

# NOTES

## SETTLING THE LONG WAR: ALTERNATIVE DISPUTE RESOLUTION AND THE WAR ON TERROR

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*War appears to be, or threatens to be, not so much a contest of strength as one of endurance, nerve, obstinacy, and pain. It appears to be, and threatens to be, not so much a contest of military strength as a bargaining process—dirty, extortionate, and often quite reluctant bargaining on one side or both—nevertheless a bargaining process.*<sup>1</sup>

## INTRODUCTION

Starving themselves for rights allegedly denied to them by the British government, hundreds of imprisoned nationalists protested the Crown in 1981.<sup>2</sup> The republican prisoners refused food, clothing, and cleanliness to force British Prime Minister Margaret Thatcher to meet a litany of demands.<sup>3</sup> Publicly, the Prime Minister denounced the strikes and firmly stated that her nation maintained an unyielding policy: the United Kingdom does not negotiate with terrorists.<sup>4</sup> Yet, documents from the period recently made public indicate that Thatcher secretly negotiated with Irish Republican Army leadership to bring about a conclusion of the strikes.<sup>5</sup> These talks demanded a cessation of the hunger strike in exchange for limited concessions detailed by Parliament.<sup>6</sup> Ultimately, these overtures at settlement were rebuffed and the hunger strike resolved of its own volition.<sup>7</sup> Several decades elapsed before the British and the Irish separatists fashioned a workable peace through negotiation.

In light of this microcosmic example, and in the face of heinous acts of terror and dissident disruptions, Western democracies—namely the United Kingdom and the United States—stand resolute

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1. THOMAS C. SCHELLING, *ARMS AND INFLUENCE* 7 (2008).

2. See PADRAIG O'MALLEY, *BITING AT THE GRAVE: THE IRISH HUNGER STRIKES AND THE POLITICS OF DESPAIR* 6-9 (1990) (setting the scene for the hunger strikes).

3. *Id.* The prisoners issued “five demands” that included the right “to wear their own clothes; to refrain from prison work; to have free association with other prisoners ...; to organize recreation and leisure activity ...; and to have remission ... restored.” DAVID BERESFORD, *TEN MEN DEAD: THE STORY OF THE 1981 IRISH HUNGER STRIKE* 27 (1987).

4. *Margaret Thatcher “Negotiated with IRA,”* BBC NEWS (Dec. 30, 2011, 10:46 PM), <http://www.bbc.co.uk/news/uk-northern-ireland-16366413> [<http://perma.cc/YF2U-9Q4N>].

5. *Id.*

6. *Id.*

7. See BERESFORD, *supra* note 3, at 331 (“Even the *Guardian*, long respected in Ireland for its understanding of the island’s woes, said: “The Government has overcome the hunger strikes by a show of resolute determination not to be bullied.”).

and publicly refuse negotiations. Adopting economic sanctions and waging war to cripple dissident groups have been the preferred methods for addressing the vexing problem presented by extremists. Yet, as the number and frequency of terrorist attacks remain on the rise, the efficacy of this hardline approach deserves objective evaluation.<sup>8</sup> This Note argues that the United States should abandon its antiquated and myopic policy of refusing to negotiate with terrorist organizations. Instead, the United States should adopt a clear policy of active negotiations with dissident groups in order to reach agreements that further American interests and mollify terrorist activities. This Note suggests—as very few commentators to date have—that such a policy of alternative dispute resolution may be effectively used in tandem with America’s economic and military might to dismantle extremist threats to the United States.<sup>9</sup>

In order to illustrate both the feasibility and the benefits of a policy of negotiating with terrorists, this Note employs a two-part case study. What follows focuses on the lessons garnered from the British experience with the Provisional Irish Republican Army (PIRA) and explains how the United States might adopt a similar strategy in its war against al-Qaeda. This Note is divided into several sections to facilitate the connection of these empirical dots. Part I addresses the terms and definitions at work in this Note, defining terrorists, terrorism, and negotiations. Part II provides a detailed look at the actors involved in the formulation of this alternative policy through

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8. See Riaz Hassan, *Global Rise of Suicide Terrorism*, 36 *ASIAN J. SOC. SCI.* 271, 272 (2008) (discussing the “acceleration of suicide attacks”).

9. Scores of scholars have posited hundreds of strategies for dealing with the rise of terrorism in the modern age. See generally CINDY C. COMBS, *TERRORISM IN THE TWENTY-FIRST CENTURY* 2-3, 9, 285-86 (3d ed. 2003); ALEX P. SCHMID, *POLITICAL TERRORISM* 239-41 (1983); Philip B. Heymann, *Dealing with Terrorism*, 26 *INT’L SECURITY* 24, 25 (2001). Many prominent academics urge prolonged conflict, while others stress a course of abstention. See, e.g., ALAN M. DERSHOWITZ, *WHY TERRORISM WORKS: UNDERSTANDING THE THREAT, RESPONDING TO THE CHALLENGE* 2-3, 11-12 (2002); BENJAMIN NETANYAHU, *TERRORISM: HOW THE WEST CAN WIN* 3-4 (1986). Only a handful of individuals have called for a centrist approach of durable engagement. See generally F.J. HACKER, *CRUSADERS, CRIMINALS, CRAZIES: TERROR AND TERRORISM IN OUR TIME* 310-11 (1976) (arguing that correction of political injustices in the world may reduce terrorist acts); Symposium, *Negotiating with Terrorists and Non-State Actors: The Journey to World Peace*, 4 *CARDOZO ONLINE J. CONFLICT RESOL.* 2 (2003) (posing cost-benefit analysis to counterterrorism operations). This Note uniquely, albeit modestly, adds to that important and growing body of scholarship.

an examination of the United States, the United Kingdom, the PIRA, and al-Qaeda. Part III explores how the British defused a century-long war with Irish nationalists through negotiations, while Part IV applies the lessons gleaned from the Anglo-Irish experience to America's relationship with al-Qaeda. Finally, Part V responds to three prominent critiques of the policy advanced by this Note.

### I. LEGAL UNDERPINNINGS AND TERMS OF ART

The legal system in America is commonly known to thrive on the adversarial practice of law.<sup>10</sup> Lawyers are seen to argue passionately before an impartial party, who determines winners and losers under the law.<sup>11</sup> Yet, such an all-or-nothing approach is rapidly waning, as fewer and fewer cases are formally tried before the bench.<sup>12</sup> Instead, an increasing number of cases are resolved through alternative means of dispute resolution, including negotiations, arbitrations, and mediations.<sup>13</sup>

Yet, while the legal field rapidly trends away from pure confrontation and towards reasoned, cost-effective bargaining, the American nation at large remains resistant to notions of open dialogue and mutual gain in foreign policy. In fact, when addressing the grave concern of terrorism, the United States repeatedly and specifically singles out and proscribes negotiation as a viable policy option: "there will be no negotiations with terrorists of any kind."<sup>14</sup>

Discarding this particular policy mantra in favor of a more flexible, negotiation-centric strategic regime forms the crux of this

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10. See LARRY L. TEPLY ET AL., CIVIL PROCEDURE: CASES, TEXT, NOTES, AND PROBLEMS 11-12 (2d ed. 2008); see also THEODORE L. KUBICEK, ADVERSARIAL JUSTICE: AMERICA'S COURT SYSTEM ON TRIAL 6 (2006) (criticizing America's adversarial system).

11. TEPLY ET AL., *supra* note 10, at 11.

12. ROBERT P. BURNS, THE DEATH OF THE AMERICAN TRIAL 8-9 (2009); Albert W. Alschuler, *The Vanishing Civil Jury*, 1990 U. CHI. LEGAL F. 1, 5 (describing the civil trial as being "on its deathbed, or close to it").

13. A sample taken in 2002 demonstrated that no more than 2 percent of civil cases and 5 percent of criminal cases ever go to trial. Pat V. Tremmel, *Much Celebrated American Trial Is Dying in Real Life*, NW. UNIV. (Mar. 31, 2009), <http://www.northwestern.edu/newscenter/stories/2009/03/burnstrial.html> [<http://perma.cc/QA4Q-PQCM>].

14. Jason Koebler, *Why Governments Should Negotiate with Terrorists*, U.S. NEWS (July 31, 2012, 6:00 AM), <http://www.usnews.com/news/articles/2012/07/31/why-governments-should-negotiate-with-terrorists> [<http://perma.cc/6THY-XAPN>].

Note's proposal. To achieve this end, some baseline definitions should be established for the sake of conceptual clarity.

A. *"Terrorist Group" and "Terrorism"*

Despite the immense body of nuanced scholarship that attends defining a term like "terrorist group" or "terrorism," this Note elects a streamlined definition for ease of discussion.<sup>15</sup> As this Note addresses American interaction with terrorist groups, the definition of Foreign Terrorist Organizations (FTOs)—as advanced by the U.S. Department of State—will be adopted for purposes of the analysis below.<sup>16</sup> The relevant statutory framework requires that a target group (1) "must be a foreign organization," (2) "must engage in terrorist activity ... or terrorism ... or retain the capability and intent to engage in terrorist activity or terrorism," and (3) such "terrorist activity or terrorism must threaten the security of U.S. nationals or the national security ... of the United States."<sup>17</sup>

For the purposes of the case study below, al-Qaeda was designated an FTO in 1999.<sup>18</sup> Although the State Department has not designated the PIRA as an FTO, several related Irish nationalist groups—the Real Irish Republican Army and the Continuity Irish Republican Army—have been so classified.<sup>19</sup>

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15. See, e.g., S.C. Res. 1566, U.N. Doc. S/RES/1566, at 2 (Oct. 8, 2004) (defining international terrorism); BEN SAUL, *DEFINING TERRORISM IN INTERNATIONAL LAW* 1-5 (2006) (defining terrorism); Reuven Young, *Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Definitions in Domestic Legislation*, 29 B.C. INT'L & COMP. L. REV. 23, 25 (2006) (same).

16. *Foreign Terrorist Organizations*, U.S. DEP'T OF STATE (Aug. 9, 2002), [https://josephhall.org/export/US\\_Dept\\_State\\_FTO\\_site.pdf](https://josephhall.org/export/US_Dept_State_FTO_site.pdf) [<http://perma.cc/85UQ-A35P>].

17. *Id.* The statute contemplates threats to national security as those against "national defense, foreign relations, or the economic interests [ ] of the United States." *Id.* Additionally, the Act defines "terrorist activity" as the commission of hijackings, the perpetration of hostage taking or assassination, and the use of biological, chemical, nuclear, or incendiary devices "with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property." *Id.*

18. *Foreign Terrorist Organizations*, U.S. DEP'T OF STATE (Oct. 7, 2014), <http://www.state.gov/j/ct/rls/other/des/123085.htm> [<http://perma.cc/67CJ-SA5S>]. FTO status expires every two years with the option to extend vested in the Secretary of State. *Id.* At no time has al-Qaeda's status as an FTO ceased since its original designation. *Id.*

19. U.S. CUSTOMS & BORDER PROT. OFFICE OF BORDER PATROL, U.S. DEP'T OF HOMELAND SEC., *TERRORIST ORGANIZATION REFERENCE GUIDE*, at i-ii (2004), available at <http://perma.cc/C75H-8ESZ>.

Nevertheless, al-Qaeda and the PIRA share identical status under the statutory definition.<sup>20</sup>

*B. “Negotiation”*

Defining the field of negotiation is perhaps less tricky, but certainly as reductive as defining terrorism. Generally, negotiation involves the “deliberation, discussion, or conference upon the terms of a proposed agreement.”<sup>21</sup> Roger Fisher and William Ury pose a simplified formula at the outset of their seminal guide to negotiating strategies: “Each side takes a position, argues for it, and makes concessions to reach a compromise.”<sup>22</sup>

As this Note addresses the relation between state and nonstate actors as parties to the negotiation process, it may prove worthwhile to impose a limited foreign policy gloss on the simple definition of negotiation. Nations rely strongly on formal and informal channels of diplomatic relations among and between themselves. Yet, this is not the only manner in which state actors communicate. States often, if not constantly, engage in tacit bargaining processes, in which non-rhetorical posturing and behavior signal policy preferences, choices, and goals.<sup>23</sup> As nonstate actors, by definition, lack the apparatus for handling direct diplomatic communications, so tacit bargaining proves essential to states attempting to engage with nonstate entities.<sup>24</sup> The case studies that underpin this Note lean heavily on notions of both formal and tacit bargaining as a means of effecting state-to-nonstate negotiations.

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20. Immigration and Nationality Act § 219, 8 U.S.C. § 1189 (2012).

21. BLACK'S LAW DICTIONARY 1036 (6th ed. 2009).

22. ROGER FISHER & WILLIAM URY, GETTING TO YES 3 (3d ed. 2011).

23. George W. Downs & David M. Roche, *Tacit Bargaining and Arms Control*, 39 WORLD POL. 297, 297 (1987) (“A state bargains tacitly with another state when it attempts to manipulate the latter’s policy choices through its behavior rather than by relying on formal or informal diplomatic exchanges.”).

24. *See id.* at 298-99.

## II. THE ACTORS

This Note will largely focus on four geopolitical entities: the United States, the United Kingdom, the Provisional Irish Republican Army (PIRA), and al-Qaeda. Clearly, the former two are state actors, while the latter two are nonstate organizations. Understanding the organizational structure and the relevant history—as pertinent to the issue at hand—of these actors is a necessary predicate of the analysis to follow.

### *A. State Actors: The United States and the United Kingdom*

Unlike the nonstate actors in this Note, the state actors here discussed are readily understood through common experience, and a discussion of the three branches of American government or the British constitutional monarchy would serve little purpose. Yet, it may prove worthwhile to classify these two nations, as does Robert Pape, as liberal democracies.<sup>25</sup> This classification proves relevant in the context of state reactions to the tactics of terrorism, as liberal democracies prove the overwhelming targets of suicide bombings perpetrated by terrorist organizations.<sup>26</sup> Pape has offered three explanations for this phenomenon.<sup>27</sup> First, Pape suggests that liberal democracies are viewed by terrorist organizations as “soft” targets in that their “publics have low thresholds of cost tolerance and high ability to affect state policy.”<sup>28</sup> Second, democratic states tend to react cautiously when dealing with threats to security and are slow to retaliate.<sup>29</sup> Finally, unlike authoritarian regimes, liberal governments, almost by definition, afford wide latitude to those who wish to publicize, organize, and perpetrate dissident agendas.<sup>30</sup> While these factors unfortunately place liberal

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25. Robert A. Pape, *The Strategic Logic of Suicide Terrorism*, 97 AM. POL. SCI. REV. 343, 350 (2003).

26. *Id.* at 347 (“[A]ll suicide terrorist campaigns in the last two decades have been aimed at democracies, which make more suitable targets from the terrorists’ point of view.”).

27. *Id.* at 349-50.

28. *Id.* at 349.

29. *Id.* at 350.

30. *See id.*



democracies in the crosshairs of terrorist organizations, they each may serve a greater end in facilitating effective negotiations with groups set on achieving policy aims through coercive violence. That is to say that having durable democratic institutions backed by popular sentiment seems to create an atmosphere ripe for seeking state interests through negotiation. By actively engaging in dialogue with terrorists, liberal governments limit the effectiveness of extreme bargaining tactics and emphasize the critical importance of reasoned concession.

### *B. Provisional Irish Republican Army*

Springing fully formed from the defunct corpse of the Old Irish Republican Army (IRA) in the early twentieth century, the Provisional Irish Republican Army eschewed reconciliation with the British government and waged a protracted guerrilla war for nearly fifty years before reticently laying down its arms at the foot of the negotiating table.<sup>31</sup> During this period—from its formation in 1969 to the decommissioning of its arms in 2005—the PIRA perpetrated dozens of terrorist acts that left nearly 2000 individuals dead and accounted for nearly 50 percent of the casualties during the Anglo-Irish conflict.<sup>32</sup>

This Section's analysis of the PIRA is bifurcated. The first segment treats the historical context within which the Anglo-Irish conflict took shape, while the second portion examines the relevant organizational structure of the PIRA. As a mild disclaimer: it may be of no surprise that several facts below appear reductive and compressed in light of the nuance and complexity of a conflict that

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31. See generally DAVID MCKITTRICK & DAVID McVEA, MAKING SENSE OF THE TROUBLES: THE STORY OF THE CONFLICT IN NORTHERN IRELAND, at ix-xi (2002) (discussing the trajectory of the Anglo-Irish conflict).

32. MALCOLM SUTTON, BEAR IN MIND THESE DEAD: AN INDEX OF DEATHS FROM THE CONFLICT IN IRELAND, 1969-1993, at 95-97 (1994), available at <http://perma.cc/QFB6-D22R> (indicating 2058 killings committed by Republican Paramilitary groups during the period stated, with nearly 89 percent of that total stemming from PIRA violence); Brian Lavery, *I.R.A. Apologizes for Civilian Deaths in Its 30-Year Campaign*, N.Y. TIMES (July 17, 2002), <http://www.nytimes.com/2002/07/17/world/ira-apologizes-for-civilian-deaths-in-its-30-year-campaign.html> [<http://perma.cc/BL2D-MHN4>] (indicating 650 civilian deaths, in contrast to paramilitary or security forces).

has raged hot and cold for centuries.<sup>33</sup> What follows is merely a thumbnail sketch that necessarily does little justice to the harrowing geopolitical narrative tragically penned in English and Irish blood for the better part of the last few centuries.

### *1. Historical Background*

The roots of the Irish nationalist agenda are widely studied, deeply contested, and constantly revised by each passing generation. Most scholars have traced the seeds of subjugation and the formation of the nationalist agenda to the earliest contact between the British Crown and the Emerald Isle.<sup>34</sup> As early as the seventeenth century, the English effectively colonized Ireland, confiscating land and installing Protestant “plantations” from which to foster an Anglican identity.<sup>35</sup> Centuries of such cultural and political subjugation reached a fever pitch around the turn of the twentieth century, as the Crown sought to firmly advance a thoroughly English agenda on an increasingly hostile and marginalized native population.

Seeking to forestall being wholly subsumed into the British Empire, several Irish elite proposed a series of bills to the British Parliament in an effort to effect a system of Home Rule—by which the Irish would have a say in Anglo-Irish policy making from within Great Britain’s decision-making body itself.<sup>36</sup> Needless to say, such political measures faced stiff resistance in the corridors of English power, with the First Home Rule Bill defeated on the floor of the House of Commons.<sup>37</sup> Seven years later, the Second Home Rule Bill met an identical fate in the House of Lords.<sup>38</sup> Not until 1914 did

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33. DESMOND HAMILL, *PIG IN THE MIDDLE: THE ARMY IN NORTHERN IRELAND 1969-1984*, at 32 (1985) (“*The Times* quoted a Belfast citizen saying: ‘Anyone who isn’t confused here doesn’t really understand what is going on.’”).

34. See J.C. BECKETT, *THE MAKING OF MODERN IRELAND 1603-1923*, at 21 (1966) (addressing England’s “colonization” efforts in Ireland).

35. See MALACHY MCCOURT, *HISTORY OF IRELAND 102-12* (2004) (discussing the Crown’s “plantation policies”).

36. *Id.* at 197-200 (highlighting Charles Parnell’s push for home rule legislation).

37. See ALVIN JACKSON, *HOME RULE: AN IRISH HISTORY 1800-2000*, at 63 (2003) (discussing fate of the Home Rule bills).

38. *Id.* at 84.

Dublin succeed in convincing Parliament to create a devolved, or semi-decentralized, government for Irish representation.<sup>39</sup>

Alas, Northern Unionists—that is, Protestants with fast cultural and economic ties to Britain—firmly opposed any arrangement by which they might be distanced from their motherland and relegated to struggle under the perceived political caprice of Dublin.<sup>40</sup> Marching under this banner of socioeconomic and ethnoreligious consternation, Unionists gathered in droves to protest any attempt at effectively implementing Home Rule.<sup>41</sup>

Meanwhile, Irish Nationalists—largely Catholic southerners who wanted full Irish autonomy and unification—struggled to divorce their island from the English altogether. This particular strain of revolutionary animosity rapidly devolved into armed conflict, with Irish nationalists seizing, by force, several strategic locations in Dublin and proclaiming Ireland unchained from its colonial shackles.<sup>42</sup> Termed the Easter Rising for its temporal coincidence with the eponymous holiday, the insurrection barely lasted a full week but resulted in a violent British crackdown that left approximately 400 dead.<sup>43</sup>

In addition to quashing the nationalist rebellion through a surprisingly agile and explosive show of force, the Crown proceeded to try the presumed leaders of the uprising and handed down a staggering ninety-seven capital sentences, although it ultimately carried out only sixteen.<sup>44</sup> Additionally, the Crown set about passing a

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39. See BECKETT, *supra* note 34, at 434. This third Home Rule Act was never, in actuality, implemented, as the outbreak of World War I forestalled it and the Unionist violence stymied it. See JACKSON, *supra* note 37, at 143 (highlighting demise of the Home Rule movement in the wake of World War I).

40. See BECKETT, *supra* note 34, at 439 (discussing the activation of the Ulster Volunteers).

41. As a means to quantify their opposition, the Ulster Unionist Council drafted the Ulster Covenant, swearing to defy the implementation of Home Rule; nearly 500,000 signatures appear on the Covenant., *The Ulster Covenant*, PUB. RECS. OFF. N. IR., [http://www.proni.gov.uk/index/search\\_the\\_archives/ulster\\_covenant.htm](http://www.proni.gov.uk/index/search_the_archives/ulster_covenant.htm) [<http://perma.cc/R549-NSMB>] (last visited Apr. 11, 2015).

42. See BECKETT, *supra* note 34, at 439 (discussing the events of Easter Week); see generally TIM P. COOGAN, 1916: THE EASTER RISING (2001) (offering a narrative of the six-day-long conflict, its historical roots, and its ramifications).

43. MICHAEL T. FOY & BRIAN BARTON, THE EASTER RISING 325 (2011).

44. *The 1916 Rising: Personalities & Perspectives*, NAT'L LIB. IR., [http://www.nli.ie/1916/1916\\_main.html](http://www.nli.ie/1916/1916_main.html) [<http://perma.cc/UVS7-ENYK>] (last visited Apr. 11, 2015).

fourth and final Home Rule Act, which partitioned Ireland into a six-county Northern region and a three-province Southern territory.<sup>45</sup> Both of these reactionary steps—the violent crackdown on the civil uprising and the forcible partition of the island—served little end but to further entrench dissident factions and lay the foundation for a century-long, blood-drenched conflict.

Yet, rather than immediately descend into unmitigated strife, the conflict sat idle until the onset of the colloquially termed “Troubles” in 1969.<sup>46</sup> After several decades of rumination and brooding, nationalist riots broke out in County Londonderry, sparking the onset of the pivotal three-day Battle of the Bogside, which pitted IRA protestors against Loyalist paramilitary forces.<sup>47</sup> In addition to touching off the modern era of the Irish Troubles and providing a microcosm of the strife that would seemingly plague the Emerald Isle interminably, the Battle of the Bogside marked a seminal moment in the formation of the PIRA. This galvanizing process, as well as the organizational structure and trajectory that it yielded, is discussed immediately below.

## 2. *Organizational Dynamics*

Rising from the rubble of County Londonderry following the Battle of the Bogside was not one Irish Republican Army, but two. After the fighting had ceased, the Provisional Army Council—acting as the primary decision-making body for the IRA—split over a crucial policy issue.<sup>48</sup> The IRA’s leadership struggled mightily with whether to continue nationalist representation through the Northern Irish Stormont—and by extension through Parliament—or to abstain from politicking altogether.<sup>49</sup> Having witnessed the might of the British response to republican crusading, many among the IRA’s

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45. See BECKETT, *supra* note 34, at 442 (discussing the negotiations leading up to partition). These borders and their attendant governance structure remained largely intact until the Northern Ireland Act of 1998, which largely repealed all preceding home rule legislation. Northern Ireland Act, 1998, c. 47 (U.K.).

46. See *generally* TIM P. COOGAN, *THE TROUBLES: IRELAND’S ORDEAL 1966-1996 AND THE SEARCH FOR PEACE* (1996).

47. *Id.* at 74-81 (delivering a detailed account of the Battle of the Bogside).

48. See RICHARD ENGLISH, *ARMED STRUGGLE: THE HISTORY OF THE IRA* 114 (2003) (analyzing the IRA split).

49. See *id.*

leadership decided to accept a variant of Home Rule and politically bound themselves to the Crown.<sup>50</sup> Conversely, IRA hardliners refused to bend and break in the imperial wind and raised their arms all the higher.<sup>51</sup> From this division, the traditional IRA disbanded and much of its leadership drifted to the halls of legitimate state power.<sup>52</sup> The remaining former members coalesced into two related groups—the PIRA and the Official Irish Republican Army (OIRA).<sup>53</sup> The former adopted a concerted strategy of guerilla warfare with the desire to forcibly untether Ireland from England, while the latter sought a similar goal, but while operating under the color of a leftist, Marxist movement.<sup>54</sup>

Forged from the extant leadership of the former IRA, the PIRA quickly adopted a well-defined internal leadership structure in order to carry out their war of attrition.<sup>55</sup> To this end, the PIRA coalesced around a top-down organization capped by the General Army Convention (GAC).<sup>56</sup> While this representative council met only twice during the reign of the PIRA—once in 1970 and again in 1986—it served as the organization’s imperturbable ideological rudder.<sup>57</sup> Situated below the GAC, the IRA Executive Council and the IRA Army Council handled the bulk of the PIRA’s decision making.<sup>58</sup> Here, the PIRA cloaked itself in a bizarrely formalistic and almost corporate mantle, with the twelve-member Executive Council electing the seven members of the Army Council.<sup>59</sup> Strategies adopted by the Executive and Army Councils were

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50. *See id.*

51. *See id.*

52. *See id.*

53. *See id.* at 175.

54. *See id.* at 176; Matthew P. Chiarello, *A Seat at the Negotiating Table: A Case Study of Northern Irish Rebel Groups*, 18 *MONITOR J. INT’L STUD.* 17, 21 (2013) (“[T]he OIRA saw neither the success nor the longevity of the PIRA’s campaign. Rather, derisive terrorist tactics worked to alienate the working class rather than unite them as a base of support for the movement. As a result, the OIRA announced a ceasefire in 1972 in order to pursue their popular front ideology in the bloodless forum of government.”).

55. *See* BRENDAN O’BRIEN, *THE LONG WAR: THE IRA AND SINN FÉIN* 158 (2d ed. 1999) (describing the hierarchical structure of the PIRA).

56. *See id.*

57. *See id.*

58. *Id.*

59. *Id.* Additionally, the PIRA maintained a Chief of Staff through the Army Council, along with an eight-department Cabinet. *Id.*

dispatched to two Regional Commands—one operating in Northern Ireland and the other in the South.<sup>60</sup> At the regional level, directives were circulated among local PIRA chapters, brigades, battalions, and companies for ultimate implementation.<sup>61</sup>

This rigid structural hierarchy was supplemented and reinforced by standardized ideological tenets, codified in the PIRA's *Green Book*.<sup>62</sup> This text—first printed in 1956 and later issued into wider circulation in 1977—featured a veritable checklist of PIRA aims and ambitions, from a recitation of a revisionist Anglo-Irish history, to directions for maintaining a long war of attrition, to benchmarks for establishing a post-Troubles government.<sup>63</sup>

Having created an ironclad chain of command and having recruited zealous nationalists to its separatist cause, the PIRA set upon a tragic campaign of terror with the aim of wearing Britain out of Ireland. The PIRA's attacks ranged from urban bombing sprees, to mortar attacks on Downing Street and Heathrow Airport, to a royal assassination.<sup>64</sup> Although the precise medium of terrorism varied widely during the PIRA's half-century campaign, the dogged mission—and the attendant devastating results—remained unchanged.<sup>65</sup>

Yet, these violent demonstrations came with a hefty price, as war-weary civilians in both Northern Ireland and the Republic of Ireland became increasingly disenchanted with the prospects of altering the status quo. Recognizing the need for an alternative and less gruesome course of action, PIRA leadership—largely through its political

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60. *See id.*

61. *See id.*

62. *See generally* IRISH REPUBLICAN ARMY, IRA GREEN BOOK (1956), available at <http://perma.cc/D373-TE7R>.

63. *Id.* at 8.

64. Kathryn Gregory, *Provisional Irish Republican Army*, COUNCIL ON FOREIGN REL. (Mar. 16, 2010), <http://www.cfr.org/separatist-terrorism/provisional-irish-republican-army-ira-aka-pira-provos-glaigh-na-hireann-uk-separatists/p9240#p5> [<http://perma.cc/C7E8-WS6G>]. Most notable among PIRA attacks stand the “bombing spree known as Bloody Friday, in which downtown Belfast was rocked by twenty-two bombs in seventy-five minutes, leaving nine dead and 130 injured.” *Id.* Additionally, in 1979, the PIRA claimed responsibility for assassinating Lord Mountbatten, Queen Elizabeth II's uncle, after rigging his boat with explosives. ENGLISH, *supra* note 48, at 220.

65. In a manner of unfairness, this Section nominally disregards the more pacifist strain of PIRA activity, which focused on hunger strikes and political demonstrations. *See, e.g.*, ENGLISH, *supra* note 48, at 194.

arm, Sinn Féin—began conversing with the British government.<sup>66</sup> These talks, initiated in the early 1990s, culminated in a self-imposed ceasefire in 1997 and a tentative peace agreement in 1998.<sup>67</sup> This accord was legitimized by submission to the Irish public through the Good Friday Referendum and received staggering approval—71 percent in the North and 95 percent in the South.<sup>68</sup> Presumably buckling under the unwavering chorus of popular sentiment and British intransigence, the PIRA rapidly began a process of arms decommissioning and traded its rifles for ballots.<sup>69</sup>

### C. Al-Qaeda

Spawned at the close of the Soviet invasion of Afghanistan, al-Qaeda—in its nearly thirty-year existence—has perpetrated some of the most devastating terrorist attacks in modern history.<sup>70</sup> From its heinous plot against the World Trade Center complex,<sup>71</sup> to its bombing of public transport in the United Kingdom and Spain,<sup>72</sup> to its disruptive efforts against coalition troops in Iraq and Afghanistan,<sup>73</sup> al-Qaeda has acted with deadly calculus to advance

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66. ENGLISH, *supra* note 48, at 290-91.

67. O'BRIEN, *supra* note 55, at 385 (discussing the hallmarks of the Good Friday Agreement, noting in particular its emphasis on “constitutional balance [and] cross-community decision-making”).

68. See Colin Irwin, *How Public Opinion Polls Were Used in Support of the Northern Irish Peace Process*, 1 GLOBAL REV. ETHNOPOLITICS 62, 62-64 (2001); *The 1998 Referendums*, ECON. & SOC. RES. COUNCIL (Jan. 14, 2001), <http://www.ark.ac.uk/elections/fref98.htm> [<http://perma.cc/XHA7-XBK3>]. These figures were bolstered by equally astounding turnout, as 81 percent of Northern Ireland and 57 percent of the Republic of Ireland cast votes. *The 1998 Referendums*, *supra*.

69. See David Trimble, *The Belfast Agreement*, 22 FORDHAM INT'L L.J. 1145, 1166 (1998); *The Belfast Agreement* (1998), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136652/agreement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf) [<http://perma.cc/TYV4-AY3E>].

70. See generally ABDEL B. ATWAN, *THE SECRET HISTORY OF AL QAEDA* (2006); ROHAN GUNARATNA, *INSIDE AL QAEDA: GLOBAL NETWORK OF TERROR* (2002).

71. See, e.g., LAWRENCE WRIGHT, *THE LOOMING TOWER: AL-QAEDA AND THE ROAD TO 9/11*, at 176 (2006).

72. Alan Cowell, *Subway and Bus Blasts in London Kill at Least 37*, N.Y. TIMES (July 8, 2005), <http://www.nytimes.com/2005/07/08/international/europe/08bombings.html?pagewanted=all&r=0> [<http://perma.cc/Y9VV-HMGH>]; Elaine Sciolino, *Spain Struggles to Absorb Worst Terrorist Attack in Its History*, N.Y. TIMES (Mar. 11, 2004), <http://www.nytimes.com/2004/03/11/international/europe/11CND-TRAI.html> [<http://perma.cc/VLM4-NYLR>].

73. See generally ALI H. SOUFAN, *THE BLACK BANNERS: THE INSIDE STORY OF 9/11 AND THE WAR AGAINST AL-QAEDA* (2011) (describing al-Qaeda's involvement in the War on Terror).

its own aims and ideology. Marching under the black banner of Sunni extremism, al-Qaeda has effectuated a modern-day *jihad* that has branded it one of the most deadly and potent terror organizations in recent history.<sup>74</sup> Illustrative of this ignominious designation is the stark fact that al-Qaeda has executed a mere 1 percent of global terrorist attacks since 1998, but those attacks have yielded over 20 percent of the fatalities attributed to terrorism worldwide over the same period.<sup>75</sup>

This Section looks to achieve the same ends by the same means as the immediately preceding Section, which was concerned with the PIRA. Thus, the first portion below situates al-Qaeda within its unique historical and geopolitical circumstances, while the second explores the institutional structure of the international terrorist organization. Like its peer above, a brief discussion of al-Qaeda warrants a proviso of its own: due to al-Qaeda's clandestine nature and its active status as a global terrorist organization, several elements of the group's history and structure remain intense topics of debate. Needless to say, when no clear answer is apparent, this Note will shun bare assumptions and indicate the relevant scholarly contentions.

### *1. Historical Background*

Although the modern brand of al-Qaeda has global aspirations and deep-seated ties to nations as disparate as Spain and Yemen, Algeria and Indonesia, the terrorist organization originated in response to a largely regional conflict: expelling the Soviet Union from Afghanistan.<sup>76</sup> As Soviet tanks rolled through provincial Afghanistan, the Afghan population scrambled for a means to expel the

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74. GUNARATNA, *supra* note 70, at 12 (describing al-Qaeda as “an overwhelmingly Sunni group, doctrinally and otherwise”). This ideological and religious motivation, however, may hold a subservient station to the geopolitical pursuits of the organization. *Id.* (“Al Qaeda has persistently argued that Islamist groups should shed their doctrinal differences and unite to take on the real enemy, the West, and strike the US — ‘the head of the snake.’”).

75. NAT'L CONSORTIUM FOR THE STUDY OF TERRORISM & RESPONSES TO TERRORISM, BACKGROUND REPORT: THE FATAL TERRORISM OF AL-QA'IDA 2 (2011), *available at* <http://perma.cc/8MCP-JW49>.

76. *See* PETER TOMSEN, THE WARS OF AFGHANISTAN: MESSIANIC TERRORISM, TRIBAL CONFLICTS, AND THE FAILURES OF GREAT POWERS 198-99 (2011) (describing al-Qaeda leadership in Afghanistan during the 1980s).



foreign invaders.<sup>77</sup> Inspired by the theologically zealous sermons of the Father of Global Jihad, Abdullah Azzam, radicals spilled into Afghanistan from neighboring nations to fend off the resource-hungry intruders.<sup>78</sup> Spying an opportunity to strike at nonbelievers near and far, a young Osama bin Laden began funneling vast sums of money into the *jihadi* movement through a financial network termed the “Golden Chain.”<sup>79</sup> In addition to funding, bin Laden and Azzam steered *mujahideen* manpower into training camps and, by extension, into the anti-Soviet fray through an organization known alternatively as the Services Office or Maktab al-Khidamat (MAK).<sup>80</sup> By 1989, the war of attrition broke the seemingly ironclad Soviet will, and President Mikhail Gorbachev ordered the withdrawal of USSR forces from the Middle East.<sup>81</sup> Bolstered by this success, bin Laden set his sights on maintaining and expanding his regional network, which had shed the MAK label and adopted the name al-Qaeda—reflecting its newfound status as a “base” or “foundation” of global operations.<sup>82</sup> This decision caused tension between bin Laden and Azzam, as the former pushed for expansion to conflicts around the world while the latter solely wished to continue to fight in the fields of Afghanistan in an effort to gain control of the rapidly splintering nation.<sup>83</sup> This internal policy debate concluded abruptly when Azzam was assassinated in a coordinated car bombing in late 1989, and bin Laden’s al-Qaeda subsumed a majority of Azzam’s now-rudderless adherents.<sup>84</sup>

With this influx of motivated personnel, bin Laden set about formulating a durable fighting force that could be deployed throughout the world to wreak havoc on those who would suppress

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77. *See id.* at 118.

78. *See id.* at 193-95 (introducing Azzam and his rhetoric to the conflict in Afghanistan).

79. *See* WRIGHT, *supra* note 71, at 3 (discussing financial network crafted by bin Laden). *See generally* JOHN ROTH ET AL., NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., TERRORIST FINANCING STAFF MONOGRAPH 17-29, 94 (2002), *available at* <http://perma.cc/TV2U-RUJF>.

80. *See* ATWAN, *supra* note 70, at 74 (connecting Azzam, bin Laden, and MAK); *see also* WRIGHT, *supra* note 71, at 105 (noting that of all the *mujahideen* that participated in the war against the Soviet Union, there were no more than 3000 bin Laden-sponsored foreign fighters in Afghanistan at any one time).

81. *See* TOMSEN, *supra* note 76, at 340-41 (summarizing Soviet retreat from Afghanistan).

82. ATWAN, *supra* note 70, at 44.

83. *See id.* at 74-75.

84. *See id.*

the rising Islamic revival.<sup>85</sup> In order to zealously advance a carefully crafted agenda of geopolitical disruption, al-Qaeda narrowed its sights on two targets, one far and one near.<sup>86</sup> The former, in broad terms, connoted the United States and the Western values therein fostered and exported.<sup>87</sup> The latter—and arguably the more significant enemy in the eyes of al-Qaeda leadership—consisted of apostate governments in the Middle East, those nations and leaders perceived to have bowed to Western influence and abandoned strict Sunni governance.<sup>88</sup> Central to battling the capitulating near enemies stood the assault on the Saudi government, primarily targeted by al-Qaeda for allowing the United States to place forward bases on the peninsula during the run-up to the First Gulf War.<sup>89</sup> Unshaken by al-Qaeda’s rabbleroxing and largely rhetorical carping, the House of Saud exiled bin Laden with the hope of quashing his *jihadi* movement.<sup>90</sup>

Yet, apparently only emboldened by his homeland’s disavowal, bin Laden took refuge in Sudan and began rapidly expanding the sphere of al-Qaeda’s influence.<sup>91</sup> It was from this remote North African post that bin Laden dispatched al-Qaeda’s first forays into international terrorism, coordinating and funding attacks against American Black Hawks in Somalia,<sup>92</sup> the World Trade Center in 1993,<sup>93</sup> and

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85. See, e.g., Bill Roggio, *The Seven Phases of The Base*, LONG WAR J. (Aug. 15, 2005), [http://www.longwarjournal.org/archives/2005/08/the\\_seven\\_phase.php](http://www.longwarjournal.org/archives/2005/08/the_seven_phase.php) [<http://perma.cc/LSJ4-L6RK>] (outlining one formulation of al-Qaeda strategy as articulated by one of al-Qaeda’s top leaders, Saif al-Adel).

86. See Christopher Henzel, *The Origins of al Qaeda’s Ideology: Implications for US Strategy*, 35 PARAMETERS 69, 75 (2005) (differentiating the near from the far enemy).

87. *Id.*

88. *Id.* at 71 (“[T]he experience of their movement drives them to view their opponents within Sunni Islam—‘the near enemy’—as a more important target than non-Muslims—‘the far enemy.’”).

89. See ROLAND JACQUARD, *IN THE NAME OF OSAMA BIN LADEN: GLOBAL TERRORISM & THE BIN LADEN BROTHERHOOD* 25-27 (Samia Serageldin ed., George Heloch trans., 2002) (noting bin Laden’s calls against the Saudi government).

90. *Id.* at 25-26.

91. *Id.* at 27-29.

92. Bill Roggio, *Shabaab Leader Recounts al Qaeda’s Role in Somalia in the 1990s*, LONG WAR J. (Dec. 31, 2011), [http://www.longwarjournal.org/archives/2011/12/shabaab\\_leader\\_recou.php](http://www.longwarjournal.org/archives/2011/12/shabaab_leader_recou.php) [<http://perma.cc/B7FD-FRAK>].

93. Richard A. Serrano, *After 15 Years in Solitary, Convicted Terrorist Pleads for Contact with Others*, L.A. TIMES (Feb. 16, 2013), <http://articles.latimes.com/2013/feb/16/nation/la-na-nousef-solitary-20130217> [<http://perma.cc/5ZS5-659E>].

a U.S.-Saudi military training facility in 1995.<sup>94</sup> Thrust into the gruesome spotlight of international terror, al-Qaeda was forced from Sudan and made to return to a crumbling Afghanistan to seek refuge in the folds of the rising Taliban.<sup>95</sup>

From this fundamentalist perch, bin Laden issued dual *fatwa*—“Declaration of War against the Americans Occupying the Land of the Two Holy Places”<sup>96</sup> and “World Islamic Front’s Statement Urging Jihad Against Jews and Crusaders”<sup>97</sup>—hyperbolically condemning American involvement in the Middle East and calling for believers to wage total war against the West.<sup>98</sup> Uniting under this vitriolic banner, several prominent *jihadi* groups—including Ayman al-Zawahiri’s Egyptian Islamist Jihad—merged into al-Qaeda.<sup>99</sup> Swollen in size, funding, and ideological zeal, al-Qaeda set upon orchestrating a new string of devastating attacks. In late 1998, al-Qaeda detonated simultaneous truck bombs at the American embassies in Tanzania and Kenya, killing hundreds and injuring thousands.<sup>100</sup> Two years later, al-Qaeda staged an aquatic suicide attack on the USS *Cole* off the coast of Yemen, leaving seventeen American troops dead.<sup>101</sup> Shortly thereafter, al-Qaeda launched its most devastating and infamous attack against the United States in September 2001, slaying nearly

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94. Robert Windrem, *Al-Qaida Timeline: Plots and Attacks*, NBC NEWS, <http://www.nbcnews.com/id/4677978/#.UobxaZTwJ18> [<http://perma.cc/AVE7-FBEK>] (last visited Mar. 30, 2015).

95. See JACQUARD, *supra* note 89, at 37-39 (discussing bin Laden’s time “[a]mong the Taliban”).

96. World Islamic Front, *Bin Laden’s Fatwa*, PBS (Aug. 23, 1996), [http://www.pbs.org/newshour/updates/military/july-dec96-fatwa\\_1996/](http://www.pbs.org/newshour/updates/military/july-dec96-fatwa_1996/) [<http://perma.cc/D37J-QNEF>].

97. World Islamic Front, *Al Qaeda’s Second Fatwa*, PBS (Feb. 23, 1998), [http://www.pbs.org/newshour/updates/military/jan-june98/fatwa\\_1998/](http://www.pbs.org/newshour/updates/military/jan-june98/fatwa_1998/) [<http://perma.cc/5KT4-M4F4>].

98. Among the paragraphs of vitriol stands a call to action:

The ruling to kill the Americans and their allies—civilians and military—is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate ... [Mecca] from their grip and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim.

*Id.*

99. See WRIGHT, *supra* note 71, at 260. Among the signatories to this second *fatwa* were several prominent terror-group leaders including bin Laden, al-Zawahiri, Abu-Yasir Rafa’l Ahamad Taha, and Fazlul Rahman. *Id.*

100. ATWAN, *supra* note 70, at 226.

101. *Id.* at 80.

3000 American civilians and pitching the world's economies into disarray.<sup>102</sup>

Yet this calculated strike against al-Qaeda's far enemy came with substantial consequences, as the United States rapidly mobilized against its assailants, with Congress passing the Authorization for Use of Military Force (AUMF) merely three days after the attack.<sup>103</sup> This broad mandate precipitated nearly immediate war in Afghanistan, along with anti-terror operations in the Philippines, Somalia, Mali, Pakistan, and Yemen.<sup>104</sup> Most estimates from within the intelligence community suggest that the War on Terror has significantly impacted al-Qaeda's ability to plan and perpetrate attacks.<sup>105</sup> Yet, even in the wake of a global counterterrorism effort, al-Qaeda has managed to coordinate and influence attacks in Bali, Mombasa, Riyadh, Jakarta, Madrid, and London, among others.<sup>106</sup> In addition, al-Qaeda continues to wage war against the United States both domestically—claiming responsibility for training the Underwear Bomber, Umar Farouk Abdulmutallab<sup>107</sup>—and abroad, in a series of strikes in Iraq and Afghanistan. This war of attrition continues, more or less unabated, even in light of the impressive measures taken by the United States and coalition partners to put an end to the violence perpetrated by al-Qaeda.<sup>108</sup> These counterterrorism efforts materialized in full force in May 2011, as elite American forces were dispatched to neutralize bin Laden after he was located in Pakistan.<sup>109</sup> In the wake of bin Laden's death, al-Qaeda continues to operate in pursuit of its destabilizing objectives, driven by a powerful network of terrorist operatives. Precisely this organizational structure will be discussed in the Section to follow.

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102. See generally 9/11 COMMISSION, THE 9/11 COMMISSION REPORT (2004), available at <http://perma.cc/MD52-NYWZ> (investigating the perpetration of the September 11 attacks).

103. Authorization of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001).

104. See RICHARD A. CLARKE, AGAINST ALL ENEMIES: INSIDE AMERICA'S WAR ON TERROR 275 (2004); PAUL RUSCHMANN, THE WAR ON TERROR 12, 14-15 (Alan Marzilli ed., 2d ed. 2008).

105. Rachel Briggs, *The Changing Face of Al Qaeda*, INST. STRATEGIC DIALOGUE 1, 1-2 (2012), <http://www.strategicdialogue.org/The%20Changing%20Face%20of%20Al%20Qaeda.pdf> [<http://perma.cc/FCM5-NQPJ>].

106. See Windrem, *supra* note 94 and accompanying text.

107. Charlie Savage, *Christmas Day Bomb Plot Detailed in Court Filings*, N.Y. TIMES (Feb. 10, 2012), [http://www.nytimes.com/2012/02/11/us/underwear-bomb-plot-detailed-in-court-filings.html?\\_r=0](http://www.nytimes.com/2012/02/11/us/underwear-bomb-plot-detailed-in-court-filings.html?_r=0) [<http://perma.cc/LH2Y-4CS3>].

108. See, e.g., RUSCHMANN, *supra* note 104, at 59.

109. See MARK BOWDEN, THE FINISH: THE KILLING OF OSAMA BIN LADEN 210-13 (2012).

## 2. *Organizational Dynamics*

From its inception to its decapitation, al-Qaeda has defied scholarly attempts to precisely identify its organizational structure.<sup>110</sup> As may have been apparent from the above-recited history of al-Qaeda, the group's structure is markedly difficult to extricate from its upper-echelon leadership, and in many ways the story of the organization is the biography of its leader. This difficulty and peculiarity does not necessarily indicate that there are no truths to behold regarding the composition of the transnational terrorist group. Rather, it merely suggests that a degree of caution when discussing the certitude of conclusions may be warranted. In light of that observation, what follows is a cursory examination of the decision-making structure of al-Qaeda, which flows chronologically for conceptual ease.

The narrative surrounding the early phases of al-Qaeda suggests that the organization was originally little more than a funnel by which funds and manpower were siphoned into the Afghan-Soviet conflict.<sup>111</sup> Decision-making functions, at the time, were localized in the hands of bin Laden and Azzam.<sup>112</sup> Shortly after the fledgling al-Qaeda's perceived success against the Soviet Union, bin Laden began a process of formalizing his union of fundamentalist operatives. In late 1988, bin Laden and his advisors drafted an oath of loyalty to al-Qaeda and designed concrete plans for training and exploiting members in a global struggle.<sup>113</sup>

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110. Katherine Zimmerman, *The al Qaeda Network: A New Framework for Defining the Enemy*, AM. ENTERPRISE INST. 1, 5 (2013), [http://www.criticalthreats.org/sites/default/files/pdf\\_upload/analysis/Zimmerman\\_the\\_al\\_Qaeda\\_Network\\_September\\_2013.pdf](http://www.criticalthreats.org/sites/default/files/pdf_upload/analysis/Zimmerman_the_al_Qaeda_Network_September_2013.pdf) [<http://perma.cc/73E5-GWYF>] ("The al-Qaeda network has changed over the years, and so have the various frameworks used to explain it. The corpus of research on al Qaeda is extensive and portrays varying ideas of how the network itself functions, ranging from a core group of senior leaders directing a global network to an amorphous group of individuals driving toward a shared objective. The adaptive nature of the network and the complexity of the ways in which members and groups interact within the network exacerbate the challenge of understanding the organization.")

111. See *supra* notes 76-80 and accompanying text.

112. See WRIGHT, *supra* note 71, at 132 (quoting bin Laden: "I am only one person. We have started neither an organization nor an Islamic group").

113. In a bizarrely corporate fashion, minute entries exist for the first documented al-Qaeda meeting on August 8, 1988, wherein the "secretary listed the requirements of those who sought to join this new organization" and dictated an oath of membership. *Id.* at 133.

As bin Laden shuttled between Saudi Arabia, Sudan, and Afghanistan after helping to thwart the Soviet invasion, he allegedly made contacts with other like-minded men and organizations.<sup>114</sup> These associates gradually coalesced around the message espoused by bin Laden in his first *fatwa* deriding the United States, and by the time al-Qaeda issued its second *fatwa* in 1998, it did so with the full-throated endorsement of fellow Islamic extremists under the banner of the World Islamic Front.<sup>115</sup> The 9/11 Commission Report describes the decision-making structure of al-Qaeda in the period leading up to the attacks on the United States homeland as follows:

The inner core of al Qaeda continued to be a hierarchical top-down group with defined positions, tasks, and salaries. Most but not all in this core swore fealty (or *bayat*) to Bin Ladin. Other operatives were committed to Bin Ladin or to his goals and would take assignments for him, but they did not swear *bayat* and maintained, or tried to maintain, some autonomy. A looser circle of adherents might give money to al Qaeda or train in its camps but remained essentially independent.<sup>116</sup>

Following the tightly orchestrated attacks of 9/11 and the subsequent American mobilization against al-Qaeda, the authoritative clarity of the organization's structure begins to fade. One strand, advanced by Katherine Zimmerman, suggests that al-Qaeda presently exists as a core group operating largely from Pakistan with affiliates and associates radiating out along a spectrum of allegiance.<sup>117</sup> By contrast, others suggest that al-Qaeda has devolved in leadership but evolved in complexity following the deaths of bin

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114. See *supra* notes 90-95 and accompanying text.

115. See *supra* notes 96-102 and accompanying text.

116. 9/11 COMMISSION, *supra* note 102, at 67. But see Zimmerman, *supra* note 110, at 9-10 (marginalizing al-Qaeda's perceived monolithic structure).

117. See Zimmerman, *supra* note 110, at 14-15. In Zimmerman's model, affiliates are those "[g]roups that have publicly pledged allegiance to the al Qaeda *emir* and have in turn received public recognition as part of al Qaeda by the al Qaeda *emir*." *Id.* at 15. Associates, by contrast, are "[g]roups that exhibit a sufficient number of characteristics common within the al Qaeda network such as shared resources, overlapping fighter or leadership networks, a common signature, and ideological alignment with al Qaeda," but have not been publically endorsed by the central al-Qaeda entity. *Id.*

Laden and Anwar al-Awlaki.<sup>118</sup> This view is predicated primarily on the erratic nature of recent al-Qaeda efforts as compared against the elaborate plots perpetrated in the 2000s.<sup>119</sup> Taken to its extreme, this structural argument suggests a trend toward “lone wolf” terrorism[is[m],” in which al-Qaeda “empower[s] and motivate[s] individuals to commit violence outside of any chain of command.”<sup>120</sup>

In light of these wholly divergent modes of explaining the present formulation of al-Qaeda, one truth stands paramount: “[W]e cannot simplify the problem or discount aspects of the network without creating a dangerous misunderstanding that will shape a faulty strategy for combating it.”<sup>121</sup> Thus, resolving the tension between and among these conflicting theoretical models is imperative to shaping a coherent negotiating strategy, as will become apparent in the remainder of this Note.

### III. HOW THE UNITED KINGDOM RESOLVED THE PIRA PROBLEM

From pipe bombings to hunger strikes, the disruptive agenda of the PIRA served to rankle the British homeland for decades.<sup>122</sup> Undaunted by the power of Parliament, the PIRA operated with clandestine impunity to sever the Emerald Isle from the Commonwealth.<sup>123</sup> Unrelenting in the face of terrorism, the English refused large-scale concessions for the duration of the Troubles and matched aggression with oppression.<sup>124</sup> What follows considers how this smoldering deadlock reached peaceable resolution after seemingly interminable strife.

In brief, the following case study will posit three related factors that drew the United Kingdom and the PIRA to the negotiating table and sent them away with a brokered peace agreement in hand. First, Section A will examine the clout of the United Kingdom and how the might of the established state was leveraged to tip the

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118. See Briggs, *supra* note 105, at 1-2 (advancing the theory of al-Qaeda’s diffuse network structure).

119. *Id.* (“[A]ttacks are becoming less complex, because the organizational structure has become fragmented following the incarceration or assassination of key terrorist personnel.”).

120. *Id.*

121. Zimmerman, *supra* note 110, at 5.

122. See *supra* Part II.B.1.

123. See *supra* Part II.B.1.

124. See *supra* Part II.B.1.

battlefield away from the geopolitically untethered PIRA. Second, Section B will assess how the organizational factors discussed above in Part II impacted both the formation of a negotiated agreement and the efficacy of its enforcement. Finally, Section C will suggest that limited and functional negotiations neutralized harmful rhetoric and minimized fundamentalist collateral.

Exposition of the relevant facts and factors that allowed for an operative cessation of violence in the Anglo-Irish conflict is not presented in a vacuum. Rather, this Note looks to present a functional and transferrable model for endorsing a policy that leverages the power of alternative dispute resolution in international affairs. In short, the United States should look to these three factors in constructing a strategy for dealing effectively with terrorist groups and, in so doing, should embrace a policy of open negotiations with dissidents to fulfill American objectives.

#### *A. Tipping the Battlefield: Negotiations and State Leverage*

Reports of carnage in the streets of Belfast and Dublin did not prompt the Crown to sit idle on its throne. Rather, Parliament dispatched thousands of troops to defend Loyalist enclaves and to stem the rising tide of sectarian terror under Operation Banner.<sup>125</sup> British forces, alongside royal police regiments, enforced stringent curfews in Irish cities and exacted harsh justice on actual and suspected guerrillas.<sup>126</sup> In addition to placing proverbial boots on the ground, Parliament leveled domestic and international condemnation at the PIRA and related nationalist forces.<sup>127</sup> Thus, despite waging a de facto, albeit limited, ground war, the English insisted on a political resolution sufficient to end the violence. In hindsight, the Crown's ability to apply forcible leverage to counteract a deteriorating situation and to appear resolute in the face of a long war of attrition proved critical to putting an end to the Troubles. Evaluating the

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125. See *supra* Part II.B. At the conflict's zenith, the British Army had approximately 35,000 troops deployed in Northern Ireland. Max Hastings, *Army Cuts: Farewell to Our Warrior Nation*, TELEGRAPH (Nov. 9, 2012), <http://www.telegraph.co.uk/news/uknews/defence/9667102/Army-cuts-Farewell-to-our-warrior-nation.html> [<http://perma.cc/V9D9-QHPS>]; see also NICK VAN DER BIJL, OPERATION BANNER: THE BRITISH ARMY IN NORTHERN IRELAND: 1969 TO 2007, at 27-28 (2009) (providing background on the early phases of Operation Banner).

126. See BIJL, *supra* note 125, at 34-35 (detailing the martial law in effect in Irish cities).

127. See COOGAN, *supra* note 46, at 134 (highlighting public reaction to PIRA violence).



capacity to employ the assets of the state to tip the battlefield away from dissident counterparties will be the focus of the material in this Section.

The ostensible layman's handbook to conducting alternative dispute resolution, *Getting to Yes*, devotes an entire chapter to the perennial problem with negotiations: what steps to take when the other side is "more powerful."<sup>128</sup> For Fisher and Ury, the answer lies in the weaker party's ability to protect its own interests and to marshal its limited assets to its ultimate benefit.<sup>129</sup> Yet, this vague strategy cannot "guarantee success if all the leverage lies on the other side."<sup>130</sup> Terrorist groups, unsatisfied with this result, have repeatedly advanced an alternative answer in their dealings with liberal democracies: asymmetrical warfare.<sup>131</sup> The Long War waged by the PIRA against the British typified this brutal strategy. Enlisting a small cadre of zealous nationalists, the PIRA bombed and shot their way into the domestic and international public square.<sup>132</sup> From that open vantage, the PIRA held hostage the Emerald Isle as ransom against the severance of ties with the United Kingdom.<sup>133</sup> In line with prototypical guerilla campaigns, the PIRA sought a "specific secular and strategic goal: to compel [a] liberal democrac[y] to withdraw military forces from territory that the [PIRA] terrorists consider to be their homeland."<sup>134</sup> In the case of the Troubles, the PIRA held its proverbial gun to the head of the Irish people for decades without a blink from the English.

Instead of offering concessions—rightly or wrongly—the Crown entrenched itself in firm, coherent policy objectives that focused on unity within the Commonwealth, and decried guerilla violence.<sup>135</sup> In the geopolitical echo chamber, the English offered an American refrain: we will not negotiate with terrorists. And yet, objective-

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128. FISHER & URY, *supra* note 22, at 99-108.

129. *Id.* at 99.

130. *Id.*

131. See *supra* notes 31-32, 55-65 and accompanying text. *But see* Antulio J. Echevarria II, *Fourth-Generation War and Other Myths*, STRATEGIC STUD. INST. 1, 6 (2005), <http://www.strategiestudiesinstitute.army.mil/pdffiles/pub632.pdf> [<http://perma.cc/E5R3-U9ZN>] (countering principles of fourth-generation guerilla warfare).

132. See *supra* Part II.B.2.

133. *Id.*

134. Robert Pape, *Dying to Kill Us*, N.Y. TIMES (Sept. 22, 2003), <http://www.nytimes.com/2003/09/22/opinion/dying-to-kill-us.html> [<http://perma.cc/YG2V-CUCY>].

135. See *supra* Part II.B.2.

driven, tacit bargaining belied the hollow Anglo-American prohibition. To that end, the English sent troops to combat rebels, dispatched politicians to entreat with Sinn Féin, and enlisted international partners to denounce the sectarian violence.<sup>136</sup> Even Prime Minister Thatcher directly, albeit secretly, responded to PIRA demands during the 1981 hunger strikes.<sup>137</sup>

These steps demonstrate no weakness or feeble acquiescence; to the contrary, they speak to rational restraint and calculated leverage. In tacitly bargaining with the PIRA, the English accomplished two concomitant goals. First, they clearly signaled that Parliament remained open to reaching a peace agreement on terms favorable to the Crown. Second, the British demonstrated that they would not capitulate in a war of attrition and would draw upon the virtually unlimited resources of the state to combat terrorism far into the future. Thus, when the Troubles grew stale and the populations of the United Kingdom and Ireland complained loudly of war-weariness, the English were able to credibly draw a seat for the PIRA at the negotiating table. In extending an iron hand in a velvet glove to the PIRA, the English ensured that the Crown would preserve its interests: violence would end, arms would be decommissioned, and the public would be placated. Emphatically, these aims were achieved through negotiations and would not have been realized or sustained through continued conflict.

### *B. Organizational Criteria*

The origins of the PIRA dictated their top-down organizational structure. Formed from an established coalition of freedom fighters and nationalists, the PIRA established a clear chain of command, a hierarchy that would dominate their planning and tactics for the duration of their active existence.<sup>138</sup> Dispatches from the upper echelons of the PIRA organization translated into highly coordinated and devastating attacks on soldiers and civilians alike.<sup>139</sup> Not only did the command and control structure facilitate violence, but it also allowed for the formulation and dispersal of a unified message. By

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136. See Part II.B.2.

137. See *supra* notes 5-8 and accompanying text.

138. See *supra* Part II.B.2.

139. See *supra* Part II.B.2.

maintaining tight organizational control, PIRA leaders remained free to formulate a cogent agenda and take concerted steps to actualize their geopolitical aims.<sup>140</sup> It was precisely this level of control over message and means that allowed the United Kingdom to reach and enforce a negotiated settlement with the PIRA.<sup>141</sup> Thus, what follows is a brief examination of the PIRA's structural ability to press for concessions at the negotiating table and England's position in exploiting the monolithic terrorist group's organization.

After decades of violence, the Troubles began to wear popular opinion to the bone.<sup>142</sup> What began as a fervent nationalist movement on the fringes of Irish society gradually unraveled to a state of cautious stalemate.<sup>143</sup> At the outset of the conflict, bombings would garner support and rattle opposition forces.<sup>144</sup> Entering the 1980s, the PIRA leadership instigated a series of public demonstrations—including the infamous hunger strikes of 1981—to further bolster public opinion of the nationalist movement and to throw electoral stones at the English.<sup>145</sup> Seeing success at the polls and in the streets from this diversified strategy, the PIRA executives began pushing resources into their political arm, Sinn Féin.<sup>146</sup> This strategy was captured colorfully by PIRA elite, Danny Morrison, at an annual Sinn Féin meeting: “with a ballot paper in this hand, and an Armalite [machine gun] in this hand, we take power in Ireland.”<sup>147</sup>

Yet, as the war trudged towards the 1990s, the attacks and rallies had lost their intended impact, and popular opinion of the PIRA

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140. *See supra* Part II.B.2.

141. *See supra* notes 66-67 and accompanying text.

142. *See* JACK HOLLAND, HOPE AGAINST HISTORY: THE COURSE OF CONFLICT IN NORTHERN IRELAND 3-4 (1999) (discussing the trajectory of the Troubles).

143. *See id.* at 3-5.

144. *See id.*

145. *See generally* BERESFORD, *supra* note 3, at 27 (recounting the demonstrations in Belfast's Long Kesh prison that left ten inmates starved to death). These protests were highly effective in garnering popular support, as represented by the tens of thousands of mourners and protestors who attended Bobby Sands's funeral after he succumbed to starvation. *See id.* at 103.

146. Sinn Féin garnered 10 percent of the Northern Irish vote in 1982. *1982: Sinn Féin Triumph in Election*, BBC NEWS (Oct. 21, 2008), [http://news.bbc.co.uk/onthisday/hi/dates/stories/october/21/newsid\\_2489000/2489349.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/october/21/newsid_2489000/2489349.stm) [<http://perma.cc/K2J9-NSTM>].

147. ENGLISH, *supra* note 48, at 225.

flagged dramatically.<sup>148</sup> Sensing an opportunity to capitalize on a reduction in nationalist fervor, the United Kingdom opened dialogue with Sinn Féin and PIRA leadership.<sup>149</sup> These relatively secret talks, although at times inflammatory and seemingly counterproductive, yielded a temporary ceasefire in 1994.<sup>150</sup> This agreement—forged between Sinn Féin and the United Kingdom—called for a cessation of violence in exchange for further talks between the parties.<sup>151</sup>

Having induced the PIRA to sit at the negotiating table, the British attempted to leverage their assets and demanded that the PIRA disarm entirely before discussing further settlement.<sup>152</sup> This maneuver overplayed the Crown's hand and drove the PIRA to raise arms, once again, against England.<sup>153</sup> Two years elapsed and multiple bombs detonated before the ceasefire was reinstated in 1997.<sup>154</sup> This cessation proved largely permanent, as the UK and PIRA advanced towards a workable compromise codified in the Good Friday Agreement.<sup>155</sup>

This Note contends that the Good Friday Agreement—or any agreement for that matter—would have been virtually impossible had the PIRA been a diffuse collection of renegade zealots. The tightly controlled terrorist organization allowed for the leadership to take a long view of the political landscape and to develop optimal strategies for realizing secular, political goals. As guerilla warfare began producing diminishing returns and as the door to Parliament creaked open, the PIRA leadership recognized a viable alternative and exploited it for mutual gain. The above-discussed process of negotiating over and signing the Good Friday Agreement clearly demonstrates the indispensable role organizational dynamics plays in the process of negotiating with terrorists in two crucial ways. First, the PIRA's monolithic and objective-oriented leadership allowed for the UK to engage with a single entity on substantive issues. Negotiations would have been impossible had the PIRA been structurally and ideologically diffuse. Second, the PIRA's rigid lines

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148. *See supra* notes 66-69 and accompanying text.

149. *See supra* notes 66-69 and accompanying text.

150. *See O'BRIEN, supra* note 55, at 26.

151. *See id.* at 346-47.

152. *See id.* at 347-48.

153. *See id.* at 354.

154. *See id.* at 375.

155. *See supra* notes 66-69 and accompanying text.

of command and control allowed for the creation of a credible, enforceable resolution. Bargaining to end the conflict required a select few of the PIRA's upper leadership to bind the group's nearly 10,000 constituent members.<sup>156</sup> This feat of negotiated conflict resolution was made possible by the PIRA's organizational structure and the UK's incisive ability to mold a landmark agreement around the institutional features of the terrorist group.

### *C. Limiting Fundamentalist Collateral*

At base, the aims of most terrorist groups are secular and political.<sup>157</sup> Inflaming ideological passions and stoking religious zeal, it seems, are largely means to an end.<sup>158</sup> Pointing to the oppression of the perceived colonizer or to the atrocities of the unseen far enemy provides fodder for both the guerilla foot soldiers and the civilian population at large.<sup>159</sup> Such inflammatory rhetoric provides indispensable sustenance to a long-term, asymmetrical campaign of terror. As such, it is in the interest of the targeted state to minimize such vitriol and, in so doing, rob the terrorist of a mighty motivational tool. This Note posits that offering credible settlements through negotiations and alternative means of dispute resolution may play a crucial role in so disarming dissident groups.

In this department, the United Kingdom struggled throughout the Troubles. Parliament's initial response to the onset of the sectarian violence was to funnel troops and supplies into many Irish cities.<sup>160</sup> Ostensibly imposing martial law on the Emerald Isle, the British imposed rigid curfews and dealt roughly with those suspected of dissident activities.<sup>161</sup> Yet, these oppressive measures engendered further resentment of the colonial-minded English

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156. See ED MOLONEY, *A SECRET HISTORY OF THE IRA*, at xviii (Penguin Books 2d ed. 2007).

157. See Pape, *supra* note 25, at 343, 345-48 (distilling the aims of suicide terrorism).

158. See *id.* at 347 ("The more suicide terrorists justify their actions on the basis of religious or ideological motives that match the beliefs of a broader national community, the more the status of the terrorist martyrs is elevated, and the more plausible it becomes that others will follow in their footsteps.")

159. See *id.* at 348.

160. See *supra* notes 125-27 and accompanying text.

161. See *supra* notes 125-27 and accompanying text.

among the native Irish population.<sup>162</sup> Armed intervention through a de facto ground war on Irish nationalism proved largely counterproductive to reaching the English aim of staving off the bloodshed.<sup>163</sup>

Ultimately, however, the English vented the steam of nationalist fervor by opening the valve of negotiated compromise.<sup>164</sup> Seeing a growing stalemate on the horizon, the Crown dispatched delegations to gain an impression of the PIRA's agenda.<sup>165</sup> As these talks became public in the early 1990s, the typically acerbic rhetoric seemed to be overshadowed by a moderate cloud. With the prospect of realizing considerable gains in their separatist agenda through substantive negotiations with the Crown, PIRA leadership actively minimized its more radical elements.<sup>166</sup> Thus, when the ink dried on the ceasefire, only a handful of dissidents clung to their guns; the PIRA and the English met mutual objectives and created little additional friction in the process.<sup>167</sup> In sum, by signaling to the PIRA that a settlement was possible—and in many ways necessary to end the conflict—the United Kingdom provided a platform for reaching an enforceable agreement without exacerbating long-standing problems or instigating new ideological grievances. This ability to neutralize ideological fervor and limit fundamentalist collateral ensures that the agreements reached in 1998 will extend undisturbed well into the future.

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162. In assessing the imposition of curfews, for instance, one Sinn Féin leader remarked: “thousands of people ... who had never had any time for physical force now accepted it as a practical necessity.” MALCOLM GLADWELL, *DAVID & GOLIATH* 222 (2013).

163. See *supra* Part II.B.1.

164. See *supra* notes 66-69 and accompanying text.

165. See ENGLISH, *supra* note 48, at 158 (focusing on political contact points between the PIRA and the UK).

166. Rather than deliver rants against colonial oppression, several key PIRA elite began speaking in the diction of compromise. O'BRIEN, *supra* note 55, at 267 (“In a carefully crafted speech, McGuinness did not call for a British withdrawal and he indicated that the Republican Movement was ready for compromise.”).

167. Two minority nationalist groups repudiated the agreement and continued armed resistance: the Continuity Irish Republican Army and the Real Irish Republican Army. See generally JOHN MOONEY & MICHAEL O'TOOLE, *BLACK OPERATIONS: THE SECRET WAR AGAINST THE REAL IRA* (2003). These groups' impact on the conflict has been marginal but lurks on the periphery of the present peace. See Henry McDonald, *Republican Dissidents Join Forces to Form a New IRA*, *GUARDIAN* (July 26, 2012), <http://www.theguardian.com/uk/2012/jul/26/ira-northern-ireland-dissident-republican-groups> [<http://perma.cc/Y8AZ-XG9A>].

## IV. NEGOTIATING WITH AL-QAEDA

Targeting the far enemy of the United States for several decades, al-Qaeda has proven a durable and audacious enemy. Claiming a disproportionate share of terrorist-related fatalities and charging their political aims with harsh ideology, the terrorist organization foiled many American attempts to quash its global network.<sup>168</sup> Ostensibly, America waged two wars with the explicit aim of eradicating al-Qaeda and its sponsors, and provided support for campaigns against terrorism in dozens of countries across the world.<sup>169</sup> At no time has the American government openly offered negotiations, and it never conceded any strategic or political ground in the pursuit of quelling terrorist attacks.<sup>170</sup> This Note strenuously argues that such a strategy should be abandoned and must be replaced by a policy regime that recognizes the efficacy of alternative means of dispute resolution. Such a policy need not—and emphatically should not—appease terrorists. Rather, the proposed policy places a viable option on the table for the United States to leverage its considerable assets in the pursuit of realizing tangible goals in the war against terror.

To that end, this Section will focus on applying the lessons gleaned from the Anglo-Irish experience, as detailed in Part III. Naturally, then, this Section will parallel the tripartite framework there articulated: (1) applying state leverage to tip the battlefield in America's favor; (2) understanding the organizational framework of the enemy so as to garner acceptable concessions; and (3) limiting the creation of additional fundamentalist grievances. Crafting American policy in light of these three criteria will have the ultimate effect of reaching a settlement with foreign dissidents that objectively advances the interests of the United States. Clinging to antiquated foreign policy notions that eschew international engagement, even in the face of irredeemable violence, should no longer be the preferred stance of the United States. Rather, American

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168. *See supra* Part II.C.

169. *See generally* CLARKE, *supra* note 104 (outlining strategies in the war on terror).

170. *See id.*

leadership should actualize its policy interest by seeking an alternative means: negotiating with terrorists.

*A. Tipping the Battlefield: Negotiations and State Leverage*

Discussing American military strength necessarily involves hyperbole.<sup>171</sup> In brief, the American military machine accounts for nearly half of all global expenditures on fighting forces and national defense.<sup>172</sup> Further, the United States boasts a robust foreign policy apparatus and seeks engagement with nearly every nation on earth.<sup>173</sup> These two assets—the American soldier and the American statesman—function in tandem to ensure unbalanced negotiations that advance the interests of the United States abroad. From friendly relations with allies to tense negotiations with regimes that aid and abet campaigns of terrorism, the United States hardly hesitates to employ all options at its disposal to further its agenda. The United States need not abandon these powerful resources the instant the counterparty materializes as a nonstate actor; the war on terror may be condoned or condemned, but it must, at the very least, be calculated.

Reflecting briefly on the English experience in Ireland, this Note previously suggested that the British response was that of a government speaking in terms of prohibiting negotiations with the dissidents, but acting as though it was deaf to its own mandate.<sup>174</sup> In so doing, Parliament remained resolute in the eyes of the public, immovable in the view of the nationalist movement, and potentially reasonable in the estimate of the PIRA's leadership. In America's struggle with al-Qaeda, this trifecta provides a reasonable template for advancing American interests and for curtailing the violence of

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171. Comparing defense expenditures in the United States against similar budgets globally indicates that America outspends its closest competitor, China, six-to-one. Lacey Heeley, *U.S. Defense Spending vs. Global Defense Spending*, CENTER FOR ARMS CONTROL & NON-PROLIFERATION (Apr. 24, 2013), [http://armscontrolcenter.org/issues/securityspending/articles/2012\\_topline\\_global\\_defense\\_spending/](http://armscontrolcenter.org/issues/securityspending/articles/2012_topline_global_defense_spending/) [<http://perma.cc/P4FA-2URK>]. In fact, America's defense budget in 2012 touts a sum double that of defense budgets in all Asian nations combined over the same period. *Id.*

172. *See id.*

173. *See U.S. Bilateral Relations Fact Sheets*, U.S. DEP'T OF STATE, <http://www.state.gov/r/pa/ei/bgn> [<http://perma.cc/VUL5-6AR4>] (last visited Apr. 11, 2015).

174. *See supra* notes 136-38 and accompanying text.



*jihadi* terrorism. Moreover, the United States occupies a unique hegemonic place in the world order such that affecting such a balanced stance in the War on Terror requires very little maneuvering and minimal reallocation of resources.<sup>175</sup>

Rather than collapse in the face of senseless violence at the close of 2001, American leadership staunchly denounced the tactics of terrorism and resolutely announced that the nation would not be coerced by foreign fundamentalists. To that end, Congress passed the AUMF and broadly encouraged the Executive Branch to rain fire—militarily, economically, and politically—on al-Qaeda, its associates, and its sponsors.<sup>176</sup> This response engendered a multitude of economic sanctions, propelled two Middle Eastern wars, and crowded foreign skies with drones.<sup>177</sup> Leveraging American forces in the pursuit of defeating al-Qaeda is not, in the strictest sense, a negotiation. Massive military retaliation is, however, powerful leverage at the bargaining table. In this department, the sheer size and scope of the United States' response to al-Qaeda dwarfs the British reaction to the PIRA.<sup>178</sup>

Yet, the United States does not treat its military mobilization against al-Qaeda as one of leverage. Rather, American policy largely calls for the defeat of al-Qaeda through military means and draws upon the tactics of counterinsurgency warfare.<sup>179</sup> This policy is only part of the equation necessary to stem the violence wrought by al-Qaeda, if the English experience in Ireland is to be any guide. Critically, the United Kingdom sent more than troops—it sent a powerful message through official and unofficial channels, one that offered open dialogue in exchange for a cessation of violence against the state and its civilians.<sup>180</sup> Notice, this stance did not offer bald concessions or appeasement of terrorist aims. Rather, calling the

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175. See Christopher Layne & Benjamin Schwarz, *American Hegemony—Without an Enemy*, 92 FOREIGN POL'Y 5, 5-7 (1993).

176. See Authorization of Military Force, Pub. L. No. 107-40, §§ 1-2, 115 Stat. 224 (2001).

177. See Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 HARV. L. REV. 2047, 2048-50 (2005); Erwin Chemerinsky, *The Assault on the Constitution: Executive Power and the War on Terrorism*, 40 U.C. DAVIS L. REV. 1, 3 (2006).

178. See *supra* Part III.

179. This policy is encapsulated in an Address to the Nation delivered by President George W. Bush nine days after the events of 9/11. See President George W. Bush, Address to a Joint Session of Congress and the Nation (Sept. 20, 2001), available at <http://perma.cc/9XBL-3ZCQ>.

180. See *supra* Part III.A.

dissidents into conversation leverages the assets of the state against the relative weakness of its counterparty. Beginning a firm and unwavering dialogue with al-Qaeda and like-minded terrorist organizations may advance American interests further than warfare alone. Negotiation, in tandem with America's devastating economic and military power, might prove a compelling option in concluding the war on terror on terms favorable to the United States.

### *B. Organizational Criteria*

Effectively combating global terrorism cannot be an easy task for any nation. The difficulties inherent in conducting a counterinsurgency or counterterrorism campaign are innumerable and are compounded when defining the enemy, itself, proves challenging. As noted in Part II, civilian analysts in the United States still grapple with the size, scope, and composition of al-Qaeda as an organization.<sup>181</sup> Theories of structure range from a global monolith directed by a handful of elite *jihadi*, to an amorphous, dissociated network of like-minded cells.<sup>182</sup> It is in this respect that the United States's relationship with al-Qaeda substantially departs from the largely analogous Anglo-Irish conflict; the PIRA, by nearly all measures and metrics, exhibited a clearly defined top-down structure and the English used this organizational fact to facilitate negotiations and enforce practical solutions.<sup>183</sup> By stark contrast, the United States is forced to combat a terrorist group armed with little in the way of information regarding the organization's institutional components.<sup>184</sup> In light of this limited intelligence, two primary alternatives emerge and will be dealt with, in turn, below: (1) al-Qaeda as monolithic and (2) al-Qaeda as cellular.

In the first case, this Note treats al-Qaeda as exhibiting a command and control regime very similar to that adopted by the PIRA. Under that framework, an elite group of *jihadi* strategists and financiers guide the operations of the global terrorist operation and

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181. *See supra* Part II.C.2.

182. *See supra* Part II.C.2.

183. *See supra* Part III.

184. To a certain degree, we may operate under the common assumption that the intelligence community holds a greater degree of information regarding the organization than does the average citizen.

coordinate attacks directly with subordinates and surrogates.<sup>185</sup> This parallel with the PIRA presents the self-same solution: the United States may negotiate with a select few in al-Qaeda's upper echelon. Those who hold sway over their underlings prove ideal counterparties in reaching effective compromises, as was shown to be true after the decommissioning of arms following the implementation of the Good Friday Agreement.<sup>186</sup> Even in the event that the command and control lines are less rigid than those exhibited by the PIRA, al-Qaeda's core membership is likely a fraction of the PIRA's membership.<sup>187</sup> Thus, negotiating concessions and implementing a resolution might radiate out from al-Qaeda's leadership and affect all subordinate and associated terrorists.

In the alternative case, al-Qaeda may evidence a dissociated and cellular structure, in which constituent groups share ideology and financing but lack interconnected leadership.<sup>188</sup> Certainly, this scenario provides the more challenging case for American engagement. Although American leadership may have difficulty identifying al-Qaeda leadership and, by extension, may face an uphill battle implementing any eventual settlements, the process remains largely unchanged. Operating under the assumption that ideological coherence and political objectives motivate a cellular al-Qaeda in much the same way that these aims animate a unified al-Qaeda, the terms of the negotiation remain identical. American diplomacy may then target individual terrorist groups as they are identified and leverage the state's assets to reach settlements with discrete cells. The resources consumed in identifying these cells and negotiating with their individual leaders is partially ameliorated by the ease of implementation. That is to say that rather than rely on top-down channels of enforcement, individual settlements create limited groups to monitor, rather than an entire organization to police. In sum, however, diplomatic and rhetorical acrobatics aside, a cellular al-Qaeda appears to fall largely outside of the framework this Note

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185. See Zimmerman, *supra* note 110, at 14-15.

186. See *supra* Part III.

187. Carl Bialik, *Shadowy Figure: Al Qaeda's Size Is Hard to Measure*, WALL ST. J. (Sept. 10, 2011), <http://online.wsj.com/news/articles/SB10001424053111903285704576560593124523206> [<http://perma.cc/7AS9-7DLF>] ("Analysts put the core membership at anywhere from 200 to 1,000. The next shell, of affiliated fighters or funders, is made up of thousands or tens of thousands.")

188. See Briggs, *supra* note 105, at 1.

attempts to advance. Negotiating with individual cells is feasible on paper but admittedly lacks real-world application.

For effectively negotiating with al-Qaeda, the hope, then, lies in a unified organization or in some gradation stopping short of purely cellular. As Zimmerman noted, al-Qaeda's leadership may have evolved on a temporal spectrum—beginning with a system of strong command and control and then gradually devolving into a more cellular organization.<sup>189</sup> Even under this framework, it remains difficult to identify at what point along the timeline modern al-Qaeda occupies. If al-Qaeda's structure falls short of the extreme cellular tail of the spectrum, then negotiations with concentrated pockets of leadership will prove possible. Summarily, once the United States clearly identifies its enemy, it should make every attempt to isolate leadership—en masse or individually—and solicit concessions. In this way, the United States might mirror the foreign policy of the United Kingdom, which neutralized the disruptive forces of the PIRA by engaging directly with terrorist leadership.

### *C. Limiting Fundamentalist Collateral*

From its inception, the War on Terror has purported to focus on eradicating al-Qaeda and stemming the rising tide of anti-American sentiment globally.<sup>190</sup> As a vehicle for accomplishing this task, American leadership adopted a strategy by which the United States would relentlessly attack al-Qaeda strongholds and win the “hearts and minds” of the native populations through building trusted networks.<sup>191</sup> The United States Army and Marine Corps recognized this latter strategy in its *Counterinsurgency Field Manual*, stating: “Over time, successful trusted networks grow like roots into the populace. They displace enemy networks, which forces enemies into the open, letting military forces seize the initiative and destroy the insurgents.”<sup>192</sup> To that end, the manual advises avoiding “actions

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189. Zimmerman, *supra* note 110, at 15.

190. See *supra* note 169 and accompanying text.

191. U.S. DEP'T OF ARMY, FIELD MANUAL 3-24: COUNTERINSURGENCY para. A-26 (Dec. 15, 2006), available at <http://perma.cc/S46R-FMBJ>.

192. *Id.* The final draft before publication of 2006 *Counterinsurgency Field Manual* included additional language recognizing this strategy. U.S. DEP'T OF ARMY, FIELD MANUAL 3-24: COUNTERINSURGENCY (FINAL DRAFT—NOT FOR IMPLEMENTATION) para. 3-89 (June 2006), available at <http://perma.cc/6UXT-HUSJ> (“Protracted popular war is best countered by

that undermine trust” for fear of aiding the enemy.<sup>193</sup> At the highest levels of power in the United States, the principle of limiting the negative publicity of a hardline stance on extremism remains a critical priority in the war on terror.<sup>194</sup>

In this arena, the United States might be well served by emulating the English stance towards the Irish in the latter phases of the Anglo-Irish conflict. As noted above, Parliament’s initial crackdown on terrorism proved effective in quelling violence in the short term but may have prolonged the fight as the actions fanned the image of the English as oppressive imperialists and drew more combatants into the fray.<sup>195</sup> Yet, overtures of settlement and carefully orchestrated military pressure prompted the PIRA leadership to change their tune; rather than craft vitriolic speeches, they turned to drafting ballot measures.<sup>196</sup> Should the United States sustain its military interventions and simultaneously offer the possibility of settlement to al-Qaeda leadership, the cycle of anti-American sentiment may ease and the probability of future terrorist attacks may decline.

In light of this dualist approach—in which military might is balanced against diplomacy through negotiation—it is important to maintain a perspective on the challenges presented by the War on Terror. Solutions that work today may fail tomorrow. Military intervention may have been the proper course a decade ago—and may still be the proper course today and into the future—but other variables and alternatives may have their own role to play. As Pape astutely notes, “Conquering countries may disrupt terrorist operations in the short term, but it is important to recognize that occupation of more countries may well increase the number of terrorists coming at us.”<sup>197</sup> This Note suggests that opening the channels of negotiation will alleviate the problems associated with

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winning the ‘hearts and minds’ of the populace.”).

193. U.S. DEP’T OF ARMY, *supra* note 191, at para. A-28.

194. President Barack Obama spoke to the need to limit fundamentalist rancor, addressing the torture of detainees: “[Abiding by the Geneva Convention] ... will make us safer and will help in changing hearts and minds in our struggle against extremists.” Elizabeth Dickinson, *A Bright Shining Slogan*, FOREIGN POL’Y, Sept./Oct. 2009, at 29, available at <http://perma.cc/MB9N-WATW>.

195. *See supra* Part III.

196. *See supra* notes 167-69 and accompanying text.

197. Pape, *supra* note 25, at 357.

creating a class of future generations of would-be suicide bombers and anti-American antagonists.

## V. COUNTERARGUMENTS

Augmentation of the status quo is frequently an uphill battle, especially in the realm of American foreign policy.<sup>198</sup> Any change in the United States's posture in the world, large or small, naturally draws derision and detractors. The policy that this Note advocates—resolving disputes with terrorist groups through negotiations and other alternative means—may be considered both drastic and imprudent. Valid arguments may be made in opposition to this policy, and the most significant of these critiques will be addressed squarely below.

### A. *Sacrificing a Hard-Line Approach*

American exceptionalism and military might justify a zero-tolerance approach to political extremism, and as such no ground should be conceded to those who wish harm upon the United States, some in dissent would argue. Although this supposition rings of well-placed patriotism and leans on the supposed benefits of having a bright-line prohibition against negotiating with terrorists, it falls far short of effectuating successful policies and results. The hard-line approach fastens itself to the perceived ability of the United States to conduct perfect counterterrorism operations that eradicate an organization whose membership is virtually unknown.<sup>199</sup> The American government should not limit itself to such a specious strategy.

Sacrificing the hard line, comes the rejoinder, will weaken America's position in the world and paint a target on the homeland. This Note suggests that the precise opposite result is to be expected. By offering to engage with those who hold political grievances—merited or not—minimizes the chances of future attacks and dampens the passions of zealots. As addressed at length

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198. See Illana Ritov & Jonathan Baron, *Status-Quo and Omission Biases*, 5 J. RISK & UNCERTAINTY 49, 50 (1992) (discussing the preference of inaction over action); William Samuelson & Richard Zeckhauser, *Status Quo Bias in Decision Making*, 1 J. RISK & UNCERTAINTY 7, 9 (1988) (describing the lure of the status quo).

199. See *supra* Part IV.

in Part III, the British spent decades and hundreds of their soldiers' lives in the admirable pursuit of quashing nationalist dissidents. And when this policy experienced diminishing returns, Parliament placed more diverse options on the table.<sup>200</sup> The United States has fought a ground war against terror largely informed by the counterinsurgency experiences of its allies—the British in Malaya and the French in Algeria.<sup>201</sup> Why, then, should America eschew the lessons of history outside of the context of war making?

Negotiating with terrorists supplements—and in no way displaces—the ability of the United States to destroy terrorist networks. This Note, then, does not purport to discredit the efficacy of resolute war or policy making. Rather, the proposition here advanced advocates for an additional means of effective engagement with the enemy. Playing poker with half of a deck of cards is an absurd endeavor. Yet, in the absence of a flexible approach to foreign policy, American leadership is playing precisely that game in waging the War on Terror.

### *B. Opening the Door*

A second counterargument lodged against the premise of this Note revolves around the notion that if the United States concedes to one group of terrorists, the proverbial door will be open to other like-minded dissidents. Hand in hand with hard-liners, those who would dissent on these grounds suggest that rejecting negotiations with al-Qaeda would likewise discourage other groups from using extremist means to meet political ends. This argument is underpinned by over-inclusive reasoning in that it assumes that a strategy of negotiations involves mutually satisfactory compromise; the alternative means of dispute resolution addressed in this Note do not adhere to such a conciliatory model.

Rather, this Note has repeatedly emphasized the importance of the state's military and political leverage.<sup>202</sup> Employing the nearly

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200. See *supra* Part III.

201. Daniel T. Canfield, *Algeria and Malaya: A Tale of Two Distinct and Dramatically Different Counterinsurgency Campaigns*, SMALL WARS J. (Aug. 26, 2013, 11:46 AM), <http://smallwarsjournal.com/jrnl/art/algeria-and-malaya-a-tale-of-two-distinct-and-dramatically-different-counterinsurgency-camp> [<http://perma.cc/9MHU-3MUT>].

202. See *supra* Part III.A.

limitless assets of the state in direct negotiations with one terrorist group to achieve concessions in favor of the state is a fundamental notion that undergirds the preceding analysis. As such, this finger-on-the-scale mode of negotiation is a form hardly discouraged by this Note. Critically, showing force at the negotiating table and reaching resolutions favorable to America sends a potent signal to other potential enemies and counterparties discouraging dissident actions.

Few would question America's military capabilities in the War on Terror. Even fewer would doubt America's ability to outlast a movement in global terrorism. Negotiating with dissident groups will not weaken America's position in the world and will not open the floodgates of violent extremism. Negotiating with al-Qaeda does not mean appeasing their extreme agendas and therefore does not indicate a potential pathway for like-minded dissidents. Effectively resolving the conflict with al-Qaeda defuses a grave threat to American security. Discrediting the solution posited in this Note—based on the supposition that other threats may arise in the future—risks the very security that negotiations would likely ensure.

### *C. Encouraging Recidivism*

A final voice in the chorus of potential dissenting opinions might contend that negotiating with al-Qaeda will merely encourage the terrorist group to make more expansive demands. Thus, the argument goes, if America concedes to dissident demands through negotiations once, the State essentially incentivizes future extremist activity to coerce further allowances. This reasoning, although topically tempting, misreads both the "logic of suicide terrorism" and the aims of this Note in equal measure.<sup>203</sup>

To the former, terrorists pursue political agendas through extreme means.<sup>204</sup> By and large, acts of terror are perpetrated by rational individuals motivated by secular aims.<sup>205</sup> Severe asymmetries between the dissident and the State prompt wanton violence, as the option of direct physical engagement eludes the non-state

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203. Pape, *supra* note 25, at 344.

204. *Id.* at 345.

205. *Id.*



belligerent.<sup>206</sup> Removing the animating grievances—or at the very least entertaining the prospect of a negotiated settlement—steals the oxygen from the would-be terrorists’ lungs. Negotiating with terrorists strikes at the very means of the logic of terrorism: Why die for a cause when the cause may not require your life, but only your signature?

To the latter, this Note advocates a position of calculated bargaining that aims to neutralize—not placate—a nonstate enemy on terms favorable to the State. The lessons drawn from the PIRA case study expressly illustrate this logic.<sup>207</sup> As a brief reminder, Parliament refused to settle for anything less than a full cessation of violence and the wholesale decommissioning of arms.<sup>208</sup> This unbending stance forced the peace agreement to sputter and stall, but served the crucial end of signaling to the PIRA that if a deal were to be reached, it would be reached on the terms set by the Crown.<sup>209</sup> In negotiating with al-Qaeda, the United States should doubtlessly employ the same firm message.

At base, this counterargument fallaciously conflates the real danger of placating terrorists in the wake of acts of terrorism and the imagined danger of conceding to terrorists on the margins at the negotiating table. The former carries only risk for the State and introduces an irredeemable stigma. Conversely, the latter places the State in the position to capture a great deal of upside advantage with relatively minimal cost. In sum, supplementing the American arsenal with calculated negotiations and similar means of alternative dispute resolution will work to end terrorism, not engender it.

## CONCLUSION

The evolution of global terror requires the adoption of a durable strategy. Acts of heinous extremism have been met by the sword and the shield, but rarely with the pen. This Note advances the simple proposition that America should shed its prohibition against negotiating with terrorists and adopt a policy that centers on en-

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206. *Id.*

207. *See supra* Part III.

208. *See supra* Part III.A.

209. *See supra* Part III.A.

gaging with the enemy. Utilizing theories of alternative dispute resolution and leveraging the considerable assets of the State, the United States may neutralize its dissident adversaries. To achieve this end, this Note relied heavily on the British experience in Northern Ireland to elucidate three core concepts of engagement: (1) harnessing the power of the State to tip the battlefield away from extremists; (2) assessing the organizational components of the enemy; and (3) minimizing the fundamentalist collateral of physical engagement. Applying this tripartite framework to the relationship between the United States and al-Qaeda formed the crux of this Note with the aim of demonstrating the feasibility and efficacy of such a reasoned strategy of alternative dispute resolution. By adopting a policy of engagement over isolation, the United States would gain the opportunity to ensure a cessation of violence and the defeat of menacing ideologues across the globe.

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