



The Killing without Right: Islamic Concepts of Terrorism

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Introduction

When the *postmortems* on the War on Terror (WOT) are written, among the issues in need of redress will be the destruction of strategic thinking and its replacement by fictions in the form of academic models or scripted war games that systematically admit only those facts that enforce the model while systematically excluding relevant facts that the paradigm either cannot accommodate or will not recognize. Strategy runs on facts: the facts of a defined enemy, his known terrain and his stated threat doctrine. Models, all models, are ultimately narratives and hence a form of fiction. National security planning based on fictions will fail because they must. When these models break down, and they all do, failure is attributed to things like “complexity theory” that hold that because the “world is so complex,” all one can do is manage “chaos”. For example, orienting all elements of national power on the vacuously defined “violent extremism” in the face of self-identified threats that self identify as *Jihadis*, who openly declare that they wage *Jihad* in accordance with ubiquitously available Islamic law in order to implement shari’a while reestablishing the *Caliphate* will foreseeably cause one’s analysis to cascade into the management of chaos – having already systematically denied all relevant facts, including all terms associated with those facts, that interfere with the fiction. When managing chaos, one is not managing people, places or things. “Violent Extremism” is not a real person, not a real place, and not a real thing. To manage chaos is to manage nothing. Operating along analytical canons of “complexity” imposes chaos on the people. Fidelity to chaos models provides intellectual cover for a total disregard for factual analysis that not only signals an epistemic collapse of strategic proportions, but does so by forcing a collapse of professional canons on the duty to be competent that includes the duty to know (all enemies foreign and domestic).¹

*Things fall apart; the
centre cannot hold;
Mere anarchy is loosed
upon the world,
The blood-dimmed tide is
loosed, and everywhere
the ceremony of
innocence is drowned;
The best lack all
conviction, while the
worst are full of
passionate intensity.*

– W.B. Yeats

¹ Coughlin, Stephen C, *To Our Great Detriment: Ignoring what Extremists Say About Jihad*, Washington, DC: National Defense Intelligence College, MSSJ thesis accepted in July 2007), 228. **NOTE:** This is not a new concern. In a thesis that undertook a sustained analysis of the nature of the threat in the War on Terror, the conclusion raised serious concerns regarding competency: “Having said that, it is the position of this thesis that it *will not fail* if decisionmakers and analysts return to an IPB methodology that begins with an unconstrained, undelegated, systematic, factual analysis of the threat doctrine that the enemy self-identifies as being driven by Islamic law. Following such a process has the benefit of meeting professional standards



This paper is one example of strategic blindness. “Killing without Right” will seek to expose this blindness by introducing a concept ubiquitously communicated inside Islamic Movement networks that, nevertheless, remains unknown outside of it concerning an Islamic concept of terrorism based on the “killing of a Muslim without right.” While this concept of terrorism is derived from Islamic law, this paper will position the analysis on recent *Deobandi* pronouncements condemning terrorism to show that while it aligns with Islamic law, it also reflects the same understanding of terrorism ratified by the Organization of the Islamic Conference (OIC) in its official communications as well as Islamic Movement institutions such as the Muslim Brotherhood. As such, this paper is written from the perspective of the Islamic Movement and its orientation to Islamic law and makes no claims to account for potential competing Shari’a positions in the larger Islamic world.

The goal is to demonstrate an interlocking understanding of this concept of terrorism from local *madrassas in India*, to global Islamic organizations, to Islamic Centers in the United States. Because of the current interest in what modelers call “the self-radicalization process,” this paper will use Major Hasan’s presentation to his fellow psychiatrists and Army officers at Walter Reed in 2009 to show its nexus to common concepts of Islamic terrorism in order to expose the dangerousness of these sanctioned myths while warning that the lack of situational awareness these models sustain come at a price. The objective is to demonstrate that threats in the War on Terror are comprehensible for those who choose to know them based on articulable facts. Major Hasan’s briefing is but an example.

As this paper was being socialized, Saudi Arabia issued a *fatwa* condemning terrorism and the funding of terrorism. By request, it was brought out of draft to account for the Saudi *fatwa* as a test case /

The objective is to demonstrate that threats in the War on Terror are very comprehensible for those who choose to know the enemy based on articulable.

for competent analysis. This thesis *cannot succeed*, however, if the response is to outsource it to subject matter experts willing to volunteer their information under the sole condition that it be accepted both uncritically and unconditionally. This is not only true because such an approach fails to meet the professional standard, but also because it fails the standard for the same reason that it will lead to defeat in the WOT.”



proof of the concept of the paper. Hence, "Test Case: The 2010 Saudi Fatwa" was a last-minute addition to "The Killing without Right."

Peace and Terror at the Darul Uloom – Deoband, India

What follows is an analysis of a May 2008 Indian *Deobandi fatwa* condemning terrorism. It demonstrates how the failure to recognize Islamic law's influence on instruments and statements leads to systemic error in the analytical processes when Islamic realities identified in the body of those products are systematically overwritten by concepts designed to satisfy the requirements of Western academic models based on non-factual assumptions that are then later converted to conclusory assumptions.

On 31 May 2008, MEMRI reported that "thousands of Islamic clerics and madrasa teachers from across India" met in New Delhi for an Anti-Terrorism and Global Peace Conference to issue an anti-terrorism *fatwa* heralded as the "world's first unequivocal *fatwa* against Islamic terror."² The statement condemns "Islamic terror." The conference was co-sponsored and lead by the *Darul Uloom Deoband* – the *Deobandis*. From the *Deobandi* Grand Mufti:

- "Islam Has Come to Wipe Out All Kinds of Terrorism and to Spread . . . Global Peace"
- "Islam is a religion of peace and security. In its eyes, on any part over the surface of the earth, spreading mischief, rioting, breach of peace, bloodshed, killing of innocent persons and plundering are the most inhuman crimes."³

Given the declaration's moderate tone, it seems reasonable to assume that the Grand Mufti's comments were in line with Western expectations when making them. But are they? When answering this question, it should be noted that the articles provide two clues to the

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² "Indian Clerics Conference Issues World's First Anti-Terror Fatwa," MEMRI Special Dispatch Series No. 1959, 13 June 2008, URL: < <http://www.memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP195908>>, accessed 21 June 2008.

³ MEMRI Special Dispatch 1959.



criteria by which the *Darul Uloom Deoband* would rely when speaking of peace and terror:

- The initiative for the anti-terror *fatwa* came from Maulana Mahmood Madani, the Indian parliamentarian who asked the *Darul Uloom Deoband* to clarify the Islamic stand on **global peace in light of *shari'a***.⁴
- According to a media report, "[the *Darul Uloom Deoband*] not only declared terror activities to be anti-Islam, but also involved top clerics in **defining terrorism in the light of the Quran and *shari'a***."⁵

From an Islamic institution of stature, the *Deobandis* based their "peace and terror" *fatwa* on Islamic law. How could an Islamic legal ruling be based on anything else? This necessarily means that a competent analysis would have to account for Islamic law's influence on the *fatwa*. A corollary comes into play. Analytical products that fail to account for Islamic law's influence on an Islamic legal ruling will fail to meet professional standards of competence because they fail to account for an expressly stated influence. The question to ask is whether it is reasonable⁶ to accept analysis of *Deobandi* pronouncements that do not account for Islamic law. The *Deobandi* statements from the Indian Conference on peace and terror "in light of *shari'ah*" did not condemn terrorism as commonly perceived in the West but did stake out a doctrinal position that is in line with similar statements from other Islamic Movement players. Of importance, if the *Deobandi* explanation of terrorism is based on Islamic law, it will necessarily be the same understanding that the OIC relied on when it promulgated the *OIC Convention on Combating International Terrorism* when declaring that OIC concepts of terrorism are likewise exclusively based on Islamic law:

An Islamic institution of some stature, the Deobandis quite reasonably base their "peace and terror" fatwa on Islamic law.

⁴ MEMRI Special Dispatch 1959.

⁵ MEMRI Special Dispatch 1959.

⁶ *Black's Law Dictionary*, 6th Edition, (St. Paul: West Publishing, 1990), 1266. As used here, "reasonable" suggests the "reasonable standard." "The standard one must observe to avoid liability for negligence is the standard of the reasonable man under all the circumstances including the foreseeability of harm to one such plaintiff."



- *Pursuant* to the tenets of the tolerant Islamic Sharia ...
- *Abiding* by the lofty, moral and religious principles particularly the provisions of the Islamic Sharia ... ⁷

Who's Who in the Zoo - the *Darul Uloom* and Syed Abdul A'la

Maududi. Before proceeding, the *Darul Uloom* needs an explanation of its relationship to the Deobandi movement as well as its *Salafi* orientation. The limited purpose of this review is to put names and associations in frame for the reader. It makes no claims to being exhaustive.

From its own webpage, the *Darul Uloom* was founded in Deoband, India on 30 May 1866.⁸ Members, followers, and the movement derived the name "Deobandi" from the town in which *Darul Uloom* was founded - Deoband, India. *Darul Uloom* states that it is the subcontinent's "largest institution for the dissemination and propagation of Islam and the biggest headspring of education in the Islamic sciences."⁹ *Darul Uloom* boasts "an incomparable teaching institution for the religious education of the Muslims not only in the sub-continent but also throughout the Islamic world." In fact, it is second only to the *Jam'a-e Azhar* in Cairo, Egypt. *Darul Uloom* takes credit for "great services in the revival of Islam" that "awakened political consciousness among the Muslims" allowing them to take a "leading part in the struggle for freedom as a result of which the countries of the sub-continent acquired independence."¹⁰ Moving forward, the *Darul Uloom* expects to render "invaluable services to the cause of Islam" and will "continue to discharge the obligation of inciting

⁷ *OIC Convention to Combat Terrorism (1999-1420H): Convention of the Organization of the Islamic Conference on Combating International Terrorism*, Organization of the Islamic Conference, URL: http://www.oic-oci.org/english/convention/terrorism_convention.htm or <http://www.oicun.org/7/38/>. Cited hereafter as "OIC Combating Terrorism Convention."

⁸ From the *Darul Uloom's* own webpage "A Brief Introduction," DARULULOOM, Deoband – India (Webpage of *Darul Uloom*), URL: <http://www.darululoom-deoband.com/english/index.htm>. Hereafter "A Brief Introduction" – DARULULOOM-DEOBAND.

⁹ "A Brief Introduction" – DARULULOOM-DEOBAND.

¹⁰ "A Brief Introduction" – DARULULOOM-DEOBAND.



the Muslims power of action, of strengthening the faiths and of preaching and propagating Islam.”¹¹

As a part of the “propagating Islam” mission, the *Darul Uloom* takes the firm *Salafi* position on the role of Islamic law as the law of the land. In the political sphere, the *Deobandi*’s are represented by the *Jamiat-e Ulema-e Islam* (JUI),¹² an organization with strong public ties to the Taliban.¹³ Both inside and out of the JUI, the *Deobandis* have enjoyed close ties to the Pakistani Inter-Services Intelligence Directorate, the ISI, and share close ideological ties with *Wahabism*.¹⁴

Because of his substantial role in the Islamic Movement in the Subcontinent, Syed Abdul A’la Maududi (1903-1979)¹⁵ must be identified. While not a *Deobandi*, Maududi’s dominant role in promoting the *Salafi/Jihadi* agenda in India and Pakistan continues to influence *Deobandi* policies to this day. Maududi’s influence in the Islamic Movement stretched beyond India and Pakistan with Muslim Brotherhood figures like Sayid Qutb, author of *Milestones*, drawing inspiration from his work.¹⁶ Not always friendly, Maududi’s close association with the *Deobandis* can be traced to 1925 -1928 when he was editor of the *al-Jam’iyat*, a publication of the *Jam’iyat-I ‘Ulama-I Hind*, a political organization closely associated with *Deoband* Muslim scholars.¹⁷ Caught up in the revolutionary language of the ascendant communist parties, Maududi likened *Jihad* to revolution. As early as

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¹¹ “A Brief Introduction” – DARULULOOM-DEOBAND.

¹² Haroon Rashid, “Profile: Maulana Fazlur Rahman,” BBCNews World Edition, 6 November 2002, URL: http://news.bbc.co.uk/2/hi/south_asia/2411683.stm

¹³ Ahmed Rashid, *Taliban*, New Haven: Yale University Press, 2000, 92. For a brief review of the Taliban – Deobandi relationship, see Kawun Kakar, “An Introduction of the Taliban,” Institute for Afghan Studies, Fall 2000, URL: http://www.institute-for-afghan-studies.org/AFGHAN%20CONFLICT/TALIBAN/intro_kakar.htm

¹⁴ Professor Hassan N. Gardezi, “The Politics of Religion in Pakistan: Islamic State or Shari’a Rule,” SACW, 14 April 2003, URL: <http://www.sacw.net/new/Gardezi140403.html>

¹⁵ Biographical Summary - Maulana Maududi, The Pakistanis - Social Network for Pakistanis, URL: <http://www.thepakistanis.com/about/get/personalities/religious-figures/maulana-maududi.htm>. Cited hereafter as Biographical Summary – Maulana Maududi.

¹⁶ Landau, Jacob M., *The Politics of Pan Islam: Ideology and Organization*, Oxford: Clarendon Press, 1990, 284.

¹⁷ Biographical Summary – Maulana Maududi.



1939, in a speech delivered at the Town Hall in Lahore, India, Maududi used revolutionary language to describe the mission of *Jihad*:

- 'Muslim' is the title of that International Revolutionary Party organized by Islam to carry into effect its revolutionary program. And '*Jihad*' refers to that revolutionary struggle and utmost exertion which the Islamic Party brings into play to achieve this objective.¹⁸

Maududi then stated the need to develop a language unique to Islam to explain the use of the term "*Jihad*":

- The word '*Jihad*' belongs to this particular terminology of Islam. Islam purposely rejected the word '*harb*' and other Arabic words bearing the same meaning of 'war' and used the word '*Jihad*' which is synonymous with 'struggle', though more forceful and wider in connotation. The nearest correct meaning of the word '*Jihad*' in English can be expressed as under:
 - 'To exert one's utmost endeavor in promoting a cause'.¹⁹

Emphasizing the humanitarian role that Islam seeks to achieve through *Jihad* is what makes it different from wars fought for simple political benefit, Maududi identified the goal of *Jihad*:

- The sole interest of Islam is the welfare of mankind. Islam has its own particular ideological standpoint and practical programme to carry out reforms for the welfare of mankind. ***Islam wishes to destroy all States and Governments anywhere on the face of the earth which are opposed to the ideology and programme of Islam regardless of the country or the Nation which rules it.*** The purpose of Islam is to set up a State on the basis of its own ideology and programme, regardless of which nation assumes the role of the standard bearer of Islam or the rule of which nation is

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¹⁸ Syed Abdul A'la Maududi, *Jihad in Islam*, Islamic Publications (Pvt.) Ltd. 7th printing December 2001, 8. Cited hereafter as Maududi, *Jihad in Islam*.

¹⁹ Maududi, *Jihad in Islam*, 9.



undermined in the process of the establishment of an ideological Islamic State.²⁰ [Emphasis added]

The *Darul Uloom* is a known quantity that operates in the open in its part of the world. Recognizing their stature provides perspective on who they are and how they are received in their domain. The same holds true for Maududi.

Analyzed for Context and Meaning. Because of the West's penchant for accepting all positive statements from Islamic sources as breakthroughs in civilizational accord, it should be noted that at the same time that *Deobandi* Indians were condemning Islamic terror, the *Indian Mujahideen in the Land of the Hind* issued their own *fatwa*:

- Wait only five minutes from now! Wait for the *Mujahideen* and *Fidayeen* of Islam and stop them if you can – who will make you feel the terror of *Jihad*. Feel the havoc cast into your hearts by Allah, the Almighty, face His Dreadful Punishment, and suffer the results of fighting the Muslims and the *Mujahideen*. Await the anguish, agony, sorrow and pain. **Await, only 5 minutes, to feel the fear of death.**²¹ [Red bold in the original]

The *Indian Mujahideen's fatwa* did not attract the same attention as the *Deobandi* even though Gujaratis have since suffered numerous attacks in line with the *fatwa*. Given the proximate timing of the two *fatwas*, it seems reasonable to ask whether they are in conflict. Is the *Deobandi* condemnation of "Islamic terror" in conflict with the *Indian Mujahideen's* call to make Gujarat Hindus "feel the terror of *Jihad*?"²² This analysis argues that they are not in conflict when terrorism is understood "in light of the Qur'an and *shari'ah*."

Broadening the discussion to the greater Subcontinent, one finds Pakistani Minister Mohammed Ijaz ul-Haq, son of the former president and Chief of Staff of the Pakistani Army, General Mohammed Zia-ul-

The question is whether they are in conflict.

²⁰ Maududi, *Jihad in Islam*, 10.

²¹ *The Rise of Jihad, the Revenge of Gujarat*, Indian Mujahideen in the Land of the Hind, 14-page PDF sent as e-mail to select Indian television channels, July 2008, 7. Hereafter cited as Indian Mujahideen in the Land of the Hind.

²² NOTE: deferred.



Haq, making the following statement concerning the United Kingdom's knighting of Salman Rushdie:

- ISLAMABAD, Pakistan (AP) — Pakistan yesterday condemned Britain's award of a knighthood to author Salman Rushdie, and a Cabinet minister said the honor provided a justification for suicide attacks. "This is an occasion for the world's 1.5 billion Muslims to look at the seriousness of this decision," Mohammed Ijaz ul-Haq, religious affairs minister, said in parliament. ... "The West is accusing Muslims of extremism and terrorism. If someone exploded a bomb on his body, he would be right to do so unless the British government apologizes and withdraws the 'sir' title," Mr. ul-Haq said. ... "The 'sir' title from Britain for blasphemer Salman Rushdie has hurt the sentiments of the Muslims across the world."²³

Ul-Haq is not the leader of a terrorist organization but rather an elected member of the Pakistani Parliament. Considering that a religious affairs minister in an Islamic republic has status and that his comments were made in parliament as the leader of a powerful political family, it is remarkable that the Western response has been to dismiss them as the rantings of a religious extremist or as a series of jumbled contradictions. A contradictory rant because, sandwiched in between the Pakistani state actor's public call for suicide attacks and his endorsement of the same, was an earnest denial that Islam involves itself in acts of "extremism and terrorism" - in much the same way that Indian Muslims condemn "Islamic terror" while at the same time remaining silent on the attacks against Gujarati Hindus intended to make them "feel the terror of *Jihad*." Surely, as with Gujarat, non-Muslim populations in the UK were targeted for attack proximate to ul-Haq's call for "justified suicide attack" – undertaken by Pakistanis no less.

Broadening the discussion to the larger Muslim world, the Organization of the Islamic Conference ("OIC") explicitly bases its understanding of terrorism on Islamic law as well. Just as the *Darul*

²³ Sir Salman Slammed, Washington Times, online ed., 19 June 2007, URL: <http://www.washingtontimes.com/article/20070619/FOREIGN/106190021&SearchID=73284751953045>, accessed 19 June 2006.



Uloom Deoband defines terrorism “in light of the Qur’an and *shari’a*,” the OIC formally served the *OIC Convention on Combating International Terrorism* as a legal instrument to the United Nations in 1999.²⁴ In that convention, as noted, the OIC states twice, at the very beginning of the *Convention*, that it is bound by *Shari’a* law:

- **Pursuant** to the tenets of the tolerant Islamic Sharia . . .
- **Abiding** by the lofty, moral and religious principles particularly the provisions of the Islamic Sharia ²⁵

The importance of the *Convention* owes to the fact that the OIC is “the second largest inter-governmental organization after the United Nations which has membership of 57 states spread over four continents” and represents “the collective voice of the Muslim world.”²⁶ OIC Member States are bound by an OIC Charter²⁷ that makes reasonable claims to representing the *Ummah*.²⁸ Hence, if the OIC bases its understanding of terrorism on strictly Islamic legal grounds

²⁴ Article 42, *OIC Combating Terrorism Convention to Combat Terrorism*:

- This Convention has been written in English, Arabic and French of equal authenticity, of one original deposited with the General Secretariat of the Organization of the Islamic Conference which shall have it registered at the United Nations Organization, in accordance with the provisions of Article 102 of its Charter. The General Secretariat shall communicate approved copies thereof to the Member States of the Organization of the Islamic Conference.

²⁵ *OIC Combating Terrorism Convention to Combat Terrorism*.

²⁶ “About the OIC,” Organization of The Islamic Conference webpage, at URL: http://www.oic-oci.org/page_detail.asp?p_id=52. Hereafter cite as About the OIC.

²⁷ About the OIC:

- The present Charter of the Organization was adopted by the Eleventh Islamic Summit held in Dakar on 13-14 March 2008

²⁸ *Charter of the Organisation of the Islamic Conference*, at URL: <http://www.oic-oci.org/is11/english/Charter-en.pdf>. For example, see Articles 6 and 7:

Article 6

- The Islamic Summit is composed of Kings and Heads of State and Government of Member States and is the supreme authority of the Organisation.

Article 7

- The Islamic Summit shall deliberate, take policy decisions and provide guidance on all issues pertaining to the realization of the objectives as provided for in the Charter and consider other issues of concern to the Member States and the Ummah.



and has ratified it as such in the form of a convention, then every country in the Muslim World has put the rest of the world on notice that when the Islamic world speaks of terrorism, it only means terrorism as defined by Islamic law, as a matter of law.

A review of OIC conferences going back to 1995 reveals a consistency in the language and tone of the organization towards the issue of peace.²⁹ A review of two post 9/11 Foreign Ministers conferences provides additional detail of the OIC convention's position on terrorism. One such conference was held in Tehran in 2003, the Thirtieth Session of the Islamic Conference of Foreign Ministers (Session of Unity and Dignity) and the other in 2004 in Istanbul, the Thirty-First Session of the Islamic Conference of Foreign Ministers (Session of the Progress and Global Harmony).

Both the Tehran and Istanbul documents state their alignment with Islamic law:

- **Committed to** the moral and human principles that the **OIC Member States** believe in, and inspired by their sublime and tolerant religion and by their heritage and tradition which call for the rejection of all forms of injustice, aggression, and intolerance;^{30, 31}

A review of OIC conferences going back to 1995 reveals a consistency in the language and tone of the organization towards the issue of peace.

²⁹ See, for example, **RESOLUTION NO. 43/23-P**: "On Convening of an International Conference under the Auspices of the U.N. to Define Terrorism and Distinguish it from Peoples' Struggle for National Liberation" or **RESOLUTION NO. 44/23-P**: "On The Follow-up of the Code of Conduct for Combating International Terrorism," **Report and Resolutions on Political, Muslim Minorities & Communities, Legal and Information Affairs, Adopted at the Twenty-Third Islamic Conference of Foreign Ministers** (Session of Peace, Solidarity and Tolerance) Conakry, Republic of Guinea, 17-20 Rajab 1416H (9-12 December, 1995) at URL: <http://www.oic-oci.org/oicnew/english/conf/fm/23/Resolutions23-P.htm>.

³⁰ **RESOLUTION No. 7/30-LEG** – "On Convening an International Conference Under the Auspices of the UN to Define Terrorism and Distinguish it from Peoples' Struggle for National Liberation," Resolutions on Legal Affairs Adopted by the Thirtieth Session of the Islamic Conference of Foreign Ministers (Session of Unity and Dignity), Tehran, Islamic Republic of Iran, 27-29 Rabi-ul-Awal, 1424H 28-30 May, 2003, at URL: <http://www.oic-oci.org/oicnew/english/conf/fm/30/30%20icfm-leg-e.htm>. Hereafter cite as OIC Resolution No. 7/30-LEG – Tehran 2003.

³¹ **Resolution No. 7/31-LEG**: "On Convening an International Conference under the Auspices of the UN to Define Terrorism and Distinguish it from Peoples' Struggle for National Liberation," **Resolutions on Legal Affairs Adopted by the Thirty-First Session of the Islamic Conference of Foreign Ministers**



Both Tehran and Istanbul emphasize the role of human rights, especially as they relate to Islamic law on human rights:

- **Recalling** the noble motives and objectives of the glorious religion of Islam, which emphasizes the importance of human rights; and mindful of the universality and integral nature of **Islamic laws on human rights** and the prominent place of Man;^{32, 33}

In both 2003 and 2004 conferences, the OIC “strongly condemned terrorism in all its forms and manifestations including state terrorism directed against all States and peoples.”³⁴ In both the Tehran and Istanbul documents, using identical language, the OIC asserted that Islam is innocent of the killing of people forbidden by Islam:

- **Asserts** that Islam is innocent of all forms of terrorism which involve the murder of innocent people whose killing is forbidden by Islam, and **rejects** any attempts to link Islam and Muslims to terrorism because the latter has no relation whatsoever with religions, civilizations or nationalities.^{35, 36}

(Session of the Progress and Global Harmony), Istanbul, Republic of Turkey, 26-28 Rabiul Thani 1425H (14-16 June 2004) at URL: <http://www.oic-oci.org/oicnew/english/conf/fm/31/31%20icfm-leg-eng.htm>. Cited hereafter as **OIC Resolution No. 7/31-LEG** – Istanbul 2004.

³² **OIC Resolution No. 7/30-LEG** – Tehran 2003.

³³ **RESOLUTION No. 2/31-LEG**: “On the Follow-up of the Cairo Declaration on Human Rights in Islam,” **Resolutions on Legal Affairs Adopted by the Thirty-First Session of the Islamic Conference of Foreign Ministers (Session of the Progress and Global Harmony)**, Istanbul, Republic of Turkey, 26-28 Rabiul Thani 1425H (14-16 June 2004) at URL: <http://www.oic-oci.org/oicnew/english/conf/fm/31/31%20icfm-leg-eng.htm>.

³⁴ **RESOLUTION No. 6/30-LEG**: “On the OIC Convention on Combating International Terrorism Resolution,” **Resolutions on Legal Affairs Adopted by the Thirtieth Session of the Islamic Conference of Foreign Ministers (Session of Unity and Dignity)**, Tehran, Islamic Republic of Iran, 27-29 Rabi-ul-Awal, 1424H 28-30 May, 2003, at URL: <http://www.oic-oci.org/oicnew/english/conf/fm/30/30%20icfm-leg-e.htm>. Hereafter cite as **OIC Resolution No. 6/30-LEG** – Tehran 2003.

³⁵ **OIC Resolution No. 6/30-LEG** – Tehran 2003.

³⁶ **Resolution No. 6/31-LEG**: “The OIC Convention on Combating International Terrorism,” **Resolutions on Legal Affairs Adopted by the Thirty-First Session of the Islamic Conference of Foreign Ministers (Session of the Progress and Global Harmony)**, Istanbul, Republic of Turkey, 26-28 Rabiul Thani 1425H (14-16 June 2004) at URL: <http://www.oic-oci.org/oicnew/english/conf/fm/31/31%20icfm-leg-eng.htm>.



This brings us to the same language used by the *Deobandis* in their *fatwa*. Hence, to develop a proper understanding of terrorism within an Islamic context, it is not only necessary to identify a functional definition of terrorism, but also of innocence.

oci.org/oicnew/english/conf/fm/31/31%20icfm-leg-eng.htm. Cited hereafter as **OIC Resolution No. 6/31-LEG** – Istanbul 2004.



Terrorism, Human Rights and Racism – the OIC Way

What if the United States signed an instrument supposing it supported human rights, outlawed terrorism and condemned racism that the other party agreed to because, for the other party, it implements shari'a law, outlaws the killing of a Muslim without right and condemns defamation of Islam? Sound implausible?

When engaging in discussions where an effort is made to define the terms, it is important to analyze the motivations and objectives of the group that defined the terms according to the definitions they provide. Because the OIC, on behalf of all Muslim countries, has formally undertaken the effort to define the terms it uses in its official policy-setting documents, it is important to assess the OIC based on those definitions. As the "second largest inter-governmental organization after the United Nations which has membership of 57 states spread over four continents" the OIC reflects the "collective voice of the Muslim world."¹ When meeting at the Summit level, the OIC is represented by heads of state that deliberate "issues of concern to the Member States and the *Ummah*."² So, when the OIC provides notice of definitions (or provides indicators of authoritative sources that define a term), genuine questions arise when decisions or analytical products relating to OIC or OIC Member State activities do not account for a term's defined usage when notice is formally provided that a term has been so defined. It is no different than analyzing a law based on the U.S. Code that depends on the statutory definition of key terms but then ignores the statutory definitions – which is actual malpractice. For example, the OIC defines three terms in ways that differ from the standard Western usage of the same terms: Terrorism, Human Rights and Racism.

Terrorism – "Killing of a Muslim without Right"

Pursuant to Article 102 of the Charter, the OIC served an instrument to the United Nations in 1999 titled the *OIC Convention on Combating International Terrorism*³ where the first two articles of the Convention state that terrorism is to be defined in strictly Islamic legal terms:

- Pursuant to the tenets of the tolerant Islamic Sharia
- Abiding by the lofty, moral and religious principles particularly the provisions of the Islamic Sharia

Human Rights – "Shari'a Law"

The OIC defines "human rights" as Shari'a Law through the "Cairo Declaration on Human Rights in Islam" that was ratified in 1990 and served as an instrument to the United Nations in 1993.⁴ The final two articles of the Declaration make it clear that human rights are exclusively defined in terms of Islamic law:

- **ARTICLE 24:** All the rights and freedoms stipulated in this Declaration are subject to the Islamic *Shari'ah*.
- **ARTICLE 25:** The Islamic *Shari'ah* is the only source of reference for the explanation or clarification of any of the articles of this Declaration.

Racism – "Defamation of Islam"

In official documents, the OIC frames the term "racism" so that its use and meaning is associated with "defamation of Islam" or "Islamophobia" or related terms that center on enforcing Islamic legal notions of slander (as defined in Islamic law). Two examples:

- **Defamation of religions, 5)** The World Conference considers that the defamation of an individual's religion provides the basis of, legitimizes and inevitably leads to the manifestation of racism, including in their structural forms, such as Islamophobia against the adherents of that religion.
- **Contemporary forms of racism, 3)** Contemporary forms of racism are based on discrimination and disparagement on a cultural, rather than biological basis. In this content, the increasing trend of Islamophobia, as a distinct form of xenophobia in non-Muslim societies is very alarming.⁵

1. "About the OIC," Organization of The Islamic Conference.

2. *Charter of the Organisation of the Islamic Conference*.

3. *OIC Convention to Combat Terrorism (1999-1420H)*.

4. ANNEX TO RES. NO.49/19-P THE CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM.

5. Report of the Secretary General on the Defamation of Islam," Reports of the Secretary General on Legal Affairs Submitted to the 28th Session of the Islamic Conference of Foreign Ministers, Bamako, Mali, 25-29 June 2001.



Returning to the *Darul Uloom* - What was Given

The call for the conference was issued in a 25 February 2008 "Declaration" at the earlier "All India Anti-Terror Conference" sponsored by the *Darul Uloom* and chaired by *Deobandis*.³⁷ Stating that the *fatwa* gives the "Islamic stand" on issues of global peace and terrorism "in light of the Qur'an and *shari'a*," the question is whether it asserts a specific legal basis or is rather arguing along general principles. From the document, the discussion of peace and security involves issues that relate to the killing of innocents as well as the bringing of mischief to the land:

- The initiative for the anti-terror *fatwa* came from Maulana Mahmood Madani, the Indian parliamentarian who asked the *Darul Uloom Deoband* to clarify the Islamic stand on global peace in light of *shari'a*. The *fatwa*, signed by *Darul Uloom Deoband* grand mufti Maulana Habibur Rahman, stated: "Islam is a religion of peace and security. In its eyes, on any part over the surface of the earth, **spreading mischief**, rioting, breach of peace, bloodshed, **killing of innocent persons** and plundering are the most inhuman crimes."³⁸

Earlier in the year, the *Darul Uloom Deoband* issued the much-publicized anti-terror declaration based on the legal theory that the killing of a single person was like killing all humanity. The June *fatwa* ratified that declaration:

- The *fatwa* is actually the ratification of an anti-terror declaration issued by the *Darul Uloom Deoband* earlier this year. The declaration, which stated that killing a single person is tantamount to the killing of all humanity, without differentiation based on creed, was adopted last February by

The initiative for the anti-terror fatwa came from Maulana Mahmood Madan.

³⁷ "Indian Clerics' Anti-Terror Conference Issues Declaration against Terror, Blames 'Tyrant and Colonial Master of the West [i.e. U.S.]' for Aggression in Muslim World," MEMRI Special Dispatch No. 1856, 29 February 2008, URL: <<http://www.memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP185608>>, accessed 24 June 2008.

³⁸ "Indian Clerics Conference," MEMRI Special Dispatch Series No. 1959, 13 June 2008, URL: <<http://www.memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP195908>>, accessed 21 June 2008. – From MEMRI Footnote 3: The Hindu (India), June 1, 2008.



about 10,000 scholars, muftis, clerics and madrassa teachers from across India.³⁹

Deobandi leadership restated this view when saying that terrorism is the targeted killing of innocents by all who undertake such acts:

- Maulana Mahmood Madani and Maulana Marghoobur Rahman, who is rector of *Darul Uloom Deoband*, were among a dozen prominent Indian clerics who addressed the conference. According to a report, Maulana Madani said: "Any action that **targets innocents**, whether by an individual or by any government or by a private organisation anywhere in the world constitutes, according to Islam, an act of terrorism."⁴⁰

As with the June *fatwa*, news reports of the initial *Darul Uloom Deoband* declaration in February 2008 used language that remained tightly aligned with the 'killing of humanity,' oppression, and the 'bringing of mischief to the land' narrative:

- "Islam is the religion of mercy for all humanity. It is the fountainhead of eternal peace, tranquility [and] security. Islam has given so much importance to human beings that it regards the killing of a single person [as] the killing [of] the entire humanity, without differentiation based on creed and caste. Its teaching of peace encompasses all humanity. Islam has taught its followers to treat all mankind with equality, mercy, tolerance [and] justice. Islam sternly condemns all kinds of oppression, violence and terrorism. It has regarded oppression, mischief, rioting and murdering among [the] severest sins and crimes."⁴¹

³⁹ MEMRI Special Dispatch 1959. From MEMRI Footnote 5: MEMRI Special Dispatch Series No. 1856, "Indian Clerics' Anti-Terror Conference Issues Declaration against Terror, Blames 'Tyrant and Colonial Master of the West [i.e. U.S.]' for Aggression in Muslim World," <http://www.memri.org/bin/articles.cgi?Page=subjects&Area=urdu&ID=SP185608>

⁴⁰ MEMRI Special Dispatch 1959. From MEMRI Footnote 8: Hindustan Times (India), June 1, 2008.

⁴¹ "Indian Clerics' Anti-Terror Conference Issues Declaration against Terror, Blames 'Tyrant and Colonial Master of the West [i.e. U.S.]' for Aggression in Muslim World," MEMRI Special Dispatch No. 1856, 29 February 2008, URL: <http://www.>



From the last two citations, with the comment "any action that **targets innocents**, ...by any government ... anywhere in the world constitutes, according to Islam, an act of terrorism,"⁴² followed by the statement that "Islam sternly condemns all kinds of oppression, violence and terrorism," there is the obvious question as to whether a veiled reference is being made to the United States in the War on Terror (WOT).

"Global Peace in Light of Shari'a Explained. While this paper is primarily concerned with Islamic notions of terrorism, the *fatwa* does so in conjunction with "global peace in light of *shari'a*." Because this language binds the *Deobandis* to Islamic concepts of peace, a review is in order. In the forward to Pakistani Brigadier General's *Quranic Concept of War*, Allah Bukhsh K. Brohi, former Pakistani Advocate General and Ambassador to India, discussed international affairs in the classic Islamic context that sees the world as divided into two irreconcilable camps; the world of Islam and peace - the *dar al-Islam* - and the world of the infidel, disbelief and war – the *dar al-harb*.⁴³ Islamic law designates a person from the territory of war as *harbi*. From the monograph *Islamic Law of Nations*, *Shaybani's Siyar*, Khadduri defines *harbi* as "a person belonging to the territory of war, equivalent to an alien in modern terminology, but may be regarded as an enemy as well since he was also in a state of war with the Muslims."⁴⁴ Brohi explains that because the *dar al-harb* is the world of rebellion and defiance against Allah, there can never be a basis for anything beyond temporary accommodation:

- Islam views the world as though it were bipolarized in two opposing camps -- *Darul Salam* facing *Darul Harb* -- the first one is submissive to the Lord in cooperating with God's

... because the *dar al-harb* is the world of rebellion and defiance against Allah, there can never be a basis for anything more than temporary accommodation

memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP185608>, accessed 24 June 2008.

⁴² MEMRI Special Dispatch 1959. From MEMRI Footnote 8: Hindustan Times (India), June 1, 2008.

⁴³ *The Quranic Concept of War* by Brigadier S.K. Malik, (Lahore, Pakistan: Wajid Al's Ltd., 1979. (with a forward by General Zia-ul-Haq) (This paper relies on the 1986 First Indian Reprint), xviii-xix. Cited hereafter as S.K. Malik, QCW.

⁴⁴ Muhammad ibn Hasan al-Shaybani, *The Islamic Law of Nations: Shaybani's Siyar (Kitab al-siyar al-kabir)*, trans. Majid Khadduri, (Baltimore: Johns Hopkins Press, 1966), 47. Cited hereafter as al-Khadduri, *Shaybani's Siyar*, 54.



purpose *to establish peace*, order and such other preconditions of human development, but the second one on the other hand is engaged in perpetuating defiance of the same Lord. Such a state of affairs which engages anyone in rebellion against God's will is termed as "*Fitna*" – which would literally mean test or trial.⁴⁵ (Emphasis added)

Given the realities of a world order based on the nation-state, Brohi adopts a realistic long-term perspective when explaining that the current order, along with the concepts of "peace" that it supports, is a temporary reality that will change when Islam is able to reclaim its power:

- It is true that in modern society the maintenance of international order and peace in the international community of mankind proceeds upon the premises of sovereign equality of 'nation-states' whose number at present is 151. And this number is reached by taking notice of the *territorial* aspect of structure of a modern nation-state. The idea of the *Ummah* of Mohammad, the Prophet of Islam, is incapable of being realized within the frame-work of territorial states much less an enduring basis of viewing the world as having been polarized between the **world of Islam** and the **world of war**. Islam, in my understanding, does not subscribe to the concept of the territorial state and it would be recalled that even Iqbal in his lectures on "The Reconstruction of Religious Thought in Islam" went so far as to suggest that, Muslim states, to begin with, be treated as territorial states and that too only as an **interim measure** since these are later on to be incorporated into commonwealth of Muslim *states*.⁴⁶ (Emphasis added)

From this, a relationship between Islamic concepts of peace and Islamic doctrines of *Jihad* begin to emerge. In the introduction to *Shaybani's Siyar*, Majid Khadduri's explanation of *Jihad* is in line with Brohi's. Noting the classic "complete way of life" formula,⁴⁷ Khadduri

It is true that in modern society the maintenance of international order and peace in the international community of mankind proceeds upon the premises of sovereign equality of 'nation-states' whose number at present is 151.

⁴⁵ S. K. Malik, QCW, xviii-xix.

⁴⁶ S. K. Malik, QCW, xx.

⁴⁷ Khadduri, *Shaybani's Siyar*, 10. "In order to reconstruct an Islamic theory of the law of nations we should recall that Islam is not merely a set of religious ideas



confirms the legal status of the *Siyar* before explaining the Islamic political division of the world into the same two camps discussed by Brohi:

- In Islamic theory, the world was split into two divisions: *the territory of Islam* (the *dar al-Islam*), which may be called *Pax Islamica*, comprising Islamic and non-Islamic communities that had accepted Islamic sovereignty, and the rest of the world, called the *dar al-harb*, or *the territory of war*. The first included the community of believers as well as those who entered into alliance with Islam.⁴⁸ (Emphasis added)

Here Khadduri associates Islamic peace with the *dar al-Islam* – under Islamic law. Because the division is permanent, the world of unbelief (the *dar al-harb*) remains the permanent object of Islamic conquest:

- The world surrounding the Islamic state, composed of *all other nations and territories* that had not been brought under its rule, was collectively known as the “territory of war.” The territory of war was the object, not the subject, of the Islamic legal system, and it was the duty of Muslim rulers to bring it under Islamic sovereignty *whenever the strength was there’s to do so*.⁴⁹ (Emphasis added)

This brings context to Khadduri’s definition of *harbi* as “enemy person; person from the territory of war.”⁵⁰ Because Islam is obligated to make the entire world a part of the “abode of peace,” a state of hostility exists between the *dar al-Islam* and *dar al-harb* until the abode of war is subsumed. Of course, the legal consequence of this doctrine is that countries from the *dar al-harb*, the United States for example, are populated by citizens designated as *harbi* and, hence, remain in a permanent state of war with Islam:

- The *dar al-Islam*, in theory, was in a state of war with the *dar al-harb*, because the ultimate objective of Islam was the whole

The dar al-Islam, in theory, was in a state of war with the dar al-harb, because the ultimate objective of Islam was the whole world.

and practices but also a political community (the *umma*) endowed with central authority.”

⁴⁸ Khadduri, *Shaybani’s Siyar*, 11.

⁴⁹ Khadduri, *Shaybani’s Siyar*, 12.

⁵⁰ Khadduri, *Shaybani’s Siyar*, 299.



world. If the *dar al-harb* were reduced by Islam, the public order of *Pax Islamica* would supersede all others, and non-Muslim communities would either become part of the Islamic community or submit to its sovereignty as *tolerated* religious communities or as autonomous entities possessing treaty relations with it.⁵¹ (Emphasis added)

It is in this context that “global peace in light of *shari’a*” takes form. Khadduri explains that *Jihad* is conducted in furtherance of an Islamic notion of peace that can only be realized when the entire world is brought under the *dar al-Islam*:

- The state of war should, accordingly, come to an end when the *dar-al-harb* had disappeared. At such a stage the *dar al-Islam*, as the abode of peace, would reign supreme in the world. It may be argued, therefore, that the ultimate objective of Islam is the achievement of permanent peace rather than the perpetuation of war. Thus the *Jihad*, in Islamic theory, was a temporary legal device designed to achieve Islam’s ideal public order by transforming the *dar al-harb* into the *dar al-Islam*.⁵²

The state of war should, accordingly, come to an end when the dar-al-harb had disappeared.

Until this permanent end-state of Islamic peace is achieved, Islam does not recognize other notions of peace (as a permanent state) because it constitutes a bar to waging *Jihad*. Khadduri explains:

- Peace does not supersede the state of war, for the *Jihad* is a legal duty prescribed by the law; peace means the grant of security or protection to non-Muslims for certain specified purposes, and the achievement of them brings the grant of peace to an end.⁵³

This explains why Islamic law disfavors peace treaties. From *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, truces are disfavored “because [they] entail the nonperformance of *Jihad*.”⁵⁴

⁵¹ Khadduri, *Shaybani’s Siyar*, 13.

⁵² Khadduri, *Shaybani’s Siyar*, 17.

⁵³ Khadduri, *Shaybani’s Siyar*, 54.

⁵⁴ Ahmad ibn Naqib al-Misri, ‘Umdat al-Salik (*Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*), rev. ed. trans. Nuh Ha Mim Keller (Beltsville:



Relying on Qur'an Verse 47:35 for authority (*"So do not be fainthearted and call for peace, when it is you who are the uppermost"*), Islamic law states that the maintenance of a peaceful *status quo* cannot serve as the basis for a truce when circumstances favor success in *Jihad*. When the Pakistani Professor of Islamic law, Imran Ahsan Khan Nyazee, said that the "Muslim community may be considered to be passing through a period of truce," and then associates it with Islam's "present state of weakness,"⁵⁵ he reflects the legal standard that truces with the *dar al harb* are defensive, time limited, and inappropriate once Islam reclaims its strength.⁵⁶ This is in

Amana Publications, 1994), Book O "Justice," at o9.0 "Jihad," at o9.16: "Truces." Hereafter cited as *Al-Misri*.

- (O: As for truces, the author does not mention them. In Sacred Law truce means a peace treaty with those hostile to Islam, involving a cessation of fighting for a specified period, whether for payment or something else. The scriptural basis for them includes such Quranic verses as: *"An acquittal from Allah and His Messenger..."* (9:1) and *"If they incline towards peace, then incline towards it also"* (8:61) as well as the truce which the Prophet (Allah bless him and give him peace) made with the Quraysh in the year of Hdaybiya, as related by Bukhari and Muslim.
- Truces are permissible, not obligatory. The only one who may effect a truce is the Muslim ruler of a region (or his representative) with a segment of the non-Muslims of the region, or the caliph (o22) (or his representative). When made with other than a *portion* of the non-Muslims, or when made with all of them, or with all in a particular region such as India or Asia Minor, then only the caliph (or his representative) may effect it, *for it is a matter of the gravest consequence because it entails the nonperformance of jihad, whether globally or in a given locality, and our interest must be looked after therein*, which is why it is best left to the caliph under any circumstances, or to someone he delegates to see to the interests of the various regions.

⁵⁵ Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihad*, 2d ed., (Kuala Lumpur: The Other Press, 2002), 252-254. Cited hereafter as Nyazee, *Ijtihad*.

⁵⁶ al-Misri, Book O "Justice," at o9.0: "Jihad," at o9.16 "Truces."

- There must be some interest served in making a truce other than mere preservation of the status quo. Allah most high says, *"So do not be fainthearted and call for peace, when it is you who are the uppermost"* (Qur'an 47:35). *Interests that justify making a truce are such things as Muslim weakness because of lack of numbers or material*, or the hope of an enemy becoming Muslim, for the Prophet (Allah bless him and give him peace) made a truce in the year Mecca was liberated with Safwan ibn Umayya for four months in hope that he would become Muslim, and he entered Islam before its time was up. *If the Muslims are weak, a truce may be made for ten years if necessary*, for the Prophet (Allah bless him and grant him Peace) made a truce with Quraysh for that long, as it related by Abu Dawud. It is not permissible to stipulate longer than that, save by means of new truces, each of which does not exceed ten years.



line with Brohi's earlier statement. Nyazee also recognizes the classic Eighth century Islamic division of the world into two spheres, the *dar al-Islam* and the *dar al-Harb*, a real Islamic distinction first established by Abu Hanifa as recorded by Muhammad ibn al-Hasan al-Shaybani in his *Siyar*.⁵⁷ Explaining early Islamic law on treaties, Khadduri confirms Nyazee's restatement of the law that Muslim rulers can only resort to peace treaties out of necessity:

- Muslim authorities concluded peace treaties with the enemy only when it was to the advantage of Islam, whether because it found itself in a state of temporary weakness following a military defeat or because of engagement in war in another area.⁵⁸

Reliance of the Traveller reflects this rule:

- Interests that justify making a truce are such things as Muslim weakness because of lack of numbers or material, or the hope of an enemy becoming Muslim.⁵⁹

Majid Khadduri echoes this point in his book *War and Peace in the Law of Islam*:

- "By their very nature treaties must be of temporary duration, for in Muslim legal theory the normal relations between Muslim and non-Muslim territories are not peaceful, but warlike."⁶⁰

This brings Khadduri to the Islamic notion of peace as the culminating product of *Jihad*:

- The *Jihad*, it will be recalled, was regarded as Islam's instrument to transform the *dar al-harb* into the *dar al-Islam*. If that end had ever been achieved, the *dar al-harb* would have been reduced to non-existence and the *raison d'être* of *Jihad*, except for combating Islam's internal enemies, would have

"By their very nature treaties must be of temporary duration, for in Muslim legal theory the normal relations between Muslim and non-Muslim territories are not peaceful, but warlike."

⁵⁷ Nyazee, *Ijtihad*, 172.

⁵⁸ Khadduri, al-Shaybani, 54.

⁵⁹ al-Misri, Book O "Justice," at o9.0 "Jihad," at o9.16 "Truces."

⁶⁰ Majid Khadduri, *War and Peace in the Law of Islam*, (Clark, NJ: Lawbook Exchange, 2006 [reprint from Johns Hopkins Press: Baltimore, 1955]), 220. Cited hereafter as Khadduri, *War and Peace*.



eventually disappeared. We may argue, therefore, that in Islamic legal theory, the ultimate objective of Islam was not war *per se*, but the ultimate achievement of peace. This may be regarded as another reason why the *Jihad* was not made, as it has been by the *Kharijis*, the sixth pillar of faith, since in theory it was merely a temporary instrument to establish ultimate peace, rather than a permanent article of the faith.⁶¹

Ultimate peace, bringing the entire world under Islamic law, is the peace the *Deobandis* seek when stating that their objective is “global peace in light of *Shari’a*.” In this, the *Deobandis* of India are in accord with Pakistani notions of the same as noted by the same Pakistanis that this analysis relied on: Brigadier S. K. Malik, Advocate General Brohi and Islamic Law Professor Khan. As Brigadier S. K. Malik stated:

- Quran spelt out the object of the divine war against Paganism soon after it commanded the Muslims to take recourse to fighting. “*And fight then on,*” ruled the Book, “*until there is no more tumult and oppression, and there prevail justice and faith in Allah.*” [Baqara - 2: 193] Similar instructions were repeated after the termination of the battle of Badr, about a year later. “*And fight them on,*” the Holy Quran directed them on that occasion, “*until there is no more tumult and oppression, and there prevail justice and faith in Allah altogether and everywhere.*” [Anfal - 8:39] These injunctions laid down the ultimate and absolute divine purpose behind this war which was ‘to obtain conditions of peace, justice and faith.’⁶²

Hence, the Indian Grand Mufti and the Pakistani Brigadier agree. From the Indian Grand Mufti:

- “Islam Has Come to Wipe Out All Kinds of Terrorism and to Spread... Global Peace”⁶³

Form the Pakistani Brigadier:

Ultimate peace, bringing the entire world under Islamic law, is the peace the Deobandis seek when stating that their objective is “global peace in light of Shari’a.”

⁶¹ Khadduri, *War and Peace*, 141.

⁶² *The Quranic Concept of War* by Brigadier S.K. Malik, (Lahore, Pakistan: Wajid Al’s Ltd., 1979. (with a forward by General Zia-ul-Haq) (This paper relies on the 1986 First Indian Reprint), 28, 28. Cited hereafter as S.K. Malik, QCW.

⁶³ MEMRI Special Dispatch 1959.



- The Holy Quran does not interpret war in terms of narrow national interests but points to the realization of universal peace and justice.⁶⁴

When the *Deobandis* of the *Darul Uloom* base their *fatwas* of peace on “global peace in light of *shari’a*,” it is the peace that comes when the entire world has been brought under the *dar al-Islam*; through *dawah* if possible, but through *Jihad* if necessary. As the Pakistani Brigadier made clear, to achieve such a peace, nuclear war is authorized.⁶⁵

Because this concept of peace finds support in Islamic law, consideration should be given to the possibility that it reflects Islamic legal doctrines of peace. It is with this understanding of peace that one should consider the 39 Imams’ insistence when, in October 2006, they stated that there is no compulsion in religion and that Islam does not force individual conversion in a section titled “Forced Conversions” in the signed *Open Letter to His Holiness Pope Benedict XVI*:

- Islamic teaching did not prescribe that the conquered populations be forced or coerced into converting. Indeed, many of the first areas conquered by the Muslims remained predominantly non-Muslim for centuries. Had Muslims desired to convert all others by force, there would not be a single church or synagogue left anywhere in the Islamic world. The command *There is no compulsion in religion* means now what it meant then. The mere fact of a person being non-Muslim has never been a legitimate *casus belli* in Islamic law or belief. ...We emphatically agree that forcing others to believe — if such a thing be truly possible at all — is not pleasing to God and that God is not pleased by blood.⁶⁶

A close review of the Imams’ statement reveals that they may be correct, that Islam does not wage *Jihad* to force individual conversion to Islamic faith and yet substantively misleading because Islam is under *Jihad* obligation to bring all individuals under Islamic law. A

The Holy Quran does not interpret war in terms of narrow national interests but points to the realization of universal peace and justice.

Islamic teaching did not prescribe that the conquered populations be forced or coerced into converting.

⁶⁴ S.K. Malik, QCW, 1.

⁶⁵ S.K. Malik, QCW, 60.

⁶⁶ *Open Letter to His Holiness Pope Benedict XVI*, 12 October 2006, URL: http://www.duaatalislam.com/english_letter.htm. 3 Cited hereafter as *Open Letter to Pope Benedict*.



close reading of the *Open Letter* on conversion in conjunction with the discussion on Islamic concepts of peace reveals that there may be no inherent contradiction between the two.

Major Hasan and Fort Hood. The statements coming from the Indian *Deobandis* comport with Major Hasan's argument in his presentation to fellow psychiatrists and Army officers at Walter Reed Army Hospital in June 2007 when stating that sending Muslim military personnel to fight in the Middle East violated the Islamic legal proscription against the killing without right.⁶⁷ For this reason, the Major recommended that the "Department of Defense allow Muslim Soldiers the option of being released as "conscientious objectors" "to increase troop morale and decrease adverse events"⁶⁸ where Hasan defined adverse events as the permissive killing of fellow U.S. soldiers and engaging in espionage.⁶⁹ The Major supported his argument against "killing Muslims unjustly" by reference to Quranic authority⁷⁰ before

⁶⁷ Slide 49 "Conclusions," Major Nidal M. Hasan, "The Koranic World View as it Relates to Muslims in the U.S. Military," June 2007, first given to fellow psychiatrist/interns at Walter Reed Army Hospital in Washington, D.C., published by the Washington Post as a PowerPoint in PDF format at URL: <http://www.washingtonpost.com/wp-dyn/content/gallery/2009/11/10/GA2009111000920.html>, 5 November 2009. Cited hereafter as "Slide # "slide title," Major Hasan Briefing,." in part:

- Fighting to establish the Islamic State to please God, even if by force, is condoned by Islam.
- Muslim Soldiers should not serve in any capacity that renders them at risk to hurting/killing believers unjustly → will vary!

⁶⁸ Slide 50 "Recommendations," Major Hasan Briefing.

⁶⁹ Slide 13 "Adverse Events," Major Hasan Briefing:

Adverse Events

- Hasan Akbar: 101st Airborne Division's 326th Engineer Battalion – Through grenades killing/wounding many.
- Army Capt. James Yee – charged with espionage; later acquitted
- Marine Cpl. Waseef Ali Hassoun; deserted in Iraq; Cited disapproval of war as a Muslim.
- Army Sergeant Abdullah William Webster; refused to deploy to Iraq based on religious beliefs

⁷⁰ Slide 12 "Muslims in the Military," Major Hasan Briefing:

Muslims in the Military

- **[4:93]** And whoever kills a believer intentionally, his punishment is hell; he shall abide in it, and Allah will send His wrath on him and curse him and prepare for him a painful chastisement.



transitioning to his open declaration that if he was ordered to deploy to the Middle East, because he would be at risk of “killing someone whose killing Allah has forbidden except for a just cause,” he would be compelled to engage in *Jihad*. Hasan provided a clearly stated detailed explanation - given to U.S. military officers many times - of the conditions by which he would declare himself a jihadi and kill fellow soldiers as required by Islam.⁷¹ The Major stated his personal view in *Slide 48* when, after listing off a series of actors (Osama bin Laden, the Taliban, suicide bombers and Iran), he stated, in the conditional, that “if Muslim groups can convince Muslims that they are fighting for God against injustices of the “infidels”; i.e.: enemies of Islam, then Muslims can become a potent adversary i.e.: suicide bombing, etc.” When concluding his presentation by declaring that “**we** love death more than you love life,” the Major included himself as a part of the “**we**”.⁷² When learning of his impending deployment to the Middle East, Hasan carried through on his warning and, on November 5, 2009, went on a shooting spree at Fort Hood, Texas killing 13 and injuring many more.

The language used by Major Hasan and that of the *Deobandis* is similar. For both, the choice of language is not random. Consistent use of a language-form by those whose status indicates they have the credentials to speak with authority on principles of Islamic law should serve as notice that they may be using terms of art in recognized formulas that align their declarations (and *fatwas*) with specific points of Islamic law they say serves as the basis for the positions they adopt.⁷³ The question is whether the views of the *Deobandis* and Major Hasan are accidentally or necessarily aligned.

There is marked similarity between the language used by Major Hasan and the Deobandis.

- [17:33] And do not kill anyone whose killing Allah has forbidden, except for a just cause ...

⁷¹ For example, see Slide 35 “Jihad-rule of Abrogation,” Slide 37 “Defensive Verses,” Slide 38 “Defensive Jihad Cont,” Slide 39 “Defensive Jihad Cont,” Slide 40 “Defensive Verses Cont,” Slide 41 “Defensive Jihad Cont,” Slide 42 “Verse of the Sword,” Slide 43 “Verse of the Sword Cont,” Slide 44 “Offensive Jihad Cont” and. Slide 48 stating in part:

⁷² Slide 48 “Comments,” Major Hasan Briefing.

⁷³ **NOTE:** In the introduction to his translation of *The Hidaya*, Imran Ahsan Khan Nyzaee provides a useful analogy to the use of “macros” in software programming when explaining that Islamic terms mean what Islamic law defines them to mean where there is no real understanding of the



Aligned by “Terrorism in Light of the Qur’an and Shari’a – i.e., through Shari’a Law

When referring to the Islamic legal basis for terrorism, the declaration (and subsequent *fatwa*) appears to centralize on two Qur’an Verses – Verses 5:32 and 5:33:

- *On that account: We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people. Then although there came to them our messengers with clear signs, yet, even after that, many of them continued to commit excesses in the land.*
(Quran 5:32)
- *The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter;⁷⁴ (Quran 5:33)*

statements of the law without a pre-existing understanding of the terms as already defined with specificity. Hence, Nyazee explains:

- The book (The Hidayah) contains a huge amount of “coded” information. We use the term coded here to mean what people in the computer world would mean. Within information are “macros” – short statements that pack within them pages of information. The macro needs to be preprocessed before the code can reveal its meaning.
- Hence, Islamic law, in this instance *The Hidayah*, can only be understood in terms of what Islamic law intends the term to mean where the doctrinal terms are only to be used according to known defined criteria - as pre-existing, pre-defined, pre-loaded “macros”).

--- al-Marghinani, Burhan al-Din al-Farghani, *Al-Hidaya: The Guidance*, Vol 1, trans. Imran Ahsan Khan Nyazee (Bristol, England: Amal Press, 2008), xxiv.

⁷⁴ *The Meaning of the Holy Qur’an*, 10th ed., trans. ‘Abdullah Yusuf ‘Ali (Beltsville: Amana Publications, 1999). Cited hereafter as Yusuf Ali.

- **NOTE:** Unless otherwise noted, all citations to Qur’an verses are from Yusuf Ali. The exception will be when a verse is part of a larger cited piece that includes its own Quranic Verses – as, for example, when referring to Qur’anic verses cited in a larger body of Islamic law or when relying on *Tafsir Ibn Kathir*.



Parsed, the two verses read as follows:

- **Verse 5:32.** The verse restates a rule for the “*Children of Israel*” along with the stated exception; “*unless it be for murder or for spreading mischief in the land.*”
 - The rule was that “if any one slew a person it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people.”
 - The verse concludes with the observation that even with such clear signs, “many of them continued to commit excesses in the land.”
- **Verse 5:33.** Because the “*Children of Israel . . . continued to commit excesses in the land,*” Verse 5:33 provides the new standard. For those who:
 - wage war against Allah and His Messenger
 - and/or strive with might and main for mischief through the land
- *The punishment* commanded by Allah . . . is either:
 - execution
 - or crucifixion,
 - or the cutting off of hands and feet from opposite sides
 - or exile from the land

How does one begin to make sense of these verses “in light of *shari’a*”? The idea that one can simply read the verses and form one’s own opinion is immediately ruled out.⁷⁵ A good place to start would be

How does one begin to make sense of these verses “in light of shari’a”?

⁷⁵ Al-Misri, Book R “Holding One’s Tongue,” Section r14.1 “Explaining the Koran by Personal Opinion.”

- R14.1. The Prophet (Allah bless him and give him peace) said, “Whoever speaks of the Book of Allah from his own opinion is in error.”



with a review of an authoritative commentary,⁷⁶ for example, the *Tafsir*⁷⁷ *Ibn Kathir*.⁷⁸

Tafsir Ibn Kathir Explains Qur'an Verses 5:32 & 5:33

Verse 5:32. After stating the verse in whole,⁷⁹ *Tafsir Ibn Kathir* provides a section by section commentary of 5:32. For the section “*it would be as if he killed all mankind*” Ibn Kathir explains that it relates to the killing of innocent Muslims. Innocent because the “murder” in Verse 5:32 (“*unless it be for murder or for spreading mischief in the land*”) concerns the killing without right. Muslim because the clause “*it would be as if he killed all mankind*” is explained to mean “*He who allows himself to shed the blood of a Muslim, is like he who allows shedding the blood of all people.*” Kathir further explains the prohibition as being against one who “*kills a believing soul.*”⁸⁰ Hence, the rule is

⁷⁶ Al-Misri, Book R “Holding One’s Tongue,” § r14.3 “Explaining the Koran by Personal Opinion.”

- § r14.3. Koran and *hadith* commentaries are of tremendous importance to teachers, speakers, writers, and translators who are preparing materials to present to Muslim audiences. The dictionary is not enough.

⁷⁷ Al-Hafiz Abu al-Fida’ ‘Imad Ad-Din Isma’il bin ‘Umar bin Kathir Al-Qurashi Al-Busrawi ibn Kathir, *Tafsir of Ibn Kathir*, vol. 1, Trans. Abdul-Malik Mujahid. (Riyadh: Darussalam, 2000), 5. Cited hereafter as *ibn Kathir*.

- **NOTE:** The *Tafsir al-Qur’an al-Azim* (*Tafsir of the Noble Qur’an*), better known as the *Tafsir ibn Kathir* (hereafter *Tafsir*) is the most widely relied on interpretation of the Qur’an in the Arabic language.⁷⁷ It is also the most renowned and accepted explanation of the Qur’an in the entire world. In fact, most Muslims consider the *Tafsir* to be the best interpretation of the Qur’an based on the Qur’an and *Sunnah*.

⁷⁸ From al-Misri, Book X “Biographical Notes,” § x165:

- **Ibn Kathir** is Isma’il ibn ‘Umar ibn Kathir ibn Daww ibn Dara’, Abu al-Fida’ ‘Imad al-Din, born in 701/1302 in a village outside of Damascus, where he moved with his brother at the age of five. He later traveled in pursuit of Sacred Knowledge, becoming a principle **Shafi’i scholar**, *hadith* master (*hafiz*), and historian who authored works in each of these fields, though he is perhaps best known for his four-volume *Tafsir al-Qur’an al-Azim* [*Commentary on the Mighty Koran*], which reflect its author’s magisterial command of the sciences of *hadith*. He died in Damascus in 774/1373.

⁷⁹ *Tafsir of Ibn Kathir*, vol. 3, at 159. The relevant verse as presented in the *tafsir*:

- *On that account: We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people. Then although there came to them Our messengers with clear signs, yet, even after that, many of them continued to commit excesses in the land. (Qur’an 5:32)*

⁸⁰ *Tasfir of Ibn Kathir*, vol. 3, at 159. In detail, the relevant commentary reads:



that one cannot kill a Muslim unless he commits murder or “*spread(s) mischief in the land.*” This explanation restricts the meaning of “person” in Verse 5:32 to Muslims who have neither 1) killed without right nor 2) “*spread mischief in the land.*”

“Killing without Right” – What it is. The restricted definition of “person” in Verse 5:32 is silent on the slaying of non-Muslims. Moreover, when *Deobandi* leaders speak of the targeted killing of “innocents,” the language mirrors Ibn Kathir’s explanation that the killing of an innocent means the killing of a “soul that Allah has forbidden killing.”⁸¹ While the *Deobandi* language is silent on the treatment of non-Muslims, it finds Islamic legal support. From *Reliance of the Traveller*, an entire section is dedicated to the question of who can and cannot be killed with cause in Book O “Justice,” §o1.0 “Who is Subject to Retaliation for Injurious Crimes:”⁸²

- *Injurious crimes* include not only those committed with injurious weapons, but those inflicted otherwise as well. Such as with sorcery. Killing without right is, after unbelief, one of the very worst enormities, as Shafi’i explicitly states in Muzani’s *The Epitome*. The Prophet (Allah bless him and give him peace) said:
 - “The blood of a Muslim man who testifies that there is no god but Allah and that I am the Messenger of Allah is not lawful to shed unless he be one of three: a married adulterer, someone killed in retaliation for killing another,

The restricted definition of “person” in Verse 5:32 is silent on the slaying of non-Muslims.

- On the meaning of verse 5:32: “(it would be as if he killed all mankind. . .) means, “Whoever kills one soul that Allah has forbidden killing, is just like he who kills all mankind.” Sa’id bin Jubayr said, “He who allows himself to shed the blood of a Muslim, is like he who allows shedding the blood of all people. He who forbids shedding the blood of one Muslim, is like he who forbids shedding the blood of all people.”
- Additionally, “(it would be as if he killed all mankind. . .) He who kills a believing soul intentionally, Allah makes the Fire and Hell his abode, He will become angry with him, and curse him, and has prepared a tremendous punishment for him, equal to if he had killed all people, ...”

⁸¹ *Tafsir Ibn Kathir*, vol. 3, at 159.

⁸² Al-Misri, Book O “Justice,” § o1.0 “Who is Subject to Retaliation for Injurious Crimes.



or someone who abandons his religion and the Muslim community,”

- And in another hadith, “The killing of a believer is more heinous in Allah’s sight that (sic) doing away with all this world.”
- Allah Most High Says: “...and not to slay the soul that Allah has forbidden, except with right”⁸³ (Koran 6:151)⁸⁴, and,

⁸³ **NOTE – Detail on citation from *Reliance of the Traveller*:** Yusuf Ali translates “except with justice” as “except by way of justice and law.” In full, Verse 6:151 reads:

- Say: “Come, I will rehearse what Allah hath really prohibited you from”: Join not anything as equal with Him; be good to your parents; kill not your children on a plea of want; - We provide sustenance for you and for them; - come not nigh to shameful deeds. Whether open or secret; take not life, which Allah hath made sacred, except by way of justice and law: thus doth He command you, that ye may learn wisdom. (Qur’an 6:151)

⁸⁴ **NOTE – Detail on citation from *al-Misri*:** *Tafsir Ibn Kathir*, vol. 3, at 514-15. NOTE: Although diluted, Ibn Kathir’s explanation of Verse 6:151 sheds some protection from the “killing without right” to non-Muslims (but is not equal to killing a Muslim without right as noted in later discussion of § o1.2): From the section “The Prohibition of Unjustified Killing:”

- Allah said, (*And kill not anyone whom Allah has forbidden, except for a just cause* (according to Islamic law).)
- This part of the Ayah emphasizes this prohibition in specific, although it is included in the immoral sins committed openly and in secret. In the Two Sahihs, it is recorded that Ibn Mas’ud said that the Messenger of Allah said,
- (*The blood of a Muslim person who testifies that there is no deity worthy of worship except Allah and that I am the Messenger of Allah is prohibited, except for three offenses: a married person who commits illegal sexual intercourse, life for life, and whoever reverts from the religion and abandons the Jama’ah* (the community of faithful believers).)
- There is a prohibition, a warning and a threat against killing the *Mu’ahid*, i.e., non-Muslims who have a treaty of peace with Muslims. Al-Bukhari recorded that ‘Abdullah bin ‘Amr said that the Prophet said, (*Whoever killed a person having a treaty of protection with Muslims, shall not smell the scent of Paradise, though its scent is perceived from a distance of forty years.*)
- Abu Hurayrah narrated that the Prophet said, (*Whoever killed a person having a treaty of protection with the Muslims, and who enjoys the guarantee of Allah and His Messenger, he will have spoiled the guarantee of Allah for him. He shall not smell the scent of Paradise though its smell is perceived from a distance of seventy years.*)



- “Oh you who believe, retaliation is prescribed for you regarding the slain . . .” (Koran 2:178)⁸⁵

Reliance of the Traveller relies on Shafi'i, the iconic founder of the third doctrinal school of Islamic law for its authority. *Reliance's* codification of the “killing without right” as “among the worst enormities” mirrors the case Major Hasan made in his presentation as well as the subsequent requirement to retaliate against those who do. While § 01.0 expands the list of those that can be “killed with right” to four, (adding adultery and apostasy), the limitation still remains exclusively Muslim. The last comment in § 01.0 relies on Qur'an Verse 2:178 to reminds readers of the obligatory nature of retaliation. On retaliation, Section 01.1, states:

- S 01.1 Retaliation is obligatory if the person entitled wishes to take it against anyone who kills a human being purely intentionally and without right. *Intentionally* is a first restriction and excludes killing someone through an honest mistake, while *purely* excludes a mistake made in a deliberate injury, and *without right* excludes cases of justifiable homicide such as lawful retaliation.⁸⁶

“Killing without Right” – What it is Not. Because the meaning of “person” is left open in § 01.1, to avoid confusion regarding the obligation, the next section, § 01.2, balances the equation by stating those classes of people that **cannot** be made the object of retaliation.

⁸⁵ NOTE – Detail on citation from *al-Misri: Tafsir Ibn Kathir*, vol. 1, at 484-85. NOTE: Even as a disfavored minority view, Ibn Kathir's explanation of Verse 2:178 sheds just a little light on the “killing without right” that extends to non-Muslims: From the section “The Command and the Wisdom behind the Law of Equality:”

- Allah's statement: (*the free for the free, the slave for the slave, and the female for the female.*) was abrogated by the statement life for life (5:45). However, the majority of scholars agree that the Muslim is not killed for a disbeliever whom he kills.
- Al- Bukhari reported that `Ali narrated that Allah's Messenger said: (*The Muslim is not killed for the disbeliever whom he kills.*) No opinion that opposes this ruling could stand correct, nor is there an authentic *Hadith* to contradict it. However, Abu Hanifah thought that the Muslim could be killed for a disbeliever, following the general meaning of the Ayah (5:45) in Surat Al-Ma'idah (chapter 5 in the Qur'an).

⁸⁶ Al-Misri, Book O “Justice,” Section 01.1.



While the entire list is revealing, of immediate importance is §01.2(2) “Muslim(s) for killing a non-Muslim” are “not subject to retaliation.”⁸⁷ [Of note and permissively tailored to accommodate honor killing, §01.2(4) includes “a father and mother for killing their offspring.”]

When the *Deobandis* issued their declaration (and subsequent *fatwa*), they said their pronouncement reflects the “Islamic stand” on terrorism as understood “in the light of the Quran and *shari’a*.” By using language like the “killing a single person is tantamount to the killing of all humanity” or condemning the “target(ing) of innocents,” they used terms of reference that align their stand with Islamic law – most notably by relying on Qur’an Verse 5:32. Analysis of Verse 5:32, along with supporting language, indicates that the proscription against killing without right is limited to the killing of innocent Muslims. This view is supported by the fact that the unsanctioned killing of non-Muslims not only fails to meet the minimum threshold to warrant obligatory retaliation, but that retaliation is affirmatively denied when a Muslim kills a non-Muslim. A side-by-side-by-side comparison of Verse 5:32, its *tafsir* treatment,⁸⁸ and two representative extracts from the *Deoband*^{89,90} declaration (and subsequent *fatwa*) brings the essential parallels forward:

⁸⁷ Al-Misri, Book O “Justice,” Section 01.2. NOTE: The other categories of people for whom retaliation cannot be brought are revealing. From Section 01.2 “The following are not subject to retaliation:”

- (2) a Muslim for killing a non-Muslim;
- (4) a father or mother (or their fathers or mothers) for killing their offspring, or offspring’s offspring;
- (1) a Jewish or Christian subject of the Islamic state for killing an apostate from Islam because a subject of the state is under its protection, while killing an apostate from Islam is without consequence;
- (2) a father and mother (or their fathers or mothers) for killing their offspring; or offspring’s offspring;
- (3) nor is retaliation permissible to a descendent for his ancestor’s killing someone whose death would otherwise entitle the descendent to retaliate, such as when his father kills his mother.

⁸⁸ *Tafsir Ibn Kathir*, vol. 3, at 161, 162.

⁸⁹ MEMRI Special Dispatch 1959.

⁹⁰ “Indian Clerics’ Anti-Terror Conference Issues Declaration against Terror, Blames ‘Tyrant and Colonial Master of the West [i.e. U.S.]’ for Aggression in Muslim World,” MEMRI Special Dispatch No. 1856, 29 February 2008, URL: <http://www.>



<p><u>Qur'an Verse 5:32</u></p> <p><i>On that account: We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people; and if any one saved a life, it would be as if he saved the life of the whole people. Then although there came to them Our messengers with clear signs, yet, even after that, many of them continued to commit excesses in the land.</i></p>	<p><u>Ibn Kathir's explanatory discussion of Verse 5:32</u></p> <p>The clause "it would be as if he killed all mankind" is explained:</p> <ul style="list-style-type: none"> ○ "He who allows himself to shed the blood of a Muslim, is like he who allows shedding the blood of all people." ○ one who "kills a believing soul" 	<p><u>Language from the Deobandi declaration and Fatwa</u></p> <ul style="list-style-type: none"> ○ "In its eyes, on any part over the surface of the earth, ... killing of innocent persons ... are the most inhuman crimes." ○ "... killing a single person is tantamount to killing all humanity ..."
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If the 5:32 analysis is sustained, it means the Islamic concept of terrorism is limited to the killing of Muslims without right. Conversely, because the language is silent on the killing of non-Muslims in any status, as a matter of definition, the killing of non-Muslims by Muslims does not meet the legal threshold to qualify as Islamic terrorism from which an Islamic claim of terrorism could be sustained.

The less-than-equal status of non-Muslims under Islamic law ratifies a institutionalized discriminatory practice that begins at an early age. For example, from the government approved 5th grade Saudi school text, we have the following from the 2005-6 academic school year:

- Whoever obeys the Prophet and accepts the oneness of Allah cannot be loyal to those who oppose Allah and His Prophet, even if they are his closest relatives.
- It is forbidden for a Muslim to be a loyal friend to someone who does not believe in Allah and His Prophet, or someone who fights the religion of Islam.⁹¹

The less-than-equal status of non-Muslims under Islamic law ratifies a process of institutionalized discrimination that begins at an early age.

memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP185608>, accessed 24 June 2008.

⁹¹ Excerpts from Saudi Ministry of Education Textbooks for Islamic Studies: Arabic with English Translation, Center for Religious Freedom of Freedom House with the Institute for Gulf Affairs, 2006, 17, 18 citing Fifth Grade School Text for 2005-6 Academic School Year: *Monotheism, Hadith, Jurisprudence*,



Returning to Major Hasan. Ibn Kathir's language on the "killing of a soul that Allah has forbidden" and *Reliance of the Traveller's* "killing without right" resonates the key point Major Hasan was making in *Slide 12* "Muslims in the Military" when citing two Quranic verses warning that Muslims serving in the U.S. Military cannot engage in hostilities against fellow Muslims as this constitutes "killing without right." From *Slide 12*:

- [4:93] And whoever kills a believer intentionally, his punishment is hell; he shall abide in it, and Allah will send His wrath on him and curse him and prepare for him a painful chastisement.
- [17:33] And do not kill anyone whose killing Allah has forbidden, except for a just cause . . .⁹²

Through these verses, Major Hasan claimed the same "killing without right" standard that undergirds Verse 5:32, especially as amplified by Ibn Kathir and *Reliance of the Traveller*. Applying the ibn Kathir treatment to the verses in Major Hasan's *Slide 12* is revealing. Kathir explains that the phrase in Verse 4:93 "*And whoever kills a believer intentionally*" identifies this act as among the most serious of crimes in Islamic law:

- "This *Ayah* carries a stern warning for those who commit so grave a sin that it is mentioned along with *Shirk* in several *Ayat* of Allah's Book. For instance, in *Surat Al-Furqan*, Allah said,

and *Qur'anic Recitation*, Ministry of Education, Kingdom of Saudi Arabia, 2005-6, 14. Also, from that same class text:

- It is not permitted to be a loyal friend to those who oppose Allah and His Prophet
- A Muslim, even if he lives far away, is your brother in religion. Someone who opposes Allah, even if he is your brother by family tie, is your enemy in religion.
- The companions of the Prophet demonstrated the most astonishing examples of true loyalty to Allah and His religion when they fought against their relatives who battled the Prophet. Allah praised them for this.

⁹² Slide 12 "Muslims in the Military," Major Hasan Briefing.



- *And those who invoke not any other god along with Allah, nor kill such person as Allah has forbidden, except of just cause,*⁹³

This is the same point the *Deobandi* Indian Grand Mufti made earlier.⁹⁴

Just as with Verse 5:32 and *Reliance of the Traveller*, Kathir's *Tafsir* provides *Sahih hadith* (*hadith* established as sacred) to explain both Verses 4:93 and 17:33. From Verse 4:93:

- There are many *Ayat* and *Hadiths* that prohibit murder. In the Two *Sahihs*, it is recorded that Ibn Mas'ud said that the Messenger of Allah said,
 - Blood offenses are the first disputes to be judged between the people on the Day of Resurrection.
- Another *Hadith* states,
 - The destruction of this earthly life is less significant before Allah than killing a Muslim man (or woman).⁹⁵

Under the header "Prohibition of Unlawful Killing," Ibn Kathir likewise relies on *Sahih hadith* for Verse 17:33:

- Allah forbids killing with no legitimate reason. It was reported in the Two *Sahihs* that the Messenger of Allah said:
 - The Blood of a Muslim who bears witness to *la ilaha illallah* and that Muhammad is the Messenger of Allah, is not permissible (to be shed) except in three cases: a soul for a soul (i.e., in the case of murder), an adulterer who is married, and a person who leaves his religion and deserts the *Jama'ah*.
 - If the word were to be destroyed, it would be of less importance to Allah than the Killing of a Muslim.⁹⁶

⁹³ *Tafsir of Ibn Kathir*, vol. 2, at 542.

⁹⁴ See page 2.

⁹⁵ *Tafsir of Ibn Kathir*, vol. 2, at 542.

⁹⁶ *Tafsir of Ibn Kathir*, vol. 5, at 618.



A straight forward analysis of the Islamic legal consequences of the *Darul Uloom's* declaration (and subsequent *fatwa*) suggests that Major Hasan's argument has merit. He certainly made a *prima facie* case.⁹⁷ Because his argument is based on Islamic doctrines of "killing without right" that do not include the killing of non-Muslims, he may not view his acts at Fort Hood as acts of terrorism as they do not constitute terrorism as defined by Islamic law. In fact, Major Hasan qualified his acts as *Jihad*!

Verse 5:33. Authoritative in its own right, Verse 5:32 also anticipates Verse 5:33's statement of both the crime (waging war against Islam and/or bringing chaos to Muslim land) and punishment. A sustained recitation of Ibn Kathir's treatment of Verse 5:33⁹⁸ provides the relevant insight:

- 'Wage war' mentioned here means, oppose and contradict, and it includes disbelief, blocking roads and spreading fear in the fairways. Mischief in the land refers to various types of evil.

⁹⁷ *Black's Law Dictionary*, 1189-1190. Provides the following definitions:

- **Prima Facie - defined:** "At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary."
- **Prima facie case - defined:** "Such as will prevail until contradicted and overcome by other evidence . . . Courts use 'prima facie' to mean not only that plaintiff's evidence would reasonably allow conclusion plaintiff seeks, but also that plaintiff's evidence compels such a conclusion if the defendant produces no evidence to rebut it."
- **Prima Facie Evidence – defined:** "Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or a group or chain of facts constituting the party's claim or defense, and which, if not rebutted or contradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by other evidence."

⁹⁸ *Tafsir Ibn Kathir*, vol. 3, at 159. The relevant verse as presented in the *tafsir*:

- *The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled from the land.* (Qur'an 5:33)



- Ibn Jarir recorded that `Ikrimah and Al-Hasan Al-Basri said that the *Ayat*, (*The recompense of those who wage war against Allah and His Messenger*) . . .
 - "Were revealed about the idolators. Therefore, the *Ayah* decrees that, whoever among them repents before you apprehend them, then you have no right to punish them. This *Ayah* does not save a Muslim from punishment if he kills, causes mischief in the land or wages war against Allah and His Messenger and then joins rank with the disbelievers, before the Muslims are able to catch him. He will still be liable for punishment for the crimes he committed."
- Abu Dawud and An-Nasa'i recorded that `Ikrimah said that Ibn `Abbas said that the *Ayah*, (*The recompense of those who wage war against Allah and His Messenger and do mischief in the land...*)
 - "Was revealed concerning the idolators, those among them who repent before being apprehended, they will still be liable for punishment for the crimes they committed." The correct opinion is that this *Ayah* is general in meaning and includes the idolators and all others who commit the types of crimes the *Ayah* mentioned. Al-Bukhari and Muslim recorded that Abu Qilabah `Abdullah bin Zayd Al-Jarmi, said that Anas bin Malik said, "Eight people of the `Ukl tribe came to the Messenger of Allah and gave him their pledge to follow Islam. Al-Madinah's climate did not suit them and they became sick and complained to Allah's Messenger.
- So he said, (*Go with our shepherd to be treated by the milk and urine of his camels.*)
 - So they went as directed, and after they drank from the camels' milk and urine, they became healthy, and they killed the shepherd and drove away all the camels. The news reached the Prophet and he sent (men) in their pursuit and they were captured. He then ordered that their



hands and feet be cut off (and it was done), and their eyes were branded with heated pieces of iron. Next, they were put in the sun until they died." This is the wording of Muslim . . .

- Allah said, (they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled from the land.)
 - Ali bin Abi Talhah said that Ibn `Abbas said about this *Ayah*, `He who takes up arms in Muslim lands and spreads fear in the fairways and is captured, the Muslim Leader has the choice to either have him killed, crucified or cut off his hands and feet . . .”⁹⁹

From Ibn Kathir, we find that Verse 5:33 applies to both Muslims and non-Muslims, includes disbelief, and focuses on those who take up arms in Muslim lands.¹⁰⁰ Ibn Kathir’s detailed explanation of the verse brings out the general applicability of the punishment to anyone who brings discord (“*tumult and oppression*” or “*mischief in the land*”) to the *Ummah*. As will be discussed, when the Qur’an enumerates a punishment, it becomes mandatory. Relying on *hadith* from the two most authoritative *hadith* collectors, Bukhari and Muslim, the *tafsir* provides an example of how Muhammad executed a Verse 5:33 action.¹⁰¹ Anchored in the Qur’an and sacred *hadith*, the rule of law arising from this example is firmly grounded. It follows that any legal claim, for example the *Deobandi* declaration (and subsequent *fatwa*), that successfully aligns itself with this rule of law will likewise be firmly grounded in that same Sacred Islamic law. A side-by-side-by-side comparison of Verse 5:33, its *tafsir* treatment,¹⁰² and two

⁹⁹ *Tafsir Ibn Kathir*, vol. 3, at 161, 162.

¹⁰⁰ **NOTE:** When Ibn Kahtir uses language like “blocking roads and spreading fear in the fairways,” he is also saying that Verse 5:33 punishment also applies to those who commit the crime of *hiraba* – or highway robbery, brigandage or gangsterism.

¹⁰¹ **NOTE:** See “Treatment of Prisoners in S.K. Malik’s *Quranic Concept of War*,” 15 May 2007 for an explanation why this explains the treatment of captured US soldiers receive for “*wag[ing] war against Allah and His Messenger and do[ing] mischief in the land*.”

¹⁰² *Tafsir Ibn Kathir*, vol. 3, at 161, 162.



representative extracts from the *Deobandi*^{103,104} declaration (and subsequent *fatwa*) brings the essential parallels forward:

<u>Qur'an Verse 5:33</u>	<u>Ibn Kathir's explanatory discussion of Verse 5:33</u>	<u>Language from the Deobandi declaration and Fatwa</u>
<i>The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled from the land.</i>	<ul style="list-style-type: none"> ○ This Ayah does not save a Muslim from punishment <u>if he kills, causes mischief in the land or wages war against Allah and His Messenger and then joins rank with the disbelievers</u>, before the Muslims are able to catch him. He will still be liable for punishment for the crimes he committed.' 	<ul style="list-style-type: none"> ○ "In its eyes, on any part over the surface of the earth, <u>spreading mischief, rioting, breach of peace, bloodshed, killing of innocent persons and plundering are the most inhuman crimes.</u>" ○ It has regarded <u>oppression, mischief, rioting and murdering</u> among the severest sins and crimes.

A Note on the 5:33 Standard. Verse 5:33 applies to those who “wage war against Allah” by bringing “mischief” to Muslim lands. As it relates to U.S. Forces, this standard applies to non-Muslim forces in Muslim lands so long as they are successfully characterized as having entered uninvited and hence not of goodwill.¹⁰⁵ When non-Muslim forces fail to meet the “allies of good will” standard, their presence in Muslim lands triggers the standing rule that “*Jihad* is also personally obligatory for everyone able to perform it . . . by every possible means.”¹⁰⁶ But the

¹⁰³ MEMRI Special Dispatch 1959.

¹⁰⁴ “Indian Clerics' Anti-Terror Conference Issues Declaration against Terror, Blames 'Tyrant and Colonial Master of the West [i.e. U.S.]' for Aggression in Muslim World,” MEMRI Special Dispatch No. 1856, 29 February 2008, URL: <http://www.memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP185608>, accessed 24 June 2008.

¹⁰⁵ al-Misri, Book O “Justice,” o9.0 “Jihad,” at o9.7: Muslims may not seek help from non-Muslim allies unless the Muslims are considerably outnumbered and the allies are of goodwill towards the Muslims.

¹⁰⁶ al-Misri, Book O “Justice,” at o9 “Jihad,” at o9.3:

“*Jihad* is also personally obligatory for everyone able to perform it, male or female, old or young when the enemy has surrounded the Muslims on every side, having entered our territory, even if the land consists of ruins, wilderness, or mountains, for non-Muslim forces entering Muslim lands is a



“wage war against Allah” by bringing “*mischief*” to the land standard can also apply to entities that cause “*tumult and oppression*” to come to the land as well. This includes *Jihadis* believed to be fighting *Jihads* NOT sanctioned by Allah as evidenced by continuous defeat that, over time, gives rise to question as to whether they exceeded their ability (“*transgressing the limits*”) when attacking non-Muslims in non-Muslim lands.

On this last point, to the extent that the perception is that the *Jihadis* exceeded their ability when attacking non-Muslims in non-Muslim lands, al-Qaeda could be positioned as the cause-in-fact for non-Muslim forces retaliating when entering Muslim lands. In such circumstances, the *Ummah* could reason that the *Jihadis* are culpable for the “*mischief*” they brought to the land. If such a perception coalesced inside the Muslim world, especially among the *Salafi* community, the *Jihadis*, in this case al-Qaeda, could be in trouble (in fact, this is one of the three *Salafi* arguments directed against al-Qaeda). Alternatively, one should expect *Jihadi* groups like al-Qaeda, al-Qaeda in Iraq, the Taliban and even more radical elements of the Muslim Brotherhood to use the 5:33 standard to position themselves as enforcers of *Shari’a* law by casting themselves as protectors against infidelity (“*which is worse than killing*”). In fact, a balance of power analysis could be developed based on who controls the 5:33 narrative - and against whom. Just as Verse 5:32 limits applicability to the killing of Muslims with right, Verse 5:33 seems limited to “*tumult and oppression*” or “*mischief*” in Muslim lands (or outside Muslim lands in ways that bring “*mischief*” to the land). On this last point, attention should be given when prominent Islamic entities appear to condemn the killing of non-Muslims in non-Muslim lands to determine whether the condemnation was made in an unqualified sense or whether it was in some way associated with downstream acts that caused “*mischief*” to be brought to Muslim lands. This becomes more relevant when *Jihadi* forces come to be perceived as violating Islamic law themselves – especially through actions that result in the downstream “killing without right” (of Muslims) inside Muslim lands.

... one should expect jihadi groups like al-Qaeda, al-Qaeda in Iraq, the Taliban and even more radical elements of the Muslim Brotherhood to use the 5:33 standard to position themselves as enforcers of Shari’a law by casting themselves as protectors against infidelity.

weighty matter that cannot be ignored, but must be met with effort and struggle to repel them by every possible means.”



Presumption of Correctness. An assessment of Quranic verses like 5:33 cannot be fully understood without reference to an Islamic legal doctrine concerning the “Rights of Pure Punishment.” Because the current analysis concerns the *Deobandi* pronouncements from the Subcontinent, this analysis will use Pakistani law Professor Imran Ahsan Khan Nyazee’s explanation of the concept along with references to Pakistani law as stated in the 1996 edition of *Islamic Hudood Laws in Pakistan*¹⁰⁷ (*Hudood Laws*) to demonstrate not only that such legal doctrines exist, but that Islamic governments recognize such concepts and seek conformance. The analysis will show that Pakistani notions of “pure punishment” are in line with Islamic law. If true, it will explain the intensity of Major Hasan’s argument.

When criminal acts are associated with enumerated punishments in the Qur’an, serious consequences arise. As the Islamic jurist explains, the Right of Pure Punishment, also called *hudud* punishments, are the second highest “Rights of Allah” that Allah instituted as a deterrent.¹⁰⁸ The plural of *hadd*,¹⁰⁹ Nyazee defines *hudud* as “a fixed penalty prescribed as a right of Allah.”¹¹⁰ Because *hudud* penalties belong to Allah, Islamic law does not permit their being waived or commuted.¹¹¹ Because the penalties of Verse 5:33 are enumerated (“execution, or

An assessment of Quranic verses like 5:33 cannot be fully understood without reference to an Islamic legal doctrine concerning the “Rights of Pure Punishment.”

¹⁰⁷ M.K. Chohan, *Islamic Hudood Laws in Pakistan*, Legal Monograph, Khyber Law Publishers (Lahore, Pakistan: Our Press 1996).

¹⁰⁸ Nyazee, *Ijtihad*, at 60.

¹⁰⁹ Nyazee, *Ijtihad*, 318, 316. *Hudud* defined: Plural of *hadd*. *Hadd* defined: Limit; boundary. A fixed penalty prescribed as a right of Allah.

¹¹⁰ Nyazee, *Ijtihad*, at 318.

¹¹¹ Nyazee, *Ijtihad*, at 118,119. The spheres of law and *hudud* penalties: We have already indicated that the classification of laws into those invoking the right of Allah and those related to the right of the individual is not an idle classification. ... This classification makes a great difference in practice. Indeed, it is the most important classification in the Islamic legal system. It has tremendous explanatory power as far as the structure of the legal system is concerned. ... The consequences of this classification for the Islamic Criminal Law are as follows:

1. The penalty for an offense against the right of Allah cannot be waived or commuted after apprehension and conviction. However, the penalty against the right of an individual alone or against the rights of individuals, that is, the rights of the state, can be commuted. ... We know very well that the state can pardon any sentence that is not *hadd*. The reason is that the sentence other than *hadd* are not awarded and applied as a right of Allah.



crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land”), they fall under the *hudud* regime. Nyazee’s characterization of *hudud* penalties conforms to Pakistani law on the topic. From *Pakistani Hudood Laws*:

- “*Hadd*” means punishment ordained by the Holy Qur’an or *Sunnah*.¹¹²

Pakistani Hudood Laws support this definition by reference to Pakistani caselaw that incorporates the Islamic legal definition into the Pakistan’s legal framework:

- *Hadd* is a kind of fixed punishment prescribed by Allah in the exercise of His exclusive right. *Hadd* is the fixed punishment for the reason that this can neither be increased nor be decreased by anybody. (*Ibn Nujaim; Bahur Raid, v. 8p. 286*)¹¹³

The Pakistani characterization of *hudud* penalties is consistent with its treatment in Islamic law. The *‘Umdat al-Salik (Reliance of the Traveller)* classifies acts that require *hadd* punishment as an “Enormity:”

- § p0.0. Edited from the *Kitab al-kaba’ir [Book of Enormities]* of Imam Dhahabi, who defines an *enormity* as any sin entailing either a threat of punishment in the hereafter explicitly mentioned by the Koran or *hadith*, a prescribed legal penalty (*Hadd*), or being accursed by Allah or His messenger (Allah bless him & give him peace).¹¹⁴

Because prescribed legal punishments are expressions of Allah’s will as stated in the Qur’an (and *hadith*), compassion in sentencing is impermissible because it challenges a right of Allah concerning the dispensation of justice:

- Let not compassion move you in their case, in a matter prescribed by Allah, if you believe in Allah and the Last Day:

¹¹² *Islamic Hudood Laws in Pakistan*, 5.

¹¹³ *Islamic Hudood Laws in Pakistan*, 6.

¹¹⁴ al-Misri, Book P “Enormities,” at § p0.0.



and let a party of believers witness their punishment.
(Qur'an 24:2)¹¹⁵

The relevance of the “right of pure punishment” analysis is that the *Deobandis*, speaking for the Indian Muslim community, state that their understanding of Islamic concepts of terrorism complies with Islamic law. If true, it not only means that the definitions of terrorism are controlled by Verses 5:32 and 5:33, but the punishments are likewise determined by that same Islamic law as well. Hence, Major Hasan’s deep concern for the consequences to his mortal soul if deployed to the Middle East.

Islamic Concept of Terrorism - the “5:32-33 Rule”. That Islamic legal scholars are required to base their legal claims on Islamic law should come as no surprise as their rulings cannot reasonably be thought to be based on anything else. Hence, it is neither reasonable¹¹⁶ nor professional to analyze the *Deobandi* declaration (and subsequent *fatwa*) without reference to Islamic law. This holds true for the *Deobandis* when they “defined terrorism in the light of the Quran and *shari’a*,”¹¹⁷ given that they aligned the declaration (and subsequent *fatwa*) with Qur’an Verses 5:32 and 5:33 along with supporting *hadith* and *tafsir* commentaries known to be associated with it. While the two verses have their own meaning, they seem to be joined and operate as a set. The *Deobandi* analysis certainly treats it that way. A side-by-side comparison of Verse 5:32 and 5:33 and an extracted paragraph from the *Deobandi*¹¹⁸ *fatwa* not only demonstrates the similarities but also that the *Deobandis* treat the two verses as a paired set:

That Islamic legal scholars, acting in their capacity as Islamic legal scholars, are required to base their Islamic legal claims on Islamic law should not come as a surprise as their rulings could not reasonably be presumed to be based on anything else.

¹¹⁵ al-Misri, Book P “Enormities,” at § p0.0.

¹¹⁶ *Black’s Law Dictionary*, 1266. Reasonable here used to suggest the “reasonable standard.” “The standard one must observe to avoid liability for negligence is the standard of the reasonable man under all the circumstances including the foreseeability of harm to one such plaintiff.”

¹¹⁷ MEMRI Special Dispatch 1959.

¹¹⁸ MEMRI Special Dispatch 1959.



Qur'an Verse 5:32 & 5:33

On that account: We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people. Then although there came to them Our messengers with clear signs, yet, even after that, many of them continued to commit excesses in the land

The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled from the land.

Language from the Deobandi Fatwa

○ "Islam is the religion of mercy for all humanity. It is the fountainhead of eternal peace, tranquility and security. Islam has given so much importance to human beings that it regards the killing of a single person as the killing of the entire humanity, without differentiation based on creed and caste. Its teaching of peace encompasses all humanity. Islam has taught its followers to treat all mankind with equality, mercy, tolerance and justice. Islam sternly condemns all kinds of oppression, violence and terrorism. It has regarded oppression, mischief, rioting and murdering among the severest sins and crimes.

As a set, the rule of law from Verse 5:32 concerns the killing of Muslims without right while Verse 5:33 focuses on the criminality and punishment of Muslims and non-Muslims who bring "*mischief to Muslim lands*." In both instances, there must be some nexus to Islam for the law to toll. This holds true for the *Deobandi* declaration (and subsequent *fatwa*). This rule of law will be designated the "5:32-33 Rule."

The Rule Applied

When the *Deobandis* said "it is proven, from clear guidelines provided by the Holy Koran, that the allegation of terrorism against a religion which preaches and guarantees world peace are nothing but a lie,"¹¹⁹ they may not only be sincere, they are also on solid ground. The problem for counter-terror analysts and commentators is that this concept of terrorism is silent on Muslims killing non-Muslims in *Jihad* even as it supports Islamic concepts of "global peace in light of *shari'a*".

¹¹⁹ MEMRI Special Dispatch 1959.



The Indian *Mujahideen*. If Islamic notions of terrorism are silent on activities that do not involve Muslims or Muslim lands, there is no contradiction or insincerity in condemning “all kinds of terrorism” while at the same time calling for a *fatwa* against all Hind in Gujarat:

- Remember, O you Gujarati Hindus! O you filthy, shameless and foul creatures! O you Gujarati Hindus, most immoral and the most gutless cowards! Remember whom you have fought against! You have fought against the inheritors of a Messenger of Allah, of a Prophet of Allah whose terror was cast on the enemy from a distance of a month’s journey.
- You have fought against the warriors who love death more than you love life, who fight for a cause that makes them enter a never-ending Paradise, who fight for an absolute purpose – the purpose of making Islam superior over all religions.
- Wait only five minutes from now! Wait for the *Mujahideen* and *Fidayeen* of Islam and stop them if you can – who will make you feel the terror of *Jihad*. Feel the havoc cast into your hearts by Allah, the Almighty, face His Dreadful Punishment, and suffer the results of fighting the Muslims and the *Mujahideen*. Await the anguish, agony, sorrow and pain. Await, only 5 minutes, to feel the fear of death.¹²⁰

Because the object of the attacks are the Hind, the “killing of Muslims without right” does not come into play. Because the place of attack is Gujarat in India, the actions do not cause “mischief” in Muslim lands. This means the 5:32-33 Rule is not affected. (Of course, if attacks on the Hind cause a disproportionate response, the Indian *Mujahideen* could be challenged by other *Salafi* groups for causing “mischief” to be brought to Muslims or to Muslim lands.) Both in theory and as a practical matter, there is no contradiction between a person’s promulgating the *Deobandi* declaration (and subsequent *fatwa*) condemning terrorism while also supporting the Indian *Mujahideen*’s explicit call for the terror killing of Hindus in India. This remains true even as those same jihadi acts would constitute terrorism if the Hindus respond in-kind against Muslims in retaliation. There is no reciprocity

¹²⁰ Indian *Mujahideen* in the Land of the Hind, 6, 7.



in this concept of terrorism. Recognition should be given to the fact that the Indian *Mujahideen*'s war-cry that "you have fought against the warriors who love death more than you love life," is matched by Major Hasan's jihadi war-cry in *Slide 48* when declaring; "**we** love death more than you love life."¹²¹

The Rushdie Knighting. Recalling that Pakistani Minister Mohammed Ijaz ul-Haq's condemnation of the knighting of Salman Rushdie reads like an incoherent rant when read according to Western expectancies, the 5:32-33 Rule sheds an altogether different light on those same statements. As a religious affairs minister in an Islamic Republic, his comments on terrorism should be assessed primarily in "light of the Qur'an and *Shari'a*":

- ISLAMABAD, Pakistan (AP) – Pakistan yesterday condemned Britain's award of a knighthood to author Salman Rushdie, and a Cabinet minister said the honor provided a justification for suicide attacks. "This is an occasion for the world's 1.5 billion Muslims to look at the seriousness of this decision," Mohammed Ijaz ul-Haq, religious affairs minister, said in parliament ... "The West is accusing Muslims of extremism and terrorism. If someone exploded a bomb on his body, he would be right to do so unless the British government apologizes and withdraws the 'sir' title," Mr. ul-Haq said ... "The 'sir' title from Britain for blasphemer Salman Rushdie has hurt the sentiments of the Muslims across the world."¹²²

When read in light of the 5:32-33 Rule, it is clear that Minister Haq provided clear notice and warning. Hence, the Pakistani minister gave the British government the chance to withdraw its slander¹²³ before

"...you have fought against the warriors who love death more than you love life."

¹²¹ Slide 48 "Comments," Major Hasan Briefing.

¹²² Sir Salman Slammed, Washington Times, online ed., 19 June 2007, URL: <http://www.washingtontimes.com/article/20070619/FOREIGN/106190021&SearchID=73284751953045>, accessed 19 June 2006.

¹²³ Islam defines slander differently than is understood in the West. Slander in Islam is saying anything derogatory about Islam, Allah or the Prophet, or anything that disadvantages Islam. For example:

- al-Misri, Book R "Holding One's Tongue," r2.0 "Slander," r2.6.
r2.6 The Prophet (Allah bless him and give him peace) said:
(1) "*The talebearer will not enter paradise.*"



appropriate action was taken. The “*dawah*” conditions were set and a “*Jihad*” response was directed by the Government of Pakistan through one of its Ministers when speaking in Parliament. There was no extremism because, when Islam was slandered, Pakistan served notice including a decent interval for the UK to conform to the demand. There was no act of terrorism because the United Kingdom is not a Muslim land and those threatened with reprisal were not Muslim.¹²⁴ Reading both the Indian *Mujahideen fatwa* and the Pakistani Minister’s statement through the prism of the 5:32-33 Rule brings coherence to what may otherwise seem like incoherent communications.¹²⁵ The

(2) “Do you know what slander is?” They answered, “Allah and His Messenger know best.” He said, “*It is to mention of your brother that which he would dislike.*” Someone asked, “What if he is as I say?” And he replied, “*If he is as you say, you have slandered him, and if not, you have calumniated him.*”

(3) “*The Muslim is the brother of the Muslim. He does not betray him, lie to him, or hang back from coming to his aid.*”

- al-Misri, Book R “Holding One’s Tongue,” r3.0 “Talebearing (*Namima*),” r3.1.

r3.1 . . . In fact, talebearing is not limited to that, but rather consists of revealing anything whose disclosure is resented, whether presented by the person who originally said it, the person to whom it is disclosed, or by a third person. ... *The reality of talebearing lies in divulging a secret, in revealing something confidential whose disclosure is resented. A person should not speak of anything he notices about people besides that which benefits a Muslim to relate or prevents disobedience.* (Emphasis added)

¹²⁴ Because terrorism concerns the killing of a Muslim without right, there was no threat of suicide. Because a time interval was given to submit to the prescribed Islamic remedy before action was taken, there was no extremism. When defined along the criteria by which the Islamic world publishes its official construction of terrorism, no act of terrorism occurred. Because the national security community has been on formal notice of this reality, the question to raise is whether national security work product that fails to account for known Islamic definition of terms fails to meet minimal competency standards for that reason.

¹²⁵ With the killing of Theo van Gogh and the calling for the killing of Geert Wilders for Slander, the recent news of “Jihad Jane” associated with her role in the assassination plots associated with a publisher of the Muhammad cartoons and the recent failed “Time Square” bombing associated with the *South Park* program, the consequences of violating Slander are upon us. Add to this the OICs Ten-Year Plan to make defamation of Islam a crime in all jurisdictions (OIC Summit 10 Year Strategic Action Plan: Ten-year program of action to meet the challenges facing the Muslim Ummah in the 21st century, Third Extraordinary Session of the Islamic Summit Conference, Makkah al Mukarramah, Kingdom of Saudi Arabia, 5-6 dhul qa’dah 1426 h 7-8 December 2005) and Muslim Public Affairs Council (MPACs) successful demand to have Islamic terms removed from national security lexicons



position of the Pakistani Minister, the Indian *Mujahideen*, and the Deobandi Declaration and *Fatwa* are not inconsistent with each other.

On Pakistani Condemnation of Suicide Bombing. In October 2008, a conference of Pakistani Islamic jurists voiced unanimous agreement with the *Jamaat ud Dawa's* condemnation of suicide attacks. The *Jamaat ud Dawa* is a Pakistani *Deobandi* organization. From the *Daily Times* (Lahore):

- A *fatwa* (edict) issued unanimously by the *Muttahida Ulema Council* (MUC) during the conference at the Jamia Naeemia comes in the wake of devastating suicide bomb attacks in the country that have claimed hundreds of lives. The MUC also declared suicide bombings un-Islamic, saying the government should stop military operations in the Tribal Areas and conduct negotiations with the people there to end militancy.
- They called on the government to support Iran, saying it was a better ally than the US. They said Iran's security was directly linked to Pakistan's sovereignty therefore Iran's standoff with the US over Tehran's pursuit of nuclear technology should be taken up at the Organisation of Islamic Conference platform.¹²⁶

Certainly, there is some good news here, but what is its scope? The *Voice of America*, in its overriding need to define War on Terror events in positive secular terms, characterized the edict by stating that "a council of Muslim clerics in Pakistan has issued an edict declaring suicide bombings to be 'un-Islamic'."¹²⁷ Regrettably, VOA coverage was silent on the fact that the United *Ulema* Council called for the Pakistani Government to break its ties with America and align with Iran; that it called on the Organization of the Islamic Conference (the

Certainly, there is some good news here, but what is it and what is its scope?

used for War on Terror planning and this issue becomes far from simply academic.

¹²⁶ "Suicide Bombing Un-Islamic: Only State Can Declare Jihad: Fatwa," *Daily Times* (Lahore), 15 October 2008, URL: <http://www.dailytimes.com.pk/default.asp?page=2008%5C10%5C15%5Cstory_15-10-2008_pg1_2>, accessed 20 October 2008.

¹²⁷ "Muslim Clerics in Pakistan Say Suicide Bombings 'Un-Islamic'," *VOA News*, 14 October 2008, URL: <<http://www.voanews.com/english/2008-10-14-voa39.cfm>>, accessed 20 October 2008.



OIC) to arbitrate issues that divide Pakistan and Iran; and that the Pakistani government welcomed the edict.¹²⁸ But did the VOA get at least the 'rejection of suicide bombings' portion of the story correct? Actually, it did and it did not! *Fatwas* are legal instruments in Islamic law and are therefore drafted with precision. From the lead paragraph in *Al-Arabia's* treatment of the event:

- An assembly of religious scholars representing each school of Islamic thought and a variety of political parties Tuesday issued a unanimous verdict declaring suicide attacks **in Pakistan** un-Islamic and warned the government against involvement in American war efforts.¹²⁹ [Emphasis added]

Al-Arabia reported that the *Ulema* Conference had participation from all the Islamic schools of thought and that the decision was unanimously agreed upon (seeking consensus).¹³⁰ Assuming the report is accurate, *Al-Arabia* was explaining that consensus among the Pakistani jurists was reached on the *fatwa*. In Islamic law, unanimous agreement on a legal issue that further claims consensus substantially increases the legal stature of the instrument, in this case, a *fatwa*.¹³¹ From the report:

Al-Arabia reported that the Ulema Conference had participation from all the Islamic schools of thought and that the decision was unanimously agreed upon.

¹²⁸ "Suicide Bombing Un-Islamic, Only State Can Declare Jihad: Fatwa."

¹²⁹ "Suicide attacks are un-Islamic: Pakistani clerics," *Al-Arabia*, 15 October 2008, URL: < <http://www.alarabiya.net/articles/2008/10/15/58286.html>>, accessed 21 October 2008.

¹³⁰ al-Misri, Book B, at § b7.2. **NOTE:** This note is not made to suggest that classical consensus was reached but only to indicate the inherent importance Islamic law has for agreements where any form of consensus is achieved: at § b7.2 "When the ... necessary integrals of consensus exist, the ruling agreed upon is an authoritative part of Sacred Law that is obligatory to obey and not lawful to disobey. Nor can *mujtahids* of a succeeding era make the thing an object of new *ijtihad*, because the ruling on it, verified by scholarly consensus, is an absolute ruling which does not admit of being contravened or annulled."

¹³¹ al-Misri, Book B "The Validity of Following Qualified Scholarship," b.7 "Scholarly Consensus (ijma), at b7.6. **NOTE:** This note does not suggest that classical consensus was reached but only to indicated the status achieved when consensus of all schools is achieved:

- (n: In addition to its general interest as a formal legal opinion, the following serves in the present context to clarify why other than the four Sunni schools of jurisprudence do not necessarily play a role in scholarly consensus.)



- “It is a unanimous decree of the Islamic scholars (*ulema*) that suicide attacks in Pakistan are *haram* and illegitimate,” said the joint declaration released to the media after the meeting. It added that only the state can declare *Jihad*.
- The council expressed resentment that the top political and military leadership and Islamabad’s bureaucracy “shamelessly” carried out an American war against their own people. They asked the officials to stop acting as “western slaves” and demanded they step down if they cannot defend the country.¹³²
- The *ulema* condemned the U.S. agenda in the region, saying it was being pursued under cover of terror acts,
- It called upon *ulema* throughout the country to condemn U.S. policies in their Friday sermons and prepare the people for a mass movement.¹³³

While the primary analysis is directed towards the first bulleted point, the others are included to indicate that the Pakistani Muslim community unanimously rejected Pakistan’s relations with the U.S. and U.S. policy *per se*. This is significant because, for a country that declares itself an Islamic Republic, having its *Ulema* formally and unanimously reject its current policy actually undermines Pakistani legitimacy. This portends a shift. This point was overlooked by the VOA. The VOA was also silent on the OIC sanctioned alignment of the Muslim world’s only nuclear power, one that permits the use of nuclear weapons in furtherance of *Jihad*,¹³⁴ with the Muslim world’s next nuclear power that has stated its intent to use nuclear weapons for just such a jihad.

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- (‘Abd al-Rahman Ba’alawi:) Ibn Salah reports that there is scholarly consensus on its being unlawful to follow rulings from schools other than those of the four Imams, meaning in one’s personal works, let alone give court verdicts or formal legal opinions to people from them, because of the untrustworthiness of the ascription of such rulings to the scholars who reportedly gave them, there being no channels of transmission which obviate the possibility of textual corruption and spurious substitutions.

¹³² NOTE: This is not completely untrue.

¹³³ “Suicide attacks are un-Islamic: Pakistani clerics.”

¹³⁴ S.K. Malik, QCW, 60.



Also important, when stating that the “*Ulema* condemned the U.S. agenda in the region, saying it was being pursued under cover of terror acts” and called for the entire country to “condemn U.S. policy,” the Pakistani *Ulema* was simply echoing the policy position of all of America’s Middle Eastern Coalition partners when they twice stated, first at the OIC Foreign Ministers Conference in Tehran in 2003 and then again in Istanbul in 2004, that the U.S. used “combating terrorism” as a pretext:

- **Denouncing also** the use or threat to use military force against any Islamic State under the pretext of combating terrorism; and stressing the pivotal role of the UN in the international campaign against terrorism and that the expression (axis of evil), used by certain States to target other States is a form of political and psychological terrorism;^{135, 136}

The Istanbul Conference went even further by repudiating U.S. policy including its classification of countries like Iran as a “terror sponsoring state:”

- **Noting** the classification adopted by some quarters on the basis of biased political considerations according to which a number of Islamic States are listed among the so-called terrorism-sponsoring states;¹³⁷

Hence, in official resolutions, our coalition partners, through the OIC, are formally on record as denouncing the U.S. in the War on Terror as terrorists. Further, when U.S. forces kill Muslims without right, a straight line reading of those OIC resolutions state they are just as guilty as al-Qaeda when doing so and should, therefore, be combated:

- **Reaffirming** the determination to combat terrorist acts in all their forms and manifestations, including those where States are directly or indirectly involved^{138, 139}

When U.S. forces kill Muslims without right, a straight line reading of those OIC resolutions state that they are just as guilty as al-Qaeda when doing so and should, therefore, be combated.

¹³⁵ OIC Resolution No. 7/30-LEG – Tehran 2003.

¹³⁶ OIC Resolution No. 7/31-LEG – Istanbul 2004.

¹³⁷ OIC Resolution No. 7/31-LEG – Istanbul 2004.

¹³⁸ OIC Resolution No. 6/30-LEG – Tehran 2003.

¹³⁹ OIC Resolution No. 6/31-LEG – Istanbul 2004.



The VOA report was inaccurate because the *fatwas* did not declare suicide bombing “un-Islamic”¹⁴⁰ but rather, as *al-Arabia* stated, it was “a unanimous decree of the Islamic scholars that suicide attacks in Pakistan are *haram* and illegitimate.” The emphasis here is on “in Pakistan,” which means that the decree was silent on suicide bombings outside Pakistan; for example, in places like Afghanistan and Iraq where U.S. forces operate. A review of the reporting leading up to the *Ulema* Conference, as well as from reports on the conference itself, indicates that the suicide bombings and other acts of terror that forced the *fatwa* concerned acts directed against Pakistanis, by Pakistanis, inside Pakistan.¹⁴¹ Applying the 5:32-33 Rule to the Pakistani *fatwa*, it turns out that it meets the Islamic terror threshold for the same reasons the *Indian Mujahideen’s fatwa* did not. With reference to Verse 5:32, the object of the suicide attacks were Muslims who were killed without right. Regarding Verse 5:33, the suicide bombings brought “*mischief*” to Muslim lands. Hence, the legal elements of both verses were triggered. Because innocent Muslims were killed in Muslim lands, the acts do not qualify as *shaheed* operations (martyrdom operations) but rather as the killing of Muslims without right. Hence, the act meets all the elements of terrorism under Islamic law:

1. the suicide of a Muslim actor (an independent violation of Islamic law),
2. the murder of Muslims without right, and
3. the fact that they occurred inside Muslim lands.

¹⁴⁰ “Muslim Clerics in Pakistan Say Suicide Bombings ‘Un-Islamic’,”

¹⁴¹ In addition to the articles on the *Ulema* Conference already cited, see also:

- “Pakistan clerics declare suicide bombings un-Islamic,” Rediff India Abroad, October 14, 2008, URL: <<http://ia.rediff.com/news/2008/oct/14pak1.htm>>, accessed 20 October 2008.
- “Pak Muslim clerics declare suicide bombings un-Islamic,” Times of India, 14 October 2008, URL: <http://timesofindia.indiatimes.com/World/Pak_Muslim_clerics_declare_suicide_bombings_un-Islamic/articleshow/3595167.cms>, accessed 20 October 2008.
- “Pakistani clerics say suicide is ‘un-Islamic’,” 16 October 2008, Quqnoos, URL: <http://quqnoos.com/index.php?option=com_content&task=view&id=1809&Itemid=49>, accessed 20 October 2008.



The Pakistani statement does not apply to *shaheed* operations (martyrdom operations) against U.S. forces, was not intended to imply it, and made no assertions that it did. Rather, it condemned the killing of Muslims without right in Muslim lands by fellow Muslims, not the killing of infidels (U.S. forces) in those same lands. As will be demonstrated, this pattern repeats itself whenever *fatwas* are promulgated. Wanting them to be condemnations of terrorism as understood in the West, they actually serve as demands to more tightly focus the targeting selection against licit enemies – like us.

In the context of Islamic Movement entities and actors, given the controversy as to whether jihad means holy war, the Pakistani *Daily Times* (Lahore) begins its article on the Pakistani *Ulema* Conference's *fatwas* by using the term "*jihad*" and then placing a brief definition in parenthesis:

- **LAHORE:** Only the state has the authority to call for *jihad* (holy war), and individuals or groups are not authorised to do that, a conference of Muslim clerics from across the country said on Tuesday. (Daily Times (Lahore), 15 October 2008.) [Parens original to text]

In his treatment of holy war, Pakistani Brigadier S.K. Malik adds explains the Quranic concept of war which he later associates with *jihad*:

- As a complete Code of Life, the Holy Quran gives us a philosophy of war as well. This divine philosophy is an integral part of the total Quranic Ideology. It is a philosophy that is controlled and conditioned by the Word of Allah from its conception to its conclusion. No other military thought known to Man possesses this supreme characteristic; from it, flow its numerous other attributes. It is complete, perfect, comprehensive, balanced, practical and effective. (*Quranic Concept of War*, Brigadier S.K. Malik, xxvii, xxviii.)

The 5:32-33 Rule may reflect the Islamic Standard for Terrorism

The Islamic concept of terrorism is not limited to the *Deobandis* or even just Muslims of the Subcontinent. Rather, it seems to reflect the global Islamic standard. A sampling of recent statements from Islamic entities regarding terrorism will demonstrate a broad adherence to the 5:32-33 Rule with some pronouncements making explicit reference to it while others simply hold to narratives that can be shown to align with it. Because this type of analysis can seem overly legalistic, theoretical or academic, a review of recent *fatwas* and related pronouncements will be provided to demonstrate not only a



broad-based recognition of this Islamic concept of terrorism, but that such recognition brings with it the realization that it manifests itself in broad-based broadly recognized execution narratives that are themselves steeped with operational consequences.

The Current View of the *Darul Uloom*. The *Darul Uloom*'s position on peace and terrorism as currently posted on their website is in line with their Declaration and *Fatwa* of 2008. Titled the *Concept of Peace and Condemnation of Terrorism in Islam* (*Peace and Terrorism*)¹⁴² the *Deobandis* condemn terrorism by stating "that type of terrorism has no place in Islamic *Shariah*" and then adding that "the Holy Quran makes it explicit that killing an innocent person is equivalent to killing the whole of mankind."¹⁴³ This statement resonates Verse 5:32. Hence, the terrorism condemned is that which is based on the "killing without right" as stated in the Qur'an. While this language establishes the alignment to the 5:32-33 Rule, *Peace and Terrorism* goes further by making the association explicit:

- A verse in Surah Maidah states, "*If anyone slew a person unless it be for murder or for spreading mischief in the land it would be as if he slew the whole people: and if anyone saved a life. It would be as if he saved the life of the whole people.*" (Al-Maidah. verse 32)¹⁴⁴ [i.e., 5:32]

Just as with Major Hasan, the *Deobandis* associate Islamic notions of terror with Quran Verse 17:33 and then clarifies the point further by stating the when killing is justified:

- In different forms at several places in Holy Quran, unjustified murder has been strongly condemned. Respect and protection of human life has been sufficiently stressed. Holy Quran

A verse in Surah Maidah states, "If anyone slew a person unless it be for murder or for spreading mischief in the land it would be as if he slew the whole people: and if anyone saved a life. It would be as if he saved the life of the whole people."

¹⁴² Concept of Peace and Condemnation of Terrorism in Islam," Preaching and Teaching of Islam, Islam and Terrorism, DARULULOOM, DEOBAND – INDIA, <http://www.darululoom-deoband.com/english/index.htm>. Accessed 24 May 2010. Cited hereafter as Concept of Peace, DEOBAND.

¹⁴³ Concept of Peace, DEOBAND.

- That type of terrorism has no place in Islamic *Shariah*. The Holy Quran makes it explicit that killing an innocent person is equivalent to killing the whole humankind.

¹⁴⁴ Concept of Peace, DEOBAND.



commands: "Nor take life-which Allah has made sacred-except for just cause." (*Bani Israel*, verse 33) [i.e., 17:33]
Murder is justified only in case of an assassin, guilty of the murder of an innocent person, as recompense.¹⁴⁵

As underlined above, "that type of terrorism" relates to the killing of Muslims without right. The statement then limits its examples to ones where non-Muslim forces engage against Muslims:

- The barbarous bombing of several countries by USA, Israeli aggression against Palestinians, Russian atrocities in Chechnya and Chinese brutalities against Muslims in Sin kiang are glaring examples of double standards being applied for defining terrorism.¹⁴⁶

As with the OIC and related *Deobandi* statements, the only terrorism that *Peace and Terrorism* refers to under this criterion is that caused by the United States:

- According to the definition of terrorism by intellectuals, and thinkers of the West, the conduct of the governments of USA, Israel, Russia, Philippine and Burma may be regarded as brazen act of state terrorism.¹⁴⁷

The *Darul Uloom's* position on Muslims killing fellow Muslims is treated separately in *Peace and Terrorism* with the main discussion stressing that killing fellow Muslims is a serious offense and that there are legal remedies under Islamic law that include rights of retaliation.¹⁴⁸ The *Darul Uloom* conforms to the 5:32-33 Rule.

The Darul Uloom's position on Muslims killing fellow Muslims is treated separately in Peace and Terrorism...

¹⁴⁵ Concept of Peace, DEOBAND.

¹⁴⁶ Concept of Peace, DEOBAND.

¹⁴⁷ Concept of Peace, DEOBAND.

¹⁴⁸ Concept of Peace, DEOBAND.

- According to the Prophet (Pbuh) the murder of an innocent person is among heinous crimes. (please refer chapter Al-Diyah, Bukhari). It has to be clarified that the power for ordering justified murder vests with the court of a just government. The death has to follow a judicial process. Keeping in view the value of human life the Shariah has found a way out. If the successors of the deceased are agreeable to compensation for the loss of life or if they forgive the assassin, his life shall be spared; otherwise, it is advisable to keep the society free from the existence of an assassin. The presence of an assassin within the society may embolden others to commit



The Most Recent Pakistani *Fatwa*. MEMRI Special Dispatch No 2914 dated 16 April 2010¹⁴⁹ translated a 5 March 2010 *Al-Sharq Al-Awsat* interview with Sheikh Muhammad Tahir-ul-Qadri, “a senior Pakistani religious cleric who . . . heads the *Sufi* movement *Minhaj-ul-Quran*, which promotes religious tolerance and combats extremism.”¹⁵⁰ Titled “Senior Pakistani Sheikh Issues *Fatwa* Against Terrorism, Says Suicide Bombers Go To Hell, Not Paradise,” Sheikh Qadri’s interview begins with the promise of a way to break out of the strictly construed 5:32-33 Rule. Asked whether he wrote any prior *fatwas* against terror, Qadri answered:

- The first [book on terrorism] was published in 1995 and dealt with the issue from the perspective of human rights . . . I wrote that killing [people] – Muslim or non-Muslim – through acts of terror is unequivocally forbidden . . . ¹⁵¹

The Sheikh’s disclosure relates back to his former *fatwas* where, after *madrassa* bombings in Karachi and Rawalpindi, he condemned the World Trade Center attacks on 9/11 because, in causing the deaths of innocent people, it put Muslims at risk in the rest of the world.¹⁵² Qadri’s condemnation of the 9/11 attacks is qualified by the fact that the killing of non-Muslims on 9/11 is associated with the downstream death of Muslims brought about as a result of the 9/11 attacks thus making the 9/11 attacks the cause-in-fact for non-Muslim forces entering Muslim lands. This, along with killing innocent Muslims, is what gives rise to al-Qaeda’s being condemned for bringing “*mischief to the land*.” This is the context in which one should read Sheikh Qadri’s comment that al-Qaeda is “corrupting the image of Islam by indiscriminately murdering innocent people in New York, London, and

similar crimes. That is likely to pose a severe threat to the peaceful atmosphere of the society.

¹⁴⁹ MEMRI Special Dispatch No. 2914: “Senior Pakistani Sheikh Issues *Fatwa* Against Terrorism, Says Suicide Bombers to Go to Hell, Not Paradise, 16 April 2010, at URL: <http://www.memri.org/report/en/0/0/0/0/0/0/4107.htm>. Hereafter cited as MEMRI Special Dispatch No. 2914 - 2010 Pakistani *Fatwa*.

¹⁵⁰ MEMRI Special Dispatch No. 2914 - 2010 Pakistani *Fatwa*.

¹⁵¹ 2010 Pakistani *Fatwa*.

¹⁵² 2010 Pakistani *Fatwa*.



Madrid” as well as in Muslim lands.”¹⁵³ The Sheikh’s *fatwa* is an appeal to young Muslims who have fallen under the influence of modern day *khawarijs* like Ayman al-Zawahiri and Osama bin Laden.¹⁵⁴ By simply labeling al-Qaeda and Taliban leaders as “modern-day *khawarij*,” Qadri is saying that the terrorism he is condemning is that of Muslims killing fellow Muslims.¹⁵⁵ On questions regarding the *fatwa*, Qadri answered:

- **Q:** "Is there any particular reason for issuing this *fatwa* against suicide operations specifically at this time?"
 - **A:** "I have written jurisprudential studies and books of this sort in the past, but my reason for drafting the *fatwa* at precisely this moment is the growing strength of terrorism in Pakistan over the last year. And [the terrorists] are no longer satisfied with simply killing people, but slaughter them like animals in Swat and the tribal districts. Furthermore, several eyewitnesses have reported that [the terrorists], after killing people, disinterred their bodies and hung them on trees for three days. This happened in Swat, where many people were slaughtered. Later on, the terrorists launched a campaign of bombing mosques on Fridays . . . Their heinous, barbaric deeds prove that they are 'modern-day Khawarij,' 'an old evil with a new name.'"

¹⁵³ 2010 Pakistani Fatwa.

¹⁵⁴ 2010 Pakistani Fatwa.

- A *fatwa* can influence extremists and terrorists who read it or hear it because they are Muslims with the willingness to understand what the Koran or *hadith* say, or to comprehend the messages of senior imams, such as Sheikh Ibn Bazz, Al-Albani, or 'Sheikh Al-Islam' Ibn Taymiyya, who would be their natural imams had they not been enticed to listen to [Ayman] Al-Zawahiri and [Osama] Bin Laden, the 'modern-day Khawarij.' This is why it is the duty of imams and religious scholars to expose the shame of the ignorant religious ideologues of these organizations of violence.

¹⁵⁵ 2010 Pakistani Fatwa. From MEMRI’s own footnote explaining the term “*khawarij*”:

- The *Khawarij* were a group that separated from the forces of Fourth Caliph 'Ali ibn Abi-Talib during the battle of Siffin in 657 BCE, and they are considered the first Muslim opposition within Islam. Hence, this term is used as a derogatory label for a secessionist group.



- **Q:** "Do Pakistani sheikhs and religious scholars fear violence from Al-Qaeda or the Taliban? Why do they keep their silence?"
 - **A:** . . . "Another reason [for this silence] is political in nature – namely, that these terrorists all hail from the North West Frontier Province, Swat, Peshawar, and North and South Waziristan. That's where the [sheikhs' and clerics'] voters are, and they want to get their votes . . . [Therefore] they do not take a political stance in opposition to that of [their constituents] . . . In addition, the Pakistani religious scholars believe that this terrorism comes in response to the misguided pro-American policy adopted by one Pakistani government after another . . ." ¹⁵⁶

The *Fatwa* from a *Sufi* Sheikh conforms to the 5:32-33 Rule; the World Trade Center attacks were condemned because of the downstream effect they had on the Muslim Community in Muslim lands.

The OIC - Aligned and on Message with the Rule. As discussed, and prescient, when the OIC served the *OIC Convention on Combating International Terrorism* to the United Nations in 1999, it subordinated its definition of terrorism to Islamic law.¹⁵⁷ This raises the requirement that all OIC and OIC Member State comments on terrorism be assessed in a manner that accounts for this. When the OIC announced in the 2003 Tehran Resolution that it “strongly condemned terrorism in all its forms and manifestations including state terrorism directed against all states and peoples,”¹⁵⁸ the meaning of this statement was bound by Islamic law. This was explicitly stated in the annual Foreign Ministers conference in 2003 (Tehran) and 2004 (Istanbul):

- **Asserts** that Islam is innocent of all forms of terrorism which involve the murder of innocent people whose killing is forbidden by Islam, and rejects any attempts to link Islam and

¹⁵⁶ 2010 Pakistani Fatwa.

¹⁵⁷ *OIC Combating Terrorism Convention to Combat Terrorism*.

¹⁵⁸ OIC Resolution No. 6/30-LEG – Tehran 2003.



Muslims to terrorism because the latter has no relation whatsoever with religions, civilizations or nationalities.^{159, 160}

OIC language limits the condemnation of terrorism to those “forms of terrorism” that have been “forbidden by Islam.” Because the language is silent on “all forms of terrorism” that have not been “forbidden by Islam,” the OIC is likewise silent on acts inflicted by the *Indian Mujahideen* on the Hind in Gujarat. The OIC is restricted to terrorism forbidden by Islam (which does not include jihad). It is in this context that the 2003 Tehran and 2004 Istanbul Resolutions should be understood when stating:

- **Strongly condemns** the perpetrators of terrorist crimes, who pretend to act in the name of Islam or under any other pretext.^{161, 162}

This language incorporates the standard that forbids Muslims from killing without right into OIC resolutions. Moreover, the OIC’s condemnation of terrorism expresses the same concern as Major Hasan when relying on Qur’an Verse 17:33 (“*And do not kill anyone whose killing Allah has forbidden except for a just cause*”) and then warning that “Muslim Soldiers should not serve in any capacity that renders them at risk to hurting/killing believers unjustly” in his presentation at Walter Reed.¹⁶³ From the perspective of the 5:32-33 Rule, the OICs condemnation is consistent with its assertions that “Islam is innocent of all forms of terrorism which involve the murder of innocent people whose killing is forbidden by Islam, and rejects any attempts to link Islam and Muslims to terrorism.”^{164, 165} Moving beyond Western skepticism, the OIC position seems genuine.

Reading the 2003 (Tehran) and 2004 (Istanbul) resolutions from the Foreign Minister’s Conferences in light of the 5:32-33 Rule’s

OIC language expressly limits the condemnation of terrorism to only those “forms of terrorism” that have been “forbidden by Islam.

Because U.S. Forces engage Muslims who have not apostatized, committed adultery, or killed a fellow Muslim without right, they satisfy the Islamic legal criteria to qualify as terrorist acts under Islamic criteria as expressly stated by the OIC:

¹⁵⁹ OIC Resolution No. 6/30-LEG – Tehran 2003.

¹⁶⁰ OIC Resolution No. 6/31-LEG – Istanbul 2004.

¹⁶¹ OIC Resolution No. 6/30-LEG – Tehran 2003.

¹⁶² OIC Resolution No. 6/31-LEG – Istanbul 2004.

¹⁶³ Slide 12 “Muslims in the Military” and Slide 49 “Conclusions,” Major Hasan Briefing.

¹⁶⁴ OIC Resolution No. 6/30-LEG – Tehran 2003.

¹⁶⁵ OIC Resolution No. 6/31-LEG – Istanbul 2004.



characterization of terrorism raises questions about how the United States is situated with regard to those definitions as stated by OIC foreign ministers. Because U.S. Forces engage Muslims who have not apostatized, committed adultery, or killed a fellow Muslim without right, those actions satisfy Islamic legal criteria that qualify them as terrorist acts as stated by the OIC:

- **Reaffirming** the determination to combat terrorist acts in all their forms and manifestations, including those where States are directly or indirectly involved;
- **Reiterating** the commitment to combat terrorism in all its forms and manifestations, to eliminate the objectives and causes of terrorism directed against the life and property of innocent people and the sovereignty, territorial integrity, stability, and security of States, and to uphold the provisions of the OIC Convention on Combating International Terrorism, which reaffirm this commitment;
- **Strongly condemning** terrorism in all its forms and manifestations including state terrorism directed against all States and peoples;^{166, 167}

Because the U.S. Forces occupy Muslim lands, as reiterated by the OIC, resistance becomes mandatory:

- **Reaffirming** the fundamental and legitimate right of all peoples struggling under the yoke of colonialist and racist regimes as well as under foreign occupation to resist occupation and achieve self-determination, and particularly the struggle of national liberation movements;^{168, 169}

OIC statements concerning its posture on terrorism take on threatening form when understood in its intended context. Understood this way, the OIC's position on terrorism does not conflict with Major Hasan's. Before leaving the OIC analysis, it is noteworthy that the

According to both criteria, OIC statements concerning its posture on terrorism take on threatening form when understood in its intended context.

¹⁶⁶ OIC Resolution No. 6/30-LEG – Tehran 2003.

¹⁶⁷ OIC Resolution No. 6/31-LEG – Istanbul 2004.

¹⁶⁸ OIC Resolution No. 7/30-LEG – Tehran 2003.

¹⁶⁹ OIC Resolution No. 7/31-LEG – Istanbul 2004.



Foreign Ministers Conference in 2003 (Tehran) took place the same year the United States went into Iraq where the Government of Turkey denied transit rights to U.S. Forces headed to Iraq. Turkey was not only a party to the 2003 Resolution; it hosted the next year's Foreign Ministers Conference in Istanbul where the same points were re-iterated *verbatim*. Turkey is both a NATO ally and an original Member State of the OIC. Given the OIC language discussed above, especially in light of the 5:32-33 Rule and associated Islamic legal concepts, why isn't it reasonable to ask what side Turkey is on, especially given its continued close coordination with Iran on terrorism issues. By refusing U.S. transit rights, they waived on whether they considered U.S. actions to be of "goodwill."¹⁷⁰ Moreover, because Muslim countries withheld public approval of the U.S. mission in Iraq, the U.S. does not enjoy "ally of goodwill" status. In Islamic legal theory, the absence of "goodwill" sets off the default rule that recognizes the U.S. presence as hostile thus triggering the obligatory duty of *Jihad* when non-Muslim forces enter Muslim lands.¹⁷¹

Muslim Brotherhood - Sheikh Yusuf Qaradawi. Sheikh Yusuf Qaradawi is the spiritual leader of the Muslim Brotherhood and founder of *IslamOnline*. He is also the chief jurist. Sheikh Qaradawi attended the elite *al-Ahzar*, was a protégé of Muslim Brotherhood founder Hasan al-Banna, serves on various *shari'a* compliant finance boards and has been denied a visa to travel into the United States since the Clinton Administration (1999) for his associations with terrorism. In comments made on September 2007, Qaradawi emphasized the need to contain extremist activities so that they serve the interests of the *Ummah* and do not put it at risk:

- Responding to host 'Uthman 'Uthman's question of how Islam can be protected from *takfir* sedition, Qaradawi advised that in

¹⁷⁰ al-Misri, Book O "Justice," o9.0 "Jihad," at o9.7: "Muslims may not seek help from non-Muslim allies unless the Muslims are considerably outnumbered and the allies of goodwill towards the Muslims."

¹⁷¹ al-Misri, Book O "Justice," at o9 "Jihad," at o9.3: "*Jihad* is also personally obligatory for everyone able to perform it, male or female, old or young when the enemy has surrounded the Muslims on every side, having entered our territory, even if the land consists of ruins, wilderness, or mountains, for non-Muslim forces entering Muslim lands is a weighty matter that cannot be ignored, but must be met with effort and struggle to repel them by every possible means."



order to protect the *Ummah* (Islamic nation), Muslims must “renounce fanaticism and extremism,” which he asserted had been responsible for destroying it in the past. He called upon Muslims to adopt a “moderate approach” so that they may properly understand and correctly abide by the tenets of Islam.¹⁷²

While not obvious, when Sheikh Qaradawi speaks of protecting Islam from “*takfir*” sedition, he is making the same point as Pakistani Sheikh Qadri when he accused bin Laden and Zawahiri of being “modern-day *Khawarij*.”¹⁷³ (*Khawarijis* engage in *takfirism* and those who engage in *takfirism* are often accused of being *Khawarij* – especially when actions undertaken in the name of *Jihad* fail to meet with approval. In both instances, the issue concerns Muslims killing fellow Muslims without right.)¹⁷⁴ By calling it “*takfir* sedition,” Qaradawi was warning *Wahabi*-based *Jihadis*, most notably al-Qaeda, that their activities ‘transgressed the limits’ of Islam and hence they are engaging in “fanaticism and extremism,” just like the *Khawarij*. When Qaradawi used the term “*takfir*” in conjunction with “fanaticism and extremism,” he aligned his argument with the 5:32 Rule prohibiting the killing of Muslims without right. By speaking of the need to “protect the *Ummah*,” Qaradawi was accusing those groups of bringing “*mischievous to the land*,” thus establishing the Qur’an Verse 5:33 standard. Of interest, Qaradawi opened the door for those *takfiri* Muslims to rejoin the fold if they “renounce” their “fanaticism and extremism.”

While Qaradawi may be forgiving to fellow Muslims that reject “killing without right,” he maintained his hard line with respect to Americans. To the Egyptian Journalist Union in Cairo in 2004, Sheikh Qaradawi stated:

While not obvious, when Sheikh Qaradawi speaks of protecting Islam from “takfir” sedition, he is making the same point as Pakistani Sheikh Qadri when he accused bin Laden and Zawahiri of being “modern-day Khawarij.

¹⁷² Media Issues citing “*Shari’a* and Life.” *Al-Jazeera* 30 September 2007.

¹⁷³ 2010 Pakistani Fatwa.

¹⁷⁴ **NOTE:** This paper is not going to go into the specifics on the use of the terms “*Khawarij*” and “*takfir*” as the brief explanation given is sufficient for the purposed of their use here. It should be noted, however, that the terms are often misused. The “other” Islamic entity known for *takfirism* are those that follow the teachings of ibn Taymiya. Ibn Taymiya’s doctrines underpin *Wahabism*.



- 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 an obligation so as to cause them to leave Iraq immediately.¹⁷⁵

Qaradawi Unchanged on *Jihad*

Contrary to the aspirations of analysts who want to see in Qaradawi's statement a rejection of terrorism, no such pronouncement was made. One need look no further than Qaradawi's statements days after issuing the above statement to realize that Qaradawi's views on *jihad* remain binding on all Muslims when the effort is directed against non-Muslims. From Doha:

- When a Muslim country is invaded by some other country, all Muslims who are capable of doing jihad should spare no efforts in defending the invaded country. It is not true that Muslims should not go outside their countries to defend their fellow Muslims unless they get permission from the ruler of their country. (Qaradawi, 13 October 2007 [*Gulf Times* (Doha, Qatar) 13 October 2007])

Qaradawi's 13 October statement is consistent with comments he made in 2006 when explicitly stating a religious pretext for violence:

We do not disassociate Islam from war. On the contrary, disassociating Islam from war is the reason for our defeat. We are fighting in the name of Islam. Religion must lead to war. This is the only way we can win. (Qaradawi, MEMRI, 26 February 2006)

As with the statements of any leader, when reading Qaradawi, it is important to position his statements in the context of his overall narrative. For Qaradawi and the Muslim Brotherhood, when the object of violence is non-Muslims in Muslim lands, the commitment to *jihad* remains unchanged. From an Islamic Movement context, *jihad* is not terrorism. Of note, Qaradawi's office is just blocks away U.S. CENTCOM Forward in Doha, Qatar.

Muslim Brotherhood - Mohammed Akef. Until he retired earlier this year, Mohammed Akef was the Chairman and Supreme Guide of the International Muslim Brotherhood. In a 2006 *Al-Jazeera* TV interview, Akef made the following comment:

- I fear that blood be shed for no price. I want blood that is shed for a price . . . This American Satan claims to be a messenger

¹⁷⁵ MEMRI Special Dispatch, "Reactions to Sheikh Al-Qaradawi's Fatwa Calling for the Abduction and Killing of American Civilians in Iraq," MEMRI Special Dispatch No. 794, 6 October 2004, URL: < http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP79_404#_edn1 >, accessed 5 May 2007. Cited hereafter as "Qaradawi's Fatwa."



of divine guidance . . . I go back to the issue of *Jihad*. *Jihad* is an individual duty incumbent upon every Muslim, male and female, if any inch of the land of Islam and the Muslims is occupied.¹⁷⁶

Akef's statement mirrors Qaradawi's 2007 statement and both accurately reflect the Islamic legal requirement as stated in *Reliance of the Traveller* in Book O "Justice," § 9 "*Jihad*":

- *Jihad* is also personally obligatory for everyone able to perform it, . . . when the enemy has surrounded the Muslims on every side, . . . that . . . must be met with effort and struggle to repel them by every possible means.¹⁷⁷

If Islamic law is the criteria, both Qaradawi and Akef are "radically" correct in their statements of law when calling for mandatory *Jihad* against American forces inside Muslim lands. In a later interview with *Elaph Publishing*, Akef seems to have been speaking to the same "killing of a Muslim without right" distinction running through this paper. Remembering that Sheikh Qaradawi raised the specter of reconciliation if groups "renounced fanaticism and extremism" back in 2004, it is worth noting that in 2008 the Muslim Brotherhood's Supreme Guide accepted Usama bin Laden as a member of the fold when designating him a holy warrior:

- **Interviewer:** As we talk about resistance and *Jihad*, do you consider **Usama Bin Ladin** a **terrorist** or an Islamic **Mujahid**?

If Islamic law is the criteria, both Qaradawi and Akef are "radically" correct in their statements of law when calling for mandatory jihad against American forces inside Muslim lands.

¹⁷⁶ MEMRI TV Monitor Project, "Mahdi 'Akef, Supreme Guide of the Muslim Brotherhood Warns Egyptian Regime: The People Will Trample You Underfoot," Clip No. 1214, 30 July 2006, URL: < <http://www.memritv.org/Transcript.asp?P1=1214> >, accessed 20 May 2007.

¹⁷⁷ al-Misri, Book O "Justice," at o9 "Jihad," at o9.3. Reads: *Jihad* is also personally obligatory for everyone able to perform it, male or female, old or young when the enemy has surrounded the Muslims on every side, having entered our territory, even if the land consists of ruins, wilderness, or mountains, for non-Muslim forces entering Muslim lands is a weighty matter that cannot be ignored, but must be met with effort and struggle to repel them by every possible means.



- **Akef:** Most certainly he is a **Mujahid**. I do not doubt his sincerity in resisting occupation for the sake of God Almighty.¹⁷⁸

When Usama bin Laden and al-Qaeda are “resisting occupation” – that is; fighting non-Muslim forces in Muslim lands as required by Islamic law, they are *mujahids*. Further questioning indicates that Akef, and hence the Muslim Brotherhood, including the Muslim Brotherhood in America, make distinctions with respect to terrorism based on the same Islamic legal principles as the *Deobandis* and the OIC. Hence, while a *mujahid* when fighting Americans, they are terrorists when killing Muslims:

- **Interviewer:** Then, do you support the activities of Al-Qa’ida, and to what extent?
- **Akef:** Yes, I support its activities against the occupier, **but not** against the people.¹⁷⁹

Muslim Brotherhood guidance is clear; if al-Qaeda limits its terrorism to non-Muslims, they will be forgiven and welcomed as heroes. If they kill without right, they will be condemned. Both Qaradawi and Akef define terrorism in ways that align with the Islamic legal paradigm in ways hostile to the United States. This may have consequences for Muslim Brotherhood groups in American such as the MAS, MSA, ISNA, ICNA FCNA, NAIT, IIIT or CAIR¹⁸⁰ – to name just a few. The *Fiqh* Council of North America (FCNA) is an element of the Islamic

Muslim Brotherhood guidance is clear; if al-Qaeda limits its terrorism to non-Muslims, they will be forgiven and welcomed as heroes.

¹⁷⁸ “Interview with Mohammed Akef, Supreme Guide, International Muslim Brotherhood,” *Elaph Publishing* (in Arabic), 22 May 2008, at URL: www.elaph.com. (*Elaph Publishing* is a Saudi owned London-based publishing entity.)

¹⁷⁹ Interview with Mohammed Akef, International Muslim Brotherhood.

¹⁸⁰ Explanatory Memorandum: On the General Strategic Goal for the Group,” Mohamed Akram, May 22, 1991, Government Exhibit 003-0085/3:04-CR-240-G U.S. v. HLF, et al., United States District Court, Northern District of Texas, <http://www.txnd.uscourts.gov/judges/hlf2/09-25-08/Elbarasse%20Search%203.pdf>. **NOTE:** The listed groups were identified in this document as elements of either the Muslim Brotherhood or elements of the Islamic Movement under the control of the Muslim Brotherhood. Spelled out, the listed groups are: Islamic Society of North American, Islamic Circle of North American, Fiqh Council of North America, North American Islamic Trust, International Institute of Islamic Thought, and Council on American Islamic Relations (in 1991 known as the Islamic Association for Palestine – IAP).



Society of North America (ISNA) charged with specific responsibility for Islamic law.¹⁸¹ A review of their position on terrorism reveals that they are also in line with the Muslim Brotherhood leadership and the 5:32-33 Rule.

Imam Yahya Hendi and the *Fiqh* Council on North America. Imam Yahya Hendi, in his capacity as a council member on the *Fiqh* Council of North America¹⁸² issued a *fatwa* condemning terrorism on behalf of the FCNA and, by extension, the Muslim Brotherhood of North America. Imam Hendi is also the Muslim Chaplain at Georgetown University.¹⁸³ Hendi starts his *fatwa* by specifically identifying Islamic law as the authority and then uses language that follows Islamic legal form:

- The Fiqh, Jurisprudence, Council of North America (FCNA) wishes to address the issue of terrorism and how it is viewed in the Islamic legal and ethical system:
- Islamic law has consistently **condemned terrorism and extremism** in all forms and under all circumstances, and we reiterate this unequivocal position. Islam strictly condemns religious extremism and the use of violence **against innocent lives**.
- There is no justification in Islamic Law and ethics for extremism or terrorism. **Targeting civilians'** lives and property through suicide bombings or any other method of attack is *haram* - prohibited in Islam - and those who commit these acts are violators of the teachings of Islam and *Shari'ah* law, and therefore, **are not seen as "martyrs"**.
- The Qur'an, Islam's Holy Scripture, states: "*Whoever kills a person unjustly, it is as though he has killed all mankind. And*

Islamic law has consistently condemned terrorism and extremism in all forms and under all circumstances...

¹⁸¹ The Fiqh Council of North America, About Us, 28 February 2010, <http://fiqhouncil.org/AboutUs/tabid/175/Default.aspx>. Hereafter cited as About Us, FCNA.

¹⁸² About Us, FCNA.

¹⁸³ "What it Means to be a Muslim in America," Prince Alwaleed bin Talal Center for Muslim-Christian Understanding, Georgetown University, 19 April 2007, <http://events.georgetown.edu/events/index.cfm?Action=View&CalendarID=106&EventID=49881>.



whoever saves a life, it is as though he had saved all mankind." (Qur'an, 5:32) Recent killings are not justified and not condoned either by FCNA or Islam. **Attacks on civilians are not condoned by Islamic law** and are seen as *Haram*.¹⁸⁴

Imam Hendi "condemns terrorism and extremism" when it is "against innocent lives." But then Hendi qualified the condemnation to that which is "prohibited in Islam" and then further clarified this by stating that such acts violate "*Shari'ah* law." By stating that those who violate Islamic law will not be seen as martyrs, Hendi indicates that the *fatwa* is directed at Muslims who kill without right when engaging in suicide operations against fellow Muslims. Hendi ratifies the position by specific reference to Qur'an Verse 5:32 thus aligning his "civilians" and "innocent lives" with the 5:32 "*kills a person unjustly*" that equates to the killing of a Muslim without right. The Georgetown Chaplain wrote his *fatwa* in 2005. The martyrdom operations in the headlines at the time related to Zarqawi's killing of innocent Iraqis. Hence, the Jesuits at Georgetown University, FCNA, the Muslim Brotherhood in America, and the International Muslim Brotherhood are all aligned with the Islamic legal understanding of terrorism (and peace) that was expressed at *Darul Uloom* in Deoband, India as well as with the OIC. Hendi's *fatwa* also conforms to the 5:32-33 Rule. Because the Rule permits the killing of non-Muslims, Catholics at Georgetown for example, one wonders how a Catholic university like Georgetown reconciles this with their Catholic identity. Returning to the *Open Letter to His Holiness Pope Benedict XVI*, it should be noted that in the section where the 39 Imams insisted that Islam is not fought to force the conversion of non-Muslims to Islam, the relevant paragraph ended with specific reference to Verse 5:32. By conforming to the 5:32-33 Rule, the *Open Letter* simply asserts that Muslim use of force is controlled by Islamic doctrines on terrorism. In fuller context, the relevant section of the *Open Letter* read:

- Islamic teaching did not prescribe that the conquered populations be forced or coerced into converting. Indeed, many of the first areas conquered by the Muslims remained

Islamic teaching did not prescribe that the conquered populations be forced or coerced into converting.

¹⁸⁴ "Islamic Law has Consistently Condemned Terrorism," Imam Yahya Hendi, *Fatwas*, issued 25 July 2005, http://www.imamyahyahendi.com/fatwas_terrorism.htm.



predominantly non-Muslim for centuries. Had Muslims desired to convert all others by force, there would not be a single church or synagogue left anywhere in the Islamic world. The command *There is no compulsion in religion* means now what it meant then. The mere fact of a person being non-Muslim has never been a legitimate *casus belli* in Islamic law or belief. ... We emphatically agree that forcing others to believe — if such a thing be truly possible at all — is not pleasing to God and that God is not pleased by blood. **Indeed, we believe, and Muslims have always believed, that *Who so slays a soul not to retaliate for a soul slain, nor for corruption done in the land, it shall be as if he had slain mankind altogether (al-Ma'idah 5:32).***¹⁸⁵ [i.e., 5:32]

Worth noting, two of Imam Hendi's fellow FCNA members listed on the FCNAs "About Us" page, Dr. Jamal Badawi, Executive Committee, and Mohamed Al-Hanooti, fellow Council Member were listed as unindicted co-conspirators in the *United States v. Holy Land Foundation* case,¹⁸⁶ the largest funding terrorism case in the history of the United States. FCNA's parent organization, ISNA, was likewise listed as an unindicted coconspirator.¹⁸⁷

¹⁸⁵ *Open Letter to Pope Benedict*, 3.

¹⁸⁶ Attachment A, List of Unindicted Co-conspirators and/or Joint Ventures, *United States of America vs. Holy Land Foundation*, United States District Court for Northern District of Texas, Dallas Division, (Case 3:04-cr-00240, Document 656-2), 29 March 2007, at <http://www.websupp.com/data/NDTX/3:04-cr-00240-635-NDTX.pdf> or at http://www.nefafoundation.org/miscellaneous/HLF/US_v_HLF_Unindicted_Coconspirators.pdf. Hereafter cited as Attachment A.

¹⁸⁷ Attachment A.



Yahiya Emerick: Part I

Simple Enough to Teach 7th Graders

Before departing the United States, it may be of interest to see how terrorism is explained to American Muslim children. Written for 7th grade instruction, Yahiya Emerick's *What Islam is All About: A Student Textbook*, teaches that the three duties of Islam are *dawah*, *jihad*, and doing good and forbidding evil as stated in Chapter 36 "The Three Duties."¹ As part of the instruction, the text distinguishes between oppression and wrongful oppression:

- So just what is the position of Islam on war and conflict? Allah has said in the Qur'an that He does not love those who create trouble in the Earth. (16:90, 9:111) He also said that people who do wrong will be punished. Now this does not mean that Islam is against fighting or defending one's self. Allah said, "And those who, when they are oppressed wrongfully, help and defend themselves." (42:39)²

From there, Emerick draws the line between legitimate and illegitimate forms of oppression where legitimate oppression can be countered by *jihad* while illegitimate forms of oppression are explained in terms of the 5:32-33 Rule:

- What Islam is against is random violence and senseless killing. According to the Qur'an, "*If you kill a life it is as if you kill all life.*" Of course the life in question is of an innocent person. (See 2:190, 2:229 and 16:90 for example)³

While not cited, the "if you kill a life it's as if you kill all life" resonates the Verse 5:32 standard thus putting American Muslim children on the Islamic Movement's legal track to defining concepts of terrorism that are at variance with American notions of the same. Emerick conforms to the 5:32-33 Rule.

1. Yahiya Emerick, *What Islam is all About: A Student Textbook* (Grades 7 to 12), 5th rev. ed. (Lebanon: Noorart, 2004), 163.
2. Yahiya Emerick, 163.
3. Yahiya Emerick, 163.



Yahiya Emerick Part II

He Explicitly States the Rule to those Who would not Understand even if He told them

While Emerick quotes Verse 5:32 in *What Islam is All About*, he did not actually cite it. In his *The Complete Idiot's Guide to Understanding Islam*, however, he quotes and cites Verse 5:32 in a treatment that takes on ominous meaning when read in the context of the 5:32-33 Rule:

- The Rules of War
 - The rules for the conduct of war in Islam forbid the killing of noncombatants . . . **The trouble with bombing a bus or marketplace is that soldiers are not the ones who are killed.** Thus, the people who engage in this type of attack are going against the teaching of Islam. According to the Qur'an, *"If you kill a life unjustly it is as if you killed all life."* (Qur'an 5:32) Suicide bombers are also guilty of ignoring Islamic teachings, because suicide is forbidden in Islam. (Emphasis added)¹

Emerick asserts the Rule. So, what is meant by the statement "the trouble with bombing a bus or marketplace is that the soldiers are not the ones who are killed"? Certainly, Emerick is saying that the only people killed are "Muslims without right" which is unacceptable - suggesting that had soldiers been killed, the activity would have been acceptable. Hence, the "soldiers" could not have been Muslim because their killing would require an additional ruling on their status. Emerick does not appear to be referring to the Israelis because the Palestinians are in control of their territory and Israelis use and operate the bus system inside Israel. Certainly, Emerick is referring to the killing of non-Muslim forces in Muslim lands where the non-Muslim forces are diffused inside the Muslim population. At the time of writing, 2004, the most obvious example that meets this criterion was U.S. and Coalition forces in Afghanistan and Iraq. Given the target audience for *The Complete Idiots Guide*, perhaps Emerick calculated that he could serve explicit notice of the Rule to readers who would not get it - even if told - and yet notice was served.

Emerick, Yahiya, *The Complete Idiot's Guide to Understanding Islam*, 2nd ed., Alpha Books, Penguin Group: New York, 2004), 188.

Suicide Bombing is "Killing without Right" while Martyrdom Operations in Not!

The Position on Martyrdom Operations Presupposes the Rule. If the 5:32-33 Rule holds authoritative status, one would expect to see downstream consequences in the form of follow-on doctrines reflecting the natural consequence of such a rule. The Islamic Movement's position on suicide bombings is one example. From the Muslim American Society (MAS), a Muslim Brotherhood organization, to *IslamOnline*, a leading Muslim Brotherhood media outlet operated by



Sheikh Qaradawi out of Doha, Qatar, to the OIC's Islamic *Fiqh* Academy, there appears to be consensus on martyrdom operations. In June 2002, MAS published Sheikh Faysal Mawlawi's "*Fatwa* Questions about Palestine" in its monthly journal *American Muslim*. Mawlawi is the Vice President of the European Council for *Fatwa* and Research (ECFR),¹⁸⁸ a Dublin based Muslim Brotherhood entity¹⁸⁹ that disseminates Brotherhood approved *fatwas*. Yusuf Qaradawi is the president of the ECFR.¹⁹⁰ In *American Muslim*, Mawlawi's *fatwa* explained that while martyrdom operations are justified, suicide bombings are not. The 5:32-33 Rule clarifies the distinction. Blowing oneself up when non-Muslims are killed, especially non-Muslim forces, makes the activity a *Jihad* and the actor a *shaheed* (martyr). Blowing oneself up when only Muslims are targeted makes the activity murder rendering the actor guilty of suicide:

- Martyr operations are not suicide and should not be deemed as unjustifiable means of endangering one's life. Allah says in the Glorious Qur'an: "*And spend of your substance in the cause of Allah, and make not your own hands contribute to (your) destruction: but do good: for Allah loveth those who do good.*" (Al-Baqara: 195)
- Prophet Muhammad strictly forbade suicide and made it clear that anyone who commits suicide would be cast into hell. But in such case, suicide means a man's killing himself without any lawfully accepted reason or killing himself to escape pain or social problems.
- On the other hand, in martyr operations, the Muslim sacrifices his own life for the sake of performing a religious **duty**, which is *Jihad* against the enemy as scholars say. Accordingly, a Muslim's intention when committing suicide is certainly different from his intention when performing a military operation and dying in the Cause of Almighty Allah.

¹⁸⁸ The European Council for Fatwa Research, 22 July 2001, URL: <http://www.e-cfr.org/en/ECFR.pdf>, 4. Cited hereafter as ECFR.

¹⁸⁹ ECFR, 4.

¹⁹⁰ ECFR, cover.



This means that martyr operations are totally different from the forbidden suicide.¹⁹¹

Martyrdom operations are not only distinguishable from suicide, they take on the status of a **duty** when performed in furtherance of activities sanctioned by Islamic law.¹⁹² Mawlawi's 2002 *fatwa* was republished *verbatim* on 26 July 2007 in *IslamOnline's* "Fatwa Bank." Imam Mawlawi's *Fatwa* answered the question concerning the licit and illicit nature of martyrdom operations and suicide bombing. To bolster the validity of its claim, *IslamOnline* further relied on the Islamic *Fiqh* Academy which, in January 2003, declared:

- The Islamic *Fiqh* Academy stresses that 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.¹⁹³

The Islamic Fiqh Academy stresses that martyr operations are a form of jihad...

Headquartered in Jedda, Saudi Arabia, the *Fiqh Academy* is a subsidiary organ of the OIC under a charter to "achieve theoretical and practical unity of the Islamic Ummah by striving to have Man conform his conduct to the principles of the Islamic Sharia at the individual, social as well as international levels."¹⁹⁴ Hence, the *Fiqh Academy* formally expresses the OIC Member States' concurrence on the matter while serving public notice of it to the non-Muslim world.

¹⁹¹ Sheikh Faysal Mawlawi, "Fatwa Questions About Palestine," MAS – *The American Muslim*, Vol. 3, no. 2, June 2002.

¹⁹² Sheikh Faysal Mawlawi, "Fatwa Questions About Palestine," MAS – *The American Muslim*, Vol. 3, no. 2, June 2002.

¹⁹³ Islamic *Fiqh* Academy affiliated to the OIC in its fourteenth session, held in Duha (Qatar) 5–13 Dhul-Qi'dah 1423 A.H., 11–16 January 2003 C.E, as cited in "Jihad: Rulings & Regulations," "Living Shari'a/Fatwa Bank," *IslamOnline*, at URL: http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503543974

¹⁹⁴ Subsidiary Organs, Organization of the Islamic Conference, undated, OIC, URL: (updated) http://www.oic-oci.org/page_detail.asp?p_id=64#FIQH. **ALSO:** "To draw inspiration from the Islamic Sharia, to study contemporary problems from the Sharia point of view and to try to find the solutions in conformity with the Sharia through an authentic interpretation of its content."



Because the OIC and Brotherhood expend considerable efforts to ensure that their concepts of Islamic law are integrated and aligned,¹⁹⁵ the Brotherhood *Fatwa* and the OIC declaration can be considered paired. Just months after 9/11, what the Brotherhood identified as a permissive **duty** in 2002, the OIC declared an **obligation** in 2003 in Doha. Certainly, Major Hasan was pondering suicide missions when articulating his Jihadi cry “**we** love death more than you love life” in *Slide 48* of his briefing.¹⁹⁶ Certainly, Major Hasan was influenced by the OIC and Brotherhood’s reasoning when explaining the circumstances in which his **duty** becomes an **obligation**. In a 20 May 2009 *Scribd* entry, just months before acting out at Fort Hood, Hasan weighted the merits of martyrdom operations in a manner that reflects the reasoning of the *Fatwa*:

- “If one suicide bomber can kill 100 enemy soldiers because they were caught off guard that would be considered a strategic victory . . . You can call them crazy i (sic) you want but their act was nto one of suicide that is despised by Islam. So the scholars main point is that “IT SEEMS AS THOUGH YOUR INTENTION IS THE MAIN ISSUE: and Allah (SWT) knows best.”¹⁹⁷

¹⁹⁵ For example, Al-Misri, “Documents,” pp. xvii - xix. On *International Institute of Islamic Thought* letter head, Dr. Taha Jabir al-Alwani certified *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law* (the ‘*Umdat al-Salik*) over a signature block that identifies him as **1)** President of the International Institute of Islamic Thought (IIIT), **2)** President of the Fiqh Council of North America (FCNA), and **3)** a Member of the Fiqh Academy at Jeddah. Both the IIIT and FCNA are known American Muslim Brotherhood front organizations.

¹⁹⁶ Slide 48 “Comments,” Major Hasan Briefing.

¹⁹⁷ Nidal Hasan, “NidalHasan scribble,” *Scribd*, 20 May 2009, URL: <http://www.scribd.com/NidalHasan>, originally accessed 8 November 2009. FULL CITATION: “FULL CITATION:

- There was a grenade thrown amongs (sic) a group of American soldiers. One of the soldiers, feeling that it was to late for everyone to flee jumped on the grave with the intention of saving his comrades. Indeed he saved them. He inentionally (sic) took his life (suicide) for a noble cause i.e. saving the lives of his soldier. To say that this soldier committed suicide is inappropriate. Its more appropriate to say he is a brave hero that sacrificed his life for a more noble cause. Scholars have paralled (sic) this to suicide bombers whose intention, by sacrificing their lives, is to help save Muslims by killing enemy soldiers. If one suicide bomber can kill 100 enemy soldiers because they were caught off guard that would be considered a strategic victory. Their

Because the OIC and Brotherhood expend considerable efforts to ensure that their concepts of Islamic law are integrated and aligned, the Brotherhood Fatwa and and the OIC declaration should be understood as joined.



While asserting the 5:32-33 Rule justifying martyrdom operations, American Islamic Movement organizations nevertheless seek to mask its downstream effects. For example, as recently as 16 June 2010, the Muslim Public Affairs Council (MPAC,) sent a letter to Senator Joseph Lieberman (CT) demanding a change in terminology in which MPAC president, Salam Al-Marayati, made it clear that opposition to bin Laden was based on al-Qaeda's killing of Muslims without right:

- Rather, avoiding religious terminology in America's efforts to counter violent extremism makes strategic sense. It denies Al-Qaeda and its affiliates the religious legitimacy they severely lack and so desperately seek. For years, Muslim public opinion has decisively turned against Bin Ladin, Al-Qaeda and other terrorist groups because of the immoral, unethical and gruesome tactics they employ and because the vast majority of their victims have been other Muslims.¹⁹⁸

Earlier, in 2003, MPAC expressed its reliance on the 5:32-33 Rule in the document *A review of U.S. Counterterrorism Policy: American Muslim Critique & Recommendations*:

- Like other religions, Islam sanctifies life and forbids arbitrary killing. On this the Quran is rather explicit: . . . whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed all mankind, and whoso saveth the life of one, it shall be as if he had saved the life of all mankind. [Quran, 5:32].¹⁹⁹

As far back as 2003, MPAC expressed its reliance on the 5:32-33 Rule.

intention is not to die because of some despair. The same can be said for the Kamikazees (sic) in Japan. They died (via crashing their planes into ships) to kill the enemies for the homeland. You can call them crazy i (sic) you want but their act was not one of suicide that is despised by Islam. So the scholars main point is that "IT SEEMS AS THOUGH YOUR INTENTION IS THE MAIN ISSUE" and Allah (SWT) knows best.

¹⁹⁸ Salam Al-Marayati, *MPAC Letter of Senator Lieberman*, 16 June 2010.

¹⁹⁹ *A Review of U.S. Counterterrorism Policy: American Muslim Critique & Recommendations*, Muslim Public Affairs Council, September 2003, URL: <http://www.mpac.org/publications/counterterrorism-policy-paper/counterterrorism-policy-paper.pdf>, 7. Cited Hereafter as MPAC Review of U.S. CT Policy. **NOTE:** MPAC asserts the 5:32-33 Rule in the lead paragraph of a section titled "Violence and War in Islamic Law." A straight reading of that paragraph (below) indicates that it is based exclusively on Islamic law as defined by the Qur'an and *Hadith*. When the paragraph is



Telling Senator Lieberman that its objection to al-Qaeda is based on their “killing without right,” MPAC was consistent. When Marayati said “Muslim public opinion decisively turned against” al-Qaeda and Associated Movements, the reference to “immoral, unethical and gruesome tactics” was in reference to tactics that violate Islamic law because they bring “*mischief*” to the land by, among other things, killing innocent Muslims. MPAC succeeded at retaining the narrative that evokes the Rule while sanitizing the lexicon of language that actually defines it.

This leaves us in the situation where Major Hasan can publicly declare his intent to engage in jihad against U.S. military personnel inside the United States to his fellow American officers with the reasonable expectation that they will lack the subject matter awareness to comprehend that warning while the entire Islamic Movement is made instantaneously aware of his intent on hearing the same warning. For our elite national security establishment, this can be passed off as “complex.” For the American people, it results in chaos.

A Brief MPAC Segue. MPAC’s 16 June 2010 letter to Senator Lieberman was written to protest the Senator’s use of terminology that presumes to associate Islam with terrorism.²⁰⁰ This was the same

MPAC succeeded at retaining the narrative that evokes the Rule while sanitizing the lexicon of language that actually defines.

read according to the MPAC’s stated requirements as stated in the body of that paragraph, their position on *jihad* become indistinguishable al-Qaeda’s:

- Among the most enduring misconceptions about the Islamic faith is the presumed link between Islam and violence. Like other religions, Islam sanctifies life and forbids arbitrary killing. On this the Quran is rather explicit: . . . whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed all mankind, and whoso saveth the life of one, it shall be as if he had saved the life of all mankind. [Quran, 5:32]. In Islam, war should be avoided if possible and is to be entered into only when all other options for resolving a crisis have been exhausted. In addition, Muslims may engage in warfare as a form of *jihad*, but only under certain conditions and in a manner regulated by Islamic law, as defined by the Quran and Hadith (sayings of the Prophet Muhammad), which delineate how, when and why Muslims may take up arms against an enemy.

²⁰⁰ Salam Al-Marayati, *MPAC Letter of Senator Lieberman*, 16 June 2010:

- In your piece, you argue that the recent National Security Strategy “refuses to identify our enemy in this war as what it is: violent Islamist extremism.” The piece then goes on to give a number of arguments



concern MPAC raised in its discussion concerning *Jihad* in the just noted *Review of U.S. Counterterrorism Policy* report in 2003.²⁰¹ It is also the same concern MPAC raised when asking to testify to the Subcommittee on National Security, Emerging Threats, and International Relations on the topic of the 9/11 Commission Report. In that report, addressed to Congressman Chris Shays, the MPAC document stated:

- **The problem with the term Islamism:** Terminology is important in defining our goals as well as removing roadblocks into hearts and minds. The 9/11 Commission identifies Islamist terrorism as the threat. The Muslim Public Affairs Council recommends that the US government find other terminology.²⁰²

MPAC achieved phenomenal success when demanding that the United States sanitize its analytical lexicon of Islamic terms in a War on Terror where the self-identified threat defines itself and its mission exclusively in Islamic terms. Since these and related demands have been made, the enemy's known threat vocabulary (and therefore the doctrines associated with that vocabulary) have been purged from use in national security threat analysis. For a threat that seeks victory in the information battle-space, information supremacy is achieved by **1)** removing terms that define; **2)** acquiring control of the analytical processes through control of the replacement terminology that **3)** purposefully mis-defines the threat while **4)** replacing threat-centered methodologies with pseudo-scientific narratives that **5)** create the

Terminology is important in defining our goals as well as removing roadblocks into hearts and minds.

for why it is important to identify the violent perpetrators as Muslims and Islamists. We disagree strongly with your central argument.

²⁰¹ MPAC Review of U.S. CT Policy, 7:

- Among the most enduring misconceptions about the Islamic faith is the presumed link between Islam and violence.

²⁰² MPAC Testimony Submitted to Congressman Christopher Shays (R-CT), Chairman of the Subcommittee on National Security, Emerging Threats, and International Relations, 24 August 2004, at URL: http://mpac.org/bucket_downloads/Subcommittee%20on%20National%20Security%20--%20MPAC%20Testimony.pdf. Cite hereafter as MPAC Testimony on 9/11 Report.



illusion of a higher form of a gnostic awareness **6)** through the use of a scientized vocabulary.

This is the same MPAC that spoke on issues of freedom of religion and expression in Europe at places like UNESCO and the UN in Geneva at the invitation of the State Department in January 2010.²⁰³ This is the same State Department that cosponsored a resolution in the United Nations Human Rights Council on 25 September 2009 that seeks to subordinate First Amendment free speech rights to a media licensing scheme based on content²⁰⁴ where the lead organization on free speech rests with a Human Rights Council entity called the “Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression”^{205/206} whose roles and responsibilities appear to merge with an entity formed at the same time called the “Special Rapporteur on Contemporary Form of

²⁰³ Al-Marayati Explores Religious Freedom & Free Speech in Paris & Geneva,” 28 January 2010, MPAC News Release, at URL: <http://www.mpac.org/article.php?id=1020>:

- Last week, Executive Director Salam Al-Marayati traveled to Europe at the invitation of the State Department to speak about religious freedom and free speech. He spoke at UNESCO in Paris and at the U.S. mission to the United Nations in Geneva.

²⁰⁴ Paragraph 5, § h, Freedom of opinion and expression, Egypt, United States of America: draft resolution, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Human Rights Council, Twelfth Session, Agenda Item 3, (A/HRC/12/L.14), 25 September 2009, at URL: http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_12_L14.doc. Hereinafter cited as US Resolution on Free Speech to the UN HRC:

- 5. *Calls upon* all States: (h) To promote a pluralistic approach to information and multiple points of view by encouraging a diversity of ownership of media and of sources of information, including mass media, through, inter alia, transparent licensing systems and effective regulations on undue concentration of ownership of the media in the private sector; ...

²⁰⁵ For example, Paragraph 2, US Resolution on Free Speech to the UN HRC.

²⁰⁶ Resolution 7/36. Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Human Rights Council. 28 March 2008, at URL: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_36.pdf.



Racism.”²⁰⁷ The Human Rights Council is dominated by the OIC.²⁰⁸ The OIC defines human rights as “*shari’a* law,”²⁰⁹ “contemporary forms of racism” as “defamation of Islam,”²¹⁰ and is five years into a ten-year programme of action to make defamation of Islam a crime in every jurisdiction in the world,²¹¹ including the United States; all under the

²⁰⁷ Resolution 7/34. Mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Human Rights Council, 28 March 2008, at URL: http://www2.ohchr.org/english/issues/racism/rapporteur/docs/A_HRC_RES_7_34.pdf.

²⁰⁸ About OIC, Organization of the Islamic Conference, assessed on 10 April 2009, URL: http://www.oic-oci.org/page_detail.asp?p_id=52. Cited hereafter as About OIC:

- The Organization of the Islamic Conference (OIC) is the second largest inter-governmental organization after the United Nations which has membership of 57 states spread over four continents.

²⁰⁹ Articles 24 & 25, Annex to Res. No. 49/19-P “The Cairo Declaration on Human Rights in Islam,” the Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), Cairo, Arab Republic of Egypt, 9-14 Muharram 1411H, 31 July to 5 August 1990, URL: [http://www.oic-oci.org/english/conf/fm/19/19%20icfm-political-en.htm#THE CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM](http://www.oic-oci.org/english/conf/fm/19/19%20icfm-political-en.htm#THE%20CAIRO%20DECLARATION%20ON%20HUMAN%20RIGHTS%20IN%20ISLAM). Cited Hereafter as “Cairo Declaration.”

- **ARTICLE 24:** All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah.
- **ARTICLE 25:** The Islamic Shari’ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.

²¹⁰ “Defamation of Religions,” Reports of the Secretary General on the Legal Affairs Submitted to the Twenty-Eighth Session of the Islamic Conference of Foreign Ministers, Bamako, Republic of Mali, 4-8 Rabi-ul-Thani, 1422H (25-29 June, 2001) at <http://www.oic-oci.org/oicnew/english/conf/fm/28/28-ICFM-SG-Rep-en/28-ICFM-LEG-D-en.htm>. Cited hereafter as Twenty-Eighth Session of the Islamic Conference of Foreign Ministers, Bamako:

- **Contemporary forms of racism, 3) Contemporary forms of racism are based on discrimination and disparagement on a cultural, rather than biological basis.** In this content, the increasing trend of **Islamophobia**, as a distinct form of xenophobia in non-Muslim societies is very alarming. 4) The Committee for the Elimination of Racial Discrimination and the **Commission on Human Rights** along with its subsidiary bodies and mechanisms, have an important guiding role in the **elimination of the contemporary forms of racism. All governments should cooperate** fully with the Committee and the **Special Rapporteur on the Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance** with the view to enabling them to fulfill their mandates and to examine the incidents of contemporary forms of racism, **more specifically discrimination based on religion, including against Islam and Muslims.**

²¹¹ VII “Combating Islamophobia,” Ten-Year Programme of Action to Meet the Challenges Facing the Muslim Ummah in the 21st Century, Third Extraordinary Session of the Islamic Summit, Makkah al Mukarramah –



watchful eye of the OIC Member States who approved the plan.²¹² Of course, such an undertaking raise serious First Amendment and Article VI of the Constitution issues if undertaken. With MPAC's understanding of "free expression" aligned with the OIC's against the First Amendment, with the State Department sponsoring UN Resolutions on free speech patterned on OIC language where the State Department asks MPAC to speak on "free expression" issues abroad, the question is whether such resolutions can have the effect of subordinating U.S. free speech standards to Islamic speech codes as expressed by the OIC and MPAC in their respective forums.

So what is MPAC? If it is not a Muslim Brotherhood entity in its own right, it certainly satisfies the requirements to be a part of the "Islamic Movement." The Muslim Public Affairs Council was formed in 1986 as the Political Action Committee for the Islamic Center for Southern California and became an independent entity in 1988.²¹³ Maher Hathout is a founder of both the Islamic Center of Southern

The Muslim Public Affairs Council was formed in 1986 as the Political Action Committee for the Islamic Center for Southern California and became an independent entity in 1988.

Kingdom of Saudi Arabia, 5-6 dhul qa'dah 1426h 7-8 December 2005, at URL: <http://www.oic-oci.org/ex-summit/english/10-years-plan.htm>. Cited hereafter as OIC 10 Year Plan:

- **VII. Combating Islamophobia, 1)** Emphasize the responsibility of the international community, including all governments, to ensure respect for all religions and combat their defamation, **2)** Affirm the need to counter Islamophobia, through the establishment of an observatory at the OIC General Secretariat to monitor all forms of Islamophobia, issue an annual report thereon, and ensure cooperation with the relevant Governmental and Non-Governmental Organizations (NGOs) in order to counter Islamophobia. **3)** Endeavor to have the United Nations adopt an international resolution to counter Islamophobia, and call upon all States to enact laws to counter it, including deterrent punishments.

²¹² About OIC. (**NOTE:** The above footnote states the decision was made at a "Summit."):

- The **Islamic Summit**, composed of Kings and Heads of State and Government of Member States, is the supreme authority of the Organization. It convenes once every three years to deliberate, take policy decisions and provide guidance on all issues pertaining to the realization of the objectives and consider other issues of concern to the Member States and the Ummah.

²¹³ Muslim Public Affairs Council. "MPAC Timeline." MPAC website. URL: <http://www.mpac.org/about/timeline>. Accessed 23 June 2010.



California²¹⁴ and MPAC.^{215/216} MPAC maintains close relationships with ISNA and CAIR,²¹⁷ both known Muslim Brotherhood entities.²¹⁸ Both ISNA and CAIR are on the unindicted coconspirators list associated with the *Holy Land Foundation* case.²¹⁹ So what is the "Islamic Movement?"

One place to look is a document that was entered into evidence in the 2008 *United States v Holy Land Foundation* trial titled the *Explanatory Memorandum: On the General Strategic Goal for the Group*.²²⁰ Written in 1991 by Mohamed Akram, the General Masul of the Muslim Brotherhood in America, the document said that the Islamic Movement is a Muslim Brotherhood effort lead by the Muslim Brotherhood in America.²²¹ The *Explanatory Memorandum* explained that the

²¹⁴ *IslamOnline*, "Guest CV: Dr. Maher Hathout," IslamOnline website, URL: <http://web.archive.org/web/20070421005147/http://www.islamonline.net/livedialogue/english/Guestcv.asp?hGuestID=TNFyAg>. Accessed 23 June 2010.

²¹⁵ *IslamOnline*, "Guest CV: Maher Hathout." URL: <http://web.archive.org/web/20070421005147/http://www.islamonline.net/livedialogue/english/Guestcv.asp?hGuestID=TNFyAg>. Accessed June 23, 2010.

²¹⁶ Muslim Public Affairs Council, "Maher Hathout." MPAC website, URL: <http://www.mpac.org/about/staff-board/maher-hathout.php>. Accessed 24 June 2010.

²¹⁷ Local Chapter, Muslim Public Affairs Council, Local Chapters, MPAC website, URL: <http://web.archive.org/web/1996111123227/www.mpac.org/local.html>. Accessed June 24, 2010.

²¹⁸ *Explanatory Memorandum* (CAIR as AIP), 32.

²¹⁹ Attachment A

²²⁰ *Explanatory Memorandum: On the General Strategic Goal for the Group*, Mohamed Akram, May 22, 1991, Government Exhibit 003-0085/3:04-CR-240-G U.S. v. HLF, et al., United States District Court, Northern District of Texas, <http://www.txnd.uscourts.gov/judges/hlf2/09-25-08/Elbarasse%20Search%203.pdf>, 18. Hereafter Cited as *Explanatory Memorandum*.

²²¹ Paragraph 1, §§ 1 and 2, *Explanatory Memorandum*, 18:

- **One: The Memorandum is derived from:**
 - 1 - The general strategic goal of the Group in America which was approved by the *Shura* Council and the Organizational Conference for the year [1987] is "Enablement of Islam in North America, meaning: establishing an effective and a stable Islamic Movement led by the Muslim Brotherhood which adopts Muslims' causes domestically and globally, and which works to expand the observant Muslim base, aims at unifying and directing Muslims' efforts, presents Islam as a civilization alternative, and supports the global Islamic State wherever it is".



“Movement” is a “settlement” process to establish itself inside the United States and, once established, to undertake a “grand mission” characterized as a “civilization *Jihadist*” mission led by the Muslim Brotherhood.²²² Further, the “settlement process” is a “Civilization-*Jihadist* Process” that is led by the Muslim Brotherhood and involves a “grand *Jihad* in eliminating and destroying the Western civilization from within and “sabotaging” its miserable house by their hands and the hands of the believers so that it is eliminated . . .”²²³ Hence, “Civilization *Jihad*” is the “Settlement Process” and the “Settlement Process” is the mission of the “Islamic Movement” – that calls for

*“Civilization Jihad” is the
“Settlement Process” and
the “Settlement Process”
is the mission of the
“Islamic Movement”*

- **Two: An Introduction to the Explanatory Memorandum:**

In order to begin with the explanation, we must “summon” the following question and place it in front of our eyes as its relationship is important and necessary with the strategic goal and the explanation project we are embarking on. The question we are facing is: “How do you like to see the Islam Movement in North America in ten years?”, or “taking along” the following sentence when planning and working, “Islamic Work in North America in the year (2000): A Strategic Vision”. Also, we must summon and take along “elements” of the general strategic goal of the Group in North America and I will intentionally repeat them in numbers. They are: I- Establishing an effective and stable **Islamic Movement led by the Muslim Brotherhood**.

²²² Paragraph 4, *Explanatory Memorandum*, 20:

- **Four: The Process of Settlement:**

In order for Islam and its **Movement** to become “a part of the homeland” in which it lives, “stable” in its land, “rooted” in the spirits and minds of its people, “enabled” in the lives of its society and has firmly-established “organizations” on which the Islamic structure is built and with which the testimony of civilization is achieved, the **Movement** must plan and struggle to obtain “the keys” and the tools of this process in carry out this grand mission as a “**Civilization Jihadist**” responsibility which lies on the shoulders of Muslims and - on top of them - the **Muslim Brotherhood** in this country. Among these keys and tools are the following ...

²²³ Paragraph 4, § 4, *Explanatory Memorandum*, 21:

- **4- Understanding the role of the Muslim Brother in North America:**

The process of settlement is a “Civilization-Jihadist Process” with all the word means. The *Ikhwan* must understand that their work in America is a kind of grand Jihad in eliminating and destroying the Western civilization from within and “sabotaging” its miserable house by their hands and the hands of the believers so that it is eliminated and God’s religion is made victorious over all other religions. Without this level of understanding, we are not up to this challenge and have not prepared ourselves for Jihad yet. It is a Muslim’s destiny to perform Jihad and work wherever he is and wherever he lands until the final hour comes, and there is no escape from that destiny except for those who chose to slack. But, would the slackers and the Mujahedeen be equal.



“eliminating and destroying” our way of life through a strategy of penetration and subversion.

The document states that the settlement process of “Civilization-Jihad” is in furtherance of establishing a “global Islamic Movement” to establish a global *Islamic State* that bears a striking resemblance to the *Caliphate*.²²⁴ Hence, the “Islamic Movement” is one that is closely associated with – and subordinated to - the Muslim Brotherhood’s plan to subvert the United States through a form of *Jihad* bearing the characteristics of both an insurgency and a subversion campaign designed to be executed at the inter-cultural level. So what does MPAC have to say about the Islamic Movement? Returning yet again to the September 2003 publication *A Review of U.S. Counterterrorism Policy*, MPAC makes numerous references to an Islamic Movement and Islamic movements:

- In most Muslim countries today, Islamic movements represent the most important and organized forces of political opposition facing these governments.²²⁵

MPAC’s language is in line with Muslim Brotherhood characterizations of the Islamic Movement. The MPAC document further states:

- Given both the prominence and diversity of revivalist trends in most Muslim nations, as well as Secretary Powell’s affirmation that Islam and democracy are not necessarily incompatible, the State Department should develop dialogues and cultivate relationships with those within the Islamic movement who subscribe to democratic principles. In doing so, the United States should promote democracy without direct involvement

²²⁴ Paragraph 4, § 7, *Explanatory Memorandum*, 22.

- **7- The conviction that the success of the settlement of Islam and its Movement in this country is a success to the global Islamic Movement and a true support for the sought-after state, God willing:**

There is a conviction - with which this memorandum disagrees - that our focus in attempting to settle Islam in this country will lead to negligence in our duty towards the **global Islamic Movement** in supporting its project **to establish the state**. We believe that the reply is in two segments: One - The success of the **Movement in America** in establishing an observant Islamic base with power and effectiveness will be the best support and aid to the **global Movement project**.

²²⁵ MPAC Review of U.S. CT Policy, 6.

This is an explicit statement that lying is sometimes permissible for a given interest... When it is possible to achieve such an aim by lying but not by telling the truth, it is permissible to lie if attaining the goal is permissible (N: i.e., when the purpose of lying is to circumvent someone who is preventing one from doing something permissible) and obligatory to lie if the goal is obligatory.

Al-Misri,
Lying, Book R
“Holding Ones’ Tongue,”
Reliance of the Traveller:
A Classical Manual of Sacred
Islamic Law



or interference on behalf of (or against) one or another individual, group, or philosophical/ideological trend.

It is not entirely clear what MAPC means by movements that “subscribe to democratic principles” as there are indicators that CAIR can message approval of democratic principles as part of a “civilization *Jihad*” process with the intent to subvert²²⁶ at the same time that ISNA related mosques warn against accepting democratic principles as un-Islamic. For example, while CAIR speaks of having two messages, one to Muslims and one to the Americans,²²⁷ an ISNA affiliated mosque in Houston, the Islamic Society of Greater Houston, warns that “support for democracy is among those things that “nullify one’s Islam.”²²⁸ Of course, to “nullify one’s Islam” is to apostatize from Islam. The penalty for Apostasy is death.²²⁹ As such, this makes the

²²⁶ Al-Misri, r8.0 “Lying” at § r8.2 “Permissible Lying,”

- This is an explicit statement that lying is sometimes permissible for a given interest...When it is possible to achieve such an aim by lying but not by telling the truth, it is permissible to lie if attaining the goal is permissible (N: i.e., when the purpose of lying is to circumvent someone who is preventing one from doing something permissible) and obligatory to lie if the goal is obligatory.

²²⁷ Government Exhibit: Philly Meeting - 15, 3:04-CR-240-G, U.S. v. HLF, et al., at 2,3, at <http://www.txnd.uscourts.gov/judges/hlf2/09-29-08/Philly%20Meeting%2015.pdf>: (**Omar Ahmad**) “I believe that our problem is that we stopped working underground. We will recognize the source of any message which comes out of us. I mean, if a message is publicized, we will know ..., the media person among us will recognize that you send two messages; **one to the Americans and one to the Muslims**. I they found out who said that – even four years later – it will cause a discredit to the Foundation as far as the Muslims are concerned as they say “Look, he used to tell us about Islam and that is a cause and stuff while he, at the same time, is shooting elsewhere.”

²²⁸ Zainu, Muhammad Jamil. *Islamic Guidelines to Reform the Individual and the Society*. Riyadh: Jumaa Electronic Printing House, 1995. Collected from Islamic Society of Greater Houston North Zone, Houston, TX, 12/06/03, *Islamic Guidelines to Reform the Individual and the Society*, Saudi Arabia: Jum’a Electronic Publishing House, as cited in *Saudi Publications on Hate Ideology Invade American Mosques*, Center for Religious Freedom, Freedom House, 28 January 2006, at, 43, http://www.freedomhouse.org/uploads/special_report/45.pdf.

²²⁹ Ahmad ibn Naqib al-Misri, ‘Umdat al-Salik (*Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*), rev. ed. trans. Nuh Ha Mim Keller (Beltsville: Amana Publications, 1994), Book O “Justice,” § o8.0 “Apostasy from Islam (*RIDDA*),” at §§ o8.0 and o8.1:

- **§o8.0.** Leaving Islam is the ugliest form of unbelief and the worst. Whoever voluntarily leaves Islam is killed.



Brotherhood warnings to American Muslims against accepting democracy subversive to the American political process while at the same time constituting death threats against American Muslims.

This detour into the world of MPAC was done to point to issues that can only be understood by accounting for the Islamic legal principles that guide Islamic Movement entities – especially those that state such reliance. MPAC accepts the 5:32-33 Rule, uses language on war that can seem neutral when read with a Western eye and yet be cause for concern when read with an eye to Islamic law's influence on the meaning of terms.

A Global Inventory

Numerous other *fatwas* and related pronouncements were issued that condemned terrorism. What follows is an inventory of a few of those pronouncements along with an identification of the language that signals conformance to the 5:32-33 Rule.

Saudi Sheikh Oadah Condemns Osama bin Laden. On 14 September 2007, Saudi Sheikh Salman al-Oadah, the general supervisor of *IslamToday*, broadcast “A Ramadan Letter to Osama bin Laden”²³⁰ that condemned bin Laden and al-Qaeda. A strong theme running through the narrative was the killing of innocents that culminates in a reference to Verse 5:32:

- How much blood has been spilled? How many innocent children, women, and old people have been killed, maimed, and expelled from their homes in the name of “al-Qaeda”?
 - Are you happy to meet Allah with this heavy burden on your shoulders? It is a weighty burden indeed – at least hundreds of thousands of innocent people, if not millions.
 - Our Lord tells us: “Whosoever kills a human being for other than manslaughter or corruption in the Earth, it shall be as if
- **5:32.1.** When a person who has reached puberty and is sane voluntarily apostatizes from Islam, he deserves to be killed.

²³⁰ Salman al-Oadah, “A Ramadan Letter to Osama bin Laden,” *IslamToday*, 14 September 2007, URL: < http://www.islamtoday.net/english/showme2.cfm?cat_id=29&sub_cat_id=1521 >, accessed 19 September 2007.

Numerous other fatwas and related pronouncements of note were issued that condemned terrorism.



he had killed all mankind, and whoso saves the life of one, it shall be as if he had saved the lives of all mankind.” [Sûrah al-Mâ'idah: 32]²³¹ [i.e., 5:32]

Just as the 2008 Conference of Pakistani Islamic jurists limited its *fatwa* condemning suicide attacks to Pakistan, Sheikh Oadah likewise limits the harshness of his criticisms by narrowing on examples that took place inside Muslim lands against Muslims. Hence, the stated wrong was not the act of suicide bombing *per se* but rather its use against “innocent” Muslims:

- “What do a hundred people in Algeria, or double that number in Lebanon, or likewise in Saudi Arabia hope to achieve by carrying out acts of violence – or as they say, suicide attacks? These acts are futile.”²³²

The Saudi Sheikh places blame for the civil war and the destruction of Afghanistan and Iraq squarely at the hands of bin Laden and al-Qaeda. Because the language speaks to the “*mischief in the land*” that al-Qaeda brought to those countries, it resonates the 5:32-33 Rule. As it relates to Afghanistan, the fact that “*tumult and oppression*” in the land is attributed to al-Qaeda means that they are being blamed for causing non-Muslim forces to enter Muslim lands:

- Brother Osama, what is to be gained from the destruction of entire nations – which is what we are witnessing in Afghanistan and Iraq – seeing them torn with plague and famine? What is to be gained from undermining their stability and every hope of a normal life? Three million refugees are packing into Syria and Jordan alone, not to mention those who are fleeing to the East and the West.
- The nightmare of civil war which now reigns supreme in Afghanistan and Iraq brings no joy to the Muslims.²³³

The nightmare of civil war which now reigns supreme in Afghanistan and Iraq brings no joy to the Muslims

²³¹ **Note:** Sûrah al-Mâ'idah: 32 is Qur'an Verse 5:32

²³² Salman al-Oadah.

²³³ Sheikh Salman al-Oadah, “A Ramadan Letter to Osama bin Laden,” (read live on NBC television, Saudi Arabia, Day 2 of Ramadan, 14 September, 2007), *Islamtoday.net*, See URL: <



The Kuwaiti Press Responds to Al-Tabatabai. On September 11, 2007, Kuwaiti Member of Parliament Walid Al-Tabatabai wrote a letter praising Osama bin Laden in which he “appealed to bin Laden to distinguish between fighting the American invader and attacking the Muslims, and to refrain from random operations which harmed innocents because such operations damaged the image of *Jihad* and sabotaged the spreading of Islam.”²³⁴ In his effort to mount a defense for bin Laden, Tabatabai drew the same bright line as Qaradawi between *Jihad*, the killing of Americans, and terrorism, the killing of Muslims without right.

Tabatabai’s letter brought a harsh response from the Kuwaiti press raising concerns over the dangerous nature of such praise. One example came from *Al-Watan* (Kuwait) on 27 September 2007. A close reading indicates that it mapped to the 5:32-33 Rule. With the first bullet spelling out the distinction between *Jihad* against the infidel (Americans) and terrorism, the second and third bullets spoke to the “*tumult and oppression*” bin Laden’s actions brought to the land. The fourth and fifth bullets blame al-Qaeda’s reckless activities for causing the United States to enter Muslim lands that caused them to remain. Hence, Tabatabai effectively placed the blame for U.S. presence in Iraq and Afghanistan on al-Qaeda because they caused the “*mischief*” to the land when attacking on 9/11.

- "Sheikh Osama, what the [organization] called Al-Qaeda has carried out in Iraq [is] mixing together *Jihad* against the occupation with operations for kidnapping, killing, and bombing public places and harming worshippers of God – Shi’ite and Sunni civilians alike – when even imams of mosques, and preachers, have not been spared in the operations carried out by those belonging to Al-Qaeda in Iraq. These operations strike civilians and harm the image of *Jihad* and of the resistance in Iraq against the occupation...

http://www.islamtoday.net/english/showme2.cfm?cat_id=29&sub_cat_id=1521 >, accessed 19 September 2007.

²³⁴ “Kuwaiti MP Praises Jihad, Advises Bin Laden On Avoiding Mistakes In Al-Qaeda’s Jihad,” *MEMRI Special Dispatch Series* – No 1760, URL: < <http://memri.org/bin/latestnews.cgi?ID=SD176007> >, 8 November 2007.



- "I wish to ask Sheikh Osama about his view of the operations by some groups belonging to Al-Qaeda, that carry out random bombings and whose victims are innocent people, some of whom are Muslim.
- "I would like for Sheikh Osama to tell us – and we would appreciate this – regarding an Al-Qaeda group in the Maghreb states that is perpetrating various bombings, the victims of which are innocent people – mostly, or all, Muslims.²³⁵
- Unfortunately, the speech was like a lifesaver to the American president, who is dealing with great internal pressures to withdraw his forces from Iraq. Thus, commentators said that Bush found what he wished for in this speech, since [bin Laden] provided [Bush] with clear-cut evidence of [the need] to restrain his adversaries: That is, the continued presence of the U.S. military in Iraq is for the sake of defending the entire American people from the ongoing Al-Qaeda threat... Your speech damaged all the efforts underway to speed up the American exit from Iraq – unless you are not interested in this!
- "The West and its helpers from the Arab and Islamic countries saw what they wished to see in 9/11 – [a pretext] to fight Islamic activity in general, and charity activity in particular. The big Islamic charity societies were closed down, and other societies and institutions were significantly downsized and restricted – harming millions of Muslims receiving help from the activity of these institutions and societies, even though they had no direct or indirect connection to these events [of 9/11] . . ."

The West and its helpers from the Arab and Islamic countries saw what they wished to see in 9/11.

Saudi Mufti Abd Al-'Aziz Says al-Qaeda Harms Muslims. In a *fatwa* issued by Saudi Mufti Sheikh Abd Al-'Aziz bin Abdallah Al-Sheikh on 1 October 2007, Osama bin Laden was criticized while the Saudi youth were warned that they could not engage in *Jihad*.²³⁶ Al-Aziz's *fatwa* is

²³⁵ MEMRI Special Dispatch Series – No 1760.

²³⁶ "Saudi Mufti Issues Fatwa Prohibiting Saudi Youth from Engaging In Jihad Abroad," MEMRI Special Dispatch Series - No. 1731, 3 October 2007 (concerning Saudi Mufti Sheikh Abd Al-'Aziz bin Abdallah Aal Al-Sheikh's 1 Oct 2007 Fatwa).



somewhat subtler and is based as much on violating sovereign Saudi law as on violating the 5:32-33 Rule. Just as with the Pakistani *fatwa*, the Saudi Mufti's decree stated that those who fight *Jihad* without permission from the proper authorities violate Islamic law. Mufti Al-'Aziz emphasized the harm that al-Qaeda brought to Muslims (Verse 5:32) and to Muslim lands (Verse 5:33):

- I order those with means to spend their money with discretion, so that it does not harm the Muslims.
- All this is extremely dangerous, because the actions of these young people harm the Muslim nation - this damage harms our peaceful and serene country Saudi Arabia. By their actions, these young people are weakening the country and its people."
- These young people have been easy prey for anyone seeking to corrupt the country and to exploit their religious zeal - to the point where they have become walking bombs, killing themselves to accomplish the political and military aims of suspicious elements.
- "This phenomenon has reached the point where our youth have become a commodity bought and sold by elements in both the East and the West, with the aim of fulfilling their own objectives and goals - and only Allah knows the extent of the damage that these operations are causing Islam and its people.²³⁷

Egyptian *Jihadi* Cleric Sayyed Imam Al-Sharif. Author of Al-Qaeda's *Shari'a Guide to Jihad* and prominent *Jihad* jurist, Sayyed Imam Al-Sharif is serving a life sentence in an Egyptian prison. Also known as "Dr. Fadl" and "'Abd Al-Qader Bin 'Abd Al-'Aziz," 'al-Sharif was a peer of al-Qaeda's second in command, Ayman Al-Zawahiri. In reading his Fall 2007 repudiation of al-Qaeda and Zawahiri, it should be noted that it was done at the direction of Egyptian officials; his work product was reviewed by *Al-Azhar* scholars.²³⁸

²³⁷ MEMRI Special Dispatch Series - No. 1731.

²³⁸ "Major Jihadi Cleric and Author of Al-Qaeda's Shari'a Guide to Jihad: 9/11 Was a Sin; A Shari'a Court Should Be Set Up to Hold bin Laden and Al-Zawahiri



Of interest, al-Sharif's objections to al-Qaeda stem from the fact that al-Qaeda's attacks in the United States caused the "*mischief*" in Muslim lands; in effect blaming al-Qaeda for U.S. forces entering Muslim lands following 9/11. For Sharif, the violation of Islamic law is not that innocents were attacked in the United States but rather that the attacks in the United States exceeded the abilities of al-Qaeda thus making these attacks both the proximate cause and the cause in fact of "*mischief*" being brought to Muslim lands (in the form of non-Muslim forces entering Muslim lands as a result of the 9/11 attacks that al-Qaeda lacked the capacity to resist). When successfully branded this way, groups like al-Qaeda become vulnerable to accusations of "extremism" in the Islamic sense that they conducted themselves in a manner that exceeded their ability. To be branded as the cause for "*mischief in the land*" is to stand accused of violating Verse 5:33. Sharif expanded his argument to include a violation of Verse 5:32 by claiming that the death of innocent Muslims was a direct consequence of those same acts. The following three extracts give a sense for Sharif's reasoning as well as how his argument reflects the 5:32-33 Rule:

- But what good is it if you destroy one of your enemy's buildings, and he destroys one of your countries? What good is it if you kill one of his people, and he kills a thousand of your people? . . . That, in short, is my evaluation of 9/11."
- "Bin Laden, Al-Zawahiri, and others fled at the beginning of the American bombing [in Afghanistan], to the point of abandoning their wives and families to be killed along with other innocent people.
- (On 9/11) "It was a catastrophe for the Muslims. Al-Qaeda ignited strife that found its way into every home, and they were the cause of the imprisonment of thousands of Muslims in the prisons of various countries. They caused the death of tens of thousands of Muslims - Arabs, Afghans, Pakistanis, and others. The Taliban's Islamic Emirate was destroyed, and Al-

...groups like al-Qaeda can become vulnerable to accusations of "extremism" in the Islamic sense that they conducted themselves in ways that exceeded their ability.

Accountable; There Are Only Two Kinds of People in Al-Qaeda – The Ignorant and Those Who Seek Worldly Gain," MEMRI Special Dispatch Series No. 1785, 14 December 2007, URL: < <http://www.memri.org/bin/latestnews.cgi?ID=IA41107>>, accessed 21 December 2007.



Qaeda was destroyed. They were the direct cause of the American occupation of Afghanistan and other heavy losses which there is not enough time to mention here. They bear the responsibility for all of this." ²³⁹

Middle Eastern Press Going After Abu Musab al-Zarqawi. In 2005, when Abu Musab al-Zarqawi launched his savage attacks against Iraqi civilians known to be unaligned and non-combatants, the Arab world expressed genuine outrage. The attacks directly violated Verse 5:32 concerning killing Muslims without right. The Arab media and Iraqi leadership lost no time in spelling out that bright-line distinction between martyrdom in jihad and murder resulting in suicide. Muslims claiming *Jihad* who bring "*mischief to the land*" can be classified as unlawful *Jihadis* whose status reverts that of highway robbery or gangsterism. Often misunderstood, the crime of *hiraba* – is brigandage.²⁴⁰ When Muslim groups bring "*mischief to the land*," brigandage becomes the understood description of those violating the 5:32-33 Rule.²⁴¹ Actions sanctioned when in furtherance of *Jihad* become gangsterism when those same acts are undertaken in circumstances where the *Jihad* threshold is either not met or withdrawn. At the time Zarqawi undertook his murderous actions, the

²³⁹ MEMRI Special Dispatch Series No. 1785.

²⁴⁰ Ahmad ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, rev. ed. Trans. Nuh Ha Min Keller, (Beltsville, MD: Amana Publications, 1994), Book O "Justice," o15 "Penalty for Highway Robbery," o15.1 – o15.2: "The caliph is obliged to summon whoever uses a weapon though force suffices to be considered a weapon, or taking money by dint of one's fist and makes people afraid to use the road no matter whether in the wilderness, a village or in the country; meaning he frightens those who pass along the way by means of his strength or weapons ... The difference between a highwayman and someone who takes by forcible seizure is that the latter does so within earshot of help, while the offense of the highwayman is far greater because he menaces the lifeline of the community, its trade routes. If a highwayman kills someone, he must be executed, even when the person entitled to retaliation agrees to forgo it."

²⁴¹ al-Misri, Book P "Enormities," p22.0 – p22.2: "HIGHWAY MEN WHO MENACE THE ROAD. ... Allah Most High says: "*The recompense of those at war with Allah and His Messenger and who strive for corruption in the land is that they be killed or crucified, or a hand and foot cut off from opposite sides, or banished from the land. That is their humiliation in this world, and an immense torment awaits them in the next.*" (Koran 5:33) Merely making people feel that the way is unsafe is to commit an enormity, so how if such a person should take money?"



response from Prime Minister Talabani²⁴² and the larger Arab media was swift. From the following bullets, it is clear, the argument follows the 5:32-33 Rule – first identify the killing without right and then the associated “*mischief in the land*”:

- Over 160 dead on Wednesday, most of them Baghdadi laborers whose only crime was to try and find some work so that they could feed their families. It was an act of sheer evil . . . This was even worse than the suicide bombing two months ago which killed around 30 children. At least then there could be the pretence that American troops were the target. There can be no pretence this time. There was no attempt to target the Americans or the security forces. Just plain Iraqis gathered near a meeting point for laborers, hoping for a day's work. (*Arab News*, Jedda, Saudi Arabia, 16 Sept 2005)
- “They are killing hundreds of Iraqis, destroying their wealth and trying their best to stop their march towards the just goals of rebuilding their country.” (From Iraqi President Jalal Talabani’s UN speech.)
- In declaring war against Iraqi Shiites, Al-Qaeda has proven itself to be nothing more than a ruthless, sectarian gang . . . Will they limit this battle to Iraq or do they intend to expand their call for Arabs to kill their fellow Arabs throughout the region? . . . They need to make it amply clear to the youth of the Islamic world that there is only one characteristic that defines Al-Qaeda: un-Islamic gangsterism. (*Daily Star*, Beirut, 16 Sept 2005)

The 2005 Spanish *Fatwa*. In 2005, one year after the al-Qaeda inspired bombing of the Madrid train yard, Mansur Escudero Bedate, Secretary General of the Islamic Commission of Spain issued a *fatwa* condemning terrorism. The *fatwa* made direct reference to Verse 5:32:

- After the murder of Abel, God says: “We declare to the children of Israel that those who kill a human being - not being

²⁴² See the 17 September 2005 unclassified USCENTCOM Point Paper No 1 titled “President Talibani’s Communications Strategy - An Analysis,” for a more detailed explanation of the underlying dynamic.



to punish murder or the plating of corruption on Earth-- will be treated as if they had killed all of humanity; and whosoever saves a life, will be treated as if they had saved the life of all of humanity ".²⁴³

The Islamic Movement holds to definitions of terrorism that can be shown to be closely aligned with the 5:32-33 Rule as well as related Quranic and Islamic legal authority. From the Indian *Deobandis*, to the Pakistanis, to the OIC, to the Muslim Brotherhood as well as to the prominent authorities identified in the inventory, the concept of terrorism as discussed in this paper has been validated as an understood standard within the Muslim world.

Conclusion

The *Deobandis* at the *Darul Uloom* define terrorism as the killing of a Muslim without right. By all appearances, this definition is in line with Islamic legal doctrines that strictly prohibit the killing of a Muslim without right for any purpose by any person or persons – Muslim or non-Muslim. This definition is silent on the killing of non-Muslims. As the survey indicates, the Islamic Movement's concept of terrorism as the "killing without right" seems both universal and local, and ubiquitous at all levels. From a review of OIC documents, this is the official understanding of terrorism that our Middle Eastern Coalition partners hold when dealing with the United States. We know this because they have said so in formal resolutions and publicly served conventions. This has consequences. So serious is the offense of killing without right, Major Hasan preferred the route of *Jihad* against his fellow U.S. servicemen; taking the extraordinary step of publicly declaring his intent in a clearly stated presentation to his officer peers – many times over.

Clearly stated, that is, to anyone committed to a factual understanding of the doctrines *Jihadis* openly declare to be the basis for their motivations. The point of failure persists because such understandings

After the murder of Abel, God says: "We declare to the children of Israel that those who kill a human being - not being to punish murder or the plating of corruption on Earth-- will be treated as if they had killed all of humanity; and whosoever saves a life, will be treated as if they had saved the life of all of humanity ".

²⁴³ Mansur Escudero Bedate, Secretary General of The Islamic Commission of Spain in Cordova, 11 March 2005, from "Text of the Fatwa Declared Against Osama Bin Laden by the Islamic Commission of Spain," WWW.WEBISLAM.COM, translated by Liza Sabater, Fuente Culture Kitchen, URL: <<http://www.webislam.com/pdf/pdf.asp?idn=537>>, 12 March 2005, accessed 1 October 2008.



are fundamentally unclear to non-Muslims in general and to national security professionals specifically. This is the opportunity cost of sacrificing strategic analysis for theoretical models. The cost of focusing all the elements of national power on constructed pseudorealities is that the complexity born of such modeling becomes the product that renders those under its influence incapable of recognizing basic facts associated with the threats they are designed to mask. Chaos in the planning cycle is the desired end-state. When academics take the lead in counterterrorism programs that subordinate operational expertise to academic constructs, the risk is that operations are placed in the service of narratives designed to validate the models of social scientists. Models are fictions. When models deny the facts of self-identified enemy's self-identified basis for fighting in environments that fully validate both the enemy and his motivations, they deny reality. The result is strategic blindness in furtherance of catastrophic failure. The enemy plans to win this war on the altar of postmodernism.²⁴⁴ When representing War on Terror issues to the public, at some point the communication of narratives become a misrepresentation of facts. At what point does command guidance against recognition of a self-identified threat undermine the Constitutional mandate to "support and defend"?

Test Case: The 2010 Saudi *Fatwa*
follows a series of quotes below

"Nor do we describe our enemy as 'jihadists' or 'Islamists' because jihad is a holy struggle, a legitimate tenet of Islam, meaning to purify oneself or one's community, and there is nothing holy or legitimate or Islamic about murdering innocent men, women and children, ..."
[Conforms to the 5:32-33 Rule]

**John Brennan, Deputy National
Security Advisor for
Counterterrorism and Homeland
Security, 27 May 2010**

²⁴⁴ How one can one tell if an organization or institution has fallen under the postmodern sway? When leaders of those entities respond to factual analysis by stating "you just cannot get me to believe this is true," they are stating that facts do not influence their analysis or decision-making except when they validate a narrative. When that happens, one is on notice that the organization or institution in question orients on narratives that validate models, not on winning a war.



A Few Quotes

He repeated the administration argument that the enemy is not "terrorism," because terrorism is a "tactic," and not terror, because terror is a "state of mind"

John Brennan, Deputy National Security Advisor for Counterterrorism and Homeland Security, 27 May 2010

Well, no and yes!

No because, in *Jihad*, terror is the desired end state. As explained by our close Coalition Partner –

TERROR struck into the hearts of the enemies is not only a means; it is an end in itself. Once a condition of terror into the opponent's heart is obtained, hardly anything is left to be achieved. It is the point where the means and the end meet and merge. **TERROR** is not a means of imposing decision upon the enemy; it is the decision we wish to impose upon him.

Pakistani Brigadier S. K. Malik
***Quranic Concept of War*, 59.**

But yes, because terror is a "state of mind" – in fact, it is the desired end-state objective of *Jihad* -

TERROR cannot be struck into the hearts of an army by merely cutting its lines of communication or depriving it of its routes to withdraw. It is basically related to the strength or weakness of the human soul. It can be instilled only if the opponent's Faith is destroyed. Psychological dislocation is temporary; spiritual dislocation is permanent . . . To instill **TERROR** into the hearts of the enemy, it is essential, in the ultimate analysis, to dislocate his faith. An invincible faith is immune to **TERROR**.

Pakistani Brigadier S. K. Malik
***Quranic Concept of War*, 60.**

From the Pakistani General Staff, a book published in English and available since 1979.



Test Case: The 2010 Saudi Fatwa

Proof of Concept - "The Killing without Right: Islamic Concepts of Terrorism," 1 July 2010

"Corruptio optima pessima est!"²⁴⁵

As this paper was being socialized for final release, the Royal Saudi Embassy issued a press release concerning a recent *fatwa* titled "Council of Senior *Ulema* Fatwa on Terror-Financing," in Washington D.C. on 7 May 2010²⁴⁶ (Saudi *Fatwa*) condemning terrorism and terrorism financing. The actual *fatwa* was in the form of a resolution of the Council of the Senior *Ulema* dated 2 April 2010.²⁴⁷ What follows is a test case test case of the concepts raised in "Killing without Right."

Conclusory Assumptions. With regard for the Saudi *Fatwa*, *Washington Post* reporter David Ignatius, in the article "A Saudi *Fatwa* for Moderation," stated:

- But a powerful and so far largely unreported denunciation of terrorism emerged last month from Saudi Arabia's top religious leadership, known as the Council of Senior *Ulema*. The Saudi *fatwa* is a tough condemnation of terror and of the underground network that finances it. It has impressed senior U.S. military commanders and intelligence officers, who were surprised when it came out.²⁴⁸

²⁴⁵ "The best, corrupted, become the worst!"

²⁴⁶ "Council of Senior *Ulema* Fatwa on terror-financing," *Royal Embassy of Saudi Arabia*, Washington, D.C., May 7, 2010, at URL: <http://www.saudiembassy.net/announcement/announcement05071001.aspx>. Cited hereafter as Saudi *Fatwa*.

²⁴⁷ Saudi *Fatwa*. Reads: Resolution 239 dated 27 Rabi al-Thani 1431 H [April 12, 2010] All Praise to Allah, the Lord of the world; and May peace and prayers be upon our Prophet and his family and companions; ...

²⁴⁸ David Ignatius, "A Saudi fatwa for moderation," *The Washington Post*, p. A-15, June 13, 2010, at URL: <http://www.Washingtonpost.com/wp-dyn/content/article/2010/06/11/AR2010061104395.html>. Cited hereafter as Ignatius on Saudi *Fatwa*. **NOTE:** The David Ignatius article is fairly representative of most of the treatment on this subject in both media and inside the government. As such this Test Case is not intended to be an attack on Mr. Ignatius but rather simply an analysis of how an entrenched pseudoreality might work.

*"Corruptio optima
pessima est!"*



Ignatius recognized the *fatwa* resulted from the Saudi Royal family being made the targets of terrorism:

- This growing activism partly reflects a recognition that senior members of the House of Saud are themselves prime targets of al-Qaeda. A recent example was the assassination attempt in August against Prince Mohammed bin Nayef, the Saudi counterterrorism chief.²⁴⁹

As the *Washington Post* article accurately reported, the Saudi *Fatwa* is clear, that such *fatwas* have the force of law, and that the condemnation of terror extends to financing terror:

- "There is no gray area here," said a senior Saudi official. "Once it has come out like this, from the most senior religious body in the kingdom, it's hard for a lesser religious authority to justify violence."²⁵⁰
- For Muslims in the kingdom, it has the force of law and it will provide a strong religious and legal backing for Saudi and other Arab security services as they track terrorist networks.²⁵¹
- What's striking is that the *fatwa* specifically attacks financing of terrorism. The Muslim religious council said that it "regards the financing of such terrorist acts as a form of complicity to those acts . . . to bring a conduit for sustaining and spreading of such evil acts."²⁵²
- The *fatwa* goes on: "The Council rules that the financing of terrorism, the inception, help or attempt to commit a terrorist act of whatever kind or dimension, is forbidden by Islamic Sharia and constitutes a punishable crime thereby; this includes gathering or providing of finance for that end." The *fatwa* exempts "legitimate charity to help the poor" from this ban.²⁵³

What's striking is that the fatwa specifically attacks financing of terrorism.

²⁴⁹ Ignatius on Saudi *Fatwa*.

²⁵⁰ Ignatius on Saudi *Fatwa*.

²⁵¹ Ignatius on Saudi *Fatwa*.

²⁵² Ignatius on Saudi *Fatwa*.

²⁵³ Ignatius on Saudi *Fatwa*.



In the Service of Pseudorealities. The Saudi *Fatwa* is straight forward. David Ignatius reported the facts of a *fatwa* that the Saudis sincerely promulgated. So how can it be that what the Saudis communicated is not what Ignatius reported? The answer may not be with the facts of the reporting but rather with the reality against which those facts are templated; a backdrop narrative that serves as a pseudo-real replacement. The Saudis consistently template their message against a defined reality, Islamic law, while the West templates that same message against constructed narratives reflecting a *false* reality designed to isolate the counter-terror effort from the stated threat doctrine. By design, the backdrop narrative is *faux*. The German philosopher Josef Pieper had much to say about the risks of living in constructed realities in his monograph *Abuse of Language, Abuse of Power*:

- I spoke of public discourse becoming “detached from the notions of truth and reality” . . . It is entirely possible that the true and authentic reality is being drowned out by the countless superficial information bits noisily and breathlessly presented in propaganda fashion. Consequently, one may be entirely knowledgeable about a thousand details and nevertheless, because of ignorance regarding the core of the matter, remain without basic insight. This is a phenomenon in itself already quite astonishing and disturbing. Arnold Gehlen labeled it “a fundamental ignorance, created by technology and nourished by information.” But, I wanted to say, something far more discouraging is readily conceivable as well: the place of authentic reality is taken over by fictitious reality; my perception is indeed still directed toward an object, but now it is a *pseudoreality*, deceptively appearing as being real, so much so that it becomes almost impossible any more to discern the truth.²⁵⁴

Ignatius’s article is projected against a constructed reality intended to communicate facts without reference to the “core of the matter.” As such, it enforces a “fictitious reality” that “only deceptively appears as

The Saudis consistently template their message against a defined reality, Islamic law, while the West templates that same message against a constructed narrative reflecting a false reality designed to isolate the counter-terror effort from the stated threat doctrine.

²⁵⁴ Josef Pieper, *Abuse of Language – Abuse of Power*, Ignatius Press, 1992 (trans. Lothar Krauth, Kosel-Verlag, Munich 1974), 33-34. Cited hereafter as Josef Pieper.



being real” at the expense of the “authentic reality.” When speaking of “pseudorealities,”²⁵⁵ Pieper explains the architecture of a classic information operation that was not only successfully employed by the Nazi’s to gain power in Germany, but also by Alcibiades to subvert Athens:

- Toward the end he [Plato] wrote one more dialogue, the *Sophist*, in which he added a new element to his answer: “The sophists”, he says, “fabricate a fictitious reality.” That the existential realm of man could be taken over by pseudoreality whose fictitious nature threatens to become indiscernible is truly a depressing thought. And yet, the Platonic nightmare, I hold, possesses an alarming contemporary relevance. For the general public it is being reduced to a state where people are not only unable to find out about the truth but also become unable even to search for the truth because they are satisfied with deception and trickery that have determined their convictions, satisfied with a fictitious reality created by design through the abuse of language. This, says Plato, is the worst thing that the sophists are capable of wreaking upon mankind by their corruption of the word. There is now the ancient saying *corruptio optima pessima*, “the best, corrupted, become the worst.” Those who have some notion about the worst must also, according to this saying, have a notion about what is best.²⁵⁶

When, on first impression, national security analysis appears to be marooned in pseudorealities that mask realities, the operating assumption, at least until ruled out, must be that they were

When national security analysis appears to be marooned in pseudorealities that mask realities, the operating assumption, at least until ruled out, must be that they were intentionally put in motion by an actor or actors for a purpose detrimental to U.S. national security interests.

²⁵⁵ *Webster’s New Collegiate Dictionary*, A Merriam-Webster, (G. & C. Merriam Company: Springfield, MA, 1980), 922. **Pseudo**. False, spurious. Being apparently rather than actually as stated: SHAM, SPURIOUS. Use of term “**pseudoreality**” should be used analogously to the term “**pseudoscience**,” at 923: **pseudoscience**, a system of theories, assumptions, and methods erroneously regarded as scientific. 1227. The legal definition is consistent. *Black’s Law Dictionary*, 6th ed, (West Publishing: Saint Paul, MN, 1990), at 1227 defines **pseudo** as follows: **Pseudo**. False, counterfeit, pretend, spurious.

²⁵⁶ Josef Pieper, 34-35.



intentionally put in motion by an actor or actors for a purpose detrimental to U.S. national security interests.

In the Face of Stated Authority to the Contrary. This proof of concept will demonstrate how covering a story without understanding the “core of the matter” can end up being completely correct about the “countless . . . information bits” and yet totally wrong about the “true and authentic reality.” Completely correct because it accurately reflects the Saudi *Fatwa* where the Saudi authorities fully disclosed the nature and effect of the *fatwa*. Misleading because Ignatius mapped the article to the pseudoreality “who’s fictitious nature threatens to become indiscernible” from “authentic reality.” Analyzing the Saudi *Fatwa* in light of Islamic law, the question is whether Ignatius’s assessment is only valid in the pseudoreality when stating that “there’s a new voice for moderation coming from the Muslim clerical establishment.”²⁵⁷

Even as the *Fatwa* Fully Conforms to the Rule. Ignatius states that “the *fatwa* begins with a clear definition of terrorism”²⁵⁸ and then lists the elements of the *fatwa* that are associated with Islamic legal notions of terrorism, namely those elements that bring “*mischief*” to the land as stated in the 5:32-33 Rule. While list reflects the elements of terrorism, the *Fatwa* does not constitute the definition itself but rather the definition resides inside the body of Islamic law. While it should not have to be stated, it is axiomatically true that fatwas, as formal legal rulings, must formally conform to Islamic law. Before entering into an analysis of what the Saudi *Fatwa* means, it is important to recognize what is already known by operation of law. First, the Saudi Arabian Constitution states that it is an Islamic state that derives its authority from the Qur’an and the Hadith and is governed by Islamic law.²⁵⁹

Ignatius states that “the fatwa begins with a clear definition of terrorism”.

²⁵⁷ Ignatius on Saudi *Fatwa*.

²⁵⁸ Ignatius on Saudi *Fatwa*: “The *fatwa* begins with a clear definition of terrorism, which it calls “a crime aiming at destabilizing security” by attacking people or property, public or private. The document goes on to list examples of this criminal activity: “blowing up of dwellings, schools, hospitals, factories, bridges, airplanes (including hijacking), oil and pipelines.” It doesn’t mention any geographical area where such actions might be permissible.”

²⁵⁹ **Saudi Arabia Constitution**, March 1992, URL: http://www.oefre.unibe.ch/law/icl/sa00000_.html, accessed 20 March 2005:



Hence, the Saudi definition of terrorism must be in line with Islamic legal notions of the same.

Second, and also by operation of law, Saudi Arabia is a Member State of the Organization of the Islamic Conference (OIC). As such, it is a party to the *OIC Convention on Combating International Terrorism*, a legal instrument that was served to the United Nations in 1999.²⁶⁰ At the very beginning, the Convention twice states that it is based on Islamic law.²⁶¹ While the Saudi Constitution requires that its position on terrorism be in line with Islamic legal provisions, the Convention

At the very beginning, the Convention twice states that the instrument is based exclusively on Islamic law.

Article 1. The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God's Book and the Sunnah of His Prophet, God's prayers and peace be upon him, are its constitution, Arabic is its language and Riyadh is its capital.

Article 7. Government in Saudi Arabia derives power from the Holy Koran and the Prophet's tradition

Article 8 [Government Principles]. Government in the Kingdom of Saudi Arabia is based on the premise of justice, consultation, and equality in accordance with the Islamic Shari'ah.

Article 25 [World Peace]. The state strives for the achievement of the hopes of the Arab and Islamic nation for solidarity and unity of word, and to consolidate its relations with friendly states.

Article 26 [Human Rights]. The state protects human rights in accordance with the Islamic Shari'ah.

Article 29 [Science, Culture]. The state safeguards science, literature and culture; it encourages scientific research; it protects the Islamic and Arab heritage and contributes toward the Arab, Islamic and human civilization.

Article 45. The source of the deliverance of fatwa in the Kingdom of Saudi Arabia are God's Book and the Sunnah of His Messenger. The law will define the composition of the senior ulema body, the administration of scientific research, deliverance of fatwa and it's (the body of senior ulema's) functions.

Article 46. The judiciary is an independent authority. There is no control over judges in the dispensation of their judgments except in the case of the Islamic Shari'ah.

²⁶⁰ *OIC Convention to Combat Terrorism (1999-1420H): Convention of the Organization of the Islamic Conference on Combating International Terrorism*, Organization of the Islamic Conference, URL: http://www.oic-oci.org/english/convention/terrorism_convention.htm or <http://www.oicun.org/7/38/>. Cited hereafter as "OIC Combating Terrorism Convention."

²⁶¹ OIC Combating Terrorism Convention:

- **Pursuant** to the tenets of the tolerant Islamic Sharia . . .
- **Abiding** by the lofty, moral and religious principles particularly the provisions of the Islamic Sharia . . .



demands that such concepts follow Islamic law. Hence, if the 5:32-33 Rule is validated as a functional construct on which to understand Islamic terrorism, then this concept should be read into the Saudi *Fatwa*. When done, however, it means that the *Fatwa* does not condemn actions undertaken in furtherance of *Jihad* as terrorism. It also means that it would only assess attacks against non-Muslims based on their downstream effects on Muslims, the Muslim community, or Muslim lands.

Finally, even if analysts assess the Saudi *Fatwa* without reference to its Islamic legal basis, one would still be on notice that the *fatwa* is defined in strictly Islamic legal terms because the document itself, slightly over one page in length, states specific reliance on Islamic law six times:

- . . . or any similar acts of destruction or subversion outlawed by the Islamic *Shariah* [law].
- The Council also looked into textual evidences from the Qur'an, the *Sunnah* (sayings and deeds of the Prophet Muhammad) and the rules of *Shariah* . . .
- Furthermore, it is the established rules of Islamic *Shariah*: for the means is the ruling of ends.
- Add to this ruling the general *Shariah* provisions for safeguarding and protecting rights, vows and commitments in Islamic or other countries.
- Thus, the Council rules that the financing of terrorism; the inception, help or attempt to commit a terrorist act whatever kind or dimension is forbidden by Islamic *Shariah*.
- He who commits such a crime intentionally, commits a forbidden act, and has been in a flagrant violation of *Shariah* that call for a punishment according to its law.²⁶²

Pseudorealities Undermine Discernment. By every measure, both in their entirety and severable, the Saudi *Fatwa*, the Saudi Constitution and the *OIC Convention on Combating International Terrorism*

²⁶² Saudi *Fatwa*.



categorically identify Islamic law as the sole basis for authority and hence, as the exclusive mechanism by which to understand what is communicated. This means that Ignatius's "clear definition of terrorism" does not arise out of the Saudi *Fatwa* itself, but rather is located within the body of Islamic law as each instrument states. This means that any assessment of the Saudi *Fatwa* undertaken without reference to that law is incompetent not just as a matter of professional analytical work product but also as a matter of law. Not for Ignatius, however, but rather for the national security apparatus that detrimentally relies on it. Given the super-abundant notice, how is it possible to assess such a product without reference to its stated authority? Why shouldn't this constitute malpractice?

Hence, Ignatius is correct when quoting the Saudi official as saying "there is no gray area here" and then commenting later that, for Muslims, such *fatwas* have the "force of law." Ignatius refers to the *Ulema* in religious terms seven times, in one instance he said "religious and legal" and on another "political and religious." Yet the Saudi *Fatwa* itself does not base the *Ulema*'s authority on a religious basis but rather on its ability to enforce "crimes committed" that undermine Saudi Arabia's national security.²⁶³

The *Ulema* promulgates Islamic law as the law of the land to a population that understands this to be the case. By fulfilling a Western expectancy, by explaining the Saudi *Fatwa* as if classic Western notions of "church and state" were in effect, Ignatius articulates a distinction that not only denies the "heart of the matter," but does so in

Ignatius's "clear definition of terrorism" does not arise out of the Saudi Fatwa itself, but rather is located exclusively inside the body of Islamic law as stated. This means that any assessment of the Saudi Fatwa undertaken without reference to that law is incompetent not just as a matter of professional analytical work product but as a matter of law.

The Ulema promulgates Islamic law as the law of the land to a population that understands this to be the case.

²⁶³ Saudi *Fatwa*: The Council of Senior *Ulema* [Council of Senior Scholars] in its twentieth extraordinary session held in Riyadh, Saturday 25 Rabi al-Thani 1431 H [10 April 2010], refers to its previous decisions and statements concerning crimes committed by the corrupters on earth by undermining the security and causing grave violations of sanctity in Muslim and other countries, . . . **NOTE:** On the phrase "and other countries," for reasons already discussed in the paper, does not necessarily refer to non-Muslims in those non-Muslim lands when condemning terrorism but rather to the downstream effects those attacks have on Muslims and the *Ummah*. Beyond that, however, is the possibility that the Saudi's may be referring to Muslims who live in those non-Muslim lands. Saudi Arabia is a Member State of the OIC. The OIC Charter claims jurisdiction over non-Muslims in Muslim states. In **CHAPTER I "Objectives and Principles," Article 1**. The objectives of the Organisation of the Islamic Conference shall be: 16. To safeguard the rights, dignity and religious and cultural identity of Muslim communities and minorities in non-Member States; . . . *Charter of the Organisation of the Islamic Conference*, at URL: <http://www.oic-oci.org/is11/english/Charter-en.pdf>.



a manner that denies the *Fatwa*'s doctrinal basis by looking past the Islamic legal basis that is the sole basis on which to assess its meaning. In the process, it sustains the pseudoreality. Ignatius, most conventional reporting, and almost all national security analyses assess such activities by choosing to deny the "authentic reality" of the *Fatwa* by templating its message against a pseudoreality that "drowns" the plain meaning of the Saudi *Fatwa* in "countless superficial information bits [that are] noisily and breathlessly presented in propaganda fashion." When "religious" edicts have the force of law, those edicts are the law and those promulgating them ARE legal authorities. In jurisdictions that promulgate "religious" law as the law of the land, referring to that law as "religious" has the effect of making distinctions without meaning in the target population while facilitating a pseudoreality that distorts the analysis in ours.

Where the "Core of the Matter" is Islamic Law. This finding, however, does not conflict with Ignatius' recognition that it was the numerous assassination attempts against Saudi subjects, specifically members of the House of Saud, most notably Prince Nayef, which gave rise to the Saudi *Fatwa*. Alongside the attempted killing of the legitimate ruling authority, the motivation behind Saudi King Abdullah's initiating the process was that the activities he addressed concerned the "killing of Muslims without right." This conforms to the Islamic definition of terrorism as discussed in the 5:32-33 Rule. Adding further support, the Saudi *Fatwa* emphasized the bringing "*mischief*" to the land. Citing the Qur'an, the *Fatwa* twice referred to the "*mischief*" standard:

- He also said: And of mankind there is he whose speech may please you, in this worldly life, and he calls Allah to witness as to that which is in his heart, yet he is the most quarrelsome of the opponents. And when he turns away, his effort in the land is to **make mischief** therein and to destroy the crops and the cattle, and **Allah likes not mischief.**" [Surah Al-Baqarah, verses 204-205].

When "religious" edicts have the force of law, those edicts are the law and those promulgating them ARE legal authorities.



- He, the Almighty, also said: “And **do not do mischief on earth** after it has been set in order.” [Surah Al-A’raf, verse 56]²⁶⁴

The second citation, Verse 7:56, speaks to land that “has been set in order” indicating that the offense is in bringing “*mischief*” to lands already brought under Islamic law. In the treatment dealing with this part of Verse 7:56, the header information from *Tafsir Ibn Kathir*, titled “*The Prohibition of Causing Mischief in the Land*” states:

- Allah prohibits causing ***mischief in the earth***, especially after it has been set in order. When the affairs are in order and then ***mischief*** occurs, it will cause maximum harm to the people; thus Allah forbids causing ***mischief*** and ordained worshipping Him, supplicating to Him, begging Him and being humble to Him.²⁶⁵

Allah prohibits causing mischief in the earth, especially after it has been set in order.

That is Otherwise Fully Comprehensible. Initiated as a decision to act against the “killing of Muslims without right” and supported by arguments that such terrorism brings “mischief” to Muslim lands, the Saudi Fatwa conforms to the concepts of terrorism identified in the 5:32-33 Rule. Hence, when Ignatius states that the “*fatwa* specifically attacks financing terrorism,” this can only be true when his comment is mapped against the Islamic legal concept of terrorism. To the extent that Western notions of terrorism run parallel to Islamic concepts of *Jihad*, Ignatius’s statement cannot be true. One of the “Five Pillars of Islam” is the obligatory payment of *Zakat*²⁶⁶ where one eighth of all

One of the “Five Pillars of Islam” is the obligatory payment of Zakat where one eighth of all Zakat payments are for funding jihad.

²⁶⁴ Saudi *Fatwa*.

²⁶⁵ Al-Hafiz Abu al-Fida’ ‘Imad Ad-Din Isma’il bin ‘Umar bin Kathir Al-Qurashi Al-Busrawi ibn Kathir, *Tafsir of Ibn Kathir*, vol. 4, Trans. Abdul-Malik Mujahid. (Riyadh: Darussalam, 2000), 80-83.

²⁶⁶ Al-Misri, Book H “Zakat,” at h1.0, h1.1, “Who Must Pay Zakat,” 246:

- In Sacred Law it [Zakat] is the name for a particular amount of property that must be payed to certain kinds of recipients under the conditions mentioned below. (h1.0)
- Zakat is obligatory: (a) for every free Muslim (O: male, female, adult, or child) . . . (h1.1)



Zakat payments²⁶⁷ are for funding *Jihad*²⁶⁸ - that the OIC and the Muslim Brotherhood define as warfare against non-Muslims to establish the religion.²⁶⁹ Analyzing the Saudi *Fatwa* without reference to the “core of the matter” not only causes one to misconstrue the point of law but to extend an over inclusive application of the law to what the Saudi template affirmatively excludes. Such an over-inclusive analysis leads to a material misrepresentation of the Saudi position. For example, the Saudi *Fatwa*, by providing instructional clarification, ensures that those seeking to fund *Jihad* do not confuse it with Islamic concepts of terrorism. While the one is unlawful, the other is mandatory. Hence, as Ignatius indicated, the Saudi *Fatwa* condemns the financing of terrorism even as it was not silent on the funding of *Jihad*:

- The *fatwa* goes on: "The Council rules that the financing of terrorism, the inception, help or attempt to commit a terrorist act of whatever kind or dimension, is forbidden by Islamic Sharia and constitutes a punishable crime thereby; this includes gathering or providing of finance for that end." The *fatwa* exempts "legitimate charity to help the poor" from this ban.²⁷⁰

In Islamic law, *Zakat* is a mandatory contribution.²⁷¹ As an element of *Zakat*, funding *Jihad* qualifies as a charity. While the funding of

In Islamic law, Zakat is a mandatory contribution.

²⁶⁷ Ahmad ibn Naqib al-Misri, 'Umdat al-Salik (*Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*), rev. ed. trans. Nuh Ha Mim Keller (Beltsville: Amana Publications, 1994), Book H "Zakat," at h8.7 "The Eight Categories of Recipients," at 266. Hereafter cited as Al-Misri: It is obligatory to distribute one's zakat among eight categories of recipients, (O: meaning that zakat goes to none besides them), one eighth of the zakat to each category. (h8.7)

²⁶⁸ Al-Misri, Book H "Zakat," at h8.17 "Those Fighting for Allah," at 272: The seventh category is *those fighting for Allah*, meaning people engaged in Islamic military operations for whom no salary has been allotted in the army roster.

²⁶⁹ Al-Misri, Book O "Justice," at o9.0.

²⁷⁰ Ignatius on Saudi *Fatwa*.

²⁷¹ From Qur'an Verse 9:60:

- *Zakah is for the poor and the needy, and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to Truth); for those in bondage and in debt; **in the cause of Allah**; and for the wayfarer: (thus it is) ordained by Allah, and Allah is full of knowledge and wisdom.*



terrorism has always been unlawful, the requirement to fund *Jihad* has always been mandatory. In fact, as stated by Bukhari, the most authoritative hadith collector, Muslims can meet their *Jihad* obligations simply by funding it:

- Muhammad said, “He who prepares a ghazi [a warrior returning from participating in *Jihad*] going in Allah’s cause is given a reward equal to that of a ghazi, and he who looks after properly the dependents of a ghazi going in Allah’s cause is given a reward equal to the of a ghazi.” (Bukhari 4:96)

Confidence arising from Pseudorealities is ALWAYS False. In-so-far as “U.S. military commanders and intelligence officers” recognize that the Saudi *Fatwa* does not affect the killing of non-Muslims in Muslim lands, most immediately, U.S. Forces in the Middle East, or of *Jihad* in the non-Muslim world, for example terror attacks against U.S. citizens inside the United States, their being, as Ignatius put it, “impressed”²⁷² reflects a sober understanding that restrictions on the killing of Muslims without right inside Muslim lands can have positive effects at the local level; for example, when Middle Eastern law enforcement pursues terrorists under Islamic criteria where the successful suppression of terrorism fulfills U.S. interests; for example, when pursuing al-Qaeda for destabilizing Iraq and Afghanistan when killing local Muslims.

Yet if being “impressed” is based on the erroneous belief that the Saudi *Fatwa* includes outlawing the killing of non-Muslims *per se*, then there is no basis to be “impressed” because the *fatwa* makes no such claim. As Muslim Brotherhood leader Akef made clear, if *Jihadi* groups like al-Qaeda cease the killing of Muslims without right and limit their attacks on non-Muslims in Muslim lands and on infidels abroad, they can be reclaimed as *mujahids*.²⁷³ If “U.S. military commanders and

²⁷² Ignatius on Saudi *Fatwa*.

²⁷³ “Interview with Mohammed Akef, Supreme Guide, International Muslim Brotherhood,” *Elaph Publishing* (in Arabic), 22 May 2008, at URL: www.elaph.com. (*Elaph Publishing* is a Saudi owned London-based publishing entity.):

- **Interviewer:** As we talk about resistance and *jihad*, do you consider Usama Bin Ladin a **terrorist** or an Islamic **Mujahid**?



intelligence officers” are “impressed” because they focus their analysis and decision-making on the benefits of the pseudoreality, as Josef Pieper stated, they have then been “reduced to a state” where they are “not only unable to find out about the truth but have also become unable even to search for the truth because they are satisfied with the deception and trickery that have determined their convictions, satisfied with a fictitious reality created by design through the abuse of language.”

Conclusion of the Test Case

The Saudi *Fatwa* is truthful, accurate, and conforms to the condemnation of terrorism as explained by the 5:32-33 Rule. There is no question of the Saudis misstating or deceptively communicating their policy positions on terrorism either in the Saudi *Fatwa* or in any other statements they have made on terrorism. More broadly, this holds true for all OIC Member States at the leadership level. Hence, if we are bringing all elements of national power to bear against an enemy defined in pseudo-real terms, it means that we are imposing it on ourselves. This conforms to a strategy, it’s just not ours. In a document admitted into evidence in the *Holy Land Foundation* case, the American component of the Muslim Brotherhood published a memorandum explaining their strategy to defeat the United States through penetration and subversion based on getting us to subvert ourselves - “by [our] hands.”²⁷⁴ For such “Civilization *Jihad*” scenarios to succeed, they would have to start with senior national security

...if we are bringing all elements of national power to bear against an enemy defined in pseudo-real terms, it means that we are imposing it on ourselves.

- **Akef:** Most certainly he is a *Mujahid*. I do not doubt his sincerity in resisting occupation for the sake of God Almighty.

²⁷⁴ **Explanatory Memorandum: On the General Strategic Goal for the Group,”**

Mohamed Akram, May 22, 1991, Government Exhibit 003-0085/3:04-CR-240-G U.S. v. HLF, et al., United States District Court, Northern District of Texas, URL: <http://www.txnd.uscourts.gov/judges/hlf2/09-25-08/Elbarasse%20Search%203.pdf>, 21:

- The process of settlement is a “Civilization-Jihadist Process” with all the means. The *Ikhwan* must understand that their work in America is a kind of grand Jihad in eliminating and destroying the Western civilization from within and “sabotaging” its miserable house by their hands and the hands of the believers so that it is eliminated and Allah’s religion is made victorious over all other religions . . . It is a Muslim’s destiny to perform Jihad and work wherever he is . . .



leaders and analysts being be maneuvered into imposing pseudorealities into the analytical space.

The Saudi Test Case validates Islamic concepts of terrorism as defined by the 5:32-33 Rule. The price of orienting all elements of national power on narratives of “violent extremism” is that they demand an enforced ignorance of factually determinable realities like the Rule. If true, we are participating in the subversion of our own national interest – “by our own hand.” It also suggests that the failure to comprehend basic concepts of Islamic terrorism are the intended consequence of enforcing such pseudorealities. Such a requirement can only be enforced by sacrificing professional canons designed to ensure competent work product from those holding themselves out as professionals. When national analytical assets are steered toward sustaining a psuedoreality, especially in light of clear indicators to the contrary that constitute “clear and present dangers,” two questions must be asked:

- At what point does the imposition of a *faux* lexicon designed to sustain a psuedoreality become an undue command influence to subvert professional analysis, and;
- At what point does a professional’s decision to conform to that requirement constitute malpractice?

When orders to conduct analysis without reference to “the core of the matter” are made, a requirement is being leveled to drown national security analysis in “countless superficial information bits noisily and breathlessly presented in propaganda fashion.”

Pondering the true cost of bringing all elements of national power to bear against a constructed pseudoreality, consideration must be given not only to its impact on one’s solemn oath to “support and defend” the Constitution of the United States against all enemies foreign and domestic, but also to the citizens who live under it.

As a proof of concept, the Saudi Fatwa validates the concepts discussed in “Killing without Right.”