



A GUIDE TO REFUTING JIHADISM

Critiquing radical Islamist claims
to theological authenticity

By Rashad Ali and Hannah Stuart

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بسم الله الرحمن الرحيم

من أشد ما يحتاج إلى رؤية فقهية رشيدة موضوع "الجهاد في الإسلام" كيف نفهمه؟ وكيف نمارسه؟

والسر في أهمية هذا الموضوع أن من يتصدى للحدِيث فيه أو الكتابة عنه يحتاج إلى زاد كبير من التراث الإسلامي الممتدة جذوره في الماضي والحاضر، كما يحتاج إلى إدراك ما يسمى بمقاصد الشرعية التي تعظم شأن النفس والعرض والأموال وتراعي الحال والمآل وتأخذ من الماضي ما يصلح الحاضر ويجهز للمستقبل، وهذا البحث الذي نحن بصدد التقدم له جهد طامح لفهم الموضوع وإدراكه إدراكًا يتناسب مع الفقه الإسلامي الرشيد كما نفهمه نحن أهل السنّة وبالأخص فيما يخص قضية تقسيم العالم وقضية دار الإسلام ودار الكفر أو الحرب أو ما شابه ذلك.

وقد قضى الأخ النشيط رشاد علي -وهو واحد ممن أسهموا في إخراج هذا البحث - في الرابطة العالمية للخريجي الأزهر الشريف برنامجًا كاملاً في دراسة عدة قضايا من بينها موضوع "الجهاد في الإسلام" ووفروعه التي من بينها قضية تقسيم العالم، وكان من أهدافنا أن نعرف كيف نفهم الجهاد، وتدريب على مناقشة الأفكار المنحرفة والمتطرفة حيال هذا الموضوع، ولذا فنحن نرجو أن يكون هذا العمل جهدًا بحثيًا علميًا، ونواة للنفع العام لترسيخ الوسطية الأزهرية في المجتمع الإنجليزي وغيره، ولترشيد أفكار جماعات متطرفة فهمت موضوع الجهاد الإسلامي فهمًا خاطئًا، فأضرت نفسها ودينها بل والإنسانية كلها، كما نرجو أن يخرج الأمر من مجرد كونه بحثًا إلى أن يكون برامج تدريب وورش عمل لكل من يتصدى للدعوة الإسلامية ويناقش الأفكار المتطرفة في كل مكان.

وكتبه

خالد عبد العزيز عمران

مشرف التدريب بالرابطة العالمية لخريجي الأزهر الشريف.

Foreword

With the Name of God, Most Beneficent, Most Merciful

One of the issues that most needs an enlightened juristic view is that of ‘*Jihad* in Islam’: how do we understand and experience it?

This issue is important because anyone addressing it needs detailed familiarity with the Islamic heritage, extensively-rooted in the past and present. Such a person also needs to comprehend what is called ‘*Maqasid al-Shari’ah*’ (Objectives of Law), that emphasise life, dignity and wealth, and take into account present circumstances and future consequences. These also draw on the past to benefit the present and prepare for the future.

The present study is an ambitious effort to understand the issue according to enlightened Sunni Islamic jurisprudence. It focusses on the issue of dividing the world into *Dar al-Islam* (Land of Islam), *Dar al-Kufr* (Land of Unbelief), *Dar al-Harb* (Land of War), etc.

Rashad Ali, a co-author of the report, has completed a programme of study at the Global Network for Al-Azhar Graduates. One of the topics was ‘*Jihad* in Islam’: the sub-topics included the issue of dividing the world as mentioned above. Our aims in this programme included understanding *Jihad* and training in challenging deviant and extremist views about it.

Thus, we hope that this scholarly research work will be a seed of general benefit in rooting Azharite moderation in British society and elsewhere; in correcting the thinking of extremist groups that have misunderstood *Jihad* in Islam, thus harming themselves, their religion and humanity in general.

We also hope that this research will develop into training programmes and workshops for any who wish to present the Islamic message and to challenge extremist views everywhere.

Sheikh Khalid Abdul Aziz Omran
Head of Training, Global Network for Al-Azhar Graduates

January 2014

Foreword

With the Name of God, All-Merciful, Most Merciful

One of the least-understood aspects of contemporary Islamist terrorism worldwide is the fact that it claims to be based on a sophisticated tradition of ancient and medieval Islamic jurisprudence that discussed the rules and ethics of war, borrowing from and influencing other civilisations that it encountered throughout history. In reality, however, modern terrorism is a blatant subversion of the ethical imperative and spirit that has always animated Islam.

In particular, the notions of *Dar al-Islam* ('lands of Islam'), *Dar al-Kufr* ('lands of disbelief') and *Dar al-Harb* ('lands of war'), with the latter two terms often used interchangeably, dominated pre-modern discussions about the legality of war (*jihad* or *qital*) and where it could be waged. Islamist extremism often ignores the recent, global development of these notions, e.g. the Geneva Conventions and other international agreements regarding warfare.

As a young man, I briefly participated in an armed *jihad* against communist forces in Afghanistan, 1990-1. The British salafi group, of which I was a leader, sent dozens of fighters from the United Kingdom to that war as well to the Bosnian *jihad* in the 1990s. We intuitively understood 'lands of war', in a common-sense way, to refer to a real war-zone in modern times.

Over the past two decades since the Bosnian war, al-Qa'ida ideologues and terrorists have widened the idea of 'lands of war' to include the home countries of armies stationed or fighting in 'lands of Islam'. From 9/11 and the 7/7 London bombings to this year's murder of a British soldier in London and, most recently, al-Shabab's attack on a shopping mall in Kenya: all these atrocities are justified in the minds of their perpetrators by superficial and twisted 'lands of war' thinking.

Given this recent history and context, Rashad Ali and Hannah Stuart's brilliant scholarly discussion, critiquing contemporary extremist misappropriation of ancient and medieval discourse, is a welcome and much-needed contribution to the worldwide debate. The arguments made in this treatise deserve serious and careful attention.

Sheikh Dr. Usama Hasan

October 2013

Endorsements

One of the most pernicious aspects of the various groups that are loosely known as “Islamist” is precisely the fact that they appear to confidently claim Islamic authority for the positions they hold and the actions they take. This is disastrous for Islam in the eyes of non-Muslims since it gives the impression that Islam really does authorise the aberrant and frequently abhorrent activities undertaken by these people. And it is equally disastrous for Muslims, because so many are persuaded by this to condone what is done in their name and in some unfortunate cases to participate in it.

How useful and important it is, therefore, in the present situation, to have the book, *A Guide to Refuting Jihadism*, in which the views of the ‘Islamists’ are systematically shown to be perversions and distortions of the traditional positions of Islam. Under a series of headings, among which are the definition of *Dar al-Islam*, Peace Treaties, the Caliphate, and the nature of *Jihad*, the authors examine the positions of various well-known spokesmen for the ‘Islamist’ movements and then systematically show them, by quoting universally acknowledged, authentic Islamic sources, to be at best extremely heterodox interpretations, and all too frequently outright travesties, of the orthodox positions of Islam regarding these matters.

It is to be hoped that this book will receive the wide distribution and exposure it deserves so that both Muslims and non-Muslims will be able to see through the deceptive casuistry of the ‘Islamist’ positions concerning these matters and appreciate the balance and justice underlying the true position of Islam in relation to them and its vital relevance to the situation in which we find ourselves in the world today.

Sheikh Abdalhaqq Bewley

Diwan Press & Muslim Faculty of Advanced Studies

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Often the deadliest of hates emanate from the deepest of desires. Many of us rightly identify with the victims of oppression and injustices in the *Ummah* and believe we see ourselves in them. However, we confuse empathy with that of solidarity with the Messenger of *Allah* (peace & blessings of *Allah* upon him). When we do not look away we also see that the majority of our *Ummah* are either simply bystanders many of whom are engrossed in beliefs and actions that also cry out for guidance, or people who are tired and ashamed of violence and strife and only wish to live in peace, or the small but significant number of people who

are malicious perpetrators of mayhem and cruelty in the name of *Ar-Rahman* (God Most Merciful) and the one sent as mercy to the worlds.

Hasan Al-Basri once said, 'A grain of genuine piety (*taqwa*) is better than a thousand fold weight of (*nafl*) fasting and prayer'. *Taqwa* as we must know is a mode of behaviour which is not only a responsible manner of living, but one that respects Allah. It avoids any action which goes against justice or mercy because that displeases Allah. *Taqwa* encourages a person towards true learning and humble considerations.

This book, although small in its size, is a handy, effective aid presented with the clarity of the force of sound knowledge by Rashad Ali and Hannah Stuart. I hope and pray every seeker of God's pleasure and of Truth will read this genuine book authored with superb competence and relevance, in order to expel disagreeable desires from a healing soul instead of repressing them in a disturbed one.

Sheikh Abu Muntasir

Jamiat Ihya Minhaj al-Sunnah (JIMAS)

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By delving deep into classical Islamic theology and law, this report debunks the claims of modern Jihadists to authenticity. It shows how the views often presented by such groups are based on skewed and sometimes deliberately distorted theological arguments, and definitely not the 'majority view' or a 'consensus' as they often claim. As such, this report warrants careful study by anyone who wishes to understand Jihadist, extremist discourses today.

Dilwar Hussain

New Horizons & Islamic Society of Britain

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Executive Summary

Al-Qa'ida, Hamas and Lashkar-e-Ta'iba claim that their violent actions are supported within the four traditional schools of Sunni Islamic jurisprudence, and that traditional Islam itself mandates a jihadist view of scripture. *A Guide to Refuting Jihadism* counters these theological claims by demonstrating that their arguments are not based on Islamic consensus or traditionally recognised interpretations of classical Islamic sources.

Part I examines the division of the world into *Dar al-Islam* ('lands of Islam') and *Dar al-Harb* ('lands of war'). By demonstrating that the Islamist understanding of the former is much narrower than that of classical scholars, the report counters key jihadist tenets, including the requirements to re-conquer Islamic lands; to reject peaceful relations with illegitimate states; and to re-establish an expansionist 'Islamic' state, known as the Caliphate.

Dar al-Islam

- Central to the worldview espoused by jihadist groups is the division of the world into *Dar al-Islam* and *Dar al-Harb* and the subsequent belief that their violent campaigns against the realm of *kufi* ('disbelief') are not just religiously justified but obligatory.
- *Dar al-Islam* and *Dar al-Harb*, however, are not mentioned in the primary sources of *shari'a* ('Islamic principles and law'); rather they are paralegal descriptions of the reality of medieval international relations. According to traditional scholarship, the normative values exhibited in *Dar al-Islam* are the right to practise Islamic rules and the free exhibition of the symbols of Islam.
- The Islamist assertion, therefore, that there is a religious duty to re-establish an expansionist 'Islamic' state where *shari'a* functions as state law, known as the Caliphate, is not a definitive reading of religious scripture.

Reclaiming Muslim land

- Jihadist groups maintain that lands formerly under Muslim dominion are *Dar al-Harb*, and, as such, there is a religious necessity to fight in order to recapture them. Throughout Islamic history, however, lands have frequently exchanged authority, which developing Islamic jurisprudence recognised.
- Common among the four predominant Sunni schools of law, is the belief that if people can practise the rituals of Islam, then the land remains *Dar al-Islam*. Historically, *fatawa* ('religious edicts'; sg *fatwa*) to this effect were issued in relation to the *Reconquista* of Muslim Europe as well as the fourteenth-century invasion of eastern Muslim lands by the Tatars and Muslims living in India under British colonial rule.

- Contrary to jihadist belief, such territories remain *Dar al-Islam* within classical jurisprudence, and, as such, there is no obligation either to emigrate from them or to fight to reclaim them.

Peace treaties

- A key tenet of jihadist ideology is the rejection of peace treaties with perceived enemies, which are seen as an act of religious betrayal. Al-Qa'ida, Hamas and Lashkar-e-Ta'iba all refuse to recognise Israel, for example, arguing that it is an illegitimate state because it occupies what was, and should remain, Muslim land.
- Islamic jurists, however, considered peace treaties to be a legitimate form of mutual recognition of another polity and its sovereignty. Within *Jalawa* literature there are examples of peace treaties with perceived enemies or 'illegitimate' states in response to the greater needs or benefit of Muslim communities.
- There is also a strong legal tradition of upholding a peace treaty even if the other party is at war with another Muslim state. Sunni jurisprudence, therefore, does not prevent a Muslim-majority state from entering into a peace treaty with Israel while other Muslim-majority states choose not to.

The Caliphate

- A point of unity among Islamists is the perceived religious duty to re-establish an expansionist Caliphate under a single leader who will unite Muslims globally under one interpretation of *shari'a*. For Islamists, rejection of this injunction constitutes rejection of an essential aspect of Muslim belief; and Muslims who disagree are charged with unbelief and then declared apostates from Islam – a practice known as *takfir*.
- Traditional emphasis on single leadership, however, has been interpreted as an injunction against division where unity already exists, rather than unqualified support for the forceful unification of Muslim-majority countries.
- Medieval scholars recognised the political realities of Islamic history, acknowledging that there have always been different Muslim states and empires and multiple leaders. As such, it was considered a form of extremism, among classical scholars, to exaggerate the issue of the Caliphate and declare *takfir* on those who rejected it.

Part II demonstrates that the jihadist groups' rendering of the rules of Islamic warfare – particularly who can declare *jihad* ('religiously sanctioned warfare') and when, as well as who can be targeted, whether suicide operations are religiously lawful and who should fight – diverges from both classical and contemporary sources of Islamic law.

***Jihad* may only be declared by political authorities and for legitimate reasons**

- The four primary Sunni schools of law restrict the legitimate declaration of war to legitimate political leaders. Individuals and non-state actors cannot, therefore, legitimately declare *jihad*.
- Jihadists pursue the perceived liberation and re-conquering of Islamic lands. They assert that *jihad* must be continued at all times and places, for the sake of spreading Islam to the detriment of the disbelievers; and that it is mandatory. Classical scholars' understanding of *jihad*, however, is more restrictive.
- Many classical scholars advocated *jihad* as a defensive practice or for use in circumstances when Muslims face *hiraba* ('hostility') and are attacked. Others also considered it a duty to fight *jihad* whenever Muslims are being persecuted, arguing that hostility to Muslims occurs when they are prevented from practising their faith.
- *Jihad*, therefore, includes permissible defensive measures declared by legitimate political authorities to defend an attack or stop persecution. It is not permissible to initiate hostilities or to violate international treaties; nor is the aim of *jihad* either conversion or domination.
- Scholars also explained that peaceful means to guarantee freedom of religion are favoured over warfare. In the modern context, the maxim that warfare should only be initiated in accordance with international law finds support in classical, mainstream Islamic sources.

The Islamic prohibition on targeting non-combatants

- Jihadist organisations engage in terrorist activities which indiscriminately claim non-Muslim and Muslim civilian lives. They argue reciprocity, necessity, and collectivity in order to limit or disregard the general Islamic prohibition on the killing of non-combatants.
- They employ the well-established doctrine of necessity – *al-darura tubih al-mahzurat* ('necessity makes permissible the prohibited') and advocate collective guilt on behalf of the perceived enemies of Islam to circumvent the prohibition.
- The sanctity of human life, however, unites Islamic scholars past and present, and the prohibition on the killing of women and children is one of the few areas upon which there is consensus. The jihadists' disregard for such sanctity evidences their divergence from Islamic law.

The Islamic prohibition on suicide operations

- Central to the jihadist propagation of suicide operations is the widening of the Islamic tradition of *shahada* ('bearing witness'; also 'martyrdom') – traditionally seen as soldiers who die in the battlefield at the hands of their enemy – to permit the killing not only of the intended targets but also of

the attacker(s), innovating the term *istishhad* ('the act of deliberately killing oneself with the intent of seeking martyrdom').

- Jihadists present suicide bombings as noble attacks against a more powerful enemy. Arguing necessity, they cite a disputed edict on the permissibility of attacking prisoners of war being used as a human shield in order to defend the indiscriminate nature of the attacks.
- Jihadist groups' use of suicide operations, however, does not meet the theoretical criteria laid down by the minority of jurists who permit such actions. These are: vital necessity; universal benefit; and certainty of outcome. Some scholars questioned whether they can ever be fulfilled; while other scholars stated such attacks were never permissible.
- Additionally, the use of suicide bombers dressed as civilians breaches the Islamic prohibition on perfidy in warfare.

The Islamic prohibition on treachery towards one's country of residence

- Jihadist ideologues advocate loyalty to the *umma* ('transnational Muslim community'), to the exclusion of any other communal or national loyalty. This is expressed as solidarity with countries perceived to be at the forefront of *jihad*, either by virtue of occupation (e.g. the Palestinian Territories and Kashmir) or by the presence or recent presence of Western forces (e.g. Iraq and Afghanistan). An extreme endpoint includes inciting Muslims living in Western countries to perform acts of terrorism against their fellow citizens.
- Traditionally, however, Islamic law does not permit Muslims to engage in hostile acts against the land in which they live, regardless of whether that country is Muslim-majority or not. Classical Islamic scholars recognised that, in lands where people's security was granted by law, there was a social contract or covenant between the people and the state. As such, Muslims living in non-Muslim majority countries were prohibited from violating the rights of others and breaking the law of the land – even if the resident country engaged in a war against a Muslim-majority country.

The existence of traditional legal opinion which differs from that of modern jihadists contradicts their claims to theological authenticity and, more significantly, exclusive truth. This report shows that the aims and methods of jihadist groups as well as the support they receive from some conservative Sunni and Islamist scholars is antithetical to the normative values displayed within classical Sunni jurisprudence.

Introduction

Jihadist groups offer theological reasoning in support of their political ideology and violent activities. This report refutes these theological claims, using examples from traditionally recognised interpretations of classical Islamic sources, and demonstrates that the jihadists' arguments are not based on Islamic consensus nor do they conform to the cultural heritage within the four traditional schools of Sunni Islamic jurisprudence.

The report analyses concepts critical to the worldview espoused by the global jihadist group, al-Qa'ida, as well as by groups local to the Middle East and South Asia: Hamas and Lashkar-e-Ta'iba, respectively. It also includes ideas from a variety of jihadist or Islamist groups and figures, in order to illustrate the typical arguments advanced by proponents of jihadist ideology as a whole.

The report examines the division of the world into *Dar al-Islam* ('lands of Islam') and *Dar al-Harb* ('lands of war'), and demonstrates that the Islamist understanding of the former is much narrower than that of classical scholars. As such – and using evidence from the Prophetic tradition – the report counters key jihadist tenets, including the requirement to re-conquer Islamic lands; the rejection of peaceful relations with illegitimate states; and the requirement to re-establish an expansionist 'Islamic' state, known as the Caliphate.

The report also focuses on the rules of Islamic warfare – particularly who can declare *jihad* ('religiously sanctioned warfare') and when, as well as who can be targeted, whether suicide operations are religiously lawful and who should fight. It also demonstrates where the jihadists' rendering of the rules of *jihad* diverge from both classical and contemporary sources of Islamic law. Moreover, the report seeks to show that international relations as defined by Islamic principles corresponds with international laws governing treaties and warfare.

The existence of differing views on the primary sources of Islamic law is significant in countering the legitimacy and subsequent proliferation of jihadist ideology: while it is not – and should not be – possible to convince everyone to adopt a particular theological perspective, the existence of traditional legal opinion which differs from modern jihadist views must be acknowledged.

As a result, the report directly refutes the groups' claim that there is no acceptable theological approach to these issues other than the one presented by them, and challenges the resultant idea that traditional Islam mandates a view of scripture along jihadist lines. While it is beyond the scope of this report to systematically deconstruct jihadist ideology, the incongruities between key jihadist concepts and classical Islamic jurisprudence, as well as the development of Islamic international relations, provide useful counter-arguments in the on-going and necessary debate over violent Islamism in contemporary society.

Background

Islamism

Islamism is as a political ideology which sees Islam as a complete socio-political system and, as such, advocates an expansionist ‘Islamic’ state, or Caliphate, within which state law is derived from *shari‘a* (‘Islamic principles and law’). The spectrum of Sunni Islamism ranges from entry-level Islamists (e.g. Jamaat-e-Islami) and revolutionary Islamists (e.g. Hizb ut-Tahrir),¹ to militant Islamists or jihadists (e.g. al-Qa’ida)² who are prepared to use violence in order to achieve their aims.

Al-Qa’ida, Hamas,³ and Lashkar-e-Ta’iba all belong to jihadist Islamism.⁴ Grounded in a shared belief in the division of the world into *Dar al-Islam* (‘lands of Islam’) and *Dar al-Harb* (‘lands of war’) or *Dar al-Kufr* (‘lands of disbelief’), they mandate both permanent war against the realm of *kufr* (‘disbelief’) and the re-conquest of former Islamic lands. The groups further assert the rejection of peaceful relations with what they perceive to be illegitimate states, while simultaneously calling for the reconstitution of the Caliphate for the security of Muslims worldwide.

The groups differ in terms of the methods that they employ and in the definitions which they give for the geographical scope of their goals. Hamas and Lashkar-e-Ta’iba have irredentist approaches to their enemies in the localities with which they identify (Israel/Palestine and Pakistan/Kashmir, respectively), while al-Qa’ida employs more doctrinal and global definitions for its goals. Their primary differences are, therefore, not ideological or theological, but rather based on their choice of territory and tactics.

Jihad

Given the various discussions surrounding it – whether in a legal or scriptural context – defining *jihad* is problematic. The textual meaning of *jihad* is very broad:

1. Founded in 1953, in Jerusalem, by Palestinian scholar and judge Taqi’ al-Din Nabhani, Hizb ut-Tahrir (Party of Liberation) is a revolutionary Islamist group that works to establish an expansionist super-state in Muslim-majority countries, through political and military coups.

2. Founded between 1988 and 1989, by former leader Osama bin Laden, al-Qa’ida is a global network that aspires to: unite Muslim nations, in order to establish a global caliphate under *shari‘a*; expel Western presence and influence in Muslim-majority countries; and initiate terrorist attacks and kidnappings against its perceived enemies. It is comprised of a core leadership (headed by Ayman al-Zawahiri) based in Pakistan, and a number of regional franchises (each with varying degrees of autonomy).

3. Hamas (Harakat al-Muqawama al-Islamiyya; or, the Islamic Resistance Movement) was founded in 1987, during the First Intifada (1987–1993), as an affiliate of the Egyptian Muslim Brotherhood. It seeks to establish an Islamic state in the West Bank, the Gaza Strip, and Israel.

4. Lashkar-e-Ta’iba emerged in 1993 as the military wing of the South Asian organization, Markaz al-Da’wa wa’l-Irshad (a Pakistan-based charity founded to oppose the Soviet presence in Afghanistan). It opposes India’s sovereignty over the State of Jammu and Kashmir.

in *Qur'an* and *hadith* ('reported speech of the Prophet'; pl *ahadith*) literature as well as the writings of the four medieval schools and their authorities in Islamic law,⁵ it covers all matters of religious observance. *Ahadith* pertaining to fighting or struggling against the self are often mentioned: for example, '*al-mujahid man jahada ala-nafsihi*' – 'the *mujahid* ('one who does *jihad*') is the one who struggles against his self' – is commonly cited and considered sound.

Other narrations similarly fall under this broad meaning of *jihad*. Founder of the Maliki School, Imam Malik ibn Anas (712–795), for example, narrates in *al-muwatta* from Ibn Shihab al-Zuhri from Sa'id bin Musayyab from Abu Hurayrah from the Messenger peace and blessings be upon him: 'The strong is not the one who overcomes the people by his strength, but the strong is the one who controls himself while in anger.'⁶ The Cordoba-born *hadith* scholar Yusuf ibn 'Abdallah ibn Mohammed ibn 'Abd al-Barr (978–1071) comments on the *hadith* as follows:

The Messenger peace and blessings be upon him, has ascribed to the one who can control himself a type of power/strength which is not possessed by other than them. In this there is evidence that struggle against the self (*mujahadat al-nafs*) is a lofty goal to seek; and is superior than struggling against ones enemies (*mujahadat ul-adou*) and Allah knows best.⁷

The context of this report, however, is the legal dimension of *jihad*, specifically the discussions surrounding *jihad* as warfare and subsequent rules of engagement. The report examines the legal reason and the laws of engagement for warfare as understood and contextualised primarily in medieval Islamic literature. As a result, much of the jurists' writings and rules as well as the definitions found therein, reflects this pre-modern and imperial context.

Some of the early definitions for *jihad* do not seek to define or explain it beyond the fact that it is warfare. Shafi jurists, like Sulayman ibn Muhammad al-Bujayrimi, for example, simply state *jihad* is *qital fi-sabillillah* ('fighting in God's way').⁸ Other scholars, for example the early Hanafi authorities like jurist Imam Abu Bakr 'Ala' al-Din al-Kasani (d.1189), defined *jihad* as 'fighting in in the way of God with

5. There are four enduring law schools (*madhhab*; pl. *madhahib*) in Sunni Islam: 1) the Hanafi School, founded by Abu Hanifa (699–767); mainly followed in Turkey, the countries of the Fertile Crescent, Lower Egypt, and India; 2) the Maliki School, founded by Imam Malik ibn Anas (712–795); predominant across North Africa; 3) the Shafi'i School, founded by Imam al-Shafi'i (d. 820); predominant in Egypt, Eastern Africa, and South-East Asia; and 4) the Hanbali School, founded by the Imam Ahmad ibn Hanbal (d.855); found in Saudi Arabia. Within Sunni Islam, there is also the smaller Zahiri School; within Shia Islam, the primary law school is the Ja'fari School, followed by the Zaidi School; and, distinct from the Sunni and Shia denominations, there is also the Ibadi School. The scope of this report, however, is limited primarily to the four primary Sunni schools. See: Aisha Bewley, *Glossary of Islamic Terms*, (London: Ta-Ha Publishers, 1998), pp.161-178.

6. Imam Malik, *al-muwatta*, cited in Ibn Abdul Barr, *fat'h bar'ri fi-tartib fiqhi li-tamhid ibn abdul barr*, ed. and arranged by Sheikh Muhammad Maghrawi (Riyadh: Saudi Arabia, 1996), vol. 10, p 557

7. Ibid.

8. *Hashiya al-bujairimi 'ala sharh al-khateeb*, 225/4, cited in Dr. Muhammad Khayr al-Haikal, *jihad wal-qital fi-siyasa ul-shariah* (Beirut: Dar al-Biyaraq, 1996), 2nd ed., vol. 1, p.44.

your person, your wealth and your tongue and other means’,⁹ indicating a more general notion than physical fighting but not explaining against whom and in what circumstances.

Maliki authorities, for example the North African scholar Mohammed bin Mohammed bin Arafa al-Werghemmi Ibn Arafa (1316-1401), stated that *jihad* is ‘fighting against the non-believers who do not have peaceful relations through treaties (*ahd*), either when the non-believers gather against you or you enter their land for such purposes’,¹⁰ giving a broader definition and explanation as to the situation and rationale for *jihad*.

Finally, the medieval Hanbali jurist Muwaffaq al-Din ibn Qudama’s (1146–1223) definition seeks to develop this further, by stating that what is intended by *jihad* in religio-legal terms is ‘warfare, and fighting against non-believers, aimed at defending the Muslims from their enemies, or defending the frontiers, or their borders or lands including the communal and individual religious duties’.¹¹

The medieval Maliki and Hanbali definitions in particular, therefore, develop the legitimate parameters for jihad. Examination of the legal works of the four Sunni schools of law contained in this report indicates that the definition of jihad includes: fighting declared by legitimate political authorities, aimed at removing religious persecution and defending lands where Muslims reside and can practice their religion, within agreed upon parameters of international relations and treaties.

For the purposes of this report jihad is defined as ‘religiously sanctioned warfare’.

9. Al-Kasani, *bada’i al-sana’i fi tartib al-shara’i*, cited in Dr. al-Haikal, *jihad wal-qital fi-siyasa ul-shariah*, vol. 1, p.44.

10. Ibn Arafa, *kitab ul-hudud*, cited in Dr. al-Haikal, *jihad wal-qital fi-siyasa ul-shariah*, vol. 1, p.44.

11. Ibn Qudama, *al-mughni*, cited in Dr. al-Haikal, *jihad wal-qital fi-siyasa ul-shariah*, vol. 1, p.44.

Part I:

Refuting Jihadism

DAR AL-ISLAM¹²

Islamists commonly define *Dar al-Islam* ('lands of Islam') as any land under Muslim control which implements the religious principles of *shari'a* as divine law; any land, therefore, that is not governed by a Muslim (and, ideally, Islamist) state is considered *Dar al-Harb* ('lands of war') or *Dar al-Kufr* ('lands of disbelief'). Jihadists maintain that only an Islamist state – one that implements *shari'a*, and rejects cooperation with non-Muslim states – can provide the necessary security and legitimacy for its Muslim residents. Moreover, they argue, only an Islamist state is accepted within Sunni jurisprudence and considered *Dar al-Islam* (which, in its preferred form, would be an expansionist global caliphate seeking to take Islam to all parts of the world).

Significance of Dar al-Islam, for jihadists

For jihadists, the implementation of *shari'a* as state law is a precondition for *Dar al-Islam*. As an example, the Jordanian-Palestinian jihadist; former spiritual guide to Abu Musab al-Zarqawi;¹³ and 'the most influential living Jihadi Theorist',¹⁴ Abu Muhammad al-Maqdisi (1959–present), uses *Dar al-Kufr* to describe states where perceived non-Islamic rules are dominant. In his work, *This Is Our Aqidah* ('belief'), he states:

And we hold the view of the jurists regarding the *dar* ['lands'; 'abodes'] wherein if the laws of *kufr* ['disbelief'] were uppermost and the dominance therein was for the *kuffar* ['unbelievers'] and their legislations then it is *dar al-kufr*. However, we believe that this term has no bearing upon the inhabitants of the abodes in light of the absence of the Islamic state and its power and the domination of the apostates and their control of the reigns of rule in the lands of the Muslims. This term is applied to the abode if the rulings of *kufr* are uppermost, even if the majority of its people are Muslims

12. Translations from Arabic sources are the author's own. Quotations from English-language sources have been transcribed exactly as found, and include any spelling or grammatical mistakes.

13. The deceased former leader of al-Qa'ida in Iraq.

14. The U.S. Military Academy Combating Terrorism Center stated in a 2006 report that al-Maqdisi (real name: Isam Mohammad Tahir al-Barqawi) 'is the key contemporary ideologue in the Jihadi intellectual universe—he is the primary broker between the Medieval Authorities, the Conservative Scholars, and the Saudi Establishment Clerics on the one hand, and the Jihadi Theorists on the other'. See: 'Militant Ideology Atlas, Executive Report', Combating Terrorism Center, U.S. Military Academy, November 2006, p. 8, available at: <http://www.ctc.usma.edu/wp-content/uploads/2012/04/Atlas-ExecutiveReport.pdf>.

just as the term *dar al-Islam* is applied upon the abode in which the laws of Islam are uppermost, even if the majority of its inhabitants are *kuffar* as long as they are submitting to the rule of Islam.¹⁵

Al-Maqqdisi further believes that *Dar al-Kufr* is synonymous with *Dar al-Harb*, perceiving any area not ruled by Islam to be open to potential conflict, and the only difference being whether the conflict is currently taking place or whether there is merely a potential for it. It is also al-Maqqdisi's view that currently no state meets the criteria for *Dar al-Islam*; as such, the whole world is a site for potential conflict.¹⁶

While Hamas' charter explains that conquering Israel is its primary aim, it also presents its image of a future Palestine as *Dar al-Islam*, conceived as a precondition for Muslim security:

The Islamic Resistance Movement is a distinguished Palestinian movement, whose allegiance is to Allah, and whose way of life is Islam. It strives to raise the banner of Allah over every inch of Palestine, for under the wing of Islam followers of all religions can coexist in security and safety where their lives, possessions and rights are concerned. In the absence of Islam, strife will be rife, oppression spreads, evil prevails and schisms and wars will break out.¹⁷

In South Asia, Lashkar-e-Ta'iba opposes India's sovereignty over the State of Jammu and Kashmir, and seeks to restore Islamic rule in India and unite Muslim-majority areas in south-east Asia.¹⁸ By uniting Muslim-majority areas, the group seeks, ultimately, to create *Dar al-Islam* – an expansionist Islamist state which can impose *shari'a* as state law.¹⁹ As methods, Lashkar-e-Ta'iba employs both *da'wa* ('proselytisation') and armed *jihad* (which is viewed as *fard al-'ayn*; or, 'an individual obligation'). *Jihad* ('religiously sanctioned warfare') should continue, the group believes, until Islam dominates the world, because '[when] Muslims abandoned jihad and other injunctions they began to degenerate'.²⁰

15. Al-Maqqdisi, *This is Our Aqidah*, 2nd ed. (n.d.), p.62, available at: http://ia700304.us.archive.org/6/items/ThisIsOuraqidah-AbiMuhammadAl-maqqdisi/our_aqeedah.pdf.

16. *Ibid.*, pp. 65-66.

17. 'Article Six', *The Hamas Charter 1988* (The Covenant of the Islamic Resistance Movement), Yale Avalon Project translation, available at: http://avalon.law.yale.edu/20th_century/hamas.asp. All subsequent references are taken from this translation.

18. 'Country Reports on Terrorism 2011, Chapter 6. Foreign Terrorist Organizations – Lashkar E-Tayyiba (LT)', US State Department Office Of The Coordinator For Counterterrorism, 31 July 2012, available at: <http://www.state.gov/j/ct/rls/crt/2011/195553.htm#lt>.

19. Yoginder Sikand, 'Islamist Militancy in Kashmir: The Case of Lashkar-e-Ta'iba', in *The Practice of War: Production, Reproduction, and Communication of Armed Conflict*, eds Aparna Rao, Michael Bollig, and Monica Bock (New York: Berghahn Books, 2007), pp. 215-237, p. 220.

20. Yoginder Sikand, 'Islamist Militancy in Kashmir', p. 222.

Defining Dar al-Islam according to traditional Sunni scholarship

Jihadist groups claim that their understanding of Muslim lands is based upon the four medieval schools and their authorities in Islamic law. The concepts of *Dar al-Islam* and *Dar al-Harb*, however, are not mentioned in the primary sources of *shari'a*, the *Qur'an* and Prophetic traditions, as collected in the *hadith* ('the reported speech of the Prophet'; pl *ahadith*);²¹ they are political and jurisprudential definitions that have developed throughout Islamic history (as such, they form part of the paralegal analysis which focuses on the application of *shari'a*, and are liable to variable definitions). It was not uncommon for classical scholars to develop jurisprudential definitions for concepts which were not directly referred to in the primary sources of Islamic law, but which still reflected the lives of Muslim communities. Another example is the definition of trade as 'the exchange of property for another type of property' (*mubadala al-mal li'l-mal*), by medieval Hanbali jurist Ibn Qudama.²² This was not defined by the religious scriptures, but was rather a paralegal discussion defining the nature of trade in a particular historical context.

Dar al-Islam is usually rendered as a land which implements Islamic law and provides security for Muslims, an understanding which Islamists use to call for the implementation of *shari'a* as state law as a pre-requisite for an expansionist Caliphate. The Islamist definition of *Dar al-Islam*, however, is anachronistic, since the concepts of the modern nation state and state law post-date the primary sources of *shari'a*. According to traditional scholarship, the normative values exhibited in *Dar al-Islam* are the right to practise Islamic rules and the free exhibition of the symbols of Islam (for example, the ritual prayer; the annual fast; the building of mosques; the call to prayer; the wearing of Islamic dress; and the performance of Muslim marriage).

This is the Shafi'i position, as exemplified by the Iraqi judge and scholar of Muslim polity and law, Abu'l-Hasan al-Mawardi (d. 1058), and the Syrian scholar, Imam Abu Zakariyya Muhyi 'l-Din al-Nawawi (1233–1277). In his work on the ordinances of government, for example, al-Mawardi states:

The public acts of worship (*sha'a'ir*) of Islam such as group prayers in mosques and calls for prayers are the criteria by which the Prophet, peace be upon him, differentiated between the Land of Islam and the Land of Disbelief.²³

21. *Hadith*: 'reported speech of the Prophet'. See: Bewley, *Glossary of Islamic Terms*, p.8. The Prophet's entire *hadith* are published in six canonical collections, of which those by al-Bukhari and Muslim are considered the most reliable. Similar material may be found in the *sira* ('biographical narratives devoted to the Prophet').

22. Ibn Qudama, *al-mughni*, (Beirut: Dar ul-Kutub ul-Ilmiya, n.d.), vol. 4, *kitab ul-buyu* (*Book of Trade*), p. 2.

23. Al-Mawardi, *al-ahkam al-sultaniyah wal-wilayat al-diniyah*, (Beirut: Dar al-Kutub al-Ilmiyah, 1985), vol. 1, p. 275.

In his major legal work, *rawda al-talibin*, al-Nawawi cites al-Mawardi's definition of *Dar al-Islam* approvingly:

If a Muslim is able to declare his Islam openly and living therein (in a land dominated by non-Muslims), it is better for him to do so [...] because by this it becomes Dar al-Islam [...]²⁴

The criterion adopted by al-Mawardi and al-Nawawi, therefore, was that the open practice of Islamic acts was sufficient for the land to be considered Islamic land.

In his work on Shafi'i jurisprudential doctrine, *al-hawi al-kabir*, al-Mawardi further states:

Where a Muslim is able to protect and isolate himself, even if he is not able to proselytize and engage in combat, in such case it would be incumbent upon him to remain in this place and not emigrate. For such a place, by the fact that he is able to isolate himself, has become a *dar Islam*.²⁵

Al-Mawardi, therefore, considered living safely in non-Muslim-majority land as preferable to emigration to a Muslim land, hoping that Islam would spread by proselytisation and virtue of the good example of Muslims residing there. For both al-Mawardi and al-Nawawi, emigration was only considered a religious duty when Muslims were persecuted; prevented from practising their faith; and if it was practical to do so.²⁶

The Shafi'i position was based upon a Prophetic practice (*sunna*)²⁷ that no *jihad* or fighting should take place in a region where the call to prayer (*adhan*) was heard, as the free practice of Islam indicated that the land in general was not hostile to Muslims and Islam. This is found in a *hadith* from the *al-jami' al-sahih* (also known as the *Sahih Bukhari*) of Muhammad al-Bukhari (d. 870), and in a *hadith* from the *Sahih Muslim* of Imam Muslim ibn al-Hajjaj (d. 875). Both texts are considered, by all Sunni scholars, to be the soundest of the six main *hadith* collections and equal in authenticity:

Whenever Allah's Apostle attacked some people, he would never attack them till it was dawn. If he heard the Adhan (i.e. call for prayer) he would delay the fight, and if he did not hear the

24. Al-Nawawi, *rawda al-talibin*, (Beirut: Dar ibn Hazm, 2002), p. 1819.

25. Al-Mawardi, *al-hawi al-kabeer*, cited in Sherman A. Jackson, 'Liberal/Progressive, Modern, and Modernized Islam: Muslim Americans and the American State', in *Innovation in Islam: Traditions and Contributions*, ed. by Mehran Kamrava, (USA: University of California Press, 2011), p. 187.

26. Al-Nawawi, *rawda al-talibin*, (Beirut: Dar ibn Hazm, 2002), p. 1819.

27. *Sunna*: the customary practice of a person or a group of people; it has come to refer almost exclusively to the practice of the Messenger of Allah and to the first generation of Muslims. See: Bewley, *Glossary of Islamic Terms*, p. 22.

Adhan, he would attack them immediately after dawn.

Sahih Bukhari (4:52:193)²⁸

The Messenger of Allah (may peace be upon him) used to attack the enemy when it was dawn. He would listen to the Adhan; so if he heard an Adhan, he stopped, otherwise made an attack.

Sahih Muslim (4:745)²⁹

In *al-minhaj bi-sharh sahih muslim*, al-Nawawi's respected thirteenth-century commentary on *Sahih Muslim*, he interprets the *hadith* as follows:

In this narration is evidence that verily the call to prayer forbids invading (*yamna*) a people of that area, and this is an evidence of their Islam.³⁰

Al-Nawawi further argues that this evidence of Islam can be met by as few as one individual praying.³¹

The medieval Shafi'i criterion for *Dar al-Islam*, therefore, was the presence of symbols of Islam (*sha'a'ir*), or the *zuhur* ('outward appearance') of Islamic laws – referring to the ability to openly declare oneself a Muslim, and the freedom to practise the religion. Pre-eminent scholars within the Shafi'i school, such as al-Mawardi and al-Nawawi, therefore, held the opinion that *Dar al-Harb* or *Dar al-Kufr* becomes a land of Islam merely through permission granted to Muslims to observe certain Islamic practices and rules.

Within the Hanafi School, which has the largest number of adherents worldwide, an analogous position was held by Syrian scholar Muhammad Amin ibn 'Abidin (1784–1836). Ibn 'Abidin's most famous piece is the *radd al-muhtar 'ala'l-durr al-mukhtar*. This is a commentary on the legal work of the seventeenth-century Damascene Mufti, Muhammad ibn 'Ali al-Haskafi (d. 1677), and considered the primary treatise of Hanafi jurisprudence. In *radd al-muhtar*, Ibn 'Abidin writes:

The land of war (Dar al-Harb) becomes a land of Islam (Dar al-Islam) with the imposition of the rulings of Islam within it, such as the Friday congregational prayer (Salah al-Jum'a) and 'Id (the major festivals in Islam) prayers.³²

Based upon such Hanafi criteria, therefore, any land in which Muslims are

28. *Sahih Bukhari*, vol. 4, book 52, 'Fighting for the Cause of Allah (Jihaad)', no. 193, available online at: <http://www.hadithcollection.com/sahihbukhari/85/3699-sahih-bukhari-volume-004-book-052-hadith-number-193.html>.

29. *Sahih Muslim, kitab al-salat (Book of Prayers)*, no. 745, available online at: <http://www.hadithcollection.com/sahihmuslim/132-Sahih%20Muslim%20Book%2004.%20Prayer/10642-sahih-muslim-book-004-hadith-number-0745.html>.

30. Al-Nawawi, *al-minhaj bi-sharh sahih muslim*, (Beirut: Dar ul-Mari'fa, 2001), vol. 2, part 4, p. 306.

31. Al-Nawawi, *rawda al-talibin*, (Beirut: Dar ibn Hazm, 2002), p. 1819.

32. Ibn 'Abidin, *radd al-muhtar 'ala'l-durr al-mukhtar*, (Mecca: Maktaba al-Tijariyya, 1966), vol. 4, p. 130.

permitted to practise their religion – build mosques; pray; and state that they are Muslim, for example – would be considered *Dar al-Islam*.

Modern Islamic scholars have sought to reclaim this traditional understanding of *Dar al-Islam*. In his work on the influences of war in Islamic jurisprudence, the chair of Islamic jurisprudence in the College of Shari‘a at Damascus University, Sheikh Wahbah Mustafa al-Zuhayli (1932–present), says:

As for safety, it is attained in most of the places of the world today for any citizen... This opinion is shared by most of the jurists of the Maliki and Shafi‘i schools of thought. They believe that when the symbols of Islam are established in a land, then that land should be considered Dar al-Islam [...]³³

Since the *Dar al-Islam/Dar al-Harb* paradigm has no scriptural basis, al-Zuhayli argues that it was a paralegal description of the reality of medieval international relations. As such, he believes that the descriptions resemble contemporary categories of international relations more than they constitute any theological tenet:

It is common among Muslim legal scholars to divide the world into two abodes: the *abode of Islam (dar al-islam)* and that of *war (dar al-harb)*; some scholars add a third one, the *abode of covenant (dar al-‘ahd or dar as-sulh)*. [...] In fact, this division has no textual support, for no provision is made for it either in the Qur‘an or in the Hadith. It is instead a transient description of what happens when war flares up between Muslims and others. It is a narration of facts, similar to those confirmed by scholars of international law, namely that war splits the international community into two parties: belligerents, in particular the States involved in war; and non-belligerents and neutrals, which comprise the remaining members of the international community.³⁴

The political description of *Dar al-Islam* at the centre of jihadist ideology is, therefore, not grounded in religious scripture. Positive definitions from the past should not be applied in a normative manner today, and the Islamist understanding should have no religious relevance in defining the nature of relationships between states in the modern world.

RECLAIMING MUSLIM LAND

Throughout Islamic history, lands have frequently exchanged authority. Jihadists believe that lands that were once under Muslim dominion are rightfully Islamic

33. Al-Zuhayli, *athar al-harb fil-fiqh al-islami*, (Damascus: Dar el-Fikr, 1998), p.173.

34. Al-Zuhayli, ‘Islam and International Law’, *International Review of the Red Cross*, vol. 87, no. 858, June 2005, pp. 269-283, p. 278, available at: http://www.icrc.org/eng/assets/files/other/irrc_858_zuhili.pdf.

lands in perpetuity. Regardless of a jihadist group's geographical priority, the underpinning concept is the same: lands formerly under Muslim dominion are *Dar al-Harb* ('lands of war'), and, as such, there is a religious necessity to fight in order to recapture them.

Jihadist injunction to reclaim Muslim land

The concept of reclaiming or liberating perceived Muslim land is a common denominator among jihadist groups. In the al-Qa'ida global narrative, this ranges from removing the United States' influence in Saudi Arabia, to reclaiming the Iberian Peninsula; Indonesia; and even Western China. For Hamas, 'Muslim land' means – primarily – historic Palestine, and, for Lashkar-e-Ta'iba, the focus is Kashmir; India; and the wider sub-continent.

For all groups – whether the territories were historically Islamised through *fath* ('conquest'), through Muslim imperial rule, or through *da'wa* ('proselytisation'; or, 'the invitation to Islam through missionary efforts') – the essentialist reading of the primary texts is that any land previously conquered by Muslims, or forming a part of historic Muslim empires, is understood to be Muslim land by religious law (*shari'a*), and so, Islamic land forever. Accordingly, any such land must always be ruled over by a Muslim government – preferably an Islamist one – at whatever cost, including warfare and terrorism. Any perceived attempt to influence, subvert, invade, or occupy such land is, therefore, to be resisted.

For example, al-Qa'ida's early pre-dominant aim, outlined in founder Osama bin Laden's (1957–2011) 1996 statement on the perceived war between the 'Zionist-Crusader alliance' and global Muslims, was the removal of United States military forces from Saudi Arabia, following the first Gulf War.³⁵ A subsequent 1998 manifesto from the World Islamic Front, signed by both former and current al-Qa'ida leaders bin Laden and Ayman al-Zawahiri (1951–present), developed the group's rationale in relation to perceived Muslim land. This *fatwa* ('religious edict'; pl. *fatawa*) focused on three grievances: the continued presence of United States military forces in Saudi Arabia; the sustained blockade and intermittent airstrikes on Iraq; and the continued support, by the United States and its Western allies, for Israeli occupation of historic Palestine. After stating that these actions entailed 'a clear declaration of war on God, his messenger and Muslims,' the *fatwa* then rules on the religious necessity to use force to liberate Muslim lands from Western forces and influence:

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 the al-Aqsa Mosque and the holy mosque [Mecca] from their grip, and in order for their armies to move out of all the lands of Islam,

35. 'The Declaration of War against the Americans Occupying the Land of the Two Holy Places', *al-Quds al-Arabi*, August 1996, translation available at: http://www.pbs.org/newshour/updates/military/july-dec96/fatwa_1996.html.

defeated and unable to threaten any Muslim.³⁶

Literature from both Hamas and Lashkar-e-Ta'iba also demonstrates the desire to return previously conquered land to Muslim control. Specifically, they argue respectively that, since the states of Israel and India rest upon lands previously conquered by Muslims, these territories must be declared *Dar al-Harb*, and that *jihad* ('religiously sanctioned warfare'), in the form of military action, to put an end to non-Muslim rule, is a religious duty (*fard*).³⁷

For Hamas, historic Palestine is considered Muslim land indefinitely, as defined by *shari'a* (which, in turn, mandates perpetual warfare against disbelief):

The Islamic Resistance Movement believes that the land of Palestine is an Islamic Waqf ['endowment'] consecrated for future Moslem generations until Judgement Day. It, or any part of it, should not be squandered: it, or any part of it, should not be given up. Neither a single Arab country nor all Arab countries, neither any king or president, nor all the kings and presidents, neither any organization nor all of them, be they Palestinian or Arab, possess the right to do that. Palestine is an Islamic Waqf land consecrated for Moslem generations until Judgement Day. This being so, who could claim to have the right to represent Moslem generations till Judgement Day?

This is the law governing the land of Palestine in the Islamic Shari'a (law) and the same goes for any land the Moslems have conquered by force, because during the times of (Islamic) conquests, the Moslems consecrated these lands to Moslem generations till the Day of Judgement.

This Waqf remains as long as earth and heaven remain. Any procedure in contradiction to Islamic Shari'a, where Palestine is concerned, is null and void.³⁸

The most concise statement of Lashkar-e-Ta'iba objectives is found in the publication, *Why Are We Waging Jihad?* (*hum jihad kyun kar rahe hain?*). Among the eight reasons listed for *jihad* is the obligation to liberate Muslim territories under

36. 'Jihad Against Jews and Crusaders', World Islamic Front Statement, *al-Quds al-Arabi*, 23 February 1998. Signatories are described as 'Shaykh Usamah Bin-Muhammad Bin-Ladin; Ayman al-Zawahiri, amir of the Jihad Group in Egypt; Abu-Yasir al-Rifa'i, Ahmad Taha, Egyptian Islamic Group; Shaykh Mir Hamzah, secretary of the Jamiat-ul-Ulema-e-Pakistan; Fazlur Rahman, amir of the Jihad Movement in Bangladesh', translation available at: <http://www.fas.org/irp/world/para/docs/980223-fatwa.htm>; Arabic original available at: <http://www.library.cornell.edu/colldev/mideast/fatw2.htm>.

37. *Fard* (pl. *fara'id*): obligatory; an act of worship or practice of the Islamic religion, as defined by the Shari'a. See: Bewley, *Glossary of Islamic Terms*, p.7.

38. 'Article Eleven', *The Hamas Charter 1988* (The Covenant of the Islamic Resistance Movement), Yale Avalon Project translation.

non-Muslim occupation.³⁹ On the obligation to re-conquer Muslim lands, the publication states:

Muslims ruled Andalusia (Spain) for 800 years but they were finished to the last man. Christians now rule (Spain) and we must wrest it back from them. All of India, including Kashmir, Hyderabad, Assam, Nepal, Burma, Bihar and Junagadh were part of the Muslim empire that was lost because Muslims gave up jihad. Palestine is occupied by the Jews. The Holy Qibla-e-Awwal (First Center of Prayer) in Jerusalem is under Jewish control. Several countries such as Bulgaria, Hungary, Cyprus, Sicily, Ethiopia, Russian Turkistan and Chinese Turkistan...were Muslim lands and it is our duty to get these back from unbelievers.⁴⁰

Lashkar-e-Ta'iba also conceives of Western powers as occupying forces and, therefore, enemies to the Islamic movement. The group's literature demonstrates a commitment to targeting perceived enemies outside, rather than inside, Pakistan, despite government cooperation with the United States.⁴¹ As such, Lashkar-e-Ta'iba is a member of both the World Islamic Front and bin Laden's network responsible for the 1998 *fatwa*,⁴² and considers the United States; Israel; and India as existential enemies of Islam.⁴³

For all three groups, therefore, previously Muslim land is seen as belonging, in perpetuity, to Muslims. Consequently, each has a desire – prompted by their own understanding of what constitutes, and who has authority over, Islamic land – to reclaim either current Muslim-majority areas from non-Islamist governments (particularly those seen to ally with, or tolerate the presence of, Western

39. The remaining seven are: 1) to eliminate evil and facilitate the conversion to, and practice of, Islam; 2) to ensure the ascendancy of Islam; 3) to force non-Muslims to pay *jizya* ('tax paid by non-Muslims for the protection of a Muslim ruler'); 4) to assist the weak and powerless; 5) to avenge the blood of Muslims killed by unbelievers; 6) to punish enemies for breaking promises and treaties; and 7) to defend a Muslim state. See: *Hum jihad kyun kar rahe hain? (Why Are We Waging Jihad?)*, (Markaz al-Da'wa wal-Irshad, n.d.); original in Urdu, translation taken from Husain Haqqani, 'The Ideologies of South Asian Jihadi Groups,' *Current Trends in Islamist Ideology* (Hudson Institute, 2005), vol. 1, pp. 12-26, available at: http://www.currenttrends.org/docLib/20060130_Current_Trends_vol_1.pdf.

40. *Hum jihad kyun kar rahe hain? (Why Are We Waging Jihad?)*, translation taken from Haqqani, 'The Ideologies of South Asian Jihadi Groups', p. 26.

41. Lashkar-e-Ta'iba literature states that the Pakistani government is guilty of collaborating with the United States; it further claims that Pakistani Muslims are united, despite sectarian differences, and that disbelievers outside of Pakistan who are at war with Muslims should be attacked as a priority. See: Christine Fair, 'Lashkar-e-Ta'iba beyond Bin Laden: Enduring Challenges for the Region and the International Community', Testimony prepared for the U.S. Senate, Foreign Relations Committee Hearing on Al Qa'ida, the Taliban, and Other Extremist Groups in Afghanistan and Pakistan, 24 May 2011, available at: http://www.foreign.senate.gov/imo/media/doc/Fair_Testimony.pdf.

42. 'Lashkar-e-Ta'iba (LeT), Terrorist Organization Profile', The National Consortium for the Study of Terrorism and Responses to Terrorism (START), available at: http://www.start.umd.edu/start/data_collections/tops/terrorist_organization_profile.asp?id=66.

43. *Hum jihad kyun kar rahe hain? (Why Are We Waging Jihad?)*, translation taken from Haqqani, 'The Ideologies of South Asian Jihadi Groups'.

governments and influence), or non-Muslim-majority territory which was previously part of historic Muslim empires. By declaring the whole world to be *Dar al-Harb*, following the destruction of the Ottoman Empire and the subsequent abolition of Islamic political rule through the institution of the Caliphate in 1924, jihadists mandate the religious necessity of re-conquering and repelling infidels from all Islamic lands, and the restoration of a Caliphate through jihadist methods and tactics.

Accepting Reconquista authority over Muslims

The *Reconquista* traditionally refers to the period between the eighth and fourteenth centuries, during which Christian states in the Iberian Peninsula reconquered territory, collectively known as al-Andalus, then held by Muslim states. Islamic jurisprudence developed alongside such shifting geographical realities of Muslim lands and fortunes, and, as such, demonstrates a more plural view (in contrast to the *Dar al-Harb* one offered by modern jihadists) of lands that have been conquered or re-conquered. In fact, many mainstream scholars from the four primary Sunni schools of law have also taken a different view to the one espoused by modern jihadists, arguing that, as long as the symbols and rituals of Islam are still publicly entertained and that some of the Islamic legal rules are still practised, such territories are considered sufficiently Muslim to be treated as *Dar al-Islam* ('lands of Islam'), and not *Dar al-Harb*.

There are many examples of *fatawa* (pl. of *fatwa*) given by Muslim scholars throughout history, in which rulings such as these were explained. The most famous of them relate to the *Reconquista* of Muslim Europe, though similar edicts exist in response to the invasion of eastern Muslim lands by the Tatars in the fourteenth-century, as well as the situation of Muslims living in India under British colonial rule.

The Maliki School is the predominant Sunni school in North Africa, and was historically followed in al-Andalus and Muslim Sicily.⁴⁴ As a result of the *Reconquista*, large numbers of Muslims in these areas found themselves living under Christian rule, which raised a number of legal and ethical questions about the status of these Muslim communities. It is commonly believed that the Maliki position was that Muslims should not live in non-Muslim lands if possible, in order to avoid non-Muslim law or widespread sin.⁴⁵ For example, Maliki scholar Abu'l-Walid Muhammad ibn Rushd (d. 1126), grandfather of Abu'l-Walid Muhammad ibn Ahmad ibn Rushd (or, Averroes; 1126–1198), issued a *fatwa* in response to Muslim losses in al-Andalus, stating that it is prohibited for a Muslim to enter – or live in – *Dar al-Harb*.⁴⁶

44. Kathryn A. Millar, *Guardians of Islam: Religious Authority and Muslim Communities of Late Medieval Spain*, (Chichester & New York: Columbia University Press, 2008), p. 21.

45. Khaled Abou El Fadl, 'Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from 8th to 17th Century CE/2nd to 11th Century Hijrah', *Islamic Law and Society*, Vol. 1, No. 2 (1994), pp. 141-187, p. 146.

46. Ibn Rushd, *al-muqaddimat*, cited in El Fadl, 'Islamic Law and Muslim Minorities', p. 150.

Ibn Rushd's opinion, however, was not unanimous: there were a number of Maliki scholars who argued that if the condition of open practice of Islam was met, then formerly Muslim land in Europe remained – legally – part of *Dar al-Islam*. This is because, according to Cordoba-born *hadith* ('reported speech of the Prophet') scholar Ibn 'Abd al-Barr in his *al-istidhkar*, one of the earliest major legal exegesis on Malik ibn Anas' *al-muwatta* (itself the first written collection of *hadith* and *fiqh* ('jurisprudence'), the call to prayer 'is a sign which differentiates Dar al-Islam from Dar al-Kufr ['lands of disbelief']'.⁴⁷

This view was supported by the Arab jurist, Muhammad Ali al-Mazari (1058–1141), who issued a *fatwa* authorising Muslims living under non-Muslim rule in Sicily to remain there, on the condition that their personal safety was guaranteed.⁴⁸

The views of Ibn 'Abd al-Barr and al-Mazari were further supported by the thirteenth-century scholar, Shihab al-Din Abu'l-Abbas Ahmad ibn Idris al-Qarafi (1228–1285). For example, al-Qarafi's work, *al-dhakheera* (widely considered one of the best books on Maliki *fiqh*), cites al-Mazari approvingly:

Al-Mazari said: "Regarding the adhan [the call to prayer] there are two meanings: the first of them is the exhibition of the Islamic rituals and the notification that the abode is one of Islam..."⁴⁹

The view that non-Muslim rule does not necessitate land becoming *Dar al-Harb* was further supported in the nineteenth-century, by Egyptian scholar Muhammad bin Ahmad bin 'Arafa al-Dusuqi (d. 1815). In the well-known *hashiyat al-dusuqi*, for example, he states that:

the countries of Islam do not become Dar al-Harb by the non-Muslims taking them by force, as long as the rituals of Islam are established within them [...] this only happens when the rituals of Islam are discontinued; if they are established, or most of them are, then it does not become Dar al-Harb.⁵⁰

The view expressed by the various Maliki scholars is supported by scholars of the Hanbali School (the fourth orthodox school of law within Sunni Islam, enforced in Saudi Arabia today and prominent in Qatar and areas of the Persian Gulf). In *al-mughni*, the most widely known textbook of Hanbali *fiqh*, jurist Ibn Qudama stated:

A country that belonged to the Muslims, and then non-Muslims conquered it [...] even if only a single Muslim resides therein,

47. Ibn 'Abd al-Barr, *al-istidhkar*, ed. by Salim Muhammad 'Ata and Muhammad 'Ali Mu'awad (Beirut: Dar ul-Kutub ul-Ilmiyah, 2010), vol. 1, p. 371.

48. Al-Mazari's *fatwa*, cited in El Fadl, 'Islamic Law and Muslim Minorities', p. 151.

49. Al-Qarafi, *al-dhakheera*, (Beirut: Dar al-Gharb al-Islamiya, 1994), vol. 2, p. 58.

50. Al-Dusuqi, *hashiyat al-dusuqi*, 4 vols. (Beirut: Dar al-Fikr, n.d.), vol. 2, p. 188.

then it is judged to be Dar al-Islam (a land of Islam).⁵¹

Scholars from both the Shafi'i and Hanafi schools – notably al-Mawardi, al-Nawawi, and Ibn 'Abidin (see pages 19-21) – also believed that the open practice of Islam was sufficient for lands to be considered *Dar al-Islam*. After the *Reconquista*, Muslim scholars issued edicts explaining that, as long as the Muslims were safe to practise their religion, re-conquered land remained *Dar al-Islam*. Egyptian Shafi'i scholar Shihab al-Din al-Ramli (d.1550), for example, explains this in a *fatwa* in response to a question about the position of Muslims living under a Christian king in Aragon in Andalusia. His edict is considered the mainstream position within the Shafi'i School.

Recorded in *fatawa al-ramli* (a collection of al-Ramli's edicts compiled by his son, Shams al-Din Muhammad al-Ramli (1513–1595)), he answered that the Muslims in Aragon should not emigrate, because they were allowed to manifest their religion openly. He stated that, because the land had not become *Dar al-Harb*, there were no obligations on the Muslims residing there to emigrate; to launch wars to reclaim the land; or to withhold taxes. On the basis that such lands should be considered *Dar al-Islam*, he further said that it may even be forbidden for them to leave, because, by remaining, their presence might enable the spread of Islam, while mass emigration could result in the lands becoming *Dar al-Harb*.⁵²

According to the Hanafi School, territory previously considered *Dar al-Islam* but conquered by non-Muslims only becomes *Dar al-Harb* on the fulfilment of three conditions: that the laws on non-Muslims are exclusively applied; that the land is physically separated from any other *Dar al-Islam*; and that the rights and protections guaranteed under the previous ruler and afforded to Muslims and *dhimmi*s ('non-Muslims living under the protection of Muslim rule, on the payment of a tax (*jizya*)') are no longer applied.⁵³

In his work, *al-mabsul*, eleventh-century Hanafi scholar Muhammad ibn Ahmad Abu Bakr al-Sarakhsi (1009–1090/1097)⁵⁴ states that these criteria came from the founder of the Hanafi School, Abu Hanifa:

[From] Abu Hanifa, may God have mercy on him: verily their Dar (Dar al-Islam) becomes Dar al-Harb when three condition are met: that they are surrounded with no Muslim land between them and the enemy land; that there remains not a Muslim with security nor even a dhimmi with security; and the dominance of the rulings of shirk ['worship of something or someone other than

51. Ibn Qudama, *al-mughni*, (Beirut: Dar ul-Kutub al-Arabi, 1982), vol. 6, p 35.

52. Al-Ramli, *fatawa al-ramli*, on the margin of *fatawa al-kubra al-fiqhiyya* by Ibn Hajar al-Haythami, (Beirut: Dar ul-Kutub ul-Ilmiyya, n.d.), vol. 4, pp. 52-53.

53. El Fadl, 'Islamic Law and Muslim Minorities', p. 161–162.

54. Date of death is disputed.

Allah'] in this land [...]'⁵⁵

Al-Sarakhsi added that a single Muslim or *dhimmi* and a single area of Muslim rule would suffice to keep the territory *Dar al-Islam*:

[...] this land in principle remains Dar al-Islam as long as there remains within it a Muslim or a dhimmi and a remnant of the original land (i.e. Dar al-Islam) then that judgment remains [i.e. that the land is still Dar al-Islam].⁵⁶

Another eleventh-century Hanafi scholar, Shams al-'Imma al-Hilwani (d. 1056), also issued an edict in accordance with Abu Hanifa's criterion that a land would remain *Dar al-Islam* unless there was no security for Muslims or they could not practise their faith openly.⁵⁷

Others from the Hanafi and Shafi'i schools gave similar edicts regarding the Mongols and the Tatars, who, following their invasion of various eastern Muslim lands, allowed the conquered Muslims to live unharmed and practise their religion. The scholars argued that if Muslims could openly practise their faith and have a degree of independence, then they should continue to reside there because the territory is considered *Dar al-Islam*.⁵⁸ In Russia, the Tatar scholar Shihab al-Din Marjani (1818–1889) gave the same edict in response to Tsarist rule.⁵⁹

Similar *fatawa* were also written by Muslim scholars in India under British rule; following the Hanafi scholars' methodology, they stated that British India should be considered a part of *Dar al-Islam*.⁶⁰ The Hanafi scholar and founder of the Bareilvi movement of South Asia, Ahmed Riza Khan Fazil-e-Bareilvi (1856–1921), for example, opposed labelling British India as *Dar al-Harb*, and, by extension, opposed any justification either for *jihad* or *hijra* ('emigration'). Ahmed Riza Khan's *fatwa*, originally written in the 1880s and published in the Rampur newspaper, *Dabdaba-e Sikandari*, in October 1920, declares that India under British rule was *Dar al-Islam* because Muslims could observe their religion:

In Hindustan ... Muslims are free to openly observe the two 'ids [Islamic festivals], the azan [the call to prayer], ... congregational prayer ... which are the signs of the shari'a, without opposition. Also [sic] the religious duties, marriage ceremony, fosterage ... There are many such matters among Muslims ... on which ...

55. Al-Sarakhsi, *al-mabsut*, (Beirut: Dar al-Fikr, 2000), vol. 5 (part 10), p. 93.

56. Ibid.

57. 'Abd al-Karim Zaydan, *ahkam al-dhimmiyin wa al-musta'minin fi dar al-islam*, (Beirut: Mu'assasat al-Risala, 1988), 2nd ed., p. 21.

58. Khaled Abou El Fadl, 'Striking a Balance: Islamic Legal Discourse on Muslim Minorities', in *Muslims on the Americanization Path?*, ed. by Yvonne Yazbeck Haddad & John L. Esposito, (Oxford & New York: Oxford University Press, 1998), pp. 47-63, p. 52.

59. Abdal-Hakim Murad, *Bombing Without Moonlight: The Origins of Suicidal Terrorism* (Bristol: Amal Press, 2008), p. 13.

60. Ibid.

the British government also finds it necessary to seek fatawa from the ‘ulama [‘scholars’] and act accordingly, whether the rulers be Zoroastrian or Christian. ... In short, there is no doubt that Hindustan is dar al-Islam.⁶¹

Throughout history, therefore, and common (but not unanimous) among the four predominant Sunni schools of law, is the belief that if people can practise the rituals of Islam, then the land remains *Dar al-Islam*. Historically, when certain lands were conquered, edicts were issued by scholars, explaining that such lands remained as lands in which Muslims could – and sometimes should – continue to live, and where they should abide by the agreements made with the rulers and pay their taxes. From a religious and legal point of view, therefore, such territories remain *Dar al-Islam*, and, as such, there is no obligation either to emigrate from them or to fight to reclaim them.⁶²

PEACE TREATIES

A key tenet of jihadist ideology is the rejection of peace treaties with perceived enemies, which are seen as an act of religious betrayal. Al-Qa’ida; Hamas; and Lashkar-e-Ta’iba, for example, all refuse to recognise Israel, arguing that it is an illegitimate state because it occupies what was, and should remain, Muslim land.

Jihadist rejection of peace treaties

In his seminal work, *Defense of the Muslim Lands*, ‘Abd Allah Yusuf ‘Azzam (1941–1989), Palestinian theorist of *jihad* (‘religiously sanctioned warfare’) and former mentor to bin Laden, explains the significance of Muslim lands and the religious duty not to relinquish them as part of a peace treaty:

It is not permitted to include a condition in the treaty that relinquishes even a hand span of Muslim land to the Kuffar [‘unbelievers’]. Because, the land of Islam belongs to no one, therefore none can make negotiations over it. Such a condition nullifies the treaty because the land belongs to Allah and to Islam. It is not permitted for anyone to misuse anything in a domain not his own. Or to barter [...] that [which] does not belong to him.⁶³

The Hamas charter also rejects contemporary international instruments for peace:

61. Usha Sanyal, *Ahmad Riza Khan Bareilwi - In the Path of the Prophet*, (Oxford: One World Publications, 2005), p.82, available at: <http://data.nur.nu/Kutub/English/Ahmad-Riza-Khan-bio-by-Usha-Sanyal.pdf>.

62. Sheikh Muhammad Afifi al-Akiti, ‘Defending the Transgressed by Censuring the Reckless against the Killing of Civilians’ (*mudafi’ al-mazlum bi-radd al-muhamil ‘ala qital man la yuqatil*), *Fatwa Against The Targeting Of Civilians*, (Birmingham: Aqsa Press, 2005), p. 22, available at: http://www.abc.se/home/m9783/ir/d/dcmm_e.pdf.

63. ‘Abd Allah Yusuf ‘Azzam, *Defence of the Muslim Lands: The First Obligation after Faith*, (Ahle Sunnah Wal Jama’at Publications, n.d.), 1st ed., chapter 4, available at: http://islam.worldofislam.info/index.php?option=com_content&view=category&id=118&Itemid=51.

Initiatives, and so-called peaceful solutions and international conferences, are in contradiction to the principles of the Islamic Resistance Movement. Abusing any part of Palestine is abuse directed against part of religion. [...] These conferences are only ways of setting the infidels in the land of the Moslems as arbitrators. When did the infidels do justice to the believers? [...] There is no solution for the Palestinian question except through Jihad. Initiatives, proposals and international conferences are all a waste of time and vain endeavors. The Palestinian people know better than to consent to having their future, rights and fate toyed with.⁶⁴

Accepting peaceful relations with illegitimate states

The legal precedent for accepting *Reconquista* ('the re-taking of Muslim-held land by Christians') authority – from the Iberian Peninsula, to British India and Tsarist Russia (see pages 27-30) – points to a plurality of jurisprudential opinion and a historical flexibility in response to changing historical and geographical realities. Moreover, it is argued that both Prophetic practice and recent history provide examples of flexibility and tolerance regarding entering into peace treaties with perceived enemies or illegitimate states in response to the greater needs of Muslim communities.

The 1979 Egypt–Israel Peace Treaty, for example, represented official Egyptian recognition of Israel – the first from an Arab state.⁶⁵ Despite the treaty's unpopularity, the need to obtain peace with Israel was accepted by both Egypt's political establishment (as represented by Egyptian President and signatory Anwar el-Sadat) and by al-Azhar, widely considered Sunni Islam's highest religious authority.⁶⁶ More recently, Egypt's actions (if not, at times, its rhetoric), following the fall of former-President Hosni Mubarak, have also been in accordance with the peace treaty.⁶⁷ The religious acceptance of the peace treaty and the continuing actions of Egypt, including under Muslim Brotherhood rule, undermine the idea advanced by Hamas that Israel is an illegitimate state. Jihadists' belief in

64. 'Article Thirteen', *The Hamas Charter 1988* (The Covenant of the Islamic Resistance Movement), Yale Avalon Project translation.

65. 'Camp David Accords', Israeli Ministry of Foreign Affairs, available at: <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/camp%20david%20accords.aspx>. See also: 'Peace Treaty between Israel And Egypt, March 26, 1979', The Avalon Project at Yale Law School, available at: http://avalon.law.yale.edu/20th_century/isregypt.asp.

66. Yitzhak Reiter, 'Islam and the Question of Peace with Israel: Jad al-Haqq's Fatwa Permitting Egypt's 1979 Peace Treaty with Israel', in *Muslim Attitudes to Jews and Israel: The Ambivalences of Rejection, Antagonism, Tolerance and Cooperation*, ed. by Moshe Ma'oz, (Eastbourne: Sussex University Press, 2010), pp. 90-112, p. 93.

67. For example, in November 2012, following hostilities in Gaza, the then-President of Egypt and -leader of the Muslim Brotherhood's ruling Freedom and Justice Party, Mohammed Morsi, provided a guarantee for the ceasefire with Hamas, implicitly upholding the peace treaty; and, in April 2013, Egyptian leaders reassured visiting U.S. Defense Secretary Chuck Hagel that they were committed to the peace treaty and normal bilateral relations. See: 'The Egypt-Israel peace test', *Al-Jazeera*, 20 May 2013, available at: <http://www.aljazeera.com/indepth/opinion/2013/05/201351312123626397.html>; and, 'Egypt Assures Hagel: We're Committed to Peace with Israel', *Arutz Sheva News*, 25 April 2013, available at: <http://www.israelnationalnews.com/News/News.aspx/167469#.Ubb2OvIkWjY>.

Israeli illegitimacy is, therefore, an ideological and political argument; but it is not theological.

The pertinent theological question concerning relations with illegitimate states is the jurisprudential legitimacy of entering into treaties which assign parts of Muslim dominion to other states or non-Muslim rule. While Islamic jurists consider peace treaties as mutual recognition of another polity and its sovereignty, there is an established tradition – based on Prophetic practice – of accepting perceived unfavourable conditions if there is a greater benefit to be gained. This position finds support in all four Sunni schools of law, as well as from both conservative and moderate contemporary Sunni representatives in both the Middle East and the UK.

The Treaty of Hudaibiyya

Islamic jurists have long considered the acceptance of treaties to be a legitimate form of recognition (both of the validity of their own polity to others, and of the polities with which they are dealing). The earliest example is the Treaty of Hudaibiyya, signed in 628, between the Prophet Muhammad (on behalf of the Muslim state of Medina) and Suhayl ibn Amr, the envoy of the Quraish tribe which controlled Mecca (the city from which Muhammad had been forced to flee in 622). Diplomatic negotiations occurred after Muhammad and a group of 1,400 Muslims marched peacefully towards Mecca in an attempt to perform the *Umrah* ('pilgrimage'). While the resultant treaty did not allow them to enter Mecca that year, it affirmed a ten-year peace and authorised Muhammad's followers to return the following year in 629, in what became known as the First Pilgrimage.

The Treaty of Hudaibiyya, however, was controversial among the Medinan Muslims. The Quraish did not accept Muhammad's description as the Messenger of God; neither did they permit those Muslims living in hard conditions in Mecca to migrate to Medina, where the Prophet and other Muslims were living safely. While, to many of Muhammad's followers, the treaty appeared humiliating and a sign of weakness, the *Qur'an* refers to the treaty as a 'manifest victory' (48:1): it was argued that the greater benefits facilitated by this agreement – a ten-year peace; recognition of the Muslim polity; the opportunity to visit, and propagate the faith in, Mecca; the political removal of any justification for Muslim persecution; and the abolition of propaganda against the Prophet – outweighed the negative clauses.

The doctrine of necessity and need

Integral, therefore, to the discussion of peace treaties is the Islamic doctrine of necessity or benefit, which renders normally prohibited actions permissible if they are in the best interests of a community. The Treaty of Hudaibiyya also engenders discussion over whether Islamic international relations are predicated on perpetual war or peace, and, as such, whether peace treaties should be subjected to time-limits.

The doctrine of necessity – *al-darura tubih al-mahzurat* (literally, ‘necessity makes permissible the prohibited’) – is a well-established principle of Islamic jurisprudence,⁶⁸ something may be permissible in circumstances of ‘need’ (*haja*), as well as ‘absolute necessity’ (*darura*), with ‘need’ being a lesser criterion. For example, a judgment by Hanbali jurist Ibn Qudama states, ‘*ma‘a‘adam al-haja ilayhi, fa-hadhithi kulluha shurut fasida...* in the absence of a need these conditions [giving away Muslim property, land, and women] would be irregular’.⁶⁹

The doctrine is also accepted by the other major Sunni schools, as evidenced by the work of the twelfth-century Hanafi jurist, Imam Abu Bakr ‘Ala’ al-Din al-Kasani (d.1189),⁷⁰ and that of Shafi‘i scholar Shams al-Ramli.⁷¹

Additionally, the Shafi‘i scholar, al-Nawawi, believed that the Treaty of Hudaibiyya demonstrated the doctrine of need (*haja*) or benefit:

In this [Treaty of Hudaibiyya] there is evidence for the permissibility of making treaties with non-Muslims if there is an interest or benefit (*maslaha*) in doing so. There is a consensus on this (*majma‘alayhi*) when there is a need (*haja*) [...] In our opinion, this should not exceed ten years, but there is a sound view (*qawl*) that it is allowed without a time restriction. And Malik said there is no limit at all and it is allowed for a short time or protracted period according to the opinion of the ruler.⁷²

Al-Nawawi explained that such treaties were permissible according to whatever the rulers viewed to be in the interest of the people, while acknowledging that these interests may be disputed. He further believed that, in certain circumstances, certain evils may be accepted to repel greater evils (*ihthimal mafsada yasiru li daf‘a‘zam minha*).⁷³

Al-Nawawi also acknowledged the lack of consensus on time limits. The plurality of thought on this issue is demonstrated further by Cordoban exegete Abu ‘Abd Allah al-Qurtubi (1214–1273), a Maliki scholar widely cited across the spectrum of Islamic and Islamist thought. Explaining the verse, ‘If they incline towards peace then you must incline towards it’ (8:61), al-Qurtubi states that peace treaties were acceptable for a range of time frames and in a range of circumstances:

Ibn Habib narrated from Imam Malik: “It is permitted to have treaties with polytheists for a year, two years, three years, or without any time restriction (*ghayr mudda*)” – this can take place

68. Sohail H. Hashmi, ‘Saving and Taking Life in War: Three Modern Muslim Views’, in *The Muslim World*, (April 1999), vol. 89, no. 2, pp. 158–182, p. 177, available at: <http://www.hartsem.edu/sites/default/files/macdonald/articles/hashmiart1.pdf>.

69. Ibn Qudama, *al-mughni*, (Beirut: Dar ul-Kutub ul-Ilmiyya, n.d.), vol. 10, p. 526.

70. Al-Kasani, *bada‘i al-sana‘i fi tartib al-shara‘i*, (Cairo: Sharikah Matb al-Islamiyya, 1909), vol.7, p. 109.

71. Al-Ramli, *nihayat u-muhtaj*, (Cairo, al-Matba al-Bahiyya, n.d.), vol.7, p. 236.

72. Al-Nawawi, *al-minhaj bi sharh sahih muslim*, (Beirut: Dar ul-Mari‘fa, 2001), vol. 6, part 12, p. 355.

73. Ibid.

when the ruler deems fit. It can also take place without winning anything from the enemy and, in fact, when there is a need (*haja*), even by handing over properties (*amwal*) belonging to the Muslims, as the Prophet did.⁷⁴

In his work on the influence of war on Islamic jurisprudence, contemporary Syrian scholar al-Zuhayli argues that the primary basis of Islamic international relations is peace rather than war.⁷⁵ As such, he advocates the doctrine of necessity and need:

Giving away part of the lands of the Muslims (*iqta' juz' min ard al-muslimin*) or allowing them to enter the holy land (entering the *haram* ['sanctity'] of Mecca), or giving the enemy our weapons (*alat al-harb*), or giving them the property of Muslims (*tark mal al-muslim fi ayadhim*) – these would normally be forbidden, but if there is a strong benefit (*maslaha*) or a need (*haja*), then they would be permitted.⁷⁶

Al-Zuhayli explains that this is justified by the precedent set by Prophet Muhammad in the Treaty of Hudaibiyya. He further cites the example of Muhammad's successful defence of Medina (the Battle of the Trench), in 627, against a siege by Arab and Jewish tribes – where he initiated peace negotiations with the Bani Ghatafan tribe, offering them one third of the fruit harvest of Medina in exchange for their withdrawal. Al-Zuhayli also states that the doctrine of necessity has sound legal underpinnings:

It is also backed by the general Shari'a principles, that Muslim rulers may in similar circumstances undertake similar actions, namely: "It is permitted to suffer a specific harm in order to repel a more general harm" (*yatahम्मal al-darar al-khass li-difa' al-darar al-'amm*) and "hardship requires ease" (*al-mushaqqqa tujlib al-taysir*) and "necessity permits the forbidden" (*al-darura tubih al-mahzurat*).⁷⁷

Modern acceptance of peace treaties

The function of treaties as a legitimate Islamic mechanism for recognising the sovereignty of other states, therefore, has a long history; is based on Prophetic practice; and is recognised by classical scholars from the four Sunni schools of law. Moreover, a range of contemporary academics – from the progressive al-Zuhayli; to Islamist moderates; to conservative Saudi scholars – recognise the religious validity of peace treaties.

74. Al-Qurtubi, *al-jami ahkam ul-qur'an*, (Beirut: Dar al-Fikr, 1999), vol. 4, p. 2238.

75. Al-Zuhayli, *athar al-harb fil-fiqh al-islami*, p. 135.

76. *Ibid.*, p. 674.

77. *Ibid.*

One such Islamist scholar is Yusuf al-Qaradawi (1926–present), the influential Qatar-based Egyptian theologian; ideological leader of the Muslim Brotherhood; and author of the most extensive Muslim discussion of post-9/11 war, violence, and terrorism: *fiqh al-jihad* ('Jurisprudence of Jihad'). In *fiqh al-jihad*, al-Qaradawi states that the United Nations is constituted by a treaty which renders the world a peaceful abode; as such, the idea of hostility as the basis of relationships between countries is removed, and peace as the basic norm and rule is established.⁷⁸ Al-Qaradawi's position is based on an edict issued by the al-Azhar scholar, Muhammad Abu Zahrah (1898–1974), who explained that all signatories to the United Nations convention became part of *Dar al-Ahd* ('lands of covenant'), a third category for states with which there is a peace treaty and, therefore, peaceful relations. Abu Zahrah argued that the conditions apply to all countries that are explicitly included in the agreement, including – for example – Israel and India.⁷⁹

In *fiqh al-jihad*, however, al-Qaradawi excludes Israel from the understanding of a worldwide community of peace, stating that it is the one country still considered *Dar al-Harb* ('lands of war') for Muslims. He argues that the West is wrong to include Israel in the United Nations, and singles the country out as an arena of legitimate resistance. Al-Qaradawi's rejection of Israel, however, is arguably political rather than theological: this exception to an established Islamic principle is one which he chooses not to apply to any other country (including those previously known to have been under Muslim dominion or those permitting the presence of Western forces).

Al-Qaradawi's singling out of Israel – from a legal position – contradicts conservative Sunni edicts which explain that the basis for normal and peaceful relations with the state exists in Islamic law, and that trade and other types of relations are also permitted. Such edicts came from a range of sources, including Egypt's religious authority: al-Azhar.

As the leading Mufti of al-Azhar at the time of the 1979 Egypt–Israel Peace Treaty, Jad al-Haqq 'Ali Jad al-Haqq (1917–1996) issued a detailed *fatwa* ('religious edict') justifying the treaty according to *shari'a* ('religious law') and emphasising the benefit that peace would bring to Islam and Muslims.⁸⁰ Jad al-Haqq's long declaration, published in a national newspaper, explained that peace was the primary basis of Islamic international relations; as such, treaties should be made in the best interests of the people, and, if necessary, can draw upon other principles established in Islamic law (for example, permitting the lesser of two evils for a greater benefit). He cited Maliki scholar al-Qurtubi to substantiate his position.⁸¹

78. Yusuf al-Qaradawi, *fiqh al-jihad*, (Cairo: Wahba Bookshop, 2009), vol.2, p. 902.

79. Muhammad Abu Zahrah, *al-ilaqat al-dawliyah fi'l-islam*, (Cairo: Al-Dar al-Qaumiyah, 1964), pp. 47-52.

80. Reiter, 'Islam and the Question of Peace with Israel', p. 93.

81. Arabic fatwa available at: www.jiis.org/upload/publications/fatwa/fatwa%205.pdf.

Likewise, the Salafist state Mufti of Saudi Arabia, Sheikh ‘Abd al- ‘Aziz bin Baz (1910-1999), produced an edict – on the permissibility of both a peace that was time-limited (*muwaqqata*), as well as one that was not (*mullaqa*) – which also referred to the criterion of best interests. Furthermore, he referenced the Qur’anic injunction, ‘If they incline towards peace then you must incline towards it’ (8:61), and cited the Treaty of Hudaibiyya as precedent.⁸² While in a later edict he restricted his statements to situations defined by Muslim weakness, bin Baz continued to assert Israel’s right to establish political and trade relations, thereby conferring a limited form of recognition of the country and its legitimacy.⁸³ He also wrote a response to al-Qaradawi’s exemption of Israel, arguing that the *Qur’an* approves of compromise when facing oppression; that treaties facilitating such compromise are to be valued; and that one should do what one could, but no more, to reduce oppression.⁸⁴

Bin Baz’s fatwa is not without legal precedent. There is a strong legal tradition of upholding a peace treaty even if the other party is at war with another Muslim state. This is based on the Qur’anic injunction:

But if they seek your help in religion, it is your duty to help them except against a people with whom you have a treaty of mutual alliance, and Allah is the All- Seer of what you do. (8:72)

North African Maliki scholar Abul-Abbas Ahmed al-Wanshirisi (1430/31–1508) supported this principle in his collection of North African and Andalusian *fatawa*, the multi-volume *al-miyar al-murib*, which is widely considered a primary source on the social, cultural, economic, and juridical practices of medieval al-Andalus and the Maghreb. In answer to an abstract question about the legitimacy of a Muslim empire or state having relations with another state with whom other Muslim states are at war, Imam Wanshirisi answered affirmatively; and the principle is considered mainstream within the Maliki School.⁸⁵

82. Arabic fatwa available at: www.jiis.org/upload/publications/fatwa/fatwa%2010.pdf. English summary: ‘Permissibility of temporary or unlimited truce with the enemy if the ruler sees it to be beneficial’ (Interview by the editor-in-chief of Muslimun Paper with His Eminence about treaties with the Jews), *Fatwas of Ibn Baz*, Portal of the General Presidency of Scholarly Research and Ifta’, Kingdom of Saudi Arabia, website, Part 8, p. 212, available at: <http://www.alifta.net/Fatawa/FatawaDetails.aspx?language=en&lang=en&IndexItemID=403&SecItemHitID=405&ind=9&Type=Index&View=Page&PageID=1032&PageNo=1&BookID=14&Title=DisplayIndexAlpha.aspx#Jews>.

83. Arabic fatwa available at: www.jiis.org/upload/publications/fatwa/fatwa%2012.pdf. English summary: ‘Making peace is contingent upon the public interest’, *Fatwas of Ibn Baz*, Portal of the General Presidency of Scholarly Research and Ifta’, Kingdom of Saudi Arabia, website, Part 8, p. 224, available at: <http://www.alifta.net/Fatawa/FatawaDetails.aspx?language=en&lang=en&IndexItemID=802&SecItemHitID=815&ind=6&Type=Index&View=Page&PageID=1039&PageNo=1&BookID=14&Title=DisplayIndexAlpha.aspx#Palestine>.

84. Arabic available at: www.jiis.org/upload/publications/fatwa/fatwa%2011.pdf. English summary: ‘A clarification and a commentary on an article by Shaykh Yusuf Al-Qaradawy on making peace with the Jews’, *Fatwas of Ibn Baz*, Portal of the General Presidency of Scholarly Research and Ifta’, Kingdom of Saudi Arabia, website, Part 8, p. 226, available at: <http://www.alifta.net/Fatawa/FatawaDetails.aspx?language=en&lang=en&IndexItemID=802&SecItemHitID=815&ind=6&Type=Index&View=Page&PageID=1040&PageNo=1&BookID=14&Title=DisplayIndexAlpha.aspx>.

85. Al-Wanshirisi, *al-miyar ul-murib wal-jami al-mughrib an-fatawiyy ahl al-iffriqiya wal-andalus wal-maghrib (The clear measure and the extraordinary collection of the judicial opinions of the scholars of Ifriqiya, al-Andalus and the Maghrib)* ed. by scholars under the supervision of Dr. Muhammad Heggy (Morocco: Wizara al-Awqaf, 1981) vol. 1, p. 115.

Contemporary scholarship also recognises the pragmatism behind this principle. The Oxford University-based Malaysian Shafi'i jurist, Sheikh Muhammad Afifi al-Akiti (1976–present), for example, writes:

Even during the period of the Ottoman caliphate, for example, another Muslim authority elsewhere, such as in the Indian subcontinent, could have been engaged in a war when at the same time the Khalifa's army was at peace with the same enemy, and this is how it will always be, and this is the reality on the ground.⁸⁶

As such, neither Prophetic practice nor Sunni jurisprudence prevents a Muslim state from entering into a peace treaty with Israel while other Muslim states choose not to.

Contemporary British Muslim scholars' acceptance of peaceful relations with Israel

On the basis of the Islamic legitimacy of peace treaties and the doctrine of best interests, there are contemporary British scholars who support peaceful relations between Israel and Palestinians in the form of a two-state solution regulated by international peace treaties. The London-based academic and part-time Imam, Dr. Usama Hasan, for example, says:

The ideal resolution to the current conflict between Israel and Palestine would be for people to be able to live side by side; enjoy the same rights without discrimination; and take part in producing a society which respected each other's freedoms and rights, and where people of different faiths and multiple complex ethnicities were able to build a society together. There are many obstacles to this actually being realized, such that it may be more practical in the short term for the Palestinians to at least establish a State – alongside the Israeli State – which is given the right to self-governance and real independence and autonomy. Both states should be able to compromise and arrive at a peaceful resolution which allows them both to respect the integrity of each other's existence...⁸⁷

British scholar Mufti Abu Layth also supports this view:

The ideal and utopian solution to the Palestinian issue, from an Islamic perspective, would be the restoration of rights; property; land; freedoms; and human dignity to the indigenous people of Palestine, with immediate effect – in order for justice to be truly realized. However, in the absence of idealistic solutions, a realistic and viable alternative is a two-state solution which, at the very

86. Al-Akiti, 'Defending the Transgressed', p. 23.

87. Interview with Dr. Usama Hasan.

least, will offer the Palestinian people considerable sovereignty; autonomy; freedoms; and dignity. Such a pragmatic solution, despite its controversial coverage, is not un-Islamic; neither are Islam or religion barriers to such progress, since Islam has long sought to mitigate suffering and establish justice by practical means – albeit, at times, by means of compromise.⁸⁸

The jurisprudential arguments advanced by Hamas and other jihadist groups which reject international peace instruments and describe a short-term ceasefire as the only viable Islamic option are, therefore, not essential or even typical aspects of Islamic law. Neither are there religious restrictions on recognising India or Israel, nor on making political agreements and accepting permanent settlements – even if such countries occupy parts of Muslim land. Undoubtedly, there are widely held political or ideological reasons (including narrow readings of Islamic law) for refusing to accept perceived illegitimate states like (most notably) Israel; such reasons, however, are not provided by the four primary Sunni schools of law. If such an agreement or recognition is deemed a political necessity, Sunni jurisprudence does not prevent it.

THE CALIPHATE

Across the spectrum of Islamism, the perceived religious duty for a single Caliphate (an expansionist Islamic state) is a point of unity. Methodological differences notwithstanding, jihadist groups al-Qa'ida; Hamas; and Lashkar-e-Ta'iba, revolutionary Islamists Hizb ut-Tahrir, and entry-level Islamists like the Arab Islamist movement, the Muslim Brotherhood, and its South Asian equivalent, Jamaat-e-Islami, all share the fundamental aim of establishing an expansionist Caliphate under a single leader – the Caliph – who will unite Muslims globally under one interpretation of *shari'a* ('religious law').

The Caliphate in jihadist cultural heritage

While contemporary jihadists utilise classical Islamic jurisprudence in order to justify terrorism, they are also influenced by modern Islamism stemming from Arab and South Asian groups' resistance to colonialism. This is exemplified by their support for the ideas of the Muslim Brotherhood and Jamaat-e-Islami. Of particular note are the founder of the Muslim Brotherhood, Hassan al-Banna (1906–1949); the leading Muslim Brotherhood ideologue, Sayyid Qutb (1906–1966); and the Jamaat-e-Islami founder, Abul Ala Maududi (1903–1979) – all of whom advocated the need for an expansionist Caliphate in order to spread *Dar al-Islam* ('lands of Islam') across the world.

In his work, *haqiqat-i-jihad* ('The Truth of Jihad'), for example, Maududi refers to the expansionist nature of *jihad* ('religiously sanctioned warfare'):

88. Interview with Mufti Abu Layth.

Human relations and associations are so integrated that no state can have complete freedom of action within its own principles, unless those same principles are in force in a neighbouring country. Therefore, Muslim groups will not be content with the establishment of an Islamic state in one area alone. Depending on their resources, they should try to expand in all directions. On one hand, they will spread their ideology and on the other they will invite people of all nations to accept their creed, for salvation lies only in it. If their Islamic state has power and resources it will fight and destroy non-Islamic governments and establish Islamic states in their place.⁸⁹

Both al-Banna and Qutb also repeatedly referenced the need for a pan-Islamic state as part of their programme of Islamic revival. In 1938, for example, al-Banna stated:

Islam does not recognize geographical boundaries, not [sic] does it [sic] acknowledge racial and blood differences, considering all Muslims as one Umma [‘transnational Muslim community’]. The Muslim Brethren consider this unity as holy and believe in this union, striving for the joint action of all Muslims and the strengthening of the brotherhood of Islam, declaring that every inch of land inhabited by Muslims is their fatherland...The Muslim Brethren do not oppose every one’s [sic] working for one’s own fatherland. They believe that the caliphate is a symbol of Islamic Union and an indication of the bonds between the nations of Islam. They see the caliphate and its re-establishment as a top priority, subsequently; an association of Muslims [sic] people should be set up, which would elect the imam.⁹⁰

Meanwhile, in chapter nine of his book, *Milestones (ma‘alim fi’l-tariq)*, Qutb says:

There is only one place on earth which can be called the home of Islam (Dar-ul-Islam), and it is that place where the Islamic state is established and the Shari‘ah is the authority and God’s limits are observed, and where all the Muslims administer the affairs of the state with mutual consultation. The rest of the world is the home

89. Abul Ala Maududi, *haqiqat-i-jihad*, (Lahore: Taj Company Ltd, 1964), p. 64.

90. ‘The Stand of the Muslim Brethren towards Union’, al-Banna’s lecture at the fifth Muslim Brotherhood conference, Cairo, 11 October 1938. See: Muhammad Amara, *al-islam wa-l-urubba wa-l-almaniyya* (Beirut, 1981), p. 171, cited by the Muslim Brotherhood’s official English-language website, available at: <http://www.ikhwanweb.com/article.php?id=17065>.

of hostility (Dar-ul-Harb).⁹¹

In chapter four, he also states:

Those who say that Islamic Jihaad was merely for the defense of the ‘homeland of Islam’ diminish the greatness of the Islamic way of life and consider it less important than their ‘homeland’. [...] Of course, in that case the defense of the ‘homeland of Islam’ is the defense of the Islamic beliefs, the Islamic way of life, and the Islamic community. However, its defense is not the ultimate objective of the Islamic movement of Jihaad but is a means of establishing the Divine authority within it so that it becomes the headquarters for the movement of Islam, which is then to be carried throughout the earth to the whole of mankind, as the object of this religion is all humanity and its sphere of action is the whole earth.⁹²

While the Muslim Brotherhood is not a single entity, its regional branches share a common understanding of Islam. In 2005, former General Guide (*Murshid al-‘Amm*) Mohammed Akef reiterated that the movement’s shared goal was the global spread of Islam:

[The Muslim Brotherhood is] a global movement whose members cooperate with each other throughout the world, based on the same religious worldview—the spread of Islam, until it rules the world.⁹³

[...] the Muslim Brotherhood is an all-inclusive Islamic organization that calls for this great religion sent by God as a mercy for the human race. We are present in the international arena, calling for God according to the Muslim Brotherhood approach. All the brothers in the international arena are working according to a written approach.⁹⁴

The revolutionary Islamist party, Hizb ut-Tahrir, also seeks to re-establish the Caliphate and implement *shari‘a*, in order to establish *Dar al-Islam*:

So what matters in determining whether the land is Dar ul-Islam or Dar ul-Kufr [‘lands of disbelief’] is neither the land itself nor its inhabitants, rather it is the laws and the security. So if its laws

91. Sayyid Qutb, *Milestones*, (Damascus: Dar al-‘Ilm, n.d.), chapter 9, p. 118, also available at: http://web.youngmuslims.ca/online_library/books/milestones/hold/chapter_9.htm.

92. Qutb, *Milestones*, chapter 4, pp. 71-72.

93. Interview in *al-Sharq al-Awsat*, London, 11 December 2005, cited in Lorenzo Vidino, ‘The Global Muslim Brotherhood: Myth Or Reality?’, George Washington University Homeland Security Policy Institute, Issue Brief 10, 2 March 2011, available at: <http://www.gwu.edu/hspi/policy/Issue%20Brief%2010.%20Global%20Muslim%20Brotherhood.pdf>.

94. Interview in *al-Sharq al-Awsat*, London, 16 December 2005, available at: <http://www.aawsat.net/2005/12/article55268569>.

are Islamic and its security is maintained by Muslims then it is Dar ul-Islam. When its laws are the laws of Kufr (disbelief) and its security is not maintained by Muslims then it is Dar ul-Kufr or Dar ul-Harb (land of disbelief or land of war). This understanding is taken from the tradition of the Prophet [...] narrated by Sulayman Bin Buraida.⁹⁵

An article published on Hizb ut-Tahrir's English-language website also states:

The term Dar al-Harb (land of war) is synonymous with Dar al-Kufr as in origin the aim of Islam is to spread to all lands until the Islamic state encompasses the whole globe. However there is a difference between those nations which are considered as Dar al-Harb fi'l-an (actual land of war) like the state of Israel which occupies Islamic land and Dar al-Harb hukman (potential land of war) which include other states which are not occupying Islamic land or engaged with a direct war against our lands. These definitions have been derived from the Islamic evidences and discussed by the Ulema (scholars) in history.⁹⁶

The application of the *Dar* ('lands') concept, and the motivation to have an idealised Islamic state, as represented in a cross-section of writings from prominent Islamist thinkers, demonstrate the Islamist – and, subsequently, jihadist – representation of the Caliphate as *Dar al-Islam*.

Accepting alternatives to the Caliphate

For Islamists, rejection of the perceived doctrinal injunction for a Caliphate constitutes rejection of an essential aspect of Muslim belief; as such, Muslims who disagree are charged with unbelief and then declared apostates from Islam – a practice known as *takfir*. The necessity for a single leader and re-establishing the Caliphate, therefore, are enduring priorities for both jihadists and Islamists.

Muslim jurists past and present, however, hold the view that there are different and legitimate opinions on this issue. Mainstream religious scholars prefer unity and peaceful relations to disunity, where possible; as such, traditional emphasis on single leadership can be interpreted as an injunction against division where unity already exists, rather than unqualified support for the forceful unification of Muslim-majority countries (as Islamists insist). Furthermore, traditional scholars have recognised the political realities of Islamic history, and have acknowledged that there have always been different Muslim states and empires. As a result, it was considered a form of extremism, among classical scholars, to exaggerate the issue of the Caliphate and declare *takfir* on those who accepted multiple leaders.

95. Hizb ut-Tahrir, *The Methodology of Hizb ut-Tahrir for Change*, (London: Al-Khilafah Publications, 1999), p.6, available at: http://www.khilafahbooks.com/wp-content/ebooks/english/kihlahaf/methodology_of_hizb_tahrir.pdf.

96. 'Clarifying the meaning of Dar al-Kufr & Dar al-Islam', *Khilafah*, 28 March 2007, available at: www.khilafah.com/index.php/the-kihlahaf/foreign-policy/225-clarifying-the-meaning-of-dar-al-kufr-a-dar-al-islam.

Single leadership

Religious extremists and jihadists claim evidence from Prophetic tradition obligates the necessity of one Caliph and forbids multiple rulers; they further believe that such evidence is definitive (*qat'i*), and permits no other interpretations. The relevant *hadith* ('reported speech of the Prophet') from the Book of Leadership in *Sahih Muslim* are:

It has been narrated on the authority of 'Arfaja who said: I have heard the Messenger of Allah (may peace be upon him) say: Different evils will make their appearance in the near future. Anyone who tries to disrupt the affairs of this Umma while they are united you should strike him with the sword, whoever he be. (If remonstrance does not prevail with him and he does not desist from his disruptive activities, he is to be killed). (20:4565)⁹⁷

It has been narrated on the authority of Abu Sa'id al-Khudri that the Messenger of Allah (may peace be upon him) said: When oath of allegiance has been taken for two caliphs, kill the one for whom the oath was taken later. (20:4568)⁹⁸

Muslim scholars, however, have differed over the necessity of having a single political leadership. For some, the *hadith* should be interpreted as meaning Muslims must prevent schisms when they are already united under a single leadership, not necessarily when there are already many different states and leaderships. In his commentary on the *Sahih Muslim*, Shafi'i scholar al-Nawawi, for example, says that 'anyone' refers to 'those who have rebelled (*kharaja*) against the leader'.⁹⁹

Prominent thirteenth-century Maliki scholar al-Qurtubi, for example, stated that, 'if the lands are distant and far from each other, such as Khurasan [modern Afghanistan] and Andalusia, then it is allowed [to appoint more than one leader]'.¹⁰⁰ A later Maliki scholar from Granada, Abu'l Hasan Ali Bin Muhammad bin Ali al-Qurashi al-Qalsadi (1412–1486), stated in his commentary on *anwar al-sunniyah*, the hadith collection of Ibn al-Juzay al-Kalbi al-Gharnati (d. 1340), that the hadith meant it was not correct to have more than one leader in any one country.¹⁰¹

Al-Nawawi further states that while, in general, scholars have agreed that there

97. *Sahih Muslim, kitab al-imara (Book on Leadership)*, no. 4565, available online at: <http://www.hadithcollection.com/sahihmuslim/148-Sahih%20Muslim%20Book%2020.%20On%20Government/12974-sahih-muslim-book-020-hadith-number-4565.html>.

98. *Sahih Muslim, kitab al-imara (Book on Leadership)*, no. 4568, available online at: <http://www.hadithcollection.com/sahihmuslim/148-Sahih%20Muslim%20Book%2020.%20On%20Government/12974-sahih-muslim-book-020-hadith-number-4568.html>.

99. Al-Nawawi, *al-minhaj bi-sharh sahih muslim*, (Beirut: Dar ul-Mari'fa, 2001), vol. 6, p. 444.

100. Al-Qurtubi, *al-jami ahkam ul-qur'an*, (Beirut: Dar al-Fikr, 1999), vol. 1, p. 230.

101. Al-Qalsadi, *tub ul-a'har il-iyamaniyya ala al-anwar al-sunniya*, (published alongside *anwar ul-sunniya fi-alfadh al-sunniya*) (Beirut: Dar Ibn Hazm, 2010), p. 308.

should not be two leaders at one time, there is the possibility of different opinions, and that this issue is ‘outside the definitive matters (*kharij min al-qawati*)’.¹⁰² Al-Nawawi then refers to the twelfth-century jurist, al-Mazari, and the Shafi’i Imam, al-Haramayn al-Juwayni (1028–1085), as evidence of those who accepted the permissibility of multiple political leaders. In his text on the rights and responsibilities of the rulers, *ghiyath al-umam*, al-Juwayni says:

I do not deny the permissibility of appointing (two leaders) according to need (*haja*) and enforcing both of their executive decisions as a religious duty. But this is only permitted when there is no Imam with overall authority. [...] If they agree to appoint an Imam over them, it is a right for the two leaders to submit to the decisions of this Imam in a manner he deems appropriate.¹⁰³

For al-Juwayni, therefore, the division of authority is according to need. Discussing the question of two imams in two separate countries, he concluded that neither could lay claim to the leadership of all Muslims.¹⁰⁴

Reality of multiple leaders

Contrary to jihadists’ insistence that the Caliphate ended in 1924, classical mainstream scholars recognise the pre-existing plurality of Muslim leadership. In the eleventh century, for example, Persian Shafi’i scholar Muhammad ibn Muhammad al-Ghazali (1058–1111) criticised those who claimed that the end of the Caliphate warranted the end of Muslim life and adherence to *shari’a*. Instead, he advocated pragmatic recognition of existing power structures:

There are those who hold the imamate is dead, lacking as it does the required qualifications. But no substitute can be found for it. What then? Are we to give up obeying law? Shall we dismiss the judges, declare all authority valueless, cease marrying and pronounce the acts of those in places to be invalid at all points, leaving the population to live in “sinfulness”? Or shall we continue as we are, recognising that the imamate really exists and that all acts of administration are valid, given the circumstances of the case and the necessities of the actual moment? The concessions made by us are not spontaneous, but necessity makes lawful what is forbidden. We know it is not lawful to feed on a dead animal; still, it would be worse to die of hunger. Of those that contend that the caliphate is dead forever and irreplaceable, we should like to ask: which is preferred, anarchy and the stoppage of social life for the lack of properly constituted authority, or acknowledgement of the existing power, whatever it be? Of these two alternatives, the

102. Al-Nawawi, *al-minhaj bi-sharh sahih muslim*, (Beirut: Dar ul-Mari’fa, 2001), vol. 6, p. 444.

103. Al-Juwayni, *ghiyath al-umam fi tiyath al-zulam*, (Beirut: Muassasah al-Rayyan, 1997), pp. 168-169.

104. Al-Juwayni, *ghiyath al-umam fi tiyath al-zulam*, (Beirut: Muassasah al-Rayyan, 1997), pp. 168-169.

jurist cannot but choose the latter.¹⁰⁵

Al-Ghazali's approach to the leadership is pragmatic rather than theological; and the Caliphate is not represented as an essential aspect of Islamic teaching.

In his eighteenth-century commentary on Ibn Hajar al-Asqalani's (1372–1449) *hadith* collection, *bulugh al-maram*, Yemeni jurist Muhammad bin Isma'il al-Amir al-San'ani (d. 1768) acknowledges the plurality of Muslim rule since the third Islamic Caliphate, known as the Abbasid Caliphate (750–1258). Commenting on the *hadith*, 'Whoever left obedience to the Imam and separated from the community and then died, then his is a death of pagan ignorance', al-San'ani explains:

The phrase, "... left obedience ..." means obedience to the Caliph with whom there is agreement. And the implication here is that the Caliph referred to is that of a particular region because the people have never gathered together behind a single Caliph in all the lands of Islam since the time of the Abbasid State. Rather, the people of every region were independent with someone presiding over their affairs. If the *hadith* was taken to mean the overall Caliph which the people of Islam had united behind, then there would have been no benefit in the saying.¹⁰⁶

Another Yemeni scholar – the reformer Imam Muhammad ibn 'Ali al-Shawkani (1759–1834), popular among both Salafis and Sufis – acknowledged the historical necessity of multiple rulers as the Islamic empire expanded:

When Islam spread and its territories expanded and its regions became distant [from each other], it was known that in all of these regions loyalty was given to an Imam or Sultan... So there is no harm in the multiplicity of Imams and Sultans and it is obligatory for those people in whose land his orders and prohibitions become effective to give obedience to him after having given *bay'a* (a pledge of allegiance) to him. It is the same for the people of all the other regions.¹⁰⁷

Declaring takfir on those who reject the idea of the Caliphate

Making political leadership a central aspect of faith and declaring Muslims who accepted multiple leaders to be unbelievers were traditionally considered characteristics of extremists. Shafi'i scholar al-Ghazali, for example, stated:

105. Al-Ghazali, *al-iqtisad fi'l-i'tiqad*, cited in 'Juwayni and Gazali: The Sultanate', in Ann K. S. Lambton, *State and Government in Medieval Islam. An Introduction to the study of Islamic political theory: the jurists*, (Oxford: Oxford University Press, 1981), pp. 103–130, pp. 110–111.

106. Al-San'ani, *subul al-salam*, (Beirut: Dar Ihya Turath Al-Arabi, 1960), vol. 3, p. 499.

107. Al-Shawkani, *al-sayl ul-jarrar mudaffiq ala hada'iq ul-a'char*, (Damascus and Beirut, Dar Ibn Kathir, 2005), vol. 4, pp. 706–707

Know, however, that error regarding the status of the Caliphate, whether or not establishing this office is a (communal) obligation, who qualifies for it, and related matters, cannot serve as grounds for condemning people as unbelievers. Indeed Ibn al-Kaysan denied that there was any religious obligation to have a Caliphate at all; but this does not mean that he must be branded an unbeliever. Nor do we pay any attention to those who exaggerate the matter of Imamate and equate recognition of the Imam with faith in God and His Messenger. Nor do we pay any attention to those people who oppose these people and brand them unbelievers simply on the basis of their doctrine on the Imamate. Both of these positions are extreme. For neither of the doctrines in question entails any claim that the Prophet perpetrated lies.¹⁰⁸

Al-Ghazali believed, therefore, that while a Muslim denying the recognition of single political leadership would be considered mistaken by mainstream scholars, they should not be considered as outside the community of believers, and that to do so is extreme.¹⁰⁹ This is because the status of the Caliphate has traditionally been considered a subsidiary branch of *fatawa* ('religious edicts'), rather than a fundamental aspect of religion. For example, fourteenth-century scholar Jamal al-Din al-Asnawi (d. 1370) stated:

The obligation of appointing an Imam is one of the branches of jurisprudential rulings (*al-furu' al-fiqhiyya*), and without a doubt they are not from the fundamentals of religion (*usul al-din*).¹¹⁰

While some scholars accepted the historical reality and permissibility of multiple Muslim leaders, even those who believed that rejecting single leadership was erroneous still did not consider it the basis of *kufri* ('disbelief'). As such, mainstream scholars accepted the legitimacy of differing opinions, and did not believe – unlike Islamists and jihadists – that the acceptance of multiple Muslim leaders warranted *takfir*.

108. Al-Ghazali, cited in Sherman A. Jackson, *On the Boundaries of Theological Tolerance in Islam, Abu Hamid al-Ghazali's Fayisal al-Tafriqa*, (Oxford: Oxford University Press, 2002), p. 113.

109. Al-Ghazali, cited in Jackson, *On the Boundaries of Theological Tolerance in Islam*, pp. 115–117.

110. Al-Asnawi, *nihayat ul-su' al fi-sharh minhaj al-wusul lil-qadi al-baydawi ma'a'l-hashiyya salam al-wusul li-sharh al-nihaya*, with commentary by Shaykh Muhammad Bakhit al-Muti'i, (Beirut: 'Alam ul-Kutub, 1982), vol. 3, p. 92.

Part II:

Towards Reclaiming Jihad

Contemporary international law has two sets of criteria for war: *jus ad bellum* (or, ‘the reason for warfare’), and *jus in bello* (or, ‘conduct within war’). The development of Islamic jurisprudence on *jihad* (‘religiously sanctioned warfare’) also generated two such independent branches of law. This section will focus on both criteria – who can declare *jihad* and when, as well as who can be targeted and who should fight – and will demonstrate how the jihadists’ rendering of the rules of *jihad* has diverged from both classical and contemporary sources of Islamic law.

JUS AD BELLUM

The pertinent jurisprudential questions are who can declare *jihad*, and when. Jihadist groups advocate their own authority to declare *jihad*; furthermore, they argue that *jihad* is both mandatory and permanent until all formerly Islamic land has been reclaimed and Islam has dominated the world. Classical and contemporary scholars, however, are significantly more restrictive in their understanding of who is authorised to declare *jihad* and under what circumstances.

Jihad may only be declared by legitimate political leaders

One of the important maxims in traditional discussions of *jihad* is that declarations of war can only be issued by legitimate political leaders, traditionally a Caliph. By contrast, the modern trend in jihadist thought is for armed groups and non-state actors to declare war. For example, in response to the question, ‘Can we fight jihad while we haven’t an Amir [‘leader’]?’ former al-Qa’ida ideologue ‘Abd Allah Yusuf ‘Azzam wrote, ‘Yes we fight, and we haven’t an Amir. None has said that the absence of a community of Muslims under an Amir cancels the Fard [‘religious duty’] of jihad.’¹¹¹

The four primary Sunni schools of law, however, do not share this view; they are specific in restricting the legitimate declaration of war to leaders. Eleventh-century Hanafi scholar al-Sarakhsi, for example, stated that political leaders were responsible for Muslim armies and should accompany them where possible: ‘The ruler of the Muslims must always exert all efforts to lead an army himself or dispatch a military detachment of Muslims [on his behalf].’¹¹²

Thirteenth-century Shaf’i scholar al-Nawawi wrote that the decision to break a

111. ‘Abd Allah Yusuf ‘Azzam, *Defence of Muslim Lands*, chapter 4.

112. Al-Sarakhsi, *al-mabsut*, (Beirut: Dar al-Fikr, 2000), vol. 5 (part 10), p.3.

peace treaty and, therefore declare war, was the prerogative of political leaders:

“Only when there is a real situation where there is a certain belief that treachery [i.e. breaking the terms of the treaty] is taking place is it permitted for the head of state to inform others that such treaties are being repealed [...] This is because such a decision requires investigation and expert opinion and therefore requires the judgement of a legal authority”.¹¹³

Twelfth-century Hanbali scholar Ibn Qudama wrote in *al-mughni* that the decision to declare *jihad* belonged to the political leader:

Declaring Jihad is the responsibility of the Ruler and is his independent legal judgment. And it is the duty of the citizens to obey whatever he regards appropriate.¹¹⁴

Similarly, al-Qarafi, reportedly the greatest Maliki legal theorist of the thirteenth century,¹¹⁵ wrote that, ‘the head of state is delegated the responsibility of taking care of people’s affairs’, adding that warfare and fighting, ‘are of this nature’.¹¹⁶

The legal maxim that *jihad* can only be declared by legitimate rulers is also shared by contemporary Islamic scholars. Muhammad Sa‘id Ramadan al-Buti (1929–2013), a former professor at the College of Islamic Law at Damascus University, killed during the Syrian conflict, believed the declaration of *jihad* to be an act of legitimate political leadership, regardless of the nature of that leadership:

The scholars agree that jihad and warfare are a part of the rules pertaining to the political leadership... whether they are called caliphs, Imams, Kings, [or] Presidents.¹¹⁷

He further stated that there is no difference of opinion in this (*la a‘lam al-khilaf fiha*).¹¹⁸ Contemporary Syrian scholar al-Zuhayli also argues that, because political analysis of the case both for and against military conflict is required and the outcome affects public interest, it should only be conducted on the authority of the head of state.¹¹⁹ Similarly, in his work on the jurisprudence of minorities, respected Mauritanian scholar and Mufti Sheikh Abdullah bin Mahfoudh bin

113. Al-Nawawi, *kitab al-majmou sharh ul-muhadhab lil-shirazi*, ed. by Mohammad Najib al-Muti‘I, (Beirut: Dar Isha Turath al-Arabi, n.d.) 1st ed., vol. 21, pp. 280-281

114. Ibn Qudama, *al-mughni*, (Beirut: Dar ul-Kutub ul-Ilmiya, n.d.) vol. 10, p. 373.

115. Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihab al-Din al-Qarafi*, (Leiden: EJ Brill, 1996), pp. 1-5.

116. Al-Qarafi, *kitab al-ihkam fi tamiyic al-fatawa an al-ahkam wa tasarrufat al-qadi wa ‘l-imam (The book of perfecting the distinction between legal opinions, judicial decisions and the discretionary actions of judges and caliphs)*, (Damascus: Maktabat Matbu al-Islamiya, 1967), p. 42. See also: Sherman A. Jackson, *Islamic Law and the State*.

117. Al-Buti, *al-jihad fi ‘l-islam*, (Beirut: Dar al-Fikr, 1997), p. 115.

118. *Ibid.*, p. 112.

119. Al-Zuhayli, *athar al-harb fil-fiqh al-islami*, p. 91.

Bayyah (1935–present) argues, ‘Jihad belongs to legislation regarding political authority, and individuals and groups cannot announce a jihad. It is only for political authorities to do so’.¹²⁰

Bin Bayyah was present at a conference of international Islamic scholars in Mardin, Turkey, in 2010, which collectively authored a *fatwa* (‘religious edict’) concluding: ‘It is not for a Muslim individual or a Muslim group to announce and declare war or engage in combative jihad ... on their own’.¹²¹

Individuals and non-state actors cannot, therefore, legitimately declare *jihad*; mainstream Sunni jurisprudence limits the declaration of warfare to legitimate political authorities.

Legitimate reasons for fighting Jihad

The primary motivation for jihadists is the perceived liberation and re-conquering of Islamic lands, or a part thereof. Advocates often popularise their message by using fundamental theological principles concerning the nature of *jihad*, the most important among these being that *jihad* is offensive; that it must be continued at all times and places for the sake of spreading Islam to the detriment of the disbelievers; and that it is mandatory – either as an individual obligation (*fard al-‘ayn*) or a collective one (*fard al-kifaya*). The latter is obligatory for the community as a whole, and is satisfied if a sufficient number of adults perform it.¹²²

Offensive jihad

Two principal al-Qa’ida ideologues make reference to offensive *jihad* as a communal obligation: Yusuf al-Uyayri, a prominent leader of al-Qa’ida in Saudi Arabia (pre-cursor to al-Qa’ida in the Arabian Peninsula) who provided instructional material for jihadists until he was killed in May 2003,¹²³ and ‘Abd Allah Yusuf ‘Azzam, an architect of al-Qa’ida’s founding principles.

In his work on the different types of *jihad*, al-Uyayri writes:

Broadly speaking, there are two types, which have been mentioned by the Ulema [‘scholars’] regarding Jihad. The first is Jihad al-Talab wal Ibtida’ also known as Offensive Jihad / Jihad of Conquering; and the second known as Jihad ud-Dafa’ or defensive

120. Abdullah bin Mahfoudh Bin Bayyah, *sina’atul fatwa wa fiqh al ‘aqaliyat*, (Jeddah: Dar al-Minhaj, 2007), p115.

121. ‘Islam scholars recast jihadists’ favorite fatwa’, *al-Arabiya*, 31 March 2010, available at: <http://www.alarabiya.net/articles/2010/03/31/104563.html>.

122. Bewley, *Glossary of Islamic Terms*, p.117.

123. Benedict Wilkinson and Jack Barclay, ‘The Language Of Jihad: Narratives and Strategies of Al-Qa’ida in the Arabian Peninsula and UK Responses’, Royal United Services Institute for Defence and Security Studies, December 2011, pp. 9-10, available at: http://www.rusi.org/downloads/assets/Language_of_Jihad_web.pdf. See also: Thomas Hegghammer, *Jihad in Saudi Arabia: Violence and Pan-Islamism since 1979*, (Cambridge, UK: Cambridge University Press, 2010), p. 121. See also: ‘Following the death of Al-Muqrin and disappearance and failure of Voice of al-Jihad web site, Al-Qa’idah Organization in Saudi Arabia collapsing as teenagers take over’, *Al-Watan News*, 30 June 2005.

Jihad.¹²⁴

He then defines offensive *jihad* as war against disbelief:

This is the request and call, from the Muslims to the Kuffar (disbelievers) in their lands and dwelling places to enter Islam and to fight them if they do not accept the rule of the Islamic authority over them.¹²⁵

In terms of the minimum time-limit requirement upon Muslims to perform offensive *jihad*, al-Uyayri gives two differing opinions. First, that there should be ‘at least one expedition each year to discharge the duty of Jihad’ (a view with which, he states, the majority of scholars agree); and second, that it is ‘obligatory to fight jihad against the enemy in their heartlands whenever possible and there is no minimum requirement stipulated’.¹²⁶

Al-Uyayri believed the latter to be the ‘strongest’ opinion because it ‘perfectly suites [sic] the aims and objectives of fighting Jihad’, which he defines as:

[...] removing corruption from the face of earth and spreading the Islamic authority all over the world. The obligation of Jihad will only ever cease being a duty when Jihad’s true purpose is realised, that being the complete control of the whole earth such that not a single hand-span is left which is not under Islamic rule or by struggling ones [sic] utmost to accomplish this.

[...] the meaning of Jihad is to sacrifice oneself completely in the way of Allah (swt) [honorific: *Subhanahu wa ta’ala*, ‘glorified is He and exalted’] against the disbelievers. It is not sufficient to solely fight against the Kuffar on a single frontier; rather it is obligatory for the Muslims to fight the Kuffar who is nearest to them.¹²⁷

He goes on to argue that offensive *jihad* is a communal obligation, dependent upon the ability of those waging it:

[...] Offensive Jihad and Jihad of conquering is a duty of sufficiency (Fard Kifayah). If a group from among the Muslims goes out to fight and they have the sufficient ability and capability to spread Islam and call for it, then it is not an obligation for all the Muslims to go out with them.¹²⁸

124. Yusuf al-Uyayri, ‘The Ruling on Jihad and its Divisions’, Series of researches and studies in Shari’ah no. 2, translation by Abu Osama for at-Tawheed Publications (al-Muwahhideen), p. 1, available at: http://www.e-prism.org/images/The_Ruling_on_Jihad_and_its_Divisions_-_Yousef_Uyery.pdf.

125. Al-Uyayri, ‘The Ruling on Jihad and its Divisions’, p. 1.

126. Ibid., p. 8.

127. Ibid., p. 9.

128. Ibid., p. 6.

In *Defence of the Muslim Lands*, ‘Abd Allah Yusuf ‘Azzam, emphatically summarises offensive *jihad* as a communal obligation until all citizens worldwide either convert to Islam or submit to Islamic rule:

Where the Kuffar are not gathering to fight the Muslims. The fighting becomes Fard Kifaya with the minimum requirement of appointing believers to guard borders, and the sending of an army at least once a year to terrorise the enemies of Allah. It is a duty of the Imam to assemble and send out an army unit into the land of war once or twice every year. Moreover, it is the responsibility of the Muslim population to assist him, and if he does not send an army he is in sin.- And the Ulama [‘scholars’] have mentioned that this type of jihad is for maintaining the payment of Jizya [‘tax on non-Muslims’]. The scholars of the principles of religion have also said: “Jihad is Daw‘ah [‘proselytisation’] with a force, and is obligatory to perform with all available capabilities, until there remains only Muslims or people who submit to Islam.”¹²⁹

‘Azzam and al-Uyayri, therefore, promote a continuous state of war with non-Muslims in order to make Islam predominant in the world, and argue it is a communal obligation in Muslim legal doctrine, irrespective of time; place; or context.

Defensive jihad?

Classical and contemporary Muslim understanding of the legitimate reasons for military *jihad* – supported by the Maliki, Hanafi, and Hanbali schools of Sunni law – is considerably more restrictive than jihadists advocate. These three schools advocate *jihad* as a defensive practice or for use in circumstances – for example – when Muslims face *hiraba* (‘hostility’) and are attacked, or face persecution and are prevented from practising their religion. Furthermore, *jihad* is considered a last resort when all peaceful means have failed, and is not presented as a means to conquer the world or convert unbelievers.

Defence against hostility

Scholars from among the companions of the Prophet – including ‘Abd Allah ibn Umar (d. 693), a son of the second Caliph Umar, as well as prominent medieval Islamic scholars from the Maliki; Hanafi; and Hanbali schools – believed that the obligation of *jihad* applied only when Muslims were fought against.

The eleventh-century Hanafi authority, al-Sarakhsi, for example, stated: ‘Fighting is only initiated because of *hiraba* as our ‘ulama’ have stated, may God have mercy on them.’ He explained that this means, ‘fighting the non-believer in order to repel harm and evil from them. The expressions may be general but what is

129. ‘Abd Allah Yusuf ‘Azzam, *Defence of the Muslim Lands*, chapter 3.

intended is specific; those who are fighting you from among the non-believers'.¹³⁰ In *radd al-muhtar*, widely considered the most authoritative book on Hanafi *fiqh* ('jurisprudence'), nineteenth-century scholar Ibn 'Abidin further confirms: 'What is intended (in the obligation of jihad) is the repelling of enmity.'¹³¹

Thirteenth-century Maliki scholar al-Qurtubi also gives the rationale for fighting as *hiraba*, based on the Qur'anic verse, 'Fight the polytheists together because they fight you together' (9:36). In *al-jami ahkam ul-qur'an*, the most important of al-Qurtubi's works, he explains the verse as follows: 'because we are being fought and the fact that they have gathered (their forces) against us, it is an obligation upon us to gather ours against them'.¹³²

The famous medieval Hanbali scholar, Taqi al-Din Ahmad ibn Taymiyya (1263–1328),¹³³ also stated that 'the permission to fight for Muslims is based upon the fact that those fighting them have permitted themselves this.' His student, Muhammad Ibn Qayyim al-Jawziyya (1292–1350), explained: 'the obligation of fighting upon Muslims is against those who fight them as opposed to those who do not fight them'.¹³⁴

Contemporary Syrian scholar al-Buti also explained the legal reasoning behind limiting *jihad*:

The evidence of the mainstream of the scholars is the explicit verses in the Book of God Most Sublime which clearly state that fighting is obliged upon Muslims because of the aggression that they face from others. There are many verses revealed in various chapters and various places, and the many [*hadith* ('reported speech of the Prophet')] which forbid fighting those who do not show aggression against Muslims nor fight them.¹³⁵

Al-Buti further limited *hiraba* to actual hostilities, rather the perception of hostile

130. Al-Sarakhsi, *al-mabsut*, (Beirut: Dar al-Fikr, 2000), vol. 5 (part 10), p. 5.

131. Ibn Abidin, *radd al-muhtar 'ala'l-durr al-mukhtar*, (Mecca: Makataba al-Tijariya, 1966), vol. 3, p. 225.

132. Al-Qurtubi, *al-jami ahkam ul-qur'an*, (Beirut: Dar el-Fikr, 1999), vol. 4, part 8, p. 53.

133. Ibn Taymiyya was a controversial figure among orthodox Muslims of his time. He did not always conform to the prevailing consensus on matters of creed, religious practice and political edicts and was imprisoned several times. Famously, he criticised the Mongols' conversion to Islam as insincere and as a means of justifying the occupation of Muslim territory. His life and works are often seen as contradictory: at times he appears to advocate tolerance of differences in juristic positions; other times he ascribes deviancies to people in minor juristic disputes. His student, the polymath Imam al-Dhahabi, stated that he took a more tolerant view towards the end of his life. He is considered the putative authority of modern jihadism and an inspiration for Qutbist Islamists as well as austere Salafi-Wahabism. Some believe this to be a misreading of his edicts: his *fatwa* concerning the status of the city of Mardin, for example, was allegedly subject to a copyist error changing the meaning. While many believe he wrote that Muslims should be treated as they deserve and unbelievers should be fought as they deserve, the original edition only contains *yu'ama* (should be treated) which was mistakenly rendered *yugatal* (should be fought) in a subsequent edition. Nevertheless, the incorrect *fatwa* has been used to justify indiscriminate violence, terrorism and the excommunication of Muslims; and Ibn Taymiyya remains a reference point among contemporary Jihadists. For a thorough study of his thinking and work see *Ibn Taymiyya and His Times*, eds Y. Rapoport and S. Ahmed (Karachi: Oxford University Press 2010)

134. Al-Jawziyya, *zad ul-ma'ad (Provisions of the Hereafter)*, (Cairo: Matba al-Halab, 1928), 1st ed., vol. 2, p. 58.

135. Al-Buti, *jihad fi-l-islam*, (Beirut: Dar al-Fikr, 1997), p. 108.

behaviour.¹³⁶

The argument that *jihad* is only to defend against hostilities is based on the Qur'anic injunction to respond in kind to peaceful neighbours. The twelfth-century Shafi'i scholar and traditionalist, al-Hafiz ibn al-Salah al-Shahrazuri (1181–1245), explained the position of the mainstream scholars as follows:

Verily the basic principle is to allow the non-believers to live and accept them. Allah did not intend to destroy the creation! Nor did he merely create them so that they could be killed! Verily it is only permitted to fight them to repel any harm from them. Nor should it be considered as a punishment for them, for this world is not the abode of punishment!¹³⁷

Similarly, explaining the Qur'anic verse, 'If they incline towards peace then you must incline towards it, and trust in God' (8: 61), Ibn Taymiyya stated:

The Prophet's biography shows that he did not fight whoever made peace with him among the unbelievers; and the books of biography, prophetic traditions, exegesis, jurisprudence, and history are full of such acts and this is widely narrated in his biography. Thus, the Prophet did not initiate fighting with anyone, and had Allah commanded him to fight every disbeliever, then he would have initiated fighting with them.¹³⁸

Contemporary Syrian scholar al-Zuhayli also argues that, according to Islamic scripture, the normal relationship between Muslims and non-Muslims is one of peace rather than war.¹³⁹ He further states that this is the majority position in Islamic jurisprudence:

The majority of the scholars, namely the Maliki, the Hanafi and the Hanbali have said that the legal cause of fighting is *hiraba* (hostility) – initiation of fighting and aggression – not non-belief.¹⁴⁰

Defence against persecution

Other classical scholars have advocated a broader understanding of hostility, and considered it a duty to fight *jihad* not only in the event of an attack, but also whenever Muslims were being persecuted and killed. As these scholars argue, hostility to Muslims occurs when they are prevented from practising their faith. A corollary rationale, historically, is that of the Christian Crusades between the

136. Al-Buti, *jihad fi-l-islam*, (Beirut: Dar al-Fikr, 1997), p. 108.

137. Ibn al-Salah, *fatawa ibn salah*, Manuscript 337, Dar ul-Kutub, Damascus, Syria, p. 223.

138. Ibn Taymiyya, 'qa'ida fi qital al-kuffar', from *majmu'at rasail*, (Cairo: Sunni Mohammadi, 1949), p. 125.

139. Al-Zuhayli, *athar al-harb fil-fiqh al-islami*, pp.113-114.

140. Ibid., p.106.

eleventh and thirteenth centuries: fighting was considered legitimate in order to defend people of faith and allow them to practise their religion.

One of the earliest Islamic proponents of fighting to defend religion was Muhammad ibn Jarir al-Tabari (838–923), an early exegete of the *Qur'an* and founder of the small Jariri School which disappeared after the tenth century.¹⁴¹ In relation to the *Qur'anic* verse, 'Did not God check one set of people by means of another, monasteries, churches, synagogues and mosques wherein the name of God is often mentioned would surely have been pulled down' (22:40), al-Tabari proposes that the defence of religious freedom is a legitimate cause of *jihad*. In such circumstance, he argues, fighting is necessary:

The monasteries of monks would be destroyed, the churches of Christians, the synagogues of the Jews, and the mosques of the Muslims; the places where God's name is mentioned, would be destroyed [if we did not prevent it].¹⁴²

Early and medieval Hanafi scholars have also acknowledged the plurality of opinion on whether defence against persecution is a legitimate criterion for *jihad*. In his *Qur'an* commentary, Hanafi Imam Abu Bakr al-Jassas al-Razi (917–980) records both views: that *jihad* is legitimate only against attack, and that *jihad* is also permissible whenever Muslims are persecuted.¹⁴³ Leading Hanafi jurist Kamal ibn al-Humam (1388–1457) also described the two situations in his commentary on *al-hidayah*, Burhan al-Din al-Farghani al-Marghinani's (1135–1197) classic manual of Hanafi law:

Allah states "Fight the polytheists as a whole because they fight you as a whole" (*Qur'an* 9:36); we can understand that fighting is commanded of us but as a response to and caused by the fact that we are fought. This is similar to the situation where God May He be Exalted says: "Fight them until there is no more tumult" (*Qur'an* 8:39) i.e. no more tumult on the Muslims being persecuted for their religion and being forced to leave it by being beaten or killed.¹⁴⁴

Twelfth-century Maliki scholar Ibn Rushd (the Elder, grandfather of Averroes) also believed that the presence of security negates the duty of defensive *jihad*:

So, whenever we are placed beyond the reach of the enemy, the outlying districts of the Muslim lands are secured and the gaps in their fortifications are filled, the obligation to wage *jihad* falls from

141. Bewley, *Glossary of Islamic Terms*, p. 177.

142. Al-Tabari, *tafsir al-tabari*, (Beirut: Muassas al-Rayyan, 2000), vol. 5, p. 325.

143. Al-Jassas al-Razi, *ahkam al-qur'an*, (Beirut: Dar al-Kitab, 1936), vol. 3, p. 114.

144. Ibn al-Humam, *fath al-qadir*, (Cairo: Matba Mustafa Muhammad, n.d.), vol. 4, p. 279.

all the rest of the Muslims....¹⁴⁵

For classical Islamic scholars, therefore, the requirement for *jihad* ranges from actual or imminent hostility, to widespread persecution and lack of safety. However, many contemporary scholars – for example, Egyptian scholar Abu Zahrah and Syrian scholar al-Zuhayli – argue that the existence of international laws safeguarding human rights and freedom of religious practice negates the latter rationale. While Muslims are permitted to engage in hostilities to defend themselves (or to defend others) when they are being attacked, they argue, this must be done in accordance with international norms and practice.¹⁴⁶

Jihad is not to fight against disbelief

As long as Muslims have the freedom to express their religious beliefs, Sunni jurisprudence does not permit them to start conflicts. Scholars have also explained that peaceful means to guarantee freedom of religion are favoured over warfare, specifically explaining that the aim of *jihad* is neither conversion nor domination.

In his exegesis and commentary on the *Qur'an*, Shafi'i Persian philosopher Abu 'Abd Allah Muhammad Fakhr al-Din al-Razi (1149–1209) understands the Qur'anic verse, 'There is no compulsion in religion' (2:256), to mean that one cannot force faith upon people. He explains:

Forcing someone to embrace a religion invalidates the meaning of being tried and tested. Consider and reflect over the Word of God: "Whoever wishes let him believe, and whoever wishes let him reject faith." [18:29] What this shows is that the following verse reads "indeed the truth stands clear from falsehood" [2:256], meaning that the proofs are manifest and the evidences are plain and clear; so there is no way left except compulsion and force, which is not permitted.¹⁴⁷

Similarly, Hanbali scholar Ibn Taymiyya understood the verse to mean an immutable prohibition against forced conversion:

For the majority of the Salaf (the early community of believers) this verse [2:256] is neither abrogated nor restricted. It is a definitive statement that is general in its meaning, that we do not compel anyone to embrace a religion. And in fact fighting is only against those who initiate war against us, and even if they don't accept Islam, their property and lives are safe, and if these people are not combatants we do not fight them. No-one can narrate that the prophet ever forced anyone to embrace Islam... there is no

145. Ibn Rushd, *al-muqaddimat*, on the margin of *al-mudawanna al-kubra*, (Beirut: Dar al-Fikr, n.d.), vol.1, p. 374.

146. Al-Zuhayli, *athar al-harb fil-fiqh al-islami*; Abu Zahra, *al-ilaqat al-dauliyah fi'l-islam*, in *Dirasat al-fiqhiya* (Cairo: Dar ul-Fikr al-Arabi, n.d.), p. 60.

147. Al-Razi, *al-tafsir al-kabir*, also known as *mufatih al-ghayb*, (Cairo: Matba Khayriya, 1889), 1st ed., vol. 2, p. 319.

benefit in Islam in any such conversion...¹⁴⁸

As a result, he argued that disbelief was not grounds in and of itself for fighting: 'If the unbeliever were to be killed unless he becomes a Muslim, such an action would constitute the greatest compulsion in religion'.¹⁴⁹

Contemporary Syrian scholar al-Zuhayli reiterates the Islamic prohibition against forced conversion, and explicitly states that *jihad* is not a means through which to dominate the world:

This historical maxim within Islamic jurisprudence explains in a clear and eloquent manner that fighting non-believers is not in itself the goal of fighting jihad [...] Warfare is only [used] when it is absolutely necessary to defend the community from oppression and belligerence.¹⁵⁰

[Jihad is not] a means to gain sovereignty over the Earth, nor to establish a political authority nor to extend [Muslim] dominion [...]¹⁵¹

While jihadists advocate a permanent state of warfare against disbelievers, traditional scholarship provides a different view on applying the Qur'anic verses related to fighting – concluding that fighting is a response to specific political circumstances, and that peaceful resolution is preferable. In his commentary on al-Nawawi's *al-mughni*, for example, Muhammad ibn Ahmad al-Khatib al-Shirbini (d. 1570), a reliable source of Shafi'i *fiqh*, states the Shafi'i position as follows:

The obligation of jihad, [sic] is an obligation of means (*wasai'il*) not of aims (*maqasid*), when what is meant is fighting (*qital*). Surely, it is guidance and similar matters such as correctly bearing witness. As for fighting non-believers, this is not the purpose (of jihad). If it is possible to spread guidance by establishing the proof [of Islam] without violent jihad, that would be preferable to jihad.¹⁵²

Al-Shirbini argued, therefore, that consideration of the intention behind fighting is paramount to the understanding and correct application of the verses related to fighting, and that it is preferable to realise one's aims without having recourse to warfare.

Persian Qur'anic exegete Abu'l-Qasim Husayn al-Raghib al-Isfahani (d. 1109) further explained the contextual application of the verses advocating fighting:

148. Ibn Taymiyya, 'qa'ida fi qital al-kuffar,' from *majmu'at rasail*, (Cairo: Sunni Mohammadi, 1949), pp. 123-124.

149. Al-Jawziyya, *ahkam ahl al-dhimma*, cited in Ibrahim Kalin, 'Islam and Peace: A Survey of the Source of Peace in the Islamic Tradition', in *Crescent and Dove: Peace and Conflict Resolution in Islam*, ed. by Qamar-ul Huda, (US: United States Institute for Peace, 2010), p.20.

150. Al-Zuhayli, *athar al-harb fil-fiqh al-islami*, p. 90.

151. *Ibid.*, p. 83.

152. Al-Shirbini, *mughni al-muhtaj*, (Cairo: al-Halabi, 1933), vol. 4, p. 210.

The Prophet was ordered to have kindness and leniency, and restricting himself to admonition then beautiful argumentation; then he was permitted to fight when he was fought, but then when they initiated warfare to obstinately deny the truth, he was commanded to fight. So the orders came according to the political circumstances.¹⁵³

The Qur'anic verses on *jihad* are, and were, liable to be interpreted and acted upon differently in a range of political circumstances. There is a plurality of opinion – both among classical and contemporary scholars – that the mainstream Sunni position is that only legitimate political authorities can declare *jihad*, and this is limited to specific circumstances: in defence, against attack or persecution. Additionally, the primary basis of relationships between Muslims and non-Muslims is one of peace and not conflict, and peaceful resolution to conflict is preferable to warfare. In the modern context of nation-states and international institutions, therefore, the maxim that warfare should only be initiated in accordance with international law finds support in classical, mainstream Islamic sources.

JUS IN BELLO

While there are internal disputes within jihadist organisations over whose life is considered violable in Islam, many senior jihadist ideologues advocate the targeting of non-combatants and the use of suicide operations. Furthermore, they advocate Muslim loyalty to their cause, to the detriment of national or other forms of communal loyalty. Their ideas, however, are antithetical to classical Sunni jurisprudence, as well as contemporary scholarship.

The Islamic prohibition on targeting non-combatants

Jihadist organisations – including al-Qa'ida, Hamas, and Lashkar-e-Ta'iba – recognise the general Islamic prohibition on the killing of non-combatants (including women, children, and the elderly); yet, they continue to engage in terrorist activities which indiscriminately claim non-Muslim and Muslim civilian lives. For example, outside of the group's large civilian-death toll in Iraq and Afghanistan, al-Qa'ida was directly responsible for approximately 4,400 civilian deaths in operations in at least 18 countries, many of which were Muslim-majorities, between 1992 and 2010.¹⁵⁴

Hamas also targets non-combatants indiscriminately on both sides of the Israeli-Palestinian conflict: the group has killed over 400 Israelis since 1993, and regularly

153. Al-Isfahani, cited in Imam Abul Hayan al-Andalusi, *al-bahr al-muhit*, (Egypt: Sa'adat bil-Misr, 1910), vol. 2, p. 65.

154. According to The Economist, al-Qa'ida attacks were carried out in 18 countries: Saudi Arabia (7 attacks); Pakistan, Yemen (3); Indonesia, Kenya, the United States (2); Algeria, Egypt, Iran, Jordan, Morocco, Philippines, Somalia, Spain, Tanzania, Tunisia, Turkey, and the UK (1). See: 'Al-Qaeda attacks: Killing in the name of Islam', *The Economist*, 6 May 2011, available at: http://www.economist.com/blogs/dailychart/2011/05/al-Qa'ida_attacks.

attacked Palestinian political opponents since Israeli disengagement in 2005.¹⁵⁵ As well as targeting Israeli military personnel, Hamas also routinely engaged in suicide bombings from 1993 to 2006, and continues to target Israeli civilians through rocket attacks.¹⁵⁶ Lashkar-e-Ta'iba is also infamous for its brutality: as well as numerous massacres against primarily Hindu civilians in Kashmir, the group was involved in the bomb attacks on the Mumbai transport network in 2006, killing over 200 civilians, followed by attacks against luxury hotels and Jewish sites in the same city two years later (in which 166 civilians were killed).¹⁵⁷

Jihadist ideologues have, therefore, developed theological arguments for who constitutes a legitimate target, as well as (in certain contexts) whether targets need to be differentiated at all. While there is significant internal debate – both among and within jihadist organisations – as to the Islamic legitimacy of particular attacks (including the 9/11 attack), three inter-linked lines of argument for limiting or disregarding the general prohibition emerge. These are: reciprocity, necessity, and collectivity.

Reciprocity – ‘Then whoever transgresses upon you then transgress likewise against them’ (2:194)

The idea that *jihad* (‘religiously sanctioned warfare’) is a legitimate response to attacks against Muslim civilians is central to al-Qa’ida, Hamas, and Lashkar-e-Ta’iba. Not only have ideologues and literature from the three groups argued reciprocity in order to justify attacks against civilian targets, but conservative Sunni scholars not associated with terrorist groups have also echoed their rationale.

For example, Saudi jihadist cleric Faris Ahmed Jamaan al-Showeel al-Zahrani (aka Abu Jandal al-Azdi) – who was involved in the early al-Qa’ida in the Arabian Peninsula campaign between 2003 and 2006, and was number 12 on a list of Saudi Arabia’s 26 most wanted terrorist suspects at the time of his arrest in August 2004 – has argued for reciprocity. According to material from at-Tibyan Publications, a prolific online publisher of pro-jihadist literature,¹⁵⁸ al-Zahrani has stated:

So it is permissible for the Muslims to treat their enemies with the likeness of everything they perpetrate against the Muslims. So if they assassinate our *Mujahidim* [‘those taking part in jihad’], then

155. Jim Zanotti, *Hamas: Background and Issues for Congress*, Congressional Research Service, 2 December 2010, p. 3, available at: <http://www.fas.org/sgp/crs/mideast/R41514.pdf>.

156. ‘Hamas in call to end suicide bombings’, *Observer*, 9 April 2006, available at: <http://www.guardian.co.uk/world/2006/apr/09/israel>.

157. ‘Lashkar-e-Ta’iba’, in *The SAGE Encyclopedia of Terrorism*, ed. by C. Gus Martin, 2nd ed. (London, UK: SAGE Publications, 2011), pp. 341–342. See also: ‘Lashkar-e-Ta’iba, Mapping Militant Organizations’, Stanford University, available at: <http://www.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/79>.

158. ‘Violent Islamist Extremism, The Internet, and the Homegrown Terrorist Threat’, United States Senate, Committee on Homeland Security and Governmental Affairs, Majority & Minority Staff Report, 8 May 2008, p. 8.

we will assassinate them; and if they mutilate the Muslims, it is permissible to mutilate them; *if they target our women and children- then it is the right of the Muslims to equally retaliate by targeting their women and children-* and this is because of the generality of the Verses.¹⁵⁹

Another Saudi jihadist cleric with close links to al-Qa'ida who advocated reciprocal attacks is Nasir bin Hamad al-Fahd (1968–present).¹⁶⁰ In his 2003 *fatwa* ('religious edict'; pl. *fatawa*), 'A Treatise on the Legal Status of Using Weapons of Mass Destruction Against Infidels', al-Fahd made the following declaration:

[The Americans] have killed about ten millions [sic] Muslims, and destroyed countless lands... If they would be bombed in a way that would kill ten millions [sic] of them and destroy their lands – it is obviously permitted, with no need for [further] evidence.¹⁶¹

Lashkar-e-Ta'iba also articulates a clear belief in reciprocity as justification for their *jihad*. In *Why Are We Waging Jihad?*, for example, the group includes 'to avenge the blood of Muslims killed by unbelievers' among its eight reasons for engaging in attacks.¹⁶²

Hamas also argues reciprocity for its attacks against both civilian and military targets. In 2002, for example, former Hamas leader Isma'il Abu Shanab (1950–2003) argued reciprocity in his defence of civilian deaths:

It's not targeting civilians. It is saying that if you attack mine I'll attack yours. If we say yes, we'll stop [sic] can the world guarantee Israel will stop? The rules of the game were set by the other side. If you follow all our martyrdom operations, you will find that they all came after their massacres. We would accept the rules [of international humanitarian law] if Israel would use them. If you ask us to comply, that is not difficult. Islamic teachings support the Geneva Conventions. They are accepted. When it comes to the other party, if they don't abide, we cannot be obliged to them,

159. Al-Zahrani, cited in *al-tibyān fi istihdāf al-nisā' wa'l-sibyān (The clarification regarding intentionally targeting women and children)*, (At-Tibyān Publications, 2004), p. 83, available at: <http://archive.org/stream/IntentionalityTargetingWomenAndChildren/At-tibyānPublications-IntentionallyTargetingWomenAndChildren#page/n0/mode/2up>.

160. Al-Fahd was one of three scholars arrested following the Riyadh bombings in May 2003, for issuing *fatawa* ('religious edicts') permitting the killing of security personnel. While al-Fahd recanted a number of his *fatawa* in a Saudi television interview in November 2003, he later issued a communiqué stating that the interview was made under coercion by Saudi authorities.

161. Al-Fahd, 'A Treatise on the Legal Status of Using Weapons of Mass Destruction Against Infidels' (*risāla fi hukm istikhdam aslihat al-damar al-shāmī dhīd al-kuffār*), 21 May 2003, cited in Reuven Paz, 'YES to WMD: The first Islamist Fatwah on the use of Weapons of Mass Destruction', The Project For The Research of Islamist Movements, PRISM Special Dispatches, vol. 1, no. 1, (May 2003), p. 7, available at: <http://www.e-prism.org/images/PRISM%20Special%20dispatch%20no%201.doc>.

162. *Hum jihad kyun kar rahe hain? (Why Are We Waging Jihad?)*, translation taken from Haqqani, 'The Ideologies of South Asian Jihadi Groups'. See also: Stephen Tankel, 'Lashkar-e-Ta'iba: Past Operations and Future Prospects', New America Foundation National Security Studies Program Policy Paper, April 2011, available at: http://newamerica.net/sites/newamerica.net/files/policydocs/Tankel_LeT_0.pdf.

except insofar as we can achieve something.¹⁶³

Conservative Salafī scholars not associated with terrorist groups have also advocated reciprocity during war as justification for the targeting of non-combatants. Prominent Saudi cleric Ibn Salih al-Uthaymin (1925–2001), for example, stated that the killing of women and children can be permissible:

Secondly, it is forbidden to kill women and children in the state of war; but, if they do that to us, by killing our women and children, do we do the same? As it seems, it is permissible for us to kill their women and children because this breaks the hearts of the enemy, and [causes] their humiliation, [and] because of the generality of the verse, “Then whoever transgresses upon you then transgress likewise against them” (2:194).¹⁶⁴

Material by radical online sources also attributes the following exchange to al-Uthaymin:

Question: The women being killed are not the ones who killed our women, so is this justice?

Al-Uthaymin: What is justice? Not at all. They kill our women, we kill their women. This is the justice. It’s not justice to say, “if they kill our women we won’t kill your women”.¹⁶⁵

Necessity – *al-darura tubih al-mahzurat* (‘necessity makes permissible the prohibited’)

The doctrine of necessity is a well-established principle of Islamic jurisprudence (see pages 32-33). In a modern context, the principle is often invoked in relation to medical situations, permitting normally prohibited actions in cases of imminent danger to an individual or community.¹⁶⁶ In relation to *jihad*, al-Qa’ida theorists, al-Fahd and al-Uyayri, have argued necessity as a justification for targeting civilians indiscriminately; and Hamas utilises the concept to justify its use of human shields.

163. Human Rights Watch interview with Isma’il Abu Shanab, Gaza City, 15 May 2002, in ‘Erased in a Moment: Suicide Bombing Attacks against Israeli Civilians’, Human Rights Watch, 1 November 2002, available at: <http://www.refworld.org/docid/3dc9379d4.html>.

164. ‘Ruling on Jihad’ – Ibn Uthaymin, audio recording, available at: <http://www.youtube.com/watch?v=DKI6-aETIJC>. See also: <http://www.hoor-al-ayn.com/articles/Fiqh/Shaykh%20Ibn%20Uthaymin%20-%20Killing%20women.pdf>.

165. Al-Uthaymin, cited in *al-tibyan fi istihdaf al-nisa’ wa’l-sibyan* (*The clarification regarding intentionally targeting women and children*), p. 73. See also: ‘The Verdict of Shaykh Muhammad Ibn Salih Al-Uthaymin, (Hoor-al-ayn, n.d.)’, available at: <http://www.hoor-al-ayn.com/articles/Fiqh/Shaykh%20Ibn%20Uthaymin%20-%20Killing%20women.pdf>.

166. In 1988, the Islamic Jurisprudence Assembly Council in Saudi Arabia approved deceased and live donation. In 1996, the Muslim Law (Shari’ah) Council UK issued a *fatwa* permitting organ transplantation as a means of alleviating pain or saving life. See: Golemakani MM, Niknam MH, Hedayat KM, ‘Transplantation ethics from the Islamic point of view’, *Medical Science Monitor*, 2005, 11:105-109, and ‘General leaflet on religious viewpoints, NHS Organ Donation’, available at: http://www.organdonation.nhs.uk/how_to_become_a_donor/religious_perspectives/leaflets/summary_leaflet.asp.

In his *fatwa* authorising the use of weapons of mass destruction (WMDs), al-Fahd stated that, when necessary in a defensive war, it is permissible to use WMDs indiscriminately, even if the casualties include Muslims:

One kills in a good manner only when one can. If those engaged in jihad cannot do so, for example when they are forced to bomb, destroy, burn or flood, it is permissible. [...]

One avoids killing women and children only when one can distinguish them. If one cannot do so, as when infidels make a night attack or invade, they may be killed as collateral to the fighters. [...]

Similarly, killing a Muslim is forbidden and not permitted; but if those engaged in jihad are forced to kill him because they cannot repel the infidels or fight them otherwise, it is permitted, as when the Muslim is being used as a living shield.¹⁶⁷

Al-Uyayri, al-Fahd's predecessor in the early al-Qa'ida in the Arabian Peninsula movement, offered one of the most developed al-Qa'ida arguments for targeting civilians, based on the doctrine of necessity. An anonymous pamphlet written in defence of the first Chechen female suicide bomber, Hawa Barayev,¹⁶⁸ and attributed to al-Uyayri by online radical sources,¹⁶⁹ states:

The Muslim army is ordinarily prohibited from killing not only Muslims, but also dhimmis (unbelievers living as protected subjects of the Muslim state), as well as old men, women and children from among the unbelievers. If Muslim prisoners of war are used by the unbelievers then it is not permissible to fire on them except in cases of dire necessity. In the case of women and children of the unbelievers, however, they could be fired upon for an expediency of war even if it is not dire necessity, for war may need such action, but the intention should not be specifically to kill the non-combatants. The Prophet (peace and blessings be upon him and his Household) was asked about the pagans being hit by night, and some women and children being killed in the process, and he

167. Rolf Mowatt-Larssen, 'Islam and the Bomb: Religious Justification For and Against Nuclear Weapons', Belfer Center for Science and International Affairs, Harvard Kennedy School, January 2011, p. 32, available at: http://belfercenter.ksg.harvard.edu/files/uploads/Islam_and_the_Bomb-Final.pdf.

168. Hawa Barayev attacked Russian targets in June 2000. See: Cindy D. Ness, 'In the name of the cause; women's work in secular and religious terrorism', in *Female terrorism and militancy: agency, utility, and organization*, ed. by Cindy D. Ness, (Oxford: Routledge, 2008), pp. 11-36, pp.19-20.

169. Dr. David Cook, 'Radical Islam and martyrdom operations: what should the United States do?', The James Baker III Institute for Public Policy, March 2005, p. 16, available at: http://bakerinstitute.org/programs/energy-forum/publications/docs/DavidCook_martyrdom.pdf.

replied, “*They are from among them.*” [Bukhari and Muslim] [...]¹⁷⁰

In his later treatise in defence of the 9/11 attacks, al-Uyayri specifically refutes critiques based on the Islamic prohibition of killing non-combatants. Developing his rationale from the suicide-operations pamphlet, al-Uyayri argues that the general prohibition is not sacred, but rather it allows for circumstances where such killing is permissible. To that end, he states:

And as for the non-Muslims- the original ruling is not sanctity- rather, it is permissibility. Shedding the blood of the *kuffār* [‘unbelievers’], seizing their wealth, and removing their honor [by enslavement] – these actions are all *Halal* [permissible]. And it is not forbidden to spill their blood, seize their wealth, nor remove their honor- nor is it forbidden to harm him [...]¹⁷¹

Hamas also utilises the principle of necessity with regards to its defence mechanisms. One of the best-known classical invocations of military necessity is the eleventh-century Shafi’i scholar al-Ghazali’s disputed edict that, in a situation of vital necessity, universal benefit and certainty of outcome, Muslim armies are permitted to sacrifice prisoners of war from their own army who are being used as a human shield by the enemy.¹⁷² Hamas inverts and misappropriates this edict to permit the use of Palestinian women and children as human shields for their activities and weapons. On 29 February 2008, for example, Hamas’ al-Aqsa television station broadcast Hamas MP Fathi Hammad saying:

For the Palestinian people, death has become an industry, at which women excel, and so do all the people living on this land. The elderly excel at this, and so do the mujahideen [‘those taking part in jihad’] and the children. This is why they have formed human shields of the women, the children, the elderly, and the mujahideen, in order to challenge the Zionist bombing machine.¹⁷³

Collectivity – ‘Fight the polytheists together because they fight you together’ (9:36)

The concept of collective guilt on behalf of the perceived enemies of Islam – as well as reciprocity – was central to bin Laden’s early declaration of war against the United States. In the February 1998 World Islamic Front *fatwa*, ‘Jihad

170. Al-Uyayri, ‘The Islamic Ruling on the Permissibility of Martyrdom Operations – Did Hawa Barayev Commit Suicide or achieve Martyrdom?’, August 2000, p. 10, available at: <http://www.religioscope.com/pdf/martyrdom.pdf>. See also *al-tibyan fi istihdaf al-nisa’ wa’l-sibyan* (The clarification regarding intentionally targeting women and children), pp. 6-7.

171. Al-Uyayri, cited in *al-tibyan fi istihdaf al-nisa’ wa’l-sibyan* (The clarification regarding intentionally targeting women and children), p. 9.

172. Sohaail H. Hashmi, ‘Saving and Taking Life in War’, p. 177.

173. ‘Hamas Exploitation of Civilians’, Israel Ministry of Foreign Affairs, 13 January 2009, available at: http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Hamas_Exploitation_Civilians_Jan_2009.aspx. Video and translation by MEMRI, available at: <http://www.youtube.com/watch?v=g0wJXf2nt4Y>.

Against Jews and Crusaders,¹⁷⁴ bin Laden and his four co-signatories agree that it is permissible to target American civilians indiscriminately in retaliation for the United States seeking regional support for air strikes against Iraq:

All these crimes and sins committed by the Americans are a clear declaration of war on God, his messenger, and Muslims. [...] On that basis, and in compliance with God's order, we issue the following fatwa to all Muslims

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 the al-Aqsa Mosque and the holy mosque [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. This is in accordance with the words of Almighty God, "and fight the pagans all together as they fight you all together," and "fight them until there is no more tumult or oppression, and there prevail justice and faith in God."¹⁷⁵

Al-Uyayri also deployed collective guilt in his defence of the 9/11 attacks, arguing that American women; children; and elderly are classified as combatants because, as part of the electorate that voted for United States President George W. Bush, they supported military intervention in the Middle East.¹⁷⁶

Hamas utilises the collectivity argument to target Israelis indiscriminately. Hamas leaflet 65, distributed among Palestinians in November 1990, for example, states: 'every Jew is a settler and it is our obligation to kill him'.¹⁷⁷ Moreover, Hamas claims to maintain the Islamic prohibition on targeting civilians, by arguing that all Israelis are combatants by virtues of the existence of settlements and conscription. In August 2001, for example, Hamas founder Ahmad Yassin (1937–2004) said: 'The Geneva Convention protects civilians in occupied territories, not civilians who are in fact occupiers. All of Israel, Tel Aviv included, is occupied Palestine. So we're not actually targeting civilians that would go against Islam'.¹⁷⁸

174. The statement was faxed to the *al-Quds al-'Arabi* newspaper, and reportedly signed by 'Shaykh Usamah Bin-Muhammad Bin-Ladin (the prominent Saudi oppositionist); Ayman al-Zawahiri, amir of the Jihad Group in Egypt; Abu-Yasir Rifa'i Ahmad Taha, a leader of the [Egyptian] Islamic Group; Shaykh Mir Hamzah, secretary of the Jamiat-ul-Ulema-e-Pakistan; and Fazlul Rahman, amir of the Jihad Movement in Bangladesh'. See: 'Bin-Ladin, Others Sign Fatwa To "Kill Americans" Everywhere', *al-Quds al-'Arabi*, 23 February 1998, reproduced by 'Daily Intelligence Report: Summary of Activities/Usama Bin Laden Page', Emergency Response and Research Institute, 1998, available at: <https://www.mtholyoke.edu/acad/intrel/news/osama.htm>. See also: original Arabic, available at: <http://www.library.cornell.edu/colldv/mideast/fatw2.htm>.

175. 'Saudi Arabia: Bin-Ladin, Others Sign Fatwa To "Kill Americans" Everywhere', *al-Quds al-'Arabi*, 23 February 1998.

176. *Militant Ideology Atlas*, Combating Terrorism Center, U.S. Military Academy, ed. by William McCants, pp.83-84, available at: <http://www.ctc.usma.edu/wp-content/uploads/2012/04/Atlas-ResearchCompendium1.pdf>.

177. Gad Yaacobi, *Breakthrough: Israel in a Changing World*, (London, UK: Rosemount Publishing, 1996), p. 110.

178. 'No Israeli targets off-limits, Hamas spiritual chief warns', Flore de Preneuf interview with Shaikh Ahmad Yassin, *St. Petersburg Times* (Florida), 11 August 2001.

Islamic protection of life

While these quotations illustrate the types of views held by jihadists, they are not representative of the Islamic legal tradition, which has consistently advocated the protection of life. According to the *hadith* ('reported speech of the Prophet'), the killing of women and children is forbidden:

It is narrated by Ibn 'Umar that a woman was found killed in one of these battles; so the Messenger of Allah (may peace be upon him) forbade the killing of women and children.

Sahih Muslim (19:4320)¹⁷⁹

Narated By Ibn 'Umar: During some of the Ghazawat of Allah's Apostle a woman was found killed, so Allah's Apostle forbade the killing of women and children.

Sahih Bukhari (4:52:258)¹⁸⁰

Moreover, the protection of life is classically understood on the basis of humanity, and not on the basis of creed; race; or other considerations. Fourteenth-century Somali jurist and scholar Uthman bin Ali Zayla'i (d. 1342), for example, wrote: 'We do not accept that the basis of moral inviolability is Islam, rather it is humanity'.¹⁸¹

The sanctity of life unites Islamic scholars past and present, and the prohibition on the killing of women and children is one of the few areas upon which there is consensus. In his commentary on *umdat al-ahkam*, a respected *hadith* collection by Hafiz 'Abd al-Ghani al-Maqdisi (d. 1203), for example, Shafi'i scholar Ibn Daqiq al-'Id (d. 1303) states that the *hadith* prohibiting the killing of women and children during war are *muttafaq 'alayhi* ('agreed upon'), meaning that the two foremost *hadith* compilers, al-Bukhari and Muslim, agreed on its authenticity:

This is a ruling that is well known and agreed upon with regard to civilians. The *hadith* is understood in this way since women and children are not combatants.

It could be said that the essence of this rule (*hukm*) is that the basic principle is the sanctity of human life, and that taking life is only permitted if it is done to repel harm. So those who are not combatants, and are not people who normally take part in combat, are not going to cause harm (*darar*) in a manner similar to combatants, hence one resorts to the original rule regarding them,

179. *Sahih Muslim, kitab al-jihad wa'l-siyar (Book on Jihad and Expedition)*, no. 4320, available online at: <http://www.hadithcollection.com/sahihmuslim/147-Sahih%20Muslim%20Book%2019.%20Jihad%20and%20Expedition/12781-sahih-muslim-book-019-hadith-number-4320.html>.

180. *Sahih Bukhari*, vol. 4, book 52, 'Fighting for the Cause of Allah (Jihaad)', no. 258, available online at: <http://www.hadithcollection.com/sahihbukhari/85/3510-sahih-bukhari-volume-004-book-052-hadith-number-258.html>.

181. Uthman bin Ali Zayla'i, *tabyin al-haq'a'iq sharh kanz al-daqa'iq*, (Cairo: Dar ul-Kitab al-Islami, n.d.), vol. 3, p. 268.

and that is one of prohibition.¹⁸²

In his commentary on the *Sahih Muslim*, al-Nawawi also agreed that there was consensus on the prohibition of killing women and children:

Muslim jurists are unanimous about the prohibition of killing of women and children when they do not fight. But if they fight, then according to the overwhelming majority of jurists, they may be killed.¹⁸³

While very few matters in Islamic law are subject to consensus – not even the times of the five daily prayers, for example – this is one issue which al-Nawawi (and others) introduced as subject to consensual opinion by the jurists. Moreover, the sanctity and protection of human life within Islam is widely accepted by contemporary scholars – including the Grand Mufti of Egypt, Sheikh Ali Gooma (1951–present), and the Shafi'i jurist, Sheikh Afifi al-Akiti.¹⁸⁴

The prohibition on killing women and children resonates throughout Islamic history. As such, scholars whose work is often misappropriated by jihadists have, in fact, forbidden the targeting of non-combatants. Islamic scholar Ibn al-Nahhas al-Dumyati's (d. 1411) seminal encyclopaedia on *jihad*, *mashari' al-ashwaq ila masari' al-'ushshaq*, for example, is one of the classical texts most frequently misappropriated by jihadist clerics.¹⁸⁵ Despite this, Ibn al-Nahhas provides clear edicts that forbid the killing of non-combatants.¹⁸⁶ Moreover, he cites al-Nawawi and al-Mawardi (see pages 19-21) approvingly, that a country which is administered by non-Muslims but permits Muslims to practise their religion is *Dar al-Islam* ('lands of Islam') and – therefore – not considered hostile territory.¹⁸⁷

Furthermore, even some jihadist ideologues have questioned the terrorist organisations' targeting of non-combatants. Former al-Qa'ida Shura Council ('Consultative Council') member Mahfouz Ould al-Walid (aka Abu Hafis al-Mauritani) (1975–present), for example, objected to 9/11 during the planning stages because of the indiscriminate nature of the attacks. In an interview with

182. Ibn Daqiq al-'Id, *ihkam al-ahkam: sharh 'umdat al-ahkam (On the narration and documentation of 'Imad al-Din Ibn al-Athir al-Halabi)*, ed. by Hasan Ahmad Isbir, (Beirut: Dar Ibn Hazm, 2002), p. 972.

183. Al-Nawawi, *sharh sahih muslim*, cited in Muhammad Munir, 'The Protection of Civilians in War: Non-combatant Immunity in Islamic law War', 2011, available at: http://works.bepress.com/cgi/viewcontent.cgi?article=1025&context=muhammad_munir.

184. Sheikh Ali Gooma, 'Jihad in Islam: Myths & Facts', available at: http://www.ali-gomaa.com/?page=scholarly-output&so_details=135. See also al-Akiti, 'Defending the Transgressed'.

185. This is among Anwar al-Awlaki's most popular speeches, and different versions have been found in circulation within South Asian jihadist groups; the Islamic Movement of Uzbekistan; and Jemaah Islamiyah in Indonesia, suggesting widespread appeal. See: Jack Barclay, 'Challenging the Influence of Anwar Al-Awlaki', International Centre for the Study of Radicalisation and Political Violence, September 2010, p. 7, available at: http://icsr.info/wp-content/uploads/2012/10/1283965345ICSR_ChallengingtheInfluenceofAnwarAlAwlaki.pdf. See also: Haqqani, 'The Ideologies of South Asian Jihadi Groups'.

186. Al-Dumyati, *mashari' al-ashwaq ila masari' al-'ushshaq, al-jihad wa fada' ilahi*, eds Duirish Muhammad 'Ali and Muhammad Khalid Istanbuli, (Beirut: Dar al-Basha'ir-Islamiya, 2002), pp. 1024-1025.

187. *Ibid.*, p. 1063.

al-Jazeera after his release from a Mauritanian prison, al-Walid stated:

I was the staunchest opponent to such an operation. My opposition was based on religious legal grounds: Jihad is not about pointless killing and destruction. [...] The other reason for my objection to this operation was that it would involve things prohibited by Islamic law. Civilians would be killed, and our religion forbids us to kill civilians. In Islam, a civilian is anybody who is not involved in fighting. This includes women, children, the elderly, and ordinary people.¹⁸⁸

The Islamic prohibition on suicide operations

Modern suicide terrorism was popularised as an effective technique by the Shi'ite militant group Hezbollah between April and October 1983, after three suicide truck bombs against the United States embassy and United States and French marine barracks killed 362 civilians and military personnel, forcing the withdrawal of Western forces from Lebanon.¹⁸⁹ For Hezbollah, a relatively unknown group at the time,¹⁹⁰ the attacks brought global publicity as fighters willing to sacrifice themselves for *jihad* ('religiously sanctioned warfare').¹⁹¹

Hezbollah's actions also had widespread repercussions within Sunni Islamist militant groups, which previously had no history of utilising suicide. While fighting the Soviet occupation between 1978 and 1988, for example, the Afghan *mujahideen* ('those taking part in jihad') honoured fighters who died as a result of battle and reversed their status as *shuhada* ('martyrs who die fighting in the cause of Allah'; sg *shahid*), but did not resort to suicide attacks as a tactic.¹⁹² Following Hezbollah's perceived success, Hamas adopted suicide bombing in 1993; al-Qa'ida was first implicated in suicide bombings in 1995; and Lashkar-e-Ta'iba began its brand of suicide mission, known as *fidayeen*, in 1999.

188. Al-Jazeera interview with Mahfouz Ould al-Walid, 17 and 19 October 2012; see 'Former Al-Qaeda Shura Council Member Abu Hafis Al-Mauritani: I Opposed 9/11 In Its Planning Stages', MEMRI, 30 October 2012, available at: <http://www.memri.org/report/en/print6783.htm>.

189. Suicide Bombing in the COE, Handbook No. 1.03, U.S. Army Training and Doctrine Command, Deputy Chief of Staff for Intelligence, 10 August 2006, p. 15, available at: <http://www.fas.org/irp/threat/terrorism/sup3.pdf>. See also Terrorist Organization Profile: Hezbollah, Global Terrorism Database, National Consortium for the Study of Terrorism and Responses to Terrorism (START), 2012, available at: http://www.start.umd.edu/start/data_collections/tops/terrorist_organization_profile.asp?id=3101.

190. Hezbollah was conceived in the early 1980s and formed between 1982 and 1985 (sources vary over the official formation). See Casey L. Addis and Christopher M. Blanchard, Hezbollah: Background and Issues for Congress, Congressional Research Service, 3 January 2011, pp. 7-8, available at: <http://www.fas.org/sgp/crs/mideast/R41446.pdf>.

191. Suicide Bombing in the COE, Handbook No. 1.03, U.S. Army, p. 15. See also Gilles Kepel, *Beyond Terror and Martyrdom: The Future of the Middle East*, trans. by Pascale Ghazaleh, (Cambridge, Mass.: The Belknap Press of Harvard University Press, 2008), pp. 82-84.

192. Noah Feldman, 'Islam, Terror and the Second Nuclear Age', *New York Times*, 29 October 2006, available at: http://www.nytimes.com/2006/10/29/magazine/29islam.html?pagewanted=all&_r=0. See also Gilles Kepel, *Beyond Terror and Martyrdom: The Future of the Middle East*, p84.

Hamas, al-Qa'ida and Lashkar-e-Ta'iba's use of suicide operations

On 16 April 1993, Hamas operative Tamam Nabulsi detonated an explosive-laden van at Mehola Junction in the West Bank, killing himself and one civilian in the first suicide attack against Israel by a Palestinian terrorist group.¹⁹³ Since then, Hamas has claimed responsibility or been implicated in 62 suicide operations killing 444 people.¹⁹⁴ In April 2006, Hamas renounced suicide bombings as a tactic.¹⁹⁵ Despite this, a Hamas operative killed one civilian at a shopping centre in Dimona, Israel, on 4 February 2008 in a suicide bombing which the group described in a statement as a 'heroic act'.¹⁹⁶ To date, there have been no Hamas suicide attacks since.

Between 1995 and 2005, al-Qa'ida (excluding al-Qa'ida in Iraq) perpetrated or was implicated in 27 suicide operations killing 4,015 people.¹⁹⁷ This dataset includes the group's involvement in the 1995 Saudi National Guard training centre bombing and the bombing of a United States military facility based in Khobar Towers in Dhahran, Saudi Arabia the following year.¹⁹⁸ The first suicide operation that the group assumed direct responsibility for was the simultaneous bombings of the United States embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania in 1998, which killed 224 people; and the most high profile suicide operation (to date) remains the 11 September 2001 attacks against New York and Washington D.C., which killed approximately 3,000 people.

The proliferation of al-Qa'ida franchises after 9/11 further globalised the use of suicide operations within militant Sunni Islamism. Aside from al-Qa'ida's core leadership in Pakistan, there are five regional franchises currently operational, all of which engage in suicide attacks.¹⁹⁹ Targets routinely include both Muslim and

193. 'Suicide car bomb kills 2 near West Bank restaurant', *Sarasota Herald Tribune*, 17 April 1993, available at: <http://news.google.com/newspapers?id=2G4fAAAAIBAJ&sjid=13EAAAIBAJ&pg=6767,127751>. See also Shaul Kimhi and Shmuel Even, *Who are the Palestinian Suicide Terrorists?*, Institute for National Security Studies (INSS) Strategic Assessment, September 2003, Vol. 6, No. 2, available at: <http://www.inss.org.il/publications.php?cat=21&incat=&read=672&print=1>

194. Data compiled from the Jewish Virtual Library, the Israeli Ministry of Foreign Affairs and Gambetta – Tzvetkova Suicide Attacks Dataset, Nuffield College, Oxford, available at: <http://www.jewishvirtuallibrary.org/jsource/Terrorism/victims.html>; <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Suicide%20and%20Other%20Bombing%20Attacks%20in%20Israel%20Since.aspx>; and www.nuff.ox.ac.uk/projects/datalibrary/holdings_datasets.aspx

195. 'Hamas in call to end suicide bombings', *Observer*, 9 April 2006.

196. Israeli Ministry of Foreign, available at: <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Suicide%20and%20Other%20Bombing%20Attacks%20in%20Israel%20Since.aspx>.

197. Gambetta – Tzvetkova Suicide Attacks Dataset, Nuffield College, Oxford.

198. The two attacks (13 November 1995 and 25 June 1996) are included in the Gambetta – Tzvetkova Suicide Attacks Dataset. See also Aaron Mannes, *Profiles in Terror: the Guide to Middle East Terrorist Organisations* (Lanham: Rowman & Littlefield, 2004) p. 55.

199. These are Al-Qa'ida in the Arabian Peninsula, in Yemen; Al-Qa'ida in Iraq; Al-Qa'ida in the Islamic Maghreb (formerly the Salafist Group for Preaching and Combat); Al-Shabaab, in Somalia; and most recently Al-Qa'ida in Iraq and the Levant, in Syria. Several other countries also contain an al-Qa'ida presence: there is established network in Iran and developing networks in Libya, the Sinai Peninsula, Nigeria and Tunisia. See Robin Simcox, *Al-Qaeda's Global Footprint: An Assessment of al-Qaeda's Strength Today*, Henry Jackson Society, September 2013, p. 7.

non-Muslim civilians as well as military targets. Between 2003 and January 2006, for example, al-Qa'ida in Iraq perpetrated 42 suicide operations killing 1,633 people, 1,436 of which were civilians.²⁰⁰ Between 2006 and 2011, Al-Qa'ida in the Arabian Peninsula perpetrated 14 suicide attacks, killing 117 people;²⁰¹ and on 21 May 2012, an Al-Qa'ida in the Arabian Peninsula suicide bomber disguised as a soldier killed 96 Yemeni soldiers in the capital Sana'a.²⁰² Al-Qa'ida in the Islamic Maghreb, which joined al-Qa'ida in September 2006, conducts suicide bombings across North Africa;²⁰³ and the group's most high-profile attack was the 11 December 2007 suicide bombing of the United Nations offices in Algiers, which killed at least 26 people.²⁰⁴ Al-Shabaab, which became al-Qa'ida's official East African franchise in February 2012, has claimed responsibility for suicide bombings in Mogadishu and in central and northern Somalia as well as the 11 July 2010 twin suicide bombings in Kampala, Uganda, which killed more than 70 people.²⁰⁵ Most recently, Al-Qa'ida in Iraq and the Levant has popularised suicide bombings against regime targets in the Syrian conflict (2011 – present).

While the use of suicide bombings by both al-Qa'ida and Hamas is irrefutable, there is significant debate surrounding Lashkar-e-Ta'iba and the group's approach to suicide operations. Following its withdrawal from Indian-administered Kashmir in 1999, Lashkar-e-Ta'iba announced a strategy known as *fidayeen*,²⁰⁶ which has come to refer to small units of fighters who commonly die during the course of an attack on military or government facilities as well as on infrastructure and civilians.²⁰⁷ In January 2000, for example, a spokesperson told Agence France Presse news agency that Lashkar-e-Ta'iba had been responsible for the recent attacks on Indian military personnel, stating: 'Ten Fidayeen of our organisation laid down their lives for the freedom of Kashmir this month'.²⁰⁸ Agence France Presse translated *fidayeen* as 'suicide militants'; and the term is also often translated

200. Gambetta – Tzvetkova Suicide Attacks Dataset, Nuffield College, Oxford.

201. Al-Qa'ida in the Arabian Peninsula, Global Terrorism Database, (START).

202. "'Al-Qaeda Attack' on Yemen Army Parade Causes Carnage", *BBC News*, 21 May 2012, available at: <http://www.bbc.co.uk/news/world-middle-east-18142695>.

203. Robin Simcox, *Al-Qaeda's Global Footprint*, pp. 23–25. See also Al-Qa'ida in the Lands of the Islamic Maghreb, National Counter-Terrorism Center, United States Government, available at: <http://www.nctc.gov/site/groups/aqim.html>.

204. '11 UN workers among 26 killed in Algeria blasts', *CBC News*, 11 December 2007, available at: <http://www.cbc.ca/news/world/11-un-workers-among-26-killed-in-algeria-blasts-1.636919>

205. Al-Shabaab, National Counter-Terrorism Center, United States Government, available at: http://www.nctc.gov/site/groups/al_shabaab.html

206. Etymologically, *fidayeen* (sg. *fidayee*) comes from the Arabic *fida*, and means devotees or those who would give up their lives for another or a cause. See Dr. N C Asthana and Dr. Anjali Nirmal, *Urban Terrorism: Myths and Realities* (Jaipur: Pointer Publishers, 2009), pp. 79–80.

207. See Sumantra Bose, *Contested Lands: Israel-Palestine, Kashmir, Bosnia, Cyprus, and Sri Lanka*, (Cambridge, USA: Harvard University Press, 2007), pp. 154–203, p. 182.

208. 'Militant group vows to continue attacks against troops', *Agence France Presse*, 10 January 2000

as ‘suicide squad’ or ‘suicide warfare’.²⁰⁹

The lack of certainty surrounding the death of the *fidayeen* has led some to query whether Lashkar-e-Ta’iba supports true suicide operations. One analyst states that Lashkar-e-Ta’iba’s *fidayeen* attacks are ‘more akin to high-risk missions in which well-trained commandos engage in fierce combat during which death is preferable to capture’.²¹⁰ While *fidayeen* attacks are most commonly used by Lashkar-e-Ta’iba, the group has also perpetrated suicide car bombings.²¹¹ On 9 May 2001, for example, two Lashkar-e-Ta’iba suicide bombers killed themselves and six civilians in an attack on a military camp in Magam, Kashmir;²¹² and, according to United States officials, in 2006 the then leader of Lashkar-e-Ta’iba operations in Kashmir, Zaki ur Rehman Lakhvi, told members to begin training operatives for suicide bombings.²¹³ More recently, Indian officials and United States intelligence indicate that the 3 August 2013 suicide bomb attack on the Indian consulate in Jalalabad was perpetrated by Lashkar-e-Ta’iba as part of a broader strategy to target Indian interests in Afghanistan following United States withdrawal in 2014.²¹⁴

Jihadist justification for suicide operations

While Hamas, al-Qa’ida and Lashkar-e-Ta’iba differ as the style, regularity and location of their suicide operations, their theological justifications follow similar themes. As with conventional attacks, the organisations argue reciprocity and collectivity, most commonly presenting suicide operations as a vengeful attack against a symbolic whole; as well as employing the juristic doctrine of necessity in what is described as an asymmetric war. Central, however, to the jihadist propagation and defence of suicide operations specifically, is the widening of the Islamic tradition of *shahada* (‘bearing witness’; also ‘martyrdom’) – traditionally seen as soldiers who die in the battlefield at the hands of their enemy – to permit the killing not only of the intended targets but also of the attacker(s), innovating the term *istishhad* (‘the act of deliberately killing oneself with the intent of seeking martyrdom’). Jihadist ideologues cite evidence from the *hadith* (‘the reported speech of the Prophet’) in support of self-sacrifice for the benefit of Islam and

209. Lt. Gen. Mohan C. Bhandari, the former Chief of Staff of Central Army in the Indian Armed Forces, for example, translates it as ‘suicide squad’ in his work *Solving Kashmir*, (New Delhi: Lancer Publishers, 2006). A number of academics also use these terms: see Sumantra Bose, *Contested Lands*, p. 182; and also Richard H. Davis, ‘The Rise and Fall of a Sacred Place: Ayodhya over Three Decades’ in *Culture and Belonging in Divided Societies: Contestation and Symbolic Landscapes*, ed. by Marc Howard Ross (Philadelphia: University of Pennsylvania Press, 2009), pp. 25-44, p. 26.

210. Christine Fair, ‘Lashkar-e-Ta’iba beyond Bin Laden: Enduring Challenges for the Region and the International Community’, p. 9.

211. Ashley J. Tellis, *The Menace That Is Lashkar-e-Taiba*, Carnegie Endowment for International Peace, March 2012, p. 14, available at: http://carnegieendowment.org/files/LeT_menace.pdf.

212. ‘Eight killed in Muslim militant suicide attack in Kashmir’, *Agence France Presse*, 9 May 2001. See also Incident Summary 200105090001, Global Terrorism Database, (START)

213. ‘“Uncle” named as Mumbai terror conspirator’, *Independent*, 8 December 2008, available at: <http://www.independent.co.uk/news/world/asia/uncle-named-as-mumbai-terror-conspirator-1057699.html>

214. ‘Capture Kabul, cripple Kashmir: Pakistan’s new two-faced war’, *Hindustan Times*, 8 August 2013

single fighters risking certain death in order to circumvent the Qu'ranic injunction against suicide.²¹⁵ Moreover, there is a lack of consensus among contemporary Muslim authorities and scholars over suicide operations, both in principle and location dependent, which further allows militant Sunni Islamism to present suicide operations as permissible according to the laws governing the conduct of *jihad*.

Righteous vengeance

Jihadist suicide attacks are regularly presented as avenging the killing and oppression of Muslims; as resistance against the occupation of Muslim land; as countering a Western war against Islam; or as punishment for Muslim-majority countries' compliance with the West. As with conventional attacks against civilians, the generality of the targets is justified on the grounds of collective association. According to a 2002 Human Rights Watch report, for example, 'Palestinian armed groups' – including Hamas – justify suicide attacks 'by pointing to Israeli military actions that have killed numerous Palestinian civilians'.²¹⁶

Al-Qa'ida has repeatedly justified its attacks as revenge for perceived Western interference in and oppression of Muslim lands, citing particularly the United States' support for Israel and its military presence in the Arabian Peninsula. Other actions which the group have stated precipitated collective revenge include the 1982 Israeli siege of Beirut; the United States-led invasions of Afghanistan and Iraq in 2001 and 2003 respectively; and the publication and subsequent reprinting of cartoons depicting Islam's prophet in the Danish newspaper *Jyllands-Posten* since 2005.

In a 1999 interview with *Newsweek*, for example, Bin Laden stated that the 1998 embassy suicide bombings constituted 'Islamic revenge on American spies in East Africa'.²¹⁷ Arguing both reciprocity and collectively, Bin Laden further asserted:

If the Israelis are killing the small children in Palestine and the Americans are killing the innocent people in Iraq, and if the majority of the American people support their dissolute president, this means the American people are fighting us and we have the right to target them.²¹⁸

In a statement in the aftermath of 9/11, Bin Laden attributed the attacks to revenge and blamed the American people collectively for their country's support of Israel and military presence in the Arabian Peninsula:

215. 'Destroy not yourselves. Surely Allah is ever merciful to you' (4:29); 'And spend in the Path of Allah, and do not contribute to your own destruction' (2:195)

216. 'Erased in a Moment', Human Rights Watch, 1 November 2002.

217. 'I am not afraid of death', *Newsweek Magazine*, 10 January 1999, available at: <http://www.thedailybeast.com/newsweek/1999/01/10/i-am-not-afraid-of-death.html>

218. *Ibid.*

What America is tasting [sic] now, is something insignificant compared to what we have tasted for scores of years. Our nation (the Islamic world) has been tasting [sic] this humiliation and this degradation for more than 80 years. [...]

When the sword comes down (on America), after 80 years, hypocrisy rears its ugly head. They deplore and they lament for those killers, who have abused the blood, honour, and sanctuaries of Muslims. The least that can be said about those people, is that they are debauched. They have followed injustice. They supported the butcher over the victim, the oppressor over the innocent child. May God show them His wrath and give them what they deserve. [...]

To America, I say only a few words to it and its people. I swear by God, who has elevated the skies without pillars, neither America nor the people who live in it will dream of security before we live it in Palestine, and not before all the infidel armies leave the land of Muhammad, peace by upon him.²¹⁹

In a later video speech, broadcast by al-Jazeera in October 2004, Bin Laden further asserted that the 9/11 attacks were conceived as symbolic revenge for the 1982 Israeli siege of Beirut:

God knows it did not cross our minds to attack the [Twin] towers but after the situation became unbearable and we witnessed the injustice and tyranny of the American-Israeli alliance against our people in Palestine and Lebanon, I thought about it. And the events that affected me directly were that of 1982 and the events that followed - when America allowed the Israelis to invade Lebanon, helped by the US sixth fleet.

In those difficult moments many emotions came over me which are hard to describe, but which produced an overwhelming feeling to reject injustice and a strong determination to punish the unjust.

As I watched the destroyed towers in Lebanon, it occurred to me to punish the unjust the same way [and] to destroy towers in America so it could taste some of what we are tasting and to stop killing our children and women.²²⁰

Al-Qa'ida also claimed responsibility for the suicide truck-bombing of the Ghriba synagogue, a Jewish pilgrimage site on the Tunisian island of Djerba, on 11

219. 'Bin Laden's statement', *Guardian*, 7 October 2001, available at: <http://www.theguardian.com/world/2001/oct/07/afghanistan.terrorism15>

220. "'God knows it did not cross our minds to attack the towers'", *Guardian*, 30 October 2004, available at: <http://www.theguardian.com/world/2004/oct/30/alqaida.september11>

April 2002, claiming that the perpetrator ‘could not see his brothers in Palestine butchered and murdered... [while] he saw Jews cavorting in Djerba’.²²¹

Al-Qa’ida operative and ringleader of the 7 July 2005 London underground suicide bombings, Mohammad Sidique Khan, explained his motives in a confessional video broadcast by al-Jazeera:

Your democratically elected governments continuously perpetuate atrocities against my people all over the world. And your support of them makes you directly responsible, just as I am directly responsible for protecting and avenging my Muslim brothers and sisters.

Until we feel security, you will be our targets. And until you stop the bombing, gassing, imprisonment and torture of my people we will not stop this fight. We are at war and I am a soldier.²²²

Al-Qa’ida’s statement following the 2008 suicide bombing of the Danish embassy in Islamabad said that the attack was an act of revenge for ‘what the infidels from the so-called state of Denmark have published, the insulting cartoons of the prophet Mohammed’.²²³ In an earlier video message, posted on an al-Qa’ida website over two months before the embassy attack, Bin Laden had said that publishing the cartoons was a greater offense than the ‘bombing of modest villages that collapsed over women and children’, a reference to the Iraq War, and threatened that ‘the punishment will also be more severe’.²²⁴

Necessity and asymmetric warfare – the ‘human shield’ defence

As with conventional attacks, the groups argue necessity in defence of suicide attacks, particularly in response to the combined military strength of the United States, Israel and India.

For example, despite Hamas’ widespread efforts to popularise suicide bombings within Palestinian (and wider) society, the group continues to outwardly assert that its suicide campaigns were a strategic and necessary response to extreme oppression from Israel. In 2002, for example, former Hamas leader Abd al-Aziz Rantisi described suicide attacks as the group’s most important ‘strategic weapon’

221. ‘Al-Qaeda claims Tunisia attack’, *BBC News*, 23 June 2002, available at: http://news.bbc.co.uk/1/hi/world/middle_east/2061071.stm

222. ‘London bomber: Text in full’, *BBC News*, 1 September 2005, available at: <http://news.bbc.co.uk/1/hi/uk/4206800.stm>.

223. ‘Al Qaeda Claims Responsibility for Danish Embassy Attack’, *Deutsche Welle*, 5 June 2008, available at: www.dw.de/al-qaeda-claims-responsibility-for-danish-embassy-attack/a-3389920-1.

224. ‘Bin Laden Threatens Europe Over Mohammed Cartoons’, *Deutsche Welle*, 20 March 2008, available at: <http://www.dw.de/bin-laden-threatens-europe-over-mohammed-cartoons/a-3204372>.

in an asymmetrical war;²²⁵ and in 2006, Hamas member of the Palestinian Legislative Council Yihieh Musa told the British *Observer* newspaper that '[they] happened in an exceptional period and they have now stopped'.²²⁶

In his seminal text on the jurisprudence of *jihad*, Muslim Brotherhood ideologue Yusuf al-Qaradawi excludes Israel from *Dar al-Ahd* ('lands of covenant'), which establishes peaceful relations between signatories to the United Nations (see page 33). On the basis of this exception and Israel's policy of conscription, al-Qaradawi assesses the whole of Israeli society as warring rather than civilian. He permits *istishhad* for Palestinians fighting Israeli occupation, arguing that the Palestinian situation is one characterised by constraint. Faced with few options, the Palestinians, he states, may resort to unconventional warfare out of necessity, including the use of suicide bombings.²²⁷

Al-Qaradawi cites al-Ghazali's eleventh-century edict regarding the permissibility of attacking an enemy who uses Muslim captives as a human shield, even though the Muslims may be killed, in a situation of vital necessity, universal benefit and certainty of outcome. The intention should never be to kill women and children, al-Qaradawi states, but they may be killed as a result of attacks against a warring society or as unintended victims – both scenarios, he says, are a direct consequence for Israelis of living in Israel.²²⁸ He deployed the same argument in a 1997 *fatwa* ('religious edict') which justified suicide bombings in Israel and the Palestinian Territories:

The Israeli society is militaristic in nature. Both men and women serve in the army and can be drafted at any moment. On the other hand, if a child or an elderly person is killed in such an [suicide] operation, he is not killed on purpose, but by mistake, and as a result of military necessity. Necessity justifies the forbidden.²²⁹

Al-Qa'ida has also invoked al-Ghazali's edict in order to justify civilian deaths as a result of suicide bombings. In a January 1999 interview with the American news channel ABC News, Osama Bin Laden, for example, utilised the 'human shield' defence to justify the deaths of Muslim civilians incurred during the in 1998 embassy suicide bombings. While continuing to deny al-Qa'ida involvement in the attacks, Bin Laden asserted that if inaction were to cause greater harm to Muslims collectively, then the principle of necessity rendered the killing of

225. Suicide Terrorism: Rationalizing the Irrational, *Strategic Insights*, Vol. III, Issue 8 (August 2004), p.2, available at: http://www.au.af.mil/au/awc/awcgate/nps/madsen_aug04.pdf.

226. 'Hamas in call to end suicide bombings', *Observer*, 9 April 2006.

227. Al-Qaradawi, *fiqh al-jihad*, vol. 2, pp. 1082-1092.

228. Ibid.

229. Al-Qaradawi, *shari'ya al-'amaliyat al-istishhadiya fi filastin al-muhtalla* (The legality of Martyrdom operations in the Occupied Palestine), al-Islah, Vol. 375 (15–18 August 1997), cited in Muhammad Munir, Suicide attacks and Islamic law, International Review of the Red Cross, March 2008, Vol. 90 No. 869, p. 4, available at: http://www.icrc.org/eng/assets/files/other/irrc-869_munir.pdf.

Muslims permissible under Islamic law. He stated:

Suppose that the Americans have attacked an Islamic country and kidnapped my children, the children of Osama bin Laden, to use as a shield, and then started to kill Muslims as it the case in Lebanon, Palestine, and these days in Iraq, and also when they supported the Serbs in massacring the Muslims in Bosnia. According to Islamic jurisprudence if we abstain from firing on the Americans lest we should kill these Muslims (used by them as shields), the harm that could befall Muslims at large, who are being attacked, outweighs the good of saving the lives of these Muslims used as shields.

This means that in a case like this, when it becomes apparent that it would be impossible to repel these Americans without assaulting them, even if this involved the killing of Muslims, this is permissible under Islam. That is why I do understand the motives of those who carried out these acts. However, radio reports said that most of those killed were members of the American Embassy in Nairobi, which housed the largest C.I.A center [sic] in the African continent. We do understand what happened. Many people were saddened by the death of some innocent people outside the embassy building.²³⁰

Al-Qa'ida has also publicly referenced the group's efforts to minimise Muslim civilian casualties. In an interview with Pakistani TV station Geo after the June 2008 suicide bombing of the Danish embassy in Islamabad, for example, Mustafa Abu al-Yazid, al-Qa'ida's then commander in Afghanistan said: 'We are proud of that attack, and I had congratulated my colleagues for conducting it successfully. We had chosen a time for the attack when there would be no innocent Muslims around'.²³¹

Among the most detailed defence of suicide attacks from al-Qa'ida ideologues is the pamphlet, 'The Islamic Ruling on the Permissibility of Martyrdom Operations', attributed to Yusuf al-Uyayri.²³² Utilising the doctrine of necessity, al-Uyayri asserts that suicide attacks are legitimate not only because they are a necessary response to superior military forces, but also because of the perceived benefit they bring to Muslims and Islam. Specifically, he states:

Martyrdom or self-sacrifice operations are those performed by one or more people, against enemies far outstripping them in numbers and equipment, with prior knowledge that the operations will almost inevitably lead to death.[...]

230. World's Most Wanted Terrorist: An Interview with Osama bin Laden, *ABC News Online*, 2 January 1999, available at: <http://cryptome.org/jya/bin-laden-abc.htm>.

231. 'Al-Qaeda leader in TV interview', *BBC News*, 22 July 2008, available at: <http://news.bbc.co.uk/1/hi/7518763.stm>.

232. Al-Uyayri, 'The Islamic Ruling on the Permissibility of Martyrdom Operations'.

As for the effects of these operations on the enemy, we have found, through the course of our experience that there is no other technique which strikes as much terror into their hearts, and which shatters their spirit as much. [...] On the material level, these operations inflict the heaviest losses on the enemy, and are lowest in cost to us.²³³

The subjective nature of necessity and benefit, however, has precipitated a breadth of contemporary responses to the permissibility of suicide operations. There is significant debate among contemporary clerics over whether certain circumstances permit such attacks. For example, while al-Qaradawi strongly criticised al-Qa'ida's targeting of American civilians in the 9/11 attacks,²³⁴ he issued a *fatwa* in August 2004 sanctioning the targeting of American military personnel and civilians in Iraq:

All of the Americans in Iraq are combatants, there is no difference between civilians and soldiers, and one should fight them, since the American civilians came to Iraq in order to serve the occupation. The abduction and killing of Americans in Iraq is a [religious] obligation so as to cause them to leave Iraq immediately.²³⁵

In a July 2004 interview with *BBC News*, al-Qaradawi had previously made statements to the effect that in certain circumstances suicide operations against American targets in Iraq would be permissible:

If the Iraqis can confront the enemy, there is no need for these acts of martyrdom. If they don't have the means, acts of martyrdom are allowed. I didn't say that the Iraqis cannot, it depends on their need.²³⁶

During the course of the interview he clarified: 'In Palestine the need is there, in Iraq today the need is not there'.²³⁷ In his seminal text *fiqh al-jihad*, however, al-Qaradawi explicitly asserts that by virtue of necessity all Israeli civilians are legitimate targets for suicide attacks.²³⁸

233. Al-Uyayri, 'The Islamic Ruling on the Permissibility of Martyrdom Operations', pp. 2-3.

234. Mowatt-Larssen, 'Islam and the Bomb', pp. 45-46.

235. Ten days after Al-Qaradawi's fatwa was issued he sent a fax to the office of the Al-Hayat newspaper stating that he had not issued the fatwa, but rather that, 'At the Egyptian Journalists' Union a few days ago I was asked about the permissibility of fighting against the occupation in Iraq, and I answered that it is permitted. Afterwards I was asked concerning the American civilians in Iraq and I merely responded with the question - are there American civilians in Iraq?' See 'Reactions to Sheikh Al-Qaradawi's Fatwa Calling for the Abduction and Killing of American Civilians in Iraq', The Middle East Media Research Institute (MEMRI), 4 October 2004, available at: http://www.terrorism-info.org.il/data/pdf/PDF_simuchin_282_2.pdf. See also Lorenzo Vidino, *The New Muslim Brotherhood in the West*, (New York: Columbia University Press, 2010), p. 211.

236. 'Al-Qaradawi full transcript', *BBC News*, 8 July 2004, available at: <http://news.bbc.co.uk/1/hi/3875119.stm>.

237. *Ibid.*

238. Al-Qaradawi, *fiqh al-jihad*, vol. 2, pp. 1082-1092.

Al-Qaradawi is not alone in privileging Israel: one analyst has compiled a database of 61 contemporary Islamic leaders who have issued *fatawa* that permit the use of suicide operations; of these, 32 specifically reference Israel with the majority confining suicide attacks to this conflict alone.²³⁹ Once an action is permissible in one location however, it can become so in others: the remaining *fatawa*, for example, reference twenty other countries; and a total of four permit suicide attacks across the 'entire world'.²⁴⁰ The lack of consensus among contemporary Muslim authorities and scholars over suicide operations, therefore, aids the presentation of suicide operations as permissible according to the laws governing the conduct of *jihad*.

Jihadist culture of martyrdom

Central to jihadists' ability to popularise suicide operations is the promotion of the Islamic tradition of *shahada*. Hamas, al-Qa'ida and Lashkar-e-Ta'iba all celebrate martyrdom not only in order to recruit suicide operatives but also to legitimise their acts within their respective audiences. Martyrs are commonly memorialised; with the individuals' names, family information and circumstances of their death routinely published and celebrated.

Hamas' literature, communications and educational/social campaigns, for example, consistently propagate a culture of martyrdom among all strata of Palestinian society. Article eight of the Hamas Charter, for example, states that the slogan of 'the Islamic Resistance Movement' as follows:

Allah is its target, the Prophet is its model, the Koran its constitution: Jihad is its path and death for the sake of Allah is the loftiest of its wishes.²⁴¹

According to Hamas propaganda, self-sacrifice is the medium through which Palestinian independence can be realised. Originally, the group targeted men for suicide operations and women as the mothers of the *shuhada*.²⁴² A Hamas flyer from the early 1990s, for example, encouraging mothers to permit their sons to participate in suicide operations, stated:

We salute the Mother of the *Shahid* and we stand at attention to the sound of the joyful ululation emitted from her mouth, which she

239. Dr. David Cook, 'Radical Islam and martyrdom operations', p. 5.

240. *Ibid.*, p. 6.

241. 'Article Eight', *The Hamas Charter 1988* (The Covenant of the Islamic Resistance Movement), Yale Avalon Project translation.

242. The first female Hamas suicide bomber was 22-year-old Reem al-Reyashi, who killed four Israeli soldiers at a checkpoint on 14 January 2004; and Muslim Brotherhood ideologue Yusuf al-Qaradawi endorsed the use of women as suicide bombers in a March 2004 *fatwa*. Hamas has since has made a concerted effort to recruit women as suicide bombers in an attempt to circumvent security. See Debra D. Zedalis, *Female Suicide Bombers*, Strategic Studies Institute, United States Army, p. 2, available at: <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub408.pdf>. See also The Qaradawi Fatwas, Middle East Quarterly, 2004, Vol. XI, No. 3, pp. 78-80, available at: http://www.meforum.org/646/the-qaradawi-fatwas_#fn3.

will ululate twice: once on the day that her son leaves to fight and to fall and become a *shahid*, and the day on which the [Palestinian] state will be declared.²⁴³

Children are also targeted via Hamas' television and radio channels, internet presence and summer camps.²⁴⁴ In a December 2012 interview with Al-Quds television, for example, senior Hamas commander Zaher Jabarin said that Hamas 'labour[s] day and night' to educate Palestinian children of the religious obligation to become a suicide bomber, adding that: 'the Palestinian youngsters, the resistance and Jihad warriors, fight and quarrel over performing a courageous suicide operation'.²⁴⁵

Lashkar-e-Ta'iba, like Hamas, works to propagate a culture of martyrdom within Pakistani society. The group regularly issues statements which glorify the successes of its operations: in 2002, for example, Lashkar-e-Ta'iba claimed that in the previous eleven years, 14,369 Indian soldiers had been 'sent to hell', while nearly 1,200 operatives had 'drunk the cup of martyrdom'.²⁴⁶

Lashkar-e-Ta'iba also routinely publishes details of the organisation's deceased militants. At least four Urdu language publications have been produced since 1989 which glorify the group's cause and those who have died for it. The publications contain extensive biographical information including age, family details, and descriptions of the fighters' journeys through various training programmes as well as information about the battles they fought in and the location of their deaths.²⁴⁷

The titles of the publications – the three volume book *hum ma'en lashkar-e-taiba ki* (We, the Mothers of Lashkar-e-Ta'iba); and journals *majallah taibaat* (Journal of Virtuous Women), *majallah al-dawa* (Journal for the Call to Islam) (renamed *al-haramain*, The Two Holy Lands) and *mahanah z'arb-e-taiba* (Monthly Strike of the Righteous)²⁴⁸ – reflect both religious sacrifice and echo Hamas' focus on women as the mothers of *shuhada*. The compiler of *hum ma'en lashkar-e-taiba ki*, Umm-e-Hammad, for example, is also the editor of the group's magazine for women,

243. Mira Tzoref, 'The Palestinian Shahida: National Patriotism, Islamic Feminism, or Social Crisis', in *Female Suicide Bombers: Dying for Equality?*, ed. by Yoram Schweitzer, Jaffee Center for Strategic Studies, Tel Aviv University, August 2006, pp. 13-24, p. 14, available at: <http://www.gees.org/documentos/Documen-01398.pdf>.

244. Jim Zanotti, Hamas: Background and Issues for Congress, p. 16.

245. Interview with Zaher Jabarin, Al-Quds TV, 18 December 2012, video available at: <http://www.youtube.com/watch?v=qX4X07o560A>.

246. Mariam Abou Zahab, 'I Shall be Waiting at the Door of Paradise: The Pakistani Martyrs of the Lashkar-e-Taiba (Army of the Pure)', *The Practice of War: Production, Reproduction and Communication of Armed Violence*, ed. by Aparna Rao et al. (New York: Berghahn Books, 2007), pp. 133–158, p. 137.

247. Anirban Ghosh, Arif Jamal, Christine Fair, Don Rassler, Nadia Shoeb, *The Fighters of Lashkar-e-Taiba: Recruitment, Training, Deployment and Death*, Combating Terrorism Center, U.S. Military Academy, 4 April 2013, p. 10, available at: <http://www.ctc.usma.edu/posts/the-fighters-of-lashkar-e-taiba-recruitment-training-deployment-and-death>.

248. *Ibid.*, pp. 3-6.

majallah taibaat, and is promoted as the mother of two Lashkar-e-Ta'iba martyrs.²⁴⁹

Al-Qa'ida's potential recruitment pool is much more global than either Hamas or Lashkar-e-Ta'iba; and the group has fewer opportunities with regard to targeted welfare or educational programmes than Hamas does in Gaza and the West Bank or Lashkar-e-Ta'iba does in Pakistan. Despite this, al-Qa'ida has conducted numerous international media campaigns glorifying martyrdom for recruitment purposes. The group produced a seven-minute recruitment video, for example, which coupled footage of jihadist fighting with images of twenty-seven *shuhada*, including their names, background information and where they died.²⁵⁰

In April 2002, al-Jazeera broadcast a documentary made by al-Qa'ida's production company, al-Sahab Institute for Media Production, featuring a segment entitled, 'The Wills of the New York and Washington Battle Martyrs', which glorified the 9/11 hijackers. In a message to camera recorded before the attacks, one of the hijackers, 22-year-old Ahmed al-Haznawi, pledges to give his life to 'martyrdom' stating 'it is time to kill Americans in their heartland'.²⁵¹

In another al-Qa'ida video, released just before the first anniversary of the 9/11 attacks, Bin Laden is shown praising the hijackers as 'great men who deepened the roots of faith in the hearts of the faithful reaffirmed allegiance to God and torpedoed the schemes of the crusaders and their stooges, the rulers of the region'.²⁵² The video also included footage of hijacker Abdulaziz al-Omari which demonstrates the power of al-Qa'ida's culture of martyrdom. In his farewell message, Al-Omari states:

My work is a message [to] those who heard me and to all those who saw me at the same time it is a message to the infidels that you should leave the Arabian peninsula defeated and stop giving a hand of help to the coward Jews in Palestine.

God may reward all those who trained me on this path and was behind this noble act and a special mention should be made of the Mujahid leader Sheikh Osama bin Laden, may God protect him.²⁵³

Hamas, al-Qa'ida and Lashkar-e-Ta'iba, therefore, dedicate extensive resources to promoting a culture of martyrdom among their respective constituencies. Suicide attacks are deliberately framed as 'martyrdom operations' not only to

249. Anirban Ghosh, Arif Jamal, Christine Fair, Don Rassler, Nadia Shoeb, *The Fighters of Lashkar-e-Taiba*, p. 10.

250. Suicide Bombing in the COE, Handbook No. 1.03, p. 26

251. 'Timeline: the al-Qaida tapes', Special Report: al-Qaida, *Guardian*, n.d., available at: <http://www.theguardian.com/alqaida/page/0,12643,839823,00.html>

252. 'Bin Laden voice on video, says TV channel', *Guardian*, 10 September 2002, available at: <http://www.theguardian.com/media/2002/sep/10/alqaida.september112001>

253. Ibid.

circumvent the Islamic prohibition on suicide, but also to present the suicide operatives' actions as permissible under Islamic law.

Al-Qaradawi, the scholar who most consistently defends Hamas' use of suicide bombing, presents the group's suicide operations as the pinnacle of religious sacrifice and *shahada* rather than suicide. In his 1997 fatwa justifying suicide bombings in Israel and the Palestinian Territories, al-Qaradawi also asserts their difference from suicide:

These operations are the supreme form of jihad for the sake of Allah, and a type of terrorism that is allowed by Shari'ah ... the term "suicide operations" is an incorrect and misleading term, because these are heroic operations of martyrdom, and have nothing to do with suicide ... While someone who commits suicide has lost hope for himself and with the spirit of Allah, the mujahid is full of hope with regard to Allah's spirit and mercy. He fights his enemy and the enemy of Allah with this new weapon, which destiny has put in the hands of the weak, so that they would fight against the evil of the strong and arrogant.²⁵⁴

Al-Uyayri's pamphlet, 'The Islamic Ruling on the Permissibility of Martyrdom Operations', published in August 2000 in defence of the first female Chechen suicide bomber, Hawa Barayev, two months earlier,²⁵⁵ predates the 9/11 attacks and focuses primarily on distinguishing suicide bombings from suicide per se. Al-Uyayri presents suicide bombings as a contemporary manifestation of the Islamic tradition of self-sacrifice in order to further the propagation of Islam.

Responding to criticism of Barayev for committing suicide, for example, al-Uyayri – like al-Qaradawi – argues that while suicide is the recourse of those who have given up their faith, martyrdom operations are sought by those with the truest faith:

The name 'suicide-operations' used by some is inaccurate, and in fact this name was chosen by the Jews to discourage people from such endeavours. How great is the difference between one who commits suicide - because of his unhappiness, lack of patience and weakness or absence of iman and has been threatened with Hell-Fire - and between the self-sacrificer who embarks on the operation out of strength of faith and conviction, and to bring victory to Islam, by sacrificing his life for the upliftment of Allah's word!²⁵⁶

254. Al-Qaradawi, *shari'ya al-'amaliyat al-istishhadiya fi filastin al-muhtalla* (The legality of Martyrdom operations in the Occupied Palestine), al-Islah, Vol. 375 (15–18 August 1997), cited in Muhammad Munir, *Suicide attacks and Islamic law*, p. 4.

255. Yossef Bondansky, *Chechen Jihad: Al-Qaeda's Training Ground And The Next War on Terror*, (New York: HarperCollins, 2007) p. 179

256. Al-Uyayri, 'The Islamic Ruling on the Permissibility of Martyrdom Operations', p. 2.

Al-Uyayri cites evidence from the *hadith* in support of self-sacrifice for the benefit of Islam in order to differentiate between suicide and suicide operations. Specifically, he relates two *ahadith* in which lowly figures – a boy and a Pharaoh's daughter's hairdresser – triumph over disbelieving rulers – a King and a Pharaoh – by refusing to renounce their faith even when faced with certain death.

Al-Uyayri references the *hadith* about the King and the boy throughout his pamphlet, stating that it 'is the strongest of evidences for this issue [the permissibility of suicide operations]'.²⁵⁷ He relates the *hadith* in full as follows:

In the hadith in Sahih Muslim [...] we find that the unbelieving king tried various means to kill the believing boy, failing each time. Eventually, the boy told him, "You will not be able to kill me until ... you gather people on one plateau, hang me on a palm-trunk, take an arrow from my quiver, place it in the bow, say, "In the name of Allah, the Lord of the boy," and shoot me." The king did this, and thereby managed to kill the boy as predicted, but the people who had gathered began saying, "We believe in Allah, the Lord of the boy!"²⁵⁸

Al-Uyayri states that, 'the boy, in this hadith, ordered the king to kill him in the interest of the religion, and this indicates that such a deed is legitimate, and not considered suicide.' Similarly, the hairdresser's comparable 'steadfastness' when faced with her and her children's death, according to al-Uyayri, represents the 'virtue of this deed'.²⁵⁹

Al-Uyayri further cites over forty narrations which he states support the virtue of seeking martyrdom on the battlefield;²⁶⁰ and cites evidence to support the specific notion of an individual fighter breaking through the frontline and risking certain death to kill as many from the enemy's forces as possible:

Abu Dawud (3/27) and Tirmidhi (4/280) have narrated (and Tirmidhi graded it as sahih [sound]) that Aslam ibn `Imran narrated that when they were fighting a mighty army of the Romans, a man in the Muslim army attacked the Roman ranks until he penetrated them. People shouted, saying, "SubhanAllah! He has contributed to his own destruction." Thereupon, Abu Ayyub al-Ansari stood up, and said, "O people! You give this interpretation to this verse, whereas it was revealed concerning us, the Ansar, when Allah had given honour to Islam and its supporters had become many, whereupon some of us secretly said

257. Al-Uyayri, 'The Islamic Ruling on the Permissibility of Martyrdom Operations', p. 9.

258. Ibid., p. 4.

259. Ibid., p. 4.

260. Ibid., pp. 4-5.

to one another ... “Our wealth has been depleted, and Allah has given honour to Islam and its supporters have become many, so let us stay amidst our wealth and make up what has been depleted of it.” Thereupon, Allah revealed to His Prophet [meaning] “And spend in the Path of Allah, and do not contribute to your own destruction” [Qur’an, 2:195] refuting what we had said. So, the destruction lay in staying with our wealth and repleting it, and abandoning combat.” Abu Ayyub remained fixed until he [was killed and] was buried in Rome.²⁶¹

Attempting to circumvent the Islamic prohibition on suicide, Al-Uyayri argues that, ‘in this hadith, Abu Ayyub explained that the verse (Qur’an, 2:195) does not apply to one who plunges into the enemy ranks alone, even though it may seem to people that he is destroying himself’.²⁶²

Al-Uyayri argues, therefore, that willingly embracing one’s inevitable death in the furtherance of Islam – either to inflict heavy casualties against enemy forces or to strengthen the steadfastness of Muslims – is self-sacrifice; and presents suicide bombers as a contemporary manifestation of this tradition.²⁶³

Al-Uyayri acknowledges that, ‘there is one difference between the martyrdom operations and their classical precedent, namely that in our case the person is killed by his own hand, whereas in the other he was killed by the enemy’;²⁶⁴ but goes on to say this difference does not affect the permissibility of such operations. For example, while stating that the boy in the *hadith* ‘did not take it by his own hand’, al-Uyayri asserts that ‘[the boy’s] opinion was the sole factor leading to his killing’, concluding that: ‘protection of the religion is the greatest service a Mujahid performs, and the[se] evidences do not leave us with any doubt that a Mujahid may sacrifice his life for the religion.’²⁶⁵ He goes on to argue that given that it is permissible for Muslim prisoners used as a human shield to be killed if it is necessary for victory, then ‘an overwhelming religious benefit [...] should similarly allow for killing oneself [...] for the taking of one’s own life is less serious than taking someone else’s life’.²⁶⁶

Illegality of suicide operations within Islamic law

Despite their claims to the contrary, neither the exhortation of suicide operations displayed by jihadist ideologues nor the qualified support offered by Islamist

261. Al-Uyayri, ‘The Islamic Ruling on the Permissibility of Martyrdom Operations’, pp. 4-5.

262. Ibid., pp. 4-5.

263. Ibid., p. 6.

264. Ibid., p. 6.

265. Ibid., p. 9.

266. Ibid., p. 10.

clerics is endorsed by classical Islamic jurisprudence on warfare. As previously demonstrated, not only do Hamas, al-Qa'ida and Lashkar-e-Ta'iba lack the requisite political authority to declare *jihad*, but their actions, including both conventional and suicide attacks, contravene the consensus prohibiting the killing of women and children as well as the sanctity of life that run throughout the primary sources of *shari'a* (see pages 63-64). Moreover, traditional rulings on the behaviour of those undertaking *jihad* – specifically the injunction to protect life (both their own and others), the prohibition on perfidy in warfare and the requisite criteria for permitting the killing of prisoners – fail to support either the jihadists' conflation of suicide and martyrdom or their use of the 'human shield' defence.

In classical Islamic literature there is no explicit discussion of suicide missions. Relevant rulings, however, can be found in the context of women on the battlefield. In his collection of North African and Andalusian *fatawa*, fifteenth-century Maliki scholar al-Wanshirisi, for example, answers a question about the legitimacy of those undertaking *jihad* attacking women. Assuming the legitimacy of warfare had been established, the majority view among classical jurists was that women could only be attacked if they were actively involved in combat on the battlefield. Part of al-Wanshirisi's explanation for this is used by modern scholars to forbid suicide operations.

Specifically, al-Wanshirisi cited an edict from an earlier Maliki jurist Abu'l Abbas al-Amareedh that stated that a Muslim soldier is prohibited from fighting women and children unless they were physically attacking him and he was likely to lose his life if he refrained. If, in the course of defending himself, al-Amareedh explained, the women or children are killed then 'there is no censure'; it would not be permissible, however, for a Muslim soldier not to defend himself when capable and die as a result, because: 'being the cause (*mutasabbib*) of one's own death is haram (*forbidden*).'²⁶⁷

From this and similar edicts regarding conduct on the battlefield, contemporary scholars have concluded that the act of self-detonation can never be permitted. Contemporary Shafi'i jurist Sheikh Afifi al-Akiti, for example, states explicitly:

If the attack involves a bomb placed on the body or placed so close to the bomber that when the bomber detonated it the bomber is certain [yaqin] to die, then the More Correct Position [Qawl Asahh] according to us is that it does constitute suicide. This is because the bomber, being also the maqtul [the one killed], is unquestionably the same as the qatil [the immediate and active agent that kills] = qatil nafsah [self-killing, i.e., suicide].²⁶⁸

Al-Akiti utilises this definition of suicide as self-killing to refute al-Uyayri's defence

267. Al-Wanshirisi, *al-miyar ul-murib wal-jami al-mughrib an-fatawiy ahl al-ifriqiya wal-andalus wal-maghrif (The clear measure and the extraordinary collection of the judicial opinions of the scholars of Ifriqiya, al-Andalus and the Maghrif)* ed. by scholars under the supervision of Dr. Muhammad Heggy (Morocco: Wizara al-Awqaf, 1981) vol. 1, p. 132.

268. Al-Akiti, 'Defending the Transgressed', p. 24.

of suicide operations as a modern manifestation of the heroic lone soldier. Al-Akiti cites eleventh-century Shafi'i scholar al-Ghazali's understanding of the Qu'ranic injunction 'do not contribute to your own destruction' (2:195). While al-Ghazali permitted a competent single soldier to continue to fight 'even if he knows he will almost certainly be killed', he specifically prohibited actions that would not lead to any tangible benefit but would likely result in death. Al-Akiti cites (and comments upon) al-Ghazali as follows:

(...) were he to know [zanni] that his charge will not cause harm to the non-Muslim [army], such as the blind or the weak throwing himself into the [hostile] battle-lines, then it is prohibited [haram], and [this latter incident] is included under the general meaning [‘umum] of “*destruction*” from the Verse [for in this case he will be literally throwing himself into destruction].²⁶⁹

Al-Akiti argues that a true contemporary manifestation of the lone soldier, which he describes as a 'selfless deed which any modern soldier, Muslim or non-Muslim, might perform in battle today', is specifically 'not suicide'. Referencing al-Ghazali's distinction, however, he concludes that, 'to endanger one's life is one thing and to commit suicide during the attack is obviously another'; and that while 'it is possible to have both situations', the latter 'is prohibited'.²⁷⁰

The correct manner in which *mujahideen* should behave is recorded in the *hadith* and elsewhere. The use of or support for suicide attacks, however, further fails to honour these injunctions in two specific ways. Firstly, despite portraying their fighters as legitimate *mujahideen*, Hamas, al-Qa'ida and Lashkar-e-Ta'iba deploy suicide operatives dressed as civilians in order to, in al-Uyayri's words, 'cause the maximum losses in the enemy ranks, taking advantage of the element of surprise and penetration'.²⁷¹ The requisite subterfuge for a suicide operation, however, breaches the strict prohibition of perfidy during warfare, as evidenced by the *hadith* narrating Muhammad's commands to his army in the eighth year after his migration to Medina: 'Fight with the name of God and in the path of God. Combat those who disbelieve in God. Fight yet do not cheat, do not break trust, do not mutilate, do not kill minors'.²⁷²

Secondly, al-Qaradawi's justification that Israeli civilians can be classified as combatants (and therefore legitimate targets) by virtue of conscription fails to uphold the distinction between combatants and non-combatants that is clearly delineated throughout classical jurisprudence on *jihad*. Responding to a question which describes, as al-Qaradawi has done, Israeli society as 'militarised', al-Akiti refutes the implication that Israeli women 'fall into the category of women who

269. Al-Ghazali, *Ihya Ulum ul-Din*, cited in al-Akiti, 'Defending the Transgressed', p. 26.

270. Al-Akiti, 'Defending the Transgressed', p. 27.

271. Al-Uyayri, 'The Islamic Ruling on the Permissibility of Martyrdom Operations', p. 2.

272. Muhammad Munir, 'Suicide attacks and Islamic law', p. 83

fight and that this makes them legitimate targets [for suicide bombings] but only in the case of Palestine'.²⁷³

Al-Akiti's reasoning is based on the classical ruling that women can be targeted only when they are the battlefield and actively involved in combat. He states that linguistic analysis of the primary sources show that the form of verb used 'denotes a direct or a personal or a reciprocal relationship between two agents' which has the legal implication that 'one of the two [the combatant and the woman] can only even be considered a legitimate target when there is a reciprocal/direct relationship'.²⁷⁴ He contrasts this direct relationship, which under the conditions of warfare permits fighting, to suicide bombings, which he states are not permissible:

[because they are] offensive in nature – as they are not after all targeting, for example, a force that **is attacking** an immediate Muslim force but rather the attack is directed at an overtly non-military target, so the person carrying it out can only be described as attacking it – and the target is someone unknown until only seconds before the mission reaches its termination.²⁷⁵

Finally, the commonly used justification of the indiscriminate targeting of civilians inherent in suicide bombings based on the permissibility of attacking Muslim prisoners being used as a human shield, does not reflect the specific criteria that the minority of scholars of *usul al-fiqh* ('fundamental principles of jurisprudence') who permit such actions have required.

Eighteenth-century Yemeni scholar al-Shawkani, for example, describes a situation in which an enemy using a human shield on a ship were likely to defeat the Muslim army, kill them and then kill the human shield. He questions whether, given that the *shari'a* in general seeks to preserve human life, it is acceptable to attack the human shield as a form of defence. Al-Shawkani cites al-Ghazali's text, *al-mustasfa min al-ilm ul-usul*, for the theoretical criteria. They are: that the aim of the attack is among the five *maqasid* ('foundational goals of the *shari'a*'), namely preserving life, religion, property, family lineage, and intellect; that it is absolutely necessary; that it concerns all, rather than some, Muslims; and that there is certainty (*qati*) that the actions taken would result in either the aversion of harm or the realisation of interest. Al-Shawkani concludes that the situation he described would not constitute a permissible departure from the religious rule prohibiting the killing of civilians based on necessity, interest or benefit as not all Muslims would benefit nor would the outcome be certain.²⁷⁶

Despite al-Qaradawi, al-Uyayri and bin Laden's exhortations of the 'human shield' defence, the majority position of the four Sunni schools is that attacking

273. Al-Akiti, 'Defending the Transgressed', p. 32.

274. *Ibid.*, p. 33.

275. *Ibid.*, p. 33.

276. Al-Shawkani, *irshad ul-fuhul ila tahqiq ul-haq min al-ilm ul-usul*, (Beirut: Dar ul-Kutub ul-ilmia, 1994) pp. 358-360

a human shield is never permissible. In his commentary on the Hanbali scholar Majd ul-Din Ibn Taymiyya's (d. 1255)²⁷⁷ *hadith* collection *muntaqa al-akhbar*, al-Shawkani states:

The ahadith [on the prohibition of killing non-combatants] in this chapter clearly indicate it is not allowed to kill women and children, as was stated by Malik and Awza'i: it is not allowed in any circumstance whatsoever, even if the enemy used them as shields or surrounded themselves with them in forts or on a ship, it would not be permitted to fire upon them or set them on fire. Shafi and the Kufans [Hanafi scholars] reconciled the traditions stating it was [only] allowed to fight them [the human shields] if they fought you. Ibn Habib from the Maliki scholars stated it was not allowed to target them even when they were fighting unless they were first to kill or trying to do so.²⁷⁸

Islamist scholars and jihadist ideologues' use of al-Ghazali's edict on human shields to support suicide bombings, therefore, diverges from classical sources of Islamic law and does not conform to the cultural heritage within the four traditional schools of Sunni Islamic jurisprudence.

The Islamic prohibition on treachery towards one's country of residence

Jihadist ideologues advocate loyalty to the *umma* ('transnational Muslim community'), to the exclusion of any other communal or national loyalty. The most extreme endpoint of this misappropriation of loyalty includes inciting Muslims living in Western countries to perform acts of terrorism against their fellow citizens. Both the United Kingdom and the United States face a significant threat from 'home-grown' terrorism: 69% of Islamism-inspired terrorism convictions and attacks in the United Kingdom between 1998 and 2010 were perpetrated by British nationals,²⁷⁹ and 54% of convictions and attacks against the United States homeland between 1997 and 2011 were committed by American citizens.²⁸⁰

Yemeni-American al-Qa'ida cleric Anwar al-Awlaki (1971–2011) played a prominent role in radicalising and recruiting Western Muslims before he was killed in a United States drone attack on 30 September 2011. Formerly a spiritual leader of al-Qa'ida in the Arabian Peninsula, al-Awlaki was integral to the founding of al-Qa'ida's English-language magazine, *Inspire*, which seeks to incite

277. Grandfather of Taqi al-Din Ahmad ibn Taymiyya.

278. Al-Shawkani, *Nayl ul-awtar min ahadith sayid ul-akhbar shar'h muntaqa ul-akhbar* (Beirut: Dar ul-Kutub il-ilmiyya, 1999), vol. 5, pp 261-262.

279. Robin Simcox, Hannah Stuart and Houriya Ahmed, *Islamist Terrorism: The British Connections*, Henry Jackson Society, 2011, 2nd ed., available at: <http://henryjacksonsociety.org/2011/07/07/islamist-terrorism-the-british-connections/>.

280. Robin Simcox and Emily Dyer, *Al-Qaeda in the United States: A Complete Analysis of Terrorism Offenses*, Henry Jackson Society, 2013, available at: <http://henryjacksonsociety.org/2013/04/17/al-qaeda-in-the-united-states-a-complete-analysis-of-terrorism-offenses-2/>.

Western Muslims to commit terrorist attacks in their home countries.

Al-Awlaki preached that there was a war between the West and Islam, and that, for Western Muslims, loyalty was to their religion rather than their country. For example, in his 2010 online statement, titled 'Message to the American people', al-Awlaki said:

To the Muslims in America I have this to say: how can your conscience allow you to live in peaceful co-existence with the nation that is responsible for the tyranny and crimes committed against your own brothers and sisters? How can you have your loyalty to a government that is leading the war against Islam and Muslims? [...] Don't be deceived by the promises of preserving your rights from a government that is right now killing your own brothers and sisters. Today, with the war between Muslims and the West escalating, you cannot count on the message of solidarity you may get from a civic group or a political party, or the word of support you hear from a kind neighbor or a nice co-worker. The West will eventually turn against its Muslim citizens!²⁸¹

Al-Awlaki, therefore, approved of American Muslims targeting their fellow citizens. In a television interview with al-Jazeera, he praised United States military psychiatrist Nidal Malik Hasan's attack on the Fort Hood military base in Texas which killed 13 in November 2009. When asked how he could approve of actions which betrayed Hasan's country, al-Awlaki answered:

More important than that is that he did not betray his religion. Working in the American Army to kill Muslims is a betrayal to Islam. America today is yesterday's pharaoh; it is an enemy to Islam. A Muslim is not allowed to work in the American Army unless he intends to walk the steps of our Brother Nidal. Loyalty in Islam is to Allah, His messenger and the believers, and not to a handful of soil they call "nation." The American Muslim's loyalty is to the Muslim Nation and not to America, and brother Nidal is a proof on that through [executing] his blessed operation, so may Allah reward him the best of the rewards for that.²⁸²

The jihadists' notion of loyalty to Islam is entwined with their conception of Islamic lands, and is often expressed as solidarity with the citizens of Muslim-majority countries perceived to be at the forefront of *jihad*, either by virtue of occupation (for example, the Palestinian Territories and Kashmir) or by the presence or recent presence of Western forces (for example, Iraq and Afghanistan).

Michael Adebolajo, a suspect in the May 2013 beheading of a British soldier

281. Anwar Al-Awlaki, 'Message to the American people', 2010, available at: <http://archive.org/details/AwlakiToUsa>.

282. 'Transcript of interview with al-Awlaki, Muslim cleric speaks with Al-Jazeera about alleged Fort Hood shooter', *NBC News*, 23 December 2009, available at: http://www.nbcnews.com/id/34579438/ns/us_news-tragedy_at_fort_hood/t/transcript-interview-al-awlaki/#.UeRIY_lkwjY.

in Woolwich, London, for example, is a British citizen of Nigerian descent. In his message recorded by passers-by in the aftermath of the attack, however, he stated loyalty to perceived ‘Muslim lands’, and contrasted the women who had witnessed the attack with women ‘in our lands’:

The only reason we have killed this man today is because Muslims are dying daily by British soldiers [...] By Allah, we swear by the Almighty Allah we will never stop fighting you until you leave us alone. So what if we want to live by the shari‘a in Muslim lands. [...] I apologise that women had to see this today but in our lands our women have to see the same. [...] Leave our lands and you will live in peace.²⁸³

While jihadists misappropriate Muslim loyalty to their religion, Islamic law traditionally does not permit Muslims to engage in hostile acts against the land in which they live, regardless of whether that country is Muslim-majority or not. As such, Muslims living in non-Muslim majority countries were prohibited from violating the rights of others and breaking the law of the land – even if the resident country engaged in a war against a Muslim-majority country. Furthermore, Muslim scholars from the eighth century to the present day have consistently applied this ruling.

For example, classical Islamic scholars recognised that, in lands where people’s security was granted by law, there was a social contract or covenant between the people and the state – from which followed an agreement among the Sunni and Shi‘i schools that breaking the laws of the land is forbidden. Adherents to this ruling were numerous, and included the author of the seminal work on Islamic international law, *al-Siyar*, and leading transmitter of the views of Abu Hanifa, Imam Muhammad al-Shaybani (748–805);²⁸⁴ the twelfth-century Hanbali scholar, Ibn Qudama;²⁸⁵ and Egyptian Hanbali jurist Shaykh Mansur al-Buhuti (1592–1641).²⁸⁶ All explain that this security is a mutually binding covenant which commands adherence to the conditions of the agreement and, therefore, the laws of the land.

The mutual recognition of rights and responsibilities accorded by a covenant was also advocated by one of the most respected authorities on the Zaydi-Shi‘i School, Imam Ahmad bin Yahya al-Murtadha (1362–1436).²⁸⁷ In his seminal work on

283. Video available at: ‘Chilling video of London attacker explaining machete attack on reported soldier’, *Washington Post*, 23 May 2013, available at: <http://www.washingtonpost.com/blogs/worldviews/wp/2013/05/22/chilling-video-of-london-attacker-explaining-machete-attack-on-reported-soldier/>.

284. Al-Shaybani, *al-siyar al-kabir*, in Al-Sarakhsi, *shar‘h al-siyar al-kabir*, (Cairo: Ma‘had al-Makhtutat, 1971), vol. 2, pp. 507-511.

285. Ibn Qudama, *al-mughni*, (Beirut: Dar ul-Kutub ul-Ilmiya, n.d.), vol. 10, pp. 515-516.

286. Al-Buhuti, *al-kashshaf ul-qina*, (Beirut: Dar el-Fikr, 1982), vol. 5, pp.108-109.

287. Al-Murtadha’s year of birth is disputed as either 1362 or 1373, see William J. Donaldson, *Sharecropping in the Yemen: A Study of Islamic Theory, Custom, and Pragmatism*, Studies in Islamic Law and Society, vol. 13, (Leiden: Brill, 2000), p. 94.

fiqh, *matn al-azhar fi fiqh al-a'immah al-athar* (commonly known as *kitab al-azhar*), al-Murtadha stated that the granting of *aman* ('safe passage') through hostile territory to a Muslim and his property obliges Muslims to grant the same for members of that community and that any property taken by force should be returned.²⁸⁸ He further stated that as part of the covenant it is *mahdhur* ('forbidden') to violate the *shurut* ('conditions'; sg *shart*) of that territory.²⁸⁹

The founders of the Shafi'i and Hanafi'i schools, Imam al-Shafi'i (767–820) and Abu Hanifa also advocated *aman* and the concept is considered mainstream within their respective schools. In his legal text *al-muhadhab*, for example, eleventh century Shafi'i Imam and legal specialist Abu Ishaq ibn Ibrahim al-Shirazi (1003–1083)²⁹⁰ wrote:

If a Muslim enters enemy lands with *aman* and steals or borrows money and returns to *Dar al-Islam* and the owners [...] demand it back, he is obliged to return the wealth because safe passage necessitates the guarantee of people's wealth.²⁹¹

In his work on al-Nawawi's famous commentary on *al-muhadhab*, contemporary scholar Muhammad Najib al-Muti'i states that this view was shared by Imam al-Shafi'i.²⁹² Al-Muti'i further states that while Abu Hanifa also forbade the violation of property rights afforded to an individual by *aman* and referred to such violation as a religious sin, he did not legally oblige that the wealth be returned.²⁹³

The sixteenth-century Shafi'i jurist, Ibn Hajar al-Haythami (1504–1567), also understood that such protection is mutual and, therefore, obliges Muslims to protect non-Muslims with whom they have a covenant. When Muslims are given freedom to practise their faith and live freely within non-Muslim-majority countries or under non-Muslim rule, for example, they are obliged to defend the resident country in the event of attack; and, moreover, all Muslims around the world are obliged as well. In *fath al-jawwad*, for example, al-Haythami writes:

So we would have to defend any non-Muslim with a treaty of protection (*dhimma*) as a necessary part of such a contract (*muqtada ul-aqd*), as we would even in enemy territory if there is a Muslim living therein, or a neighbouring country as opposed to any

288. Ibn al-Murtada, *kitab al-azhar*, cited in al-Shawkani, *al-sayl ul-jarrar mudaffiq ala hada'iq ul-Azhar*, (Damascus and Beirut, Dar Ibn Kathir, 2005), vol. 3, p. 753.

289. Ibid.

290. Abu Ishaq al-Shirazi, *Encyclopaedia Islamica*, ed. by Wilferd Madelung and Farhad Daftary, Brill Online, 2013, available at: http://www.encycuran.brill.nl/entries/encyclopaedia-islamica/abu-ishaq-al-shirazi-COM_0090.

291. Al-Shirazi, *al-muhadhab*, cited in al-Nawawi, *kitab al-majmou sharh ul-muhadhab lil-shirazi*, ed. by Muhammad Najib al-Muti'i, (Beirut: Dar Ihya Turath al-Arabi, n.d.) 1st ed., vol. 21, pp. 285-6.

292. Al-Nawawi, *kitab al-majmou sharh ul-muhadhab lil-shirazi*, ed. by Muhammad Najib al-Muti'i, (Beirut: Dar Ihya Turath al-Arabi, n.d.) 1st ed., vol. 21, p. 287.

293. Ibid.

country not like this unless specified in a treaty.²⁹⁴

He further states that this is *wajib* ('a necessary part of the shar'ia'²⁹⁵).

Even in situations where the minority Muslims' safety was compromised, Shafi'i scholars still upheld the Islamic injunction to live peacefully and abide by the resident country's laws. For al-Haythami, this was appropriate in circumstances where some of the Muslims were persecuted, but the communities had security in general.²⁹⁶ In his collection of *fatawa*, Shafi'i jurist Ibn Hajar al-Asqalani, for example, promoted Muslim obedience in a country where there was no explicit covenant between the Muslim residents and the non-Muslim leaders: 'The aforementioned unbelievers are *harbiyyun* ['hostile people']. Nevertheless one may neither accept usury from them nor cheat them in measures and weights'.²⁹⁷

The classical injunction for Muslims to abide by the commitments made to their host countries is so strong that even jihadists have queried whether certain terrorist actions ran contrary to this obligation. For example, letters written by bin Laden while in hiding in Abbottabad, Pakistan, reveal an on-going concern with jihadists violating their oaths. In a letter dated 21 October 2010, he criticises the attempted bombing of Times Square in New York City in May 2010 (which was orchestrated by the Pakistani Taliban), particularly the revelation that perpetrator Faisal Shahzad broke his oath of citizenship to the United States:

You have perhaps followed the media trial of brother Faisal Shahzad, may God release him, during which the brother was asked to explain his attack [against the United States] in view of having taken an oath [not to harm it] when he was awarded his American citizenship. He responded that he lied [when he took the oath]. It does not escape you [Shaykh 'Atiyya]²⁹⁸ that [Shahzad's lie] amounts to betrayal (*ghadr*) and does not fall under permissible lying to [evade] the enemy [during times of war]...please request from our Pakistani Taliban brothers to redress this matter... also draw their attention to the fact that brother Faisal Shahzad appeared in a photograph alongside Commander Mahsud. I would like to verify whether Mahsud knew that when a person acquires an American citizenship, this involves taking an oath, swearing not to harm America. If he is unaware of this matter, he should be informed of it. Unless this matter is addressed, its negative consequences are known to you. [We must therefore act

294. Al-Haythami, *fath al-jawwad*, (Cairo: Mustafa al-Babi al-Halabi, 1971), vol. 3, p. 346.

295. Bewley, *Glossary of Islamic Terms*, p.24.

296. Al-Haythami, *al-fatawa al-kubra al-fiqhiya*, (Beirut: Dar ul-Kutub ul-Ilmiya, n.d.), p. 249.

297. Ibn Hajar al-Asqalani, *al-fatawa*, cited in El Fadl, *Islamic Law and Muslim Minorities*, p. 176.

298. Atiyyatullah Abu 'Abd al-Rahman, a senior al-Qa'ida figure (killed in a U.S. drone attack in 2011) and the recipient of Bin Laden's letter.

swiftly] to remove the suspicion that jihadis violate their oath and engage in *ghadr*.²⁹⁹

Similarly, former al-Qa'ida ideologue Dr. Fadl (aka Sayyed Imam al-Sharif; 1950–present) criticised the 9/11 attacks in a pamphlet written while in an Egyptian prison and serialised in two Arab newspapers in 2007.³⁰⁰ Specifically, Dr. Fadl accused the hijackers of violating the terms of their visa, which he interpreted it as a form of *aman*.³⁰¹ In 2012, former Shura Council member al-Walid supported Dr. Fadl's analysis, stating in an interview with al-Jazeera:

[...] such operations [9/11] violate the pact we made. Anybody who enters the U.S. uses an entrance visa, which we consider, from a religious perspective, to be a binding treaty of protection. Anybody who is protected by the enemy should not harm the enemy. He is prohibited from breaching this treaty of protection.³⁰²

Bin Laden and the current al-Qa'ida *emir* ('leader') al-Zawahiri disagreed, however, and distinguished between acquired citizenship – which involves taking an oath (*'ahd*) – and a visa or citizenship by birth, which do not.³⁰³ While their interpretations differ, it is testament to the strength of the Islamic obligation to honour an oath that senior al-Qa'ida figures view perceived transgressions with such severity.

Many contemporary Islamic scholars, however, apply the classical position regarding oaths to the situation of all Muslims living in non-Muslim-majority countries today. Mauritanian Mufti bin Bayyah, for example, argues that Muslim citizens of European states benefit from religious freedom, and – as such – are obliged to adhere to the social contract (including obeying state law), as evidenced by the Qur'anic verse, 'O you who have attained faith! Fulfil your agreements' (5:1). Bin Bayyah states that these rules also extend to Muslim residents, insofar as: they have chosen to enter and live in non-Muslim-majority countries under a covenant or agreement, and God has 'obliged us with obedience to the law'.³⁰⁴

Moreover, bin Bayyah reminds Muslims that they must maintain high 'moral and ethical standards', whether they are in countries with Muslim majorities or otherwise, and that 'the basis of political participation for Muslims in Europe

299. Bin Laden letter recovered in Abbottabad, dated 21 October 2010, SOCOM-2012-0000015-HT. See: 'Letters from Abbottabad: Bin Ladin Sidelined?', Harmony Program, Combating Terrorism Center, U.S. Military Academy, 3 May 2012, p. 36, available at: <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB410/docs/UBLDocument16.pdf>.

300. *Wathiqat tarshid al-'amal al-jihadi fi misr wa'l-'alam (Rationalizations on Jihad in Egypt and the World)*. See: Jarret Brachman, 'Leading Egyptian Jihadist Sayyid Imam Renounces Violence', CTC Sentinel, 15 December 2007, available at: <http://www.ctc.usma.edu/posts/leading-egyptian-jihadist-sayyid-imam-renounces-violence>.

301. 'Letters from Abbottabad: Bin Ladin Sidelined?', Harmony Program, p. 36.

302. Al-Jazeera interview with Mahfouz Ould Al-Walid, 17 and 19 October 2012.

303. 'Letters from Abbottabad: Bin Ladin Sidelined?', Harmony Program, p. 36.

304. Abdullah Bin Mahfoudh Bin Bayyah, *sina'at al-fatawa wa fiqh al-'aqliyyat, (Fatwa Making and Minority Jurisprudence)*, (Jeddah: Dar al-Minhaj, 2007), p. 292.

is from the command of God to “co-operate with each other in goodness and piety, but not upon sin and transgression,” which implies there are duties, recommendations and permitted acts that are necessary parts of citizenship’. This should be done, he argues, ‘by sticking to Islamic etiquettes and mores, such as truthfulness, justice, faithfulness, fulfilling one’s trusts, and respecting diversity and different opinions, and discussing matters lightly with those who differ with you and avoiding obstinate behaviour’.³⁰⁵

305. Abdullah Bin Mahfoudh Bin Bayyah, *sina'at al-fatawa wa fiqh al-'aqliyat*, pp. 294-295.

Conclusion

Al-Qa'ida, Hamas and Lashkar-e-Ta'iba claim that their violent actions are supported within the four traditional schools of Sunni Islamic jurisprudence, and that traditional Islam itself mandates a jihadist view of scripture. In reality, as this report demonstrates, their arguments are not based on Islamic consensus or traditionally recognised interpretations of classical Islamic sources. Moreover, the jihadists' disregard for the sanctity of human life evidences their divergence from both classical and contemporary sources of Islamic law.

Central to the worldview espoused by jihadist groups is the division of the world into *Dar al-Islam* ('lands of Islam') and *Dar al-Harb* ('lands of war'), and the subsequent belief that their violent campaigns against the realm of *kufir* ('disbelief') and the re-conquest of former Islamic lands is not just religiously justified but obligatory.

Dar al-Islam and *Dar al-Harb*, however, are not mentioned in the primary sources of *shari'a* ('Islamic principles and law'); rather they are paralegal descriptions of the reality of medieval international relations. According to traditional scholarship, the normative values exhibited in *Dar al-Islam* are the right to practise Islamic rules and the free exhibition of the symbols of Islam. As such, the Islamist assertion that there is a religious duty to re-establish an expansionist Islamic state where *shari'a* functions as state law, known as the Caliphate, is not a definitive reading of religious scripture.

A Guide to Refuting Jihadism also demonstrates that jihadist groups' rendering of the rules of Islamic warfare – particularly who can declare *jihad* ('religiously sanctioned warfare') and when, as well as who can be targeted, whether suicide operations are religiously lawful and who should fight – is not based on the legal works of the four Sunni schools of law.

Jihad includes permissible defensive measures declared by legitimate political authorities to defend an attack or stop persecution; it is not permissible to initiate hostilities or to violate international treaties. Moreover, *jihad* does not include non-state actors, nor does it include the targeting of those not engaged in warfare. Modern jihadist groups' indiscriminate targeting of civilians violates the Islamic injunction for the sanctity and protection of human life; and their use of suicide operations additionally breaches the Islamic prohibition on suicide as well as the prohibition on perfidy in warfare.

The existence of traditional legal opinion which differs from that of modern jihadists contradicts their claims to theological authenticity and, more significantly, exclusive truth. In fact, as this report shows, the aims and methods of jihadist groups as well as the support they receive from some conservative Sunni and Islamist scholars is antithetical to the normative values displayed within classical Sunni jurisprudence.

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