Introduction to the Symposium: “Ten Years After 9/11: Rethinking Counterterrorism”

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Few topics central to world order—a world order of human dignity especially—could be as important as the theme of this symposium, touching as it does upon human rights, socioeconomic justice, cross-cultural understanding, and issues of war and peace. These are core inquiries to which Transnational Law and Contemporary Problems (“TLCP”) has been dedicated since its beginning twenty years ago. We thus were pleased to accept TLCP’s kind invitation to serve as co-organizers and co-editors of its 2011 symposium, which took place at The University of Iowa College of Law on February 10–11, 2011, seven months short of ten years to the day, September 11, 2011, when the United States and world were jolted into a global order not unpredictable, but radically antithetical to the very idea of human dignity.

The purpose of the symposium, as reflected in the remarks and essays that follow and flow from it, was to reflect thoughtfully upon the counter-terrorism policies pursued by the United States and its allies since that horrific day, particularly in the Middle East and Central/South Asia, and in the context of the tragically enduring Israeli-Palestinian conflict which many believe has much to do with why 9/11 took place in the first place. Our aim was to assess the effectiveness of these policies and to recommend alternatives where needed. Despite the killing of Osama bin Laden shortly after the symposium and the promising events of the “Arab Spring” that unfolded during the symposium, issues of terrorism and counter-terrorism, we assumed, would remain to challenge us all many years to come. This outcome is especially likely, we predict, as the unattended effects of climate change and consequent resource conflicts begin also to dominate the daily headlines. Some, perhaps many, of our students, though but teenagers when 9/11 took place, will spend a significant part of their lives—as private practitioners, government counsel, non-profit attorneys, politicians, judges, scholars, or as citizen activists—engaged with these issues that will not go away.

It was thus for good reason that the symposium was established as a regional event of the American Society of International Law, the preeminent professional organization in our field.1 We were blessed, too, by the financial

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and moral support of Dean Gail Agrawal and The University of Iowa College of Law (which has facilitated our TLCP journal and its annual symposia every year for two decades now); also by the generosity of our law faculty colleagues Enrique Carrasco and Mark Osiel for joining us as panel moderators and by the cooperation of numerous campus groups, including most prominently The University of Iowa Center for Human Rights and the UI Lecture Committee. Of course, we are profoundly indebted as well to the 2010–2011 TLCP staff who, under the dedicated leadership of Editor in Chief Alison Kurth, spearheaded the symposium’s organization; and likewise to the 2011–2012 TLCP Staff, expertly led by Editor in Chief Heidi M. Loch, who did the critical follow-up of bringing this journal issue to final fruition. To all of the above we extend our very special thanks.

We are, however, uniquely grateful to Richard Falk, the Albert G. Milbank Professor of International Law & Practice Emeritus at Princeton University, for his keynote address and to the impressive array of other experts who, along with him, served as panel discussants. Particularly are we thankful to those of them who found time in their busy schedules to grace us with their keen insights and perspectives in the pages that follow.

Of course, the essays speak for themselves. They need no interpretive analysis from us. It is, however, important to note that in our symposium planning we conceived each to be part of an integrated whole, together to serve as a kind of template on how to think about counter-terrorism comprehensively—one that, if sufficiently rigorous, could lead to reformist or transformist approaches more effective and more life-saving than the essentially militarist strategy upon which the United States and its allies have relied since 9/11. Hence the organization of our symposium around the following four themes: “Rethinking Israeli-Palestinian Policy,” “Rethinking Economic Policy,” “Rethinking Cross-Cultural Policy,” and “Rethinking Military Policy”—constituting, in our view, an essential minimum of

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2 Other sponsors included: the UI International & Comparative Law Program and International Law Society, the UI Executive Council of Graduate and Professional Students (ECGPS), and UI International Programs; the UI College of Arts & Sciences, College of Business, and College of Education; the UI Department of Political Science Sudhindra Bose Lecture Series; Bank of the West; the UI Community Credit Union; and Thai Flavors.

3 In alphabetical order: S. Brock Blomberg, Dean of the Robert Day School of Economics & Finance and Peter K. Barker Professor of Economics & George R. Roberts Fellow, Claremont McKenna College; David Cortright, Director of Policy Studies, University of Notre Dame Kroc Institute for International Peace Studies and Chair of the Board, Fourth Freedom Forum; Lloyd J. Dumas, Professor of Political Economy, Economics, & Public Policy, University of Texas at Dallas; Hilal Elver, Distinguished Visiting Professor, University of California at Santa Barbara and Visiting Associate Professor of Law, Chapman University; Professor of Political Science, Boston University; James M. Lindsay, Senior Vice President, Director of Studies, and Maurice R. Greenberg Chair, Council on Foreign Relations; and Wadie E. Said, Assistant Professor of Law, University of South Carolina.

4 In this regard, we are especially grateful to Laura Nader, Professor of Anthropology, University of California at Berkeley, who could not attend our February symposium, but who nonetheless generously and graciously submitted her paper for this issue.
considerations through which a truly meaningful reassessment of the Middle Eastern-Central/South Asian “war on terrorism” in the decade following 9/11 should be pursued.

Our efforts, we believe, bore notable results in this regard, beginning with Richard Falk’s keynote address: 9/11 & 9/12 +10 = The United States, al Qaeda, and the World in which Professor Falk appealed for an alternative to the coercive retaliatory policies embarked upon by the United States on 9/12 “that produced major defeats for themselves in relation to their expressed goals and values over the course of the decade following 9/11.” On the part of the United States, this meant “a reflexive reliance on conventional war making [despite the non-state adversary]” (which meant in practice “treat[ing] the governing regimes in Afghanistan and later in Iraq as if they were responsible for 9/11”) and “a . . . neoconservative grand strategy . . . [t]he main intent [of which] was to . . . project U.S. military force so as to reconfigure the political landscape of the Middle East.” “[T]he most functional response,” he concluded, “would have involved primary reliance on improved transnational law enforcement, police and intelligence collaboration, and attentiveness to legitimate grievances in the Islamic world vis-à-vis the West, especially, . . . achieving a just and sustainable peace in the Israel–Palestine conflict.” In so concluding, Falk struck a chord that resonated throughout the symposium commentaries and now the essays that follow, including, naturally, his own.

As the first presenter on Panel I (“Rethinking Israel-Palestine Policy”) and in his capacity as UN Special Rapporteur for Human Rights in the Palestinian Territories, Professor Falk continued to press for soft power. A soft power peace process that affirms the impartial judgment of international law vis-à-vis both Israel and Palestine, Falk argues in his paper No Peace without Rights: Why International Law Matters, affords large opportunity for a stable, enduring peace. A hard power peace process that allows Israel to ignore international law, on the other hand, results in Israel losing the “legitimacy war” in worldwide public opinion (despite a huge advantage in resources to advance its goals). It also leaves the United States, captive to special interests at odds with law and morality, unable to exert the leverage and leadership needed to overcome the gridlock that prevents a genuinely just peace, thereby feeding terrorism in the region.

Following Professor Falk as the second Panel I presenter was Professor of Political Science Irene Gendzier of Boston University, a long-time, widely respected scholar of Middle Eastern affairs. In her paper, cleverly titled Weapons of Mass Deception and What We Don’t Know about U.S. Policy in the Middle East, Professor Gendzier rues the “self-censored, superficial, provincial and at times Islamophobic coverage of the Arab world in a large swath of American news media.”5 It is, however, her subsequent expose of what may be called an abuse of soft power that is her primary concern—

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specifically, the widespread use of the mainstream media and academia, commonly in service to powerful constituencies and interests, deliberately to foster the deletion of history and memory relative to the Israeli–Palestinian conflict and other Middle Eastern and Central and South Asian issues and events, largely to justify the exercise of hard power and to minimize or deflect public criticism of it. This campaign of disinformation and misinformation, Professor Gendzier observes, comes at a high cost: sabotage of the democratic ideal of open information and informed consent and, along with it, critical thinking and a sense of responsibility for the true situation in the Arab and Muslim world. It also is a recipe that, counter-productively, stirs terrorist activism.

In Panel II (“Rethinking Economic Policy”), the first speaker, S. Brock Blomberg, Dean of the Robert Day School of Economics & Finance at Claremont McKenna College and the Peter K. Barker Professor of Economics there, commented on *Calculating the Economic Cost of Terrorism: Insights from 9/11*. Regrettably, Dean Blomberg was unable to provide an elaborative paper for this TLCP issue but his core comments were nonetheless telling. Based on an economic impact modeling research design that afforded him reliable data, he reported that the macroeconomic consequences of the 9/11 attack, totaled $55–80 billion to the United States alone, taking into account some $25 billion in property damage, circa $15 billion in loss of life, and between $26 and $126 billion in “business interruption,”6 mitigated by a resilient economy, Federal Reserve action, and government fiscal policy at the time. He also acknowledged, however, that the money the U.S. spent on security and defense was much greater than the total macroeconomic consequences of the 9/11 attack, and that, significantly, his assessment did not account for costs attributable to the mostly hard power counter-terrorism measures taken in Afghanistan, Iraq, and Iran. In other words, the major determinant of the economic impacts of the 9/11 attack was not the attack itself, but how we responded to it. Unaddressed by Dean Blomberg, however, were key questions: Was it worth it? According to what criteria? How might U.S. taxpayer dollars have been better spent? Might alternative soft power options have been available?

Our second Panel II presenter, Lloyd J. Dumas, Professor of Political Economy, Economics, & Public Policy at the University of Texas at Dallas, answers some of these questions in his paper titled *Counterterrorism and Economic Policy*. Observing that people living in desperate economic conditions are more likely and willing than others to commit acts of terror against those they believe are directly or indirectly responsible for their poverty, he urges policy- and decision-makers to adopt an essentially preemptive approach to terrorism in the form of a variety of soft power economic measures that, if invoked and applied in timely fashion and with cross-cultural sensitivity, could serve to prevent extremist violence before it

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6 Mostly in air travel and related tourism driven by a “fear factor,” according to Blomberg.
occurs. Long-term economic development, immediate direct aid projects, microlending to those in poverty to spur entrepreneurship, and respectful trade are among the soft power measures Professor Dumas identifies. Combating terrorism, he avers, lies in reaching out to the marginalized and disadvantaged and giving them a sense of empowerment and self-worth.

The matter of cross-cultural sensitivity invoked by Professor Dumas was the focus of our Panel III (“Rethinking Cross-Cultural Policy”). Three esteemed scholars participated: Professor of Anthropology Laura Nader of the University of California at Berkeley (in absentia); Hilal Elver, Distinguished Visiting Professor, University of California at Santa Barbara and Visiting Associate Professor of Law, Chapman University; and Assistant Professor of Law Wadie Said at the University of South Carolina.

Laura Nader, in *Rethinking Salvation Mentality and Counterterrorism*, gives us a lucid meditation on the long history of cross-cultural contact between the West and Arab/Muslim East, revealing Western exceptionalism as a driver of violence between the two cultures in past centuries and today. She illuminates the West’s fraught relationship with Islam and provides a sharp critique of mainstream efforts (by the National Research Council and others) to define terrorism and counter-terrorism using a limiting and “hopelessly generalized” typological approach. She recommends, instead, an ethnographic methodology that employs cultural and sociological models in historical context to provide a more meaningful understanding of terrorism and of how to combat it effectively. “Countering the terrorism myth’s false conceptions of cause, threat, and definition opens the possibilities for assessing threats to national security with more wisdom,” she writes, “[and] allows for a more pragmatic reflection of the distinctions between barbarism and civilization, as defined by our most distinguished legal thinkers.” She also urges a renewed focus and insistence on the rule of law and human rights, nationally and internationally—core elements, we believe, of a soft power approach to counter-terrorism.

Hilal Elver, drawing partly on her personal experience as a Turkish immigrant to the United States, contributes an historical survey of Islam in the U.S. in *Racializing Islam Before and After 9/11: From Melting Pot to Islamophobia*. Confirming Laura Nader’s perspective, Professor Elver reveals how long-standing prejudice and discrimination have paved the way for the current climate of Islamophobia in our country. The law, she emphasizes, has not been innocent in this regard, referencing government racial profiling in the “war on terror,” the Patriot Act, immigration, and other laws that have stigmatized innocents in our population—racializing them as “the Other” and thus serving to marginalize and otherwise oppress Muslims and others from the Middle East and Central and South Asia. Using critical race theory terminology, they have been socially constructed as “black.” She also points to how little has changed since 9/11, citing the widespread opposition to the

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7 See supra note 4.
“Cordoba Project” (the proposed Sufi Muslim community center two blocks from “Ground Zero”), the false (and racist) labeling of President Obama as a Muslim, hate speech, and the banning of shari’a or Islamic law in U.S. state courts. Professor Elver rues that it is unlikely that Islam will be embraced in the “liberal” and “secular” United States any time soon. And so long as it is not, we must add, a hard power approach to counter-terrorism is not likely to give way to soft power approaches in the near future.

Professor Said, in *The Message and Means of the Modern Terrorism Prosecution*, particularizes the cross-cultural focus by questioning the criminal trial model of litigation as optimal for trying suspected terrorists. He demonstrates how Islamophobia in the United States has had the effect of corroding the rule of law in our country. The rules and procedures appertaining to torture, military tribunals, habeas corpus, and warfare and assassination have begun to blur, he points out. The U.S. approach to modern terrorism prosecution, while greatly expanding government latitude in this realm, has been essentially dismissive of the U.S. constitution and international humanitarian and human rights law and consequently has loosened U.S. criminal law and procedure—and not for the better. This trend, Professor Said observes, threatens the fairness and impartiality of our legal system. Given strong indications that modern terrorism prosecution presumes the Middle Easterner to be a terrorist, it sends a clear message, he concludes, that justice for Arab and Muslim suspects can be far from impartial. Clearly, this is a message that is unlikely to win the hearts and minds of Middle Eastern and Central and South Asian peoples who otherwise might be compatriots in the counter-terrorism struggle.

Finally, Panel IV (“Rethinking Military Policy”), addresses the pros and cons of U.S. and allied hard power counter-terrorism in the Middle East and Central and South Asia. The panel featured, in order of presentation, Professor David Cortright, Director of Policy Studies at the University of Notre Dame Kroc Institute for International Peace Studies and Chair of the Board of the Fourth Freedom Forum; and James M. Lindsay, formerly of the political science faculty at The University of Iowa, now Senior Vice President, Director of Studies, and Maurice R. Greenberg Chair at the Council on Foreign Relations. However, as Mr. Lindsay was able to provide only an abstract of his remarks, a reverse order, allowing Professor Cortright’s extensive analysis to round out and close this symposium, is more fitting.

At the outset of his talk, Mr. Lindsay noted that the Bush Administration’s guiding presumption was that a “law enforcement approach” to countering terrorism would be both ineffective and insufficient in dealing with the threat facing the United States. Lindsay went on to observe, however, that this calculation “exaggerated the contribution that military forces can make in combating terrorism.” It unintentionally aggravated the terrorist threat, Mr. Lindsay said. While he acknowledged that military action is both inevitable and desirable under some conditions, he emphasized that the decentralized and far-flung nature of the modern
jihadist threat renders military options irrelevant in most cases. A softer “law enforcement approach,” which includes strengthened counter-intelligence capabilities to track and detect terrorist activities, will instead be the counter-terrorism strategy of choice in the future, he concluded.

David Cortright goes farther in *Winning Without War: Nonmilitary Strategies for Overcoming Violent Extremism*. Recent empirical studies, he reports, confirm that war is an ineffective, even counterproductive, means of confronting terrorism and insurgency, often sparking terrorism and armed resistance. Not discounting that there are acceptable and effective counter-terrorism measures (e.g., accountable security forces, enhanced judicial authority, tighter financial controls), in reality, he observes, winning the fight against terrorism means a multifaceted strategy. It involves, *inter alia*, “living up to American ideals of justice, equality, and the rule of law”; “focusing . . . on the use of diplomacy, law enforcement, and economic development”; “providing consistent support for human rights and political freedom for all people in every country”; and “working cooperatively in the world rather than unilaterally, with humility rather than arrogance.” In this soft power way, Professor Cortright concludes, the United States can speak and act with moral authority in dissuading others from supporting terrorism.

In sum, our symposium presenters doubted, if they did not fully deplore, the hard power “war on terrorism” approach taken by the United States and its allies since 9/11 to combat Middle Eastern and Central and South Asian terrorism (including all the rationalizations and misrepresentations of it). But they did not stop there. They also argued strongly for soft power counter-terrorism strategies that they saw to be more effective while simultaneously honoring the rule of law relative to our constitution, the laws of war, and international human rights.

Of course, how quickly, if at all, the visions of our presenters might actually shape official counter-terrorism policy is uncertain, not easy to predict. There is no question, however, that such a transformation in thought and action is a daunting proposition. It entails a reconsideration of some of the most basic premises of our economic, political, and cultural orders, and of our legal orders as well. Still, at this point in time when, throughout the world, we can see signs of resistance to traditional patterns of national and international governance accompanied by progressive if sometimes violent thought and action, we are cautiously optimistic. If we can liberate ourselves from the rigid axes of hard power thinking, if we can enlarge our understanding of human rights and expand our sense of how they can serve strategic as well as moral purposes, and if we can honor the power of cross-cultural sensitivity, the rule of law, and the necessity of a world public order of human dignity for both present and future generations, we might just get beyond the dominant hard power system and its taxonomy of national and international law-making and enforcement. Even if we cannot do this quickly, first-step initiatives such as this symposium, we believe, can do some good.