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Non-Linearity of Engagement

Transnational Armed Groups, International Law, and the Conflict between Al Qaeda and the United States

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Executive Summary

The conflict between Al Qaeda and the United States illustrates the evolution of warfare in three respects.

- First, in an effort to compensate for the disparity in logistical military capability, a non-state actor party to an international conflict has sought to expand the platform of combat, regarding disparity of forces not as a deterrent but as an opportunity. This has implied the expansion of the panoply of means at the disposition of Al Qaeda; not merely terrorism but the full range of kinetic force to influence its enemy.

- Second, a non-state armed group, whose membership transcends borders and nationality, has declared war on a state and its citizens, regarding war as retaliation for what can be termed 'privatized collective responsibility.' Al Qaeda estimates that the citizens of the countries with whom it is at war bear a responsibility in the policies of their governments. Such democratization of responsibility rests, it is argued, in the ability that citizens of the enemy state have to elect and dismiss the representatives which take foreign policy decisions on their behalf.

- Third, a political movement with a demonstrated military ability has sought to overstep the state while co-opting the latter's attributes and channeling its resources. In that sense, Al Qaeda's is a claim to circumvent statehood, and particularly its monopoly over legitimate violence.

The leading conflict of our time takes the form of war between a major state (and allies) and a group of a few thousand individuals harboring a perceived right of self-defense that is substituted for statist authority. Al Qaeda's actions alter the grammar of the existing international relations regime thus:

- the geographical indeterminacy of the group's action speaks of the dissolution of territorial power;

- Al Qaeda's pretension has an important twofold implication for enduring principles of international humanitarian law, namely the obliteration of the combatant/civilian status categories and the refusal to distinguish between civilian and military targets; and

- a rational disputation has arisen whereby the authority to fight may no longer be related to the state authority that governs lawfully, and the will and power to act militarily is affirmed by a private entity.

Claiming a valid *jus ad bellum* case, Al Qaeda sets itself as deciding war as a proper authority whose just cause is a case of self-defense. Permissible warfare is channeled within (i) aggrandizement of the principle of necessity, (ii) literalization of civilian responsibility, and (iii) tactical instrumentalization of technological imbalance. Coming to grips with such metamorphosis of offense means acknowledging the logic in which terrorism is used as a method of warfare, according to a principle of indiscrimination whose rationale is negation of the notion of innocence of the civilian population, and imputation of collective responsibility.

Al Qaeda is an industrious, committed, and power-wielding organization waging a political, limited, and evasive war of attrition — not a religious, open-ended, apocalyptic one. Since its creation, it has implemented a clearly articulated policy, skillfully conducted complex military operations, and demonstrated strategic operational flexibility. Of late, this versatile transnational phenomenon has exhibited an ability to operate innovatively amid heightened international counter-measures. The organization has also suffered setbacks, chiefly the loss of Afghanistan as an operational base and the arrest or death of several key figures.

The sophistication of Al Qaeda's military operations grew steadily throughout the 1990s culminating in the September 2001 attacks on the United States. With the wars in Afghanistan and Iraq, Al Qaeda's forces have been reallocated by way of an elastic defense relying on mobile forces, which was paralleled by a scaling up of international operations and an investment in global tactical relationships. Al Qaeda's leadership has encouraged the proliferation of mini-Al Qaedas; groups that would be loosely connected to a 'mother Al Qaeda' (*Al Qaeda al Oum*), but which would be independent and viable enough to act on their own within a regional context.

In the past two years, Al Qaeda has reoriented its strategic and tactical direction, and mutated from a hierarchical to a decentralized, multicentric organization. The relocation and repositioning of its forces have gone in hand with a newfound emphasis on its politico-diplomatic message. Ever borrowing attributes of the state, Al Qaeda al Oum has struck private and public alliances, offered truces, impacted on elections, developed an economic discourse, and, overall, gained international stature beyond a mere security threat.

In the next phase, both soft and hard targets will, in all likelihood, continue to be targeted by Al Qaeda through the use of well-honed, low-cost, high-impact operations. A repeat of an assault such as the September 11, 2001, March 11, 2004 (Madrid), or July 7, 2005 (London) operations may also be attempted, though it will be more difficult to achieve.

The challenge represented by the newness of this global transformation is reinforced by analytical shortcomings. Partaking of a larger, problematic pattern of misrepresentation of the nature of the organization, Al Qaeda's war on the United States remains documented inadequately and presented as resistant to explanation. Overwhelmingly martial, scholarship on this question is overly concerned with the group's alleged irrationality, fundamentalism, and hatred. These conceptions, which have achieved normative supremacy in key policy quarters, continue to color the cognitive scenery. The persistence of misconceptions also represents a strategic consensus, which rests on the group's improbable eradication or ideological conversion.

The minimizing of Al Qaeda's political discourse, in favor of overemphasized religious views, sidesteps the reasons at the core of the discord and disagreement. Al Qaeda's war is waged for declared political goals. Since the September 11, 2001 attacks, the leadership of Al Qaeda has issued thirty-two messages in which a threefold demand has been rehearsed steadily, namely that the United States ends (i) its military presence in the Middle East, (ii) its uncritical political support and military aid to Israel's occupation of Palestinian territories, and (iii) its sponsoring of corrupt and repressive regimes in the Arab and Muslim world. These pronouncements followed an insistent logic in which U.S. policies in the Middle East were regarded as constitutive of a *casus belli*. In the event, Al Qaeda is taking in its hands not so much weapons and the recourse to violence, but the conduct of regional foreign policy.

How can the war between Al Qaeda and the United States be brought to an end? The United States will not be able to overpower a diffuse, ever-mutating, organized international militancy whose struggle enjoys the rear-guard sympathy of large numbers of Muslims. Correspondingly, Al Qaeda can score tactical victories on the United States and its allies but it cannot rout the world's sole superpower.

Can political engagement be considered? Besides lives and time, what would the belligerents gain through this notional transaction? What avenues can be legitimately and meaningfully explored? There are incentives (historical precedents and statements by Al Qaeda) and disincentives (both parties are stronger and neither is under particular pressure to end the conflict rapidly).

Though dismissed widely, a measure of congruity may be inevitable for the resolution of the conflict. The sum total of the textual evidence and sober analysis indicates that Al Qaeda would conceivably cease hostilities against the United States, and bring an end to the war it declared against that country in 1996 and in 1998, in return for some degree of satisfaction regarding its political grievances. Absent such dynamic, the conflict will persist in its current violent configuration.

Introduction

In the wake of the September 11, 2001 attacks on New York and Washington, a uniform discourse has emerged as regards the nature of the war pitting the United States government against the transnational armed Islamist group known as Al Qaeda. This dominant perspective has presented the fundamental parameters of the conflict as an open-and-shut matter of 'good' versus 'evil.' As the war is about to enter its fifth year since the battle was joined fully and eighth since hostilities were declared formally, and no elements of twilight have materialized, dogmatic scholarship and trenchant practice continue to depict non-military engagement with Al Qaeda as improper and unnecessary. Via this autopsy, revelation of the purpose and structure of Al Qaeda are crudely mechanistic.

The results of this struggle of epochal significance cannot be overstated. In less than five years, the world order has been reshaped and paradigmatic shifts introduced in the constituent parts of the international system, now through the adversaries' avowed actions, now by way of their antagonistic interaction.

Among the key unresolved legal and policy questions, the nature of the war waged by Al Qaeda remains misunderstood. Marked by a persistent failure to try and understand, the majority of analyses within academe and journalism have been ideological and polemical. Overwhelmingly, the issues are not spoken of in an objective, scientific mode. Alongside the conspicuous absence of a precise topos and the proliferation of dichotomous analyses, reification of one of the belligerents is linked intimately to its vilification. A central contradiction of this discourse is that Al Qaeda is presented simultaneously as but a terrorist group that must be apprehended and a new entity that calls for special measures and novel categories (e.g., "illegal combatants").

Such undifferentiated understanding may, however, be but a transitive phenomenon. Increasingly, the nature of the contest is calling for a reassessment of the basic categories at hand. To wit, historical precision, analytical perspicacity, and empirically-based information indicate that Al Qaeda's is a formulation hitherto unknown, essentially the result of a natural cumulative evolution and an insistent logic of discourse and practice.

Al Qaeda is an industrious, committed, and power-wielding organization waging a political, limited, and evasive war of attrition — not a religious, open-ended, apocalyptic one. Over the past ten years, Al Qaeda has implemented a clearly articulated policy, skillfully conducted complex military operations, and demonstrated strategic operational flexibility. Of late, this versatile transnational phenomenon has exhibited an ability to operate innovatively amid heightened international counter-measures.

Al Qaeda is waging a political, limited, and evasive war of attrition – not a religious, open-ended, apocalyptic one.

To be certain, the novelty of the role played by Al Qaeda has been stated resoundingly, but it has not been fully understood, debated, and analyzed with a view to inform an international policy and legal environment wherein hyper-power begat hyper-reaction. The cumulative effect of these complex, ongoing processes has generated a situation where, in particular, satisfactory explanations of the question of causation remain elusive. Therefore, it is imperative to subject Al Qaeda to rational analysis and consider, constructively and creatively, its principled political action and symmetrical compulsion.

Changed Context

The post-Cold War era was marked by a breakdown in international rules organizing the use of force. With all its violence and potential for nuclear war, the Cold War had the virtue of controlling the flow of violence.[1] It represented a visible edifice of antinomian forces whose waning led, in particular, to a transformation in the way conflict is channeled, conducted, and justified. "At the beginning of the Cold War, that regime stressed the inviolability of obligations in accordance with the norm *pacta sunt servanda* (treaties are binding). By the last decade of that conflict, there was increased support for the legal doctrine of *rebus sic stantibus*, which terminated agreements if the circumstances at the time of the signing no longer obtained."[2]

This vista of thinking ushered a period propitious to the rise of a multicentric, interdependent world with emancipated transnational actors. The previously stalemated international scene was transforming. A shift to a new paradigm, whose basic assumption was that if state practice could be modified so could sub-state one, occurred. In that context, Al Qaeda was born following a modern systemic standard of political and militaristic organization.

Latterly, the world has emerged from the immediate post-September 11 period and the 2001-2003 wars in Afghanistan and Iraq only to enter the longer term, historical 'post-9/11 era,' the characteristics of which are fourfold: (i) the transformation of the temporal and spatial elements of conflict, (ii) the mutation of the belligerents' identity, (iii) the expansion of the nature of targets (now encompassing political, social, and cultural symbols), and (iv) the systematization of privatized asymmetrical warfare (expressed on the mode "our security depends on the insecurity that we can inflict upon you").

A new conflict paradigm

From the very beginning, the nature of the conflict being simultaneously born and revealed in September 2001 was murky, thus allowing a sense of exceptionalism and derogation to develop. In simple terms, two schools came to offer different answers to the question of whether international humanitarian law was relevant to the "war on terror." While one argued that the world had changed, that there was a new architecture limiting the application of the 1949 Geneva Conventions, another maintained that large-scale terrorism was nothing new, and that greater magnitude did not imply a shift of paradigm.

Admittedly limited and potentially a rule-proving exception, Al Qaeda's singularity indicates, nevertheless, a genuine departure from the existing state-centered conflict paradigm. What is more, such departure is conceived, enacted, and reflected upon in a conscious and forward-looking manner by the actor itself. Therefore, "conceiving of Al Qaeda as a traditional terrorist group construct and something that can be conventionally defeated,"[3] is an analytical position no longer tenable in the face of a factual assessment of the impact of this group on early twenty-first century warfare.

The current conflict between Al Qaeda and the United States illustrates vividly the evolution of warfare in three respects.

First, in an effort to compensate for the disparity in logistical military capability, a non-state actor party to an international conflict has sought to expand the platform of combat, regarding disparity of forces not as a deterrent but as an opportunity. The sub-state actor is positioning itself consciously on different planes of the power continuum. Inasmuch as it no longer functions on a straightforward plane of quantitative advantage, disparity has come to imply the expansion of the panoply of means at the disposition of Al Qaeda; not merely terrorism but the full range of kinetic force to influence its enemy.

[1] Emran Qureshi and Michael A. Sells, eds., *The New Crusades – Constructing the Muslim Enemy*, New York: Columbia University Press, 2003, p. 11.
[2] David Jablonsky, *Paradigm Lost? Transitions and the Search for a New World Order*, Westport, Connecticut: Praeger, 1995, p. 55.
[3] Jason Burke, *Al Qaeda – Casting a Shadow of Terror*, London: I.B. Tauris, 2003, p. 17.

Such new generation of warfare is referred to as asymmetric. William S. Lind explains that, "in broad terms, [it is] likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between 'civilian' and 'military' may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity."[4]

A non-state armed group, whose membership transcends borders and nationality, has declared war on a state and its citizens, regarding war as retaliation....

Asymmetry spells, moreover, a disinclination to prosecute wars swiftly — which, from *Blitzkrieg* to 'Shock and Awe,' has been the preferred approach of states. It entails, in particular, a systematic deceleration of the use of force on the part of the non-state armed group. As Herfried Münkler noted, "asymmetrical warfare, the salient feature of the new wars in recent decades, is based to a large extent on the different velocities at which the parties wage war on each other: asymmetries of strength are based on a capacity for acceleration which outstrips that of the enemy, whereas asymmetries of weakness are based on a readiness and ability to slow down the pace of war."[5] The point deserves some emphasis that spatio-temporal non-linearity of engagement serves principally to detach the armed group from vulnerability and permanent exposure to its more powerful, lawful government enemy.

Similarly, "the rule of proportionality and its related prohibitions are often hard to discern in the way that the asymmetric and often internal conflicts of new wars are conducted. Extremists on either side are prone, as we have seen, to contemplate the use of any means to secure their overriding purposes…. Violent acts falling outside those permitted in war are therefore regarded as breaches of the rules of war or simply as crimes…. This implies that if we are to discern the rule of proportionality and its relations operating in new wars we must be able to regard them as properly wars, and not just outbreaks of uncontrolled violence between conflicting parties."[6]

War is indeed, first and foremost, organized violence between political units. For all its novelty, far from being an aberration or an anomaly, Al Qaeda's war is the outcome of a natural development whereby the perceived failure of particular states to act on behalf of populations and their interests has led to the coming into existence of a regional entity seeking to undertake those martial responsibilities. Cast in such light, Al Qaeda's is a claim to circumvent statehood, and particularly its monopoly over legitimate violence.

Second, a non-state armed group, whose membership transcends borders and nationality, has declared war on a state and its citizens, regarding war as retaliation to what can be termed 'privatized collective responsibility.' According to this argument, civilians are considered to be involved tangentially in the conflict (as accessories to the fact of perceived political hostilities). This contention marks a significant departure from the notion of 'belligerent reprisals.' While the latter — understood as measures taken by a Party to a conflict that are otherwise unlawful but enacted in response to violations of international law by the adversary — are construed as regulated exceptions to the rule, Al Qaeda's novel principle of indiscrimination alters the parameters of international humanitarian law and indicates its compliance limits. As Paul Gilbert notes, "whereas in old wars non-combatants and combatants *hors de combat* are not to be targeted because they do not,

[4] William S. Lind et al., "The Changing Face of War: Into the Fourth Generation," *Marine Corps Gazette*, October 1989, p. 23. Another analyst suggests that Al Qaeda's war is a harbinger of a fifth generation of warfare. See Richard Bonney, *Jihad - From Quran to Bin Laden*, New York: Palgrave Macmillan, 2004. Bonney argues that "what needs to be clearly understood [is that] it is not necessarily technological innovation, but ruthlessness and cost-effectiveness (to the terrorist) that characterizes 'fifth-generation' warfare" (p. 376). Similarly, Lt. Col. Thomas X. Hammes points out that the most commonly cited reason of generational change in warfare is technology. Yet, he notes, "while technological changes clearly have a major impact, attributing the generational changes in warfare primarily to technology oversimplifies the problem. The true drivers of generational change are political, social, and economic factors." See "The Evolution of Warfare: The Fourth Generation," *Marine Corps Gazette*, September 2004, www.d-n-i.net/fcs/hammes.htm.
[5] Herfried Münkler, "The Wars of the 21st Century," *International Review of the Red Cross* 85, 849, March 2003, p. 9.
[6] Paul Gilbert, *New Terror, New Wars*, Edinburgh: Edinburgh University Press, 2004, p. 89.

by their intentional actions, obstruct military operations to secure territory, in new wars they may be just as implicated in the supposed injustice the war is intended to rectify as are their soldiers in action."[7]

Al Qaeda estimates that the citizens of the states with whom it is at war bear a responsibility in the policies of their governments.

The upshot of this depiction is that Al Qaeda estimates that the citizens of the states with whom it is at war bear a responsibility in the policies of their governments. This contention was stated straightforwardly in an interview granted by Osama Ben Laden to ABC journalist John Miller in May 1998: "Any American who pays taxes to his government is our target because he is helping the American war machine against the Muslim nation…. Terrorizing oppressors and criminals and thieves and robbers is necessary for the safety of the people and for the protection of their property…. They have compromised our honor and our dignity and dare we utter a single word of protest, we are called terrorists. This is compounded injustice."[8]

Such *democratization of responsibility* and the licitness of the killing rest, it is argued, in the ability that citizens of the enemy state have to elect and dismiss the representatives which take foreign policy decisions on their behalf. In the aforementioned ABC interview, Ben Laden added: "We fight against their governments and all those who approve of the injustice they practice against us…. We fight them, and those who are part of their rule are judged in the same manner." The argument was restated unambiguously by Ben Laden in November 2002: "By electing these leaders, the American people have given their consent to the incarceration of the Palestinian people, the demolition of Palestinian homes, and the slaughter of the children of Iraq. The American people have the ability and choice to refuse the policies of their government, yet time and again, polls show the American people support the policies of the elected government…. This is why the American people are not innocent. The American people are active members in all these crimes."[9] In that sense, Al Qaeda's strategy is one of liberalization and expansion of the domain of conflict. Equally, it renders immaterial the Arab and Islamic governments that are qualified theoretically to address these grievances, and it seeks to engage directly with the people of the states concerned, whom it considers co-responsible for their governments' actions.

On that basis, Al Qaeda claims a valid *jus ad bellum* case. Dismissing, in the same vein, Arab and Muslim governments (and noting the security inefficacy of their structures of authority perceived to be assisting the enemy), it sets itself as deciding war as a *proper authority*[10] — the legitimacy of which is anchored in public support — whose just cause is a case of *self-defense* in the face of American "aggression" (i.e., war as punishment for the oppression of Muslims). The group affirms a *right intention* of restoring peace in the region. Noting the nature of American operations, it claims to be acting in *proportionate response* and as a *last resort*.

Third, as a political movement with a demonstrated military ability, Al Qaeda has sought to bypass the state while co-opting strategically the latter's attributes and channeling tactically its resources. The identity of the actors partaking of new conflicts has, in effect, mutated rendering identification more difficult. For Jean-Jacques Rousseau, war occurred — two hundred and forty years ago — not between man and man, but between states. The individuals who became involved in it were, argued the Swiss philosopher, enemies only by

[7] Gilbert, *New Terror, New Wars*, p. 10.
[8] Osama Ben Laden, interview with John Miller, ABC, May 1998. The full text of the interview is available at www.pbs.org/wgbh/pages/frontline/shows/binladen/who/interview.html.
[9] Osama Ben Laden, "Letter to America," November 24, 2002, http://observer.guardian.co.uk/worldview/story/0,11581,845725,00.html.
[10] As Gilbert notes, "authority to fight involves two aspects. One is that those who fight should be under effective control so that the rules of war, in particular those designed for the protection of civilians, should be observed…. The second aspect of authority is that of being in a position to decide to go to war, that is to say, to determine whether one's purposes in doing so would be appropriate ones," adding that "the problem with these conclusions is that they do not seem to touch the Islamic revolutionaries' own conception of what gives them authority to fight and what makes their intentions the right ones; and this raises questions, of course, about the applicability of just war theory across cultural boundaries." See Gilbert, *New Terror, New Wars*, pp. 28-29 and 41.

accident.[11] Contrapuntally, the leading conflict of our time takes the form of war between a major state and a group of a few thousand individuals. To be certain, the latter spring from states, which they in turn, for the most, have fought and sought to reform violently. Yet force is their *ultima ratio*, and legitimate force proceeds from a perceived right of self-defense which is substituted for statist decisive authority.

Thus, Al Qaeda's war simultaneously casts shafts of light on challenges to the manner in which the existing corpus of international law seeks to regulate warfare and epitomizes a return to stripped-down concepts of opposition. One analyst remarks: "War exists when a political entity attempts to compel an enemy by force — irrespective of whether this force complies with regulatory laws created by man or meets a specific juridical definition. Man's law is an artificial construct. It is not an immutable law, such as the law of physics, and hence a man's law may be (and often is) ignored or broken. The principles of warfare, on the other hand, apply whether man recognizes them or not. They apply whenever war exists and, therefore, are not considered normative."[12]

However, scant attention is paid to these dimensions, and discussion of Al Qaeda's *jus ad bellum* argument continues to be marred by doctrinal insistence on its illegality. This, it appears, may no

Table 1: The Post-9/11 Warfare Context

Traditional Conflict Paradigm	New Conflict Paradigm
Specific moment and place *Encounter on a battlefield*	Enlargement of the spatial dimension *Geographical indeterminacy of theatre of operations*
Sharply-etched sequential timeframe *Recognizable beginning and end of engagement*	Transformation of the temporal element *Simultaneous multiplicity of points of interaction; Concurrent acceleration and deceleration of engagement*
Well-defined actors *Soldiers (as state agents), civilians*	Mutation of the belligerents' identity *Obliteration of combatant/civilian categories*
Armies attacking armies *Military targets, siege warfare, proportionality*	Expansion of the nature of targets *Increasing blending of civilian and military targets*
Traditional weaponry *Targeted use of kinetic force*	Systematization of asymmetrical warfare *Amplification of the platform of combat; Weaponization of civilian assets*

[11] Jean-Jacques Rousseau, *The Social Contract*, Charles M. Sherover, ed./trans.New York: Meridian, 1974., chapter 4. Rousseau writes: "War, then, is not a relation between man and man, but a relation between state and state, in which individuals are enemies only by accident, not as men, nor even as citizens, but as soldiers; not as members of the fatherland, but as its defenders. In short, each state can have as enemies only other states and not individual men, inasmuch as it is impossible to fix any true relation between things of different natures. This principle is also comformable to the established maxims of all ages and to the invariable practice of all civilized peoples."

[12] Donald J. Hanle, *Terrorism – The Newest Face of Warfare*, London: Brassey's, 1989, p. 9. In the current context, some analysts have argued that without meaningful reform, the law of war is "flirting with irrelevance." See Tomas Valasek, "New Threats, New Rules," *World Policy Journal* 20, 1, Spring 2003, pp. 17-24. For a different view, emphasizing the challenge of implementation, see Gabor Rona, "Interesting Times for International Humanitarian Law: Challenges from the 'War on Terror'," *The Fletcher Forum of World Affairs Journal* 27, 2 Summer/Fall 2003, pp. 55-74.

longer be tenable in light of contradictions in the scholarship and practice underscoring this view. "Is it armed action by sub-state actors per se that is objected to as somehow a threat to human rights? Surely not, for sometimes such action is undertaken to defend them. Is it specifically sub-state action across international boundaries? This too is sometimes claimed to be defensive and not without reason. Is it sub-state action that destabilizes the borders within which law and order can be maintained? Again not, as there is a wider tolerance, on broadly liberal principles, of self-determinative struggles which have this effect than might otherwise seem desirable."[13]

Recognition of the paradigm change unfolding before us has become imperative. A paradigm is composed of a set of assumptions that form a persistent representation of an order. Failure of the representations associated with these assumptions leads normally to its reconsideration. In effect, "how analysts think about change and continuity shapes what they look for, and what they look for affects what they find…. A paradigm does not provide answers; it is not knowledge itself. Instead it holds the promise of answers."[14] Paradigms of law and war inform the changing understanding of mutating international affairs regimes where neither full continuity nor complete change obtain. In the case at hand, the correlation of forces, the nature of the wills clashing, and the adherence, and lack thereof, to particular normative values underscoring the existing configuration of the international legal and power order call for new organized propositions to depict and understand objectively such *bellum novae*.

A new type of actor

A key prerequisite for the modification of a paradigm is the introduction of actors triggering ostensible change in the fundamental dynamics of a given system. Al Qaeda is one such actor and its actions alter the existing international affairs regime in three main respects.

First, the geographical indeterminacy of the group's action speaks of the dissolution of territorial power. With the transformation of the spatial dimension, the theater of conflict has become global and points of interaction multiple. Al Qaeda and the United States are clashing simultaneously in the United States, the United Kingdom, Afghanistan, Iraq, Kenya, Spain, Indonesia, Tanzania, Saudi Arabia, Pakistan, Turkey, Yemen, and elsewhere.

Second, the strategy devised and adopted by Al Qaeda marks the escalation of militarization on the part of a non-state actor with a redirecting of its effort to the center of the political sphere.[15] Categorically speaking, "war is an act of lethal force between organized political entities for the purpose of achieving political goals by compelling an enemy to modify or surrender his own political objectives through weakening or destroying his will to resist."[16] Be that as it may, Al Qaeda's *modus operandi* has an important twofold implication for enduring principles of international humanitarian law, namely the obliteration of the combatant/civilian status categories and the refusal to distinguish between civilian and military targets. The strategy underscores specifically suicide bombings as a feature of modern conflicts that can be about retribution and restoring justice. A young Palestinian explains: "I know I cannot stand in front of a tank that would wipe me out within seconds, so I use myself as a weapon. They call it terrorism. I say it is self-defense."[17]

Third, the will and power to act militarily is claimed legitimately by a private entity. In other words, in the face of perceived oppression, a rational disputation arises whereby the authority to fight may no longer be related to the state authority that governs lawfully. The impetus for

[13] Gilbert, *New Terror, New Wars*, p. 122.
[14] Jablonsky, *Paradigm Lost*, pp. 3-4.
[15] Such escalation plays out, as a pattern, elsewhere. Hence, on November 7, 2004, the Lebanese Islamist group Hizballah successfully flew an unmanned aerial vehicle (UAV) over Israel. See Arieh O'Sullivan, "Hizbullah Drone Enters Israeli Airspace," *The Jerusalem Post*, November 8, 2004.
[16] Hanle, *Terrorism*, p. 11.
[17] Hala Jaber, "Inside the World of the Palestinian Suicide Bomber," *The Times* (London), March 24, 2002, p. 24. The stigmatization of suicide attacks only stifles debate. As Mahmood Mamdani notes, "we need to recognize the suicide bomber, first and foremost, as a category of soldier." See Mamdani, *Good Muslim, Bad Muslim – America, the Cold War, and the Roots of Terror*, New York: Random House, 2004, p. 222.

Table 2: Al Qaeda's Non-Linear War

Motive	Self-defensive, punitive retaliation to aggressive policies
Rationale	Principle ①: Indiscrimination (privatized collective responsibility) Principle ②: Substitution (bypassing the state's monopoly of legitimate violence)
Strategy	Instrumentalization of technological imbalance (disparity of forces as opportunity rather than constraint)
Tactics	• mobilization of combatants across boundaries • cell structure and spin-off groups • use of high-profile civilian assets (airplanes, commuter trains, buses)

such *captation de fonction* is twofold. It comes, on the one hand, from an objective evolutionary continuity beyond the values of the group, and, on the other hand, from a force-extender subjective principle of sense of injury. Among the logical concomitants to such an approach is a conscious confusion of the two modes that speak to the manner war is conceived of, namely a maximization of moral force, which is "the ability to resist demoralization and to initiate and sustain combat in the face of great personal danger. The elements of moral force are nebulous and much more difficult to quantify than the elements of physical force."[18]

In this respect, Al Qaeda is a sub-state, international armed group that is making a claim to a legitimate war against a group of countries. That pretension regards the use of indiscriminate force against civilians belonging to those countries, and those who publicly associate themselves with their authorities, as an acceptable method of warfare.

From the point of view of Al Qaeda, the policies enacted by the United States in the Middle East constitute a *casus belli*. The reactive war is waged to redress an injury, but also to recover territorial property (Saudi Arabia, Palestine, Iraq). It is also presented as a struggle against *dhulm* (injustice, offense) and therefore as mere retaliation in the face of provocations. Ben Laden was explicit on this issue in his 1998 interview with ABC: "It is not enough for their people to show pain when they see our children being killed in Israeli raids launched by American planes, nor does this serve the purpose. What they ought to do is change their governments which attack our countries. The hostility that America continues to express against the Muslim people has given rise to feelings of animosity on the part of Muslims against America and against the West in General. Those feelings of animosity have produced a change in the behavior of some crushed and subdued groups who, instead of fighting the Americans inside the Muslim countries, went on to fight them inside the United States of America itself."[19]

If, arguably, the visiting of retribution is potentially tenable from a *jus ad bellum* point of view, the *jus in bello* dimension is more problematic — including from a religious point of view as suicide bombings challenge two fundamental principles

[18] Hanle, *Terrorism*, p. 18.
[19] Ben Laden, interview with ABC, 1998.

of Islamic ethics, namely the prohibition against suicide and the deliberate killing of non-combatants.[20] Put simply, the responsibilization and resulting targeting of civilians cannot be reconciled with the central international humanitarian law tenet of distinction. Yet the cogency of Al Qaeda's novel claim rests on an indiscriminateness that is merely apparent. Holding the citizens of the state responsible individually and documenting the founding rationale for such conduct indicates effective control and a potential measure of respect for the rules. As it is, Al Qaeda has targeted both military (Pentagon, USS *Cole*) and civilian (World Trade Center, Atocha train station, London subway system) targets.

There are self-imposed limitations to Al Qaeda's actions (no weapons of mass destruction have been used so far), but the civilian distinction is rejected formally by the group. Permissible warfare is channeled within aggrandizement of the principle of necessity, literalization of civilian responsibility, and acknowledgment of technological imbalance. It is argued that an extreme situation (of collapse of the power structures or fragmentation of power) calls for extreme measures. In many ways, this is a result of the perceived — and very real — deficiencies of the Arab state system. In Clausewitzian fashion, war aims are pursued nakedly and no state patronage is needed.

Coming to grips with such metamorphosis of offense[21] — and the significant leverage that Al Qaeda commands as part of the ethos of the group — means acknowledging the logic in which terrorism is used as a method of warfare, according to a principle of indiscrimination whose rationale is negation of the notion of innocence of the civilian population, and imputation of collective responsibility to those who support the unjust actions of their government. Be that as it may, "if terrorism *is* to be treated as a method of war, in accordance with the unjust war model, then there must be *some* legitimate targets which the terrorists could attack in consistence with the rules of war."[22]

[20] See, for example, Sohail H. Hashmi, "Not What the Prophet Would Want: How Can Islamic Scholars Sanction Suicidal Tactics?," *The Washington Post*, June 9, 2002, pp. B1 and B3; Neil MacFarquhar, "Muslim Scholars Increasingly Debate Unholy War," *The New York Times*, December 10, 2004, pp. 1 and 10; and Amir Taheri, "To Kill or not to Kill is the Issue," *Gulf News*, June 9, 2005.

[21] The authors of the Final Report of the National Commission on Terrorist Attacks upon the United States note: "The details of what happened on the morning of September 11 are complex, but they play out a simple theme. NORAD [North American Aerospace Defense Command] and the FAA [Federal Aviation Agency] were *unprepared* for the type of attacks launched against the United States on September 11, 2001. They struggled, under difficult circumstances, to improvise a homeland defense against an unprecedented challenge they had *never before encountered* and had *never trained to meet*." See *The 9/11 Report*, New York: Norton, 2004, p. 45, emphasis added.

[22] Paul Gilbert, *Terrorism, Security, and Nationality – An Introduction Study in Applied Political Philosophy*, London: Routledge, 1994, p. 13.

Pattern and Purpose

Eliciting more disagreement than assent, the challenge represented by the newness of Al Qaeda is reinforced by existing analytical shortcomings. As Jason Burke opines, "the threat…is new and different, complex, and diverse, dynamic and protean and profoundly difficult to characterize. Currently, there is no vocabulary to characterize it. This leads to problems…. The contingent, dynamic, and local elements of what is a broad and ill-defined movement rooted in historical trends of great complexity are lost…. One of the problems of writing about modern Islamic extremists, such as Ben Laden, is that a vocabulary to describe their ideas has yet to be successfully constructed."[23]

Though such vocabulary has, in point of fact, come into being, it elides important distinctions and Al Qaeda's nature continues to baffle analysts. When its existence is not refuted, the group has been described, pell-mell, as a formula system, a venture capitalist firm, a commissioning editor, a newspaper, a television production, a publishing house, a wealthy university, a financial godfather, a transnational corporation, a franchise outfit, and a multinational holding company. Such multiplicity of analogies betrays the organization's novelty and masks its teleology.

Al Qaeda's evolution

Some analysts have posited that Al Qaeda is goal-oriented not rule-oriented, and that this sets it apart from state-sponsored groups. The United States Department of State, for instance, noted that "transnational terrorists benefit from modern communications and transportations, have global sources of funding, are knowledgeable about modern explosives and weapons, and are more difficult to track and apprehend than members of the old established groups or those sponsored by states."[24] Within a fluid and dynamic approach, Al Qaeda has in fact concluded that given the current configuration of Arab politics, it is not possible to expect realistically the region's long-time a-dying regimes to defend the populations' interests. The group then organized to achieve those goals and, in the process, effect a more legitimate social, political, economic, and religious rule.

As the acme of a new generation of non-state actors, Al Qaeda has come to represent an organization whose rough etiquette is violent action. However, the formulation of that use of force (in fact a military strategy) has been enacted in purely instrumentalist terms, and, in time, taken on an emphasized political mode. Over the past fifteen years, the group has gone through at least four different phases, mutating in the course into a full-fledged international political force.

Al Qaeda was born as result of the failure of discredited Arab governments to protect the legitimate interests of their nation.

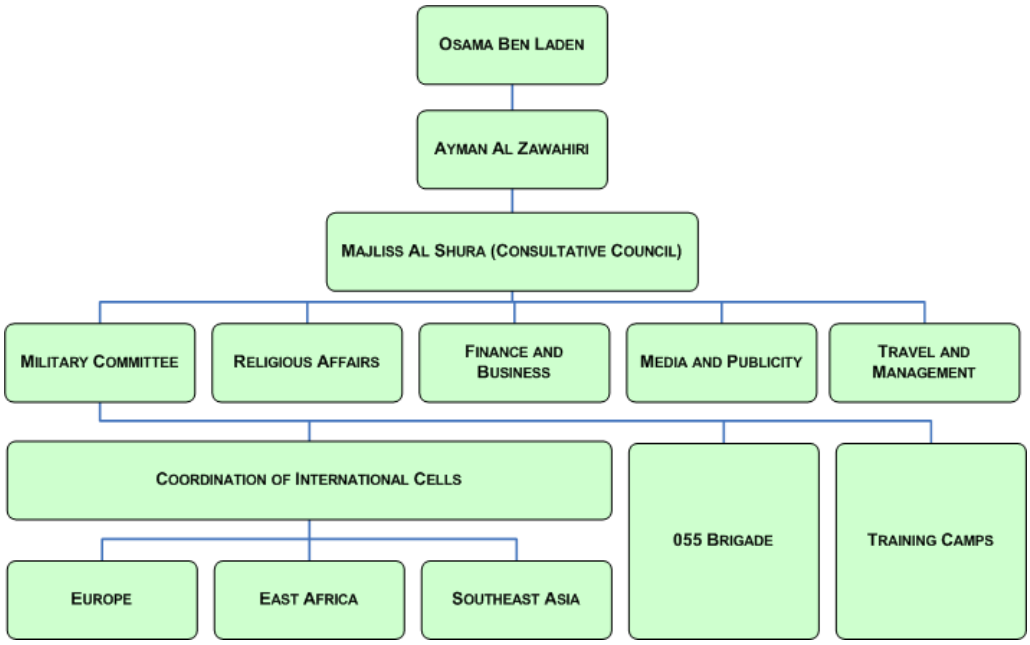
1989-1995: Development of a strategy

As noted, Al Qaeda was born as result of the failure of discredited Arab governments to protect the legitimate interests of their nation. The evolution towards armed politics of a group of Islamists from the Middle East and North Africa was the consequence of a dual realization, wherein private actors came to the conclusion that their states were too weak to defend their citizenry, but equally too strong to be overtaken. At the core of the group's genesis stands, thus, a mixture of pragmatism and defiance, not, as is often argued, hopelessness and despair.

The ascendancy of this rationale meant, too, that domestic failure and repression of the 'near enemy' should be separated tactically from the fight against the 'far enemy,' namely that party that allows the situation to persist and benefits from it. The notion of focus on the latter led inevitably to taking the battle to the United States.[25] It meant,

[23] Burke, *Al Qaeda*, pp. 7, 13, and 38.
[24] United States Department of State, *Patterns of Global Terrorism 1995*, Washington, DC: Office of the Coordinator of Counterterrorism, 1996, p. iii.
[25] A portent was the operation conducted by Hizballah in Beirut on April 18, 1983 against the US Marine barracks and the French Paratroopers' headquarters, which killed two hundred and forty-one Marines and fifty-eight Paratroopers and led to the United States' withdrawal from Lebanon.

Graph 1: Al Qaeda in the 1990s



specifically, the husbanding of financial and logistical resources and the formation of professional, disciplined and dependable soldiers, as well as a corps of officers, and permanent contacts.

In the mid-1980s, a Palestinian named Abdallah Azzam, who had emerged as leader of those Arabs that traveled to Afghanistan to help the Afghans resist the Soviet invasion, set up a Kabul-based office of logistical coordination for the affairs of the 'Arab Afghans,' the *Maktab al Khadamat lil Mujahideen al Arab* (also know as *Maktab al Dhiyafa* or hospitality house). This waystation, which functioned as an international bureau and serviced some twenty-five thousand individuals, constituted the matrix for what would become Al Qaeda. In parallel, Osama Ben Laden set up the *Beit al Ansar* (House of Companions), another structure designed to support and train the Arab and Muslim fighters in Afghanistan.

The broad outlines of an organization that would outlast the Afghanistan conflict began in earnest in late 1987 with the winding down of the Soviet campaign in the country. Before his death in November 1989, the Jenin-born, Al-Azhar-trained, Islamabad University lecturer Azzam had put in place the elements of such an international army in partnership with Ben Laden (who had initially left Saudi Arabia for Pakistan in December 1979 to assess the humanitarian needs of the Afghan refugees) and Ayman al Zawahiri (who migrated from Egypt in 1985).

The concept of an all-Arab/Muslim legion to wage warfare against the United States was fleshed out eventually in late 1989 at a meeting in Khost, Afghanistan. The new entity, which merged the Maktab al Khadamat and Beit al Ansar, was originally dubbed *Al Qaeda al 'Askariya* (the military base).[26]

International recruits, including some coming from the United States, were trained in Afghanistan as early as 1985.[27] The transformation that occurred from then on meant that the new army would not be operating solely or primarily in a territorial contiguity (e.g., Afghanistan or Egypt), and that, in departing from 1970s- and 1980s-type terrorism, it would shift from loosely coordinated quantitative attacks to carefully planned quality attacks.

[26] Al Qaeda's name has purposefully a double-entendre. In Arabic, *qaeda* can mean 'precept' or 'column.' In a modern context, it also can refer to 'database.'

[27] As Rohan Gunaratna notes, "until 1993, Al Qaeda maintained its own momentum and no government or rival group attempted to disrupt its growth." See Gunaratna, *Inside Al Qaeda – Global Network of Terror*, New York: Berkley Books, 2002, p. 74.

That the ambition of this new actor was indeed to displace the state's military function — which it regarded as both illegitimate and dangerously defective — is underscored by the unsuccessful offer made by Osama Ben Laden to the Saudi government in 1991 to use his organization to expel the Iraqi forces that had invaded Kuwait in August of that year. In April 1994, the Saudi royal family deprived Ben Laden of his passport and his citizenship. Ben Laden then moved the organization to Sudan, where he headquartered his operations and began establishing military camps on the Afghan model.[28] (All in all, Al Qaeda was, at varying degrees and in different capacities, present in the Sudan from December 1991 to May 1996.)

Besides establishing the parameters of a global strategy, this opening phase also allowed Al Qaeda to effect discipline, training, and unit cohesion within its ranks. The organization initially followed a hierarchical system where a leader (Osama Ben Laden) and a deputy (Ayman al Zawahiri) received the advice of a thirty-one member consultative council (*Majliss al Shura*) divided in five operational committees: military, religious affairs, financial matters, media and publicity, and logistics (see Graph 1). Headed by Abu Obaida al Banshiri and Mohammad Atef (both now deceased), the military committee oversaw activities of local units (notably, the 055 Brigade which was integrated into the Army of the Islamic Emirate of Afghanistan to fight the Northern Alliance) and their training in a number of camps in Kabul, Khost, Mahavia, Jalalabad, Kunar, Kandahar, Tora Bora, and Liza. That committee was also in charge of the supervision of a growing number of international cells in Europe (Germany, Italy, the United Kingdom), Southeast Asia (Singapore, Malaysia, the Philippines), and East Africa (Tanzania, Somalia, Kenya).

1996-2001: War plans

Having put in place the components of a far-flung force, the leadership of Al Qaeda focused its attention on the elaboration of a war strategy that would take the form of a sustained campaign on different centers of gravity, with a view to spread the enemy's attention and expose it. To be certain, consideration of operational matters perdured. Hence, a training manual meant to serve as reference material for the soldiers, the *Encyclopedia of the Jihad*, was released in Afghanistan in 1996 (and transferred to CD-ROM in 1999); it covered different aspects of guerilla warfare, use of explosives, surveillance, kamikaze attacks, and interrogation techniques.[29]

This phase of the history of Al Qaeda was concerned with maintaining training camps, assembling a coalition of operatives, and overseeing the preparation of several parallel missions. In May 1996, Osama Ben Laden and his close companions relocated from the Sudan to Afghanistan, where the Taliban led by Mollah Mohammad Omar had recently taken control of most of the country. Having considered other locations (the Yemen, in particular), a choice was made to settle in Afghanistan and wage battle not in that country, which was viewed as a sanctuary, but towards U.S.-related international targets. In that sense, the alliance that took place between Al Qaeda and the Taliban was tactical and based not on religious grounds (the latter's is an extremist form of Islam alien to the vast majority of Arabs and Muslims, Al Qaeda's is militant but its conservatism acceptable to significant numbers) but on the fact that the Taliban held control of a state.

Reversing the 'state-sponsoring' rule, Ben Laden would in effect engage in subsidizing a state (whereas in the Sudan and in relation to Saudi Arabia he had attempted to merely *influence* state practice) and consolidating protective links with the Taliban. Some two thousand Qaeda soldiers (the 055 Brigade) were integrated into the Taliban forces. Such geopolitical latitude was underscored by recognition of the necessity to shift from a local-defensive to an international-offensive approach.

Qaeda leaders would then concentrate on developing a new type of operations against their enemies in the West. As Ben Laden explained in a November 1996 interview with the editor-in-chief

[28] Jane Corbin, *Al Qaeda – In Search of the Terror Network that Terrorizes the World*, New York: Thunder's Mouth Press, 2002, pp. 37-38.
[29] On the latter aspect, for instance, the Manual indicates: "We find permission to interrogate the hostage for the purpose of obtaining information. It is permitted to strike the [hostage] until he reveals the news, information, and secrets of his people… [A]lso permitted [is] the exchange of hostages for money, services, expertise, and secrets of the enemy's army plans." Cited in Gunaratna, *Inside Al Qaeda*, p. 101.

of the London-based Arabic daily newspaper, *Al Qods al Arabi*, Abdelbari Atwan: "Preparations for major operations take a certain amount of time, unlike minor operations. If we wanted small actions, the matter would have been carried out easily…. The nature of the battle calls for operations of a specific type that will make an impact on the enemy and this calls for excellent preparations."[30] In the war declaration against the United States made by Al Qaeda four months earlier, such strategy, rooted in a tactical acknowledgment of the imparity, was noted similarly: "Due to the imbalance of power between our armed forces and the enemy forces, a suitable means of fighting must be adopted, namely using fast-moving light forces that work under complete secrecy…. It is wise in the present circumstances for the armed military forces not to be engaged in conventional fighting with the forces of the… enemy… unless a big advantage is likely to be achieved; and the great losses induced on the enemy side that would shake and destroy its foundations and infrastructure… spread rumors, fear, and discouragement among the members of the enemy forces."[31]

Consequently, the focus of the energy was both in setting a sophisticated infrastructure and identifying and recruiting highly motivated individuals who would be subsequently short-listed for operations to enact an unprecedented battle plan. In a videotape recording made in the spring of 2001, Ahmed al Haznawi, one of the nineteen hijackers of the September 11, 2001 operation, declared: "Today, we are killing them in the midst of their homes. It is time to kill Americans in their heartland."

That transformation did not completely escape analysts. Following the June 25, 1996 attack on the Al Khobar Towers apartment complex housing U.S. Air Force personnel in Dhahran, Saudi Arabia, the head of the United States Central Command declared before the Senate Armed Services Committee: "Recently, we have seen growth in 'transnational' groups, comprised of fanatical Islamic extremists, many of whom fought in Afghanistan and now drift to other countries with the aim of establishing anti-Western fundamentalist regimes by destabilizing traditional governments and attacking U.S. and Western targets."[32]

As Al Qaeda was assembling its war apparatus, it started making public its *sui generis* international case for war against the United States. Thus, in 1997-1998, Osama Ben Laden granted a number of interviews with international media outlets and held a press conference. The opening salvo of that communication strategy took place in April 1997 when Ben Laden granted an interview to CNN journalist Peter Bergen (aired on May 12). In it, Ben Laden declared: "We believe the United States is responsible directly for those who were killed in Palestine, Lebanon, and Iraq. This American government abandoned humanitarian feelings by these hideous crimes. It transgressed all bounds and behaved in a way not witnessed before by any power or any imperialist power in the world. The United States today has set a double standard, calling whoever goes against its injustice a terrorist. It wants to occupy our countries, steal our resources, impose on us agents to rule us… and wants us to agree to all these. If we refuse to do so, it will say, 'You are terrorists'."[33]

In time, war was declared on America anew. On August 23, 1996, Ben Laden and supporters had promulgated a Declaration of War against the Americans occupying the Land of the Two Holy Places. On February 23, 1998, Ben Laden issued a second declaration of war stating that to "kill American and their allies — civilian and military — is an individual duty for every Muslim who can do it in any country in which it is possible to do so, in order to liberate the Al Aqsa mosque and the Holy Mosque, and in order for their armies to move out of the lands of Islam, defeated and unable to threaten any Muslim."[34] That statement

[30] Osama Ben Laden, interview with Abdelbari Atwan, *Al Qods al Arabi*, November 27, 1996.
[31] "Declaration of War against the Americans Occupying the Land of the Two Holy Places: A Message from Osama Ben Mohammad Ben Laden," August 23, 1996. A translation of the Declaration is available at www.terrorismfiles.org/individuals/declaration_of_jihad1.html.
[32] United States Department of Defense, *Defense Issues*, vol. 11, no. 59, "Combating Terrorism in Saudi Arabia," July 9, 1996, www.defenselink.mil/speeches/1996/t19960709-perry.html. However, the September 11 Commission noted that "until 1996, hardly anyone in the U.S. government understood that Osama Ben Laden was an inspirer and organizer of the new terrorism. […] While we know now that Al Qaeda was formed in 1988, at the end of the Soviet occupation of Afghanistan, the intelligence community did not describe this organization, at least in documents we have seen, until 1999." See *The 9/11 Report*, pp. 108 and 341.
[33] Cited in Peter L. Bergen, *Holy War, Inc. – Inside the Secret World of Osama Bin Laden*, New York: The Free Press, 2001, pp. 19 and 21.
[34] The text of the original Declaration in Arabic and an English translation are available at www.fas.org/irp/world/para/docs/980223-fatwa.htm.

was forwarded to the newspaper *Al Qods al Arabi* by Qaeda military Committee leader Mohammad Atef for publication, and it was followed by a press conference in May 1998.

These pronouncements followed an extraordinarily insistent logic in which U.S. policies in the Middle East were regarded as constitutive of a *casus belli*. Consequently, initial engagements — notably the attack on the Office of Program Management of the U.S.-trained Saudi National Guard in Riyadh on November 13, 1995, and the 1996 Dhahran bombing — were followed by more frontal attacks. On August 7, 1998, Al Qaeda conducted two simultaneous bombings of the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania.[35] The United States responded with Operation Infinite Reach on August 20 firing cruise missiles on training camps in Khost, Afghanistan and a Pharmaceutical plant in Khartoum — two locations associated with Al Qaeda. The battle was joined. Again, this realization was not lost on the American side. In a December 4, 1998 internal memorandum on Al Qaeda, CIA Director George Tenet wrote: "We are at war."[36]

The sophistication of Al Qaeda's military operations continued to grow throughout the 1990s.[37] A thwarted attempt to bomb an American warship off the Yemeni coast, the USS *The Sullivans*, on January 3, 2000, was followed by a suicide attack on another vessel the USS *Cole* the following October 12. While research, preparation, and training for a fourfold assault on New York and Washington were underway, the organization's leadership accelerated the formation of its foot soldiers in Afghanistan. Though accurate information about the numbers of those trainees is not available, and public figures oscillate between ten and one hundred thousand, it can be estimated realistically that ten to twenty thousand individuals were trained in these camps. Of those, five to ten thousand may still be active in 2005, scattered around the world.

On September 11, 2001, a Qaeda commando, initially assembled in Germany and led by Egyptian architect Mohammad Atta, hijacked simultaneously four American domestic airliners. It crashed two in the World Trade Center in New York, and one on the Pentagon in Washington, DC. More than three thousand persons were killed.

2002-2003: Regrouping and privatizing

Before the United States and the United Kingdom attacked Taliban forces in Afghanistan in October 2001 in retaliation for the New York and Washington operations, Al Qaeda's leadership had realized that a full engagement with American and British forces in Afghanistan would be suicidal. In the face of overwhelming power — though the United States had adopted a scaled-down approach to invasion, wherein local co-opted forces (the Northern Alliance, in particular) were enlisted to fight on behalf of the United States[38]— a strategic retreat was opted for. The risk-minimizing objective was to slow the Western forces' advance, as per Sun Tzu's maxim that "one defends when his strength is inadequate,"[39] and Van Creveld's axiom that "a belligerent who is weaker than the enemy cannot afford to be worn down."[40]

Between the autumn of 2001 and the spring of 2002, Al Qaeda's forces — which must be distinguished from Taliban contingents — were not depleted as much as they were reallocated. With the battles of Tora Bora (December 2001) and Shahi Kowt (March 2002) lasting three weeks each, this elastic defense relying on mobile forces was paralleled by a scaling up of international operations and an investment in global tactical relationships.

[35] On August 11, 1998, an Islamic Liberation Army of the People of Kenya, in all likelihood an off-shoot of Al Qaeda, issued a statement (from London) whose rationale and language for the attacks was consistent with the 1996 and 1998 war declarations. It noted: "The Americans humiliate our people, they have occupied the Arabian peninsula, they extract our riches, they enforce a blockade, and they support Israel, our archenemy who occupies the Al Aqsa mosque."

[36] Cited in Steve Coll, *Ghost Wars – The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion to September 10, 2001*, New York: The Penguin Press, 2004, p. 435.

[37] For instance, infiltration operations were also conducted by Qaeda operatives. At least one individual, Ali Mohamed, joined Al Qaeda after accessing classified documents while serving in the US Army. Mohamed was a US Army sergeant assigned to a Special Forces unit at Fort Bragg, North Carolina. In the early 1990s, he trained Al Qaeda recruits in surveillance techniques, cell structures, and detailed reconnaissance. See United States District Court Southern District of New York, *United States of America v. Ali Mohamed*, New York, October 20, 2000.

[38] See Bob Woodward, *Plan of Attack*, New York: Simon and Schuster, 2004.

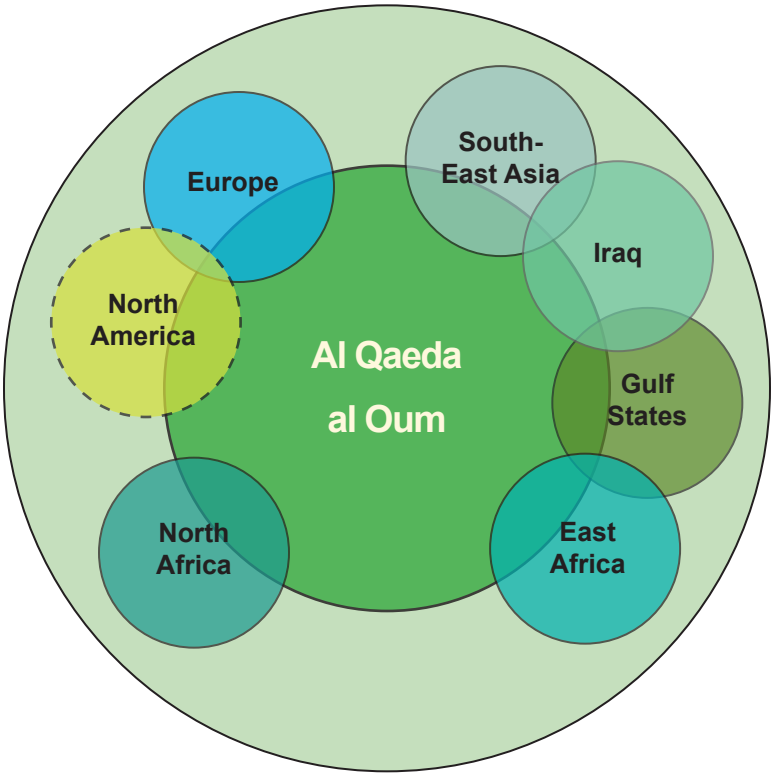
[39] Sun Tzu, *The Art of War*, London: Oxford University Press, 1971, p. 85.

[40] Martin Van Creveld, *The Transformation of War*, New York: The Free Press, 1991, pp. 112-113.

Faced with the objective possibility of a copycat phenomenon and the subjective aim to maximize politically its September 11 military success, and no longer able to enjoy a centralized sanctuary, Al Qaeda's leadership encouraged the proliferation of mini-Al Qaedas, groups that would be loosely connected to a 'mother Al Qaeda' (*Al Qaeda al Oum*), but which would be independent and viable enough to act on their own within a regional context (see Graph 2). Such shift from 'thinking locally and acting globally' to 'thinking globally and acting locally' relied on self-contained, mission-oriented strategic units in Southeast Asia, Western Europe, East Africa, North Africa, Jordan, Iraq (Abu Musab al Zarqawi), Saudi Arabia (Salah al 'Oofi), Yemen, and, possibly, North America.

"The *modus operandi* of Al Qaeda is to conduct coordinated and simultaneous attacks whenever possible. Such multiple attacks require long-range planning and preparation, skills which Al Qaeda possesses to a remarkable degree."[41] Al Qaeda al Oum is fully aware of the effect of this fissile strategy on its enemies. In October 2004, Ben Laden remarked: "All that we have to do is to send two mujahidin to the furthest point east to raise a piece of cloth on which is written Al Qaeda, in order to make the generals race there to cause America to suffer human, economic, and political losses without their achieving for it anything of note other than some benefits for their private companies." As integrative forces, "Ben Laden and Al Qaeda act consciously to encourage others to carry out operations on their own by providing inspiration and ideological justification."[42] Hence, aside from the war in Iraq, between 2002 and 2005, the United States and seven of its Western allies (the United Kingdom, Spain, Italy, Australia, Israel, France, and Germany)

Graph 2: Al Qaeda in the 2000s



[41] Gunaratna, *Inside Al Qaeda*, p. xxxix.
[42] Benjamin Orbach, "Usama bin Ladin and al-Qa'ida; Origins and Doctrines," *Middle East Review of International Affairs* 5, 4, December 2001, p. 63.

were the targets of seventeen major attacks in eleven countries (Tunisia, Pakistan, Yemen, Indonesia, Kuwait, Spain, Saudi Arabia, the United Kingdom, Egypt, Kenya, and Morocco) for a total of seven hundred and fifty people killed.

In a fall 2001 book entitled *Knights Under the Prophet's Banner*, Ayman al Zawahiri had explained the approach and the cost-effective rationale of these measures, namely "the need to inflict the maximum casualties against the opponent, for this is the language understood by the West, no matter how much time and effort such operations take…. The targets as well as the type and method of weapons used must be chosen to have an impact on the structure of the enemy and deter it enough to stop its brutality."[43] In Iraq, after 2003, this eventually took the form of ambushes, guerilla tactics, and small-scale engagements, as well as kidnappings, suicide bombings, and beheadings.

During the same phase, Al Qaeda reserved, as well, the right to reciprocate should non-conventional weaponry be used by its enemies. In November 2001, Osama Ben Laden declared: "If America uses chemical or nuclear weapons against us, then we may retort with chemical and nuclear weapons as a deterrent."[44] Subsequently, a Saudi scholar, Shaikh Nasser Ibn Hamid al Fahd, authored an *amicus curiae*-like treatise justifying the potential use of weapons of mass destruction by Al Qaeda, noting that civilian casualties are acceptable if they are the byproduct of an attack meant at defeating massively the enemy. He argued: "The situation in this regard is that if those engaged in Jihad establish that the evil of the infidels can be repelled only by attacking them at night with weapons of mass destruction, they may be used even if they annihilate all the infidels."[45]

A characteristic of this phase is that, for the first time in its history, the organization was on the defensive, and suffering setbacks, chiefly the loss of Afghanistan as a base and the arrest or death of a few key figures, notably Mohammad Atef ('Abu Hafs al Masri,' head of the military committee, killed during a November 14, 2001 U.S. air strike on Kabul), Zein al Abidin Mohammed Hussein ('Abu Zubayda,' director of external operations, arrested in Faisalabad, Pakistan on March 28, 2002), and Ramzi Ben al Shaiba and Khaled Shaikh Mohammad (respectively coordinator and planner of the September 11 operation, apprehended on September 11, 2002 in Karachi and March 1, 2003 in Rawalpindi). Yet, for two reasons, these hardships did not affect the organization's ability to function: displacement from the camps was anticipated, and the officers were replaced rapidly.

Al Qaeda al Oum has immersed itself in the political process of countries in Europe, the Middle East, and the United States...

2004-present: War and diplomacy

Over the past two years, Al Qaeda has reoriented its strategic and tactical direction, and mutated from a hierarchical to a decentralized, multicentric organization. The relocation and repositioning of its forces has gone in hand with a newfound emphasis on its politico-diplomatic message. Ever borrowing attributes of the state, Al Qaeda al Oum has struck private and public alliances, offered truces, impacted on elections, and, overall, gained international stature beyond a mere security threat. Too, an economic discourse has been featured increasingly in its panoply.

Al Qaeda al Oum has immersed itself in the political process of countries in Europe, the Middle East, and the United States (as well as parts of Asia, particularly in Pakistan and Indonesia). On March 11, 2004, three days before Spain's legislative elections, in which the political party of Prime Minister José María Aznar, the Popular Party (PP), was forecasted the winner, a regional, North African-dominated cell of Al Qaeda (the Brigades of Abu Hafs al Masri) detonated ten explosive

[43] Extended excerpts of the book were published by the London-based, Arabic-language daily *Al Sharq al Awsat* on December 2, 2001.
[44] Osama Ben Laden, interview with Hamid Mir, *Dawn* (Pakistan), November 6, 2001.
[45] Shaikh Nasser Ibn Hamid al Fahd, *A Treatise on the Legal Status of Using Weapons of Mass Destruction against Infidels*, May 21, 2003, www.al-fhd.com. Al Fahd writes: "Scholars have agreed that it is permissible to bombard an enemy with a catapult and similar things. As everyone knows, a catapult stone does not distinguish between women, children, and others; it destroys anything that it hits, buildings or otherwise. This proves that the principle of destroying the infidels' lands and killing them if the Jihad requires it and those in authority over the Jihad decide so is legitimate."

devices aboard four commuter trains approaching the Atocha train station in Madrid, killing one hundred and ninety-one individuals and injuring close to two thousand. Aznar's government, which had supported actively the United States' war effort in Iraq and sent troops, insisted on the responsibility of the Basque separatist group Euskadi ta Askatasuna (ETA). The following Sunday, the PP lost the elections to the Socialist Party led by José Luis Rodríguez Zapatero who ordered the 1,300 Spanish soldiers out of Iraq on April 18.

On October 30, 2004, four days before the American presidential elections, Osama Ben Laden sent a videotaped message to the American people "concern[ing] the ideal way to prevent another Manhattan, and deal[ing] with the war and its causes and consequences," in which he stated: "Your security is not in the hands of [Democratic Party candidate John] Kerry, nor [President George W.] Bush, nor Al Qaeda. No. Your security is in your own hands. And every state that does not play with our security has automatically guaranteed its own security."[46]

The following December 27, Al Jazeera aired an audiotaped message in which Ben Laden advised the Iraqi people not to take part in the January 30, 2005 general elections, explaining that the Constitution that U.S. Civil Administrator in Iraq L. Paul Bremmer had sponsored was illegitimate and divisive, and confirmed, "for the record," that Jordanian Islamist militant Abu Musab al Zarqawi (Ahmed al Khaylaila) was the "Emir" of Al Qaeda in Mesopotamia, endorsing his struggle against the Americans, other occupation forces, and Iraqi "collaborators" and urging Iraqis to listen to him. On October 17, Al Zarqawi had published a statement on an Islamist website in which he claimed allegiance to Ben Laden, changing the name of his organization from *Al Tawhid wa al Jihad* (Unity and Holy War) to *Munadhamat al Qaeda fi Bilad al Rafidayn* (Organization of Al Qaeda in Mesopotamia). Ben Laden welcomed that pledge deeming it "an important step in unifying the fighters in establishing the state of righteousness and ending the state of injustice."

In all likelihood, both soft and hard targets will continue to be targeted by Al Qaeda through the use of well-honed, low-cost, high-impact operations. A repeat of an attack such as the September 11, 2001, March 11, 2004, or July 7, 2005 operations may also be attempted, though it would take longer to prepare as infiltration in Western countries has become more difficult. As Martin Van Creveld remarks insightfully, in war:

> An action that has succeeded once will likely fail when it is tried for the second time. It will fail, not in spite of having succeeded once but because its very success will probably put an intelligent opponent on its guard. The same reasoning also works in reverse. An operation having failed once, the opponent may conclude that it will not be repeated. Once he believes it will not be repeated, the best way to ensure success is precisely to repeat it.[47]

Like any army, Al Qaeda will persevere in seeking to expand its portfolio of operations. Since September 11, 2001, the war's pattern has been thus: "Strong, relentless, and effective attacks against Al Qaeda in a relatively small portion of the world, offset by much more limited success elsewhere, all of which punctuated by the steady pace of Al Qaeda operations."[48]

To round out the picture of those developments, it is particularly crucial to take full stock of the intricate set of relationships within the new Qaeda. As one analyst notes, "rather than try to comprehend the multiplicity of different ways in which Ben Laden and other Islamic radicals interact, it is far easier to reduce them to a simple boss-worker, commander-foot soldier relationship. Such an oversimplification is wrong."[49] It partakes, however, of a larger, more problematic, pattern of misrepresentation of the nature of the Qaeda organization and its *modus essendi*.

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[46] Osama Ben Laden, "Address to the American People," videotaped message aired on Al Jazeera on October 30, 2004. The full text of the Address is available at english.aljazeera.net/NR/exeres/79C6AF22-98FB-4A1C-B21F-2BC36E87F61F.htm.
[47] Van Creveld, *Transformation of War*, p. 120.
[48] Anonymous (Michael Scheuer), *Imperial Hubris – Why the West is Losing the War on Terror*, Washington, DC: Brassey's, 2004, p. 70.
[49] Burke, *Al Qaeda*, p. 194. He notes: "Clearly, the movement is rooted in social, economic, and political contingencies. Over the past fifteen years, tens of thousands of young Muslim men made their way to training camps in Afghanistan…. Their motivations were varied but profound and genuinely felt. They were neither kidnapped nor compelled to travel in search of Jihad. Similarly, the men who sought out Ben Laden's assistance, hoping to find the help that they needed to realize their dreams of violent actions against the West, traveled for what they felt were good reasons" (p. 5).

The Reciprocity Imperative

The history of Al Qaeda and of its conflict with the United States and its allies indicates that the September 11, 2001 was not an unprovoked, gratuitous act. The attack was more accurately a military operation, researched and planned since at least 1996, and conducted by a trained commando in the context of a war that had been declared officially and publicly in 1996 and again in 1998. The operation targeted two military locations (the Pentagon and the White House) and a civilian facility regarded as the symbol of the United States' economic and financial power (the World Trade Center).

The former head of the anti-Ben Laden unit at the Central Intelligence Agency notes: "The September 11 attacks were not apocalyptic onslaughts on Western civilization. They were country-specific attacks meant to inflict substantial, visible, and quantifiable human and economic destruction on America. The attacks were also meant to inflict psychological damage on Americans. The attacks were acts of war and had limited goals, which were achieved; intellectual honesty forbids describing them as efforts to destroy such unquantifiable things as our freedom or a way of life."[50]

The assault was the culmination of a larger campaign, which forecasted impact and planned for the enemy's reaction. The attack was, more importantly, a military act designed to gain the tactical upper hand. As Carl Von Clausewitz noted, "a great destructive act inevitably exerts on all other actions, and it is exactly at such times that the moral factor is, so to speak, the most fluid element of all, and therefore spreads most easily to affect everything else."[51]

However, such quickening of momentum has not been matched by the necessary program of inquiry. Mahmood Mamdani notes that the clue to the nature of a political movement lies not in its language but in its agenda.[52] Yet Al Qaeda's motives have been misrepresented, dismissed, or ridiculed. In the face of operations such as the September 11 attacks and their aftermath in Afghanistan and Iraq, speculation and animosity appear inappropriate policy responses.

Misleading explanations

In the context of a mental horizon dominated by the accretion of emotional commentary and amplification, Al Qaeda's war on the United States remains documented inadequately and presented as resistant to explanation. Overwhelmingly martial, scholarship on this question focuses on Al Qaeda's 'irrationality,' 'fundamentalism,' and 'hatred.' Other leading explanations of the animus of Al Qaeda emphasize poverty (as a source of terrorism), criminality (as a way to profit),[53] and barbarism (to satiate bestial goals). An admixture of these conceptions, which have achieved normative supremacy in key policy quarters, continues to color dominant analyses with obstinacy.

Whereas "war is an organized, group activity that includes organizations having dynamics of their own that do not lend themselves to explanations based upon individual human behavior patterns,"[54] Al Qaeda's struggle is often presented as lacking rationality. Such explanation highlights mindless violence and attributes it to the organization's alleged nihilism and rejection of modernity. Depicting Ben Laden and Al Zawahiri as bent on wreaking havoc, such thinking, in effect, strips the military campaign of an eminently political entity of any cogency painting it as a gratuitous enterprise. Hence, one analyst argues that "the attacks on New York and the Pentagon were unprovoked and had no specific objective. Rather, they were part of a general as-

[50] Anonymous (Scheuer), *Imperial Hubris*, p. 223.
[51] Carl Von Clausewitz, *On War*, Princeton, New Jersey: Princeton University Press, 1976 [1832], p. 47.
[52] Mamdani, *Good Muslim, Bad Muslim*, p. 37.
[53] On this question, the allegations of drug trade made in the October 4, 2001 British dossier on Al Qaeda have not been substantiated. See Government of the United Kingdom, *Responsibility for the Terrorist Atrocities in the United States on 11 September 2001: Britain's Case against Bin Laden*, October 4, 2001. Jason Burke notes: "There has never been any evidence that Ben Laden has ever been involved in narcotics production, and everyone involved in the trade in Pakistan, Afghanistan, and elsewhere, from farmers through to the United Nations experts monitoring drugs production, denies the allegations." See Burke, *Al Qaeda*, p. 19.
[54] Hanle, *Terrorism*, p. 3.

sault of Islamic extremists bent on destroying non-Islamic civilizations. As such, America's war with Al Qaeda is non-negotiable."[55] For another: "[The enemy's] objective is not merely to murder as many [Americans] as possible and to conquer our land. Like the Nazis and Communists before him, he is dedicated to the destruction of everything good for which America stands."[56] As Paul Gilbert notes, "far from being irrational, extremists may rationally calculate that their political ends require the disruption of normal politics, within whose constraints they are unlikely to be achieved. Nor should we necessarily think of extremists as temperamentally intolerant of other views."[57]

A second etiology of Al Qaeda's motives, which also presents modernity as anathema to the group, places emphasis on its religious discourse and depicts it as a fundamentalist cult. It argues that Al Qaeda is conducting an all-out religious war on the West (a sort of *bellum contra totum populum Christianum*) and that its Jihad is aimed at the reestablishment of the Islamic Caliphate.[58] Not only must we question the widespread assumption that every political movement which speaks the language of religion is potentially terrorist,[59] but even so, in the case at hand, Al Qaeda's Islamist phraseology is indicative of its political philosophy and its sociocultural affiliation — not necessarily its immediate political aims.

The conflict between Al Qaeda and the United States is not about the protection of purity nor is it conceived primarily to advance religion or for religious interests. Undeniably, there is a religious dimension — somewhat mirrored on the American side[60] — but that is merely the spiritual context. Moreover, Jihad, as it were, cannot be equated with the term 'fundamentalism' coined in 1920 by the Reverend Curtis Lee Laws (following the movement initiated by the Presbyterians of Princeton). Holy War – like the ancient Israelites' *Milchemet Mitzvah* – is a war waged by spiritual power or fought under the auspices of a spiritual power and for religious interests. Jihad is a doctrine of spiritual effort of which military action is only one possible manifestation, the crusade and Jihad are, strictly speaking, not comparable.[61] The minimizing and elimination of Al Qaeda's political discourse, in favor of overemphasized religious views, sidesteps the reasons at the core of the discord and disagreement.

Al Qaeda's political goals must be distinguished from the religious rhetoric, particularly so since Islam is a religion with neither clergy nor intercession (and therefore no intercessionary corps), only learned scholars respected for their knowledge (the *ulama*). Though there is a measure of merging the *corpus politicum* and *corpus mysticum* functions, neither Ben Laden (a political leader) nor al Zawahiri (a strategic advisor) are religious leaders, nor do they claim to be. Although their political statements rely on *ijtihad* (interpretation of legal principles in light of changing historical contexts), theirs is a war 'offered' in the service of the Islamic nation (as a group of people) and its (historical) interests.

Other analysts locate Al Qaeda's motivations in hatred harbored towards the West in general and the United States in particular. The subtext of this line of thinking is a plethora of commentary in recent years — from Bernard Lewis's celebrated essay on "The Roots of Muslim Rage" to the "Axis of Evil" (initially "of Hate") phrase coined by Presidential speechwriter David Frum and made public by President George W. Bush in January 2002. The rationale, here, is that the feelings of hatred that allegedly motivate Al Qaeda's members and their supporters originate *ad hominem* in a miasma of personal humiliation, frustration,

[55] Richard Pipes, "Give the Chechens a Land of Their Own," *The New York Times*, September 9, 2004, p. A33.
[56] Norman Podhoretz, "World War IV: How it Started, What it Means, and Why We Have to Win," *Commentary*, September 2004, p. 18.
[57] Gilbert, *New Terror, New Wars*, p. 85.
[58] Gunatarana, for instance, argues that "Al Qaeda is waging a universal Jihad." See Gunatarana, p. xx. See also Salman Rushdie, "This is About Islam," *The New York Times*, November 2, 2001, p. A25.
[59] Mamdani, *Good Muslim, Bad Muslim*, p. 37.
[60] As illustrated by the statements of the United States Deputy Undersecretary of Defense, Lieutenant-General William Boykin, that "the enemy is a spiritual enemy. He's called the principality of darkness. The enemy is a guy called Satan…. Why are terrorists out to destroy the United States?…. They're after us because we're a Christian nation." See Lisa Myers and NBC Team, "Top Terrorist Hunter's Divisive Views," NBC Nightly News, October 15, 2003, www.msnbc.com/news/980764.asp?cp1=1#body.
[61] Michel Villey, *La Croisade – Essai sur la Formation d'une Théorie Juridique*, Paris: Vrin, 1942, p. 21 ; Peter Partner, "Holy War, Crusade, and Jihad: An Attempt to Define Some Problems," in Michel Balard, ed., *Autour de la Première Croisade: Actes du Colloque de la Society for the Study of the Crusades and the Latin East*, Paris: Publications de la Sorbonne, 1996, p. 333. See, also, James Turner Johnson, *The Holy War Idea in Western and Islamic Traditions*, University Park: Pennsylvania State University Press, 1997.

and jealousy. The result is a clarion call for actions against an 'evil' that allegedly abhors democracy and the Western 'way of life.'[62] In his October 30, 2004 address to the American people, Osama Ben Laden declared that President George W. Bush was wrong to "claim that we hate freedom," adding: "If so, then let him explain to us why we do not strike Sweden, for example."

These schools of thought on Al Qaeda betoken a static, monolothic view of the group. The persistence of misconceptions (and the convenience of misrepresentation) represents a strategic consensus which rests, essentially, on a medley of the enemy's eradication and ideological conversion. In the face of the sense of limitation represented by such solutionism and the increasing ambition of Al Qaeda, the political reasons at the core of the group's assumption of a leading role in international affairs and its war-making capabilities must become the subject of serious and sustained attention.

The primacy of the political

Perfunctorily presented, the explanations summarized above attribute the causes of the violence to something other than what it is. They espouse platitudinous ideas about the lack of democracy in the Arab world and substitute theological and cultural reasons to political ones. Yet seeking an explanation for political violence in cultural terms is misleading. This is neither an obliterative war on democracy, on the 'civilized/free world,' or indeed Westerners, nor an apocalyptic theological war. The war waged by Al Qaeda is done so for declared political goals.

The domination of the various faulty explanations is particularly surprising in the face of non-ambiguous statements made by Al Qaeda as to the main reasons for its war on the United States. These have been imparted consistently since 1996, notably in the August 1996 and February 1998 declarations of war and the November 2002 and October 2004 justifications for its continuation. Since the September 11, 2001 attacks on New York and Washington, Osama Ben Laden and Ayman al Zawahiri have delivered, respectively, eighteen and fourteen messages via audio or videotape in which a threefold case was rehearsed, namely that the United States ends (i) its military presence in the Middle East, (ii) its uncritical political support and military aid to Israel's occupation of Palestinian territories, and (iii) its support of corrupt and coercive regimes in the Arab and Muslim world. To these accusations of direct and indirect occupation and of being an accessory to the fact of repression, Al Qaeda demands that, generally, the United States stop threatening the security of Muslims.

In the Declaration of War against the Americans Occupying the Land of the Two Holy Places of August 23, 1996, Al Qaeda indicated in relation to its reasons to resort to war:

> We will list them, in order to remind everyone. First, for seven years, the United States has been *occupying* the lands of Islam in the holiest of places, the Arabian Peninsula,… and turning its bases in the peninsula into a spearhead through which to fight the neighboring Muslim peoples. Second,… the great devastation inflicted on the Iraqi people… with the protracted *blockade* imposed after the… [1991 Gulf] war and the fragmentation and devastation. Third,… the aim is also… to divert attention from the *occupation* of Jerusalem…. All these crimes… committed by the Americans are a clear declaration of war… and scholars have throughout Islamic history agreed unanimously that the Jihad is an individual duty if the enemy destroys the Muslim countries. (Emphasis added.)

Two years later, in the Declaration of War by Osama Ben Laden and the leaders of the World Islamic Front (*Al Jabha al Islamiya al 'Alamiya*) of February 23, 1998, it is noted that:

> For about seven years, the United States has been occupying the most sacred lands of Islam, stealing its resources, dictating to its rulers, humiliating its peoples, terrorizing its neighbors, and turning its bases in the peninsula into a spearhead through which to fight the neighboring Muslim

[62] See, for instance, Christopher Hitchens, "It's a Good Time for War," *The Boston Globe*, September 8, 2002. Hitchens writes: "Here was a direct, unmistakable confrontation between everything I loved and everything I hated. On one side, the ethics of the multicultural, the secular, the skeptical, and the cosmopolitan…. On the other, the arid monochrome of dull and vicious theocratic fascism. I am prepared for this war to go on for a very long time. I will never become tired of waging it, because it is a fight over essentials."[62]

> peoples…. Terrorizing you while you are carrying arms on our land is a *legitimate* and morally demanded duty. It is a *legitimate* right. (Emphasis added.)

Following the New York and Washington attacks and the inception of the conflict in Afghanistan, Ben Laden declared in a November 6, 2001 interview with Pakistani journalist Hamid Mir: "If the Muslims do not have security, the Americans also will not have it. This is a very simple formula…. This is the formula of live and let live."[63]

A year later, on November 12, 2002, Ben Laden issued a message "to the peoples of the countries who have entered into a coalition with the… American administration" where he articulated further such *lex talionis* and the reciprocity issue that stands at the heart of this conflict:

> The road to safety begins with the removal of *aggression*, and justice stipulates exacting the *same treatment*. What happened since the attacks on New York and Washington and up until today, such as the killing of the Germans in Tunisia, the French in Karachi, and the bombing of the French oil tanker in the Yemen, and the killing of the Marines in Kuwait, and the killing of the British and Australians in the explosions of Bali and the recent operation in Moscow, as well as some other operations here and there, is but a reaction and a retaliation, an eye for an eye…. If you have been aggrieved and appalled by the sight of your dead and the dead from among your allies,… remember our dead…. So how long should the killing, destruction, expulsion, and the orphaning, and widowing continue to be an exclusive occurrence upon us while peace, security, and happiness remains your exclusive monopoly…. This is an unfair predicament. It is high time we become equal…. *So as you kill, you shall be killed*, and as you bomb, you shall be bombed, and wait for what brings calamity."[64] (Emphasis added.)

The materialization of this thinking has not been matched by appropriate analyses and understanding. As noted, the nature of Al Qaeda *qua* novel type of actor encompassing a political program and conducting military operation has also not been grasped fully. Instead, its political goals have been muted or attenuated and the group's impress limited to 'terrorism.' For a number of years, a discipline of 'terrorology' has, hence, been constructed whereby the notion of 'terrorism' is employed not in response to honest puzzlement about the real world but rather in response to ideological pressures whose fundamental tenets are skillfully insinuated through selective focus, omission, and biased description.[65]

[T]he nature of Al Qaeda qua novel type of actor encompassing a political program and conducting military operation has … not been grasped fully.

Yet terrorism is but a tactical strategy designed to achieve a strategic purpose. As such, it is merely a particular way to employ force massively and represents consequently a form of war.[66] From the Jewish Zealots (who enlisted professional killers known as *Sicarii*), to the Muslim Assassins (*Ismaili Fedayin*), to the French *Jacobins* (of Robespierre's "La Grande Terreur"), to Russian anarchists (such as the anti-Czarist *Narodnaya Volya* group), Chinese revolutionaries, Algerian, Palestinian, and Irish nationalists, and Basque separatists, the fundamental subjectiveness associated to what may be described best as 'the use of force to advance a political cause which involves killing of civilians' has persisted.

This central political component and the inherent subjectivity have indeed led to a definitional paralysis, whereby the process of employment of

[63] Osama Ben Laden, interview with Hamid Mir, *Dawn* (Pakistan), November 6, 2001.
[64] Osama Ben Laden, audio message aired by Al Jazeera, November 12, 2002.
[65] Alexander George, "The Discipline of Terrorology," in Alexander George, ed., *Western State Terrorism*, London: Polity Press, 1991, pp. 92-93.
[66] As one analyst writes: "The term terrorism is widely misused. It is utilized in its generic sense as a form of shorthand by governments and the media, and is applied to a variety of acts and occurrences…. Terrorism, if nothing else, is violence or threats of violence, but it is not mindless violence, as some observers have charged. Usually, when employed in a political context, it represents a calculated series of actions designed to intimidate and sow fear throughout a target population in an effort to produce a pervasive atmosphere of insecurity, a widespread condition of anxiety. A terrorist campaign that causes a significant threshold of fear among the target population may achieve its aims. In some instances, terrorism is potentially a more effective, especially from a cost-benefit perspective, strategy than conventional or guerrilla warfare. Unlike other forms of warfare, however, the goal of terrorism is not to destroy the opposing side but instead to break its will." See Neil C. Livingstone, *The War against Terrorism*, Lexington, Massachusetts, 1982, p. 4.

force (by sub-state groups and states alike) to attain strategic and political goals is not regarded as a form of war. Yet "if, indeed, a type of terrorism is war, then it follows that it, too, rests on the same immutable principles of war as do the more classical manifestations of the phenomenon. This being the case, a type of terrorism that qualifies as a form of war should — indeed *must* — be treated as a form of war."[67] Sean Anderson and Stephen Sloan remark:

> [The] moralistic blanket condemnation of terrorism makes it difficult to arrive at any dispassionate objectivity in understanding terrorism, and even the attempt to study terrorism without immediate condemnation of it may be viewed as tacit acceptance of what is judged to be pernicious and reprehensible. The disturbing questions of morality are carried over into the equally heated debate over the nature of terrorism in which competing interpretations of what terrorism really is also complicate the debate on terrorism.[68]

Georges Abi-Saab summarizes the conundrum:

> All international efforts for decades, starting with the League of Nations and continuing in the United Nations, to draw a comprehensive convention against terrorism (but not specific acts of terrorism) have hitherto failed, absent a generally accepted and shared legal definition of what is terrorism, a terrorist act or a terrorist group. This is not because of any technical impossibility of formulating such a definition, but because of the lack of universal *opinio juris*, particularly about the ambit of the proposed crime *ratione personae*. Roughly speaking, the major powers insist on limiting the crime to private actors, excluding from it state actors; small powers on the contrary insist on including state actors, while some of them would like to exclude freedom fighters.[69]

In that sense, "no amount of legal argument will persuade a combatant to respect the rules when he himself has been deprived of their protection…. This psychological impossibility is the consequence of a fundamental contradiction in terms of formal logic…. It is impossible to demand that an adversary respect the laws and customs of war while at the same time declaring that every one of its acts will be treated as a war crime because of the mere fact that the act was carried out in the context of a war of aggression."[70]

In the case at hand, terrorism has been opted for by Al Qaeda as a reaction to the absence of political reciprocity in its war with the United States, and to the asymmetrical evolution of methods of war-fighting. To ignore this is to fail to realize that were Al Qaeda to match the military capabilities of its opponent, it would, in all likelihood, resort to conventional weaponry. Indeed, "modern suicide terrorism is analogous to instances of international coercion. For states, air power and economic sanctions are often the preferred tools. For terrorist groups, suicide attacks are becoming the coercive instrument of choice."[71]

Also in need of understanding is the reactive nature of Al Qaeda's struggle and the related transformation of a movement initially aimed

[67] Hanle, *Terrorism*, p. xiii, original emphasis.
[68] Sean K. Anderson and Stephen Sloan, *Historical Dictionary of Terrorism*, London: Scarecrow, 2002, p. 1. Also see Bruce Hoffman, *Inside Terrorism*, New York: Columbia University Press, 1998, especially pp. 13-44.
[69] Georges Abi-Saab, "There is No Need to Reinvent the Law," *A Defining Moment: International Law Since September 11*, Crimes of War Project, www.crimesofwar.org/sept-mag/sept-abi-printer.htm. In 2004, the Report of the United Nations Secretary General's High-Level Panel on Threats, Challenges, and Change, attempted to provide a specific definition of terrorism: "Any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions, and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act." See *A More Secure World: Our Shared Responsibility*, pp. 51-52, www.un.org/secureworld/report2.pdf.
[70] François Bugnion, "Just Wars, Wars of Aggression, and International Humanitarian Law," *International Review of the Red Cross* 847, 84, September 2002, p. 538.
[71] Robert A. Pape, "The Strategic Logic of Suicide Terrorism," *American Political Science Review* 97, 3, August 2003, p. 344. Reviewing the one-hundred and eighty-eight worldwide terrorist attacks between 1980 and 2001 (ninety-five per cent of which were "part of organized, coherent campaigns"), Pape concludes: "The central logic of this strategy is simple: Suicide terrorism attempts to inflict enough pain on the opposing society to overwhelm their interest in resisting the terrorists demands and, so, to cause either the government to concede or the population to revolt against the government. The common feature of all suicide terrorist campaigns is that they inflict punishment on the opposing society, either directly by killing civilians or indirectly by killing military personnel in circumstances that cannot lead to meaningful battlefield victory" (p. 346).

at reforming a group of states. For it is less violence that characterizes the movement than the ideological content of its message and, as noted, how it has midwifed a new approach to displace the state. In that respect, the original six-point program of *Al Ikhwan al Muslimeen* (the Islamist Brotherhood Society), founded by Hassan al-Banna in March 1928 in Cairo, concerned the development of a welfare organization with no interest in violence. Only after the failure of the Arab armies to stand up to Israel in 1948 did the movement turn to armed struggle. Similarly, the two main forces that would ultimately be fused to form Al Qaeda in the late 1980s — the variegated groups of Arabs that volunteered to help the Afghans against the Soviets and the Egyptian Islamist groups — argued that they were initially acting to fill a gap, namely the security of their fellow Muslims (domestically and abroad) which Arab and Muslim governments failed characteristically to address (except rhetorically, and, in some cases, financially).[72]

Ayman al Zawahiri explains the logic and expected results of Al Qaeda's war:

> If the shrapnel from the battle reaches their homes and bodies, they will trade accusations with their agents about who is responsible for this. In that case, they will face one of two bitter choices: either personally to wage battle against Muslims, which means that the battle will turn into clear-cut Jihad, or reconsider their plans after acknowledging the failure of the brute and violent confrontation against Muslims. Therefore, we must move the battle to the enemy's grounds to burn the hands of those who ignite fire in our countries.[73]

In sum, Al Qaeda is taking in its hand not so much weapons and the recourse to violence, but the conduct of domestic and foreign policy. That its legitimation mode is religious, at a time when Islamist movements had been gaining the upper hand in the Arab and Muslim world marking the nadir of the timid democratization experiments of the 1990s, only made it easier to translate a political message in terms of local concerns. In that sense, Al Qaeda's struggle was historically inevitable and likely to have a profound imprint on the region's geopolitics in the coming decades.

[72] Ayman al Zawahiri is a follower of the teachings of Egyptian Islamist Sayyid al Qutb, who was of the view that, in the final analysis, only physical force would remove the political, social, and economic obstacles to the establishment of the Islamic community. See Montasser Al-Zayyat, *The Road to Al Qaeda – The Story of Bin Laden's Right-Hand Man*, London: Pluto Press, 2004, pp. 24-25. An ideologue of contemporary Islamist radicalism, Qutb had developed his ideas during a visit to the United States in the late 1940s. See his book *Signposts* (Ma'alim fi al Tareeq), Beirut: The Holy Koran Publishing House, 1980. Qutb's brother, Mohammad, was among Osama Ben Laden's professors at the University of Jeddah in the mid-1970s.

[73] Ayman al Zawahiri, *Knights under the Prophet's Banner*, excerpts in *Al Sharq al Awsat*, December 2, 2001.

The Way Ahead

This essay has suggested that the conflict opposing the United States (and its allies) to the transnational, non-state armed group known as Al Qaeda remains problematic in manifold ways, highlighting policy gaps and legal challenges. No constructive, international consensus exists on this foremost problem, which remains the province of military and dichotomous phraseology.

It was proposed that the combined effect of a changed context, a new actor, and policies of exceptionalism has allowed for a curtailing of international law which is being rationalized by way of a political and legal discourse. In particular, the 'war on terrorism' – "our war with terror begins with Al Qaeda, but it does not end… until every terrorist group of global reach has been found, stopped, and defeated" declared President George W. Bush in January 2002 – has been an inaccurate concept as few non-Al Qaeda groups have been targeted.

Al Qaeda illustrates the evolution of warfare at the same time that it introduces new patterns of conflict.

The aim of the discussion has been to indicate that, ultimately, Al Qaeda illustrates the evolution of warfare at the same time that it introduces new patterns of conflict. The analysis has sought to depict the manner in which this new actor is conceiving of and conducting warfare, namely a transformative understanding that falls outside the existing template of international humanitarian law, and its self-sustaining semantic, *erga omnes* obligations, and predictable codes. Al Qaeda's principles of substitution and indiscrimination, it was offered, question basic tenets of, respectively, *jus ad bellum* and *jus in bello*.

Finally, it was argued that, in spite of these historical changes, the policy debate remains distorted by self-referential analyses that, for the most, have ignored the novelty of the issues at play. Virus analogies and law-enforcement perspectives have, in particular, led to conceptual and tactical impasses, and highlighted the need for a parsimonious approach on a topic where conjectures abound. Internationalizing the debate and taking full stock of the facts of the matter is an urgent necessity.

Ending the deadlock

How can the war between Al Qaeda and the United States be brought to an end?

The outcome of the confrontation is unclear. What is certain is that neither side can defeat the other. The United States will not be able to overpower a diffuse, ever-mutating, organized international militancy movement, whose struggle enjoys the rear-guard sympathy of large numbers of Muslims. Correspondingly, as a formidable enemy, Al Qaeda can score tactical victories on the United States and its allies but it cannot rout the world's sole superpower.

Wars end traditionally with the victory of one side, which manages to impose its will. Yet, here, "if, on the one hand, a sub-state group has no expectation of obtaining military superiority over its opponent and, on the other, a state or combination of states has little hope of ending enemy operations by demonstrating its superior force then how can the operations of either be assessed as proportionate to purely military goals, or not as the case may be?"[74]

It is submitted that the extent to which Al Qaeda can achieve its goal of getting the United States, under the present American administration or another, to alter the nature of its policies in the Middle East, and towards Muslims in general; and the degree to which the United States can manage to have Al Qaeda cease its attacks on the United States and its allies constitute the mainstay of this political conflict. The nodal point is the following: Is the United States prepared to rethink some of its foreign policy choices in order to cancel Al Qaeda's *casus belli*?[75]

[74] Gilbert, *New Terror, New Wars*, p. 91.

[75] Rashid Khalidi notes: "This raises the rarely asked question of whether American bases in countries where they are not wanted by the population increase or decrease the security of the United States and the American people in the long run, and whether they serve to prevent terrorism or in fact to foster it. If this question were asked, something exceedingly difficult to do in the atmosphere of Washington, DC,… it would have revolutionary implications for American strategy and security." See Rashid Khalidi, *Resurrecting Empire – Western Footprints and America's Perilous Path in the Middle East*, Boston: Beacon, 2004, p. 54.

The 'terrorists should not be rewarded' mantra may not apply readily to the situation that obtains currently. These 'terrorists' are *de facto* combatants, and justice, rather than material reward (as in the case of mercenaries, contractors, or criminals), is what they are after. Maintaining dogmatically the illegitimacy of Al Qaeda as an enemy is also akin to perpetuating an imbalance within the conflict's definition itself, namely that only one side can decide on the beginning, form, and end of hostilities.[76] The examination of grievances may be an unavoidable process, which responsible statesmanship calls for.

Can, therefore, political engagement be considered? There are, as it is, incentives and disincentives. Besides lives and time, what would the belligerents gain through this notional transaction? What avenues can be legitimately and meaningfully explored? What can be accepted to resolve the conflict? Fifteen years ago, Martin Van Creveld wrote:

> If, as seems to be the case, th[e] state cannot defend itself effectively against internal or external low-intensity conflict, then clearly it does not have a future in front of it. If the state does take on such conflict in earnest then it will have to win quickly and decisively. Alternatively, the process of fighting itself will undermine the state's foundations – and indeed the fear of initiating this process has been a major factor behind the reluctance of many Western countries in particular to come to grips with terrorism. This is certainly not an imagined scenario; even today in many places around the world, the dice are on the table and the game is already under way […] Over the last few decades, regular armed forces… have repeatedly failed in numerous low-intensity conflicts where they seemed to hold all the cards. This should have caused politicians, the military, and their academic advisers to take a profound new look at the nature of war in our time; however, by and large no such attempt at reevaluation was made. Held captive by the accepted strategic framework, time and again the losers explained away their defeat by citing mitigating factors.[77]

Historical precedents abound as to the inevitability of a political settlement to a conflict pitting state and non-state actors. During the 1950s and 1960s in Algeria, the National Liberation Front (FLN) violently opposing French rule (through the use of indiscriminate urban bombing campaigns) was considered a terrorist organization by French colonial authorities and its eradication was pursued (including by way of torture, summary executions, and mass repression) before a political settlement was reached between FLN representatives and French officials in Evian, France in March 1962. In Northern Ireland, cost-ineffective heavy-handed approaches (including internment) were replaced in the mid-1980s with a change of tactics leading, in turn, to political initiatives.

The immediate precedent within this war confirms tacitly this approach. "By striking Spain just before its elections, the militants sent a message to Western governments that their presence in the Middle East would exact a heavy political and human toll."[78] In effect, a reversal of a policy perceived as anti-Muslim led to a cessation of hostilities on the part of Al Qaeda. Spaniards' removal of a government that was seen overwhelmingly as not acting as per their democratic choices and its replacement by a government that opted for different relations with the Arab and Muslim world prompted Al Qaeda to announce that it would stop actions against Spain. This was followed immediately by an offer of truce to European countries as a whole on the condition that they pulled their troops from Iraq and ceased interfering in Muslims' affairs.[79] The United Kingdom, which rejected the truce, was attacked in July 2005.

Finally, the issues have already been disclosed by one of the parties and indications to the possibility of a settlement stated. Osama Ben Laden did so explicitly in 2002: "Whether America es-

[76] For instance, the 9/11 Commission concludes: "[Al Qaeda's] is not a position with which Americans can bargain or negotiate. With it, there is no common ground – not even respect for life – on which to begin a dialogue. It can only be destroyed or utterly isolated." See *The 9/11 Report*, p. 362.
[77] Van Creveld, *Transformation of War*, pp. 198 and 222.
[78] Jason Burke, "Think Again: Al Qaeda," *Foreign Policy*, May-June 2004, p. 20.
[79] See Osama Ben Laden, "Proposal for a Peace Treaty," April 15, 2004. www.memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP69504. Ben Laden writes: "... [I]n response to the positive developments that were expressed in recent events and in the public opinion polls, which determined that most European peoples want peace,... I hereby offer them a peace treaty, the essence of which is our commitment to halt actions againt any country that commits itself to refraining from attacking Muslims or intervening in their affairs."

calates or de-escalates this conflict, we will reply in kind."[80] In light of this, a Professor of Defense Analysis at the United States Naval Postgraduate School notes:

> Facing a chance of losing may encourage negotiations… [This] suggests we face some important choices in the main battlefield in the war on terror. We must either start fighting in new ways against Al Qaeda or else commence some form of diplomatic negotiations with them. Perhaps we should do both at once. But we must do something… [N]egotiation is more important with the networks because they are harder to fight for us. Doing battle with them requires inventing new tactics that radically differ from those we traditionally employ against national armies… [W]e must accept that there might never be a treaty signed. But there could be a tacit agreement among the combatants, after which terrorist attacks almost entirely cease and U.S. forces begin an exodus from Muslim countries. Both sides have been saying they want the latter anyway."[81]

However, both parties are stronger and seem to have entered the conflict with no clear avenues to conclusion. Within a few years, the United States has emerged as a full-fledged global empire. Al Qaeda has been scoring important tactical victories and has come to constitute today "the most serious immediate threat to the United States."[82] Consequently, neither side is under particular pressure to end the conflict rapidly.

As one analyst remarks, "failure to appreciate the existence of common ground within functioning — even if badly functioning — political communities stems from a dangerous intellectualism which looks for principles in pronouncements rather than in deeds." Though dismissed widely, a measure of congruity may in fact be inevitable for the resolution of the conflict. Al Qaeda is "an entirely rational enemy, motivated by causes just as dear as those that drive Americans. It is bent… on defending its own liberties in its homelands; it is amply armed, and is equipped with a better understanding of the strategies of fourth-generation warfare than Americans yet possess."[83]

Osama Ben Laden's plan was ambitious and it has been successful. It has, in particular, confirmed the principle that, based on their moral force, decentralized, weaker entities can match a stronger military power. Within five years, Ben Laden has become the most powerful and the most respected Arab figure, dwarfing the twenty-two Arab heads of state, now presenting himself as "an elder statesman for a borderless Muslim nation."[84] Though there are dissentient views, no leading Muslim intellectual or scholar has denounced him. Yet his appeal is not religious and Al Qaeda's war agenda is eminently political and concerned with self-preservation.

Engagement with 'terrorists' requires addressing the issues raised. Namely acknowledging the collective grievances in which they anchor their acts of force, depicted as political actions in response to specific issues. The sum total of the textual evidence and sober analysis is that Al Qaeda would conceivably cease hostilities against the United States, and indeed bring an end to the war it declared against that country in 1996 and in 1998, in return for some degree of satisfaction regarding its grievances.

Absent a dynamic of non-military engagement, for Al Qaeda, war (understood as resistance) may remain an ethical imperative, as stated by Osama Ben Laden in his October 2004 address to the American people: "Is defending oneself and punishing the aggressor in kind, objectionable terrorism? If it is such, then it is unavoidable for us."

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[80] Osama Ben Laden, audio message broadcast on Al Jazeera, October 6, 2002.

[81] John Arquilla, "The Forever War – The Fight against Terrorism Could Go on Indefinitely Unless the U.S. Adopts Imaginative New Strategies," *The San Francisco Chronicle*, January 9, 2005, p. C-1. On the larger policy background to such thinking, see Michael Ware, "Talking with the Enemy – Inside the Secret Dialogue between the US and Insurgents in Iraq," *Time*, February 20, 2005; Susan B. Glasser, "Review May Shift Terror Policies," *The Washington Post*, May 29, 2005, p. A1; and Hala Jaber, "US in Talks with Iraq Rebels," *The Sunday Times*, June 26, 2005, p. 1.

[82] Brian Michael Jenkins, *Countering Al Qaeda – An Appreciation of the Situation and Suggestions for Strategy*, Santa Monica, California: Rand, 2002, p. vii.

[83] Jonathan Raban, "The Truth about Terrorism," *The New York Review of Books*, 52, 1, January 13, 2005, p. 24. As Michael Scheuer remarks, "the threat Osama Ben Laden poses lies in the coherence and consistency of his ideas, their precise articulation, and the acts of war he takes to implement them." See *Imperial Hubris*, p. xvii.

[84] Don Van Natta Jr., "Sizing Up the New Toned-Down Bin Laden," *The New York Times*, December 19, 2004, pp. 1 and 6.

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