

INTERNATIONAL TERRORISM UNDER THE LAW

*Yassin El-Ayouty**

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I. INTRODUCTION

Terror has been generally defined as “the threat or use of violence in order to create extreme fear and anxiety in a target group so as to coerce them to meet political (or quasi-political) objectives of the perpetrators. Such terrorist acts have an international character when they are carried out across national lines or directed against nationals of a foreign State or instrumentality of that State.”¹ The attacks of August 7, 1998 on the United States’ embassies in Nairobi, Kenya, and Dar-es-Salaam, Tanzania, signaled graphically how terror has mutated. In the 1970’s and the 1980’s, terrorism consisted largely of the taking of hostages, plane hijacking and destruction, attacks by bombs or car bombs on market places or diplomatic premises. It was engaged in by small bands whose goals were identifiable, were national, and had largely to do with some form or another of the denial of the right to self-determination and the resistance to physical and oppressive foreign occupation.² The face of the old terror was primarily secular, even if it adopted a religious name like Hezbollah, the Party of God, of southern Lebanon. It has leaders with whom one can negotiate or from whom one can accept a cease-fire, or an exchange of hostages, or the return of the remains of dead soldiers for the freedom of terrorist prisoners.

Under the old terror, there was almost a quid pro quo relationship between a State and the terrorist group, which is a non-state actor. Because the old terrorist cause was identifiable, there was almost an

* Dr. Yassin El-Ayouty is Special Counsel for Spector & Feldman in New York, New York. Dr. El-Ayouty is an adjunct Professor of International law at the Cordozo School of Law in New York, New York and a Distinguished Visiting Professor at Nova Southeastern University, Shepard Broad Law Center in Fort Lauderdale, Florida.

1. Oscar Schachter, *INTERNATIONAL LAW IN THEORY AND PRACTICE* 163 (1991).
2. John Deutch, *When to Strike Back*, *THE NEW YORK TIMES*, Aug. 22, 1998.

implied contract relationship between the terrorist group and the State. Under such relationship, there could be offers or counter offers, acceptance or rejection, and of course, there was always some form of consideration. Agents of that form of terror were perceived as freedom-fighters, and at times their leaders were even elevated to diplomatic posts and other lofty political positions whenever peace returned.

Now terror has mutated. The new terror has no borders, no front, no clear ideology, no state, no government, and no physical structure. It has become globalized, has no organizational chart, no fixed bases. The new terror is not interested in Katysha rockets; it is interested in chemical, biological, and nuclear weapons which are weapons of mass terror and indiscriminate destruction. It is also interested in what John Deutch, former Director of the CIA, describes as the possibility of cyber attack against computers and telecommunication networks. The objectives of the new terror are pseudo-religious and are transcontinental. The Osama Bin Laden's of the newly mutated terror call for a universalistic achievement, namely "the Islamic Revolution,"³ which has neither a definition nor clear objectives.

Ironically the new terrorists, from Saddam Hussein to Bin Laden, were green-housed or cocooned by the United States and/or by allies of the United States, such as Pakistan, Saudi Arabia, Egypt and Afghanistan under Soviet occupation. The goal of United States support was to assist in the achievement of an objective, namely the defeat of communism in Afghanistan in order to deny the Soviets any fresh expansion beyond their imperial borders of 1945. The Taliban movement, which now controls ninety percent of Afghanistan, and shelters the advocates of the Islamic Revolution, was spawned in Pakistani refugee camps. Osama Bin Laden is a prime example of the leadership of this new terror. It is therefore necessary to provide the reader with a brief background on that enigmatic figure who has been described in the European press as United States' Number One Enemy.

II. WHO IS OSAMA BIN LADEN?

Osama Bin Laden⁴ scion of an Yemeni family (from the Hadramout region) became Saudi by naturalization. His carpenter father first worked in residential construction in Jedda and at the urging of the Saudi Government, got involved in road construction in the 1950's. The Bin Laden Construction Company grew immensely wealthy and its fame spread throughout the Gulf region especially in port construction. Osama was two years old at the time his father was killed when his private plane crashed over a Bin Laden work site in Saudi Arabia. Since dynamite was used in road construction, it is to be presumed that Osama had developed respect

3. LE MONDE, Aug. 28, 1998, at 5.

4. This background was orally provided to the author by several Saudi Arabian sources.

for dynamite from an early age. After the father's death, the family, following the traditions of Hadramout, stayed together, and with a view to growing the business further, no distribution was made of the estate's assets. Today, the Bin Laden Construction remains one of the biggest of its kind in the Middle East.

The Soviet invasion of Afghanistan jolted both the West, especially the U.S. and the Muslim world. The Afghani resistance of the 1980's represented to the Muslim world what the Algerian resistance represented in the 1950's - true Mujahedeen, fighters for the cause of God. The ranks of the Afghani resistance were gradually joined by volunteers from all over the Muslim world, including Pakistan, Egypt and Saudi Arabia. The United States' CIA became deeply involved in financing, arming and training the Mujahedeen. When Osama Bin Laden decided to join that Jihad, the Saudi Government and media were full of praise for the young, Saudi-millionaire who chose the path of God rather than the path of pleasure in Nice and Costa del Sol. Osama poured into Afghanistan millions of dollars (his share of the Bin Laden construction empire) to help destroy the Soviets in Afghanistan. His purchases of stinger missiles, which are shoulder-held, were only a part of his Jihad arsenal. In the end, Afghanistan was liberated, signaling the beginning of the end of the Soviet Union. By the time that war came to an end, Bin Laden had become captive to the ideology of Muslim extremism, which began to take shape in the late 1970's and throughout the 1980's. The Mujahedeen returned to their various countries as unsung heroes. Rampant government corruption and widening chasms between the rich and the poor compounded their feelings of frustration at the economic and social hardships that awaited them. For them, the Jihad in Afghanistan continued to be a memorable ideal of what Muslim society should be. Gradually, the Mujahedeen provided the core of the new terrorism.

Unbeknownst to the Saudi Government, Bin Laden had begun to fund Al-Jamaa Al-Islamia in Egypt and other terrorist groups elsewhere. The son of the great builder had become a pillar in destructive terrorism, all in a misguided notion of what Muslim society should be. Thus was borne "Al-Qaeda" of Bin Laden in Afghanistan together with the incoherent precepts of "The Islamic Revolution."

Eventually, the Saudi Arabia government expelled Osama Bin Laden and his clan publicly disowned him. Osama had already transferred his wealth abroad. His assets were dispersed in various parts of the world through complicated interlocking directories. After his expulsion from Saudi Arabia, Bin Laden together with his three wives moved to Yemen. Again he was expelled from the land of his ancestors. His destination was now Afghanistan, where he was to be reunited with his old comrades, the present Taliban leadership, which today controls ninety percent of Afghani territory. His heroism and generosity during the Afghani war of liberation bestowed on him the status of an exalted Mujahed, especially a Sunni Mujahed in a Sunni Muslim country.

Although Bin Laden is not an Islamic scholar, his ideology of terrorism is punctuated by Islamic Fatwas - decisions of points of Islamic law. He has thus arrogated for himself the position of an expounder of Islamic jurisprudence. As will be seen below, these Bin Laden's Fatwas, including his declaration of a war of genocide against all Americans, has absolutely no legal weight and are devoid of any legitimacy in the context of Islamic law. Herein lies one aspect of the importance of marshalling Islamic law (the Sharia) in the global confrontation of the new terrorism.

III. THE FRAMEWORK OF ISLAMIC JURISPRUDENCE

Islamic law (the Sharia) is based on *The Koran* and the practice of the Prophet Muhammad (the Sunna). Islam's holy book, *The Koran*, does not contain within itself a system of doctrines, but it does tell the faithful what God wishes them to do. *The Koran* is a revelation of His Will.⁵

As to specific commands, *The Koran* contains some. But for the most part, God's Will is expressed in terms of general principles. The Sunna is how the Prophet had acted, i.e. Muhammad's habitual behaviour. It is the second pillar on which Islamic law rests. Any law or practice in Islam also takes into account the opinions of the scholars (Ulama). This is akin to what Article 38(d) of the Statute of the International Court of Justice calls "judicial decisions and the teachings of the most highly qualified publicists."⁶ It also takes into account the practice of the local community, the equivalent of customary law. If confronted with a new situation, those qualified should proceed by analogy (qiyas) - stare decisis in common law. The Ulama are those who taught Sharia and administered it. They and they alone, are, to quote Khadduri in his seminal *Islamic Jurisprudence* "the heirs of the prophets."⁷

So in general, the framework of Islamic jurisprudence consists of *The Koran*, the Sunna, and the teachings of the Ulama, the analogy, and the practice of the community. *The Koran* and the Sunna always control and none of the other elements can contradict their teachings. This is the jurisprudential basis of Islamic fundamentalism, which goes back to the birth of Islam and has nothing to do with what is erroneously termed today "Islamic fundamentalism."

IV. RESPONSES TO TERRORISM UNDER ISLAMIC LAW

First, there is no Islamic fundamentalism in the advocacy or the practise of terrorism. The new terrorism, one of whose gurus is Osama Bin Laden, hides behind the misnomer of Islamic fundamentalism. The co-

5. Albert Hourani, *A HISTORY OF THE ARAB PEOPLES* 65 (1992).

6. Statute of the International Court of Justice, June 29, 1945, art. 38(d), 59 Stat. 1055, T.S. No. 993.

7. M. Khadduri, *ISLAMIC JURISPRUDENCE* (1961), quoted in Hourani, *supra* note 5, at 68.

optation of the term "Islamic fundamentalism" is akin to the cooptation by communism of the term "people's democracy." In Muslim parlance, that cooptation is aptly described as, "a speech about goodness whose intent is evil."

Second, Jihad and terrorism are dramatically opposed to one another. In Islam, Jihad is a war intended to defend Islam against armed aggression by non-Muslims. In that context, *The Koran* says, "wage Jihad in the way of God" - i.e. in defense of the faith and of the territorial integrity of the Muslim State. Such was the case of Algeria under French occupation and Afghanistan under Soviet occupation. These were wars of national liberation which Islamic law makes legitimate but under very strict conditions intended to protect non-combatants. But for the Bin Laden terrorists, Jihad is a continuous and world-wide campaign which primarily targets the United States interests and United States citizens without justification and without discrimination between civilian and military targets. The goal of this terror is purportedly to rid Saudi Arabia, the custodian of the Holiest Muslim Places, from United States military presence. But that presence, although coincidentally aiding United States regional interests, has originally been requested and later consented to by the Government of Saudi Arabia (as well as by Kuwait and other Arab Gulf States) to defend that region from aggression by Saddam Hussein. In this situation, there is no armed aggression by the U.S. against those Muslim States, no forcible territorial occupation, no colonial oppression of the Saudi people, no subversion of the Saudi national will and no derogation of territorial integrity. In short, the premise of Jihad under Islamic law does not exist at all.

Third, genocide is anathema to Islam. Bin Laden had declared a genocidal war against all Americans. He is said to have issued a so-called Fatwa on this. But genocide is totally prohibited under Islamic law. Its perpetrators become subject to capital punishment. *The Koran* says "and that ye slay not the life which Allah has made sacred, save in the course of justice."⁸ In Islam, "the course of justice" is the application of the judicial system as established by the State to civil and criminal offences. The monopoly of force and the means of law enforcement lie entirely in the hands of the State. In this regard, the terrorists are mere usurpers of power. In addition, under the Sharia they are considered the instigators of division, insurrection, and anarchy, which Islam calls "fitna" - a grave societal transgression under Islam.

In another verse, *The Koran* says "whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he

8. *The Koran*, XVII/33 (the cites to *The Koran* are from an Arabic version, which list the chapters in the Traditional Sequence. The Arabic version does not convert exactly in the English translation).

had killed all mankind, and whosoever saveth the life of one, it shall be as if he had saved the life of all mankind."⁹

So the slaughter at the U.S. embassies in Kenya and Tanzania of innocent people who had perpetrated neither manslaughter nor corruption which means here subversion of the morality and institutions of the community, crimes which can only be punished by Islamic courts, is a grave criminal act under Islamic law.

Fourth, self-sacrificing is a crime under Islamic law. The terrorists claim that Muslims who sacrifice themselves in car bombings and other acts of terror are martyrs and such martyrdom is a sure way to heaven. Islamic jurisprudence, as based on *The Koran*, says something completely different. Unless a Muslim is engaged in Jihad, as defined above, self-sacrifice is anti-Islamic. *The Koran* says "be not cast by your own hands to ruin."¹⁰ Here ruin means oblivious death. In the eyes of Islam, a Muslim killing himself, except in Jihad, dies an apostate or Kafir (non-believer).

Fifth, cooperation in terrorism is anti-Islamic. The likes of Bin Laden believe that financing terror activities is a worthy contribution to the cause of Islam. But *The Koran* says "spend your wealth for the cause of Allah." The terrorists also claim that pan-Islamic cooperation in terrorist activities accords with Islam. It is not so at all, as Islam specifically prohibits conspiring for criminal activities. *The Koran* says, "help ye one another unto righteousness and pious duty. Help not one another unto sin and transgression..."¹¹ The objective of cooperation between Muslims is to attain the common good and to ward off injustice. In this regard, the United States and NATO forces which may become involved militarily in saving the Muslims in Kosovo from genocide inflicted upon them by the Serbs are, under Islamic law, fighters for the cause of Allah, in effect, close allies of the Mujahedeen.

Sixth, Islam puts a high premium on the cause of peace. The terrorists look upon perpetual conflict across frontiers as an endeavor for the sake of God and for the glory of Islam. This view is held by "Al-Qaeda" of Bin Laden, and by other terrorist groups confederated with Bin Laden. Islamic jurisprudence delegitimizes such activities, and criminalizes individuals, groups, and government authorities involved in anti-peace actions. *The Koran* says "as often as they light a fire for war, Allah extinguishth it. Their effort is for corruption in the land and Allah loveth not corrupters."¹² In another verse, it states "and Allah summoneth to the abode of Peace and leadeth whom He will to a straight path."¹³

9. *Id.* At V/32.

10. *Id.* at II/195.

11. *Id.* at V/2.

12. *Id.* at V/65.

13. *The Koran*, *supra* note 8, at X/25.

Seventh, under Islamic law, contracts should always be respected. *The Koran* states, "O ye who believe! Fulfil your undertakings."¹⁴ In Islam, an undertaking is a contract, and the parties must respect a contract thereto, and nobody should interfere with or impede the fulfillment of contracts. The Vienna Convention on Diplomatic and Consular Privileges and Immunities is a treaty (i.e. a contract) which protects the persons in and the premises of all diplomatic and consular missions including the U.S. embassies in Kenya and Tanzania. The terror which was perpetrated against those embassies, and the harm done to the people and properties in those attacks are grave violations of the Kuranic injunction against international violations of and other interferences with contracts. In this regard, the intent to be bound is very important in Islamic law. The Prophet Muhammad said "Deeds are to be judged by intentions, and to everyone should be attributed what he intended to do."

Bin Laden is reported to be implicated in numerous attacks on United Nations peacekeepers in Somalia, namely those who were feeding and protecting Muslims. These peace-keepers were acting within the purview of a United Nations mandate flowing from the U.N. Charter which is another treaty - another contract.

Thus, it should be concluded that all forms of terrorism are, under Islamic law capital offences and their perpetrators are renegades or heretics. The charges against such persons would be based not only on acts of terror, but also on the invocation of God's name for criminal purposes, the deliberate spread of lies or untruths about Islam, and the usurpation of authority to decide and interpret Islamic law. The invocation of Islamic law would constitute a powerful tool in the delegitimization of the Islamic framework within which Muslim terrorists operate and raise funds. It also denies them the competitive advantage in the recruitment of new adherents. The invocation of Islamic law would be of considerable help in the areas of extradition, prosecution and punishment of Muslim terrorists. However, its most immediate effect would be to peel the label of "Muslim" off the perpetrators of this new type of war which goes on under the name of Islam.

V. RESPONSES TO TERRORISM UNDER INTERNATIONAL LAW

Within the general definition of terrorism provided above, international law has dealt with this phenomenon through a variety of instruments. Aside from the U.N. Charter, and resolutions by the United Nations General Assembly and the Security Council, we have numerous multilateral conventions, which specifically prohibit and punish terrorism. Following the hijacking and destruction by the Palestinian Liberation Organization [hereinafter PLO] in the late 1960's and in 1970 of various western airlines, (which prompted King Hussein of Jordan to expel the

14. *Id.* at V/1.

PLO leadership from Jordan in September 1970) a series of international conventions were adopted. Using shorthand for the long titles of these conventions, the following should be cited, The Hijacking Convention (1971), The Sabotage Convention (1971), The Internationally Protected Persons Convention (1973), The Hostage Convention (1979), and The Maritime Terrorism Convention (1988).¹⁵

The acts of retaliation against terrorism are deeply anchored in Article 51 of the U.N. Charter, which *inter alia* states, "nothing in the present Charter shall impair the inherent right of individual or collective self-defense."¹⁶ This article also covers pre-emptive strikes against terrorism which come under the theory of "anticipatory self-defense", although it is not specifically mentioned in it. Nor does this article stipulate either what should a State regard as a threat justifying a response, nor the proportionality of that response. I fully agree with Mr. John Deutch that in the case of universal and catastrophic terrorism which aims at our ability to govern and at the destruction of essential infrastructure, striking at the terrorists does not wait until a definite nexus is established between the terrorists and their actions. In an article in *The New York Times*, Deutch rightly points out that we do not require a standard of proof as in Oklahoma; only an opportunity for the President and his senior team to weigh the information presented to him.¹⁷

As was stated above, Bin Laden has declared a war of genocide against all Americans. The U.N. Convention on the Prevention and the Punishment of the Crime of Genocide, which Afghanistan had signed, states, "the contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law, which they undertake to prevent and to punish."¹⁸ Taliban in Afghanistan has not shown respect for its international obligations under this and other international instruments. This is an abdication of sovereign responsibility, and Afghanistan, under the Taliban who have recently executed nine Iranian diplomats and an Iranian journalist when they captured Mazar-i-Sharif, should be treated as a Barbary State. Under these conditions, law and order should be imposed upon it from the outside until it co-operates internationally the extradition, or the apprehension in prosecution and punishment of all those implicated in this genocidal war against the American people.

The United Nations General Assembly has characterized terrorism as international crime. Following the Achille Lauro Seizure in 1985, the

15. Malvina Halberstam, *How Serious Are We About Prohibiting International Terrorism and Punishing Terrorists*, *THE JEWISH LAW*, at 1-12 (1996).

16. U.N. CHARTER art. 51.

17. Deutch, *supra* note 2, at A15.

18. U.N. Convention On The Prevention and Punishment Of The Crime Of Genocide, Dec. 9, 1948, art. 1, 78 U.N.I.S. 277 (1948).

General Assembly unanimously adopted resolution No. 40/61 also in 1985. After labelling terrorism an international crime, the resolution, in its paragraph 6, called on all States "...to fulfill their obligations under international law to refrain from organizing, instigating, assisting or participating in terrorist acts in other States, or acquiescing in activities within their territory directed toward the commission of such acts."¹⁹ This led Professor Oscar Schachter to conclude that, "the condemnation of international terrorism thus imposes an obligation on all States to take appropriate measures to prevent acts of international terrorism. When suspected terrorists are apprehended the State must either extradite or try and punish them. This obligation, I believe, is now general customary international law."²⁰ It should be noted here that none of the anti-terrorist conventions provide for economic or other sanctions against States assisting terrorism. It was only in 1992 that the Security Council, acting on Libya's refusal to either extradite or effectively prosecute two of its citizens suspected of being the perpetrators of the Lockerbie tragedy in 1987 that sanctions were imposed on Libya, thanks to China's non-use of its veto power. We are now entering upon the era of the International Criminal Court, (ICC), which is a natural progression from the period of ad hoc criminal tribunals in ex-Yugoslavia and Rwanda.

The ICC, whose statute was enacted in Rome on July 17, 1998, promises to be an effective institution in the global confrontation of terrorism under international law. Article I of that Statute provides, inter alia, that "the ICC" shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern and shall be complimentary to national criminal jurisdiction."²¹ This new and permanent institution, which will be linked to the United Nations through a special agreement, and which complements national criminal jurisdictions, will not be a strong court until the United States has signed its Statute.

Pending the coming into force of the Rome Statute of the International Court which was adopted on July 17, 1998, and keeping in mind the requirements of the issues of compulsory jurisdiction, the International Court of Justice, (ICJ) should consider instituting some sort of ICJ jurisdiction for the rendering of preliminary rulings (opinions delivered to other courts to help them decide issues of international law) which have to do with combating terrorism. The non-existence of extradition treaties between the United States and certain powers could be overcome through inter-State agreements to try terrorists before especially-established tribunals such as the ad hoc tribunal envisaged for the trial of the two Libyans suspected of the destruction of PAN AM flight 103 over

19. G. A. Res., 40/61 (Dec. 9, 1985), *reprinted in* 80 ASIL 435 (1986).

20. *See supra* note 1.

21. Rome Statute Of The International Criminal Court, U.N. Doc. No. A/Conf. 183/9, Art.1, (1998), 37 I.L.M. 999 (1998).

Lockerbie, Scotland. When convened, this ad hoc tribunal will be presided over by Scottish judges who will sit in The Hague and try those Libyan suspects under Scottish law.

VI. CONTAINMENT OF TERRORISM THROUGH GLOBALIZATION

Despite the chaotic international environment such as the one we are witnessing now in the post-cold war, terrorism can be contained through globalizing the campaign against it. None of the world's major religions, Islam included, condone terrorism which is one of the most heinous crimes against humanity and human rights. Laws, whether Islamic or international, are but one tool in combating the scourge of terrorism. In his report to the 53rd session of the General Assembly, U.N. Secretary-General referred to the global environment of lawlessness in which terrorism thrives as "the global culture of impunity."²² He added, "individuals everywhere have a responsibility to help defend the ideals of human rights."

At present, the new terrorism feeds on and is fed by this international chaotic environment which manifests a host of ominous characteristics. From Algeria to the Philippines, governments are either quietly appeasing terrorism, are desperately trying to contain it, or have become its havens. Algeria is reported to be only two years away from producing weapon-grade plutonium. Commenting on the Clinton trip to Russia, United States Representative, Lee Hamilton, spoke recently of the "sour mood about Russia in Congress today because of their missile and nuclear help to Iran." This typifies the new international chaotic environment, where one's friends can also be supporters of one's enemies.

As the United States prepared to wage war by proxy against the Soviets in Afghanistan, it undertook to train the likes of Bin Laden. *Le Monde* of August 28, reported on its interview with Bin Laden in 1995, which was released only on August 27, 1998. In that interview, Bin Laden is reported to have said that during the struggle for the liberation of Afghanistan from the ex-Soviet Union, the Saudis chose him as their representative in Afghanistan. He also said the volunteers fighting the Red Army were trained by Pakistani and United States officers, the arms were furnished by the United States and the money came from the Saudis. So the emirs of the Islamic Revolution had a prolonged period of internship with the United States during which they were introduced to United States military counter-insurgency doctrine, weaponry, tactics, and prototypes of command structure.

Pakistan represents another facet of the new chaotic environment. After the euphoria of its nuclear blasts in response to India's blasts, Pakistan is now facing economic bankruptcy and political collapse. Its

22. *Report of the Secretary-General in the Work of the Organization*, U.N. GAOR, 53rd Sess. Supp. No.1, at 24, U.N. Doc. A/53/1 (1998).

Prime Minister, Mr. Nawaz Sharif, who is facing corruption charges, is also facing the dire consequences of the armed forces' Islamization policy of the 1980's. It is no surprise that Mr. Sharif has now called for the establishment of a strictly Islamic State in Pakistan. Commented the *Frontline Post* of Karachi, "Whenever a government finds itself in a pickle, it invariably talks about the Islamization of society." Pakistan, a close ally of the United States and a potential base of United States attacks on the new terror, could become another Afghanistan.

How is Uncle Sam perceived abroad? For the purpose of this topic, the term "abroad" has to be largely confined to the Third World, especially its Islamic area. The September 1998 issue of the *World Press Review* summed up the answer to this question in these words, "Not only is the U.S. the 800-pound gorilla in the neighborhood, it is arguably smug, arrogant, self-centered, unpredictable, and occasionally just plain wrong."

Such a negative assessment is perhaps unavoidable. In the post-cold war period, the United States has become the only super-power, but has not yet adjusted to its proper role in a unipolar world. Its foreign policy is largely reactive not creative. In the Third World, friends of the United States are not only under pressure internally because of that friendship; internal pressures are also generated by corruption at the highest level of government and by the systematic denial of human rights. The United States seems to put more premium on the stability of regimes than on ethics and the application of due process abroad. The phenomenon of the Shah of Iran, Marcos of the Philippines, and Suharto of Indonesia is plain for all to see. No wonder that the slogan of "Islam is the Answer," which, among other things, is an anti-corruption slogan for millions, causes deep apprehension in Washington, D.C. and in the west in general.

When the United States acted in self-defense in response to the attacks on the embassies in Africa, there was not much elation in either Kenya or Tanzania. The reasons are rather complex. But the most obvious of these is the anger of the Kenyans and the Tanzanians for what they perceived as United States callousness during the rescue operations. The Kenyans witnessed United States concentration on America's dead and wounded. The United States Marines are reported by the *Economist* of August 22, 1998 to have prevented Kenyans from entering the Nairobi embassy compound "to reach victims buried in the rubble of the collapsed building next door." In a non-diplomatic and insensitive response, United States Ambassador Prudence Bushnell justified that Marine action as an act of guarding the embassy against looters. The populace took that as a collective insult. It was too late for Secretary Albright to repair the damage even when she acknowledged in Nairobi that the American personnel "had mishandled things."²³

23. *The Economist*, August 22, 1998, at 36.

As could be expected, the United States retaliatory strikes were greeted derisively by both Khartoum and Kabul. That reaction was obviously motivated by nationalistic fervor. But it also had a substantive international reason. The United States has so far refused to endorse the call by Khartoum for an international inquiry into the veracity of the Sudanese claim that the factory, which was hit, was a medicine factory with a United Nations contract. This was seized upon as proof of United States arrogance and deception. Hassan Al-Turabi, the Islamic Guide of the Sudanese government, appeared on CNN on August 25, 1998, and referred to President Clinton's problems in the Lewinsky affair as follows, "a President who lied to his wife, could lie to the entire world." Since perception and reality sometimes merge, we have to take it into account in preparing for a global effort directed against terrorism.

Opening the 53rd Session of the United Nations General Assembly on September 21, 1998, Secretary-General Kofi Annan said, "Terrorism is a global menace which clearly calls for global action. Individual actions by Member states, whether aimed at State or non-State actors, cannot in themselves provide a solution. We must meet this threat together."²⁴ Nearly all the Islamic States were vociferous before the same General Assembly session in condemnation of terrorism. The Foreign Minister of Egypt, a country, which lost Sadat and nearly lost his successor Mubarak as well to terrorism, described it as an "international crime against all societies."²⁵ And President Clinton stated before the same session of the United Nations General Assembly that "it is a grave misconception to see terrorism as only, or even mostly, an American problem."²⁶ Then he went on to say: "Some may have the world believe that Almighty God Himself, the merciful, grants a license to kill; but that is not our understanding of Islam."²⁷

Islamic law, although based on general principles, punishes terrorism severely and maximally. In the global combat against terrorism, it is important to note that Muslim perpetrators of terror regard international law, including the United States Charter, as a Western invention and a colonial device. Therefore they should be always be confronted with Islamic law which regards terrorism as a crime and views terrorists as apostates. Under Sharia, the punishment of apostasy is death.

In globalizing our efforts to confront terrorism, we should bear in mind that terror has an address; - namely the Host State. In the case of Al-Qaeda of Bin Laden, the Taliban of Afghanistan, which misguidedly prides itself on practicing strict Islam, should be made to bear the full responsibility for the Bin Laden actions. To seize and hold a border

24. U.N. Doc., A/53/PV. 007, (1998).

25. U.N. Doc., A/53/PV. 015, (1998).

26. See *supra* note 24.

27. *Id.*

province of Afghanistan by a pan-Islamic military force made up, for example of Saudi, Turkish, Egyptian and Pakistani contingents, supported by the United States and NATO, would represent a continuous humiliation of the Taliban until the Bin Laden problem is solved through extradition or effective and internationally-supervised prosecution. Intelligence coordination, especially with the participation of the recently established Pan-Arab Conference of Ministers of the Interior, should be embarked upon as an important element of globalizing the anti-terror campaign. The launching of media campaigns and international seminars in which Muslim scholars from prestigious institutions such as Al-Azhar University of Cairo, Egypt, (the oldest Islamic University in the world), as well as leaders of regional organizations such as the Conference of the Islamic Organization would expound on the apostasy of the so-called Muslim terrorists, would be a powerful mechanism. The eventual success of peace between the Palestinians and the Israelis would constitute an immense boost in the global campaign against terror.

The world confrontation against terrorism should also take into account the socio-economic causes of terrorism where poverty, hopelessness, and the non-observance of human rights drive young people in the arms of terrorism where they find communal support, an identity and a cause through which they vent their anger through the heinous crime of terror.

References have been made to the general debate with which the United Nations General Assembly began its 53rd session in September 1998 at United Nations Headquarters, New York. The relevance of the statements made by the foreign ministers of Arab and Muslim Member States to this topic is that they are a barometer of the readiness of those States to act in concert with the United States and other regions of the world to combat terrorism globally. From those statements, it appears that the time is ripe for the United Nations to act positively on the call by Egypt to convene a world summit on terrorism with a view to globalizing the campaign against terrorism. A few examples of these statements should suffice to convey the sense of readiness of members of the League of Arab States, the region most directly at present involved in and impacted by the terror phenomenon. Kuwait declared that it supports "all collective international efforts to confront this phenomenon."²⁸ The United Arab Emirates pointed out "combating this dangerous phenomenon should not be carried out on a unilateral basis,"²⁹ and Yemen stressed that terrorism "has become an international phenomenon. It concerns all nations and peoples, and there is a pressing need for the international community to respond immediately."³⁰ The Chief Delegate of Saudi Arabia condemned

28. U.N. Doc. A/53/PV.016 (1998).

29. *Id.*

30. *Id.*

globalized terror in these words, "Violence and terrorism are universal phenomena rather than the characteristics of a certain people, race or religion. Precisely because of the comprehensiveness and universality of terrorism, the only way to combat it is through a unified and collective international action, within the framework of the United Nations."³¹

With the backing of the Non-Aligned Movement summit in South Africa in September 1998, President Mubarak of Egypt issued a call for a summit on terrorism under the auspices of the United Nations was very specific. Amre Moussa, Egypt's foreign minister told the United Nations General Assembly later that month, "I find it important also in this connection to put before the Assembly the call of President Hosni Mubarak to convene an international summit under the auspices of the United Nations. The summit should direct the international community to deal with terrorism legally, politically, economically, and technologically. This call was supported in the final communiqué of the recent non-aligned summit. I suggest that the General Assembly consider the Egyptian call to the proposed summit. I also call upon the Secretary-General to start working towards its convening."³²

Simultaneous with the urgent need to convene such a summit whose anticipated declaration would add immeasurably to the growing body of international conventions on terror, the United States with a view to a successful globalization of the fight against terrorism through, among other mechanisms, regional coalitions, should respond to the call of the Sudan for an international inquiry into the United States attack on the Al-Shifa pharmaceutical factory on August 20, 1998. That call for an inquiry has been supported by broad sectors of the international community.³³

Undoubtedly, self-defense actions violate the national sovereignty, and, at times, the territorial integrity of the State targeted for such action.³⁴ Self-defense has a legal dimension, which, in my advocacy of globalizing the response to terrorism, cannot be lost sight of. However, global terror must be viewed as a global emergency under the threat of such an emergency, nationally and internationally, the requirements of necessity, especially in the context of an alliance, a concert of nations or a resolution of either the United Nations Security Council or General Assembly criminalizing the action or non-action of the targeted State, should prevail.

31. U.N. Doc. A/53/PV.020 (1998).

32. See *supra* note 25.

33. U.N. Doc. A/53/PV.019 (1998).

34. A lively discussion of the issues of "necessity" and sovereignty took place on October 6, 1998 at the Columbia University Seminar on the problem of peace where I was the presenter under the Seminar leadership of Professor Oscar Schachter. I would like to acknowledge with gratitude the contribution made to the final draft of this article by those comments as well as by questions raised at an earlier presentation which I made on September 4, 1998 at the Nova Southeastern University Shepard Broad Law Center, Fort Lauderdale, Florida, at a faculty and students meeting convened by Professor James Wilets.

With these considerations in mind, self-defense in international law as applicable to the globalized war on terrorism approximates the same right in municipal law. The ultimate message of the evolving rules of international law, in response to this new threat to global law and order which terrorism represents, is as Professor Malvina Halberstam states "that terrorism is a crime and that those responsible will be tried and punished."³⁵

In this context, and taking into account both the havoc caused by terrorism across frontiers, and the chaotic international environment which prevails at present, I am inclined to accept the premise of what a former Secretary of State of the United States Dean Acheson, is reported to have said, "The survival of States is not a matter of law."³⁶

35. *See supra* note 15.

36. *See supra* note 1, at 136.