

# Islam Enters America

L. ALI KHAN

**LEGAL SCHOLAR  
ACADEMY**



Copyright © 2015 L. Ali Khan/Legal Scholar Academy

All rights reserved.

ISBN-13: 978-1514340004

ISBN-10: 1514340003

## **Dedication**

This book is dedicated to Harun Ali Khan, my son.

## **Table of Contents**

Dedication .....	iii
Preface .....	1
1 An Islamic View on the 9/11 Attack on America .....	3
2 Who's Feeding the Bin Laden Legend?.....	10
3 What is in the Belly of Trojan Horse? .....	16
4 Hallucinations of President George W. Bush .....	20
5 Fighting Words against Islam in America .....	24
6 Anti-Americanism in Pakistan.....	29
7 Attacking Iran is illegal.....	34
8 American Renditions .....	38
9 Thou shall not Kill, We will.....	43
10 The Invention of Porno Torture.....	48
11 Presidential Incitements to Genocide.....	53
12 Defamation of Religions .....	62
13 NATO Genocide in Afghanistan .....	72
14 A Civil War – Obama's Gift to Pakistan .....	79
15 Sequential Destruction of Muslim Nations .....	84
16 Undermining the Sovereignty of Muslim States .....	89

17 Crusade against American Muslims .....	94
18 Petitioning Congress on Qur'an Burning .....	99
19 Murder as an Instrument of Foreign Policy .....	104
20 Kansas Legislature Does Harm in Barring Islamic Law	109
21 Oklahoma Ban on Shariah is Unconstitutional.....	115
22 An Islamic View on Meltdown in American Markets ....	121
23 Nuclear Non-Proliferation Treaty Poised to Fall Apart.	126
24 Is There a Right to Armed Struggle? .....	130
25 Essentialist Terrorist .....	135
26 Alif for Allah, Baa for Bush.....	142
27 The Dirty Game of Minority Appointments .....	146
28 The Bright Orange Jumpsuit – An Emblem of Cruelty.	151
29 Political Platforms Attack Human Rights .....	154
30 Above and beyond International Law.....	160
About the Author .....	165



## **Preface**

This book is a collection of thirty (30) commentaries I have written since the 9/11 attack on the United States. Written over a period of fourteen years, the commentaries offer a view of American history that I saw as a Muslim American. They explore the various dimensions of complex relationships between the United States and Muslims.

Millions of Muslims live in all parts of the United States from California to New York highland. Hundreds of mosques and Islamic centers have been built in all states. Muslims enjoy the freedom of worship, even though many mosques are under surveillance for fear of terrorism. In November 2008, the election of Barak Obama as the President of the United States was a historic event partly because Obama's father and stepfather, both were Muslims.

The wars in Iraq, Afghanistan, Syria, and Libya have not been easy for the United States foreign policymakers. The drone attacks in Pakistan, Somalia, and Yemen added

further complexity to the United States relations with Muslims. The killings of Osama bin Laden and Anwar Awlaki, a U.S. Citizen, recruited murder as a weapon in the conduct of foreign policy.

At home, the burning of the Qur'an and drawing of the Prophet Muhammad's cartoons and terrorist bombings in New York Times Square, Boston, and Texas are in the process of creating new dynamics in social relations. Muslims in America are scared for their children and grandchildren as other Americans are apprehensive about future violence in towns and communities.

These commentaries offer insights into a mindset that produces grounds for misunderstanding, persecution, and cruelty.

The author is grateful to online publications, including Counterpunch, JURIST, Baltimore Chronicle, The American Muslim, and Media with Conscience where these commentaries were published.

## **1 An Islamic View on the 9/11 Attack on America**

It is no longer a secret who perpetrated the September 11 terrorist attack on the World Trade Center and Pentagon. We now know that all the perpetrators were Muslims. The attack has stunned all of us, reinforcing the already lingering suspicion among many Americans that Muslims are capable of committing horrendous acts, even against the innocent, in the name of Allah. The American anger is legitimate and the pain is real. Feelings of retribution, if not revenge, permeate public commentaries, political statements and popular reactions. Muslims in America, including my family, are worried that they will be assaulted and discriminated against. Muslims abroad are apprehensive that the wrath of the United States will hit their cities and citizens.

Once the grief has subsided and the pain is a little more bearable, Americans are most likely to ask: Why did they do

it? There will be plenty of answers. Some will suggest that Islam breeds terrorism. Some will defend Islam but criticize fundamentalism. Some will doubt whether the terrorists were real Muslims at heart. Others will focus on the clash of civilizations. Still others will argue that they hate us for what we stand for. No one answer can fully capture the motives and the context that might have prompted the September Calamity. In this short commentary, I would like to provide a few insights into the phenomenon of Islamic terrorism.

### **Islamic Terrorism**

I use the term Islamic terrorism not to diminish Islam, which is my own religion, but to explain that although Islam is predominantly a religion of peace, it does seem to allow terrorism to combat, for example, the state of *zulm*, that is, exceptional circumstances of oppression, misery and helplessness.

Over the centuries, Islam has restrained its followers from unleashing unlawful violence for which there is no clear basis in teachings of the Quran. And whenever a ruler ordered unlawful fighting, his orders were criticized and condemned. This is so because the Quran decrees Muslims not to take life--which Allah has made sacred--except for just cause.

For many Muslims, however, the Islamic message of peace yields to a more militant call when an Islamic community, like that of the Palestinians, is suffering under foreign

occupation and economic misery. And it is in fighting *zulm* that the nexus between jihad and terrorism becomes fused and inseparable.

The text of the Quran, when read in its fullest context, affirms hope, peace and spiritual intelligence. It also lays out the law of war. Yet, one may read the Quranic verses in isolation to undertake a terrorist course of action. The Quran, for example, states that Muslims engaged in fighting may strike terror in the hearts of the enemies. Note the word terror. This terror may be caused by a willingness to kill and die or by the innovative use of weapons (steeds of war). To produce terror, militant Muslims may invoke two additional verses of the Quran. O Prophet, rouse the believers to the fight. If there are twenty amongst you, patient and persevering, they will vanquish two hundred. Thus a small number of Muslims may opt to go to war against a mighty enemy. The other verse, which the militants may invoke, underscores the vulnerability of strong structures: Wherever you are, death will find you out, even if you are in towers built up strong and high.

To the most learned in the text of the Quran, these verses must be read in the context of many other verses that stipulate the Islamic law of war---a war that the Islamic leader must declare after due consultation with advisers. For the less learned, however, these verses may provide the

motivation and even the plot for a merciless strike against a self-chosen enemy. Note that the September Calamity was propelled by about twenty Muslims who brought down the twin towers built up strong and high. For these Muslims, terrorism--if it means causing credible harm and the associated fear--was not outside the teachings of the Quran. They acted upon their faith, even though their acts disgust many Muslims across the world.

Despite the controversy over the legitimacy of their act, the question remains why the September warriors of Islam chose the United States as their prime target.

### Why American targets?

To Muslims generally, and to militant Middle Eastern Muslims particularly, the United States has done too many things to be qualified as an enemy subject to the Islamic law of war. The United States, for example, has bombed Libya, the Sudan and Afghanistan. The attacks on Iraq continue. American bombers have terrorized major Arab cities: Baghdad, Tripoli and Khartoum. Several Muslim States, including Syria and Iran, are on the US list of terrorist states. The United States politicians demonize Islamic leaders but embrace undemocratic rulers, such as the ones in Algeria. To add to this all, the US troops are stationed not too far away from Mecca and Medina, the holiest cities of Islam.

The militants see more than the US bombing of Muslim

countries. They see that the United States has imposed economic sanctions against almost the entire Islamic world. Even Islamic states, such as Pakistan, which have supported the United States in its wars, are not immune from economic sanctions. Perhaps, the most serious case is Iraq where the economic sanctions have resulted in the death of thousands of children, for want of medical facilities. The rest of the international community is willing to lift these sanctions. But the United States continues to exercise its veto.

For Muslims who hate the United States, the most dramatic scenes come from the Israeli siege of Palestinians. There is a general perception among Muslims that the United States has failed to be a neutral peacemaker in this conflict. In fact, they conclude that Israel will be much more willing to end its occupation if the United States withdrew its money and weapons. Thus, the militants see the United States as the ultimate enemy against the liberation of Israeli occupied territories. This perception is further reinforced when the United States openly supports Israel in its public statements and blocks Security Council resolutions that might benefit the Palestinians, resolutions such as stationing international observers around the occupied territories.

What should be done?

Terrorists cannot dictate what the United States should

do. No self-respecting nation, much less an unrivaled superpower, will formulate its policies according to the wishes of those who inflict harm on its innocent citizens.

Accordingly, the United States is justified in smacking out the terrorists who planned the September Calamity. But the United States must do more. It must take into confidence more than a billion Muslims, through the auspices of the Organization of Islamic Conference--an inter-governmental organization composed of 53 Islamic states. Under no circumstance will it be wise to pursue a foreign policy that alienates a sizeable portion of the international community. It will be equally unwise to pursue a foreign policy that endangers the lives of Americans here and abroad. No nation, not even a superpower, will act upon a foreign policy most likely to harm its people and property. During the Cold War, the United States did not attack the Soviet Union. That was the right thing to do.

Likewise, the United States must reconstruct its foreign policy towards the Islamic world. The new policy should be based on respect for Islam, for Muslims and for their countries. The United States should highlight the role it played in the protection of Bosnia, and in the liberation of the Soviet-occupied Afghanistan. It should also highlight the freedom of religion that Muslims enjoy in the United States. American Muslims will testify to the fact that the name of Allah is being called aloud, with no restrictions, from

mosques built all across the United States.

More should be done to reconstruct the US foreign policy. Instead of bombing Muslim nations, the United States should engage them in diplomacy. Libya, Afghanistan, Syria, Iran, Sudan, all these states can be influenced more by talking to them, less by punishing them. Instead of imposing economic sanctions against a legion of Islamic countries, the United States should interweave them into commerce and trade. In the Middle East crisis, the United States can indeed play a more effective role in ending the misery of Palestinians and the insecurity of Israel.

In short, America isn't anti-Islamic. Nor does it need to be. America and Allah are not at odds. Nor do they need to be. If the United States fails to alter the course of its foreign policy and if it continues to be perceived as anti-Islamic, Islamic terrorism may not go away with missiles and bombs. In that event, more than six million Muslims, now living in the United States, may suffer persecution that American Indians, African-Americans and American citizens of Japanese descent have experienced in the past. In that event, America will also fail from within. (JURIST - September 17, 2001)

## **2 Who's Feeding the Bin Laden Legend?**

Robin Hood and not Osama Bin Laden is the most celebrated outlaw in the English-speaking world. Part reality and part fantasy, Robin Hood has been written into children's stories and adult poems, portrayed on the stage and in movies, examined and reexamined in scholarly research. Even in the realm of law, Robin folk tales raise intriguing questions about law and lawlessness. Is Robin Hood a good lead to understanding Osama Bin Laden? At first blush, any comparison between (Ro)bin Hood and Bin Laden seems odd, most certainly to the English-speaking world for whom 'Bin Hood is a romantic robber whereas Bin Laden is a despised terrorist. The comparison might also displease Muslim militants who see Bin Laden as a spiritual sheikh fighting the crusaders. In the realm of manufacturing legends, however, the similarities between the two outlaws are so real and so fantastic that very little brush work is

needed to draw them together.

The most bewildering similarity between Robin and Osama is their hidden presence. To this day, scholars who expended their entire intellectual capital on tracing Robin's historical whereabouts are unsure whether he operated from Sherwood forests in Nottingham or from Barnsdale parks in Yorkshire. This controversy muddles history but nonetheless furnishes texture to Robin's legend. Now cometh Osama! Despite technology and resources available to experts and spies and despite a \$25 million bounty placed on his head, Osama's whereabouts remain a deep mystery. Is he in Pakistan or Afghanistan? The tough mountains interweaving the borders of these two countries, captured in TV shots, add awesome scenery (a la American Western) to his inscrutable absence. And yet Osama is far from hidden. You can hear him on the internet and see him on Al-Jazeera broadcasts. The snippets from his old videos—him riding a stout white horse or him ambling down a rocky hill with a cane in his hand—are repeatedly shown on American television, adding fantasy to emerging tales of terror.

We know what makes Robin Hood a beloved outlaw and not a mere criminal. The romanticized distinction lies in the English folklore, generously expressed in ballads and poems written over the centuries, asserting that Robin's lawlessness had a redeeming value embodied in his egalitarian ethic of wealth redistribution. "Never poor man came for help/and

went away denied." This non-conservative compassion for the poor sprang from Robin's systemic critique that "how (the poor) toiled without their share" under the then corrupt clerical/feudal alliance. Robin and his Merry Men, however, were by no means bespectacled revolutionaries devoted to social justice. They were hurly burly ruffians, hiding in the forest, having good time, robbing bishops, killing the forbidden deer, and deceiving the Sheriff of Nottingham. Wanted by the Sheriff dead or alive, Robin is nonetheless a real hero in English folk tales "for not a soul in Locksley town/would speak him an ill word."

Wanted dead or alive by the Sheriff of the World, Osama too is an outlaw. But he is not a thief; he is a master terrorist who strikes embassies, ships, and towers without mercy. One can build a legend around Osama, even a bigger legend than that of Robin, since the stakes Osama raises are high, the conflict he espouses is monumental, and his story, going far beyond the confines of a Nottingham, cuts across cultures, religions, and civilizations.

If the genius of an outlaw is to find law beyond law and to place justice at the core of criminality, Osama's claims that he is fighting against foreign occupation, neo-colonialism, and alien domination sound credible to Marxists, Palestinians, war critics, and anti-imperialists. And if the genius of an outlaw is to establish a popular constituency that roots for his breaches of law, Osama has done that too.

Muslim militants see Osama as a righteous warrior, some have named their sons after him, some carry his picture in protest rallies. Under the American pressure, Islamic governments are prohibiting the sale of Osama posters, T-shirts, and other merchandise. Such suppressions, however, deepen his cult.

Ironically, Americans themselves are feeding the Bin Laden legend. There is something in the American spirit that celebrates the outlaws, even violent outlaws. If Osama's comparison with Robin seems grotesque or contrived, consider comparing him with Jesse James, Al Capone, George Musgrave, Terminator, Arnold Schwarzenegger. American fascination with outlaws and gratuitous violence, generously depicted in Hollywood movies and in the real time bombing of a romantically-lit Baghdad, seems benign, creative, stunning, fun—having nothing to do with real death or grief or loss or barbarism. And it is all legal. In this great tradition of violence starting with Cowboys against Indians, Osama is an exotic but a perfect fit. Produced in Washington D.C., directed by the CIA, and filmed in Afghanistan, Osama is cast as a millionaire hero, the 17th son from a family of 50, who speaks softly but carries a cane, who prays five times a day and inspires his Men to terminate Soviet helicopters flying low over the mud houses of a wretched Afghan population.

This alien hero, this entrepreneur of violence, this Osama,

after successfully shooting the first movie against the Soviet evil empire—decides to go on his own. He moves the camera and the crew from an emptied Afghanistan to a city filled with skyscrapers. Planes hit the towers with real death and grief and loss and barbarism. This unprecedented though overly-familiar violence perpetrated in America against America, shown in real time, comes across as neither legal nor creative. 9/11 changes the world, the norms of reaction, the meaning of violence, the definition of artistic expression, fun, the gulf between law and lawlessness. But has 9/11 changed the celebration of the outlaw?

While American soldiers, spies, bounty hunters, television, radio, magazines, and private conversations pursue Osama to bring him to justice for perpetrating the crime of the century, and while Muslim militants pray and fast and plot to kill the enemy under Osama's real or inspired leadership, the yearly festival at Nottingham recites the fifteenth-century ballads and later poems to keep alive the Robin Hood legend. One ballad opens with the words Attend and listen gentlemen/that be of freeborn blood/ I shall tell you of a good yeoman/ His name was Robin Hood. John Keats raises poetic scare by asking what if Robin should be cast/sudden from his turfed grave. Alfred Noyes makes an ecstatic call of Robin! Robin! Robin! All his merry thieves/Answer as the bugle-note shivers through the leaves. But the abbot and the Sheriff are in no frolicsome mood.

"Seize him, seize him!" the Abbot cried/With his fat voice  
through the trees. And the Sheriff is mad as hell.  
(Counterpunch, December 29, 2004).



### **3 What is in the Belly of Trojan Horse?**

US democratization offerings to the Muslim world supposedly carry America's good will and soft power. It is a gesture of peace and friendship. A few Muslims, however, appreciate the urgency with which they are being wheedled to accept the democracy gift. By all counts, the timing is suspicious. At a time when the Pentagon is pulverizing Iraq and Afghanistan, the White House is threatening action against Syria and Iran, US generals are ridiculing Allah and military guards are desecrating the Quran, and hundreds of Muslims are rotting in secret prisons, the soft talk of democracy comes across as brazenly cynical. Muslims worry that if they accept the US sponsored democratization, soldiers will pop out from the belly of the Trojan horse.

A few days ago, Secretary of State Condoleezza Rice, a pastor's daughter, speaking at Cairo's American University,

gave a condescending sermon on the benefits of democracy, as if over a billion Muslims “seeing they see not; and hearing they hear not.” The Egyptian audience gave no applause to Secretary Rice even though the rhetoric of liberty was well crafted and ably delivered. One Egyptian-American said to me: “What Rice did was ill-mannered. It is like visiting somebody’s house as a guest but demanding that their living room furniture be replaced.”

But even when US officials act suave, their lectures on democracy sound hollow. Look who’s talking, says the audience. The same ruling elites, who have mangled civil liberties throwing away the constitution, and waged a senseless war throwing away international law, are touting liberties and accountability to the Muslim world. Do they know, and do they care, about the anger and hatred that flow like molten lava in the hearts and minds of ordinary Muslims across the globe? Muslims see US ruling elites as bullies who disdain the rule of law they preach. For a long time, Muslims hated Israel the most. Now, the US is fast earning that dubious distinction.

Even if hatred fades, US elites drumming democracy would face stiff opposition in the Muslim world. They should know that words such as freedom and liberty have negative connotations for traditional Muslims--just as the phrase “law and order” carries an ominous message for African-Americans. (American criminologists are well aware that

white Americans hear the phrase “law and order” as police efforts to prevent crime, whereas African Americans associate the same phrase with police brutality and arbitrary stops.)

Freedom and liberty mean one thing in America, quite another in Muslim countries. Freedom and liberty are positive concepts for Americans who see in these words assurances for self-expression and self-development. For most Muslims, these words mean sexual promiscuity, disrespect for parents, selfishness, breaking away from social mores, ignoring religion, and pursuing irresponsible lifestyles.

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

Despite their profound concerns about US-sponsored freedoms and liberties, Muslims nonetheless aspire to embrace a conception of democracy under which governments are removable and accountable. Corrupt and

incompetent governments, many pro-American, rule the Muslim world. And they become abusive when the people challenge their power. Ironically, many Muslim populations blame the United States for supporting, and now installing, sham democracies and puppet rulers.

For example, General Pervez Musharraf's superimposition over Pakistani democracy might be good for America in the short run but Pakistan would fall precipitously if its top ruler were required to be a White House viceroy. Likewise, American liaisons with Hosni Mubarak, who has single-handedly steered Egypt for decades, going nowhere, have cultivated everything but democracy. Despite shedding tears over supporting dictators, as Secretary Rice did in her Cairo speech, US crocodiles enjoy little goodwill in the Muslim world.

No one disputes that Muslims need democracy. Unfortunately, the American gift of democratization will confuse the process. Rightly or wrongly, most Muslims see the US democracy initiative as part of a larger war against Islam. It would be best for all, therefore, if the democratization carousel stops. Let Muslim nations ride their own fate and build their own democratic structures. But will the US ruling elites accept such a genuine notion of self-quest and self-rule? (Baltimore Chronicle – June 30, 2005).

## **4 Hallucinations of President George W. Bush**

Presidential candidate Rev. Al Sharpton has accused President Bush of believing in hallucinations. This is a harsh personal attack that can be dismissed as political rhetoric signifying nothing. Political opponents may enjoy the attack for its entertainment value. Sharpton is particularly good at delivering exciting punches. Yet what he said carries an element of truth.

Technically, hallucination means the apparent perception of sights and sounds that are not actually present. The person hallucinating often fails to realize that he is seeing things that no one else is. Of false visions and voices, command hallucinations are the most dangerous, for they prompt the person to take action. Dr. Dale McNeil of the University of California has recently found a disturbing relationship between command hallucinations and aggressive behavior.

Though failing to meet technical definition, Sharpton's accusation simply means that the Bush administration does not see facts or acts, sometimes too strongly, based upon facts that no one else finds credible. This is a harsh indictment of a president elected primarily for his straightforwardness and clarity of vision. Sharpton furnishes no facts to prove his point, but his statement seems to refer to the president's war expeditions abroad and law and order polices at home.

September 11 was of course no hallucination. Towers fell in reality. Deaths were tangible. The anguish across America was genuine. Osama videos, showing him smiling over the tragedy, were not made in America. And President Bush's tears, co-mingled with many others, were real.

In reaction to the September calamity, however, the Bush administration has most certainly been overly cautious even at the expense of facts. The administration has reacted in ways contrary to the established constitutional principles of liberty and due process. Hundreds of immigrants and citizens have been swooped up from their homes and businesses, detained, and kept incommunicado for months, even though the administration had scant facts to justify the sweep. In combating terror, the enforcement agencies are under institutional pressure to monitor places of worships, charities, and religious gatherings. This pressure cultivates among public officials a propensity to see and hear things

out of context. In one case, for example, three medical students were arrested in a highway chase for allegedly laughing about September 11. In another case, a Muslim cleric was falsely charged with carrying bags laced with TNT. Such episodes begin to make the case that the Bush administration favors caution over facts.

Sharpton's accusation is even more believable in analyzing the war on Iraq. Was the Bush administration relying on facts about Iraq's weapons of mass destruction? It is no secret that the president argued that Iraq's weapons of mass destruction posed a direct threat to the United States. Satellite photos--shared with the UN Security Council--showed Iraqis trucking away weapons from a suspicious production site. However, the International Atomic Energy Agency and UN inspectors failed to trace these weapons. Frustrated, the president waged a controversial war to prove his point. So far no weapons of mass destruction have been found, shoring up the rhetoric of hallucination. Yet, one might simply say that the president was given bad intelligence or that the president's real intention was to dismount a brutal dictator.

Sharpton's accusation begins to gather mass when the president's two self-damaging declarations are added to the evidence. In May, the president declared that the Iraqi war was over. One would think that the president had relied upon credible facts before making such a momentous declaration.

Later developments demonstrate, however, that the announcement was no more than wishful thinking, for since then the news from the battleground has been anything but good. Even capturing Saddam and killing his sons did little to end the war.

The president's other declaration—that he sees a wave of democracy sweeping through the kingdoms of the Middle East—is equally troubling, for it too seems to ignore facts. The people in the Middle East--including Palestinians--yearn to have personal freedoms and democratic options. But it will take a miracle for these people to believe that the president is a champion of civil and political rights for Muslims at home and abroad. Moreover, stable institutions of democracy grow from within and do not flow from the barrels of guns. Despite the president's sincere assurances that he sees Islam as a peaceful faith, the rhetoric of good and evil has muddled more than cleared the waters of the Middle East. Only time will tell whether the president's vision about democracy in the Middle East is real?

Meanwhile, as the election contest draws near and as Rev. Sharpton departs from the main stage, his wild accusation that President Bush believes in hallucinations might survive as a fact in the records of history. (Baltimore Chronicle – January 3, 2004)

.

## **5 Fighting Words against Islam in America**

It is becoming fashionable for elected officials in the Anglo-American world, notably in the United States and the United Kingdom, to employ abusive language involving Islam. Phrases such as "Islamic terrorism," "totalitarian Islam," "crimes of Islam," and "Islamic fascism" are freely used, with sadist disrespect, to condemn real and imagined terrorists who practice the faith of Islam. For years, and long before the 9/11 attacks, neo-conservative scholarship has been determined to popularize the concept of the essentialist terrorist who purportedly draws his deepest inspiration from the puritanical beliefs of Islam and equipped with cruelty, commits violence against innocent Jews and Christians. According to this, occupations, invasions, territorial thefts, assassinations, house demolitions, human rights violations, and other such grievances have nothing to do with Islamic resistance. Islamic terrorism, according to neo-conservative

scholarship, stems from the Sharia, from passages of the Quran, and from a puritanical mindset that manufactures pretexts to maim and kill. These killers, it is further contended, wish to impose Islamic law over the entire world.

Gradually but successfully, the propagandized essentialist terrorist and the attendant abusive language against Islam have entered political rhetoric. Presidents, prime ministers, congressmen, senators, and other officials are now freely using abusive language to malign Islam, not through uncaught moments of Freudian slips but as a policy of expressive audacity.

Commenting on the alleged plan of British nationals of Pakistani descent to blow up US-bound planes over the Atlantic, President Bush said: "This is a stark reminder that this nation is at war with Islamic fascists." Senator Rick Santorum distinguishes between terrorism and Islamic fascism, arguing that terrorism is a tactic but what the West is fighting is "Islamic fascism" which is "truly evil" and which is "as big a threat today as Nazism and communism."

This new trend to openly curse Islam echoes the words of UK Prime Minister Tony Blair, who said: "We should not be apologetic or defensive in defining the problems of terrorism."

One wonders why elected officials in supposedly democratic nations, which tout the principles of equal respect and dignity for all, use abusive language to wound

the sentiments of more than a billion people across the world. Several explanations come to mind.

First, the abusive language may be described as an effect of an over-generalization. Suppose that Muslim militants indeed wish to impose Islam on the Anglo-American world, a supposition that even the militants would ridicule as blatant propaganda to infuriate domestic audiences. Though mounted on a questionable supposition, the label is accurate to the extent that the use of violence to forcibly modify the values of a foreign nation is indeed fascism - a definition that, ironically, would also paint President Bush as an American fascist for his forcible democratization of Afghanistan and Iraq. Even if President Bush were declared a fascist, it would be wrong to describe his foreign policy as American fascism because that is tantamount to over- as well as mis-generalization.

Islamic fascism as a descriptive label also fails to capture the limited meaning of describing militants who are supposedly fascists. The label comes across as a prescriptive indictment, suggesting that Islam is intolerant, violent, and aggressively self-righteous in imposing its values on non-Islamic cultures. If Anglo-American politicians are using the label in this broad sense, and thus accusing Islam and not merely the militants, they should say so. If they are using the label in a limited sense and do not wish to antagonize the entire Muslim world or malign the faith of Islam, they must

abandon the label. The label of Islamic fascism even in a limited sense is not an intelligent use of the language, for it is susceptible to multiple interpretations. Its use in the broad sense is highly provocative and counterproductive to the war on terrorism. It foolishly alienates all Muslims.

Second, there might be a democratic argument for politicians using abusive language involving Islam. But no American politician would describe pedophilia scandals in some Catholic churches as Catholic pedophilia. Such an over-generalization would be politically unwise because no prudent politician would want to lose Catholic money and votes. Likewise, no politician would use abusive language against Jews or Judaism for fear of alienating that community, not to mention the American-Israel Public Affairs Committee (AIPAC), which keeps a close tab on what American politicians are saying and doing. Because American Muslims do not have loads of money, lobbying clout, or votes, however, they constitute a minority that can be easily sacrificed and trashed. If this is the reason behind abusive rhetoric against Islam, however, it reveals a sad truth about democracy in general and American democracy in particular which has had a tainted record when it comes to the abusive treatment of minorities including native Indians, Blacks, and others.

Third, there seems to exist an unexamined assumption in American political circles that Islam is a foreign religion, an

outsider, the other. Politicians who use abusive language against Islam do not see Islam as part of American multi-religious fabric. Despite their enchantment with secularism, they still see this nation as Christian, perhaps Judeo-Christian, ignoring the fact that millions of Muslims, immigrants and native born, now live in all states of the United States. Hundreds of mosques in America, though under surveillance, furnish indelible signs that Islam has arrived in this country, not to forcibly convert anyone but to enrich American culture, diversity, history, architecture, sciences, and, yes, laws. Let American politicians greet Islam and Muslims with *Assalaam ulaikum* (peace be upon you) if for no other reason than to remind them that their religion is one of peace and not of violence. (JURIST – August 20, 2006).

## **6 Anti-Americanism in Pakistan**

On May 14, after deliberations of over 10 hours, the democratically-elected Pakistan Parliament in a joint session of both houses passed a unanimous resolution to reclaim Pakistan's sovereignty, territorial integrity, and national security against U.S. military actions. Invoking the U.N. Charter, international law, and humanitarian norms, the resolution specifically condemns "the continued drone attacks on the territory of Pakistan," which have increased manifold under President Obama. The resolution empowers the Pakistan Government "to consider taking necessary steps including withdrawal of transit facility allowed to NATO/ISAF forces" in case the CIA-operated drone attacks are not "stopped forthwith." The Parliament also expressed "its deep distress" over "the campaign in certain (U.S.) quarters" to malign Pakistan as a nation that secretly supports terrorist outfits.

The U.S. National Security Council (NSC), the President's principal forum for considering national security and foreign policy matters, should take notice of the rising anti-Americanism in Pakistan. It must review the policy of drone attacks and find ways to establish rapport with the Pakistan Parliament. Failure to do so would most likely harm U.S. strategic and foreign policy interests.

### Drones as Propaganda Tools

Shrouded in secrecy, drone attacks have turned into propaganda tools for both defenders and critics. Because the international and Pakistani media are denied access to the tribal areas, the target territory of drone attacks, the precise count of casualties remains unclear. Furthermore, no one knows with certainty whether drones kill more militants or civilians. Defenders, mostly in the U.S., support drones as efficacious machines to fight militants lodged in inaccessible mountains. Critics, mostly in Pakistan, condemn drones as lawless gadgets that kill innocent men, women, and children, the indigenous population of tribal areas.

The Pakistani electronic media, exercising its newly-found freedom of expression, is the greatest critic of drone attacks. Day after day, Pakistani anchors, sitting among politicians, government officials, and opinion makers, condemn drone attacks, reinforcing the unprecedented anti-Americanism throughout Pakistan. Even pro-Western elites, educated in

American universities and trained in military academies, are disappointed with the U.S. disrespect for Pakistan as a nation. The NSC must not underestimate the fallout of these negative sentiments.

### Silk-Route Alliance

The NSC is reported to have examined the Parliament's resolution and the rising anti-Americanism. Some in the NSC oppose the frequency, and perhaps the wisdom, of drone attacks, particularly at the eve of Afghanistan war. All in the NSC, however, know that Pakistan has few operable options to stop drone attacks. Pakistan cannot shoot down drones for such countermeasures would invite the U.S. Congress to impose economic and military sanctions, in addition to withholding billions of dollars in assistance. Pakistan is also unlikely to withdraw transit facilities for fear of jeopardizing trade and diplomatic relations with NATO states. In no way can Pakistan afford a dramatic breach with the U.S.

Nonetheless, a helpless Pakistan, under intense anti-American pressure at home, may begin to take small steps to drift away toward China, the so-called all-weather friend, and possibly woo Russia, modifying its pro-U.S. foreign policy. A Silk-Route alliance, including China, Pakistan, Afghanistan, and Central Asian states, is unlikely to forge anytime soon, but Pakistan, more than China, will be the key

to such an alliance. Central Asian states, rich in natural resources, will find the alliance economically appealing. The alliance with Muslim states will effectively eliminate the Uighur secessionist threat in the Xinjiang province, a huge benefit to China. India too is unlikely to fully embrace the U.S. as a counter-weight to the Silk-Route Alliance. India cannot trust the U.S. after the U.S. brutally degrades and abandons Pakistan, a sixty-year old subservient ally. The Silk-Route alliance may thus expel the U.S. from the region.

### Courting Pakistan's Parliament

If the NSC wishes to retain Pakistan as an ally, it must take immediate steps to demonstrate that it respects Pakistan's democratically-elected Parliament. The NSC may consider the following steps in mending the breach with the Parliament:

1. The NSC should invite influential members of the Parliament to the U.S. to meet with members of Congress for meaningful exchange of views. Members of Congress must also visit Pakistan to make the case for the U.S. national security. This democratic bilateralism will deepen mutual understanding of elected institutions.
2. The NSC should dissuade government officials and members of Congress from issuing provocative statements that paint Pakistan as an unreliable or duplicitous ally. Such degrading rhetoric is more appropriate after the NSC decides

to ditch Pakistan as an ally.

3. The NSC should stop drone attacks forthwith, meeting a key demand of Pakistan's Parliament. Killing a few more militants cannot change the ground realities of the Afghan war. In alienating the people of Pakistan and its Parliament, the drone attacks cause more harm than benefit to U.S. geostrategic interests.

These and similar steps will launch a pragmatic policy of treating Pakistan as a dignified ally, which recognizes Pakistan's sacrifices in supporting the U.S. campaign against terrorism. With the rising anti-Americanism, Pakistan will no longer remain a slave state. (The American Muslim – June 11, 2011)

## **7 Attacking Iran is illegal**

The United States and Israel have launched a vociferous global campaign to justify an attack on the Iranian nuclear facilities. Israel paints the Iranian nuclear program as an existential threat to itself whereas the United States characterizes the Iranian program as a peril to international peace and security. Most Western European states and some Middle Eastern states, including Saudi Arabia, view the Iranian quest for nuclear energy with suspicion and alarm. Russia and China, the permanent members of the U.N. Security Council, and numerous Muslim and non-Muslim states in Asia, Africa and, Latin America, even when they are unsure about Iran's intentions, oppose an armed attack on Iran.

As a State Party to the Nuclear Non-Proliferation Treaty (NPT), Iran claims a lawful right to develop nuclear energy, just as scores of States Parties including the United States

mobilize such a right to develop nuclear energy. The Iranian leaders deny, in an unambiguous language, that they intend to develop nuclear weapons. Ayatollah Khomeini, the founder of the 1979 Iranian Revolution, had opined that Islamic law prohibits the possession of nuclear weapons. Consistent with Iranian assurances, U.S. intelligence agencies believe that Iran has not made a decision to manufacture nuclear weapons.

Rejecting Iranian statements as lies, Israel, more than the United States, is planning an armed attack against Iranian nuclear plants and the associated command and control headquarters. The irony is that Israel itself possesses hundreds of nuclear weapons it has built with the covert assistance of the United States. As a self-appointed sheriff of the Middle East, Israel refuses to allow any other state in the neighborhood to develop nuclear energy. All by itself, Israel unlawfully destroyed the nuclear energy plants in Iraq and Syria. Israeli intelligence agencies assassinate Iranian scientists and nuclear engineers, an illegal course of action that no other state undertakes or endorses. The United States would commit a great wrong, argues Israel's Prime Minister, if the United States does not soon start a war with Iran.

There are two distinct reasons why an armed attack on Iran is illegal under international law, whether the attacker is Israel or the United States.

First, a violation of the NPT does not justify an armed attack. The NPT carries no war clauses for its violations. Suppose that Iran is indeed in violation of the NPT as it refuses to fully submit its nuclear facilities to satisfactory inspection by the International Atomic Energy Agency (IAEA). However, a dispute over the logistics of inspection with the IAEA does not furnish a sufficient basis in international law for any state, including the United States, to launch an armed attack against the State Party. Israel, which has not even signed the NPT, cannot invoke the failed IAEA inspections for justifying an armed attack on Iran, a founding member of the NPT. International law knows no rule under which a state that refuses to sign a treaty turns around to enforce the same treaty, by all means necessary, against a founding member of the treaty. To preempt any such adventures, the NPT Preamble specifically prohibits "the threat or use of force against the territorial integrity or political independence of any State."

Second, the U.N. Charter outlaws war in the following guiding principle: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state." As States Parties to the U.N. Charter, Israel and the United States violate this principle when they threaten an armed attack against Iran, again a founding member of the Charter. Israel has not yet claimed the right to self-defense

under Article 51 of the Charter. However, any such claim would be dubious. There is no credible evidence that Iran is preparing an armed attack against Israel or the United States, triggering the right to self-defense. Most important, the Security Council is well aware of the Iranian problem. The efforts to persuade the Security Council to impose economic sanctions on Iran have failed. If the Security Council is opposed even to economic sanctions, it is unlikely to authorize the use of force against Iran.

Israel and the United States may petition the Security Council under Chapter VII of the U.N. Charter for the use of force to deter Iran from manufacturing nuclear weapons. Bypassing the Security Council, any armed attack on Iran will be akin to the unlawful invasion of Iraq. In that case, the attack will have zero legitimacy under international law.  
(Huffington Post – March 6, 2012)

## **8 American Renditions**

Rendition is one of those words that bureaucracies craft to hide official monstrosities. As an artistic term, rendition means "a performance of a dramatic role." Webster's 1913 dictionary defines rendition as "the act of surrendering fugitives from justice at the claim of a foreign government." In its brand new usage, rendition has come to mean surrender of aliens. It is a quasi-legal practice under which US intelligence agencies "render terrorists" to friendly governments, mostly in the Islamic world, for detention and interrogation and more.

Ghastly stories have surfaced how Egypt, Syria, Afghanistan, Uzbekistan, and other Muslim states abuse and torture rendered men, inflicting more indignities on them than Muslim inmates have suffered at Guantanamo. Beatings, physical suspensions, electric shocks, and other cruel and degrading treatments have been reported. International

human rights groups claim that in Uzbekistan two rendered prisoners were boiled to death. Renditions are now firmly associated with America, torture and Muslim states.

More than anything else, the law (or lawlessness) around renditions is most intriguing. Rendered men cannot be lawfully extradited because they have committed no crime in the Muslim state to which they are rendered. Sometimes, the friendly government has no clue about the identity or activities of the person before he is rendered. Sometimes, the rendered man is not even a national of the receiving state. Hence the contrast between extradition and rendition is vivid. Extradition is an open procedure under which a fugitive is lawfully sent to a requesting state where he has committed a serious crime. Rendition is a covert operation under which even an innocent person may be forcibly transferred to a state where he has committed no crime. It is like a bully dispatching a helpless prey to another bully in another town.

Rendition is not even deportation. A person may be deported under US immigration laws for a variety of reasons including charges of terrorism. Deportation however implies that the person is in the United States. Rendition is not territorial. US agencies can abduct a Muslim anywhere in the world and render him to a friendly government. In December 2003, US agents pulled Khaled el-Masri from a bus on the Serbia-Macedonia border and flew him to Afghanistan where he was

drugged and tortured. But the man was a tad lucky. Though born in Lebanon, el-Masri had obtained German nationality. Germany came to his rescue for he was no terrorist. El-Masri was released, though he would still be languishing in Afghan torture chambers if he were, say, the national of a Muslim state that does not care.

Defying international treaties and US laws, rendition works on dark fringes of legality. The Torture Convention specifies that no signatory state shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture. The Convention is so strict in its prohibition of torture that it allows no exceptions under which any such transfer may be justified. Additionally, it is a crime under US laws to commit torture outside the United States. If the victim dies of torture, the crime is punishable by death. It is also a crime for US officials to conspire to commit torture outside the United States. Under both the Convention and US laws, therefore, rendition is strictly prohibited if the rendered person would be subjected to torture.

Sadly, such has become the nature of law in the United States that fertile minds trained in top law schools can find believable exceptions to even clearest provisions of law. Law is a game and talent lies in finding loopholes. Accordingly, the laws against shipping detainees to torture chambers tickle the legal imagination of government lawyers and,

surely, they find ways to dodge legal texts. To escape the reach of the law, US agents seek verbal assurances from friendly governments that no torture would be committed. Friendly governments nod and receive the cargo. No one winks an eye but all know the script. As soon as men are thrown into torture chambers, lips are sealed. US agencies do not ask and friendly governments do not tell what is being done to "terrorists."

One might ask why the US is abducting and rendering men to friendly states. There are many answers. Sometimes, men are rendered because they have nothing more to tell to US agents but still out of caution they cannot be freed; it is cheaper for the US to detain these men in Muslim prisons than here in America. Sometimes, the rendered men need pressure' to disgorge their stories, and the torture techniques employed in friendly states are just perfect to do the job. Sometimes, men are rendered as a loyalty test, just to make sure that Muslim intelligence agencies are indeed supportive of the US war on terror. Sometimes, it is safer to tuck away minor terrorists elsewhere because lawsuits in America may pester for truth and embarrass the government. No such pestering exists in friendly Muslim states where pro-American, autocratic governments are well removed from public accountability and would love to oblige their friends and masters.

And for American neo-conservatives, rendition stories are

fun. Don't be surprised if at dinner tables, they drink and laugh and talk about Muslims degrading Muslims. Some of them are even talking about closing the Muslim prison at Guantanamo. Thomas Friedman of New York Times, who vigorously supported the neo-conservative invasion of Iraq, recently wrote a column suggesting that the Guantanamo camp be shut down for it has become "corrosive" for America's standing abroad. Many good-hearted Americans who have nothing to do with neo-conservatives also favor the closure of this eyesore.

Ironically, though, the timing for shutting down the Guantanamo Gulag is near perfect. The inmates have emptied their minds and their spirits are broken beyond repair. They are no longer useful though they are still considered dangerous. The time is ripe for their renditions. Men in orange, shown coiled in the fetal position, will perhaps go home where, surely, no Quran will be desecrated but where their limbs will be hung on hooks, their genitals will be shocked with erratic electricity, and their fingernails will be plucked off with primitive pliers. America will get rid of its guilt, claiming moral superiority over the rest of the world. And the name of Islam will be further smeared with barbaric details coming from torture chambers, serving America, but maintained by friendly governments in not Kafir but Muslim states. (Counterpunch – June 6, 2005)

## **9 Thou shall not Kill, We will**

The September 11 attacks have changed American law and foreign policy regarding political murders. Since the 1970s, when a Congressional Committee exposed the CIA plots to murder Fidel Castro and other foreign leaders, the President's law embodied in Executive Orders has prohibited government employees from directly or indirectly engaging in assassinations. That law seems to have been secretly revoked. The President may do so for national security reasons. Even if the Executive Order prohibiting assassinations is still the law, its language is open to interpretation. Given the bad faith interpretations that government lawyers have made to undermine the laws of war and torture, do not be surprised if the Executive Order is reinterpreted to allow domestic—yes domestic—and foreign political murders. If the law has indeed been revoked, the President's hand is freer.

Not only the law but also US foreign policy has changed with respect to political murders, casting away years of international efforts to forbid extra-judicial killings. The new US commandment is: Thou shall not kill—but we will. The word “thou” in the commandment is a bit convoluted. It means Syria and other disfavored states. It does not include Israel and other allies. The US, as the sole superpower, is of course above and beyond all commandments. Under the new commandment, the US reserves the right to murder whomever it pleases, to condemn or condone political murders as it pleases. Here are three episodes that illuminate the new commandment.

### Condemning Political Murder

Take the political murder of Lebanese Prime Minister Rafik Hariri. A UN commission has concluded that since the Syrian and Lebanese intelligence services were closely allied in Lebanon, “it would be difficult to envisage a scenario whereby such a complex assassination plot could have been carried out without their knowledge.” The commission also accuses Syrian security officials of giving false or inaccurate information. However, the commission is emphatic in saying that the investigation is incomplete and that “the full picture of the assassination can only be reached through an extensive and credible investigation.”

The UN report provides a basis, however thin, for the US

ruling group to slash the Syrian throat. After Iraq, Syria has been the perfect next target for a while. The US ruling group needs new subterfuges to sustain the failing war on terror. Pouncing on the opportunity, Secretary of State Condoleezza Rice has already convicted the entire Syrian government. The UN report cannot be “left lying on the table,” she said. The military option is always there, President Bush announced on Al Arabiya television. Neocons agree wholeheartedly. Punishing Syria would also delight Prime Minister Sharon, whose own involvement in the 1982 Sabra and Shatila massacres in Lebanon was not even referred to any UN investigation commission.

### Condoning Political Murder

That takes us to Sharon-sponsored political murders. In March 2004, Sharon ordered the murder of blind quadriplegic Sheikh Ahmad Yâsîn, the spiritual leader of Hamas, who had previously suffered years of torture in Israeli prisons. Yasin was blasted out of his wheelchair as he was returning from the Gaza mosque after the morning prayer. Sharon chose the time and place of the murder to reinforce a favorite Israeli theme that not even God helps the Palestinians. Israel accepted responsibility, arguing that the Sheikh, as the godfather of terrorism, deserved to die. Reacting to the news, the US State Department had no words of condemnation. Its spokesman urged “all parties to remain

calm and exercise restraint.” This urging for calm was obviously aimed at Palestinians and not Israelis who, after the assassination, had every reason to be serene. President Bush further mitigated the murder by saying that Israel had the right to defend itself but should take into account the consequences of its actions. When the matter was brought before the UN Security Council, the same Council where the US is actively seeking a resolution against Syria, Israel faced no consequences for the political murder. The US vetoed the resolution drafted to condemn the killing. “How do the Israelis continue with what they are saying and what they are doing unless there is this unfortunate automatic protection by the superpower of the world?” remarked the Palestinian UN observer.

### Perpetrating Political Murder

But the superpower of the world was even more blatant in committing political murders. In July 2003, the US murdered Saddam Hussein’s two sons, Uday and Qusai, and his 14- year old grandson, Mustapha. The murders were justified as the outcome of an armed encounter with the US army. But the circumstances under which the murders took place revealed intent and premeditation. The targets were trapped in a villa and had nowhere to go. Their limited cache of bullets had been completely exhausted. Several hours after the fire from the villa had stopped, US Special Forces under

the cover of overwhelming force of missiles, helicopters, rockets, and grenades, entered the building not to take prisoners but, per order, to murder Saddam's children.

Back home, particularly in Washington, the air was drenched with morbidity. Deaths of the enemy's children were seen as rare trophies. Contrary to Pentagon wishes and contrary to the laws of war, the broken faces of Uday and Qusai were reconstructed with plastic pudding for a grand display. Gruesome pictures of the brothers were shown to the world as proof of the dead. Major newspapers, including the New York Times, celebrated the murders and congratulated the Bush administration for a heroic undertaking. So widespread was the joy in the murders that even some liberal Senators were bathing their hands in the blood.

These three episodes demonstrate that the US is evolving into a capricious monster. It no longer respects the rule of law. Away from the luminous halls on Capitol Hill where democracy is showcased for the American public and the world, lawless and arbitrary decisions are made in dim caves accessible only to select members of the ruling group. The world must demand that the Bush administration make an unequivocal statement in the UN Security Council that the US upholds the law against all political murders, with no exceptions. (Baltimore Chronicle – October 29, 2005)

## **10 The Invention of Porno Torture**

Lynndie England, the Army private photographed holding a naked Iraqi by a dog leash, has been convicted leaving behind a nagging question: how far up does the responsibility go? By no means is Lynndie England alone. She is the scapegoat of a larger US Torture Establishment. A related question that demands scrutiny is the widespread use of porno torture. Photos and stories emanating from Abu Gharib and Guantanamo, the military prisons that would live in infamy, reveal that American soldiers, CIA interrogators, and military contractors, all have engaged in porno torture against Muslim detainees. Unofficial stories circulating on the internet are beyond belief. But even official acknowledgment, though exposing the only tip of the iceberg, furnishes credible clues that porno torture has been, and probably still is, a favorite tool to degrade and torment Muslim detainees.

General Antonio Taguba, who investigated charges of torture in Iraq, reported numerous episodes of porno torture. At Abu Gharib, detained Muslim boys were sodomized and detained Muslim girls were raped. Detained Muslim men were stripped naked and stacked in pyramids. Some were forced to engage in oral sex with each other. Some were forced to wear female underwears. Reports from the Guantanamo gulag are no less pornographic. One Muslim detainee was smeared with the menstrual blood of a prostitute. Another was led to believe, through long therapy sessions, that he was a closet homosexual–torture aimed at dismantling the detainee’s self-identity. Yet another detainee reported: Americans stripped me, hit me and beat me up. I pointed to where the pain was but they took it as a joke and they laughed. All these sadistic episodes are examples of porno torture.

Porno torture is not defined in law. However, laws do define pornography and torture separately. Pornography is visual depictions, including photograph, film, and video, of actual or simulated sexually explicit conduct, such as a lascivious exhibition of the genitals, sexual acts, sadistic or masochistic abuse. Torture is the intentional infliction of severe physical or mental pain on a person for the purposes of obtaining information or a confession, punishment, or intimidation.

From these definitions, porno torture may be deduced as

the intentional infliction of severe physical or mental pain for interrogative, punitive, or abusive purposes by forcing a person to engage in sexually explicit behavior which is recorded or staged before a live audience.

Note that porno torture is not the same as porno conduct. What distinguishes the two is the element of consent. The person engaged in porno conduct consents to visual depictions of his or her actual or simulated sexual acts. By contrast, porno torture forces the person against his or her will to engage in actual sexual acts for or before an audience. Just like porno conduct, porno torture is also photographed, filmed, or videotaped for the gratification of others. At Abu Gharib, for example, an act of torture was committed when naked detainees were forcibly stacked in a pyramid. This act of torture turned into porno torture when sexual torture was photographed, filmed, or videotaped. Recording of sexual torture, however, is not critical for pornographic purposes. Porno torture may be committed for the gratification of a live audience, with or without producing any visual record.

Torture is by no means an exclusive American practice. Almost all states, including Muslim nations, practice atrocious forms of torture. Porno torture, however, is unique. It is unique not because it is harsher but because it is unusual. Very few states have been reported to practice porno torture. So a question arises: Why has the US Torture Establishment invented porno torture to degrade and

torment Muslim men, women, and children? There can be several believable explanations. Here are two:

The first explanation is legal. The Torture Establishment knows that the United States has not fully accepted the concept of mental torture. The Convention against Torture and other Cruel, Inhuman, or Degrading Treatment (1984), a universally subscribed international treaty, prohibits physical or mental torture and allows no exceptions under any circumstances. In 1994, however, the United States ratified the Convention with several reservations. One reservation narrows the scope of mental torture. No mental torture is actionable under US laws unless it causes "prolonged mental harm." Accordingly, the Torture Establishment might have foolishly concluded that porno torture may be inflicted on Muslim detainees since it presumably causes no severe physical injury or prolonged mental harm.

The second explanation is cultural-religious. The Torture Establishment interprets the war on terror as a religious war. It presumes that terrorists are Muslim fundamentalists with conservative sexual morality. The presumption is valid to the extent that Islamic culture shuns porno nudity and porno sexual acts staged for the gratification of an audience. In this sense, Islamic culture is no different from the mainstream American culture. However, while a multi-billion dollars porn industry is permitted under the US laws, Muslim

nations practice severe censorship to minimize the entry of porno products. This awareness of cultural difference empowers the Torture Establishment to use porno torture as an effective tool in challenging, confusing, and degrading the religious orientation of Muslim detainees. The Torture Establishment is betting that porno torture would cause severe mental pain and suffering to Muslim militants but no perpetrator will be prosecuted.

It is no surprise that the military court that convicted Lynndie England found no porno torture in the case. In fact, England was not even charged for committing any form of torture. She has been found guilty of one count of conspiracy, four counts of maltreating detainees, and one count of committing an indecent act. No Iraqi detainees were summoned as witnesses to tell their story of shame, degradation, pain, and suffering that porno torture inflicted on their bodies, minds, and souls. Meanwhile, the Torture Establishment has buried thousands of pictures of porno torture in confidential files to avoid responsibility.  
(Counterpunch – September 28, 2005)

## **11 Presidential Incitements to Genocide**

On the fifth anniversary of 9/11, President George Walker Bush delivered an illegal speech and may have committed an international crime, that is, the crime of direct and public incitement to commit genocide of a religious group. Determined to rally disbelieving Americans behind a failed Iraqi war, the President drifted into calling for open-ended violence against Muslims. Says the President: "The war against this enemy is more than a military conflict. It is the decisive ideological struggle of the 21st century and the calling of our generation." The President identifies "this enemy" as Muslim extremists. The 9/11speech is one among many through which the President has engaged, and continues to do so, in direct and public incitements to commit violence and other crimes against Muslims as a religious group.

The1948 Convention on the Prevention and Punishment

of the Crime of Genocide defines genocide, among other things, as the act of killing members of a national, ethnical, racial, or religious group with intent to destroy, in whole or in part, the target group. But the Convention goes further and lists other criminal acts related to genocide. It prohibits and punishes a conspiracy to commit genocide as well as "direct and public incitement to commit genocide." Article 4 of the Convention provides that the persons committing any of the listed genocide crimes shall be punished "whether they are constitutionally responsible rulers, public officials or private individuals."

The US has ratified the Genocide Convention. In 1987, the US Congress furnished the implementing legislation to enforce the Convention (the Proxmire Act). The crime of inciting genocide is not only an international crime but a federal crime as well.

### Elements of the Crime

The incitement crime under the Genocide Convention consists of three distinct elements. First, the target of incitement is a group listed in the Convention. Second, the incitement to commit genocide is direct and public. Third, the perpetrator has the requisite intent. When a perpetrator satisfies these three elements, the crime of genocide-incitement is complete and committed.

Note that the incitement to commit genocide is a verbal

crime, although non-verbal methods of incitement are equally criminal. Genocide-incitement is primarily a crime of the tongue. It is criminal speech. The Convention does not require that verbal incitement produce actual genocide, just as conspiracy to commit a crime is actionable even though it may yield no crime. Furthermore, the incitement committed with words is not protected under the First Amendment of the US Constitution, treaties, or customary international law of freedom of speech.

Let us critically examine whether the President's 9/11 speech satisfies the three elements of the crime of incitement as defined in the Genocide Convention.

### The Group

The Genocide Convention applies when the perpetrator defines the target in terms of a national, ethnical, racial, or religious group. The Convention does not require that incitement be against the group as a whole. Even if the incitement to commit genocide is aimed at part of the group, the Convention crime has been committed.

In his 9/11 speech, the President defines the enemy as Muslims who believe in a "perverted vision of Islam." This perverted religious group is one that, according to the President, aspires "to build a radical Islamic empire where women are prisoners in their homes, men are beaten for missing prayer meetings, and terrorists have a safe haven to

plan and launch attacks on America and other civilized nations." The President 's target is not confined to al Qaeda or actual terrorists who attacked or might be planning attacks on the US. Nor does the President define the target in terms of criminals who happen to be Muslims. Fearlessly as if the law would never reach him, which might sadly be true, the President paints the religious group with a broad stroke, describing the group as religiously perverted and evil, a religious group that must be confronted, defeated, and killed.

The President targets the religious group for its ideology and not for its criminality against the US. That some members of this amorphous religious group may have committed crimes against the US furnishes no legal excuse to liquidate the entire group. When the innocent and the guilty are lumped together as a single entity, the offense of designing a target group is complete. Perpetrators of genocide (Hitler) frequently detest the group, in whole or in part, and not merely individuals. They make no distinction between the innocent and the guilty. The net they throw to encircle the group is vast, fluid, and indiscriminating.

### Direct and Public Incitement

No one would dispute that the President's 9/11 speech was a public event, a speech directly delivered to national and international audiences, carried live by major networks with global reach. The speech was also directly and publicly

delivered to the US troops fighting in Iraq and Afghanistan and stationed elsewhere in the world. The speech also addresses the US allies that are fighting terrorism. Thus, the NATO troops in Afghanistan, the Coalition troops in Iraq, the Israeli Defense Forces in occupied territories, all these troops were the actual or potential audiences of the well-advertised 9/11 speech that the President delivered with high emotional voltage. I discuss below that the speech carried genocide incitement. Here it must be noted that the speech that delivered the message was not hidden and private. It was direct and public. The speech was delivered to millions of people across the world, including criminals, gangs, and soldiers, who harbor hatred against Muslims. In his speeches, the President has repeatedly and spitefully labeled Muslim extremists as an evil religious group that must be physically eliminated.

The incitement to genocide is a verbal attempt to exhort, persuade, encourage, and provoke the audience and troops to kill members of the target group. Part of the incitement is to dehumanize the target group, showing through words that the target group is subhuman, a threat, dangerous, and worthless. The President paints the target religious group as "dangerous enemies," one that is "driven by a perverted vision of Islam," that espouses "hateful ideology," that "will not leave us alone," that "will follow us," and one that will use "the weapons of mass destruction." These descriptions of

the target group cause fear, anger, and arousal, urging the audience and troops to do something, including killings. Since the group is defined in a broad manner, the incitement to kill provides no specifics. It cultivates combat and preemption through any means necessary, including the physical elimination of the group.

Furthermore, the President constantly uses the language of war to crush the target religious group. To defeat the group's Islamic ideology, the President is proposing no cultural dialogue, seminars, or other peaceful means. The President is speaking of military action and a permanent war. Examine the following statements delivered in the 9/11 speech, making it crystal clear that the purpose of incitement is none else but killings, embodied in the metaphor and reality of war: "America will stay in the fight." "We are in a war that will set the course for this new century." It "will not be over until we or the extremists emerge victorious." As if the incitement to the physical elimination of the religious group were still unclear, the President specifically addresses the audience and troops and calls them to action. The "decisive" battle of the 21st century, says the President, is the "calling of our generation."

### Requisite Intent

Genocide crimes, including the crime of direct and public incitement to commit genocide, are intentional crimes.

These are not crimes of omission or negligence. The Genocide Convention demands that intent of the perpetrator be shown in the commission of the listed crimes. The incitement crime does not occur if a person's speech comes across as genocidal against a defined group, but the speaker has no intent to produce mass murder. Without intent, the provocation may still be regarded as odious and morally reprehensible. But it does not constitute the crime of genocide-incitement.

However, the intent is not a purely subjective state of mind that only the perpetrator knows. The intent is derived from the context in which the incitement is relayed to the audience and troops.

No one would dispute that the President intends war when he says war. War means killing. He is not using the word war only in the ideological sense. The President fuses military and ideological wars to constitute an organic unit. One war supports the other. Throughout his 9/11 speech, the President refers to intentional killings of the religious group. "We put al Qaeda on the run, and killed or captured most of those who planned the 9/11 attacks." The President continues to defend the illegal and intentional invasion of Iraq, which has killed hundreds of innocent Muslims. Speaking of exterminating the perverted religious group, the President adds: "America has confronted evil before, and we have defeated it — sometimes at the cost of thousands of

good men in a single battle."

In his 9/11 speech, the President uses the word "war" eleven (11) times, the word "fight or fighting" six (6) times, the word "battle" two (2 times). Speaking of American soldiers, the President adds: "Our nation is blessed to have young Americans like these — and we will need them." Need them for what? Obviously, for war and battle and fighting. The talk of killing is not accidental or even negligent. It is deliberate, cold-blooded, and even malicious. There exists evidence beyond reasonable doubt that the President intends to wipe out what he describes as the perverted religious group.

### Conclusion

Examined in the light of the President's direct and public incitements through his speeches, particularly the 9/11 speech, the atrocities committed by US troops, the Coalition forces, and the IDF acquire a new context. Episodes of repeated torture, Abu Gharib excesses, shootings at wedding parties in US-occupied Muslim lands, frequent murders of innocent civilians in Afghanistan and Iraq—murders for which American soldiers are facing court-martial and death penalty—the IDF's cruel and criminal destruction of Lebanon, all are related to the President's direct and public incitements in which he repeatedly dehumanizes and criminalizes Muslims, not as individuals but as a religious

group, inviting lawless action against the group. The responsibility of the President as the commander-in-chief of the US forces might well be abstract and technical. In light of his incitements, this responsibility has become direct and tangible. The President has intentionally engaged in repeated direct and public provocations, persuasions, and exhortations to commit murderous violence against a religious group. (Counterpunch – September 19, 2006)



## **12 Defamation of Religions**

A new value is emerging in the realm of the peoples' rights. Now two years in a row, the United Nations General Assembly has passed a resolution called, Combating Defamation of Religions.<sup>1</sup> Although the Defamation Resolution applies to all religions, it highlights "the negative projection of Islam in the media and the introduction and enforcement of laws that specifically discriminate against and target Muslims." The Defamation Resolution, first introduced in the 60th Session (2005) of the General Assembly,<sup>2</sup> however, has failed to gain universal approval. The West is particularly opposed to the Defamation Resolution. In the 61st Session held in December 2006, the Defamation Resolution gathered slightly more support than before. Still, the opposition persists.

The General Assembly resolutions may contain soft international law. With the passage of time and compliant

state behavior, some resolutions pave the way for the formation of a multilateral treaty or customary international law. In almost all cases, these resolutions reflect the international community's views, which cannot be dismissed as mere opinions. These views, even when they fall short of opinio juris, influence multilateral relations and compose the sociology of international law. This article briefly examines the Defamation Resolution's contents and the voting pattern to highlight the differing ideological viewpoints that inform the defamation debate.

### Contents of Defamation Resolution

Taking into account the negative stereotyping of religions that exist in various regions of the world, the Defamation Resolution proclaims that defamation of religions causes social disharmony and leads to violations of human rights. The Resolution notes that in the aftermath of the September 11 attacks on the United States, Islam has been frequently and wrongly associated with terrorism, and the ethnic and religious profiling of Muslim minorities is becoming more and more acceptable. The Defamation Resolution deplores the use of print and electronic media to incite xenophobia against Islam or any other religion. It also condemns physical attacks on places of worship and religious symbols.

Furthermore, the Defamation Resolution urges states to prevent political institutions and organizations from

fomenting discrimination, hostility, and violence against religious groups. It also urges states to complement their legal systems with intellectual and moral strategies to combat religious hatred and intolerance. The Resolution calls upon the international community to initiate a global dialogue between civilizations to promote a culture of tolerance and an awareness of religious diversity.

Global events support the urgency of the Defamation Resolution, and the focus on Islam is far from arbitrary. In the United States, for example, politicians, journalists, and even university professors associate Islam and Muslims with gratuitous violence and barbarism.<sup>3</sup> It is becoming fashionable in the media and politics to associate Islamic Puritanism with fascism and to insinuate that Islam is evil. Although some elected officials warn against stereotyping Islam and Muslims, others do the opposite. Recently, a Congressman from Virginia proposed a ban on legal immigration from Muslim countries. This xenophobic proposal was made in reaction to the election of the first Muslim to the House of Representatives.

Fanned by politicians and journalists, the popular views of Islam are becoming increasingly negative. Six in ten Americans believe that Islam is violent, and one in four admits to having a prejudice against Muslims. The negative images of Islam, freely disseminated through movies, radio talk shows, and even some church pulpits, are hardly new;

they are deeply etched in Western memories.

Karen Armstrong traces them back to the 11th century Crusades.<sup>6</sup> In Europe, Muslim immigrants from North Africa, South Asia, and the Middle East are caricatured to recast ancient prejudices in fresh language. Though hundreds of Europeans and Americans are embracing Islam as their religion of choice, the passions against Islam are steely and combustible.

### How the Nations Voted

The voting pattern on the Defamation Resolution reveals that a clear majority of states in the world supports the value of combating defamation of religions. In 2006, 58% member states of the United Nations (192 states) voted for the Resolution, 28% opposed it, and 14% were non-committed.

1. Supportive States: In 2005, 101 states voted for the Defamation Resolution. In 2006, the Resolution gained ten more states, bringing the total to 111. All Middle Eastern states except Israel, an overwhelming majority of states from Asia, Africa, and South America voted for the Resolution. Russia and China, the two permanent members of the UN Security Council also voted for the Resolution.

2. Opposition States: In 2005, 53 states voted against the Defamation Resolution. In 2006, the opposition gained one more state, South Korea, bringing the total to 54. The opposition consists of predominantly Western states,

including all members of the European Union, Australia, New Zealand, Canada, and the United States. Except for Japan and South Korea, no other Asian state opposes the Resolution. So far, not a single state from Africa or South America has voted against the Defamation Resolution.

3. Non-Committed States: In 2005, 37 states from Asia, Africa, and South America did not commit themselves to or against the Defamation Resolution. Some of these states abstained from voting, the others did not show up. In 2006, 10 of these states switched to supporting the Resolution and only one, South Korea, crossed over to the opposition bloc. There are still 27 non-committed states. A few of these states are members of the Organization of Islamic Conference, and they are most likely to support the Resolution in the coming years. The most important state still not committed to the Defamation Resolution is India, which has the second largest Muslim population after Indonesia.

## Geopolitical Background

The voting pattern on the Defamation Resolution, discussed above, rejects the thesis that Islam and Christianity have locked horns for the domination of the world. The overwhelming support for the Defamation Resolution among scores of Christian states, including the Latin American States, Russia, and the Philippines, belies any such thesis. It is also remarkable that most Catholic

states in the world supported the Defamation Resolution, notwithstanding German Pope Benedict's unfortunate (and hopefully unintended) comments that associated Islam with evil and violence.

If the Defamation Resolution is symptomatic of any grand struggle in the world, it appears to be between the West and the rest of the world, a struggle that may be explained in several distinct ways.

For example, it might be argued that the voting pattern has little to do with particulars of the Defamation Resolution and everything to do with a broader and deeper geopolitical and economic struggle between the West and the non-West. The non-Western world is loosely organized through a group called the Non-Aligned Movement (NAM).<sup>7</sup> Most members of the NAM supported the Defamation Resolution; and, perhaps as importantly, not a single NAM member opposed it. This voting pattern emerges from a shared understanding in the NAM world that the West uses the law of human rights as a political tool to single out countries for condemnation and that its commitment to human rights is at best duplicitous.<sup>8</sup> China and Russia voted for the Defamation Resolution as part of a strategic interest in the grand struggle. These two permanent members of the Security Council often vote for NAM initiatives to cultivate better ties with the NAM and to expose, and perhaps even to promote, the West's increasing moral alienation from the rest of the

world.

From a Western viewpoint, the grand struggle might also be explained in terms of a fundamental rift between liberal and non-liberal worlds. According to this viewpoint, the West and the Western-leaning states, such as Japan and South Korea, represent a liberal world in which property rights, free markets, democratic accountability, and individual freedoms are cherished and protected. By contrast, the non-liberal world pays lip service to democracy and human rights but it is fundamentally inclined toward authoritarian controls of markets and citizens.

There is an element of truth in the Western viewpoint, at least to the extent that many NAM countries, and Russia and China that support the NAM, are not liberal, democratic states. The human rights records of numerous NAM states are tainted. This viewpoint, however, must be taken with a grain of doubt since India and the post-apartheid South Africa, both vibrant democracies, are active members and leaders of the NAM.

### Ideological Viewpoints

In addition to disclosing the geopolitical struggle, the voting pattern on the Defamation Resolution is also ideological, which discloses conflicting views on free speech and criticisms of religious practices.

The Resolution does not define defamation. Traditionally,

defamation applies to reputational injury to individuals. Group defamation is a problematic concept as it can stifle free speech and furnish undeserved protection to decadent customs and practices. The defamation of religions falls even beyond the concept of group defamation, since it may even prohibit the defamation of religious ideas and doctrines.

In the absence of a legally sustainable definition of defamation of religions, the Defamation Resolution will be taken in the West as an infringement upon free speech, a fundamental civil and political right deeply embedded in numerous human rights treaties and national constitutions. The United States Constitution tolerates very few constraints on the freedom of the press, political speech, and academic freedom. The advocates of free speech will, therefore, have little use for a resolution that urges states to use the coercive power of law to prevent defamation of religions. In secular legal systems, the protection of religious sensibilities at the cost of sacrificing artistic liberty and political rhetoric is considered a bad bargain.

Furthermore, some critics argue that the Defamation Resolution fails to distinguish between the dignity of religion, which must be protected, and valid criticisms of certain religious practices. The right to adopt a religion without coercion is a fundamental human right recognized in numerous human rights treaties. Muslim countries do not actively proselytize but they welcome non-Muslims to

embrace Islam. However, some Muslim countries impose harsh punishments, including the death penalty, if a Muslim converts to another religion. Many critics see these practices as a double standard. The International Humanist and Ethical Union, a non-governmental organization, while expressing its views before the UN Commission on Human Rights, was accused of attacking Islam when it “raised the issue of the treatment of those accused of apostasy in some Islamic countries.”

The idea of combating the defamation of religions, though morally sound, is difficult from a legislative viewpoint and will pose serious drafting challenges. The idea, however, poses no greater problems than prohibiting hate speech against racial, ethnic, or religious groups—a law adopted in almost all countries of the world except the United States.<sup>11</sup> One key function of law is to make distinctions and draw a balance between competing rights. In the complex realm of human affairs, no right is absolute, not even free speech or the dignity of religion. Accordingly, the law against defamation of religions may be constructed in a way that does not abridge legitimate speech including artistic freedom and yet protects the dignity of religion.

## Conclusion

An overly broad interpretation of defamation would allow states to own a religion and persecute even their own citizens

who challenge any aspect of this ownership. Valid criticisms of religious practices must not constitute actionable defamation. However, all nations must devote intellectual and moral resources to teach children and adults respect for the diversity of religions. A legal system in which religions are respected rather than trashed will not be a blemish on human civilization. (The American Muslim – January 1, 2007)



## **13 NATO Genocide in Afghanistan**

Sloganeers, propagandists, and politicians often use the word "genocide" in ways that the law does not permit. But rarely is the crime of genocide invoked when Western militaries murder Muslim groups. This essay argues that the internationally recognized crime of genocide applies to the intentional killings that NATO troops commit on a weekly basis in the poor villages and mute mountains of Afghanistan to destroy the Taliban, a puritanical Islamic group. NATO combat troops bombard and kill people in Taliban enclaves and meeting places. They also murder defenseless Afghan civilians. The dehumanized label of "Taliban" is used to cloak the nameless victims of NATO operations. Some political opposition to this practice is building in NATO countries, such as Canada, where calls are heard to withdraw troops from Afghanistan or divert them to non-combat tasks.

## Dehumanization

In almost all NATO nations, the Taliban have been completely dehumanized — a historically-tested signal that perpetrators of the crime of genocide carry unmitigated intentions to eradicate the dehumanized group. Politicians, the armed forces, the media, and even the general public associate in the West the Taliban with irrational fanatics, intolerant fundamentalists, brutal assassins, beheaders of women, bearded extremists, and terrorists. This luminescent negativity paves the way for aggression, military operations, and genocide. Promoting the predatory doctrine of collective self-defense, killing the Taliban is celebrated as a legal virtue. To leave the Taliban in control of Afghanistan, says NATO, is to leave a haven for terrorism.

A similar dehumanization took place in the 16th and 17th centuries when NATO precursors occupied the Americas to purloin land and resources. The killings of native inhabitants were extensive and heartless. Thomas Jefferson, the noble author of the Declaration of Independence, labeled Indians as "merciless savages." President Andrew Jackson pontificated: "What good man would prefer a country covered with forests and ranged by a few thousand savages to our extensive Republic, studded with cities, towns, and prosperous farms." Promoting the predatory doctrine of discovery, the United States Supreme Court later ratified the pilgrims' crimes, holding that "discovery gave an exclusive

right to extinguish the Indian title (to land). ([T]he Indians were fierce savages...To leave them in possession of their country was to leave the country a wilderness."

The predators have not changed their stripes a bit. They come, they demonize, they obliterate. They do all this in the name of superior civilization.

### The Facts

The NATO website lists its killings in Afghanistan. These killings are also reported in the world media, often with a shameless tone of gratitude as if NATO forces are engaged in wiping out cannibals. In 2007 alone, NATO helicopters and precision-guided munitions bombed and killed over six thousand "Taliban." Read the following recent attacks, which the NATO itself reports, and smell the scent of genocide:

On January 19, 2008, NATO launched a preemptive strike relying on "credible intelligence" that the Taliban were planning to mass on a NATO base. The attack killed two dozen "insurgents" in the Watapoor District of Kunar Province, though the exact number of casualties could not be confirmed because of the rough mountainous region. The world media reported that numerous civilians were killed and 25 bodies were buried in just one mass grave.

On January 12, 2008, NATO forces conducted what it calls a "precise strike" on a compound in Kapisa Province targeting Taliban leaders. NATO claimed that the civilians

were cleared from the compound before the attack. The claim is absurd because any removal of civilians from the compound would have alerted the battle-hardened Taliban that an enemy attack was imminent.

On September 20, 2007, NATO forces launched "Operation Palk Wahel" to kill and remove the Taliban from an area in the Upper Gereshk Valley. Numerous civilians were killed. The evidence of the genocide was so obvious that NATO admitted that it "was unaware of civilians in the vicinity of the target and unfortunately it appears that a number of non-combatants were caught in the attack and killed."

### The Law

The Convention on the Prevention and Punishment of the Crime of Genocide (entered into force, 1951) is binding on all states including the 26 member states of NATO. The Genocide Convention is *jus cogens*, the law from which no derogation is allowed. It provides no exceptions for any nation or any organization of nations, such as the United Nations or NATO, to commit genocide. Nor does the Convention allow any exceptions to genocide "whether committed in time of peace or in time of war." Even traditional self-defense - let alone preemptive self-defense, a deceptive name for aggression – cannot be invoked to justify or excuse the crime of genocide.

In murdering the Taliban, NATO armed forces systematically practice on a continual basis the crime of genocide that consists of three constituent elements - act, intent to destroy, and religious group. The crime, as defined in the Convention, is analyzed below:

1. Act. The Convention lists five acts, each of which qualifies as genocide. NATO forces in Afghanistan are committing three of the five acts. They are killing members of the Taliban. They are causing serious bodily harm to members of the Taliban. They are deliberately inflicting on the Taliban conditions of life calculated to bring about their physical destruction in whole or in part. Any of these three acts committed one time constitutes the crime of genocide. NATO combat troops have been committing, and continue to commit, these acts through multiple means and weapons.

2. Intent to Destroy. The crime of genocide is a crime of intent. It must be shown that NATO combat troops and the high command ordering these troops carry the requisite intent to destroy the Taliban. Mere negligent killings do not qualify as genocide. The statements of NATO's Secretary-General Jaap de Hoop Scheffer and those of NATO spokesmen leave no doubt that the NATO conducts military operations to "hunt and destroy" the Taliban. Preemptive strikes to kill the Taliban are sufficient proof that NATO troops and commanding generals have specific intent to destroy as many Taliban members as they can find. The

weekly murderous planning and intelligence gathering to locate and eliminate the Taliban leaders and members further demonstrate that the killings in Afghanistan are not negligent, accidental, or by mistake. For all legal purposes, NATO's incessant and deliberate killings of the Taliban are powered with the specific intent to destroy a religious group.

3. Religious Group. The Genocide Convention is far from universal in that it does not protect all groups from genocide. Its protection covers only four groups: national, ethnic, racial and religious. (Political groups are not protected). The Convention does not require the complete eradication of a protected group as a necessary condition for the crime of genocide. Even part destruction of a protected group constitutes the crime. It is no secret that the Taliban are a religious group. (They may also qualify as a national (Afghan) or ethnic (Pushtun) group). The Taliban advocate and practice a puritanical version of Islam. The Convention does not demand that the protected group advocate and practice a form of religion acceptable to the West or the world. The questionable beliefs and practices of a religious group are no reasons to destroy the group. That the Taliban are armed or support terrorism or oppress women are unlawful excuses to commit genocide. (All reasons that Hitler had to murder Jews would be simply irrelevant under the Convention).

## The Holding

It may, therefore, be safely concluded that NATO combat troops and NATO commanders are engaged in murdering the Taliban, a protected group under the Genocide Convention, with the specific intent to physically and mentally destroy the group in whole or in part. This is the crime of genocide. (JURIST – January 29, 2008)



## **14 A Civil War – Obama’s Gift to Pakistan**

A civil war is brewing in Pakistan. Thanks to President Barack Obama, who is shifting the American war from Iraq to “the real enemies” operating from Afghanistan and Pakistan. Cash-strapped Pakistan could not defy Obama persuasion and decided to wage a war against its own people, the Pashtuns inhabiting the Northern Province and the tribal areas of Waziristan. Decades ago, Pakistan waged a similar war against its own people, the Bengalis in East Pakistan. In 1971, the Pakistani military charged to wipe out Mukti Bahini, a Bengali resistance force, paved the way for the nation’s dismemberment. In 2009, the military is charged to eliminate the Taliban, a Pashtun resistance force. History is repeating itself in Pakistan—as it frequently does for nations that do not learn from past mistakes.

With a willful caricature of the Pashtuns, who are successfully resisting the occupation of Afghanistan, Obama

advisers are forcing Pakistan, a subservient ally, to help win the war in Afghanistan. This help is suicidal for Pakistan. The civil war will unleash intractable sectarian, ethnic, and secessionist forces. As the warfare intensifies in coming months, Pakistan will face economic meltdown. If the civil war spins out of control, Pakistan's nuclear assets would pose a security threat to the world, in which case Pakistan might forcibly be denuclearized.

### Pashtun Caricature

A failing war in Afghanistan has persuaded American policymakers to generate a make-believe caricature of the Pashtuns, the dominant ethnic group in Afghanistan. For all practical purposes, the Pashtuns are now subsumed under the title of the Taliban. The caricature is simple and compelling: It highlights the Taliban as the paramount enemy without ever mentioning the Pashtun resistance to the eight-year-old occupation of Afghanistan. The Taliban fighters are presented as religious brutes addicted to oppression and violence, who wish to impose a barbaric version of Islam under which there is no concept of individual freedom, particularly for Muslim women.

To further distort the Pashtun resistance in Afghanistan, the Taliban are co-equated with the Al-Qaeda, an undefined terrorist group allegedly scheming to detonate weapons of mass destruction, particularly against the United States.

Burqas, floggings, and beheadings are accentuated to paint a repulsive caricature of the Taliban. In this caricature, no mention is made that the American bombings of villages, extra-judicial killings, torture, and secret prisons have failed to subdue the Pashtuns in one of the poorest countries of the world.

### Pashtun Code

Credit goes to President Obama for rightfully diagnosing the fact that the Pashtuns of Afghanistan cannot be separated from the Pashtuns of Pakistan across the Durand Line— a more than 1600 miles long border that ineffectively separates Afghanistan from Pakistan. Nearly 41 million Pashtuns live on both sides of the border; around 13 million in Afghanistan and twice as many (28 million) in Pakistan. Concentrated in geographically contiguous regions of Afghanistan and Pakistan, the Pashtuns live in big cities, small towns, and remote villages. Kabul, Kandahar, Peshawar, Swat, and Quetta are their big cities. Going back thousands of years, the Pashtuns are united through culture, dialects, and traditions. Most have embraced the Sunni sect of Islam. Like other cultural groups, however, the Pashtuns have fused Islamic laws with their pre-Islamic honor code, known as the Pashtunwali.

Pashtunwali is the unwritten Pashtun Code that regulates social behavior and interactions with foreigners. This Code

belongs to the Pashtuns, not just to the Taliban. Hospitable and gracious, the Pashtuns go out of their way to respect and protect guests and strangers. Invaders, however, are killed without mercy. Nang (honor) is the founding principle of the Pashtun Code. Khushal Khan Khattak (1613-1689), a Pashtun warrior and a poet, summed up the nang principle in decisive words: “Death is better than life when life cannot be lived with honor.” Badal (revenge) is an integral part of the honor. Badal requires that insult be avenged with insult, death with death, and no price is too high to seek revenge. Until the revenge is taken, the Pashtuns are restless, anxious, and uncomfortable with themselves. Forgiveness is available if the injury were unintentional. No forgiveness is rendered to invaders and occupiers. No enemy is too strong to deserve an exception to the Pashtun Code. Brits, Sikhs, Moguls, Russians, and Americans, whoever violates the Pashtun Code faces an unremitting resistance until badal has been consummated. Mighty armies have perished in the land of Pashtuns.

### Revenge and Civil War

Since 2001, Pakistan has been resisting the pressure to join the American war against the Pashtuns. A war against the Pashtuns of Afghanistan is also a war against the Pashtuns of Pakistan, and vice versa. No concept of the nation-state or territorial integrity could separate the

Pashtuns across the border—certainly not when the Pashtun lands have been invaded and occupied. No vilification of the Taliban could similarly separate them from their Pashtun tribes, even if the Taliban subscribe to a strong religious ideology. For the Pashtuns, the Taliban behavior is deeply rooted in nang and badal of the Pashtun Code. The divide and rule policy practiced in Iraq, which pit Sunnis against Shias and Kurds against Arabs, cannot work against the Pashtuns. Discounting the Pashtun Code, Americans continue to ignore this writing on the wall.

Betting on changing the lessons of history, the Obama White House has coerced Pakistan to close the doors of negotiation and begin to kill the so-called Taliban. Pakistani leadership knows that the Pashtun tribes cannot abandon their sons and brothers whether the invading armies label them Taliban, miscreants, or terrorists. The suicide attacks in Lahore, Islamabad, and Karachi reflect *nang* and *badla* of the Pashtun Code. The foremost Pashtun loyalties are to their own people and to their own Code. The Pashtun Code, long before the advent of Islam, has been their way. In order to receive billions of dollars from the United States, the Pakistani leadership has succumbed to the caricature of the Taliban and plunged the nation into a civil war with the Pashtuns, the nation's second-largest ethnic group.  
(Counterpunch – June 17, 2009)

## **15 Sequential Destruction of Muslim Nations**

A conspiratorial view of the world is frequently inaccurate, exposing more the paranoia of the view rather than the reality of the world. The sequential destruction of Muslim nations — Palestine, Iraq, Afghanistan, Pakistan, (and Iran is on the list) — may or may not be a conspiracy hatched in Washington D.C., but it is becoming an international reality. It is no secret that the United States and Europe, with varying degree of mutual cooperation and some make-believe internal discord, superintend the sequential destruction of Muslim nations. This War of Sequential Destruction (WSD), despite Nobel-Laureate Barack Obama's denials, refuses to go away.

The WSD is multi-frontal. It crosshairs Al-Qaeda, Taliban, Hezbollah, Hamas, Al-Bashir, Ahmadinejad, Sunni, Shia, Wahabi, Gaza, Iraq, Syria, Sudan, Iran, Afghanistan, and now Pakistan. Many Western policymakers rarely see

Muslim nations, including allies, with any inherent respect. Vice President Dick Cheney described the Muslim world as "brute and nasty." Obama advisers, though more guarded in their word choices, see Muslim nations no differently. The idea that Islam is inherently violent, openly expressed during the Bush administration, continues to animate foreign policy. The White House holds a new President but Congressional leadership and Washington policymakers are more or less the same. Anti-Islamic policies of warfare and destabilization are intact.

Therefore, the WSD will continue and gather momentum. The picture is not pretty. Palestinians are penned in misery and their territorial cage is constantly shrinking to meet the "natural growth" of vociferous settlers. Oil-rich Iraq is under American occupation and its communities have been torn apart by irreversible harm. Afghanistan, one of the poorest nations in the world, is placed under the boots of Western armies. Thousands of Afghans have been murdered, their houses bombed, their villages devastated. The International Criminal Court headquartered in Holland has indicted the first sitting head of the state, the Muslim President of Sudan. The United States and Europe, themselves armed with thousands of nuclear heads, are strategizing to punish Iran for asserting a treaty-based right to produce nuclear energy, leaving open the option of attacks on Iranian nuclear facilities.

After razing Iraq and Afghanistan, the WSD has now turned to ravage an ally, Muslim Pakistan. Pakistan is a nation that the British, in 1947, carved out of India and that India, in 1971, broke into two, liberating Bangladesh from the murderous clutch of the Pakistani military. Over the past sixty-two years, Pakistan's military and civilian rulers, one after the other, and without exception, have turned to America for military training, weapons, money, and strategic instructions. Eager to send their sons and daughters to Western cities for education and employment, Pakistani politicians, generals, and bureaucrats all look for ways, and create the ways, to oblige Western capitals, particularly Washington D.C. Partly for personal interests and partly out of faulty readings of geopolitical situations, Pakistani rulers, like most rulers in Muslim nations, frequently compromise national sovereignty and public welfare.

The Pakistani orientation for self-destruction serves American interests. Facing a failing campaign in Afghanistan, Obama advisers decided to expand the war into Waziristan and other parts of Pakistan. The United States desperately solicited the Pakistani military to join the Afghan war. Pakistani rulers, this time a democratically elected government, listened to the American call. They first permitted the CIA to fly drones armed with missiles, which killed a few militants but hundreds of civilians in the tribal areas. The United States later urged Pakistan to invade Swat

to kill militants. Pakistan did. Millions of civilians were made homeless.

The reaction to drone attacks and the ground offensive in Swat was fierce. Pashtun and Punjabi militants began to attack soft and hard targets. They attacked police stations, military trucks, and even the military's fortified headquarters in Rawalpindi. Citing these counter-offensives as a threat to Pakistan's national security, the United States urged the Pakistani military to launch a ground offensive in Waziristan. The rulers listened to the call and sent 30,000 troops to Waziristan. Muslims fighting Muslims have been efficacious in weakening the Iraqi militancy. The same formula, Obama advisers are betting, will crush the Pashtun resistance in Afghanistan.

Certainly, the United States can kill hundreds of thousands of Pashtuns on both sides of the AF-PAK border, even if no more troops are dispatched to the region. Killing militarily weak populations requires no sophisticated military strategy. The convenient but thoroughly demonized label of "Taliban" provides the rhetorical shield to justify the ghastly massacres of civilians. Since Pakistani military has joined the war, killings on both sides of the border will become even more robust. These killings will carry an air of logic, even legitimacy since no military presumably kills its own people unless it sees a threat to national security.

Under coercion, Pakistan has started a civil war that will

consume its economy, national security, and tear apart its social fabric. The civil war will spill into many parts of Pakistan. It already has arrived in some parts of Punjab. Militants are unlikely to confine this war to sparsely-populated Waziristan. They are taking the war to the most populated cities, including Peshawar, Rawalpindi, and Lahore. Karachi, which appears to be quiet, is sitting on a tinderbox. Karachi can erupt any minute as its ethnic rivalries are primed for a civil war. It is sheer foolery and a grave analytical mistake to presume that the Pakistani military offensive will provoke no one but only a few misguided militants in the North.

It is not yet too late for Pakistan to return from the precipice of national suicide. Pakistan must take a U-turn and preempt the civil war. Pakistan must say an emphatic no to President Obama who must also carefully weigh the stakes of expanding the WSD to Pakistan. If the NATO forces cannot subdue the militancy in Afghanistan, adding one more military into the battlefield will not solve the problem of occupation and resistance. Furthermore, an internally torn Pakistan does not weaken but empowers militants. Obama advisers must ponder over one thing more: The people of Pakistan, like the people of Iran under the Shah, might rise to oppose the US hegemony over their internal affairs. (Counterpunch – October 21, 2009)

## **16 Undermining the Sovereignty of Muslim States**

The United States has adopted an invasive foreign policy that violates the sovereignty of many Muslim nations. Article 2(4) of the UN Charter promulgates: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” Territorial integrity and political independence are the principles of national sovereignty – key principles of the U. N. Charter and post-colonial international law – which empower nations to freely determine their political, social, economic, and religious institutions, without external coercion, diplomatic pressure, war threats, and economic sanctions. Philosophically, these principles respect human diversity and presume that no system, including liberal democracy, can be the singular model for all nations. The principles caution against any

mindless importation of legal and political systems successful in other nations. Accordingly, the peoples of the world are free to institute political systems of their choice, including constitutional monarchies, presidential systems, secular or religious forms of government.

Contrary to the U.N. Charter, and in blatant violation of the principles of territorial integrity and political independence, the U. S. is determined to forcibly shape the Muslim world in its own image. Part of this determination mirrors the American mindset that Muslim nations would indeed be better off if they simply borrow secular institutions of the United States. This evangelical mindset presumes that Islam is a reactionary religion that impedes material prosperity and social justice. Part of this determination reflects the dark side of American self-pride and super-power exceptionalism, which sees most other nations as the lesser children of God in need of American guidance. Undoubtedly, the U.S. foreign policy is also geared toward obtaining key natural resources (such as oil) and maintaining strategic military dominance in various Muslim regions of the world.

For the most part of the twentieth century, Muslim nations, some emerging from the colonial yoke, approached the U. S. for economic assistance, development, and even protection against regional and global enemies. For example, the U.S. played a supportive role in the independence of

Indonesia, the largest Muslim nation. The fear of the Soviet Union, which had occupied Central Asian Muslim nations and later invaded Afghanistan, drove many other Muslim nations to seek U.S. patronage. For a variety of reasons, the U.S. succeeded in constructing strategic alliances with key Muslim nations, including Saudi Arabia, Egypt, Turkey, Pakistan, and Iran under the Shah.

The relations with the Muslim world, however, began to fracture as the U.S. foreign policy favored Israel in the Middle East conflict. The 1979 Iranian revolution painted the U.S. as the Great Satan and highlighted the immorality of U.S. foreign policy that subsidizes cruel and inhuman occupation of Palestine and institutes puppet governments in Muslim countries. A few years later, the Al Qaeda, an international militant organization, launched asymmetrical warfare against U.S. targets to draw attention to the occupation of Muslim lands. In countering terrorist attacks, the U.S. bombed Tripoli and Khartoum, the capitals of Libya and Sudan, ratcheting up the conflict with Muslim nations.

The 9/11 attacks and subsequent invasions of Afghanistan and Iraq have further fractured relations with the Muslim world. The U.S. homeland security and the associated legal rhetoric of self-defense and the war on terror have been invoked to establish a new justificatory paradigm for violating territorial integrity and political independence of Muslim nations. The phraseology of “Islamic fascism” and

“Islamic terrorism” paints Muslim militants as inherently violent individuals who kill to please God and to go to heaven. Almost every Muslim nation, foe or friend, is under intense U.S. diplomatic pressure to launch attacks on national militants even if such attacks kill innocent civilians.

The U.S. logic of homeland security is weighing heavily on Afghanistan, where the war machine has killed thousands of civilians in pursuing the dubious goal of defeating the Taliban. Even Pakistan, a subservient ally, has been subjected to drone attacks while Pakistan’s democratically elected government and its armed forces are helpless in protecting the nation’s territorial integrity and political independence.

In addition to military attacks, the U.S. foreign policy employs subversive modus operandi. The 2006 Iran Freedom Support Act allocates millions of dollars authorizing U.S. intelligence agencies to support groups opposed to the Iranian government. This law is fashioned after the Iraq Liberation Act of 1998, a law that paved the way for invasion and the overthrow of Saddam Hussein. The threats of attacking Iran are in the air. Meanwhile, U.S. intelligence agencies enjoy the legal mandate to destabilize the Iranian government and possibly reverse the Islamic revolution by sowing seeds of confusion and anarchy.

Unfortunately, these massive violations of the U.N. Charter, specifically of the principles of territorial integrity

and political independence, go unnoticed. The U.N. officials are silent over these violations as if Article 2(4) does not exist. The U.S. foreign policy remains the same under President Obama, who promised to mend relations with Muslim nations. Meanwhile, U.S. policymakers continue to talk about winning hearts and minds of Muslim populations. Iraq, Afghanistan, Pakistan, Sudan, Syria, Palestine, Iran, with so many Muslim countries on the U.S. hit-list, it is unclear how a foreign policy of territorial aggression, invasion, and subversion can generate goodwill that the U.S. seeks in the Muslim world. (Counterpunch – December 18, 2009)

## **17 Crusade against American Muslims**

Despite calls to call off the proposed Congressional hearings on the inflammatory topic of “the radicalization of American Muslims,” Representative Peter King, a Roman Catholic, the Republican Chairman of the House Committee on Homeland Security--who was a strong supporter of the Irish Republican Army--is determined to investigate the so-called homegrown Islamic terrorism. Numerous faith groups, including the Catholics, oppose King’s Hearings as a crude attack on the religious dignity of Islam. Jewish leaders and rabbis have been most vocal in condemning the undignified implication that “there is an inherent link between Islam per se and terrorism (which) is not helpful to religious tolerance in America.”

Other faith groups warn that “singling out a group of Americans for government scrutiny based on their faith is divisive and wrong.” King remains unpersuaded, however,

reaffirming regrettable popular opinions that Islam poses a threat to national security, that mosques are turning into centers of radicalism, and that American Muslims are actively planning to engage in acts of terrorism.

### Denial of Human Dignity

In addition to challenging the religious dignity of Islam, a religion now well-established in the U.S., King's Hearings violate the principle of human dignity, the bedrock of the law of human rights. Human dignity requires that the group identity should not be the sole criterion for judging individuals. Every individual, regardless of his or her racial, religious, or any other group identity is entitled to human dignity. This principle of the dignity of the individual, though it applies to all, is particularly protective of individuals of vulnerable minorities, such as American Muslims.

King knows that several million Muslims living in all parts of the U.S. epitomize diversity and individuality. They all are not the same. American Muslims are South Asians, Arabs, African-Americans, and Caucasians; they are immigrants and native-born; they are men, women, and children; they are cab drivers, students, doctors, engineers, and lawyers. Ignoring complex compositions of American-Muslims as individuals, King's Hearings endorse an inaccurate impression that American Muslims constitute a violent monolithic community; or, worse, that each and every

American Muslim poses a threat to homeland security.

### McCarthyism Overgeneralization

As public figures wielding influence, lawmakers are duty-bound to avoid harmful overgeneralizations that cause public panic or fear. Opponents of the Hearings point out that Representative King is following Senator Joseph McCarthy, who in 1950s tilled the popular American fear that Soviet-sponsored communist spies had infested the nation and were planning to overthrow the U.S. Constitution. McCarthy was right to the extent that communist spies had indeed infiltrated the U. S.

What was wrong with McCarthy's Red Scare was an irresponsible overgeneralization under which every egalitarian person, every critic of free markets, and every opponent of the U.S. foreign policy was regarded as a communist spy. Patriotic Americans, who disagreed with McCarthy's conservative agenda, were seen as state enemies. McCarthyism is now associated with a phenomenon that morphs legitimate concerns into an unlawful overgeneralization.

Unfortunately, King's Hearings are charting the McCarthyism path. King underscores a legitimate homeland security concern. A few individuals would likely commit acts of terrorism and some already have. In 2010, Faisal Shahzad, a naturalized Muslim citizen, attempted to detonate a car

bomb in Times Squares. In 2009, Major Nidal Hasan, a Muslim born in Virginia, killed 13 persons at Fort Hood. However, select acts of terrorism, no matter how despicable, cannot be inflated into the collective guilt of an entire community.

History teaches us, again and again, that overgeneralizations lead to error and tragedy. Most American Muslims are like most other Americans, engrossed in their daily lives. They commute to work, they take children to school, they work, they come home, and they look forward to a restful evening. Committing violence against their own country does not cross their mind. Committing the cardinal error of overgeneralization, King, despite legitimate concerns he has for homeland security, comes across as a prejudiced lawmaker determined to demonize American Muslims as violent radicals. At a time when the U.S. needs the goodwill of domestic Muslim communities to safeguard homeland security, King is widening the gulf of trust and mutual respect among Americans.

### Inflated Concerns for Homeland Security

Homeland security is a legitimate congressional concern. Members of Congress are bound by oath or affirmation to defend the U.S. Constitution against domestic and foreign enemies. Note, however, that it is the U.S. Constitution that members of Congress must defend. No responsible lawmaker

would reduce the Constitution's complex rights-based architecture to mere homeland security. It is no secret that inflated concerns for homeland security can assault civil liberties and protected rights. (Middle Eastern autocrats, as we witness the revolt against them, have for decades denied the people's freedoms in the name of homeland security.)

Rights-based democracies interweave homeland security into the precious fabric of rights and liberties. The internment of Japanese-Americans during the Second World War was a grave error precisely because the internment policy threw away rights and liberties for the sake of homeland security. Congressional leaders, including the Speaker of the House, must not allow King to conduct these hearings that challenge the religious dignity of Islam and through harmful generalization decline to treat American Muslims as individuals. (Media With Conscience -March 9, 2011)

## **18 Petitioning Congress on Qur'an Burning**

The recent Qur'an burning by Pastor Terry Jones, the author of *Islam is of the Devil*, is the continuation of a Western medieval custom of assaulting the dignity of Islam, particularly personal integrity of the Prophet Muhammad, and the divinity of the Qur'an, a holy book that more than a billion people, including American Muslims, hold dear to their hearts. In recent years, the West has invoked the freedom of speech to defend new assaults on Islam, including the Danish publication of cartoons of the Prophet. Unfortunately, the post-9/11 United States, where attacks on the Qur'an are a relatively new phenomenon, is in the process of adopting the medieval custom.

Over the centuries, Western Europe has used various theological, literary, and popular justifications to sustain its medieval custom. In nurturing this custom, however, the West stands alone. Africans, Asians, and Eastern Europeans,

rarely participate in desecrations of the Qur'an. The Chinese and Hindus, while celebrating their own religious and metaphysical traditions, have generally refrained from disrespecting the Qur'an. The Western contempt for the Qur'an, however, refuses to abate even though the West itself has undergone a radical transformation from medieval religiosity to modern secularism.

This commentary provides a brief historical insight into the medieval custom of desecrating the Qur'an and argues that the United States should resist the custom that sows the seeds of hatred, provokes violence, and barricades a meaningful dialogue between the West and Islam. The commentary also proposes that the United States must find legal ways to prevent desecrations of the Qur'an.

### Medieval Custom

During the Middle Ages, the West frequently demonized the Qur'an on the basis of hearsay because the Qur'an was unavailable in vernacular languages. The first English translation of the Qur'an appeared in 1649 without a named translator, publisher, or printer. Anticipating hostility, the preface defended the translation saying that the ugliness of the Qur'an would enhance the beauty of the Gospels, for the Qur'an is, "without head or tail ... confused, contradictory in many things, written in the rude language, consisting of lies and useless follies." This medieval conception of the Qur'an

is deeply etched in the West.

In 1736, Voltaire, the celebrated French belletrist, wrote a five-act play Mahomet to highlight the depravity of Islam, and perhaps all religions. A few years later, however, Voltaire revised his views and appreciated the Qur'an for removing idolatry. In the past few decades, new Western scholarship promoted a sensational thesis that the Qur'an is a fraudulent book concocted centuries after the Prophet's death, projected back in time, and falsely attributed to the Prophet Muhammad. This thesis was later retracted by the authors.

Western artists also contribute to desecrations of the Qur'an. In 2004, Dutch filmmaker Van Gogh produced a short film, called Submission, to highlight the subjugation of women that the Qur'an allegedly advocates. The film shows nude women wearing see-through veils with Arabic verses of the Qur'an etched on their bodies, insinuating that the Qur'an perpetuates their lack of freedom. An infuriated Moroccan murdered Van Gogh. While condemning the murder, another filmmaker opined, "Longtime readers of Van Gogh's weekly column in the Dutch newspaper "Metro" know very well that his intention was not to reform male chauvinism, but rather to express crude bigotry."

In the post 9/11 United States, the Qur'an is a prime target. In 2007, the information obtained from the FBI files revealed that Guantanamo prison guards threw the Qur'an in the toilet to torture Muslim detainees. The so-called experts

on terrorism frequently cite verses of the Qur'an to argue that the Qur'an inspires violence against Jews and Christians. This April, Pastor Jones accused the Qur'an of fomenting terrorism and put the Qur'an on trial. In this mock trial held inside a church in Florida, a jury heard the evidence and found the Qur'an guilty. Upon conviction, the Qur'an was punished by being burned in a fire. Pastor Jones seeks shelter under the First Amendment to defend his odious expressive conduct.

### Questionable Expressive Conduct

In the language of the law, Qur'an burning would be an expressive conduct. The First Amendment is generous in protecting oral and written word. It is less so with respect to expressive conduct. The First Amendment shelters expressive conduct if it does not threaten to disturb the peace. The United States Supreme Court declined to outlaw the burning of an American flag because "no disturbance of the peace actually occurred or threatened to occur."

The flag precedent does not apply because Qur'an burning is an expressive conduct that incites actual violence. So far Qur'an burning has produced instantaneous violence outside the United States. Given the presence of a growing population of American Muslims, Qur'an burning threatens domestic peace. Media and blog invectives may have forced Justice Stephen Breyer to retract his otherwise sound

intuition that the First Amendment would not protect Qur'an burning.

Invoking their constitutional right, American Muslims should petition the United States Congress for a redress of grievances. They must demand constitutionally sound legislation that outlaws desecrations of the Qur'an. For Congress, such legislation will demonstrate to American Muslims that the United States is prepared to break away from the medieval custom of assaulting the dignity of the Qur'an. It will also send a powerful message to Iraq, Afghanistan, Pakistan, Libya, and the entire Muslim world, that the U.S. is neither Islamophobic nor anti-Islamic, a move that can undermine terrorist threats to homeland security.

To their credit, Western European nations have adopted anti-hate statutes, which would proscribe burning of the Qur'an. A few days ago, the British government arrested a Welsh politician who allegedly burned a copy of the Qur'an. The British government has also banned Pastor Jones from entering the United Kingdom. (JURIST – April 19, 2011)

## **19 Murder as an Instrument of Foreign Policy**

President Obama has openly deployed murder as an instrument of foreign policy. Soon after assuming office, Obama authorized the Central Intelligence Agency (CIA) to plan and execute the murder of terrorists and other enemies, regardless of whether they are U.S. citizens. Osama bin Laden, Anwar al-Awlaki, and Muammar Gaddafi are the prominent murder victims while numerous others in Afghanistan, Yemen, Somalia, Iran, and Pakistan have been purposely targeted and killed.

The legitimization of extra-judicial killing is a disturbing development in international law as other nations are certain to follow suit. In pursuit of pre-meditated murders, the collateral damage (the killing of the obviously innocent) has been extensive. The claim that such murders can be executed with electronic precision, though false, serves as an incentive for other nations to develop drones to perpetrate their own

surgical assassinations. For now, however, the CIA enjoys the monopoly over drone kills.

### Covert Murders

The 1947 National Security Act created the CIA for the purpose of gathering and evaluating information necessary to protect the nation from foreign threats. Right from the beginning, however, the CIA assumed a proactive role in promoting U.S. economic and military interests. In 1948, the CIA was transformed into a paramilitary organization, empowered under law to engage in “propaganda, economic warfare, sabotage, subversion against hostile states through assistance to underground resistance movements and guerillas.” Ever since the CIA has engineered world events for U.S. hegemony.

The murder policy under the CIA aegis is by no means an Obama invention. Over the decades, the CIA has spearheaded what Vice President Dick Cheney once described as the “dark side” of the United States. Previously, however, the murders were covert, not to be openly admitted. In the 1960s, the CIA planned the murders of “communists who threatened the free world,” including those of Patrice Lumumba of Congo and Fidel Castro of Cuba. Researchers dispute over whether the CIA participated in Che Guevara’s murder. The evidence is mounting, however, that the CIA head in Bolivia had a “prior agreement

or understanding with the Bolivians that Che would be killed if captured.” (See Ratner & Smith, Who Killed Che?: How the CIA Got Away with Murder).

Covert murders were planned to shield the President from the attendant foreign policy fallout and the moral discomfort emanating from cold-blooded strategies. Notably, the President chairs the National Security Council (NSC), the supreme body that empowers the CIA to conduct covert operations. In the early decades, intelligence experts instituted the doctrine of plausible deniability under which the facts of a covert operation were reported to the President in a way that he could deny the knowledge of a murder. The words “killing” or “murder” or “assassination” were rarely used in oral and written memos to the President. For example, Che’s murder was reported to President Johnson as a “stupid murder.” Such wink, wink linguistic deceptions allow the President to occupy the high moral ground and deny that the U.S. “murders” foreign enemies or “tortures” detainees. The President’s veil of deniability was considered necessary to safeguard America’s image as “the city on the hill,” “the beacon of liberty,” “the greatest nation in the world,” etc.

### Audacity of Murder

Since the 9/11 attacks, the policy logistics of murder have been dramatically transformed. The doctrine of plausible

deniability has been discarded. Moral constraints on killing enemies, including heads of states and governments, have been cast away. The notion of the U.S. as a “moral nation” is now viewed as an impediment to the conduct of international relations. The “dark side” freely informs the foreign policy. The audacity of murder has gained depth and momentum. The President does not think twice about the moral implications of boasting a drone kill.

In a major policy shift, the murder has been institutionalized. Now, the NSC may itself approve a pending murder. Remember the President and statutory members of the NSC (including Secretaries of State and Defense and the CIA Director) watching bin Laden’s murder as it was happening. The NSC released the picture for public consumption, implying that watching the murder of a noted enemy is morally acceptable. Imagine barbarism if this practice is writ large in the world. No one would be surprised if the NSC itself has authorized the murder of Anwar Awlaki, a U.S. citizen or if the NSC itself has authorized the drone attack on the Gaddafi motorcade to flush him out for murder in public view.

These and similar international murders are no longer the CIA secrets that the Senate needs to investigate as it did in the 1970s. This time, the fascination with murder has metastasized. It is bipartisan. Except for Ron Paul, Republican Presidential candidates endorse the murder of

“terrorists” who threaten “our way of life.” (Juxtapose the historical massacres of Indian “savages” who too threatened “our way of life.”). Upon the execution of a successful murder, President Obama walks to the podium to express joy in a casual tone of voice. Many politicians join the happy hours. Congratulations are exchanged. The corporate media invites the public to celebrate the great news. This is the most vivid moral collapse of a nation that brazenly talks about human rights and universal values. The American people cannot choose to be silent. They must restore the nation’s moral dignity. (Media with Conscience – November 2, 2011)

## **20 Kansas Legislature Does Harm in Barring Islamic Law**

The Kansas legislature is in the process of enacting Bill 2087 that prohibits courts, arbitrators, and agency officials from relying in their decisions and rulings on any foreign law, legal code, or system that does not protect "the same fundamental rights, liberties, rights, and privileges granted under the United States and Kansas constitutions." The bill, led by Republican conservatives in both chambers of the Kansas legislature, will become law as soon as Governor Sam Brownback signs it.

Unfortunately, the bill shows disrespect for the state judiciary, erects unnecessary barriers against international investments, and condemns the religion of Islam inflicting distress on Muslim citizens of Kansas. The day this bill becomes law will be a dubious day in an otherwise morally upright history of Kansas -- a free state that repudiated

slavery, a state whose citizens take religion seriously, a state whose colleges and universities educate foreign students, and a state whose farmers work honestly and arduously to feed families in Kansas, the United States, and the world.

### Disrespect for State Judiciary

Bill 2087 is cast in an overly broad language. It does not mention Islamic law or Sharia. Instead, the bill employs broad phrases such as "foreign law," "legal code," or "system." Nor does the bill mention Egypt, Pakistan, Saudi Arabia, or any other Muslim country to associate these phrases with Islam. The bill deliberately avoids specific references to Islam and Sharia because the Tenth Circuit, the federal appellate court that has jurisdiction over Kansas, has scrubbed the Oklahoma State constitutional amendment that banned the use of the Sharia in Oklahoma state courts. The Kansas legislature knew that openly anti-Islamic provisions, similar to the ones adopted in Oklahoma, would not stand in federal courts. The bill is therefore clothed in broader and somewhat sweeping language. Yet, the driving force behind the bill is the irrational fear of Islam that does not protect "the same rights, liberties, and freedoms" as do federal and state constitutions. Many conservative Republican lawmakers openly express negative views about Islam and the accompanied misunderstandings of the Sharia.

From legal and constitutional viewpoints, Bill 2087 will be

a useless law that adds nothing but an embarrassment to the Kansas legal system. As far as state courts and state agencies are concerned, they, in enforcing contracts, are already bound to protect rights, liberties, and privileges granted under the state and federal constitutions. Therefore, reaffirming these rights and liberties as a "state policy" is a jurisprudential overkill. No new statute is needed to remind courts and agencies of their systemic obligation to enforce the federal and state constitutions in their decisions and rulings. Worse, Bill 2087 embodies unjustified legislative disrespect for state judges, trained in law and jurisprudence, who know very well that they are bound by the constitutions in enforcing any legal relationship, including international transactions. A state system does not benefit when its legislature fights quixotic windmills to reform state jurisprudence.

### Harm to State Businesses

Even though Bill 2087 adds nothing useful to Kansas jurisprudence, it carries the potential of driving away international businesses from the state. Under common law, parties are free to choose a body of law that would govern the resolution of disputes arising under the contract. Traditionally, state courts do not enforce choice of law clauses found contrary to state laws or policies. Bill 2087 compels state courts not to enforce contracts if the parties

have chosen a "suspect foreign law" to govern the contract, one that does not protect rights and liberties granted under the federal and state constitutions. The courts must now determine the liberty quality of an entire foreign legal system before they can enforce a choice of foreign law clause. This legal barrier is likely to discourage foreign companies from doing business in a state that restricts their freedom to choose the best law that must govern the contact. Worse, Kansas businesses might be forced to accept the resolution of contract disputes in foreign jurisdictions under foreign laws, which may or may not benefit Kansas businesses.

Bill 2087 is highly problematic since it compels even arbitrators (in addition to state judges and agencies) not to enforce the choice of "suspect foreign law" clauses in contracts. When parties choose arbitration rather than litigation to resolve disputes, they enjoy internationally recognized freedoms under rules of arbitration to choose not only the governing law but also the country, location within the country, and the language in which arbitration proceedings would be conducted. Since Bill 2087 restricts the freedom of the parties to choose foreign law, the parties would simply move the locale of arbitration outside Kansas.

It is most surprising that Kansas Republicans who favor capitalism, free markets, individual liberties, and eagerly condemn regulation of businesses will abandon their party ideology; and, motivated by misunderstandings of Islam, will

enact a law that imprudently restricts the freedom of contract. The small economy of Kansas needs international investments to develop and diversify. It does not need questionable legal barriers. Ideally, the Kansas legislature would make laws that expand the Kansas economy, attract international businesses rather than shoo them away.

### Harm to Muslim Citizens

By passing the bill and making impudent statements against Islamic law, the Kansas legislature has disappointed Muslims citizens of Kansas, who gratefully serve the state contributing to its welfare and economy. Muslim physicians from Pakistan, Jordan, Syria, Iran, Egypt, and other Muslim countries are providing critical medical services in many specialty areas, including cardiology, oncology, pulmonology, and pediatrics. Some Muslim physicians work for the VA hospitals providing medical care for the sick and disabled soldiers. Numerous Muslim engineers from Yemen, Tunisia, Bangladesh, and other Muslim countries work for state agencies. Muslims own and run numerous gas stations and food franchises in Topeka and Wichita.

Furthermore, hundreds of Muslim students from the Gulf States come to Kansas colleges and universities for higher education. The Kansas University Law School attracts many Muslim students for its JD, LLM and JSD programs and has an active relationship with law schools in Turkey, a Muslim

country. I (as one of the first Muslim law professors hired in the United States) have been teaching at Washburn University Law School for nearly 30 years, and note with satisfaction that Washburn law graduates proudly serve the state of Kansas as lawyers and judges.

Muslim citizens of Kansas and Muslim students studying in Kansas colleges and universities are disheartened that the Kansas legislature is passing a law to condemn their religion and the associated Sharia. They all know what the Sharia means to Muslims: it means saying the daily five prayers according to the prescribed law; it means fasting in the month of Ramadan according to the prescribed law; it means giving charity to the needy and the poor; it means taking care of young children and old parents; it means working honestly and diligently. The Sharia caricatures on which the legislature has relied to pass the bill will tell a sad story to Kansas children, Muslim and non-Muslim. (Huffington Post – May 15, 2012)

## **21 Oklahoma Ban on Shariah is Unconstitutional**

On November 2, 2010, an overwhelming majority of Oklahoma citizens (slightly more than 70%) approved State Question (SQ) 755, as a state constitutional amendment, forbidding Oklahoma courts from “considering or using” international law or Shariah law. Oklahoma State Representative Rex Duncan, the amendment’s principal author, characterized the Shariah as a “cancer that must be removed with a preemptive strike.” A petition has already been filed with the United States District Court to seek a temporary restraining order against the enforcement of SQ 755. It remains to be seen whether the federal courts will strike down the amendment under the supremacy clause of the United States Constitution.

This commentary highlights the practical implications and legal effects of SQ 755 to conclude that the Oklahoma courts would be unable to surgically remove the Shariah from the

myriad of legal relations emanating from the laws of the Qur'an and the Prophet's Sunnah, the primary sources of the Shariah law. Given the omnipresence of the Shariah law in Muslim life and its inseparability from practicing the religion of Islam, SQ 755 will go down in history as an ill-informed proposal that deceived the people of Oklahoma into voting for an illegal constitutional amendment, singled out the Oklahoma Muslim community for religious indignity, and tried to obligate Oklahoma courts to do what they, in good conscience, and as a matter of law, simply can not do.

### Religious Rights

SQ 755 impinges upon religious rights protected under the U.S. Constitution. The application of Shariah law is necessary to protect Muslims' civil rights and religious freedom under the U.S. Constitution. Take a simple case of supplying halal food for Muslim inmates in the Oklahoma prisons. The Shariah obligates Muslims to eat halal food much like Judaism obligates Jews to eat kosher food. In Massachusetts, Muslim inmates filed a civil rights action against the Department of Corrections for not providing halal food, alleging violations of the First and Fourteenth Amendments. The United States District Court held that refusal to provide halal food to Muslim inmates (and likewise a ban on their weekly group prayer services) "substantially burdened Muslim inmates' exercise of their religious beliefs."

Relying on this holding, the Superior Court of Massachusetts extended the provision of halal food “to all inmates who have demonstrated a sincere belief in the tenets of Islam.”

Now suppose this case were to arise in Oklahoma. SQ 755 would require the state courts to deny, as a matter of summary judgment, the Muslim inmates’ petition for halal food simply because granting such a petition is tantamount to “considering or using” the Shariah law. But would the Oklahoma courts, in order to give effect to SQ 755, set aside the inmates’ civil and religious rights protected under the U.S. Constitution? The courts would inevitably conclude that SQ 755 cannot override the U.S. Constitution.

### Choice of Law

Furthermore, SQ 755 impairs the freedom of contract. In a dynamic global economy, legal systems accommodate parties’ considered decision to choose a law that would govern their contract and allows the parties to choose a forum to resolve potential contract disputes. The Shariah is the choice of law in numerous international contracts. In 1995, a Saudi Arabian corporation entered into a multi-million dollar contract with an American telecommunication company. The parties agreed to subject the contract to the Shariah law. Ruling on a breach of contract lawsuit, a United States Court enforced the Shariah law as the parties’ choice of law – and rendered a Shariah ruling that was indeed

favorable to the American corporation.

Under SQ 755, Oklahoma courts would be obligated to disregard the parties' choice of law if it were the Shariah law. Even more importantly, SQ 755 inaccurately presumes that Oklahoma businesses, which may opt for the Shariah law in international transactions, would always be better off under the Oklahoma contract law than they would be under the Shariah law. In doing so, SQ 755 disregards Oklahomans' freedom of contract to make legally savvy and profitable business decisions. SQ 755 will also have a chilling effect on international investments. The ban on Oklahoma judges' discretion to consider international or Shariah law will discourage international businesses from investing in Oklahoma or consenting to the jurisdiction of Oklahoma courts.

### Family Rights

Thousands of Muslim families, derived from diverse ethnic groups, domestic and foreign, live in various cities of Oklahoma. Some of these families are native to Oklahoma, and some have migrated from Muslim states, including Egypt, Palestine, and Pakistan. For centuries, U.S. common law has recognized marriages contracted in foreign countries. Accordingly, a marriage that is valid under the law of the state or country where it is celebrated is valid in Oklahoma unless it is repugnant to public policy.

Under SQ 755, marriages contracted under the Shariah law of Egypt, Palestine, or Pakistan would no longer be valid because their validity will depend upon “considering or using” the Shariah law that SQ 755 specifically prohibits. For example, a couple married in Egypt will be unable to enforce their marital rights in Oklahoma because the Shariah marriage cannot be recognized under SQ 755. This invidious discrimination regarding the recognition of Shariah marriages will greatly impact the marital and family rights of numerous law-abiding Muslim citizens of Oklahoma. The non-recognition of Shariah marriages will also undermine the rights of children from these marriages who are born in Oklahoma.

### Air of Bigotry

While Oklahoma courts have been burdened with the impossible task of removing the Shariah law from the daily life of Muslim communities, SQ 755 spreads bigotry and prejudice throughout the state. Since 1995, when Timothy McVeigh, a U.S. Army veteran, detonated a truck bomb in front of the Alfred P. Murray Federal Building in Oklahoma City, Muslims in Oklahoma have been singled out for unfair treatment and blatant discrimination. Muslim women have been denied jobs and drivers’ licenses for wearing the headscarf. A number of Oklahoma newspapers have detailed discrimination stories against Muslim men and women.

Additionally, politicians, including Rex Duncan, a lawyer by profession, continue to stir hatred against Muslim citizens of Oklahoma. Duncan's commentary on SQ 755 shows that the amendment is certainly focused on Shariah law and not international law. SQ 755 is an attempt to demonize the Muslim population in Oklahoma.

Ironically, in an effort to ensure only the application of Oklahoma law and U.S. Constitutional law, SQ 755 itself violates Article VI, clause 2 of the U.S. Constitution's mandate that all treaties and laws of the United States (including customary international law) be the supreme law of the land and binding on all state judges – notwithstanding any contrary state law. Fortunately, many Oklahoma residents, civil liberties and human rights organizations alike have recognized the unenforceability of SQ 755. A significant thirty percent of Oklahoma voters voted against SQ 755. We hope that the Oklahoma courts will find a way to discard SQ 755 from the fabric of the law. (Media with Conscience – November 9, 2010 (co-authored with Jasmine Abou-Kassem)

## **22 An Islamic View on Meltdown in American Markets**

Call it the consequences of irresponsible American invasions, call it the irrational exuberance of short sellers, call it the catastrophe of subprime lending, call it the mismanagement of leveraged products, blame it as you may, American markets are facing unprecedented meltdown and doomsayers see little promise in the federal bailout package. Ironically, the Wall Street has noticed that Shariah-compliant investments—which avoid speculative risk and debt-ridden greed—have fared much better in these troubled markets. In the past few years, Shariah-compliant investments in Western markets have grown to more than half a trillion dollars.

Islamic financing is attracting huge academic curiosity. Many experts participating in the 8th Harvard University Forum on Islamic Finance held this past April wondered if

Islamic financing could have prevented the meltdown that American markets are facing primarily due to mortgage debt and mortgage-backed securities—now known as "toxic investments." This legal commentary highlights the two fundamental principles of Islamic financing that I presented at the Forum.

### High-Risk Investments

The Quran prohibits al-Maysir or speculative risk, warning the faithful to avoid games of chance in which the probability of loss is much higher than the probability of gain (2:219). Shariah-compliant investments, therefore, avoid speculative risk, including interest rate options, naked equity options, futures, derivative and numerous leveraged products purportedly designed to hedge investments. Many of these financial products attract speculators in hopes of making quick money. When trusted fund managers, under institutional pressures to show a profit, resort to speculative risk, hedge investments turn into suicidal strategies for financial destruction.

In pursuit of greed and thrill, straightforward investments in companies engaged in socially useful activity have become unattractive, even boring, because of their presumably lower rate of return—frequently a self-fulfilling prophecy. Billions of dollars are dumped into companies that promise huge profits but produce nothing. While Islam would allow risking

investments in socially beneficial research projects, it prohibits investments in companies peddling alcohol, tobacco, pornography, debt, and weapons—products that undermine our health and safety.

Some investment strategies rampant in the markets are not only morally corrupt but socially harmful. Short sellers, for example, make money when companies collapse and close. Turning the conventional logic of investment on its head, short sellers wish companies to crash rather than prosper for they make the most money when companies go bankrupt, workers and employees lose jobs, and pension funds evaporate through declining company stock. Such cynical investments touted as useful forces that balance the market, are contrary to Islamic law.

### Interest-Bearing Debt

In addition to prohibiting high-risk investments, the Quran also prohibits no-risk investments. The prohibition against riba, interest on loans, is strictly forbidden. Islam does not prohibit passive investments. Nor does it prohibit giving interest-free loans. Debt is not contrary to Islamic law. Charging interest is. Although some experts argue that usury, and not interest, is prohibited under Islamic law. Most Muslim scholars agree, however, that interest on loans is contrary to the Shariah.

Refuting arguments that money has time value or that

interest is analogous to profit, the Quran offers a categorical principle that “trade is permitted but interest is not.” (2:275). The prohibition against interest was revealed not only to save the poor from unscrupulous lenders but also to deter investors who demand a set return on their investments and decline to take the risk of engaging in useful trade.

Contrary to Islamic principles, lending in general and subprime lending, in particular, was predestined to harm American financial markets for two distinct reasons. First, debt braced with high interest was being extended to persons who simply could not afford to pay back loans. This was usury. Second, the real estate mortgage was no longer a prudent investment decision, since numerous investors were trading in real estate with inflated prices. Investment bankers and other geniuses on Wall Street were securitizing mortgage debts, turning them into interest-bearing securities. These fancy securities began to fail when their underlying assets were foreclosed or deflated. The debt turned deadly and its holders bankrupt.

### Shared Destruction

Between the prohibited limits of maysir (speculative risk) and riba (no risk), however, Islamic Law permits creativity in financial markets where investors mobilize surplus monies for the production and distribution of halal (Kosher) goods and services. These permissible markets are neither risk-free nor prone to irresponsible risk. Though innovative and

authentic, the markets are infused with the values of fairness, transparency, and reasonable profits. They are free of predatory practices that corrupt transactions with greed and inflict hardship on the poor, the elderly, and the novice.

The federal bailout package that the Bush Administration is selling as a quick cure of all problems will only aggravate the underlying cancer of interest-bearing debt. It is unlikely that the infusion of more money will reform institutions and companies built on layers of interest-bearing debt. When the best and the brightest are engrossed in finding ways to make money with money, and no more, the system may look creative and intelligent but it is geared toward shared destruction. (Counterpunch – September 27-29, 2008)

## **23 Nuclear Non-Proliferation Treaty Poised to Fall Apart**

Recognizing "the devastation that would be visited upon all mankind by a nuclear war," the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was designed to prevent the spread of nuclear weapons. The NPT, which is now 35 years old, has succeeded to the extent that nearly 190 states have subscribed to it. Despite its grandiose universality, however, here are five reasons why the NPT is poised to fall apart in the near future.

1. The NPT's nuclear club has been broken into. In 1970, the Treaty divided the world into two camps: haves and have-nots. It acknowledged that five states—US, UK, France, Russia, and China—lawfully possessed nuclear weapons. It hoped that the rest of the world would not acquire them. That did not happen. In 1998, India and Pakistan detonated nuclear weapons in face of the world. The US now publicly

admits that Israel possesses nuclear weapons. Probability dictates that North Korea has them too. The dilemma is therefore insurmountable. If the club of five is expanded to eight and perhaps more, proliferation would seem to have been accommodated. If not, the club would be treated as a foolish anomaly. Either way, the NPT is in legal disarray.

2. The NPT can be lawfully dumped. It allows a signatory state to withdraw from the non-proliferation regime "if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. All that is required is a three months advance notice. North Korea joined the NPT in 1985. In January, 2003, however, it withdrew from the Treaty (effective immediately). If North Korea detonates the bomb and joins the de facto club, the NPT would be further weakened. And the dumping rule will be reaffirmed in international law. As luck would have it, there will be new withdrawals from the NPT, most likely in the Middle East where states will not accept Israel's regional nuclear monopoly. Even one or two more withdrawals will kill the Treaty.

3. The NPT's foundational promise is not kept. The five declared nuclear-weapon states promised to cease the nuclear arms race and head toward a complete nuclear disarmament under strict and effective international control. The collapse of the Soviet Union was a godsend that ceased the superpowers, nuclear arms race. But no good faith effort,

as the Treaty requires, is being made towards complete nuclear disarmament. In fact, contrary to the letter and spirit of the NPT, the Bush administration is actively considering to develop brand new nuclear bunker-buster weapons. No treaty regime can succeed on such blatant contempt for the world. When the shepherd on the white horse loses his way, no sheep come home.

4. The NPT is a double-headed monster. It is simultaneously good and evil. The Treaty allows the development of nuclear energy for peaceful purposes. In fact, the Treaty rests on a bargain. States relinquished the right to have nuclear weapons because they were led to believe that "peaceful applications of nuclear explosions will be made available to them. Iran that signed the NPT claims that it has "the unalienable right to develop peaceful nuclear energy. The United States claims that if Iran is allowed to acquire nuclear technology, it would come closer to developing nuclear weapons. Both claims are simultaneously accurate. This double-headedness is precisely the inherent flaw of the NPT. Its one head spews light, the other flames.

5. The NPT is a suicide pact. The US foreign policy has created a global context in which it is far more protective for states to have nuclear weapons than not to have them. The war on Iraq demonstrates that a state without weapons of mass destruction is vulnerable to invasion and occupation. It would be perfectly logical to conclude that Iraq was attacked

not because it had weapons of mass destruction but because it had none. This pathological logic will be further confirmed if the United States continues to pursue diplomacy with North Korea that presumably have both nuclear weapons and missiles to deliver them. The Iraq/North Korea binary reality resurrects old truths that might be right, and be firm with the bullies. And so, in a dangerous world, adhering to the NPT will be considered foolish.

For these five reasons, the NPT seems no longer viable. If the analysis above is dark and pessimistic, and something can indeed be done about the weapons of mass destruction, beware, more wars and "the devastation that would be visited upon all mankind might be on the way. A complete nuclear disarmament is, of course, another possible solution. (Counterpunch – May 4, 2005)

## **24 Is There a Right to Armed Struggle?**

Major new developments have muddled the right to armed struggle. The global war on terrorism openly denies that any such right exists. The collapse of the Soviet Union has undermined the Marxist-Leninist concept of armed struggle, which overthrew numerous old regimes. Great liberation movements that freed Asian and African lands from colonial empires have dissipated, even though neocolonialism is retaking many lands and their resources. Great guerilla leaders of the 20th century such as Mao Zedong, Che Guevara, and Yasser Arafat have passed away, leaving behind uncertain legacies. Newly armed revolutionaries are treated worse than criminals as suppressive states make every effort to kill them. Nations, such as Iran and Syria, which allegedly support the right to armed struggle, have been designated as terrorist states. The United States, the sole superpower, is planning to build tactical nuclear

weapons to incinerate caves and bunkers that might shelter any infrastructure of resistance and militancy.

Despite these developments, international law has not yet repudiated the right to armed struggle. In 1974, the United Nations General Assembly passed historic Resolution 3314, adopting the Definition of Aggression that includes the right to armed struggle. The Definition embodies customary international law. Therefore, it cannot be dismissed as mere political opinion. The Definition forbids states and coalitions of states from "any military occupation, however temporary." It also prohibits bombardments, blockades, or forced annexations of any lands. The Definition warns that no consideration of whatever nature, whether political, economic, military or otherwise, justifies aggression. Even a declaration of war furnishes no legal basis to commit aggression. Furthermore, the Definition treats acts of aggression as crimes against peace.

In outlawing all forms of aggression, however, the Definition provides an exception for the right to armed struggle. It states: "Nothing in this definition of aggression could in any way prejudice the right to self-determination, freedom and independence of peoples forcibly deprived of that right, particularly peoples under colonial and racist regimes or other forms of alien domination: nor the right of these peoples to struggle to that end and to seek and receive support." Although the text mentions "struggle" and not

"armed struggle," its contextual meaning includes both. Even logic yields such an interpretation. Since the Definition lists unlawful uses of force, the exception must refer to the lawful use of force. Accordingly, the people under occupation, apartheid, and alien domination may resort to armed struggle in pursuit of freedom and independence. They may also seek and receive arms and other support from external sources. This is the law of armed struggle.

The war on terrorism aims at repudiating this law. The insurgents fighting the US occupation in Iraq are branded as terrorists and criminals. Neighboring states are under intense diplomatic and military pressure to provide no assistance to Iraqi insurgents. Likewise, Israel labels all attacks on its civilians, settlers, and occupying soldiers as terrorism. Dozens of Palestinian groups fighting for self-determination, including Hamas, have been declared terrorist organizations. Even charities providing funds for armed struggle have been criminalized and closed down.

Has terrorism repudiated the right to armed struggle? One could argue that the Definition of Aggression was adopted more than thirty years ago; and therefore, it no longer embodies the current consensus on the right to armed struggle. This argument has no merit since every year various international organizations and institutions reaffirm the right of self-determination against colonial and racist regimes and other forms of alien domination.

In 2005, for example, the UN Commission on Human Rights reaffirmed the Palestinians' right of self-determination, urging "all member states and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination." In another resolution, the Commission condemned "the use of force by the Israeli occupying forces against Palestinian civilians, resulting in extensive loss of life, vast numbers of injuries and massive destruction of homes, properties, agricultural lands and vital infrastructure." These resolutions do not specifically mention the right to armed struggle. But they invoke the language of the Definition of Aggression pertaining to alien domination and racist regimes, a language that embodies the right to armed struggle.

The Organization of Islamic Conference (OIC), an organization of 56 Muslim states, is most forthcoming in its recognition of the right to armed struggle. The OIC Convention on Combating International Terrorism (1998) states in unambiguous terms that "Peoples' struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime." This allowance for armed struggle, however, is not unbridled. Militants fighting for liberation and self-

determination must execute their struggle within the confines of international law.

Law aside, even good morals cannot take away the right to armed struggle. For if there were no right to armed struggle, predatory states would be emboldened to subjugate weak nations. And if a people under occupation have no right to seek and receive support from outside sources, they will be unable to engage in any effective resistance. The occupying states wish to change the law and morality of armed struggle so that they can easily crush the will of the occupied.

The right to armed struggle might have faded away, had international institutions and superpowers played by the rules that mandate peaceful resolution of disputes and prohibit all forms of aggression. Successful resolution of self-determination conflicts in Chechnya, Kashmir, and Palestine might have blunted the need for armed struggle. But the UN Security Council, the watchdog of international peace and security, has worsened these disputes through inaction, deadlock, and vetoes. The United States, the sole superpower, has behaved even more irresponsibly by choosing aggression at will. (Counterpunch – August 27/28, 2005)

## **25 Essentialist Terrorist**

The essentialist terrorist is a violent monster that the Highly Influential Terrorist Literature (“HITLit”) has successfully invented and made real and believable. It is the new terrorist. It is dark and evil, part real and part phantom, part human and part animal, part man and part woman, part bearded and part veiled, part strategic and part crazy. A noted trait of this grotesque but cowardly creature is that it kills innocents. But this monster’s most defining characteristic is that it is driven to violence by its nature, compelled by an ingrained mental/psychological/cultural/religious formation. Its violence has little to do with any outward political or geopolitical grievances. It hates Israel and America and the West. It loathes democracy and liberties and freedoms. It subjugates women. It is warped and jealous and vengeful. Addicted to violence, this monster resides in sleeping cells,

prays to Allah, lurks in tunnels and airports, wears a belt of explosives, and craves traveling in buses, trains, and airplanes. One day it explodes, killing innocents. Amazingly though, even after dying a thousand deaths, it does not die. It constantly reproduces itself into many more similar-looking monsters. It must be obliterated.

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

The HITLit's new terrorism is intellectualized propaganda. It has been written and published in the United States years before the September 11 attacks on the World Trade Center and the Pentagon. It is still being produced and published. The HITLit consists of academic books published by elite university presses, popular books, magazine articles, and syndicated columns. This literature is highly influential in that it shapes, defends, and justifies U.S. government policies towards the Muslim world. As referenced in this article, the 9/11 Report adopted many concepts that the HITLit has been spawning for years. Most HITLit authors, known as terrorism experts, are research associates with influential think tanks such as RAND and the American Enterprise Institute, and some teach at Harvard University. Some have worked for the National Security Council and the U.S. Defense Department. These authors include Bernard Lewis, Bruce Hoffman, Steven Simon, Jessica Stern, Daniel Benjamin, and Richard Perle, Walter Laqueur, David Frum, and Michael Ledeen, Daniel Pipes, and David Horowitz. They appear on National Public Radio and major radio and television networks to comment on terrorist events and disseminate their views to the general public. The HITLit themes of the essentialist terrorist are further disseminated through the views of collaborating journalists such as Thomas Friedman, Charles Krauthammer, David Brooks, and William Kristol.

Studied in isolation, each Highly Influential Terrorist Literature (HITlit) theme seems credible. Collectively, HITLit themes are perilous propaganda.

Studied in isolation, each HITlit theme seems credible. Collectively, HITLit themes are perilous propaganda. They are the half-truths what Cass Sunstein, himself a HITLit sympathizer, has in another context called “enclave deliberations.” HITLit authors have pooled their arguments, citing each other’s dubious research, to malign Islam, boldly painting it to be a violent religion, ignoring the canons of interfaith respect for a fourteen-centuries-old religion practiced by more than a billion people in all countries of the world. Yet in doing so, the enclave authors claim they wish to make a better world. The Quran describes such persons as *mufsidun*, which may be translated as mischief-makers. “When it is said to them: ‘Make not mischief on the earth,’ they say: ‘Why, we only want to make peace!’ Verily, they are the mischief-makers, but they realize [it] not.” These *mufsidun* have successfully influenced US foreign policy and are determined to further deepen the conflict between the United States and the Islamic world. They use essentialist terrorism as the edge of the wedge between civilizations.

The HITLit themes, specifically the distinction between conventional and essentialist terrorists, have played a critical role in shaping the George W. Bush administration’s views with respect to Muslim militants. The rhetoric it employs to

describe Muslim militants reveals how the Bush administration has latched on to the HITLit's new terrorism. While the conventional terrorist is a moral being, the new terrorist is evil. Repeatedly, Bush officials use the word "evil" to describe Muslim militants who fight US occupation in Iraq and Afghanistan or commit violence elsewhere against US interests. The word "evil" highlights the essentialist nature of the Muslim militant who is evil, not only because of what he does but who he is. And perchance, the Old Testament furnishes a parallel to the HITLit concept of the essentialist terrorist: Just as the Ethiopian cannot change his skin, and the leopard cannot change his spots, the Muslim militant cannot change his propensity to do evil.

The HITLit's new terrorism is not simply a rhetorical device to engage in the propaganda war against Muslim militants or Islam. It also has serious consequences in the realm of law.

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

rights and protections because he is fundamentally immoral and irredeemable.

Consequently, the Muslim militant is humiliated, tortured, detained without charges, kept in detention without a trial, and even killed without any judicial process. Conventional terrorists are the subjects of the traditional criminal justice system, but essentialist terrorists are unlawful combatants who may be denied protections available under domestic and international law, including the prisoner of war status under the law of war. The HITLit authors' "clumsy and unconvincing exercise in conjecture," has remained for the most part unexposed.

Essentialist terrorists, as opposed to conventional terrorists, are guilty without proof. The proof of their monstrosity is in their being.

The HITLit conjectures and consequent prescriptions are nonetheless genocidal and generally lawless. One proposed prescription for dealing with Muslim militants is to engage them in battle and kill them. No legal process is recommended to wipe out them. The other prescription is to capture Muslim militants and completely disable them. Disability rather than accountability must be the fate of essentialist terrorists. Accordingly, the Guantánamo prison embodies the concept of comprehensive disability, which suspends essentialist terrorists in legal limbo. Essentialist terrorists are guilty without proof. The proof of their

monstrosity is in their being. But in law, they are neither charged with any crime nor declared innocent. They are neither tried in courts nor released. They are neither criminals nor prisoners of war. Their status defies existing legal categories. They are a category of their own. They are *sui generis*. They are unique. Therefore, the law or the lawyer cannot help them, should not help them. As the mantra goes, September 11 changed everything. (Baltimore Chronicle – November 28, 2005)



## **26 Alif for Allah, Baa for Bush**

*Alif* and *Baa* (roughly equivalent to A and B) are the first two letters of the Arabic alphabet and of several other Islamic languages, including Persian and Urdu. As compared to Baa, Alif has a special place in Islamic mysticism. Alif is the first letter of the word Allah. Alif is written in the same way as the numeral one, thus underscoring the Oneness of Allah. The Quran's first word revealed to the Prophet---*iqra* (i.e. read)--starts with Alif. In Sufi literature, Alif represents the unity of the universe and is considered the source of all knowledge. America, a nation now deeply entangled with the Islamic world, also begins with the letter Alif. Some Sufis see deeper connections in this entanglement.

The Bush adventures in the Islamic world, however, fix our gaze onto the reality of Baa. Bush begins with Baa (which in English means to make a bleating sound, like a sheep or goat.). Bush is using the power of America to change the

Islamic world. Bush the warrior is rummaging through Afghanistan, Iraq, and Pakistan to kill "terrorists" and thereby make America safe. Bush the reformer aspires to renovate Islam and thereby liberate Muslims from its theological tentacles. Bush the preacher wants to save the world. George Walker Bush, however, should know that, at least in the past centuries, many invaders of the Islamic world were themselves captured by the power of Alif.

In pursuing the Islamic world, Bush the warrior gathers the awe of a daringly written fiction, such as the adventures of *Don Quixote*. Don Quixote is a Spanish fictional knight that Cervantes, its author, borrowed from a Muslim storyteller. Like Quixote, Bush is most intriguing when he is searching for truth, that is when he is looking for nuclear weapons in donkey carts, insurgents among the herds of sheep, documents in inns and castles, and giants disguised as windmills.

President Zapatero, who pulled Spanish troops from Iraq, obviously has no taste for fiction. The critics argue that George Bush is unreal. But so is *Don Quixote*. The illusion is part of their charm. *Don Quixote* is charming because he rides a pencil-thin horse in various parts of the world, fighting oppression and righting wrongs. George Bush is charming because he has dismantled theocracy in Afghanistan and secularism in Iraq, the two opposite evils.

And more seems to be coming in the next four years.

Sweetened with fantasies and delivered with chivalric gusto, George Bush's second inaugural speech is a precious gift to law and literature. Its major theme comes straight from the Spanish classic. Here is Don Quixote: "I looked for no less, my lord, from your High Magnificence...I so much desire to lawfully roam through all the four quarters of the world seeking adventures on behalf of those in distress, as is the duty of chivalry and of knights-errant like myself." Here is President Bush: "All who live in tyranny and hopelessness can know (that I) will not ignore your oppression, or excuse your oppressors.... [I will proclaim] freedom sustained by the rule of law....throughout all the world and to all the inhabitants thereof." It is the power of fiction, and no mere coincidence, that both Don Quixote and George Bush wish to fight evil, *a la* grandiose, but within the bounds of the law.

The fictional comparison must stop here. To stretch it further would defame the President, for Don Quixote's notion of law is delusional. The peoples of the world, as the President calls them with affection, should quit brooding over the unlawful stuff that happened in the last four years. The President is promising the rule of law in the next four years. Hence, there is going to be no more torture in camps and prisons, no more deportations for traffic violations, no more indefinite detentions in secret locations, no more assassinations by state aircraft, no more naked pyramids, and no more hooded men standing on stools with their arms

stretching out, doing Pilates.

Forgetting the sickening scenes, Muslims should be particularly thankful to the President for he is bringing “the untamed fire of freedom” in the darkest corners of their world. The metaphor of “the untamed fire” is somewhat inapt since it unwittingly refers to bombs and missiles raining blindly over the Muslim world. The President means well. He wants to introduce whiteness to dark places. Therefore, when the bombs fall, Muslims should gratefully receive them as friendly fire.

Even if Muslims are unsure about the President's adventures, they cannot fault the President for what he says. America would prevail in its mission, says the President in his inaugural speech, “Not because history runs on the wheels of inevitability; it is human choices that move events. Not because we consider ourselves a chosen nation; God moves and chooses as He wills.” And now compare these words with what the Quran says: “Surely Allah does not change the condition of a people until they change their own condition.” (13:11) And furthermore, "Say: O Allah, Owner of the Kingdom, Thou gives the kingdom to whom Thou wills, and takes away the kingdom from whom Thou wills." (3:26)"

This is remarkable coming together of Allah and Bush, the Alif and the Baa. The dervishes are dancing in ecstasy. Since the Alif is all powerful, they say, it remains to be seen whether the Baa would prevail. (January 25, 2005)

## **27 The Dirty Game of Minority Appointments**

The Bush administration is making history in hiring minorities to perform high-profile jobs. Colin Powell was the first black man to head the State Department, Condoleezza Rice the first black woman to be the National Security Advisor, and soon Secretary of State. Alberto Gonzales, if confirmed by the Senate, would be the first Hispanic to be crowned as the United States Attorney General. The induction of these and other minorities into what has been a game of white monopoly is bewitching in that it tells the world that President Bush values both equality and diversity and that racial prejudices, actively wired in American power grids, are falling apart. No longer are Blacks, Hispanics, and Asians confined to dirty jobs, such as cleaning private quarters of the white establishment. See, says the Administration—now sons and daughters of the people of color are being actively recruited for leading the world.

Cynicism aside, however, the Thanksgiving dinner for this great achievement is infested with flies. The willing coalition of black, brown, and other faces of color appears to have been summoned to whitewash foreign invasions, occupations, deportations, detentions, disappearances, and even commission of war crimes such as torture and extra-judicial executions. Minorities are cast as big-headed puppets to speak daggers on behalf of a producer/director who, we are told, believes in God, democracy, and liberation.

Take Dr. Condoleezza Rice, known as Condi (which means sweet). Born in the same year the famous Brown case outlawing segregation was decided, raised in the Deep South where lynching of the innocent had been the way to vent hatred, and scarred with memories of her schoolmate killed in the bombing of a black church by white supremacists, Condi has come a long way indeed to champion abusive harshness against the enemy. Of all the president's men and women, Condi, a pastor's daughter, has been the most combative in her rhetoric of warfare. It was Condi, the brilliant professor on the Bush Cabinet, who wrote a column in the New York Times to tell the world that "Why we know Iraq is lying about weapons of mass destruction, concluding her piece with ominous words "time is running out. The time did run out on Iraq, UN inspectors, and the world calling for restraint, though Condi knew little about the truth of her crusade. One wonders how Condi would employ her

militaristic strategies in her new role as America's chief diplomat.

Another Bush minority, Alberto Gonzalez, has gathered equally impressive credentials to promote abusive harshness at home and abroad. Rising from a humble Mexican family in Texas, going to college against all odds of a working-class household, and graduating from Harvard Law School, Alberto has endeared himself to Administrations tough guys. As the White House Counsel, Alberto envisioned a lawless prison for the so-called enemy combatants captured in Afghanistan. He denied them the protection of Geneva Conventions, arguing that some of the law's provisions are obsolete. In 2002, Alberto cleared a legal memo allowing torture as an acceptable means to investigate enemy combatants unless torture results in "death, organ failure, or serious impairment of bodily functions. Discarding restraints of international law, since the tough guys had no use for them, Alberto's memos most certainly contributed to abominable abuses at Abu Gharib (which perchance was under the general command of General Ricardo Sanchez, another Bush minority supervising the slaughter of Iraqi civilians). Seeing law as an instrument of power, Alberto has constructed a notion of White House legality with no intrinsic morality. It remains to be seen how Alberto if confirmed by the Senate, would lead the Department of Justice whose job is not simply to please the White House

but to enforce laws and protect civil liberties.

The story of Viet Dinh, perhaps the most brilliant Bush minority, is no less compelling. Born in Saigon when bombs were falling all over Vietnam, Viet entered America as a refugee. Graduating magna cum laude from Harvard Law School, clerking with Supreme Court Justice Sandra O'Connor, and later teaching at the Georgetown Law Center, Viet was ripe in 2001 to serve the public. As the irony would have it, the glory of authoring the Patriot Act fell on this Asian refugee. The Act he authored is an inscrutable text, neither elegant nor candid, but one hammered together to sneak and peek (on the theory that while the cat's away the mice will play), gag, detain, and even criminally implicate speech protected under the First Amendment. In his media encounters, Viet defends the Act as a wonderful security gift to Americans (Muslim Americans excluded) and labels the grassroots movement against the Act as "hysteria and fury signifying nothing."

Far more pompous than Condi, Alberto, and Viet is Colin Powell who has served his boss with shrewd skepticism instead of foolish fervor. Powell has gained the reputation of a man of conscience who has resisted to be totally subservient to the tough guys. That is why, the argument goes, he first lost his power, then his job. That might be so. But it was this Bush minority who deceived the Security Council about pictures of Iraqi trucks hauling the weapons of

mass destruction. Powell seemingly disapproved the war but nonetheless continued to support it for years. This is no conscience. In any event, Colin has aided and abetted a dirty foreign policy far too long to claim any purity.

Of course, there exists no proof that the White House has launched a deliberate policy of hiring minorities for illegal and immoral assignments. But who needs proof these days; mere accusation would suffice. It sure seems intriguing that Bush minorities are collectively chanting the mantras of "security at home" and "liberty abroad to play dirty with law—affirming an unfortunate message that even the people of color, when given the responsibility to run affairs of the state, act no differently than white males—a species much maligned in critical race literature as the paragon of brutality and cold-heartedness.

Thus a chapter is being written in American history the theme of which is dirty diversity. Non-white faces have been hired for big-ticket jobs so that a black woman vouches for an unjust war, a black man defends it, a Hispanic supervises the slaughter of civilians while another justifies the use of torture, and a Vietnamese refugee writes the law to maim civil liberties in America. (Counterpunch – November 26-28, 2004)

## **28 The Bright Orange Jumpsuit – An Emblem of Cruelty**

The Islamic State (ISIS) released a video showing the Jordanian pilot, Moaz al-Kasasbeh, dressed in an orange jumpsuit standing in a see-through cage. Later, the pilot was doused with petroleum and set on fire. The cruelty, surpassing all bounds of civilization, is nauseating.

The ISIS has adopted the bright orange jumpsuit as the garment of revenge. The American and English journalists were dressed in orange jumpsuits before they were beheaded.

Who has invented the bright orange jumpsuit? The world first saw the orange jumpsuits at Guantanamo prison. Helpless Muslim detainees dressed in orange jumpsuits were shown sitting in a holding area under the surveillance of US military police at Camp X-Ray at Naval Base Guantanamo Bay.

The bright orange jumpsuit was also used when Muslim detainees were tortured in Iraq. The picture of a dog staring at the person wearing the orange jumpsuit was grotesque. It was a reminder that even civilized nations are capable of subjecting human beings to utter humiliation. Vice President Dick Cheney saw little harm in subjecting "terrorists" to degrading treatment.

Defense Secretary Donald Rumsfeld was right on point when he said, "Terrorists do not function in a vacuum. They don't live in Antarctica. They work, they train and they plan..." It now appears that the terrorists noticed the orange jumpsuits displayed at the Guantanamo Muslim prison and in torture pictures emanating from Iraq. ISIS was planning.

The bright orange jumpsuit is an authentic piece of evidence to demonstrate that the human species is going bonkers. Rule of law, constitutional rights, mercy, and forgiveness are no longer the prime values. Torture, porno-torture, bombings, state-sponsored abductions, drone attacks, beheadings, burning enemies alive, and similar forms of cruelty are the weapons of revenge used by state officials and non-state actors.

The orange jumpsuit is catching on. Some people think it is cool to wear orange jumpsuits out at the mall or in public as a fashion statement. Orange jumpsuits are being sold at Walmart, eBay, Amazon. Soon *Othello* will be staged in contemporary garments. Othello, the Moor, will be wearing a

bright orange jumpsuit. Then in Scene 3, Iago, also clad in a bright orange jumpsuit, would engage the audience: "Virtue? A fig! 'Tis in ourselves that we are thus or thus." (Huffington Post – February 6, 2015)



## **29 Political Platforms Attack Human Rights**

Brazenly, the 2012 Republican platform disowns the human rights of women, children, and persons with disabilities, the historically disadvantaged groups that are emerging from the thicket of patriarchic and Darwinian ethos. The Republican platform urges the U.S. Congress to reject the human rights convention on the elimination of all forms of discrimination against women, the human rights convention protecting the rights of the child, and the convention on the rights of persons with disabilities. The platform specifically calls on the Senate not to ratify these conventions and urges the House of Representatives not to appropriate any funds for their possible enforcement. The platform advocates an ideological repudiation of human rights treaties if the Republicans win the Senate, the House, or the White House.

## Mythical American Family

Invoking American Exceptionalism, the Republican platform envisions America without human rights and detaches the nation from the entire world. As the table below shows, the women's and children's human rights conventions are universal in that almost all nations of the world with diverse cultural and religious backgrounds are parties to these treaties.

Liberal countries such as the Netherlands and Sweden and conservative countries such as Saudi Arabia and Iran have ratified these treaties, though some nations make disconcerting reservations. Although the United States has signed the women's and children's conventions, Republican Senators have blocked the Senate's advice and consent, a constitutional requirement for the ratification of treaties. The disabilities convention is relatively new that opened for signature during President George W. Bush's second term. President Bush refused to sign the treaty.

In opposing the human rights treaties for women, children, and persons with disabilities, the Republican platform does not take the position that subscription to human rights treaties is unnecessary because the United States Constitution already protects these rights -- a position popular among conservative critics of international law in general and human rights in particular. The platform rather contends that the "long-range impact (of human rights

treaties) on the American family is ominous or unclear." (The expression "ominous or unclear" might be a logical fallacy.)

The Republican contention that these universal treaties are harmful to the American family is deceitful. To set aside the American family as exceptional in the whole world is factually inaccurate. The American family is no different from a typical family in Canada, Australia, or the United Kingdom, all parties to these treaties. President Carter and President Clinton who signed the treaties did not believe that the human rights of women and children pose an "ominous" threat to the American family. Few Americans would avow that the American family flourishes only in the vacuity of human rights.

Let us presume for the sake of argument that the mythical American family is indeed so peculiar in the world that the universal rights of women and children threaten its existential fabric. Now, one might ask, how are the rights of persons with disabilities ominous for the American family? Would the American family fare better if its sons and daughters with disabilities enjoy no rights? The Republican platform ignores the fact that the 2006 disabilities convention is substantively related to the American with Disabilities Act (1990), a federal statute enacted sixteen years before the convention. What message does the Republican platform have for Susie Doyens, born with Down

syndrome, who remained speechless throughout her childhood due to social pressure and anxiety? American families were pleased, not disappointed when Doyens competed in the Special Olympics? President Obama might sign the disabilities treaty in case he is elected for the second term, even though the Republican Senators would oppose its ratification.

### Religious Liberty or Bigotry

While disowning the universal human rights treaties of women, children, and persons with disabilities, the Republican platform does not completely reject the notion of human rights. The platform devotes a petite paragraph to Protecting Human Rights. Paradoxically, however, the only human right acknowledged in the paragraph is religious freedom. The paragraph, despite its pluralistic title, mentions no other human right. Nor does the paragraph refer to any human rights treaty. The paragraph is domestic in content as it criticizes the Obama administration for "shunting aside" the U.S. Commission on International Religious Freedom, which the Republicans established "to advance the rights of persecuted peoples everywhere." Highlighting (Islamic) fanaticism in the Middle East, the paragraph promises that a "Republican Administration will return the advocacy of religious liberty to a central place in our diplomacy."

Religious liberty is a cardinal right affirmed in numerous human rights treaties. Historically, the U.S. has been a sanctuary for religious minorities fleeing Europe and elsewhere. The Republican platform is right on the mark when it proclaims: "To those who stand in the darkness of tyranny, America has always been a beacon of hope, and so it must remain." The peoples of the world will welcome the Romney administration if, after winning the White House, it embarks upon protecting religious freedom in the world and at home.

Alas, there is a fly in the Republican ointment. If religious liberty is so precious, why are Republican leaders bent on persecuting American Muslims right here in the United States? Examine their record. The Oklahoma Republicans amended the state constitution to ban Sharia, a move that the federal courts declared unconstitutional. The Kansas Republicans have outlawed Sharia in both litigation and arbitration, a move that foments anti-Muslim prejudice without conferring any benefit on Kansas citizens. Many neoconservative Republicans equate Islam, the religion of more than a billion people, with fascism and communism. Peter King, the Republican Chairman of the House Committee on Homeland Security, has been doggedly investigating American Muslims for possible links to domestic and international terrorism.

Despite the Republican-sponsored animosity against

Islam, Muslim doctors, engineers, lawyers, cabdrivers, teachers, and others continue to provide valuable services in all parts of the United States. Ignoring their services, the Republican leadership is forcing American Muslim communities to cultivate a siege mentality. Microaggressions against American Muslims are multiplying. Pastors spew revulsion against Islam. Mosques in Missouri and Tennessee have been fire-bombed. Qurans are regularly burned. Islam's prophet is repeatedly maligned. Law enforcement agencies spy on Muslim neighborhoods and infiltrate Muslim-owned businesses. Muslim inmates are committing suicide at Guantanamo. Muslim men are lured into far-fetched criminality. Muslim women wearing hijab are subjected to ridicule and discrimination. Is this the model of religious liberty that the Republican platform promises to export to the rest of the world?

Bigotry at home but liberty abroad cannot be a winning combination. The 2012 Republican platform denying human rights to women, children, persons with disabilities, and American Muslims invites denunciation across America because "a false balance is an abomination." (Huffington Post)

## **30 Above and beyond International Law**

For centuries, international law has been anchored in the theory of contracts. Treaties are explicit contracts among states, but the even customary international law, at least in its formative stages, is founded on consent and is derived from voluntary state practices.

All along, powerful nations have influenced international law. Yet in modern times no single state - no single sovereign - has claimed the authority to make laws for the rest of the world. International law has, since the Second World War, admittedly developed some coercive elements in its genetic structure, but it nonetheless remains, both in its essence and legitimacy, the law of partnership. This jurisprudence might change, however, if George Walker Bush is successful in crowning himself as the Austinian Sovereign.

In 1832, the English legal theorist John Austin articulated his famous concept of the Sovereign, in his celebrated work

*The Province of Jurisprudence Determined.* Supreme power limited by positive law, he declared, is a flat contradiction in terms. The Sovereign may impose laws and morals on himself, but these principles or maxims are mere guides; the Sovereign is under no obligation to be constrained by these self-imposed limitations. The Sovereign has the ultimate authority to "abrogate the law at pleasure. If the Sovereign is bound to observe the law, Austin argued, he is no longer the Sovereign. On the basis of this logic, Austin concluded, that a departure by a Sovereign from any law is within the domain of his authority, and the inferiors are under a legal obligation to obey the Sovereign.

President Bush has gone to war on Iraq without the approval of the UN Security Council. The question remains whether the United Nations, has now, in the President's own words, become irrelevant. President Bush's unilateralism has offended many nations, including China, Russia, and France. The President's departure from the United Nations Charter, however, makes perfect sense in the domain of Austinian jurisprudence, as it does in the realm of power.

In the realm of power, international relations flow from the dynamics of superior military and economic power. In the Security Council, Cameroon has a vote but no power. France has a veto but its power is not the same as that of the United States. Therefore, the logic of power would dictate that permanent and non-permanent members of the Security

Council submit to the United States might rather than play games with the mechanics of voting. The five vetoes have collapsed into one, recognizing an already well-known reality that there exists only one super-power, the United States of America. In this new realm of power, the democratic authority of the majority is confusing, if not outright meaningless. (It was this positivist logic upon which the apartheid in South Africa was established.)

The arguments of power are not always devoid of law. In the domain of Austinian jurisprudence, the matter is even more lucid. George Walker Bush is willing to be guided by the principles and maxims of the United Nations Charter. He would have been pleased to obtain a resolution that supported his option for war. But the international law cannot be allowed to restrain his options, for President Bush, as the Austinian Sovereign, is fully empowered to abrogate the Charter at his pleasure.

One might further argue that a new norm has been established in international jurisprudence. International law is now subject to the authority of the United States President. International law may still be learned and taught, using the metaphor of partnership. It may still contain elements of the law of contracts. But its fundamental nature has changed. The norms of international law are valid only if the President says so. And if the President says a norm of international law is binding on other nations, it is, even if the

same norm is not binding on the United States.

Iraq, for example, must adhere to the Geneva Conventions and treat American prisoners of war accordingly. This is so because the President says so. And no one can question the President (the Austinian Sovereign) as to why the same Conventions do not apply to the prisoners of war detained in see-through cages at Guantanamo Bay.

This analysis is not offered as a jest or satire but as a serious presentation of a possible development in the theory of international law. One wonders, however, whether President Bush has thought through the consequences of his approach. Does he appreciate that Austinian jurisprudence - in name, or in fact - could not sustain the British Empire, on which the sun has now definitely set? And does he appreciate the irony of the fact that Austin himself was never formally trained in international law, but rather obtained his legal understandings, as the famed English legal historian William Holdsworth has somewhat snidely put it, "by means of undirected reading and discussion"? (JURIST, January 24, 2003)

## PERSONAL NOTES AND COMMENTS



## About the Author

L. Ali Khan initially trained as a civil engineer. He later switched to law, obtaining a law degree from Punjab University, Lahore. In 1976, Khan immigrated to the United States and studied law at New York University School of Law where he received his LL.M. and J.S.D. Khan is a member of the New York Bar.

In 2014, Khan founded Legal Scholar Academy ([legalscholaracademy.com](http://legalscholaracademy.com)) to provide impact analysis of U.S. foreign policy pertaining to Muslim nations and communities. Listen to Khan's commentaries on iTunes, Daily Motion, and YouTube.

Khan has authored several books, including *The Extinction of Nation-States* (1996), *A Theory of Universal Democracy* (2003), *A Theory of International Terrorism* (2006), and *Contemporary Ijtihad: Limits and Controversies* (2011). Over the years, he has written numerous law review articles and essays on Islamic law, international law, commercial law, creative writing, legal humor, jurisprudence, the U.S. Constitution, comparative constitutional law, human rights, and foreign policy. Khan teaches law at Washburn University School of Law.