

## VEILED IMPUNITY: IRAN'S USE OF NON-STATE ARMED GROUPS

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*The only strength of Iran is the weakness of the international community vis-à-vis Iran.*

– Shimon Peres<sup>1</sup>

### I. INTRODUCTION

In December of 2006, thousands of Hezbollah supporters crowded the streets of Beirut, angrily demanding that Prime Minister Siniora's government step down. This followed several months after armed members of Hezbollah crossed the Lebanese border into Israel and murdered three Israeli soldiers and kidnapped two others, precipitating the July War of 2006. In Iraq, Shi'a death squads – including members of Muqtada al-Sadr's militia – roam the streets of Baghdad, murdering Sunni Arabs and suspected collaborators of the U.S. led coalition. They, along with well placed Sadr supporters in the Iraqi government, seek to change the shape of the political landscape in Iraq, guaranteeing Shi'a dominance. In the Gaza Strip in June 2006, members of Hamas crossed underground into Israel, killed two Israeli soldiers, and kidnapped a third. Only six months prior to this, Hamas won a landslide victory in parliamentary elections. Each of these groups – Hezbollah, Mahdi's Army, and Hamas – is a non-state armed group that is financially, politically, and ideologically supported by Iran. As such, their actions may be attributed to Iran.

Iranian support of non-state armed groups is not limited to the three groups listed above. In fact, Iran provides support to groups all over the world in what has become a cornerstone of its foreign policy. By supporting these groups, Iran seeks

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1. The Honorable Shimon Peres, Deputy Prime Minister of Isr., Member of Knesset, Washington Institute for Near East Policy, Special Policy Forum: Israel: The War Against Hizballah and the Battle Against Hamas (Aug. 1, 2006), *available at* the website of the Washington Institute for Near East Policy, <http://www.washingtoninstitute.org/documents/44d7361fc2685.pdf>.

to accomplish multiple objectives, including: increasing Iranian influence in the Middle East while limiting Sunni Arab influence, destroying Israel, and limiting or eliminating U.S. influence in the region.

The level of sophistication of Iran's approach to indirect aggression is particularly noteworthy. Rather than using their own armed forces and engaging in open hostilities with adversaries, Iran cultivates non-state armed groups within the territory of, or directly adjacent to, other States. These non-state armed groups develop parallel military and political branches to rival the target State they seek to destabilize or overthrow. Iranian-backed armed groups are not limited, as are other State sponsored groups, to the blunt use of force to achieve its strategic objectives.

Surprisingly, Iran's use of non-state armed groups as an extension of its foreign policy has not met significant deterrence. Many still believe that aggression can only be committed when a State openly attacks another State with military force, a misperception of *jus ad bellum* law. This paper suggests a closer analysis of what constitutes unlawful aggression under international law. Specifically, the issue is whether State support of non-state armed groups as a means of threatening the territorial integrity or political independence of another State constitutes unlawful aggression.

Several aspects of Iran's involvement with non-state armed groups must be discussed before reaching these determinations. The general framework of these groups and a detailed discussion of Iran's support to Hezbollah, Iraqi insurgents, and Hamas are found in Section II. Iran's strategic objectives as well as its sophisticated use of armed groups are discussed in Section III. Whether Iran's use of non-state armed groups against target States amounts to aggression is analyzed in Section IV. The final section, Section V, provides recommendations and conclusions for policy and law-makers interested in deterring Iran's use of armed groups as a means of foreign policy.

## II. THE UNLAWFUL NATURE OF NON-STATE ARMED GROUPS & IRANIAN SUPPORT

Iran is responsible, financially and materially, for a new Shi'a strength in the Middle East due largely to its support of non-state armed groups.<sup>2</sup> Jordan's King Abdullah voiced concern over Iran's new "crescent" of influence running from Tehran through Iraq and Syria to Lebanon.<sup>3</sup> This is a sentiment shared by many Arab leaders, including King Abdullah of Saudi Arabia and Egyptian President Hosni Mubarak.<sup>4</sup>

Non-state armed groups can be categorized into four different groups: insurgents, terrorists, militias, and criminal organizations.<sup>5</sup> The emergence of the increased capabilities of armed groups to attack States in the post-Cold War era

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2. Bobby Ghosh, *Behind the Sunni-Shi'ite Divide*, TIME.COM, Feb. 22, 2007, <http://www.time.com/time/magazine/article/0,9171,1592849,00.html>.

3. *Id.*

4. *Id.*

5. RICHARD H. SHULTZ, JR. ET AL., ARMED GROUPS: A TIER-ONE SECURITY THREAT, U.S. AIR FORCE INST. FOR NAT'L SEC. STUD. 16, INSS Occasional Paper 57 (2004), available at <http://www.usafa.af.mil/df/inss/OCP/ocp57.pdf> [hereinafter SHULTZ, TIER ONE].

had a powerful impact on the State system.<sup>6</sup> Similarly, Iran's use of these groups introduces a new threat within that paradigm. Iran exploits four of the basic characteristics of non-state armed groups to achieve its strategic goals. These characteristics include: challenging the legitimacy of the State, using force as a primary instrument, maintaining local and global capabilities, and failing to recognize democratic principles and the rule of law.<sup>7</sup> Iran, however, changes this dynamic by using armed groups to undermine State legitimacy through methods other than the open use of force.

Historically, armed groups have used force as their primary method of threatening a State's political independence. In 1977, the United Nations (U.N.) Security Council condemned the unlawful aggression committed by mercenaries against the Republic of Benin.<sup>8</sup> While direct attacks against a State are sometimes committed, these groups tend to employ indirect and prolonged violence to exert their influence. This is the case in Colombia, Lebanon, and the Philippines.<sup>9</sup>

Some non-state armed groups attempt to legitimize their efforts by establishing a political wing and by providing public services. This can result in a State within a State, as was the case of the Maoist Rebels in Nepal.<sup>10</sup> Of these attempts at legitimacy, one expert comments:

It is true that some armed groups maintain political and paramilitary wings and that the former may, for tactical reasons, eschew violence. Still, the use of force is a critical instrument for these organizations, regardless of how they may seek to mask that fact. Violence is used instrumentally to achieve political and/or other objectives.<sup>11</sup>

In his article, "Era of Armed Groups," Richard H. Schultz discusses six defining aspects of armed groups. They are: leadership, rank and file membership, organizational structure and functions, an ideology or political code of beliefs and objectives, strategy and tactics, and links with other non-state and State actors.<sup>12</sup> The following Section focuses on the last of these, namely, Iran's ties to non-state armed groups.

#### A. *Hezbollah, Iraqi Insurgents, & Hamas*

Typically, non-state armed groups are used by States to supplement regular armed forces. Iran, however, uses non-state armed groups as a central component of its foreign policy.<sup>13</sup> By providing these groups with a combination of political,

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6. *Id.* at 3.

7. *Id.* at 13-17.

8. S.C. Res. 405, U.N. Doc. S/RES/405 (Apr. 14, 1977).

9. Richard H. Shultz, Jr., *The Era Of Armed Groups*, in THE FUTURE OF AMERICAN INTELLIGENCE 1, 1 (2005) [hereinafter Shultz, *Armed Groups*].

10. IRINNEWS.ORG, *Nepal: Rebels accused of running parallel government*, Sept. 14, 2006, <http://www.irinnews.org/report.aspx?reportid=61695>; See also BBCNEWS, *Nepal Maoists Disband Government*, Jan. 18, 2007, [http://news.bbc.co.uk/go/pr/fr/-/2/hi/sout\\_asia/6273535.stm](http://news.bbc.co.uk/go/pr/fr/-/2/hi/sout_asia/6273535.stm).

11. Shultz, *Armed Groups*, *supra* note 9, at 10.

12. *Id.*

13. See James M. O'Brien, *Exporting Jihad: Iran's Use of Non-State Armed Groups* 3 (Mar. 29, 2006) (unpublished M.A. thesis, Tufts University) (on file with The Fletcher School, Tufts University).

ideological, financial, and military backing, Iran exercises a unique sophistication in threatening the political independence of States. Rather than using direct force – and not as innocuous as winning elections – these groups undermine the legitimacy of recognized governments through their actions.<sup>14</sup>

Some of the groups that Iran supports include: the Armed Islamic Group in Algeria, Hamas in the Palestinian territories, Hezbollah in Lebanon, the Islamic Courts in Somalia, and several insurgent groups in Iraq such as the Badr Organization and Mahdi's Army. For the purpose of brevity, this paper will limit its focus to Hezbollah, Mahdi's Army and the Badr Organization in Iraq, and Hamas.

*B. Hezbollah: A Threat to International Law & Politics*

The most prominent non-state armed group backed by Iran is the Lebanon-based Hezbollah organization, designated by the U.S. Department of State as a foreign terrorist organization.<sup>15</sup> But to categorize Hezbollah merely as an organization that commits acts of terrorism is to overlook its dual threat to regional stability – the military and political aspects of the organization.<sup>16</sup> Members of Hezbollah's political wing hold seats in the Lebanese parliament and serve in Prime Minister Siniora's cabinet. The organization also maintains social institutions and provides basic services for southern Lebanon. In fact, it is a parallel political and military organization to Lebanon's duly elected government.<sup>17</sup>

Hezbollah was Iran's first use of a non-state armed group to achieve its strategic goals.<sup>18</sup> Closely following the aftermath of Iran's revolution several years before, Hezbollah was created in 1982 as a result of Israel's invasion of Lebanon.<sup>19</sup> Its ideology consisted of protecting the Lebanese Shi'a population from Israeli occupation and expanding Iran's brand of Shi'a extremism.

During the Lebanese Civil War, Hezbollah carried out attacks against Israeli, Western, and other targets suggesting Iranian involvement. These attacks include: the 1983 suicide bombings of French Headquarters and U.S. Marine barracks in Beirut, killing 58 French soldiers and 241 Marines; the 1984 hijacking of an Air France passenger jet; and the 1988 bombing near Saudi Arabian Airlines offices in Kuwait City – likely a result of Saudi Arabia's severance of diplomatic ties with Iran just weeks before.<sup>20</sup>

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14. *Id.* at 91-95.

15. OFFICE OF COUNTERTERRORISM, U.S. DEP'T. OF STATE, FACT SHEET: FOREIGN TERRORIST ORGANIZATIONS (Oct. 11, 2005), available at <http://www.state.gov/s/ct/rls/fs/37191.htm>.

16. See O'Brien, *supra* note 13, at 93-95.

17. Susan Sachs, *Hezbollah Offers a Helping Hand in Southern Lebanon*, N.Y. TIMES, May 31, 2000, at A3.

18. O'Brien, *supra* note 13, at 58.

19. CNN.COM, *Hezbollah: Violence mixed with social mission*, July 17, 2006, <http://www.cnn.com/2006/WORLD/meast/07/13/hezbollah/index.html>.

20. ELY KARMON, WASH. INST. FOR NEAR EAST POL'Y, 'FIGHT ON ALL FRONTS': HIZBALLAH, THE WAR ON TERROR, AND THE WAR IN IRAQ 4-11, Policy Focus No. 45 (Dec. 2003).

Following the end of Lebanon's civil war in 1989, Hezbollah was permitted to keep its arms under the Taif Accord in order to continue fighting the Israeli occupation of southern Lebanon.<sup>21</sup> During the 1990s, Hezbollah's leader, Sheikh Sayyed Hassan Nasrallah, developed the organization into a more effective fighting force with international reach.<sup>22</sup> Under his leadership, Hezbollah's network has conducted attacks or operations in Saudi Arabia, South America, Canada, Sweden, and several Asian States.<sup>23</sup> These attacks are closely linked to Iran.<sup>24</sup>

In spite of Israel's withdrawal from southern Lebanon in 2000, Hezbollah retained its militant wing.<sup>25</sup> In fact, they stockpiled thousands of medium and long range rockets and missiles, and continued lending operational support to the Palestinian intifada.<sup>26</sup> Hezbollah claims it cannot disarm since it is responsible for preventing further attacks by Israel.<sup>27</sup>

Today, the Lebanese government refuses to seize Hezbollah's assets or arms despite U.S. pressure, claiming they are a legitimate resistance movement and political party.<sup>28</sup> This unwillingness to disarm is in direct contravention of U.N. Security Council Resolution 1559.<sup>29</sup>

The July War of 2006, initiated by Hezbollah against Israel, demonstrated Hezbollah's current political and military strength. First, it was evident that, while smaller in size, Hezbollah is a formidable force against stronger adversaries, including the Israeli Defense Forces (IDF).<sup>30</sup> Second, it showed that Lebanon does not have the military strength or political capital to reign in Hezbollah if it truly wanted to.<sup>31</sup> Finally, Hezbollah enjoys unwavering popular support from large parts of Lebanon, particularly the Lebanese Shi'a community.<sup>32</sup>

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21. ANDREW EXUM, WASH. INST. FOR NEAR EAST POL'Y, *HIZBALLAH AT WAR: A MILITARY ASSESSMENT 2*, Policy Focus No. 63 (Dec. 2006) [hereinafter *HIZBALLAH AT WAR*].

22. *See id.*

23. KARMON, *supra* note 20, at 9-11. Hezbollah was responsible for the terror attacks in Buenos Aires in 1992 and 1994 and the bombing of the Khobar Towers in Saudi Arabia in 1996, which housed a U.S. military complex. Hezbollah's international operations also extend to the "tri-border area", where Argentina, Brazil, and Paraguay share a border. Also, Hezbollah cells in Colombia are known to use drug trafficking and contraband networks to launder funds later used to finance terrorism. *Id.* at 2, 9-10. *See also* SHULTZ, *TIER ONE*, *supra* note 5, at 59-61.

24. Matthew Levitt, Lecture at the Washington Institute for Near East Policy: Iran and Syria: State Sponsorship in the Age of Terror Networks (Mar. 7, 2005) (transcript available at the website of the Wash. Inst. for Near East Policy., <http://www.washingtoninstitute.org/templateC07.php?CID=230>).

25. *HIZBALLAH AT WAR*, *supra* note 21, at 2.

26. *See* KARMON, *supra* note 20, at 24.

27. Graham E. Fuller, *The Hizballah-Iran Connection: Model for Sunni Resistance*, 30 WASH. Q. 139, 144 (Winter 2006-2007). Hezbollah also claims that its military wing is necessary to liberate the small territory known as Shebaa Farms, which is occupied by Israel, recognized as Syrian, but claimed by Lebanon. *Id.*

28. KARMON, *supra* note 20, at 23.

29. S.C. Res. 1559, ¶ 3, U.N. Doc. S/RES/1559 (Sept. 2, 2004).

30. *See* *HIZBALLAH AT WAR*, *supra* note 21, at 5.

31. *Id.* at 8.

32. Hussein Dakroub, *Hezbollah allies claim win in Lebanon*, ASSOCIATED PRESS, June 6, 2005.

The strength of Hezbollah's political wing should not be underestimated. In June of 2005, Hezbollah won all 23 seats available in Parliament for the southern portion of Lebanon.<sup>33</sup> As a result, Hezbollah has gained some legitimacy in the international community. While some States categorize Hezbollah as a terrorist organization (U.S. and Australia), others, at least partially, recognize the political wing (U.K.).<sup>34</sup> To date, the United Nations and the European Union have also not designated Hezbollah as a terrorist organization.<sup>35</sup>

Hezbollah's political power is a direct threat to the established Lebanese government. If it were to continue its social services in the South and limit its actions to those of a traditional political party, there would be little concern. However, Hezbollah's motives have never been so benign. Although peaceful, the protests held in Beirut in December 2006 were a precursor to what could be more coercive means to remove Prime Minister Siniora's government.<sup>36</sup> In fact, Hezbollah and its political allies continue to demand a greater voice in Siniora's cabinet.<sup>37</sup> Some claim the political standoff is partly a remnant of sectarian divisions unresolved since the civil war,<sup>38</sup> and partly a result of pro-U.S. officials (Siniora) pitted against pro-Iranian and Syrian groups (Hezbollah).<sup>39</sup>

The recent moves by Hezbollah to seize more control in Beirut must be viewed in light of Iranian support. Martin Kramer, adding to a quote from Richard Armitage, stated, "If Hezbollah is the A-team [of terrorism], Iran is the team owner and Syria is the coach."<sup>40</sup> Iran offers a full range of support to Hezbollah, including political, economic, and military assistance.<sup>41</sup> The relationship between the two could not be more clear. At a meeting with Iranian Supreme Leader Khamenei in 2001, Nasrallah publicly kissed Khamenei's hand – a sign among Shi'a Muslims that Nasrallah accepts Khamenei as his leader.<sup>42</sup>

Without Iran's financial and military assistance, Hezbollah would not be the organization it is today. Iran provides Hezbollah with at least \$100 million per year,<sup>43</sup> and has also provided approximately 11,000 rockets to their arsenal.<sup>44</sup>

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33. *Id.*

34. Nigel Brew, Def. and Trade Group, Foreign Affairs, *Hezbollah in Profile*, Parliament of Australia, Research Note no. 42 2002-03, June 2, 2003, <http://www.aph.gov.au/Library/Pubs/rn/2002-03/03rn42.htm>.

35. *Id.*

36. Anthony Shadid, *Protest Crowds Surge as Beirut Braces for Next Step*, WASH. POST, Dec. 11, 2006, at A13.

37. *Id.*

38. Tensions between Sunni and Shia in Lebanon were relatively calm until the assassination of former Prime Minister Rafiq Hariri, a respected Sunni leader. Sunni's blame one of Hezbollah's key sponsors, Syria, for the killing. See Ghosh, *supra* note 2.

39. Shadid, *supra* note 36.

40. KARMON, *supra* note 20, at 49 (citing Martin Kramer, Remarks at the Woodrow Wilson International Center for Scholars Conference: The Terrorism of Hizbollah: Ideology, Scope, Threat (Jan. 16, 2003)).

41. KARMON, *supra* note 20, at 17.

42. Mehdi Khalaji, WASH. INST. FOR NEAR EAST POL'Y, *Iran's Shadow Government in Lebanon*, PolicyWatch No. 1124 (July 19, 2006) [hereinafter *Iran's Shadow Government*].

43. David Makovsky, *Iran's Hand in Lebanon*, SAN DIEGO UNION TRIB., July 23, 2006, at G-1.

Beyond merely giving arms and equipment, Iran provides the expertise of its special forces. Since Hezbollah's founding, its members have conducted regular training exercises with the Iranian Revolutionary Guard Corps (IRGC).<sup>45</sup>

Conversely, Hezbollah's achievements have helped strengthen the hardliners in Iran who actively engage in anti-U.S. and anti-Israeli policies.<sup>46</sup> The 2000 Israeli withdrawal from southern Lebanon and the de facto victory of Hezbollah in the July War of 2006 have emboldened Tehran.<sup>47</sup> Analysts agree that Iran pushed for Hezbollah and Hamas to instigate a confrontation with Israel in 2006 in order to draw attention away from increased international pressure on their nuclear ambitions.<sup>48</sup> Even the former Hezbollah Secretary General, Sheik Sobhi Tufeili, claims Hezbollah has now become a pawn to Iran.<sup>49</sup>

Iran's use of Hezbollah as an extension of its foreign policy allows a great deal of strategic flexibility. This is due, in large part, to Hezbollah's ability to ignore international law with relative impunity. Hezbollah regularly engages in terrorism, criminal enterprises, and violates the laws of war.<sup>50</sup> Furthermore, Hezbollah directly violates the mandate of U.N. Security Council Resolution 1559 by maintaining its militant wing. This resolution calls for the removal of all foreign troops from Lebanon and disarmament of all militia.<sup>51</sup> Resolution 1559 has had little influence over the status of Hezbollah's arms and has done nothing to stop outside support from both Syria and Iran.<sup>52</sup>

This unwavering support translates into political capital for Hezbollah. Flexing its political muscle, Hezbollah influenced the Siniora government after the Cedar Revolution of 2004, which effectively ousted Syrian troops from Lebanese soil. Shortly after the Cedar Revolution, Hassan Nasrallah arranged for three of his party members to be part of the Siniora cabinet, all while Hezbollah kept its strategic relationship with Syria.<sup>53</sup> Over the next six months, politicians and journalists who supported the Cedar Revolution were assassinated via car bombs.<sup>54</sup> Analysts believe this was to demonstrate to the anti-Syrian politicians in Lebanon that there would be no obstructing Iranian-Syrian assistance to Hezbollah.<sup>55</sup> This

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44. *Id.*

45. *Id.*

46. KARMON, *supra* note 20, at 17.

47. Posting by Walid Phares to Counterterrorism Blog, *Hezbollah's Iranian War in Lebanon*, [http://counterterrorismblog.org/2006/07/hizbollahs\\_iranian\\_war\\_in\\_leba.php](http://counterterrorismblog.org/2006/07/hizbollahs_iranian_war_in_leba.php) (July 22, 2006, 01:50 PM).

48. *Id.* See also Makovsky, *supra* note 43.

49. Steve Schippert, *Iran Fueling Hamas and Hizballah Toward Conflict*, THREATSWATCH.ORG, Dec. 8, 2006, <http://inbrief.threatswatch.org/2006/12/iran-fueling-hamas-and-hizball/>.

50. KARMON, *supra* note 20, at 17.

51. S.C. Res. 1559, ¶¶ 2-3, U.N. Doc. S/RES/1559 (Sept. 2, 2004). See also Adel Darwish, *Hezbollah and Israel: The Proxy War*, MIDEASTNEWS, July 2006, <http://www.mideastnews.com/Lebanon06july.html>.

52. Phares, *supra* note 47.

53. *Id.*

54. *Id.*

55. *Id.*

terror seemingly persuaded the Lebanese government to not implement the measures in Resolution 1559.<sup>56</sup>

At least one analyst is more concerned with the political and ideological ties between Hezbollah and Iran than with disbanding Hezbollah's military wing.<sup>57</sup> It is believed that only total severance with Iran will eliminate Iran's use of Hezbollah as a threat to the region. Severing these ties, however, will prove difficult because, in the war of ideas, Hezbollah and Iran clearly have the initiative in Lebanon.

Ironically, Hezbollah's and Iran's popularity in Lebanon is due more to the public services they provide than to their collective military strength.<sup>58</sup> This stems from the early 1980s, when Iran first helped Hezbollah build broadcasting, healthcare, and educational centers. Iran also founded several hospitals and charitable organizations in southern Lebanon, which work closely with Hezbollah. With Iran's support, Hezbollah is able to provide for the basic needs of the people where the Lebanese government cannot.<sup>59</sup>

Iran is careful to cultivate future relationships as well. Every year hundreds of Hezbollah affiliated Lebanese students attend political and religious training at Iranian universities and seminaries.<sup>60</sup> The faithful Shi'a in Lebanon also have close ties to Iran. While Ali Hussein al-Sistani is respected as the most important ayatollah in Shi'a Islam, his presence in Lebanon is limited since he is based in the holy city of An Najaf, Iraq. In contrast, Iran receives religious taxes from Lebanese Shiites, and it pays monthly salaries to the Shiite clerics of Lebanon, thereby securing their loyalty.<sup>61</sup>

In addition, Iran is responsible, financially and materially, for a new Shi'a strength in the region.<sup>62</sup> Following the U.S. invasion of Iraq in 2003, Iran, Syria, and Hezbollah were able to rely on their close Shi'a ties in the region as a counter weight to U.S. policy in the region. In fact, many Shi'a organizations in Iraq already had financial and operational ties to Hezbollah prior to the U.S. invasion.<sup>63</sup> Several years later, after Hezbollah's impressive tactical and strategic successes in the July War of 2006, many fear that other groups, particularly the Iraqi militias, will emulate Hezbollah.<sup>64</sup> In fact, Muqtada al-Sadr, radical Shi'a cleric and leader of Mahdi's Army in Iraq, publicly supported Hezbollah during this conflict, and

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56. *Id.*

57. *Iran's Shadow Government*, *supra* note 42.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. Ghosh, *supra* note 2.

63. See KARMON, *supra* note 20, at 33.

64. Andrew Exum, WASH. INST. FOR NEAR EAST POL'Y, *Comparing and Contrasting Hizballah and Iraq's Militias*, PolicyWatch No. 1197 (Feb. 14, 2007), <http://www.washingtoninstitute.org/templateC05.php?CID=2566>.

members of the Mahdi Army have allegedly accepted training from Hezbollah in Lebanon and Iraq.<sup>65</sup>

*C. Iraqi Insurgent Groups: Mahdi's Army & Badr Organization*

Iran's support of non-state armed groups profoundly impacts the ongoing conflict in Iraq. Groups such as Mahdi's Army and the Badr Organization not only enjoy public support among disenfranchised Shi'a, but also maintain strong militant forces to combat coalition forces and Sunni insurgents. Each group holds key positions in the current Iraqi government, led by Prime Minister Nouri al Maliki. Similar to Iran's support of Hezbollah, these organizations operate with relative impunity, which allows Iran to use them to pursue its strategic objectives at a safe distance from the law.

The Iraqi insurgent groups most favored by Iran are Mahdi's Army and the Badr Organization. Mahdi's Army was formed in the summer of 2003 and is comprised of the armed followers of the cleric Moqtada al-Sadr.<sup>66</sup> Currently, it is estimated that its forces are at least several thousand strong.<sup>67</sup> At al-Sadr's direction, Mahdi's Army commits acts of terrorism and targets U.S., U.K., and Iraqi forces.<sup>68</sup> The fiercest outright clashes between coalition forces and Mahdi's Army came in April and August 2004.<sup>69</sup> The Badr Brigade – later renamed the Badr Organization – was founded in 1982 as the armed wing of the Supreme Council for Islamic Revolution in Iraq (SCIRI), which was established by Iran to oppose Saddam Hussein's regime.<sup>70</sup>

Unquestionably, the Iraqi insurgent groups are known violators of the laws of war. During the standoff with coalition forces in An Najaf in August 2004, al-Sadr and Mahdi's Army took up fighting positions in and around one of Shi'a Islam's holiest sites, the Imam Ali mosque.<sup>71</sup> This is a clear violation of international humanitarian law.<sup>72</sup> More recently, U.S. and Iraqi forces arrested the deputy health minister, who is a key member of al-Sadr's Mahdi's Army. He is accused of aiding militiamen and moving weapons in ambulances.<sup>73</sup> Perhaps most egregious is the ethnic cleansing committed by the "death squads" of both Mahdi's Army and the Badr Corps. Radical Shi'a elements in the region applaud al-Sadr's

65. *Id.* at 2.

66. See GLOBALSECURITY.ORG, *Al-Mahdi Army / Active Religious Seminary / Al-Sadr's Group*, <http://www.globalsecurity.org/military/world/para/al-sadr.htm>.

67. MIPT Terrorism Knowledge Base, *Mahdi Army*, <http://www.tkb.org/Group.jsp?groupID=4437>.

68. GLOBALSECURITY.ORG, *supra* note 66.

69. *See id.*

70. KARMON, *supra* note 20, at 33. See also IRAN FOCUS, *Iran is Behind Badr Brigade in Iraq*, Nov. 17, 2005, <http://www.iranfocus.com/modules/news/article.php?storyid=4461>.

71. CNN.COM, *Who is Muqtada al-Sadr?*, Aug. 13, 2004, <http://edition.cnn.com/2004/WORLD/meast/08/13/iraq.alsadr/>.

72. Human Rights Watch, *Off Target: The Conduct of the War and Civilian Casualties in Iraq* 73, HRW Index No. 1564322939, Dec. 2003.

73. BBCNEWS, *Top Iraqi Official Held in Raid*, Feb. 8, 2007, [http://news.bbc.co.uk/2/hi/middle\\_east/6341321.stm](http://news.bbc.co.uk/2/hi/middle_east/6341321.stm).

role in the sectarian conflict in Iraq, where his militia is likely responsible for thousands of Sunni deaths.<sup>74</sup>

Al-Sadr's political strength is derived from his popular support among the poor Shi'a in Iraq. Al Sadr's family successfully portrays itself as doing the most to redress decades of suppression by Sunni Muslims under Saddam Hussein's rule.<sup>75</sup> Mahdi's Army wins support in places like Sadr City, a slum in northeast Baghdad of about two million people. In addition to protection against Sunni insurgents, they provide basic necessities such as cooking gas, and services like fixing drains.<sup>76</sup> Al-Sadr spends significant resources, donations from his followers, on orphans and poor families.<sup>77</sup> In addition, he has established a network of social institutions since the fall of Saddam Hussein's regime.<sup>78</sup> Controlling both the Health and Transportation Ministries facilitates al-Sadr's legitimate support for his social endeavors.<sup>79</sup> As a result, Sadr City has become a State within a State, not unlike Hezbollah's influence in southern Lebanon.<sup>80</sup>

Today, al-Sadr enjoys considerable political cover. Previous attempts by coalition forces to target al-Sadr and his Mahdi's Army have been stifled by Prime Minister Nuri al-Maliki.<sup>81</sup> In fact, Prime Minister Maliki owes his position to the swing votes of al-Sadr loyalists in the parliament.<sup>82</sup>

Politics have become the favored refuge of Mahdi's Army. It is characteristic of its members to lie low and return to politics so as not to incur the full wrath of the coalition. In late January 2007, following President Bush's announcement of the coalition "surge,"<sup>83</sup> they did just that. The 30 parliamentary members of the Sadr bloc returned to politics after a two month boycott.<sup>84</sup> Many believed this was to avoid the brunt of the U.S. "surge," while others think al-Sadr is building more leverage in anticipation of political pressure on his movement.<sup>85</sup> Al-Sadr himself,

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74. Ghosh, *supra* note 2.

75. GLOBALSECURITY.ORG, *supra* note 66.

76. Andrew North, *US Seeking Support in Sadr City*, BBCNEWS, Mar. 7, 2007, [http://news.bbc.co.uk/2/hi/middle\\_east/6425171.stm](http://news.bbc.co.uk/2/hi/middle_east/6425171.stm).

77. Michel Nawfal, *Iran and Muqtada al-Sadr's Movement – Driving the Americans Into a Corner in Iraq*, BEIRUT AL-MUSTAQBAL, Apr. 10, 2004 (Open Source Center trans., on file with author).

78. *Id.*

79. Jeffrey Bartholet, *How Al-Sadr May Control U.S. Fate in Iraq*, NEWSWEEK, Dec. 4, 2006, available at <http://www.msnbc.msn.com/id/15898064/site/newsweek/print/1/displaymode/1098>.

80. North, *supra* note 76.

81. *Id.*

82. Bartholet, *supra* note 79.

83. See President George W. Bush, Address to the Nation (Jan. 10, 2007), available at <http://www.whitehouse.gov/news/releases/2007/01/20070110-7.html> [hereinafter President's Address].

84. CNN.com, *25 U.S. troops die on one of deadliest days in Iraq*, Jan. 21, 2007, <http://www.cnn.com/2007/WORLD/meast/01/21/Iraq.main/index.html>.

85. See Mike Wooldridge, *New Pressure on Mehdi Army*, BBCNEWS, Jan. 24, 2007, [http://news.bbc.co.uk/2/hi/middle\\_east/6296097.stm](http://news.bbc.co.uk/2/hi/middle_east/6296097.stm).

however, remains out of the political sphere so he can develop his two-front strategy: develop his militia while his followers operate in politics.

Iran's support for Shi'a militias was clear in the early stages of the Iraq conflict. Ayatollah Ali Hossein Khamenei declared on April 11, 2003, that Iran would not "remain neutral between the Iraqi people and the occupiers."<sup>86</sup> Primarily, Iranian ambitions in Iraq are to protect and promote the interests of the Shi'a, and frustrate the efforts of the U.S.-led coalition.<sup>87</sup> In spite of the Persian-Arab divide, Iranian ties to Iraqi Shi'a opposition dates back to the founding of the SCIRI's militant wing, the Badr Organization, in 1982.<sup>88</sup>

As early as April 2004, Iranian diplomatic sources stated that "certain Iranian circles wish to push the United States into an Iraqi corner to avert any serious U.S. challenge to Iran in the near future, which is a normal thing to do."<sup>89</sup> The same source responded to a question about Tehran's link to al-Sadr's group: "The United States came to Iraq [to put pressure on Iran].... For its part, Iran wishes to see the United States driven into a corner in Iraq."<sup>90</sup> Al Sadr's movement is a relative unknown to the U.S. in comparison to other groups in the Iraqi government, both politically and militarily. It is a "hidden force."<sup>91</sup> Al-Sadr claimed that if Iran were attacked by the United States, then Mahdi's Army would come to its defense. Al-Sadr made this announcement from Tehran in 2006.<sup>92</sup>

There is little doubt that Iran supplies arms and ammunition to Shi'a militias and is committed to seeing the United States fail in Iraq.<sup>93</sup> Iran provides the Mahdi's Army and the Badr Organization with weapons, mortar shells, and rocket propelled grenade (RPG) rounds.<sup>94</sup> British intelligence suggests that the Sadr-led uprising in Najaf, Basra, and other southern Iraqi cities in 2004 was financed by Iran.<sup>95</sup> Iran once relied exclusively upon the Badr Organization in Iraq, but with recent support to Mahdi's Army it is uncertain whether this has changed.<sup>96</sup> Nonetheless, it is clear that the Badr Organization at one point received operational and financial support from the Iranian Revolutionary Guard Corps in the sum of \$3 million per month.<sup>97</sup> In contrast, a Mahdi's Army commander stated that Iran's help is given to al-Sadr's militia, not because they like them, "but because they

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86. KARMON, *supra* note 20, at 38.

87. Robert Baer, *Where's the Smoking Gun on Iran?*, TIME.COM, Feb. 13, 2007, <http://www.time.com/time/world/article/0,8599,1588810,00.html> [hereinafter *Where's the Smoking Gun on Iran?*].

88. KARMON, *supra* note 20, at 33. See also IRAN FOCUS, *supra* note 70.

89. Nawfal, *supra* note 77.

90. *Id.*

91. *Id.*

92. Ghaith Abdul-Ahad, 'If they pay we kill them anyway' – the Kidnapper's Story, THE GUARDIAN (London), Jan. 27, 2007, at 1.

93. *Where's the Smoking Gun on Iran?*, *supra* note 87.

94. Abdul-Ahad, *supra* note 92.

95. MIPT Terrorism Knowledge Base, *Mahdi Army*, *supra* note 67.

96. See Abdul-Ahad, *supra* note 92.

97. IRAN FOCUS, *supra* note 70.

hate the U.S.”<sup>98</sup> While Iran supports both organizations, they remain rival groups.<sup>99</sup>

In early 2007, the U.S. government took a rare step and openly accused Iran of providing highly effective roadside bombs to Iraq's militia. It was reported that the Badr Brigade and Mahdi's Army received and used Explosively Formed Penetrators (EFPs) and killed about 1780 coalition troops from 2005 to 2006.<sup>100</sup> Insurgents also received training on how to implement EFPs in Iranian territory.<sup>101</sup> While Iran is generally charged with providing these weapons, the level of Tehran's direct involvement is unclear. Former U.S. Joint Chiefs of Staff Chairman General Peter Pace said that these roadside bombs are linked to Iran, but it is unclear whether top government officials are aware or complicit.<sup>102</sup>

Because it is given indirectly, Iranian support to Iraq's militia is hard to detect. American forces arrested and have been holding five IRGC members since January 11, 2007.<sup>103</sup> They claim these five helped the Iraqi opposition target Americans. However, there is no direct evidence of attacks by the IRGC, largely because this evidence is so hard to come by.<sup>104</sup> This fits Iran's policy of indirect engagement through non-state armed groups.

Current reports are uncertain as to how deep Iran's connection to Mahdi's Army is, besides funding and supplying weapons.<sup>105</sup> What is clear, however, is that Al Sadr and his militia find sanctuary in Iran. After President Bush announced the security crackdown in Baghdad<sup>106</sup> – or the “surge” – senior Mahdi Army officials fled to either Syria or Iran.<sup>107</sup> Also, Sadr headquarters warned their supporters to avoid confrontation with the Americans at all cost.<sup>108</sup> A senior advisor to Prime Minister Maliki confirmed that al-Sadr was in Iran.<sup>109</sup> This would not be the first time al-Sadr has met with the hardline Shi'a clerics in

98. Abdul-Ahad, *supra* note 92.

99. Bartholet, *supra* note 79.

100. Sharon Behn, 'Rogue' Shi'ite Militias Using Iranian Bombs, WASH. TIMES, Feb. 18, 2007, at A5. See also Michael R. Gordon, *Deadliest Bomb in Iraq is Made by Iran*, U.S. SAYS, N.Y. TIMES, Feb. 10, 2007, at A1; BBCNEWS, *US accuses Iran over Iraq Bombs*, Feb. 11, 2007, [http://news.bbc.co.uk/2/hi/middle\\_east/6351257.stm](http://news.bbc.co.uk/2/hi/middle_east/6351257.stm); CNN.COM, *Gates: U.S. Has Evidence of Iran Helping Insurgents*, Feb. 9, 2007, <http://www.cnn.com/2007/POLITICS/02/09/gates.iraq.iran.ap/index.html>.

101. Jaime McIntyre, *Iraqi Insurgents Being Trained in Iran*, U.S. SAYS, CNN.COM, Apr. 12, 2007, <http://www.cnn.com/2007/WORLD/meast/04/11/iraq.main/index.html>.

102. CNN.COM, *Top General Casts Doubt on Tehran's Link to Iraq Militias*, Feb. 14, 2007, <http://www.cnn.com/2007/WORLD/meast/02/13/pace.iran/> [hereinafter *Top General Casts Doubt*].

103. Robert Baer, *Are the Iranians Out For Revenge?*, TIME.COM, Jan. 30, 2007, <http://www.time.com/time/world/article/0,8599,1583523,00.html>.

104. See *Where's the Smoking Gun on Iran?*, *supra* note 87.

105. See Abdul-Ahad, *supra* note 92.

106. President's Address 2007, *supra* note 83.

107. Joshua Partlow & Ernesto Londero, *Lie Low, Fighters are Told; 'Try at All Costs' to Avoid Conflict with Americans*, WASH. POST, Feb. 1, 2007, at A10.

108. *Id.*

109. BBCNEWS, *Radical Shia Cleric 'is in Iran'*, Feb. 15, 2007, [http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle\\_east/6364193.stm](http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/6364193.stm).

Iran.<sup>110</sup>

Iran's support of non-state armed groups is not limited to religious affiliation. It also supports groups that share its strategic interests. The following section discusses one such non-Shi'a group that Iran supports – Hamas.

*D. Hamas: Decades of Violence & A Political Coup*

Hamas was founded in the 1960s as an outgrowth of the Muslim Brotherhood.<sup>111</sup> Its founder, Sheikh Ahmed Yassin, started the group with non-violent practices, but he took the group in a more radical, violent direction in the early 1980s.<sup>112</sup> The Charter of Hamas, released in 1988, leaves no doubt about its goals, including: dedication to creating an Islamic state in Palestinian territory, which includes all of modern Israel and the Palestine territories. This necessarily involves the destruction of Israel through violent jihad, the duty of all Muslims.<sup>113</sup>

Hamas frequently uses suicide bombs and rocket attacks to attack civilians and is violently opposed to a peaceful settlement with Israel. However, popular support for Hamas is substantial. Armed with significant outside financial support, the group provides extensive networks of social services in the Palestinian Territories.<sup>114</sup>

The political wing of Hamas won a significant victory in January 2006. In the parliamentary elections, Hamas won 76 of the 132 seats.<sup>115</sup> In spite of the electoral victory, Hamas continues its aggressive position toward Israel.

In the fall of 2006, Hamas was engaged in a violent power struggle with its more moderate rival group, al-Fatah.<sup>116</sup> A power-sharing agreement resulted from a conference in Mecca. Again, Hamas emerged the victor.<sup>117</sup> The organization will essentially maintain its foothold over the security force run by Hamas in Gaza, as well as key political appointees.<sup>118</sup> Therefore, both its military and political wings remain strong.

There is ample evidence that Iran now directly supports Hamas.<sup>119</sup> Iran has sponsored three conferences relating to support for the second Palestinian Intifada, in 2001, 2002, and 2006.<sup>120</sup> More recently, in December 2006, Prime Minister Ismail Haniyeh (Hamas) was in Tehran meeting with President Mahmoud

110. See Rowan Scarborough, *Iran, Hezbollah Support al-Sadr*, WASH. TIMES, Apr. 7, 2004, at A1.

111. MIPT Terrorism Knowledge Base, *Hamas*, <http://www.tkb.org/Group.jsp?groupID=49>.

112. *Id.*

113. See The Covenant of the Islamic Resistance Movement, pmbl., intro., arts. 6-7, 11, 13, 15, 33, Aug. 18, 1988, available at <http://www.yale.edu/lawweb/avalon/mideast/hamas.htm>.

114. MIPT Terrorism Knowledge Base, *Hamas*, *supra* note 111.

115. *Id.*

116. *Id.*

117. See Tim McGirk, *Hamas Gets the Upper Hand*, TIME.COM, Feb. 15, 2007, <http://www.time.com/time/world/article/0,8599,1590431,00.html>.

118. *See id.*

119. Makovsky, *supra* note 43.

120. Bill Samii, *Iran: Intifada Conference in Tehran Has Multiple Objectives*, RADIO FREE EUROPE, Apr. 14, 2006, <http://www.rferl.org/featuresarticle/2006/04/a6170638-c079-4af1-b441-75dbba236340.html>.

Ahmadinejad. Haniyeh pledged to continue Hamas' violent jihad and refused to recognize "the Zionist entity" in spite of international pressure to do so.<sup>121</sup>

After Hamas won the January 2006 parliamentary elections, the West set out to isolate the Hamas government by cutting off financial support.<sup>122</sup> Iran quickly offered to step in and give financial assistance where the United States and the European Union left off.<sup>123</sup> So far, Iran has given the government at least \$120 million in aid since the West cut off financial ties.<sup>124</sup> Iran intends to invest \$250 million more in order to upgrade the organization's political and military capabilities.<sup>125</sup> As the primary supporter of the Hamas government, Iran now has stronger influence over its political and operational elements.

Military aid is given to Hamas in the form of new technology, training, and equipment.<sup>126</sup> Iran provides tons of explosives, small arms, and millions of rounds of ammunition and advanced anti-tank rockets.<sup>127</sup> Under the recently agreed military arrangement, Iran is also setting up a logistics system for Hamas to help properly maintain and produce weapons.<sup>128</sup> The aim is to make Hamas as effective a fighting force as Hezbollah.<sup>129</sup>

Training of Hamas militants occurs in both the Palestinian Territories and Iran. According to one report, Iranian agents, including a General Officer, were arrested in Gaza at an Islamic university known to be a Hamas stronghold. The agents were actively training Hamas activists to make explosives in chemical labs.<sup>130</sup> Groups of fighters from Gaza also receive training in Syria and Iran at IRGC bases.<sup>131</sup>

Hamas and Iran have reciprocal ties. In 2005, Hamas Chief Khaled Mashaal vowed that if Iran were attacked by Israel, Hamas would step up attacks. He added that President Ahmadinejad is courageous for dismissing the holocaust and calling for Israel to be transplanted to Europe or North America.<sup>132</sup> An Israeli newspaper

121. Schippert, *supra* note 49.

122. BBCNEWS, *Iran Offers Hamas Financial Aid*, Feb. 22, 2006, [http://news.bbc.co.uk/2/hi/middle\\_east/4739900.stm](http://news.bbc.co.uk/2/hi/middle_east/4739900.stm).

123. *Id.*

124. Richard Boudreaux, *Israeli Official Says Iran Training Hamas*, L.A. TIMES, Mar. 6, 2007, at 7.

125. TEL AVIV YEDI'OT AHARONOT, *Israel: Secret Iran-Hamas Agreement to Improve Military Capabilities*, Dec. 2, 2006, at 2 [hereinafter *Secret Iran-Hamas Agreement*].

126. ASSOCIATED PRESS, *Galant Outlines Hamas-Iran Ties*, JERUSALEM POST, Mar. 7, 2007, available at <http://www.jpost.com/servlet/Satellite?cid=1173173954784&pagename=JPost%2FJPArticle%2FShowFull>. See also Boudreaux, *supra* note 124.

127. Schippert, *supra* note 49.

128. See *Secret Iran-Hamas Agreement*, *supra* note 125.

129. See *id.*

130. Ali Waked, *Iranian General Supervised Hamas Arms, Source Says*, YNETNEWS.COM, Feb. 2, 2007, <http://www.ynetnews.com/articles/0,7340,L-3360122,00.html>. During this raid a Hamas commander responsible for orchestrating the kidnapping of an Israeli soldier near the Gaza Strip last June – one of the precipitating moves to the July War of 2006 – suffered injuries. *Id.*

131. *Secret Iran-Hamas Agreement*, *supra* note 125.

132. Posting by Robert Spencer to Jihad Watch, *Hamas Vows Revenge if Iran Attacked*,

reports that, "In effect, the Iran-Hamas agreement constitutes the final and decisive phase of enlisting Hamas into the broad rejectionist front that Iran is seeking to establish – a front that already includes Lebanon, Syria, and elements in Iraq."<sup>133</sup>

### III. IRANIAN OBJECTIVES & TACTICS

Many misinterpret Iran's strategy of using non-state armed groups for erratic behavior, or "rogue" tendencies. In reality, Iran has a very clear strategic objective in using non-state armed groups to foment instability, politically and militarily, in target States.<sup>134</sup> Iran's non-state armed groups' influence is no longer limited to specific regions; it is now a global threat. While some groups appear to have divergent interests, each serves Iran's overall policy objectives.<sup>135</sup> This section reveals that Iran's goals may be similar to other State supporters of insurgent groups; namely, regional influence and strategic competition,<sup>136</sup> but their tactics are more sophisticated.

#### A. Regional Hegemony & Beyond

Iran's goals are clear: increasing Iranian influence in the Middle East while limiting Sunni Arab influence, destroying Israel, and limiting or eliminating U.S. influence in the region. The U.S. unwittingly played into Iran's strategic plan by taking out its two principal rivals in the region – Saddam Hussein in Iraq, and the Taliban in Afghanistan. Strong allies in Syria and Hezbollah also contribute to Iran's newfound status in the region. Iran's efforts to go nuclear, if successful, would undoubtedly send shockwaves through the regional power structure as well.

Destroying Israel and establishing one State in Palestine remains a priority, and has been at least since the revolution in 1979.<sup>137</sup> Iranian support of Hamas, in spite of the Shi'a-Sunni divide, is a logical extension of this policy. President Mahmoud Ahmadinejad is vocal on this point. Shortly after taking office in 2005, he openly called for Israel to be "wiped off the map."<sup>138</sup> Following the start of the July War of 2006, the Iranian paper which most represents the supreme leader Ayatollah Seyyed Ali Hossayni Khamenei's voice, stated:

Wiping out the Zionist regime is not only a religious and national duty but a humane one...[P]olitical, logistical and arms support for Hamas and Hezbollah and sending combatants to the front is the minimum cost that the Islamic countries must pay for safeguarding their security and independence.<sup>139</sup>

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<http://www.jihadwatch.org/archives/009426.php> (Dec. 15, 2005, 6:40 AM).

133. *Secret Iran-Hamas Agreement*, *supra* note 125.

134. DANIEL L. BYMAN ET AL., RAND CORP., IRAN'S SECURITY POLICY IN THE POST-REVOLUTIONARY ERA 8, MR-1320-OSD (2001).

135. O'Brien, *supra* note 13, at 59.

136. DANIEL L. BYMAN ET AL., RAND CORP., TRENDS IN OUTSIDE SUPPORT FOR INSURGENT MOVEMENTS 23, MR-1405-OTI (2001) [hereinafter TRENDS IN OUTSIDE SUPPORT].

137. AL JAZEERA, *Ahmadinejad: Wipe Israel Off Map*, Oct. 28, 2005, <http://english.aljazeera.net/English/archive/archive?ArchiveId=15816>.

138. *Id.*

139. Makovsky, *supra* note 43.

In Iraq, support of the Shi'a majority, including SCIRI, the Badr Organization, and Mahdi's Army, is the easiest way to cripple U.S. policy objectives. As long as the United States is preoccupied with Iraq and Afghanistan, there is little chance that it poses a significant military threat to Iran. Furthermore, the Islamic Republic cannot be deaf to U.S. public opinion supporting a withdrawal of forces from Iraq. Critics of the Iraq war are skeptical of the administration's efforts to link Iran to the Iraqi militias, claiming it is the same type of hype used prior to the invasion of Iraq.<sup>140</sup>

Perhaps more disquieting than Iran's objectives are the methods it uses to achieve them. By undermining existing governments, Iran does not have to fire a single shot in order to gain regional influence, particularly in Lebanon and Iraq. Instead, it supports armed groups and their political wings which delegitimize target States, thereby securing Iranian interests.

#### *B. The Sophisticated Nature of Iranian Support*

The methods employed by Iranian-backed armed groups seem to reflect an unwelcome evolution in the use of insurgents. However, State sponsorship of non-state armed groups is not a new phenomenon. Prior to World War II, a proxy war was fought in Spain between Germany and the Soviet Union. Germany's fascist allies were led by General Franco, who battled the Soviet-backed Republicans in the Spanish Civil War.<sup>141</sup> Since 1946 there have been at least thirty-two cases of external participation by States in internal conflicts.<sup>142</sup> Another report estimates that from 1991-2000, State support played a significant role in forty-four insurgencies.<sup>143</sup>

Also, non-state armed groups achieved greater strategic and transnational capabilities as a result of U.S.–Soviet proxy conflicts during the Cold War.<sup>144</sup> In the post-Cold War era, transitional or declining States are breeding grounds of lawless, ungoverned areas ripe for control by armed groups.<sup>145</sup>

State support is not limited to specific geographic locations or to specific causes. Governments have supported groups in Asia, Africa, Europe and the Middle East.<sup>146</sup> The reasons behind State support include gaining regional influence, destabilizing neighbor States, payback, regime change, influencing the opposition, internal security, prestige, supporting co-religionists, supporting co-

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140. *General Casts Doubt*, *supra* note 102.

141. Adel Darwish, *Hezbollah and Israel: The Proxy War*, MIDEASTNEWS.COM, July 2006, <http://www.mideastnews.com/Lebanon06july.html>. Darwish compares the Spanish Civil War to the July War of 2006 in Lebanon, where he argues that the United States did combat against Syrian and Iran through Israel and Hezbollah, respectively. *See id.*

142. Nils Petter Gleditsch et al., *Armed Conflict 1946-2001: A New Dataset*, 39 J. PEACE RES. 615, 620 (2002). Version 4-2006 of the dataset is based on changes described in Lotta Harbom et al., *Armed Conflict and Peace Agreements*, 43 J. PEACE RES. 617, 617-31 (2006).

143. TRENDS IN OUTSIDE SUPPORT, *supra* note 136, at 9.

144. O'Brien, *supra* note 13, at 29 (citing THOMAS P.M. BARNETT, THE PENTAGON'S NEW MAP: WAR AND PEACE IN THE TWENTY-FIRST CENTURY 43-46 (2004)).

145. SHULTZ, TIER ONE, *supra* note 5, at 8. *See also* S.C. Res. 405, *supra* note 8.

146. TRENDS IN OUTSIDE SUPPORT, *supra* note 136, at 17.

ethnics, irredentism, leftist ideology, and plunder.<sup>147</sup>

Hezbollah, the Iraqi insurgents, and Hamas all have strong militant wings, but their primary weapon against their host State is not the use of force. Not surprisingly, most datasets that track armed conflicts do not consider the type of support that Iran gives these groups either because a.) an open conflict resulting in casualties has not yet emerged, b.) Iran's military support is not direct and is therefore not taken into account, or c.) political and social support intended to undermine sitting governments is not considered. In fact, two separate datasets that track State support of insurgencies, the Uppsala Conflict Data Program and International Peace Research Institute, Oslo (UCDP/PRIO) dataset of 2006<sup>148</sup> and the Rand Report of 2001<sup>149</sup> focus on casualties and military effectiveness when States support rebel groups. A leading expert in non-state armed groups, Richard H. Shultz, also argues that despite political aspirations, armed groups will always be defined by their underlying militancy.<sup>150</sup> Iranian support may prove to be the exception to these standards, and it may be establishing an emerging norm.

Several aspects of Iranian-backed armed groups require closer examination to determine whether they are indeed breaking new ground. These include the creation of a State within a State, the non-violent infiltration of the political system, gaining public support by providing services and financial assistance, and training forces and maintaining an active intelligence branch. Many other State-supported armed groups share some of these traits with the Iranian-backed groups, but none combine them without the underlying threat of armed force to the target State.

First, both Hezbollah and Mahdi's Army have created a State within a State in Lebanon and Iraq, respectively. Hezbollah controls most of southern Lebanon, while Mahdi's Army controls Sadr City in Baghdad and poor, rural areas in southern Iraq. This aspect of their threat to the target State is not in itself unique. In Colombia, for example, approximately half of the State's territory has been abandoned by the government for decades and is controlled by multiple armed groups.<sup>151</sup> Similarly, in Nepal, Maoist rebels effectively control and run a parallel government from a large area of the State.<sup>152</sup>

The distinction between Hezbollah and Mahdi's Army, and the Colombian insurgents and Maoist Rebels is outside State support. While the Colombian insurgents receive minor support from Venezuela and Cuba,<sup>153</sup> this support is

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147. *Id.* at 23-40.

148. See generally Harbom et al., *supra* note 142. For the dataset itself, see CENTRE FOR THE STUDY OF CIVIL WAR, PRIO, ARMED CONFLICTS VERSION 4-2006 (2006), <http://new.prio.no/CSCW-Datasets/Data-on-Armed-Conflict/UppsalaPRIO-Armed-Conflicts-Dataset/Armed-Conflicts-Old-Versions/Armed-Conflicts-Version-4-2006/>.

149. See TRENDS IN OUTSIDE SUPPORT, *supra* note 136, at 31.

150. See Shultz, *Armed Groups*, *supra* note 9, at 10.

151. SHULTZ, TIER ONE, *supra* note 5, at 9.

152. BBCNEWS, *Nepal Maoists disband government*, Jan. 18, 2007, [http://news.bbc.co.uk/2/hi/south\\_asia/6273535.stm](http://news.bbc.co.uk/2/hi/south_asia/6273535.stm).

153. TRENDS IN OUTSIDE SUPPORT, *supra* note 136, at 12.

limited and does not significantly affect the outcome of the conflict. There is no indication that the Maoist rebels receive any form of outside State support.<sup>154</sup>

Second, another key aspect of Iranian-backed armed groups is their political achievements. Hezbollah and Mahdi's Army succeeded in creating their parallel governments, in part, by earning seats in the sitting government's parliament. Similarly, the electoral victory for Hamas in January 2006 means that Hamas did not need to use force to take power in the Palestinian Territories – they won it through popular support. While the militant wings of each of these groups remains a large part of their operations, it is the legitimacy of their political wings and their ascension to power that most undermines many analysts' reliance on violence as the measuring stick for insurgent activity.

An historical analogy to a non-violent political takeover is the Anschluss of Austria by Germany in 1938. The Nuremberg Tribunal found that Nazi-leaders committed aggressive acts against Austria.<sup>155</sup> The annexation of Austria by Germany was committed "without the use of armed force: internal subversive actions and the immediate threat of extreme violence assured in these cases the 'peaceful co-operation' of the governments concerned."<sup>156</sup> Other insurgent groups with outside State support have similarly entered into, or taken over, a target State's political apparatus. Uganda and Rwanda's support of insurgents to overthrow the Mobutu regime in the Congo is an example.<sup>157</sup> The distinction between this case and Iranian-supported armed groups is that Hezbollah, Mahdi's Army, and Hamas did not win political support by threatening their respective governments with overwhelming force. Even though armed groups by their very nature do not follow democratic rules, they do seek to take full advantage of their adversaries who do.<sup>158</sup> By getting involved with, or actually taking over, the political apparatus of a State, the Iranian-backed armed groups benefit from legitimate power, which they can exercise through State institutions that are still intact – unlike the aftermath of a violent coup.

Third, Hezbollah, Hamas, and Mahdi's Army have all skillfully used much of their financial resources to fund vast socioeconomic networks, increasing their influence among the public.<sup>159</sup> This is perhaps the single most important aspect of the effectiveness of these groups, and the implementation of Iran's strategy. Other insurgent groups tend to exert their influence over local populations, raising money by collecting taxes or engaging in illicit criminal enterprises. Examples of these practices are groups such as Columbia's FARC, the Revolutionary United Front

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154. MIPT Terrorism Knowledge Base, *Communist Party of Nepal-Maoist*, <http://www.tkb.org/Group.jsp?groupID=3531>.

155. Judgment, Trial of the Major War Criminals: Before the International Military Tribunal, Nuremberg, 1 I.M.T. 171, 186, 194, Nov. 14, 1945-Oct. 1, 1946.

156. DR. C.A. POMPE, *AGGRESSIVE WAR AN INTERNATIONAL CRIME* 21 (1953).

157. TRENDS IN OUTSIDE SUPPORT, *supra* note 136, at 33. Other examples include Pakistan's support of the Taliban to topple the Rabbani government in Afghanistan and Russia ousting the United Tajik Opposition-led government in Tajikistan. *Id.*

158. SHULTZ, TIER ONE, *supra* note 5, at 13-14.

159. TRENDS IN OUTSIDE SUPPORT, *supra* note 136, at 87.

(RUF) in Sierra Leone, Cambodia's Khmer Rouge, and the Turkish Kurdistan Worker's Party (PKK).<sup>160</sup> By nurturing public support, the Iranian-backed groups enlist the loyalties of the community, increasing cooperation with their efforts, and providing a ready supply of recruits for their cause. They are also ensured a territorial base of operations.

Fourth, the Iranian-backed armed groups benefit from the training and intelligence capabilities of the IRGC's Quds force. In particular, Tehran's forces turned Hezbollah into a formidable armed force with expert intelligence-gathering capabilities.<sup>161</sup> Hamas and Mahdi's Army will similarly benefit from recent cooperation with Iran's trainers. The Quds force was created in the early 1980s with the intent of carrying out Iran's foreign policy – which, at the time, included training the Badr Organization to carry out attacks against Iraq.<sup>162</sup> Today they continue to assist Iraqi insurgent groups gather and manipulate intelligence.<sup>163</sup> While other States certainly provide training to insurgents – Pakistan is a standout example<sup>164</sup> – it is uncertain whether the assistance, especially the intelligence aspect, is as widespread or effective as that offered by the IRGC. In fact, many insurgent groups act as sources of intelligence for their sponsor States.<sup>165</sup> Iran, on the other hand, provides specialized training to its sponsor groups in order to gather and manipulate intelligence for their independent operations.<sup>166</sup>

These four aspects of Iranian support highlight the sophisticated nature of its strategy. Even though these groups started as militant organizations, their militant wings do not play the dominant role in undermining their host State as in most insurgencies. A primary example of a force-based insurgency is the RUF in Sierra Leone, sponsored by Charles Taylor's former government in Liberia. The RUF was no more than an armed militia, plundering and pillaging at will, even though they tried to have a veneer of respect.<sup>167</sup> While not all state-sponsored insurgent groups are as rudimentary as this, none reach the same level of sophistication as Iranian-backed groups. This strategy allows Iran to avoid public scrutiny and, therefore, accountability for violations of international law.

#### IV. INDIRECT AGGRESSION, IRANIAN RESPONSIBILITY, & POLICY CONSIDERATIONS

Iranian support of non-state armed groups should be considered an act of aggression in violation of international law. In order to make this determination, it

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160. *Id.*

161. *Id.* at 92. Hezbollah effectively established espionage rings to operate inside Israel after the withdrawal of the IDF from Lebanon in 2000. SHAUL SHAY, *THE AXIS OF EVIL: IRAN, HIZBALLAH, AND PALESTINIAN TERROR* 141-42 (2005).

162. RADIO FREE EUROPE, *Iran: Expert Discusses Iran's Quds Force and U.S. Charges Concerning Iraq*, Feb. 16, 2007, <http://www.globalsecurity.org/wmd/library/news/iraq/2007/02/iraq-070216-rferl01.htm>. In fact, the Iranian Quds force was active in Afghanistan in the 1980s, Iraq throughout the 1980s and '90s to undermine Saddam Hussein's regime, Bosnia in the early 1990s, and Sudan in the early 1990s. *Id.*

163. *Id.*

164. TRENDS IN OUTSIDE SUPPORT, *supra* note 136, at 92.

165. *Id.* at 98.

166. RADIO FREE EUROPE, *supra* note 162.

167. SHULTZ, TIER ONE, *supra* note 5, at 24.

is necessary to briefly discuss the history and modern legal norms governing the *jus ad bellum*.

*A. Jus Ad Bellum & State Aggression Generally*

The laws governing the initiation of armed conflict are considered the *jus ad bellum*.<sup>168</sup> This area of law has a rich history dating back to the early Christian and Islamic teachings, which became known as the “just war” theory.<sup>169</sup> During the twentieth century, *jus ad bellum* began to take shape through resolutions passed by the League of Nations<sup>170</sup> and the Kellogg-Briand Pact.<sup>171</sup> These treaties sought to prohibit the aggressive use of force between States in order to promote peace and security.<sup>172</sup>

Today, Article 2(4) of the U.N. Charter prohibits member States from using aggressive force as an extension of foreign policy. This provision states:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.<sup>173</sup>

The Security Council declared, for the first and only time, that a member committed aggression, or “a breach of the peace” as it were, when North Korea invaded South Korea in 1950.<sup>174</sup> Non-state armed groups can also commit aggression, as indicated in U.N. Security Council Resolution 405 of 1977.<sup>175</sup> Under Resolution 405, the Security Council used the term “aggression” with regard to mercenaries who attacked Benin in 1977, but did not name the State that sponsored the attack.<sup>176</sup>

168. See Steven R. Ratner, *Jus ad Bellum and Jus in Bello after September 11*, 96 AM. J. INT'L L. 905, 905 (2002). In contrast, the *jus in bello*, also known as international humanitarian law or the law of war, governs the methods used to conduct armed conflict. See BRIAN OREND, MICHAEL WALZER ON WAR AND JUSTICE 110-11 (2000).

169. ANTHONY CLARK AREND & ROBERT J. BECK, INTERNATIONAL LAW AND THE USE OF FORCE: BEYOND THE UN CHARTER PARADIGM 11-16 (1993). See also IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 5 (1963); Charles Clinch, *Jihad: How it can save Just War Doctrine*, UCLA INT'L INST., <http://www.international.ucla.edu/article.asp?parentid=35780>.

170. See BROWNLIE, *supra* note 169, at 71-72, for a discussion of League Assembly resolutions relating to aggression.

171. Treaty Between the United States and Other Powers Providing for the Renunciation of War as an Instrument of National Policy, Aug. 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 57 [hereinafter Kellogg-Briand Pact]. For an in depth discussion of the Kellogg-Briand Pact, see generally BROWNLIE, *supra* note 169, at 74-95. See also Steven R. Ratner, *Crimes Against Peace*, in CRIMES OF WAR BOOK 109 (Roy Gutman et al. eds. 1999), available at <http://www.crimesofwar.org/thebook/crimes-against-peace.html>.

172. Quincy Wright, *The Outlawry of War and the Law of War*, 47 AM. J. INT'L L. 365, 367-68 (1953).

173. U.N. Charter art. 2, para. 4.

174. S.C. Res. 82, U.N. Doc. S/RES/82 (June 25, 1950).

175. S.C. Res. 405, *supra* note 8.

176. Mohammed M. Goma, *The Definition of the Crime of Aggression and the ICC Jurisdiction over that Crime*, in THE INTERNATIONAL CRIMINAL COURT AND THE CRIME OF AGGRESSION 55, 65 n. 32 (Mauro Politi & Giuseppe Nesi eds., 2004).

The General Assembly adopted Resolution 3314 (GA Res. 3314) in 1974 in order to assist the Security Council in determining when aggression is committed by States.<sup>177</sup> Aggression is defined in article 3 of GA Res. 3314 to include: invasion or attack of armed forces of a State into another State's territory, bombardment of another State's territory, blockades, an attack on the armed forces of another State, violating the terms of an agreement between two States when one State has agreed to allow the other's armed forces on its territory, and one State allowing another State to use its territory to launch an attack against a third State.<sup>178</sup> Most relevant to this discussion is article 3(g), which states that aggression is committed by:

The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.<sup>179</sup>

While Iranian support of armed groups likely falls within this article, it is important to recognize the two distinct acts of "indirect aggression" seen in article 3(g).

First, there is the sending of irregular troops, or non-state armed groups, to another State.<sup>180</sup> The actions of these groups can be directly attributed to the State that sent them. This is a "form of direct aggression, in that the State is responsible for the hostile act, performed by its de facto military corps."<sup>181</sup> However, the armed group must commit acts comparable to the "direct use" of force by a State – both in terms of political independence and territorial integrity – in order for it to be considered aggression.<sup>182</sup>

Second, there is "substantial involvement," which includes: training, equipping, supplying weapons or other equipment, granting economic or financial aid, and making available or tolerating the use of a State's territory for operational or supply activities for the armed group.<sup>183</sup>

The International Court of Justice (ICJ) appears to identify with the first type of "indirect aggression." In the 1986 *Nicaragua v. United States* case, the ICJ stated that sending by a State of armed bands or groups is to be considered an armed attack by that State when these attacks are equivalent to a true armed attack performed by regular forces; the ICJ adds that mere supply of logistical support would not be considered an act of aggression justifying an armed response.<sup>184</sup> There must be "effective control" of the armed group for its actions to be

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177. G.A. Res. 3314 (XXIX), Annex, U.N. Doc. A/9631/Annex (Dec. 14, 1974).

178. *Id.* ¶ 3.

179. *Id.* ¶ 3(g).

180. *Id.*

181. Umberto Leanza, *The Historical Background*, in *THE INTERNATIONAL CRIMINAL COURT AND THE CRIME OF AGGRESSION* 3, 7 (Mauro Politi & Giuseppe Nesi eds., 2004).

182. *Id.*

183. *Id.* at 7-8.

184. *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14, at 65 (June 27). For additional commentary, see also Leanza, *supra* note 181, at 8.

imputable to a State.<sup>185</sup> The Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) also considered State responsibility for non-state actors in the *Tadic* decision. The *Tadic* court required “overall control going beyond the mere financing and equipping of military operations,” for there to be State responsibility.<sup>186</sup>

In addition to the “control” requirement, the ICJ accepted an “acknowledgment” basis for State responsibility in the 1980 case, *United States v. Iran*. In that case, the conduct of non-state actors, who took the American consular staff in Tehran hostage, was attributable to Iran because of the adoption of this conduct by the Khomeini government.<sup>187</sup> Both the “control” and “acknowledgement” basis for State responsibility have been adopted by the International Law Commission as customary international law.<sup>188</sup>

*B. Does Iranian Support of Non-State Armed Groups Constitute Aggression?*

Iran should be accountable for the unlawful acts of the armed groups it sponsors. It is unlikely, however, that the actions of these armed groups – with the exception of Hezbollah – are tantamount to State aggression. Under article 2(4) of the U.N. Charter and GA Res. 3314 it would seem that groups such as Hezbollah, Mahdi’s Army, and Hamas threaten either the territorial integrity or the political independence of their host State or their neighbors with the direct and substantial support of Iran.<sup>189</sup> The fact that these actions are done in a manner that is not recognized as an unlawful action vis-à-vis a sovereign State is testament to Iran’s exploitation of the rule of law.

Iran’s use of Hezbollah and Hamas against Israel fulfills the definition of aggression under GA Res. 3314. Hezbollah in particular uses direct force against Israel that is equivalent to the direct use of force by a State. This was evident in the organization’s acts during the July War of 2006.<sup>190</sup> Hezbollah and Hamas each committed raids that involved the murder and kidnapping of Israeli Soldiers to start the conflict.<sup>191</sup> This occurred with Iranian backing.<sup>192</sup> Iran may, therefore, be responsible for violating the territorial integrity of Israel by killing and kidnapping IDF Soldiers on Israeli territory and through Hezbollah’s launching of Iranian-supplied rockets into Israel.<sup>193</sup> Hezbollah, while somewhat autonomous, would not be the military and political force it is today without Iran’s support. Moreover, Iran may be responsible for Hezbollah and Hamas’s aggressive acts toward Israel

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185. Military and Paramilitary Activities, 1986 I.C.J. at 65.

186. Prosecutor v. Tadic, Case No. IT-94-1-A, Judgement, ¶ 145 (July 15, 1999).

187. U.S. Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 3, at 35 (May 24).

188. G.A. Res. 56/83, ¶ 8, 11, Annex, U.N. Doc. A/RES/56/83/Annex (Dec. 12, 2001).

189. U.N. Charter, *supra* note 174; G.A. Res. 3314 (XXIX), *supra* note 177, ¶ 3(g).

190. Phares, *supra* note 47.

191. *Id.*

192. *Id.* See also Makovsky, *supra* note 43.

193. There are two separate groups of rocket attacks to consider. First, those that came before the murder and kidnapping of IDF soldiers and can be interpreted as part of the initial armed aggression. Launching the rockets into civilian centers, particularly Haifa, entails a different form of responsibility than actually initiating the conflict. These would be analyzed under the *jus in bello*.

by acknowledging its efforts and reaffirming the goal of “elimination of the Zionist regime.”<sup>194</sup>

Iran may also be committing aggression against Lebanon by threatening its political independence. It is alleged that Hezbollah assassinated political supporters of the Cedars Revolution with car bombs.<sup>195</sup> If true, this can only be interpreted as a direct use of force intended to threaten the Lebanese government.<sup>196</sup> Prime Minister Siniora has since refused to force Hezbollah to disarm under the provisions of Security Council Resolution 1559. This leaves Hezbollah's militant wing as the de facto armed force in Lebanon – the strength of which is a result of Iranian weapons supplies. With twenty-six seats in Parliament and total control over the public services and social structures in southern Lebanon, it is not surprising that Hezbollah could stage massive protests in December of 2006 that nearly toppled the current leadership.<sup>197</sup> Beirut has no option but to allow Hezbollah to maintain its State within a State in southern Lebanon.

The issue is whether there is an “effective control” or “acknowledgement” basis for imputing Hezbollah's actions to Iran as required by the *Nicaragua* and *Hostage* cases.<sup>198</sup> At least one analyst argues that Hezbollah is not fully reliant on Iran. While there is no doubt that the organization originated and grew as a result of Iranian support and that they share strategic goals, Hezbollah now seems to be operating more independently.<sup>199</sup> Hezbollah certainly poses a threat to Lebanon's political independence, but Iran may escape responsibility as long as it does not acknowledge supporting Hezbollah's aggressive behavior.

The Iraqi insurgent groups, similarly, pose a threat in Iraq. Much like Hezbollah, however, they have never openly committed attacks against their host State. Their political aspirations are not per se illegal, nor are their open denouncements of any U.S.-supported government in Iraq. While they are repeat offenders of international humanitarian law, which could very well be attributable to Iran, they are not likely candidates for current interpretations of aggressive conduct toward a State. Iran, therefore, is able to act through its surrogates with impunity.

### *C. Policy Considerations Relating to “Indirect Aggression”*

Aggression must be considered in terms of modern day realities. Large scale traditional wars are quickly becoming the exception rather than the norm. Threats posed by “internal” or “indirect aggression,” recognized in the early years after

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194. Sean Yoong, *Ahmadinejad: Destroy Israel, End Crisis*, WASHINGTONPOST.COM, Aug. 3, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/03/AR2006080300629.html>.

195. Phares, *supra* note 47.

196. *Id.*

197. Shadid, *supra* note 36.

198. *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14, at 65 (June 27); *U.S. Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, 1980 I.C.J. 3, at 35 (May 24).

199. Fuller, *supra* note 27, at 143.

WWII, should be considered a national security priority.<sup>200</sup> When determining which acts constitute aggression, or what deterrence measures need implementing, the primary objective must always be to protect “the State’s independence as such.”<sup>201</sup>

In 1953, Dr. C.A. Pompe concluded that, “When statesmen to-day speak of aggression they include in that concept every method, every action that can lead to the destruction of the liberty or the loss of territory of a State.”<sup>202</sup> He adds that the territorial integrity and political independence of a State “must be seriously endangered by the use of force if this is to deserve the qualification ‘aggression.’”<sup>203</sup>

Under Pompe’s definition, Iran’s use of armed groups to target the political independence of weaker States does not fit the classic model of aggression, and could not be considered armed aggression warranting coercive self-defense measures. He argues that “States cannot be allowed to answer with military measures every kind of foreign support or influence on internal attacks against the established political order and the legitimate government.”<sup>204</sup> In contrast, others contend that a *causus belli* to attack Iran already exists based on its use of armed groups.<sup>205</sup> This position is supported by GA Res. 3314 and subsequent international case law which define State support of armed groups as aggression.<sup>206</sup>

Regardless of whether Iran’s support to these groups can be classified as “aggression,” the use of force in this situation is short-sighted. While this paper argues for a more expansive definition of aggression, particularly in relation to threats against the political independence of States, the blunt use of force would be a strategic mistake, highlighting the effectiveness of Iran’s more sophisticated methods. Irrespective of the legality of coercive self-defense measures, the following section discusses a range of options available to target States of Iranian aggression, as well as a deterrence framework to be employed by the international community.

#### V. RECOMMENDATIONS & CONCLUSION: THE LEGAL FRAMEWORK FOR DETERRENCE

It is uncertain whether Iran’s support of non-state armed groups is tantamount to aggression vis-à-vis these groups’ host States. The need to deter Iran’s conduct, however, is clear. While coercive measures have been considered, these are unlikely to be effective. For one, the use of force seems disproportionate to Iran’s more sophisticated, clandestine operations within the target States. As mentioned

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200. POMPE, *supra* note 156, at 93.

201. *Id.*

202. *Id.*

203. *Id.* at 106.

204. *Id.* at 111.

205. Michael T. Klare, *Three US Reasons to Attack Iran*, ASIA TIMES ONLINE, Feb. 27, 2007, [http://www.atimes.com/atimes/Middle\\_East/IB27Ak01.html](http://www.atimes.com/atimes/Middle_East/IB27Ak01.html).

206. See G.A. Res. 3314 (XXIX), *supra* note 177; Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14, at 65 (June 27).

above, outright armed force has not been Iran's policy. Rather, an equally sophisticated and multi-faceted approach is required to deter Iran's foreign policy objectives.

*A. Applying the Incentive Theory*

In analyzing the causes of war and drafting a deterrence framework, Professor John Norton Moore applies his "incentive theory."<sup>207</sup> This approach, put simply, balances the incentives affecting decision makers on whether or not to engage in the aggressive use of force. It looks at three different levels, or "images," of incentives: the individual, the form of government, and the international system of deterrence. Even though the focus of this paper is not war as such, the incentive theory is adaptable to Iran's lower-level aggression: support of non-state armed groups.

The first image in the incentive theory is the individual. This encompasses the regime elites in Iran, the leaders of the non-state armed groups it supports, and the individual citizens that follow these groups.

The regime elites in Iran and the leaders of its non-state armed groups currently have little incentive to cease their unlawful conduct in Lebanon, Iraq, and the Palestinian Territories. For its part, Iran is able to externalize the cost of subverting these governments onto the armed groups themselves. Furthermore, Ayatollah Khamenei and President Ahmadinejad are enjoying a newfound sense of regional power, particularly when Hezbollah is extremely popular after the July War of 2006 against Israel, and the U.S.-led coalition is struggling to bring security to Iraq.<sup>208</sup>

Similarly, the leaders of Iranian-backed insurgent groups have little to fear as long as they receive top-cover from the Islamic Republic. Nasrallah in Lebanon, al-Sadr in Iraq, and Prime Minister Ismail Haniyeh in the Palestinian Territories all enjoy popular support in their host States, as well as the cover of political legitimacy.

An effective way to curb the unlawful and subversive activities of these groups is through international criminal law. Each of these groups has committed war crimes and crimes against humanity; for example: Hezbollah's murdering and kidnapping IDF Soldiers and launching rockets into civilian populations,<sup>209</sup> the murder of civilians through Mahdi's Army death squads,<sup>210</sup> and Hamas' suicide bombings of Israeli civilians.<sup>211</sup> Iran is a major sponsor of each of these groups' criminal endeavors. In fact, Human Rights Watch cited Iran for giving substantial financial and logistical support to Hamas' suicide bombing campaign.<sup>212</sup> For these

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207. See generally JOHN NORTON MOORE, SOLVING THE WAR PUZZLE (2004).

208. Barry Rubin, *Iran: The Rise of a Regional Power*, 10 THE MIDDLE EAST R. INT'L AFF., Sept. 2006, <http://meria.idc.ac.il/journal/2006/issue3/jv10no3a10.html>.

209. Phares, *supra* note 47. See also Makovsky, *supra* note 43.

210. Ghosh, *supra* note 2. See also *Top Iraqi Official Held in Raid*, *supra* note 74.

211. Human Rights Watch, *Erased in a Moment: Suicide Bombing Attacks Against Israeli Civilians* 64, HRW Index No. 2807, Oct. 2002.

212. *Id.* at 96.

actions, the leaders of Iran and the insurgent groups should be held individually responsible. Effective punishment for blatant violations of international law would serve as a strong disincentive to continue their unlawful practices.

The individuals who follow Iranian-backed armed groups equally need disincentives. Hezbollah and Mahdi's Army, in particular, receive unwavering public support from the local population primarily because they provide social and financial assistance that the State cannot. This, and their appeal to disenfranchised Shi'a groups through the idea of armed resistance, has effectively won over the "hearts and minds" of their people.<sup>213</sup> In regard to the war on terror, some commentators argue that the international community, especially the United States, has done little to wage a "war of ideas" in the region.<sup>214</sup> Unfortunately, the United States has little credibility in the Islamic world.<sup>215</sup>

The Iranian population, similarly, has not been effectively engaged in the "war of ideas." This is unfortunate, since many Iranian reformists do not, in fact, support Hezbollah's attempts to provoke Israel or the use of suicide bombings to kill civilians.<sup>216</sup> It is worth noting that the relationship between Tehran and Hezbollah cooled – albeit slightly – during the presidency of reformist Muhammad Khatami.<sup>217</sup> Similarly, in the Palestinian territories, there is at least some indication that the Palestinian people will not suffer a radical, militant government. At least one commentator noted that, "The Palestinians did not vote for Hamas so that it could destroy Israel, but so that it could deal with security, corruption, the schools, and the water supply."<sup>218</sup>

In an effort to win the ideological struggle, the United States and the Western world need to stay behind the scenes. They must, however, cultivate the moderate population by discretely offering support to writers, scholars, journalists, and other intellectuals in the region who also advocate a non-violent, more moderate approach.<sup>219</sup>

The second image in the incentive theory is the form of government. In terms of waging major wars, empirical evidence proves that democracies are far less likely to be the aggressor.<sup>220</sup> Further evidence reveals that non-democracies are more likely to have slower economic growth, commit crimes against humanity (including genocide), suffer famines, support terrorism, be corrupt, be involved with narcotics trafficking, have higher levels of refugee flows, have higher infant

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213. O'Brien, *supra* note 13, at 4.

214. William Rosenau, *Waging the "War of Ideas,"* in THE MCGRAW-HILL HOMELAND SECURITY HANDBOOK 1131, 1138-39 (2006).

215. *Id.* at 1141. Although Rosenau focuses his analysis on the al Qaeda organization, the lack of an effective ideological campaign is felt in the broader region.

216. KARMON, *supra* note 20, at 19.

217. *Id.* at 18-19.

218. Olivier Roy, *The Shock Wave of the Hamas Victory*, LE FIGARO (Paris), Jan. 31, 2006, at 16 (Open Source Center trans.).

219. Rosenau, *supra* note 214, at 1142.

220. MOORE, *supra* note 207, at 14.

mortality rates, and have fewer women's rights.<sup>221</sup>

Many of these problems are seen in Iran's non-democratic theocracy. For example, in 2004 Iran received a score of 6.1 out of 10 on the economic freedom index, ranking 80 out of 130 countries surveyed.<sup>222</sup> These results are in spite of Iran's wealth of natural resources. Furthermore, the Islamic Republic has a history of discrimination towards groups such as the Turkic communities<sup>223</sup> and women.<sup>224</sup> The State also employs extreme censorship measures, particularly the state filtering system regulating the internet, rivaling that found in China.<sup>225</sup>

Lebanon, Iraq, and the Palestinian Territories are all fertile ground for Iran's policy objectives.<sup>226</sup> Weak states are chronically prone to insurgent groups that challenge their authority.<sup>227</sup> This plays into the larger struggle in the Middle East between an attempt at democratization and a new, re-energized resistance front. The main players are the United States and Iran on either side. It is hoped that, "Political integration of the Islamist parties is aimed at moving them away from violence and at preventing terrorism from drawing justification from the political frustrations of the populations of the Middle East."<sup>228</sup> With their popular support and abundant resources, the Iranian-backed insurgent groups must be encouraged to end their violent, extremist methods and move toward legitimate political and social endeavors. The State governments, meanwhile, must be given the means to prosecute and dismantle any unlawful militant groups in their territory.<sup>229</sup>

The third image in the incentive theory is the international system of deterrence. Effective deterrence can be defined as "a state of mind of the potential aggressor based on perceptions of an aggregation of external incentives."<sup>230</sup>

In order to deter the unlawful actions of the Iranian-backed armed groups, the international community must act cooperatively to supply the sitting governments with tools necessary to eliminate the militant wings of these groups through stringent law enforcement. Simultaneously, heavy diplomatic and economic pressure must be put on Iran, the sponsor of these groups. This can be done in several ways.

First, the United Nations must follow through on the sanctions regime imposed on Iran. In March 2007, the U.N. Security Council unanimously adopted Resolution 1747, which provides for Iranian cooperation with the International

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221. *Id.* at 60.

222. JAMES GWARTNEY & ROBERT LAWSON, ECONOMIC FREEDOM OF THE WORLD: 2006 ANNUAL REPORT 102, available at <http://www.freetheworld.com/2006/3aEFW2006ch3A-K.pdf>.

223. O'Brien, *supra* note 13, at 46.

224. On March 4, 2007, women protesters were arrested in front of a courthouse in Tehran. They were protesting discriminatory policies of the State against women. See BBCNEWS, *Iran Women Arrested Over Protest*, Mar. 4, 2007, [http://news.bbc.co.uk/2/hi/middle\\_east/6416789.stm](http://news.bbc.co.uk/2/hi/middle_east/6416789.stm).

225. O'Brien, *supra* note 13, at 52-53.

226. See generally GWARTNEY & LAWSON, *supra* note 222.

227. See SHULTZ, TIER ONE, *supra* note 5, at 13-14.

228. Roy, *supra* note 218.

229. This approach presents a particular problem in the Hamas-governed Palestinian Territories.

230. MOORE, *supra* note 207, at 28.

Atomic Energy Agency (IAEA), bans arms exports from Iran, calls for an end to new loans, and freezes the assets of key Iranian leaders.<sup>231</sup> The sanctions imposed in December 2006 in Security Council Resolution 1737 were followed by 150 members of the 290 strong Iranian Majlis (parliament) signing a letter blaming Iran's current fiscal woes on President Ahmadinejad.<sup>232</sup> This is an indication that external pressure is having an effect.

Second, individual States should put pressure on Iran. For example, the U.S. Treasury Department banned Bank Saderat from the U.S. financial system in September 2006.<sup>233</sup> Pressure from the international community, such as the joint statement issued by U.S. Secretary of State Condoleezza Rice in conjunction with Egypt, Jordan and six other gulf States warning Iran, has impacted internal politics of the Islamic Republic.<sup>234</sup> Similarly, the recent designation of the IRGC as a terrorist organization by the United States will put financial pressure on Iran's elite military unit and primary trainer and intelligence provider to outside armed groups.<sup>235</sup>

Third, pressure must be put on the groups Iran supports. A success story is the U.S. Treasury designation of Jihad al-Bina – Hezbollah's construction company in Lebanon.<sup>236</sup> This shut the firm out of the international financial system. Consequently, lenders and donors will not run the risk of rebuilding Lebanon through Hezbollah, rather than through the legitimate Lebanese government.<sup>237</sup> According to the Treasury Department, "Jihad al-Bina receives direct funding from Iran, is run by Hizbullah members, and is overseen by Hizbullah's Shura Council, at the head of which sits Hizbullah Secretary General Hassan Nasrallah."<sup>238</sup>

Finally, the United States should not be too quick to leave Iraq. Quite frankly, an unstable Iraq without the presence of coalition forces will be wide open to Iranian influence. Iran has already stated that the U.S. presence in the region is their biggest security concern.<sup>239</sup> As long as Iran is aware that there is a deterrent

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231. S.C. Res. 1747, ¶¶ 1-2, 4, 5, 7, Annex I, U.N. Doc. S/RES/1747 (Mar. 24, 2007).

232. Mehdi Khalaji, WASH. INST. FOR NEAR EAST POL'Y, *Iran Feels the Heat: International Pressure Emboldens Tehran's Domestic Critics*, PolicyWatch No. 1185, Jan. 18, 2007 [hereinafter *Iran Feels the Heat*].

233. Press Release, U.S. Dep't. of Treasury, Treasury Cuts Iran's Bank Saderat Off From U.S. Financial System, HP-87 (Sept. 8, 2006) (on file with the U.S. Dep't of Treasury, <http://www.treas.gov/press/releases/hp87.htm>).

234. *Iran Feels the Heat*, *supra* note 232.

235. Robin Wright, *Iranian Unit to Be Labeled 'Terrorist'; U.S. Moving Against Revolutionary Guard*, WASH. POST, Aug. 15, 2007, at A1.

236. Press Release, U.S. Dep't of Treasury, Treasury Designates Hizbullah's Construction Arm (Feb. 20, 2007) (on file with U.S. Dep't of Treasury, available at <http://www.treas.gov/press/releases/hp271.htm>). See also Gregory S. McNeal, *Cyber Embargo: Countering the Internet Jihad*, 39 CASE W. RES. J. INT'L LAW 811-816 (2008) (discussing the Treasury designation process and its use in fighting terrorists and rogue states).

237. See Matthew Levitt, WASH. INST. FOR NEAR EAST POL'Y, *Shutting Hizbullah's 'Construction Jihad'*, Feb. 20, 2007, <http://www.washingtoninstitute.org/print.php?template=C05&CID=2571>.

238. *Id.*

239. O'Brien, *supra* note 13, at 49.

force in the region it will be less likely to commit even more heinous crimes.

### *B. Conclusion*

Iran's support of non-state armed groups is an effective method to achieve its foreign policy objectives. By subverting governments in the region through the cultivation of these dual political and militant organizations, Iran is able spread its particular form of Shi'a influence.

Compared to other State supporters, Iran's use of insurgent groups is more sophisticated and less likely to draw the rebuke of the international community. Drawing upon public support, Hezbollah, the Iraqi insurgents, and Hamas have effectively established parallel governments to their host States, gained a foothold within the legitimate political apparatus, ingratiated themselves with the local populations with an attractive revolutionary ideology and extensive social services, and utilized the expertise of the IRGC's Quds force intelligence and training capabilities.

These actions alone are not enough to meet the standards of unlawful aggression under accepted interpretations of *jus ad bellum* law. Other conduct, such as the attacks against Israel by Hezbollah and Hamas, could very well be imputed to Iran as aggression, but the political and social subversion of the sitting governments in Lebanon, Iraq, and the Palestinian Territories does not in itself warrant coercive self-defense measures. This does not mean, however, that Iran is not violating international law or that the international community is helpless to effectuate change.

Incorporating the incentive theory to Iran's unlawful activity is an effective, multifaceted approach to dealing with a cunning threat. There is a large moderate population in the region that needs cultivating and support so that the ideologies of violence and hate do not continue to hold sway. The leaders that support the undermining of legitimate governments must be held accountable. Encouraging democratic reform, while maintaining economic pressure, is certain to have a deterrent effect on the bankrupt policies of Iran and the unlawful armed groups it supports.