CHAPTER SIXTEEN

INTERNATIONAL LAW, THE SHARIA AND INTERNATIONAL TERRORISM: A CRITICAL ASSESSMENT OF THE ROLE OF PAKISTAN IN THE ‘WAR ON TERROR’

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I. INTRODUCTION

Islamic law (also known as the Sharia) remains the subject of considerable intrigue and discussion. Historically, there has been an extensive debate on the position of Islam, and the character of the Sharia.1 The debate as to the parameters of Jihad in supporting or renouncing violence and terrorism has been invigorated since the tragedy of 11 September 2001. While the events of 11 September 2001 led to an increase in ‘Islamophobia’ – characterising feelings of fear, hatred and contempt for Islam and its values2 – many Muslim communities have faced persecution as a consequence of the ‘war on terror’.3 There is evidence of violation of the civil liberties and human rights under the guise of the ‘war on terrorism’.4

The present chapter is written with the fundamental objective of highlighting the difficulties of implementing the Sharia injunctions within the current political and constitutional frameworks. This analysis establishes that although Sharia – as a divine ordinance – promotes common human values and is also adaptable to changing social, ethical and cultural norms, contemporary human re-interpretation and manipulations have led to considerable distortion of the original peaceful message of the Sharia. These distortions, based on short term agendas

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2 Islamophobia has been defined as “dread or hatred of Islam – and, therefore, fear or dislike of all or most Muslims”, The Runnymede Trust, Islamophobia: A Challenge for Us All (Runnymede Trust, London, 1997), p. 1.

3 Ibid.

and advantages, have and continue to undermine not only the global impressions about the Sharia, but also lead to serious violations of human rights. The chapter presents a case-study of the Baluchis and Pakhtuns of Pakistan – two communities, whose rights have been violated during the so-called “war on terror”.

This chapter is divided into six sections. After these introductory remarks in section I, sections II and III present a brief evaluation of the sources of the Sharia and Jihad. This conceptual analysis establishes the requisite backdrop to an examination of the position of indigenous communities within Pakistan. Section IV traces the path to manipulation and human re-interpretation of the Sharia and the impact of such an exercise on the constitutional developments of Pakistan. Such manipulation led to the radicalisation of the Pakistani communities, in particular the Baluchis and the Pakhtuns. Jihad was converted into an instrument of aggression and revenge and characters such as Osama Bin Laden were welcomed as inspiring religious leaders to fight the Soviets during the occupation of Afghanistan. However, in this determination to defeat the Russians and to end the cold war, an intolerant, regressive and virulent form of the Sharia was implanted in the body-politic of Afghanistan and Pakistan. The implementation of such a regressive interpretation of the Sharia and the ascendancy of the Taliban in Afghanistan led to further human rights violations and was at least partly responsible for the terrible atrocities of 9/11. Section V examines the post 9/11 scenario and the violations of rights conducted by the United States and Pakistani administration under the guise of countering the Islamist extremists. Section VI, the final section, presents a number of concluding reflections.

II. UNDERSTANDING ISLAM: THE SHARIA, JIHAD AND INTERNATIONAL TERRORISM

Critics of Islam and the Sharia argue that Islam and Sharia are per se aggressive, encouraging and instigating Muslims to have recourse to violence, terrorism and destruction. In order to reinforce their prejudices against Sharia they point to lack of constitutionalism, abuse of power, democratic deficit and violations of fundamental human rights in almost all of the Muslim majority States of the globe. The Sharia has been equated with the wars of aggression, fanaticism, intolerance and violence.5 Islamic civilization has been castigated as backward, insular,