

Jihad in a World of Sovereigns: Law, Violence, and Islam in the Bosnia Crisis

Darryl Li

This article argues that jihads waged in recent decades by “foreign fighter” volunteers invoking a sense of global Islamic solidarity can be usefully understood as attempts to enact an alternative to the interventions of the “International Community.” Drawing from ethnographic and archival research on Arab volunteers who joined the 1992–1995 war in Bosnia-Herzegovina, this article highlights the challenges and dilemmas facing such jihad fighters as they maneuvered at the edges of diverse legal orders, including international and Islamic law. Jihad fighters appealed to a divine authority above the global nation-state order while at the same time rooting themselves in that order through affiliation with the sovereign and avowedly secular nation-state of Bosnia-Herzegovina. This article demonstrates an innovative approach to law, violence, and Islam that critically situates states and nonstate actors in relation to one another in transnational perspective.

INTRODUCTION

In recent decades, the phenomenon of jihad has attracted widespread notoriety, especially insofar as the term has been invoked by transnational nonstate groups fighting in various conflicts. In Afghanistan, Chechnya, Iraq, Somalia, Syria, and elsewhere, so-called foreign fighter Muslim volunteers have gathered from all over the world in the name of waging jihad. Such foreign fighters have been the paradigmatic enemy invoked by the United States and other governments to justify their respective campaigns against alleged terrorism.

What is the relationship between jihad and law in today’s world? Jihad is commonly understood as entailing a repudiation of secular forms of law in favor of a commitment to imposing classical Islamic law, or the *shari‘a*. Yet notwithstanding the recent rise to prominence of the self-declared Islamic State in Iraq and Syria, most transnational jihads have not emphasized governance. Instead, they have been

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forced to address questions of law, legitimacy, and war in the *absence* of clear authority. Accordingly, this article shows how transnational jihads navigate within the interstitial spaces of the international legal order of sovereign states. They articulate a substantive critique of the so-called International Community and seek to develop an alternative to its interventions in armed conflicts involving Muslim populations.

The grounds for this critique and the space for these maneuvers emerge from distinct features of how both Islam and war are regulated within the sovereign order. Armed conflicts and mass atrocities have exposed a basic issue with formal international law: on the one hand, states are supposed to hold the ultimate authority over violence, yet on the other hand they continue to invoke ad hoc supra-state justifications for armed intervention, such as the International Community, humanity, and civilization. Under such circumstances, the call to jihad has served to rally alternative interventions, namely, nonstate armed solidarity efforts organized by relatively small numbers of activists dispersed throughout the Muslim world. However, the turn to jihad raises its own problems of authority, for contemporary state-based Islamic legal regimes are mostly focused on issues of family and personal status, with no operative provisions for sanctioning jihad or regulating it. Accordingly, jihad fighters attempting to legitimize their actions and address practical legal challenges have struggled to improvise around the gaps in both international and Islamic law, with uneven results.

This article uses the case study of the 1992–1995 war in Bosnia-Herzegovina, where approximately 1,000 foreign Muslim volunteers fought alongside the Bosnian government against Serb and Croat nationalist forces.¹ It demonstrates that the jihad enjoyed an ambivalent relationship with the international legal order, claiming divine sanction to wage war while at the same time grounding itself in the legitimacy of the avowedly secular nation-state of Bosnia-Herzegovina. And while these volunteers invoked Islam as a broad source of authority, they did so with relatively limited reference to the canons of classical Islamic jurisprudence (*fiqh*) on jihad. Islamic legal doctrines were only one of multiple legal regimes that jihad fighters contended with and maneuvered around. Recognizing this fact allows us to approach contemporary jihads not merely as threats to be eradicated but also to shed light on broader debates in the study of international and Islamic law and the place of violence in them both.

RETHINKING JIHAD AND LAW

In recent decades, especially since the late Cold War, jihads have arguably been the most prominent form of transnational nonstate armed activism in the world. As such, they have been labeled a threat to international peace and security and targeted for repression through interstate cooperation, just as left and anarchist

1. In this article, the terms “Serb,” “Croat,” and “Bosniak” refer to forms of nationalist identification prevalent throughout ex-Yugoslavia. Nationalist labels such as these should not be read as references to transhistorical groups, nor should correlation be assumed between identification with a nationalist group and religious practice.

activists mobilizing to fight in the Spanish Civil War were in earlier decades.² But unlike Marxism or anarchism, jihads invoke textual traditions developed over multiple centuries outside the context of sovereign nation-states. Analyzing their relationship to law requires first situating jihads in temporally coeval relation to both Islamic traditions of knowledge (including law) and the nation-state order.

From Doctrine to Practice

The Arabic term *jihad*, from a root connoting exertion or struggle, has many contested meanings. *Jihad* is most commonly understood in Islamic traditions as religiously sanctioned warfare—especially in the expression “*jihad in God’s path*” [*al-jihād fī sabīl Allāh*]*—against non-Muslim powers or, less frequently, against Muslim rulers as well. But the term has also often been used to denote nonviolent and purely internal struggles, such as attempts at personal and spiritual improvement, or social activism. And just as jihad is not always about violence, not all forms of political violence recognized in Islamic law are considered jihad (Abou El Fadl 2001).*

In examining armed *jihad*, Western commentators have often focused on three doctrinal questions. First, when is *jihad* “defensive” or “offensive”? Second, when is *jihad* a collective duty of communities (*farḍ kifāya*) versus a duty of individual Muslims akin to prayer or fasting (*farḍ ‘ayn*)? Third, what methods govern the treatment of captives and civilians? While important, these questions illuminate more about prevalent anxieties in the West than the actual practices and debates within jihads. Discussions of *jihad* are often framed in anachronistic terms that attempt to judge centuries-old jurisprudence against contemporary logics of liberalism in a nation-state context. The subtext of these debates is often whether contemporary jihads express some kind of religious or cultural essence; they are more elaborate ways of asking: “How scared should ‘we’ be of Islam?”

Jihads are thus perceived through a vexed double relationship with legal norms: on the one hand, their violence and irrationality are antithetical to basic notions of legality and fairness; on the other hand, they are marked by an excess of fidelity to a legal order characterized by radical alterity, namely, the *sharī’a*. Several dominant—and interrelated—tendencies have accordingly emerged, all of which purport to correct reductionist Islamophobic claims: (1) the recuperative, which highlights the historical diversity of approaches to *jihad* in Islamic law, thereby showing the contingency or even falsity in arguments made by contemporary alleged radicals (Afsaruddin 2013); (2) the reformist, which seeks commensurabilities between Islamic law and contemporary international law, often to show how

2. In September 2014, the UN Security Council unanimously adopted a resolution introducing the concept of “foreign terrorist fighters” into international law, defining them as “individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict.” Unusually, the resolution purports to impose legal obligations directly on these individuals by demanding that they disarm and “cease all terrorist acts and participation in armed conflict.” S.C. Res. 2178, U.N. Doc. S/RES/2178 (Sept. 24, 2014).

the former can be rendered compatible with the latter (Bennoune 1994; Shah 2008; Ssenyonjo 2012);³ (3) the comparative, which traces the similarities and influences linking jihad to just war and other legal concepts developed in the West to undermine claims of Muslim civilizational backwardness (Johnson and Kelsay 1990); (4) the “terrorological,” which sets out to reconstruct a genealogy for alleged radical groups that often starts with ibn Taymiyya and leads teleologically to Osama bin Laden (Cook 2005).⁴

Despite the many differences between them, these bodies of work on law and jihad share important limitations. They treat law primarily as a set of rules and texts and often read the fiqh of jihad through the lens of international law’s canons of *jus ad bellum* and *jus in bello* (rules on the resort to force and the conduct of warfare, respectively) in the search for equivalents, compatibility, or foils. Moreover, they approach jihad as a discrete analytical problem about violence, a pathological form of “extremism” or “radicalism,” without also critically interrogating the state and the international order based on it.⁵ I do not mean the unremarkable observation that state violence often provokes and exceeds nonstate jihads or that states are sometimes complicit in supporting or training so-called jihadi groups.⁶ Rather, what matters is that the legal conditions of the sovereign order also structure contemporary jihads and the challenges they face. As a result of these limitations, the literature largely fails to challenge the framing of transnational jihad groups as fundamentally hostile to any legal order other than an ahistorical imagining of the sharʿa that mirrors Orientalist conjurings.

In contrast, this article uses the case of the Bosnia crisis to reexamine contemporary transnational jihads, treating law as a socially embedded process rather than as a set of rules and doctrines. As historian of early Islam Fred Donner has argued, understanding jihad primarily through theological definitions “would be to strip it of most of its human significance, since what really matters in human terms is how the Muslims of a particular time and place dealt with the vital questions of war and peace” (Donner 1991, 32). This article accordingly analyzes diverse categories of

3. Compatibility, of course, is often framed as a one-way relationship, in which only Islamic law is the object of reform. “There seems to be a sense underlying much contemporary scholarship that any acknowledgement of incompatibility [with international law] immediately signifies a failure on the part of Islam” (March and Modirzadeh 2013, 387).

4. “Like all traditional history-of-ideas narratives, this one attempts to make up for what it lacks in sufficiency with an overabundance of necessity” (Gelvin 2008, 564).

5. This is another way of saying that these discussions take place largely under the sign of liberalism, a tradition of thought that has more than enough difficulty sorting out its own theories of violence to be uncritically employed as a starting framework for analyzing others (Geuss 2001). It is only through eliding very basic conceptual questions about the state and the sovereign monopoly on violence that labels such as “moderate,” “nonviolent,” “extremist,” and “radical” can be deployed with such abandon.

6. I eschew “jihadi” and its variants (jihadist, jihadism) for the misleading insinuation that devotion to jihad is a coherent ideology or political project in itself (in Arabic, its use as a noun is often pejorative). Moreover, no sect, tendency, or school of jurisprudence has a monopoly on jihad or is doctrinally predisposed to it. Muslims vigorously debate the meaning of jihad and, more importantly, even those few who go as far as to argue that it is a sixth “pillar” of the faith must nevertheless define it in relation to some other set of values or criteria; therefore, one can participate in a jihad and then leave it to return to ordinary life. The term jihadi is akin to calling someone a “Crusade-ist” rather than a Crusader, or even a “war-ist” as opposed to a soldier. It captures an individual’s role at a certain point of time and elevates it in a way to define their entire worldview.

political violence as relational—situating the jihad alongside nationalist and imperial forms of warfare—rather than simply taking up the liberal state’s conceptual horizons (Asad 2007). Contemporary transnational jihads need to be understood as taking place *in a world of sovereigns*: these invocations of jihad may draw on the rich and diverse textual traditions of Islam, but they do so under the structural conditions of a world order based on sovereign nation-states. Contrary to the view that transnational jihad groups seek to overthrow the international order (Mendelsohn 2009), this article demonstrates how they engage and struggle within it (Lia 1998; Mohamedou 2007), just as pirates and other figures deemed outlaws in the history of international law have before them (Benton 2010).

Jihad and World Order

Situating jihad in the international legal order of sovereign states is a necessary step toward rendering this phenomenon intelligible and illuminating the kinds of dilemmas and strategic considerations that come with it. Contemporary international law establishes two categories of armed conflict: international armed conflict (commonly understood as war between states) and noninternational armed conflict (commonly understood as civil war within a state). Many invocations of jihad readily fall within these categories, whether in fighting non-Muslim powers or rebelling against Muslim governments: groups such as Hamas, Hizb Allah, and the Taliban, for example, have transnational aspects but the scope of their recruitment and their theaters of operation are largely confined to a territorial nation-state space.

In contrast to these groups are those that are often labeled as global jihad because of their ability to mobilize volunteers from distant places without nationalist or ethnic ties, such as the jihads in Afghanistan, Bosnia, and Chechnya. The prominence of foreign fighters within these jihads has led to their conflation with al-Qa’ida, even though they do not necessarily share that organization’s goal of armed confrontation with the United States around the world (Gerges [2005] 2009; Tawil [2007] 2010; Strick van Linschoten and Kuehn 2011). These groups appear to lack what Carl Schmitt called a telluric orientation, a “tie to the soil, to the autochthonous population, and to the geographical particularity of the land” (Schmitt [1963] 2007, 21) that limits the partisan’s fight to purely defensive parameters. Without this telluric aspect, the partisan is often imagined as detached from the local context, rendering his enmity dangerously unlimited. Schmitt thus posits a distinction between “autochthonous defenders of the homeland and globally aggressive revolutionary activists” (30), with the latter clearly gesturing toward the specter of international communism.⁷ Transnational jihads mobilizing volunteers from across the Muslim world seem decidedly nontelluric. They invoke a sense of shared responsibility among the worldwide community of Muslims (*umma*) and often argue that participation in jihad is necessary even when governments prohibit it.

7. Schmitt goes as far as to refer to the Spanish Civil War—in which foreign volunteers fought on the side of the socialist government—as a “national war of liberation [against the] international communist movement” (56).

And for that reason, they are seen to reject sovereign authority and, by extension, any kind of credible legal regulation in favor of an abstract commitment to *sharī'a*.⁸ Transnational jihad thus appears as a form of warfare that is rootless, ruthless, and boundless.⁹

Instead of treating Islamic and international law as two cohesive legal orders that can be superimposed on one another—leaving jihad as a kind of messy inscrutable leftover—it is necessary to interrogate and connect two problems *within* the sovereign state order that relate to Islam and war, respectively.

The first problem relates to the concept of Islamic law, by which I mean the institutionalization of legal orders deemed Islamic within modern territorial states.¹⁰ This institutionalization affects substantive doctrine, procedural mechanisms, and the social reproduction of law. Islamic law today is practiced primarily as a form of family or personal status law processed through state institutions, with a smaller number of states adopting criminal codes labeled as “Islamic.” It is not uncommon for Islamic law to be codified by legislatures rather than by classically trained jurists and implemented in civil or common law courts using state procedural rules.¹¹ Jurists specializing in Islamic law—legal scholars (*‘ulamā’*), jurisconsults (*muftīs*), and judges (*qāḍīs*)—are often state functionaries or work under strict state supervision and are hence unlikely to develop an institutional context for the law of jihad. Sociolegal studies of contemporary Islamic law have accordingly focused on debates around gender and instantiations of Islamic law within state legal institutions (Warrick 2005; Boellstorff 2006; Hussin 2007; Subramanian 2008; Moustafa 2013).

Scholars of Islamic law continue to debate the extent to which these changes should be understood in terms of ruptures or continuities.¹² Notwithstanding the importance of this discussion, jihad is one of the clearest examples of a process of legal *dis-articulation*, in the sense of separating conjoined textual authorities, epistemological frameworks, and institutional contexts, which in turn affects the elaboration and contestation of legal positions and doctrines. Among Muslim-majority

8. The other major reason proffered is the brutality of transnational jihad groups, as seen in atrocities such as the execution of prisoners. Without minimizing the gravity of these acts, there is no compelling evidence that more telluric groups shy away from such atrocities.

9. The secondary literature on Schmitt has extensively sought to analyze transnational armed Islamist groups through this notion of the nontelluric partisan, often while attempting to theorize globalized or non-territorial forms of warfare (Behnke 2004; de Benoist 2007; Ulmen 2007; Hooker 2009, 187–89).

10. Islamic law should accordingly be thought of as distinct from the *sharī'a*, a body of legal doctrines that developed throughout the Muslim world but that itself did not necessarily dominate the legal systems of Muslim polities. In the case of international law, Muslim polities such as the Ottoman empire drew upon *sharī'a* as well as other sources of law, such as treaties, local customary law, and executive decrees, over the course of several centuries (Panaite 2000; Yurdusev 2004; Calafat 2011; Smiley 2012).

11. The brief overview sketched here is necessarily very general. Intisar Rabb has shown that important variations nevertheless exist in how Islamic law is incorporated into state legality through constitutionalization, distinguishing states that delegate Islamic interpretive authority to jurists (such as in the Arab Gulf states) from those that place it in the hands of non-*sharī'a* judges (as in Egypt and Morocco) (Rabb 2008).

12. Wael Hallaq has provocatively characterized these changes as tantamount to a “structural death” of *sharī'a* (Hallaq 2009, 15–16; see also Hallaq 2004).

states today, warfare is an area generally off-limits to Islamic law.¹³ To the extent major scholars of Islamic law engage jihad, it is mostly at a theoretical level and largely an exercise in reinterpreting the doctrine to render it broadly consistent with the existing state system (Hashmi 2012, 338; Samour 2012, 553–54). Even self-proclaimed Islamic states such as Iran and Saudi Arabia do not conduct military operations within the juridical framework of jihad, even if they occasionally reference jihad as a rhetorical flourish to provide broad legitimization of their actions (March and Modirzadeh 2013, 369). Given the state reconstitution of Islamic law and the deepening of governmental power over many Muslim scholars, it is unsurprising that theorization of jihad in recent decades has often taken place outside the major schools of Islamic jurisprudence. The concept of jihad is detached from any kind of stable, grounded, institutional contexts for its further elaboration—hence the oft-repeated critique from many liberals that supposed jihadists have a poor understanding of Islamic law and legal traditions. The sovereign order thus domesticates Islamic law in three senses: doctrinally, with the reduction to primarily family and personal status issues; geographically, by organizing jurisdiction within state territorial boundaries; and politically, through constricting institutional spaces for the legitimization of dissent, especially armed dissent.

Analyzing the relationship between law and contemporary jihads from a socio-legal perspective also requires moving beyond a focus on state institutions and a perspective defined by the contours of the nation-state. This is where a second major effect of the sovereign order must be reckoned with: the spread of a normative principle grounding the ultimate authority to wage war in nation-states (Thomson 1994). A corollary to the emergence of the modern state as an entity monopolizing the legitimate use of violence in its territory (Weber [1918] 1946) is the collective arrogation by states of the authority to project legitimate violence *outside* their own territories. By the late nineteenth century, formal international law recognized states as the arbiters of legitimate warfare by restricting or outright banning mercenaries, pirates, and other nonstate providers of organized violence (Percy 2007; Cameron and Chetail 2013). The process of decolonization—which effectively left the state as the default form of political organization—arguably universalized this normative principle. Indeed, the ubiquity of a residual term such as “nonstate actor” is an ideological effect of this process.

The principle that only states can authorize war has obviously never been empirically realized. More importantly, it is part of a broader problem inherent to the sovereign order itself insofar as it assumes that juridically equal sovereigns are the constituent units of world politics. Because states have different interests, they have always sought to create mechanisms for cooperation and coordination, whether through institutions such as the United Nations or more amorphous concepts such as the International Community. The state system embodies a tension

13. The contrast between denominating family law as “Islamic” and earmarking war as a core area of “secular” governance is highly gendered as well. The laws of war in the West have long relied on and reproduced a gendered distinction between combatants (understood as masculine and politically active) and noncombatants (understood as feminine and politically inert) (Kinsella 2006). In postcolonial Muslim contexts, secular and religious modes of patriarchy are compounded: the modern state doubly “feminizes” Islamic law through reducing it to family law as well as divorcing it from the conduct of war.

that has long vexed scholars of international law: Is its legitimacy merely the aggregate of its constituent sovereign parts, or is there another source of authority at work? Various signifiers are invoked to name that surplus authority: humanity, civilization, international peace and security. But the relative abstraction of these values—to say nothing of their cynical exploitation—gives them at best a precarious authority. In other words, the sovereign order produces an excess: the attempt to root the authority for warfare in states and states alone creates tensions that can often only be resolved by appealing to nonstate authority. This tension is a reminder that the alleged secularization of the state system never eliminated religion as a source of authority for conservative, reformist, and revolutionary approaches to the international legal order (Berman 2012).

Contemporary transnational jihads are produced out of the vicissitudes of the sovereign order's attempts to institutionalize Islamic law and to regulate the authority to wage war. Specifically, Islam provides an alternative to the abstract values of humanism and civilization; or, to be more precise, pan-Islamists refuse to allow the Western powers a monopoly on defining humanism and civilization. At the same time, the invocation of jihad remains largely disconnected from state-institutionalized Islamic law and from classical textual traditions, which renders it precarious as well.¹⁴ These jihads are critical responses to the sovereign order, but they are also shaped by and tethered to that same order; they operate at its edges.

While the sovereign order produces the theoretical puzzle of authority beyond the nation-state, Islamic law is premised on a notion of supra-state authority, but struggles through a disarticulation that leaves it with limited institutional purviews. Contemporary transnational jihads thus emerge from both the sovereign order's excess and contemporary Islamic law's disarticulation. They represent an authority for violence that the sovereign order cannot eliminate and that Islamic law cannot institutionalize.

METHODS

This research is based on thirteen months of fieldwork conducted in Bosnia, mostly from 2009 to 2013, with earlier trips in 2006 and 2007.¹⁵ The core of this research draws from extended life-history interviews with twenty Arabs who lived

14. Ambiguities and tensions over the respective roles of rulers and scholars in authorizing jihad have a long history that predates the modern state system (Tor 2005; Haug 2011; Syed 2013, 152–53).

15. There are a number of sensationalist works that have dealt with the jihad in Bosnia, based almost entirely on secondhand newspaper accounts (Bodansky 1996; Kohlmann 2004; Deliso 2007; Schindler 2007). Within Bosnia, the topic has been covered by writers closely affiliated with Serb and Croat nationalist movements (Toholj 2001; Mlivončić 2007) as well as by Bosniak journalists supported by US government funding (Hećimović 2006; Azinović 2007). This latter category of books makes some use of first-hand documentary sources, but also does not include interviews with participants in the jihad or analysis of Arabic-language materials. This article does not rely on any of these sources, which share a common tendency to conflate different varieties of transnational Islamist activism under the broad heading of al-Qa'ida. Links between the Bosnian jihad and al-Qa'ida are tenuous at best. Darryl Li, "Expert Report on the Bosnian Jihad Prepared for *U.S. vs. Babar Ahmad* and *U.S. vs. Syed Talha Ahsan*," *USA vs. Ahmad et al.*, 3:04-00301-JCH (doc. no. 163-1) (D. Conn. May 16, 2014), 11–14.

or spent significant time in Bosnia, eleven of whom fought in the war. The jihad veterans I interviewed mostly hailed from North Africa, Syria, and Iraq, where strongly anti-Islamist ruling regimes and weaker economies made returning home a less appealing option than for citizens of Gulf countries. Interviews were conducted in the cities of Sarajevo, Zenica, Tuzla, and Bugojno, as well as in France, Egypt, Saudi Arabia, and Yemen. I met most of my interlocutors on multiple occasions across a multiyear period, enabling me to assess changes in their recollections of historical events. Several of these individuals faced considerable legal difficulties over the course of the project, including loss of Bosnian citizenship, detention in the country's newly built immigration prison on the outskirts of Sarajevo, and, in some cases, deportation to their countries of origin. I was able to conduct some interviews in the detention facility in my capacity as an unpaid consultant to the Helsinki Committee for Human Rights in Bosnia-Herzegovina. Although my primary purpose in detention center visits was to monitor the situation of the detainees and learn about their legal cases, our conversations also often turned to broader matters of their lives in Bosnia and their histories in the war (this was especially the case with individuals I had been interviewing even before their detention).¹⁶ In addition, I extensively interviewed eight Bosnia-born men who either fought in the jihad or were close to those who did. These men were mostly from central Bosnia and came from a variety of class backgrounds, often from nonpracticing Muslim families. Shorter interviews were conducted with several Bosnian women married to Arab war veterans as well as children of such marriages. Conversations with Bosnian clerics, journalists, and government officials also informed this research. Interviews were conducted primarily in Arabic and English.

I supplemented this fieldwork with extensive analysis of wartime archival documents gathered by the UN International Criminal Tribunal for ex-Yugoslavia (ICTY), which sits in the Hague. The ICTY held two trials of Bosnian military commanders for war crimes allegedly committed by foreign Muslim volunteers. ICTY investigators obtained documents from the archives of the Bosnian army and civil institutions as well as from foreign and international authorities. Several thousand pages were used as trial exhibits and are publicly available through a website maintained by ICTY. Most valuable were intercepts of faxes to and from jihad fighters—including the Arabic-language newsletter they produced, *Nidā' al-Jihād*—and transcripts of wiretapped telephone conversations. This surveillance was carried out by Bosnian military and civilian agencies as well as by the Italian security police, which was investigating supporters of the jihad in Milan. Until independent researchers enjoy direct access to Bosnia's wartime archives, the ICTY remains the most significant source of primary documents from this period.

16. I have also been involved in some legal work concerning Arab migrants in Bosnia. From 2008 to 2009, I was part of a law student clinical team representing a Saudi detainee held at Guantánamo Bay who had spent time in Bosnia in the 1990s. I have also participated in the preparation of amicus curiae briefs for the Constitutional Court of Bosnia-Herzegovina and the European Court of Human Rights on related issues of denationalization, deportation, and detentions. None of the data in this article derive from these projects.

Finally, I drew from materials created by participants in and supporters of the jihad that were published in Arabic, Bosnian/Croatian/Serbian,¹⁷ English, and Urdu. These include publicity videos produced by jihad fighters in Bosnia for distribution to the outside world, audio cassettes extolling their activities by participants in and supporters of the jihad, memoirs published online, and books translated from Arabic into the local language by the jihad fighters themselves. I also reviewed war-time publications, especially periodicals issued by institutions that had the greatest interactions with foreign jihad fighters, namely, the Bosnian army, the Bosnian Muslim-dominated Party of Democratic Action (Stranka Demokratske Akcije, SDA), and Bosnia's Islamic Community (Islamska Zajednica, IZ).

CONTEXT: THE BOSNIA CRISIS, BETWEEN INTERNATIONAL AND ISLAMIC LAW

The context of this study, the war in Bosnia, is ideal for illustrating how the jihad emerged out of crises of legitimacy at the edges of both international and Islamic law. The Bosnian war exposed the international system, through the Western powers and the United Nations, to widespread critique at a crucial moment immediately after the Cold War. One significant strand of critique came from those who argued that pan-Islamist solidarity was required as either a supplement or an alternative to the United Nations; but the credibility of such efforts was also undermined by the relative weakness of Muslim states and the limited scope of contemporary institutionalized Islamic law. The small number of volunteers who undertook jihad in Bosnia had at best an ambiguous status in both international and Islamic law: they operated at the edges of both systems, improvising in the space created by the crises of authority afflicting each.

Bosnia and the Sovereign Order

The dissolution of Yugoslavia was one of the defining crises facing the international system in the first years after the Cold War. For much of the 1990s, a cascading process of territorial partition and forcible demographic engineering overtook Yugoslavia as nationalist movements sought to carve out new states (Hayden 1999). The bloodiest and most protracted of the wars of Yugoslav succession¹⁸ was in Bosnia, where none of the country's three constitutionally recognized "constituent peoples" comprised a majority of the population. According to the last census conducted in the country before the war, 44 percent of the country's 4.3 million

17. In this article, I use the terms "Bosnian/Croatian/Serbian" and "the local language" interchangeably to refer to the mutually intelligible language shared by the inhabitants of Bosnia, Croatia, and Serbia.

18. Broadly speaking, there were five armed conflicts spawned by the dissolution of Yugoslavia. Aside from the one in Bosnia-Herzegovina, the most significant was the war in Croatia, where Serb nationalists attempted to secede from the newly established state, only to be completely defeated by Croatian forces reconstituted with US help, leading to the mass expulsion of Serbs from the country (1991–1995). In Kosovo, ethnic Albanian rebels waged an insurgency that resulted in armed NATO intervention in 1999 and a UN protectorate over the territory. Slovenia also fought a brief war for independence in 1991 and Macedonia experienced an insurgency in 2001.

people identified as Muslim, 31 percent as Serb, and 17 percent as Croat (“Bosnian” was not a recognized national group) (Toal and Dahlman 2011, 137–38).¹⁹ The 1992–1995 war in Bosnia-Herzegovina resulted in some 100,000 dead and displaced over half of the country’s population. It pitted the central government in Sarajevo—officially nonsectarian but increasingly tilting toward Muslim nationalism over time—against Serb and Croat nationalist forces. Although all sides engaged in ethnic cleansing to shift the demographics in their favor, the Bosnian Serb forces committed the bulk of wartime atrocities in their attempt to build a majority-Serb polity. The war formally ended with the US-brokered Dayton Accord, which preserved Bosnia-Herzegovina as a nominally independent sovereign state but effectively rendered it an international protectorate governed by Euro-US bureaucrats, experts, and peacekeepers, in which nationalist divisions were territorially, institutionally, and constitutionally entrenched (Chandler 2000; Bose 2002; Keane 2002; Knaus and Martin 2003; Coles 2007; Haynes 2008).

The Bosnia crisis dampened enthusiasm in the West for a revitalized system of political cooperation and conflict resolution based on the United Nations. The Security Council authorized the creation of a UN Protection Force (UNPROFOR) for the Yugoslav crisis, which eventually became the largest peacekeeping operation in the history of the United Nations, numbering 39,000 at its height. Yet divisions within the Security Council saddled UNPROFOR with an unclear mandate. UNPROFOR’s various tasks included stabilizing a ceasefire in Croatia between government forces and Serb separatists, escorting aid convoys, and protecting six Bosnian cities or towns designated as safe areas by the Security Council. However, in none of these tasks was it given clear authority to use force. This uncertainty left it exposed to criticism from all sides, especially after Bosnian Serb forces ethnically cleansed the allegedly safe area of Srebrenica, resulting in the massacre of some 8,000 Muslim men and boys, notwithstanding the presence of Dutch UN peacekeepers.

Bosnia and the Muslim World

While the Bosnia crisis has secured a central place in the history of the post-Cold War order, far less discussed has been the intense interest that the war aroused among Muslims worldwide. Although Bosnian Muslim nationalist mobilization tended to emphasize identity over piety (many ardent Muslim nationalists also openly engage in other ritually proscribed practices such as consuming alcohol and pork), this did not preclude a sense of identification with the umma. In both the West and the Muslim world, there was a “rediscovery” of this largely unknown country, leading to the publication of many books and other educational materials. Bosnia was covered extensively by news media in the Muslim world. Arabic newspapers at that time lacked many of the resources of their Western counterparts, but several sent correspondents to cover the war, who subsequently wrote firsthand

19. The term “Bosniak” as a national label for Muslim Slavs has become more prevalent in Bosnia since the war. In this article, the terms “Bosniak” and “Bosnian Muslim” will be used interchangeably.

about their experiences (Ghānim 1993; Maṣūr 1995; Hādī 1996). Bosnia became a cause célèbre in the Muslim world as much as in the West—and perhaps most of all for Muslims living in the West—inspiring large-scale charitable efforts (Bellion-Jourdan and Benthall 2003, 128–52).

Audiences in both the West and the Muslim world criticized the UN response to the Bosnia crisis. The arms embargo was widely blamed for preventing Bosnians from defending themselves, as Serb nationalists inherited arms and equipment from the old Yugoslav army, and Croat nationalists could still smuggle in goods through the long Adriatic coastline. Prominent Western politicians, including US Senate majority leader (and later presidential candidate) Bob Dole, called for lifting the embargo and conducting air strikes on Serb nationalist forces (the so-called lift and strike policy). Critics also blamed the United Nations for not empowering peacekeepers to respond more effectively and deter atrocities on the ground. These critiques were also widespread in the Muslim world, although audiences were more likely to view the plight of Bosnia as an outcome reflecting anti-Muslim animus rather than as a sign of impotence or paralysis. When the United Nations deepened its interventions, this was often perceived as an attempt to stifle the Bosnian Muslims' ability to take matters into their own hands. A common denominator in these critiques was to accuse the United Nations of double standards in swiftly responding to Iraq's seizure of oil-rich Kuwait while failing to stop mass atrocities in Bosnia.

The Bosnia crisis exposed the contradictions between the promise of a post-Cold War "New World Order" based on prosperity, rights, and stability and the United Nations as an organization centralizing authority in the great powers. At the same time, there was no obvious alternative, pan-Islamist or otherwise. Solidarity efforts in the Muslim world consisted mostly of holding demonstrations, sending humanitarian aid, and condemning the Western role in the crisis. At the political level, Muslim states tended to operate within existing international institutions. The Organization of the Islamic Conference, a grouping of Muslim-majority states, participated in the 1992 International Conference on the Former Yugoslavia, held several ministerial meetings, and issued statements of support for Bosnia, but did not exert much concerted effort. Some states made efforts to lobby on Bosnia's behalf in the United Nations, while Turkey, Jordan, Bangladesh, Egypt, and Pakistan contributed units to UNPROFOR or NATO-led forces. Only Iran appears to have defied the embargo and provided bilateral (if covert) military aid to Bosnia—and even then with tacit US assent.

Jihad in Bosnia: Early Legitimacy Challenges

Shortly after independence and the outbreak of war in April 1992, Bosnia hurried to organize an army, cobbling together former Yugoslav National Army personnel, local territorial defense units, the SDA's security apparatus, and criminal gangs (Hoare 2004). Throughout the war, the Bosnian army would officially maintain a nonsectarian ideology and include considerable numbers of non-Muslims in its ranks. Nevertheless, a discourse on jihad also emerged early in the war. It is important to stress that the language of jihad took hold on the fringes of nationalist

mobilization and that its adherents were themselves quite diverse: the idea of jihad, with its long and rich history in Islam, was open to appropriation and mobilization by very different actors.²⁰ It was embraced by a few young imams in Travnik, Zenica, Konjic, and other smaller towns, who started local militias denominated as Muslim units. A few dozen Arabs, mostly veterans of the Afghan jihad, soon joined them. The vast majority of Bosnian Muslims use the term “war” (*rat*) to refer to the violence in the country and some occasionally spoke of “jihad” (*džihad*) to indicate that their fighting was legitimate in Islamic terms. In contrast, these Bosnian and Arab activists used the term *jihad* to indicate not simply Islamic *legitimacy* for the war, but that fighting should be conducted according to Islamic *means* as well, grounded in notions of Muslim piety such as regular prayer and abstention from pork and alcohol. Those who engaged in jihad, be they Bosnian or non-Bosnian Muslims, called themselves *mujahids*.

Just as the Bosnian army consisted of a disparate patchwork of fighting groups, Arab *mujahids* fought in different configurations, belying representations of a global jihadist conspiracy. One group teamed up with a local militia called the Muslim Forces (*Muslimanske Snage*) in Travnik. Another, under the leadership of a Saudi called Badr ‘Abd al-Karīm al-Sudayrī (better known as Abū al-Zubayr al-Ḥā’ilī), operated independently near Tešanj. Meanwhile, individual Arab fighters joined various units: a handful served with the Fourth Muslim Light Brigade in Konjic under the command of a local imam. In a sign of how local-level dynamics defied easy nationalist categorizations, the right-wing Croat nationalist militia HOS included considerable numbers of Bosnian Muslims and one Gambian Muslim volunteer.

Mujahids in Bosnia faced numerous challenges related to informal organization of fighting units and lack of clear legal status. Bloody battlefield losses involving Arab *mujahids* led to mistrust of the Bosnian army and exposed the limits of informal coordination based on personal relationships between commanders. Atrocities against non-Muslim prisoners and civilians and intimidation of Muslims deemed insufficiently pious were attributed to Arabs in general without regard to differences between groups. Bosnians wishing to join *mujahid* groups frequently did so from other units in the army and risked being accused of desertion as a result. Moreover, by early 1993 Croat forces began to arrest and mistreat Arab travelers suspected of being fighters, notwithstanding their alliance with the Bosnian government.

The jihad’s problems were not purely local, however: the entire project faced considerable skepticism among the very quarters in Saudi Arabia that had supported similar efforts in Afghanistan just a few years earlier. The Saudi government stressed Islamic solidarity and spent billions of dollars on humanitarian aid and direct assistance to the Bosnian government, but there was far less official enthusiasm for sponsoring individuals to travel and fight in Bosnia, in contrast to the jihad against the Soviet Union in Afghanistan (Hegghammer 2010, 16–69). Skepticism

20. These developments were part of a broader set of changes in Islamic practice in Bosnia and their complex relationship with both the Bosniak nationalist project and the country’s Islamic establishment. Those dynamics are outside the scope of this article but have been extensively addressed by scholars of Islam in Bosnia (Karčić 1997; Bougarel 2001; Alibašić 2003; Mesarić 2013).

toward the call to jihad—whether in Afghanistan or elsewhere—was especially pronounced for adherents of the Salafi strand of Islam, which Western observers frequently associate with fundamentalism and violence.²¹ None of the three leading Salafi authorities of the time—chief mufti of Saudi Arabia ‘Abd al-‘Azīz bin Bāz and major scholars Muḥammad ibn al-‘Uthaymīn and Muḥammad Nāṣir al-Dīn al-Albānī—explicitly endorsed traveling to fight in Bosnia.²² Indeed, al-Albānī ridiculed the idea of joining the jihad outside the framework of organized armies, conceding only that pious Muslims could carry personal arms purely for self-defense while proselytizing in war zones (see http://youtu.be/7Ih_PB00HtQ and <http://youtu.be/hnuJfTz4j7Q>). One significant exception to this trend in the early 1990s was the Salafis in Kuwait, who participated in parliamentary politics at home and publicly supported jihad abroad in Bosnia.

There were many reasons for this skepticism. Salafis in that period tended to shy away from endorsing political activism, especially in forms not authorized by governments, making them useful allies for regimes seeking to burnish their religious credentials. For many Salafis, an insufficient basis in proper religious training makes political activity likely to end in corruption, chaos, or both. The Afghanistan experience validated this concern. Infighting between Afghan factions in the wake of the 1989 Soviet withdrawal soured many Arab supporters of the jihad. Arabs returning from Afghanistan were widely blamed for stirring up violence, especially in Algeria and Egypt. In a related vein, some Salafis were concerned that Bosnian Muslims’ Islamic piety was tainted or even eradicated by decades of socialist rule, making them unfit partners in jihad. Notably absent from these discussions was much reliance on the canons of Islamic jurisprudence on jihad. The relevance of fiqh of jihad appeared limited in a situation where most Muslims live under governments that conduct their affairs of war and peace through the sovereign order.

JIHAD UNDER TWO FLAGS

About halfway through the war, in the summer of 1993, most of the foreign fighters were consolidated into an autonomous unit within the Bosnian army, the Mujahids’ Detachment (Ar: Katībat al-Mujāhidīn, Odred Elmudžahedin in the local

21. The Salafi orientation is particularly influential in Saudi Arabia, but has adherents worldwide. Salafis are notable for stressing monotheism (tawḥīd) and individual relationships with God, without intermediaries. They formally reject imitation (taqlīd)—strict adherence to the major schools of Islamic law—in favor of reasoning directly on the basis of the Quran and ḥadīth, or reports of statements by the Prophet Muhammad (Meijer 2009).

22. On several occasions, bin Bāz called for military assistance to Bosnia, but always through Muslim governments and in the context of the international system. In a statement issued in his capacity as president of the constituent council of the Muslim World League—a Saudi-government-backed pan-Islamist organization—bin Bāz called for “supporting Muslims in Bosnia and Herzegovina with military forces.” The appeal, however, was directed at “the international community and Muslim governments” and the overall statement clearly situates pan-Islamist action within the international order: “O Muslim rulers, you should support your brothers, defend them, and ask the international community to use its influence to stop the aggression of Serbians and to punish them severely in order that they might abide by the international conventions that Muslims in Bosnia and Herzegovina abide by” (bin Bāz n.d.).

language; hereafter, “the Katiba”).²³ The unit was based in the city of Zenica with a training camp in the village of Mehurići. It was subordinated to the army’s Third Corps and operated according to broad strategic goals set by the high command. The decision to collaborate with the nominally secular Bosnian army, filled with erstwhile socialists, was not uncontroversial.²⁴ To affirm its Islamic bona fides, the Katiba touted the unusual autonomy it enjoyed: the unit’s members chose their own leadership, raised funds abroad (although they appear to have procured armaments locally), and had a unique induction and training regime. The unit enjoined regular prayer, banned alcohol, fornication, pork, swearing, and—unlike other units denominated as Muslim—smoking. The unit required all Bosnian recruits to complete approximately forty days of Islamic education as a prerequisite to military training. In place of a conventional military hierarchy, the unit made decisions through a consultative body (*majlis al-shūrā*) comprised of senior mujahids.²⁵ The most respected authority, an Egyptian preacher called Anwar Sha’bān, was a layman largely self-taught in Islamic law.²⁶

Bosnian army personnel records indicate that the Katiba numbered about 1,100 men at its peak, its ranks roughly 60 percent Bosnian and 40 percent foreign, the latter mostly being Arabs.²⁷ The unit lists 132 men as killed in action, of whom 88 (67 percent) were foreigners. The Bosnians were mostly recruited from areas under government control near the Katiba’s base in the landlocked center of the country: most were born in Zenica (25.1 percent), Travnik (23 percent), or Kakanj (10.7 percent). Statistics on foreign mujahids are less reliable, for reasons discussed in the next section of this article. The core group that established the unit consisted mostly of Egyptians and other North Africans living in Western Europe, many of whom had not fought elsewhere before. The unit’s military commanders were Egyptian veterans of the Afghan jihad. Many other members were migrant workers of North African and Egyptian origin who lived in Italy,

23. This background is based on my ethnography, interviews, and analysis of primary materials. It is largely—but not entirely—consistent with the background provided by the ICTY in the *Delić* trial judgment. *Delić*, Judgment (September 15, 2008), ¶¶ 165–237. Much of the secondary literature conflates the Katiba with another unit, the 7th Muslim Brigade, referring to them both under the catchall label of “mujahideen.” While some members of the Katiba earlier served in the 7th Muslim Brigade, the latter was far more “Bosnian” in its membership and leadership, with no foreigners in command positions and lacking the Katiba’s separate religious education component. Moreover, the 7th Muslim Brigade’s leading religious authorities were associated with the Naqshbandi Sufi order and hence at odds with the Katiba’s predominantly Salafi orientation.

24. The Katiba warded off critiques by citing an Islamic legal opinion by Ibn Taymiyya, a medieval scholar revered by many Salafis, arguing that jihad is permissible even with sinful leaders or soldiers. *Nidā’ al-Jihād*, No. 8, April 11, 1995.

25. Nevertheless, the Katiba’s ability to enforce discipline over foreign mujahids appears to have been limited mostly to expulsion; foreign fighters in particular could and sometimes did leave the unit to join the small numbers of freelancers who never formally accepted the authority of the Bosnian army.

26. Sha’bān was from Alexandria and, like many Egyptian Islamists of his generation, trained as an engineer, only occasionally attending shari’a courses. He fled crackdowns on Islamists in Egypt and lived in Kuwait before settling in Milan, where he ran the Islamic Cultural Institute and became involved in the Bosnian cause (*Il Messaggero dell’Islam* 1995; Latić 1995). He was killed in an apparent ambush by Croat nationalist forces on the final day of the war.

27. Data on the composition of the Katiba are based, unless otherwise indicated, on an analysis of a list of 1,774 names produced in February 1996. List of Members of the “El-Mudžahedin” Detachment Unit Number 5689 Zenica, signed by Gen. Sakib Mahmuljin, 05/6-409-20, February 26, 1996.

where they labored after having been driven across the Mediterranean by massive unemployment in the wake of neoliberal “structural adjustment” in their home countries (and in Algeria, civil war). A personnel list from August 1993, compiled shortly after the unit’s foundation, indicated that Egyptians and Algerians were most represented among the unit’s foreign members (20 percent and 16 percent, respectively).²⁸ The unit’s membership remained largely stable throughout the latter half of 1993, but the January 1994 rapprochement between the Bosnian government and Croat nationalist forces reopened routes linking the mujahids to the sea. This enabled greater numbers of fighters to come from outside, especially Saudis and other Gulf Arabs on holiday from work or study. By October 1994, Saudis appear to have been the single most represented nationality among foreigners in the unit (30 percent), followed by Egyptians (18 percent) and Algerians (12 percent).²⁹ Nevertheless, nationality data should be treated with caution; the most comprehensive membership list for the Katiba lacks nationality data for 26.6 percent of foreign personnel, far more than any single citizenship group. Moreover, it is important to keep in mind that some foreign mujahids never joined the Katiba; throughout the war, Abū al-Zubayr maintained a smaller, independent group.³⁰

The Katiba represented an attempt to combine a pan-Islamist sensibility with legitimacy in the sovereign order; in the words of one of the Bosnian leaders of the unit, it fought under “two flags,” that of Islam and the recognized nation-state of Bosnia-Herzegovina. The Katiba’s publicity materials frequently addressed the umma and criticized nationalism as a divisive force in the Muslim world.³¹ Defying one of the precepts of the sovereign order, the Katiba argued that participation in the Bosnian jihad did not require authorization from any government, as explained in its newsletter:

Astonishingly, there are many doubts raised around the jihad today, such as that combat and jihad are only permitted with a duly empowered [mumakkan] amir or imam. Most scholars hold the view that jihad is not impeded by the absence of an authorized imam or amir. Whether he exists or not, this does not mean the suspension of jihad while waiting for an imam or amir.³²

The choice of terms here repeatedly evoked worldly and spiritual authority (“amir” and “imam,” respectively) in order to address governments that claimed to

28. Odred Elmuđzahedin, “Spisak Pripadnika Jedinice,” 001/93.

29. Letter from Fadil Jaganić, Zenica Security Service Center, to Zenica National Defense Secretariat, 21:1/09-2728/94, October 11, 1994. This is a list of foreigners in the Bosnian army in the Zenica area, so it may not map completely onto foreign membership in the Katiba.

30. Abū al-Zubayr’s group was smaller than the Katiba (perhaps a few dozen men) and less formally organized, with mujahids billeted in private homes (often with their Bosnian wives) when away from the front as opposed to staying in camp. Various accounts suggest that resentment at the perceived dominance of Egyptians in the Katiba at the expense of Saudis was a factor in keeping this group separate (al-Hindukūshī 2007, 5:14–15). The difference appears to have been primarily organizational rather than ideological, as both sides continued to refer to relations being cordial on the whole.

31. In one newsletter, the Katiba criticized fighting between Turkey and Kurdish rebels, accusing both sides of being manipulated by foreign powers. *Nidā’ al-Jihād*, No. 7[?], April 2, 1995.

32. *Nidā’ al-Jihād*, No. 8, April 11, 1995.

possess both. While the argumentation was cast in broadly Islamic terms, it was directed at entities that were also sovereign states in the international order, most importantly Saudi Arabia, whose official religious establishment did not support participation in the jihad.

While the Katiba disclaimed any government's right to veto the jihad, this does not mean that it rejected state authority altogether. Most important was its institutionalized relationship with the Bosnian army. The Katiba described its relationship with the army as one of "partnership and independent administration" [*al-mushāraka wal-idāra al-mustaqilla*]³³ and at times refused orders from Bosnian generals to attack when its own leaders felt preparations were inadequate. The Katiba's iconography reflected this dual commitment: in publicity materials distributed abroad, its logo was a black flag emblazoned with the monotheistic creed of Islam ("There is no God but God and Muhammad is his Prophet") fluttering over a map of Bosnia. Yet in its ordinary correspondence with the army, the Katiba's leadership used stamps and seals with everyday Bosnian army insignia.

Similarly, the Katiba's relationship with formal international law was ambiguous. On the one hand, the unit distributed educational materials that countenanced acts contrary to the laws of war, such as execution of prisoners (el-Hindi n.d., 160). On the other hand, the Katiba negotiated directly with Western peacekeepers on occasion³⁴ and its Salafi supporters could celebrate its martial exploits while still demanding Bosnia's full and immediate membership in the European Union (Abū Sa'd 1994a,b). From their position at the edge of various legal orders, the mujahids engaged with and improvised around the institutions they encountered, including the Bosnian army, the local Islamic authorities, and the UN war crimes tribunal.

Legality and Legibility

The jihad drew together men fighting in the name of a global Muslim community who were also citizens of diverse nation-states. For the army, subordinating the mujahids to centralized authority was important to strengthening its control over territory. Another major reason for establishing the Katiba was to provide a regular legal status for both Bosnian and foreign mujahids, to make them legible to the state. For Bosnians, belonging to the Katiba would avert possible charges of desertion from other army units or draft dodging. The difficulty arose with recently arrived foreigners, about whom the state knew far less. The Katiba frequently fielded inquiries from the army as to whether certain Arabs alleged to have committed atrocities or infractions belonged to it. As one Bosnian member of the Katiba explained to the ICTY: "People were not familiar with the fact that there were different groups and the relationships between them, so it was very simple to say, for any of them, that this was an Arab from the El Mujahedin Detachment, when actually it was not the case" (Testimony of Protected Witness 9, *Delić* trial,

33. Letter from Abū al-Ma'ālī, et al. to Islamic Cultural Institute (Milan), March 7, 1995.

34. *Hadžihasanović*, Trial Judgment (March 15, 2006), ¶¶ 505–514; BRITBAT intelligence summary, Oct. 18, 1993.

November 15, 2007, 5636:11–15). The Katiba provided a mechanism to disclaim abuses committed by nonmembers, thereby deflecting charges of being a rogue unaccountable militia. After the murder of a British aid worker in January 1994, the Katiba issued a letter providing an alibi for two mujahids arrested in connection with the incident while also attesting that the third suspect had left the unit months earlier and was not under its responsibility.³⁵

For foreign mujahids, the benefits of legal status had to be weighed against other considerations. Some mujahids did not wish the Katiba to resemble a conventional military unit too much. They took pride in the lack of uniforms, ranks, and protocols such as saluting, which they argued could potentially dampen the unit's religious purity. For these mujahids, joining the army was a necessary formality, but did not entail a personal embrace of the Bosnian state. The Katiba sought to assure supporters abroad that it was formed "under the army in organizational matters [al-umūr al-nizāmiyya] but proclaimed upon its foundation absolute loyalty to God, His Prophet (Peace Be Upon Him), and His book and refuses to appeal to any order [naẓm] or traditions outside the provisions of the sharī'a."³⁶

The mujahids' desire to identify with the umma over the nation-state was not simply ideological; it also dovetailed with potential problems arising from their position *between* various sovereigns. Many states in the Arab world have criminalized the unauthorized participation of their citizens in wars overseas. Arabs hailing from dictatorial regimes that harshly repressed Islamist dissent such as Egypt, Algeria, Tunisia, and Syria were especially concerned that their participation would be reported to their home governments. There were also fears that the Katiba was vulnerable to infiltration, especially by Arab and Western intelligence agencies. While foreign mujahids handed over their passports and other identity documents to the Katiba's secretariat for safekeeping, they resisted the state's demands to identify themselves to it. This was a persistent source of concern for the army: on one personnel list, I found a handwritten notation from an officer in the Third Corps requesting passport data on foreign mujahids.³⁷ The army's Military Security Service (Služba Vojne Bezbednosti) targeted the Katiba for intelligence collection, tapping its phones, intercepting its faxes, compiling dossiers on its leadership, and attempting to recruit informants from within.

Foreign mujahids dealt with the issue of legibility by using kunyās to identify themselves. A kunyā is an everyday Arabic naming convention that uses the terms "abū" (father) for men or "umm" (mother) for women, generally to denote a lineal affiliation. In contexts of clandestine work, use of kunyās is widespread as a security precaution, often in conjunction with a relational adjective [nisba] that usually indicates place of origin or nationality. Hence, "Abū 'Abd Allāh al-Lībī" suggests someone whose son is named 'Abd Allāh and who hails from Libya. Kunyās are convenient because they can be portable between different contexts of jihad but they are also disposable: unlike a legal name fixed in state identity documents, kunyās can be readily changed if one wishes. Kunyās were the primary basis of

35. Letter signed by Abū al-Ḥārith, January 30, 1994.

36. *Nidā' al-Jihād*, No. 6, March 6, 1995.

37. Odred Elmudžahedin, "Spisak Pripadnika Jedinice," 001/93.

identification within the unit as well as in published materials. Years after the jihad, ex-mujahids I interviewed would often give me a blank stare when I asked them about an individual using a legal name, but would immediately recognize the same person by kunyā.

The Katiba's personnel records reflect this practice and the reluctant attitude toward making oneself legible to the state. For Bosnian members who wished to ensure that they were accounted for and not treated as deserters, data are generally accurate and complete. They are listed by full name (including father's name), with place and date of birth, identification number, and date of induction into the unit. For foreigners, the story is quite different. Almost all foreign mujahids are listed as kunyās or nicknames. The lack of legal names, however, did not make these lists completely fraudulent or useless. After all, kunyās served to identify mujahids to each other and as a form of socially contextualized knowledge could be traced back to individuals with legal names. Moreover, by the end of the war, foreigners in the Katiba may have been listed under kunyās or even false names, but they were nevertheless assigned a unique military identification number.

Several dozen foreign mujahids, however, chose to be registered with the army under their legal names. This act usually indicated an intention to take Bosnian citizenship and settle in the country. At the end of the war, the Bosnian army disbanded the Katiba under pressure from the United States. Most of the foreign mujahids left, but several dozen stayed behind, often from poorer Arab countries whose governments would have likely punished them for their participation in the war. The decision to stay was facilitated by a May 1993 amendment to the Bosnian citizenship law that exempted foreigners in the armed forces from standard naturalization requirements (BH Službeni Glasnik 11/93, May 10, 1993). Many of these individuals also married Bosnian women and applied for back pay from the Bosnian army.

The liberal naturalization law for foreign volunteers in the army may have facilitated legibility to the state, but it had unintended consequences as well. Shortly after the war, Western governments pointed to the prospect of militants holding Bosnian passports as an obstacle (one of many, to be sure) to joining the European Union. And for Arabs, membership in the army later became construed as evidence of militancy or, worse, association with al-Qa'ida. This was especially unfortunate for Arabs who appear to have *falsely* claimed membership in the Katiba as a way to obtain Bosnian nationality. Omar Rajab Amin, a Kuwaiti aid worker,³⁸ first appeared in the Katiba's personnel records in May 1995 and became a Bosnian citizen in September of that year.³⁹ Years later, Amin was captured in Afghanistan by US forces and sent to the Guantánamo Bay detention facility, where his alleged membership in the Katiba was used against him as evidence of extremism. Amin denied fighting in the jihad and claimed that he obtained citizenship instead on the basis of his marriage to a Bosnian woman, only to discover later that the

38. Amin's relief work in Bosnia was covered at the time in the Kuwaiti press (al-Furqān 1993).

39. Amin's membership in the Katiba first appears in a list produced by the Bosnian army 3rd Corps, 05/4-1028, 7 May 1995, 5. He was naturalized on September 25, 1995. BH Službeni Glasnik 73/07, October 1, 2007.

middleman he paid to arrange his naturalization papers had falsely enrolled him in the Katiba's records. This move would allow the intermediary greater profit, since naturalization on the basis of army service was exempt from processing fees. "Because I'm an Arab, it was easy for me to be registered in the Bosnian Army, in the Mujahadin Brigade. They would just take 200–500 Deutschmarks and register you under the Bosnian Army, like a bribe" (Combatant Status Review Tribunal Transcript for Omar Rajab Amin (ISN 65), 7).⁴⁰ While I cannot independently verify Amin's account, such corruption would explain why he seems never to have appeared in Bosnian army records under a kunyā and why his induction into the Katiba is back-dated by two years to May 1993, a time when joining the jihad from outside was almost impossible due to Croat-Muslim fighting.⁴¹ In any event, the ease with which Amin could pass for—or be mistaken as—a mujahid illustrates the possibilities and risks for pan-Islamist activists attempting to navigate between sovereign states.

Marriage and Madhhab

Aside from the Bosnian army, the other major institution that the Katiba dealt with was the Islamic Community (Islamska Zajednica, IZ). The IZ is a semi-autonomous centralized bureaucracy for Islamic religious affairs in Bosnia, responsible for mosques, religious schools, endowments, and hajj travel. The IZ was consolidated under Austro-Hungarian rule (1878–1918) as a structure to regulate Muslim affairs in a non-Muslim state. Shari'a courts responsible for Islamic family law and endowments continued to operate under the Hapsburgs, the kingdom of Yugoslavia (1918–1943), and the rule of fascist Croatia during World War II (Donia 1981; Karčić 2008; Greble 2014). Socialist Yugoslavia severely curtailed the IZ's activities, abolishing shari'a courts and Muslim personal law codes in 1946, banning face veiling in 1950, closing nearly all Islamic schools, and expropriating most religious endowments (Karčić 1999). After decades of restrictions under socialism, the IZ was reconstituted for a newly independent Bosnia in 1993 and anxious to assert its spiritual authority over the country's Muslims; in this context, it also became an important, if very junior, ally to Bosnian Muslim nationalists.

The consolidation of a national institution for Islamic authority in Bosnia was both succored and challenged by transnational processes. The IZ invested considerable effort in cultivating a notion of "Bosnian Islamic tradition," consistent with the nationalist vision of the country as a bridge between Europe and the Muslim world. At the same time, the IZ has been central to strengthening Bosnia's ties with the umma. Solidarity efforts and financial assistance were forthcoming from

40. Amin's account on this score was consistent throughout multiple interrogations at Guantánamo. See Detainee Assessment Brief, ISN 65, January 6, 2006, 3 ("Detainee stated that purchasing a Bosnian citizenship was a common practice among NGO workers, but that it was the reason why the Kuwait Security Service had listed him as a member of a mujahideen brigade"). Amin was transferred to Kuwait in 2006 and released shortly thereafter.

41. Lists of the Katiba's personnel produced in 1993 and 1994 do not include Amin's name or any other Kuwaitis who match his kunyā (Abū 'Abd Allāh) or year of birth.

elsewhere in the Muslim world, especially Turkey, Egypt, the Arab Gulf, Iran, and Malaysia. For a younger generation of pious Bosnian Muslims and preachers frustrated with their sinecure-holding elders, outside organizations provided exciting new ideas, to say nothing of opportunities for travel and study abroad. Most fiercely debated has been Salafi influence (frequently referred to pejoratively as “Wahhabism” in Bosnia, as elsewhere), which came through both the Arab mujahids and Gulf-based aid organizations. During the war, stories soon spread of Salafi Arab aid workers and fighters castigating locals for drinking alcohol and smoking, and telling women to cover their hair. The head of the Katiba’s training school published a pamphlet criticizing several popular Bosnian Muslim rituals as verging on polytheism and attacking local Muslim clerics for their laxness (el-Misri 1993), drawing sharp ripostes in turn (Arnaut n.d.). Many of the debates concerned points of ritual practice such as ablution and prayer style, issues where parties could agree to disagree. Perhaps the most polarizing area of dispute, and one that implicated struggles over Islamic interpretive authority, was marriage.

Marriage was an important dimension of the jihad. As noted above, the rise of colonial states throughout the Muslim world often resulted in Islamic law being narrowly redefined as family law attached to state legal systems.⁴² But in Bosnia and sites of similar jihads, marriage was key to constituting new communities that were transnational, transregional, and multiracial in scope. Dozens of Arab aid workers and fighters in Bosnia married local women (the number would climb to the low hundreds in the years after the war); mujahids in particular often met their wives through the Bosnians in the Katiba who introduced them to their sisters. Such marriages helped ground foreign mujahids in local contexts and in turn set the stage for further proselytizing efforts but also caused considerable controversy that strained ties with Bosnians.

In this context, stories also began to spread of Arabs, especially wealthy men from the Gulf, precipitously divorcing their Bosnian wives after consummating their marriages. The practice was regarded as at best extremely immoral and licentious, at worst a form of sexual exploitation thinly legitimized by marriage. These fly-by-night marriages aroused considerable concern. IZ officials in Zenica—where the Katiba and many Arab aid organizations were based—were tasked with collecting information on marriages between Arab men and Bosnian Muslim women.⁴³ The Katiba was mindful of the impact these behaviors had on its reputation, but also recognized that there was a legal issue involved. In late December 1994, Anwar Shaḥbān wrote to solicit the views of Ṭal’at Qāsim, a leader in al-Jamā’ā al-Islāmīyya, an Egyptian dissident group then waging an armed jihad against the regime of Ḥusnī Mubārak.⁴⁴ Shaḥbān was concerned about the behavior of some of the Arab “youths”:

42. In Bosnia, this occurred in 1859 under “modernizing” reforms in the Ottoman Empire (Karčić [1985] 2005, 20).

43. Information report by Col. Ekrem Alihodžić, Chief, ARBiH 3d Corps SVB to ARBiH General Staff SVB, 7-1/29-516 (as received), June 7, 1995.

44. Qāsim was abducted by the CIA in Croatia in 1995 and forcibly repatriated to Egypt, where he subsequently disappeared. His is the first known CIA rendition case involving Islamists.

Some youths have taken advantage of [sfruttano] fatwas by Muslim scholars, committing acts of immorality in the application of these fatwas. In particular the fatwa on marriage with divorce in mind [allo scopo di fare il divorzio], as has been attributed to ‘Abd al-‘Azīz bin Bāz. There are many cases in which a youth married a Bosnian girl for a period of days or months, after which the youth leaves and then sends her a message saying he has repudiated her. These behaviors have distorted the image of [other] mujahid youths who are residing in Bosnia. For this, we ask that you clarify what is wrong and right regarding this matter . . .⁴⁵

The Islamic legal opinion, or fatwa, Sha‘bān mentioned was issued by ‘Abd al-‘Azīz bin Bāz, the chief mufti of Saudi Arabia. It permitted marriage with the secret intent to divorce on the rationale that this would provide students and other travelers in non-Muslim countries a way to avoid extramarital sexual activities (al-Rasheed 2013, 128). This fatwa was widely criticized, including by many other Salafi scholars, and its use in Bosnia underlined the dangers to the IZ’s interpretive monopoly on Islamic law. In December 1993, the IZ’s new leader, Mustafa Cerić, dedicated his second fatwa in office to reaffirming the community’s adherence to the Ḥanafī school of Islamic jurisprudence [madhhab]. The fatwa’s preamble noted the “frequent occurrence of deviations from the Ḥanafī madhhab in certain religious practices, especially recently, upon coming into contact with Muslims from other madhhabs, whether in the country or abroad in exile [muhađđerluk]” (Cerić 1993). Cerić’s fatwa was all the more important because the IZ lacked courts or any other institutional means to enforce legal rulings.

The question of which madhhab would apply was especially important in the issue of consent for marriage. In many cases, Arab men wished to marry Bosnian women and girls, but their fathers objected. In response, some Arabs would cite the dominant position in the Ḥanafī school that women may marry as long as they are mentally competent, of age, and free from coercion; their fathers’ opinions were not dispositive. One Bosnian imam I interviewed decried this behavior as “selective” since the position of the Ḥanbalī school, which he claimed many Arab Salafis held to, requires the consent of the woman’s guardian.⁴⁶ At the same time, Bosnian fathers demanding the right to refuse on their daughters’ behalf were themselves implicitly repudiating the Ḥanafī position propagated by the IZ (to say nothing of the state’s own civil marriage laws). This eclecticism in argumentation was not a case of “forum shopping” per se, as there was no shar‘a court at hand that would enforce either position.⁴⁷ Moreover, it did not concern competing communities

45. Fax from Anwar Sha‘bān to “Abū Ṭalāl,” December 25, 1994, intercepted and translated by Divisione Investigazioni Generali e Operazioni Speciali (Italian only).

46. The Ḥanbalī school is dominant in Saudi Arabia and some parts of the Gulf and Salafis often follow Ḥanbalī rulings; hence the interlocutor in question called it “the Arabs’ madhhab.” One of the tenets of Salafi thought, however, is to reject “imitation” [taqlīd], or adherence to one of the major schools of jurisprudence as binding. Due to genealogical links and overlaps between Ḥanbalī and Salafi thought, Salafis have at times been accused (and accused each other) of being crypto-Ḥanbalīs (Lacroix [2010] 2011, 84–86).

47. In an interesting corollary to this case, Selma Zečević has shown how women in Ottoman Bosnia engaged in forum shopping by traveling to the imperial council in Istanbul or even seeking to switch to the Shāfi‘ī madhhab to safeguard their rights upon the extended absence of their husbands (Zečević 2007).

within the nation-state, as studies of personal status law and legal pluralism often highlight. Rather, the debate here expressed competing logics in a space of transnational intra-Muslim disputation, a tension introduced by the attempt to subsume *sharī'a* into a system of nation-states.

The Katiba was in a dilemma: endorsing the IZ's attempts to make Ḥanafī law the sole school of jurisprudence for Bosnian Muslims would offend Salafi sensibilities and indirectly support the very type of nationalist divisions between Muslims that the unit repudiated. At the same time, the Katiba was anxious not to antagonize the IZ or Bosnian Muslims further on this matter or in general. In response, the Katiba dodged the doctrinal question of which madhhab to uphold and instead sought to exercise more control over the mujahids under its command. Starting in 1994, the Katiba took several steps to curtail "immoral" marriage practices: first, speeches from senior mujahids reminding everyone that their purpose in Bosnia was jihad, not marriage. Then, the Katiba adopted a rule requiring any Arab mujahid to spend six months in Bosnia before marrying a local woman.⁴⁸ This would allow time for others to vet their character and suitability for marriage. Finally, the Katiba's titular commander at that time, Abū al-Ma'ālī, decided to require the consent of both the woman's parents and the Katiba's command. When I asked one Bosnian mujahid for any example of this policy being tested, he telephoned his wife at home, who reminded him of a "girl" (he did not specify her age) whose parents forbade her from marrying a mujahid suitor.⁴⁹ The Katiba received information that the girl's father had been threatened to obtain his consent, so Abū al-Ma'ālī called him in and told him to report anyone who exerted any pressure on them. The two never wed. The man who told me this story also acknowledged that the policy was not necessarily grounded in a strong fiqh doctrinal argument: "it's true that this is not based in *sharī'a* rules. But *sharī'a* is both rules and principles. What's important is the good."

The Katiba's attempts to regulate marriage with the local population represented an improvisational response to a practical legal dilemma: it sought to accommodate the IZ's concerns without endorsing its quasi-nationalist project of interpretive authority. At the same time, the Katiba did not explicitly base its position in Islamic legal doctrine. Instead, it relied on its authority as a military unit informed by appeals to both Islamic and national legitimacy.

Moving the Court

A third area of encounter between the mujahids and institutions of the sovereign order has been in the transitional justice project. Since the war, crimes committed by mujahids in Bosnia—especially executions of captured Serb soldiers in 1995—have come under considerable scrutiny from the ICTY. None stood as defendants, in part because much of the Katiba's leadership was killed in the war.

48. See also Testimony of Ayman Awad, *Delić* trial, February 9, 2008, 155:4–13.

49. Ethnographic studies of a village in central Bosnia in the late 1980s suggested that marriages under the legal age of 18 were not uncommon (Bringa 1995, 105–06).

Instead, the tribunal sought to hold Bosnian Muslim officers responsible for the mujahids' crimes in two cases, based on the principle of command responsibility. In particular, the case of Rasim Delić, former overall commander of the Bosnian army, in some ways tried the jihad in absentia—not only because no mujahids were in the dock, but also because the legal status of the jihad was important but only elliptically referenced. The case highlighted the gaps in the sovereign order that shaped the jihad, both in the performances of the trial and in the tribunal's jurisprudence.

The jihad trials have been largely overlooked by scholars of transitional justice, who have instead understandably focused on the major atrocity cases involving Serb nationalist defendants, such as the Srebrenica massacre, the siege of Sarajevo, and the Omarska concentration camp. This is unsurprising, for the transitional justice literature typically posits external actors (Internationals) such as the ICTY, human rights NGOs, and diplomats acting upon local ones; scholars tend to focus on institutional dynamics or local "reception" to international norms, debating the extent to which the transitional justice project has been successful or not, harmful or not, desirable or not (Hagan 2003; Hagan, Levi, and Ferrales 2006; Meyerstein 2007; Nettelfield 2010; Rowen 2012). The jihad cases instead highlight actors who are depicted as neither local nor international, but rather as *foreign* in a manner distinct from Western actors such as peacekeepers and NGOs. The ICTY noted that "[f]oreign mujahedin were easily recognisable by their traditional clothing and dark complexion. They had long beards and wore turbans or hats" (*Hadžihasanović* judgment, ¶ 414)⁵⁰ and on multiple occasions quoted witness statements highlighting mujahids as dark-skinned, bearded, and speaking in foreign languages (*Hadžihasanović* judgment, ¶¶ 1094, 1110, 1073, fn 2571; *Delić* judgment, ¶¶ 205, 209, 239, 275, 302, 424). The perceived foreignness of the mujahids mapped onto the idea of jihad as normatively outside the international order, a category not recognized in international law except as a factual matter to describe the ideological justifications of perpetrators.

The emphasis on the mujahids' foreignness—and, by implication, their brutality as rootless fanatics—served different agendas at once. The jihad cases were important to showing that the Bosnian Muslim side was not blameless, especially for those who complained that the ICTY's focus on Serb and Croat defendants evinced lack of "balance." At the same time, Bosniak nationalists could point to the fact that the jihad cases comprised two of the five prosecutions of Bosnian Muslim defendants (with two of the other cases resulting in acquittals⁵¹) to preserve their narrative of being the war's primary victims. In the perverse mathematics of "balance," mujahid crimes were useful for settling accounts between all sides.

The Delić trial highlighted the jihad's ambivalent relationship with the Bosniak nationalist project. This was most apparent in the testimony of Ayman Awad, a Syrian who served as one of the Katiba's interpreters (he acquired fluency in the local language through studying in Yugoslavia before the war). Awad was one of

50. See also *Delić* Judgment ¶ 165 ("foreign Mujahedin were of a darker complexion, wore long beards and did not speak the local language").

51. These cases were against senior general Sefer Halilović, for war crimes committed in the 1993 offensive against Croat forces, and Naser Orić, a local commander, for crimes against Serbs in the Srebrenica area.

the dozens of Arab mujahids who settled and started families in the country and became a spokesman of sorts for these veterans. He was reluctant to testify:

I would like to say that I was summoned here to testify at the request of the Prosecution not versus or against Rasim Delic but in the case of Rasim Delic, and it's not a fact that I voluntarily came to testify but that I'm here to testify on the basis of your summons and request. I would like this to be noted in the record. (Transcript of Record at 2:16–20, *Delic* trial [February 8, 2008])

Awad's cautious positioning of himself as aligned with neither side in the case reflected the dilemma he faced. Awad had no interest in helping to prosecute Delic, whom many Bosniaks continued to regard as a national hero. Yet he had to know that Delic's defense would argue that the foreign mujahids were essentially rogue fighters more beholden to al-Qa'ida than to him. Moreover, the Bosnian government had recently stripped Awad of his Bosnian citizenship as part of a US-driven campaign to expel ex-mujahids from the country.⁵² This left Awad exposed to the risk of deportation to torture in his native Syria, whose ruling regime would have viewed him as an Islamist dissident. The Delic trial presented Awad with little choice but to engage the proceedings and attempt to depict the Katiba as a responsible part of the Bosnian army without implicating that army's commander, Delic, as someone who could be held liable for its actions.

The presentation of the Arabs as unusual foreigners and of the jihad as an extraordinary phenomenon informed the trial proceedings in important ways. For the first and so far only time in nearly two decades of trials, the ICTY held sessions outside the Hague—and did so twice, in September 2007 and February 2008.⁵³ Attorneys, clerks, translators, and the accused himself all moved to Sarajevo, at considerable expense to the tribunal. The special sessions were undertaken to procure Awad's testimony and that of another Arab ex-mujahid, even though the ICTY has permitted witnesses to participate by video teleconferencing on multiple occasions, starting with its very first case (*Tadic*, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and On the Giving of Evidence by Video-Link [June 25, 1996]). These Arabs were unlike anyone else who had come before the Tribunal: they did not belong to one of the warring "ethnic groups" of

52. The review and revocation of naturalization was conducted by a special State Commission, one of whose nine voting members was a US Army officer. Although ostensibly aimed at regularizing the overall process of granting Bosnian citizenships, the goal of vetting ex-mujahids was no secret. The US Embassy described the process as a "top [US government] counter terrorism priorit[y]." "Bosnia: citizenship review underway as negative media attention grows," cable by Amb. Douglas McElhaney, 06SARAJEVO1748, August 4, 2006, ¶ 11. Awad later convinced a Bosnian court to set aside the denaturalization order and mandate a do-over; by that time, the State Commission was no longer operative, leaving Awad's Bosnian citizenship status unclear.

53. The ICTY's rules of procedure permit sessions away from the seat of the court, "if so authorised by the President [of the Tribunal] in the interests of justice." ICTY Rules & Procedures of Evidence, 4. The ICTY's sister court, the International Criminal Tribunal for Rwanda (ICTR), has a virtually identical rule that has never been exercised for trial hearings. ICTR Rules & Procedures of Evidence, 4. In contrast, both tribunals have conducted multiple "site visits," in which judges sought to familiarize themselves with locales discussed in the cases.

the Balkans, nor were they “Internationals” such as peacekeepers, journalists, or NGO workers. The decision to move the hearings to Sarajevo in this case only is all the more extraordinary given the persistent and widespread criticism of the ICTY’s geographical remoteness from the scenes of the alleged crimes. Many, especially victims’ advocates, have long accused the ICTY of practicing an overly abstract form of justice divorced from local concerns (Stover 2005, 125; Nettelfield 2010, 185, 201).

Awad later explained to me the strange circumstances of his testimony:⁵⁴ due to his own legal problems, he refused to travel to the Hague to testify without a guaranteed right to return to his Bosnian family, which was not forthcoming. Even if the court had ordered Awad transferred to the Hague to face contempt charges, it would itself run the risk of having no acceptable place to return him to afterward if Bosnia refused to take him. Thus, the US-driven “War on Terror” and the ICTY’s transitional justice agenda intersected to produce an ironic outcome: that it took a “foreign” fighter to make the international court finally “go local.”

The jihad’s ambiguous place in international law also haunted the jurisprudence of the Delić trial. The central legal question of the case, as with many others at the ICTY, was that of command responsibility: whether Delić could be held responsible for crimes committed by mujahids fighting in the name of the Bosnian army. The ICTY waded into the mixed evidentiary record and did its best to discern various indicia of control: whether mujahids obeyed the army’s commands, whether the army was capable of punishing mujahids for disciplinary infractions, and so on. In the end, its piecemeal multifactoral approach yielded a narrow result: the tribunal found Delić guilty only in connection to one set of crimes in August 1995 where prosecutors could show that he had reason to know they would occur and failed to take remedial steps (*Delić* judgment, ¶¶ 336–557).⁵⁵ The technical analysis of command responsibility, however, also had broader political implications. This can be seen in the cases dominating the ICTY’s Bosnia docket concerning Serb and Croat forces: in those cases, various legal doctrines of individual and state responsibility played into the political question of whether those militias were to be considered nonstate secessionist movements or instruments of neighboring governments, namely, Croatia or (then Serbia-dominated) Yugoslavia. Regardless of the outcome, Croat and Serb forces could be understood in the logic of state formation and national sovereignty: they were either seeking to build new sovereignties or were the tools of existing ones.

In contrast, Islamist fighters were seen to be operating either under Delić’s command—and therefore under the Bosnian army and state—or under some kind of amorphous global Muslim community. The specter of the latter found its way into the chief judge’s dissent to the conviction, which argued that the fighters did

54. See *Delić*, Scheduling Order for a Hearing to be Held in Sarajevo, 2 (August 13, 2007, referencing a confidential “Decision on Oral Prosecution Motion Pursuant to Rule 4 for a Hearing to be Held in Sarajevo,” dated July 26, 2007); Order Concerning Hearing to be Held in Sarajevo Pursuant to Rule 4 and Transfer of the Accused, 2 (February 1, 2008, referencing confidential “Written Reasons for Oral Decision on Prosecution Motion for a Hearing Pursuant to Rule 4 and to Call a Witness,” dated January 17, 2008).

55. The trial chamber convicted Delić of one war crimes count and acquitted him of three others, handing down a three-year sentence. *Delić* judgment, ¶¶ 596–97.

not truly answer to Delić but rather had “allegiance to other superiors,” including some Muslim clerics outside Bosnia (*Delić*, Dissenting Opinion of Judge Moloto [September 15, 2008], ¶ 19). The dissent’s heavily loaded yet almost throwaway reference to “other superiors” is perhaps the closest the tribunal came to acknowledging the notion of pan-Islamist authority that the *Katiba* continually drew on in response to the perceived failures of the United Nations and the international system generally. That Delić’s appeal was prematurely terminated on the occasion of his death on April 26, 2010 before these issues could be reviewed only underscores the jihad’s unresolved—and perhaps irresolvable—place in international law.⁵⁶

CONCLUSION

This article has attempted to render contemporary transnational jihads—a phenomenon that has attracted enormous attention yet inspired very little rigorous research—as historically legible and to treat their fraught relationships with law in analytically productive ways. It has demonstrated that such jihads must be understood in relation to *both* Islamic and “secular” law and that they react to, are shaped by, and draw from both. This approach will hopefully inform research on other transnational movements, especially those that contest sovereign monopolies on violence.

It is worth noting that of the transnational jihads that have occurred in the Muslim world since the Soviet invasion of Afghanistan in 1979, the Bosnian one is unusual in one respect: it was one of the very few jihads where foreigners fought on the side of a recognized government.⁵⁷ Bosnia may be the exception that proves the rule; in all of these jihads, pan-Islamic appeals to legitimacy were also always inflected through terms of territory and kinship. Even when critical toward nationalism, transnational jihads still seek ways of rooting themselves in existing communities and therefore encounter different legal processes as well. The self-declared Islamic State in Iraq and Syria that rose to global prominence after conquering Mosul in June 2014 at first appears to be a dramatic departure from other transnational jihads insofar as it is also a project of territorial governance. But here, too, it will be necessary to attend to how local and transnational factors come together—such as the crucial role played by ex-Baathist army officers and ongoing reliance on preexisting state bureaucracies and structures. For as in the Bosnian jihad, this group’s experiments with law and politics will continue to be shaped by the sovereign order.

REFERENCES

- Abou El Fadl, Khaled. 2001. *Rebellion and Violence in Islamic Law*. Cambridge: Cambridge University Press.
- Abū Sa’d, Muṣṭafā. 1994a. Min ajl iḥlāl al-salām fil-Būsna wal-Harsak. *al-Furqān*, December, 34.

56. It was the first time in the history of the two post-Cold War ad hoc tribunals that a defendant had died during the pendency of an appeal. *Delić*, Decision on the Outcome of the Proceedings (June 29, 2010), ¶ 5.

57. Arab veterans of the Afghan jihad also fought on the side of the North Yemeni government during the brief 1994 war that led to the unification of the country.

- . 1994b. Min intiṣārāt al-mujāhidīn. *al-Furqān*, December, 35.
- Afsaruddin, Asma. 2013. *Striving in the Path of God: Jihad and Martyrdom in Islamic Thought*. New York: Oxford University Press.
- Alibašić, Ahmet. 2003. *Traditional and Reformist Islam in Bosnia and Herzegovina*. Cambridge: Cambridge Programme for Security in International Society.
- Arnaut, Fikret. n.d. *Mezhebi u Islamu*. Munich: Džema'at Sabur.
- Asad, Talal. 2007. *On Suicide Bombing*. New York: Columbia University Press.
- Azinović, Vlado. 2007. *Al-Kai'da u Bosni i Hercegovini: Mit ili stvarna opasnost?* Prague: Radio Free Europe.
- Behnke, Andreas. 2004. Terrorising the Political: 9/11 Within the Context of the Globalisation of Violence. *Millennium: Journal of International Studies* 33 (2): 279–312.
- Bellion-Jourdan, Jérôme, and Jonathan Benthall. 2003. *The Charitable Crescent: Politics of Aid in the Muslim World*. London: I. B. Tauris.
- Bennoune, Karima. 1994. As-Salāmu 'alaykum? Humanitarian Law in Islamic Jurisprudence. *Michigan Journal of International Law* 15:605–43.
- de Benoist, Alain. 2007. Global Terrorism and the State of Permanent Exception: The Significance of Carl Schmitt's Thought Today. In *The International Political Thought of Carl Schmitt: Terror, Liberal War, and the Crisis of Global Order*, ed. Louiza Odysseos and Fabio Petito, 73–96. London: Routledge.
- Benton, Lauren. 2010. *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900*. Cambridge: Cambridge University Press.
- Berman, Nathaniel. 2012. "The Sacred Conspiracy": Religion, Nationalism, and the Crisis of Internationalism. *Leiden Journal of International Law* 25:9–54.
- bin Bāz, 'Abd al-'Azīz. n.d. A Call for Aiding Muslims in Bosnia and Herzegovina. <http://www.alifta.net/Fatawa/FatawaChapters.aspx?language=en&View=Page&PageID=1056&PageNo=1&BookID=14> (accessed June 18, 2014).
- Bodansky, Yossef. 1996. *Some Call it Peace: Waiting for War in the Balkans*. London: International Media.
- Boellstorff, Tom. 2006. Domesticating Islam: Sexuality, Gender, and the Limits of Pluralism. *Law & Social Inquiry* 31 (4): 1035–53.
- Bose, Sumantra. 2002. *Bosnia After Dayton: Nationalist Partition and International Intervention*. London: Hurst.
- Bougarel, Xavier. 2001. L'islam bosniaque, entre identité culturelle et idéologie politique. In *Le nouvel islam balkanique: Les musulmans, acteurs du post-communisme 1990–2000*, ed. Xavier Bougarel and Nathalie Clayer, 79–132. Paris: Maisonneuve et Larose.
- Bringa, Tone. 1995. *Being Muslim the Bosnian Way: Identity and Community in a Central Bosnian Village*. Princeton, NJ: Princeton University Press.
- Calafat, Guillaume. 2011. Ottoman North Africa and Ius Publicum Europaeum: The Case of the Treaties of Peace and Trade (1600–1750). In *War, Trade and Neutrality: Europe and the Mediterranean in the Seventeenth Centuries*, ed. Antonella Alimento, 171–87. Milan: Franco Angeli.
- Cameron, Lindsey, and Vincent Chetail. 2013. *Privatizing War: Private Military and Security Companies Under Public International Law*. Cambridge: Cambridge University Press.
- Cerić, Mustafa. 1993. Fetva broj 2. *Preporod*, December, 16.
- Chandler, David. 2000. *Bosnia: Faking Democracy After Dayton*, 2nd ed. London: Pluto Press.
- Coles, Kimberley. 2007. *Democratic Designs: International Intervention and Electoral Practices in Post-war Bosnia-Herzegovina*. Ann Arbor, MI: University of Michigan Press.
- Cook, David. 2005. *Understanding Jihad*. Berkeley, CA: University of California Press.
- Deliso, Christopher. 2007. *The Coming Balkan Caliphate: The Threat of Radical Islam to Europe and the West*. Westport, CT: Praeger Security International.
- Donia, Robert. 1981. *Islam Under the Double Eagle: The Muslims of Bosnia and Herzegovina, 1878–1914*. New York: Columbia University Press.
- Donner, Fred. 1991. The Sources of Islamic Conceptions of War. In *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions*, ed. John Kelsay and James Turner Johnson, 31–69. Westport, CT: Greenwood Press.

- al-Furqān. 1993. Hādhā mā fa'ala al-Širb fil-Būsna. *al-Furqān*, July, 36–37.
- Gelvin, James. 2008. Al-Qaeda and Anarchism: A Historian's Reply to Terrorology. *Terrorism and Political Violence* 20:563–81.
- Gerges, Fawaz. [2005] 2009. *The Far Enemy: Why Jihad Went Global*, 2nd ed. Cambridge: Cambridge University Press.
- Geuss, Raymond. 2001. *History and Illusion in Politics*. Cambridge: Cambridge University Press.
- Ghānim, Yaḥyā. 1993. *Kuntu hunāka . . . yawmiyyāt murāsīl ḥarbī fil-Būsna: al-Milaff al-sirri li-ibādat shāb*. Cairo: Dār al-naṣr lil-ṭibā'a al-islāmiyya.
- Greble, Emily. 2014. Illusions of Justice: Fascist, Customary, and Islamic Law in the Independent State of Croatia. *Past and Present* 222:249–74.
- Hādī, Anwar 'Abd Allāh. 1996. *Riḥlat al-nār wal-thulūj*. Jeddā: Fahrīsa maktabat al-Malik Fahd al-waṭaniyya athnā' al-nashr.
- Hagan, John. 2003. *Justice in the Balkans: Prosecuting War Crimes in the Hague Tribunal*. Chicago, IL: University of Chicago Press.
- Hagan, John, Ron Levi, and Gabrielle Ferrales. 2006. Swaying the Hand of Justice: The Internal and External Dynamics of Regime Change at the International Criminal Tribunal for the Former Yugoslavia. *Law & Social Inquiry* 31 (3): 585–616.
- Hallaq, Wael. 2004. Can the Shari'a Be Restored? In *Islamic Law and the Challenges of Modernity*, ed. Yvonne Yazbeck Haddad and Barbara Freyer Stowasser, 21–53. Walnut Creek, CA: Altamira.
- . 2009. *Sharī'a: Theory, Practice, Transformations*. Cambridge: Cambridge University Press.
- Hashmi, Sohail. 2012. Jihad and the Geneva Conventions: The Impact of International Law on Islamic Theory. In *Just Wars, Holy Wars, and Jihads: Christian, Jewish, and Muslim Encounters and Exchanges*, ed. Sohail Hashmi, 325–39. Oxford: Oxford University Press.
- Haug, Robert. 2011. Frontiers and the State in Early Islamic History: Jihād Between Caliphs and Volunteers. *History Compass* 9 (8): 634–43.
- Hayden, Robert. 1999. *Blueprints for a House Divided: The Constitutional Logic of the Yugoslav Conflicts*. Ann Arbor, MI: University of Michigan Press.
- Haynes, Dina Francesca. 2008. *Deconstructing the Reconstruction: Human Rights and the Rule of Law in Postwar Bosnia and Herzegovina*. Aldershot, UK: Ashgate.
- Hećimović, Esad. 2006. *Garibi: Mudžahedini u BiH 1992–1999*. Zenica, Bosnia: Fondacija Sina.
- Hegghammer, Thomas. 2010. *Jihad in Saudi Arabia: Violence and Pan-Islamism Since 1979*. Cambridge: Cambridge University Press.
- al-Hindukūshī, Abū al-Shuqarā'. 2007. *Mudhakkirātī min Kābul ilā Baghdād*. Self-published online.
- el-Hindi, Ali bin Ferid. n.d. *Skrāčena zbirka fikhskih propisa*. Trans. Hasan Makić. Organizacija Preporoda Islamske Misli-Kuvajt.
- Hoare, Marko Attila. 2004. *How Bosnia Armed*. London: Saqi Books.
- Hooker, William. 2009. *Carl Schmitt's International Thought: Order and Orientation*. Cambridge: Cambridge University Press.
- Hussin, Iza. 2007. The Pursuit of the Perak Regalia: Law and the Making of the Colonial State. *Law & Social Inquiry* 32 (3): 759–88.
- Il Messaggero dell' Islam. 1995. Ricordo Di Anwar Sha'ban. *Il Messaggero dell' Islam*, November–December, 1, 7.
- Johnson, James Turner, and John Kelsay. 1990. *Cross, Crescent, and Sword: The Justification and Limitation of War in Western and Islamic Tradition*. New York: Greenwood Press.
- Karčić, Fikret. 1997. Islamic Revival in the Balkans 1970–1992. *Islamic Studies* 36 (2,3): 565–81.
- . 1999. Administration of Islamic Affairs in Bosnia and Herzegovina. *Islamic Studies* 38 (4): 535–61.
- . [1985] 2005. *Šerijatski sudovi u Jugoslaviji 1918–1941*. Sarajevo: El-Kalem.
- . 2008. The Reform of Shari'a Courts and Islamic Law in Bosnia and Herzegovina 1918–1941. In *Islam in Inter-War Europe*, ed. Nathalie Clayer and Eric Germain, 253–70. London: Hurst.
- Keane, Rory. 2002. *Reconstituting Sovereignty: Post-Dayton Bosnia Uncovered*. Aldershot, UK: Ashgate.

- Kinsella, Helen M. 2006. Gendering Grotius: Sex and Sex Difference in the Laws of War. *Political Theory* 34 (2): 161–91.
- Knaus, Gerald, and Felix Martin. 2003. Travails of the European Raj: Lessons from Bosnia and Herzegovina. *Journal of Democracy* 14 (3): 60–74.
- Kohlmann, Evan. 2004. *Al-Qaida's Jihad in Europe: The Afghan-Bosnian Network*. Oxford: Berg.
- Lacroix, Stéphane. [2010] 2011. *Awakening Islam: The Politics of Religious Dissent in Contemporary Saudi Arabia*. Trans. George Holoch. Cambridge, MA: Harvard University Press.
- Latić, Nedžad. 1995. Hrvatska drži Šejha Ebu Talala u zatvoru i traži zemlju koja je voljna da ga primi. *Ljiljan*, November 15, 9–10.
- Lia, Brynjar. 1998. Islamist Perceptions of the United Nations and its Peacekeeping Missions: Some Preliminary Findings. *International Peacekeeping* 5 (2): 38–63.
- Maṣṣūr, Aḥmad. 1995. *Taḥta wābil al-nīrān fi Sarāyifū*. Beirut: Dār Ibn Ḥazm.
- March, Andrew, and Naz Modirzadeh. 2013. Ambivalent Universalism? *Jus Ad Bellum* in Modern Islamic Legal Discourse. *European Journal of International Law* 24 (1): 367–89.
- Meijer, Roel. 2009. *Global Salafism: Islam's New Religious Movement*. New York: Columbia University Press.
- Mendelsohn, Barak. 2009. *Combating Jihadism: American Hegemony and Interstate Cooperation in the War on Terrorism*. Chicago, IL: University of Chicago Press.
- Mesarič, Andreja. 2013. Wearing Hijab in Sarajevo: Dress Practices and the Islamic Revival in Post-War Bosnia-Herzegovina. *Anthropological Journal of European Cultures* 22 (2): 12–34.
- Meyerstein, Ariel. 2007. Between Law and Culture: Rwanda's *Gacaca* and Postcolonial Legality. *Law & Social Inquiry* 32 (2): 467–508.
- el-Misri, Imad. 1993. *Shvatanja koja trebamo ispraviti*. Travnik, Bosnia: Islamski Centar Travnik.
- Mlivoṇčič, Ivica. 2007. *Al Qaida se kalila u Bosni i Hercegovini: Mjesto i uloga mudžahida u Republici Hrvatskoj i Bosni i Hercegovini od 1991. do 2005. godine*. Split, Croatia: Naša Ognjišta.
- Mohamedou, Mohammad-Mahmoud Ould. 2007. *Understanding Al Qaeda: The Transformation of War*. London: Pluto Press.
- Moustafa, Tamir. 2013. Islamic Law, Women's Rights, and Popular Legal Consciousness in Malaysia. *Law & Social Inquiry* 38 (1): 168–88.
- Nettelfield, Lara. 2010. *Courting Democracy in Bosnia and Herzegovina: The Hague Tribunal's Impact in a Postwar State*. Cambridge: Cambridge University Press.
- Panaite, Viorel. 2000. *The Ottoman Law of War and Peace: The Ottoman Empire and Tribute Payers*. Boulder, CO: East European Monographs.
- Percy, Sarah. 2007. *Mercenaries: The History of a Norm in International Relations*. Oxford: Oxford University Press.
- Rabb, Intisar. 2008. "We the Jurists": Islamic Constitutionalism in Iraq. *University of Pennsylvania Journal of Constitutional Law* 10 (3): 527–79.
- al-Rasheed, Madawi. 2013. *A Most Masculine State: Gender, Politics and Religion in Saudi Arabia*. Cambridge: Cambridge University Press.
- Rowen, Jamie. 2012. Mobilizing Truth: Agenda Setting in a Transnational Social Movement. *Law & Social Inquiry* 37 (3): 686–718.
- Samour, Nahed. 2012. Modernized Islamic International Law Concepts as a Third World Approach to International Law. *Heidelberg Journal of International Law* 72:543–77.
- Schindler, John. 2007. *Unholy Terror: Bosnia, al-Qa'ida, and the Rise of Global Jihad*. St. Paul, MN: Zenith.
- Schmitt, Carl. [1963] 2007. *Theory of the Partisan: Intermediate Commentary on the Concept of the Political*. Trans. Gary Ulmen. New York: Telos Press.
- Shah, Niaz. 2008. *Self-Defense in Islamic and International Law: Assessing al-Qaeda and the Invasion of Iraq*. New York: Palgrave Macmillan.
- Smiley, Will. 2012. "When Peace Is Made, You Will Again Be Free": Islamic and Treaty Law, Black Sea Conflict, and the Emergence of "Prisoners of War" in the Ottoman Empire, 1739–1930. PhD diss., Queens' College, University of Cambridge, Cambridge, UK.

- Ssenyonjo, Manisuli. 2012. Jihad Re-Examined: Islamic Law and International Law. *Santa Clara Journal of International Law* 10 (1): 1–33.
- Stover, Eric. 2005. *The Witnesses: War Crimes and the Promise of Justice in the Hague*. Philadelphia, PA: University of Pennsylvania Press.
- Strick van Linschoten, Alex, and Felix Kuehn. 2011. *An Enemy We Created: The Myth of the Taliban-Al Qaeda Merger in Afghanistan*. London: Hurst.
- Subramanian, Narendra. 2008. Legal Change and Gender Inequality: Changes in Muslim Family Law in India. *Law & Social Inquiry* 33 (3): 631–72.
- Syed, Mairaj. 2013. Jihad in Classical Islamic Legal and Moral Thought. In *Just War in Religion and Politics*, ed. Jacob Neusner, Bruce Chilton, and R. E. Tully, 135–62. Lanham, MD: University Press of America.
- Tawil, Camille. [2007] 2010. *Brothers in Arms: The Story of al-Qa'ida and the Arab Jihadists*. Trans. Robin Bray. London: Saqi Books.
- Thomson, Janice. 1994. *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe*. Princeton, NJ: Princeton University Press.
- Toal, Gerard, and Carl Dahlman. 2011. *Bosnia Remade: Ethnic Cleansing and Its Reversal*. Oxford: Oxford University Press.
- Toholj, Miroslav. 2001. *“Holy Warriors” and the War in Bosnia and Herzegovina*. Belgrade: Igam.
- Tor, Deborah. 2005. Privatized Jihad and Public Order in the Pre-Seljuq Period: The Role of the *Mutatawwi'a*. *Iranian Studies* 38 (4): 555–73.
- Ulmen, Gary. 2007. Partisan Warfare, Terrorism, and a New *Nomos*. In *The International Political Thought of Carl Schmitt: Terror, Liberal War, and the Crisis of Global Order*, ed. Louiza Odysseos and Fabio Petito, 96–106. London: Routledge.
- Warrick, Catherine. 2005. The Vanishing Victim: Criminal Law and Gender in Jordan. *Law & Society Review* 39 (2): 315–48.
- Weber, Max. [1918] 1946. Politics as a Vocation. In *From Max Weber: Essays in Sociology*, ed. Hans Gerth and C. Wright Mills, 77–128. New York: Oxford University Press.
- Yurdusev, A. Nuri. 2004. The Ottoman Attitude Toward Diplomacy. In *Ottoman Diplomacy: Conventional or Unconventional?* ed. A. Nuri Yurdusev, 5–35. New York: Palgrave Macmillan.
- Zečević, Selma. 2007. Missing Husbands, Waiting Wives, Bosnian *Muftis*: *Fatwa* Texts and the Interpretation of Gendered Presences and Absences in Late Ottoman Bosnia. In *Women in the Ottoman Balkans*, ed. Amila Buturović and Irvin Cemil Schick, 335–60. London: I. B. Tauris.

CASES CITED

- Prosecutor v. Duško Tadić*, ICTY-94-1-T (1996).
- Prosecutor v. Enver Hadžihasanović and Amir Kubura*, ICTY-01-47-T (2006).
- Prosecutor v. Rasim Delić*, ICTY-04-83-T (2008).

STATUTES CITED

- Amendment to Article 9 of the Legal Order on Citizenship of the Republic of Bosnia and Herzegovina (18/92), published in BH Službeni Glasnik, 11/93, May 10, 1993.