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# Genocide, Statecraft, and Domestic Geopolitics

*Robert A. Destro*

“WHY SHOULD MY BOSS vote for a resolution condemning the genocide of Christians?” That question, posed by a congressional staffer in mid-September 2015, was innocent enough, but it left me speechless. By late summer 2015, the massacres of Christians and Yazidis in Northern Iraq had become “old news.” On February 21, 2015, only seven months earlier, members of the criminal gang that calls itself “The Islamic State in Iraq and al-Sham” (ISIS or *Da’esh*)<sup>1</sup> organized the public beheading of twenty-one Coptic Christians on a beach in Libya and posted it to social media.<sup>2</sup> A month before that, in January, 2015, it killed a Paris police officer, attacked a Jewish supermarket in Porte de Vincennes where it killed four Jewish shoppers, killed twelve members of the staff of the satirical newspaper *Charlie Hebdo*, and murdered five additional people in the *Île-de-France*

1. *Da’esh* is the Arabic acronym for “*al-Dawla al-Islamiya al-Iraq wa-ash-Shaam*,” the Islamic State of Iraq and Syria. The word “*shaam*” is used in Syrian dialect to refer to Damascus or to “Greater Syria” or “the Levant.” ISIS rejects the use of the term *Da’esh* “[b]ecause they hear it, quite rightly, as a challenge to their legitimacy: a dismissal of their aspirations to define Islamic practice, to be ‘a state for all Muslims’ and—crucially—as a refusal to *acknowledge and address them as such*.” See Alice Guthrie, “Decoding Daesh: Why is the new name for ISIS so hard to understand?” (February 19, 2015), <https://www.freewordcentre.com/blog/2015/02/daesh-isis-media-alice-guthrie/>.

2. CNN Staff, “ISIS video appears to show beheadings of Egyptian Coptic Christians in Libya,” *CNN World*, Monday, February 16, 2016, <http://www.cnn.com/2015/02/15/middleeast/isis-video-beheadings-christians/>.

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Region.<sup>3</sup> Members of this extremist network also deliberately killed or claimed credit for killing Christians in Syria,<sup>4</sup> Iraq,<sup>5</sup> Egypt,<sup>6</sup> and Nigeria.<sup>7</sup> Not long after the staffer posed her question, ISIS would also take credit for the high-altitude bombing over Sinai of a Russian passenger jet that, according to an ISIS spokesman, “carried over 220 Crusader Russians.”<sup>8</sup>

Armed with facts such as these, I thought that it would (or should) be relatively easy to use the framework of the laws defining genocide, war crimes, and crimes against humanity to accomplish several important goals.

1. To “connect the dots” among the many hundreds of incidents where people have been slaughtered because of their religion;
2. To highlight the connection between the criminals who commit these crimes and the toxic ideology that drives ISIS and its allies to

3. Heather Saul, “Paris attacks timeline: From *Charlie Hebdo* to a Jewish grocery store—how two hostage situations unfolded,” *The Independent*, January 9, 2015.

4. BBC, “Syria’s beleaguered Christians,” BBC News, February 25, 2015, <http://www.bbc.com/news/world-middle-east-22270455> (“Melkite Greek Catholic Patriarch Gregorios III Laham said last year that more than 1,000 Christians had been killed, entire villages cleared, and dozens of churches and Christian centres damaged or destroyed.”).

5. Michael W. Chapman, “Vicar of Baghdad: ISIS Beheaded 4 Christian Children; They Said, ‘We Love [Jesus],’” *CNS News.com*, December 15, 2014 3:45 PM, <http://www.cnsnews.com/news/article/michael-w-chapman/vicar-baghdad-isis-beheaded-4-christian-children-they-said-we-love>.

6. BBC World, “Islamic State: Egyptian Christians held in Libya ‘killed,’” *BBC.com*, February 15, 2015, <http://www.bbc.com/news/world-31481797>.

7. Associated Press, “Extremist violence against Muslims, Christians sweeps Nigeria, 60 dead,” July 6, 2015, <http://www.foxnews.com/world/2015/07/06/bombs-at-mosque-restaurant-in-central-nigerian-city-kill-44/> (reporting attacks on and the destruction of 32 Christian churches and the targeted killings of Christians and Muslims).

8. Abul Taher, “Islamic State terrorists release sick video celebrating Sharm el-Sheikh atrocity titled: ‘Satisfaction of souls by killing of Russians,’” *DailyMail.com*, November 7, 2015 at 18:18 GMT, <http://www.dailymail.co.uk/news/article-3308706/Islamic-State-terrorists-release-sick-video-celebrating-Sharm-el-Sheikh-atrocity-titled-Satisfaction-souls-killing-Russians.html#ixzz3rV9ZYg16> (“By God’s will, and strong efforts of our brothers and soldiers on the ground in the province of Sinai, they brought down a Russian airplane, which carried over 220 Crusader Russians. All of them have been killed, and thanks to God for that.”).

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recruit and train thousands of young *jihadi-irhabis* to murder in name of God;<sup>9</sup>

3. To commit the resources of the United States Government to a long-term, concerted effort to prevent and punish not only the murderers, but as many of those involved in the *jihadi-irhabi* network's supply and money-laundering chains as can be discovered and brought to justice;<sup>10</sup> and

4. To encourage Congress and the State Department to work with friendly governments—especially those with Muslim majorities—to develop the means by which we can act jointly—and openly—against these killers to prevent and punish these crimes.

That, at least, was my thinking when Representatives Jeff Fortenberry (R-NE) and Anna Eshoo (D-CA) asked for volunteers to produce what became the first draft of the genocide resolution adopted by the U.S. House of Representatives on March 14, 2016, by a vote of 393-0: House Concurrent Resolution 75.

The pages that follow identify those goals which have been accomplished and highlight those that remain. Part I recounts the history of the House and Senate genocide resolutions and their relationship to Secretary of State John Kerry's genocide declaration. Part II discusses the geopolitics of genocide and the main arguments made against such declarations. Part III makes the case that U.S. Government policy is caught in a "perfect storm" where political correctness, Cold War thinking, and willful blindness about U.S. Government support for terrorist organizations is creating a poisonous human rights atmosphere at home and a feckless foreign policy abroad.

9. *Irhabi* (إرهابي) is the Arabic term for "terrorist." The term *Jihadi* has several meanings, which are discussed below. For present purposes, the term refers to those who practice "the Lesser Jihad" or "violent struggle on behalf of Islam." The jihadis then are literally "those who struggle" . . . , and the expression is used by members of groups such as al-Qaeda to describe themselves. (Mujahideen, meaning 'holy warriors,' is another expression commonly used to refer to Muslims engaged in the Lesser Jihad.)" Andrew Silke, "Holy Warriors: Exploring the Psychological Processes of Jihadi Radicalization," 5(1) *European Journal of Criminology* 99–123 (2008) at 100.

10. See Mark Townsend, "Is Cosa Nostra now selling deadly assault weapons to Islamist terrorist groups?" *The Guardian*, July 23, 2016, <https://www.theguardian.com/world/2016/jul/23/cosa-nostra-assault-weapons-islamist-terror-group>.

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*The Congressional Genocide Resolutions and  
Secretary of State John Kerry's Genocide Declarations*

Work on what was to become House Concurrent Resolution 75 (H. Con. Res. 75) began in late August, 2015.<sup>11</sup> What began as a small group of volunteers has now grown into an informal “Genocide Working Group” (GWG) that works closely with members, senators, and their staffs in an effort to make real, continuing progress on the genocide issue:

1. September 9, 2015: Mr. Fortenberry, Mrs. Eshoo, and four co-sponsors introduced H. Con. Res. 75.<sup>12</sup> It highlighted the massacres of “Christians and other ethnic and religious minorities, including Yezidis, Turkmen, Sabea-Mandean, Kaka'e, and Kurds.”<sup>13</sup>
2. December 18, 2016: Senators Bill Cassidy (R-LA) and Joe Manchin (D-WV) introduced Senate Resolution 340 with three (3) co-sponsors.<sup>14</sup> By the time it passed by unanimous consent in July 2016, it had 17 co-sponsors.<sup>15</sup>
3. March 14, 2016: The House of Representatives voted 393-0 to adopt an amended version of H. Con. Res. 75.<sup>16</sup> Before passage, it had 293 cosponsors.
4. July 7, 2016: Amended Senate Resolution 340 passed by unanimous consent.<sup>17</sup>

11. House Concurrent Resolution 75 (as introduced September 9, 2015 by Reps. Jeff Fortenberry and Anna Eshoo).

12. Mr. Fortenberry and Mrs. Eshoo were joined by Reps. Trent Franks (R-AZ), Daniel Lipinski (D-IL), Jeff Deham (R-CA), and Juan Vargas (D-CA). In all, there were 213 cosponsors.

13. House Concurrent Resolution 75.

14. Senate Resolution 340 (introduced December 18, 2015).

15. In addition to Senators Casey and Manchin, the original co-sponsors were Senators Marco Rubio (R-FL), Mark Kirk (R-IL), and Roger Wicker (R-MS). In all, there were seventeen (17) co-sponsors.

16. House Concurrent Resolution 75, “Expressing the sense of Congress that the atrocities perpetrated by ISIL against religious and ethnic minorities in Iraq and Syria include war crimes, crimes against humanity, and genocide,” March 15, 2016 (as adopted).

17. Senate Resolution 340, “Expressing the Sense of Congress that the So-called Islamic State in Iraq and al-Sham (ISIS OR DA'ESH) is Committing Genocide, Crimes Against Humanity, and War Crimes,” 162 Cong. Rec. S4920, 114<sup>th</sup> Congress, 2d Sess (July 7, 2016).

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5. Ongoing activities: Members of the GWG meet regularly in an effort to keep the United States, foreign governments, and international bodies focused on the effort to prevent future genocide and to punish that which has already occurred. To date, these activities include:

6. Proposing amendments to appropriations bills, developing a legislative agenda for the 115<sup>th</sup> Congress, and proposing initiatives for the incoming Trump Administration;<sup>18</sup>

7. Working with diplomatic missions at the United Nations to develop support for a Security Council Resolution creating an international hybrid tribunal with authority to try those whose crimes fit into the definition of one of the three international “atrocities” crimes: genocide, war crimes, and crimes against humanity;<sup>19</sup>

8. Providing U.S.-based support for forensic teams working in the field in Iraq, Syria, and elsewhere to document these crimes;

9. Collating information and analysis from observers in Syria, the newly-liberated areas of Iraq, Africa, and South Asia; and

10. Collaborating with advocates and legislators in Europe, Australia, Asia, the Middle East, and Africa to bring other governments and their human and financial resources into the effort.

The 393-0 House vote on H. Con. Res. 75 was a major political accomplishment for Mr. Fortenberry, Mrs. Eshoo, and all of those who were pushing the Obama Administration to make a formal genocide declaration. Supporters knew, however, that even a unani-

18. See, e.g., H.R. 5912, Department of State: Foreign Operations and Related Programs for the fiscal year ending September 30, 2017 (114<sup>th</sup> Cong. 2d Sess.) §7034 (b)(3) (appropriating \$4 million for “forensic anthropology assistance related to the exhumation of mass graves and the identification of victims of war crimes, crimes against humanity, or genocide”).

19. According to the United Nations:

The term “atrocities crimes” refers to three legally defined international crimes: genocide, crimes against humanity, and war crimes. The definitions of the crimes can be found in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Geneva Conventions and their 1977 Additional Protocols, and the 1998 Rome Statute of the International Criminal Court, among other treaties.

United Nations, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention*, at 1 (2014) (emphasis in original, footnotes omitted), [http://www.un.org/en/prevent-genocide/adviser/pdf/framework%20of%20analysis%20for%20atrocities%20crimes\\_en.pdf](http://www.un.org/en/prevent-genocide/adviser/pdf/framework%20of%20analysis%20for%20atrocities%20crimes_en.pdf).

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mous vote in the House would not be enough. There was talk that, for weeks, there was considerable opposition from the State Department's Office of the Legal Adviser (OLA). Unless supporters could provide significant evidence *in addition to* the recurring news accounts of new atrocities, it was likely that the Secretary would defer to OLA.

Carl A. Anderson, Supreme Knight of the Knights of Columbus, had foreseen this scenario. The Knights had been running television ads for months that were designed to bring attention to the plight of those displaced by ISIS,<sup>20</sup> but the political feedback in Washington made it increasingly apparent that a public relations campaign would not be enough. For geopolitical reasons that will be explained in Part II, the State Department has long had an aversion to the use of the word "genocide" (the G-word). There was also the hard-to-prove-but-difficult-to-shake feeling that some in the Obama Administration suspected that Republicans would use genocide as a "wedge" political issue against them the upcoming presidential campaign.

In sum, "hard" evidence of criminal behavior would be needed to support the use of the G-word. In late February, GWC member, E. Scott Lloyd, an attorney with the Knights of Columbus, got on a plane, flew to Iraq, took witness statements, and worked with local church and human rights organizations to send the available documentation to the United States for processing. Dr. Gregory Stanton, founder and president of Genocide Watch, did superb work coordinating with experts in the field of genocide documentation. L. Martin Nussbaum and Ian Speir of the law firm Lewis, Roca, Rothgerber, and Christie also provided invaluable advice and assistance to the data collection effort on the ground in Iraq, database design and construction efforts here in the United States and editorial assistance on the final report. It was an extraordinary team effort.

On March 9, 2016, the Knights of Columbus and In Defense of Christians held a joint press conference to announce the publication and filing of a formal petition to Secretary of State John Kerry.<sup>21</sup>

20. See News Release, "New TV Ad Highlights Needs of Middle Eastern Christians Facing Genocide and Extinction," April 1, 2016, <http://www.kofc.org/en/news/media/facing-genocide-extinction.html>.

21. See <http://www.stopthechristiengenocide.org/en/report-photos.html>.

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They asked that the Obama Administration formally “[a]cknowledge the ongoing genocide of Christians, Yazidis, and other religious groups being targeted for extinction in the territories controlled or attacked by the ISIS and its affiliates.”<sup>22</sup>

Congress also played a critical role in the process. On December 18, 2015, the same day that the Senate genocide resolution was introduced, Congress adopted the Consolidated Appropriations Act of 2016. It gave the Secretary of State until March 17, 2016 to provide Congress with:

an evaluation of the persecution of, including attacks against, Christians and people of other religions in the Middle East by violent Islamic extremists and the Muslim Rohingya people in Burma by violent Buddhist extremists, including whether either situation constitutes mass atrocities or genocide (as defined in section 1091 of title 18, United States Code), and a detailed description of any proposed atrocities prevention response recommended by the [Atrocities Prevention Board].<sup>23</sup>

The Secretary announced his decision on schedule. On March 17, 2016, Secretary Kerry formally declared that ISIS and its affiliated organizations were committing genocide:

My purpose in appearing before you today is to assert that, in my judgment, Daesh is responsible for genocide against groups in areas under its control, including Yezidis, Christians, and Shia Muslims. Daesh is genocidal by self-proclamation, by ideology, and by actions—in what it says, what it believes, and what it does. Daesh is also responsible for crimes against humanity and ethnic cleansing

22. Robert A. Destro, L. Martin Nussbaum, & Ian Speir, “Genocide Against Christians in the Middle East: A Report Submitted to Secretary of State John Kerry by the Knights of Columbus and In Defense of Christians,” (March 9, 2016), <http://www.stopthechristiangenocide.org/scg/en/resources/Genocide-report.pdf> (footnotes omitted). The Petition notes that “[w]hile the focus of this Petition is the targeting of Christians, ISIS has targeted many other religious groups as well,” including Yazidis, Shia and Sunni Muslims, Turkmen, Shabaks, Sabean-Mandeans, Kaka’e, Kurds, and Jews.

23. H.R. 2029, Consolidated Appropriations Act, 2016, Public Law No: 114-113 §7033(d). Deadlines such as these are critical to the advocacy process because they confine the discretion of the Executive Branch. While it is possible that an agency will miss a statutory deadline, tough questions about why the deadline was missed are certain.

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directed at these same groups and in some cases also against Sunni Muslims, Kurds, and other minorities.

The fact is that Daesh kills Christians because they are Christians; Yezidis because they are Yezidis; Shia because they are Shia. This is the message it conveys to children under its control. Its entire worldview is based on eliminating those who do not subscribe to its perverse ideology. There is no question in my mind that if Daesh succeeded in establishing its so-called caliphate, it would seek to destroy what remains of ethnic and religious mosaic once thriving in the region.

I want to be clear. I am neither judge, nor prosecutor, nor jury with respect to the allegations of genocide, crimes against humanity, and ethnic cleansing by specific persons. Ultimately, the full facts must be brought to light by an independent investigation and through formal legal determination made by a competent court or tribunal. But the United States will strongly support efforts to collect, document, preserve, and analyze the evidence of atrocities, and we will do all we can to see that the perpetrators are held accountable.<sup>24</sup>

For reasons that will become clear, it was an extraordinary move.

### *The Geopolitics of Genocide*

Students of the Holocaust and of the Ottoman government's involvement in the extermination of at least 1.5 million Armenians from 1915 to 1917 are all-too-familiar with the geopolitics of genocide. So too are modern-day advocates for the victims of the atrocities that have occurred (or are occurring) in Bosnia, Cambodia, Rwanda, Myanmar, Darfur, and other troubled areas of the world.<sup>25</sup>

In her masterful treatment of the political calculus of genocide declarations, *A Problem from Hell: America in the Age of Genocide*,<sup>26</sup>

24. Secretary of State, John Kerry, "Remarks on Daesh and Genocide," March 17, 2016, <http://www.state.gov/secretary/remarks/2016/03/254782.htm>; <https://www.youtube.com/watch?v=hrbeMwlBYLY>

25. See Gregory H. Stanton, Ph.D., "Genocide Alert Map," [https://www.click2map.com/v2/H3llo/Genocide\\_Prevention](https://www.click2map.com/v2/H3llo/Genocide_Prevention).

26. Samantha Power, *A Problem From Hell: America and the Age of Genocide* (Basic Books, 2002) Kindle Edition.



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Samantha Power, who served as U.S. ambassador to the United Nations during the Obama Administration, provided a sobering description of what happened when irrefutable evidence made it impossible for the Clinton Administration to deny that genocide was occurring in Bosnia and Rwanda: “American officials . . . shunned the g-word. They were afraid that using it would have obliged the United States to act under the terms of the 1948 genocide convention. They also believed, rightly, that it would harm U.S. credibility to name the crime and then do nothing to stop it.”<sup>27</sup>

Those arguing that the United States should use its resources and alliances to intervene to protect Christians and other religious minorities from ISIS’s genocidal campaign to convert or exterminate them faced not only these arguments, but also several others unique to the forum (Congress) and targets (religious groups). The first such argument was that the Constitution’s Bill of Attainder Clause makes Congress an inappropriate forum in which to debate the genocide issue.<sup>28</sup> This is so, say its proponents, because genocide is a crime under both American and international law.<sup>29</sup> Legislative declarations that connect identifiable crimes with their alleged perpetrators are both fundamentally unfair and constitutionally forbidden, or so the argument goes.

The argument is mistaken. A Bill of Attainder is “a legislative act which inflicts punishment without a judicial trial.”<sup>30</sup> The House and Senate genocide resolutions do nothing more than allege that genocide, war crimes, and crimes against humanity are being committed—and that ISIS is committing them. They are analogous to legislative findings that there is probable cause to believe that these

27. *Ibid.*, 359.

28. U.S. Const., Art. I §9 cl. 3 (1787) (“No bill of attainder . . . shall be passed.”) See *United States v. Brown*, 381 U.S. 437, 440 (1965) (“The Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function or more simply—trial by legislature.”).

29. See 18 U.S.C. §1091, Genocide Convention Implementation Act of 1987, 18 U.S.C. § 1093.78, and U.N.T.S. 277, entered into force Jan. 12, 1951, for the United States Feb. 23, 1989. See U.S. Dep’t of State, *Treaties in Force* 345 (1994).

30. *Cummings v. Missouri*, 71 U.S. (4 Wall) 277, 323 (1867).

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genocide crimes are being committed and that ISIS and its network are committing them.<sup>31</sup> The power of impeachment, which is expressly granted to the House of Representatives,<sup>32</sup> is just that: a finding of probable cause that a crime has been committed.<sup>33</sup>

A closely-related argument against *any* declaration of genocide by the legislative branch is the full scale denial that *neither* the legislative, *nor* the executive power of a national government has the power to declare genocide. Secretary Kerry's declaration addressed this argument as follows: "I want to be clear. I am neither judge, nor prosecutor, nor jury with respect to the allegations of genocide, crimes against humanity, and ethnic cleansing by specific persons."<sup>34</sup> Kerry's point is not simply a legal nicety. It reflects a major foreign policy concern of one of America's leading allies in the Middle East: Turkey.

Modern Turkey is the successor government to that of the Ottoman Empire. Its government and politicians are implacable opponents of any attempt by foreign governments to brand the massacres of Armenians and others between April 24, 1915–1917 "a genocide."<sup>35</sup>

31. See Robert A. Destro, L. Martin Nussbaum, and Ian Speir, *Genocide Against Christians in the Middle East: A Report Submitted to Secretary of State John Kerry by the Knights of Columbus and In Defense of Christians* (March 9, 2016), <http://www.stophthechristiangenocide.org/scg/en/resources/Genocide-report.pdf> [hereafter "KofC/IDC Genocide Petition"].

32. U.S. Const., Art. I §2, ¶4 (1787) ("The House of Representatives . . . shall have the sole power of impeachment.").

33. See, e.g., Akhil Reed Amar, "On Prosecuting Presidents," 27 *Hofstra L. Rev.* 671, 674–675(1999) ("The President is elected by the entire nation, and should be judged by the entire nation. His true grand jury is the House, his true petit jury is the Senate, and the true indictment that he is subject to is called an impeachment.").

34. See Remarks of Secretary of State John Kerry.

35. See, e.g., *Periçek v. Switzerland*, Application # 27410/08, ECHR (October 15, 2015), <http://hudoc.echr.coe.int/eng?i=003-5199806-6438950> (holding that Mr. Periçek, who is a lawyer and was Chairman of the Turkish Workers' Party, could not be prosecuted for calling "the allegations of the 'Armenian genocide' . . . an international lie," alleging that "[t]he Kurdish problem and the Armenian problem were therefore, above all, not a problem and, above all, did not even exist . . .;" and "this is the truth, there was no genocide of the Armenians in 1915. It was a battle between peoples and we suffered many casualties . . . the Russian officers at the time were very disappointed because the Armenian troops carried out massacres of the Turks and Muslims. These truths were told by a Russian commander").

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Its leading proponent of the position that the Armenian Genocide is not properly classified as a “genocide,” Dr. Mustafa Serdar Palabiyik, argues:

[G]enocide is first and foremost a crime and therefore a legal concept. According to the Genocide Convention, the only competent authority to define a particular event such as genocide is a competent tribunal of the state in the territory where the genocidal act was committed, or an international penal tribunal with jurisdiction with respect to those Contracting Parties, with its jurisdiction accepted. Without a clear decision by these legal authorities, an event can only be categorized politically as a genocide, not legally, and a purely political categorization, of course has no legal consequence.<sup>36</sup>

Two observations concerning the Armenian Genocide are in order here. First of all, the House and Senate Genocide Resolutions, as well as Secretary Kerry’s Declaration of Genocide, assume that trials in a duly-constituted court having jurisdiction over the offenses and the persons accused are essential components of the prevention and punishment goals of the Genocide Convention. Certainly the Turkish argument that a formal conviction of the crime of genocide can be made only by a “competent tribunal of the state in the territory where the genocidal act was committed, or an international penal tribunal . . . with its jurisdiction accepted” is legally unassailable. This argument, however, begs the question raised by those demanding formal recognition that a genocide occurred in 1915–1917. Some Turkish officials were tried in courts-martial, but the geopolitics of

36. Mustafa Serdar Palabiyik, *Understanding the Turkish-Armenian Controversy Over 1915* (Ertem Ankara: Basım Yayın Dağıtım San. Tic. Ltd. Şti 2015) at 102. The Turkish legal argument also rests on an argument that there was no “intent to destroy”:

There was no plan to destroy Armenians, but only the wartime necessity of relocating them for the sake of military security. Those deported . . . were generally treated humanely and all necessary provisions were made for their safety and well-being (though, admittedly this broke down at times). Some Armenians were killed by criminals and roving tribes; others were killed as the result of the civil war they were waging against Turkey within a global war.

Roger W. Smith, “Denial of the Armenian Genocide,” in *Genocide: A Critical Bibliographic Review* 2: 63, 6–68 (Israel W. Charny, ed. 1991), quoted in M. Cherif Bassiouni, “World War I: ‘The War to End All Wars’ and the Birth of a Handicapped International Criminal Justice System,” 30 *Denv. J. Int’l L. & Pol’y* 244 (2002).

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genocide aborted the more formal trials contemplated by the Treaties of Versailles and Sèvres.<sup>37</sup>

On July 5, 1919, a Turkish Military Tribunal entered a verdict sentencing Prime Minister Talaat Pasha, Minister of War, Enver Effendi, Minister of the Navy, Djemal Effendi, and Minister of Education, Dr. Nazim to death *in absentia* for “the massacres which took place in the Kaza of Boghazlayan (Ankara), the Sanjak of Yozgat, and the Vilayet of Trebizond.” The verdict recognized that these atrocities “were organized and perpetrated by the leaders of the *Ittihad* and *Terakki* [Union and Progress] Party.”<sup>38</sup> Thus, while the crime of “genocide” as we know it today had yet to be defined, there were, in fact, convictions for massacres that occurred under Ottoman supervision.<sup>39</sup>

It is also undeniable that accountability requires documentation and a willingness to use the evidence to seek and obtain convictions in a properly-constituted court of competent jurisdiction. Early estimates put a price tag of over \$100 million for the forensic documentation effort alone. Add the cost of trials, defense, and prosecution costs, and the price goes up exponentially,<sup>40</sup> to perhaps a billion dollars or more.<sup>41</sup> Among the choices of fora are: 1) the International Criminal Court (ICC), a forum that, for reasons amply discussed elsewhere, appears highly unlikely;<sup>42</sup> 2) a local court in the countries

37. Bassiouni observes that American Secretary of State Robert Lansing, who chaired the Commission on the Responsibility of the Authors of War and on Enforcement of Penalties established on January 25, 1919, during the Paris Peace Conference, argued “that the Europeans’ plan to place the Kaiser on trial was nothing more than an exercise in political pandering” during Lloyd George’s election campaign. Bassiouni, 250, quoting James F. Willis, *Prologue to Nuremberg: The Politics and Diplomacy of Punishing War Criminals of the First World War* (1982), 69.

38. Official Transcript of Verdict (“Kararname”) of the Turkish Military Tribunal, published in the Official Gazette of Turkey (*Takvimi Vekayi*), No. 3604 (supplement), July 22, 1919. The transcript was translated into English by Haigazn K. Kazarian and published in the *Armenian Review*, vol. 24 (1971).

39. Whether those trials were fair is, of course, another question entirely and is a topic beyond the scope of this essay.

40. In 2003, The Economist reported that the costs were “running at more than \$100m a year.” “The Lesson of Slobodan Milosevic’s Trial and Tribulation,” *The Economist*, February 13, 2003, <http://www.economist.com/node/1576821>.

41. See Rupert Skilbeck, “Funding Justice: The Price of War Crimes Trials,” <https://www.wcl.american.edu/hrbrief/15/3skilbeck.pdf>; David Wippman, “The Costs of International Justice,” 100: 4 *Am. J. Int’l Law* 861 (2006).

42. See chapter eleven in this volume.

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in which specific crimes were committed; or 3) a hybrid tribunal created to handle cases in which the defendants are alleged to have committed violations of international law.

By far, the most difficult—and frustrating—argument against the proposed genocide resolutions was the claim that ISIS could not be accused of the “genocide” of Christians because it offered them an option: convert to Islam or pay *jizya*—the Islamic tax imposed on non-Muslims as payment for protection by the Islamic community.<sup>43</sup> Most forcefully expressed in the U.S. Holocaust Memorial Museum’s otherwise-excellent November, 2015 report: *Our Generation is Gone: The Islamic State’s Targeting of Iraqi Minorities in Ninewa*, the argument is that

IS specifically notes that its treatment of the Yezidis differs from its treatment of *abl al kitab*, the “people of the book,” Christians and Jews, who had the option of paying the *jizya* (tax) to avoid conversion or death.<sup>20</sup> By refusing Yezidis any option to avoid death or forced conversion, IS demonstrates that its actions were calculated with the intent of destroying the community and thereby different from its attacks against other minorities, which were part of a campaign of ethnic cleansing.<sup>44</sup>

There are several problems here. The first is the report’s uncritical acceptance of IS propaganda that there was, in fact, an actual choice. (There was not.) Even if there were, it would make no difference under the law of genocide. As Ambassador Samantha Power has observed:

“Genocide,” as defined in the U.N. treaty, suffered then (as it suffers now) from several inherent definitional problems. One is what might be called a numbers problem. On the question of how many individuals have to be killed and/or expelled from their homes in order for mass murder or ethnic cleansing to amount to genocide, there is—and can be—no consensus. If the law were to require a

43. M.A. S. Abdel Haleem, “The *jizya* Verse (Q. 9:29): Tax Enforcement on Non-Muslims in the First Muslim State,” *Journal of Qur’anic Studies* 14.2 (2012) 72–89. See chapter one in this volume.

44. Naomi Kikoler, U.S. Holocaust Memorial Museum, Simon-Skjodt Ctr. for the Prevention of Genocide, *Our Generation is Gone: The Islamic State’s Targeting of Iraqi Minorities in Ninewa* (Nov. 12, 2015), <https://www.ushmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf>.

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pre-specified percentage of killings before outsiders responded, perpetrators would be granted a free reign up to a dastardly point. The law would be little use if it kicked in only when a group had been entirely or largely eliminated. By focusing on the perpetrators' intentions and whether they were attempting to destroy a collective, the law's drafters thought they might ensure that diagnosis of and action against genocide would not come too late.<sup>45</sup>

Even more important is the profound misunderstanding of the nature of the ideological and kinetic warfare being waged by the so-called "Islamic State." There are considerable differences of opinion between and among Islamic and non-Muslim scholars over the meaning of the Qur'an's *jizya* verse (Q: 9:29).<sup>46</sup>

Reproduced below are two translations of *Sura Tauba*:

صَاعِرُونَ وَهُمْ يُدِّعُونَ الْجَزِيَّةَ يُعْطَوْنَ خَتَّى

THE KORAN INTERPRETED: *A Translation*, A.J. Arberry (Touchstone, 1995)

Fight those who believe not in God<sup>e</sup> and the Last Day and do not forbid what God and His Messenger have forbidden—such men as practise not the religion of truth, being of those who have been given the Book—until they pay the tribute out of hand and have been humbled.

THE QUR'AN WITH REFERENCES TO THE BIBLE: *A Contemporary Understanding*, Safi Kaskas & David Hungerford (Bridges to Reconciliation, 2016)

Fight those People of the Book<sup>a</sup> who do not believe in God and the Last Day, those who do not forbid that which has been forbidden by God and His Messenger, and do not follow the religion of Truth, until they pay the exemption tax after having been subdued.

a. [Refers to "the Byzantine Empire and their Ghassanid allies . . . [who wished] to destroy Islam and the Muslims."]

45. Samantha Power, 65.

46. M.A.S. Abdel Haleem.

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Writing in the *Journal of Qur'anic Studies*, Abdel Haleem explains that:

The root verb of *jizya* is *j-z-y*, “to reward somebody for something,” “to pay what is due in return for something” and, as will be explained later, it has a positive connotation. The important question now is, “what was the *jizya* paid in return for?” Many exegetes and Western scholars take this to mean that it was in return for allowing Christians and Jews to live in the Muslim state, practising their religion and being protected. However, the Prophet’s treaty with the Christians of Najrān stipulates that they should not be obliged to join the Muslim army (*lā yuhsharūn*). From the practice of the early Muslim community, it is known that Christians and Jews were not obliged to join the Muslims in fighting to defend the state, and this was right, because military *jihād* has an Islamic religious connotation and should not be imposed on them. As Muhammad ‘Imāra puts it, “those who did volunteer to fight with the Muslims against the Persians and Byzantines were exempted from the *jizya* and shared the battle gains with the Muslims.” *Jizya* in this sense can be considered, as ‘Imāra states, “*badal jundiyya*” (“in exchange for military service”), not in exchange for the People of the Book being allowed to keep their own faith.<sup>47</sup>

Ahmad Ziauddin amplifies the point, and puts it into political context:

A close study of the early history of *Jizya* particularly since its imposition by the Prophet till later in the period of *Khulafa’ Rashidun* will reveal that it was a tax through the payment of which the non-Muslim subjects were expected to pay allegiance to the political authority of Islam. There is nothing to prove that it was imposed just to humiliate them or to make them socially degraded.

As a matter of fact, *Jizya* or poll tax had been in vogue since before the advent of Islam. The Greeks are reported to have imposed a similar tax upon the inhabitants of the coastal regions of Asia Minor during 500 BC. The Romans imposed similar taxes upon the people they conquered, and the amount was much heavier than what was later imposed by the Muslims. The Persians are also reported to have introduced a similar tax upon their sub-

47. Ibid., 14.2; *Journal of Qur'anic Studies* at 76 (footnotes omitted).

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jects. According to Shibli *ذات الام*, the word *Jizya* itself is the Arabi-  
cised version of the word *كزيات* (*Kizyat*), meaning a levy which the  
Persian rulers used to employ in administering the affairs of war.<sup>48</sup>

Thus, even assuming that the “Islamic State” is, in fact, a “state”  
and exercises legitimate authority (which it most assuredly does not),  
the report’s uncritical acceptance of ISIS propaganda is profoundly  
disturbing. It is bad enough to give credit to a group of *Salafi-jihadi-irhabi*-  
inspired criminals who—not surprisingly—interpret Islamic  
Law to justify their behavior. It even worse to add to the already-ram-  
pant confusion about the nature of the criminals who are commit-  
ting these atrocities.

### *Willful Blindness: The Domestic Geopolitics of Religion, Ideology, and Political Correctness*

Now that Congress and the Obama Administration have called the  
slaughter of innocents in the name of religion by its proper name,  
genocide, authorities can turn to the next item of urgent business on  
the agenda: developing a focused strategy to hunt the killers, roll up  
their networks, and bring them to justice. The longer-term goals of  
the House and Senate genocide resolutions are:

1. To “connect the dots” among the many hundreds of incidents  
where people have been slaughtered because of their religion;
2. To highlight the connection between the criminals who commit  
these crimes and the toxic ideology that drives ISIS and its allies to  
recruit and train thousands of young *jihadi-irhabis* to murder in the  
name of God.

Who *are* the men and women who invoke the name of God as they  
commit murder, rape, and engage in human trafficking? The answer  
is not easy to find. The concept of “Islamophobia” is well established  
in academic literature, the media, and in the self-perception of Mus-

48. Ahmad Ziauddin, “The Concept of Jizya in Early Islam,” *Islamic Studies*, 14: 4  
(Winter 1975), 293–305 at 294.



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lim communities worldwide.<sup>49</sup> The American Muslim community is particularly concerned in light of the debate during the 2016 presidential election campaign.<sup>50</sup> It is, therefore, critically important that the names used (or official “characterizations”) of the individuals, groups, and behaviors condemned be carefully considered and take into account religious and political sensitivities of the persons who *hear* the message.

The easiest, most accurate, and least ideological way to describe the behavior of groups like ISIS and *Jema'ah Islamiyah* is to characterize the behavior as “criminal.” Among other crimes, one can catalogue hundreds of thousands of murders, rapes, examples of pillage and mayhem, human and weapons trafficking, and money laundering. “Organized criminals” is an equally neutral characterization that focuses on the criminal behavior of the individuals committing these crimes, but adding the term “organized” recognizes that they are not isolated occurrences. All of the available evidence indicates that these criminals accused are engaged in a well-planned and well-coordinated program of action.

The term “terrorist” (Arabic *ارهابي* “*irhabi*”) is often used in the domestic and foreign press (including the Arabic language press) to describe those who commit the atrocity crimes that are the subject of this essay. While there is a general consensus that the term “terrorist”—“*irhabi*” refers to persons “who use violent and intimidating methods in the pursuit of political aims,”<sup>51</sup> there is no universally-accepted definition of the term.<sup>52</sup>

The United States Code contains several definitions of “terror-

49. Brian Klug, “Islamophobia: A Concept Comes of Age,” 12:5 *Ethnicities* 665–682 (Sage Publications, 2012).

50. See, e.g., Bloomberg View, “Islamophobia is not a National Security Policy,” *Chicago Tribune*, Nov. 22, 2016; Arsalan Iftikhar, “Commentary: Being Muslim in Trump’s America,” *Chicago Tribune*, Nov. 9, 2016.

51. “Terrorist, n. and adj,” *OED Online*. September 2016, Oxford University Press. <http://www.oed.com.proxycu.wrlc.org/view/Entry/199609?redirectedFrom=terrorist>.

52. See, e.g., Andrew Silke, *Holy Warriors*, 100 (“The questions of what constitutes terrorism and who is a terrorist are deeply problematic. There is still no precise and agreed definition of terrorism, and some writers have concluded that ‘it is unlikely that any definition will ever be generally agreed upon.’”), citing Shafritz, J.M., Gibbons, E.F., Jr and Scott, G.E.J., *Almanac of Modern Terrorism* (Oxford: Facts on File, 1991).

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ism.”<sup>53</sup> All track the common understanding. 18 U.S.C. §2331 (1, 3) provide<sup>54</sup>:

- |   |  |
|---|--|
| (1) ... “International terrorism” means activities that   | 3) ... “Domestic terrorism means activities that”  |
| A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;  | (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; |
| (B) appear to be intended—  | (B) appear to be intended—   |
| (i) to intimidate or coerce a civilian population;  | (i) to intimidate or coerce a civilian population;   |
| (ii) to influence the policy of a government by intimidation or coercion; or  | (ii) to influence the policy of a government by intimidation or coercion; or   |
| (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and  | (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and                       |
| (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum; | (C) occur primarily within the territorial jurisdiction of the United States.  |

What drives these criminals to commit unspeakable atrocities against such a broad spectrum of religious groups? Their victims

53. See, e.g., 8 U.S.C. §1182 (a)(1)(3)(B) (defining terrorism, terrorist activity, terrorist organization); 22 U.S.C. § 2656f (d).

54. The November 28, 2016, car and knife attacks on pedestrians at The Ohio State University by Abdul Razak Ali Artan certainly fit within this category. See Mitch Smith, Richard Pérez-Peña & Adam Goldman, “Suspect is Killed in Attack at Ohio State University that Injured 11,” *The New York Times*, Nov. 28, 2016, <http://www.nytimes.com/2016/11/28/us/active-shooter-ohio-state-university.html>. While there is some confusion about whether Artan’s acts were commanded, or simply “influenced,” by ISIS, the statute does not differentiate. See, e.g., Mitch Smith, Richard Pérez-Peña, and Adam Goldman, “ISIS Calls Ohio State University Attacker a ‘Soldier,’” *The New York Times*, Nov. 29, 2016.

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include Christians, like the elderly French priest beheaded at morning Mass<sup>55</sup> and hundreds of others killed while at worship.<sup>56</sup> Thousands of Shia and Sunni Muslims have been slaughtered across the Middle East and Africa. They have kidnapped more than 200 Nigerian women and girls and committed the “systematic” rape and abuse of “thousands of women and children, some as young as eight years of age.”<sup>57</sup> Aside from the profit motive, why would they pillage and sell priceless historical artifacts and destroy some of the world’s most important cultural treasures?<sup>58</sup>

The answer is the religious ideology of the killers. Because of that, one must attempt to describe that ideology in a way that is true to its claims to be the only authentic version of Islam, while still differentiating it from all contrary versions of Islamic theology, law, philosophy, or thought. There are several, plausible ways to do this:

The synonyms “*jihadis*” (جهادي) and “*mujahedeen*” (مجاهدين) are a good starting point for two reasons. First, those who pledge spiritual allegiance (“make *bay’at*” (بعت عهد)<sup>59</sup> to the leadership of ISIS and related

55. Peter Allen, Julian Robinson, and Imogen Calderwood, “You Christians, you kill us’: Nun reveals words of ISIS knifemen who forced elderly priest, 84, to kneel at altar as they slit his throat on camera after invading Mass—before police shot them,” *Daily Mail.com*, July 26, 2016, <http://www.dailymail.co.uk/news/article-3708394/Two-men-armed-knives-people-hostage-French-church.html#ixzz4RKukS2Kn>.

56. See, e.g., Declan Walsh and Nour Youssef, “ISIS Claims Responsibility for Egypt Church Bombing and Warns of More to Come,” *New York Times*, Dec. 13, 2016, <http://www.nytimes.com/2016/12/13/world/middleeast/egypt-isis-bombing-coptic-christians.html> (Cairo); Reuters, “Egypt church blast death toll rises to 23,” Jan. 4, 2011, <http://www.reuters.com/article/us-egypt-church-idUSTRE7010M020110104> (Alexandria).

57. U.S. Department of State, Bureau of Counterterrorism and Countering Violent Extremism, “Country Report on Terrorism, 2015,” chapter 6 in *Islamic State of Iraq and the Levant*, <http://www.state.gov/j/ct/rls/crt/2015/257523.htm> [hereafter Counterterrorism Country Report 2015], referencing U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2015*, <http://www.state.gov/documents/organization/245365.pdf>, 39.

58. See Ben Taub, “The Real Value of the ISIS Antiquities Trade,” *The New Yorker*, December 4, 2014, <http://www.newyorker.com/news/news-desk/the-real-value-of-the-isis-antiquities-trade>; Nasir Behzad and Daud Qarizadah, “The Man Who Helped Blow Up the Bamiyan Buddhas,” *BBC Afghan*, March 12, 2015, <http://www.bbc.com/news/world-asia-31813681>.

59. See, e.g., AlHazrat.net, “The Meaning and Excellence of Bayat (Pledge),” [http://www.alahazrat.net/islam/meaning-and-excellence-of-bayat-\(pledge\).php](http://www.alahazrat.net/islam/meaning-and-excellence-of-bayat-(pledge).php)

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groups refer to themselves as “mujahedeen;” that is “those who make *jihād*” (“strive in the cause of God as a religious duty”). Second, and more important, both terms convey the religious character of the perceived obligation.

As used in the West, the terms *jihadi* and *mujahedeen* almost always have a military connotation. If we focus only on *jihadi* organizations that have or claim an offensive military mission, we can begin to narrow the scope from Islam as a whole to organizations that display one or more aspects of the “the multifaceted Islamist belief system.”<sup>60</sup> As Dr. Mary Habeck points out:

the main difference between jihadis and other Islamists as the extremists’ commitment to the violent overthrow of the existing international system and its replacement by an all-encompassing Islamic state. She believes that “only by understanding the elaborate ideology of the jihadist faction can the United States, as well as the rest of the world, determine how to contain and eventually defeat the threat they pose to stability and peace.”<sup>61</sup>

The terms “radical Islam” or “radical Islamic terrorism” are catch-all descriptive terms. They are sometimes used as a form of shorthand to describe the belief system of those who commit crimes and terrorist activities in furtherance of their “Islamist” ideology. Dr. Quintan Wiktorowicz, for example, uses the phrase “Radical Islam” as the title of his study of why Muslims in the West are drawn to radical groups and how they are convinced to engage in what he calls “high-risk, high-cost activism.”<sup>62</sup> President Donald Trump, by contrast, uses these terms in a more descriptive, popular sense.

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(“The meaning of Bay’at or pledging spiritual allegiance is to be totally sold, which means to surrender yourself totally to a Spiritual Master (Murshid) to guide you to Allah.”)

60. Mary Habeck, *Knowing the Enemy: Jihadist Ideology and the War on Terror* (New Haven: Yale University Press, 2006) reviewed in Mohammad M. Amman, 15:2 *Domes* 137–139 (Fall 2006).

61. *Ibid.*, 138.

62. Quintan Wiktorowicz, *Radical Islam Rising: Muslim Extremism in the West* (Lanham, MD: Rowman & Littlefield, 2005); Christine Fair, Book Review, Quintan Wiktorowicz, “Radical Islam Rising: Muslim Extremism in the West,” (Lanham, Md.: Rowman & Littlefield, 2005) in 39 *International Journal of Middle East Studies* 137–38 (2007).

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Today we begin a conversation about how to Make America Safe Again. In the twentieth century, the United States defeated Fascism, Nazism, and Communism. Now, a different threat challenges our world: Radical Islamic Terrorism. . . . We cannot let this evil continue. Nor can we let the hateful ideology of Radical Islam—its oppression of women, gays, children, and nonbelievers—be allowed to reside or spread within our own countries. We will defeat Radical Islamic Terrorism, just as we have defeated every threat we have faced in every age before. But we will not defeat it with closed eyes, or silenced voices. Anyone who cannot name our enemy, is not fit to lead this country. Anyone who cannot condemn the hatred, oppression, and violence of Radical Islam lacks the moral clarity to serve as our President.<sup>63</sup>

Both President Trump and Dr. Wiktorowicz use the term in a “broadly” descriptive sense, and are criticized for that reason. Former President Barak Obama, for example, has claimed that the terms are dangerously “loose language that appears to pose a civilizational conflict between the West and Islam, or the modern world and Islam,” which “make[s] it harder, not easier, for our friends and allies and ordinary people to resist and push back against the worst impulses inside the Muslim world.”<sup>64</sup>

An “Islamist” is an adherent of “an ideology that demands man’s complete adherence to the sacred law of Islam and rejects as much as possible outside influences . . . and . . . a deep antagonism toward non-Muslims and has a particular hostility toward the West.”<sup>65</sup> While the term “Islamist” is broadly descriptive, the connotation is often viewed (wrongly) as descriptive of a broader subset of Muslims. This is so because the Western media has yet to grapple with—or to report on—what it means to have a *religious* ideology.

The terms Salafi Islam and Salafist are terms “used as a self-designation by Muslims claiming authenticity, and [are] is often used by

63. Donald J. Trump, Speech at Youngstown, Ohio, August 15, 2016, <http://thehill.com/blogs/pundits-blog/presidential-campaign/291498-full-transcript-donald-trump-addresses-radical>.

64. See, e.g., Uri Friedman, “The Coming War on ‘Radical Islam’: How Trump’s Government Could Change America’s Approach to Terrorism,” *The Atlantic* (Nov. 29, 2016).

65. Daniel Pipes, “Distinguishing Between Islam and Islamism,” *Daniel Pipes Middle East Forum*, June 30, 1998.

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outsiders in a negative sense, designating reactionary and conservative Muslims, at times violently inclined.”<sup>66</sup>

Salafism is an ideology and reform movement calling for a return to traditional Islam as it was practiced and observed in the days of the Prophet Muhammad and his circle of Companions. In Arabic “*salaf*” means “predecessors; forebears, ancestors, forefathers.” According to Kamran Bokhari, “From the Salafist perspective, non-Islamic thought has contaminated the message of ‘true’ Islam for centuries, and this excess must be jettisoned from the Islamic way of life.” The Egyptian scholar and Islamist Muhammad ‘Abduh (1849–1905) spearheaded the Salafist reform movement, which continues to inspire present-day Salafist movements. Salafists constitute both violent and nonviolent minorities (in terms of ideology) within Muslim populations worldwide. As Bokhari explains, “Unlike members of the Muslim Brotherhood, Salafists do not belong to a single, unified organization. Instead, the movement comprises a diffuse agglomeration of neighborhood preachers, societal groups and—only very recently—political parties, none of which are necessarily united in ideology.”<sup>67</sup>

Susanne Olsson observes that while “most Salafis share a common creed (*‘aqīda*), but the program for action (*manhaj*) differs.” Quoting Wiktorowicz, she points out that “in spite of their common creed, Salafis’ divergence ‘lies in the inherently subjective nature of applying a creed to new issues and problems. This is a human enterprise and therefore subject to differing interpretations of context.”<sup>68</sup> In her view,

This implies that theology, or creed, are often similar among groups that can be designated as Salafi-oriented, but the program of action differs, including views on how they should relate to the surround-

66. Susanne Olsson, “Proselytizing Islam—Problematizing ‘Salafism,’” 104(1–2) *The Muslim World* 171–97 (January/April 2014) at 176.

67. Hayat Alvi, “The Diffusion of Intra-Islamic Violence and Terrorism: The Impact of the Proliferation of Salafi/Wahhabi Ideologies,” 18.2 *Middle East Review of International Affairs* (Online) 38–50 (Summer 2014) (footnotes omitted) at 39, quoting Kamran Bokhari, “Salafism and Arab Democratization,” *Stratfor Global Intelligence*, October 2, 2012, <http://www.stratfor.com/weekly/salafism-and-arab-democratization>. See also Hans Wehr, *A Dictionary of Modern Written Arabic* (Ithaca: Spoken Language Services, Inc., 3<sup>rd</sup> ed. 1976), 423.

68. Olsson, 186.

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ing society, to people of other faiths and to other people claiming to be Muslims but who do not share their view on what true Islam is or should be.<sup>69</sup>

The last of the terms proposed here—*Wahhabi*—points to the religious, geographic, and financial foundation of the ideology that drives ISIS and other organizations that share its worldview: The Kingdom of Saudi Arabia.

The Salafi/Wahhabi ideology has long enjoyed support in many forms from Saudi Arabia, especially in the case of the mujahidin fighting against the Soviets in Afghanistan. Today, we see other Gulf Cooperation Council (GCC) states, like Qatar, Kuwait, and the United Arab Emirates (UAE), also joining the game. However, unlike in previous incarnations, the primary targets of today's Salafi jihadists have become fellow Muslims, especially Shi'a, but even fellow Sunnis are not spared.<sup>70</sup>

Writing in the February, 2008 edition of the journal of the Combatting Terrorism Center at West Point, Dr. Assaf Moghadam advised that:

Accurately labeling the nature of Salafi-jihadist doctrine as a religious ideology is not merely an exercise in academic theorizing, but has important policy implications. Most importantly, it should be obvious that the United States and its allies are not facing a religion—Islam—as their main enemy, but an ideology, namely the Salafi-jihad. The fact that the Salafi-jihad is no ordinary secular ideology, but a religious one, however, is of additional significance because it renders the attempt to challenge that ideology far more complex.<sup>71</sup>

“Far more complex” is, if anything, an understatement. Muslim scholars recognize that:

the broader ideology name[d] “Wahhabism” represents a serious challenge to the theology and practice of the mainstream Sunni Islam. . . . Should this radicalized understanding of Islam continue to spread unchecked, radical interpretations could threaten social

69. Ibid.

70. Alvi, 38.

71. Assaf Moghadam, Ph.D., “The Salafi-Jihad as a Religious Ideology,” *CTC Sentinel* 1:3 (Combatting Terrorism Center at West Point, February 2008).

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stability at the local, national and regional levels and create serious geopolitical dangers to which neighboring powers, as well as the U.S. and Europe, would have to react.<sup>72</sup>

Writing on behalf of the Islamic Supreme Council of America, Shaykh Muhammad Hisham Kabbani has stated:

In truth, there is no clash between Islam and the West, which is another way of saying a clash between Islam and Christianity. If that were the case, Muslims would be attacking the Christian communities in their own nations. While there are isolated conflicts along these lines, they have never been widespread, nor have they ever been a focus of the jihadist movement.

What we are witnessing instead is a clash between people with power and those without it. It is a conflict rooted in the history of colonialism and the perception of present-day imperialism. It is a conflict in which religion is simply a means to an end. We must recognize this if we are to understand the true nature of this so-called “jihad” and its increasingly global character. . . .

Make no mistake: The aim of the jihadists is to extend their power not only through Afghanistan, Kazakhstan and Pakistan, but also through “Francistan,” “Londistan,” “Italistan,” “Switzerland,” “Hollandistan” and even “Americastan.” That is the globalization of jihad.<sup>73</sup>

ISIS is an outgrowth of *al Qaeda*. The U.S. State Department’s “Country Reports on Terrorism, 2015” reports that “[i]n October 2006, AQI [Al-Qa’ida in Iraq] publicly re-named itself the Islamic State in Iraq and in 2013 it adopted the moniker Islamic State of Iraq and the Levant (ISIL) to express its regional ambitions as it expanded its operations to include the Syrian conflict.”<sup>74</sup> Richard Allen Green and Nick Thompson of CNN report that “It was an ally of—and had

72. The Islamic Supreme Council of America [ISCA], “Islamic Radicalism: Its Wahhabi Roots and Current Representation,” *Understanding Islam, Anti-Extremism*, <http://islamicsupremecouncil.org/understanding-islam/anti-extremism/7-islamic-radicalism-its-wahhabi-roots-and-current-representation.html>.

73. Shaykh Muhammad Hisham Kabbani, “The Globalization of Jihad: From Islamist Resistance to War Against the West—A Clash of Civilizations” in Islamic Supreme Council of America [ISCA], *Understanding Islam: Anti-Extremism*, <http://islamicsupremecouncil.org/understanding-islam/anti-extremism/56-the-globalization-of-jihad-from-islamist-resistance-to-war-against-the-west.html>.

74. Counterterrorism Country Report 2015.



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similarities with—Osama bin Laden’s *al Qaeda*: both were radical anti-Western militant groups devoted to establishing an independent Islamic state in the region.”<sup>75</sup>

Like other *Salafi-jihadi* groups, the leadership of ISIS shares the view that “Westerners are . . . infidels, while moderate Muslims and Arabs are labeled apostates. To the most extreme Salafi-jihadists, Muslims who reject the tenets of Salafi-jihad are tantamount to infidels, thus deserving of death.”<sup>76</sup> Along with other organizations that share its ideology, it is but one member of a global *Salafi-jihadi* network that is (or should be considered to be) the centerpiece of the current malevolent threat matrix.<sup>77</sup> In sum, the enemy is the global *Salafi-jihadi* movement and all of the organizations that support and carry out its desire to conquer and hold territory.

### *Reconceptualizing the Malevolent Threat Matrix*

The term “threat matrix” is used to avoid many of the assumptions that have complicated—and hobbled—American policy-making and political discourse. Unless and until it is possible to have an honest conversation about the true nature of the threat, use of this term may help. The goal is to create a framework in which it is possible to have an honest conversation about the true nature of the threat posed by the spread of Salafi-jihadi ideology around the world. Without a clear understanding of the breadth and depth of the threat, it will not be possible to mount an effective counter-strategy.

The reason for [building and using a generic threat matrix] is a combination of historical aspects and the significance of the problem being faced today. Although the “threat of the day” is important to understand, it is not the only issue in place. While looking at only

75. See generally Richard Allen Green & Nick Thompson, “ISIS: Everything you need to know,” *CNN*, August 11, 2016, <http://www.cnn.com/2015/01/14/world/isis-everything-you-need-to-know/>.

76. Moghadam, “The Salafi-Jihad as a Religious Ideology.”

77. David P. Duggan, Sherry R. Thomas, Cynthia K.K. Veitch, and Laura Woodard, “Categorizing Threat: Building and Using a Generic Threat Matrix,” *Sandia Report*, SAND2007-5791 (Sandia National Laboratories) (“Malevolent Threat: A manmade event or condition; for example, a bombing of a federal facility or the use of chemical and biological agents in terrorist attacks”), [http://energy.gov/sites/prod/files/oeprod/DocumentsandMedia/14-Categorizing\\_Threat.pdf](http://energy.gov/sites/prod/files/oeprod/DocumentsandMedia/14-Categorizing_Threat.pdf), 9.

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the current threat, the entire picture can become skewed based on assumptions that follow names of organizations due to statements of the media and personal opinion. These assumptions do not allow for the objective differentiation of threats. Creating a generic threat matrix not only removes the assumptions that come with names, but also includes those types of organizations that are not the primary focus of a day, month, year, or decade.<sup>78</sup>

Let us consider, for example, the assumptions built into the United States Government's understanding of the threat matrix. The Introduction to the State Department's 2014 Human Rights Report begins by noting that "the year 2014 will be remembered as much for atrocities committed by non-state actors,"<sup>79</sup> including:

Terrorist organizations like ISIL, *al-Qa'ida* in the Arabian Peninsula (AQAP), *al-Qa'ida* in the Islamic Maghreb (AQIM), *Boko Haram*, *al-Shabaab*, *Jabhat al-Nusra*, and others perpetrated human rights abuses and violations of international humanitarian law against innocent non-combatants. Often, they sought to eliminate those who did not conform to their extreme views, including other Sunni Muslims. Some governments committed violations and abuses in response; such reactions to violent extremism often undermined efforts to contain it.<sup>80</sup>

The same organization-by-organization and country-by-country focus is seen in the "Strategic Assessment" contained in chapter one of the State Department's *Country Reports on Terrorism 2015*.<sup>81</sup> After recounting ISIS/ISIL's fortunes in Iraq and Syria, it reports on its activities in Egypt, Pakistan, Afghanistan, and notes that:

ISIL-aligned groups have also emerged in other parts of the Middle East, Africa, the Russian North Caucasus, Southeast Asia, and South Asia, although the relationship between most of these groups and ISIL's leadership remained symbolic in most cases. Many of

78. Ibid., 14.

79. U.S. Department of State, 2014 Human Rights Report Introduction, 1 (2015), <http://www.state.gov/documents/organization/236534.pdf>; see also Priyanka Boghani, "What a Pledge of Allegiance to ISIS Means," *PBS Frontline*, Nov. 12, 2014.

80. 2014 Human Rights Report, Introduction, 1.

81. To be fair, the State Department is providing "Country Reports," but a Strategic Assessment requires a more broadly-based analysis.

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these groups are made up of pre-existing terrorist networks with their own local goals and lesser capabilities than ISIL.

In March, the Nigeria-based terrorist group Boko Haram declared its affiliation to ISIL. . . . Beyond affiliated groups, ISIL was able to inspire attacks in 2015 by individuals or small groups of self-radicalized individuals in several cities around the world. ISIL's propaganda and its use of social media have created new challenges for counterterrorism efforts. Private sector entities took proactive steps to deny ISIL the use of social media platforms by aggressive enforcement of violations to companies' terms of service. Twitter reported in 2015 that it had begun suspending accounts for threatening or promoting terrorist attacks, primarily related to support for ISIL.<sup>82</sup>

While it is true that “[m]any of these groups are made up of pre-existing terrorist networks with their own local goals and lesser capabilities than ISIL,” and that most are properly classified as “non-state actors,” there is no attempt to “connect the dots” or to unpack the assumptions on which these narratives are based.

As a result, *both* analyses miss the connections between the groups, their supporters, and the ideology that spawns and unites them. Using a “generic threat matrix” is helpful under these circumstances because the cultural, religious, and geopolitical assumptions on display in the State Department reports quoted above “do not allow for the objective differentiation of threats.” For example:

1. It is undisputed that these seemingly distinct groups are united by their adherence to a common *Salafi-jihadi* ideology. It is at least plausible to argue that what the State Department views as a “symbolic” relationship among them that the “enemy” is best understood as a transnational, *ideological movement* “rooted in the history of colonialism and the perception of present-day imperialism” in which “religion is simply a means to an end.”<sup>83</sup> If this is, in fact, the case, the use of military and financial weapons will be necessary, but not sufficient to disrupt its growth.

2. It is also undisputed that the *Salafi-jihadi* ideology common to these groups is rooted in the teaching of Saudi Arabia's Abd al-Wahhab, which views “all Shiites . . . as *kufir* and *rafida* (rejection-

82. Counterterrorism Country Report 2015, chapter 1.

83. Kabbani, “The Globalization of Jihad,” 6.

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ists).”<sup>84</sup> As a practical matter, this means that the Islamic Republic of Iran, whose population is over 90% Shia Muslim, is both a *target* of the *Salafi-jihadi* movement and a potential ally of those fighting to eliminate it.<sup>85</sup>

3. *Salafi-jihadi* ideology also rests on “interpretations of the Qur’an and Sunna that declare the *ahl al-kitab* [People of the Book: Jews, Christians, and Zoroastrians] and contemporary Christians and Jews to be unbelievers.”<sup>86</sup> Partly in response, Russian President Vladimir Putin “has presented himself in a new role—as the potential saviour of Middle Eastern Christians. And even his critics wonder whether he may, in fact, have a point.”<sup>87</sup> A binary approach to Russia’s actions in the region obscures the importance of religion and of the role of the Russian Orthodox Church in President Putin’s political calculations.

4. There is considerable evidence that certain nation states, including Saudi Arabia, Qatar, and Turkey—as well as private and quasi-public actors within those nation states—provide both material and logistical support for the *Salafi-jihadi* cause.

Rethinking the malevolent threat matrix should involve reconsideration of each assumption and relationship within that matrix and reveal that the movement against which the United States seeks to do battle includes not only the terrorist *Salafi-jihadis* (“soldiers,” “sleep-

84. Aylin Ünver Noi, *A Clash of Islamic Models: 15 Current Trends in Islamic Ideology*, 92–116.

85. Abbas Milani of the Hoover Institute suggests that Iran’s Islamic Revolutionary Guard Corps—*The Army of Guardians* (اسلامی اذ قلاب پارساران مد پاد) / *Sepāh-e Pāsdārān-e Enqelāb-e Eslāmi*, or *Sepāh*—shares some of the characteristics of *Salafist-jihadi* ideology. See Abbas Milani, Lecture, “ISIS, Iran, and Saudi Arabia,” *Hoover Institution*, April 18, 2016, <http://www.hoover.org/research/abbas-milani-isis-iran-and-saudi-arabia>. This is a subject worthy of extended discussion, but at first glance, Milani’s thesis appears to confuse alliances of convenience between those who view the West as enemies and the profoundly incompatible religious world views of the Shia and the *Salafi-jihadis* who consider them to be *kufir* and *rafida*.

86. Aysha Hidayatullah, “Review of Adis Duderija, Constructing a Religiously Ideal ‘Believer’ and ‘Woman’ in Islam: Neo-traditional Salafi and Progressive Muslims’ Methods of Interpretation,” *Contemporary Islam* 8:75–78, 76 (2014).

87. Robert Vargas, “Vladimir Putin’s Holy War,” *The Catholic Herald*, Dec. 10, 2015.

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ers,” and recruits) who commit the crimes and the ex-military commanders who direct their actions, but also a network of *Salafi-jihadi* businesses, bankers and money brokers, social media experts, clerics, academics, madrassas, prison chaplains, charities, and donors that make its work and spread possible.

Disrupting and dismantling the global support network that makes it possible for these *Salafi-jihadi* organizations to take and control territory, to travel freely, to recruit globally and to spread the war to Paris, Brussels, Amman, Florida, and Ohio is going to require creative thinking on many levels. Especially important will be a frank discussion of two issues that are—for a myriad of reasons—mentioned only in hushed tones: 1. The important role that religion plays in the geopolitics of terrorism; 2. The uniquely important roles that America’s Christians, Jews, and Muslims will need to play in the fight against it.

With significant ties to organized crime and the international banking sector, as well as to the substantial resources of petrowealthy *Salafist* individuals, entities, and governments in the Middle East, the United States is watching helplessly as the global *Salafi-jihadi movement* expands its reach, recruitment efforts, influence, and violence across the globe. There is considerable evidence that private individuals, particularly in places such as Qatar, Saudi Arabia, Turkey, and Kuwait, have contributed hundreds of millions of dollars—perhaps more—to the *Salafi-jihadi* cause.<sup>88</sup> Even more launder funds; engage in human trafficking; trade oil, diamonds, and other natural resources; and trade in priceless artifacts. Some are smuggling themselves across America’s southern border.<sup>89</sup>

At a private meeting in Tehran in May, 2014, Dr. Ali Larijani, the Speaker of the Iranian Parliament (*Majlis*), observed that “the United States does not think strategically” about either the Middle East or about how to grapple with the problem of international terrorism. In his view, the major powers have neither a sense of history, nor an appreciation of the roles that they have played in it. Because their focus has long been the protection of immediate interests, their

88. See, e.g., Email from Hillary Rodham Clinton to John Podesta, August 17, 2014, <https://wikileaks.org/podesta-emails/emailid/3774>.

89. Bill Gertz, “Southern Command Warns Sunni Extremists Infiltrating from the South,” *The Washington Free Beacon*, August 22, 2016.

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approaches have been “purely tactical, with no sense of the long term.”<sup>90</sup>

America’s efforts to destroy ISIS/*Da’esh* and other groups that share its *Salafi-jihadi* ideology, such as Indonesia’s *Jema’ah Islamiyah* and Nigeria’s *Boko Haram*, are reactive. Because the current rules of military, political, financial, and religious engagement are not rooted in a clear vision of what a long-term “good outcome” would look like for the United States, they are doomed to failure. Unless and until the American rules of engagement take adequate account of the ideological nature of the enemy and its efforts to recruit disaffected Muslims here in the United States and abroad, kinetic and financial warfare will not be sufficient. Like sharks’ teeth, new leaders will arise to replace the fallen because Western leaders have no strategy to counter the *Salafi-jihadi* narrative that the *jihadis* are being martyred on the front lines of a “war against Muslims and Islam.”

In sum, the ultimate measure of success for American and other nations’ efforts to destroy the *Salafi-jihadi* movement of which ISIS is a part will be found in the answers to three empirical questions: 1. Is the number of *Salafi-jihadi* terrorist incidents increasing or decreasing? 2. Is the *Salafi-jihadi* ideology that drives ISIS and other groups spreading? 3. Are the financial and human resources needed to support *Salafi-jihadi* terrorist groups readily available through sympathetic businesses, bankers, clerics, academics, media, and charities?

As these words are written, the number of incidents is increasing, the ideology is spreading, and resources are readily available from both State-sponsored and private sources. The West is losing. Consideration must be given to taking a hard, strategic look at what a long-term “good relationship” with each of the countries in the Middle East would look for *the United States*. Of necessity, such an exercise should re-examine *all* assumptions regarding: 1. The economic needs, cultures, religious traditions, regional interests, and behavior of the countries in the Middle East/North Africa (MENA) region: Israel, Iran, Iraq, Saudi Arabia, Yemen, Turkey, Lebanon, Syria, Jordan, the Gulf States, Egypt, Libya, Tunisia, Algeria, Morocco, Ethiopia, and Sudan; 2. The behavior of the great powers in addition to

90. Compare, Peter Frankopan, *The Silk Roads: A New History of the World* (Knopf: Reprint edition, 2016).

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the United States (Russia, Germany, the UK, and France) that have so long viewed the countries of the region as “the pieces on a chessboard upon which is being played out a game for the dominion of the world.”<sup>91</sup>

All of these issues come together in the fight against ISIS or *Da'esh*. In the space of less than two years, these *Salafi-jihadis* have erased many of the post-World War borders in the region and forced over seven million people to flee their homes. Over 3.5 million Iraqis have been displaced, and another 3.5 million Syrians are refugees.<sup>92</sup> Nearly one million more have fled the scourges of Taliban and are internally displaced in Afghanistan or refugees in Iran and Pakistan.<sup>93</sup> Another two million have fled the depredations of *Boko Haram* in northeastern Nigeria,<sup>94</sup> and the list goes on with victims in Yemen, Russia, Chechnya, Sinai, Jordan, Western Europe, the United States, and Canada.

### *Conclusion*

This chapter began with a question posed by a Congressional staffer in September 2015: “*Why should my boss vote for a resolution condemning the genocide of Christians?*” Although the question seemed crass at the time, with study, it can be appreciated not only for its simplicity, but also for its practical political significance. An experienced Hill staffer knows that a resolution condemning “the atrocities perpetrated by ISIL against Christians, Yezidis, and other religious and ethnic minorities [as] war crimes, crimes against humanity, and genocide” is serious business.<sup>95</sup> For starters, it is a commitment to a long-term legislative and appropriations agenda with very real political and fiscal consequences at home and abroad.

91. George N. Curzon, *Persia and the Persian Question* (London: Frank Cass & Co., Ltd. 1892), 4–5.

92. United Nations High Commissioner for Refugees, Population Statistics: “Persons of Concern,” [http://popstats.unhcr.org/en/persons\\_of\\_concern](http://popstats.unhcr.org/en/persons_of_concern).

93. *Ibid.* The search engine calculates that over 950,000 Afghan refugees were living in Iran in 2014.

94. United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Nigeria, “About the Crisis,” <http://www.unocha.org/nigeria/about-ocha-nigeria/about-crisis>.

95. H. Con. Res. 75, ¶1.

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Such an agenda will include, at a minimum, efforts to prod the Executive Branch to use its diplomatic and intelligence resources to confirm reports from the field;<sup>96</sup> to develop bipartisan and multilateral strategies to prevent such murderers in the future;<sup>97</sup> and to seek out and punish as many of those involved in the *Salafi jihadi* network's supply and money-laundering chains as can be discovered and brought to justice.<sup>98</sup> That is no small agenda. To date, the price in blood and treasure is already enormous. Unless we act strategically—and recognize the enemy's ideology for what it is, it will grow exponentially.

Such a vote should not be taken lightly. No wonder she asked that question.

96. See, e.g., H.R. 2029, Consolidated Appropriations Act, 2016, Public Law No: 114–113 §7033(d):

Not later than 90 days after the enactment of this Act, the Secretary of State, after consultation with the heads of other United States Government agencies represented on the Atrocities Prevention Board (APB) and representatives of human rights organizations, as appropriate, shall submit to the appropriate congressional committees an evaluation of the persecution of, including attacks against, Christians and people of other religions in the Middle East by violent Islamic extremists and the Muslim Rohingya people in Burma by violent Buddhist extremists, including whether either situation constitutes mass atrocities or genocide (as defined in section 1091 of title 18, United States Code), and a detailed description of any proposed atrocities prevention response recommended by the APB: Provided, that such evaluation and response may include a classified annex, if necessary.

97. H. Con. Res. 75, ¶3.

98. See, e.g., P.L. 104–208 §555, Omnibus Consolidated Appropriations Act, 1997 (September 30, 1996) (from the LIS summary, this section permits “the President to provide a specified amount of commodities and services to the U.N. War Crimes Tribunal if doing so will contribute to a resolution of charges regarding genocide or other violations of international law in the former Yugoslavia.”)