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The rise of the modern Islamist *jihad* movement in the last two decades of the 20th century has coincided with the rise of a growing body of *fatwas* that declare *jihad* as a legal religious obligation and define clear guidelines for the waging of *jihad*. These *fatwas* therefore provide moral and legal sanction for acts of terrorism. They relate to a broad-range of issues including the definition and identification of the battle space in which *jihad* is to be undertaken; the necessary conditions for *jihad*; the identity of the “infidels” whom *jihad* must be waged against; who must participate in *jihad* and how; what are the legitimate means and who are the legitimate targets of *jihad*; the legitimacy of suicide attacks and other issues. The discussion in the *fatwas* may seem caustic but it holds far-reaching implications, for questions that are commonly deemed “moral” and “ethical” are subordinated to legal casuistry. This paper will present some of the issues arising from such *fatwas*.

The Role of the *Fatwa* in Islam

Islam is a nomocracy; it offers government by immutable law and provides the believer not only a revelation of divine will, but also a highly detailed legal code which regulates all aspects of human

behavior on both the private and the collective level. According to this *Weltanschauung*, the entire scope of human behavior has detailed instructions. Private and public behavior, morality and immorality, are all matters to be regulated by the precepts of Islamic law (*shari’ah*). All religious and moral issues can be deduced from the sources of *shari’ah* by way of casuistic analysis, and clear instructions can be given regarding right and wrong.

But who decides what a “duty” is and what is “forbidden?” The laity does not have “the time, the training or perhaps the capacity to thoroughly study and analyze the indicators... the responsibility of the laity is to imitate the jurists (perform *taqlid*).¹ As time passed since the establishment of Islam and the world of the early jurists of Islam changed, the need for authoritative rulings on new problems grew. In addition, social and political causes contributed over time to the gradual shift of the authority to make moral decisions away from the Muslim individual and toward the religious scholars, who became the authoritative interpreters of Islamic law.”

The Islamic scholars (*‘alem*, pl. *‘ulama*, or *faqih*, pl. *fuaqaha*) in Muslim societies play a double role

This article is largely based on the author’s recent book, Warrant for Terror—The Fatwas of Radical Islam and the Duty to Jihad (Lanham: Rowman and Littlefield, 2006).

both as a “legislative branch” that, by interpreting the sources of the law, creates new duties and prohibitions, and as a “judicial branch” that passes judgment on violators of the law. The mechanism by which the scholar brings the principles of *shari‘ah* to bear in the practical world is *fiqh*—Islamic jurisprudence, and its product is the *fatwa*—a written legal opinion or ruling on a specific subject, which dispels uncertainty and shows the clear path for behavior on the chosen subject. A *fatwa* can only be given by a scholar with wide enough knowledge of *shari‘ia* to be considered a mufti. The classic *fatwa* consists of a question (*istifta’*), posed by a petitioner (*mustafti* pl. *mustatifun*), and a response (*jawab*). A *fatwa* must be based on the sources (*usul*) of *fiqh*: these include the Qur’an, the *Sunna*, logical analogy (*qiyas*) and consensus of the ‘*ulama*. The latter two represent the discretion of the ‘*ulama*, either in finding an analogy between two cases or in taking into account pragmatic considerations of “public interest” (*maslahah*) or necessity (*darura*). However, most *fatwas* make little use of these tools and instead very often cite precedents from decisions by the *mujtahidun* of early Islam and the codex of existing *fatwas*.

The laity’s reliance on the ‘*ulama* for legal dispensation raises the question of personal accountability. This question is particularly relevant in the case of violent acts, which, if committed in the context of a legitimate *jihad* may be a great duty, but would otherwise be a severe sin. If the message of the *jihad* is intentionally misleading, then its author is guilty of the heinous sin of *istihlal*—“*permitting that which (Allah) forbade.*”² On the other hand, Islam is unusually tolerant of “honest mistakes” by scholars. The very act of exegesis is considered a fulfillment of a religious duty. Consequently, differences of opinion (*ikhtilaf*) are considered legitimate and even a benefit to the *Ummah*. This pluralistic nature of Islam has its drawbacks; while “red lines” are drawn clearly by radicals against more lenient interpretations, the respect towards *ikhtilaf* is frequently an obstacle to blocking radical interpretations.³

A Muslim who poses a question to a scholar does not necessarily have to accept his ruling, and may,

theoretically, seek a second opinion. However, the *mustafti* often asks a question, already knowing the general sense of the *fatwas* he can expect. Furthermore, in many cases, the petitioner has a deep affiliation with the scholar whose advice he seeks.

The subordination of the lay Muslim to the authority of the Mufti is increased within fundamentalist or radical movements. The members of these movements may pledge an oath of fealty or allegiance (*ba‘yah*) to their leader, whose title in those movements—*Amir* (Commander), *Moraqib* (Overseer), *Murshid* (Guide) or even *Mahdi* (Messiah)—reflects this relationship. The *ba‘yah* derives from the custom of pledging fealty to the tribal leader or to the Muslim Caliph, and as such it indicates acceptance of the leader as both spiritual guide and temporal leader. His *fatwa* then is not only a juridical opinion, but an operational diktat. It has been observed that this relationship is reminiscent of Gnostic sects in Christianity, characterized by an all-powerful and omniscient leader with a unique interpretation of reality and a clear, straight path to salvation.

The mechanism described above relates to Sunnite Islam. The Shiite ‘*ulama* and their *fatwas* wield even greater power over their followers. Shiite Islam never closed “the gates of *ijtihad*.” Rather it expanded the scope of *ijtihad* and placed the power there in the hands of a number of living authorities. The highest degree of religious authority in Islam is that of a “*marja’ taqlid*” (pl. *maraja’*) or “model of emulation.” Every Shiite Muslim must choose such a “model” to follow. However, due to the large number of *maraja’* from different backgrounds and different countries (the numbers in the last generations were in the tens, if not more), religious power remained decentralized. A Shiite Muslim may only be a *muqallid* (follower, imitator) of a living *marja’*. In principle, when a *marja’* dies, his authority dies with him and his *muqallidun* must accept the authority of another *marja’*. This principle operates on the collective level as well. If all the ‘*ulama* of a certain generation accept a given ruling (by consensus, *ijma’*), such a decision is only binding on that generation, not on future ones.⁴

Fatwas have played a pivotal role in politics since

the early days of Islam. Muslim regimes have used them to legitimize their policies, to bolster their Islamic credentials against domestic opponents and to mobilize support for *jihad* against foreign enemies. Some of these *fatwas* are *bona fide* questions posed by devout Muslims, confused by the apparent contradiction between the legal reasoning of the clerics who call for *jihad* and the conventional morality of modern society, not to mention their own natural scruples. Many *fatwas*, though, are clearly politically motivated; the questions are either invented or invited by the responding scholar in order to provide him with the opportunity to present his legal reasoning on one or other aspect of *jihad*.

The authors of the *fatwas* that deal with *jihad* come from diverse backgrounds. Some are scholars who provide their flock with *fatwas* on a wide range of issues, among them the question of *jihad*. Others are “political ‘*ulama*” and leaders of political fundamentalist movements who are not seen in the wider Islamic world as having authority to provide *fatwas*, but are accepted as authorities by their own followers.⁵ Furthermore, not all of the *fatwas* are prepared by individuals; some are promulgated by traditional Islamic institutions of higher education such as *al-Azhar* in Egypt, or by “*Fatwa Committees*” affiliated with certain Muslim communities or with Muslim governments.⁶ Many fundamentalist movements (e.g. the Muslim Brotherhood and similar groups) also have their own “*fatwa committees* (or councils)” which turn out politically motivated *fatwas* on a regular basis, though some defer regularly to external sources of authority.⁷ The sources for ruling in these *fatwas* are, for the most part, the Qur’an and *Hadith*. In the final analysis, the influence of a particular *fatwa* derives, first and foremost, from the authority and following of its particular author.

The “lion’s share” of the *fatwas* on *jihad* relate to general issues and not specific cases. Indeed, once a *fatwa* has been issued legitimizing a certain category of act, there is no need to obtain further dispensation for a specific act which is covered by the general *fatwas*. Nevertheless, “operational” *fatwas* are not unknown in the world of radical Islamic

groups. These may be direct *fatwas*, declaring a certain individual to be an “apostate” (*murtad*)—a sin which entails a death sentence according to many scholars. They may also be directed against specific non-personal targets such as international organizations, buildings etc. Operational *fatwas* have also come up in investigations of radical Islamic organizations in Jordan and other Muslim countries.⁸ In some cases, the operational *fatwa* is oral and lacks the detail of many of the ideological *fatwas*. This is not unacceptable in the practice of Islamic jurisprudence; a jurist who issues a *fatwa* has no obligation to disclose the evidence on which his ruling is based, though he must have the evidence to defend it if challenged by competent scholars.

While the “lion’s share” of *fatwas* on *jihad* originate in the Arabic speaking world (specifically from ‘*ulama* coming from the Gulf countries, Egypt and Jordan or Palestine), such *fatwas* have been issued in other parts of the Muslim world as well. Outside of the Arab world, most contemporary *fatwas* on *jihad* come from Pakistan, the Philippines and Indonesia.⁹ All of these Muslim societies are engaged in struggles with non-Muslim neighbors over the independence or autonomy of Muslim territory (Kashmir, Mindanao, Aceh, respectively). It is also noteworthy that many of the ‘*ulama* in the aforementioned countries who issue *fatwas* calling for *jihad* are either of Arab origin or have studied extensively in the higher Islamic academies of the Arab world (*al-Azhar* in Egypt or in Mecca). Their style and reasoning reflect the influence of those schools.

Since 9/11, the issuing of *fatwas* by radical clerics has increased. As a result, regimes in the Arabian Gulf have made efforts to restrict the phenomenon. The government of Saudi Arabia issued instructions that only authorized ‘*ulama* could issue *fatwas* and only the government was authorized to issue rulings on *jihad*. In Kuwait, a *fatwa* committee was established to coordinate and approve *fatwas*. Nevertheless, in many Muslim countries, the government has experienced political embarrassment at the hand of its own religious establishment, as a result of the nature of *fatwas* being issued. A case in point is the

Fatwa Committee of *al-Azhar* in Egypt, which has issued a wide range of *fatwas* calling for boycott of the United States and legitimizing suicide terrorism. Such instructions by scholars belonging to the regimes only serve to emphasize the diminishing religious stature of these institutions against the popular and radical scholars.

The age of information has opened up a new venue for Muslims to acquire religious instruction without coming in direct contact with the consulting Sheikh. The Internet now allows a Muslim to send a query to any learned Sheikh by E-Mail and to receive his ruling either directly or in the public domain of websites dedicated to such *fatwas*. These websites vary according to the leanings of the institution they represent, as well as the personalities of the Sheikhs involved in them. Some are “establishment” sites which represent renowned Islamic institutions or prominent individual Sheikhs and provide general Islamic instruction for the mainstream orthodox Muslim, including responses to queries on the rules and regulations of *jihad*; others are sites which are dedicated to *jihad* and include religious instruction and *fatwas* almost exclusively on the issue of *jihad*. The latter do not always provide the identity of the supplicant or of the “*Sheikh*” who gives the *fatwas*, thus compromising the authority of such *fatwas*.¹⁰ Online *fatwas* also have a tendency to be recycled; questions which have already been raised and answered are re-posted and the former response is posted with it as if it were given on that date. As a result, *fatwas* issued by a prominent Sheikh may occasionally be posted even after the death of that Sheikh.

The issues taken up by these *fatwas* range over almost every subject related to *jihad*. The questions repeat themselves—at times they are directed to radical Sheikhs in expectation of receiving dispensation for acts of *jihad*, while in other contexts they are posed by moderate Muslims to likeminded Sheikhs in anticipation of moderating responses. The issues which these *fatwas* deal with include:

1.) The very definition, current implementation, and area of application of the state of *jihad*. Is *jihad*

one of the “pillars” (*arkan*) or “roots” (*usul*) of Islam? Does it necessarily imply military war, or can it be perceived as a duty to spread Islam through preaching or even the moral struggle between one’s soul and Satan? If the former, then what are the necessary conditions for *jihad*? Does a state of *jihad* currently exist between *dar al-Islam* and *dar al-harb*? And how can one define *dar al-Islam* today, in the absence of a caliphate? Is the rest of the world automatically defined as *dar al-harb* with which a state of *jihad* exists, or do the treaties and diplomatic relations which exist between Muslim countries and “infidel” countries (including the charter of the United Nations) change this?

2.) Who must participate in *jihad*, and how? Is *jihad* a personal duty (*fard ’ein*) for each and every Muslim under all circumstances, or a collective duty (*fard kiffaya*) that can be performed only under the direction of a leader of all Muslims (*Imam, Khalifa, Amir al-Mu’aminin*)? Is it incumbent on women? On minors? May a Muslim refrain from supporting his attacked brethren or obey a non-Muslim secular law which prohibits him from supporting other Muslims in their struggle?

3.) How should the *jihad* be fought (*jus in bello*)? The questions in this area relate inter alia, to: (A) is *jihad* by definition an act of conflict against the actual “*kuffar*” or can it be defined as a spiritual struggle against the “evil inclination?” If it is the former, must it take the form of war (*jihad fi-sabil Allah*) or can it be performed by way of preaching and proselytizing (*da’awah*)? (B) Who is a legitimate target? Is it permissible to kill noncombatant civilians—women, children, elderly, and clerics; “protected” non-Muslims in Muslim countries—local non-Muslims or tourists whose visas may be interpreted as Islamic guarantees of passage (*aman*); Muslim bystanders? (C) The legitimacy of suicide attacks (*istishhad*) as a form of *jihad* in light of the severe prohibition on a Muslim taking his own life, on one hand, and the promise of rewards in the afterlife for the *shahid* who falls in a *jihad* on the other hand. (D) The weapons which may be used. For example,

may a hijacked plane be used as a weapon as in the attacks of September 11 in the light of Islamic prohibitions on killing prisoners? (E) The status of a Muslim who aids the “infidels” against other Muslims. (F) The authority to implement capital punishment in the absence of a caliph.

4.) How should *jihad* be funded? This subject relates to the transfer of *zakat* (almsgiving) collected in a community for *jihad fi-sabil Allah* (i.e., *jihad* on Allah’s path or military *jihad*), the precepts of “war booty” (*ghaneema* or *fay*) and the fifth (*khoms*) of the spoils which must be handed over to the public treasury.

5.) The behavior of a Muslim towards the *kuffar*—The existence of a state of *jihad* raises the questions regarding support of the *kuffar* by purchasing their products, performing acts which call for loyalty to their countries, serving in their military, spying for them etc.

Dar al-Islam and Dar al-Harb

A central issue in the legal thinking of radical Islam is the distinction between the “Abode of Islam” (*Dar al-Islam*) and the “Abode of War” (*Dar al-Harb*). Modern *fatwas* present a number of criteria for distinguishing between the two:

- The most radical view, held by *takfir* movements, virtually eliminates the category of *dar al-Islam*. In their view, since all Muslim countries are ruled by corrupt apostate regimes, they have ceased to be “Muslim;” their regimes are *kafer* and their citizens have sunken into a state of *jahiliyya* (the ignorance of the truth of Allah that preceded Islam).
- A classic fundamentalist view held by most Wahabbi and Hanbali Sheikhs and by most *jihad* movements implies a sharp dichotomy between *dar al-Islam* and *dar al-harb*.

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- A traditionalist view defines *dar al-Islam* as any place which is ruled by *shari'ah*. All other countries are *dar al-harb*. This of course raises questions regarding the status of Muslim countries that are ruled by secular regimes. This definition is widely used as the basis for the justification of *jihad* against secular Muslim regimes.

- A position held by the leader of the *Muhajirun* movement¹¹ maintains that the concepts of *dar al-Islam* and *dar al-harb* are no longer relevant as the former implies the existence of the Caliphate and the latter cannot exist without the former. Notwithstanding, when Muslim land is occupied by *kuffar*, the land becomes *dar al-harb* or *dar al-ghasab* (usurped land).¹²

- A more moderate position is found among some scholars living in the west, according to whom *dar al-Islam* is any country in which a Muslim may freely practice his religion. According to this interpretation, emigration (*hijra*) from *dar al-harb* is only an obligation in the case of fear for one's right to practice Islam or for one's life or property, due to his being a Muslim. Otherwise, if a Muslim may practice Islam freely in his country of residence, regardless of whether the place happens to be secular or un-Islamic, then he will be considered as living in a *dar al-Islam*; thus, he is not obliged to emigrate. Moreover, a Muslim's presence in non-Muslim lands may provide him with an opportunity to spread Islam's message through *da'wah* (preaching Islam).¹³

- A reformist definition forgoes the category of *dar al-harb* altogether and divides the world into *dar al-Islam* on one hand, and *dar al-kufr* or *dar al-da'wah* (the places where a Muslim must spread Islam through *da'wah*—in lieu of *dar al-harb*) on the other. In this case, *dar al-Islam* is any country in which there is a Muslim majority, even if the ruler does not

completely abide by Islam. On the other hand, *dar al-kufr* or *dar al-da'wah* is any country in which the majority is non Muslim.¹⁴ Other reformists propose new categories, such as *dar al-'ahd* or *dar al-sulh* (countries with which there is a treaty or peace), *dar al-islah*, *dar al-durura* (land of necessity), or *dar al-aman* (land of security).¹⁵

All the categories discussed above are legitimate in Islam for determining the attitude towards non-Muslim countries and populations. The early distinctions of “*dar al-'ahd*” and “*dar kufr*” instead of *dar al-harb* reflect a development during the period of increasing political power for the Islamic State, which tempered the original formulation of “we” and “they” with political Realpolitik. Modern radical Islam, however, reverts to what it perceives as the “original” concepts—the sharp dichotomy of *dar al-Islam* and *dar al-harb*.

This dichotomy is the basis of the rulings on *jihad* by most radical scholars. One major implication of this distinction is the prohibition to leave *dar al-Islam* for *dar al-harb* and the obligation to emigrate from the latter to the former. This is at the core of the Islamic concept of *al-walaa wa-al-baraa* (loyalty toward Muslims and taking distance from *kuffar*). While some scholars—including radical ones—propose pragmatic guidelines which allow a Muslim to remain in a non-Muslim country, others clearly oblige emigration (*hijra*) to avoid living among the *kuffar*. Some scholars stipulate that it is either a duty (*fard*) or recommended (*mustahab*) to perform *hijra* if this is for *jihad*.¹⁶ Such *fatwas* were behind a wave of *mujahidin* returning from the West to Afghanistan in early 2000.

Rebellion against Muslim Rulers

Many of the *fatwas* dealing with justification of rebellion against ostensibly Muslim leaders are, in essence, judgments of *takfir*. Since leaders of the community in Islam have duties that tran-

scend those of common Muslims, the criteria that can justify a judgment of *takfir* include elements relevant to those duties. These criteria are:

- Apostasy (*rida*) according to the definition of apostasy for an individual Muslim.
- Annulling *shari'ah* or not allowing judgment according to *shari'ah*.
- Allowing that which God has forbidden and forbidding that which God has allowed.
- “Corruption” (*fassad*) upon the face of the Earth.
- Alliance with *kuffar* against Muslims. This is occasionally portrayed as “treason against the *Ummah*,” which is, by definition also treason against God and against the Prophet.
- Allowing *kuffar* to occupy Muslim lands (i.e. collaboration).

The Saudi case is of particular interest as Saudi Arabia, unlike Egypt, is ruled ostensibly by *shari'ah*. On July 5, 2003 one of the more radical Saudi Sheikhs, ‘Abd al-Mun’im Mustafa Abu Halima (Abu Basir) issued a *fatwa* accusing the regime of according the *kuffar* the same rights as Muslims and of persecuting Islamic scholars and *mujahidin*. These two sins alone are enough to determine that the Saudi regime is “*kafer*” and despotic (*taghut*). The Sheikh makes a legal distinction between a general revolt (which he does not call for, as the necessary conditions of popular support are not yet in place) and personal action to eliminate the despotic regime. Regarding the latter, the *fatwa* concludes, it is not *haram*.¹⁷

What is *Jihad* and Whose Duty is it

Three of the most common approaches to *jihad* in Islamic writings, ranging from the radical to the more moderate, include the following:

- The radical definition, according to which

jihad is only a military (physical) conflict between the Muslims and the *kuffar*. This is the most common understanding of the term and it is deeply embedded in orthodox Islamic interpretations and traditions.

- A conservative definition, according to which *jihad* is the struggle against heresy (*kufur*) and the *kuffar* in general. This struggle does not necessarily have to be military, and it may have various manifestations, among them preaching (*da'awah*). This approach acknowledges the existence of a duty of *jihad* in Islam but finds in traditional *fiqh* legal justification to put it in abeyance.

- A modernist (and—to some extent a mystic Sufi) definition, which relies on linguistic analysis of the word *jihad* (*jahada*—“to strive”), to divest it of its military connotation.¹⁸ According to this definition, *jihad* is the “self exertion” of a Muslim to discipline his own soul, to improve one’s faith and to refrain from combat, his own evil inclination. To support this definition, a *hadith* is quoted, according to which the Prophet greeted soldiers on their return from war and told them that now they have returned from the “lesser *jihad*” (war) to the “greater *jihad*” which is the *jihad* against one’s own evil inclination.

The argument in contemporary *fatwas* for defining *jihad* solely as a military struggle is based on:¹⁹

- The duty to emulate the Prophet and his companions; the Prophet “strove” in military *jihad* most of his later life and therefore it is worthy of a Muslim to imitate this behavior.

- The explicit statements in the Qur’an (2:216) that “Fighting is enjoined on you and it is an object of dislike to you and there may be that you dislike a thing and it is good for you... Allah knows best.” And (8:39), “fight them until there is not more *fitnah* and the

religion will be for Allah alone.” These verses are interpreted as a clear command to fight in a *jihad*, whenever possible.

- Disproving of the authenticity of the *hadith* on the “lesser *jihad*” and the “greater *jihad*.”

According to this viewpoint, not only is *jihad* a duty, but at least under the present circumstances it may only take the form of a military *jihad*, and cannot be interpreted as a spiritual struggle. Furthermore, military *jihad*—and of course martyrdom—has added both spiritual and temporal value. It “implies all kinds of worship, both in its inner and outer forms. More than any other act it implies love and devotion for Allah, trust in Him, the surrender of one’s life and property to Him, patience, asceticism, remembrance of Allah and all kinds of other acts [of worship]. And the individual or community that participates in it finds itself between two blissful outcomes: either victory and triumph or martyrdom and Paradise.”²⁰

A second position, found among many mainstream scholars affiliated with Islamic establishments, defines *jihad* as a struggle against heresy (*kufir*) in general, and not a military struggle against the heretics. These scholars tend to emphasize the spiritual interpretation of *jihad* and its implementation mainly through *da’awah*, and to play down its military connotations. The proofs brought to support this argument include:

- The verse in the Qur’an which calls to “strive (*jihad*) against the disbelievers and the hypocrites (*munfaiqin*);” since the “hypocrites” are Muslims, and a Muslim cannot wage a military *jihad* against another Muslim, it is construed to mean that the striving in this case cannot be in the form of war (*qital*).²¹
- A “historic” argument that the only way to spread Islam in the time of the Prophet was through the sword. Today, however, there are many other ways to spread Islam, through *da’awah*—via the mass media, internet etc. An

extreme example of this argument is that the concept of *jihad* was relevant in the 7th century and is not relevant in the modern world. However, such an argument runs the risk of contradicting the basic principle of the timelessness of the Prophet’s messages.

- A practical argument based on the relative weakness of the Muslims and the harm that will be caused to the Muslim *Ummah* if it wages a military *jihad* against the rest of the world.

If *jihad* is by definition a military conflict, the question remains whether a specific conflict warrants being defined as a *jihad*. The definition of a conflict as a *jihad* necessitates further rulings: is participation in the *jihad* a duty, or only recommended? Or is it a duty for some and recommended for others? Is it a sin to refrain from participation of any sort in a *jihad*?

Islamic legal sources distinguish between two types of *jihad*, according to the conditions which initiate them and the nature of the enemy:

- The “offensive *jihad*” (*jihad taleb*) is a “collective duty” (*fard kifaya*) of the community of Muslims to pursue the infidels into their own lands, to call upon them to accept Islam and to fight them if they do not accept. It can only be implemented under the command of an Islamic Ruler—the Caliph—who appoints believers to guard the borders and sends out an army at least once (some say twice) a year. As long as the Caliph has appointed Muslims to perform this duty, it is fulfilled and it is not incumbent on the rest of the Muslims in the community.
- The “defensive *jihad*” (*jihad dafe’*) is an individual duty (*fard ‘ein*) for all Muslims to defend Muslim lands when the infidels prepare to attack them or when they attack and occupy them or when Muslims come into proximity of infidels on the battlefield. In contrast to

the former, this is an individual duty. As such, it is no less a religious imperative than the other five “pillars” of Islam: the statement of belief—*Shahadah*, prayer, fasting, charity and *Haj*. It becomes a *de facto* (and in the eyes of some a *de jure*) “sixth pillar;” a Muslim who does not perform it will not inherit Paradise.

A number of seminal tracts and *fatwas* by various radical scholars and leaders have put forth a cogent case that a defensive *jihad* exists and is an individual duty. This argument is echoed in many later *fatwas*. The argument for declaring the existence of a “defensive” *jihad* derives from the “irreversibility” of the Islamic identity of Muslim lands. Just as individual Muslims cannot convert (or even revert) to any other faith, any land which had once been under the sway of Islamic law may not be controlled by any other law. In the case that a land once controlled by Islamic law does come under control of another faith, it becomes the “individual duty” (*fard ‘ein*) of all Muslims in the land to fight a *jihad* to liberate it. If they do not succeed, it becomes incumbent on any Muslim in a certain perimeter from that land to join the *jihad* and so forth. There is in Islamic law no statute of limitations on a land being “Islamic;” the longer the “occupation” of a given land is in place, the greater the duty of the Muslims to liberate it; Andalusia (Spain) is as much an “occupied” Muslim land as Palestine.

Most contemporary *fatwas* on *jihad* agree that *jihad* becomes an individual duty incumbent on any sane and healthy adult male Muslim who has reached the age of puberty, under the following circumstances:

- When a Muslim ruler commands someone to fight—the command of the ruler, when directed to the individual, becomes an individual religious duty which may not be shirked.
- When facing the enemy in battle—the Qur’an is ambivalent on the issue of retreat in the face of superior enemy force; at first it forbids retreat entirely, except for tactical retreat,

According to a modern definition, *jihad* is the “self exertion” of a Muslim to discipline his own soul, to improve one’s faith and to refrain from combat, his own evil inclination.

and later allows retreat in the face of a tenfold superiority of the enemy and finally two to one. The traditional reasoning is that the act of *jihad* is, by definition, an act of faith in Allah; by fighting a weaker or equal enemy, the Muslim is relying on his own strength and not on Allah, whereas, by entering the fray against all odds, the “*mujahed*” is proving his utter faith in Allah and will be rewarded accordingly.

- When a country in which Muslims live is attacked by *kuffar*.

Legitimate Targets and Those who Should be Spared

Many *fatwas* elaborate on various aspects of *Mjus in bello*—the rules of engagement—according to the laws of *jihad*. Arguably the question most relevant to the justification of terrorism that is raised in *fatwas* is the definition of a legitimate target. This question is dealt with in *fatwas* through three categories: who should be killed; who may be saved (by discretion) and who must be spared.

A central guideline for treatment of the enemy according to classic Islamic jurisprudence distinguishes not between actual combatants and non-combatants, but between individuals who may be able to fight in the future and those who could not pose a threat to the Muslims. This distinction leaves a great deal of ambiguity regarding various categories. Early jurists were not in consensus regarding the ruling on women, children, elderly, or even monks (regarding whom the Qur’an specifically prohibited killing). In addition, the various schools of jurisprudence disagree over the very reason for the killing. Whereas most of the *Hanifi* scholars justified killing only those who may endanger the Muslims (and therefore forbade killing of women, children and older people), the *Shafi’i* scholars, for

the most part, justified killing the “pagans” (*mushrikun*) regardless of their civil status.²² This ambiguity, as will be seen later, provides a sound basis for radicals today who permit killing civilians and raise profound difficulties for moderates in search of solid ground. Many modern *fatwas* tend to ignore the category of enemies who “may be spared” or may not be killed (possibly since that category is linked in classic law to the option of ransom of hostages and slavery). Therefore, many *fatwas* issued since 9/11 have focused on the ruling regarding those categories usually defined in modern western society as protected by the laws of war—non-combatant civilians, women, children, elderly and clergy. The legal debate among Islamic scholars does not focus on the status of these people as “non-combatants” per se, but on their inclusion in categories which are idiosyncratic to Islamic law—*dhimmi*, *kafer* tourists carrying “visas” (*mus-ta’min*) whose visas may be interpreted as Islamic guarantees of passage (*aman*) and citizens of non-Muslim countries which have peace treaties with the Muslims (*mo’ahadin*).

Many *fatwas* dealing with *jihad* justify killing protected persons belonging to certain groups by portraying them in a fashion that excludes them from the general category of protection and disqualifies them from lenient treatment otherwise accorded to protected persons. Such justification is based either on their basic traits as described in the Qur’an and *hadith* or on portrayal of their contemporary behavior and analogies to groups from the time of the Prophet which behaved in a similar manner and were accorded harsh treatment by the Prophet or his Companions. One of the most well-known of these descriptions is the statements which equate the Jews (and occasionally the Christians) to “apes and dogs”—both lowly and impure animals in Islam.

Another, more problematic, dialectic for justifying total war against *abl al-kitab* is through re-defining them not as monotheists worthy of lenience but as polytheists or atheists. This is sometimes deduced by defining democracy as a polytheistic religion: it “associates” other deities with God, thus denying the uniqueness of God and allowing

humans to overrule the law of God. Under such a definition, “Democratists”—like the polytheists of 7th century Arabia—must either accept Islam or be put to the sword.²³ The legal problem arising from targeting civilians has been highlighted in *fatwas* dealing with the *jihad* in Palestine against Israel and Jews. The arguments in this regard include:

- Israeli society is militaristic in nature. Both men and women serve in the army and can be drafted at any moment.
- While it is forbidden to kill children and the elderly, necessity justifies the forbidden. If a child or an elderly is killed in such an operation, he is not killed on purpose, but by mistake, and as a result of military necessity.²⁴
- The legitimacy of killing Israeli children derives from the fact that they will grow up to be soldiers who fight the Muslims.²⁵
- The civilian who occupies land in a state of war is a *harbi*. Everyone in Israel is *ahl al-qital*. It is permitted to kill an Israeli traveling abroad because he is a *harbi* and the *harbi* “spreads corruption (*fassad*) throughout the face of the earth.” Even if he is a diplomat, his blood is permitted; that does not mean that he must be killed; it only permits his killing.²⁶
- A *fatwa* issued by the UK-based *Muhajirun* limits the scope of legitimate targets to those clearly affiliated with the State of Israel—military forces, embassies, military airports, etc. and excludes targeting “non-military or innocent Jews.”²⁷

Additional arguments which are applied to both the Israeli and the general cases (particularly the United States) include:

- The prohibition on killing women, children, and the elderly derives from their inability to fight the Muslims. In modern warfare, physi-

cal stamina is not necessary to participate in war, thus these groups may be considered as legitimate targets. The *hadith*, which is widely quoted as authority for the prohibition of killing women (the Prophet saw a woman dead and said: “she should not have been killed; she could not have fought”) is interpreted as meaning that had she been able to fight, she should have been killed.

- Democratic participation justifies killing civilians. In Israeli society, women have the right to vote; therefore they are combatants in the sense that they provide the leadership with the legitimacy for waging war against the Muslims.²⁸ American civilians may also be considered legitimate targets, due to the fact that they bear responsibility for the decisions made by their elected leaders, or because they support their government with money or opinion or counsel as is customary in their political regime.²⁹ Similarly, the attacks of 9/11 were justified because “every decision taken by the *kafer* state, America, particularly those which relate to war, is based on public opinion through referendum and/or voting in the House of Representatives or the Senate. Every American, having participated in this opinion poll and having voted regarding the war is considered a combatant or at least party to the war.”³⁰

- In modern warfare it is impossible to make a clear distinction between combatants and non-combatants since war is total and the entire populace is involved in it. An attempt to make that distinction and to refrain from killing women and children may make it impossible to fight at all, resulting in the “paralysis of *jihad*.”³¹

- The “sin” of the West is its complicity in encouraging the apostasy of the Muslims.

- The United States is responsible for the attacks on Muslims across the world—from Palestine to Iraq, Bosnia-Herzegovina, Kashmir, Chechnya and East Timor. Therefore, it warrants a status of a country which is at war with the Muslims.

- Scholars who define Israeli civilians as *ahl al-qital* but do not extend that definition to the Americans are inconsistent, for “How can one permit the killing of the branch and not permit the killing of the supporting trunk?”³² All who permit martyrdom operations against the Jews in Palestine must allow them in America.

The argument that the attacks were illegal because people “who Allah forbids killing”—women, children and elderly—were killed in them is unacceptable. This is because the “prohibition of the blood of women, children and elders is not absolute.”

The preparation for the American campaign in Iraq provided the background for a wave of *fatwas* against forming an “alliance with the *kuffar* against the Muslims.” The issues of these *fatwas* were:

- A prohibition of alliances with the United States and declaration of duty for all Muslims to repel the “aggression” against the Muslims. The *fatwa* justifies this prohibition on the basis of the US support of Israel and its occupation of Afghanistan and Iraq.
- A boycott on trade with the United States and on American products. The *fatwa* derives its position from the fact that trade strengthens the United States and its ability to fight the Muslims.
- Prohibition of cooperation with the United States in its war against Iraq by providing airports, air space or sea ports to US forces, or by providing intelligence.
- Declaration of *Jihad* as an individual duty.

The *fatwa* warns the Muslim rulers that *jihad* is a fundamental duty in Islam. Therefore, any Muslim leader who attempts to suspend it will be guilty of “forbidding that which Allah has commanded”—a sin tantamount to heresy.

- The *jihad* in Iraq is a defensive *jihad*, and therefore is an individual duty incumbent on every able Muslim. It does not require a common leadership.

- No Muslim may harm anyone engaged in the *jihad* by informing on them.

- No Muslim may support the military operations of the occupying forces, however, services like electricity, water, health, business, and public security to prevent looting etc. may be provided.

- The blood and property of Muslims is inviolable; there are no “loopholes” or room for “loose interpretations” of this principle.

- It is in the interest of Islam and the Muslims that “oppressed and weak people who are not part of the conflict ... especially those who are in humanitarian relief work, the media or just earning their living should not be harmed.”³³ According to some Islamists, this is vitally important to keep in mind today--and especially in Iraq, where the murder of innocents by Muslims could potentially, given the international media's focused attention on the conflict there, have seriously negative consequences for Muslims and the Islamist movement around the world.

- The unity of Iraq is vital; there should be no fighting between Muslims—Sunnites and Shiites, Kurds and Arabs.

The principles of *lex talionis* (*qissas*) and reciprocity (“repayment in kind”—*mu’amala bil-mithl*) are central to Islamic law in general. By nature the

principle of “eye for an eye, tooth for a tooth, and soul for a soul” is accepted with the reservation that the value of a Muslim is greater than that of a *kafer*. This principle has seminal consequences for the modern interpretation of the law of *jihad*; it is used to reach the conclusion that the “punishment” applied to the *kuffar* for a perceived wrong committed against the Muslims need not be proportionate. Taking into account that by Islamic law, the life of a Muslim is worth between twice and ten times that of a non-Muslim, radical ‘*ulama* do the arithmetic that according to the number of Muslims all over the world killed by the infidels under American leadership, the Muslims have the right to kill at least four million Americans, half of them children.³⁴

The issue of mutilation of dead bodies has also been the subject of debate between scholars. Here, too, the guiding principle is the perception of what the *kuffar* have done to the Muslims and the principle of reciprocity.³⁵ One typical response to a request for a *fatwa* on this matter states that Islam prohibits torturing living people and mutilating the dead, even if they are non-Muslims. However, if the enemies of Islam do this to Muslims, then Muslims are permitted to treat the enemies in the same manner. The dead can be mutilated not only as a reciprocal act but also when it otherwise serves the Islamic nation in that it serves “to terrorize the enemy” or to “gladden the heart of a Muslim *mujahed*.”

Justification of Suicide Bombing

The justification for “martyrdom” attacks finds a great deal of support in the Qur’an and *Hadith*. The source books of early Islam are replete with praise for the *mujahid* who endangers himself even knowing that he is surely going to be killed. It is not difficult to glean from them a favorable view of death in battle, which was cultivated in the early days of the wars of the nascent religion. This attitude is epitomized in the Qur’anic verses (Qur’an 9: 38), which exhorts Muslims: “O ye who believe!

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justifies killing civilians.

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have the right to vote;
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batants in the sense that
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ship with the legitimacy
for waging war against
the Muslims.

*What is the matter with you, that, when ye are asked to go forth in the cause of Allah, ye cling heavily to the earth? Do ye prefer the life of this world to the Hereafter? But little is the comfort of this life, as compared with the Hereafter” and (Qur’an 3:143) “Certainly you desired death before you met it.”*³⁶

Some of the main arguments in favor of justification of these attacks are as follows:

- The Qur’anic verse (2:195) “And spend yourselves in the way of Allah, and do not cast yourselves into destruction with your own hands” which is traditionally interpreted as prohibiting suicide actually is a tautological statement: not spending oneself “in the way of Allah” is the same as casting oneself into destruction.³⁷ One *fatwa* interprets the phrase “casting oneself into destruction” as “investing money and giving up *jihad*.” This is based on a hadith, according to which the verse was revealed in response to the loss of heart of the “supporters” (*ansar*) who preferred to forsake the *jihad* and go home to invest their money, thus “casting themselves into destruction.”³⁸
- Precedents of the Companions of the Prophet who charged into the ranks of the *kuffar*, knowing that they would be killed.³⁹
- The centrality of “intention” (*niya*) in determining the right or wrong a certain deed transforms the act of suicide into an act of martyrdom.⁴⁰
- On the collective level, the absence of alternative tactics with commensurate effects justifies these tactics. The Muslims do not have the military power of their adversaries, and on the other hand, the “martyrdom” attacks are clearly “cost-effective.”⁴¹
- A number of *fatwas* quote early *mujtahidin*

who ruled that a Muslim may give up his life intentionally in *jihad* in certain circumstances including when his actions hit the enemy, or encourages the Muslims and dispirits the enemy. If he is not sure that he will kill the enemy, such an act is “discouraged” (*makruh*).⁴²

Nuclear Weapons

Justification of acquisition and possible use of nuclear weapons has been treated in a number of *fatwas* for over a decade. The deliberations on this subject distinguish between obtaining nuclear weapons and actually using them. The prevailing argument is that as long as nuclear weapons are held by the “enemies” of the Muslims (e.g. the United States, Israel) or any other nation at all, it is the Islamic duty of all Muslim countries to acquire such weapons. A Muslim regime that does not fulfill this duty is a sinner and may be guilty of “corruption (*fassad*) on earth.”⁴³ The aim of having these weapons is, first and foremost, deterrence; to “awaken fear in the land of *kufr*.”⁴⁴

The ruling on the question of use of nuclear weapons, however, derives from a different reasoning. Some of the *fatwas* take as their point of departure the Islamic laws of *qisas* (*Lex Talionis*): “in case these nuclear weapons are used against Muslims, it becomes permissible for Muslims to defend themselves using the same weapon, based on Qur’an (16:126): ‘If you punish, then punish with the like of that by which you were afflicted.’”⁴⁵ The Sheikh of *al-Azhar* Muhammad Tantawi drew an analogy from the ruling of the Caliph Abu Bakr: “to fight the enemy with a sword if he fights with a sword and ... with a spear if he fights with a spear.” Therefore, had Abu Bakr lived today, he would have instructed that if the enemy uses a nuclear bomb, it is the duty of the Muslims to use it.⁴⁶

Another consideration is the certainty that use of nuclear weapons would cause the killing of “souls that Allah has forbidden to kill” such as Muslims, women, children, the elderly and ascetics in prayer. An unusually long (25 pages) *fatwa* by the Saudi

Sheikh Nasser bin Hamid al Fahd appeared in May 2003. Sheikh al-Fahd struggles in his *fatwa* with the legal ramifications of the use of WMD when children and other Muslims are killed. He reaches the conclusion that use of such weapons against the United States is obligatory. The basic justification for al-Fahd is also reciprocity; the behavior of the United States against the Muslims is such that it warrants use of weapons of mass destruction.

Conclusion

The role of radical *‘ulama* and their *fatwas* in legitimizing terrorism is a pivotal element in the social and political legitimization of terrorism and in the motivation of its supporters. The rulings analyzed above are not merely political manifests aimed at motivating followers, but serve as an important tool in the battle pitched between radical and mainstream Muslims over the future of Islam.

This however is a one-sided battle; the radicals are on the offensive, whereas counter-attacks of moderates are few and far between. *Fatwas* commanding terror can only be countered by a clear opposing consensus (*ijma’*) of mainstream *‘ulama*. Such a consensus does not exist; on the key issues relating to Islamic terror the mainstream *‘ulama* are silent, a silence which for many of their followers is construed as consent. This is due, inter alia, to the deference that mainstream *‘ulama* feel towards the radicals as the quintessential believers, and the sense that they are competing with the radicals over the same constituency. Such deference is strengthened in Islam by orthodox Islam’s aversion to declarations of heresy (*takfir*) and the fear of igniting internal conflict (*fitnah*). It is in the home field of this presumed silent majority that the main battle is taking place, and as long as it does not enter the fray, the battle cannot be won.

In practical terms, what is needed is a clear legal disengagement from any justification of violence, not through western style declarations of condemnation, but through clear and binding *fatwas* that contradict the radical narrative. These may include

fatwas declaring that no personal duty of *jihad* exists. Further, they may declare that justification of *jihad* under the present circumstances is a corruption of the roots of Islam (*usul*) and an act of heresy, and that physical, moral, or financial support of terrorism is forbidden and condemns their perpetrators to eternal hellfire. For every *fatwa* that promises paradise to those who engage in *jihad*, an authoritative counter-*fatwa* is needed that threatens hellfire for those actions. ■

Endnotes

1 Khaled Abu Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, Oxford, 2001, p. 51.

2 *Qur'an* 9:37.

3 Khaled Abu Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, University press of America, 2001, pp. 24-25.

4 Shmuel Bar, Iranian Defense Doctrine and Decision Making, Institute for Policy and Strategy, October, 2004, pp. 19-20.

5 A prime example is Ossama bin Ladin himself. Others of this type are: Sheikh Yusuf Qaradawi. The leader of the Hizb al-Tahrir, Taqi a-din Nabahani was considered by his followers as a “*mujtahid mutlaq*” (perfect *mujtahid*).

6 Examples of such committees include: “The European Council for Fatwa and Research;” “The Fiqh Council of North America;” “The Islamic Fiqh Academy in India;” “Islamic Research Academy;” “The Palestinian Scholars League;” “The House of *Fatwa*;” “Al-Azhar House of *Fatwa*,” “The Committee of the Highest ‘Ulama;” “The Permanent Committee for Research and Iftaa” (Saudi Arabia); etc.

7 The Muslim Brotherhood in Jordan has been extremely prolific over the last few years in promulgating political *fatwas*. The Palestinian Hamas, on the other hand, has no home-grown religious authority and frequently turns to the Egyptian and Jordanian Muslim Brotherhood for guidance on *fiqh*.

8 A recent case which was exposed in the Jordanian courts is that of ‘Abd Shehadah al-Tahawi, who studied in Saudi Arabia and returned to Jordan to form a radical group. Members of the group petitioned him on various matters regarding their *jihad* plans: travel to Iraq for attacks there; attacks inside Jordan etc. al-Ghur (Jordan) 10 January 2005.

9 See Nico J.G. Kaptein, *The Voice of the ‘Ulama’: Fatwas and Religious Authority in Indonesia*, ISEAS, Singapore, 2004.

10 See Gary Blunt, *Islam In The Digital Age: E-Jihad, Online Fatwas and Cyber Islamic Environments*, Pluto Press, 2003, pp. 135-160.

11 The Muhajirun is a split-off of the “Islamic Liberation Party” (Hizb ul-Tahrir al-Islami) which has as its main tenant the restoration of the Caliphate.

12 MEMRI, Special Dispatch Series no. 435, October 2002. Quotes the leader of the movement, Sheikh Omar Bakri Muhammad.

13 *Fatwas* by Sheikh ‘Atiyya Saqr, 11 October, 2002, www.islamonline.net/fatwas/english/FatwasDisplay.asp?hFatwasID=51640.

See also *fatwas* by Dr. Taha Jabir al-Alwani, President of The Graduate School of Islamic and Social Sciences in Virginia and President of the *Fiqh* Council of North America. Al-Alwani divides the world between *Dar al-Islam*, the Land of Islam, and *Dar al-Daawa*. Al-Alwani also supports renewal of *ijtihad* to deal with modern legal issues. A far reaching extrapolation of this principle is that of the Italian sheikh Pallazi who ruled that Israel cannot be viewed as dar al-harb since the Muslims there may practice their religion and pray five times a day.

- 14 *Fatwas* by Sheikh Faysal Mawlawi, 29 August 2002, www.islamonline.net/fatwas/english/FatwasDisplay.asp?hFatwasID=72774.
- 15 K. A. E. Fadl (1994) 'Islamic law and Muslim minorities: The juristic discourse on Muslim minorities from the 2nd/8th to the 11th/17th centuries.' In: V. 1 N. 2 *Islamic Law and Society*. 141-187; Muhammad Khalid Masud (1989) 'Being Muslim in a non-Muslim polity: Three alternate models.' In: V. 10 N. 1 *Journal of Institute of Muslim Minority Affairs*, pp. 118-128.
- 16 *Fatwa* by Sheikh Muhammad Saleh al-Munajjid, 23 February 2004. <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=110859>.
- 17 Reuven Paz, "The March Goes On: Saudi Islamist Opposition is Fighting Back," *Prism Series of Global Jihad*, Vol. 1, No. 7, July 2003.
- 18 This is a rather specious argument. In all occurrences of the concept in traditional Islamic texts—and more significantly the accepted meaning for the great majority of modern Muslims—the term means a divinely ordained war.
- 19 See *fatwas*: www.islam-qa.com, *fatwas* no. 34830.
- 20 Ibn Taymiyyah, "*al-Siyaasa al-shar'iyya fee Islah al-raa'ee wa al-raa'iyya*" (Governance according to Allah's Law in reforming both the ruler and his flock).
- 21 <http://www.islam-online.net/fatwas/english/FatwasDisplay.asp?hFatwasID=19944>.
- 22 Ella Landau-Tasseron, "Non-Combatants: Opinions in Islamic Law," draft paper for publication.
- 23 See writings and *fatwas* by Asem al-Burqawi (Abu Muhammad al-Maqdisi) a Salafi Palestinian, leader of the *Bay'at al-Imam* group, who became one of Bin Laden's open spokesmen. The *fatwas* were published on his website www.maqdese.com which has been taken off the internet.
- 24 Sheikh Yusuf Qaradawi to *Al-Ahram*, (Egypt), February 3, 2001.
- 25 See *fatwas* by Hamas.
- 26 See ruling by the Mufti of Egypt, Dr. 'Ali Guma': MEMRI.
- 27 *Fatwas* by Sheikh Omar Bakri Muhammad, 2 October 2000.
- 28 See discussion of the legitimacy of killing women, *Al-Watan*, Kuwait, August 31, 2001.
- 29 Sheikh Ali bin Khdheir al-Khdeir, MEMRI, Special Dispatch 333, 18 January 2002.
- 30 *Fatwas* by Sheikh Hammoud bin al-'Okla al-Shuweibi, 17 September 2001.
- 31 *Fatwas* by Sheikh Hammoud bin al-'Okla al-Shuweibi, 17 September 2001.
- 32 *Bayan min Qa'idat al-Jihad Hawl wasaia a-abtal wa-mashrou'iyat 'amaliyat NewYork wa-Washington* (A statement from Qaidat al-Jihad regarding the mandates of the heroes and the legality of the September 11 terrorist operations in New York and Washington), 24 April 2002, Accessed at: www.almeshkat.net/vb/showthread.php?threadid=1816. Also in www.mepc.org/public_asp/journal_vol10/alqaeda.html.
- 33 *Fatwa* issued November 5, 2004 by a group of twenty-six prominent Saudi Arabian '*ulama* regarding the "defensive jihad" in Iraq. Accessed at: <http://www.pbs.org/wgbh/pages/frontline/shows/saud/etc/fatwa.html>.
- 34 See Abu Gheith (al-Qaeda spokesman) in www.alneda.com (the website has been closed down). Quoted in MEMRI Special Report no, 25, January 27, 2004, p 9.

35 The principle of retribution (*qissas*) is deeply rooted both in Islamic law and in customary tribal law. In tribal customary law (*urf*), the community is held responsible for the acts of its members.

36 These verses are widely quoted by radical Islamic organizations and repeated again and again in al-Qa`ida recruitment videotapes.

37 *Fatwas* by Sheikh Faysal Mawlawi, Deputy Chairman of the European Council for *Fatwas* and Research, 28 April 2001.

38 *Fatwas* by “Abu Ruqaiyah,” *Nida ul-Islam*, December-January 1996-1997.

39 Some examples which are frequently used as analogies are the cases of Ja’far ibn Abu Taleb, Zayd bin al-Haritha etc.

40 Ibid. Based on a *hadith* that states that “Actions are but by intentions.”

41 See the *fatwas* issued by the Islamic *Fiqh* Council affiliated to the OIC in its fourteenth session, held in Duha (Qatar) 11-16 January 2003 C.E.: “Martyr operations are a form of *jihad*, and carrying out those operations is a legitimate right that has nothing to do with terrorism or suicide. Those operations become obligatory when they become **the only way to stop the aggression of the enemy, defeat it, and grievously damage its power.**” Martyr Operations or Suicide, 24 January 2004, <http://www.islamonline.net/fatwas/english/FatwasDisplay.asp?hFatwasID=91481>.

42 *Nida ul-Islam*, December-January 1996-1997.

43 *Fatwa* by the al-Azhar *Fatwas* Committee headed by Sheikh ‘Ali Abu al-Hassan. The *fatwa* was written by Sheikh ‘alla al-Shanawi. <http://www.islamonline.net/Arabic/news/2002-12/23/article06.shtml>.

44 See *fatwa* issued (21 July 2002) by Dr. ‘Abd al-Mo’az Hariz from Jordan.

45 *Fatwa* by Sheikh Faysal Mawlawi Deputy Chairman of the European Council for *Fatwas* and Research (headed by Sheikh Qaradawi) 16 October 2002, <http://www.islamonline.net/fatwas/english/FatwasDisplay.asp?hFatwasID=52398>.

46 <http://www.islamonline.net/iol-arabic/dowalia/alhadath-17-11/alhadath2.asp>, November 17, 1999.

47 Sheikh Nasr bin Hamid al Fahd, *Risalah fi hukm istikhdam aslihat al-damar al-shamel didh al-kuffar*,” A Treatise on the Legal Status of Using Weapons of Mass Destruction against Infidels,” 1 May 2003.

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