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## **The Evolution of the Jihad Doctrine: Can Modern Islamic Terrorism Be Justified in Terms of Classical Jihad?**

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# The Evolution of the Jihad Doctrine: Can Modern Islamic Terrorism Be Justified in Terms of Classical Jihad?

Fraser D. Galloway

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The proponents of modern Islamic fundamentalism draw on elements of the Islamic religion as a justification for terrorist acts. An examination of the sources of Islamic law – the Qur’an, the Sunnah and the principal Islamic schools of thought – questions the similarities between modern terrorism and the classical jihad doctrine. A distinction is drawn between the offensive and defensive theories of jihad and these are then applied to the modern context in which Islamic terrorism is perpetrated.

To supporters of the modern phenomenon of Islamic terrorism, the Kalashnikov wielding freedom fighter is the rightful successor to the scimitar brandishing Turk, gloriously vanquishing the infidels and upholding the Qur’an. The voices that link the two clearly intend to give legitimacy to an act which may be seen to both other Muslims and people in general as murder. The aim of this article is to critically examine this purported connection, not through a narrative of the historical development of jihad, but through Qur’anic analysis, with the aid of the *Sunnah* and the principal Islamic schools of thought, these being the sources of Islamic law.

That said, it is important to give an historical background to jihad in order to establish working definitions for the concepts involved. For the purposes of this

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article, the modern use of jihad can be traced to the Egyptian-based Muslim Brotherhood. During the 1948 Palestine War, it sent a unit to fight against what were then referred to as the Zionist settlers, and began calling the struggle for Palestine 'jihad'.<sup>1</sup> Since then, jihad has been increasingly used as an ideological justification for violence against both Muslim and non-Muslim governments who are perceived to be in violation of Islam. It is not easy to define modern Islamic terrorism as practices vary widely but, for the purposes of this article, it can be said to be those acts since 1948 which involve the pre-emptive indiscriminate killing of civilians by non-State actors in the name of Islam.

The reference point for these terrorists is the Qur'an, and sometimes also the *Sunnah*. Jihad is derived from the Arabic word *juhd*, literally meaning to exert, strive and struggle.<sup>2</sup> In a famous *hadith* (tradition) of the Prophet, after returning from the Battle of Badr, he referred to war as the smaller jihad, in contrast to the greater jihad of the self, the internal struggle in oneself for goodness and piety, referred to as jihad *ul-nafs*.<sup>3</sup> Jihad by the sword is the last resort but it is, of course, the sole focus of this article as it is this jihad to which modern Islamic terrorists refer when carrying out terrorist acts.

## THE DECLARATION OF JIHAD

According to the Qur'an, it was the Prophet Muhammad and, after his death, a Muslim *Imam* or *Caliph* who had the authority to declare jihad.<sup>4</sup> Although the Sunni and Shia doctrines of jihad are virtually identical, the crucial difference is that, according to classical Shia scholars, jihad can only be waged under the

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<sup>1</sup> Bassiouni, Cherif, *Evolving Approaches to Jihad: From Self-Defence to Revolutionary and Regime-Change Political Violence*, Chicago Journal of International Law, 8 (2007) 119, p. 137.

<sup>2</sup> Ali, Abdullah Yusuf, *The Meaning of the Holy Qur'an*, (1989), Maryland: Amana Corporation.

<sup>3</sup> Bassiouni, *Evolving Approaches to Jihad*, p. 124.

<sup>4</sup> Shah, Niaz A., *Self-Defence in Islamic Law*, (2005-2006) 12 Yearbook of Islamic and Middle Eastern Studies, 181, p. 190.

leadership of the *Imam*.<sup>5</sup> As the last *Imam*, Muhammad al Mahdi, disappeared in 873A.D., Shia Muslims generally avoid the jihad nomenclature. As such, this article will focus solely on the Sunni doctrine of jihad. In Sunni jihad, the declaration of war is a matter of public safety. It is therefore a matter reserved for those “charged with authority”.<sup>6</sup> In a nation State, this is clearly the government.

However, if the government is considered un-Islamic, then those who have the support and trust of the public can make decisions of public safety after being put in a position of authority according to Islamic law.<sup>7</sup> Thus, there is no inherent prohibition on non-State actors declaring jihad, provided they have public support; for example, the insurgency led by the Mujihadeen in Afghanistan in response to the communist Soviet invasion could be justified in terms of jihad. As such, a declaration of jihad by a modern Islamic terrorist is not invalid just because he does not compromise a government recognised by the international community.

#### STIPULATIONS REGARDING THE CONDUCT OF JIHAD

Following the declaration of jihad, there are certain explicit stipulations relevant to this article laid down regarding its conduct. First, there are limitations on who can take part in jihad. Minors and the insane are not legally capable (*mukallaf*) of taking part in jihad. A *hadith* regarding Ibn Umar suggests that the age of majority is 15.<sup>8</sup> Women are also denied permission due to their constitution.<sup>9</sup> Finally, those who have not obtained permission from their parents may not take part in jihad.<sup>10</sup> When Muslim territory is under attack, all

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<sup>5</sup> Peters, Rudolph, *Islam and Colonialism*, (1979), The Hague: Mouton Publishers, p. 2.

<sup>6</sup> Ali, Abdullah Yusuf, *The Holy Qur'an: Translation and Commentary*, (1946), 4:83.

<sup>7</sup> Shah, *Self-Defence in Islamic Law*, p. 190.

<sup>8</sup> Wensinck, A. J., *Concordance et Indices de la Tradition Musulmane*, (1936-69), Leiden: E. J. Brill, Vol. IV, p. 180.

<sup>9</sup> Wensinck, *Concordance*, Vol. I, p. 389.

<sup>10</sup> Wensinck, *Concordance*, Vol. I, p. 388.

people who are able to fight must fight. However, modern day terrorism, as hereby defined, is pre-emptive and so any purported jihad which involves these individuals is explicitly unjustifiable according to classical jihad. The requirement for the permission of a jihadist's parents must render many of the terrorist activities of second-generation Muslims in Western Europe and elsewhere unjustifiable.

Secondly, Muslims are required to summon their enemies before they attack them:

*...nor would We  
Visit with Our Wrath  
Until We had sent  
An apostle (to give warning).<sup>11</sup>*

A *hadith* tells Muslims that,

*When you meet your heathen enemies, summon them to three things. Accept whatsoever they agree to and refrain then from fighting them. Summon them to become Muslims. If they agree, accept their conversion. In that case summon them to move from their territory to the Abode of the Emigrants [i.e. Medina]. If they refuse that, let them know that then they are like the Muslim bedouins and that they share only in the booty when they fight with the Muslims. If they refuse conversion, then ask them to pay poll-tax [djizyah]. If they agree, accept their submission. But if they refuse, then ask Allah for assistance and fight them.<sup>12</sup>*

According to Rudolph Peters, the function of the summons is to inform the enemy that the Muslims do not fight them for worldly reasons, like subjecting

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<sup>11</sup> Ali, *The Holy Qur'an*, 17:15.

<sup>12</sup> Wensinck, *Concordance*, Vol. II, p. 131.

them and taking their property, but that their motive is a religious one, the strengthening of Islam.<sup>13</sup> This stipulation *prima facie* rules out pre-emptive indiscriminate attacks characteristic of modern Islamic terrorism. However, Muslim scholars agree that a summons is not required if it is impossible, as when the Muslim force is so weak that it can only attack by surprise. Proponents of terrorism may argue that this is the case. This stipulation alone therefore does not render modern Islamic terrorism unjustifiable.

Thirdly, there are stipulations about who may be killed by Muslims carrying out jihad. All schools agree that minors and women may not be killed, unless they fight against the Muslims.<sup>14</sup> This derives from a *hadith*:

*Once Mohammed said: 'Do not kill a decrepit old man, nor a small child, nor a woman.'*<sup>15</sup>

However, another *hadith* potentially contradicts this:

*Once the Prophet was asked about the children of the polytheists. Could they [the polytheists] be attacked at night with the possible result that they [the Muslims] would hit some of their women and children? He then answered: 'They belong to them.'*<sup>16</sup>

This has been interpreted as prohibiting only the intentional killing of women and children, not unintentional killing.<sup>17</sup> Most scholars hold that Muslims may continue the struggle and target the enemy when they shelter behind women and children; for Malikites and Shafites, this is only when there is no other way of conquering the enemy.<sup>18</sup> In terms of modern Islamic terrorism, this

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<sup>13</sup> Peters, *Islam and Colonialism*, p. 18.

<sup>14</sup> Peters, *Islam and Colonialism*, p. 21.

<sup>15</sup> Wensinck, *Concordance*, Vol. V, p. 285.

<sup>16</sup> Wensinck, *Concordance*, Vol. II, p. 175.

<sup>17</sup> Peters, *Islam and Colonialism*, p. 20.

<sup>18</sup> Peters, *Islam and Colonialism*, p. 20.

*hadith* suggests that attacks targeted on a public place are not prohibited solely on the basis that women and children may be present.

The Shafi'ites and Ibn Hazm, while agreeing that women and children must generally be spared, do not regard the first *hadith* as authentic. As such, they condone the killing of old men because they regard unbelief as the justification for killing, rather than ability to fight.<sup>19</sup> The justification they use for this is another *hadith*:

*The Messenger of Allah has said: 'Kill the old men of the polytheists and save the lives of their children.'*<sup>20</sup>

Also, Mohammed gave orders for Durayd ibn al-Simmah, a very old and blind man, to be killed.<sup>21</sup> Thus, at the very least, minors and women may not be intentionally targeted by modern Islamic terrorists and, depending on the Islamic school, old men may also be spared.

There is an element of disagreement as to whether Muslims may expose other Muslims to fatal injury in the pursuit of the enemy. The example given is whether it is permissible to attack a fortress by means of mangonels when there are Muslim captives and Muslim children inside.<sup>22</sup> Al-Awza'i and others rely on the following passage from the Qur'an to argue that such an attack is not permitted:

*If they [the believers and the disbelievers] had been  
Apart, We should  
Certainly have punished*

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<sup>19</sup> Ibn Rushd, *The Distinguished Jurist's Primer*, translated by Imran Ahsan Khan Nyazee, (1994), Reading: Garnet Publishing Limited, p. 460.

<sup>20</sup> Wensinck, *Concordance*, Vol. III, p. 227.

<sup>21</sup> Peters, *Islam and Colonialism*, p. 22.

<sup>22</sup> Ibn Rushd, *The Distinguished Jurist's Primer*, p. 460.

*The Unbelievers among them  
With a grievous punishment.*<sup>23</sup>

Al-Layth permitted such an attack. His justification relies on *maslahah*, which can be loosely translated as public interest. According to Wael Hallaq, public interest analysis may lead to the conclusion that an attack on Muslims is justifiable if it constitutes the “lesser of two evils”; for example, in circumstances where not launching such an attack would allow the enemy to win.<sup>24</sup>

Taking the *maslahah* approach, it is difficult to apply this stipulation accurately to modern Islamic terrorism. It is certainly possible to argue that an attack on a public place cannot be justified because it might involve the murder of Muslims when the enemy could be killed individually; however, it is not impossible for extremists to argue in response, for example, that in Palestine indiscriminate attacks which may kill Muslims are the only method to prevent the enemy from winning due to the Palestinians’ military disadvantage. What is patent is that the modern practice of terrorist groups’ declaring a given ruler to have become a *kafir* – meaning that he has strayed away from Islam – and killing him is undoubtedly contrary to Islam; the death penalty in the Shari’ah is limited and it is subject to trial with procedural safeguards.<sup>25</sup>

Examining all three of the above stipulations, it is clear that they place certain limitations on jihad. Several of these limitations explicitly prohibit acts of modern Islamic terrorism which have taken place since 1948. An example of a terrorist who clearly breached explicit Qur’anic provisions on jihad is Hasib Hussein, the youngest of the ‘7/7’ London bombers, whose parents later contacted Scotland Yard worrying that he might have been a victim of the

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<sup>23</sup> Ali, *The Holy Qur’an*, 48:25.

<sup>24</sup> Hallaq, Wael B., *Shari’a. Theory, Practice, Transformations*, (2009), Cambridge University Press, p. 383.

<sup>25</sup> Bassiouni, C., *Evolving Approaches to Jihad*, p. 139.



atrocities.<sup>26</sup> However, as a general principle, these stipulations alone do not prevent such acts, provided that they are carried out within the provisions. It is therefore necessary to examine the principles and aims of jihad more generally in order to ascertain its purpose and, moreover, whether modern Islamic terrorism can be justified by that purpose.

## ALTERNATIVE THEORIES OF THE JUSTIFICATION FOR JIHAD

Assuming that the above stipulations are met, it is necessary to examine whether, in principle, the pre-emptive indiscriminate killing of civilians in the name of Islam can be justified in terms of classical jihad. The theory of jihad rests on the concept of the division of the surface of the world into two parts: the Abode of Islam (*Dar al-Islam*) and the Abode of War (*Dar al-harb*).<sup>27</sup> The Abode of Islam is the part of the World where Muslims rule in accordance with the *Shari'ah*; the rest of the world is the Abode of War. Jihad takes part in the Abode of War. Abu Hanifah (d.150/767) laid down three conditions for the Abode of Islam becoming the Abode of War: (1) application of the laws of the unbelievers; (2) adjacency to the Abode of War; and (3) absence of the security of life and property of Muslims.<sup>28</sup>

According to those who see Islam as inherently threatening,

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<sup>26</sup> The Independent Newspaper, *Hasib Hussein: The boy who grew up to bomb the No 30 bus*, (14<sup>th</sup> July 2005), <<http://www.independent.co.uk/news/uk/crime/hasib-hussain-the-boy-who-grew-up-to-bomb-the-no-30-bus-498746.html>>, accessed 10 October, 2008.

<sup>27</sup> Peters, *Islam and Colonialism*, p. 11.

<sup>28</sup> Peters, *Islam and Colonialism*, p. 12.

*Islam expresses...division between friend and foe ... by dividing the world into the Dar al-harb – the domain of war – and the Dar al-Islam – the domain of Islam, where war is forbidden.*<sup>29</sup>

However, Niaz Shah argues that the Qur'an does not actively encourage the division of the world into two hostile camps; rather these states are referred to in order to describe the *status quo*, not necessarily to perpetuate it. Indeed, Shah argues further that,

*The Qur'an is absolutely consistent and spells out consistent rules for three different situations: (a) the state of neutrality, (b) the state of peace and (c) the state of war.*<sup>30</sup>

These conflicting interpretations of the references to Abodes in the Qur'an have raised the question of whether the purpose of the doctrine of jihad is a means for the Abode of Islam to subjugate the Abode of War; or whether the doctrine of jihad is merely a means of securing the Abode of Islam. These alternative theories are referred to respectively as the offensive and the defensive theories of jihad. It is vital to draw a distinction between defensive jihad, which condones violence only to protect Islam, and offensive jihad, which calls for pre-emptive jihad against unbelievers. If modern Islamic terrorism is to be justified, with the pre-emptive character by which it has been defined, then it can only be justified in terms of offensive jihad.

## THE THEORY OF OFFENSIVE JIHAD

According to Shah, the offensive theory of jihad is founded on two premises: (1) the universality of Islamic faith and (2) the obligations incumbent upon its

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<sup>29</sup> Westbrook, D., *Islamic International Law and Public International Law: Separate Expression of World Order*, (1992-1993) 33 Virginia Journal of International Law, 819-897, p. 819.

<sup>30</sup> Shah, *Self-Defence in Islamic Law*, p. 208.

followers to spread it to the rest of the world.<sup>31</sup> Two verses, commonly known as the Sword Verses<sup>32</sup>, are often quoted to support the theory:

*But when the forbidden months  
Are past, then fight and slay  
The Pagans wherever ye find them,  
And seize them, beleaguer them,  
And lie in wait for them  
In every stratagem (of war);  
But if they repent,  
And establish regular prayers  
And practice regular charity,  
Then open the way for them:  
For God is Oft-forgiving,  
Most Merciful.<sup>33</sup>*

And

*Fight those who believe not  
In God nor the Last Day,  
Nor hold that forbidden  
By God and His Apostle,  
Nor acknowledge the Religion  
Of Truth, (even if they are)  
Of the People of the Book,  
Until they pay the Jizya  
With willing submission,  
And feel themselves subdued.<sup>34</sup>*

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<sup>31</sup> Shah, *Self-Defence in Islamic Law*, p. 191.

<sup>32</sup> Peters, *Islam and Colonialism*, p. 14.

<sup>33</sup> Ali, *The Holy Qur'an*, 9:5.

<sup>34</sup> Ali, *The Holy Qur'an*, 9:29.

Maududi and Qutb, the two major proponents of the offensive theory of jihad, who have immensely influenced the debate on jihad in the twentieth century, use the Sword Verses to justify their stance.<sup>35</sup> Two further verses suggest that Islam inherently seeks violence as a means of subjugating other religions:

*And fight them on  
Until there is no more  
Tumult or oppression,  
And there prevail  
Justice and faith in God  
Altogether and everywhere;*<sup>36</sup>

and,

*It is He Who hath sent  
His Apostle with Guidance  
And the Religion of Truth,  
To proclaim it  
Over all religion,  
Even though the Pagans  
May detest (it).*<sup>37</sup>

Certainly, the concept of universality of religion which these verses *prima facie* advocate potentially causes problems for those who believe that world religions are not incompatible. However, Cherif Bassiouni argues that the verses refer to the Muslims' right to freedom of religion, including the right to propagate it, which was a novel concept in the seventh century C.E.; only when that

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<sup>35</sup> Shah, *Self-Defence in Islamic Law*, p. 191.

<sup>36</sup> Ali, *The Holy Qur'an*, 8:39.

<sup>37</sup> Ali, *The Holy Qur'an*, 9:33.

freedom to practice and propagate religion is prohibited may Muslims call for jihad.<sup>38</sup>

As stated previously, Niaz Shah argues that the offensive theory of jihad is founded firstly in a belief in the universality of Islamic faith. However, the Qur'an makes it clear that,

*If God had so willed,  
He could have made them [humanity]  
A single people...<sup>39</sup>*

More explicitly, the Qur'an states that,

*Those who believe (in the Qur'an),  
And those who follow the Jewish (scriptures),  
And the Christians and the Sabians, –  
And who believe in God  
And the Last Day,  
And work righteousness,  
Shall have their reward  
With their Lord: on them  
Shall be no fear, nor shall they grieve.<sup>40</sup>*

These verses clearly establish that Islam does not call for a universal religion. Therefore, there is no inherent incompatibility, between Islam and other religions, which calls for a permanent jihad. Furthermore, the second premise upon which Shah argues that the aggressive theory of jihad is based is that Muslims have an obligation to spread their religion. However, the Qur'an explicitly states,

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<sup>38</sup> Bassiouni, *Evolving Approaches to Jihad*, p. 133.

<sup>39</sup> Ali, *The Holy Qur'an*, 42:8.

<sup>40</sup> Ali, *The Holy Qur'an*, 2:62.

*Let there be no compulsion  
In religion...*<sup>41</sup>

Without compulsion in religion, it cannot be argued that there is a requirement for Muslims to be permanently at war with other religions. Rather, this idea has been propagated by those who, for political reasons, seek a permanent conflict between religions.

It is worth noting that violent sentiments are not unique to Islam. It is surely hypocritical that those Christian fundamentalists who incite hatred of Islam overlook verses in the Bible which have the potential to encourage Christian extremism. For example, the following Old Testament verse justifies offensive violence towards civilians:

*Everyone that is found shall be  
thrust through; and every one that  
is joined unto them shall fall by the  
sword.*

*Their children also shall be  
dashed to pieces before their eyes;  
their houses shall be spoiled, and  
their wives ravished.*

*Behold, I will stir up the Medes  
against them, which shall not regard  
silver; and as for gold, they shall not  
delight in it.*

*Their bows also shall dash the  
young men to pieces; and they shall  
have no pity on the fruit of the womb;  
their eye shall not spare children.*<sup>42</sup>

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<sup>41</sup> Ibid., 2:256.

The references to women and children describe acts seemingly permitted in Christianity, in certain circumstances, which are explicitly prohibited under the doctrine of jihad. Violence in the Bible is also apparent in the New Testament:

*[Jesus said] Think not that I am come to send peace on earth: I came not to send peace, but a sword.<sup>43</sup>*

The point is not to condemn Christianity as an inherently violent religion. Rather, the point is that any religion may be deemed to be violent if it is examined only through a narrow lens. In order to ascertain whether offensive jihad is truly compatible with Islam, the texts must be read holistically and within their interpretive contexts.

To understand jihad, it is vital to recognise that Islam was not born into a vacuum of history; it is a product of the context in which it was revealed. According to Professor Fred Donner, the entire Qur'anic interpretation underlying the verses relating to jihad reflects the political reality of the Arabian Peninsula in the seventh century C.E.:

*In this society, war (harb, used in the senses of both an activity and a condition) was in one sense a normal way of life; that is, a 'state of war' was assumed to exist between one's tribe and all others, unless a particular treaty or agreement had been reached with another tribe establishing amicable relations.<sup>44</sup>*

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<sup>42</sup> *The Holy Bible, King James Version*, Isaiah 13:15-18.

<sup>43</sup> *Ibid.*, Matthew 10:34.

<sup>44</sup> Donner, F., 'The Sources of Islamic Conceptions of War', in Kelsay and Johnson (Eds.), *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions*, (1991), New York: Greenwood Press, 31-70, p. 34.

As a result of this state of war, individuals relied upon the protection of their tribes<sup>45</sup>. There are verses in the Qur'an which make it abundantly clear that Muhammad's followers feared that supporting him would mean losing the support of their tribes, which would therefore make them vulnerable to attack from all local tribes:

*They say, 'If we were  
To follow the guidance with thee,  
We should be snatched away  
From our land.'*<sup>46</sup>

And:

*Men said to them:  
'A great army is gathering  
Against you':  
And frightened them.'*<sup>47</sup>

Thus, the verses which were revealed were not done so *ab initio*, but rather they were revealed into a culture in which violence was the norm. Indeed, the word *jihad* pre-dates Islam as a religion by centuries and was used commonly to describe *inter alia* war-making endeavours.<sup>48</sup>

This article does not seek to use historical precedent to justify the subsequent practice of jihad; rather history is being referred to here to submit that, if Islam were to survive on the Arabian Peninsula in the seventh century, it could only have been revealed by Muhammad with the doctrine of jihad included, as that

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<sup>45</sup> Rahim, A., *Mahammadan Jurisprudence*, (1911), Lahore: PLD Publishers.

<sup>46</sup> Ali, *The Holy Qur'an*, 28:57.

<sup>47</sup> *Ibid.*, 3:173.

<sup>48</sup> Bassiouni, *Evolving Approaches to Jihad*, p. 123.



was the culture of the age. To ignore this cultural reality would have rendered Islam untenable and irrelevant to the lives of Arabs. According to Shah, the Qur'anic verses relating to jihad can be categorized as: (1) justification of jihad; (2) exhorting Muslims to jihad; (3) conduct of jihad; and (4) reward for participating and punishment for not participating in jihad.<sup>49</sup> The Sword Verses do not seek to justify jihad. Rather, they act to codify the conduct of war. That is why Verse 9:5 begins by describing when jihad can take place – “when the forbidden months are passed” – and finishes by ordering mercy if the Pagans repent. Islam had to survive in circumstances where “fighting, sometimes preemptively, sometimes defensively, was understood to be the only way to do so”.<sup>50</sup>

## THE THEORY OF DEFENSIVE JIHAD

Having established that in no way do the Sword Verses justify the genocide of non-Muslims, it is necessary to examine when jihad should be regarded as legitimate. As the Qur'an, like other religious texts, is open to multiple interpretations, in order to find the true purpose of jihad it is necessary to refer to the general principles of Islam from which the doctrine must have been derived. Shah describes the major themes of the Qur'an as: “(a) peace, (b) freedom of religion and (c) justice for all God's creatures”.<sup>51</sup> The obvious way of reconciling the Sword Verses with these fundamental principles of Islam is to conclude that jihad is fundamentally a doctrine of self-defence.

There are numerous Qur'anic verses to support the theory that jihad should be interpreted as a defensive doctrine. It is clear that jihad is justifiable in two circumstances: (a) when a Muslim land is attacked or when such an attack is imminent or (b) when Muslims are persecuted for believing in Islam and are

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<sup>49</sup> Shah, *Self-Defence in Islamic Law*, p. 200.

<sup>50</sup> Jackson, S., *Jihad in the Modern World*, Journal of Islamic Law and Culture, Spring/Summer (2002), pp. 1-26.

<sup>51</sup> Shah, *Self-Defence in Islamic Law*, p. 198.

unable to defend themselves.<sup>52</sup> Regarding the former circumstance, the Qur'an states,

*To those against whom  
War is made, permission  
Is given (to fight), because  
They are wronged...*<sup>53</sup>

This verse clearly describes violence only in response to those who are directly victimised by the violence of others. It does not in any way legitimise offensive jihad. Indeed, this was the first Qur'anic verse which gave Muslims permission to fight in self-defence, and it was revealed only after Muslims had been persecuted in Mecca for thirteen years.<sup>54</sup>

The scope of self-defence does, however, extend to the second of the aforementioned circumstances, namely collective self-defence:

*And why should ye not  
Fight in the cause of God  
And of those who, being weak,  
Are ill-treated (and oppressed)? –  
Men, women, and children,  
Whose cry is: 'Our Lord!  
Rescue us from this town,  
Whose people are oppressors;  
And raise for us from Thee  
One who will protect;  
And raise for us from Thee*

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<sup>52</sup> Ibid., p. 183.

<sup>53</sup> Ali, *The Holy Qur'an*, 22.39.

<sup>54</sup> Shah, *Self-Defence in Islamic Law*, p. 184.

*One who will help!*<sup>55</sup>

The language of this verse makes it clear that the Qur'an's primary concern is for the vulnerable, not for conquering the infidel. Indeed, in asking the opening rhetorical question, the Qur'an implies that Muslims were at first questioning and sceptical as to whether any such violence is compatible with Islam.

The Qur'an even prescribes limitations on the use of self-defence:

*And fight them on  
Until there is no more  
Tumult or oppression...*<sup>56</sup>

Although admittedly this is a widely drafted limitation, inherent in this verse are the twin limitations of necessity and proportionality.<sup>57</sup> These are further substantiated in the Qur'an: "fight in the cause of God those who fight you, but do not transgress limits..."<sup>58</sup> From these verses, it is apparent that in the Qur'an jihad is deemed as a necessary doctrine, but not one which should be used aggressively.

These limitations are reiterated in the second Sword Verse, referred to previously:

*Fight those who believe not  
In God nor the Last Day,  
Nor hold that forbidden  
By God and His Apostle,  
Nor acknowledge the Religion*

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<sup>55</sup> Ali, *The Holy Qur'an*, 4:75.

<sup>56</sup> Ibid., 2:193.

<sup>57</sup> Shah, *Self-Defence in Islamic Law*, p. 185.

<sup>58</sup> Ali, *The Holy Qur'an*, 2:190.

*Of Truth, (even if they are)  
Of the People of the Book,  
Until they pay the Jizya  
With willing submission,  
And feel themselves subdued.*<sup>59</sup>

For some scholars, such as Maududi<sup>60</sup>, this verse, despite the fact that it reiterates the limitations of defensive jihad, is seen as legitimising the subjugation of non-Muslims. Here, the Qur'an does not condone the killing of non-Muslims, but it does require them to pay the *Jizya*, which *prima facie* appears to be discriminatory subjugation. However, the root meaning of *Jizya* is compensation.<sup>61</sup> It was a paltry sum, payable partly symbolically as recognition of sovereignty and partly as commutation for military services, in which non-Muslims were not obliged to partake; *Jizya* was not a specific Muslim invention but was the norm of the time.<sup>62</sup> Further, as there can be no compulsion in religion, non-Muslims were exempted from paying *zakat*, the poor tax.<sup>63</sup> Thus, non-Muslims were not the victims of Muslim subjugation when living in Muslim territory.

Any demand that non-Muslims respect Muslim sovereignty, as stated above, derived from the culture of the Arabian Peninsula whereby Muslims had to fight for control of areas in which they themselves were free to practice Islam. As freedom of religion required sovereignty, it is not unnatural that the Qur'an should demand respect for Muslim sovereignty after it had been won by means which, at the time, were universally regarded as legitimate. This interpretation of jihad as a doctrine of self-defence corresponds with what Shah describes as

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<sup>59</sup> Ibid., 9:29.

<sup>60</sup> Maududi, S.A., *Al-Jihad Fil-Islam* (Urdu), (1996), Lahore, p. 202.

<sup>61</sup> Ali, *The Meaning of the Holy Qur'an*, p. 445.

<sup>62</sup> Shah, *Self-Defence in Islamic Law*, p. 188.

<sup>63</sup> Shah, *Self-Defence in Islamic Law*, p. 188.

the underlying themes of the Qur'an. The theme of peace is substantiated in numerous verses, including the following:

*...If the enemy  
Incline towards peace,  
Do thoust (also) incline  
Towards peace...*<sup>64</sup>

And,

*...God loveth not transgressors.*<sup>65</sup>

Jihad, therefore, was a means to an end for Muslims to freely practice religion; it was not intended as a permanent state of conflict.

The theory that the Qur'an does not prescribe jihad as a permanent conflict corresponds to the locations in which the Qur'anic verses relating to jihad were revealed. The majority of such verses were revealed at Madina. Here, Muhammad was attempting to consolidate a nascent community. According to Bassiouni, the early Madina-revealed verses balance self-sacrifice and fighting in self-defence; they are generally conciliatory.<sup>66</sup> Subsequent verses regarding jihad revealed at Mecca are generally more assertive.<sup>67</sup> The reason for this rise in aggression was that Banu Bakr breached the *Treaty of Hdaybiyah*, which he had agreed with Muhammad, leading to a period of military and political turmoil in the Arabian Peninsula.<sup>68</sup> An-Na'im has argued that the Meccan verses abrogate the Madinan verses, stating specifically that Chapter 9 of the

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<sup>64</sup> Ali, *The Holy Qur'an*, 8:61.

<sup>65</sup> Ibid., 2:190.

<sup>66</sup> Bassiouni, C., *Evolving Approaches to Jihad*, p. 127.

<sup>67</sup> Ibid., p. 129.

<sup>68</sup> Shah, *Self-Defence in Islamic Law*, p. 204.

Qur'an repealed "all previously revealed inconsistent verses of the Qur'an".<sup>69</sup> However, Shah argues, "Abrogation is the right of God and the only human agent through whom God revealed the Qur'an was the Prophet Muhammad".<sup>70</sup> Further, the Qur'an explicitly states that,

*This day have I  
Perfected your religion  
For you, completed  
My favour upon you,  
And have chosen for you  
Islam as your religion.*<sup>71</sup>

Thus, the theory of abrogation is flawed: all Qur'anic verses regarding jihad are valid and should be interpreted as a whole. The Meccan verses are more aggressive because of the context in which they were revealed; they were not revealed as the sole verses relating to jihad. Indeed, according to Bassiouni, as the threat to Islam abated,

*The propagation of Islam by peaceful means, as the Prophet's Sunnah evidenced during his lifetime, became the rule and not the exception.*<sup>72</sup>

#### THE DOCTRINE OF ANTICIPATORY SELF-DEFENCE

For the sake of clarity, it should be acknowledged that the Qur'an does not prohibit anticipatory self-defence. This provision primarily envisages situations in which a non-Muslim party to a treaty with Muslims is likely to breach that treaty:

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<sup>69</sup> An-Na'im, A., *Islamic Law, International Relations, and Human Rights Challenge: Challenge and Response*, (1998) 20 *Cornell International Law Journal*, 317-339, p. 327.

<sup>70</sup> Shah, *Self-Defence in Islamic Law*, p. 205.

<sup>71</sup> Ali, *The Holy Qur'an*, 5:4.

<sup>72</sup> Bassiouni, *Evolving Approaches to Jihad*, p. 132.

*They are those with whom  
Thou didst make a covenant,  
But they break their covenant  
Every time, and they have not  
The fear (of God).<sup>73</sup>*

It is made clear that the purpose of this provision is not to give Muslims an unethical advantage but to counter the historical reality that many Arab tribes failed to honour the terms of peace treaties:

*If thou fearest treachery  
From any group, throw back  
(Their Covenant) to them, (so as  
To be) on equal terms...<sup>74</sup>*

Anticipatory self-defence does not undermine the principle that the Qur'an prohibits offensive jihad; it is rather a nuance of defensive jihad.<sup>75</sup> Regardless, as modern Islamic terrorists do not generally have pre-existing treaties with non-Muslims, it is not strictly relevant to the question, other than to submit that it is not contrary to the argument that jihad is an inherently defensive doctrine.

## INTERPRETATIONS OF JIHAD IN MODERNITY

Thus far, this article has sought to critically analyse the circumstances in which classical jihad was justifiable in antiquity. It is therefore now appropriate to examine how this classical doctrine may be applied in modernity. In modernity, there has been a debate concerning the interpretation of the doctrine of jihad between Islamists and modernists. Islamists, such as Maududi and Qutb,

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<sup>73</sup> Ali, *The Holy Qur'an*, 8:56.

<sup>74</sup> Ibid., 8:58.

<sup>75</sup> Shah, *Self-Defence in Islamic Law*, p. 189.

advocate a very literal, and often selective, interpretation of the Qur'an. This leads them to the conclusion that it is the offensive theory of the jihad which is righteous. Indeed, Qutb claims that,

*Islam is not a party of preachers and missionaries but rather of divine enforcers. Its mission is to blot out, by force if necessary, oppression, moral anarchy, social disorder, and exploitation...and replace evil with good.*<sup>76</sup>

Evidently, Qutb has abrogated all those Qur'anic verses which denounce aggression.

Alternatively, modernists seek to reconcile jihad with modernity. This process can be traced to British India, where some Muslims saw British colonialism as beneficial. A product of this school of thought was Sir Sayyid Ahmad Khan (1817-1898), who advocated the defensive theory of jihad. In Egypt, Muhammad Sa'id al-'Ashmawi, a former Chief Justice of the Criminal Court of Egypt, has articulated a similar modernist view. He argues that there is a crucial distinction between religion as a pure idea and religious thought, including law, as an elaboration of that idea.<sup>77</sup> As such, although God's religion is constant, Muslims and Islamic law should adapt to modernity. This is not entirely different to An-Na'im, who when expressing his support for abrogation, conceded that,

*It should be possible for modern Muslim jurists to reverse this process of abrogation in order to reinstate the principle of peaceful co-existence with non-Muslims.*<sup>78</sup>

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<sup>76</sup> Qutb, S., *In the Shade of the Quran*, Vols. 8 and 9, Salahi, (translated 2003), Leicester: The Islamic Foundation, p. 34.

<sup>77</sup> Hallaq, *Shari'a*, p. 392.

<sup>78</sup> An-Na'im, *Islamic Law*, p. 329.



The crucial difference between An-Na'im and al-'Ashmawi is, of course, that it is not necessary for the Qur'an to be subject to abrogation in order for it to be interpreted such that modern Islamic terrorism is unjustifiable.

Al-'Ashmawi's modernist argument corresponds with those who have studied jihad in the embryonic stages of Islam when it was a necessary means of defending religion. Indeed, Sherman Jackson contends that,

*A prevailing 'state of war', rather than difference of religion, was the raison d'être of jihad.*<sup>79</sup>

That jihad existed before Islam – as stated previously – is further evidence that a distinction can be made between the religious and secular elements of jihad. Clearly, defensive jihad was a religious duty; had Islam been a purely pacifist religion, it would have been unlikely to survive for long on the Arabian Peninsular in the seventh century C.E.. However, offensive jihad was not a religious duty and, indeed, such an interpretation would be a contradiction of the Qur'an's major theme of peace.

This article has already submitted that the classical defensive theory of jihad is the one which most closely complies with the Qur'an's holistic meaning. The modernist theory is a clear extension of the classical defensive theory of jihad. Jihad can only be justified if the Abode of Islam is threatened by the Abode of War. However, as Jackson argues,

*This 'state of war' has given way in modern times to a global 'state of peace'.<sup>80</sup>*

Since at least the founding of the United Nations in 1945, the concept of sovereignty of nation States has in principle described a relative balance of

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<sup>79</sup> Jackson, *Jihad and the Modern World*, p. 25.

<sup>80</sup> Ibid.

peace internationally; conflicts are the exception to this respect for sovereignty. As such, permanent jihad is no longer required to secure the Abode of Islam and, in turn, freedom of religion. Where there is persecution, there are prescribed mechanisms for countering it. The principal mechanism for countering a breach of the Abode and *inter alia* its freedom of religion is Article 51 of the Charter of the United Nations, which recognises,

*The inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.*

Patently, this is merely a codification of the classical doctrine of defensive jihad. Moreover, it includes collective self-defence as well as individual defence, which is crucial to the doctrine of jihad.

There is a potential problem with this theory: Qutb argues that as institutions such as the United Nations were not created by Muslims, they should be ignored by Muslims. However, Muhammad often endorsed realities that were not the products of Muslim efforts, including the system of tribal alliances, the ‘Forbidden Months’ and honouring pagan marriages contracted before Islam.<sup>81</sup> Moreover, as stated previously, Article 51 is not imposing a new doctrine of war and peace on Islam; rather it is codifying the inherent right to self-defence, which is as much an Islamic concept as it is western. In modernity, jihad can therefore be justified only in the same way that Article 51 can be justified – as a response to aggression. As such, modern Islamic terrorism is entirely incompatible with Islam, in both its classical and modernist guises.

## CONCLUSION

There are certain stipulations regarding the conduct of jihad which explicitly render some of the modern Islamic terrorism the world has seen since 1948 contrary to Islam. I have already given the example of the London bomber who

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<sup>81</sup> Ibid.

carried out jihad without his parents' permission; another example would be the reported going trend in female suicide bombers.<sup>82</sup> However, this article is more concerned with the general principles of jihad, particularly whether jihad is an offensive or defensive doctrine. The entire discourse of the Qur'anic verses relating to jihad is of a religion which is struggling to counter persecution. This ultimately leads to the conclusion that jihad can only ever be a doctrine of self-defence.

Jihad is a response to an international backdrop of perpetual conflict and persecution. In modernity, the number of possible justifications for invoking self-defence is vastly reduced. The purpose of jihad is to secure freedom of religion; provided there is freedom of religion, there can be no justification for modern Islamic terrorism. Where a state of war does arise, then of course jihad may be justified, but this is an accepted principle of international law, as codified in Article 51 of the Charter of the United Nations. In purely Qur'anic terms, it is clear that where a state of war is avoided, jihad is unjustifiable. As such, it follows that the fewer perceived threats to the freedom of Islam, the less likely there is to be modern Islamic terrorism. There comes a point in analysing a concept such as jihad where it is necessary to defer to the general principles of Islam. While, in my opinion, there is far greater evidence that modern Islamic terrorism is contrary to those general principles – and I have sought to demonstrate that link – it remains merely a corroborated opinion. This article can only ever be an artificial academic exercise; those who seek to wage war against civilians will always find their own justifications for doing so.

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<sup>82</sup>The Jamestown Foundation (2008), <<http://www.jamestown.org/terrorism/news/article.php?articleid=2369824>>, accessed 16 October, 2008.

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