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Karima Bennoune

University of California–Davis School of Law

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“Your Fatwa Does Not Apply Here”: International Law and the Opponents of “Holy Wars”

*Karima Bennoune**

I have been doing research on questions about civil society opposition to fundamentalism in diverse Muslim majority context around the world for about the last five years. I did all of this to write a book, *Your Fatwa Does Not Apply Here: Untold Stories from the Fight Against Muslim Fundamentalism*.¹ I am very grateful to the other symposium participants because I do not have to explain what Fatwa means—they have covered that. One of the things that often gets lost in all of the discussion about so-called holy war and terrorism, is that there are so many people of Muslim heritage around the world who are standing up to oppose this violence and the fundamentalist ideology that underlies it. In fact, they have been the first ones to do so, which gets left out of the discussion way too often.

I will tell a little story by way of example, which also explains how I personally came to this work. I always say that I did not choose to work on this. Unfortunately, this topic came to me, as it did to so many families in Muslim majority contexts. My father, Dr. Mahfoud Bennoune, was an Anthropologist in Algeria.² Like so many other people in his country, throughout the 1990s Jihadist violence, he spoke out against extremism and also about how the Government responded to it. He did that in the face of the awful violence that claimed the lives of as many as 200,000 people. So, it is always important to remember that when we talk about so-called holy war, it is not at all a theoretical issue. It is an issue that has a very direct impact on the human rights and the lives of thousands of people around the world.

In the face of the violence claiming all of these lives and despite death threats, my father, like so many other Algerian intellectuals, repeatedly denounced terrorism and the extremist ideas that underlie it in the press. For example, he wrote and signed his name to a 1994 series of articles in the

* Professor of International Law and Martin Luther King, Jr. Hall Research Scholar, University of California–Davis School of Law.

¹ KARIMA BENNOUNE, *YOUR FATWA DOES NOT APPLY HERE: UNTOLD STORIES FROM THE FIGHT AGAINST MUSLIM FUNDAMENTALISM* (2013). For further information about this research, see KARIMA BENNOUNE, www.karimabennoune.com (last visited Feb. 14, 2016), and Karima Bennoune, When People of Muslim Heritage Challenge Fundamentalism, TED Talk (Mar. 28, 2014), www.ted.com/talks/karima_bennoune_the_side_of_terrorism_that_doesn_t_make_headlines.

² For examples, see MAHFOUD BENNOUNE, www.mahfoudbennoune.com (last visited Feb. 14, 2016).

Algerian newspaper *El Watan* entitled “How Fundamentalism Produced a Terrorism Without Precedent.”³ In those articles, he said something that I think sadly remains all too relevant today. He said:

We are in the presence of a radical break, with the true Islam as it was lived by our ancestors. The fundamentalist terrorism that ravages and brings grief to the country on a daily basis is driven by new and foreign values that have been manufactured by fundamentalist gurus and have nothing to do with the claimed cultural continuity.⁴

To me, that is a very important concept when we think about this new modern form of so-called holy war, and so-called jihad.

One of the things I have been trying to do is dig up a lot of the writing by people who were on the front lines trying to stop holy wars by speaking out against them, because we do not listen to those people. If you engage in violence, if you claim to be carrying out a holy war, you make headlines. But if you go to the bomb craters produced by those holy warriors the next day and you fill them with flowers to show your opposition and risk your life doing that, you do not frequently end up on television screens. That is something we really have to change.

In my research I set out to meet as many people as I could who were doing what my father and so many of his colleagues were doing in Algeria back in the 1990s. I interviewed about 300 people from nearly thirty countries—from Afghanistan to Mali—to try to understand their opposition to fundamentalism and their experiences of being targeted by extremist violence. The people that I interviewed came from across a broad spectrum. They were religious believers, including some religious believers who were ardent secularists. They were also atheists, agnostics, free thinkers—many of whom said that their Muslim heritage or culture was important to them. This diversity of the people that we too easily sort of lump together and call simply “Muslims,” is a very critical thing to remember.

Let me just give a few examples of some of the people that I had the great honor of interviewing. Maria Bashir is the first and only woman chief prosecutor in Afghanistan.⁵ She has to have twenty-three bodyguards because she has not only faced threats to her life, but actual attempts to kill her. Nevertheless, Bashir is still prosecuting cases of violence against women and openly decrying the threat of the Taliban and the failure of the

³ Mahfoud Bennoune, *How Fundamentalism Produced a Terrorism Without Precedent*, MAHFOUD BENNOUNE (Nov. 6, 1994), www.mahfoudbennoune.com/article/how-fundamentalism-produced-a-terrorism-without-precedent (originally published by *El Watan*, www.elwatan.com, Algiers, No. 1244, and translated into English by Karima Bennoune).

⁴ *Id.*

⁵ See story in BENNOUNE, *supra* note 1, at 254–56.

international community to keep its promises to the Afghan population—to women in particular. I interviewed people like Diep Saeeda, a Pakistani activist who organizes demonstrations on the streets of her native Lahore.⁶ After virtually every terror attack she is out there. She was out there after the attempt to kill Malala Yousafzai. She was out there when I was in Lahore working on my book leading a demonstration she had organized against the condemning to death of a Pakistani Christian woman named Asia Bibi for alleged blasphemy. At that protest you could see Muslims, Christians, and atheists—people across the religious spectrum—standing together. And they were doing this despite the fact that Diep Saeeda was receiving phone threats saying that suicide bombers would come to the demonstration. All of this is in the context of ongoing attacks in Lahore, so you had to take such threats very seriously.

When I think about the courage of these kinds of people out there doing this work, I ask myself again and again why is there so little discussion of them internationally, including in the discipline of international law, my field; and in the discipline of human rights, where I have worked the most. How is it that this truly global struggle against Muslim fundamentalists by Muslim people themselves—and the sacrifices that they make in carrying it out—is not recognized as one of the leading human rights issues in the world today? Why is this not at the center of our debates on these issues? The point of my research is to try to change that—to try to give these people the microphone for once.

Before I wrote the book, I wrote a more theoretical paper that gives the legal argument grounding the book, and I want to talk a little bit about that.⁷ The objective is to look at how the discipline of international law has failed to respond to this issue of Muslim fundamentalism and opposition to it. Basically, what I argue is that there has been a rather surprising silence on the topic in the field of international law for a variety of reasons. Before I delve into them, what we really have to grasp is that this silence comes in the face of movements that are posing massive threats to human rights. This is evident when you look at just the one example of the level of violence against religious minorities in Iraq and Syria by “Islamic State.” The United Nations has said that this may well rise to the level of genocide.⁸ So, we are dealing with massive threats to international law values and human rights, yet we are seeing a discipline that has unfortunately been largely silent in

⁶ See story in BENNOUNE, *supra* note 1, at 239–43.

⁷ See Karima Bennoune, *Remembering the Other's Others: Theorizing the Approach of International Law to Muslim Fundamentalism*, 41 COLUM. HUM. RTS. L. REV. 635 (2010).

⁸ Adam Withnall, *ISIS in Iraq: UN Report Details “Staggering” Violence, War Crimes and “Possible Genocide” in Iraq*, THE INDEPENDENT (Jan. 19, 2016), www.independent.co.uk/news/world/middle-east/isi.

response.⁹

As an academic, I cannot go any further without defining my terms, so I have to explain what I mean when I use the term “fundamentalism.” Throughout this symposium, other people may use other terms: “extremism,” “jihadism,” or “religious intolerance” as is sometimes used in international law. I like the term “fundamentalisms”—note the “s.” As an aside, all of the world’s great religious traditions are struggling with movements one could label fundamentalist. On this symposium panel we mostly discussed Muslim contexts, but it is critical to underscore that there are other so-called holy wars that are going on in the world or have occurred recently, including the Sinhala Buddhist ethno-nationalist violence in Sri Lanka,¹⁰ or the violence of the Hindu Right today or going back to the pogroms in Gujarat against Muslims;¹¹ or the history of violence by the Lord’s Resistance Army, a Christian Fundamentalist armed group in Uganda.¹² There are other manifestations of this problem. I like this term “fundamentalisms” precisely because it is general and you can use it to talk about all of these movements.

I use a definition of the term from the Algerian sociologist Marieme Hélie-Lucas who says that fundamentalisms are “political movements of the extreme right which . . . manipulate religion in order to achieve their political aims.”¹³ It is critical to make the distinction that religion is the tool that is being used by these movements. At the end of the day, however, they are not essentially spiritual projects. They are political projects about taking power, about coercion in the state and in the society. Sadia Abbas has called this “the radical politicization of theology.”¹⁴ I have to be careful of projecting that there is some sort of monolith called fundamentalism that is the same everywhere, because these movements also have their own

⁹ *Id.*

¹⁰ See, e.g., *Civil Society Condemns Buddhist Extremists Attacks on Religious Places, Police Inaction and the Silence of Mainstream Religions and Media*, COLOMBO TELEGRAPH (Jan. 23, 2014), www.colombotelegraph.com/index.php/civil-society-condemns-buddhist-extremists-attacks-on-religious-places-police-inaction-and-the-silence-of-mainstream-religions-and-media; THE WOMEN & MEDIA COLLECTIVE, *SRI LANKA SHADOW REPORT: TO THE COMMITTEE ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 76–77* (2001), www2.ohchr.org/english/bodies/cedaw/docs/ngo/WMD_SriLanka48.pdf.

¹¹ See, e.g., Panel for the Int’l Initiative for Justice in Gujarat, *Interim Report*, SOC. SCI. RES. COUNCIL (Dec. 19, 2002), <http://conconflicts.ssrc.org/archives/gujarat/report>.

¹² WOJCIECH JAGIELSKI & ANTONIA LLOYD-JONES, *THE NIGHT WANDERERS: UGANDA’S CHILDREN AND THE LORD’S RESISTANCE ARMY* (2012).

¹³ M. A. Hélie-Lucas, *Dossier 23-24: What Is Your Tribe? Women’s Struggles and the Construction of Muslimness*, WOMEN LIVING UNDER MUSLIM LAWS (Jul. 2001), www.wluml.org/node/343.

¹⁴ Sadia Abbas, *Other People’s History: Contemporary Islam and Figures of Early Modern European Dissent*, 6 EARLY MOD. CULTURE 49 (2007), <http://emc.eserver.org/1-6/abbas.htm>.

diversities, but a discussion of that remains beyond the scope of this essay.

Now this takes me forward to mention some of the challenges to human rights from these movements. I do not have to explain this as much as I used to. The media largely takes care of this for me, but I should stress that we certainly are seeing widespread attacks by the armed wings of Muslim fundamentalist movements. The majority of victims are people of Muslim heritage, in countries like Afghanistan, Iraq, and Nigeria, but also religious minorities. Unfortunately, I think the local casualties get a lot less interest and a lot less coverage than do the Western casualties.

There also are other very serious problems: challenges to human rights from these fundamentalist movements in Muslim contexts. One of the most severe has to do with the systematic use of sexual slavery and rape by some of these groups—whether it is Boko Haram in Nigeria, whether it is the so-called Islamic State. It is truly shocking if you read the attempt at legal justification that these groups issue for engaging in sexual slavery.¹⁵ There are many instances of sexual violence in conflicts around the world. What is particular about these is that they are openly argued, they are openly acknowledged, and they are openly justified.¹⁶ Islamic State actually has a slave market.¹⁷ Boko Haram’s leader actually said they were going to sell the girls that they kidnapped in a market.¹⁸ This is very openly acknowledged. Some of the Algerian armed groups did this back in the 1990s as well—not with an open slave market, but through the practice of sexual slavery.

One of the things that is critical to understand when we look at this violence is again the relationship between it and the underlying ideology. There is a quote that I love from some Algerian women social scientists who looked at the “holy war” that they were experiencing—the very unholy holy war in Algeria in the 1990s—being waged by the armed Islamic group that was the 1990s version of “Islamic State.” They said something very important: “This absolute violence is neither a reflection of collective insanity, nor of perversity nor of the sadism of particular individuals . . . but is the consequence of a political project in which all practices are based on juridico-religious justifications.”¹⁹ In other words, if you want to tackle this violence you have to go after the underlying ideology that makes these

¹⁵ Islamic State, *The Revival of Slavery Before the Hour*, DABIQ MAG., no. 4, 2014, at 14–17, <http://media.clarionproject.org/files/islamic-state/islamic-state-isis-magazine-Issue-4-the-failed-crusade.pdf>.

¹⁶ *Id.*

¹⁷ *Call for Iraqi Women Victimized by ISIS*, ORG. OF WOMEN’S FREEDOM IN IRAQ (Sept. 3, 2014), www.owfi.info/EN/activities/call-for-iraqi-women-victimized-by-isis.

¹⁸ Adam Nossiter, *Nigerian Islamist Leader Threatens to Sell Kidnapped Girls*, N.Y. TIMES (May 5, 2014), www.nytimes.com/2014/05/06/world/africa/nigeria-kidnapped-girls.html?_r=0.

¹⁹ RACHDA, TEMPS DE VIOLS ET DE TERRORISME 45 (2004).

justifications. It is not incidental violence; it is violence that is very specifically based in the fundamentalist ideology. I think about the brave campaigner against terrorism in Algeria—Cherifa Kheddar—who lost her brother and sister to the violence in the 1990s and now heads the Algerian Association of Victims of Islamist Terrorism or Djazairouna. She said, “We cannot defeat terrorism by an anti-terrorist battle without doing the anti-fundamentalist battle.”²⁰ I think that is an absolutely critical issue.

How does international law then respond to these sets of challenges? Well, I am afraid that it has not done so very well, in my view. So you have Cherifa Kheddar left alone out there on the street protesting against killings of women by fundamentalist armed groups without a great deal of support from the fields of international human rights or international law.

Let me explain what I mean by the silences of international law here. If you look, for example, at just the scholarly output of those international lawyers writing in English, in recent years what you will find is a great deal of critique of the responses to Muslim fundamentalism and critique of the way in which the so-called war on terror was carried out. I agree with much of this critique in terms of its analysis of torture and unlawful uses of force and extraordinary renditions, and so on. But what is missing, what you do not find in that same literature is the concomitant analysis and critique of the transnational Jihadist networks themselves and the impact that they are having on the civilian population. The same thing is true with regard to the reporting of human rights non-governmental organizations.²¹ If you look at the United Nations, there certainly has been a great deal of activity around terrorism, and now increasingly around the very ambiguous concept of violent extremism, that is often not clearly defined. But there has been very little discussion of the underlying problem of fundamentalism that Cherifa Kheddar is so bravely campaigning against in North Africa.

There has been some acknowledgement in general terms. The Secretary General’s 2006 report to the General Assembly acknowledges that what he called “the politicization of culture in the form of religious ‘fundamentalisms’ in diverse religious contexts has become a serious challenge to efforts to secure women’s human rights,”²² but the U.N. system has been very nervous about going much farther beyond that. There is one very notable and important report back in 1999 of the U.N. Special Rapporteur on Religious Intolerance (who at that time was a Tunisian law

²⁰ BENNOUNE, *supra* note 1, at 336.

²¹ See, e.g., Karima Bennoune, *Terror/Torture*, 26 BERKELEY J. INT’L. L. 1, 1–61 (2008); MEREDITH TAX, *DOUBLE BIND: THE MUSLIM RIGHT, THE ANGLO-AMERICAN LEFT, AND UNIVERSAL HUMAN RIGHTS* (Ctr. from Secular Space ed., 2013).

²² U.N. Secretary-General, *In-Depth Study on All Forms of Violence Against Women*, ¶ 81, U.N. Doc. A/61/122/Add. 1 (July 6, 2006).

professor named Abdelfattah Amor). In Amor’s report, he framed what he called “religious extremism” as a rising threat to human rights and called for the elaboration of a set of international standards for dealing with the problem of extremism—a recommendation that has never been heeded. That is very unfortunate. The disciplines of international law and international human rights have to take up this challenge as a way of supporting civil society groups on the ground that are pushing back against the so-called holy war.

To conclude, you can draw a sharp distinction here between the sort of euphemistic discussion of this or the squeamishness of talking about this topic in the field of international law with what the campaigners who have been on the front lines are actually saying. One of the challenges, of course, is that at the same time we are also seeing a very significant rise in discrimination against Muslims in the West. And how do we take on all of these issues at the same time? After the January 2015 Paris attacks, Zazi Sadou, who was a campaigner against Jihadist violence in Algeria in the 1990s, wrote something very important about this very challenge:

The fundamentalist movement tied to political Islam should be combatted everywhere. It is not a question of waging “a war against Muslims,” but of acting together to stop those who are killing us and throwing our children in the pyres that they are building everywhere. The hate of the other, the hate of the foreigner is the ingredient that feeds these fires. We must maintain solidarity and vigilance.²³

It seems to me that that clarity, that specificity, that sort of principle of looking at both the problem of discrimination and at the very real problem of fundamentalist violence is the critical stance that the disciplines of international law and human rights need to take today. Most of all, we have to listen to the people who are pushing back and trying to stop the “holy wars” around the world. If we heed their words and work, we can make sure that the voices of tolerance are louder than the voices of intolerance around the world.

²³ Karima Bennouna, *One Week After the Charlie Hebdo Attack: Refuse to Sign up for the Clash of Civilizations*, HUFFINGTON POST (Jan. 14, 2015), www.huffingtonpost.com/karima-bennouna/one-week-after-the-charli_b_6467034.html (quote translated by Karima Bennouna).