometime *guerrillero* himself, insisted that this was unfair. Wars of national liberation, or against monarchical oppression, can only be carried out by unofficial armies — and the cause of such groups is often just. To criminalize them is a political choice, not a legal matter. Yet Lieber insisted that unofficial fighters had to take some definitive steps: they had to fight for public rather than private ends, belong to hierarchical military units. In addition, they had to wear a uniform or some other mark that distinguished them from civilians. If they fought only intermittently, "divesting themselves of the character or appearance of soldiers," they "shall be treated summarily as highway robbers or pirates."[21]

Prominent among the armed men who refused to take these steps were Native Americans. [22] The mid-nineteenth-century was the time when white settlers in North America, looking for *Lebensraum*, began moving into the territories of the Indians of the great western plains. Defending themselves, the Indians harassed and killed settlers without regard to the emerging stipulations of international law. The Indians belonged to no organized armies, their methods were often unspeakably cruel and, above all, they made no distinction between soldiers and civilians. To Indians, peaceful settlers, women and children, were all legitimate targets. The stories of Indian atrocities were quickly disseminated back east, universally condemned and soon calls were made for retribution. In this way, the war in quest for territory turned, from the White man's perspective, into a war between civilization and barbarism.

Francis Lieber was a nationalist, first on behalf of his native Germany and later on behalf of his adopted country.[23] As such he believed each nation had a unique destiny which it was its obligation to pursue. America was blessed by a republican set of institutions which made the country a unique haven for freedom. America's mission was to propagate its institutions and its

values and to do this successfully the country had to maintain its identity. Although Lieber, in contrast to many of his contemporaries, never explained differences between societies in terms of genetic differences between people, he made clear that America was populated by English-speakers, descendants of Anglo-Saxons, and that the country did not need immigrants from elsewhere. [24] As for the Native Americans, their destiny was to be subdued. To Lieber this was an inevitable consequence of the progress of civilization, and, on the whole, hardly regrettable.[25]

With such an underlying mentality, it is no wonder that Lieber's laws of war never applied to Native Americans. The Indians were not, like Spanish or Confederate *guerrilleros,* temporarily, and misguidedly, descending into savagery; they really were "savages", constitutionally and irredeemably. With Indians no compromises were possible, at least not regarding matters of *jus in bello*. This is consequently where we find the limits of international humanitarian law. For centuries already, the European continent had constituted a state-system held together by mutual, and well-founded, expectations regarding reciprocity. Within this common setting, a certain set of rules could easily be insisted upon, and any breach could be condemned from the point of view of the shared normative framework. International law, as it developed in the nineteenth-century, was formulated by and for civilized, Christian, states inhabited by Europeans and their descendants.[26] During the American Civil War these connections were of course particularly close. The Confederate enemy consisted of their "brothers", people the war was supposed to bring back into the Union. It was only rational not to engage in actions "which makes the return to peace unnecessarily difficult."[27]

Fighting non-Europeans, and non-Americans, was quite a different matter.[28] Native "savage" warriors lacked, in Lieber's view, decency as they had no tradition of chivalry and no respect for *jus in bello*. Instead they routinely captured, scalped, and tortured their enemies; they disregarded cease-fires and flags of truce, acted treacherously and employed underhanded tactics. Most strikingly, they made no distinction between soldiers and civilians. To a savage, civilians—including women and children—are all legitimate targets.

The question is how such savage warriors ought to be fought. This topic was much discussed by lawyers and generals in the nineteenth-century. The next-to-unanimous conclusion was that when fighting an uncivilized enemy quite different rules apply.[29] The main responsibility of a commander is toward his troops and the aim is military victory. Winning wars against non-civilized people while protecting his men is not possible if the commander follows civilized rules of engagement. Although this does not mean that commanders should let go of all moral constraints, there is no doubt that small wars, in practice, are more ruthless. While Francis Lieber himself never explicitly drew this conclusion, it is implicit in everything he wrote, and the people who followed him most closely had no doubt that they had a license to act against "savages" in perfectly savage ways.[30]

The American Way of War

American society was always, even before independence, constituted in relation to a frontier, the other side of which was inhabited by "uncivilized" tribes. In the seventeenth century, the battles often began in Ireland where many of the settlers cut their teeth fighting "Irish barbarians" before continuing on across the Atlantic.[31] Once in place, the settlers in Virginia and New England had to contend with native inhabitants who, the English were convinced, were deficient both in religion and civility. In the mid-nineteenth-century the wars continued along the expanding western frontier: against the Cheyennes in 1864, 1878-79; the Apaches in 1864-86; the Comanches in 1867-75; the Sioux in 1862, 1866, 1876-77 and 1890. When the American land mass finally was exhausted, the frontier moved across the Pacific and into Asia. The Spanish-American War brought the U.S. in contact with *guerrilleros* in the Philippines and the Vietnam War pitted them against *guerrilleros* throughout Indochina.

What distinguished the enemies in all cases was their blatant disregard for the customary laws of civilized warfare. Yet the Americans moving west often more than matched their savagery. During King Philip's War, 1675-76, Indian villages were pillaged and burned, and bounties were set on all captives. The Indians who survived were sold as slaves or exiled to tribes further west. At the Sand Creek Massacre in November 1864, some 150 Cheyennes — men, women and children — were killed by the U.S. Army. At Wounded Knee, in December 1890, these atrocities were repeated.[32]_In the Philippines, the US commander-in-chief made clear that no prisoners should be taken and that all Filipinos over 10 years of age — everyone capable of bearing arms — should be killed. A popular interrogation method was the "water cure" whereby prisoners were forced to drink water until they experienced a sensation of drowning.[33] At My Lai, March 1968, some 500 unarmed Vietnamese civilians were mutilated, sexually assaulted, and killed by American soldiers.

Looked at from this historical perspective, Bush's "Global War on Terror" can be seen as just another case of a small war. The September 11 attacks on New York and Washington where nearly 3,000 people died made no distinction between soldiers and civilians; it was a classical example of "savage" warfare. But equally familiar was the American reaction: the official aim was to "shock and awe" those who backed them in the Muslim world and to teach all terrorists that they picked a fight with the U.S. at their own peril. When the initial hopes regarding an easy victory were dashed, some U.S. commanders turned to savage methods, committing crimes against the laws of war. In the end, far more innocent civilians died in the Global War on Terror than in the initial al-Qaeda attack.[34]
It is important to recall that historically such actions in no way distinguish Americans from Europeans. The Europeans fought "savages" too and they fought them with equally savage

methods. This, after all, is the story of much of colonial warfare. The atrocities committed by the French in Algeria in the 1840s and the British in India after the uprising of 1857, were at least as indiscriminate as anything the Americans ever did. The *razzia* practiced by the French laid waste to large parts of the Algerian countryside and forced civilians into starvation; French commanders asphyxiated women and children who had taken refuge in caves — and they even went on to brag about it in the French parliament.[35] The British pillaged Delhi after it was recaptured in September 1857; razed all villages thought to contain rebel sympathizers and, most notoriously, tied the leaders to the mouths of cannons and blasted them off to eternity.[36]

Yet the American experience does differ from the European in a number of respects. Crucially, the Americans fought "savages" at home, defending and expanding their own territory, whereas the Europeans fought "savages" in far-away places, defending comparatively peripheral interests. For the Americans, these wars were always of relatively greater importance. In fact, apart from the war against Britain, Americans had not fought against civilized foes prior to the Civil War. They had turned their back on Europe, after all — the whole point was that America was a new and different kind of country — and as a result, Americans were never properly socialized into the legal framework which was emerging in Europe. And even during the Civil War it is significant that it took a European, Francis Lieber, to remind them of the rules that applied in warfare between civilized enemies.[37]

In conclusion, wars against "savages" have been a more important part of the American military experience than is commonly assumed ; perhaps it can be even said that it has marked out a distinctive "American way of war." Americans, officially at least, do not make war for the sake of territorial enlargement and given the oceans that surround their continent, America has never been invaded. All American wars are instead seen as "civilizational": they are fought against evil outsiders — "evil Empires" and "axes of Evil" — and they are said to concern the survival of American values and the American way of life. In fact, even when the enemy has been an ostensibly civilized country, such as during World War II or during the Cold War, it has generally been portrayed as distinctly "savage".[38]

Wars against "uncivilized" enemies always tend to produce a distinction between liberal do-gooders at home and the men at the frontier who are prepared to get their hands ""'dirty". In Algeria these were elements of the *pieds noirs*; in India they were the British officers who strapped mutineers to cannons; in Iraq they were the "rotten apples" and their superiors in charge at Abu Ghraib. In Europe, since the wars against "savages" were of marginal importance, the men fighting them rarely had key positions in domestic politics. Liberal opinion could more easily dismissed them as eccentrics. In the United States, however, since the wars against "savages" were part of a formative experience, the frontiersmen were often able to gain a dominant influence. There is a liberal public opinion in the U.S. too, to be sure — and it has often declared itself horrified at some of the actions of the military — but this opinion has never defined the mainstream. Throughout its history America has been speaking with two voices: one

civilized, the other obsessed with defending civilization. With President Obama, the "liberals" are back in power, the frontiersmen are in the docks, and Francis Lieber is read in order to castigate former Vice-President Dick Cheney. Yet, if history is our guide, this victory is likely to be only temporary.

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Endnotes

[1] I am grateful to Brendan O'Leary, Diane Pranzo, Philippe Sands and Yana Zuo for their help with a previous version.

[2] Various memoranda pertaining to interrogation techniques are available at "Bush Administration Documents on Interrogation," *Washington Post*, June 23, 2004.

[3] On the direct involvement of the president and his leading officials in this policy, see John McCain and Carl Levin, Inquiry into the Treatment of Detainees in U.S. Custody (Washington D.C.: Senate Armed Services Committee, December 11, 2008).

[4] Quoted in David Stout and Scott Shane, "Cheney Defends Use of Harsh Interrogations," *The New York Times*, February 7, 2008.

[5] See, for example, Philippe Sands, "The Complicit General," *New York Review of Books*, September 24, 2009.

[6] Scott Shane, "Obama Orders Secret Prisons and Detention Camps Closed," *The New York Times*, January 23, 2009.

[7] For a biography see Ernest Nys' two-part article, "Francis Lieber: His Life and His Work," *The American Journal of International Law,* 5, no. 1 (January 1911): pp. 84-117; p. 5, no. 2 (April 1911), pp. 355-393.

[8] On the "liberal" nature of early nineteenth-century German nationalism, see Hagen Schulze, *The Course of German Nationalism: From Frederick the Great to Bismarck 1763-1867* (Cambridge, University Press, 1991).

[9] See Henry W. Halleck, Elements of International Law and Laws of War (Philadelphia, J.B. Lippincott & Co., 1866).

[10] E. Nys, Francis Lieber, op. cit., p.378.

[11] Francis Lieber, Instructions for the Government of Armies of the United States, in the Field (New York, D. van Nostrand, 1863), §14, 4. See Burrus M. Carnahan, "Lincoln, Lieber and the Laws of War: The Origins and Limits of the Principle of Military Necessity," *The American Journal of International Law* 92, no. 2 (April 1998): 213-231.

[12] Lieber, Instructions, §15:6.

[13] Lieber, Instructions, §16:7.

[14] Lieber, Instructions, §§44:13-14.

[15] Lieber, Instructions, §§21-23, 8.

[16] Lieber, Instructions, §16:7; §148:33.

[17] Lieber's influence on J. C. Bluntschli is particularly clear. See Johann Caspar Bluntschli, Le droit international codifié (Paris, Guillaumin et cie, 1874).

[18] Francis Lieber, "Guerrilla Parties Considered with Reference to the Laws and Usages of War," [1862], in *The Miscellaneous Writings of Francis Lieber, Volume 2* (London, Lippincott & Co, 1881), 278. Also available by clicking here.

[19] Dyer mentions guerrillas operating in Missouri, Arkansas and Kentucky. Brainerd Dyer, "Francis Lieber and the American Civil War," *The Huntington Library Quarterly* 2, no. 4 (July 1939), pp. 452-453.

[20] Lieber, Guerrilla Parties, pp. 275-92.

[2Mark]   Lieber, Instructions, §82:21-22.

[22] Jill Lepore, *The Name of War: King Philip's War and the Origins of American Identity* (New York, Vintage, 1999); Robert A. Williams Jr, *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York, Oxford University Press, 1992).

[23] See for example "The Rise of Our Constitution and Its National Features," in F. Lieber, Miscellaneous Writings, pp. 17-85. For a critical discussion, see Merle Curti, "Francis Lieber and Nationalism," *The Huntington Library Quarterly* 4, no. 3 (April 1941), pp. 263-292; C. B. Robson, "Francis Lieber's Nationalism," *The Journal of Politics* 8, no. 1 (February 1946), pp 57-73.

[24] Lieber opposed immigration from East Asia and wanted to restrict immigration from Eastern Europe. He clearly regarded African-Americans as inferior to Anglo-Saxons and during his time in South Carolina he even owned slaves. His hope was, however, that African-Americans eventually would be absorbed by mainstream American society. See Curti, "Francis Lieber, op. cit., pp. 281-282.

[25] *Ibid.*

[26] Lieber, Instructions, pp. 24, 25.

[27] Lieber, Instructions, §16:7.

[28] Most nineteenth-century writers on international law made a sharp distinction between wars fought in Europe and in the colonies. See Elbridge Colby, "How to Fight Savage Tribes," *The American Journal of International Law* 21, no. 2 (April 1927), p. 280.

[29] Colby, Savage Tribes, op. cit., p. 279. Cf. Bluntschli, 1874, §512, p. 290.

[30] Colby, Savage Tribes, op. cit., pp.279-280.

[31] R. A. Williams, American Indian, chapter 1.

[32] See "Indians Tell Their Story: A Pathetic Recital of the Killing of Women and Children," *New York Times*, February 12, 1891.

[33] "The Water Cure Described; Discharged Soldier Tells Senate Committee How and Why the Torture Was Inflicted," *New York Times*, May 4, 1902.

[34] "New Study Says 151,000 Iraqi Dead," *BBC*, January 10, 2008.

[35] Henri Ideville, Memoirs of Marshal Bugeaud, from His Private Correspondence and Original Documents, 1784-1849 (London, Hurst and Blackett, 1884), 299-300.

[36] A contemporary account is "Blown Away," *Household Words*, March 27, 1858.

[37] Compare General Sherman quoted in E. Nys, Francis Lieber, 384.

[38] From this perspective Huntington's "The Clash of Civilizations" is incorrectly titled. The book is really concerned with the clash between "civilization and the uncivilized." See Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

Books Reviews

Critical Terrorism Studies. A new research agenda.
by Richard Jackson, Marie Breen Smyth and Jeroen Gunning (Eds.). London, and New York, Routledge, 2009. 274 pp. ISBN10:0-415-45507-3 (hbk), £ 70.-.

In the late 1960s traditional War and Peace Studies were challenged on the European continent by "critical polemologists". Today, "Orthodox Terrorism Studies" are challenged by "Critical Terrorism Studies" (CTS) . The critical polemologists who criticised almost exclusively NATO but not the Warsaw Pact have disappeared long ago. Critical Terrorism Studies tend to be equally one-eyed by being "critical" mainly about Western counter-terrorism rather than focusing also on non-state terrorism. Ideology plays a large role im such disputes. For many of the CTS scholars "objective social science …is a hegemonic project to sustain the status quo" (H.Toros & J. Gunning, p. 106) while "CTS is at heart an anti-hegemonic project" (R. Jackson et al, p. 227). The editors accuse, in their introduction "the orthodox field" of orthodox terrorism studies of functioning "ideologically in the service of existing power structures", with their academic research. Furthermore, they claim that orthodox scholars are frequently being used "to legitimise coercive intervention in the global South…." (p.6). The present volume is edited by three authors associated with the *Centre for the Study of Radicalisation and Contemporary Political Violence (CSRV)* in the Department of International Politics in Aberystwyth (Wales, UK). They also happen to be editors of a new Routledge journal "Critical Studies on Terrorism' . The "critical" refers principally but not exclusively to the "Frankfurt-via-Welsh School Critical Theory Perspective". The twelve contributors are not all equally "critical" in a Habermasian sense. The programmatic introduction of the editors is followed by two solid chapters from Magnus Ranstorp (former Director of CSTPV, St. Andrews, and currently Director of the Centre for Asymmetric Threat Studies at the Swedish National Defence College) and Andrew Silke (formerly with the UK Home Office and now Field Leader for Criminology at the University of East London). They both rightfully criticize some of the past sins and present shortcomings of the field of Terrorism Studies. One of them approvingly quotes Marc Sageman who observed that "disagreements among experts are the driving force of the scientific enterprise". Such disagreements, however, exist among "orthodox" scholars like Sageman and Hoffman or Pape and Abrams. In that sense, the claim by some critical theorists that the field of traditional Terrorism Studies is ossified without them, is simply is not true. One of the problems with many of the adherents of the "critical" school is that the focus is almost exclusively on the strawman they set up to shoot - "orthodox" terrorism *discourse* rather than on the practitioners of terrorism. Richard Jackson claims that "…most of what is accepted as well-founded 'knowledge' in terrorism studies is, in fact, highly debatable and unstable" (p.74), dismissing thereby almost four decades of scholarship as "based on a series of 'virulent myths', 'half-truths' and contested claims…biased towards Western state priorities" (p.80). For him "terrorism is…a social fact

rather than a brute fact" and "…does not exist outside of the definitions and practices which seek to enclose it, including those of the terrorism studies field" (pp.75-76). He objects to prevailing "problem-solving theories of terrorism" in favour of an approach that questions " the status quo and the dominant acts within it" (p.77). Another contributor, J.A. Sluka, argues, without offering any proof, that "terrorism is fundamentally a product of social inequality and state politics" (p. 139). Behind many of the critical theorists who blame mainstream terrorism research for taking 'the world as it finds it' there is an agenda for changing the status quo and overthrowing existing power structures. There is, in itself, nothing wrong with wanting a new and better world order. However, it is not going to be achieved by using an alternative discourse on terrorism and counter-terrorism. Toros and Gunning, contributors of another chapter, state that "*the sine qua non* of Critical Theory is emancipation" (p. 99) and M. McDonald als puts "emancipation as central to the study of terrorism" (p.121). However, there is not a single word on the non-emancipated position of women under Islam in general or among the Taliban and their friends from al-Qaeda in particular. One of the strength (some argue weakness) of Western thinking is its ability for self-criticism – something largely absent in the Muslim world. In that sense, this volume falls within a Western tradition. However, self-criticism should not come at the cost of not criticising adversaries by using the same yardstick. In this sense, this volume is strangely silent about the worldview of those terrorists who have no self-doubts and attack the Red Cross, the United Nations, NGOs and their fellow Muslims with equal lack of scruples. A number of authors in the volume appear to equate terrorism uncritically with political violence in general while in fact it is more usefully thought of as one of some twenty sub-categories of political violence - one characterized by deliberate attacks on civilians and non-combatants in order to intimidate, coerce or otherwise manipulate various audiences and parties to a conflict. Part of the volume advocates reinventing the wheel. J. Gunning, for instance, recommends to employ Social Movement Theory for the study of terrorism. However, that theory has been employed already explicitly or implicitly by a number of more orthodox scholars, e.g. Donatella della Porta. Many "critical" statements in the volume are unsupported by convincing evidence, e.g. when C. Sylvester and S. Parashar state "The September 11 attacks and the ongoing war on terror reinforce gender hierarchy and power in international relations" (p.190). Jackson claims that the key question for critical terrorism theory is "who is terrorism research for and how does terrorism knowledge support particular interests?" (p.224) It does not seem to occur to him that he could have studied this question by looking at the practitioners of terrorism and study al-Qaeda's ideological writings and its training and recruiting manuals. If CTS is a call for "*making a commitment to emancipatory praxis* central to the research enterprise" (R. Jackson et al, p. 228), CTS academics should be the first on the barricades against jihadists who treat women not as equals and who would, if they get their way, eradicate freedom of thought and religion for all mankind. It is sad that some leading proponents of Critical Terrorism Studies appear to be in fact uncritical and blind on one eye. (*Reviewed by Alex P. Schmid, TRI*)

War on terror'. The Oxford Amnesty Lectures.
Chris Miller (Ed.). Manchester, University Press, 2009 . 292 pp. ISBN: 978 07190 7975 7
(pbk) pp., £ 16.00

This volume, based mainly on a series of seven 2006 Oxford lectures and the responses to them
has, been edited by Chris Miller, the co-founder of the Oxford Amnesty Lectures. It covers topics
such as "Terrorism, war and international law" (Michael Byers), "Human Rights and counter-
terrorism" (Conor Gearty) and "Islamic Law, Human Rights and Neo-Colonialism" (Khaled
Abou El Fadl). The introduction by the editor alone already makes the volume worthwhile. In
masterly fashion, Miller (a freelance author) addresses some of the grievances of jihadists,
showing how the situation looks through non-Western eyes, pointing out, inter alia, that an
injustice frequently stands at the beginning of terrorism and "that the survivors of injustice are
not prepared simply to concede defeat, abandon their own dignity and accept the new status
quo" (pp.1-2). Amnesty International has described the 'war on terror' as a war on human rights
(p.28). However, it is humanitarian law (the first additional protocol to the Geneva Protocols)
that states that "The civilian population as such, as well as individual civilians, shall not be the
object of attack. Acts or threats of violence the primary purpose of which is to spread terror
among the civilian population are prohibited" (Art. 51 (2). While human rights law applies
(predominantly but not exclusively) to peacetime situations, humanitarian law applies to wartime
situations. The two have, however, begun to overlap just as the lines between war and peace have
become fuzzy. The volume discusses these and other distinctions, such as the one between *jus in
bello* [justification for going to war] and *jus ad bellum* [justification of acts of violence during a
war], noting also the paradox that Michael Walzer identified, namely that "It is perfectly possible
for a just war to be fought unjustly and an unjust war to be fought in strict accordance with the
rules". While terrorism, though variously defined in regional treaties but still undefined by the
United Nations, often consists of (war) crimes, the limits of counter-terrorism have become ill-
defined after eight years of the Global War on Terror. There are those who argue that "either we
fight evil with evil or we succumb". On the other hand ,there are those who fear that we too
would become monsters when fighting terrorism in kind. The volume raises and discusses
questions like whether or not we should guarantee 'to respect the rights of those who have shown
no respect for rights at all, to show mercy to those who are merciless, [and] to treat as human
those who have behaved inhumanly'(p. 93) . Not only legal crimes but also moral wrongs (the
two do not always overlap) are discussed in the volume. Thomas Pogge, for instance, argues with
regard to those behind the 9/11 attacks that they were "wrong…to harm large numbers of
innocent civilians for no compelling purpose. And they did wrong to perpetrate these attacks in
the name of a religion without taking great care to work out whether their religion really justifies
such attacks" (p.115). However, there is also no lack of criticism for Western governments. The
same author notes how remarkable it is "that our governments show so little interest in
justifying, in moral terms, the great harms they are clearly inflicting on innocent persons"
through collateral damage of the war on terror (p.124). Much of the discussion turns around the
question under what circumstances "ends are (not) justifying means" in both terrorism and

counter-terrorism. Part of the discussion focuses on the distinction between war and terrorism and the question whether or not they have a shared logic. Warfare as conducted under the laws of war attempts to minimize civilian casualties, while some forms of (religious) terrorism, including al-Qaeda's, engage in violence without constraints, seeking to maximize civilian casualties. Some argue that since terrorists deliberately attack non-combatants, they cannot be considered as combatants themselves; rather their deeds ought to be classified as war crimes. But what if there is no war, if terrorists attack in times and zones of peace? The obvious category is that of (political) criminals. In that case they should, according to Jeff McMahan, be treated under the norms of law enforcement rather than the laws of war (p. 170). Yet most terrorists are unlike ordinary criminals, as they tend to be motivated, at least initially, by ideology rather than personal greed. The volume raises many intriguing questions and answers some of them. It is a very scholarly volume. Despite its association with an action-oriented NGO like Amnesty International all contributions are of a very high quality. However, it is a pity that almost four years have passed between the series of lectures that form the heart of this volume and their actual publication. Updating is, in such a situation, highly desirable. However, that is one of the very few shortcomings of this really worthwhile collection of lectures by many outstanding scholars. (*Reviewed by Alex P. Schmid, TRI*)

War, Conflict and Human Rights. Theory and Practice.
By Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman London and New York, Routledge, 2010. 252 pp., ISBN 10: 0-415-45206-6 (pbp). £ 22.99.

This interdisciplinary textbook focuses on the interfaces of armed conflict, human rights and international politics as these relate to conflict resolution. It is the work of the Director and two Research Fellows of the Centre on Human Rights in Conflict at the University of East London. In addition, there is a chapter on the Global War on Terror" by Carmen Draghici, a Visiting Research Fellow from Italy. Part I deals with War and Human Rights, addressing theoretical issues, examining critical debates, politics and law. Part II deals with four major contemporary internal conflicts and human rights violations occurring in them, focusing on former Yugoslavia, Sierra Leone, the DR Congo and Sudan. Part III looks at recent mechanisms and institutions for building peace and seeking accountability, such as various Ad Hoc Tribunals and the International Criminal Court. A long series of Boxes dispersed throughout the text provides "in-a-nutshell"-information on key Conventions an (e.g. Rome, Geneva), Agreements (e.g. Lome, Abuja), court cases (e.g. Hamdi v. Rumsfeld, Rasul v. Bush) and UN resolutions (e.g. SC 1244, 1593). This indicates that the book has been written for university courses. However, it can also serve as a useful repertory for practitioners. The authors stress that international human rights law applies in times of war and peace, in internal and international conflicts, while international humanitarian law is confined to war. One of the problems is that many human rights violations are not directly criminalized in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These documents create obligations for states but do not automatically create international crimes (exceptions are Torture and Genocide which are also the subject of separate treaties). There are no universal enforcement measures and no criminal punishments for most of the rights contained in the UDHR, ICCPR and ICESCR. Neither do the European Convention on Human Rights and the American Convention on Human Rights contain direct criminal punishment mechanisms for violating state actors. When it comes to non-state armed groups, these international instruments are in many cases even more inadequate. However, the situation is better in regard to terrorism: the mandatory (under Chapter VII of the UN Charter) Security Council Resolution 1373 of 28 September 2001 and 16 voluntary anti-terrorism conventions (e.g. again hijackings, taking of hostages, terrorist bombings) passed since 1963 provide a comprehensive framework for international criminal prosecution. Many of these treaties are based on the *principle aut dedere aut judicare* (either extradite the perpetrator of a terrorist crime or bring him/her to justice in your own country). However, one problem here is that there is still no universally accepted legal UN definition of terrorism although a number of UN resolutions (especially SC1566) offer some guidance for states with the political will to treat as terrorists perpetrators alternatively labelled "enemy combatants", "unlawful (or unprivileged) combatants", " freedom fighters" or " jihadists". The

volume's chapter on the "Global War on Terror" is, unfortunately, the weakest of an otherwise worthwhile and well-structured book.(*Reviewed by Alex P. Schmid, TRI*)

Terrorism and Counterterrorism. Understanding Threats and Responses in the Post – 9/11 World. 3rd ed.
Boston, Longman, 2010. 334 pp. ISBN-10: 0-205-74327-7.
By Brigitte Nacos

Many have tried to enter the textbook market on terrorism but few single authors have seen their textbooks go into a second or third edition. An exception is Prof. Brigitte Nacos who has been teaching on the subject for 16 years at Columbia University in New York. Dr. Nacos, a German foreign correspondent and academic who authored more than half a dozen books, made her name mainly through her incisive analyses on the relationship between terrorism and the media, (e.g. her 2002 volume *Mass-Mediated Terrorism: The Central Role of the Media in Terrorism and Counterterrorism*). The volume under review here is much more than an update of two previous editions. While originally written for an undergraduate audience, it can serve as a solid basis for graduate courses as well. Half of the volume deals with terrorism, half with counter-terrorism. Rather than covering all possible subjects broadly and superficially, Brigitte Nacos concentrates on a limited number of essential subjects such as 'The Utility of Hard and Soft Power in Counterterrorism' or 'Balancing Security, Liberty and Human Rights'. She notes that the terrorist calculus is driven by a set of four assumptions:
(i) groups that are too weak to fight nation-states in conventional civil or foreign wars tend to opt for terrorism, (ii) governments are ill-prepared to react to the type of psychological warfare that terrorists wage against their citizens, (iii) because of their openness and far-reaching civil liberties –especially press freedom – liberal democracies are more susceptible to terrorist activities and propaganda than authoritarian regimes, and (iv) in reaction to serious acts of terror, decision-makers in constitutional democracies are likely to overreact in efforts to prevent and counter terrorism (p.5). Nacos defines terrorism "as political violence or the threat of violence by groups or individuals who deliberately target civilians or non-combatants in order to influence the behaviour and actions of targeted publics and governments" (p. 31). In other words, her focus is on non-state actors, holding that "…when governments commit this type of violence, there are a number of appropriate pejorative terms, such as *war crimes, crimes against humanity, human rights violations, genocides, atrocities – and terror.*"(p.29). Having seen Nazi terror from close quarters in Germany herself, Brigitte Nacos is not minimizing state terror. Rather, she argues that characterizing this kind of political violence committed by power-holders in states as 'terrorism' "would actually minimize the enormity of systematic political violence and mass killings of civilians by those in control of states" (p.30). In her discussion of religious terrorism, Nacos not only focuses on Islam but also shows how terrorism has been anchored in some Christian and Jewish traditions. Her treatment of crucial issues are reflecting the latest scholarly discussions; these are ably summarized before she comes down on one or the other side of the debate. Regarding the question of the effectiveness of terrorism, she concludes, for instance, that "….the terrorist rate of success is pretty high when it comes to short-term goals but quite low when it comes to long-term objectives" (p.131). Nacos, as a "born" journalist, is most at home in the discussion of the role of the media. She notes that terrorists want three things; (i) attention,

(ii) recognition of their grievances, demand and objectives, and (iii) to win the respect and even gain legitimacy in some circles, countries, or regions (p.58). For Nacos, "…the news media and terrorists are not involved in a love story; they are strange bedfellows in a marriage of convenience" (p.263). To support her argument, she quotes a suspected London-based follower of Bin Laden who told an interviewer, "Terror is the language of the twenty-first century. If I want something, I terrorize you to achieve it". (pp. 299-300) – a statement that, according to her, "goes to the heart of the terrorist calculus"(p. 300). Nevertheless, the author concludes that given the poor long-term success rate of terrorism, there is no reason for gloom and doom. (p.303). This is a very information-rich and well-argued scholarly work which places Bigitte Nacos in the good company of Louise Richardson and Martha Crenshaw as a leading female author in the field of Terrorism Studies. (*Reviewed by Alex P. Schmid*).

Understanding Terrorist and Political Violence. The life cycle of birth, growth, transformation, and demise.
 London: Routledge, 2008. 283 pp. ISBN: 978-0-415-77165-8 (pbk).
by Dipak K. Gupta

This is probably one of the most comprehensive books that have been written on political violence and terrorism in recent years in the sense that the author is able to combine rich theory, empirical data about insurgent groups, and even first-hand experience of the phenomenon of terrorism. In his preface, Dipak Gupta who is professor of Peace Studies at San Diego State University, recounts his own brief encounter with the Naxalites, the Maoist insurgency in India. At one point, he was given a gun and instructed to shoot a village moneylender. He declined the "honour" of being selected for this task, left Calcutta and headed for the United States where he enrolled in a PhD program. This personal experience explains the interest that Dipak Gupta shows in the motivations that bring people to engage in some forms of political violence. After a theory review chapter, the author presents, with a high degree of sophistication, his own theory of action. Basically, he suggests that human action is driven by dual motivations, self-interest and collective identity. An appendix at the end of the book contains a simple formalization of the model and here, in the discussion of the economics of terrorism, lies its main strength. Gupta sees the forging of collective identities as the work of political entrepreneurs and charismatic leaders. They have the organizational and inspirational capabilities to transform a latent grievance into a political demand that may be framed, depending on its nature, in religious, nationalist or class terms.

It follows from this model that contingency plays a considerable role in the emergence of political violence. The creation of identities, and the subsequent formation of a movement or an organization, depends on the emergence of political entrepreneurs, a process that is almost random and not determined by structural factors. Gupta finds some evidence in favour of his argument by means of a statistical analysis of the MIPT dataset, demonstrating that neither poverty, GDP per capita, or degree of democracy are related to the deaths and injuries resulting from terrorist conflicts. In the view of this reviewer, however, the empirical analysis is not entirely convincing, based, as it is, on a single data source. The now defunct MIPT database mixes highly heterogeneous forms of violence; this might have something to do with the apparent lack of strong correlations in Gupta's analysis. Without making any distinction between types of violence and conflict, or without testing his thesis with some other datasets (from TWEED to ITERATE), it is risky to conclude that such violence cannot be accounted for by structural variables. Moreover, there is a sizeable literature, not discussed in this book, about the economic and political determinants of civil wars and their occurrence, duration, and lethality. This literature, mainly empirical, goes against the argument of Gupta, showing for instance that there is a strong, robust negative linear relationship between civil wars and economic development.

In another section, the author analyses birth, escalation, and endgame of violent groups. This occupies the three central chapters of the book. In the middle of them, Gupta has another chapter about the similarities, differences and connections between terrorist groups and organized crime. This chapter breaks the rhythm of reading and should have been put somewhere else, perhaps in one of the appendices. For the analysis of the life cycle of violent groups, the author focuses on three cases, the IRA, Al Qaeda and the Naxalites in India. While much has been said on the IRA and Al Qaeda, the information Gupta provides about the Naxalities will be novel to many Western readers. These are three different groups indeed. The IRA is nationalist and largely domestic; it was an underground group unable to liberate territory from the state's control. Al Qaeda holds a religious doctrine and militants claiming adherence to it operate in many countries, without a definite territorial base. The Naxalitis, by contrast, are a revolutionary group acting in a poor country and possess a capacity to liberate some territory from state control in the countryside.

Despite these differences, Gupta finds common dynamics in all three groups. There is a grievance in every case that is exploited by political entrepreneurs. Most terrorist groups die in their earliest stage (90% of all groups are said to disappear after one year of activity). The ones that are able to survive are those that take roots in their constituencies. It is popular support that accounts for the resilience that surviving terrorist groups have. The popularity of the insurgents is often boosted by counterproductive state repression. If the state commits excesses in its war on terror, the effort often backfires, increasing the legitimacy of the terrorists.

The terrorists, however, also make important mistakes, carrying out attacks that may put great pressure on the state but which are rejected by their support community. Loss of support inevitably leads to isolation and marginalization, eroding the offensive capacity of the violent group. Terrorists then become more vulnerable. If the state then finds the right mix of repression and accommodation, the end is in sight. The book closes with a general discussion about the effectiveness of the terrorist strategy and some policy implications. Taking a middle position in the debate between Robert Pape and Max Abrams, Gupta holds that terrorists very seldom reach their long-term, maximalist goals, though some of them often succeed in reaching short-term objectives.

'Understanding Terrorist and Political Violence' is well written, references are exhaustive and the author manages to bridge disciplinary fields, connecting the analysis of terrorism with economic, psychological, and organizational theories. Its main contribution lies in the way it is tackling the most relevant issues: the social and political mechanisms that underlie the emergence of terrorist groups, the role of collective identities, the life cycle of these groups, the response of the state, the relationship between the terrorists and their supporters, and their degree of success. (*Reviewed by Ignacio Sánchez-Cuenca, Juan March Institute, Madrid*)

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