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Federalism: Necessary Legal Foundation for the Central Middle Eastern States

Issa Al-Aweel

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FEDERALISM: NECESSARY LEGAL FOUNDATION FOR THE CENTRAL MIDDLE EASTERN STATES

Issa Al-Aweel*

ABSTRACT

The Central Middle East—comprising of Syria, Israel, Palestine, Lebanon, and Jordan—is in need of a legal foundation defined by a constitutional umbrella that governs it as a whole. This is a proposed broad structure of such legal foundation that serves regional legal and economic needs and includes recognition of human rights.

The need for such restructuring is evident from the persistence of regional conflict and instability. Conflict and instability have been constants in the region in general and certainly in the listed five states. The issues include political instability, terrorism, continuous threats of fundamentalism, and pervasive disregard to human life and human rights. Israel has had strife with all the four neighboring peoples and states. Meanwhile, political instability either reigns or undermines each of these neighboring states. This article does not attempt to argue the correctness or fairness of what manifested in the first half of the 20th century; it does, however, argue that the political structure and how it continues to be is part of the reason for the conflicts and the instability.

* Member and practicing attorney with the Maryland State Bar. I am in debt to Dean John C. Brittain, Professor of Law and former Acting Dean with the University of the District of Columbia David A. Clarke School of Law, and colleague Patricia Shnell, for their support, assistance, and invaluable advice, without which this research and manuscript would not have been completed. I must acknowledge the Pace International Law Review editing team, in particular Ms. Emily Golban, for their tireless work.

This Article presents federalism for the five states as the necessary political structure and legal foundation, as the one option that allows the five states to co-exist, to recognize human rights as we define them today, and to allow for economic and cultural growth. This Article also argues that such a structure must begin from within, with the support of the great and global powers including the United States and Russia.

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I. INTRODUCTION

The Middle East has witnessed numerous conflicts over the centuries. The region continues to witness conflicts; however today these conflicts are arguably more pronounced and have a larger effect on the global community. The conflicts may be considered the results of internal conflicting interests where religious factions battle for control over land and governments. The conflicts also result from regional and global conflicting interests where surrounding nations and global powers struggle to create ties with Middle Eastern governments and to maintain some control over the region's resources.

Internally, the region has witnessed infighting between a multitude of ethnic and religious factions. General and broad examples of this include, but not limited to, struggles between Shiite Muslims and Sunni Muslims, Arab-speaking peoples and Kurdish populations, and Jews and Muslims.¹ Regionally, struggles between states have mirrored similar ethnic and religious differences, such that various governments have continuously attempted to influence other governments and undermine opposing factions, for instance, Iran and Syria representing a Shiite-type coalition versus Saudi Arabia and Qatar representing a Sunni-type coalition.² The global community, including for example the United States, Russia, and the European Union, also has economic and political interests in the region, with the added consequence of being directly affected by the region's instability through terrorism.

For the purposes of this Article, Syria, Israel, Palestine, Lebanon, and Jordan comprise the Central Middle East. These five states continue to witness a disproportionate share of the conflicts

¹ See, e.g., Andreas Gorzewski, *Sunnis, Shiites locked in an endless conflict*, DW (May 1, 2016), <https://www.dw.com/en/sunnis-shiites-locked-in-an-endless-conflict/a-18958491> (explaining conflict between the Sunnis and Shiites).

² See Shlomo Brom & Yoel Guzansky, *The conflict in Yemen: A case study of Iran's limited power*, Insight No. 747 INST. FOR NAT'L SEC. STUDIES (Sept. 16, 2015), <https://www.inss.org.il/publication/the-conflict-in-yemen-a-case-study-of-irans-limited-power/> ("All of this has led to the present situation in which there is a war-by-proxy between a Saudi Arabian-led Sunni coalition and an Iranian-led Shiite coalition.").

in the general region. A large focus of these conflicts revolves around the Israeli-Palestinian conflict.

Palestine's, Syria, and Lebanese Hezbollah refuse to partially or fully recognize Israel's right to exist, and, as a result, Israel has often argued that these parties continue to pose a deep security threat to Israel.³ On the other hand, each of Palestine's, Syria, and Lebanese Hezbollah argue that Israel continues to violate various areas of international law such as systematic discrimination and accession of land by force.⁴ As for Jordan, it is estimated that half of its citizens are of Palestinian-roots, thus, creating an arguably precarious effect to Jordan's current peaceful relationship with Israel.⁵

This Article argues that these five states are central to the Middle East particularly from a political standpoint. In other words, as the region and the global community struggle with various interests in the region, these five states attract a disproportionate amount of those interests, adding to the internally conflicting interests. The Article further argues that, in large part, the political and legal structures of these states cannot handle such multi-level conflicting interests and allow such multi-level conflicting interests to destabilize the region. As such, the goal of this Article is to demonstrate that the Central Middle East—comprised of the five aforementioned states—is in need of a legal foundation defined by a constitutional umbrella that governs it as a whole. The other goal is to propose a broad structure for such legal foundation that serves regional legal needs and includes declarations of human rights.

³ See CONG. RESEARCH SERV., RL33566, LEBANON: THE ISRAEL-HAMAS-HEZBOLLAH CONFLICT 1 (2016), https://www.everycrsreport.com/files/20060915_RL33566_8b116c77b728bc4054f9a71cbaaf24f5b7eabaa3.pdf (“Particularly along Israel's northern front, achieving peace between the major parties has been an elusive goal. The task has grown even more complex with the rising influence of non-state political movements/terrorist organizations, such as Hezbollah and Hamas, on Lebanon's southern border. Neither organization recognizes Israel's right to exist as a nation-state.”).

⁴ See, e.g., *id.* at 10.

⁵ See, e.g., Murdar Zahran, *Jordan Is Palestinian*, 19 MIDDLE E. Q. 3, 3 (2012).

This Article does not attempt to argue the correctness/incorrectness or fairness/unfairness of what manifested in the first half of the 20th century. It does, however, argue that the political structure is the reason for the conflicts and the instability, that the solution must begin from within, and that the five states must build on such a structure as a guide to hold each other accountable.

This Article presents federalism as the solution—federalism that links the five states through one foundational legal structure—a structure that enforces overarching principles such as tolerance and non-discrimination, while also allowing for member-state autonomy. The argument here is that federalism is the necessary political structure and legal foundation, establishing federalism as the one option that serves internal, regional, and global interests. This is because it allows the five states to co-exist, recognize human rights as we define them today, allow for economic and cultural growth, and promote accountability between the member states, while also promoting cooperation and trade with the global community. Additionally, such a structure must begin from within, with the support of the great and global powers including the United States and Russia.

Part II describes and highlights the current state of affairs and effects of the current structure by presenting the general instabilities as symptoms and as inevitable results of the political structure, highlighting the need for effective restructuring. Part III argues that the current political structure is the root of the issue because it attracts numerous conflicting interests leading to the conditions described in Part II. Part IV presents federalism as the effective solution, joining the current Central Middle Eastern states under one legal structure to decouple the conflicting internal and external interests, and to position the region to address and handle these internal and external interests. Part V argues that alternative structures, such as unions and treaties, have not succeeded in addressing because such approaches cannot address the conflicting interests. Part VI discusses the necessary structure and how to bring it about. Part VII attempts to present possible risks.

II. SYMPTOMS: POLITICAL INSTABILITY, TERRORISM, FUNDAMENTALISM, AND HUMAN RIGHTS VIOLATIONS

Instabilities within the Middle East, particularly the Central Middle East, include political instabilities, continuous and long-lived threats of violence, fundamentalisms that reflect the views of small minorities, and violations of multiple areas of human rights laws.

A. *Political Instability*

Aside from Israel, governments of Central Middle Eastern states are under almost constant threat of overthrow. While Israel has managed to maintain a relatively stable political structure, the other four states are generally and continuously threatened by differing factions. Today, multiple conflicting sides struggle to impose control over not only resources but also ideologies. Such struggles may be the result of inadequate governing on the part of the established governments remains, however, that the established governments play their part by employing systems of oppression as the approach to maintain control. The result is a multi-faction struggle for self-rule, imposing structures of governance, control of resource distribution, and most prominently, definitions of origins and cultural identities and ideologies.⁶

Additionally, other factors work as catalysts for instability. First, the concentration of the holy sites in the Middle East and the “monopolization of Arabic over Islamic jurisprudence,” give the Arab historic core great advantage and influence over the region and over non-Arabic speaking populations.⁷ Second, oil-rich gulf states maintain influential effects through “funding conservative movements and schools” that seek “counter-reformation against less austere local traditions”⁸ or non-agreeable governments.

⁶ See Laurie King-Irani, *To Reconcile, or to be Reconciled?: Agency, Accountability, and Law in Middle Eastern Conflicts*, 28 HASTINGS INT'L & COMP. L. REV. 369, 385 (2005) (explaining the structures of government in the central Middle East).

⁷ P.W. SINGER, THE BROOKINGS PROJECT ON U.S. RELATIONS WITH THE ISLAMIC WORLD, THE 9-11 WAR PLUS 5: LOOKING BACK AND LOOKING FORWARD AT U.S.-ISLAMIC WORLD RELATIONS 24 (2006).

⁸ *Id.* at 4.

Moreover, sectarianism has taken hold. Sectarianism to the extent it is today is not an ancient identity system, but actually appeared as a response to “internal and external changes in the mid-19th century Ottoman Empire.”⁹ It is arguably the result of multiple conflicting interests, including ideologies, control of land, and control of revered sites. The many examples of the instabilities include the rebellion in Syria and other Arabic-speaking countries, the Israeli-Palestinian conflict, and Lebanon’s struggles to find a sustainable governing structure.

Thus, the current political structure has not succeeded in facing the multi-layered challenges. In short, the Arab State system’s post-colonization continues to lack the “structural [and] institutional underpinnings” of envisioned nation-statehood.¹⁰ The Cold War supported the structure of these nominal states and veiled their weaknesses.¹¹ Events of the past sixty or so years have shown that stability of the current “Middle Eastern states . . . can be maintained only through coercion and intensified surveillance of the populace through oppressive intelligence services,” primarily because of the nominal character of these states.¹² In addition, high birth rates, resulting in demographic changes, add domestic pressure on Middle Eastern governments, such that the Middle Eastern ruling powers in totality have been becoming unable to legitimize their rule and less capable of containing forces counter to their rule.¹³ In addition, dysfunctional leaderships have prevailed and have been other “indices of impunity’s triumph.”¹⁴

In summary, political instability with recurring, inescapable cycles of conflicts between the various factions and against governing bodies, is one symptom of the need for restructuring. It is arguable that the instabilities are the results of oppression and external interests and interference. It is more productive to consider whether an effective legal foundation and structure would address the region’s oppressions and conflicting sides and whether

⁹ King-Irani, *supra* note 6, at 379.

¹⁰ Bassam Tibi, *The Fundamentalist Challenge to the Secular Order in the Middle East*, 23 FLETCHER F. WORLD AFF. 191, 193 (1999).

¹¹ *Id.*

¹² *Id.* at 195.

¹³ *Id.* at 198.

¹⁴ King-Irani, *supra* note 6, at 384.

such foundation would allow a government to meet its populations' needs as well as to handle external interests and in turn affect stability.

B. Terrorism

Another symptom of the need for a legal foundation and structure is terrorism. The New Oxford American Dictionary Online defines terrorism as “[t]he unlawful use of violence and intimidation . . . in the pursuit of political aims,”¹⁵ implying that the desire for political change or political goals is the driving force. The United States Code defines terrorism, international and domestic, in part as activities that:

(A) involve violent acts or acts dangerous to human life . . . [and]

(B) appear to be intended

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion;

or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.¹⁶

. . .

In 2006, when addressing the 9/11 attacks, Singer noted that for recurring and group terrorist attacks, an inspiring leader is necessary to build off of a base of existing “economic, political, social, and cultural crises.”¹⁷

Singer argues that there are two divergent approaches to understanding terrorism. First the root cause approach, which maintains that “poverty, ignorance, and lack of political expression provide [a] breeding ground for terrorist organization.”¹⁸ Second, the security threat approach, which maintains that the “focus on

¹⁵ *Terrorism*, OXFORD DICTIONARY, <https://en.oxforddictionaries.com/definition/terrorism> (last visited Apr. 9, 2019).

¹⁶ 18 U.S.C.A. § 2331 (LEXIS through Pub. L. No. 116-8).

¹⁷ SINGER, *supra* note 7, at 4.

¹⁸ *Id.*

intelligence, protection, and coercive action” prevent terrorism, and that socioeconomic deprivation have no connection to terrorism, citing that Bin Laden and his group were neither poor nor uneducated.¹⁹ Singer adds that both approaches are right and wrong in that a leader who can inspire distinguishes one radical group from another, but the appeal becomes seductive when economic, political, social, and cultural crises combine.²⁰

Activities falling under the traditional definitions or code are amply reported in the news, whether in a Central Middle Eastern state,²¹ other regional states such as Turkey²² or Pakistan, Europe,²³ or the United States.²⁴ Moreover, an arguable commonality between many of these events is that the actors often justify the acts in the name of religion, and that the actors, as well as the acts, are connected to the Middle East in one way or another. The frequency and constancy of these terrorist acts make it clear

¹⁹ *Id.*; see Mohamed R. Hassanien, *International Law Fights Terrorism in the Muslim World: A Middle Eastern Perspective*, 36 DENV. J. INT’L L. & POL’Y 221, 222–23 (2008) (pointing to poverty, ignorance, and lack of political expression as one approach to understanding terrorism).

²⁰ SINGER, *supra* note 7, at 4.

²¹ See Gili Cohen, *Hebron Brothers in Custody for Sniper Attacks Against Israelis*, HAARETZ (Feb. 29, 2016, 7:40 PM), <http://www.haaretz.com/israel-news/.premium-1.706186>; see also Gili Cohen & Chaim Levinson, *Israeli Policeman Stabbed in West Bank Village Near Jericho*, HAARETZ (Mar. 3, 2016, 7:35 AM), <http://www.haaretz.com/israel-news/1.706704>.

²² See Murad Sezer & Osman Orsal, *Two Female Militants Killed After Attacking Police Station Outside Istanbul*, HAARETZ (Mar. 3, 2016, 12:40 PM), <http://www.haaretz.com/middle-east-news/1.706717>; Declan Walsh, et al., *Taliban Attack at Bacha Khan University in Pakistan Renews Fears*, N.Y. TIMES (Jan. 20, 2016), http://www.nytimes.com/2016/01/21/world/asia/bacha-khan-university-attack-charsadda.html?emc=edit_na_20160120&nid=67698734&ref=cta&_r=0.

²³ Murad Makhmudov, et al., *Islamists Slaughter at least 120 people in Paris: France on the Wrong Side of History in Libya and Syria*, MODERN TOKYO NEWS (Nov. 14, 2015), <https://moderntokyonews.com/2015/11/14/islamists-slaughter-at-least-120-people-in-paris-france-on-the-wrong-side-of-history-in-libya-and-syria/>.

²⁴ Michael S. Schmidt & Salman Masood, *San Bernardino Couple Spoke of Attacks in 2013, F.B.I. Says*, N.Y. TIMES (Dec. 9, 2015), http://www.nytimes.com/2015/12/10/us/san-bernardino-massacre-fbi.html?emc=edit_na_20151209&nid=67698734&ref=cta.

that we have allowed such acts to become too common a headline to continue without a vision that directly addresses the motivations.

When considering the security perspective as described by Singer, it is arguable that a new approach to security is needed because violence in the Middle East, in the shape of terrorism, is carried out by irregular warriors who are fundamentalists or ethnic nationalists and are unlikely to be contained by institutionalized armies.²⁵ However, regardless of whether it is economics and/or security that hold the key to addressing terrorism, it is interesting that while fundamentalists are succeeding in using Islam as the motivation and basis for their movements, the overarching principle in Islam concerning violence is embodied in the Quranic verse: *The taking of one life is like the killing of all humankind*.²⁶ In turn, for a society or a government to claim that Islam is the cause or motivation of terrorist acts against it would be avoiding the actual issue, regardless of whether those acts were in attempt to intimidate, coerce, or influence in the name of Islam.

A broad perspective notes that Islamist movements have used confrontation as a tool to de-couple the region from the West, from Western interests, Western values, and Western influence.²⁷ In contrast, there is barely any evidence of other movements, such as the conflict in Northern Ireland, the Basque region, or Central and South America, having become conflicts with a global effect. One explanation perhaps is that the Muslim or the Arabic-speaking populations are much larger than populations involved in aforementioned conflicts. While this is true, this point supports the argument for the multi-level conflicting interests—that the conflict in the Central Middle East draws internal and global conflicting interests that are leading to internal, regional, and global terrorism. Taken a step further, a more focused perspective points to the

²⁵ Tibi, *supra* note 10, at 204.

²⁶ See Hassanien, *supra* note 19, at 230. See generally Greg Callaghan, 'Islamism is not Islam': confronting Europe's terrorism problem, SYDNEY MORNING HERALD (Dec. 8, 2018) (quoting Ed Husain, author of *The Islamist*: "mainstream Muslims are drowned out by Islamists . . ." and "most Muslims know that Islamism is not Islam[.]") <https://www.smh.com.au/world/europe/islamism-is-not-islam-confronting-europe-s-terrorism-problem-20181204-p50k0f.html>.

²⁷ Tibi, *supra* note 10, at 197.

conflict between Israel and the Arab-speaking populations as a conflict that fuels the larger part of today's terrorism,²⁸ or at the minimum contributes to the rise of 'inspiring leadership.'

The Israeli-Palestinian conflict effectively pins those of the Jewish faith against the Palestinians in particular, but also against the rest of the Middle Eastern populations. Zionist leaders, through the Jewish National Fund, pursued and purchased land in what was Palestine²⁹ and, eventually, relying on the Balfour Declaration to declare independence, fought the 1948 war and expelled the Palestinians.³⁰ The Zionist movement and ideology was central to the establishment of Israel, not simply as a state, but as a Jewish state.³¹ Israel's Declaration of Independence asserts that Israel is the homeland of the Jewish people, dismissing the presence of other peoples with a claim to lands in the area and referring to Palestinians as illegitimate inhabitants of the land.³² Israel is a Jewish state is in its legal foundation, legislated in 1950, and repeated in practices as well as further legislation in 1992.³³

²⁸ See Hassanien, *supra* note 19, at 226, 231 (discussing the conflict and how it has been the driving force behind today's terrorism); see also SINGER, *supra* note 7, at 4.

²⁹ See John Dever & James Dever, *The Occupation of Truth*, 33 MISS. C. L. REV. 39, 40 (2014).

³⁰ Authors debate the start of the war, with Jewish writers pointing to Palestinians rejecting the United Nations Resolution of partitioning the land into Israel and Palestine and taking up arms against the Jewish population and eventually losing land in Israel's War of Independence. See, e.g., Shlomo Gazit, *Israel and the Palestinians: Fifty Years of Wars and Turning Points*, 555 ANNALS AM. ACAD. POL. & SOC. SCI. 82, 83 (1998). Other authors point to Israel starting the war after declaring independence and forcibly dispossessing Palestinians from their homeland. See, e.g., Dever & Dever, *supra* note 29, at 40.

³¹ See generally Rabbi Ed Snitkoff, *Secular Zionism: From Religious Idea to Secular Ideology*, MY JEWISH LEARNING <https://www.myjewishlearning.com/article/secular-zionism/> (last visited Apr. 16, 2019) (explaining Zionism as a whole).

³² Pnina Lahav, *A "Jewish State . . . to Be Known as the State of Israel": Notes on Israeli Legal Historiography*, 19 LAW & HIST. REV. 387, 402 (2001).

³³ See Human Dignity and Liberty, 5752, § 1(a) (as amended) (Isr.), translated in *Basic Law: Human Dignity and Liberty*, KNESSET, https://www.knesset.gov.il/laws/special/eng/basic3_eng.htm (last visited Apr. 10, 2019) [hereinafter *Basic Law: Human Dignity*] (Isr.) (stating that this law's

Regardless of the correctness or incorrectness of Israel as a Jewish state, objectively the issue in its simplest is that such an approach is pinning the Jewish population against the Muslim population with regional players and global powers essentially taking sides. The Muslim population in turn has a common cause against Israel as well as global powers supporting Israel. While the vast majority of Muslims do not react with violence,³⁴ the pretext remains the same in its simplest form—Jews and Muslims against each other, in turn pinning the whole of the Muslim population with a common cause. This is not to say that the Israeli-Palestinian conflict is the one source and cause of terrorism, but rather, that the conflict and the resulting conflicting interests, are contributors.

Middle Easterners, or those of Middle Eastern descent, involved in terrorist acts either internally or globally, come from various backgrounds. They may be, for example, of Palestinian origin, Syrian, Lebanese, Egyptian, Turkish, or Saudi Arabian, or from other Persian Gulf countries, northern African countries, or may even be Europeans with Middle Eastern backgrounds. By the same token, and regarding the Islamic State (“IS”), it has become well-established that foreign fighters comprise a large portion of IS fighters.³⁵

It is granted that the reasons for Middle-Eastern-related terrorism are broader than simply the Israeli-Palestinian conflict. For example, the New York Times reported on the attack on Charlie Hebdo as a ten-year deepening radicalism fueled by American soldiers humiliating Muslims.³⁶ Thus, the reasons for

purpose is, in part, to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state).

³⁴ See ANTHONY CORDESMAN, ISLAM AND THE PATTERNS IN TERRORISM AND VIOLENT EXTREMISM, CTR. FOR STRATEGIC & INT’L STUDIES (CSIS) 1, 23–25, 46, 52 (Oct. 17, 2017), <https://www.csis.org/analysis/islam-and-patterns-terrorism-and-violent-extremism> (Working Draft).

³⁵ See Anna Altman, Opinion, *How Many Foreign Fighters Have Joined ISIS?*, N.Y. TIMES (Sept. 16, 2014, 9:29 AM), <http://op-talk.blogs.nytimes.com/2014/09/16/how-many-foreign-fighters-have-joined-isis/>.

³⁶ Rukmini Callimachi & Jim Yardley, *From Amateur to Ruthless Jihadist in France*, N.Y. TIMES (Jan. 17, 2015), <http://www.nytimes.com/2015/01/18/world/europe/paris-terrorism-brothers->

Middle-Eastern-related terrorist activities must be considered from a broader perspective, one that considers the current political structure as well as the ramifications of the structure leading to multi-level conflicting interests.

European countries, the United States, and Russia, have all maintained interests and influence in the region. Most notably, the United States consistently has had a foreign policy that supports Israel as the best means to support its interests.³⁷ In short, while neither the Israeli-Palestinian conflict, nor Islam, can be the scapegoat for explaining today's Middle Eastern-related terrorist acts, the Israeli-Palestinian conflict does spill over to bordering countries, regional countries, as well as global powers, and attracts conflicting interests leading to terrorism in the name of a common cause and led by inspiring leaders—Muslims against Israel and the West.

C. *Fundamentalism*

The combination of human development gaps and broken regimes to a large extent explains the failing environment in which radicals thrive.³⁸ Al-Qaeda's popularity has been, in part, due to its ability to draw from the sense of frustration that poorly educated youth, those lacking the skills for employment and alienated from their local system and the global political systems, feel.³⁹

The current population in the Middle East as a whole is projected to almost double, with a growth rate of around 130%, because approximately half the Arab population, Iranians, and Pakistanis are younger than twenty years old; in comparison, slightly more than one-quarter of the populations in Western countries are younger than twenty-years old.⁴⁰ With current

said-cherif-kouachi-charlie-hebdo.html?emc=edit_na_20150117&nid=67698734&r=0.

³⁷ See Zack Beauchamp, *Why the US has the Most Pro-Israel Foreign Policy in the World*, VOX (July 24, 2014, 9:00 AM), <https://www.vox.com/2014/7/24/5929705/us-israel-friends> (explaining that the United States maintains strong ties with Israel).

³⁸ SINGER, *supra* note 7, at 11.

³⁹ *Id.* at 18.

⁴⁰ *Id.* at 17.

regional structures, continued stagnant political systems, and weak infrastructure, Middle Eastern youth will lack the opportunities necessary to fulfill their aspirations, leading up to what the World Economic Forum refers to as a “ticking time-bomb.”⁴¹ In addition to the lack of opportunities as a contributing factor to a dark future, through 2016, ISIS tapped into the population trend to indoctrinate fundamentalism in children, training them for jihad.⁴²

Damaged Israeli, Palestinian, Lebanese, and more recently Syrian societies provide a nurturing environment for extremism and political violence.⁴³ Moreover, fundamentalist jihadists have been exporting the same fundamental ideology used in Saudi Arabia into the Central Middle Eastern region, arguably in attempt to overpower those states and institute Wahhabist version of Sunni Islam.⁴⁴ The Wahhabist vision is an unyielding form of Islam, allowing no room for diversity or disagreement and, instead, is dedicated to a militant form of Islam.⁴⁵ It places jihad on the same level as the ‘five pillars’⁴⁶—Muslim life, prayer, concern for the needy, self-purification, and the pilgrimage. As the ‘five pillars’ are mandatory, fundamentalists make jihad mandatory as well, in spite of the stark difference in the underlying motivation, where peace is clearly a foundation to the ‘five pillars.’⁴⁷

Moreover, Middle-Eastern born fundamentalism is certainly not contained within any Middle Eastern borders, such that it is a global issue. For instance, the New York Times reported in the summer of 2014 that European governments were

⁴¹ *Id.* (quoting World Economic Forum, *Roundtable on Arab Competitiveness*, Doha, Qatar, Apr. 2005).

⁴² Mark Townsend, *How Islamic State is training child killers in doctrine of hate*, THE GUARDIAN (Mar. 5, 2016, 2:20 PM), <https://www.theguardian.com/world/2016/mar/05/islamic-state-trains-purer-child-killers-in-doctrine-of-hate>.

⁴³ King-Irani, *supra* note 6, at 373.

⁴⁴ See Donald W. Garner & Robert L. McFarland, *Suing Islam: Tort, Terrorism and the House of Saud*, 60 OKLA. L. REV. 223, 231–32 (2007) (noting Saudi Arabia’s uniquely intolerant and dangerous version of Islam now resulting in jihad throughout the world and the Saud/Wahhab pact dedicated to spreading Sunni Islam).

⁴⁵ *Id.* at 225.

⁴⁶ *Id.* at 233.

⁴⁷ *Id.*

paying millions to Al-Qaeda in ransom for kidnappings.⁴⁸ In addition, Islamic militants have been able to recruit and train Middle Eastern westerners, including Americans, to fight alongside and for the same militant ideology.⁴⁹ The western recruits do not necessarily lack education or employment.⁵⁰ According to news reports, the Islamic State has been able to draw hundreds of individuals from Europe and elsewhere, where these individuals have included educated young men such as Mr. Emwazi and Mr. Abusalha, both individuals involved in videos showing beheadings.⁵¹ Therefore, with respect to Westerners, lack of education does not necessarily explain the draw to fundamentalism.

As such, it is arguable that Middle Eastern conditions—the conditions that are attracting conflicting internal and regional interests—are fostering fundamentalism and, in turn, fundamentalists have been able to sell a common cause against identifiable enemies such as Western governments and states, Israel, and Middle Eastern governments, who traditionally have

⁴⁸ Rukmini Callimachi, *Paying Ransoms, Europe Bankrolls Qaeda Terror*, N.Y. TIMES (July 29, 2014), <https://www.nytimes.com/2014/07/30/world/africa/ransoming-citizens-europe-becomes-al-qaedas-patron.html>.

⁴⁹ See Michael S. Schmidt & Mark Mazzetti, *Suicide Bomber From U.S. Came Home Before Attack*, N.Y. TIMES (July 30, 2014), http://www.nytimes.com/2014/07/31/us/suicide-bomber-from-us-came-home-before-attack.html?emc=edit_na_20140730&nid=67698734.

⁵⁰ See generally Margaret Coker & Jenny Gross, *Islamic State Militant Known as 'Jihadi John' Identified*, WALL ST. J. (Feb. 26, 2015, 7:08 PM), <https://www.wsj.com/articles/islamic-state-militant-known-as-jihadi-john-identified-1424955642> (reporting on Mr. Emwazi as a university-educated Londoner, and identified as the masked Islamic State militant appearing in videos showing the beheading of hostages); Kenan Malik, *Opinion, Assimilation's Failure, Terrorism's Rise*, N.Y. TIMES (July 7, 2011) <https://www.nytimes.com/2011/07/07/opinion/07malik.html> (analyzing why so many young men, intelligent and integrated, found violence and reactionary ideology attractive.).

⁵¹ See generally Coker & Gross, *supra* note 50; Mark Mazzetti, et al., *Suicide Bomber Is Identified as a Florida Man*, N.Y. TIMES (May 30, 2014), <http://www.nytimes.com/2014/05/31/world/middleeast/american-suicide-bomber-in-syria.html> (reporting that Americans, traveling to Syria to fight with the Nusra group against the Syrian government, come from diverse backgrounds and upbringings, including Mr. Abusalha as a suicide bomber in Syria).

followed tyrannical rule.

D. Devaluation of Human Life and Violation of Human Rights

1. Priorities of the Leaders in Central Middle Eastern States

It is clear that international law does not extend to the Middle East, possibly due in part to a culture that repels critical questions and, in the process, frustrates the application of International Humanitarian Law (IHL) and deflects attempts at criminal prosecutions and restorative justice.⁵² At the same time, it is also likely that human rights law is not a priority and is at best third to the conflicting interests and the pervasive political instability in the region.

The Syrian and Jordanian governments are known for disregarding human rights. Bejesky quotes a former CIA agent and states, “[i]f you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured, you send them to Syria.”⁵³ In 2004, American immigration officials informed a travelling Canadian citizen, Maher Arar, that he would be sent to Syria to be tortured; American officials delivered on their promise and sent Mr. Arar to Jordanian officials who in turn transferred him to Syria.⁵⁴ The Syrians interrogated Mr. Arar for eighteen hours a day for twelve days, regularly beat him with an electrical cable, and struck him with their fists.⁵⁵ More recently, in 2011, human rights organizations called on the United Nations Security

⁵² King-Irani, *supra* note 6, at 372.

⁵³ Robert Bejesky, *Sensibly Construing the “More Likely Than Not” Threshold for Extraordinary Rendition*, 23 KAN. J.L. & PUB POL’Y 221, 241 (2013); Layla Nadya Sadat, “Torture and the War on Terror”: *Ghost Prisoners and Black Sites: Extraordinary Rendition Under International Law*, 37 CASE W. RES. J. INT’L L. 309, 314 (2006)) (quoting *Fact Sheet: Extraordinary Rendition*, ACLU, <https://www.aclu.org/other/fact-sheet-extraordinary-rendition> (last visited July 18, 2019)).

⁵⁴ Katherine R. Hawkins, *The Promises of Torturers: Diplomatic Assurances and the Legality of “Rendition”*, 20 GEO. IMMIGR. L.J. 213, 213–14 (2006).

⁵⁵ *Id.* at 214.

Council to act and address the Syrian government's brutal crackdown against civilian protesters.⁵⁶

As for Lebanon, in 2013 the United of States Department of State reported that human rights abuses include, among others, torture, harsh prison conditions, harassment, and arbitrary arrest and detention of Syrian political activists.⁵⁷

The Israeli government also continuously violates human rights laws. In the 1990's, Israel subjected suspected Palestinian militants to detention without trial and interrogation methods that included binding, hooding, and sleep deprivation.⁵⁸ While torture methods may have changed in Israel due to an Israeli Supreme Court ruling in 1999,⁵⁹ violations of human rights against Palestinians persist which include rights to self-determination and to property.⁶⁰

One broad example of human rights violations that Middle Eastern states and their leaders have implemented is emergency law, particularly in Syria and Israel. The doctrine of emergency

⁵⁶ Andrew Baskin, *Human Rights Organizations Seek to Refer Syria to The International Criminal Court*, 27 INT'L ENFORCEMENT L. REP. 1010 (2011).

⁵⁷ U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, *LEBANON 2012 HUMAN RIGHTS REPORT* 1 (2012), <https://2009-2017.state.gov/j/drl/rls/hrrpt/2012humanrightsreport/index.htm?year=2012&dld=204372>

⁵⁸ Jennifer Moore, *Practicing What We Preach: Humane Treatment for Detainees in the War on Terror*, 34 DENV. J. INT'L L. & POL'Y 33, 42 (2006).

⁵⁹ See *id.* at 43; HCJ 5100/94 Public Committee Against Torture v. Israel 53(4) PD 817, para. 39 (1999) ("[a] democracy must sometimes fight with one hand tied behind it's back"); Aharon Barak, *A Judge on Judging: The Role of a Supreme Court in a Democracy*, 116 HARV. L. REV. 19, 21 (2002) (noting the tension between the need to protect the state and the rights of the individual in the context of threats of terrorism).

⁶⁰ Rep. of the Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on The Civil, Political, Economic, Social and Cultural Rights of the Palestinian People Throughout the Occupied Palestinian Territory, Including East Jerusalem, ¶ 33, U.N. Doc. A/HRC/22/63 (2013) [hereinafter *Situation in Palestine*] (discussing Israel is clearly violating Palestinians' right to self-determination and the right to determine how to implement self-determination and the right to permanent sovereignty); Comm. on Elimination of All Forms Racial Discrimination, *Concluding Observations: Israel*, para. 25 CERD/C/ISR/CO/14-16, (April 3, 2012) (Israel's planning and zoning policy in East Jerusalem, as well as in other parts of the West Bank, breaches Palestinian's fundamental rights).

law is a last resort mechanism implemented for the common good, temporarily suspending certain freedoms to facilitate the return of normalcy.⁶¹ The Syrian government implemented and maintained an emergency state for approximately fifty years, all in the name of the enemy Israel.⁶² The Israeli government continues to maintain its emergency state.⁶³ Repeated use of emergency law by ruling powers does not necessarily mean to restore normalcy, but is more to maintain control and convince their populations that it is necessary.⁶⁴

These are the choices those in power make. Leaders can choose to work towards peace and co-existence, or choose control through oppression and discrimination. One mitigating factor may be the balancing of interests. Thus far, political leaders as well as leaders of factions in the Middle East have either confused the definition of statehood or used it to their advantage, such that they consistently connect statehood to ethnicity and religion. This is true for Assad's regime in Syria, the kings of Jordan, the leaders in Israel, the Palestinian movements, and, less so but still, the polity in Lebanon. This is largely because the interests of each group separately outweigh the interests of the population in general. For instance, Israel has stronger interests in acquiring land and Judaizing the area under its control as opposed to treating non-Jews like Palestinians equally, or promoting Palestinian self-determination.⁶⁵ Similarly in Syria, the Assad regime has a

⁶¹ John Reynolds, *Emergency, Governmentality, and the Arab Spring*, JADALIYYA (Aug. 10, 2011), <http://www.jadaliyya.com/pages/index/2357/emergency-governmentality-and-the-arab-spring>.

⁶² See Shubra Ohri, *International Legal Updates: Human Rights in an Arab Spring*, 18 HUM. RTS. BRIEF 45, 46 (2011) (discussing the emergency decrees of governments of Egypt, Jordan, Libya, Syria, and Yemen that violated international law by prohibiting the rights to assemble and freedom of expression).

⁶³ See Yoav Mehozay, *The Fluid Jurisprudence of Israel's Emergency Powers: Legal Patchwork as a Governing Form*, 46 LAW & SOC'Y REV. 137, 137 (2012) (discussing Israel's complex emergency jurisprudence).

⁶⁴ Ohri, *supra* note 62, at 46.

⁶⁵ See Situation in Palestine, *supra* note 60, ¶¶ 59, 61 (reporting that the Israeli government aims to alter the composition of Jerusalem by erasing cultural heritage on the basis of religious affiliation, by emphasizing Jewish cultural heritage while disregarding the heritage of other cultures); see also *id.*

stronger interest in maintaining control as opposed to allowing Sunnis to attain power.⁶⁶

2. Torture, Discrimination and Inequalities

Current governments, certainly in Israel, Syria, Lebanon, Palestine, and Jordan, devalue and disrespect human life to the point that killing and torture are pervasively accepted norms.⁶⁷ Two of the worst offenders of human rights in the Middle East may be Syria and Israel.⁶⁸ It remains, however, that all of the five states continue to disregard international law and conventions such that victims remain individually and collectively unacknowledged.⁶⁹ These states kill and torture indiscriminately in the name of state security.⁷⁰ Unfortunately, the standards we have achieved in International Humanitarian Law appear to be considered as formalities, possibly seen as unachievable, as opposed to standards towards which to aspire.

The United States is a prime suspect in this regard, being at the forefront of torture techniques, and as such, implicitly

para. 68 (reporting that East Jerusalem's Palestinian population experience forced evictions, discriminatory building regulations, demolition orders, residence permit restrictions, and acute housing shortage).

⁶⁶ See generally William R. Polk, *Understanding Syria: From Pre-Civil War to Post-Assad*, THE ATLANTIC (Dec. 10, 2013), <https://www.theatlantic.com/international/archive/2013/12/understanding-syria-from-pre-civil-war-to-post-assad/281989/> (explaining that the Assad regime instills fear to maintain control).

⁶⁷ See, e.g., Oren Liebermann, *Palestinian authorities routinely 'arrest and torture' critics, says Human Rights Watch report*, CNN (Oct. 23, 2018, 3:09PM), <https://www.cnn.com/2018/10/23/middleeast/west-bank-gaza-human-rights-watch-report-intl/index.html>.

⁶⁸ King-Irani, *supra* note 6, at 372–73.

⁶⁹ *Id.* at 377–78.

⁷⁰ See also Liebermann, *supra* note 67 (“‘We documented dozens of cases of people detained for a Facebook post, for writing a critical article in a mainstream publication, for protesting, for being involved with the wrong group or movement,’ said Omar Shakir, Israel-Palestine director for HRW, at a press conference in Ramallah announcing the report. In detention, detainees routinely are threatened, beaten, subjected to foot whipping, in many cases subjected to torture.”).

permitting and encouraging other states to follow suit.⁷¹ Granted, torture and torture techniques are not new. Europeans, and the Ottomans before them, used such techniques, colonized, and implemented apartheid in numerous parts of the world.⁷² However, humanity collectively has chosen to articulate humanitarian law and to aspire to its standards.

Yet, the Syrian regime continues to capture and torture any person speaking or alluding to opposing the regime; this practice has continued to a larger scale and became even more focused when the opposition began in 2011.⁷³ For example, Syrian intelligence is documented to beat and murder members of the Kurdish population, including women, who voiced or were suspected of voicing any opposition.⁷⁴

Jewish Israelis consider their country democratic, and go as far as considering it the only democratic state in the Middle East;⁷⁵ yet, the extent of democracy goes only as far as voting does, allowing non-Jews to vote, but in fact effecting an ethnic democracy⁷⁶ and extending aspects of democracy only to the Jewish portion of the population. Some argue that Israel has

⁷¹ See generally *USA and Torture: A History of Hypocrisy*, HUMAN RIGHTS WATCH (Dec. 9, 2014, 9:04 AM), <https://www.hrw.org/news/2014/12/09/usa-and-torture-history-hypocrisy>.

⁷² See generally History.com Editors, *Ottoman Empire*, HISTORY.COM (last updated Aug. 21, 2018), <https://www.history.com/topics/middle-east/ottoman-empire>.

⁷³ See generally Joe Sterling, *Daraa: The spark that lit the Syrian flame*, CNN (Mar. 1, 2012, 9:32 AM), <https://www.cnn.com/2012/03/01/world/meast/syria-crisis-beginnings/index.html> (“When the schoolchildren were arrested in late February 2011, they were accused of scrawling graffiti on a school that said ‘the people want to topple the regime.’ Masalmeh, the activist, said security went to a school, interrogated students and rounded up suspects.”).

⁷⁴ See U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: SYRIA 2–3 (2011), <https://2009-2017.state.gov/documents/organization/160478.pdf>.

⁷⁵ Roger I. Zakheim, *Israel in the Human Rights Era: Finding A Moral Justification for the Jewish State*, 36 N.Y.U. J. INT’L L. & POL. 1005, 1008 (2004).

⁷⁶ See *id.* at 1010–13 (explaining why Israel is considered an “ethnic democracy”).

developed a class system, inherent in its legal code.⁷⁷ The government heavily discriminates against any non-Jew.⁷⁸ Israeli Arabs are heavily underrepresented,⁷⁹ in spite of the 'democratic' voting, and even when they are represented, those in power often censure and threaten anyone who speaks or acts unfavorably, calling such a person anti-Israel and a conspirer. Moreover, in the context of the Occupied Territories, Israel goes as far as to implement policies of collective punishment against Palestinians.⁸⁰

These methods have not worked for either Syria or Israel, certainly not for the region in light of continued violence and conflicts; the methods have not achieved anything that resembles peace or stability. Israelis are more fearful than in preceding years as hatred between Jews and Arabic-speaking Palestinians continues to grow.⁸¹

III. CURRENT STATE AND LEGAL STRUCTURE OF THE CENTRAL MIDDLE EAST IS THE ROOT OF THE REGION'S POLITICAL INSTABILITY, MIDDLE-EASTERN RELATED TERRORISM, AND MIDDLE-EASTERN FUNDAMENTALISM

A. Numerous Conflicting Interests

Conflicts, old and new, have been persistent and long-lived in virtually all parts of the Central Middle East. Israel has had its

⁷⁷ See *id.* at 1013 ("In Israel, for example, the emerging constitution does not enjoin the state from exhibiting partiality towards the different cultural, ethnic, and religious conceptions of its majority").

⁷⁸ See, e.g., U.N. Econ. & Soc. Council, Comm. on Econ, Soc, and Cultural Rts, Rep. on the Eighteenth and Nineteenth Sessions, ¶ 237, U.N. Doc. E/C.12/1998/26 (1999) ("The Committee notes with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively.")

⁷⁹ Yousef T. Jabareen, *Constitution Building and Equality in Deeply-Divided Societies: The Case of the Palestinian-Arab Minority in Israel*, 26 WIS. INT'L L.J. 345, 349 (2008).

⁸⁰ John Dugard & John Reynolds, *Apartheid, International Law, and the Occupied Palestinian Territory*, 24 EUR. J. INT'L L. 867, 903 (2013).

⁸¹ Daniel Bar-Tal & Eran Halperin, *Societal Beliefs and Emotions as Socio-Psychological Barriers to Peaceful Conflict Resolution*, 19 PALESTINE-ISR. J. POL'Y, ECON. & CULTURE 18, 22–23 (2014).

disputes with Palestinians, just as Hamas demands support from its Palestinian civilians.⁸² Syria, prior to its civil war, focused much of its efforts and interests in weakening Israel's position and gaining leverage possibly by supporting Hamas against Israel. Interests from regional states have included support for Hamas from Saudi Arabia, Kuwait, and Qatar;⁸³ similarly with Lebanon's Hezbollah, which is reputed to receive support from Iran.

As for global powers, arguably through 2010, the United States for example maintained a policy of preventing democracy and supporting dictators, with the view that the Muslim public would act against United States' interests if democracy were to take hold.⁸⁴ In turn, Middle Eastern dictators have oppressed their people, including in Syria and Jordan, leading to unfavorable economic as well as political conditions.⁸⁵ With such support from the West, ruling powers in the Arabic-speaking world failed to address issues that generally give rise to social unrest, and were unable to provide substantive stability and economic development because these powers were rather preoccupied with maintaining control.⁸⁶ These conditions have combined to nourish radicalism, supporting Singer's argument that radical movements require leadership along with unfavorable economic and political conditions.⁸⁷

This picture demonstrates the multi-level conflicting interests, those internal to Central Middle Eastern states, as well as

⁸² See Shira Rubin, *Palestinians have spent decades battling Israel. Now they're battling each other*, VOX (Aug. 22, 2017, 9:00AM), <https://www.vox.com/world/2017/8/22/16114696/palestinian-hamas-israel-independence-netanyahu-abbas-trump>.

⁸³ See Hannibal Travis, *Wargaming the "Arab Spring": Predicting Likely Outcomes and Planning U.N. Responses*, 46 CORNELL INT'L L.J. 75, 84 (2013) (noting also Al-Jazeera as a powerful political and social phenomenon with a consistent objective and with seed money from Qatar).

⁸⁴ See, e.g., Nader Hashemi, *The Arab Spring, U.S. Foreign Policy, and the Question of Democracy in the Middle East*, 41 DENV. J. INT'L L. & POL'Y 31, 32, 35 (2012).

⁸⁵ See Tibi, *supra* note 10, at 195–96 (noting that Arab Middle Eastern have maintained stability through coercion and oppressive intelligence service, but have become weaker while neighboring states such as Turkey and Iran have grown stronger).

⁸⁶ *Id.* at 198.

⁸⁷ SINGER, *supra* note 7, at 8.

those regional and global. For example, internal conflicting interests exist between Syria, Lebanon and Israel. Regional conflicting interests include those of Saudi Arabia, Qatar, and Iran, who all have maintained support for various brokers internal to Central Middle Eastern states.⁸⁸ Global interests include those of the United States as one global power that has maintained a policy best suited for its own interests. While the picture and “alliances” may have changed somewhat post-2010, the presence of multi-level conflicting interests has only grown.

In late 2010, the Arab Spring took off in several Middle Eastern and North African countries, and continues in some form in Syria.⁸⁹ As a Central Middle Eastern state, the conflict in Syria exemplifies the multi-level conflicting interests because of internal, regional, and global involvements.

The rebellion in Syria began with, mildly stated, citizenry dissatisfaction. It started with protests in a city situated south of Damascus.⁹⁰ The protests soon spread into other cities, with demands for alleviating emergency law and for dismembering the Syrian security and intelligence forces.⁹¹ The ruling party—the Assad government—eventually relented in regard to the emergency law, but not in regard to the security forces.⁹² The rebels escalated their protests and demanded that Assad step down.⁹³ The protests became an armed conflict within a few months, with Qatar, Saudi Arabia, and likely Turkey, reputed to have provided weapons and financial support to the rebels.⁹⁴

⁸⁸ See Marc Lynch, *The New Arab Order*, 97 FOREIGN AFF., 116, 118, 121 <https://www.foreignaffairs.com/articles/middle-east/2018-08-13/new-arab-order>.

⁸⁹ See *Arab Spring*, HISTORY.COM, <https://www.history.com/topics/middle-east/arab-spring> (last updated Apr. 5, 2019).

⁹⁰ See Sterling, *supra* note 73.

⁹¹ See Thilo Marauhn, *Sailing Close to the Wind: Human Rights Council Fact-Finding in Situations of Armed Conflict—the Case of Syria*, 43 CAL. W. INT’L L.J. 401, 403 (2013).

⁹² Khaled Yacoub Oweis *Syria’s Assad ends state of emergency*, REUTERS, Apr. 20, 2011, 8:53 PM, <https://www.reuters.com/article/us-syria-idUSTRE72N2MC20110421>

⁹³ Marauhn, *supra* note 91, at 403.

⁹⁴ See Patrick Smith, *Obama is Facing 2 Critical Questions to Negotiating Peace in Syria*, THE FISCAL TIMES (Mar. 24, 2016, 7:43 PM),

Neither side appeared to gain enough ground. Eventually, there were foreign fighters on the streets kidnapping Christians and implementing Islamic courts in various cities of the country.⁹⁵

By 2014, fighters claiming to be part of the Islamic State were appearing in the northeastern parts of the country as well as in northern Iraq⁹⁶. In 2016, such fighters were not only inflicting pain and fear among various populations, but were also providing an appeal to numbers of young men and women.⁹⁷ Highlighting the concept of conflicting interests, Syria's government has considered the opposition as terrorism supported by outside interests.⁹⁸

As a militant group that preceded IS, Al-Qaeda came into public view in conjunction with the Taliban in Afghanistan in the late 1990s.⁹⁹ While such movements made appearances across other parts of the Middle East and Africa, these appearances were sporadic and their connectedness appeared minimal.¹⁰⁰ However,

[https://www.businessinsider.com/obama-faces-syria-peace-talks-questions-2016-](https://www.businessinsider.com/obama-faces-syria-peace-talks-questions-2016-3?utm_source=feedburner&utm_medium=referral&utm_medium=feed&utm_campaign=Feed%3A+businessinsider+%28Business+Insider%29)

[3?utm_source=feedburner&utm_medium=referral&utm_medium=feed&utm_campaign=Feed%3A+businessinsider+%28Business+Insider%29](https://www.businessinsider.com/obama-faces-syria-peace-talks-questions-2016-3?utm_source=feedburner&utm_medium=referral&utm_medium=feed&utm_campaign=Feed%3A+businessinsider+%28Business+Insider%29).

⁹⁵ Suleiman Al-Khalidi, *Islamic State in Syria abducts at least 150 Christians*, REUTERS, Feb. 25, 2015, 3:28 AM,

<https://www.reuters.com/article/us-mideast-crisis-christians/islamic-state-in-syria-abducts-at-least-150-christians-idUSKBN0LS0MH20150224>.

⁹⁶ See Zack Beauchamp, et al., *27 maps that explain the crisis in Iraq*, VOX (Aug. 8, 2014), <https://www.vox.com/a/maps-explain-crisis-iraq>.

⁹⁷ See Ayman S. Ibrahim, *What Makes ISIS Appealing*, FIRST THINGS (Oct. 10, 2014), <https://www.firstthings.com/blogs/firstthoughts/2014/10/what-makes-isis-appealing>; Jethro Mullen, *What is ISIS' Appeal for Young People*, CNN (Feb. 25, 2015, 2:33 PM), <https://www.cnn.com/2015/02/25/middleeast/isis-kids-propaganda/index.html>.

⁹⁸ 'Terrorism exported to Middle East from Europe' – Assad, RT (Dec. 4, 2014, 10:45 PM), <https://www.rt.com/news/211583-terrorism-syria-europe-assad/>.

⁹⁹ See *The U.S. War in Afghanistan 1999–2019*, COUNCIL ON FOREIGN RELATIONS, [https://www.cfr.org/timeline/us-war-afghanistan_\(last visited May 20, 2019\)](https://www.cfr.org/timeline/us-war-afghanistan_(last%20visited%20May%2020%2C2019)_laying%20out%20Al-Qaeda's%20and%20the%20Taliban's%20timeline) (laying out Al-Qaeda's and the Taliban's timeline).

¹⁰⁰ See, e.g., CLAYTON THOMAS, *AL QAEDA AND U.S. POLICY: MIDDLE EAST AND AFRICA* (2018) <https://fas.org/srg/crs/mideast/R43756.pdf> (noting presence of Al-Qaeda factions and activities in the Middle East and Africa); David H. Shinn, *Al-Qaeda in East Africa and the Horn*, 28 J. CONFLICT STUD.

these movements have shown gradual growth through the first decade of the 21st century, and then through the Arab Spring in numbers and strength, with support from Persian Gulf countries, particularly Qatar.¹⁰¹ Qatar, by 2013, has also been cited to have security and diplomatic links to Israel and the United States.¹⁰²

ISIS' activities in Syria and Iraq point to the continued growth of conflicting interests. One obvious reason such movements must not be allowed to take hold is human rights and atrocities. Recent news of kidnappings and the payment of ransoms to Al-Qaeda and its direct affiliates in Europe¹⁰³ as well as violence, can easily take hold in the United States if all the involved nation-states maintain their current trajectories.¹⁰⁴ Thus, one must consider Middle Eastern affairs after 2010, of Al-Qaeda, of IS, of fundamentalists kidnaping Europeans,¹⁰⁵ and of population trends in the Middle East,¹⁰⁶ in conjunction with and as part of one picture.

47, 48–49, 69 (2007) (analyzing Al-Qaeda's presence, success, and in regard to some terrorist attacks lack of evidence of involvement).

¹⁰¹ See David Ignatius, *How ISIS Spread in the Middle East and How to Stop it*, THE ATLANTIC (Oct. 29, 2015), <https://www.theatlantic.com/international/archive/2015/10/how-isis-started-syria-iraq/412042/> (noting “[i]t was Saudi Arabia and Qatar, jockeying for regional influence, that funded a scattershot array of Sunni militias that proved easy recruiting grounds for the extremists . . .”); Editorial Board, Opinion, *Fighting, While Funding, Extremists*, N.Y. TIMES (June 19, 2017), <https://www.nytimes.com/2017/06/19/opinion/saudi-arabia-qatar-isis-terrorism.html> (pointing to Qatar, Saudi Arabia, and Iran as supporters of extremist groups; for example, noting that Qatar has supported radicals in Syria, and noting that while Saudi Arabia has become more serious against extremism and has “taken a zero-tolerance approach to ISIS . . . American government reports say financial support for terrorism from Saudis remains a threat . . .”).

¹⁰² See Travis, *supra* note 83, at 79.

¹⁰³ Callimachi & Yardley, *supra* note 36; Callimachi, *supra* note 48.

¹⁰⁴ See, e.g., Marc Santora & Stephanie Clifford, *3 Brooklyn Men Accused of Plot to Aid ISIS' Fight*, N.Y. TIMES (Feb. 25, 2015), <https://www.nytimes.com/2015/02/26/nyregion/3-men-in-brooklyn-charged-supporting-isis.html> (reporting on the involvement of 3 young men, citizens of Uzbekistan and living in Brooklyn, NY, in providing material support to the Islamic State).

¹⁰⁵ Callimachi & Yardley, *supra* note 36.

¹⁰⁶ SINGER, *supra* note 7, at 17.

The threat is present in Europe arguably in part because radicals use European systems, including criminal justice systems and prisons, while European governments fail to distinguish between a contributing citizen and a dormant-appearing radical, or fail to embrace individuals with Middle Eastern backgrounds.¹⁰⁷ A more frightening concept is that this same threat, today in Syria and Iraq, can easily reach European countries and the United States. The radical movements demonstrate the conflicts, and the conflicting interests. The movements themselves receive support and aid. More importantly, however, is that it is the political structure that is allowing such movements to thrive through the multi-level interests as opposed to a cohesive internal political and legal system.

Hashemi argues that two basic priorities intersect in the region—oil, and the State of Israel.¹⁰⁸ From another perspective, Tibi implies that the instability arises from a fundamental conflict between secular nationalists and their foes, where secular nationalists are committed to the existing Middle Eastern nation-state system, while their foes seek a regional order based on their understanding of Islamic teachings.¹⁰⁹ Tibi argues that the regional Arab states, post-Ottoman and post-colonial periods and until losing the West Bank in the Six-Day War of 1967, believed that only the pan-Arab state encompassing all of the Arab-speaking

¹⁰⁷ See, e.g., Griff Witte, *Amid Terrorism fears in Europe, are security forces going too far?*, WASH. POST (Dec. 14, 2014), https://www.washingtonpost.com/world/europe/amid-terrorism-fears-in-europe-are-security-forces-going-too-far/2014/12/14/04ff60bc-742a-11e4-95a8-fe0b46e8751a_story.html?noredirect=on&utm_term=.c92b9ddb52b0 (discussing fighters returning from Syria and “policies fail to distinguish between hardened extremists who pose a legitimate threat to the West and those who travel to Syria for . . . humanitarian concerns”); Sebastian Rotella, *How Europe Left Itself Open to Terrorism*, PBS (Oct. 18, 2016), <https://www.pbs.org/wgbh/frontline/article/how-europe-left-itself-open-to-terrorism/> (pointing to systemic issues such as differences in laws and security cultures, fragmented databases, and limited resources); PETER R. NEUMANN, PRISONS AND TERRORISM RADICALISATION AND DE-RADICALISATION IN 15 COUNTRIES 25, 28, 31 (2010), <https://www.clingendael.org/sites/default/files/pdfs/Prisons-and-terrorism-15-countries.pdf> (highlighting how prisons can play a role in radicalizing people).

¹⁰⁸ Hashemi, *supra* note 84, at 39.

¹⁰⁹ Tibi, *supra* note 10, at 191.

lands could be a real nation-state.¹¹⁰ Tibi adds that the defeat in the Six-Day War gave rise to political Islam as the greatest challenge to pan-Arabism and the secular nation-state system.¹¹¹

Thus, while oil and Israel are unarguably basic priorities, it is the lack of sustainable political and legal structures that allows the multi-level conflicting interests to be born and to flourish—interests from players supporting the existing nation-state structure, versus those seeking to alter it and gain control over the region. The players are not only internal, but also regional and global because it is clear that foreign policies from regional and global players exacerbate and promote radicalism, both directly and indirectly, depending on what those regional/global players believe would best serve their interests. This is an unsustainable status—there will be a time when force, whether militant at one extreme or a conflict between global powers at the other, will become uncontrollable.

1. Current State and Legal Structure Invites and Harbors Numerous Conflicting Interests

Attempts by Arabic-speaking nations at establishing regional agreements have failed¹¹² in turn resulting in fragmentation that, combined with weak statehoods, has supported Israel's Likud's belief in its supremacy and its continuing intransigence.¹¹³ In addition, arguably in response, many Middle Eastern governments have used the Arab-Israeli conflict to institutionalize 'national security' as a top priority and to relegate all other social and political problems, including ecological

¹¹⁰ *Id.* at 192.

¹¹¹ *Id.*

¹¹² *Id.* at 198–99 (citing such as attempts as the Cairo Agreement and more recently the Damascus Declaration Group); *see also* Justus R. Weiner, *Co-Existence Without Conflict: The Implementation of Legal Structures for Israeli-Palestinian Cooperation Pursuant to the Interim Peace Agreements*, 26 BROOK. J. INT'L L. 591, 594–97 (2000) (listing the numerous unsuccessful attempts to reach Israeli-Palestinian or Arab-Israeli peace agreements).

¹¹³ Tibi, *supra* note 10, at 199.

degradation, gender, race, class inequalities, abuses of human rights, and attacks on cultural identities, to lower statuses.¹¹⁴

The focus on national security is one explanation for a rise and exacerbation of conflicting interests and the growth and consistency of terrorism as a method by the non-established state. Conditions that can lead to terrorism include: the United States' interests in preventing democracies¹; fundamentalist Muslims looking to establish Islamic states; Syrians seeking to regain lost territories; and other regional powers seeking to further their political goals. One factor contributing to Middle Eastern-rooted terrorism, is the desire to lay claim on land—e.g. Syria and Palestine are Muslim countries interested in establishing Islamic rule, and Israel is a Jewish state, interested in laying claim to the region and imposing its values.¹¹⁵ Thus, terrorism in the region is about controlling the land and what words are instituted into that state's legal code regarding its religious identity.

Therefore, to resolve Middle Eastern conflicts there must be consideration of attempts to lay claim to the other lands, along with the attempts to impose religious and ethnic values. Further inquiry on whether the current political structure: (1) gives rise to or supports the conflicting interests; (2) is too fragile to support these conflicting interests; and (3) fails to satisfy the interests of religious identities and interests should be done.

The borders between Syria, Israel, Palestine, Lebanon, and Jordan force these states to have conflicts rather than to favor cooperation, because each state's interests outweigh the common interests among the other four states. For instance, Syria has historically been unwilling to recognize Israel as a state, and has supported groups like Hezbollah, which threaten Israel's security.¹¹⁶ As a result, Israel, who seeks security, will not return Syria's territories, currently occupied by Israel.¹¹⁷ Therefore,

¹¹⁴ Simona Sharoni, *Gender and Middle East Politics*, 17 FLETCHER F. WORLD AFF. 59, 65–66 (1993).

¹¹⁵ See Weiner, *supra* note 112, at 598.

¹¹⁶ Zachary Myers, *Fighting Terrorism: Assessing Israel's Use of Force in Response to Hezbollah*, 45 SAN DIEGO L. REV. 305, 310 (2008).

¹¹⁷ See, e.g., Victor Sharpe, Opinion, *The Golan Heights Mean More Than Security for Israel*, ARUTZ SHEVA (Jan. 1, 2019), www.israelnationalnews.com/Articles/Article.aspx/23280 (quoting Prime

interests in establishing security and in regaining land have substantially outweighed interests in cooperation as evidenced by continual disagreement, insecurity, and covert operations.

In addition, there are conflicts within each of the five states arising from oppressive governments and lack of economic leadership and development. For example, Syria's Sunni population, as demonstrated by the Syrian rebelling forces opposing its government and Syria's civil war, has become unwilling to continue under Assad's Alawite government.¹¹⁸ Lebanon struggles internally to build a sustainable coalition between its primary religious groups – Muslim Sunnis, Muslim Shiites, and Christians.¹¹⁹ Moreover, Israel struggles to reconcile with its non-Jewish Palestinian population.¹²⁰ Thus, the current political structure has been promoting conflicts because the structure promotes insecurity.

Furthermore, these five states lack legal structures that can meet security and land interests because each of these states has been able to serve the interests of only a portion of its population but not the whole. The internal conflicting interests also give rise to regional conflicting interests and global conflicting interests. Regional powers each have interests that overlap with certain factions within the five states, leading to economic as well as military support to those factions; for example, Saudi Arabia has an interest in supporting Sunni groups, while Iran has interest in supporting Shiite groups. Global powers choose sides and also support regional powers aligned with the interests of that global power. In the conflict between Syria and Israel, for example, Syria appears to receive military and strategic support from Iran and

Minister Netanyahu in discussion with U.S. National Security Advisor John Bolton, "When you are [in Golan Heights], you'll be able to understand perfectly why we will never leave the Golan Heights").

¹¹⁸ See, e.g., *Golan Heights Profile* (Mar. 25, 2019), <https://www.bbc.com/news/world-middle-east-14724842>.

¹¹⁹ See Han Il Chang & Leonid Peisakhin, *Building Cooperation among Groups in Conflict: An Experiment on Intersectarian Cooperation in Lebanon*, 63 AM. J. POL. SCI. 146, 148 (2019).

¹²⁰ See Raphael Cohen-Almagor & Mohammed S. Wattad, *The Legal Status Of Israeli-Arabs/Palestinians in Israel*, 1 GNLU LAW & SOC'Y REV. 1, 1-5 (2019).

Russia,¹²¹ while Israel appears to receive various forms of support including diplomatic and military support, from the United States and in prior years from Turkey.¹²² Lebanon's Hezbollah, in its struggles against Israel, receives support from Iran.¹²³ In sum, each internal party has at least one regional ally as well as some global support.

In summary, the current political structure promotes conflict, while the five states continue to lack a legal structure that supports cooperation. The conflicts only grow as the conflicts reach regional and global states. The five states cannot handle internal conflicts because these states exist under the premise that the other is illegitimate. Each of the five states lacks the legal structure to support all of its populations and any inter-state cooperation, and thus to handle internal conflicts.

2. Marriage of Church and State

The paramount issues in the Middle East with regards to stability revolve around the religious and ethnic conflicts.¹²⁴ The

¹²¹ See Kareem Shaheen, et. al., *Who backs whom in the Syrian conflict*, THE GUARDIAN (Dec. 2, 2015, 5:47 PM), <https://www.theguardian.com/world/ng-interactive/2015/oct/09/who-backs-whom-in-the-syrian-conflict>; Krishnadev Calamur, *Who Are Syria's Friends and Why Are They Supporting Assad*, NPR (Aug. 28, 2013, 9:50 AM), <https://www.npr.org/sections/parallels/2013/08/28/216385513/who-are-syrias-friends-and-why-are-they-supporting-assad> (quoting the Syrian Deputy Prime Minister Kadri Jami, and noting that Russia, China, and Iran are helping Syria politically, militarily and economically).

¹²² See Alex Lockie, *Here's Why the US and Israel Are Such Close Allies*, BUS. INSIDER, (Feb. 18, 2017, 10:00 AM), <https://www.businessinsider.com/us-israel-allies-2017-2>; Isabel Kershner, *Israel and Turkey Agree to Resume Full Diplomatic Ties*, N.Y. TIMES (June 27, 2016), <https://www.nytimes.com/2016/06/27/world/middleeast/israel-and-turkey-agree-to-resume-full-diplomatic-ties.html> (noting that "Turkey was once Israel's closest friend in the Muslim world, and the two countries still share many strategic interests"); Tom O'Connor, *U.S. Joins Israel's Plan for Syria as Assad Gets More Support From Russia, Iran and Others*, NEWSWEEK (Mar. 21, 2019, 6:55 PM), <https://www.newsweek.com/us-join-israel-plan-assad-support-1371704>.

¹²³ See Myers, *supra* note 116, at 310.

¹²⁴ Tibi, *supra* note 10, at 199.

nation-state is by definition secular.¹²⁵ Israel likely violates this notion since it defines itself as a Jewish State in its Basic Law.¹²⁶ Other ruling powers in the Middle East use Islam to legitimize their secular rule and to counter-forces that challenge this legitimacy.¹²⁷ Islamic fundamentalism's goal of establishing an Islamic State cannot be shaken, and their inclusion within state institutions is unlikely to change their world view in part due to pursuing order based on divine worldviews.¹²⁸

The Israeli marriage of religion with the state is not necessarily supported by the majority of Jewish Israelis.¹²⁹ Further, the Zionist movement has taken a step beyond the marriage of religion and state in considering Judaism a race, a notion that certainly is not universal among the rest of the Jewish community and has offended emancipationist Jews.¹³⁰ Zionist leaders required conformism, which led to bullying tactics against non-compliant Jews.¹³¹ Zionist leaders and Israeli politicians have interpreted support for practical Zionism as a Jewish obligation, as necessary for Jewish survival, and even as national liberation for Jews.¹³² The Israeli High Court in 1971 affirmed that "there is no Israeli nation separate from the Jewish nation . . . composed not only of those residing in Israel but also of Diaspora Jewry."¹³³

Unfortunately, this Zionist ideology creates an unwanted and unhelpful barrier between those of the Jewish faith and their neighbors.¹³⁴ The creation of a race identity for those of the Jewish faith encourages stereotyping and seeks to provide a

¹²⁵ *Id.*

¹²⁶ *Basic Law: Human Dignity*, *supra* note 33; *see* Dugard & Reynolds, *supra* note 80, at 905.

¹²⁷ Tibi, *supra* note 10, at 199.

¹²⁸ Travis, *supra* note 83, at 64; Tibi, *supra* note 10, at 200.

¹²⁹ *See* Kobi Nachshoni, *Survey finds Israeli Jews seek separation of religion from state*, YNETNEWS.COM (Sept. 18, 2017, 7:53 PM), <https://www.ynetnews.com/articles/0,7340,L-5018298,00.html>.

¹³⁰ Joseph Schechla, *The Consequences of Conflating Religion, Race, Nationality, and Citizenship*, 43 AL-MAJDAL 10, 11 (2010), http://www.badil.org/phocadownload/Badil_docs/publications/al-majdal-43.pdf.

¹³¹ *Id.* at 12.

¹³² *Id.* at 12–13.

¹³³ *Id.* at 13 (quoting CA 630/70, Tamarin v. State of Israel, 26(1) PD 197 (1972)).

¹³⁴ *Id.*

scientific basis for discrimination, in contradiction to international efforts that seek to combat racism.¹³⁵

By the same token, fundamental Islamists allege Sharia is divine; thus, Islamic Sharia is incompatible with the nation-state model because it stands in contrast to popular sovereignty, in turn making political Islamism and democracy incompatible.¹³⁶ For instance, Islam is a religion and not a concept of order or political structure, and, as such, the concept of Islamic State is rather an expression of a revolt against the Western-led nation-state and the ruling Middle Eastern class.¹³⁷ Islamic Sharia has an expansive substantive reach that permeates public and private life, creating the additional challenge of treating non-Muslims as subjects with inferior political, legal, and religious rights.¹³⁸ More troubling is that institutional fundamentalism is more dangerous than terrorism “because its followers act within the system and are in a position to remake the existing order” without substantial resistance and without resorting to violence or force.¹³⁹

Some sources of outside support for fundamentalist movements are current fundamentalist regimes in the region—Iran, Sudan, Saudi Arabia—as well as the international fundamentalist network as a logistical support system developed in Western Europe.¹⁴⁰

The current political structure in the Central Middle East encourages conflict in large part because policies and interests in each of the five states, and each movement within the states, oppose fundamental claims, such as the existence of Israel or the Alawites being in the government seat. A Jewish state by definition cannot tolerate Islamic Sharia in its code; neither can a proclaimed secular Syria. Thus, the continuation of the marriage of church and state in the Central Middle Eastern states blocks any

¹³⁵ Schechla, *supra* note 130, at 12.

¹³⁶ Tibi, *supra* note 10, at 200.

¹³⁷ *Id.* at 194.

¹³⁸ Ahmed T. el-Gaili, *Federalism and the Tyranny of Religious Majorities: Challenges to Islamic Federalism in Sudan*, 45 HARV. INT'L L.J. 503, 521 (2004).

¹³⁹ Tibi, *supra* note 10, at 201.

¹⁴⁰ *See id.* (depicting sources of outside support for the fundamentalist movements).

roadmap towards cooperation and co-existence between the area's peoples and governments. As such, this marriage must be removed as part of a larger political and legal structure in order to subdue the instability and address the conflicting interests.

3. Economics

After the oil boom in the 1970s, Middle Eastern economies shifted from being agricultural and textile markets to being primarily single commodity exporters, primarily exporting oil.¹⁴¹ Meanwhile, most of these countries have resisted reform in business organization and continue to place roadblocks against business creation, arguably because new business, particularly small businesses, generally lead to a rise in the middle class, where a middle class would likely create pressures for democratic reforms.¹⁴² Incumbent ruling elites oppose economic development when it is likely to lead to social change that threatens the rulers' hold on power.¹⁴³ Another indication of the lack of economic development is that Arabic-speaking states have the fewest trade arrangements in the world and have not integrated into the international economic community.¹⁴⁴ Moreover, border politics between the Central Middle Eastern countries, along with Iraq, complicate and stagnate existing trade.¹⁴⁵

Another issue is the dislike of Western policies, particularly those of the United States, which "prevents reform because market liberalization is branded as western cultural imperialism."¹⁴⁶ "Universalization is the acceptance of one set of cultural norms and values," whereas globalization refers to economic interdependence; it is Western universalization that Islamists oppose.¹⁴⁷ In addition, tensions and conflicts with Israel, along

¹⁴¹ Hassanien, *supra* note 19, at 223.

¹⁴² Ian Ayres & Jonathan R. Macey, *Institutional and Evolutionary Failure and Economic Development in the Middle East*, 30 YALE J. INT'L L. 397, 399 (2005).

¹⁴³ *Id.* at 400.

¹⁴⁴ Laura Adal, *MENA: The Need for A Comprehensive Trade-Based Strategy*, 19 CURRENTS INT'L TRADE L.J. 62, 62 (2011).

¹⁴⁵ *Id.* at 66.

¹⁴⁶ Ayres & Macey, *supra* note 142, at 400.

¹⁴⁷ Tibi, *supra* note 10, at 206.

with the war on terror, have slowed trade relations with western countries.¹⁴⁸

Middle Eastern countries with external threats, such as Lebanon and Israel, permit new businesses to open because growth is needed in order to generate the resources necessary to provide security.¹⁴⁹ On the other hand, countries with few external threats, such as Syria, have had weak incentives to generate growth or to tolerate political dissent.¹⁵⁰

Thus, the current political structures in the five states have either intentionally hindered economic development through policies of isolation, or have supported economic development as a means to finance the battles against insecurity and opposing movements. In short, none of the five states have been able to encourage economic development and ties with other states solely for the goal of economic development. In turn, the lack of economic development for its own benefits continues to support rhetoric from fundamentalist groups and leaders. Thus, the five states are in need of legal structure and policies that: (1) support development; and (2) do so for the sake of development and not for the sake of propagating the status quo.

B. Internal Interests: Central Middle Eastern Countries, and Why it is this Political Structure—Between Syria, Jordan, Israel, Palestine, and Lebanon—That Must Be Addressed

At the core of the issue is the Israeli-Palestinian conflict. The issue itself is probably best described in terms of control. Israel looks to control the area, likely looking for a safe haven for those of the Jewish faith. This is easily taken to an extreme, however, when there is no neutral legal foundation. Israel's Basic Law declares that Israel is a Jewish State.¹⁵¹ Furthermore, Israel incorporates into its legal foundation entities such as the Jewish National Fund, whose mission is specifically to preserve land for

¹⁴⁸ Adal, *supra* note 144, at 62.

¹⁴⁹ Ayres & Macey, *supra* note 142, at 420.

¹⁵⁰ *Id.*

¹⁵¹ *Basic Law: Human Dignity*, *supra* note 33, para. 1.

the betterment of those of the Jewish faith.¹⁵² On the opposite end, are the those of the Islamic faith, particularly Arabic-speaking Muslims, whose mission is to declare every state in the region a Muslim-Arab State.¹⁵³

Simply stated, those of the Jewish faith want the land to be ruled by Judaism, and those of the Muslim faith want the land to be ruled by Islam. This concept expands in the extreme direction with every inch granted. It is such an approach and attempt at control that Middle Eastern states and peoples must thwart. The moderate voice is lost in between the turmoil, and effectively is either forced to join or remains silent for fear of retribution.

The land is not Jewish, Muslim, or Christian. Whether such was the case in the past, or whether such approach was effective in the past, is not as relevant. It is not working for today's societies; moreover, the international community has reached a consensus against such an approach. The International Covenant on Civil and Political Rights ("ICCPR") and the International Convention on Elimination of All Form of Racial Discrimination both recognize non-discrimination as a right.¹⁵⁴ A legal foundation that includes religion, ethnicity, or a defined group in its code, is

¹⁵² See Development Authority (Transfer of Property) Law, 5710-1950, § 6, 62 (1950) (as amended) (Isr.), *translated in Development Authority Law (1950)*, GEOCITIES, <http://www.geocities.ws/savepalestinenow/israel laws/fulltext/devauthoritylaw.htm> (last visited Aug. 9, 2019). The Development Authority is a corporate body authorized to enter into contracts, and to possess and acquire property, but it shall not sell immovable property unless such has first been offered to the Jewish National Fund and the Jewish National Fund has not agreed to acquire it within a period fixed by the Development Authority. *Id.* § 2; see also Keren Kaymet Le-Israel Law, 5714-1953, 8 (1948-1987) (Isr.) (outlining the purchases of businesses for the exclusive benefit of the Jewish people); U.N. Econ. & Soc. Council, *supra* note 78 (noting with grave concern that the Status Law of 1952 authorizing the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, where these institutions are chartered to benefit Jews exclusively).

¹⁵³ Travis, *supra* note 83, at 79; Tibi, *supra* note 10, at 200.

¹⁵⁴ See generally International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

inherently discriminatory and is inclined to lead to hegemony.¹⁵⁵ Moreover, considering a land belonging to a faith or a person is counter to every one of these religions because such an approach obstructs human growth. Such labeling under the guise of the betterment of humanity encourages one path to overpower another, thus, promoting its existence and growth while hinders all others.

Palestinians and Jewish Israelis alone cannot solve the issue, history and the present times profess as much.¹⁵⁶ The two groups have found it near impossible to come to any sustainable terms within the past sixty years or so, arguably because of competing and contradictory terms. The Oslo agreement was difficult to reach, and has proven to be more difficult to implement. The Palestinians argue that they made too many concessions and that the agreement was biased towards Israel and Israel's interests,¹⁵⁷ yet, even with such bias, the two sides have not been able to make its terms come to fruition. There must be different circumstances that meet the interests of both sides. Further, both sides must concede certain points, particularly the attempt at full control along ethnic or religious lines.

1. Israel's Interests

The Israeli government has maintained that Israel is a Jewish state.¹⁵⁸ Prime Minister Benjamin Netanyahu included in a

¹⁵⁵ el-Gaili, *supra* note 138, at 519–20.

¹⁵⁶ See, e.g., Martin Indyk, *The Day Israeli-Palestinian Peace Seemed Within Reach*, THE ATLANTIC (Sept. 13, 2018), <https://www.theatlantic.com/international/archive/2018/09/25-years-oslo-anniversary-israeli-palestinian-peace/570190/> (“Over 25 years, in shifting roles from witness to midwife to arbiter, the United States has sadly failed to help Israelis and Palestinians make peace, leaving them mired for the time being in what has essentially become a frozen conflict.”); *History of Mid-East peace talks*, BBC (July 29, 2013), <https://www.bbc.com/news/world-middle-east-11103745> (“In the more than 45 years since the Middle East war of June 1967, there have been many peace plans and many negotiations . . . but a settlement has still not been reached in the core conflict - the dispute between the Israelis and Palestinians.”).

¹⁵⁷ See *infra* Part V (noting Jerusalem is not part of the discussion as there are settlements that remain).

¹⁵⁸ *Basic Law: Human Dignity*, *supra* note 33, at § 1; Prime Minister Benjamin Netanyahu, Shana Tova greeting to world Jewry (Sept. 28, 2011),

2011 speech that the Jewish people have been exposed to an agonized odyssey through the centuries and that they finally have a home.¹⁵⁹ In sum, the paramount interest of those in the Jewish faith is security and peaceful living.

Studies on the opinions of Jewish Israelis shed light on the status of these interests, whether it be the interest of peaceful living, or the more guarded aspiration of propagating Israel as a Jewish state and expanding its current borders. Bar-Tal and Halperin reported on studies that show amongst Jewish Israelis a high level of fear of being attacked.¹⁶⁰ In 1999, Beres argued that Israel was under an ever-higher existential threat due to the combination of proliferation of weapons of mass destruction and the continued Arab/Islamic enmity towards Israel.¹⁶¹ In 2006, Mnookin noted that more than 1000 Israelis and 3000 Palestinians had died between the collapse of the Oslo process and 2006, pointing to 'profound internal conflicts' between Jewish Israelis and Palestinians.¹⁶² Israel has also had conflict and attacks from Lebanese factions near its northern border, such as in 2000 when Hezbollah attacked and killed seven Israeli soldiers, to which Israel responded with air strikes.¹⁶³ Thus, it is arguable that Jewish Israelis have not acquired the desired status of peaceful living in Israel-Palestine. This is likely a result of a combination of factors:

https://mfa.gov.il/MFA/MFA-Archive/2011/Pages/PM_Netanyahu_Shana_Tova_world_Jewry-Sept_2011.aspx.

¹⁵⁹ See *id.* ("Palestinians finally have to recognize . . . that Israel is the Jewish state. That the Jewish people, after all their travails, after all their agonized odyssey through the centuries deserve their one and only place under the sun - in the land of Israel, the State of Israel").

¹⁶⁰ Bar-Tal & Halperin, *supra* note 81, at 22–23; see also Yossi Klein Halevi, *Israel's Options in a Chaotic Middle East*, WALL ST. J. (Feb. 27, 2016, 1:48 PM), <https://www.wsj.com/articles/israels-options-in-a-chaotic-middle-east-1456512527>.

¹⁶¹ Louis René Beres, *Israel After Fifty: The Oslo Agreements, International Law and National Survival*, 14 CONN. J. INT'L L. 27, 27 (1999).

¹⁶² Robert H. Mnookin, et al., *Barriers to Progress at the Negotiation Table: Internal Conflicts Among Israelis and Among Palestinians*, 6 NEV. L.J. 299, 299 (2006).

¹⁶³ Adir Waldman, *Clashing Behavior, Converging Interests: A Legal Convention Regulating a Military Conflict*, 27 YALE J. INT'L L. 249, 250 (2002).

anti-Semitism, Middle Eastern politics and the fundamentalist pursuit of Islamic statehoods.

Overall, Israel's overarching interest is that the Jewish population lives and thrives peacefully and without fear. Israel's interests are best accomplished when surrounding states accept those of the Jewish faith as being members of the region, as having a role in the region's direction, and as members of governing and decision-making bodies.

2. Palestine's Interests

The primary interest for Palestinians is arguably autonomy—self-determination—through statehood, which Palestinians claim under international law.¹⁶⁴ The Palestinians sought for years the return of land, the entirety of what is today largely accepted as Israel.¹⁶⁵ They have in large part given up on such a goal, and have settled on the European concept of the two-state solution, resting their claim on the boundaries recognized by the Security Council.¹⁶⁶ Self-determination is a second key interest for Palestinians because Israel controls natural resources in the Occupied Territories and exports, controls development through permits, controls Palestinian entrepreneurial activity that may compete with Israeli businesses, and controls Palestinian schooling.¹⁶⁷

In pursuit of self-determination, the Oslo agreement was the first agreement between Israel and Palestinians that recognized Israel as a state and Palestinians as a people with the right to a state.¹⁶⁸ The Palestinian Liberation Organization agreed with

¹⁶⁴ See Winston P. Nagan & Aitza M. Haddad, *Recognition of Palestinian Statehood: A Clarification of the Interests of the Concerned Parties*, 40 GA. J. INT'L & COMP. L. 341, 346 (2012).

¹⁶⁵ Cf. *id.* at 378–79 (citing Israeli laws, including Absentee Property Law of 1950, that deny absentee Palestinians citizenship and rights to properties inside Israel).

¹⁶⁶ See *id.* at 345 (stating that the Security Council must recognize the boundaries for any claim).

¹⁶⁷ *Id.* at 380.

¹⁶⁸ See Avi Shlaim, *The Oslo Accord*, 23 J. PALESTINE STUD. 24, 25 (1994) (“[The Oslo Accord] was the first agreement between the Palestinians and Israel since the creation of the State of Israel.”).

Israel, on certain terms, that the West Bank and Gaza would eventually be Palestine; however, this was conditioned on future negotiations and were achievable only when the parties reach a final settlement agreement.¹⁶⁹ At the same time, Israel continues to object to Palestinian statehood.¹⁷⁰ There are many Palestinians who refuse such an agreement and reject the recognition of Israel when Israel is unwilling to recognize Palestine as a state.¹⁷¹ Palestinians also point to Israelis who confiscated hundreds of thousands of acres of Palestinian land illegally.¹⁷² The question then becomes whether the return of any of these lands viable. If not, the question then becomes whether self-determination through statehood within Oslo geographical boundaries is viable.

Israel has been reluctant to settle issues that would lead to reaching a final status agreement, thus, acting to block Palestinian independence.¹⁷³ On the other hand, while Palestinian statehood is not universally recognized, 137 states have recognized the State of Palestine as of late 2018.¹⁷⁴ The remaining states, including Israel, take the position that statehood can only be established through direct negotiations between Israel and the Palestinian National Council.¹⁷⁵

¹⁶⁹ *Id.* at 361.

¹⁷⁰ *See id.* at 361 (describing Israel's unwillingness to adopt the constitutional guidelines of Resolution 181).

¹⁷¹ *See* Hassan Jabareen, *Why Palestinians Can't Recognize a 'Jewish State,'* HAARETZ (Sept. 2, 2011, 2:22 AM), <https://www.haaretz.com/1.5163334> ("For the Palestinians to recognize Israel as a Jewish State is to declare their surrender, meaning, to waive their group dignity by negating their historical narrative and national identity.").

¹⁷² Zena Tahhan, *Israel's settlements: 50 years of land theft explained,* AL JAZEERA (Nov. 21, 2017), <https://interactive.aljazeera.com/aje/2017/50-years-illegal-settlements/index.html> (explaining that there is an estimate of 600,000 to 750,000 illegal Israeli settlers in the occupied Palestinian territories).

¹⁷³ Nagan & Haddad, *supra* note 164, at 361.

¹⁷⁴ Jason Lemon, *Which Countries Recognize Palestine? Colombia Becomes 137th U.N. Member to Do So,* Newsweek (Aug. 10, 2018, 12:30 PM), <https://www.newsweek.com/which-countries-recognize-palestine-colombia-becomes-137-un-member-1068318>; *see* *MPs back Palestinian statehood alongside Israel*, BBC NEWS (Oct. 14, 2014), <http://www.bbc.com/news/uk-politics-29596822>.

¹⁷⁵ Ilene R. Prusher, *Israel rejects Palestinian statehood bid via the UN,* CHRISTIAN SCI. MONITOR (Nov. 15, 2009),

Some Palestinians consider Israel a colonial power with no right to most of the properties many of its citizens currently hold.¹⁷⁶ This is all without beginning to consider Jewish settlements in the West Bank, including East Jerusalem.

By the same token, Israel has consistently violated nearly every Fourth Geneva Convention protection.¹⁷⁷ Israeli officials have sought to affirm a Zionist manifest destiny while denying any responsibility or accountability for the negative consequences of the 1948 war.¹⁷⁸ Picket's commentary to the Fourth Geneva Convention notes that the Convention included the prohibition of civilian settlement in an occupied territory "to prevent the occupying power from colonizing a territory for political and racial reasons."¹⁷⁹

Thus, Palestine's interest in self-determination opposes Israel's interests in control. Oslo has arguably been unsuccessful because it has failed to negotiate terms that satisfy both interests; however, the blame cannot be on the Oslo effort, but rather on the extreme and opposing interests. Moreover, the current approaches of control on one end and self-determination on the other are too conflicting and only exacerbate each side. This is because the implication is one side having to completely give up its interests, as opposed to negotiating elements of those interests. In summary, the Palestinian primary interest is self-determination. This is clearly in conflict with Israeli interests of having access beyond Israel proper and evident in Israel's unwillingness to stop and

<https://www.csmonitor.com/World/Middle-East/2009/1115/p01s01-wome.html/%28page%29/2>.

¹⁷⁶ See Tahhan, *supra* note 172 (explaining that the Israeli colonies in the occupied Palestinian territories involve seizing Palestinian land and are all illegal under international law). "Munir Nuseibah, a law professor at al-Quds University in Jerusalem, says the occupation and the settlement project 'reminded the world of the colonial aspects of Israel.'" *Id.*

¹⁷⁷ Ardi Imseis, *On the Fourth Geneva Convention and the Occupied Palestinian Territory*, 44 HARV. INT'L L. J. 65, 68 (2003) (quoting Allegro Pacheoco, *Flouting Convention: the Oslo Agreements*, in THE NEW INTIFADA: RESISTING ISRAEL'S APARTHEID 181, 184–85 (Roane Carey ed., 2001)).

¹⁷⁸ *Id.* at 70.

¹⁷⁹ John Dugard & John Reynolds, *Apartheid in Occupied Palestine: A Rejoinder to Yaffa Zilbershats*, EJIL: TALK! (Oct. 2, 2013), <http://www.ejiltalk.org/a3apartheid-in-occupied-palestine-a-rejoinder-to-yaffa-zilbershats/>.

remove settlements in the West Bank.

3. Syria's Interests

Syria has maintained a posture of war towards Israel by not recognizing it as a State and continuing to build its army in anticipation of a conflict, or possibly in deterrence.¹⁸⁰ Syria has also maintained its claim to the Golan Heights and its demand that Israel relinquish its occupation of the territory.¹⁸¹ At the same time, the Assad regime has generally oppressed Syrians and subdued certain factions, such as Sunnis and Kurds.¹⁸² The war stance allowed the government to maintain emergency status for over 40 years and oppressive security and intelligence forces as the foundation for stability, which arguably prevented the country's growth.

Syria's interests, however, are not well defined because the government has maintained its hold on power as its first priority, such that the population's multiple factions continue to have differing interests, possibly contradictory in some instances.¹⁸³ Thus, the discussion must address two levels: (1) Syria's political and national interests; and (2) the population's interests.

The Israeli-Palestinian conflict, and in turn Syria's response, have in large part played a role in hindering Syria's progress and directly, or by proxy, have arguably contributed to a weak legal infrastructure. This is more evident in the face of the

¹⁸⁰ See, e.g. Zack Beauchamp, *How are other Middle Eastern counties handling the conflict?*, VOX (May 14, 2018, 10:20 AM), <https://www.vox.com/2018/11/20/18080074/israeli-palestinian-conflict-saudi-arabia-iran-turkey-egypt-jordan-syria-lebanon> ("The Syrian government is still quite hostile to Israel. Syria is aligned with Iran, Israel's greatest adversary in the region today.").

¹⁸¹ See *id.*

¹⁸² Polk, *supra* note 66 (explaining that both Assad regimes, since 1973, met opposition with heavy military action and did not allow challenge to their rule).

¹⁸³ See *id.* ("[B]eing an Alawi or a Christian or a Jew put people under a cloud. So, for Hafez al-Assad, the secular, nationalist Baath Party was a natural choice: it offered, or seemed to offer, the means to overcome his origins in a minority community and to point toward a solution to the disunity of Syrian politics.").

Syrian opposition groups and the Islamic State.¹⁸⁴ Thus, the analysis of Syria's interests must include its national interests, as well as the general interests of the population as a whole in addition to each of the several factions. The general interests of the population include the overarching principles of stability, economic development, equality, and the basic freedoms of speech and religion.

Unfortunately, Syrians have not been able to establish these general interests, which is most likely because of the oppressive regime. It may have been unreasonable to expect the population to attain these interests in the face of the government's hold on the country, the government's pervasive intelligence and security forces, and the government's military strength. It remains, however, that Syria's various factions, unlike groups in other parts of the Middle East, have shown they can co-exist.

To oppose the government's oppressive hold, certain Syrians appear to have accepted assistance from outside powers such as Qatar, Saudi Arabia, and the United States. As for the Islamic State, it is a generally accepted assertion that IS is not, and was not, Syrian.¹⁸⁵ Granted, there may be some in Syria who look for Islamic statehood; however, there is no indication that such individuals or groups constitute any substantial numbers.

Thus, generally, Syria's interests are comparatively simple—the return of occupied territories, stability, and economic development. Further, Syria's factions have historically shown they can and want to co-exist.¹⁸⁶ While there is the argument that its government dictated such co-existence, interference from outside powers remains to be a greater danger because of the

¹⁸⁴ Cf. Kamal Alam, *Why Assad's Army Has Not Defected*, NAT'L INT. (Feb. 12, 2016), <http://www.nationalinterest.org/feature/why-assads-army-has-not-defected-15190> (arguing that Syria in fact has shown a resilient military structure due to its ethnically integrated army and political structure).

¹⁸⁵ See CNN Library, *ISIS Fast Facts*, CNN (Mar. 25, 2019, 4:07 PM), <https://www.cnn.com/2014/08/08/world/isis-fast-facts/index.html> (explaining that the Islamic State started as an al Qaeda splinter group and aims to create an Islamic state called a caliphate across Iraq, Syria and beyond).

¹⁸⁶ *Guide to the Syrian opposition*, BBC (Oct. 17, 2013), <https://www.bbc.com/news/world-middle-east-15798218> (“In November 2012, Syrian opposition factions agreed to set up a new and more inclusive leadership council at a meeting in Doha, Qatar.”).

likelihood and the trend that such interference would incite strife and radicalization. The Islamic State is a prime example. As such, Syria's paramount interest is to prevent radicalization, and to re-establish stability and security. Stability will likely require rebuilding the government in such a fashion as to also support and promote economic development and equality, recognition of human rights, and employment of democratic principles.

4. Lebanon

Lebanon has had internal conflicts, and arguably continues to do so, as well as interfering interests from its two neighbors, Syria and Israel. Over almost four decades and through various agreements and legal structures, there have been several attempts to resolve the conflicts. The Lebanese Constitution, for instance, is unique in the region in that it recognizes the various religious groups¹⁸⁷ and acts as one attempt to create cohesiveness and order.

An example of the inexplicable internal conflicts is the fighting among the Lebanese Christians, forging alliances with other communities against rival Christians.¹⁸⁸ The Lebanese civil war began in the mid 1970's; subsequently, then-president Suleiman Frangieh requested military assistance from Syria and Syrian forces entered the country in 1976.¹⁸⁹ Rather than being neutral, Syrian forces supported partisan factions.¹⁹⁰

In 1989, leaders of various Lebanese groups finally reached an agreement with Syria, known as the Taif Agreement, proscribing transitional Syrian withdrawal by 1991; however, contrary to the agreement, Syrian forces remained in the country until 2005.¹⁹¹ During its presence through 2005, Syria interfered in Lebanese politics and controlled its elections, presidential

¹⁸⁷ See generally John J. Donohue, s.j., *Changing the Lebanese Constitution: A Postmodern History*, 30 CARDOZO L. REV. 2509 (2009) (presenting background of communitarian and constitutionalism in Lebanon).

¹⁸⁸ Alexandra R. Harrington, *Resurrection from Babel: The Cultural, Political, and Legal Status of Christian Communities in Lebanon and Syria and Their Prospects for the Future*, 13 TULSA J. COMP. & INT'L L. 217, 218 (2006).

¹⁸⁹ Tammam Kaissi, *Invalidating the Orontes River Treaty in the Context of Middle Eastern Politics*, 26 GEO. ENVTL. L. REV. 175, 176 (2014).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

nominations, and appointments.¹⁹² In that period, Syria claimed military and economic interests in Lebanon, and also used attacks by Hezbollah on Israel as a bargaining tool to regain the Golan Heights from Israel.¹⁹³ Syria, along with Iran,¹⁹⁴ has supported Hezbollah against Israel.

As the southern neighbor, Israel is another broker with which Lebanon has had to contend. Israel began military intervention in southern Lebanon in the 1960s in response to attacks from Palestinian guerrilla groups in the area.¹⁹⁵ Eventually, in 1982, Israeli forces reached Beirut in a major military **offensive** to drive out the Palestinian Liberation Organization, and then remained in the southern parts bordering Israel until 1985.¹⁹⁶ Israel completely withdrew in 2000.¹⁹⁷

In 1997, Lebanon engaged with both Israel and Syria to reach an agreement that addressed the rules of conduct under which the Israeli-Lebanese conflict would continue.¹⁹⁸ The United States and France were also present.¹⁹⁹

The agreement allowed both Syria and Israel to perpetuate the conflict in a controlled fashion.²⁰⁰ Hezbollah's attacks on Israel in 2000 are an example of the then continued conflict, where Israel responded with air strikes.²⁰¹ By the same token, while it was Hezbollah that executed the attacks on Israel's northern border, Israel had in fact to contend with Syria.²⁰² It was

¹⁹² *Id.* at 177.

¹⁹³ Waldman, *supra* note 163, at 254.

¹⁹⁴ See Dan Williams, *Iran's allies, not atoms, preoccupy Israeli generals*, REUTERS, May 5, 2015, 9:56 AM, <https://www.reuters.com/article/us-iran-nuclear-israel-allies/irans-allies-not-atoms-preoccupy-israeli-generals-idUSKBN0NQ1CC20150505>; *Israeli military official says Hezbollah stockpiling weapons*, YNETNEWS.COM (May 13, 2015, 8:24 PM), <https://www.ynetnews.com/articles/0,7340,L-4657064,00.html> (noting the Iranian-backed militant Hezbollah group's weapons were bought in Syria).

¹⁹⁵ Waldman, *supra* note 163, at 253.

¹⁹⁶ *Id.* at 254.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 250.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 252.

²⁰¹ *Id.* at 250–51.

²⁰² *Id.* 254.

questionable whether the attacks and the responses abided by the 1997 agreement.

Israel remains, at the minimum, concerned about Hezbollah and Hezbollah receiving support from at least Iran.²⁰³ Internally, Lebanon continues to be divided along sectarian and ideological lines while experiencing spillover from the Syrian conflict.²⁰⁴ Thus, Lebanon's interests are two-fold. First, an internal legal and political structure that can address the divisions between the different factions, without political or military interference from its neighbors. Second, stability in its neighbors that allows for collaboration and prevents the need to use Lebanon as a battle ground or as a proxy.

5. Jordan

Interests of Jordanians, and arguably Jordan as a state, revolve around democratization and its economy. Although favored, democratization in Jordan is likely difficult without regional, legal support, primarily because Jordan is constitutionally a Muslim state, such that its king being Muslim is a constitutional requirement.²⁰⁵ Such requirements are likely to collide with democratic principles, and changes to them would likely face strong opposition. Arguably, only a regional shift in polity and legal structure, with incentives in promises of stronger economy,

²⁰³ See generally Williams, *supra* note 194 (describing the primary concerns of Israeli defense ministers).

²⁰⁴ See generally Maeva Bambuck, *Frequent lockdowns around Lebanon parliament hurt businesses*, ASSOCIATED PRESS NEWS (May 13, 2015), <https://apnews.com/1908201d40d54406863f3d95dcecc100> (explaining how the Syrian civil war impacts Lebanese businesses).

²⁰⁵ See *Many Countries Favor Specific Religions, Officially or Unofficially*, PEW RESEARCH CTR. (Oct. 3, 2017), <https://www.pewforum.org/2017/10/03/many-countries-favor-specific-religions-officially-or-unofficially/> ("In Jordan, for example, Islam is the state religion, and converts from Islam to Christianity were occasionally questioned and scrutinized by security forces in 2015. Non-Muslim religious groups must register to be able to own land and administer rites such as marriage. They are tax exempt, but do not receive subsidies. In contrast, the Ministry of Awqaf and Islamic Affairs manages Islamic institutions, subsidizes certain mosque-sponsored activities, pays mosque staff salaries and manages clergy training centers.").

stronger human rights enforcements, and stronger regional relationships, but without external cultural values, would defeat such opposition.

Since 1989, Jordan has been a semi-democratic state—one that “permit[s] more political competition than autocracies, but less than democracies.”²⁰⁶ Social science shows that democratic change that shifts Jordan to full democratic status would reduce the risk of internal conflict.²⁰⁷ In addition, polls show that Jordanians look favorably upon democratic governments.²⁰⁸ In 2011, over 70% of Jordanians surveyed indicated that “democracy is preferable to any other kind of government;” moreover, in 2006, more than 80% of Jordanians believed that democracy was the best system of government “despite its drawbacks.”²⁰⁹ In regards to its legal structure, Jordan’s Constitution combines Islamic law with civil code adopted from European states, declaring Islam as the state religion while also providing for freedom of religion with certain limitations, such as prohibiting conversion from Islam and requiring that the King be Muslim.²¹⁰

Statistical analysis suggests that civil war and domestic terrorism occurs more frequently in semi-democracies, such that democratization in such states is likely to reduce the risk of instability more quickly than in autocratic states.²¹¹ Syria, as an autocratic government, may have been able to maintain social peace through oppression; however, its capacity to long-term order

²⁰⁶ Jamie O’Connell, *Common Interests, Closer Allies: How Democracy in Arab States Can Benefit the West*, 48 STAN. J. INT’L L. 341, 361 (2012).

²⁰⁷ See *id.* at 362–63 (describing how democratic governments reduce the risk of civil war).

²⁰⁸ *Globally, Broad Support for Representative and Direct Democracy*, PEW RESEARCH CTR. (Oct. 16, 2017), <https://www.pewglobal.org/2017/10/16/globally-broad-support-for-representative-and-direct-democracy/> (“A median of 27% in the Middle East and North Africa are classified as committed to representative democracy. In this region, Israelis (36%) and Jordanians (33%) are most likely to prefer democracy to nondemocratic forms of government.”).

²⁰⁹ *Id.* at 351.

²¹⁰ See Stephen S. Zimowski, *Consequences of the Arab Spring: How Shari’ah Law and the Egyptian Revolution Will Impact IP Protection and Enforcement*, 2 PENN ST. J.L. & INT’L AFF. 150, 166 (2013) (describing the Jordanian legal system).

²¹¹ O’Connell, *supra* note 206, at 361.

through such means, as shown by its most recent internal conflict that started in 2011, is questionable.²¹² In addition, Jordan, as well as Syria and other Middle Eastern states, is a party to the ICCPR, whose Article 25 provides, in part, the right to vote, to be elected at periodic elections, and to free expression guarantee.²¹³

Economically, Jordan would greatly benefit from stronger ties, collaboration, and trade with its neighbors. Its landscape being primarily a desert, Jordan lacks the natural resources to be able to completely support its population and immigrants from conflicts in neighboring states. Thus, Jordan has interests in collaborating economically with its neighbors to help grow its industries. History has shown that improved trade relations markedly benefitted Jordan.²¹⁴ Starting in 1999, Jordan has applied a secular approach to international trade and political relationships.²¹⁵ This approach has resulted in more than doubling Jordan's GDP over a 10-year period from 1999 to 2010.²¹⁶

Thus, interests of Jordanians arguably include democratization and continued economic growth, both of which are more likely to come to fruition with stronger ties with and support from its direct neighbors.

C. Regional Interests: Regional Powers—Turkey, Iran, Saudi Arabia, Qatar

Regional and neighboring countries such as Turkey and Iran are becoming stronger militarily and economically.²¹⁷ Turkey has positioned itself in the recent past as an “order-creating” center in the region, particularly after abandoning its efforts to join the

²¹² *Id.* at 360.

²¹³ *Id.* at 352–53.

²¹⁴ See, e.g., *U.S. Relations With Jordan: Bilateral Relations Fact Sheet*, U.S. DEP'T OF STATE (Aug. 2, 2018), <https://www.state.gov/u-s-relations-with-jordan/> (“The U.S.-Jordan free trade agreement (FTA), the U.S.’s first FTA with an Arab country, has expanded the trade relationship by reducing barriers for services, providing cutting-edge protection for intellectual property, ensuring regulatory transparency, and requiring effective labor and environmental enforcement.”).

²¹⁵ Zimowski, *supra* note 210, at 168.

²¹⁶ *Id.*

²¹⁷ See Tibi, *supra* note 10, at 196.

European Union.²¹⁸ It has, however, failed to become such a force.²¹⁹ Nonetheless, Turkey is considered as the “winner of the Arab Spring” in that it is seen to “have played a constructive role” in Arab events and as a model for governments in the region.²²⁰ In addition, Turkey, specifically the Justice and Development Party (AKP), recognizes its “strategic location between the Middle East and Europe.”²²¹

Equally important, Turkey also has interests in affecting and preventing Kurdish populations from gaining power or influence. Turkey has persistently demonstrated efforts to subdue its Kurdish population; it has maintained a policy of military opposition against the Kurds, particularly in the southeastern parts of the country and bordering Syria.²²² Syrian Kurds have gone as far as to accuse Turkey of supporting the Islamic State in Syria against the Kurds.²²³

Iran, on the other hand, has been more directly and openly involved in Central Middle Eastern states and the area’s politics. Iran has, and continues to, support Syria’s Assad regime,²²⁴ possibly to build strategic and religious ties considering Assad’s Alawite’s background. Thus, Iran’s interests are arguably counter

²¹⁸ *Id.*

²¹⁹ *Id.* at 196–97.

²²⁰ Halim Rane, *The Relevance of a Maqasid Approach for Political Islam Post Arab Revolutions*, 28 J.L. & RELIGION 489, 508 (2013) (quoting Shibly Telhami, *The 2011 Arab Public Opinion Poll*, BROOKINGS INST. & ZOGBY INT’L, (Nov. 21, 2011), <https://www.brookings.edu/research/the-2011-arab-public-opinion-poll/>).

²²¹ *See id.* at 510.

²²² *See* Desmond Butler & Suzan Fraser, *Turkey onslaught on Kurds, after IS attack, fuels anger*, WASH. TIMES (July 30, 2015), <https://www.washingtontimes.com/news/2015/jul/30/turkey-onslaught-on-kurds-after-is-attack-fuels-an/> (discussing Turkey’s actions and relations with the Kurds and government parties); *see, e.g.*, Akbar Shahid Ahmed, *Obama Is Letting Turkey Target The U.S.’s Best Bet Against ISIS*, HUFFINGTON POST (Feb. 11, 2016, 5:25 PM), http://www.huffingtonpost.com/entry/obama-kurds-turkey_us_56bcaeffe4b0b40245c57fcf (discussing Turkey’s ongoing violence and relations with the Kurds, and Islamic-State attacks).

²²³ BBC Monitoring, *Turkey v Syria’s Kurds v Islamic State*, BBC NEWS (Aug. 23, 2016), <http://www.bbc.com/news/world-middle-east-33690060>.

²²⁴ Ved P. Nanda, *The Arab Spring, the Responsibility to Protect, and U.S. Foreign Policy—Some Preliminary Thoughts*, 41 DENV. J. INT’L L. & POL’Y 7, 18 (2012).

to Turkey's as each state brokers to maintain or gain influence in the area.

Qatar and Saudi Arabia have also had interests in the area, particularly to oppose Iran's interests. Qatar and Saudi have supported the rebels against the Assad regime²²⁵ and against Iran. Moreover, it is clear that Qatar supports Syrian rebels against the Syrian regime not for interests in democracy, but to support establishing a Sunni state, and to oppose the Iran-friendly regime.

Saudi Arabia in particular has shown direct influence with the conflict in Syria and the spread of Wahhabist Jihad.²²⁶ Garner and McFarland hold Saudi Arabia responsible for a Wahhabist jihad outside of Saudi Arabia's geographic borders.²²⁷ They point to "connections between Saudi Arabia's Wahhabist religious establishment and the ideology sustaining worldwide Islamic jihad."²²⁸

In the 18th century, Wahhab created an unyielding form of Islam, allowing "no room for diversity or disagreement."²²⁹ He dedicated his life to Taymiyya's militant message of jihad.²³⁰ Taymiyya was a "fourteenth-century Islamic jurist and scholar" who believed that corruption of Islam occurred due to departure from strict obedience to Islamic texts and "influences from Christianity, Judaism, and paganism."²³¹ Taymiyya rejected the notion that jihad was an optional aspect of Islam.²³² Taymiyya taught that preservation justified jihad, and authorized jihad in defense of "the faith from external infidel forces" such as the Mongol invasion and subjugation of the Middle East. He did not, however, authorize jihad against other Muslims.²³³ Wahhab, on

²²⁵ *Id.*

²²⁶ See Mohammed Al Jarman, *The Intersection of Wahhabism and Jihad*, GLOBAL POLICY (July 6, 2017), <https://www.globalpolicyjournal.com/blog/06/07/2017/intersection-wahhabism-and-jihad>.

²²⁷ Garner & McFarland, *supra* note 44, at 224.

²²⁸ *Id.* at 227 (emphasis omitted).

²²⁹ *Id.* at 225.

²³⁰ *Id.* at 233.

²³¹ Garner & McFarland, *supra* note 44, at 233 n.41.

²³² *Id.* at n.43.

²³³ *Id.* at 235.

the other hand, moved a step further than Taymiyya and authorized jihad against Muslims who were considered apostates.²³⁴

Wahhab's tribe kicked him out for his style of fundamental Islam; thereafter, Wahhab favored Muhammad ibn Saud, a local tribal leader.²³⁵ Saud formalized his affinity for Wahhab in a pact in which Saud adopted Wahhab's ideology and agreed to protect Wahhab and lead the effort to indoctrinate the Arabian Peninsula.²³⁶ Muhammad ibn Saud, the patriarch of the House of Saud in the eighteenth century, met with Mullah Wahhab in 1744 and cemented the political and religious relationship.²³⁷ The Saud-Wahhab pact dedicated the "Sauds to spreading and securing Wahhab's vision of Sunni Islam."²³⁸ At the time, the Ottoman Empire did not directly control the interior of the Arabian Peninsula, thus, allowing the local tribal leaders to emerge as governing authorities.²³⁹ Saud's influence outside his tribal settlement was limited prior to his alliance with Wahhab.²⁴⁰ With the support of Wahhabbi followers, the Saudi tribe was soon able to subjugate all the neighboring tribes through a campaign of killing and plundering.²⁴¹ They used Wahhab's vision to unite the tribes under the rule of the House of Saud, paving the path to the Saudi Kingdom's birth in 1932.²⁴² The conquest of the peninsula came at a cost of 40,000 public executions and 350,000 amputations.²⁴³ Jihadists have since been using the same ideology to wage religious war outside Saudi Arabia's borders.²⁴⁴

²³⁴ *Id.*

²³⁵ *Id.* at 226.

²³⁶ *Id.*

²³⁷ *Id.* at 231.

²³⁸ *Id.* at 231–32.

²³⁹ *Id.* at 232.

²⁴⁰ *Id.*

²⁴¹ See also Max Fisher, *9 questions about Saudi Arabia you were too embarrassed to ask*, VOX (Jan. 26, 2015, 12:40 PM), <https://www.vox.com/2015/1/26/7877619/saudi-arabia-questions> (describing in part history of Wahhabis).

²⁴² Garner & McFarland, *supra* note 44, at 236.

²⁴³ *Id.* at n.54.

²⁴⁴ *Id.* at 228.

Today, Saudi Arabia does not recognize basic freedoms, such as freedom of press, thought, or religious expression.²⁴⁵ The only religious belief that the Kingdom has allowed throughout its history has been Wahhab's version of Sunni Islam.²⁴⁶ The Kingdom's religious police control the lives of Saudi subjects from the day's attire, to the manner and substance of prayers.²⁴⁷ The United States State Department noted in a 2003 report that Mosque preachers, paid and supervised by the state, continued violent anti-Jewish and anti-Christian preaching after 9/11.²⁴⁸ Moreover, the Saudi Ministry of Education publishes and permits only ministry-authorized textbooks, all of which propagate the teachings of Wahhab, and, further, bans any books authored by non-Wahhabi educators.²⁴⁹ Thus, Saudi Arabia has instilled an intolerant version of Islam that in present day, is resulting in Jihad throughout the world.²⁵⁰

In summary, Turkey, Iran, and Saudi Arabia in particular, each have conflicting interests with each other, and in Central Middle Eastern affairs. Turkey has interests in emerging as an influential regional leader and in countering any Kurdish stronghold. Iran has interests in supporting and maintaining ties with Syria's Assad regime and with Hezbollah against Israel. Saudi has interests in opposing any Iranian influence in the area or Iranian ties with the area's governments and groups. Each of these interests not only conflict, but also support and exacerbate internal conflicting interests.

D. Global Interests: The Global Powers—United States, European Union, Russia, China

The United States, along with other western powers, has supported and preferred to work with authoritarian state structures in the Middle East.²⁵¹ Thus, the superpower and 1.4 billion

²⁴⁵ *Id.* at 244.

²⁴⁶ *Id.* at 226.

²⁴⁷ *Id.* at 227.

²⁴⁸ *Id.* at 241.

²⁴⁹ *Id.* at 238.

²⁵⁰ *Id.* at 231.

²⁵¹ See Hashemi, *supra* note 84, at 33 (noting that for 60 years the United States has been supporting authoritarian regimes in the Middle East).

Muslims stand locked in mutual suspicion, distrust, and anger.²⁵² State structures in the Muslim world have been at best unresponsive and incompetent when it comes to meeting public need.²⁵³ In large part, the absence of public accountability and deeply-rooted bureaucratic traditions of self-governance have supported those state structures that result in corruption, patronage, and clientelism.²⁵⁴

Although the United States continues to be a superpower, it lacks the economic, political, and military capabilities to impose rules and effect conflict resolution on a global scale.²⁵⁵ As such, the United States supported authoritarian regimes that protected United States interests from hostile forces, preferring political stability over parliamentary democracy.²⁵⁶ As a result, the United States suffers from a credibility gap in convincing regional populations that it is serious about reform and democratization.²⁵⁷ The United States has supported democratization as long as there was no clash with United States interests.²⁵⁸ Turkey is a prime example, because it was a strong United States ally which administrations praised as a model for Muslim majority societies, until Turkey began to shift its foreign policy toward the Israel-Palestine conflict.²⁵⁹ In reality, citizens, including Arab-speaking citizens and democratic leaders, are more likely to be reliable allies in the long run than autocrats.²⁶⁰

The United States credibility gap is the culmination of the United States frequently pulling back at the realization of what reordering might mean to its short-term interests.²⁶¹ For instance, the United States considered the democratization in Palestine until Palestinians voted for Hamas, where Hamas was considered likely to counter United States' short-term interests.²⁶² Another dilemma

²⁵² SINGER, *supra* note 7, at III.

²⁵³ *Id.* at 8.

²⁵⁴ *Id.*

²⁵⁵ Tibi, *supra* note 10, at 196.

²⁵⁶ Hashemi, *supra* note 84, at 32.

²⁵⁷ SINGER, *supra* note 7, at 8.

²⁵⁸ Hashemi, *supra* note 84, at 36–37.

²⁵⁹ *See id.*

²⁶⁰ O'Connell, *supra* note 206, at 382.

²⁶¹ SINGER, *supra* note 7, at 8.

²⁶² *See id.*

is that the United States has duality in its policy and requests help from the same regimes it hopes to change—including organizations such as al-Qaeda.²⁶³ The September 11, 2001 attacks forced the United States to re-examine its policy towards the Muslim world and the Arab-speaking Middle East.²⁶⁴ In addition, lobby groups with their own agendas, such as the United States-based Jewish groups in support of Israeli nationalism, further complicate United States interests.²⁶⁵

On the other hand, Russia has provided financial and military support to regimes not aligned with the United States, particularly the Assad regime; China has also supported Assad's regime at least politically through Security Council vetoes.²⁶⁶ Syria, as a Central Middle Eastern state, has, thus, received support from both Russia and China, where both have opposed intervention in the Syrian conflict, considering states as masters of their own internal affairs.²⁶⁷ Russia and China blocked a U.N. Security Council resolution against Syria's government and its use of lethal force against protesters.²⁶⁸ China's interests in the Middle East have been incompatible with American interests, trading with and providing technology and weapons to Syria and Iran.²⁶⁹

As for the European Union, the close proximity of Middle Eastern countries to Europe generally makes the region an important economic and political player with the European Union.²⁷⁰ Europe also has immigration issues stemming from Middle Eastern states. Thus, the European Union ("E.U.") must

²⁶³ *Id.*

²⁶⁴ Hashemi, *supra* note 84, at 33.

²⁶⁵ See Nagan & Haddad, *supra* note 164, at 383–84 (commenting on the lack of United States' support in Israel).

²⁶⁶ See Nanda, *supra* note 224, at 19 n.83.

²⁶⁷ See Alexander Benard & Paul J. Leaf, Note, *Modern Threats and the United Nations Security Council: No Time for Complacency (A Response to Professor Allen Weiner)*, 62 STAN. L. REV. 1395, 1414 (2010).

²⁶⁸ See Amy E. Eckert, *The Responsibility to Protect in the Anarchical Society: Power, Interest, and the Protection of Civilians in Libya and Syria*, 41 DENV. J. INT'L L. & POL'Y 87, 90 (2012).

²⁶⁹ Justin W. Evans, *A New Energy Paradigm for the Twenty-First Century: China, Russia, and America's Triangular Security Strategy*, 39 IND. L. REV. 627, 632 n.31 (2006).

²⁷⁰ Adal, *supra* note 144, at 63.

also grapple with the region, the region's economic development, and the region's stability. The E.U. has various trade agreements with Central Middle Eastern states, particularly Israel.²⁷¹ The E.U. has also attempted to broker peace in the Central Middle East on various occasions.²⁷² The Oslo Accords are a prime example.²⁷³

Thus, each of the global powers have interests in the region and in the Central Middle East in particular. The United States has had complicated interests throughout the region.²⁷⁴ Russia and China have attempted to counter those interests to maintain their influence globally and regionally.²⁷⁵ Europe has had to deal with the political instabilities directly and indirectly through terrorism,

²⁷¹ See Tony Blair, *Foreword*, in ASSESSING ISRAEL'S TRADE WITH ITS ARAB NEIGHBOURS 3, 6 (2018) ("Israel has signed bilateral trade agreements with three of its immediate neighbours: the Palestinian Authority (PA), Egypt and Jordan.").

²⁷² Alavaro de Vasconcelos, *Preface*, in EUROPEAN INVOLVEMENT IN THE ARAB-ISRAELI CONFLICT 7, 7 (Esra Bulut Aymat ed., 2010) https://www.iss.europa.eu/sites/default/files/EUISSFiles/cp124-European_Involvement_in_the_Arab-Israeli_Conflict_1.pdf ("In the last few weeks we have witnessed, yet again, the failure of US-mediated negotiations between Palestinians and Israelis. This means that it is necessary, once again, to discuss the course of action that the European Union should follow, in the present strained regional and international circumstances, to attain its long-sought but elusive goal of peace in the Middle East.").

²⁷³ CNN Library, *Oslo Accords Fast Facts*, CNN (Sept. 4, 2018, 4:20 PM), <https://www.cnn.com/2013/09/03/world/meast/oslo-accords-fast-facts/index.html> (noting in the Accord's timeline that it was the head of a Norwegian research institute who first suggested to an Israeli politician that Norway act as an intermediary between Israel and the Palestinian Liberation Organization).

²⁷⁴ See Daniel L. Byman, *Shifting U.S. interests in the Middle East*, BROOKINGS (Mar. 2, 2016), <https://www.brookings.edu/blog/markaz/2016/03/02/shifting-u-s-interests-in-the-middle-east/>.

²⁷⁵ See Galia Lavi & Sarah Feinberg, *Russia and China in the Middle East: Rapprochement and Rivalry*, 20 STRATEGIC ASSESSMENT 57, 61 (Jan. 2018) https://www.inss.org.il/wp-content/uploads/2018/01/adkan21-1ENG_3-59-70.pdf (noting that the Middle East provides an opportunity against US hegemony); Nicolas Parasie & Robert Wall, *Russia and China target Middle East arms deals*, AGENCIA EFE (Apr. 7, 2019), <https://www.efe.com/efe/english/world/russia-and-china-target-middle-east-arms-deals/50000262-3946289> (noting that both Russia and China have been building military and economic roots in the region).

immigration, and economics.²⁷⁶ These interests conflict because, for example, the United States' interests and interventions have not lead to stability, and have in turn contributed to terrorism in and immigration into Europe.

These interests of the global powers are connected and intertwined with the regional interests and with the internal interests. The United States has ties with Turkey and Saudi Arabia, while Russia and China have ties with Iran.²⁷⁷ The United States has also supported Saudi and Qatar's indirect intervention in the Syrian conflict, providing weapons and money, while Russia provided the same to Syria's regime.²⁷⁸ Thus, the internal interests of each groups and Central Middle Eastern states have connections to regional powers and global powers. Such a scheme is not conducive to stability, but rather places groups and states at each of the three levels at odds.

E. Results of the Intersection of Interests

Al-Qaida, ISIS/IS, and other such groups cannot be allowed to grow. It is arguably in the world's best interest to achieve more stability, particularly in the Central Middle East, because of the multi-leveled interests. Unfortunately, global and regional powers have not been able to reach common grounds. For example, the United States has stated their interests are maintaining some

²⁷⁶ See, e.g., *Migrant Crisis: Migration to Europe Explained in Seven Charts*, BBC NEWS (Mar. 4, 2016) <https://www.bbc.com/news/world-europe-34131911>; Jacob L. Shapiro, *Where Europe and the Middle East Meet*, GEOPOLITICAL FUTURES (Aug. 23, 2017) <https://www.geopoliticalfutures.com/europe-middle-east-meet> (arguing that the Islamic State employs its tactics in Europe, using as an example strife between Spain and Catalonians).

²⁷⁷ See generally JEFF FELTMAN, ET AL., *THE NEW GEOPOLITICS OF THE MIDDLE EAST: AMERICA'S ROLE IN A CHANGING REGION: A BROOKINGS INTERVIEW* (Bruce Jones ed., 2019).

²⁷⁸ See Asma Alsharif, *Saudi Arabia and Qatar Funding Syrian rebels*, REUTERS, June 23, 2012, 7:34 AM, <https://www.reuters.com/article/us-syria-crisis-saudi-saudi-arabia-and-qatar-funding-syrian-rebels-idUSBRE85M07820120623> (noting that Saudi and Qatari salary payments to rebel forces in Syria, and U.S. supplying communications equipment to help activists organize and evade attacks by the regime).

oppression through autocratic regimes,²⁷⁹ with a sentiment among Middle Eastern populations that the United States is opposed political or economic progress in the region²⁸⁰. As a result, the superpowers and the 1.4 billion Muslims continue to be locked in “mutual suspicion, distrust, and anger.”²⁸¹ There are analyses on the fears of allowing democracy in the Middle East, pointing democratic forces opposing the interests of global-powers.²⁸² These fears may be well founded; they should not, however, translate to complete disregard of stability, peace, and progress.

It would be in all parties' interest to enforce stability and peace in the Central Middle East. Peace would have to be 'neutral' in its form, such that it serves the interests of the local populations and individual states, including Iran, Turkey, the United States, the European states, Russia, and so on. One source of interest that is not present, or known of, in the Central Middle East is oil. Researchers have not tapped into any major oil reserves in any part of these countries. Thus, stability in these countries would not

²⁷⁹ Akbar Ganji, Ali N. Babaei (trans.), *Confronting Terrorism and Instability in the Middle East: The Common National Interests of Iran and the United States*, HUFFPOST (June 23, 2014, 9:34 PM), https://www.huffpost.com/entry/confronting-terrorism-and_b_5516243 (noting comment by former Defense Secretary Robert Gates that Middle Eastern countries “can be held together only by authoritarian regimes”); see Hashemi, *supra* note 84, at 35 (regarding the Middle East, “. . . it is much easier for the U.S. to deal with military regimes than with democratic parliaments who reflect the will of the people.”).

²⁸⁰ Hashemi, *supra* note 84, at 40 (quoting a National Security Council report from 1958: in “. . . the eyes of the majority of Arabs . . . they believe that the United States is seeking to protect its interest in Near East oil by supporting the status quo and opposing political or economic progress . . . with widespread belief that the United States desires to keep the Arab world disunited . . .”).

²⁸¹ SINGER, *supra* note 7, at III.

²⁸² See, e.g., Hashemi, *supra* note 84, at 31–32 (2012) (noting that “authoritarian regimes protected U.S. interests from hostile forces,” and that the Arab Spring caught the Obama Administration off-guard, quoting Vice President Biden, when referring to Egypt’s former president, President Mubarak, “I would not refer to [Mubarak] as a dictator.”); SINGER, *supra* note 7, at 8 (2006) (commenting on the duality of the American policy that “shuts down American NGOs for pushing too hard for democracy.”); Byman, *supra* note 274 (commenting that “stability of foreign oil producers is less important to the United States than in the past” and “Democratization is high on no one’s list now”).

come at the expense of oil-consuming countries. Rather, stability in this area is likely to lead to better access to oil reserves in the surrounding countries and even eventual higher production of alternative energy sources including solar and wind.

The United States, European Union, and Russia, are all allowing the conflict to continue. The United States arguably, through its foreign policy and stance towards Israel, the European Union, through its economic ties with Israel, but inability to contribute to economic growth in the other 4 states, and Russia, with its counter-interests to those of the United States and with its stance with Syria.

The United States supports Israel, while other states encourage Israel to adjust its approach to Palestinian rights.²⁸³ Palestinians have a cause for which to fight, and for Arab states and Islamic populations in general to believe in, when Palestinian rights are ignored. Arab states, such as Syria, have used this cause

²⁸³ Situation in Palestine, *supra* note 60, ¶ 33 (discussing Israel is clearly violating Palestinians' right to self-determination and the right to determine how to implement self-determination and the right to permanent sovereignty); U.N., Comm. on Elimination of All Forms Racial Discrimination, Consideration of Reports Submitted by State Parties Under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination, ¶ 25, U.N. Doc. CERD/C/ISR/CO/14-16 (2012) (noting Israel's planning and zoning policy in East Jerusalem, as well as in other parts of the West Bank, breaches Palestinian's fundamental rights); U.N., Comm. on Economic, Social and Cultural Rights, Consideration of Reports Submitted by State Parties Under Article 9 of the Convention, ¶ 10 U.N. Doc. E/C.12/1/Add.27 (1998) (expressing concern that the Arabic language is not given equal importance in practice); U.N., Comm. on the Rights of the Child, Concluding Observations on the Second to Fourth Periodic Reports of Israel, Adopted by the Committee at its Sixty-Third Session (27 May – 14 June 2013), ¶ 29(a), U.N. Doc. CRC/C/ISR/CO/2-4 (2013) (expressing concern that Israel's policy not to process residency applications and arbitrarily revoke residency of children in East Jerusalem have resulted in thousands of unregistered Palestinian children excluded from access to education); G.A. Res. 58/97 (Dec. 17, 2003); G.A. Res. 56/60 (Dec. 10, 2001); S.C. Res. 904 (Mar. 18, 1994) (reaffirming the Convention is applicable to Palestinian territories occupied by Israel, including Jerusalem); S.C. Res. 641 (Aug. 30, 1989); Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Rep. 131, ¶¶ 115, 118 (July 9) (noting de facto annexation of land interferes with Palestinian people's right to self-determination, and Israeli recognition of the Palestinian people includes the right to self-determination).

to build its military for years; the same is true for Iran. Meanwhile, Russia continues to have interests in countering western pervasiveness and in maintaining an ally in each of Syria and Iran. The goal of these opposing approaches is to serve and propagate each interest, rather than build a long-term vision for stability. Thus, the self-serving focus is perpetuating conflict, instability, violations of human rights, terrorism, mass immigrations, local and proxy wars, and increasing risks of major regional and global conflicts.

IV. FEDERALISM

A fundamental issue in federalism is balancing central authority and state autonomy.²⁸⁴ *The American Heritage Dictionary of the English Language* (1969) describes federalism as “a form of government in which a union of states recognizes the sovereignty of a central authority while retaining certain residual powers of government.”²⁸⁵ In American federalism, the residual powers that states retain yields to a national standard in a given area of law when the national standard forms a federal scheme that is sufficiently comprehensive to occupy that area of law.²⁸⁶ As such, American federalism has arguably succeeded in providing a degree of regulatory variations across jurisdictions in regards to overarching principles and direction.²⁸⁷ This occurs while member states through Congress, and citizens through elections, have maintained a form of political check on the power of the central government.²⁸⁸

The Central Middle East legal structure requires coexistence, and the ability to address internal and external conflicting interests, in order to achieve stability. For instance, an agreed-upon central authority in theory would have the incentive to build cohesiveness between the member states and coexistence of

²⁸⁴ Ernest A. Young, *Protecting Member State Autonomy in the European Union: Some Cautionary Tales from American Federalism*, 77 N.Y.U. L. REV. 1612, 1641–42 (2002).

²⁸⁵ Sally Fairfax, *Old Recipes for New Federalism*, 12 ENVTL. L. 945, 949 (1982).

²⁸⁶ *See id.* at 950.

²⁸⁷ *See* Young, *supra* note 284, at 1617–18.

²⁸⁸ *See id.*

their populations, as opposed to supporting separate internal interests and continued inter-state conflict. A central authority would also have the incentive to promote trade and economic growth among the member states, from which all five potential states would greatly benefit.

In regard to regional stability, the current political structure has shown that it promotes conflict and armed competition between the five neighboring states and their populations, rather than cooperation and genuine attempts to coexist. This is evident, as described in the prior sections, primarily because the current structure does not serve the interests of each of the five states. This allows the conflicts to continue and increase, and in turn leads to competing regional and global interests that the five states cannot handle. On the other hand, creating a legal foundation that acts as an umbrella and a binding fabric is likely to also create a primary and common interest among the five states that overrides and undermines conflicting interests, while also promoting negotiating power with regional and global interests.

The benefits of a federal system lie in its promotion of unity and cooperation. For instance, these five states and their populations would be better served by a common recognition similar to the United States' privileges and immunities, such that an Israeli citizen visiting Syria would have the same protections in Syria as a Syrian citizen. In addition, internal security interests would also be better served because there would be one army structure consisting of forces from all five states, protecting and upholding the primary common interest of the five states, as opposed to depleting resources on multiple competing armies to ensure security. As for the global community, the United States would not have to balance its interests between Arab-speaking populations and the Jewish population because, theoretically, the five states would have one foreign policy that foremost serves the union. Similarly, Russia and China and, the European Union would have less resistance particularly in regard to economic relations, thus also serving its economic interests.

Naturally these are speculations, and, as the European experience has shown, such an attempt is not without challenges. Nonetheless, it is clear from history, from extreme and perpetual security and political conflicts, that the current political structure is

not conducive to co-existence. Uniting these five states under one legal umbrella would directly address the reasons behind the conflicts.

A. Proposed Structure

As an example supporting federalism, the United States Constitution mandates that federal law preempts inconsistent state law, with the Constitution being the highest law of the different tiers of federal law.²⁸⁹ The European Union, as another example, has a draft of a European Constitution, which incidentally and unlike the United States, permits state withdrawal.²⁹⁰ Unlike the EU, however, a union between these Central Middle Eastern states would require stronger political unity that includes one military and one foreign policy. Having one military is crucial to building trust and indiscriminate security between these states and their peoples. Additionally, having one military will also support and promote economic development and growth.

As such, federalism, spearheaded by a federal constitution, is “a tool for political integration in pluralistic societies,” and a counter to majoritarian tyranny.²⁹¹ Similar to Central Middle Eastern states and societies, Professor Chibli Mallat of Saint Joseph University in Beirut, Lebanon, points to Iraqi society and argues that federalism is the one model that can offer respite for Iraq’s communities to flourish. Professor Mallat points to Iraq’s multiple dimensions of disunity—between Arabs and Kurds, and Sunnis and Shiites, and notes that a federal Iraq must be thought through the diversity and complexity of Iraq’s society.²⁹² Federalism arguably corrects the model of unitary nation-state by establishing an objective structure for social and political organization, while the unitary nation-states have proven to alienate either their minority populations (Israel) or their majority

²⁸⁹ Vasan Kesavan, *The Three Tiers of Federal Law*, 100 NW. U. L. REV. 1479, 1480 (2006).

²⁹⁰ Andrew C. Snavely, *Should We Leave the Backdoor Open? Does an Agreement Uniting States Need a Withdrawal Provision: The European Union Draft Constitution*, 73 UMKC L. REV. 213, 213–14 (2004).

²⁹¹ el-Gaili, *supra* note 138, at 514.

²⁹² Chibli Mallat, *Federalism in the Middle East and Europe*, 35 CASE W. RES. J. INT’L L. 1, 11–12 (2003).

populations not in power (Syria) and lead to conflicts of ethnic identities.²⁹³ Thus, broadly speaking, one strength of federalism is that it offers greater opportunities for power-sharing, and reduces the prospects of conflict by facilitating political participation.²⁹⁴

Another issue is the confusing, and arguably contentious, definition of statehood. The international system defines a state as one with geographical boundaries, laws, recognition by other states, and a population. While each of these has the potential to be contentious, it is the population aspect of the definition that is most relevant to the argument at hand. That is, what group of persons would constitute a population in the Middle East? For instance, do those of the Jewish faith constitute a population, or those who have lived within a given state boundaries for a prolonged period regardless of religious practice and regardless of lineage? Are the Kurds in Northeast Syria members of the Syrian people, or must they continue to retain the 40-year refugee status? How about the Armenians throughout the Central Middle East?

There is no indication that international customary law limits 'population' by any definitions, such that there is no relationship to ethnic or religious boundaries; however, we often see that either those who come into power associate the state definition to ethnicity or religion, or that a given sect in the population perpetuates the association.

The multitude of peoples in the Middle East, of differing religious practices, lineages, and origins, each tend to desire a stake in governing the region. If Israel were not around, no doubt the majority Muslim population would lean toward calling Palestine a Muslim or Arabic State. After all, the majority of the population practice Islam and speak Arabic. Certainly, the Arabic speaking countries, most obvious examples being Qatar's and Saudi's recent agendas, have attempted to establish the Arabic state or some form of an Arabic union.

The definition of statehood is at the core of the issue and today's struggles. In the Central Middle Eastern reality, a state cannot abide or be limited by such limitations; rather, it must uphold the interests of all those residing under its jurisdiction, as

²⁹³ See el-Gaili, *supra* note 138, at 514.

²⁹⁴ *Id.*

one people. Thus, in the context of statehood, and political interests, all those residing under the state's jurisdiction must be considered as one people, and must not attach a characteristic of a given group of persons to the state itself.

B. Political Interests

Within the context of the Israeli-Palestinian conflict, history proves that both sides are unwilling to consider their issues of coexistence and both sides are ambivalent toward legal norms that can affect solutions.²⁹⁵ This conflict affects their political stability as well as the political stability of Syria, Jordan, and Lebanon. As discussed above, the conflict and the uncompromising position on key points also draw sided support from regional and global powers.

Similarly, in Syria and Lebanon, each has had its internal interests as well as conflicts with their neighbors, where no agreement thus far has achieved continued peace. The agreements, as with the Taif Agreement,²⁹⁶ have arguably attempted to set rules for continued conflict, and not necessarily to resolve the conflicts. While peace treaties between Israel and Jordan have actually achieved some recognition, it remains to their detriment that the lack of economic cooperation continues to reign between the two neighbors.

To promote internal and inter-state security, political stability, economic cooperation, and economic growth, there needs to be at least some ties between the five states to highlight and perpetuate common interests among these states. Federalism is the one political structure that can create the foundation for building such ties and for allowing the five states to advance their common interests. Regional and global powers have shown they are not the proper parties to promote these ties because their vision is generally promoted by their own interests, in turn perpetuating the conflicting interests and consistently causing a disservice to the region and the global community.

The five states are more likely to cooperate with each other, in particular in regard to security and political stability, when they

²⁹⁵ Nagan & Haddad, *supra* note 164, at 345.

²⁹⁶ Kaissi, *supra* note 189, at 176.

are bound to each other and when their interests are tied. A federal legal structure would act as that binding fabric, such that cooperation would outweigh inter-state conflicts and competing narrow internal interests.

While a two-state solution between Israel and Palestine is unclear and may still be moving forward with Palestine unilaterally and gradually moving to achieve full statehood, conflict and violence are likely to continue because such a structure does not serve the interests of either Israel or Palestine. Israel seeks control, recognition, and security, while Palestine seeks political and economic independence. With a Palestinian state, Israel loses control, and arguably access, over the West Bank, and East Jerusalem. These territories would likely continue to be a contentious subject and a cause for violence from both sides. As for the 150 or so settlements in the West Bank, removing them is one possibility, but even then, violence is more likely to persist from both sides, from Israelis unwilling to give up the land, and from Palestinians in retaliation.

On the other hand, federalism along with the other three Arabic-speaking states would better serve the interests of both Israelis and Palestinians. While federalism would remove Israeli control over the occupied territories, the new access to these lands would likely mitigate this interest. Israelis would also be able to live in those areas, albeit under Palestinian laws, but still under the protection of federal laws. Such a status is more likely to serve both sides than the current status. On the one hand, Palestinians would have these areas under self-control and self-determination, including control over natural resources and economic growth. Palestinians would also be able to provide Israelis with access to the West Bank, the option to remain in the West Bank, and protection from a united force that includes Israelis and Palestinians.

By the same token, federalism would also abate the conflict between Israel and Syria because Israel would be assured security from Syria, and access to the Golan Heights, while Syria would retain the Golan Heights and discontinue its war-stance against Israel. This also serves both Lebanon and Jordan simply through political stability in and among their neighbors.

There are those who would argue this is an impossibility, and nothing more than a formula for exacerbating the violence; however, it is the one method that can best serve or mitigate the interests of all sides. Alternative methods, such as agreements, or even attempts at peace talks and agreements, do not succeed or often do not even reach a signatory step because the ultimate goals of such talks cannot adequately serve any given party's interests.²⁹⁷ For instance, talks between Syria and Israel have never reached a milestone, most likely because of the positions regarding the Golan Heights, and Lebanon continues to have internal conflicts while its Hezbollah continues its strife with Israel.

Therefore, a federal structure between the five states would serve the internal and inter-state political interests among these five states, while also providing a platform to handle external interests. Federalism arguably is more likely to provide the foundation for stability and security than any agreement or attempt thus far, because its aim would be to directly address each interest that is giving rise to the conflicts.

C. *Economic Interests*

Federalism among the five states is also the necessary foundation for economic growth in all five states. Generally, the issue of establishing a regional order in the larger Middle East is fundamental to addressing the conflicts in the region.²⁹⁸ Regional economics contribute to building order, or causing chaos in the face of stagnant conditions. For instance, the peace and relative economic prosperity in Western Europe may be traced to European countries eliminating trade barriers in certain sectors, which in turn generated a degree of interdependence and order.²⁹⁹ Halabi, in 1997, argued that economic interdependence between countries in the Middle East is the most effective means of maintaining peace

²⁹⁷ See, e.g., Weiner, *supra* note 112, at 594–98 (2000) (noting that there has been many unsuccessful efforts to secure Israeli-Palestinian or Arab-Israeli peace agreements).

²⁹⁸ Tibi, *supra* note 10, at 198.

²⁹⁹ JEAN BONVIN, REGIONAL INTEGRATION: MOVING THE MIDDLE EAST INTO THE GLOBAL ECONOMY 22 (1996).

and breaking the cycle of instability.³⁰⁰ Halabi cited Lubetzky, arguing that economic cooperation would dampen animosities and encourage coexistence and that nations at war without economic relations have few shared interests to push them toward peace.³⁰¹ The issue, then, is effecting such economic cooperation.

Thus far, the region in general has been trapped in a cycle of “low growth, bad . . . governance, and resistance to economic globalization.”³⁰² The reason for such a cycle is arguably the lack of a supporting legal structure. Economic policies require a legal foundation, whether through internal policies or through inter-state trade structures. Thus, while the mechanics of integration may rely on economic policies, and free trade may help with solving the region’s issues, political will is the driving force and the necessary foundation and catalyst because it is political will that would create the necessary legal structure to allow, support, and enforce the mechanics of integration and economic policies.³⁰³

Government is necessary to provide the legal framework for entrepreneurship.³⁰⁴ Some common characteristics of successful economies include income equality, government policies, political and economic freedoms, political stability, and good governance.³⁰⁵

Halabi wrote that the obvious partner “to aid in encouraging economic development and mutual economic interdependence [in the Middle East] is the United States.”³⁰⁶ Unfortunately, discourse and agendas for democracy and free market initiatives in the 1990s between the United States Agency for International Development and non-governmental

³⁰⁰ Roni N. Halabi, *Stability in the Middle East Through Economic Development: An Analysis of the Peace Process, Increased Agricultural Trade, Joint Ventures, and Free Trade Agreements*, 2 DRAKE J. AGRIC. L. 275, 275–76 (1997).

³⁰¹ *Id.* at 276–77.

³⁰² Hassanien, *supra* note 19, at 223.

³⁰³ BONVIN, *supra* note 299, at 22; *see* Hassanien, *supra* note 19, at 224–25 (explaining why authoritarian governments in the Middle East oppose economic developments that can help prosper their countries and citizens).

³⁰⁴ Ayres & Macey, *supra* note 142, at 406.

³⁰⁵ *Id.* at 400.

³⁰⁶ Halabi, *supra* note 300, at 277.

organizations did not extend to the Middle East.³⁰⁷ In addition, local sectarianism continues to hinder productive economic relationships.

Sectarianism, possibly summarizing the entire conflict in general, blocks productive legal discourse and free market initiatives. Cultural stereotypes, collective representations of ancient blood-feuds, and religious conundrums help prevent legal investigations and judicial intervention.³⁰⁸ To dismantle sectarianism, the political and economic realities must be attended to.³⁰⁹

A given state looking to promote growth must sacrifice powers and reduce state and business interaction, thus allowing business to thrive,³¹⁰ while working to enforce overarching principles. Principles, such as individuals' rights and needs, cannot continue to be secondary to communal needs; for instance, the Jewish community's rights and needs in Israel must be adhered to while also not taking precedence over rights of non-Jews.³¹¹ Thus, building, deployment, application, and affirmation of law, are crucial to resolving the problems of today's Middle East.³¹²

To be able to address the intersection of the numerous interests, the five current states must fall under one legal umbrella, one 'federal' constitutional foundation, while also affecting equality, non-discrimination, and autonomy within the boundaries of the larger federal legal umbrella and principles. Such a legal umbrella is the one method to support and promote economic cooperation and growth among the five states.

The European experience and experiment provides a useful comparison. The European powers and community likely envisioned the European Union as a method to administer justice and to regulate the internal market,³¹³ as well as to create more

³⁰⁷ King-Irani, *supra* note 6, at 370.

³⁰⁸ *Id.* at 372.

³⁰⁹ *Id.* at 379–80 (citing USAMA MAKDISI, *THE CULTURE OF SECTARIANISM: COMMUNITY, HISTORY, AND VIOLENCE IN NINETEENTH-CENTURY OTTOMAN LEBANON* 2 (2000)).

³¹⁰ Ayres & Macey, *supra* note 142, at 407.

³¹¹ See King-Irani, *supra* note 6, at 381.

³¹² *Id.* at 386.

³¹³ Alexander Somek, *What Is Political Union?*, 14 GERMAN L.J. 561, 563 (2013).

leverage globally. However, Europe's objectives appear to be unclear, such that there appears to be only a general approach: "more Europe" along with a goal of avoiding nationalism and a promise of no superstate but without regard to whether common policies create public bads and lead to wasteful public spending.³¹⁴ Part of the issue may be that Europe needs to be a political union when it is widely unclear what a political union is.³¹⁵ One theory is that a political union means linking the stabilization of financial markets and public finances with Europeans—that is, with the people—but without a dependency on the consent of national governments.³¹⁶ Another theory identifies a political union as one having an integrated foreign policy, common defense, and organized military, all of which the EU lacks.³¹⁷

It is arguable that for the EU to succeed, Europeans, as citizens of the EU, would have to recognize the benefits of integration and accept that such benefits come with obligations, including, for example, integration of a tax system.³¹⁸ A similar argument can be made for the Middle East; the difference, however, is that arguably it is the Middle Eastern governments that must reach such a recognition and admission.

Thus, the governments of the five states need to reach consensus and recognition of their connected interests and the benefits of creating political ties. Their economic interests are best served by creating and building these political ties, which in turn serves the interests of their populations and, at least in part, address a cause of instability, insecurity, and terrorism.

D. Accountability to One Another

The five states must also become accountable to each other first and foremost, before they are accountable to the international community. This is especially true for discrimination, travel, and security. Simply put, the five states, the state governments, and the

³¹⁴ *Id.* at 562, 564–65.

³¹⁵ *Id.* at 564, 566.

³¹⁶ *See id.* at 567.

³¹⁷ *Id.* at 568.

³¹⁸ *Id.* at 572–73.

proposed federal government, must become accountable to each other and to their citizens—to the entire populous.

The United States sets a useful example, given that it is arguably the only successful federal system with the large scale of its population, land size, and ethnic diversity of its population.³¹⁹ In the United States, laws are made through a comparatively balanced process designed to be difficult, such that the actors in the process are accountable to each other and to the people.³²⁰ The United States structure achieves relative accountability through substantive restrictions imposed by its Constitution, and procedural restrictions imposed by the structural branches of both Houses of Congress and the President.³²¹ Substantive restrictions include state protections and individual rights; while procedural rules may apply to creating laws as well as enforcing them.³²² Meanwhile, the nation's judicial branch, through the nation's highest court, plays a role in defining Congress' substantive limits and has played an even more prominent role in limiting Congress' enforcement powers.³²³ In comparison, the EU has not fared as well in regards to accountability, as its Council's decisions are made away from the public eye, and the check on intergovernmental authority is lacking.³²⁴

Certainly, Central Middle Eastern states have unique issues, many of which are dissimilar from the United States and the European challenges; nonetheless, the broad lessons of accountability between one state government to one another, to their respective peoples, and to the people in the area as a whole, all apply. The United States structure provides ample lessons in the usefulness of accountability, checks and balances, and separation of powers. Arguably, the European experience provides as much from which to learn.

³¹⁹ Mark C. Anderson, *A Tougher Row to Hoe: The European Union's Ascension as a Global Superpower Analyzed Through the American Federal Experience*, 29 SYRACUSE J. INT'L L. & COM. 83, 84 (2001).

³²⁰ Ernest A. Young, *The Trouble with Global Constitutionalism*, 38 TEX. INT'L L.J. 527, 528 (2003).

³²¹ *See id.* at 529.

³²² *See id.* at 529–30.

³²³ *See id.* at 530.

³²⁴ Anderson, *supra* note 319, at 111.

Moreover, because it is the governments who have failed to reach the necessary agreements to achieve political stability, these same governments cannot have access to military power of mass destruction. In other words, unlike with the EU, the Central Middle East requires one army, such that the five states would act in unison in regard to threats, and would not have opportunities to threaten one another. That army, however, must attain only limited strength just enough to handle internal non-state forces and threats, and maintain regional deterrence from opposing outside interests, until at least a reasonable measure of political and economic stability is achieved. Such a limitation would likely limit aggression and would likely allow for more adherence to human rights; for example, the limitation would include a ban against weapons of mass destruction. Additionally, security against regional intrusion or influence can come through leverage and international agreements.

Therefore, accountability through the legal structure is necessary to promote stability and to sustain the political and legal union. Such accountability must address property rights, discriminatory practices, and disrespect of human life and violations of humanitarian law, as well as issues of larger scale such as a unified taxing system and military.

E. Risks

Risks are plenty with virtually any venture. In the case of these five Middle Eastern states, there may be risks of one particular state obtaining excessive control. Another is that of one ethnic and religious majority leading to an imbalance in the political structure. Yet another is the risk attached to centralization and the creation of a superstate. It remains, however, that the risks attached to creating a federal structure for the Central Middle East are simply and clearly exponentially smaller than the risks and issues attached to the current political structure.

A possible risk that the federal structure would have to consider is one state acting more aggressively than the other states to achieve its agenda and to meet its interests. Israel, for example has historically taken such a stance, arguably to sustain its existence. Such a stance, however, is likely to be a danger to

achieving reasonable balance of political cohesion within a federal structure.

As an example of Israel's stance, consider Prime Minister (P.M.) Netanyahu's position on the Goldstone report of 2009.³²⁵ Prime Minister Netanyahu called the report biased and unjust and asked the international community, "Will you stand with Israel or will you stand with the terrorists? We must know the answer to that question now. Only if we have the confidence that we can defend ourselves can we take further risks for peace."³²⁶ P.M. Netanyahu's comment further signals Israel's stance, 'with us or with terrorists?' proclaiming that there are only two sides, and that P.M. Netanyahu's perspective is the natural choice. Such an approach cannot coincide with a federal structure. In other words, there would need to be a commitment to the revised political structure, to federalism, for federalism to survive. The lack of commitment to federalism for its own sake have contributed to failures of federal experiments elsewhere, such as with African countries where federalism was perceived as a step toward unification.³²⁷

There is also the danger of the international federal system reducing the nation state to the format that market liberals find desirable, at the expense of the rights of individuals.³²⁸ There is the argument, for example, that an internationally-designed federal system eliminates government bailouts for ailing industries because there would not be sufficient popular support for aiding one industry in a given region over another in a different region, thus hampering social programs at the state level because of widespread regulatory competition.³²⁹ On the opposite end is the European experience, where there is an extensive effort to avoid

³²⁵ See generally Rep. of the United Nations Fact-Finding Mission on the Gaza Conflict, U.N. Doc. A/HRC/12/48 (2009) This report, prepared by Justice Richard Goldstone, indicates that Israel, as well as Hamas, had committed serious violations of international human rights, actions amounting to war crimes, and possibly crimes against humanity. *Id.*

³²⁶ Colum Lynch, *Israeli Leader Blasts Ahmadinejad at U.N.*, WASH. POST (Sept. 24, 2009, 8:24 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/24/AR2009092404598.html>.

³²⁷ el-Gaili, *supra* note 138, at 517.

³²⁸ Somek, *supra* note 313, at 563.

³²⁹ *Id.* at 563–64.

the superstate and nationalism by strengthening the economic and monetary union while democracy becomes a secondary goal.³³⁰

It is natural to have risks. However, risks can be managed by acknowledging them and building structures to address them. On the other hand, the current political lines in the Central Middle East have proven to be irreconcilable with the interests of the area's populations, and continue to lead to violent conflicts, regionally and globally. Thus, when the risks of exploring and building a structure that addresses the root of the instabilities are compared to the current ills caused by contemporary political lines, these risks are minute in comparison. Risks attached to a possible solution to an existing issue cannot be the reason for avoiding that solution. Each of the risks considered above, as well as others that are not mentioned, can be addressed. While some issues, such as continued terrorism and radicalism, have become too pervasive such that they are no longer just risks, these are social threats that should not be tolerated. Allowing the current political lines to continue is effectively allowing these threats to continue and grow. Thus, the true risk is not in a federal structure as an attempt to resolve the issues in the Middle East, but rather it is in allowing the root reasons for the existing threats to continue.

It is in the best interest of all parties, internal, regional, and global, that the Central Middle Eastern states have a vision and a plan to establish stability. Federalism is arguably the best approach because it has the potential to meet the primary internal interests, the interests of warring groups, as well as those of each state as a whole. In turn, stability in these states can also serve the interests of regional and global powers because of the potential for growth in economic cooperation without necessarily relinquishing alliances. Thus, federalism is the one solution that can serve the wide range of the conflicting interests, while also addressing the current threats of radicalism and growing instability.

V. ALTERNATIVE SOLUTIONS HAVE NOT SUCCEEDED

Military alliances, such as the alliance between Syria and Iran, and the former alliance between Turkey and Israel,

³³⁰ See *id.* at 567.

contributed to further instability.³³¹ In addition, Israeli and Palestinian failure to implement the Oslo accords blocked efforts to reorder and stabilize the Middle East.³³² As discussed above, arguably the Oslo accords were doomed to fail because the terms did not meet the interests of either Israel or Palestine. Other agreements such as that between Israel and Lebanon in 1997 to address their conflict, only served to allow Lebanon's two neighbors, Israel and Syria, to compete, for or against, Lebanon's interests and politics.³³³ Another alternative is the involvement of regional powers like Turkey and Saudi Arabia. The media reported in mid 2015 about Turkey and Saudi Arabia forming a pact to help Syrian rebels fight Syria's regime, possibly as part of a proxy war against Iran.³³⁴ Two weeks prior to this announcement, the Syrian ambassador to the United Nations accused the Saudis of "cultivating a culture of sectarian bloodshed[.]"³³⁵

Such a pact likely promotes and perpetuates sectarianism, exponentially grows divisions among the local groups, and leads to increased instability, as opposed to Turkey's and Saudi's guise of seeking stability. Unfortunately, these interests will not serve the region or the global community. For instance, with Syria being Russia's final true ally in the area, and with Russia and China likely to side with Iran, Turkey's and Saudi's pact is more likely to further divide the global community into two sides: the United States, the European Union, Turkey, and the Persian Gulf states on one side, and Russia, China, and Iran on the other. In short, Turkey and Saudi's pact is an example of regional interests interfering with local as well as global stability and not as an attempt with the smallest likelihood of achieving stability.

Tibi points to three competing alternatives for establishing order in the Middle East: (1) The US-Israeli concept of a new

³³¹ Tibi, *supra* note 10, at 202.

³³² *See id.*

³³³ *See* Waldman, *supra* note 163, at 252.

³³⁴ Desmond Butler, *Turkey, Saudi Arabia form pact to help anti-Assad rebels*, MIAMI HERALD (May 7, 2015, 11:11 AM), <https://www.miamiherald.com/news/nation-world/world/article20413182.html>.

³³⁵ Aron Lund, *Are Saudi Arabia and Turkey About to Intervene in Syria?*, CARNEGIE MIDDLE E. CTR. (Apr. 24, 2015), <http://carnegieendowment.org/syriaincrisis/?fa=59904>.

Middle East that emerged from the Oslo accords; (2) an exclusive Arab system that gives control to Middle Eastern powers; and (3) the Euro-Mediterranean community, tying the Middle East and Europe.³³⁶ Each of these alternatives serves one side while ignoring another. The first alternative favors Israel; while the second favors Arabic-speaking or Muslim states. The third alternative supports growth in all the Central Middle Eastern states, but has not succeeded in addressing Syria's interests or bringing Syria into the Middle Eastern market, and has not succeeded in addressing Jordan's nor Lebanon's challenges.

Other methods, such as alternative dispute resolutions, enable parties to a conflict to evade analyses of, and interventions in, institutionalized injustices and structural violence. In turn, such avoidance enables those committing the injustices to continue enjoying impunity and to legitimize a social structure that favors the powerful.³³⁷ Irani notes that political agreements such as Oslo displaced international law in practice, and as result rendered humanitarian law and human rights as negotiable.³³⁸

A two-nation state attempt for Israel and Palestine at the minimum is likely to be harsh on minorities in either nation state;³³⁹ it may also to lead to majoritarian tyranny. It is better to use territorial and communitarian federalism to allow the law to regulate between the various communities as opposed to building separate nations.³⁴⁰ Majoritarian tyranny can be defined as any violation of the natural or the positive rights of minorities, as stipulated in the Universal Declaration of Human Rights ("UDHR"), the International Covenant of Civil and Political Rights or domestic constitutions.³⁴¹ Such tyranny is likely to arise when the majority is self-interested or hostile to minority

³³⁶ Tibi, *supra* note 10, at 206.

³³⁷ King-Irani, *supra* note 6, at 374–75.

³³⁸ *Id.* at 375.

³³⁹ Compare Mallat, *supra* note 292, at 14 (arguing that each of the two resulting states would erect walls and legislation to exclude what is not Jewish within Israel, and what is not Arab within the resulting Palestine), with Weiner, *supra* note 112, at 594–98 (discussing federalism between Israel and Palestine, post-Oslo, to address welfare and security, including the distribution of resources, control of holy sites, and economic growth).

³⁴⁰ Mallat, *supra* note 292, at 14.

³⁴¹ el-Gaili, *supra* note 138, at 509.

concerns,³⁴² such as with the Muslim Palestinian population in Palestine.

In regard to trade and economics, existing agreements with integration efforts between Arab states in general have been ineffective likely due to administrative challenges and insufficient political commitments.³⁴³ Thus, actual and meaningful political commitments, and legal administrative structures, specifically among the five states, are necessary to achieve stability, as well as economic relationships and growth.

VI. BROAD PICTURE OF THE PROPOSED LEGAL STRUCTURE AND METHOD OF IMPLEMENTATION

A. *Federal Structure and a Constitution*

Analyzing a society in the context of federalism enlists a tripartite analysis: that of culture (ideologies), politics (legal), and economics.³⁴⁴ On the other hand, from a constitutional perspective, the basic staples of federalism include freedom of movement for people, freedom of capital, and full faith and credit clauses.³⁴⁵ More specifically, the political ideas of the American system can be categorized into six groups: 1) representative republicanism, 2) federalism, 3) separation of powers, 4) equality before the law, 5) individual autonomy, and 6) procedural fairness.³⁴⁶

As an example, the American system provides two inventions—federalism and the Supreme Court.³⁴⁷ As for the European Union, it is arguable that it is, in fact, progressing in a direction similar to that of the United States, certainly through its Court of Justice as a parallel to the United States Supreme Court. For instance, a unifying dimension to Europe is now the Court of

³⁴² *Id.*

³⁴³ Adal, *supra* note 144, at 67.

³⁴⁴ Mallat, *supra* note 292, at 2.

³⁴⁵ *Id.* at 3.

³⁴⁶ *Id.* (citing LAURENCE TRIBE, CONSTITUTIONAL CHOICES 25 (1985)).

³⁴⁷ *Id.* at 3.

Justice decision in *Costa*, making communitarian law prevalent over any national law.³⁴⁸ *Costa* said that the European treaty established a judicial order that is integrated into the legal systems of member states, and imposes itself on their jurisdictions.³⁴⁹ The effect is that a law passed in a member state will not stand before a law passed at the level of the European Union, even if the latter is in the form of a lower level lawmaking tool—such as a directive.³⁵⁰

In the Middle East, not a single experiment of unity has succeeded beyond the existing nation states, along the boundaries that the colonial powers formed. Taken a step further, it is the reality of secession that is, in fact, more prevalent.³⁵¹ On the other hand, ideas of federalism, and in turn, inter-state cooperation and unity, remain absent. One explanation that has been presented is that legal education in the Middle East never carried the construction of federalism because Middle Eastern legal education has been entrenched with British and French models, neither of which has had any experience with federalism.³⁵² Noting that federalism is an invention, Mallat argues that all unity experiments in the Middle East have failed because of the legal education's failure to introduce federalism as a possible legal structure.³⁵³

Part of the risk in federalism; however, is that bringing democracy to the Middle East, as part of federalism, in the form of one person-one vote, may result in majority mistreatment of minorities.³⁵⁴ Moreover, states generally do not volunteer to protect human rights, and protection of minorities will be considered unpopular by the government as well as its majoritarian constituency. Thus, protections must be institutionalized in a

³⁴⁸ Mallat, *supra* note 292, at 7.

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.* at 10.

³⁵² *Id.* at 10–11.

³⁵³ *Id.* at 10.

³⁵⁴ el-Gaili, *supra* note 138, at 510–11 (citing Paul Kennedy, *The Perils Of Empire*, WASH. POST (Apr. 20, 2003), https://www.washingtonpost.com/archive/opinions/2003/04/20/the-perils-of-empire/a89eb9a8-6a0f-4eaa-99e6-59fc6477130d/?utm_term=.177aad37130c (noting that majorities misuse constitutional legitimacy to serve their interests)).

constitution or through a variety of structural measures.³⁵⁵ For instance, the United States' system includes protections in its Constitution – the Bill of Rights – and entrusts the courts to enforce these rights and constrain majorities through constitutional limits.³⁵⁶ Moreover, the administrative decentralization and reduced sovereignty of the union reduce the prospect of majoritarian tyranny.³⁵⁷

The Central Middle East may, after all, require an invention of its own. Nations that have practiced federalism have practiced “essentially . . . geographical” federalism, employing boundaries to project the voice of the people within those regions.³⁵⁸ However, geographical federalism cannot accommodate all Middle Eastern countries because of divisions along personal and sectarian matters.³⁵⁹ An alternative form is communitarian federalism, one that is not based on geography but on the communities mixed within boundaries.³⁶⁰ At least two Middle Eastern countries are experimenting with communitarian federalism: Lebanon and Israel.³⁶¹ The Lebanese model achieves some balance by dedicating the presidency to the Christian Maronite sect, the post of the Prime Minister to Sunni Muslims, and that of parliament speaker to Shi'i Muslims.³⁶² Israel has limited communitarian federalism through family law; Israel allows Muslims and Christians to have their own respective courts and allows those of the Jewish faith to marry according to religious tradition, while the state implements the courts' decisions.³⁶³ However, Israel's system excludes political decisions from federalism, since there appears to be little Arab representation at the decision-making level.³⁶⁴

³⁵⁵ *Id.* at 511.

³⁵⁶ *Id.* at 512.

³⁵⁷ *Id.* at 515 (citing ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 162 (1835)).

³⁵⁸ Mallat, *supra* note 292, at 12.

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.* at 13.

³⁶⁴ *Id.*

Moreover, Israel's security "can only be guaranteed when it makes peace with the people of the region" and when justice is given to Palestinians.³⁶⁵ Constitutional reform to allow freedom of speech and the formation of political parties, among others, should be part of the agenda,³⁶⁶ in all five states. Thus, there needs to be a unique accommodation of "both geographical and communitarian federalism" to address the Middle Eastern society.³⁶⁷

To reach such an arrangement, the five states must reach a constitution, and then they must respect the supremacy of the agreed upon and established constitutional values. They can do so through, for instance, federal preemption, an independent judiciary, and the will to enforce these values and protections.³⁶⁸ There also needs to be political integration of the various groups and interests, which in turn requires national institutions and a security system that are made up of members of all of these groups.³⁶⁹

Finally, limiting policies such as the doctrine of emergency law must be considered as a last resort and only for the common good, with the condition that loss of certain freedoms is temporary and only to facilitate the return to normalcy and restoration of human rights.³⁷⁰ Thus, there must be a framework and enforcement where such policies cannot become permanent and cannot be implemented to serve the limited interest of one group.

B. Separation of Church and State and Protections of Human Rights

Secularism is necessary for federalism's success; federalism, as a structural remedy, is effective "only when a set of constitutional, institutional, and social conditions are present[.]"

³⁶⁵ Hashemi, *supra* note 84, at 45.

³⁶⁶ SINGER, *supra* note 7, at 15.

³⁶⁷ See Mallat, *supra* note 292, at 13 (discussing the ongoing search for new horizons of federalism in the Middle East).

³⁶⁸ See el-Gaili, *supra* note 138, at 516.

³⁶⁹ *Id.* at 517.

³⁷⁰ Reynolds, *supra* note 61.

including that of secularism.³⁷¹ Most importantly, federalism cannot be a substitute for secularism.³⁷²

International law, such as through the UDHR bars distinctions according to religion, among other distinctions and discriminations.³⁷³ To reference the American system, rights are vested with individuals, and not with religious groups.³⁷⁴ If the federal state were to provide support for certain religious groups, it must do the same for all religious groups present, ensuring that all religious are treated equally.³⁷⁵

Introducing elements of a majority religion into the federal structure would frustrate the purpose of federalism, in large part because the structure would fail to prevent majoritarian oppression.³⁷⁶ The result would likely be discrimination against a differing religious group, and where non-believers become subjects, rather than citizens.³⁷⁷ Religion-based federalism also appeals to divine mandates that the de facto state religion proscribes, in turn extending divinity to human opinions of scholars and politicians.³⁷⁸ In addition, divine scripture inhibits any government to a rigid appeal and stunts the evolution of federal relations between the constituent states.³⁷⁹

A federal structure in these five states must not integrate the values, or the rules, of one religion into its legal foundations and definitions. Such integration, in spite of arguments for identity, would lead to discrimination as well as inequality, in turn creating the danger of oppression and then revolt. Thus, at some point, the five states must recognize the benefits of separating religion from the state, as opposed to the dangers of integrating religion with the state.

Finally, the traditional Montevideo Convention criteria for statehood has expanded such that the fourth attribute of statehood,

³⁷¹ el-Gaili, *supra* note 138, at 505.

³⁷² *See id.* at 518 (examining the viability of religion-based federalism).

³⁷³ *Id.* at 508.

³⁷⁴ *See id.* at 519.

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 519.

³⁷⁷ *Id.* at 520.

³⁷⁸ *Id.* at 519.

³⁷⁹ *Id.*

the capacity to engage in international relations, arguably now includes a demonstrated respect for human and minority rights.³⁸⁰ Today, any entity seeking statehood must demonstrate that it will respect human and minority rights.³⁸¹ In other words, recognition of a given state, and its involvement in international trade, cannot be when that state actively chooses to ignore humanitarian laws and human rights. We have collectively decided to recognize these principles. Ignoring them and refusing to support them undermines the statehood structure in its entirety and hinders humanity's development as a whole.

C. Method of Implementation: Begin Internally

A key internal conflict in the Central Middle East is public demand for citizenship rights and effective accountable governments.³⁸² Thus, crucial to successful integration is defining transitional steps to full integration, and setting a credible timetable to recognizing rights and building accountable government.³⁸³ Leaders of the current five states: (1) must commit to operating under a federal legal system;³⁸⁴ (2) must meet in a scheduled manner; (3) must create agreeable federal legal structures; and; (4) must create roadmaps for implementation. Global powers must provide support, but must not influence and must not attempt to coerce these five to accept ideals and values of the Great Powers.

In considering the trend toward regionalization in world politics, and the “revolt against the West,” “any Western intervention in an Islamic country, even for humanitarian reasons, would lend support to Islamists’ conspiracy theories[.]”³⁸⁵ Also, Arabic-speaking rulers consider a desirable system as one of “multipolar international system that allows for regionalization of

³⁸⁰ Milena Sterio, *A Grotian Moment: Changes in the Legal Theory of Statehood*, 39 DENV. J. INT’L L. & POL’Y 209, 209–10 (2011).

³⁸¹ *Id.* at 235.

³⁸² Hashemi, *supra* note 84, at 45.

³⁸³ BONVIN, *supra* note 299, at 22.

³⁸⁴ See el-Gaili, *supra* note 138, at 517.

³⁸⁵ Tibi, *supra* note 10, at 204.

world politics” as opposed to global order maintained by a superpower.³⁸⁶

In addition, allowing the five states to design and develop a desired structure, with only support from global powers, is also likely to serve long-term interests of the global powers. For instance, the 9/11 Commission Report noted that long-term setbacks for American interests often outweighed short-term gains from cooperating with repressive governments.³⁸⁷ Unfortunately, Hashemi notes, citing Tamara Coffman Wittes, that the United States preference for democratic politics in the Arab world has long been tempered by the belief that “victors of a democratic process are unlikely to share America’s policy preferences in the region.”³⁸⁸

Powerful and influential states, such as the United States, Russia, China, the United Kingdom, and Germany, appear to directly dictate courses of action of less sovereign states.³⁸⁹

In large part, a core issue is that local populations resent their incorporation into a western-defined world order, where this order has been based on European norms and values, and not chosen by the people of the Middle East.³⁹⁰ While a federal structure is a western concept, a constitution and legal structure developed, agreed upon, and implemented internally and between local leaders is more likely to be seen as a locally-invented and developed structure, and not as a western import. Thus, the structure must be borne and designed from within to gain traction and local support.

D. The Great Powers Must Provide Support, But Not Influence

It is unrealistic to separate external interests in the region from the region, particularly those interests of influential and powerful states such as the United States, Russian, China, and the

³⁸⁶ *Id.* at 205.

³⁸⁷ Hashemi, *supra* note 84, at 33.

³⁸⁸ *Id.* at 35 (quoting TAMARA COFFMAN WITTES, FREEDOM’S UNSTEADY MARCH: AMERICA’S ROLE IN BUILDING ARAB DEMOCRACY 21 (2008)).

³⁸⁹ See Sterio, *supra* note 380, at 220–21.

³⁹⁰ Tibi, *supra* note 10, at 193.

United Kingdom. For instance, as previously stated, Western allies have continuously supported authoritarian regimes because those regimes were generally more likely to serve western interests, and because new forces seemed to drift into revolutionary and anti-western positions.³⁹¹

It remains that the United States may be able to effect change, but, as with the 2003 Iraq invasion, it is clear that it cannot control what follows.³⁹² In 2006, Singer wrote that the United States must resolve: (1) how it will support change, while recognizing that it is unable to control which forces will benefit from that support, (2) how it will react to reform debate in the Muslim world without undermining debate; and (3) how it will respond to the demographic change that will reorder politics and societies.³⁹³

Singer cites Middle East expert, professor Telhami, in noting that it is a delusion that American programs and efforts can help build a third alternative to both current governments and Islamists; rather, the United States must be flexible enough to open dialogues with the diverse set of actors in the region.³⁹⁴ This includes Russia as an influential power. As such, global powers, in large part the United States and Russia, must support federalism as the long-term vision and meetings between the local leaders to affect a roadmap towards that vision. Such support must happen without going so far as to influence the leaders, because any influence would most likely result in serving opposing external interests rather than universal interests.

VII. CONCLUSION

There is no doubt that the Central Middle East is home to numerous internal interests and conflicts, including ethnic and religious interests. The region also attracts numerous regional and global interests. The political and legal structure in this region

³⁹¹ Hashemi, *supra* note 84, at 42 (citing Chomsky who quoted British Prime Minister Harold Macmillan, that circumstances compel western powers to support outmoded regimes because new forces seem to drift in revolutionary and anti-western positions).

³⁹² SINGER, *supra* note 7, at 9.

³⁹³ *Id.* at III.

³⁹⁴ *Id.* at 14.

arguably pins the five states and their peoples against each other, such that the only possible result is continuous instability and insecurity, such as the war in Syria. Moreover, such instability acts as an obstacle to economic growth, further fueling fundamentalism. Past attempts at unions, such as those between Syria and Egypt, and Israel and Palestine, were short-lived and did not succeed. Agreements and treaties, including the Oslo treaty between Israel and Palestine, have failed to affect peace and stability. Federalism for the five states is a solution because it can address the core internal interests of each groups, while also leading each group to concede interests that inherently conflict with those of other groups.

For example, federalism would lead to a separation between church and state and can afford all religious groups equality; on the other hand, agreement between the five states over legal structure and federal institutions would allow such equality credibility as well as enforceability. In addition, federalism encourages economic growth, which in turn would act to abate factors that encourage fundamentalism. Federalism would also strengthen the five states in such a manner as to become better able to address the conflicting global interests, while at the same time serving those global interests by being better positioned to contribute to the global community.

In conclusion, it is clear and unarguable that the current political and legal structure in the Central Middle East has been an abysmal failure. The constant instability and insecurity are clear indications of this failure. The issue lies in the structure itself, as one not envisioned by the local populations, and as one that pins the local populations against each other. Federalism, locally devised and globally supported, would allow these groups to address their interests and devise a legal structure that allows them to co-exist and to grow economically.