

The Erosion of Noncombatant Immunity within Al Qaeda

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Since its inception, al Qaeda's treatment of noncombatant immunity has migrated from full observance to complete disregard. In just over a decade, al Qaeda transitioned from basing entire operations on the inviolable nature of noncombatant immunity to specifically targeting noncombatants. From 1991 until 2002, al Qaeda evolved through five distinct phases in its observance of noncombatant immunity. These phases transition from Phase One's complete respect for noncombatants to Phase Five's intentional targeting of millions of noncombatants with weapons of mass destruction. More recently, however, al Qaeda appears to be taking stock of the harm that targeting noncombatants is having on its cause. This paper will provide a phased analysis of how al Qaeda's provision of noncombatant immunity disintegrated over time and why it may be returning today. This progression of thought and action concerning noncombatants serves as a roadmap by which to understand how and why al Qaeda made these ideological leaps.

The Erosion of Noncombatant Immunity within Al Qaeda

Since its inception, al Qaeda's treatment of noncombatant immunity has migrated from full observance to complete disregard. In its evolving mission from fighting the Soviets in Afghanistan in the 1980s, to apostate Muslim regimes in the 1990s, to its current fight against the West, it has employed a variety of tactics in its conduct of war. Against the Soviets and Muslim regimes of Middle East, Northern Africa, and South East Asia, al Qaeda limited its use of force to combatants and government officials. However, in its current fight against the West, and more specifically America, it has shifted its tactics to the targeted killing of noncombatants. What has caused this great shift and departure from past deference to noncombatant immunity?

In just over a decade, al Qaeda transitioned from basing entire operations on the inviolable nature of noncombatant immunity to specifically targeting noncombatants. From 1991 until 2002, al Qaeda evolved through five distinct phases in its observance of noncombatant immunity. These phases transition from Phase One's complete respect for noncombatants to Phase Five's intentional targeting of millions of noncombatants with weapons of mass destruction. Fortunately, for the purposes of better understanding this phenomenon, al Qaeda has published much of its reasoning behind its actions. Perhaps more than any other warring party in history, al Qaeda has shared its strategy, tactics,

views, and even vulnerabilities for the entire world to see in the global media.¹ It is through these rare glimpses into the psyche of al Qaeda that we can better understand why this shift happened. By placing this shift into five finite phases, we can learn more about the driving factors for the erosion of noncombatant immunity within al Qaeda.

Background

Before diving into the analysis of the five-phase transition of al Qaeda with respect to noncombatant immunity, it would be prudent to briefly explore two background areas: the leader of al Qaeda, Osama bin Laden, and the Islamic Just War ethic. These areas are critical to understanding how bin Laden sees the world and what constraints he operates under when using the cover of Islam for his legitimacy. The contextual importance of understanding the many facets of Islam with respect to war, jihad, and noncombatants cannot be overstated.

Osama bin Laden

Bin Laden, the son of a wealthy Saudi businessman, began his fight against the enemies of Islam in Afghanistan during the Soviet occupation of the 1980s. From its meager beginnings as the Services Office, bin Laden's al Qaeda served primarily as the conduit that brought Arabs seeking martyrdom to Afghanistan.² The Afghan war was limited to Afghan militias and Arabs, funded largely by the US and Saudi Arabia via the Pakistani Intelligence Services, against Soviet soldiers.

After the Soviets retreated from Afghanistan, bin Laden returned home to Saudi Arabia. The crystallizing moment for bin Laden's contemporary view of the world occurred in the aftermath of Iraq's invasion of Kuwait in 1990. As the invasion inherently threatening Saudi Arabia, bin Laden offered his services, and those of his Afghan veterans, to the Saudi government to repel Saddam Hussein.³ The House of Saud, however, chose the United States instead, and thus the fateful rift between bin Laden and the Saudi Royal Family widened beyond repair. From that point forward, bin Laden saw the Saudi government and all apostate regimes of the Middle East as the "near enemy" and the United States as the "far enemy."⁴ In bin Laden's view, without the far enemy's propping up of the corrupt Muslim regimes in the Middle East, these regimes would fall under the pressure of Muslims yearning for Islamic states based on the Sharia.

After his exile from Saudi Arabia, bin Laden moved to the Islamic-leaning state of Sudan in 1993, to grow al Qaeda and plot against the far enemy. Under pressure from Khartoum, bin Laden departed once again for Afghanistan in 1996, and eventually joined

¹ Jarret Brachman, "Abu Yahya's Six Easy Steps for Defeating Al Qaeda," *Perspectives on Terrorism*, Vol. 1, Issue 5, available from http://www.terrorismanalysts.com/pt/index.php?option=com_rokzine&view=article&id=18&Itemid=54, accessed on 17 April 2008. Brachman discusses al Qaeda's own discussion of its weaknesses.

² Peter Bergen, *Holy War, Inc.: Inside the Secret World of Osama bin Laden*, New York: Touchstone, 2002, p. 54.

³ Peter Bergen, *The Osama bin Laden I Know: An Oral History of al Qaeda's Leader*. New York: Free Press, 2006, p. 108.

⁴ Malise Ruthven, "How to Understand Islam," *New York Review of Books*, November 8, 2007, available from <http://www.nybooks.com/articles/20800>, accessed 22 February 2008.

forces with Mullah Omar and the Taliban. It is in this “Golden Age” of al Qaeda from 1996-2001, that bin Laden planned and executed his American Embassy bombings in Africa, the USS Cole attack, and 9/11.⁵ With the US invasion of Afghanistan following 9/11, bin Laden has been on the run in the North-West Frontier Province of Pakistan. While most of al Qaeda has been decimated since 9/11, bin Laden continues to lead al Qaeda and the greater Islamic jihadist movement through regular media releases that inspire the next generation of fighters.

Islamic Ethic of War

The Islamic tradition of jihad (just war) explicitly respects noncombatant immunity. The foundation for *jus in bello* (conduct within war) was set by Muhammad’s successor, the first caliph, Abu Bakr, when he gave the Islamic “ten commands.” He very succinctly said: “do not kill children or old men, or women.”⁶ Deference for noncombatants in war is also supported by the Koran which says: “fight in God’s cause against those who wage war against you, but do not transgress limits, for God loves not the transgressors.” (2:190)⁷ In the Muslim tradition, there is a doctrine of constraint and limitations regarding noncombatants in war.

How then can Islamic jihadists reconcile the killing of noncombatants with the traditions of Islam? The reasoning lies in the many interpretations of both the Koran and *hadiths* (actions and sayings of Muhammad). The “diffuse nature” of religious authority in Islam allows clerics to offer different interpretations of the Koran.⁸ Also, the militaristic lifestyle that Muhammad led while protecting his nascent religion impacts the Islamic view of war and noncombatant immunity today. While Muhammad rejected violence during the Meccan period of his life, during the later Medinan period, he fought no less than 70 military battles and thus set forth the military component of jihad. Consequently, the *hadiths* of Muhammad demonstrate the vanquishing of the all nonbelievers of the time – the Quraysh, Bedouin tribes, Jewish tribes of Medina, and the Byzantine Empire.⁹ Muhammad’s militant words of, “when you face the enemy, be patient, and remember that Paradise is under the shade of swords,” also adds to the mystique of force within Islam.¹⁰

The loophole that some Muslims, including al Qaeda, have used to exploit Islam as a cover to kill noncombatants has been the “sword” verses of the Koran. The most famous sword verse is: “slay the polytheists wherever you find them, and take them captive, and besiege them, and lie in wait for them at every conceivable place.”(9:5)¹¹ The “peace” verse which theoretically would counter the sword verse is: “let there be no compulsion in religion.”(2:256)¹² With the dilemma of competing ideas, the principle of abrogation

⁵ Marc Sageman, “The Next Generation of Terror,” *Foreign Affairs*. Mar/Apr 2008, p. 38.

⁶ Sohail H. Hashmi, “Interpreting the Islamic Ethic of War and Peace,” in T. Nardin, ed., The Ethics of War and Peace: Religious and Secular Perspectives. Princeton, N.J.: Princeton University Press, 1996, p. 161.

⁷ Ibid.

⁸ Ibid., p. 146.

⁹ Ibid., p. 155.

¹⁰ Ibid.

¹¹ Ibid., p. 157.

¹² Ibid.

has been used to argue that since the sword verses came second, they supersede the peace verses. In the cherry-picking nature that al Qaeda has used in regards to the Koran, the verse, “make ready against them whatever force and war mounts you are able to muster,” has also been used to support the use of nuclear weapons against noncombatants.¹³

The Islamic ethic of war has provided a situation ripe for abuse at the hands of al Qaeda. In a time of genuine struggle between competing sects of Islam, and even competing movements within each sect, it is immensely important to appear more pious than the competition. Sadly, the more militant, radical, and aggressive the stance of certain Muslim groups, the more closely they are associated with “true” Islam. As such, the true standard bearer of Islam has become the observers of the sword verses who have little regard for the noncombatant immunity of both believers and nonbelievers. This debate has become so contentious between Muslims that some groups have named their cause “Islamic jihad” to differentiate between other Muslim militant groups that they have dubbed “false.”¹⁴

In a sense, al Qaeda has hijacked the entire *salafi* – or proper religious adherence and moral legitimacy – movement. As a “radical tendency” within this movement, al Qaeda has exacerbated the struggle over who is truly a *salafi*.¹⁵ With al Qaeda’s belief in *takfir*, or the ability to decide who is a true Muslim and who is not, it has proclaimed itself judge and jury of all Muslims. It has used *takfir* to pressure Muslims into supporting an offensive jihad, often targeting noncombatants, against the West. While defensive jihad is generally accepted as repelling non-Muslims from attacking Muslim lands, offensive jihad is the extension of battle to non-Muslim lands. With the self-proclaimed ability to judge Muslims as nonbelievers if they do not support offensive actions against the West, al Qaeda has extracted monetary and physical support under the cover of Muslim piety. Similarly, it has used the violent *salafi* interpretation of the Koran’s sword verses to legitimize its killing of civilians.

The Wearing Away of Noncombatant Immunity

We will now look at the specific examples of al Qaeda’s treatment of noncombatants. Beginning with al Qaeda’s actions in the Afghan war, noncombatants received the utmost protection and immunity from the devastation of war. By 2002, however, al Qaeda had declared its intent to kill noncombatants with weapons of mass destruction. The followed phased analysis of al Qaeda paints the picture of how its provision of noncombatant immunity disintegrated over time. This progression of thought and action concerning noncombatants serves as a roadmap by which to understand how and why al Qaeda made this ideological leap.

¹³ Ibid., p. 164.

¹⁴ Ibid., p. 146.

¹⁵ Quinton Wiktorowicz and John Kaltner, “Killing in the Name of Islam: Al Qaeda’s Justification for September 11” *Middle East Policy Council*, available from http://www.mepc.org/journal_vol10/0306_wiktorowicz Kaltner.asp, accessed on 18 April 2008.

Phase One

The first phase of al Qaeda's treatment of noncombatant immunity begins with respect for noncombatants in war. When al Qaeda first formed in 1988, it was fully engaged in a battle between armed combatants. While the Soviet Army was better trained and equipped, the Afghan militias and Afghan Arabs were armed nonetheless. Al Qaeda only fought the Soviets with guns and tactics directed against its soldiers. Suicide bombings against Soviet civilians in Moscow were scarcely a figment of bin Laden's imagination.

The second data point during this phase that illustrates respect for noncombatant immunity is al Qaeda's 1991 assassination attempt on the King of Afghanistan. Zahir Shah, King of Afghanistan, was in exile in Rome following a 1973 coup. At a time of civil war in Afghanistan in the early 1990s, al Qaeda feared the King's return would issue in a secular government incompatible with al Qaeda's goals of an Islamic state. As such, bin Laden and the would-be assassin Paulo Jose de Almeida Santos, a Portuguese convert to Islam, planned to dispose of the King. In a 2002 interview, Santos recounted how bin Laden was completely averse to killing noncombatants in the assassination attempt on the Afghan King in 1991.

In a scene reminiscent of Albert Camus' 1949 *The Just Assassins*, bin Laden planned the King's assassination. Similar to Camus' play where Ivan Kaliayev could not kill the Grand Duke because the carriage in which the Duke was riding contained his niece and nephew, bin Laden told Santos he could not kill the King if the King's grandson would be in danger. Santos recounted his conversation with bin Laden and, in particular, the question of whether collateral damage in the form of the grandchild was acceptable in the assassination attempt. To this question, bin Laden replied: "No, no, in no way! What are you saying? We are Muslims, we do not eliminate children!"¹⁶ Santos said that bin Laden then angrily said that if a child was present, the King could not be attacked and that bin Laden, "would rather the King return and have a civil war than to kill a child."¹⁷ Thus, al Qaeda's respect for noncombatant immunity can be fully established in 1991. Furthermore, bin Laden respected noncombatant immunity to such a high degree that he was willing to accept potentially severe losses to al Qaeda from being forced into a protracted civil war. (Incidentally, the assassination attempt on the King failed when Santos' dagger was deflected from the King's heart by a tin of Café Crème cigarillos¹⁸)

These events and primary accounts of bin Laden illustrate how disinclined al Qaeda was to the killing of noncombatants in the beginning. Bin Laden even went as far as to use Islam as the driving force for why they could not kill noncombatants. Even more ironic, bin Laden offered an explanation as to why American civilians were off limits in war. When asked about "eliminating American civilians," bin Laden replied, "No. The American government is one thing, the majority of Americans don't even vote, they are totally apathetic."¹⁹ Santos further outlined the mindset of al Qaeda's leader when he

¹⁶ Peter Bergen, *The Osama bin Laden I Know*, (hereafter OBL I Know), p. 119.

¹⁷ Ibid.

¹⁸ Ibid., p. 116.

¹⁹ Ibid., p. 119.

said that bin Laden, “refused to dirty his hands with the blood of innocent people. He is a very moral person.”²⁰ In Phase Two, the first signs of departure to this mindset appear.

Phase Two

This phase begins in March, 1997, with a CNN interview of bin Laden in Afghanistan. In a dramatic change to bin Laden’s view of noncombatants, he hints that civilians may not be as shielded as they were in the past. While he does not say that al Qaeda will target civilians, he basically intimates that if noncombatants get in the way, “it is their problem.”²¹

The CNN interview by Peter Bergen and Peter Arnett was the first time that bin Laden told Western journalists that he had declared war on the United States. Departing from his past strategy of targeting apostate Muslim regimes in the Middle East, bin Laden clearly announced that al Qaeda was now at war with America. His answer to a question regarding the classification of the enemy helps to outline his evolving view of noncombatants. Bin Laden said:

As for what you asked, whether jihad is directed against U.S. soldiers, the [U.S.] civilians in the land of the Two Holy Places [Saudi Arabia], or against the civilians in America, we have focused our declaration on striking at the soldiers in the country of the Two Holy Places...Therefore, even though American civilians are not targeted in our plan, they must leave. We do not guarantee their safety.²²

Whereas in 1991, bin Laden guaranteed the safety of the Afghan King’s grandson, in 1997, he was no longer vouching for the safety of noncombatants. This shift was the beginning of the end for al Qaeda’s respect for noncombatant immunity.

Phase Three

In this third phase, bin Laden moved from luke warm approval of noncombatant immunity to overtly declaring that noncombatants were legitimate targets. On February 22, 1998, bin Laden released a signed statement on behalf of the World Islamic Front. The World Islamic Front consisted of al Qaeda, the Jihad Group in Egypt, the Egyptian Islamic Group, Jamiet-ul-Ulema-e-Pakistan, and the Jihad Movement in Bangladesh. In this statement, bin Laden, and the rest of the alliance, not only sanctioned the killing of civilians, but also elevated it to level of a holy duty, or *fatwa*. The *fatwa* read:

The ruling to kill the Americans and their allies – civilians and military – is an individual duty for every Muslim who can do it in any country in which it is

²⁰ Ibid., p. 120.

²¹ Bergen, interview conducted at Harvard’s Kennedy School of Government, 3 April 2008.

²² Bergen, OBL I Know., pp. 183-184.

possible to do it, in order to liberate the al-Asqa Mosque [in Jerusalem] and the holy mosque [Mecca] from their grip.²³

The following summer, bin Laden held true to his word and attacked two American Embassies in Africa. On August 7, 1998, al Qaeda bombed the American Embassies in Nairobi, Kenya killing 212 civilians, and Dar es Salaam, Tanzania killing 11 civilians. While no Americans were killed in Tanzania, eight died in Kenya. Plotters of the attack have said that bin Laden was so involved with the operation that he actually decided where, in reconnaissance photos of the targets, to drive the trucks laden with explosives.

On October 12, 2000, bin Laden struck again against the US by attacking the USS Cole. There is little doubt that bin Laden orchestrated this attack which killed seventeen American sailors and crippled an American Navy destroyer. The 9/11 Commission Report even categorized the attack as a full-fledged al Qaeda operation. Bin Laden honored his attack by reciting a poem about it at his son's wedding:

A destroyer: even the brave fear its might. It inspires horror in the harbor and in the open sea. She sails into the waves, flanked by arrogance, haughtiness and false power. To her doom she moves slowly, a dingy awaits her, riding the waves.²⁴

The importance of Phase Three is that bin Laden publically sanctioned the killing of civilians and acted on this threat. Although he killed combatants in the Cole attack, he also killed non-uniformed American and African civilians in the embassy bombings. The question that must then be asked is: were the civilians that were killed true noncombatants or "agents" of the US government?²⁵ While the definition of combatant is stretched to encompass government officials, those employees working in the embassies may be considered combatants. Despite the fact that they are unarmed and are working in a job that does not explicitly call for the risk to one's life, as an employee of the US government, the case can be made that they are more than mere noncombatants protected under traditional guidelines. This subtle distinction between civilians working for the US government and those civilians not titled as an "agent" of the government brings us to Phase Four. While in Phase Three, bin Laden legitimized attacking all noncombatants in rhetoric, he only executed attacks against combatants and American government interests. In Phase Four, however, he took the degradation of noncombatant immunity to the next level by targeting and successfully attacking civilians who did not work for the US government in any capacity.

Phase Four

Phase Four is time-stamped by the 9/11 attacks. In these attacks, nearly 3,000 noncombatants were targeted both on the planes and on the ground. The noncombatants

²³ Ibid., p. 196.

²⁴ Bergen, OBL I Know, p. 256.

²⁵ Both bin Laden and Zawahiri use this term "agent" whenever they describe anyone who works in collaboration with the US government. This can describe an individual or another government.

working in the World Trade Towers and those flying on the planes were in no way associated with the American government. Their intentional murder was exacted to draw media attention to al Qaeda's cause and as retribution for perceived injustices by the American government on the Muslim community. While uniformed combatants were killed in the Pentagon on 9/11, the thrust of the operation was directed against noncombatants.

On April 24, 2002, bin Laden first attempted to explain why he targeted civilians who were not associated with the US government. In his statement titled, "A Statement from Qaidat al-Jihad Regarding the Mandates of the Heroes and the Legality of the Operations in New York and Washington," he provided religious justification for the attacks by classifying the greater struggle as a "total war" against the US. By expanding the war against the US to the total war level, he tried to elevate the unlimited nature of the war to legitimize targeting civilians.

In October, 2004, bin Laden again attempted to rationalize his attacks on 9-11 by saying:

While I was looking at those destroyed towers in Lebanon [American bombing in 1982], it occurred to me to punish the unjust one in a similar manner by destroying towers in the United States so that it would feel some of what we felt and to be deterred from killing our children and women. And that day, it was confirmed to me that oppression and the intentional killing of innocent women and children is a deliberate American policy. Destruction is freedom and democracy, while resistance is terrorism and intolerance.²⁶

This justification that bin Laden offers for killing American civilians in the World Trade Towers is that of retribution for the US and Israel killing innocent women and children in Lebanon in 1982. This "retaliation-in-kind" reasoning is of course flawed because US forces did not intentionally target women and children in 1982, whereas bin Laden did in 2001. It was a commonly known fact that daycare centers with hundreds of children were housed in the World Trade Center and still it remained a valid target for bin Laden. This fact in itself demonstrates how far bin Laden migrated from his willingness to call off the assassination attempt against the Afghan King based on the life of one child. While the rhetorical shift from Phase Two to Three was significant in that the status of civilians moved from protected to targeted, the largest shift in implementation by al Qaeda occurred from Phase Three to Four, where true noncombatants were attacked instead of government employees.

Phase Five

After the 9/11 attacks, it appears that al Qaeda's move to complete disrespect for noncombatant immunity was complete. This interpretation, however, does not account for the scale-up potential of weapons of mass destruction (WMD). Accordingly, the fifth phase demonstrates the final and most disturbing position regarding noncombatants: the use of WMDs to intentionally kill mass numbers of noncombatants. The fact that al

²⁶ Osama bin Laden transcript, 1 November 2004, provided to author by the Combating Terrorism Center, West Point.

Qaeda released a public statement informing the world of this intent, and received religious backing from a prominent Muslim cleric, makes this phase all the more dangerous. This is the current phase that we find al Qaeda; however, as far as we know, it is only at the rhetorical and preparation stage.

In June, 2002, Suleiman Abu Ghaith, al Qaeda's official spokesman, published an essay on al Qaeda's web site al Neda (The Call) titled, "In the Shadow of the Lances."²⁷ In this announcement, Ghaith explained al Qaeda's right to kill Americans using weapons of mass destruction. He stated:

Due to the American bombings and siege of Iraq, more than 1,200,000 Muslims were killed in the past decade...The Americans have still not tasted from our hands what we have tasted from theirs. The [number of] killed in the World Trade Center and the Pentagon are but a tiny part of the exchange for those killed in Palestine, Somalia, Sudan, the Philippines, Bosnia, Kashmir, Chechnya, and Afghanistan. We have not reached parity with them. We have the right to kill four million Americans – two million of them children – and to exile twice as many and wound and cripple hundreds of thousands. Furthermore, it is our right to fight them with chemical and biological weapons, so as to afflict them with the fatal maladies that have afflicted the Muslims because of [Americans'] chemical and biological weapons. America knows only the language of force. America is kept at bay by blood alone.²⁸

This assertion by al Qaeda's spokesman was afforded religious backing in the form of a *fatwa* by Sheik Nasir bin Hamid al Fahd. This *fatwa* allowed al Qaeda to use WMDs against the United States.²⁹ Al Fahd, a prominent Saudi cleric, issued this *fatwa* on May 21, 2003. In his *fatwa* titled, "A Treatise on the Legal Status of Using Weapons of Mass Destruction against Infidels," he addressed moral dilemmas and allowed for, "the permissibility of attacking the polytheists by night, even if their children are injured," and accepted the problems "that these weapons will kill some Muslims."³⁰

After receiving a religious mandate to use WMDs against noncombatants, the next question is how close is bin Laden to having this capability? While many experts believe that al Qaeda is still several years away from acquiring or building their own WMDs, both bin Laden and his deputy Ayman al Zawahiri have publically noted otherwise. On November 8, 2001, bin Laden told his official biographer Hamid Mir, "we have nuclear deterrence and this is for our defense."³¹ In addition, when Mir asked Zawahiri how al Qaeda obtained nuclear weapons, Zawahiri responded, "if you have thirty million dollars, you can have these kinds of [nuclear] suitcase bombs from the black market in central

²⁷ Bergen, OBL I Know, pp. 346-347.

²⁸ Ibid., p. 347.

²⁹ Kelly Uphoff, "Osama bin Laden's Mandate for Nuclear Terror," *The Jewish Institute for National Security Affairs (JINSA)*, available from <http://www.jinsa.org/articles/index.html/function/view/categoryid/1701/documentid/2762/history/3,2360,655,1701,2762>, accessed on 17 April 2008.

³⁰ Uphoff.

³¹ Bergen, OBL I Know, p. 348.

Asia. It is not difficult.”³² While these statements could only be a ruse to keep America guessing, the proximity of al Qaeda’s implementation of Phase Five is a worrisome question.

Phase Five is also marked by al Qaeda’s heightened tactical need to target noncombatants with the intent of consummate devastation. In order to achieve this goal and in turn harm the enemy, al Qaeda targeted not only Western noncombatants but also Muslim civilians in countries deemed by al Qaeda to have apostate governments. While al Qaeda has targeted Muslim leaders in the likes of the Afghan King, Ahmad Shah Massoud (head of the Northern Alliance in Afghanistan), and Pervez Musharraf in the 1990s and early 2000s, it only started attacking Muslim civilians in 2003. In addition to its suicide bombings campaigns in Iraq, Afghanistan, and Pakistan, it also deliberately targeted Muslim civilians in large-scale bombings in Riyadh and Casablanca in 2003. While the targeting of Muslims in countries with apostate regimes was new, al Qaeda reinforced its already established policy of killing of Western noncombatants with its attacks on Madrid in 2004 and London in 2005. Yet, the effect of these massive attacks on civilians was for the most part counterproductive as al Qaeda has begun to experience blowback and decreased support from formerly supportive demographics.

Gateways for Change

In just over a decade, al Qaeda transitioned from extreme respect, as dictated by religion, for noncombatant immunity, to a religious duty for all Muslims to kill American noncombatants. This shift was not overnight and it had to pass through several gateways in order to arrive at the position that killing noncombatants was not only acceptable but desirable. The three most important philosophical gateways that al Qaeda passed through in order to kill noncombatants with a clear conscience were: the creation of an Enemy, an excuse for killing, and a last resort scenario. It is most likely the confluence of all three steps that has allowed al Qaeda to justify targeting noncombatants.

Creation of an Enemy

Michael Walzer explains that for terrorists to gain the ability to kill noncombatants, they must create an Enemy where a whole people are “ideologically or theologically degraded so that they are available for murder.”³³ He provides examples of the creation of Enemies by the IRA to the Irish Protestants, the PLO to the Israeli Jews, and FLN to the French Algerians. He further explains that once the Enemy is created, any of them (men, women, or children) can be killed.

Al Qaeda has undergone this process with the United States. Bin Laden and Zawahiri have attempted to reinforce this enemy characterization of the US by running a comprehensive media campaign targeted at both fellow jihadists and mainstream Muslims. Analysis of their video releases over the past seven years has shown them to reinforce several platform themes in order to vilify the US. These themes have been:

³² Ibid., p. 348.

³³ Michael Walzer, *Arguing About War*, New Haven, CT: Yale University Press, 2004, p. 132.

1) there is a strong US-Israeli alliance, 2) the US is stealing Muslim oil, 3) a clash of civilizations exists between the West and Islam, and 4) the US is propping up apostate regimes in the Middle East. With these themes, al Qaeda has forged an Enemy in the US by using ideas that resonate incredibly well among Muslims.

Excuse for Killing

Another gateway that al Qaeda must pass through in order to kill noncombatants is the formulation of an excuse in which to base the murder of women and children. This excuse for killing noncombatants provides the necessary rationale for jihadists to perform an act that human nature would inform otherwise. The “excuses for terror” are manifold for al Qaeda; however, they primarily rest on the norm of reciprocity.³⁴

Jihadists characterize the US and Israel as “people of war” where the Israelis oppress the Muslims of Palestine and the US attacks the Muslims of Afghanistan and Iraq.³⁵ Accordingly, as a people of war, the US can only be fought using similar tactics. Al Qaeda reasons that since American actions have resulted in the deaths of Muslim noncombatants around the world, it has charged itself with the mission of exacting like retribution. Consequently, al Qaeda’s excuse for killing civilians is that it is merely following the “eye for an eye” doctrine of justice. This form of justice carries immense weight not only among jihadists, but also within the greater Muslim community.

Last Resort Argument

Al Qaeda has fashioned a last resort argument within its fight against the US in order to justify the killing of noncombatants. Bin Laden premises his argument in the historical justification of the demise of Muslims over the last four centuries. In business terminology, bin Laden has cleverly painted the picture that Muslims around the world are on a “burning platform” that without drastic measures will sink into oblivion.

For historical reasons, bin Laden argues that Muslims must immediately unite and take emergency measures to defeat the West or risk remaining in servitude. As Bernard Lewis has explained, Muslims are “morning over the loss of a cultural primacy that was theirs” for almost a thousand years from Muhammad’s death in 632 A.D. to the failed Muslim siege of Vienna in 1683.³⁶ Bin Laden echoes this idea that Muslims have been humiliated for the last hundred years and that the US will continue to suppress Muslims well into the future. In a January, 2004, taped message, bin Laden shows the last resort nature of al Qaeda’s cause against the US.

O Muslims: The situation is serious, and the misfortune is momentous. By God, I am keen on safeguarding your religion and your worldly life. So, lend me your ears and open up your hearts to me so that we may examine these pitch-black

³⁴ Walzer, *Arguing About War*, p. 141.

³⁵ Wiktorowicz.

³⁶ Clifford Geertz, “Which Way to Mecca?” *New York Review of Books*, June 12, 2003, available from <http://www.nybooks.com.ezpl.harvard.edu/articles/16380>, accessed on 20 April 2008.

misfortunes, and so that we may consider how we can find a way out of these adversities and calamities. The West's occupation of our countries is old, yet new. The struggle between us and them, the confrontation, and clashing began centuries ago, and will continue because the ground rules regarding the fight between right and falsehood will remain valid until Judgment Day.³⁷

As bin Laden seeks to reestablish the Islamic Caliphate, his means for carrying out his goal against an economically and militarily superior enemy have turned increasingly desperate. This last resort desperation seems to legitimize the attacking of noncombatants as it is the only tool that al Qaeda has left in its toolbox. Since the members of al Qaeda truly believe the without such tactics the war against the US will be lost, they have accepted the killing of civilians as a just means to achieve their ends. In al Qaeda's eyes, this tactic of targeting noncombatants has had the desired effect of halting American supremacy and restoring power to Muslims. An al Qaeda spokesman confirmed this belief when he said after 9/11 that the attacks "rang the bells of restoring Arab and Islamic glory."³⁸

Where Does al Qaeda Go From Here?

As one looks to the future of al Qaeda and its view of noncombatant immunity, it is hard to foresee an immediate shift back to complete respect for noncombatants. With limited resources, terror attacks against civilians yield the most publicity for al Qaeda's cause.

But after 9/11 with the world now aware of al Qaeda and its goals, is the targeting of noncombatants the most beneficial use of its labor and funding? Similar to how the terrorist attacks on Israeli athletes at the Munich Olympics in 1972 brought the Palestinian cause to the forefront of the global media, 9/11 has shed light on Muslim jihad against the West. Now that al Qaeda's platform issues have been publicized, however, their terror attacks against noncombatants appear to be undermining their cause. For two reasons, it would appear that al Qaeda may revert back to a semblance of respect for noncombatant immunity in the near future. The first reason is that the US is proving to be thicker skinned than bin Laden had thought. The second is that Muslim opinion is waning regarding al Qaeda's tactic of killing civilians. As a disproportionately high number of Muslim civilians are being killed in al Qaeda's attacks, Muslims around the world are beginning to question al Qaeda.

The assumption that the US has a soft underbelly in regards to sustaining casualties is weakening every month that the US continues to stay in Iraq and Afghanistan. Bin Laden and his associates believed that after the US suffered the civilian casualties from 9/11, it would begin to pull out of the Middle East. Unfortunately for bin Laden, this has not happened. Following the 9/11 attacks, just the opposite occurred with Americans' resolve against al Qaeda and radical Islamists becoming stronger. In fact, there was an increase in military service applications and a surge of patriotism, as shown by the unfurling of American flags on homes, cars, and office buildings everywhere.

³⁷ Osama bin Laden, tape from 4 January 2004, provided to author by the Combating Terrorism Center, West Point.

³⁸ Louise Richardson, What Terrorists Want, New York: Random House, 2006, p. 4.

The counterproductive nature of al Qaeda's targeting of civilians is not a historical anomaly. During WWII, the German air war over London that targeted civilians actually hardened British resolve to fight Germany instead of forcing its surrender. Perhaps bin Laden should have heeded the words of the famous French military commander Marshal Foch when he said: "You cannot scare a great nation into submission by destroying her cities."³⁹ Thus, with the stiffening of national resistance to al Qaeda precisely because of its targeting of noncombatants, bin Laden may be rethinking his faulty tactic of attacking civilians.

Secondly, there is considerable evidence that al Qaeda's attacks on noncombatants are having a deleterious effect on al Qaeda's support base both within the organization and the mainstream Muslim community. The number of ex-jihadists and formerly supportive Muslim clerics speaking out against al Qaeda has increased in the last several years precisely because of its targeting of civilians.⁴⁰ After al Qaeda's former chief in Iraq, Abu Musab al-Zarqawi, began targeting noncombatant Shia, support for al Qaeda within the greater Muslim community dropped precipitously. Al Qaeda's increased suicide attacks on civilians within Saudi Arabia and Pakistan have also caused its supporters to leave in droves. In fact, a recent *Terror Free Tomorrow* poll in Pakistan shows that support for bin Laden has plummeted from 46% to 24% and backing for al Qaeda has dropped from 33% to 18% in the past six months.⁴¹ In another survey from 2005, when suicide bombings against noncombatants first peaked, the number of Pakistanis believing that suicide bombing was justified dropped from 73% to 46%.⁴² Thus, if al Qaeda wants to stem its dwindling support, it will seek to reduce its targeting of noncombatants.

Just as al Qaeda's targeting of noncombatants progressed in phases, perhaps it is moving into a Phase Six where a limited respect for noncombatant immunity once again exists. In 2005, Zawahiri directed al Qaeda in Iraq to stop killing Shia noncombatants because it was hurting al Qaeda's greater cause. Furthermore, a top al Qaeda strategist, Abu Yahya al-Libi, has written to al Qaeda in Iraq telling them that its killing of "too many civilians" was undermining al Qaeda's global strategy.⁴³ Indeed, one influential ex-jihadist has correctly identified the flawed nature of targeting noncombatants by saying that, "the tactics have taken over the strategy."⁴⁴ While a full prohibition against the targeting of all noncombatants may be years ahead, this development is promising. Although the path to disregard for noncombatant immunity took over a decade to mature, signs are pointing to a reversal as its legitimacy is crumbling under its own weight.

³⁹ J.C. Ford, "The Morality of Obliteration Bombing," *Theological Studies* 5 (1994), p. 301.

⁴⁰ Peter Bergen and Paul Cruickshank, "The Beginning of the End for Al Qaeda?" p. 3. Forthcoming.

⁴¹ "Poll: Bin Laden's Popularity fading in Pakistan," MSNBC.com, available from <http://www.msnbc.msn.com/id/23094334/>, accessed on 19 April 2008.

⁴² "Poll: Dramatic Change in Public Opinion in the Muslim World," *Terror Free Tomorrow: The Center for Public Opinion*, available from <http://www.terrorfreetomorrow.org/articlenav.php?id=71>, accessed on 17 April 2008.

⁴³ Michael Moss and Souad Mekhennet, "Rising Leader for the Next Phase of al Qaeda's War," *New York Times*, available from http://www.nytimes.com/2008/04/04/world/asia/04qaeda.html?_r=2&ei=5088&en=ade199d53d7ab70a&ex=1364961600&partner=rssnyt&emc=rss&pagewanted=all&oref=slogin&oref=slogin#, accessed on 17 April 2008.

⁴⁴ Peter Bergen, interview conducted on 29 April 2008. Noman Benotman, the former leader of the militant Libyan Islamic Fighting Group, is the ex-jihadist that is quoted.

Further evidence that al Qaeda is rethinking its targeting of noncombatants is a recent bin Laden video from December 29, 2007, that said al Qaeda is not intentionally targeting civilians. Bin Laden's video entitled, "The Way to Foil Conspiracies," explains how he is saddened when civilians are killed. He says:

and him [sic] who falls dead from the Muslims in any of the operations against the crusader infidels or their agents, he is not meant by killing and Allah only knows how it hurts and grieves us when some Muslims die in any operation and we are responsible for it, and we seek Allah's forgiveness due to it, and we ask Allah to grant their souls mercy, grant them paradise and help their families.⁴⁵

Zawahiri then followed suit several months ago when he held an unprecedented online Question and Answer session in March, 2008. Zawahiri accepted hundreds of questions in an online submission process and answered with 46 pages of text. The first and most important questions, he said, regarded al Qaeda's stance on noncombatant immunity. Zawahiri went as far as to say that only by mistake does al Qaeda kill civilians. Zawahiri replied when asked by Mudarris Jughrafiya, a geography teacher, "Do you consider the killing of women and children to be jihad?":

we don't kill innocents: in fact, we fight those who kill innocents. Those who kill innocents are the Americans, the Jews, the Russians and the French and their agents. Were we insane killers of innocents as the questioner claims, it would be possible for us to kill thousands of them in the crowded markets, but we are confronting the enemies of the Muslim Ummah and targeting *them*, and it may be the case that during this, an innocent might fall unintentionally or unavoidably, and the Mujahideen have warned repeatedly the Muslims in general that they are in a war with the senior criminals – the Americans and Jews and their allies and agents– and that they must keep away from the places where these enemies gather.⁴⁶

Final Thoughts

The killing of noncombatants is often justified by the idea of *inter arma silent leges*: in time of war the law is silent.⁴⁷ This is expanded to impart that in war, "self-interest and necessity prevail" and "morality and law have no place."⁴⁸ This is a bleak, but realist view of war and the treatment of noncombatants. Al Qaeda has embraced this position over the last decade, although using religious cover to kill noncombatants. Ironically, this "self-interest and necessity" that drove al Qaeda to target civilians may be driving it back into the fold of respecting noncombatant immunity. When the US did not leave the Middle East following the murder of thousands of civilians after 9/11, it sent a message

⁴⁵ Osama bin Laden, "The Way to Foil Conspiracies" video released on 29 December 2007, available from http://www.lauramansfield.com/subscribers/20071229_binladen.asp, accessed on 20 April 2008.

⁴⁶ Ayman al Zawahiri, "The Open Meeting with Shaykh Ayman al Zawahiri," As-Sahab, text released 15 March 2008, available from http://www.lauramansfield.com/OpenMeetingZawahiri_Part%201.pdf, accessed 28 April 2008.

⁴⁷ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, N.Y.: Basic Books, Inc., 1977, p. 3.

⁴⁸ *Ibid.*

to al Qaeda that the targeting of civilians would not achieve its goals. Also, with Muslims around the world retracting support from al Qaeda precisely because of its targeting of civilians, the *ummah* (Muslim community) is sending its own message that al Qaeda must respect noncombatant immunity. At this point, bin Laden's best bet for winning the war would be to begin respecting noncombatants' right to life. If the observation of noncombatant immunity, spanning from respect to disregard, is plotted on a line, it appears that the pendulum depicting al Qaeda's current position has reached its apex of disregard and is beginning to swing back towards a greater level of respect. If this holds true, it can only serve as a positive force in the future of warfare.

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