

# 2

## SHARIAH AND JIHAD

Shariah – derived from Islam’s foundational documents – defines Islamic doctrine, including the universal obligation to jihad against non-believers. The question is: What is meant by “jihad”? Is jihad merely a personal struggle to be the best possible Muslim? Or does jihad mean holy war, the pursuit of a global Islamic State (caliphate) that rules in accordance with shariah?

### THE QURAN AND JIHAD

The answer is readily accessible to those willing to seek it. Islamic jurisprudence, *fiqh* in Arabic, forms the legal context for shariah and its rulings. As such, it relies first and foremost on the Quran and cites its verses to support the caliphate and jihad. Simple citation of the verses themselves, without the context provided by how the shariah scholars interpreted these verses, provides an incomplete and incorrect understanding.

Shariah scholars typically cite as authority for jihad from the Quran any of the 164 verses that specifically refer to jihad against non-Muslims in terms that include military expeditions, fighting enemies, or distributing the spoils of war. Among these are: “Fighting is prescribed for you” (Q 2:216); “Slay them wherever you find them” (Q 4:89); and “Fight the idolaters utterly” (Q 9:36).

Among the most categorical of such Quranic entries and the most often cited as authoritative by the shariah scholars is the “Verse of the Sword”: “So when the sacred months have passed, then fight and slay the pagans wherever you find them, and seize them, beleaguer them, and lie in wait for them in every stratagem of war; but if they repent and establish regular prayers, and practice regular charity, then leave their way free to them; for surely Allah is Forgiving, Merciful.” (Q 9:5)

As regards pagans (or polytheists), therefore, the doctrine is clear: Convert or die. The treatment for “People of the Book,” Christians and Jews, is controlled by a Sura 9: “Fight those who believe not in God nor the Last Day, nor hold that forbidden which hath been forbidden by God and His Apostle, nor acknowledge the Religion of truth, even if they be People of the book [Christians and Jews] until they pay the *Jizya* with willing submission and feel themselves subdued.” (Q 9:29)

Thus, Christians and Jews are afforded a third choice not available to polytheists: convert, die or submit to Islam as *dhimmis*.<sup>96</sup>

In the Quran and in later Muslim usage, the word jihad is commonly followed by the expression *fi sabil Allah*, “in the path of Allah.”<sup>97</sup> By describing the warfare of jihad as something sanctioned by Allah himself, Islamic authorities set it apart from the common tribal warfare of the time and elevated it to a superior status as something sacred.

## THE HADITHS AND JIHAD

The *hadiths* are the second source of shariah. Throughout those *hadiths* considered authoritative, jihad means warfare. The hadith collections of Sahih al-Bukhari and Sahih Muslim are accorded the highest level of authenticity by Islamic scholars and both include hundreds of references to jihad. Each and every one of these citations leaves no room for doubt that jihad means warfare.<sup>98</sup>

For example, one of the most oft-cited Sahih al-Bukhari *hadiths* about jihad says:

Narrated abu Huraira: Allah's Apostle said, "I have been ordered to fight with the people till they say, 'None has the right to be worshipped but Allah,' and whoever says, 'None has the right to be worshipped but Allah,' his life and property will be saved by me except for Islamic laws and his accounts will be with Allah, (either to punish him or to forgive him)." <sup>99</sup>

The wording of this "*sahih*" *hadith* (meaning that its authoritative status has already been determined) not only states unequivocally that it is Allah himself who has ordered Muslims to war against non-Muslims, but also states the command in completely open-ended terms; i.e., Muslims are to fight "the people" who do not worship Allah until "they" all submit to Islam. This is not a command to convert non-believers but to subjugate them to "Islamic laws."

## THE CLASSICAL SOURCES ON JIHAD

There are, moreover, a number of recognized compilations that systematize and codify Islamic law. They spell out the duty of jihad as holy war, which all Muslims, so the shariah states, must advance in one or more carefully delineated ways.

Excerpts from several of these texts are illustrative. The first is from the Shafite school's *Reliance of the Traveller: The Clas-*

*sic Manual of Islamic Sacred Law (Umdat Al-Salik)* by Ahmad ibn Naqib al-Misri. An English-language edition of *Reliance* was published in 1994, with Nu Ha Mim Keller as the translator and chief commentator. Readers are advised at the outset that this version of the 14th Century classic is an officially approved translation, complete with testimonials to that effect in English and Arabic from the governments of Syria, Jordan, Egypt and Saudi Arabia.<sup>100</sup>

In Chapter O, o9.0, *Reliance of the Traveler* states: “Jihad means to wage war against non-Muslims, and is etymologically derived from the word *mujahada*, signifying warfare to establish the religion. And it is the lesser Jihad.”<sup>101</sup> Al-Misri goes on to explain that the “greater” jihad is the struggle for the spiritual self. Importantly, he adds that *the hadith upon which that distinction is based is weak or false*, depending on which authority is referenced, *and so is not authoritative*.<sup>102</sup>

Consequently, when *Reliance* refers to the greater and lesser jihad, it indicates that this differentiation is not a part of the law of jihad – leaving us with no alternative but to understand that, under shariah, the meaning of ‘jihad’ connotes force and violence.

Al-Misri also cites at o9.0:

...Such *hadiths* as the one related by Bukhari and Muslim that the Prophet... said: “I have been commanded to fight the people until they testify that there is no god but Allah and that Mohammed is the Messenger of Allah, and perform the prayer, and pay the *zakat*. If they say it, they have saved their blood and possessions from me, except for the rights of Islam over them.”<sup>103</sup>

Other confirmations of this interpretation can be found in the *Al-Hidayah*, which came out in the 12<sup>th</sup> century and is a classic from the Hanafi Islamic school of law.<sup>104</sup> Then, there is *The Distinguished Jurist’s Primer* by Ibn Rushd, which was published in the 12th century, and is a classic Maliki text.<sup>105</sup> It is worth noting that

Ibn Rushd was a *qhadi*, an Islamic law judge, in the court of Cordoba in Andalus. He is best known as “Averroës” in the West.

Each of these texts contains similar treatments on the subject of “jihad.” In Ibn Rushd’s work, Book Ten is entitled, “Jihad.” In the *Hidayah*, Book Thirteen entitled “The Siyar,” deals with jihad and relations with non-Muslims. It maps almost exactly with the book *Shaybani Siyar*, or, as translated by a Professor Majid Khadduri – *The Islamic Law of Nations* – which is the oldest, most completely extant text of Islamic law on warfare.<sup>106</sup>

### CONTEMPORARY ADVOCATES OF JIHAD

Moving to modern times, Abu al-A’la Mawdudi (1903-79), the Indian-born (and later, Pakistani) thinker, paved the way for Muslim Brotherhood ideologues such as Hasan al-Banna (1906-49) and Sayyid Qutb (1906-56). Those Ikhwan ideologues recast modern jihad in the fiery language of revolution and anti-colonialism of the times and not just strictly warfare to expand Islamic legal and political dominance. Their war was directed against oppressive colonialist forces or Muslim rulers (“the near enemy”) who were judged apostates because of their failure to uphold shariah.<sup>107</sup> Mawdudi’s approach harkened back to the 13<sup>th</sup> century Islamic jurist, Taqi ad-Din Ahmed ibn Tamiyya (1263-1328), who declared the overthrow of unjust governments to be lawful.

In his capstone book, *Milestones*, Muslim Brotherhood chief theoretician Qutb<sup>108</sup> declared:

The reasons for Jihad which have been described in...verses [from cited sacred texts] are these: to establish God's authority in the earth; to arrange human affairs according to the true guidance provided by God; to abolish all the Satanic forces and Satanic systems of life; to end the lordship of one man over others since all men are creatures of God and no one has the authority to make them his servants or to make arbitrary laws for them. These reasons are sufficient for proclaiming Jihad.<sup>109</sup>

By “Satanic systems of life,” Qutb means the way of life practiced in Western-style liberal democracies – the way of the infidel, the Westerner, the non-Muslim. Similarly, “the lordship of one man over others” means the system of democracy – which is the political system of the infidel, the Westerner, the non-Muslim.

Among those who acted on Mawdudi and Qutb’s injunctions with respect to jihad were the assassins of Egyptian president Anwar Sadat. The followers of Ayman al-Zawahiri and his group, Egyptian Islamic Jihad (EIJ), produced a pamphlet called *The Neglected Duty*, which exalted violent jihad to “enjoin the good and forbid evil”<sup>110</sup> as the heart and soul of Islam. *The Neglected Duty* exhorts Muslims to be aggressive and to “exert every conceivable effort” to establish truly Islamic government, a restoration of the caliphate, and the expansion of Dar al-Islam.<sup>111</sup>

Then, there is a volume whose title says it all: *The Quranic Concept of War*, written in 1979 by Brigadier General S. K. Malik when he was chief of staff of the Pakistani army.<sup>112</sup> Then-Pakistani Army Chief of Staff Zia ul Haq declared this book to be his country’s doctrine.<sup>113</sup> The Advocate General in Pakistan said that it constitutes a “Restatement” of the law.<sup>114</sup>

## OTHER SOURCES ON JIHAD

Modern means of communication allow for an even broader dissemination of Islamic thinking on the subject than ever before. For instance, the online Arabic language magazine *Moheet*, which has offices in Egypt and the United Arab Emirates, carried an article on March 13, 2010 by Islamic cleric Iman al-Khashab. The article extolled the virtues of jihad, provided doctrinal references for his position and described violent warfare against infidels as the “sixth pillar of Islam.”<sup>115</sup> Al-Khashab wrote:

Jihad in the path of Allah is a mainstay of the religion and a great religious duty, as the Prophet (PBUH) said: “The most important thing is Islam, and it is supported by prayer, and its

apex is jihad in the path of Allah.” Allah has commanded us in many verses (of the Quran), and urged us, as has also our Prophet (PBUH), regarding the issue of jihad. The Prophet desired it himself, and urged (others) to it. He declared its virtues so often that some scholars consider it the sixth pillar of Islam, due to its importance, which is attested by how often it appears in the Quran and hadith.

### THE SHIITE AND IRANIAN VIEWS OF JIHAD

The Sunni and Shiite schools of jurisprudence differ in a number of respects. One difference has been with respect to the doctrine under which “offensive” jihad could be conducted, with traditional Shiites holding that it may not be waged in the absence of an imam to lead it. According to Shia Islam, the 12th and final Shiite imam, directly descended from the Prophet, disappeared in the 10th century. For centuries afterward, Shiite scholars held that renewal of offensive jihad must await his reappearance as Shiism’s messianic figure at the End of Times.

But in practice and in historical example, Shia and Sunni doctrines on jihad were fundamentally the same.<sup>116</sup> Even the so-called “requirement” for the “hidden” Shia Imam’s “consent” to wage jihad, was already argued away regarding “defensive jihad” by Abu Jaffar al-Tusi during the 11th century as the Shia of Iraq were beset by the Sunni Seljuk Turks.<sup>117</sup> This position was reiterated in the 13th century by al-Hilli.<sup>118</sup> These legists maintained—in a deliberately vague and elastic formulation—that Shia Muslims could be summoned to jihad by the Imam’s so-called “designee(s)” —which came to mean the “fuqaha,” or doctors of the (Shiite) Muslim Law. <sup>119</sup> With the advent at the outset of the 16th century of the very aggressive Shiite Safavid theocracy under Shah Ismail, who claimed direct descent from the Imams, we see “non-fuqaha” rulers declaring unabashed offensive, expansionist jihad throughout this dynasty. <sup>120</sup>

Demonstrating how Safavid Shi'ite jurisprudence was in agreement with the Sunni consensus on the basic nature of jihad war, including offensive jihad, here is an excerpt from the *Jami-i-Abbasi* [the popular Persian manual of Shi'a Law] written by al-Amili (d.1622), a distinguished theologian under Shah Abbas I:

Islamic Holy war [jihad] against followers of other religions, such as Jews, is required unless they convert to Islam or pay the poll tax.

The 18th century Qajar Shiite theocratic dynasty saw the role of declaring jihad—again, including offensive, expansionist jihad—restored in theory to the Shiite fuqaha.<sup>122</sup> Finally re-emphasizing how such campaigns under the both Safavids and Qajars no longer required endorsement by the Imam, an early 18th century Qajar treatise on jihad states, “It is possible to say that jihad during the Imam's concealment is more praiseworthy than during his presence.”<sup>123</sup>

The ascendancy of the Khomeini theocracy marked a revitalized militancy of Shiite jihadism unparalleled since the 16th to early 18th century Safavid dynasty. In 1970, the Iranian Ayatollah Ruhollah Musavi Khomeini outlined a personal ideology he called *Velayat-e Faqih* (Rule of the Jurisprudent). In it, he asserted – within this branch of Shia scholarly tradition – that Shiites should not have to wait interminably for the return to earth of their Mahdi to wage jihad.

Khomeini set himself up as a kind of stand-in for the 12<sup>th</sup> Imam as a grand ayatollah and arrogated to himself the title of “Imam.” Following his revolution and rise to power in Tehran, the policy of his Iranian theocracy to bear in advancing the sort of offensive jihad shariah-adherent Sunnis had always espoused.

For example, Khomeini declared himself unequivocally committed to jihad:

Islam says: Whatever good there is exists thanks to the sword and in the shadow of the sword! People cannot be made obedient except with the sword! The sword is the key to Paradise, which can be opened only for Holy Warriors! There are hundreds of other [Koranic] psalms and *Hadiths* [sayings of the Prophet] urging Muslims to value war and to fight. Does all that mean that Islam is a religion that prevents men from waging war? I spit upon those foolish souls who make such a claim.<sup>124</sup>

Khomeini's ideology found its way into the 1989 Iranian constitution, as well. In the chapter dealing with the "Religious Army," better known as the Islamic Revolutionary Guard Corps (IRGC), the constitution pronounces: "The [IRGC has] the responsibility not only for the safeguarding of the frontiers, but also for a religious mission, which is Holy War (JIHAD) along the way of God, and the struggle to extend the supremacy of God's Law in the world."

Immediately following this chapter, the constitution quotes directly from Quranic verse 8:60: "Against them make ready your strength to the utmost of your power, including steeds of war, to strike terror into the hearts of the enemies of God and your enemies, and others besides." Interestingly, that is the same verse displayed on the Sunni Muslim Brotherhood's coat of arms.

It was this pan-Islamic perspective that brought the Iranian regime and its terror proxy Hezbollah to work with Osama bin-Laden, Ayman al-Zawahiri and an incipient al Qaeda in Sudan in the early 1990s in an operational alliance to conduct a unified jihad against the West. That Sunni-Shia alliance, formed under the aegis of the Sudanese Islamic figure, Hasan al-Turabi, solidified and intensified throughout the 1990s, with joint attacks against Khobar Towers (1996), two American embassies in East Africa (1998), the USS *Cole* (2000) and the attacks of September 11, 2001.

In short, each of these sources makes plain the supremacist character of shariah and the instrument for realizing its global dominance, jihad. The bottom line: There is no basis in doctrinal Islam for concluding that jihad means anything other than waging holy war for the implementation of shariah and the establishment of the caliphate throughout the world. Indeed, a scholarly consensus on the definition of jihad was achieved over a thousand years ago – because it was impossible *not* to have consensus on the question: Allah commanded it and Mohammed confirmed it. In both direct and indirect divine revelation, the meaning of jihad as holy war was made clear.

#### **JIHAD IS OBLIGATORY**<sup>125</sup>

With the correct meaning of jihad within shariah thus established, it is important next to note the compulsory nature of participating in jihad, which is founded in Quranic verse 2:216: “Prescribed for you is fighting, though it be hateful to you.”

In his renowned *Muqaddimah*, the first work of Islamic historical theory, Ibn Khaldun, an acclaimed historian, jurist, philosopher, and early social scientist who lived from 1332-1406, picked up the theme of the Muslims’ sacred duty to participate in jihad. He noted that, “In the Muslim community, the holy war is a religious duty, because of the universalism of the Muslim mission and [the obligation to] convert everybody to Islam either by persuasion or by force.” Ibn Khaldun asserts that this is because Islam is “under obligation to gain power over other nations.”<sup>126</sup>

In general, the obligation to jihad is a collective one (*fard kifayah*) and only becomes a personal one (*fard ’ayn*) when Muslim lands are invaded or occupied by an infidel force that is uninvited. Ibn Rushd, writing in 12<sup>th</sup> Century Seville and Cordoba, Spain during the so-called “Golden Era” of Islam invoked the consensus of the scholars in his seminal *Bidayat al-Mujtahid wa-Nihayat al-Muqtasid*:

... This obligation [to jihad], when it can be properly carried out by a limited number of individuals, is cancelled for the remaining Muslims, is founded on [Q 9:122]: “It is not for the believers to go forth totally,” “Yet to each Allah has promised the reward most fair” [Q 4:95] and, lastly, on the fact that the Prophet never went to battle without leaving some people behind. All this together implies that this activity is a collective obligation. . . .

Scholars agree that all polytheists should be fought [According to some modern shariah authorities, this includes anyone who holds secular law as superior to Allah's shariah.] This is founded on: “Fight them until there is no persecution and the religion is Allah's entirely . . .” [Q 8:39]

Damage inflicted upon the enemy may consist in damage to his property, injury to his person or violation of his personal liberty, i.e., that he is made a slave and is appropriated. This may be done, according to *ijma* [the consensus of the shariah authorities] to all polytheists: men, women, young and old, important and unimportant. . . .

Most scholars are agreed that, in his dealings with captives, various policies are open to the Caliph or Imam [head of the Islamic State]. He may pardon them, enslave them, kill them, or release them either on ransom or as *dhimmi* [non-Muslim subjugated to the Muslim regime], in which latter case the released captive is obliged to pay poll-tax (*jizya*).<sup>127</sup>

## WAGING JIHAD

Muhammad ibn al-Hasan al-Shaybani, who lived in the 8th and 9th Centuries, was an important jurist of the Hanafi school of jurisprudence and the first to write extensively on the *Siyar* or Islamic Law of Nations. An important staple of Islamic jurisprudence, *Shaybani's Siyar* was translated and annotated by the respected contemporary scholar, Majid Khadduri, in 1966.

Shaybani wrote that a constant state of war must exist between the *Dar al-Islam* and the *Dar al-Harb* and explained the protocols to be followed in waging jihad.

Fight in the name of Allah and in the “path of Allah.” Combat those who disbelieve in Allah. Do not cheat or commit treachery, nor should you mutilate anyone or kill children. Whenever you meet your polytheist enemies, invite them [first] to adopt Islam. If they do so, accept it, and let them alone. . . .If they refuse, then call upon them to pay the *jizya* [poll tax imposed on dhimmis]; if they do, accept it and leave them alone. . . .If the army [of Islam] attacks *Dar al-Harb* and it is a territory that has received an invitation to accept Islam, it is commendable if the army renews the invitation, but if it fails to do so it is not wrong. The army may launch the attack by night or by day and it is permissible to burn [the enemy] fortifications with fire or to inundate them with water.<sup>128</sup>

Ibn Abi Zayd al-Qayrawani (10th century), a leading Maliki jurist, echoes al-Shaybani’s injunction about the requirement to issue the call to Islam (*dawa*) before launching an attack (jihad) against the infidel. This legal requirement remains valid and relevant today. Al-Qayrawani also notes the choice given to People of the Book (Christians and Jews), who are not compelled to convert, but may submit to Islam, pay the *jizya*, and live under Muslim domination as *dhimmis*:

Jihad is a precept of Divine institution. Its performance by certain individuals may dispense others from it. We Malikis maintain that it is preferable not to begin hostilities with the enemy before having invited the latter to embrace the religion of Allah except where the enemy attacks first. They have the alternative of either converting to Islam or paying the poll tax (*jizya*), short of which war will be declared against them.<sup>129</sup>

Finally, there is Ibn Taymiyya, a Hanbali jurist of the 14th century, and a favorite of contemporary jihadis, who, although primarily focused on defensive jihad, nevertheless wrote:

Since lawful warfare is essentially jihad and since its aim is that the religion is Allah's entirely and Allah's word is uppermost, therefore according to all Muslims, those who stand in the way of this aim must be fought. As for those who cannot offer resistance or cannot fight, such as women, children, monks, old people, the blind, handicapped and their likes, they shall not be killed unless they actually fight with words (e.g., by propaganda) and acts (e.g., by spying or otherwise assisting in the warfare).<sup>130</sup>

Seething anger at the presence of hated non-Muslim influence anywhere in the "Muslim world" or in those parts of the world once under the dominion of Dar al-Islam infused Taymiyya's writings, including *Al-Ubudiyyah. Being a True Slave of Allah* and *Public and Private Law in Islam: Or Public Policy in Islamic Jurisprudence*.<sup>131</sup> It is in part Ibn Taymiyya's characterization of defensive jihad as a personal obligation (*fard 'ayn*) to fight "false" Muslim leaders (those who do not uphold strictly the obligations of shariah and allow Western/infidel troops on their soil) that has made him such a favorite source for contemporary jihadists.

## CIVILIZATION JIHAD

Jihad in the form of violent acts, often referred to by some as "kinetic" jihad, dominates the attention of those responsible for national and homeland security. But the more dangerous threat, especially in the long run, is what the Muslim Brotherhood calls "civilization jihad" – a form of warfare that Robert Spencer has more popularly dubbed "stealth jihad."

According to shariah, this "pre-violent" form of jihad is considered an integral, even dominant element of jihad that is at least as obligatory for shariah's adherents as the violent kind. *Da-*

*wa*, the call to Islam that by Islamic law must precede jihad, is all-too-often dismissed – as are its manifestations under the rubric of non-violent jihad – simply because this kind of assault does not kill but intends “merely” to subjugate. Absent an appreciation of the threat posed by stealth jihad, the pre-violent jihadist is free to proceed unimpeded under the radar in Western societies, infiltrating and subverting along lines specifically tailored to today’s liberal, multicultural-minded non-Muslim populations in ways that are genuinely difficult to recognize, oppose or counter. (See chapter seven.)

To be clear: The objective of the stealth jihad is the same as the violent: subjugation of *Dar al-Harb* to shariah, which would result in the non-Muslim world being subsumed under *Dar al-Islam*.

This subject will be dealt with at length in chapter five’s discussion of the Muslim Brotherhood, because it is the Brotherhood that has the dominant role with respect to the prosecution of the pre-violent form of jihad in the United States, and the West more generally. The insinuation of shariah and its adherents into America’s academic, banking and finance, government, intelligence, law enforcement and military institutions and society more generally is quite far advanced.

Official U.S. doctrine on threat development requires that threat assessment begin with an unconstrained analysis of the enemy’s stated threat doctrine. The first two sections of this report make plain that it is possible to know the enemy and his intentions with certitude.

If adherents to shariah have sworn to destroy us, it is *their* doctrine we are required to know. Whether that doctrine is judged by us to be accurate, appropriate or even identifiable with “genuine” Islam is wholly irrelevant. If it can be demonstrated that the enemy that attacks and kills Americans and seeks to subvert our Constitution refers to and relies on this doctrine to guide

and justify his actions, then that is all that matters in terms of the enemy threat doctrine U.S. civilian and military leaders must thoroughly understand and orient upon for the purpose of defeating such foes. (It is only in what the military calls the “course of action” development phase that issues concerning the actual validity of the threats adherence to Islamic law entails come into play.)

Failing to orient on an enemy’s self-identified doctrines not only violates our own doctrine on threat analysis but renders us unable to defeat the enemy because we have failed properly to identify him. As noted at the beginning of this report, such failure defies the rules of warfare reaching back to Sun Tzu on the requirement to “know the enemy.” It also completely defies common sense and the canons of professional conduct of our leadership.

