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“DIFFERENCE IN POWER” MORE THAN “POWER OF DIFFERENCE”: UPHOLDING THE UNIVERSALITY OF HUMAN RIGHTS AGAINST AMERICAN AND ISLAMIC JIHAD

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INTRODUCTION

1. Thousands of people were killed in the terrorist attacks of September 11th, 2001 in New York and Washington DC, and more thousands in Afghanistan as a result of the military retaliation by the United States since October 7th. A special report in the Guardian, UK of December 20th 2001, carefully estimates that 3767 civilians have been killed by American bombs in Afghanistan, in addition to as yet undetermined number of Taliban and so-called Al-Qaeda fighters. The United States is already preparing for, and consulting with its allies about, continuation of its military campaign against other Islamic countries and movements it deems to be associated with international terrorism. All of this is happening without an independent examination and verification of the evidence for responsibility for the September 11th attacks, or assessment of the necessity, proportionality or appropriateness of the military campaign. In other words, the United States has acted, and continues to act, militarily on a global scale exclusively on its own perceptions of the immediate or anticipated danger to itself, without any assessment of those perceptions through accepted institutional arrangements and processes of international law. To simplify and illustrate this in domestic law terms, it is as though someone's house was attacked and the aggressor was killed in the attack, but the victim took his gun and went into the town killing those he deemed to be responsible for or associated with that attack. That is what I call *a failure of international legality*, regardless of one's personal sympathies or opinion about its reasons or possible justifications.
2. In this paper, I am neither suggesting that the United States should passively submit to repeated atrocious attacks against its citizens and interests at home and abroad, nor drawing any conclusions about possible legal justification(s) for the military campaign of the United States in Afghanistan. Rather, my position is simply that the actions of the United States since October 7th cannot be accepted as in conformity with international legality unless they are scrutinised and approved by the *normative, institutional and procedural* requirements of that system. In other words, the United States, or any other state of course, cannot claim the mantel of international legality until it is willing to submit

to the authority of international law and abide by its outcome. Whatever legal justification(s) may be claimed for the actions of the United States, it cannot act as prosecutor, judge, jury, and executioner in its own cause and still claim the legitimacy of international legality.

3. It may be true that there is no international legality any way, or that it is too weak and uncertain to cope with the realities of global power relations. But this distinction is immaterial for my argument in this essay. That is, whether there is no international legality, or it is too weak to check self-help and vigilante justice by the most powerful among its purported subjects against the weakest, the question is what are the implications for the international protection of universal human rights. This is the question I am addressing here from an Islamic perspective. However, as a Muslim advocate of universal human rights, I will attempt to do so in the affirmative sense of how to avoid the negative consequences of the lack or weakness of international legality in relation to the aftermath of September 11th and October 7th, rather than concede those consequences as either inevitable or permanent.
4. The premise of my analysis in this essay is that there is no moral, political or legal difference between this *jihad* by the United States against those it deems to be its enemies and jihad by Islamic groups against those they deem to be their enemies. From this premise I argue that both forms of jihad not only violate the human rights of countless numbers of people, but also undermine even the possibility of the universality of human rights. From the very beginning of the modern international human rights movement, the primary challenge to the universality of these rights has been assumed to be cultural/religious difference according to the following logic. In other words, given the cultural foundation of all normative systems, on the one hand, and the permanent cultural diversity of the world, on the other, how to determine universally valid human rights standards that are acceptable to all societies regardless of cultural and contextual difference? While appreciating the continuing reality and seriousness of this challenge, I do believe that it can be mediated by promoting an overlapping consensus over the universality of human rights through internal discourse within cultures and cross-cultural dialogue among them. The question now is whether people around the world will have enough confidence in the possibility of universal human rights to try to overcome those “traditional” difficulties with the concept.
5. It seems clear to me that the aftermath of the attacks of September 11th, 2001 prove the fallacy of Huntington’s “clash of civilizations” thesis, while emphasising the grave risks of this “self-fulfilling prophecy” to peaceful international relations in general, and the prospects of universal protection of human rights in particular. The fallacy of this thesis is clear in that those attacks were motivated by specific political, security and human rights grievances against the foreign policy of the United States, rather than by an irrational generalised Islamic hostility to so-called “Western civilisation” as such. Although public opinion in many Islamic societies expressed understanding of the relevance of those grievances, the vast majority of Muslims condemned the attacks and all the governments of Islamic countries either supported the massive and sustained military retaliation by the United States or acquiesced to it. More importantly, the governments of all Islamic countries have clearly and consistently acted throughout this crisis on their own calculations of economic, political or security interests, instead of standing in solidarity with Muslim attackers or the states accused of harbouring or supporting them. In other words, this was a case of the politics of power as usual; unfettered by an overriding civilizational divides predicted by that thesis.
6. In this light, it becomes clear that the aftermath of September 11th and October 7th is more about the *difference in power* between the two sides of the conflict and their allies, regardless of cultural/religious affiliation, than *the power of difference* between so-called Islamic and Western civilizations. As would be the case everywhere in the world, culture and religion are important dimensions of the conflict only in relation to how events are perceived, interpreted, and reacted to by all sides, and not as independent and static variables. Recent global events do raise a risk of a deepening cultural/religious divide that will undermine the universality of human rights. But this alarming prospect is the product

of moral and political choices being constantly made by all sides to this or other similar conflicts, and not inherent in the nature of cultural/religious difference as such.

7. If this is a valid characterization of the issues, then it will always remain possible to re-affirm and vindicate the universality of human rights by making the appropriate moral and political choices and acting on them. Otherwise, the idea of universality of human rights itself will be inconceivable simply because it cannot be the substitute of culture and/or religion for any human society, anywhere in the world. That is, if the universality of human rights is inherently inconsistent with culture/religion, the former can only be affirmed by repudiating the latter, which is an impossible choice for any society, whether in the so-called global North or South, West or East.
8. To be clear on the point, this view is premised on the fact that culture and religion are more fundamental than the universality of human rights for all societies everywhere, and are not only in non-Western settings. The common perception that Western societies already accept the universality of human rights is an illusion of power relations in the history of the human rights movement. In fact, Western societies have their own difficulties in accepting some aspects of the universality of these rights, as has already been clear in the case of economic, social and cultural rights, or collective human rights like a right to development, which are of critical importance for some non-Western societies. For our purposes here in particular, the most recent illustration of the lack or weakness of Western commitment to the universality of human rights is the conduct of North American and Western European countries since the beginning of the American bombing of Afghanistan on October 7th, 2001.
9. In view of this realistic assessment of the challenge, I plead for giving the universality of human rights a chance over both Islamic and Western chauvinism of American and Islamic *jihad*. The threat of terrorism cannot be combated by military campaigns against every country that is suspected of supporting or harbouring terrorists. Even if such that was possible, it carries truly grave dangers to international peace and security. A much better, humane and sustainable solution should consist of two elements. First, continue and accelerate international cooperation in addressing the underlying causes of the poverty, frustration and powerlessness that motivates terrorists and their supporters. Second, establish effective legal mechanisms for prosecuting and, if convicted, punishing terrorists, but with the full protection of the due process of law.
10. To substantiate the preceding assessment and support this plea, I will now present my own understanding of these events as the challenge of international terrorism to the universality of human rights. In the following sections of the paper, I elaborate the nature of that challenge for Islamic societies, on the one hand, and the United States and its allies, on the other, as well as for the international community at large. Underlying my whole argument is my belief in the critical importance of the rule of law as a framework for responding to this challenge. It should be emphasized, however, that the rule of law in this sense means “law” that is consistent with international human rights law, and not simply in any formal sense of the term. In my view, this is the only effective and sustainable response to the reality of *our shared vulnerability* as human beings everywhere, even the most privileged and apparently secure persons and groups, as painfully and dramatically illustrated by the attacks of September 11th.

THE CHALLENGE OF TERRORISM TO INTERNATIONAL LEGALITY

11. There is much controversy about the definition of terrorism, but the real issue is the failure to apply any definition consistently, as in “one man’s terrorist is another man’s freedom fighter”, rather than the difficulty of agreement on a definition as such. The main point to emphasize here is that a workable definition should be developed and consistently applied at the international as well as the domestic level, with the full protection of due process of law, and regardless of the identity or

affiliation of the suspect. Accordingly, as more facts emerge about what really happened in Afghanistan since October 7th, it is conceivable that an impartial application of a definition of terrorism can apply to the actions of the United States and its allies in that country, as well as to the attacks of September 11th.

12. To place the subject of this paper in perspective, and with due regard to the gravity and magnitude of the criminal attacks of September 11th, such atrocities are, unfortunately, not unique as incidents of terrorism, which is a specific manifestation of the broader and truly global problem of political violence in general. Only within the last decade or so, many parts of the world have suffered more horrendous atrocities, from genocide in Bosnia and Rwanda to state-sponsored mass murder in East Timor, in addition to humanitarian disasters and indiscriminate violence in the course of civil wars. The transnational dimension of these crimes calls for special cooperation in their investigation and prosecution, as often happens in cases of traffic in illegal drugs or regarding organized crime, without compromising on due process protections.
13. What is different about September 11th is that the attacks were directed against the pride and sovereignty of the most powerful country in the world, which is able and willing to retaliate with massive and sustained military power against its enemies with total impunity. This is particularly disturbing when peaceful alternatives, whether through the United Nations' system or extradition and criminal prosecution, were never given a chance to work. In other words, what is exceptional about these attacks is that the victim state is powerful enough to secure unconditional international support for whatever it unilaterally deemed necessary to "eliminate" this particular source of danger to itself in the name of combating international terrorism without any accountability under international law.
14. For the purposes of this paper in particular, a critical element of this instance of so-called "American exceptionalism" is the complicity of all the major powers in bypassing the United Nations and international law in general because of their own political agenda. In my view, this failure of international legality in the face of unilateral power is the more immediate threat in the present global environment because it reinforces and legitimizes the power of cultural/religious difference, in addition to the independent threat of terrorism as such.
15. Terrorism is a serious threat to human rights precisely because it is a powerful temptation to sacrifice principled commitment to the due process of law in the name of defending national security and public safety. The ultimate object of terrorism, in all its forms and from whatever source it may come, is to diminish the humanity of its victims and reduce them to its own level of barbarity. To respond to this challenge, each society needs to reflect on its own enlightened and humane best interest in the face of such grotesque behaviour. In particular, since direct retaliation will only feed into a spiral of mutual destruction, each society has to strive to understand and address possible causes of what appears to be utterly senseless carnage, however alien and incomprehensible that may be to the society's own sense of rationality.
16. Failure to acknowledge and address the rationality of the terrorists is to deny their humanity, and thereby forfeit any possibility of universality of human rights. That is why it is critically important to attempt to articulate the grievances of terrorists, as they perceive them, without implying that they justify or legitimise terrorism as a means of redress. Understanding the motivation of any terrorist is essential for a reasoned and sustainable response, and should not be seen as condoning the crimes or blaming the victim. It is from this perspective that I insist that it is relevant, indeed necessary, to consider the relationship between the attacks of September 11th and the foreign policy of the United States. Since this is our focus here, I will give examples of that regarding the Middle East for the reasons briefly stated below.
17. In my view, the worst failure of the foreign policy of the United States in the Middle East is its unconditional and uncritical support of whatever Israel does in the region. For example, Israeli armed

forces are believed to have killed more than 17000 unarmed civilians during its illegal invasion and occupation of parts of Lebanon for 18 years. Yet the United States blocked every international effort to force Israel to withdraw, let alone holding its leaders accountable for those crimes. In contrast, the United States and its allies continue to punish the people of Iraq for the sins of their oppressors who did to Kuwait what Israel was still doing to Lebanon at the time. Another failure is the unqualified support of the corrupt and oppressive regime of Saudi Arabia that is the primary source of militant fundamentalism in the Muslim world.

18. The irony is that these foreign policy failures are rationalised in the domestic politics of the United States as necessary for the protection of the economic and security interests of the country, while they can only lead to the opposite results. Consider how the suppression of the liberal democratic process in Iran in 1953, and support of the Shah's regime as a Cold War strategy, begot Khomeini by 1979, with drastically negative consequences for the economic and security of the United States since that time and throughout the Middle East.
19. Since the failure of international legality noted earlier has so far precluded an authoritative determination of responsibility for those attacks, reference to the Middle East does not imply that this is the only relevant region. But it is reasonable to refer to the Middle East in this context because the military retaliation by the United States is targeting Islamic fundamentalist groups closely associated with that region. Moreover, given that the subject here is the human rights implications of recent events from an Islamic perspective, one should take into account the special significance of the Middle East for most Muslims for religious and historical reasons. The vast majority of Muslims throughout the world regarding the aftermath of September 11th and October 7th are likely to be more influenced by their perception of the negative role of the foreign policy of the United States in the Middle East than in relation to other regions.
20. Similarly, the focus on Islamic debates about forms of political violence that can be regarded as terrorism today should be taken to imply that there is a particular "natural" connection between the two. As any review of recent history or current events will show, terrorists in all parts of the world are motivated by a wide variety of nationalist ideological and other secular causes, as well as religious zeal. Raising the challenge for Islamic societies in relation to the recent global events simply happens to be my own concern as a Muslim advocate of the universality of human rights and the rule of law in international relations.

THE CHALLENGE OF TERRORISM FOR ISLAMIC SOCIETIES

21. The basic issue facing Islamic societies today regarding the role of Islam in their national politics and international relations is whether, and to what extent, should traditional formulations of *Shari`a* apply. Different positions on this basic issue have been reflected in the extensive public debate among Muslims since September 11th, ranging from a categorical disassociation between Islam and those attacks, at one end, to strong support for them as justified, if not dictated, by *Shari`a*, at the other end.
22. In fact, the relationship between *Shari`a* (as the human understanding and practice of Islam) and terrorism has always been an extremely contested subject among Muslims since the first civil war (*al-fitnah al-kubrah*) of the mid 600s CE. Since *textual* sources (Qur'an and Sunna or traditions of the Prophet) as well as precedents in early Islamic history can be cited in support of either side in this controversy, I suggest, resolution should be sought in the *contextual* mediation between these views. That is, competing textual sources can only be understood and reconciled with reference to a contextual framework for their meaning and practical application today.

23. The main premise of this contextual mediation is that Islamic sources are supposed to provide moral and political guidance for drastically different Muslim communities living under radically different conditions – from the small city state of Medina in seventh century Arabia, to today’s nation-state societies, and into the future. The historical context within which Shari`a was elaborated during the first three centuries of Islam was an extremely harsh and violent environment, where the use of force in inter-communal relations was the unquestioned norm. It was simply conceptually incoherent and practically impossible for Shari`a regulation of inter-communal (international) relations (*Siyar*) to have been based on principles of peaceful co-existence and rule of law in the modern sense of these terms. The dominant traditional view is that Shari`a restricted both the causes of the legitimate use of aggressive force in jihad, and strictly regulated the conduct of hostilities. But it is also clear that there is much ambiguity and diversity of opinion in the theory of Shari`a on this subject, and that practice was far from consistent with that theory throughout Islamic history.
24. While I believe that Shari`a notions of jihad were appropriate for that historical context, I also hold that they are no longer acceptable or workable today. In my view, and despite serious reservations about the current global context, there is little point in re-visiting old controversies about the precise scope and conditions of jihad because even the most restrictive view of its causes and manner are categorically illegal and politically untenable in the modern context. In other words, the serious threat to international legality posed by the recent conduct of the United States and complicity of major world powers in that regard does not justify a re-enactment of that sense of jihad, and the realities of global power relations would not permit its practice today.
25. Therefore, the challenge facing Islamic societies today is how to authoritatively and effectively repudiate those notions of jihad in the hearts and minds of Muslims, and not only in the official policy and practice of their states. As can be observed regarding many of its principles that are no longer applicable as a matter of national law or policy, Shari`a continues to exercise a powerful influence in the socialization of Muslim children, attitudes and behaviour of adults and the communal life of groups in general. Since Islam addresses the individual Muslim directly, there is a strong sense of obligation to comply with what is believed to be Shari`a, regardless of the official policy or action of the state as such. Of particular relevance to our subject here, the influence of these psychological, sociological and political dimensions of Shari`a is likely to be intensified in crisis situations, as people look for resources for anchoring and securing their identity and sense of purpose or guidance in daily life.
26. There is an internal and an external dimension to the proposed transformation of the nature and role of Shari`a in the lives of modern Islamic societies. The internal dimension includes theological and theoretical debates about the rationale or justification of change, and ways of coping with its traumatic impact on personal and communal lives. This internal dimension also includes the political and sociological “space” for such debates and experimentation with new ideas and life-style. The strong acceptance and effective implementation of universal of human rights are critical for all of these facets of social change and cultural transformation.
27. Regarding the external dimension, a society needs to feel secure in its own political and cultural space, its sense of identity and physical well being safeguarded, and so forth. Conversely, if a society feels threatened or under attack, a siege mentality will take hold, whereby people and groups tend to become more conservative and entrenched in their traditional ways of seeing and interpreting things. From this perspective, it is clear to me that the foreign policy of the United States in the Middle East contributes to the erosion of the internal pre-requests for social change and transformation, as well as reinforcing a sense of external threat that encourages conservative entrenchment. This policy also promotes strong skepticism about the universalist ethos of human rights, whether by supporting oppressive regimes like Saudi Arabia or enabling that of Iraq to consolidate its control by citing external pressure of sanctions and constant threats of air strikes. These long-term negative consequences are now drastically compounded by the military campaign in Afghanistan.

28. Questions likely to be raised by Muslims everywhere now include the following. If the United States is free to bomb Afghanistan so intensely for weeks in order to change its internal political configuration, and continue to impose conditions on the new regime, with the rest of the world watching with apparent indifference, which Islamic country is next? What will become of the people of the country that is next on the list, and of their social and political institutions? Will their children die of starvation and disease like the children of Iraq, while its dictatorial regimes exploit those external threats to perpetuate their own power? To a well-informed observer of international relations who appreciate the limitations of all forms of power everywhere, these concerns might sound exaggerated. But such scenarios may well sound realistic and plausible to the masses of Muslims who have been conditioned by their own leaders, as well as Western controlled media, to accept the absolute power of the United States to do as it pleases anywhere in the world.
29. To summarise the main points made in this section, I suggest that Islamic sources that sanction *jihad* as the use of force for any reason other than self-defence should be seen as no longer applicable in the modern context of global peaceful co-existence and interdependence. I also maintain that notions of jihad that authorize the direct use of violence by private non-state actors are equally dated in the present context of nation-state and state-based international relations.
30. But the conceptual premise of these propositions, and political precondition for their general acceptability, is the reality and credibility of peaceful co-existence under the rule of law. That is, the argument against traditional understanding and practice of jihad is conceptually untenable and politically unlikely to prevail among present day Muslims unless they are able to see that national politics and international relations are in fact peaceful and in accordance with appropriate legality.
31. From this perspective, the manner and scale of the military retaliation by the United States, and the failure of the international community to check that unilateral use of force to alter political realities inside Afghanistan by direct military intervention, are tantamount to a fundamental repudiation of that premise. In other words, the proponents of jihad as an aggressive war are more likely to be supported by the majority of Muslims in a world where military force and self-help prevail over the rule of law in international relations. When the United States engages in its own *jihad* with complete international impunity, how can one condemn and combat terrorism as a means to vindicate perceptions of injustice and victimization?

UPHOLDING INTERNATIONAL LEGALITY FOR HUMAN RIGHTS

32. One of the consequences of the recent failure of international legality is that it precludes any meaningful discussion of the legal characterization of both the terrorist attacks of September 11th, and the military retaliation by the United States and its allies since October 7th. Instead of engaging in a hypothetical or speculative discussion of those issues, I prefer to focus here on clarifying what I mean by this failure of international legality, and its drastic implications for the universality of human rights. My point here can easily be appreciated from the old maxim “justice must not only be done, but must also *be seen* to be done.” In this case, the appearance of arbitrary, unfettered and unilateral power of the United States to do what it pleases across the world is as damaging to the legitimacy and credibility of international law (and human rights) as an affirmation that it actually has the legal authority to do so.
33. As stated earlier, the threat of terrorism to human rights is that it dehumanises its victims and reduces them to such a level of savagery and rage that they want to strike back without considering the consequences of their action. Terrorists seek to enhance their moral advantage by pushing states to be reckless about human life and indifferent to human suffering. It is particularly unfortunate that the United States, the sole superpower and permanent member of the Security Council of the United Nations that is supposed to be the guardian of international peace and security, has so easily and quickly fallen into this trap. In so doing, the United States and its allies have betrayed all those who

are calling for the rule of law in international relations and respect for human rights and humanitarian law. This betrayal is particularly serious for Muslim advocates of international legality and universality of human rights because it undermines the conceptual as well as political basis of their internal Islamic argument against jihad and in favour of universality of human rights, as explained in the preceding section.

34. But it is also pertinent to ask what is the alternative? How can the United States protect its own citizens and safeguard its sovereignty and territorial integrity, even its national dignity and pride as the world's sole superpower? The answer is simply that those attacks were international crimes of the utmost seriousness that must be vigorously investigated in order to hold those responsible under the law. From this perspective, and according to the available and verifiable facts, the legal issue between the United States government and the Taliban government of Afghanistan immediately after the attacks should be characterized as an extradition matter, and pursued as such. That would of course entail compliance with due process safeguards in such matters. While one can speculate about other possible characterization of the issues at that stage, the pre-emptive action of the United States and international complicity in that action have precluded an independent and authoritative determination of the matter through the normative and institutional mechanisms of international law.
35. If there is the political will to treat those attacks as a matter for law enforcement, not military retaliation, I believe that there are enough normative and institutional resources to begin the process of criminal accountability under international law. Available models include ad hoc international tribunals established by the Security Council of the United Nations, and tribunals established as a result of negotiations between concerned states, as happened in the case of the bombing of the Pan Am flight over Lockerbie in Scotland. In fact, during the first week of October, that is a few days prior to the commencement of the military campaign of the United States, Iran made an offer through the Foreign Minister of the United Kingdom to use the mediation of the Organization of the International Islamic Conference (which was to meet the following week in Bahrain) to agree on a forum whereby suspects in the September 11 attacks could be brought to trial based on the evidence. The United States rejected that offer, and demanded the immediate and unconditional surrender of Osama bin Laden by the Taliban, without even showing its evidence to its closest allies among the governments of Islamic countries, like Pakistan. According to some press reports at the time, the United States showed the evidence it had against Osama bin Ladin and his associates to its NATO allies, some of whom felt that it would not stand in a court of law. But even if they all found the evidence sufficient for a conviction, that will not be good enough from a due process of law point of view.
36. It may be true that the institutional capacity and practical efficacy of the international legal order are insufficient for these purposes. But this claim is not available to the United States simply because it never gave international legality a chance to work in this case. Moreover, the only way to remedy the weakness or inadequacies of international legal processes is to invest in the development of the system over time. As clearly illustrated in the legal history of the United States itself - when organized gangsters unleashed a streak of violence, intimidation and corruption that really gutted the whole system in the 1920s to 1940s. Yet the United States government persisted in its commitment to due process, and gradually built a credible domestic judicial system without compromising on due process. Without similar determination and perseverance, the time will never come when the rule of law replaces self-help and vigilante justice in international relations.
37. The problem here is that the United States is more committed to the protection of the civil liberties of its own citizens, than of human rights everywhere. This can be clearly seen in the treatment of non-citizens within the country itself since September 11th, including the military directive of President Bush authorizing the trial of foreign suspects of terrorism before military tribunals, with much reduced due process protections. In this light, and given its strong opposition to efforts to establish the International Criminal Court, one may wonder whether the United States' rush to

military action was not part of a deliberate policy to subvert any possibility of international criminal accountability for the terrorists attacks of September 11th.

38. In the final analysis, however, since it was so clear that the United States was unwilling to give due process of international law a chance, why did the Security Council fail to intervene to uphold the mandate of the Charter of the United Nation itself for peaceful settlement of disputes? Why did the Security Council fail to either expressly authorize the use of force by the United States and clearly define the scope and objectives of its military operations, or call for the establishment of a UN force for the purpose? The apparent answer to these and related questions is that the members of the Council itself, especially the five permanent members, have conspired to paralyse and marginalize the UN system for their own political interests. It is relevant to recall here, I believe, that none of the major actors in that subversion of international legality come to this with clean hands. While a host of countries, including the United States and Russia have used terrorist methods or sponsored terrorists for decades, others have either done so in the recent past or have their own political reasons for failing to challenge those who do.

CONCLUDING REMARKS

39. Despite the gravity of this challenge to international legality and the prospect of universal human rights, I do believe that there are signs of hope out of these tragic events. On the one hand, I am glad to report that many Muslims are now more willing to re-examine the meaning and relevance of Islam in their lives as individuals and communities. On the other hand, the limitations of military intervention in combating international terrorism are also becoming clearer and more appreciated everywhere. This is particularly true when one considers this problem from the perspective of other countries, as in the case India and Pakistan over the attack on the Indian parliament by Pakistani nationals where all [the attackers] were killed in that incident. Moreover, despite the failure of political will to use them, the norms and institutions of international legality are still available. I see these and related developments as a good basis for a more viable and sustainable response to international terrorism, as outlined earlier. Ultimately, that is the only morally right and politically viable choice to make.
40. To end on a personal note because it is relevant to what I am saying in this essay. I am from Sudan, and retain my Sudanese nationality. But I have also become a naturalized citizen of the United States, partly because that enables me to be more of citizen of the world. This choice does not mean that I believe that the policies and actions of the United States are always right, or that I should accept and defend them as my “patriotic duty”. The standards I am seeking to apply, and the practical possibility of doing so, are both enshrined in universal standards of human rights. My criticism of the foreign policy of the United States is therefore part of my support for international legality as a necessary condition for the legitimacy and efficacy of universal human rights. Given the realities of global power relations, it is clear to me that that project is unattainable without a positive role for the United States and its West European allies. The views and analysis I presented above are intended as an optimistic affirmation of the possibility of that role, rather than advocacy of its abandonment or a purported neutral scholarly exercise.

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