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## MERIP OP-EDS

[Wasting Time In The Middle East](#)

TomPaine.com  
February 23, 2007  
Joel Beinin

Secretary of State Condoleezza Rice concluded her second trip to the Middle East in a month with little to show for her efforts. The meeting she hosted between Palestinian Authority President Mahmoud Abbas (Abu Mazen) and Israeli Prime Minister Ehud Olmert was undermined the day before it began. Olmert announced that Israel and the United States had agreed that they would boycott the Palestinian government of national unity which will be formed on the basis of the accords reached in Mecca unless it recognizes "the right of the State of Israel to exist," stops "terrorism" and agrees to fulfill the agreements signed by the PLO.

Such demands appear to be sensible requirements for a diplomatic process. But in fact they are one-sided and hypocritical. [Full Story >>](#)

### [Somalia Airstrikes are not the Answer](#)

Northwest Arkansas Times  
February 8, 2007  
Khalid Mustafa Medani

On January 24, the US launched a second round of airstrikes in Somalia against alleged al-Qaeda terrorists believed to be responsible for the bombings of US embassies in Kenya and Tanzania in 1998. Intended to eradicate these extremist elements from the Horn of Africa, the airstrikes instead exacerbated the chaos brought on by the fall of the Union of Islamic Courts to US-backed Ethiopian forces late last year. Continued instability

## From Nuremberg to Guantánamo: International Law and American Power Politics

[MER 229 Table of Contents](#)

Lisa Hajjar

*(Lisa Hajjar, an editor of Middle East Report, teaches in the Law and Society Program at the University of California-Santa Barbara.)*

*All that is needed to achieve total political domination is to kill the juridical in humankind.*

—Hannah Arendt, *On the Origins of Totalitarianism*

In the aftermath of the September 11 attack on the US, George W. Bush used terms like "punishment and



Detainees watched by US military police during initial processing at Guantánamo Bay, January 2002. (Shane T. McCoy/US Navy/AFP)

"justice" to assert what his administration would make happen and why. Using such legalistic terms was the logical means of legitimizing the American state's planned response to the violence. This logic became all the more apparent when Bush also used the distinctly non-legal term "crusade," for which he was roundly criticized.

Punishment is indeed an appropriate response to crime, and the September 11 attacks were, by any reasoned assessment, crimes against humanity—large-scale and/or systematic attacks against civilians. Crimes against humanity, like genocide, war crimes, torture, apartheid, hijacking and certain kinds of hostage taking, are international crimes because they are defined and prohibited by international laws. The laws criminalizing these practices encode normative principles that reflect a fairly high level of international consensus, and their jurisdiction is international, which means not only that these practices are illegal everywhere, but also that everyone—not just victims—has an interest in their enforcement.

The Bush administration, however, immediately nationalized the international character and consequences of September 11, classifying the attacks as an "act of war" against America and shunning a law enforcement model as the mechanism of punishment. Because the September 11 attacks were perpetrated on American soil and killed thousands of civilians, at the outset there was broad international support for the US decision to respond with military force in Afghanistan. That country was the functional base of al-Qaeda, and the Taliban regime was unwilling to turn over suspected perpetrators of the attacks. That support rapidly eroded as US discretion transformed from hot pursuit rationalized as self-defense into an offensive global war on terror, unrestrained by territory or by law.

Two years on, we can judge the US response to September 11 as a failure on its own terms: the Bush administration has not achieved justice for the victims, nor has the war on terror made the US more secure. The cost of these failures is heightened by what has been destroyed or subverted by US policy and state practices that fall within the ambit of the war on terror. Rather than capitalizing on post-September 11 international sympathy to strengthen multilateral mechanisms of international law enforcement, the US war on terror has put international law—and the norms enshrined therein—at risk, with deleterious ramifications for global security.

### The Nuremberg Precedent

Until the end of World War II, international laws were oriented primarily to relations among states, excluding, for the most part, the governance and treatment of human beings. State sovereignty constituted a form of supreme power based on principles of political independence, domestic jurisdiction and foreign non-interference. Most human beings had no claim to international rights because they had (virtually) no standing in international law. But World War II took a toll on the legitimacy of this Westphalian order. The grimmest lesson of the war was that the most egregious atrocities, perpetrated by modern sovereign

**Universal jurisdiction** derives from the nature of the crime itself and applies to certain "core crimes" of international law. Its purpose is to compensate for a gap in other doctrines of jurisdiction. The origins of the doctrine of universal jurisdiction trace back to international efforts to outlaw piracy on the high seas and the slave trade. It was built on the idea that individuals responsible for such practices are *hostes humanis generis*, "enemies of all mankind," who could be subjected to sanction and punishment in any competent legal system. The aim was to deny perpetrators sanctuary, and to impose upon the "custodial state" where they were located an obligation to try them or extradite them to another venue if petitioned to do so. The crimes to which universal jurisdiction apply have been expanded, although applicability remains subject to debate.

Today, universal jurisdiction clearly applies to torture, apartheid, hijacking and certain forms of terrorism because the international laws outlawing these practices contain such a provision. War crimes, generally defined as "grave breaches" of the Geneva Conventions, attach universal jurisdiction through an express obligation to "extradite or prosecute." However, determining which acts of war constitute crimes and which are consequences of military necessity is more difficult and subjective. These ambiguities notwithstanding, universal jurisdiction for war crimes derives from the fact that perpetrators of these crimes are often agents of states, and within the jurisdiction of those states. If states are unwilling or unable to prosecute their own nationals for war crimes, territorial jurisdiction can provide a "safe haven." For similar reasons, crimes against humanity also attach universal jurisdiction, although until the creation of the International Criminal Court statute, they were not clearly defined in conventional law. Genocide, often described as "the worst crime," did not

renders Somalia ripe for the reemergence of the same kind of militancy the US strikes aimed to eliminate. Limited military actions cannot prevent Somalia from reverting to militant haven status, but a comprehensive, three-pronged US approach could. [Full Story>>](#)

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[Iraqis Deserved Better Justice](#)  
**La Tercera (Chile)**  
December 30, 2006  
Shiva Balaghi

For much of the time that I wrote my biography of Saddam Hussein between 2003-2005, its ending remained unclear. Throughout the process of researching and writing the book, Saddam's government was overthrown, and he went into hiding. In December 2003, US soldiers participating in Operation Red Dawn found him hovering in a spider hole near his hometown of Tikrit. As he was captured, Saddam said, "I am Saddam Hussein. I'm the President of Iraq, and I want to negotiate." As it turns out, his American captors chose not to take him up on his offer. [Full Story>>](#)

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[Behind the Gaza Breakdown](#)  
**TomPaine.com**  
December 18, 2006  
Chris Toensing

The latest convoluted set of events within Palestine, and at its borders, form a depressing tableau that mirrors the conflict as a whole.

Ismail Haniyeh, the prime minister compelled by an Israeli-Arab-Western financial blockade to seek his government's budget from Iran and Sudan, was denied reentry into Gaza, the seat of his government, until Israeli-Egyptian-US negotiations decided he would leave his bags of donated cash behind in Egypt. That a Palestinian's movements should be thus externally controlled is not, of course, novel, and Israel accorded Yasser Arafat similar treatment, in life and in death. But there was a twist in Haniyeh's delayed border crossing on December 14: the prime minister's entourage met a hail of bullets from gunmen likely linked to Fatah, the main rival of the Hamas movement to which he belongs. Haniyeh escaped, but a bodyguard did not. [Full Story>>](#)

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states, were not illegal because there were no laws to prohibit them and no authority to prevent them.

attach universal jurisdiction, at least in conventional law. The Genocide Convention only provides for prosecution in the legal system of the country where it occurred or in an international forum, not the legal system of a third country.

At the end of the war, tribunals were established in Nuremberg and Tokyo to try Axis leaders. The process of establishing legal codes for the tribunals and the proceedings that took place therein clarified and extended the parameters of "war crimes," laying the ground for the subsequent reform of international humanitarian law ("laws of war") that materialized in the four Geneva Conventions of 1949. The tribunals also articulated a new category of crimes ("crimes against humanity") prohibiting systematic violence against civilians in times of war or peace, and contributed to the establishment of a new category of rights ("human rights"). The United Nations, founded in 1946, first articulated human rights in positive law in 1948 with the Genocide Convention and the Universal Declaration of Human Rights.

These post-war legal developments set new limits on the rights of states, but they did not alter the state-centrism of the international order. Rather, new and reformed international laws changed the norms to which all states would be expected to adhere, while preserving the principle of states' rights as sovereign entities. Human rights obtained their universal character from the fact that people are subjects of states, and states are subject to international law.

But the enforceability of international law was compromised from the outset by *realpolitik* exigencies and Cold War polarizations. Within the UN system, efforts to institute international law enforcement mechanisms were either aborted (no International Criminal Court was created) or subordinated to states' sovereign discretion (the enforcement power of the International Court of Justice was made contingent on the will of states to submit to the court's jurisdiction). Enforcement depended on the willingness of individual states to conform to the laws they signed, and on the system of states to act against those that did not. While some states instituted domestic reforms and pursued foreign policies in keeping with their international obligations, most refused to regard human rights and humanitarian laws as binding, especially if the implications would compromise vested interests or curtail the pursuit of those interests (including through force).

Consequently, from the close of the Nuremberg and Tokyo tribunals to the end of the Cold War, international laws pertaining to the rights of human beings functioned not as law but as moral rhetoric framed in legal language. During these decades, more people were killed and harmed by practices that had come to be characterized as international crimes than in any previous period. The politics of sovereignty held sway over any meaningful commitment to legality, evidenced by active refusal to authorize international action to stop or prevent grotesque abuses. It was an age of impunity.

### **American Exceptionalism**

[Study Group Shows Why US Must Leave Iraq](#)  
**The Mountain Mail (Colorado); Northwest Arkansas Times**  
 December 14, 2006  
 Chris Toensing

It is time for the United States to leave Iraq.

Not because the consequences of withdrawal won't be dire for Iraq, but because these consequences are occurring anyway, in slow motion. Civil war and chaos already envelop the country, both conditions are getting worse and the United States is powerless to arrest the downward spiral.

Slowly, but too slowly for those who will die unnecessarily in the meantime, this somber reality is dawning on Washington. The report of the vaunted Baker-Hamilton commission, released December 6, offers a blunt diagnosis of multiple problems besetting the Bush administration's Mesopotamian misadventure. [Full Story>>](#)

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The US played an important—but decidedly mixed—role in the history of international lawmaking and enforcement. American officials, in cooperation with other victorious Allies, ran the Nuremberg and Tokyo tribunals to put an international legal veneer on retribution against the Axis powers. But if horrific violence against civilians could be criminalized and punished, there was a clear double standard in the fact that no similar retributive process was mounted to account for the horrors caused by the bombings of Dresden, Hiroshima and Nagasaki.

The US supported the establishment of the UN to provide for global peace and security, but forged an exception for itself and the other four permanent members of the Security Council in the form of veto power. The veto provided a political shield from accountability and was utilized countless times to foil calls for intervention on behalf of populations at risk. American officials operating in the UN contributed to the formulation and passage of international laws, while a powerful coterie of domestic officials opposed international law and institutions in principle. In the 1940s and 1950s, domestic opposition was led by but certainly not limited to old-school conservatives from the Midwest. The Midwesterners were soon buttressed by Southerners motivated to contest the "radical" principle of universal human equality, which menaced beloved local traditions of racism. This domestic opposition congealed into a logic that international law contravenes the status of the Constitution as the "highest law," subordinates the will of the American people to foreigners and can lead down the slippery slope to "global government" that would threaten American sovereignty.

In the 1960s, 1970s and 1980s, opposition hardened to conform to the logic of *realpolitik*. There was a bipartisan record of perpetration or abetment of practices that constituted international crimes, from Southeast Asia through the Middle East to Latin America. US policy made a mockery of the principles enshrined in international law, while officials opportunistically utilized its moral-legal rhetoric to castigate enemies. If "American exceptionalism" was invoked to explain (and in some quarters justify) this hypocrisy, there was nothing particularly exceptional about it, in that violations and non-enforcement of international law were the rule throughout the Cold War era.

### **The Boom Years**

American  
exceptionalism  
took on new  
meaning,  
however,  
when the Cold  
War ended.  
The fate of  
international  
law began to  
shift in the late  
1980s and  
early 1990s,  
spurred by

political transformations in Latin America, South Africa and Eastern Europe. Regime changes from authoritarian, military and racist rule to more democratic governance provided new opportunities to judge the past against standards of international law, and in many countries, accountability for gross violations became a dominant theme in national transitions.



Henry Kissinger, still at large. (Paul J. Richards/AFP)

Arguably, the most significant change over the last decade was the expansion of human rights practice from reliance on shaming and pressure tactics to include prosecution. A key turning point was the creation of ad hoc UN tribunals for the former Yugoslavia in 1993 and Rwanda in 1994 to prosecute suspected perpetrators of genocide, war crimes and crimes against humanity. Since then international or mixed tribunals have been established to contend with gross violations perpetrated in other countries. Other major developments of the decade included the indictment of former Chilean dictator Augusto Pinochet and the completion of a treaty to establish a new International Criminal Court (ICC). In 1999, Belgium passed a national universal jurisdiction law, which would avail its courts as venues to prosecute people accused of crimes to which such jurisdiction attaches (see box). Together, these developments sought to recuperate the "Nuremberg precedent" in which individuals could be held accountable and punished for perpetrating or abetting international crimes. Thus, prior to September 11, international law enforcement was experiencing a boom.

The US, after the shameful refusal to permit an international response to the genocide in Rwanda, supported the establishment of the first UN ad hoc tribunals. Support for this type of international justice could be sold at home because the people subject to the tribunals' jurisdiction did not include American

nationals. But where Americans were complicit in gross violations, there was no official support for the mechanisms of justice, clearly evident in refusal to turn over relevant documents to foreign governments, like Chile and Argentina, seeking to investigate and punish those responsible for gross violations in their "dirty wars."

In the late 1990s, US officials responded to developments in international law enforcement as threats to American interests. The Pinochet case, and the Belgian law which was its progeny, eroded the principle of "sovereign immunity" for crimes of state and boosted the principle of universal jurisdiction. Could the trial of Henry Kissinger be next? Of course, the line of reasoning that perceives universal jurisdiction as threatening conflates the fate of individuals with the fate of states, and contravenes the legal principle that certain practices are crimes and the individuals responsible for them are punishable, ideally at home but if not, abroad.

The ICC was touted by supporters around the world as a breakthrough in long-thwarted aspirations to globalize the jurisdiction and enforceability of international criminal law in the future. In Rome, where the ICC treaty was negotiated, US officials worked vigorously to limit the court's powers, and many US demands were incorporated into the final text in the hope of gaining American support for the institution—and in acknowledgment that without US support the ICC would be seriously weakened. Not satisfied that the treaty gave the US adequate power to influence the operation of the court or adequately protected American immunity from prosecution for crimes covered by the ICC statute, however, the US, along with six other countries, voted against the treaty.

When George W. Bush became president in 2000, he removed the US signature from the ICC treaty, which the outgoing Bill Clinton had signed in the very last hours of his presidency (while recommending that the treaty not be submitted to Congress for ratification). One month after the ICC obtained the needed number of signatures for its establishment in July 2002, Congress passed a law, the American Service Members Protection Act, prohibiting any American cooperation with the ICC, and authorizing the executive to order the use of force to "free" any American citizen or resident who might be taken into ICC custody. This law has been mocked by critics as the "Hague Invasion Act."

### **Hyper-Sovereignty**

Bush had run his presidential campaign decrying the post-Cold War internationalism that had been building over the last decade. He promised to avoid involvement in international humanitarian interventions unless there was a clear US interest at stake, and vowed not to waste American resources on foreign "nation building." This anti-internationalism was reflective of the interests of Bush's core constituency, comprised of two strands of conservatives, both of which, in different ways, represented a hyper-sovereign politics of "America first." Paleo-conservatives favored a return to American isolationism, whereas neo-

conservatives championed the aggressive national interventions abroad in pursuit of strategic interests that had characterized US policy during the Cold War era.

These discrepancies in worldview among conservatives were overwhelmed by the shock of September 11. Neo-conservatives, who dominated the civilian sector of the Pentagon, were positioned to exploit the national trauma to justify the launching of a global military war on terror. This was an opportunity, born of violence, to pursue agendas of political unilateralism and military preemption cooked up in conservative think tanks during the Clinton years. The invasion of Iraq in the face of enormous international opposition represented the American hyper-sovereign will to act without restraint. Bush described the anti-war demonstrations on February 15, 2003, when more people took to streets around the world than at any other time in history, as "focus groups" that would not influence, let alone inhibit, American discretion.

Paleo-conservatives, like Attorney General John Ashcroft, also found opportunity to exploit the tragedy. The increasingly discredited practice of racial profiling was recuperated after September 11 to target racialized "enemies within," a new lease on state-sponsored racism. The "clash of civilizations" paradigm, widely criticized in the 1990s as intellectually simplistic and factually flawed, became the war on terror's central ideological trope. The American public was spoon-fed a steady diet of Manichean rhetoric, washed down with the intoxicating brew of US military force as the harbinger of a "civilizing mission."

The concept of freedom has played an important role in the Bush administration's global war on terror. Freedom is constantly invoked by Bush and other officials to explain—and, when criticized, to justify—a variety of practices and goals. Sometimes it is invoked as a right to act unilaterally and to utilize military force in the pursuit of political interests. In these regards, freedom means freedom from international accountability or the backing of international institutions. Sometimes it is invoked as a purpose to which America is committing its resources—"spreading freedom" is the bright side of military intervention. As a concept, freedom has an indisputable appeal. However, where power is unrestrained and unregulated, freedom can manifest as a Hobbesian "warre of all against all." The purpose of law in general, and certainly international law, is both to balance freedom with other interests, not least security, and to establish criteria by which the pursuit of those interests can be regulated and judged. It is the ambiguous legal meaning of freedom that makes it so appealing to the Bush administration.

### **Disputed Future**

The future  
of  
international  
law as a  
framework  
for global  
order has

been intensely disputed since September 11. Of preeminent importance at this juncture is whether the US, with unparalleled military and economic power and global ambitions, can be guided—and restrained—by international legal principles. Indeed, the global war on terror is being waged, in



Israeli soldier brings in blindfolded Palestinian youth in Ramallah, September 2002 (Muhammed Muhaisen)

part, on the terrain of international law. For example, since the US began preparing for—and subsequently launched—a preemptive war against Iraq, there have been rancorous debates as to whether the UN Security Council will retain its status as the arbiter of war. There are also raging debates as to whether the Geneva Conventions are applicable to a global war on "terror," and if so, how they should be applied.

Across the political spectrum, there is a common tendency to characterize the post-September 11 era as a restoration of unbridled *realpolitik* at the expense of international law. Those who embrace this interpretation—especially, but not exclusively, the neo-conservatives—regard the last decade as a dangerously multilateral lapse thankfully reversed by a strong, self-interested US government. At the start of the war in Iraq, Richard Perle published a eulogy for international law: "What will die is the fantasy of the UN as the foundation of a new world order. As we sift the debris, it will be important to preserve, the better to understand, the intellectual wreckage of the liberal conceit of safety through international law administered by international institutions." [1] Other less cynical but no less skeptical commentators, like Michael Ignatieff and Ronald Dworkin, have pondered whether this era marks the demise of the international legal regime.

The eulogies are premature. The enduring relevance of international law is apparent in the fact that even the unilateralists

in the Bush administration continue to seek legal legitimization for their actions—because they need it. The issue is not whether international law will survive the war on terror, but how it will be made, interpreted and used in the future.

US power in a unipolar world is of utmost importance to the future of international law. As Kenneth Anderson aptly points out, the question has become "who owns the laws of war." "Even while there is agreement on the need for fundamental rules governing the conduct of war," he writes, "there is profound disagreement over who has the authority to declare, interpret and enforce those rules, as well as who—and what developments in the so-called art of war—will shape them now and into the future." Anderson offers an answer to his own question that comports with the neo-conservative American view, which assumes that international law can and should be domesticated.

For the past 20 years, the center of gravity in establishing, interpreting and shaping the law of war has gradually shifted away from the military establishments of leading states and their "state practice." It has even shifted away from the International [Committee of] the Red Cross (invested by the Geneva Conventions with special authority) and toward more activist and publicly aggressive [non-governmental organizations].... These NGOs are indispensable in advancing the cause of humanitarianism in war. But the pendulum shift toward them has gone further than is useful and the ownership of the laws of war needs to give much greater weight to the state practices of leading countries.... NGOs are also wedded far too much to a procedural preference for the international over the national. But that agenda increasingly amounts to internationalism for its own sake, and its specific purpose is to constrain American sovereignty. [2]

The American domestication of international law takes two forms. One entails the use of political arm-twisting to ensure globalized immunity for Americans. To date, the US has signed bilateral ICC immunity agreements with over 70 non-NATO countries, often using foreign aid as the negative incentive. Indeed, the US is on a quest to sign such agreements with every possible country, including East European states that are not yet members of NATO, thereby heightening tensions with NATO allies, all of whom are ICC signatories. These agreements not only weaken the power of the ICC, which is the declared US intention, but undermine the global jurisdiction of international criminal law. In the spring of 2003, US officials mounted a campaign to force Belgium to discard its universal jurisdiction law. Not satisfied with the "diplomatic filters" that were instituted, which would have made it quite impossible for any case alleging war crimes against an American to move forward in the Belgian court system, the US threatened to relocate NATO headquarters from Brussels to Warsaw. In August, Belgium overturned the law.

**"Israelization"**

The second form that the American domestication of international law takes is interpretive—using international law selectively, advancing interpretations that defy international consensus and asserting the legality of state practices that foreign governments and international organizations classify as violations. This kind of hyper-sovereign interpretative stance could be termed the "Israelization" of international law. Here, Israelization does not refer to the fact that some leading American policymakers are closely aligned with the Likud Party in Israel, nor to the overlapping US and Israeli state interests in war-making in the Middle East. Rather, Israelization refers to the Israeli-like ways in which US officials are interpreting international law to wage the war on terrorism. The guiding principle is that absolute security is a legal right of the state. Yet this principle defies the very basis of post-World War II legal developments.

Israel provides a salient model partly because it has been in a continuous state of war since it was established in 1948, and because it has engaged in military preemption on numerous occasions. But more importantly, Israeli officials have always taken international law very seriously. When Israel occupied the West Bank and Gaza in 1967, officials formulated an elaborate legal doctrine establishing the state's rights and duties in those areas. This doctrine does not ignore the Fourth Geneva Convention. On the contrary, it is premised on a highly sophisticated interpretation, albeit one that the international community has never accepted, claiming that the West Bank and Gaza are not technically "occupied" but rather "administered," and therefore that the Fourth Geneva Convention does not apply in a *de jure* manner. On this basis, Israel could then legally rationalize all kinds of policies that violate the convention, including the settlement of its Jewish citizens in the territories, the deportation of Palestinian residents and collective punishment. Moreover, Israel could claim that it was not bound to adhere to international human rights laws in these areas, even ones to which it was a signatory, because the status of the territories is *sui generis* and "disputed." Palestinian statelessness has been an important factor in official Israeli legal reasoning. Palestinian resistance, including non-violent activism, to perpetuated statelessness has been officially deemed threatening to Israeli security and categorized as "terrorism," thereby authorizing state violence against Palestinians.

This kind of legal reasoning about the limits of international law when enemies are stateless and/or "terrorists" is being utilized today by US officials to articulate a position on the state's rights in a global war on terror. This is evident in the handling—and the discourse about the handling—of people captured in Afghanistan and elsewhere. But relying on legal reasoning indicates that the US, like Israel, is not indifferent to international law.

What the Israeli and US governments share is not a common enemy but a common dilemma of how to pursue absolute security in the face of threats from stateless enemies. The Bush and Sharon administrations also have in common core constituencies from the right wings of their respective societies, ideologically driven political agendas which they are willing to pursue militarily, and hostility or indifference to international opinion that references

international law in an attempt to constrain state practices vis-à-vis their enemies.

In a number of ways, since September 11 the policies of the Israeli and US governments in their respective wars have echoed one another. For both governments, the concept of "unlawful combatants," first articulated by the US but seized upon by Israel (which passed a new "illegal combatants law" in 2002), encodes the idea that in the war(s) on terror, international humanitarian law does not apply to the treatment of "terrorists," while asserting political (rather than judicial) discretion to determine who falls into this category. Thus, the American prison camp at Guantánamo Bay, [3] and Israeli prisons at Ofer and elsewhere, [4] are sites where some detainees have been placed "outside" the law by the states holding them in custody. The interpretative innovation of a category of "unlawful combatants" who have no legal rights has been challenged by international law experts. [5]

Another echo pertains to interrogation and torture. US security agents working in Afghanistan have acknowledged the use of "stress and duress" tactics in the interrogation of people taken into custody. [6] These tactics bear a striking resemblance to the tactics Israel has used and characterized as "moderate physical pressure"—various forms of physical abuse and sleep deprivation. Responding to criticism, US officials, like Israeli officials, affirmed that torture is illegal, while denying that the interrogation tactics used by their agents constitute torture. Echoes also could be heard in the tactic of assassination. The Israeli state's legal rationale justifying the assassination of Palestinians—officially termed "targeted killings," "liquidations" and "preemptive strikes"—has three main components. First, Palestinians are "at war" with Israel. Second, the laws of war permit states to kill their enemies. And third, the targeted individuals were "ticking bombs" who had to be killed because they could not be arrested and because they would perpetrate attacks on Israelis if not eliminated. The dozens of bystander deaths in the assassinations have been dubbed "collateral damage," in accordance with the discourse of war. [7]

US officials relied on Israeli-like reasoning to justify the assassination of Ali Qaed Sinan al-Harithi and five others (including a US citizen) in Yemen by a pilotless drone. [8] The US proclaimed that, because it was at war with al-Qaeda (of which al-Harithi was allegedly a member), and because arrest was impossible, assassination was a legitimate tactic, even against a person located in a country not at war with the US. To be clear, assassination means extrajudicial killing. In Israel, the legality of this policy is being challenged by Israeli lawyers (on behalf of Israeli and Palestinian human rights organizations) in the Israeli High Court of Justice, but to date the court has yet to render a ruling. For the US, the practice of assassination contravenes a 1975 executive order prohibiting this practice, but it is unclear whether anyone has "legal standing" to contest the use of assassination because of its Israeli-like framing as a tactic of war.

The US government's establishment of military tribunals to prosecute Guantánamo detainees institutes many features characteristic of the Israeli military courts in the West Bank and

Gaza, including protracted incommunicado detention, extreme difficulties for lawyers to meet with defendants, no presumption of innocence and use of "secret evidence" unavailable to defendants or their lawyers. If anything, the US military tribunals appear likely to impose even greater barriers to due process of law than the Israeli military court system, such as a gag on lawyers prohibiting them from discussing issues or evidence associated with cases. [9]

The Israelization of international law manifests itself as the hyper-sovereign assertion of states' rights to use force to retaliate against as well as deter anything or anyone officials construe as threats to absolute security. What is important to appreciate, though, is that Israelization does not make international law irrelevant, contrary to the claims of eulogists and critics alike. Rather, it appropriates the right of interpretation to the state. The US, like Israel, has made use of law—because this is necessary to legitimize state practices—to explain military preemption, indefinite incommunicado detention, abusive interrogation tactics, assassinations and targeting of areas dense with civilians. But what this risks is an erosion of the very foundation of international law: consensus and universalism. Neither justice nor security are served by these turns.

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[1] *Guardian*, March 21, 2003.

[2] Kenneth Anderson, "Who Owns the Rules of War?" *New York Times Magazine*, April 13, 2003.

[3] Guantánamo prison opened in January 2001 to house prisoners deemed "unlawful combatants" in the US "war on terror." Most prisoners were captured in Afghanistan in the war launched in October 2001.

[4] Jonathan Cook, "Facility 1391: Israel's Guantánamo," *Le Monde Diplomatique* (November 2003).

[5] Knut Dormann, "The Legal Situation of 'Unlawful/Unprivileged Combatants,'" *International Review of the Red Cross* 85 (2003).

[6] *Washington Post*, December 26, 2002.

[7] Neve Gordon analyzed media coverage of Israeli assassinations in three major Israeli newspapers (*Haaretz*, *Yediot Aharonot* and *Maariv*), and found a striking and consistent pattern of reporting. "[I]t is almost as if the newspapers were staging a trial. The subject on trial, however, is not the executed person, but rather the state of Israel and its policy of extrajudicial executions. The objective is to acquit the state of what might appear to be an unlawful act through the production and dissemination of the rationality and morality of executions.... [T]he narratives' objective is...to vindicate Israel by creating a sense that, given the situation, the assassination was both inevitable and was carried

out in a principled manner.... [The assassinated person's] guilt is established after the punishment [by reporting past actions and insinuating evidence of plans for future crimes] and the person is transformed into a 'ticking bomb' after (and because?) he is already dead." Neve Gordon, "Rationalizing Extrajudicial Executions: The Israeli Press and the Legitimization of Abuse," *International Journal of Human Rights* 8 (2004).

[8] See Anthony Hartle, "Atrocities in War: Dirty Hands and Noncombatants," *Social Research* 69 (2002) and Seymour Hersh, "Manhunt: The Bush Administration's New Strategy in the War Against Terror," *New Yorker*, December 23 and December 30, 2002.

[9] See Aryeh Neier, "The Military Tribunals on Trial," *New York Review of Books*, February 14, 2002; American Civil Liberties Union letter to William J. Haynes II, General Counsel, Department of Defense, March 19, 2003; Human Rights Watch, "Briefing Paper on US Military Commissions," June 25, 2003; *Financial Times*, July 15, 2003.

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