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The Transformation of International Law and War between the Middle East and Vietnam

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International Law in Relief

War, as a concept as much as a set of practices, occupies a central place in the development of international law. But not all wars have had an equal effect on the shape and pace of legal change. This volume is built on the premise that any attempt to understand how the content and function of international law changed in the second half of the twentieth century should consider two armed conflicts, fought on opposite edges of Asia, and the legal pathways that link them together across time and space. The Arab-Israeli conflict (including both the wars between Israel and the Arab states and the ongoing Israel-Palestine conflict) and the Second Indochina War (called the American War in Vietnam, but known more commonly in the United States and around the world as the Vietnam War) are each the product of their own particularities, dynamics, and histories. But considered closely, and especially taken together, these two armed conflicts can also help us to tell a story of the transformation of international law, and its relationship to war, since 1945.

This claim of significance is contestable. The legal scholars Oona Hathaway and Scott Shapiro agree "that the defining feature of an inter-

national system is how it regulates armed conflict," but they want to push these two regional conflicts (and others like them) to the margins of our understanding of the development of international law. For them, the great story of international law in the twentieth century is the outlawing of war and territorial conquest.[1] A series of initiatives—centering for Hathaway and Shapiro on the Paris Peace Pact of 1928 but culminating in the United Nations Charter of 1945—did away with an "old world order" in which war was legal and conquest a corollary right of war. The resulting "new world order" turned international law on its head, and the intertwined acts of aggressive war, territorial conquest, and annexation all became illegal. This legal transformation was remarkably successful. Hathaway and Shapiro find that "for every 100 square kilometers taken through sticky conquests before 1929, just 6 square kilometers were thus obtained after 1948." With their "bird's-eye view, it is possible to see what observers on the ground too often miss: that what was once frighteningly common is now thankfully infrequent, because what was once seen as the embodiment of international law is now understood as its repudiation."[2]

While conquest and territorial annexation became rare after 1945, wars did not cease. Hathaway and Shapiro therefore qualify their argument by noting that the prohibition on acquiring territory by conquest worked where sovereignty was clear and borders were accepted. "But if sovereignty is disputed and the lines hazy, the legal situation gets complicated very quickly." Hathaway and Shapiro attribute the residual violence of the transformed legal order to "clumsy decolonization" resulting in "botched handoffs" from empire to nation and "blurry lines" on the world map that engender uncertainty and contestation over sovereignty. The outlawry of aggressive war and territorial conquest also works paradoxically to prop up weak states that then become, for Hathaway and Shapiro, a source of violence. "Those weak states sometimes become failed states," they write (with little attention to the agency of the United States and other major powers such as Russia in the making of weak and failed states). "And those failed states too often become breeding grounds for internal conflict and terrorism." The messy wars of decolonization and the internal violence of weak or failed states together make up what Hathaway and Shapiro label "the dark side of the New World Order."[3]

In order to make their argument, Hathaway and Shapiro push the conflicts in the Middle East and Indochina (and other places) to the margins of the development of international law. They become side-stories to the main narrative of an end to conquest and annexation. To get up close—to be "on the ground"—with these conflicts is to distract from a full appreciation of

this grand transformation, suggest Hathaway and Shapiro. Acknowledging that the acquisition of territory by Israel in 1967 and North Vietnam in 1975 were "events of great significance to those involved," they nonetheless insist that to focus on these (and eight other similar cases of post-1928 conquests that stuck) "risks missing the forest for the trees, or more accurately failing to see that the forest *has so few trees*."[4] Hathaway and Shapiro acknowledge the incredible violence of these events but do not want it to overshadow the bigger picture. "Without minimizing this pain and distress, the broad perspective provided by our data makes clear that these conquests were, in historical terms, both relatively rare and comparatively small." To focus on the exceptions, such as with Israel-Palestine and Vietnam, is to miss the broader rule.[5]

Where attention is given to the violence of these exceptions, the finger is pointed at botched handoffs and blurry lines. The British Mandate of Palestine is "perhaps the most infamous example of a botched handoff," write Hathaway and Shapiro, noting that "at least one reason the conflict has proven so intransigent is that the British mandate expired with no clear plan for the territory it had governed." Minimizing the extent to which the United Nations Partition Plan for Palestine in UN General Assembly Resolution 181 (II) *did* provide a clear—if unenforced—plan for the territory of the British Mandate, Hathaway and Shapiro declare that "Palestine became a legal black hole, a territory in which the chain of sovereignty had been broken."[6] They offer a similar analysis for the violence visited on the people of Indochina after 1945. "Much the same happened in Vietnam, where the sudden end of Japanese rule left uncertainty—and then war—over who was the rightful sovereign after Japan relinquished control."[7] For Hathaway and Shapiro, the wars in the Middle East and Indochina are not productive of international legal order in any meaningful sense. They are aberrations, to be regretted and corrected, but of little consequence for the development of international law.

Starting from positions marginal or diagonal to that narrative, however, allows for the possibility that international law has not developed in spite of the conflicts in the Middle East and Indochina but because of them.[8] On closer examination, the "legal black holes" (Hathaway and Shapiro's words) or the "crevices" of international law (Ihab Shalbak and Jessica Whyte's words from their chapter in this volume) are not simply unfortunate byproducts of historical progress but are themselves crucial drivers of change in the international legal order. This volume, then, examines the development of international law in relief. It *begins* with the crevices, black holes, and other recesses that make up the so-called dark side of the inter-

national legal order, allowing a different story about the transformation of legal order in the twentieth century to emerge. Our approach recasts the outlawry of aggressive war, as important as it is, as the background to legal change. We instead foreground attempts to develop legal rationales for the continued waging of war after 1945—not the total, industrialized warfare of the sort the UN Charter signatories sought to avert, but more limited and diffuse forms of warfare. Examining international law in relief allows us to move beyond explaining the end of war as a legal institution and toward understanding the attempted institutionalization of endless war.

From Total War to Endless War

The Vietnam and Middle East conflicts are not, of course, the most marginal places from which to gain a different perspective on the development of international law since the mid-twentieth century. As major regional conflicts they occupy a much more prominent position in the history and practice of international law than places such as Nauru, Nagaland, and Namibia.[9] Both conflicts were—and in the case of the Israel-Palestine conflict, continue to be—very much in the public spotlight. They made headline news. They were debated passionately in the newspapers, on radio, and in universities all over the world. Nor did these debates ignore the legal dimensions of these two conflicts. On the contrary, both conflicts were highly visible international law conflicts, in which all sides invoked international rules, procedures, and institutions.

In the case of the Vietnam War, Americans both for and against US involvement developed international law rationales to make their cases. The US government and its supporters put significant effort into making the argument that North Vietnam was engaged in armed aggression against South Vietnam for the purposes of conquest, making the case in public speeches, films, and two white papers released in 1961 and 1965.[10] This official narrative of North Vietnamese aggression was challenged by antiwar activists, clergy, scholars, and lawyers. To them, the United States was the aggressor, violating the 1954 Geneva Accords, unjustly intervening in a civil war, and waging war inhumanely.[11] Guenter Lewy, an early postwar scholarly voice arguing for the necessity and justness of the American effort in Vietnam, noted that "the impact of the antiwar movement was enhanced by the widely publicized charges of American atrocities and lawlessness."[12] The weight of public opinion eventually followed the antiwar movement and shifted against the American war effort.

This shift in public opinion was, in turn, a key prompt for Congress to stop funding the war. South Vietnam—and by proxy the United States—lost the war when Saigon fell to North Vietnamese troops in 1975. The United States had won most of the major military battles of the war, but losing the battle for public opinion at home mattered more in determining the war's ultimate outcome.[13]

In the Middle East conflicts, too, legal arguments have been offered and rebutted by all sides. The Israeli government and its supporters developed international law rationales for its use of force in 1948, 1956, and 1967, and its displacement of the Palestinian people from their homes, which were contested by the Arab states and their Palestinian supporters.[14] Israel's settlements in Palestinian territories have been widely condemned as contrary to international law, most notably by the principal judicial organ of the United Nations.[15] Israel has invested a lot of resources into countering legal narratives articulated by international organizations and anti-occupation activists that its annexation of East Jerusalem, the settlements, and its prolonged occupation of the West Bank and the Gaza Strip violate international law.[16] Israel has employed public spokesmen well versed in the law of war to vigorously challenge claims that its armed forces might have committed war crimes in the West Bank and Gaza. Its reaction to the Goldstone report of 2011 is a case in point.[17]

Despite (or perhaps because of) the vast quantity of pages devoted to the legal aspects of the Vietnam and Middle East conflicts, there is little sense that international law played much of a role in the initiation or conduct of these wars, or in ensuring just outcomes. "It is a humbling realization of no small moment," Richard Falk wrote of the Vietnam War in 1973, "to acknowledge that only international lawyers have been paying attention to the international law arguments on the war."[18] The legal historian Samuel Moyn adds that "it will be obvious to anyone who has studied or lived through the period that none of the legal monuments in an American landscape roiled by the Vietnam war were terribly prominent in the scheme of things."[19] The place of legal argument in the antiwar movement should not be overplayed, in other words, and nor should the effect of international law on the Middle East conflicts. The human rights attorney and legal scholar Noura Erakat notes that "few conflicts have been as defined by astute attention to law and legal controversy" as the Palestinian-Israel conflict. "Enumerating a comprehensive list of the legal questions surrounding this conflict could span the pages of an entire book," she adds, before observing that "none of these issues has been resolved by legal fiat, even as all parties have availed themselves of the law's moral, political, and

intellectual logic." For all the legal arguments advanced against Israel's occupation of Palestinian territories, "international law has seemed futile, if not irrelevant."[20]

If law's effect on these wars seems marginal, early assessments of the effect of these conflicts on the development of international law were also underwhelming. Writing five years after the fall of Saigon, Geoffrey Best, a leading historian of the laws of war, had "nothing" to say about the Vietnam War "because it raised few new questions of principle." On the Middle East, Best added only that "the amount of writing about the Arab-Israeli conflict is by now enormous, and exceptionally controversial."[21] The debates over international law in Vietnam and the Middle East seemed to generate much heat but little light. This sense of international law's stasis was only intensified by the Cold War. The standoff between the United States and the Soviet Union formed the backdrop to both conflicts and ensured that international law arguments were as often as not advanced (and certainly perceived) as propaganda and psychological warfare rather than genuinely held legal opinions. In the standard telling, the Cold War stunted the development of international law after 1945, and the regional conflicts waged within the context of the Cold War did not change that narrative.[22]

Several other factors also worked to obscure the ways in which the Vietnam and Middle East conflicts transformed the relationship between war and law. The turn to a politics of human rights in the 1970s helped Americans draw a line under their Vietnam War experience. Human rights, in the words of Barbara Keys, "helped Americans make sense of the new global terrain . . . not as a means of coming to terms with the Vietnam War but as a means of moving past it."[23] Moving past both the lawless and law-bending aspects of the war Washington waged in Vietnam included latching on to "just war" theory, which served to pull a medieval mask over the novelties of the 1960s and 1970s.[24] After the war, too, as Anthea Roberts notes, American international lawyers turned inwards, prioritizing American interests and interpretations in a way the previous generation of multilingual, often émigré, lawyers did not.[25] Naz Modirzadeh argues similarly that the "passion-filled Vietnam-era scholarship" in international law has given way to "an aridly technical, acontextual, and ahistorical" mode of international law scholarship in the early twenty-first century.[26] Part of that process has involved losing any sense that the Vietnam and Middle East conflicts of the twentieth century have relevance to the armed conflicts of today. Having always assumed that contemporary analyses of war and law were "far more law-rich and technical" than anything previous genera-

tions of lawyers could offer—that "the forms of legal argumentation and available legal doctrines prior to our present moment were not sophisticated enough to imagine questions like the notion of extraterritorial non-international armed conflict or the outer limits of the geographic scope of non-international armed conflict"—Modirzadeh herself was "astonished" to find precedents and parallels from the 1960s and 1970s that spoke directly to twenty-first-century concerns.[27]

Revisiting the Vietnam and Middle East conflicts today, and foregrounding them in a study of the development of international law, shows that they were not merely unfortunate exceptions to a larger narrative of progress. Nor did the international law arguments proffered and rebutted during those conflicts amount to only a fiery but ultimately vacuous, insignificant, and unsophisticated debate. The Vietnam and Middle East conflicts of the twentieth century were themselves productive of new approaches to, and interpretations of, international law. As Richard Falk notes in the foreword to this volume, the Vietnam and Middle East conflicts were not merely exceptions to the intended legal order of 1945 but were also "a source of new norms of international law." Whether or not anyone except for international lawyers was paying attention to the legal arguments of the 1960s and 1970s, some of those arguments nevertheless contributed to particular interpretations of international law, which were then advanced by certain states attempting to control the normative discourse for employing force in international law. This new discourse was not so much prompted by total wars of the sort that had motivated the war-prevention rationale of the UN Charter, as it was by smaller-scale regional wars, including wars of national liberation, that motivated attempts to *reinterpret* the Charter and the post–World War II international legal order more generally. This, then, is not a story about the outlawry of "total war" but the rise and attempted legitimation of the "endless war" that characterizes our current age.

The armed conflicts fought in the first decades of the twenty-first century, especially those waged by the United States and its allies, seem to many like a new form of war, in which the old lines that circumscribed, particularized, and regulated war seem to have blurred. The persistent wars in Afghanistan and Iraq, the use of force beyond those war zones, potently symbolized by the remotely piloted drone, and the sense that the conduct of hostilities now increasingly sits outside the old rules of war all form the backdrop to renewed interest in the history of the international law of war and peace. The perceived lack of a horizon is particularly troubling. "This is an endless war without boundaries, no limitation on time or geography,"

suggested US senator Lindsay Graham in early 2018. "We don't know exactly where we're at in the world militarily and what we're doing."[28] At about the same time, Samuel Moyn noted that "the literature of endless war has crystallized into an identifiable genre."[29] Despite the ahistorical and universalist assumptions embedded within the language of "endless" and "everywhere" war, contemporary armed conflict and the legal logics that argue for its legitimacy do have a history. An important element in the emergence and contingent development of this history can be located in the Middle East and Indochina conflicts.

The wars fought in Vietnam and the Middle East were not just physical confrontations. They were also battles of ideas, including legal ideas. To justify their decisions to resort to the use of military force and to use that force in particular ways, Americans, Vietnamese, Israelis, Egyptians, Syrians, Jordanians, Palestinians, their supporters in the West, and other parties to these conflicts appealed widely to international laws and customs. These appeals rested not only on settled understandings of the relevant international law but also on legal interpretations that attempted to shift those understandings. Those novel legal interpretations did not always arise in each conflict independently, however, but were often the product of migrations and mutations of legal knowledge between the two war zones. New understandings of both legal substance (e.g., the right of self-defense, the distinction between civilians and combatants) and legal process (e.g., the legal authority of the UN versus unilateral legal authority) arose out of the conversations, comparisons, and commonalities that connected these two conflicts.

None of this is to downplay the significant differences between the two conflicts—especially the obvious one that whereas the Vietnam War is history, the annexation of occupied Palestinian lands, and the blockade of Gaza, is very much still with us. While recognizing the distinctiveness of each of the two conflicts examined, this volume also considers them in tandem. The migration of legal ideas between these two conflicts helped establish legal precedents and interpretations for the justification of violence that changed the face of armed conflict, and these precedents and interpretations matter for why and how war is waged today.

Connected Histories

The material aid postwar Vietnam provided to revolutionaries around the world was quite meagre. Focused internally on the political and economic

development of their now-unified country, and externally on fraught relations with Cambodia and China (leading to the Third Indochina War launched in late 1978), Vietnamese leaders had little to offer revolutionary groups in terms of hardware and training. The historian Lien-Hang Nguyen notes that in the early 1980s, at the request of the Sandinista government of Nicaragua, Vietnam sent two dozen personnel to train Nicaraguan soldiers in overcoming American-style counterinsurgency. But with international attention on the presence of Vietnamese troops in Cambodia, the Nicaraguan mission was kept a secret. "Though committed to passing on the torch of revolution, Hanoi did not advertise its forays into foreign terrain as the Soviets, Chinese, and Cubans had done earlier in the Cold War," writes Nguyen. "Even though revolutionary groups throughout the Third World appealed to Hanoi for guidance and support during and after the Vietnam War, Vietnam was in neither the economic nor the political position to assist other national liberation struggles."[30]

Rather than a source of material support, then, Vietnam would provide intellectual and moral support for other such struggles around the world. Le Duan, general secretary of the Communist Party of Vietnam and architect of North Vietnam's strategy in the American War, described the Vietnamese revolution as "the bridge between socialism and the revolutionary world, the spearhead for the people's movement as well as for national liberation struggles in Asia, Africa, Latin America." The Vietnamese experience served as the "model" of a successful national liberation struggle, and Nguyen observes that "the revolutionary Third World pored over the translated writings of Ho Chi Minh and Vo Nguyen Giap while they listened intently to the speeches of Madame Nguyen Thi Binh."[31]

The Vietnamese and Palestinian liberation movements saw themselves as connected—as partners in the same broad political and legal project.[32] "The Vietnamese and Palestinian people have much in common," Giap told a delegation from the Palestine Liberation Organization visiting Hanoi in 1970, "just like two people suffering from the same illness."[33] Two historians of the Palestinian national movement, Yezid Sayigh and Paul Chamberlin, both highlight how Palestinian liberation groups looked to the Vietnamese model (as well as the Chinese, Algerian, and Cuban examples) in their own struggle. Different Palestinian groups diverged in how they invoked the Vietnamese experience depending on their understanding of the connection between armed struggle and social and economic revolution. The Popular Front for the Liberation of Palestine (PFLP), led by George Habash, "argued that the Vietnamese revolution had demonstrated that by mobilizing the masses, studying the art of revolutionary

warfare, and building international alliances, a movement could achieve victory over imperialism."[34] Given Israeli military power, the PFLP called for turning the Middle East into "a second Vietnam" and the establishment of an "Arab Hanoi" (possibly Amman or Beirut) as a base area that could support the war effort in a way North Vietnam had done for the southern National Liberation Front.[35] Fatah, led by Yasser Arafat, was less invested than the PFLP in the precise social theories that underlay Vietnam's model of people's war, but it nonetheless still paired the Palestinian and Vietnamese struggles in general terms, consciously connecting the Deir Yassin and My Lai massacres, for example, and using the Vietnamese association "as a way of accessing international networks of Third World radicals."[36] In his inaugural address to the UN General Assembly in November 1974, Arafat reminded the world that Israel had backed "South Viet Nam against the Vietnamese revolution."[37]

The links between the United States and Israel go well beyond the sphere of ideas, of course, with Israel getting more US foreign aid (US$150 billion as of 2021) than any other country since World War II. Almost all American aid to Israel is in the form of military assistance, with Washington currently pledged to give Israel $3.8 billion in military aid per year until 2028.[38] There is a blunt material difference in the links between the Vietnamese and Palestinian national movements on the one hand and the American and Israeli states on the other. Yet the heft of the aid transfers should not obscure the important intellectual transfers that also occur. Like the Vietnamese-Palestinian relationship, the exchange of ideas matters in the US-Israel relationship.

The Israeli soldier-politician Moshe Dayan's 1966 visit to South Vietnam to observe US and South Vietnamese operations is emblematic of the exchange of ideas in the realm of military strategy and tactics. No longer on active service in the military, and in between stints as a cabinet minister, Dayan arranged to report on the American war effort for the Israeli newspaper *Maariv*. He later wrote that "I wanted to see for myself, on the spot, what modern war was like, how the new weaponry was handled, how it shaped up in action, whether it could be adopted for our own use." In Dayan's words, he visited Vietnam because it was "the best, and only military 'laboratory' at the time."[39]

This idea of America's Vietnam War as a laboratory was widely acknowledged well before Dayan visited the country. "Defense officials do not like the terminology, but they readily concede that Vietnam has given the United States armed forces a 'laboratory for war,'" reported Jack Raymond for the *New York Times* in May 1965. "Tactical theories are being

tried, men trained and weapons tested."[40] The development of counterinsurgency theories and practices in Vietnam and elsewhere further ensured that the idea of a laboratory was not confined to a conventional military domain. Tracing the connections between foreign counterinsurgency and domestic policing, the historian Stuart Schrader observes that Vietnam and other Third World countries in the early and mid-1960s were a "laboratory of professionalization" for American policing, boosting the War on Crime back home in the United States and contributing to new forms of "racially invidious policing and incarceration."[41] But the "laboratory" image as a link between Vietnam and the Middle East is particularly resonant. For just as Dayan saw America's Vietnam War as a laboratory that might provide lessons for Israel, so the Israel-Palestine conflict has come to be seen as a laboratory for modern military and paramilitary techniques and technologies.

As Rhys Machold observes, "the concept of the laboratory is employed in making sense of Israel's perceived centrality in global patterns of violence and militarism." It has gained increasing traction in recent times in part as a (not always helpful) explanation "for addressing how Israel has emerged as a major exporter of weapons, security technology and expertise"—including back to the United States via the "Israelification" of American military and police forces.[42] But the idea of Palestine as a laboratory has deep historical roots. Laleh Khalili has both described the "horizontal circuits" in which "officials and foot soldiers, technologies of control, and resources travel not only between colonies and metropoles but also between different colonies of the same colonial power and between different colonial metropoles," and identified Palestine's crucial role in these circuits—"as either a point of origin or an intermediary node of transmission."[43] The suppression of the Palestinian Revolt (1936–39) was a crucial temporal link in the British counterinsurgency knowledge chain that connected pre–World War I campaigns in Ireland, Bengal, the North-West Frontier Province, and South Africa to the post–World War II wars of decolonization in Malaya, Cyprus, Kenya, and other colonies.

Khalili identifies the movement of personnel, the sharing of training programs and doctrines, and the creation of think-tanks and other transnational epistemic communities as key vectors in the transmission of knowledge around the horizontal circuits. We believe that lawyers, legal doctrine, and other juridical concepts also deserve significant attention in the transnational circuits that connect the Vietnam and Middle East conflicts.[44] "Gaza is a laboratory in more than one sense," observes Eyal Weizman. "Most significantly of all, it is the thresholds that are tested and pushed: the limits of the law, and the limits of violence that can be inflicted by a

state and be internationally tolerated."[45] But these thresholds are not solely the result of Israel's use of force in Gaza in the twenty-first century. The circuits of legal knowledge that push—and resist—these new thresholds cut across history and geography. The circuit that connects the Vietnam and Middle East conflicts is, we believe, particularly worthy of attention.

Without minimizing the particularities of each conflict—and the chapters that follow flesh out differences as well as connections—we suggest that to consider the Vietnam and Middle East conflicts in tandem allows for a fresh perspective on the history of international law since World War II. Examining the circuits of state, revolutionary, and antiwar knowledge and practice allows us to trace, for example, the diminution over time of what Richard Falk in his foreword terms the "war-prevention rationale" of the UN Charter. The conflicts in Indochina and the Middle East loomed large as states and antiwar activists debated and reinterpreted the meanings of "aggression," "armed attack," and "self-defense" in the legal prohibition on the use of force in international life. The Vietnam War and Middle East conflicts were similarly central to the renegotiation of *who* could fight in wars, and *how* they could fight. Saigon fell in 1975, in between sessions of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (1974–1977), giving the Vietnamese Communists a powerful voice in Geneva to advocate for the idea of "people's war." The legitimation given national liberation movements and their fighters in the 1977 Additional Protocols to the Geneva Conventions served as post facto vindication of the Vietnamese struggle, a milestone in the Palestine Liberation Organization's turn to international law and institutions, and a prompt for the United States and Israel to increasingly craft their own legal interpretations and innovations. The subsequent juridification of war in the twenty-first century—more laws, more lawyers, more legal controversies—owes much to the Vietnam and Middle East conflicts.

Background and Volume Outline

The Vietnam War and Arab-Israeli conflicts are also connected by their colonial origins, and especially through the violent end to formal European imperialism in Indochina and the Middle East in the middle of the twentieth century. France secured colonial control of Vietnam in the late nineteenth century, but during World War II the Vichy-aligned colonial regime lacked sufficient armed forces to preserve its dominance and so it

allowed Japanese troops into the country—an occupying force in all but name. In 1941, Vietnamese nationalists formed the Revolutionary League for the Independence of Vietnam, known as the Viet Minh, to contest both French formal and Japanese informal rule. Their campaign intensified after Japan overthrew the colonial French government in March 1945, and when Japan surrendered in August the Viet Minh moved to take power. On September 2, 1945, Ho Chi Minh proclaimed Vietnamese independence. Postwar France insisted on its right to return to power in Indochina, however, and with the help of British occupation forces regained control of southern Vietnam. Negotiations between France and the Viet Minh broke down in late 1946, and the First Indochina War commenced, lasting until 1954.

After initially supporting the Viet Minh against the Japanese, the United States increasingly put its weight behind the French effort to reestablish its empire in Indochina. The ascension of Harry Truman to the presidency, and the onset of the Cold War, led to greater suspicion of the Viet Minh's communist core, and to more support for France, especially from 1949. The newly proclaimed People's Republic of China threw its support to the Viet Minh around the same time. Despite significant amounts of American aid, France's military and political position in Vietnam deteriorated. Defeated in battle at Dien Bien Phu in May 1954, France relinquished its rule in Indochina as part of the July 1954 Geneva Accords. The Accords temporarily divided Vietnam in two to allow for the regrouping of military forces. But the unification elections planned for 1956 never happened, and two Vietnamese regimes emerged, each styled as a state—the Democratic Republic of Vietnam in the north and the Republic of Vietnam in the south.[46]

The administration of US president Dwight Eisenhower backed the anticommunist nationalist Ngo Dinh Diem in South Vietnam, pouring money into his nation-building efforts. Hanoi's leadership initially focused on its own nation-building efforts in the north, too, but from the late 1950s increasingly turned to bringing about unification through support to southern revolutionaries. Hanoi prompted the formation of the southern National Liberation Front (NLF), often referred to as the Viet Cong, in December 1960 and the insurgency against the Diem regime intensified.[47] Increased support from the new administration of John F. Kennedy bolstered Diem for a time, but domestic opposition and loss of American faith eventually led to Diem's overthrow. A string of shaky successor governments in Saigon saw Kennedy's successor, Lyndon Johnson, continue to increase aid to South Vietnam, culminating in 1965 with the decision to fight the war with American military might directly.

The colonial origins of the Middle East conflicts are similarly complex. The region known as the Middle East (or the Levant or West Asia) was partitioned into mandates after World War I and divided between the British and French Empires. France secured control of Syria and Lebanon, while Britain took Palestine, Transjordan, and Mesopotamia (Iraq). Native opposition to British and French rule led to serious uprisings in all these places, which were brutally crushed. Iraq remained a client state of Great Britain even after it was admitted to the League of Nations in 1932, as did Egypt, which joined in 1937. Egypt had been colonized by British forces since the late nineteenth century when British and Indian troops were sent to Egypt and Sudan to put down a revolt that threatened the empire's commercial and strategic interests. During World War II, the French government recognized the independence of Syria and Lebanon, and Britain progressively transferred power to the Emir of Transjordan until Jordan was recognized as an independent state in 1946.

In Palestine, the political situation was more complex due to British support for the establishment of a Jewish national home, which was opposed by Palestine's indigenous community, the majority of whom comprised Arabic-speaking Muslims and Christians of various denominations and sects. The Jewish community in 1917 formed less than 10 percent of the population, but the League of Nations supported their emigration from Europe to Palestine, which was to alter the demographic balance of the country considerably. Palestine's Arab community feared they would lose the economic and political privileges they had enjoyed as Ottoman citizens and opposed British rule and Jewish immigration, often violently. Between 1936 and 1939, a major Arab uprising in Palestine was crushed by British troops and the leaders of the Arab community's political parties were either killed or sent into exile. In 1947, following a revolt by Palestine's Jewish community, which now formed one-third of the population of the country, Britain announced that it would leave Palestine. The UN adopted General Assembly resolution 181 (II) that envisaged a transfer of power from the British authorities to a commission that would supervise the establishment of Arab and Jewish states in Palestine with a special international regime established for the City of Jerusalem, but the plan was never enforced as originally envisaged due to the outbreak of the First Arab-Israeli War of 1948. During the war, two-thirds of Palestine's Arab population were evicted or fled from their homes, and the armies of Egypt, Transjordan, and Iraq occupied sections of the country that had been allotted to the Arab state in resolution 181 (II), except for the City of Jerusalem that was divided between Jewish forces and the Jordanian Arab Legion.

The First Arab-Israeli War concluded with several armistice agreements between Israel and the Arab states, signed between February and July of 1949. The demarcation line (the "Green Line" or pre-1967 borders) established by the armistice agreements allowed for the cessation of major hostilities but also set the scene for seven years of low-intensity conflict as Arabs, principally Palestinian refugees with economic, social, and emotional motivations to return to the lands they had been expelled or fled from in 1948, sought to cross the new lines. Infiltration across the new boundaries from the Arab states (especially Jordan and, from 1954, Egypt) into Israeli territory and Israel's responses—particularly its reprisal operations—were the major sources of friction in the years from the armistice agreements to the Second Arab-Israeli War (or Suez Crisis) of 1956.

In chapter 2, Brian Cuddy traces both the evolution of Israel's reprisal policy in the years 1949–1956 and the concurrent emergence of a key Israeli justification for its reprisal operations: the idea that a string of small-scale provocations justifies a single, more significant strike in return. The United States government not only condemned Israeli reprisals but also rejected this argument, now often referred to as the "accumulation of events" doctrine, when it was advanced by Israel in the 1950s. A decade later, however, Washington's attitude shifted. After some internal debate, the administration maintained its formal opposition to reprisals, but State Department lawyers nonetheless reproduced elements of Israel's "accumulation of events" doctrine in the official US justification for bombing North Vietnam. Government lawyers integrated the argument more fully into a justification based on self-defense and, later, made clear that the doctrine allowed for anticipatory self-defense rather than retaliatory punishment. Like Israel, then, albeit by a somewhat different legal route, the United States challenged the conventional understanding of an "armed attack" in international law, borrowing (although not acknowledging) for Southeast Asia what it had once rejected in the Middle East.

In chapter 3, Madelaine Chiam and Brian Cuddy turn from the internal US government debates over the legal justification for bombing North Vietnam to the public reception of, and reaction to, the justifications offered by the United States. In March 1965, the State Department issued a memorandum laying out the legal case for its actions against North Vietnam, sparking debate within the American legal profession over the lawfulness of Washington's war in Southeast Asia. The participants in the debate, first generalist lawyers then specialist international lawyers, mobilized their legal expertise and the American ideological commitment to the rule of law to argue both for and against the legality of US actions. This elite-

level debate over law received less attention from 1967 as a larger, more activist antiwar movement—with its own, more popular, understanding of international law—came to dominate the American conversation regarding the war. But the debate nonetheless gained enough public and political traction to have a significant impact on the way the US government and American legal profession subsequently engaged with questions of law and war. The participants took different lessons from the debate and moved along different pathways from 1967—some toward more solidarity with activist and anticolonial interpretations of international law, others toward improving the establishment's facility with incorporating law into national security policymaking—but the debate remains an important moment in the development of American international law.

The year 1967 was a critical time in America's Vietnam War. It saw renewed commitment to General Westmoreland's pacification strategy—what he called "the other war"—but also represented the height of the big unit war, which involved search and destroy operations in rough terrain along the Demilitarized Zone and in the jungles of the highlands. According to American statistics, in 1967 alone, US troops killed 25,564 Vietnamese communist guerrilla fighters. American scorch earthed tactics also produced huge refugee flows, with the number of internally displaced Vietnamese reaching one million by the end of 1967. American military strategy also soaked up precious American combat manpower by exacting a heavy price in American lives. During the first half of 1967, American casualties reached an average of 816 killed in action per month, compared with a monthly average of 477 in 1966.[48] Opposition to America's war increased at home and abroad, which together with the war's drain on American resources made 1967 a key inflection point in America's global position.[49]

That same year, 1967, was also a key turning point in the Middle East, with the Six-Day War, also known as the June 1967 War, marking a number of new features in regional politics: the beginning of Israel's occupation of East Jerusalem, the West Bank, the Gaza Strip, the Golan Heights, and the Sinai Peninsula; a revived Palestinian national movement called the Palestine Liberation Organization (PLO), which sought to liberate all parts of the country by commando action; and Washington's more direct diplomatic, military, and legal support for Israel.

In chapter 4, John Quigley provides an assessment of the legality of military action by Egypt and Syria in October 1973. Reversing its usual argument for *expanding* the temporal frame of reference upon which to judge the use of force, in October 1973 Israel argued the narrow point that Egypt and Syria were aggressors because they initiated hostilities. Egypt

and Syria did indeed strike first on October 6, but in attacking into their own territory in the Sinai Peninsula and the Golan Heights they were taking a course of action that had been legally available to them since the occupation of those territories by Israel in 1967 and in the face of UN Security Council inaction. As with its war in Vietnam, the United States was able to use its position as a veto-wielding member of the Security Council to steer discussion away from questions of legality from 1967 through 1973. But this support for Israel in the face of international sentiment that favored the territorial rights of the Arab states only added to the increasingly unfavorable international political context that faced the United States as a result of its war in Southeast Asia and the changed composition of the United Nations. Even though Washington withdrew combat troops from South Vietnam six months prior to the October 1973 war, it continued to be challenged over its wartime practices, most notably at a series of diplomatic conferences that renegotiated the laws of war between 1974 and 1977.

In chapter 5, Amanda Alexander shifts the frame of legal analysis from the use of force to the conduct of hostilities. The 1977 Additional Protocols to the 1949 Geneva Conventions established the principle of distinction between civilians and combatants and the protection of civilians as perhaps the central precepts of international humanitarian law. But the easy acceptance of those precepts today masks how their particular features emerged as flawed compromises from the 1974–1977 negotiations. The United States and the Vietnamese communists (both the government of North Vietnam and the National Liberation Front in South Vietnam) took different legal and spatial understandings of armed conflict into the Second Indochina War. Those differences between Western conventional war and revolutionary war played out both on the battlefields of Vietnam and around the conference tables of Geneva. Diplomatically outnumbered in Geneva, the United States and its Western allies were forced to accept the proposition that wars of national liberation—wars fought to free a country from imperial control—were legitimate international conflicts, and that guerrilla fighters could be legitimate combatants. The guerrilla fighter question put the principle of distinction front and center at the conference, with long and complex debates eventually leading to a compromise: combatants only needed to distinguish themselves from the civilian population during a military engagement and the preceding deployment. Thus the principle of distinction was enshrined in law only by accepting the lack of any absolute difference between combatant and civilian.

In chapter 6, Ihab Shalbak and Jessica Whyte continue to examine

the question of the relation between irregular fighters and the civilian population, but from a Palestinian perspective. As one of the few national liberation movements that had not achieved statehood by the time the Additional Protocols were finalized, the stakes of the debate were crucial for the Palestinians, touching as they did on the existential question of who constituted a people. In the years between the 1967 War and the Diplomatic Conference, armed struggle played a central role in the self-constitution of a Palestinian identity. The essential unity of civilian and combatant—fighter and farmer—was the foundation upon which the Palestinian national movement reconstituted the Palestinian people, with a right to self-determination and a right to return to their land. The cause of combatant status for irregular fighters, then, was central to the Palestinian participation in the negotiations for the Additional Protocols. The Palestinian delegation stressed that giving status to irregular fighters was actually a means of protecting civilians, given the harm inflicted on civilians by counterinsurgency campaigns and pacification. Winning recognition for guerrilla fighters and protections for civilians, however, came at the cost of operating within the strictures of international law—of substituting state-building for nation-building.

What did not change as a result of concluding the Additional Protocols was Israel's continued treatment of the civilian population of Palestine with suspicion, irrespective of its newly defined and protected status within international law. But diplomatic and political relations between Israel, the Arab states, and the PLO did undergo some significant changes from the late 1970s. In 1982, Israel completed its withdrawal from the Sinai Peninsula after concluding a peace treaty with Egypt, although the PLO was less successful in its attempt to liberate Palestine by armed struggle, and its leadership was exiled to Tunisia during Israel's 1982 siege of Beirut. From Tunis, the PLO embarked on discussions with peace activists close to Israel's Labor Party, and in 1993, following the formation of a government led by Labor after the 1992 general election, the PLO recognized the State of Israel, and in exchange Israel allowed the PLO's leadership to return from exile and govern the West Bank and the Gaza Strip.

In chapter 7, Victor Kattan returns the focus to the United States, revisiting critiques of the laws of war among lawyers serving in the US government following the fall of Saigon in 1975 that viewed the emergence of a Third World bloc in the UN as a problem. A marriage of convenience was also taking place between the United States and Israel, whose interests became increasingly entwined in the 1970s as they saw themselves as liberal democracies fighting insurgents that hid amidst civilian popula-

tions only to invoke the law of war to their advantage. Disconcerted by the "Third Worldism" of the Carter administration, the interests of neoconservatives with close links to members of the Israeli government and Vietnam War veterans became aligned after the drafting of the Additional Protocols to the 1949 Geneva Conventions. Bitterness over the loss of the Vietnam War, the success of national liberation struggles in influencing the drafting of Additional Protocol I, and a spate of high-profile terrorist attacks against US citizens between 1983 and 1985, persuaded Ronald Reagan to refuse to send the treaty to the Senate for advice and consent for ratification. For the Reagan administration, certain provisions of API were considered too constraining on US power in the global confrontation with the Soviet Union and too accommodating to the interests of the national liberation movements that were supported by the Soviet Union in undermining US interests in the Third World. To win the Cold War, the United States wanted to go on the offensive and in order to accomplish this objective international law needed to be interpreted flexibly.

In chapter 8, Craig Jones looks at the mechanics of how this flexible interpretation of the laws of war came about in practice. As a result of the Vietnam War, and in an attempt to overcome the negativity toward the laws of war felt by many US commanders who had fought in Vietnam, the United States invented and developed a new military-legal discipline called "operational law." A mix of domestic and international law, operational law was designed to give military commanders the tools they needed for "mission success." US military lawyers first consciously used the approach in Panama (1989) and the First Gulf War (1990–91), and it was then picked up and developed by the Israeli military during the Second Intifada beginning in September 2000. Applying the idea of operational law has allowed the United States and Israeli militaries to domesticate international law, which combined with the creative interpretive legal work of military lawyers has seen the expansion of the scope and space of a permissible target and other controversial policies that push at the boundaries of international law.

In chapter 9, Tor Krever looks not at how international law has been used to advance American and Israeli policies and practices in Vietnam and Palestine but at how it has been used to contest and condemn those policies and practices. In both the Vietnamese and Palestinian struggles, law has been used as a tool of resistance. A prominent form of such resistance has been peoples' tribunals—bodies set up by private citizens but modeled on legal courts for the purpose of judging and condemning state behavior with reference to law. The British philosopher Bertrand Russell was the inspiration behind two sessions of the International War Crimes Tribunal

that heard testimony and issued verdicts against US actions in Vietnam in 1967. Subsequent "Russell Tribunals" have periodically been conducted since, including the Russell Tribunal on Palestine, which held six sessions between 2010 and 2014. All peoples' tribunals navigate a tension between legal form and political purpose, but the way they do so has changed over time. The Vietnam War tribunal attempted to mobilize international law tactically in service to a broader practice of resistance against imperialism. Four decades later, the Palestine tribunal had a greater tendency to invoke international law, and compliance with the law, not just tactically but as an end in itself. Just as legalism has become more prominent in American and Israeli military practices since the Vietnam War, then, so too has it become more prominent in opposition to those practices. With its potential to obscure larger political goals, this juridification of resistance has not come without cost.

In chapter 10, we close the volume with a chapter on how the wars in Vietnam and the Middle East shaped the rationalization for various uses of armed force by the United States and Israel between the Cold War and the "War on Terror." We suggest that America's culture wars and the impact of English-language media, cinema, and other forms of popular culture have had an oversized impact on the language of war. This is supported by the quantity of literature devoted to these two conflicts in specialized international law journals as well as official government publications. We trace the roots of the special relationship between the United States and Israel to their common enemies, and the two wars fought against international terrorism, declared by the Reagan administration after the 1983 Beirut bombings, and then following 9/11 by the Bush administration. Resistance to these rationalizations for the permissive use of force by the American and Israeli governments, together with criticism from the scholarly community, led to the establishment of smaller groups of like-minded ideologically committed lawyers associated with Tel Aviv and Washington who embarked on a process of "reform." This reform process involved persuading the governments of powerful states in North America, Europe, and Australasia to revise the prohibition on the use of force in Article 2(4) of the UN Charter to enable military action against novel types of threats, especially those emanating from ungoverned spaces. The permissive interpretations of international law held by these like-minded lawyers were shaped by their common threat perceptions, which in turn had been largely shaped by the conflicts in Vietnam and the Middle East. A consequence of these rationalizations has been the legitimization of endless wars and the novel technologies that sustain them. Even if these lawyers

have not been as successful in advancing their new interpretations of the law beyond the Anglosphere, scholars should nevertheless remain vigilant about the sources and origins of these arguments because they risk further estranging the international community, by which we mean *all* members of the United Nations and not just "the West" or a "concert of democracies," from the UN Charter's war-prevention rationale.

The Vietnam and Middle East conflicts were fundamental to the development of our current international legal order. They shaped both prominent public lawmaking moments, especially the Diplomatic Conference leading to the Additional Protocols in 1977, and also the slower behind-the-scenes accretion of interpretation and practice, the significance of which was often difficult to discern at the time and is only readily apparent in historical perspective. Bringing such a perspective to the study of the Vietnam and Middle East conflicts, and studying these two regional conflicts in tandem, allows this volume to provide the beginnings of a framework for better appreciating the development of international law and war since 1945. The changes wrought to the international legal order and to the character of war during, and as a result of, the Vietnam and Middle East conflicts were important and enduring.

NOTES

1. Oona A. Hathaway and Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (New York: Simon and Schuster, 2017), xix.

2. Hathaway and Shapiro, *The Internationalists*, 321, 329. "Sticky" conquests are those that have not been reversed by later events. Historians who are sympathetic to Hathaway and Shapiro's argument still question the suddenness of the shift they describe, and they suggest that ideas about the outlawry of war have a longer and more complex history than Hathaway and Shapiro acknowledge. Isabel Hull, for example, questions Hathaway and Shapiro's portrayal of the Paris Peace Pact as "almost magical in its transformative capacities," preferring instead to see a "long and uneven history of legal change" going back to the seventeenth century. Isabel V. Hull, "Anything Can Be Rescinded," review of *The Internationalists: How a Radical Plan to Outlaw War Remade the World*, by Oona Hathaway and Scott Shapiro, *London Review of Books* 40, no. 8 (April 26, 2018); see also Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford: Clarendon Press, 1996). These ideas have a more diverse history, too, including not just Hathaway and Shapiro's four "internationalists"—all men, all European or American—but extending the cast of characters much wider to socialists, feminists, conservatives, and other groups who articulated an internationalist vision.

3. Hathaway and Shapiro, *The Internationalists*, 353, 355, 368, 365.

4. Hathaway and Shapiro also gloss over the acquisition of territory in 1948 by Israel in areas allotted to the Arab State in the UN Partition Plan following the

adoption of General Assembly Resolution 181 (II) on November 29, 1947, which purported to establish two states in Palestine.

5. Hathaway and Shapiro, *The Internationalists*, 328, 329.

6. Hathaway and Shapiro, *The Internationalists*, 355–57.

7. Hathaway and Shapiro, *The Internationalists*, 357.

8. Mary Beth Norton, "History on the Diagonal," *American Historical Review* 124, no. 1 (February 2019): 1–19.

9. Cait Storr, *International Status in the Shadow of Empire: Nauru and the Histories of International Law* (Cambridge: Cambridge University Press, 2020); Lydia Walker, "Decolonization in the 1960s: On Legitimate and Illegitimate Nationalist Claims-Making," *Past and Present* 242 (February 2019): 227–64. Storr begins her work on Nauru from the premise "that the international order one perceives is radically determined by the place in which one stands" (8) and rejects "any presumption of Nauru as anomaly" (10). Walker's comparison of Naga and Namibian nationalist claims-making excavates "a layer of international relations, usually unseen" that "worked within the UN's fissures" (228).

10. See, for example, Lyndon B. Johnson, Address at Johns Hopkins University: "Peace Without Conquest," April 7, 1965, reprinted in *The American Presidency Project* by Gerhard Peters and John T. Woolley, https://www.presidency.ucsb.edu/node/241950; Department of Defense, "Why Vietnam?" documentary film, 1965, https://archive.org/details/gov.archives.arc.2569861; Department of State, "A Threat to the Peace: North Viet-Nam's Effort to Conquer South Viet-Nam," December 1961; Department of State, "Aggression from the North: The Record of North Viet-Nam's Campaign to Conquer South Viet-Nam," February 1965; Roger H. Hull and John C. Novogrod, *Law and Vietnam* (Dobbs Ferry, NY: Oceana Publications, 1968); John Norton Moore, *Law and the Indo-China War* (Princeton: Princeton University Press, 1972).

11. See, for example, Consultative Council of the Lawyers Committee on American Policy Towards Vietnam, *Vietnam and International Law: The Illegality of United States Military Involvement*, rapporteur John H. E. Fried (Flanders, NJ: O'Hare Books, 1967); Clergy and Laymen Concerned About Vietnam, *In the Name of America: The conduct of the war in Vietnam by the armed forces of the United States as shown by public reports compared with the Laws of War binding on the United States Government and on its citizens*, director of research Seymour Melman (Annandale, VA: The Turnpike Press, 1968); John Duffett, ed., *Against the Crime of Silence: Proceedings of the Russell International War Crimes Tribunal* (Flanders, NJ: O'Hare Books, 1968); Richard A. Falk, Gabriel Kolko, and Robert Jay Lifton, eds., *Crimes of War: A legal, political-documentary, and psychological inquiry into the responsibility of leaders, citizens, and soldiers for criminal acts in wars* (New York: Vintage Books, 1971); Richard A. Falk, ed., *The Vietnam War and International Law*, 4 vols. (Princeton: Princeton University Press, 1968–1976). The latter series included a variety of viewpoints on the conflict but overall tended to favor antiwar perspectives.

12. Guenter Lewy, *America in Vietnam* (New York: Oxford University Press, 1978), 434.

13. There are still scholars who argue that the United States could have won the Vietnam War had Congress, responding to public opinion, not cut funds for the war. For an overview of this literature, see Gary R. Hess, *Vietnam: Explaining America's Lost War* (Malden, MA: Blackwell, 2009), 179–206.

14. See, for example, Colloquium of Arab Jurists, *The Palestine Question: Seminar of Arab Jurists on Palestine, Algiers, 22–27 July, 1967* (Beirut: Institute for Palestine Studies, 1968); Nathan Feinberg, *The Arab-Israel Conflict in International Law: A Critical Analysis of the Colloquium of Arab Jurists in Algiers* (Jerusalem: The Magnes Press, 1970); Faris Yahya, *The Palestine Question and International Law* (Beirut: PLO Research Center, 1970); Henry Cattan, *Palestine and International Law: The Legal Aspects of the Arab-Israeli Conflict* (London: Longmans, 1973); Nathan Feinberg, *Studies in International Law, with Special Reference to the Arab-Israeli Conflict* (Jerusalem: The Magnes Press, 1979); W. Thomas Mallison and Sally V. Mallison, *An International Law Analysis of Major United Nations Resolutions Concerning the Palestine Question* (New York: United Nations, 1979); Julius Stone, *Israel and Palestine: Assault on the Law of Nations* (Baltimore: Johns Hopkins University Press, 1981).

15. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, 136 at 184, para 120.

16. On the settlements, see, for example, the writings of Eugene Rostow (also a prominent figure in the Vietnam War), which continue to be cited in contemporary polemics: Eugene Rostow, "'Palestinian self-determination': Possible Futures for the Unallocated Territories of the Palestine Mandate," *Yale Studies in World Public Order* 5 (1978–1979): 147–72; Douglas Feith and Eugene Rostow, *Israel's Legitimacy in Law and History: Proceedings of the Conference on International Law and the Arab-Israeli Conflict* (New York: Center for Near East Policy Research, 1993). Another figure who wrote prolifically on the Vietnam War was John Norton Moore. His four-volume tome on the Arab-Israeli conflict remains essential reading: John Norton Moore, ed., *The Arab-Israeli Conflict*, 4 vols. (Princeton: Princeton University Press, 1973). See also, M. Cherif Bassiouni and Shlomo Ben Ami, eds., *A Guide to Documents on the Arab-Palestinian/Israeli Conflict, 1897–2008* (Leiden: Martinus Nijhoff, 2009).

17. See Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/HRC/12/48, September 25, 2009. For reactions see the documents listed on the website of Israel's Ministry of Foreign Affairs: https://www.gov.il/en/Departments/General/goldstone-fact-finding-report-a-challenge-to-democracies-fighting-terror. See also Adam Horowitz, Lizzy Ratner, and Philip Weiss, eds., *The Goldstone Report: The Legacy of the Landmark Investigation of the Gaza Conflict* (New York: Nation Books, 2011).

18. Richard A. Falk, review of *Fire in the Lake: The Vietnamese and the Americans in Vietnam* by Frances Fitzgerald, *Texas Law Review* 51, no. 3 (March 1973): 618.

19. Samuel Moyn, "From Antiwar Politics to Antitorture Politics," in *Law and War*, ed. Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey (Stanford: Stanford University Press, 2014), 155.

20. Noura Erakat, *Justice for Some: Law and the Question of Palestine* (Stanford: Stanford University Press, 2019), 3, 2.

21. Geoffrey Best, *Humanity in Warfare* (New York: Columbia University Press, 1980), 371n44, 371n46.

22. For another recent challenge to this narrative, see Matthew Craven, Sundhya Pahuja, and Gerry Simpson, "Reading and Unreading a Historiography of Hiatus," in *International Law and the Cold War*, ed. Matthew Craven, Sundhya Pahuja, and Gerry Simpson (Cambridge: Cambridge University Press, 2020).

23. Barbara J. Keys, *Reclaiming American Virtue: The Human Rights Revolution of the 1970s* (Cambridge, MA: Harvard University Press, 2014), 3. See also *Samuel Moyn, The Last Utopia: Human Rights in History* (Cambridge, MA: The Belknap Press of Harvard University Press, 2010), esp. chap. 5, "International Law and Human Rights."

24. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977). See also Jessica Whyte, "The 'Dangerous Concept of the Just War': Decolonization, Wars of National Liberation, and the Additional Protocols to the Geneva Conventions," *Humanity* 9, no. 3 (Winter 2018): 313–41.

25. Anthea Roberts, *Is International Law International?* (New York: Oxford University Press, 2017), 50, 104–5.

26. Naz K. Modirzadeh, "Cut These Words: Passion and International Law of War Scholarship," *Harvard International Law Journal* 61, no. 1 (Winter 2020): 1.

27. Modirzadeh, "Cut These Words," 5–6.

28. Cited in Rukmini Callimachi, Helene Cooper, Eric Schmitt, Alan Blinder, and Thomas Gibbons-Neff, "'An Endless War': Why 4 U.S. Soldiers Died in a Remote African Desert," *New York Times*, February 20, 2018, https://www.nytimes.com/interactive/2018/02/17/world/africa/niger-ambush-american-soldiers.html

29. Samuel Moyn, "American Peace in an Age of Endless War," *Raritan* 37, no. 3 (Winter 2018): 153.

30. Lien-Hang T. Nguyen, "The Vietnam Decade: The Global Shock of the War," in *The Shock of the Global: The 1970s in Perspective*, ed. Niall Ferguson, Charles S. Maier, Erez Manela, and Daniel J. Sargent (Cambridge, MA: Belknap Press of Harvard University Press, 2010), 168.

31. Nguyen, "The Vietnam Decade," 169.

32. Evyn Lê Espiritu, "Cold War Entanglements, Third World Solidarities: Vietnam and Palestine, 1967–1975," *Canadian Review of American Studies* 48, no. 3 (2018): 352–86.

33. Cited in Paul Chamberlin, *The Global Offensive: The United States, the Palestine Liberation Organization, and the Making of the Post-Cold War Order* (New York: Oxford University Press, 2012), 1.

34. Chamberlin, *The Global Offensive*, 26. Habash was a key figure in the establishment of both the Arab Nationalist Movement in 1953 and the PFLP in 1967.

35. Yezid Sayigh, *Armed Struggle and the Search for State: The Palestinian National Movement, 1949–1993* (Oxford: Oxford University Press, 1999), 200; Chamberlin, *The Global Offensive*, 26.

36. Sayigh, *Armed Struggle and the Search for State*, 196–202; Chamberlin, *The Global Offensive*, 27.

37. Agenda item 108, Question of Palestine, United Nations General Assembly, 29th Session, Official Records, UN Doc. A/PV.2282 and Corr. 1, November 13, 1974, para. 41.

38. Jeremy M. Sharp, "U.S. Foreign Aid to Israel," Congressional Research Service Report RL33222, February 18, 2022.

39. Marc Leepson, "Moshe Dayan Sounds the Alarm in Vietnam," https://www.historynet.com/moshe-dayan-sounds-the-alarm-in-vietnam-3.htm. While Dayan came away impressed with American firepower and personnel, he expressed con-

cern at both the search-and-destroy and hearts-and-minds strategies of US forces, writing that "the Americans are winning everything—except the war."

40. Jack Raymond, "Vietnam Gives U.S. 'War Laboratory,'" *New York Times*, May 3, 1965, 12. Explaining the Pentagon's aversion to laboratory terminology, Raymond added that "officials hesitate to discuss Vietnam as a military proving ground because they fear it might be taken out of context—the Spanish Civil War 30 years ago was regarded by military experts as the Nazis' laboratory for World War II."

41. Stuart Schrader, *Badges Without Borders: How Global Counterinsurgency Transformed American Policing* (Oakland: University of California Press, 2019), 11, 2.

42. Rhys Machold, "Reconsidering the Laboratory Thesis: Palestine/Israel and the Geopolitics of Representation," *Political Geography* 65 (2018): 89, 88, 90.

43. Laleh Khalili, "The Location of Palestine in Global Counterinsurgencies," *International Journal of Middle East Studies* 42 (2010): 413–14.

44. Khalili does note the important historical continuity in the laws and regulations operating in Palestinian lands before and after 1948, which helps to account for "the striking isomorphism of British techniques of suppression during the Arab Revolt and the Israeli methods of population control since 1948 and especially in the last two decades." But she treats this as something of an exceptional feature of the Palestinian context, stating that "it is one of the very few loci—if not the only site—of asymmetric warfare where one counterinsurgent force has explicitly inherited and adapted not only the practices and doctrines of its preceding counterinsurgent army but also its laws and regulations." Khalili, "The Location of Palestine in Global Counterinsurgencies," 427. Different conclusions can be reached if *international* law is taken into account.

45. Eyal Weizman, *The Least of All Possible Evils: Humanitarian Violence from Arendt to Gaza* (London: Verso, 2011), 96. See also Machold, "Reconsidering the Laboratory Thesis," 90.

46. Whether or not North and South Vietnam were actually states was a question that aroused considerable legal controversy. Neither regime was admitted to the United Nations as a member state during the war—only in 1977 was Vietnam admitted as a single, unitary state. The United States argued, however, that South Vietnam had achieved de facto if not de jure statehood, and while it did not bestow diplomatic recognition on Hanoi it implicitly acknowledged North Vietnam's independence, too. Hanoi did not recognize the legitimacy of the Saigon regime's rule in the south.

47. For a discussion of the history and politics of naming the NLF, see Brett Reilly, "The True Origin of the Term 'Viet Cong,'" *The Diplomat*, January 31, 2018, https://thediplomat.com/2018/01/the-true-origin-of-the-term-viet-cong/

48. Lewy, *America in Vietnam*, 65, 73.

49. See, for example, Mark Atwood Lawrence, "America's Case of 'Tonkin Gulfitis,'" *New York Times*, March 7, 2017, https://www.nytimes.com/2017/03/07/opinion/americas-case-of-tonkin-gulfitis.html