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**TERRORISM, HUMAN RIGHTS AND ADVOCACY STRATEGIES**

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1. The politically-loaded nature of the word “terrorism”; the abuses committed in the name of countering terror, particularly since 9/11; and the fear of treading on dangerous religious ground have made many human rights activists uncomfortable with addressing human rights violations committed in the name of Islam. But failure to do so may be leading to what Wilder Tayler has called a “screeching lack of legitimacy” in the eyes of the public – at least the public in countries that have been affected by terrorist attacks.<sup>1</sup>
2. We can point to terrorist acts committed by non-Muslim non-state actors such as Timothy McVeigh in Oklahoma City, or the Aum Shinrikyo sect and its 1995 sarin gas attack on the Tokyo subway as evidence that no group has a monopoly on indiscriminate attacks on civilians. But the fact remains that only one ideology, *salafi jihadism*, has inspired widely disparate groups around the world – in Iraq, Madrid, Istanbul, Bali, and New York, among other places – to mount systematic attacks on civilians, in the name of retaliating for attacks, real and perceived, of the United States and its allies on Muslim populations.
3. The fact that there is not a single definition of terrorism should not be – and in fact has not been – a deterrent to seeing such attacks as violations of human rights and/or humanitarian law. All of the various definitions in circulation focus in one way or another on the targeting of civilians, and the one used in *A More Secure World*, the 2004 report of the U.N. High Level Panel on Threats, Challenges and Change, is as good as any other. It also has the value of being concise:

Any action [...] 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 organisation to do or to abstain from doing any act.

4. Neither Amnesty International nor Human Rights Watch had any difficulty in condemning the 9/11 attacks as a crime against humanity, and Human Rights Watch explicitly noted that such

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<sup>1</sup> Wilder Tayler, “Towards an Advocacy Strategy for Human Rights in the Fight Against Terrorist Acts”, presentation to the International Commission of Jurists, 25 August 2004.

crimes were covered by the Rome Statute of the International Criminal Court.<sup>2</sup> But neither organisation carried its analysis much further – the focus was more on the dangers of the human rights violations emerging from sweeping counter-terrorism measures.

5. There are several difficulties in dealing with salafi jihadi groups that perceive themselves as part of a global jihad, especially if they are not at the same time a party to internal conflict:
  - Their religiously-based arguments are intrinsically more difficult for secular rights organisations to address, let alone refute.
  - It is simply not possible to try and analyse causation in any convincing way. Just as no one tries to “understand” why torture of political detainees takes place but instead condemns it as wrong and illegal, we need to look at certain methods – e.g. large-scale indiscriminate killing of civilians -- as absolutely unacceptable without probing or trying to explain them in terms of “root causes”. Focusing on methods also makes it easier to blur the distinction between jihadist groups (al-Qaeda, Jemaah Islamiyah) and movements that are essentially ethno-nationalist (Chechnya, Moro Islamic Liberation Front), however much they may be perceived as Islamic by jihadists in other countries.
  - The fact that the “war on terror” has been aimed at organisations that act in the name of Islam and that Muslims have borne the brunt of the discrimination, arbitrary detention, and other violations that have ensued makes it more difficult in some cases to appeal to the Muslim mainstream who are appalled by terrorist tactics but don’t want to join in any further stigmatisation of their faith.
6. Before examining some of these problems, it is worth mapping out where salafi jihadis fit within the spectrum of politically active Islamic groups.

### **POLITICAL ISLAM: NOT ALL “RADICALS” AND “ISLAMISTS” ARE “TERRORISTS”**

7. “Islamism” is the term now commonly used to refer to Islamic activism of a political or religious nature. Too often, it is used as a code word for terrorism, as if anyone working to promote the application of Islamic law was a closet bomber. It is precisely this kind of blanket demonisation that makes broader advocacy against terrorism on human rights grounds next to impossible. In fact, Islamists are a very varied lot. Most are committed to achieving their objectives through peaceful means, and many are viscerally opposed to the activities of salafi jihadis.
8. Islamic activism among Sunni Muslims can be divided into three broad categories, political, missionary, and jihadist.<sup>3</sup>
9. The political category consists largely of groups like the Muslim Brotherhood and its various offshoots and derivatives, or Islamic parties like the Justice and Development Party in Turkey or the Prosperous Justice Party in Indonesia, that are interested in attaining power at the national level. Most of these groups today are willing to work through democratic political systems where such systems exist; are willing to work for the upholding of Islamic principles through reform rather than revolution; and for the most part, reject violence. In cases where they do use violence – Hamas is one example – it is in support of nationalist rather than global jihadist objectives. This in no way excuses acts of terrorism, and indeed is an argument for looking at methods rather than objectives.

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<sup>2</sup> Human Rights Watch, “September 11: One Year On: A Message to the Human Rights Watch Community” 9 September 2002.

<sup>3</sup> Much of this section follows the analysis in International Crisis Group, Middle East/North Africa Report No.37, *Understanding Islamism*, 2 March 2005.

10. One of the few utopian organisations that falls within the political activist category is Hizbut Tahrir, the organisation based in Jordan that has large followings in Central Asia and increasingly, Southeast Asia. It has a revolutionary vision of the ideal Islamic state and aims to restore the caliphate that disappeared with the Ottoman Empire in 1924. It rejects democracy as being based on man-made laws and has a revolutionary view of the pure Islamic society. While it is non-violent itself, its members often support or justify the use of violence by others as a weapon of the weak against much stronger, hostile forces.
11. Islamists in the second category, missionary activism, focus on dakwah or religious outreach, mostly aimed less at gaining converts than at making Muslims more rigorous about practising their faith. There are two main groups in this category, both non-violent. The first is the *Jama'at al-Da'wa wa'l-Tabligh* (simply Jemaah Tabligh in Southeast Asia) whose members are known as Tablighis, a South Asia-based movement whose annual gathering attracts more Muslims around the world than any other single event other than the haj to Mecca. The second is the salafi movement, of which Wahabism in Saudi Arabia is the best known manifestation.
12. Jemaah Tabligh is highly conservative but apolitical. It originated in India but now has a rapidly growing membership worldwide, including North Africa, West Africa and Southeast Asia. Its distinctive characteristic is *kburuj*, or going forth, a practice not unlike the missionary work required of Mormons, whereby every member is encouraged to go out into the community for a specified period every year to persuade fellow Muslims to more strictly adhere to the tenets of the faith. Women are encouraged to veil themselves completely, men to grow full beards and wear long robes. Because the *kburuj* brings many South Asians to Southeast Asia, there have been numerous incidents of unfounded reports of possible “al-Qaeda” suspects in the region that almost always turn out to be harmless Tablighis. The problem is that some jihadists on occasion have pretended to be Tablighis as a way of moving from one place to another without arousing suspicion, and in some cases, individual Tablighis have been recruited into less benign groups.
13. The salafi movement is one of the most misunderstood. Salafism is a reformist movement that began in the late 19<sup>th</sup> century and aims at purifying the faith by adhering as closely as possible to the letter of the Quran and using the 7<sup>th</sup> century practices of the Prophet Muhammad and his companions as a guide for how Islam should be practised today. Wahabism, the variant of salafism that became the ideological basis of the Saudi state, is best understood as a subset of salafism, but often the words are used interchangeably.
14. The fact that most of the 9/11 hijackers were Saudis; that Saudi-based charities have been a conduit for funds to al-Qaeda; that the Saudi government has funded an aggressive Wahabi proselytisation program, and that most jihadists consider themselves salafi has led to a completely mistaken assumption that salafism promotes terrorism.
15. There is no question that salafis are extreme fundamentalists in the purest sense of that word, and innately hostile – based on their reading of Quranic texts – to Shi'ites, Sufis, and people they consider kafir or unbelievers, particularly Christians and Jews. But most are not only non-violent: the most rigid are also among the most staunchly opposed to what the jihadist movement represents.
16. Salafis by and large are religious activists, interested in convincing other Muslims to purify their own practices and remove unwarranted innovations (*bid'a*) that have grown up over the last 14 centuries. Most forms of political organisation, and democracy itself, are regarded as *bid'a*, and political activity, especially in organisations like the Muslim Brotherhood, is seen as an unacceptable diversion from a focus on faith. One of the worst epithets a salafi can use against a fellow Muslim is to accuse him of being *hizbiyah*, having political party-like tendencies, and one

of the grounds on which salafis object to jihadist groups is that their political structures, with oaths of loyalty to the leader, smack of hizbiyah practices and only serve to sow dissension within the ummah (community of believers).

17. It is also a premise of salafism that it is not permissible to revolt against a Muslim ruler, no matter how oppressive or unjust. Most Indonesian salafis, for example, who look to their Saudi mentors for guidance, are implacably opposed to Osama bin Laden on these grounds. Likewise, they oppose Jemaah Islamiyah, not so much because it is seen as a puppet of bin Laden, but because it is an offshoot of a movement called Darul Islam that began as a rebellion against the Indonesian government.
18. When mainstream salafis have engaged in violence, it is more likely to be along the lines of smashing nightclubs, bars, places of prostitution and the like, in the interests of protecting the morality of the faithful. Such actions are usually straightforward violations of the local criminal code and are more likely to result in property damage than civilian deaths.
19. Salafism has also appealed to Muslim immigrant communities in the West because in its literalist message, and its effort to remove all culturally-specific practices in the name of rejecting *bid'a*, it can provide a common bond and identity among uprooted Muslims from many different countries.<sup>4</sup>
20. The confusion over the linkage between salafism and terrorism comes because most jihadists also consider themselves salafi. But in fact, they constitute an extreme wing of the movement, committed to an interpretation of jihad that entails the use of force against kafirs. (Because of their propensity to declare as kafirs and therefore targets for jihad those Muslims who do not defend the faith with sufficient vigour, salafi jihadists are also sometimes referred to as *salafi takfiris*.)
21. In some cases, this violence is directed toward perceived *kafir* occupiers or rulers (Palestine, Chechnya, Mindanao) where it is likely to manifest itself as an ethno-nationalist insurgency or against states whose Muslim rulers engage in such anti-Islamic practices, in their view, that they are tantamount to being kafirs. The chief ideologue for this group is Sayyid Qutb, a radical thinker executed in Egypt in 1966 who argued, in opposition to a key salafi principle, that governments based on nationalism rather than Islam, even if led by Muslims, were inherently anti-Islamic and therefore it was legitimate, even obligatory, to wage war (*jihad*) on them.
22. Al-Qaeda is the archetype of the other kind of salafi jihadist, whose violence is directed against the West, and particularly against the “U.S. and its lackeys.” Chief among the “lackeys” are Israel; Saudi Arabia since the first Gulf War; and, since 2003, the various members of the coalition in Iraq.
23. The salafi jihadi ideology emerged out of the mujahidin struggle in Afghanistan, where the Saudi-funded mujahidin leader, Abdul Rasul Sayyaf, brought in foreign fighters and his Wahabi stance acquired an overlay of Egyptian and Palestinian radicalism. With the defeat of the Soviet Union, its adherents also acquired a sense of power that they had the capacity to take on a superpower and win. Many of these “Afghan alumni” formed the core of jihadist groups responding to local grievances in their own countries after they returned home.
24. The jihadist approach finds inspiration in the writings of the 13th century scholar Ibnu Taimiyyah, as interpreted among others by Abdullah Azzam, the man who became mentor to Osama bin Laden and who was killed in Peshawar in 1989. Virtually all Muslims accept the idea of defensive jihad, that Muslims in an area under attack have a collective obligation to come to

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<sup>4</sup> See Olivier Roy, *Globalised Islam: The Search for a New Ummah*, Paris, 2002.

the aid of their fellow Muslims. But jihadists go a step further, arguing that the aim of jihad is not simply to protect and defend, but also to destroy any obstacle in the way of upholding Islam; to pre-empt attacks by the enemy; and to eradicate kafirs, idolatrous, apostates, and hypocrites.<sup>5</sup> They also argue that jihad is an individual obligation for all Muslims, almost as much as prayer or fasting during Ramadan.

25. This interpretation underlies al-Qaeda's 1998 declaration of jihad against Jews and Crusaders. The declaration urges the killing of Americans and their allies, civilian and military, because "for over seven years, the United States has been occupying the lands of Islam in the holiest of places, the Arabian Peninsula, plundering its riches, dictating to its rulers, humiliating its people, terrorizing its neighbours and turning its bases in the Peninsula into a spearhead through which to fight the neighbouring Muslim peoples." This is an individual duty, the fatwa says, "for every Muslim who can do it in any country in which it is possible to do it."<sup>6</sup>
26. Salafi jihadists accept the possibility of "collateral damage", and cite Ibn Taimiyyah as ruling that if it is not possible to fight kafirs without killing Muslims, then those killings are acceptable.<sup>7</sup>
27. Salafi jihadists thus directly advocate the use of violence, including against civilians. But it is important to underscore that even within the Islamist community, their interpretation of jihad is not widely shared, nor their tactics condoned.

#### **JEMAAH ISLAMIYAH AND ITS JUSTIFICATIONS FOR KILLING CIVILIANS**

28. In Southeast Asia, it is Jemaah Islamiyah that has been most associated with al-Qaeda, but the complexity of that relationship should be enough to stop anyone from seeing al-Qaeda as some deus ex machine controlling everything from above. JI leaders established contact with Khalid Sheikh Mohammed and Osama bin Laden in Afghanistan in the late 1980s and kept in particularly close touch with the former. From the outset, those most inspired were not the majority of JI's members in Indonesia, but those resident in Malaysia and Singapore. There was disagreement from the beginning over attacks on the West, with one faction believing they would divert scarce resources from the struggle to establish an Islamic state in Indonesia. Both factions were diverted from their respective objectives in 1999 and 2000 as two conflicts – Ambon (Moluccas) and Poso (Central Sulawesi) -- erupted in Indonesia, where the immediate imperative of jihad became the defence of Indonesian Muslims against Christian attacks.
29. JI's first bombings carried out against civilians on Indonesian soil were thus not against the West but against Indonesian Christians in retaliation for deaths of Muslims in Ambon. They were justified, however, in terms of the need to defend Muslims against attacks by the international Christian-Zionist conspiracy, of which Ambonese Christians were a part.
30. The Bali bombings were the first "successful" attacks against a Western target, although there had been plans for a major attack in Singapore in 1999 that never took place. The Bali attacks, and all subsequent bombings undertaken by JI members, were in fact carried out by the Malaysia-based faction that looked to Hambali for leadership. That faction had direct channels to al-Qaeda funding, and justified its actions in classic salafi jihadist terms.

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<sup>5</sup> See Sheikh Abdullah Azzam, "The Islamic Ruling on Defending Muslim Land Under Attack" at <http://geocities.com/sadiqurnet/defendingmuslim.html>

<sup>6</sup> Jihad Against Jews and Crusaders, World Islamic Front Statement, 23 February 1998. [www.fas.org/irp/wpr;d/para/docs/980223-fatwa.htm](http://www.fas.org/irp/wpr;d/para/docs/980223-fatwa.htm)

<sup>7</sup> Sheikh Abdullah Azzam, op.cit.

31. According to one of the bombers:

We want to retaliate for the brutality of the leaders and armies of these states that have killed, annihilated our women and our children, but at the moment, we don't yet have the capacity to attack and kill them. So we attack their people, whose religion is the same as theirs, i.e. they are all kafirs, as a way of retaliating for their attacks against us.<sup>8</sup>

32. Imam Samudra, another one of the bombers listed thirteen reasons for doing what he did:

- To fight the brutality of the Crusader Army of the US and its allies (Britain, Australia, Germany, France, Japan, Russian Orthodox, etc).
- As the duty of all Muslims to retaliate for the 200,000 innocent men, women and infants who fell under thousands of tons of bombs in September 2001 in Afghanistan.
- Because Australia intervened to separate East Timor from Indonesia as part of the international Crusader conspiracy.
- Because of the intervention of Crusader forces who worked with infidel Hindus in India to annihilate Muslims in Kashmir.
- As a response to the brutality and involvement of Crusader forces to the ethnic cleansing in Ambon, Poso, Halmahera, and elsewhere.
- To defend Bosnian Muslims who were being exterminated by Crusader forces.
- To undertake the individual obligation of Muslims to wage a global war on Jews and Christians in all Muslim countries.
- As an expression of the Muslim community, unfettered by geographic boundaries
- To execute Allah's order in Surat An-Nisa on the duty of everyone to defend innocent men, women, and children who become the targets of the inhumane American terrorists and their allies.
- As a warning to Christians and Jews against the effort led by America and its allies to colonise the two most holy places of Islam.
- So that American terrorists and their allies understand that the price of the blood of Muslims comes high and cannot be exploited.
- So that American terrorists understand the pain and bitterness of losing mothers, husbands, children, and wives, since they have caused the deaths of Muslims around the world.
- To show to Allah that we will do our utmost to defend vulnerable Muslims and will fight to oppose imperialists and American terrorists and their allies (may Allah curse and destroy them).<sup>9</sup>

33. In a book of his prison writings, Imam Samudra elaborates on the rationale for killing civilians under a heading, "Is it Permissible to Kill Women Infidels?"

Islam is generally understood to forbid the killing of women, old men, and non-combatants. But this is a conditional prohibition. There are situations where these strictures don't apply, so that those who are normally an exception can become a target of war.

[...] In this regard, Imam al-Mujahid, Ibnu Nuhas, quoting an opinion of Imam Ibnu Rusyd said, "Attacking women and children is forbidden as long as they are not involved in war. But if there are, then you need have no doubts about the permissibility of killing them and making war against them."

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<sup>8</sup> Aly Gufroon bin Nurhasyim, *Jihad Bom Bali: Sebuah Pembelaan*, April 2003.

<sup>9</sup> Testimony of Abdul Aziz alias Imam Samudra, 21 October 2002.

Muslims are agreed on the permissibility of killing old men, the blind, the infirm, even paraplegics if in fact they are involved in a war against the Muslim community or they form part of a group that gives advice on war, management of the war, or become part of a group of war strategists.

#### The Involvement of Zionist and Crusader Women in War

Involvement can be categorized as material and non-material. Finances are a material factor that directly supports a war. We understand that in the concept of democracy, power is in the hands of the people. The people channel their aspirations through their representatives, who then debate the matter in parliament. Parliament determines the policies that will be implemented by a democratic state. One can say that the policies of the head of state are the policies of a parliament which in turn means they constitute the voice of the people.

When a democratic country decides on a program of war, [it raises] money. That money comes from the state, including via taxes. A war cannot take place without such funds.

Like it or not, every citizen of America and its allies becomes an obedient taxpayer. [...] Because of this, I have no hesitation in saying that all American citizens and their allies are involved in the Crusader War.

[...] Let's turn to Indonesia, and particularly to Bali. From an eastern perspective, we can see how the process of "bestialisation" has taken place. White Jews and Crusaders show off their animal nature with pride, doing whatever they want without anyone preventing them, let alone forbidding them. Anyone who has a moral filter in his heart will understand that their behaviour wrecks the morality of the Indonesian people, the majority of whom are Muslim. Islam views the behaviour of these white kafirs as something that must be prevented. And we haven't even touched on aspects such as drunkenness, gambling, and other kinds of vices that take place mostly at night.<sup>10</sup>

34. Going after any target involving Westerners was thus legitimate, but the added benefit of eradicating vice made the choice of a nightclub particularly appropriate, in the view of the perpetrators.
35. Two of the JI bombers involved in the attack on the Australian Embassy in Jakarta provided different rationales for attacking civilians. According to one:

The goal was to make the enemies of Islam – the U.S. and its allies -- shiver. [...] And we considered that Australia was one of those allies because it was helping the U.S. in Iraq. I believe we succeeded in our goal because we caused serious damage and succeeded in attracting the attention of America and its allies.

Police: But the bomb also caused damage to dozens of other buildings and casualties of ordinary people who happened to be walking by. In causing fear to the US and its allies, did you have to use a bomb of that magnitude that caused so much death and destruction?

Hasan: Yes, we had to use a big bomb because we were hoping that it would destroy the embassy and all the Australians inside. And based on the survey we conducted, we knew there was going to be damage in the area around the embassy and to people passing by, but I didn't think it was going to be as bad as it was because Dr. Azhari told us the damage would be restricted to a 30-meter radius.<sup>11</sup>

36. According to the second:

It was Noordin M. Top who determined the target for the explosion. [He] gathered us together and unfolded a map of "Megapolitan Jakarta Area" and told us the target would be the Australian embassy. Then Dr. Azhari explained that the reason for choosing the Australian embassy was that

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<sup>10</sup> Imam Samudra, *Aku Melawan Teroris!*, Jakarta, 2004, pp.145-47.

<sup>11</sup> From testimony of Achmad Hasan als Agung Cahyono als Purnomo, 16 November 2004.

Australia had greatly influenced the policies of the Indonesian government with respect to terrorism, and had helped Indonesia to arrest mujahidin and our brothers in Indonesia. Don't think of the embassy as a civilian body, he said, the embassy is a symbol of the Australian military, and attacking the embassy is the same as attacking the country itself.<sup>12</sup>

37. Given the nature of these arguments, one might think that one strategy for curbing terrorism would be to change U.S. and Australian foreign policy. Even if that were possible, it's not that simple.
38. First, while the rhetoric may be international, the factors that push Indonesians into JI are overwhelmingly local: initially, Soeharto-era repression; then Ambon and Poso; then aspects of the "war on terror" as conducted in Indonesia.
39. Second, jihadist organisations are not clubs that everyone can join. If anger at the war in Iraq was the driving force, all of Indonesia – and not just Muslims – would be making bombs. But these groups depend on personal networks and family backgrounds. Take two young Islamists in Indonesia angry about the Iraq war, one from a Darul Islam background, one from a Muslim student organisation, it will be the first and not the second who is more likely to take action based on his beliefs. And if the war in Iraq were to end tomorrow, the Darul Islam network and its offshoots, of which JI is one, would find another mission to absorb its energies.
40. The ideology at some level is genuinely held – members of the network really do believe that the U.S. is Enemy No.1 – but virtually anything can and will be seen through that lens. It will be developments in the region, particularly in Indonesia, but elsewhere in Southeast Asia as well, that will have far greater impact on propensity of JI to engage in terrorism than any developments in Baghdad or Jerusalem, Washington or Canberra.

## **THE PROBLEMS OF REBUTTING JIHADIST ARGUMENTS**

41. It is difficult to see how many salafi jihadists would be persuaded by human rights arguments against indiscriminate killings, although some have become convinced that the tactic is wrong. Among the Indonesians, this change of heart has taken place in three ways:
  - Through religious arguments made not by "moderate" Muslims but by the more rigid salafis at the most conservative end of the spectrum who can argue about correct and incorrect interpretations of jihad without giving any ground on the essentially untrustworthy nature of kafirs. (The desire of many Western donors to embrace "moderates" for this purpose not only may have little impact, it also may be the surest path to undermine the local credibility of groups so embraced.).
  - Through prison experience and a recognition of the consequences of taking part in crimes. Some jihadists in the region have been turned this way, but many have not, and indeed have found their legitimacy in the movement enhanced by serving time in prison.
  - Through arguments made by respected figures within the jihadist groups, who are usually themselves religious scholars, but who oppose attacks on civilians on the grounds of either principle or pragmatism. In Indonesia, the JI leaders who support the goal of fighting for an Islamic state more than they do a global jihad against the West have been able to persuade some of their associates that going after the West is a waste of scarce resources and an unnecessary diversion from long-term goals.
42. In Indonesia, the defence teams for arrested jihadists are a more interesting possibility. With some trained as human rights lawyers, they are perfectly willing to use secular human rights

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<sup>12</sup> From testimony of Heri Sigu Samboja als. Anshori als. Shogir als Abdul Fatah, 12 November 2004.

arguments in court when it serves their clients' interests, citing international law, for example, against torture and arbitrary detention and in support of rights of suspects. With respect to civilian deaths, they tend to either deny that their clients were involved in killing, or in some cases defend the deaths as unfortunate but legitimate responses to the U.S. war on Islam. But they could be valuable interlocutors in trying to analyze how approaches to jihadists might be made in terms of banning indiscriminate attacks.

43. But at the moment, it's not just the jihadists themselves who are unwilling to condemn "terrorism" in the sense of indiscriminate killings of civilians. It's also some of the Muslim mainstream in the countries where jihadist groups exist, who are wary of:
  - Aligning themselves in any way with the US or the war on terror.
  - Inadvertently fuelling the demonisation of Islam (one frequently asked question in Southeast Asia is "Why do people insist on using the term 'Islamic terrorism' when they don't refer to what the IRA does as 'Catholic terrorism'?" It's a fair point if one is dealing with an internal armed conflict of a regional or nationalist nature, but it's harder to avoid the term in reference to groups like JI.)
  - Supporting arguments that are seen as favouring Western, non-Muslim victims rather than Muslim victims. There's a widespread perception in Southeast Asia that the word "terror" is used only to apply to acts in which Westerners are targeted.<sup>13</sup>
44. These concerns could possibly be alleviated, and those who hold them brought on board in a campaign to stop terrorism in the sense of indiscriminate killing, if they could be convinced that the "other side" would be given equal treatment. This is easier said than done. Indonesian Muslim student groups, for example, will point to numbers of civilians killed in Iraq by U.S. bombs and want to know why this doesn't constitute terrorism. The niceties of international legal arguments are not going to make much difference.

## **JIHADISM AS GLOBAL INSURGENCY?**

45. The desirability, for advocacy purposes, of demonstrating "balance" raises the question as to whether there is any value in taking the Bush administration's argument of a war on terror and treating the jihadists as global insurgents – an approach that seems to be gaining favour among military strategists. The serious consequences of doing so almost certainly outweigh any advantage gained, but the arguments are worth reviewing.
46. If the war on terror were a "real" war, then international humanitarian law could apply to both sides. The International Committee of the Red Cross has taken the position that with the exception of al-Qaeda and its allies in Afghanistan, most entities described as "terrorist" are "loosely organized groups (networks) or individuals that, at best, share a common ideology" and therefore "it is doubtful whether [they] can be characterised as a 'party' to a conflict within the meaning of IHL."<sup>14</sup>
47. Some military analysts argue, however, that this network constitutes a single insurgency: "a popular movement that seeks to change the status quo through violence and subversion. [...] But whereas traditional insurgencies sought to overthrow governments or social structures in one state or region, this insurgency seeks to transform the entire Islamic world and remake its relationship with the rest of the globe. It looks back to a golden age, seeking to re-establish a

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<sup>13</sup> Some in the mainstream also have yet to be convinced that Muslims could commit indiscriminate killings in the first place and prefer to accept conspiracy theories pointing to the CIA and Mossad as the perpetrators of 9/11, Bali, or Madrid.

<sup>14</sup> ICRC, "International humanitarian law and terrorism: questions and answers", 5 May 2004, <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/5YNLEV>

caliphate throughout the Muslim world and, ultimately, expand the realm of Islam to all human society.[...]The scale of the Islamist agenda is new, but their grievances and methods would be familiar to any insurgent in history.”<sup>15</sup>

48. According to this analysis, the insurgency lacks a unified organisation, instead operating through “aligned independent movements”; it controls no territory but rather operates through a “Islamist virtual state”; and the network is maintained through cyberspace and international communication technologies. Like more conventional insurgencies, once it reaches a critical mass, it becomes self-sustaining and “removing the initial cause [...] will not cause it to wither.”<sup>16</sup>
49. The advantage of thinking of global jihadism as an insurgency, the analysis continues, is not just that it focuses on understanding and disrupting the insurgents’ strategy, rather than on simply arresting individual perpetrators. It also focuses on understanding and addressing grievances, winning hearts and minds, and treating insurgents not as psychopaths but as rebels who can be reintegrated and rehabilitated as part of a settlement.<sup>17</sup>
50. This view of jihadism as insurgency seems to be gaining greater currency in Western military circles, ironically coming closer to the view of some of the jihadists themselves. But whatever advantage can be derived by the “balance” thus achieved and the possibility that such an interpretation might make possible a wider application of international humanitarian law, the costs are high:
  - Treating jihadism as insurgency would justify military action in areas where situations where law enforcement might be more effective. Had the military rather than the police been in charge of the counter-terror program in Indonesia, there would have been serious ramifications for Indonesia’s democratic transition – and the results are not likely to have been as good.
  - Looking at all the various groups in the network as part of a loosely aligned whole tends to obscure their very local characteristics and the possible divisions within them. If only one faction in JI supports attacking Western targets, for example, then using military means to go after the organisation could serve to radicalise the other faction and make the problem worse. It would also make rights advocacy harder than it is already.
  - Any gain in “balance” would be offset by increased polarisation.

#### **ALTERNATIVE WAYS TO ACHIEVE BALANCE**

51. The best we can hope for may be to return to the focus on methods, and use the term “terrorism” to condemn all acts of indiscriminate killings of civilians, including those committed in the course of internal armed conflicts and those committed by states. The usual justification for excluding the latter is that they are well-covered by other provisions of international law.<sup>18</sup> This may be true, but it does not diminish the importance for advocacy purposes of including acts by states, including the use of weapons that are inherently indiscriminate in impact.
52. If one focus of human rights advocacy would be to get general agreement that no acts of terror were justified, then as noted above, it will be counterproductive to try to analyse “root causes”.

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<sup>15</sup> David Kilcullen, “Countering Global Insurgency”, Canberra, 2004.

<sup>16</sup> Ibid. p. 33.

<sup>17</sup> Ibid., p.19.

<sup>18</sup> See for example, A More Secure World, where the Secretary-General’s High-Level Panel states with respect to arguments that state terrorism be included in any definition of the problem, “We believe that the legal and normative framework against State violations is far stronger than in the case of non-State actors and we do not find this objection to be compelling.”

Indiscriminate targeting of civilians is wrong, whatever the cause. A Joint NGO Statement on Beslan, for example, after the horrendous hostage-taking in September 2004 that led to the death of hundreds of children, noted that:

the Beslan attack took place against a backdrop of five years of widespread, persistent and largely unpunished human rights violations by Russian troops against civilians in Chechnya as well as egregious human rights abuses by rebel fighters.

53. The statement was not an attempt to justify the carnage in terms of the political context -- but in human rights statements on the World Trade Center attacks, there is no similar effort even to explain the context. Why? Presumably because it seemed so self-evident that no explanation would suffice, or was needed.
54. Focusing on the nature of the crime – attacks on civilians – also helps avoid another problem that bedevils many analyses, which is that when an organisation rather than an act is labelled as terrorist, it leads to a tendency to brand all activities committed by that organisation as terrorist in nature. A robbery by a JI member today to raise funds for the cause would likely be prosecuted under anti-terrorist legislation, instead of under the ordinary criminal code, yet it hardly falls in the same category as the Bali bombing.
55. That said, the human rights community will have to come to grips with how it deals with organisations that advocate the targeting of civilians, and whether such organisations should be banned, thereby allowing governments to arrest individuals on the basis of membership alone, whether or not they have participated in or advocated violence. In Indonesia, for example, banning JI would not be the silver bullet to eradicating terrorism – it could always change its name, which it has never publicly acknowledged anyway – but it would at least enable the government to put some people involved in recruitment behind bars. It could also ease pressure on the government to enact an Internal Security Act, a much graver possibility.

## CONCLUSIONS

56. The human rights community faces a major dilemma in confronting terrorist acts by jihadist groups. If it cannot find a way to do more than issue pro forma condemnations, it will indeed lose credibility with governments that are the targets of these attacks. If it seems to be lining up with the “war on terror”, it will lose credibility with the Muslim populations it needs to reach. Even if it focuses on unambiguous condemnation of indiscriminate attacks on civilians, there is no guarantee that jihadists and their supporters would be open to influence, or that Muslim organisations whose support would be essential to any campaign would see that the balance achieved by including acts of state terrorism would go far enough (especially if in the context of the war in Iraq, for example, mistakes and “collateral damage” were not also considered indiscriminate attacks).
57. The International Council could play a useful role by holding conversations with different groups to test the viability of an effort to stop targeting civilians. These groups could include:
  - “reformed” jihadists, such as Usama Rushdi, of the Egyptian Gema’a Islamiya, now living in the Netherlands, or Nasir Abbas of JI, now working with the police in Indonesia.
  - salafi religious scholars
  - Muslim student associations across the Muslim world
  - lawyers for detained jihadists
  - counter-terrorism analysts