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M. Cherif Bassiouni

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Evolving Approaches to Jihad: From Self-defense to Revolutionary and Regime-Change Political Violence

M. Cherif Bassiouni*

I. INTRODUCTION

The Arabic language was used in the southern part of the Arabian Peninsula for centuries before the Qur'an was revealed to Prophet Muhammad in 610 CE. In its early developmental phase, Arabic was influenced by Aramaic and Syriac, which was a derivative language of Aramaic. Because Arabic was the language of a Bedouin and mostly nomadic society, it was essentially spoken. Arabic's oral tradition was by far more developed than its written one. Thus, when the Qur'an was memorized by the Prophet's companions, or *sahaba*, it had seven acknowledged readings, or *qeraat*, because written Arabic did not then have vowels or diacritical marks. By reciting the Qur'an in seven different ways, words could be given different meanings. This situation remained until 644 CE when Uthman Ibn Affan, the third *Khalifa*,¹ had a group of learned *sahaba* redact the authoritative version of the Qur'an, which has since remained unchanged and unchallenged.²

Early Arabic was not as developed a language as it became after the Qur'an's revelation was completed in 632 CE, and more so some 100 years later when vowels and diacritical signs became common usage in the written Arabic. Thereafter, the language developed along two paths: the sacred as it relates to the exegesis of the Qur'an and the *hadith*,³ (sayings of the Prophet), and the

* Distinguished Research Professor of Law and President Emeritus, International Human Rights Law Institute, DePaul University College of Law.

1 The successive rulers of the Islamic state were called *khalifa*, which means successor by reference to the Prophet as the first ruler of the Muslim state, the *ummah* (nation).

2 Consider M. M. al-Azami, *The History of the Qur'anic Text from Revelation to Compilation: A Comparative Study with the Old and New Testaments* (UK Islamic Academy 2003).

3 The purported *ahadith* reached nearly 250,000 only 150 years after the Prophet's death. Even though these were reduced by the scholar-compiler al-Bukhari to 7,275 and Muslim to 4,200, some scholars consider only some 40 *ahadith*, called *qudsia* (meaning sacred), to be authoritative.

popular—both written and spoken—in the different Arabic-speaking countries. The former has remained more or less constant though developing in sophistication and richness. The latter has changed and reflects the cultural diversity of the countries where it is spoken.

The inhabitants of the mostly desert area of southern Arabia consisted of tribal societies, some nomadic herders, and others engaged in caravan commerce and other commercial endeavors. This brought them in contact with Jews and Christians who were Aramaic speaking, as well as with other sedentary Semitic groups who inhabited the northern parts bordering on the Mediterranean and who spoke both Aramaic and Syriac. The pre-Islamic Arab culture with the contributions of other cultures had an important influence on the understanding and application of Islam in the region of its birth. This Arab influence to date has marked the evolution of Islam's application in non-Arab Muslim societies.

The sacred Arabic, for approximately the first three-hundred years of Islam, was influenced by theologians and jurists who tended to interpret the Qur'an and the *hadith* in ways that reflected the spiritual meaning and philosophy of Islam. Subsequently, exegesis was heavily influenced by language experts who understandably tended to be literalists. In time, the literalists consolidated their intellectual dominance of exegesis and that had a profound effect on how the interpretation of jihad has evolved.

The nature of jihad—its scope and means—has evolved since the days of the Prophet, often reflecting political realities. During the Prophet's days, jihad was a call to put everything a person could into the service of Islam, and that included use of force in self-defense. With few exceptions, the spiritual dimension was the predominant aspect of jihad's meaning at that later time.⁴ Jihad became a state doctrine which legitimized preemptive self-defense and justified conquest. It also evolved into a doctrine supporting the use of force in the name of political legitimacy. Throughout the centuries, competing claimants to the *khilafa* resorted to it in their struggles for power. This doctrinal extension of jihad has reached an entirely new level since the nineteenth century, when it became a justification for regime-change. Groups seeking to accomplish regime-change advanced it as moral justification for their violent means, even when

However, the majority of Muslim scholars and most of clerics freely dip into this vast reservoir of *abadith* to selectively pick what they deem most advantageous.

⁴ It should be noted that the Prophet's attack on the Madinah-based Jewish tribe of Qurayza cannot be considered self-defense. This tribe had agreed to peaceful co-existence with the Muslims of Madinah, though they were not supportive of them or their new religion, or of the Prophet himself. However, their openly verbal disapprovals did not warrant the Prophet-led Muslim attack on them, which killed all the male population (estimated at six hundred to eight hundred), and resulted in the enslavement of all women and children. See Hector Avalos, *Fighting Words: The Origins of Religious Violence* 250 (Prometheus 2005).

these means violated fundamental tenets of Islam, covering the protection of non-combatants.⁵ Over time, manipulation of jihad's meaning has distorted that aspect of the Shari'ah. This was possible because such manipulators of religious doctrine were allowed to do so by the official clergy and by timid or complacent governments.⁶ This situation enhanced public acceptance of jihadist violence as a means to achieve what these jihadist groups perceive to be legitimate ends. Thus, the end was deemed to justify the means.⁷

Admittedly, the record of jihad is far from clear, and the Muslim religious establishment has historically failed to clarify it. Thus, the contemporary politicization of jihad is due in part to the absence of a coherent and authoritative doctrinal body of interpretation on the subject. Credible secular Muslim scholars have also failed to counterbalance the views of politically and economically motivated clerics with reform notions of jihad. As result, jihad as political violence has become nothing more than a revolutionary doctrine to justify those who engage in it by appealing to the legitimacy of their self-proclaimed ends.⁸

There is a debate among Western academics as to whether violence is endemic to Islam or whether Islam is a peaceful religion. Proponents of these views are largely influenced by their own political persuasions, but mostly by their perceptions as outside observers of the Muslim world. The most plausible

⁵ See note 14.

⁶ For example, some modern political leaders sought to reinforce their undemocratic regimes by obtaining the support of politically active fundamentalist groups against secular democrat efforts. Anwar es-Sadat in 1979, after signing the peace treaty with Israel, used the Muslim Brotherhood and al-Azhar clergy to fight off secular democracy proponents who challenged his regime. Today the Muslim Brotherhood has eighty-eight members of parliament and is probably the group with the most political credibility in Egypt. Pakistan's General Zia-ul-Haq, who led a military coup against the elected civilian president Bhutto, used Muslim fundamentalists to support his military regime. In exchange, he allowed these movements to develop their private *madrasa* (schools) which produced generations of think-alike Muslims, among whom are many fundamentalists who believe in political jihad. These groups provided support to the Afghani Taliban. More significantly, the leeway given by these dictatorial regimes to these Islamic groups gave them a hold on the uneducated and downtrodden masses of their respective countries. The temporary political gains of these regimes in thwarting secular pro-democracy movements and political parties led to an almost irreversible trend favoring the theocratic movements and parties. For a general discussion, see Ahmed Rashid, *Jihad: The Rise of Militant Islam in Central Asia* (Yale 2002); Mary Anne Weaver, *A Portrait of Egypt: A Journey through the World of Militant Islam* (Farrar, Straus, and Giroux 1999).

⁷ For a general discussion on the issue of legitimacy in terrorism, see M. Cherif Bassiouni, *Legal Controls of International Terrorism: A Policy-Oriented Assessment*, 43 Harv Intl L J 83 (2002); Thomas Franck and Scott C. Senecal, *Porfiry's Proposition: Legitimacy and Terrorism*, 20 Vand J Transnatl L 195 (1987).

⁸ Of note is that contemporary jihad has never been advocated in the Muslim world to advance democracy and the rule of law, or to fulfill the inherent goodness and tolerance of Islam.

conclusions are advanced by those who simply see Muslim societies as any other society wrestling with social, economic, cultural, and political issues, and where at different times ideology is resorted to as a way of justifying political transformation. In some cases, Islamic doctrine is used as a legitimizing basis for political violence, and in these cases, it simply becomes the equivalent of any other revolutionary idea.⁹

The following interpretation of jihad and its evolving doctrinal nature should not be construed as an apology or rationalization of its worst applications. There are contradictions in the evolving doctrines and applications of jihad throughout Islam's fifteen centuries. These uncorrected contradictions by responsible Muslim clergy have led to the contemporary rationalizations of unbridled violence in the name of Islamic jihad. Such doctrines and their contemporary applications should be unequivocally rejected and condemned.

II. THE MEANINGS OF JIHAD

The Arabic word "jihad" means striving, endeavoring, and struggling. The person who engages in jihad, is the one who *jabada*. Jihad is the noun of the verb *jabada*. *Jabada* is commonly understood as someone who is diligent, industrious, or laborious in the pursuit of a praiseworthy objective. These terms apply equally

⁹ See David Martin, *Does Christianity Cause War?* (Oxford 2004), in which the author takes the position that religion, irrespective of which religion, does not necessarily cause violence. See also Hector Avalos, *Fighting Words* (cited in note 4). Bruce Lawrence challenges the notion that Islam is a religion of violence in his books *Shattering the Myth: Islam beyond Violence* (Princeton 1998) and *New Faiths, Old Fears: Muslims and Other Asian Immigrants in American Religious Life* (Columbia 2002). See also M. Muhammad Ali, *The Religion of Islam: A Comprehensive Discussion of the Sources, Principles and Practices of Islam* (Ahmadiyya Anjouman Isha'at Islam 6th ed 1990); Reinhard Schulze, *A Modern History of the Islamic World* (NYU 2000) (Azizah Adodi, trans). For the proposition that economic causes are at the root of the problems confronting Islam and the West, see Benjamin R. Barber, *Jihad vs. McWorld: Terrorism's Challenge to Democracy* (Ballantine 1996). In this writer's view, religions and ideologies are either motivators of resort to violence as a way of achieving the goals they deem to be divinely ordained or legitimate. To argue whether these sources are the original cause of violence or whether people use them for certain ends is irrelevant, as history reveals how many wars have been fought on religious grounds or for ostensibly religious purposes. It should be noted that the documentation on terror violence since the 1960s does not show that religiously-motivated terror violence is any more significant than its ideologically-motivated counterpart. For example, in the last four years, there have been more suicide bombings by the Tamil Tigers against the government of Sri Lanka, which is not religiously-based. The number of casualties in the Irish and Basque conflicts by far supersede those inflicted by the Palestinians against Israelis. For a recent statistical study, see Robert A. Pape, *Dying to Win: The Strategic Logic of Suicide Terrorism* (Random House 2006). For an annual survey divided by countries, types and acts of terror-violence, see United States Department of State, *Patterns of Global Terrorism 2003* (2004), available online at <<http://www.state.gov/documents/organization/31912.pdf>> (visited Apr 21, 2007).

to spiritual, intellectual, and physical endeavors,¹⁰ but reflect a higher purpose in the pursuit of the undertaking. Thus, the value-oriented goal of the undertaking is its moral content.

The verb *ijtihad* means the process of engaging in a diligent, industrious, and laborious endeavor. But it has acquired, since early Islam, an essentially theological significance because it applied to the intellectual process of developing an interpretation concerning a particular problem for which the Shari'ah does not have an explicit answer.¹¹ As to the *mujtabid*, it is the person who engages in intellectual *ijtihad*.

In the pre-Islamic period of the *jabiliyya*, the words *jihad*, *mujabid* (the one who actively struggles), and *mujtabid* were commonly used for physical and intellectual endeavors not necessarily associated with war-making, though in time the former became just that. For the *jabiliyya* Arabs, war was permissible as an extension of political and other tribal goals except when war was a breach of treaty or other tribal and customary obligations.¹² However, *jabiliyya* Arabs had a customary code of conduct in war much like what developed over a millennium later in Europe's middle ages, namely, the codes of chivalry.¹³ Arab warriors were not to kill non-combatants, which included women, children, and the aged, as well as the wounded and the sick if they asked to be spared death. The custom that Arab Muslims of the Peninsula inherited from *jabiliyya* Arabs became part of Muslim law of conduct in warfare and jihad.¹⁴

¹⁰ For the various meanings of jihad, see *Lisan al-Arab lil-Imam al-'Alama Ibn Man Dhur* (Cairo: Dar Al-Hadith 2d ed 2003), an Arabic language dictionary and encyclopedia. The original work was published in twenty volumes between 1305–1307 AH. "AH" refers to *Anno Hajira*, and 1 AH corresponds to the year 622 CE, which is the year of the Prophet's flight from Makkah to Medina.

¹¹ The linguistic meaning is discussed in the preceding text of this section. For the legal meaning, see M. Cherif Bassiouni and Gamal M. Badr, *The Shari'ah: Sources, Interpretation, and Rule-Making*, 1 UCLA J Islamic & Near E L 135 (2002); Wael B. Hallaq, *A History of Islamic Legal Theories* (Cambridge 1997).

¹² Centuries later, Carl Von Clausewitz described war as a continuation of politics by other means. Carl Von Clausewitz, 1 *On War* 119 (Penguin 1982). It was not until 1928 that fifty-four states signed the Kellogg-Briand Pact on Renunciation of War (1928) 94 LNTS 57, available online at <<http://www.yale.edu/lawweb/avalon/imt/kbpact.htm>> (visited Apr 21, 2007). Thus, the position of the *jabiliyya* Arabs reflected the customary practice of states up to 1928 CE.

¹³ See Maurice Keen, *The Laws of War in the Late Middle-Ages* 2–3, 19–22 (Routledge 1965).

¹⁴ See Majid Khadduri, *War and Peace in the Law of Islam* (Johns Hopkins 1955); Muhammad ibn al-Hasan Shaybani, *The Islamic Law of Nations: Shaybani's Siyyar* (Johns Hopkins 1966) (Majid Khadduri, trans). These works are based on those of the twelfth century Muslim jurist Al-Shaybani, who documented the law and practice of Muslims during armed conflicts. It was not until the late 1800s that some of these Muslim rules of warfare became part of what is now international humanitarian law. See generally M. Cherif Bassiouni, ed, *A Manual on International Humanitarian Law and Arms Control Agreements* (Transnational 2000). Muslims, like other groups including those in contemporary times, have not always followed these rules in their practices. Human nature being what it is, people do not always rise to their best possible levels.

The common usage meaning of words relating to jihad started to change after the Revelations and particularly during the Prophet's lifetime as he was confronted by the enemies of Islam while seeking to establish a Muslim state. The earlier period of Islam in Makkah (613–622 CE), before the Prophet and his followers' migration to Madinah (622 CE), was essentially a period in which Muslim converts stoically withstood the Makkans' pressures and persecutions. Thus, the term jihad essentially connoted the steadfast spiritual struggle in upholding the newly-acquired faith. The Qur'an, which was revealed between 610 and 632 CE in Makkah and Madinah (with a few exceptions in locations between these two cities), contains several references to jihad—some of which have the distinct meaning of war-like activities in defense of the faith. During the first twenty-two years of Islam, the military dimension of jihad meant resistance to aggression, in other words, self-defense.¹⁵ Nevertheless, the spiritual aspects of jihad were prevalent, particularly as practiced by the early Makkan Muslims between 610 and 622 CE. This spiritual dimension was reflected in a *hadith* of the Prophet who, after returning from the battle of Badr,¹⁶ referred to war as the smaller jihad, in contrast to the struggle against oneself for goodness and piety, referred to as jihad *ul-nafs*—the greater jihad.¹⁷

Over the last fourteen centuries, *fiqh* (doctrine) did not elaborate much on the Prophet's *hadith*, which focused on the non-spiritual aspects of jihad *ul-nafs* (the struggle against self). The reason may well be that this spiritual aspect of jihad, which the Prophet considered the greater one, is self-evident, and thus needed no elaboration. Indeed, much of the Qur'an and the *hadith* deal with how to reach a higher spiritual plane through *iman* (faith), *'aqida* (belief), and *taqwa* (piety). Conversely, the struggle against non-believers in the early days of Islam, who either wanted to crush Islam (as the Makkans) or simply oppose it, needed a doctrinal basis for the armed struggle facing the Muslims. Various doctrines developed as to when resort to the use of force could be considered jihad and

¹⁵ See Hilmi Zawati, *Is Jihad a Just War? War, Peace and Human Rights under Islamic and Public International Law* 29–30 (Edwin Mellen 2001).

¹⁶ For a general discussion of the Battle of Badr, see *Battle of Badr*, available online at <http://en.wikipedia.org/wiki/Battle_of_Badr> (visited Apr 21, 2007); *Battle of Badr*, available online at <<http://www.al-islam.org/history/history/badr.html>> (visited Apr 21, 2007). It should be noted that during the Madinah era, on instructions of the Prophet, Muslim troops disrupted East/West caravans going to and from Makkah. The purpose was to cause the Makkans to heed the demands of Muhammad as the leader of the new Muslim community. This can be considered a form of provocation, which undermines the validity of the self-defense claim against the attack of the Makkans.

¹⁷ This *hadith* is found in many sources but it is considered "weak" by many scholars because of its questionable chain of transmission to the Prophet. However, it is frequently referred to in several scholarly works in Arabic, including Ibn Taymiyya, *Majmou' al-Fatawa*; Al-Zayla'i, *Takhrir al-Kashaf*; and Ibn Hagar al-Askalani, *Al-Kafi al-Shaf*.

when it could not, and also against whom it is permitted.¹⁸ Doctrine also discussed how to deal with apostates, polytheists, and others who opposed Islam, as well as those who undermined it from within, whom the Qur'an refers to as the "hypocrites" (*al-munafiqun*).¹⁹ It is significant to note that all doctrinal discussions of jihad distinguish its meaning as a struggle in the military sense from its meaning of the personal, spiritual, and moral struggle for the attainment of Islam's spiritual ends. However, strong revisionist doctrinal trends started to become evident after the Prophet's death in 632 CE.

During the Prophet's time, the Qur'an's revelations mentioning jihad were essentially found in twenty-four verses. Most of the verses, quoted below, urge a more spiritual and non-violent aspect of the concept of jihad. Most of the Qur'an's exhortations are to being steadfast in the faith, to sacrifice for the faith, to migrate from Makkah to Madinah, and to peacefully propagate the faith. Several verses specifically refer to personal and financial sacrifices. In comparison to the above-mentioned spiritual exhortations, a few verses specifically address jihad as armed resistance to the enemies of Islam. Resort to use of force as part of jihad was, however, always contemplated.

The verses quoted below in their entirety are intended to give the reader a better feeling of the Divine message than what this writer may convey. The reader will also note a change in tone and content between the Madinah-revealed verses and the subsequent Makkah-revealed ones.

The following Madinah-revealed verses balance personal sacrifice and fighting in self-defense.

Surat al-Baqarah: Those who believed and those who suffered exile and fought [and strove and struggled] in the path of Allah—they have the hope of the Mercy of Allah: And Allah is Oft-forgiving, Most Merciful.²⁰

Surat al-Nisa': Not equal are those believers who sit [at home] and receive no hurt, and those who strive and fight in the cause of Allah with their goods and their persons. Allah hath granted a grade higher to those who strive and fight with their goods and persons than to those who sit [at home]. Unto all

¹⁸ For a synthetic, comprehensive survey, see Rudolph Peters, *Jihad in Classical and Modern Islam* (Markus Wiener 1996). See also Reuven Firestone, *Jihad: The Origin of Holy War in Islam* (Oxford 1999).

¹⁹ The Qur'an has a chapter entitled *Surat al-Munafiqun*, no 63, which urges not only caution but strong opposition to the hypocrites. See also the chapter entitled *Surat al-Tahrim*, 66:9 ("O Prophet! Strive hard against the Unbelievers and the Hypocrites, and be firm against them. Their abode is Hell, an evil refuge [indeed].") The Qur'anic verses cited in this Article were translated by Abdullah Yusuf Ali. See Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an* (Amana 2004), or by this author, as noted in the text.

²⁰ Qur'an 2:218.

[in Faith] Hath Allah promised good: But those who strive and fight Hath He distinguished above those who sit [at home] by a special reward.²¹

Surat al-Ma'idah: O ye who believe! Do your duty to Allah, seek the means of approach unto Him, and strive with might and main in his cause: that ye may prosper . . .²² O ye who believe! if any from among you turn back from his Faith, soon will Allah produce a people whom He will love as they will love Him,- lowly with the believers, mighty against the rejecters, fighting in the way [service] of Allah, and never afraid of the reproaches of such as find fault. That is the grace of Allah, which He will bestow on whom He pleaseth. And Allah encompasseth all, and He knoweth all things.²³

Surat al-Anfal: Those who believed, and adopted exile, and fought for the Faith, with their property and their persons, in the cause of Allah, as well as those who gave [them] asylum and aid, these are [all] friends and protectors, one of another. As to those who believed but came not into exile, ye owe no duty of protection to them until they come into exile; but if they seek your aid in religion, it is your duty to help them, except against a people with whom ye have a treaty of mutual alliance. And [remember] Allah seeth all that ye do.²⁴

Surat al-Tawbah: Do ye make the giving of drink to pilgrims, or the maintenance of the Sacred Mosque, equal to [the pious service of] those who believe in Allah and the Last Day, and strive with might and main in the cause of Allah? They are not comparable in the sight of Allah: and Allah guides not those who do wrong . . .²⁵ Those who believe, and suffer exile and strive with might and main, in Allah's cause, with their goods and their persons, have the highest rank in the sight of Allah: they are the people who will achieve [salvation] . . .²⁶ Say: If it be that your fathers, your sons, your brothers, your mates, or your kindred; the wealth that ye have gained; the commerce in which ye fear a decline: or the dwellings in which ye delight - are dearer to you than Allah, or His Messenger, or the striving in His cause;- then wait until Allah brings about His decision: and Allah guides not the rebellious . . .²⁷ Those who believe in Allah and the Last Day ask thee for no exemption from fighting with their goods and persons. And Allah knoweth well those who do their duty . . .²⁸ O Prophet! Strive hard against the unbelievers and the Hypocrites, and be firm against them. Their abode is Hell, an evil refuge indeed.²⁹

²¹ Id at 4:95.

²² Id at 5:35.

²³ Id at 5:54.

²⁴ Id at 8:72.

²⁵ Id at 9:19.

²⁶ Id at 9:20.

²⁷ Id at 9:24.

²⁸ Id at 9:44.

²⁹ Id at 9:73.

Surat al-Hajj: And strive in His cause as ye ought to strive, [with sincerity and under discipline]. He has chosen you, and has imposed no difficulties on you in religion; it is the cult of your father Abraham. It is He Who has named you Muslims, both before and in this [Revelation]; that the Messenger may be a witness for you, and ye be witnesses for mankind! So establish regular Prayer, give regular Charity, and hold fast to Allah! He is your Protector - the Best to protect and the Best to help!³⁰

Surat al-Hujurat: Only those are Believers who have believed in Allah and His Messenger, and have never since doubted, but have striven with their belongings and their persons in the Cause of Allah: Such are the sincere ones.³¹

Surat al-Mumtabinab: O ye who believe! Take not my enemies and yours as friends [or protectors],- offering them [your] love, even though they have rejected the Truth that has come to you, and have [on the contrary] driven out the Prophet and yourselves [from your homes], [simply] because ye believe in Allah your Lord! If ye have come out to strive in My Way and to seek My Good Pleasure, [take them not as friends], holding secret converse of love [and friendship] with them: for I know full well all that ye conceal and all that ye reveal. And any of you that does this has strayed from the Straight Path.³²

The chapters revealed in Makkah have a different content and tone. They are less conciliatory and more directive toward violent action. They include the following:

Surat al-Furqan: Therefore listen not to the Unbelievers, but strive against them with the utmost strenuousness, with the [Qur'an].³³

Surat al-Ankabut: And if any [of you] strive, they do so for their own souls: for Allah is free of all needs from all creation . . .³⁴ And those who strive in Our [cause], We will certainly guide them to our Paths: For verily Allah is with those who do right.³⁵

Surat al-Saff: That ye believe in Allah and His Messenger, and that ye strive [your utmost] in the Cause of Allah, with your property and your persons: That will be best for you, if ye but knew!³⁶

The verses revealed in Madinah were conciliatory because that was the critical time when Islam's candle was flickering and could have easily been snuffed out by the enemies of Islam. That was the time that required jihad in all of its meanings and by all Muslims. It required: migrating from Makkah to

³⁰ Id at 22:78.

³¹ Id at 49:15.

³² Id at 60:1.

³³ Id at 25:52.

³⁴ Id at 29:6.

³⁵ Id at 29:69.

³⁶ Id at 69:11.

Madinah, while leaving behind tribal affiliation, family, work, house, and fortune; the inhabitants of Madinah to share their property with those who migrated from Makkah and other places; Muslims to share what they had with new converts, proselytize, and set good examples; and ultimately fighting in self-defense for survival. But this was also why later exegetes deemed the verses referring to that period as being superseded by the subsequent Makkan verses.³⁷ In the case of jihad, the revelations subsequent in time do not state that they supersede or abrogate prior ones, though admittedly they leave room for such an interpretation.

The Qur'an in connection with jihad refers to *qital* (fighting) against the unbelievers.³⁸ The two issues debated by exegetes are whether Muslims are to fight unbelievers at any and all times save for when there is a truce or a treaty, or only in self-defense; and, whether this is a permanent injunction. The following verses are used by some interpreters of the Qur'an to support this proposition that fighting the unbelievers, meaning all non-Muslims with whom there is no truce or treaty, is a permanent undertaking for all Muslims. These verses are:

Surat al-Baqarab: Fight in the cause of Allah those who fight you, but do not transgress limits; for Allah loveth not transgressors . . .³⁹ And fight them on until there is no more Tumult or oppression, and there prevail justice and faith in Allah; but if they cease, Let there be no hostility except to those who practice oppression.⁴⁰

³⁷ There is a substantial debate among Shari'ah scholars as to a doctrine called *naskh* (repudiation). Essentially, it argues that certain verses were revealed for a given purpose and that they are linked to their intended purpose. Thus, they conclude, that revelations subsequent in time implicitly abrogate the former ones. Some scholars, with whom this writer agrees, reject the doctrine of abrogation because God, given His unique characteristics, cannot be deemed by humans to have implicitly abrogated what He has revealed. Instead, only superseding revelations can explicitly do that. Concerning abrogation, it is important to note that the Qur'an is specific as to when a revelation abrogates a prior revelation. Qur'an 2:106 ("None of Our revelations do We abrogate or cause to be forgotten, but We substitute something better or similar: Knowest thou not that Allah Hath power over all things?"). Some exegetes view this as referring mostly to prior revelations made in connection with Judaism and Christianity, but it also applies to Qur'anic revelations. A better approach to the problem of *naskh* is to consider subsequent revelations as superseding. This leaves the preceding revelations as having historic relevance and also as bearing on interpretation with respect to subsequent revelations.

³⁸ Qur'an 22:39 ("To those against whom war is made, permission is given (to fight), because they are wronged; and verily, Allah is most powerful for their aid."). See also *id* at 3:157-158, 169-172, 9:81-82, 48:16. The verses apply to jihad with practical specificity. See *id* at 9:91 (exempting certain persons from military action); *id* at 2:217 (prohibiting war during the holy month of Ramadan); *id* at 2:191 (prohibiting war in the holy territory of Makkah); *id* at 47:4 (addressing prisoners of war who are to be treated humanely); *id* at 9:6 (urging respect for safe-conduct); and *id* at 8:61 (respecting a truce).

³⁹ *Id* at 2:190.

⁴⁰ *Id* at 2:193.

Surat al-Anfal: And fight them on until there is no more tumult or oppression, and there prevail justice and faith in Allah altogether and everywhere; but if they cease, verily Allah doth see all that they do.⁴¹

Surat al-Tawbah: 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 Allah is Oft-forgiving, Most Merciful . . .⁴² But if they violate their oaths after their covenant, and taunt you for your Faith, fight ye the chiefs of Unfaith: for their oaths are nothing to them: that thus they may be restrained . . .⁴³ Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, 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.⁴⁴

These verses are relied upon by some interpreters of the Qur'an to have "abrogated" the earlier Madinah verses quoted above.⁴⁵

The more warlike interpretations of jihad in the Makkan revelations are more consonant with the Arab *jabiliyya* custom of war described above than with the spirit of peace, tolerance, and goodness reflected elsewhere in the Qur'an. It is also these interpretations that are relied upon by contemporary political jihadist groups.⁴⁶

As stated above, the distinctive characteristic of armed jihad at the Prophet's time was self-defense. This was particularly evident in the battles of Badr (624 CE) and Uhud (625 CE), where the Muslims were attacked by superior forces, as well as in other battles.⁴⁷ But when the Muslims under the Prophet attacked Makkah in 630 CE, it was not for self-defense but to take

⁴¹ Id at 8:39.

⁴² Id at 9:5.

⁴³ Id at 9:12.

⁴⁴ Id at 9:29.

⁴⁵ See, for example, Peters, *Jihad in Classical and Modern Islam* (cited in note 18). As stated in note 37, this writer does not agree with the classical views on *naskh*.

⁴⁶ See note 50. These sources describe the contemporary approaches to Islamic-based political doctrines—some of them rely on interpretation of jihad in a way that makes it closer to the *jabiliyya* concept of war than to the just war/self-defense of early Islam.

⁴⁷ There were other battles such as: al-Ahzab (626 CE); Khaibar (628 CE); Tabuk (630 CE); Mu'tha (629 CE); Hunain (630 CE); Quraizah (627 CE); and al-Mutaliq (627 CE). The Battles of Badr, Uhud, al-Ahzab, and Hunain are mentioned in the Qur'an. See, for example, *Surat al-Nisa'* 4:88, *Surat Al Imran* 3:122, 137–141; *Surat al-Ahzab* 33:23; *Surat al-Tin* 95:26, 26; *Surat al-Nasr* 110:1–3. See also note 16.

control of the *Kaaba*.⁴⁸ Justified as this may have been, it was not self-defense.⁴⁹ Thereafter, jihad was used as a basis for conquest.

During Islam's post-Prophet period and until the end of the Ottoman Empire after WWI, jihad was mainly used in support of conquests and internal power struggles within the Muslim nation. In the last half-century it ceased to be a state doctrine and became the new legitimizing doctrine for non-state actors in search of a revolutionary doctrine for regime-change.⁵⁰

III. DOCTRINAL EMPHASIS ON THE ARMED STRUGGLE ASPECT OF JIHAD

As stated above, warlike jihad originated as self-defense. When the Prophet and his followers were forced to leave Makkah (622 CE), they were attacked by non-Muslims, and a verse of the Qur'an was revealed about the right to self-defense against aggression: "Sanction is given unto those who fight because they have been wronged."⁵¹ Later, the Qur'an was more explicit:

Surat al-Baqarah: Fight in the way of God against those who fight against you, *but do not begin hostilities for God does not love aggression*. And slay them wherever you find them [the aggressors], and drive them out of their places whence they drove you out, for persecution is worse than slaughter. And fight not with them in the Inviolable Place of Worship until they attack you, then slay them. Such is the reward of disbelievers.⁵²

⁴⁸ The *Kaaba* is Islam's holiest place. It is where Abraham built the first house of worship of the One and Only God, and where Abraham was ready to sacrifice his first-born, Isamil (Ishmael) which God redeemed with a ram (or sheep). See Reuven Firestone, *Journeys in Holy Lands: The Evolution of the Abraham-Ishmael Legends in Islamic Exegesis* (SUNY 1990).

⁴⁹ For background information on the conquest of Makkah, see *Conquest of Mecca*, available online at <http://en.wikipedia.org/wiki/Conquest_of_Mecca> (visited Apr 21, 2007); *Conquest of Makkah*, available online at <http://www.usc.edu/dept/MSA/fundamentals/pillars/fasting/rajuddin/fast_76.html> (visited Apr 21, 2007); *The Conquest of Makkah*, available online at <http://www.witness-pioneer.org/vil/Books/MH_LM/conquest_of_makkah.htm> (visited Apr 21, 2007); *The Conquest of Makkah*, available online at <<http://alisliah3.tripod.com/alisliah/id15.html>> (visited Apr 21, 2007).

⁵⁰ See generally Khaled Abou el Fadl, *The Great Theft: Wrestling Islam from the Extremists* (Harper 2005); Mark Huband, *Warriors of the Prophet: The Struggle for Islam* (Westview 1999); Fawaz A. Gerges, *The Far Enemy: Why Jihad Went Global* (Cambridge 2005); Oliver Roy, *Globalized Islam: The Search for a New Ummah* (Columbia 2004); Gilles Kepel, *Jihad: The Trail of Political Islam* (Harvard 2002); Roy Mottahedeh, *The Mantle of the Prophet: Religion and Politics in Iran* (Simon & Schuster 1985) (does not speak of jihad); John J. Donohue and John L. Esposito, eds, *Islam in Transition: Muslim Perspectives* (Oxford 1982); Hamid Enayat, *Modern Islamic Political Thought* (Islamic Book Trust 2001).

⁵¹ Qur'an 22:39 (author's translation).

⁵² Qur'an 2:191-92 (emphasis added) (author's translation, revealed in Madinah). Madinah or al-Madinah is the city to which the Prophet migrated. While there for three years, a number of verses of the Qur'an were revealed to him. Nearly all other verses were revealed in the city of Makkah.

The Qur'an further states that "if they incline to peace, incline then also to it."⁵³

The *ahadith* (plural of *hadith*) also contain many references to jihad as a military concept, though none advocate aggressive violence.⁵⁴ Most of these reported *ahadith* reiterate the same concept, namely, that it is a great virtue to fight for Islam and that such persons who do will be rewarded with heavenly graces.

Muslim scholars—from earlier periods of Islam⁵⁵ up to and including our contemporary era—have given disproportionate emphasis to the warlike, rather than the spiritual and social, aspects of jihad. The reasons for this emphasis are the interpretations given in the Qur'an and the *hadith*'s references to jihad, which lent themselves to more expansive interpretations than the ones given by the

⁵³ Id at 8:61.

⁵⁴ See Sahih al-Bukhari, *hadith* numbers 25, 35, 506, 919, 1385, 1433, 1434, 1746, 1783, 2386, 2590, 2598, 2599, 2600, 2601, 2613, 2636, 2643, 2645, 2646, 2662, 2670, 2671, 2685, 2686, 2687, 2688, 2702, 2766, 2775, 2806, 2869, 2875, 2910, 2970, 3397, 3417, 3539, 3639, 3653, 3824, 3997, 3998, 3999, 4001, 4188, 4189, 5585, 5587, 6735, 6976, 6982, 7052. The complete record of the Sunnah was compiled by Ishaq ibn Yassar 136 years after the death of the Prophet in 11 AH. The most reliable sources of the Sunnah are Iman al-Nawawi, ed, *Muhammad ibn Isma'il ibn Ibrahim al-Mughbira al-Ja'fi al-Bukhari* (Sahih al-Bukhari 1924), and Muslim ibn al-Hajjaj al-Qushayri, *Sahih Muslim* (Baker and Taylor 1971) (Abdul Hamid Siddiqui, trans). Bukhari and Muslim, who were contemporaries, died in 257 AH and 261 AH, respectively, and their works have endured the passage of time. Bukhari notes that there is agreement concerning the 7,275 *hadith* contained in his *sahih*, but that, because of repetition and overlaps, there are actually only 2,762 separate *hadith*. For a complete collection of Sahih Al-Bukhari, see University of Southern California Compendium of Muslim Texts, available online at <<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/>> (visited Apr 21, 2007). At that time, there were as many as 200,000 alleged *hadith* in circulation. The debate over what *hadith* are *sahih*, meaning true, is as extensive as the one over the interpretation of each *hadith*. The reconciliation of inconsistent and contradictory *hadith* is another complex issue; it is best addressed in Abd Allah ibn Muslim ibn Qutayba, *Ta'wil Mukhtalafat al-Hadith* (1936) (interpretation of differences in the *hadith*). For an analytical study on the technique of Sunnah interpretation, see Abu Ali Farisi, *Jawahir al-Usul, fi 'Ilm Hadith al-Rasul* (Cairo: Dar El Hekma 1973). See also Mohammed Hashim Kamali, *A Textbook of Hadith Scholars* (Islamic Found 2005).

⁵⁵ The first authority was Imam Malik (d 796). See Malik ibn Anas, *The First Formulation of Islamic Law* (Baker and Taylor 1989) (Aisha Abdurrahman Bewley, trans). He was followed by the most noted legal authority, Muhammad al-Shaybani (d 804), whose *Kitab al-Siyar* codified the laws and customs of war in accordance to Shari'ah. His work was translated by Majid Khadduri in *The Islamic Law of Nations* (cited in note 14). See also Muhammad Hamidullah, *Muslim Conduct of State* (Lahore: Sh. Muhammad Ashraf 1961); Abdullah Mustafa L. Maraghi, *al-Ijtihad* (Cairo: Majallat al-Azhar 1996); and Mahmud Shaltut, *al-Qur'an wa a l-Qital* (The Qur'an and War) (al-Nasirah: Matba'at al-Nasr wa-Maktab Ittihad al-Sharq 1948). This shortcoming is also apparent in the works of contemporary fundamentalist Muslim writers such as Abu'l Ala'al-Mawdudi (d 1976). For a contemporary critique, see M. Cherif Bassiouni, *A Search for Islamic Criminal Justice: An Emerging Trend in Muslim States*, in B. Stowasser, ed, *The Islamic Impulse* 244 (1983), reprinted in B. Stowasser, ed, *New Perspectives on Islam and Politics in the Middle East* 249 (1987).

exegetics of the Madinah era. Subsequent doctrinal approaches extrapolated from self-defense to pre-emptive self-defense, then to conquest, and then beyond that to violence in pursuit of regime-change.⁵⁶

The early formative period of Islam—from 610 to 632 CE—was characterized by war between the Muslims and other tribes in the Arabian Peninsula. It was also a period during which Islam's survival as a religion and as an *ummah* (nation) was at stake. After the Prophet⁵⁷ established the *ummah* with its seat in Makkah in 630 CE, the distinction between *Dar el-Selm* (the land of peace) and *Dar el-Harb* (the land of war) was developed. *Dar el-Selm* was the territory controlled by Muslims or the territory where Muslims could freely practice and proselytize Islam. *Dar el-Harb* was the territory controlled by non-Muslims, who, if they had no treaty with the Muslims or if they prohibited the peaceful propagation of Islam, were presumed to be enemies of Islam. *Dar el-Harb* was where warlike jihad was to take place, subject to many exceptions and also subject to many rules and constraints.⁵⁸ The exceptions included the existence of treaties; and whether the land was inhabited by *dhimmis* or People of the Book (namely, Christians and Jews who paid tribute, or *jizya*, to the Muslims). Other exceptions emerged in the Practice of the Prophet and in the practices of the first four Righteous *Khalifas* that followed him (633–61 CE).⁵⁹ But these reflected opportunistic and political considerations more than religious doctrinal ones.

As the threat to the Islamic nations' existence abated between the eighth and twelfth centuries CE and more friendly relations developed with other nations, new doctrinal limitations were imposed on the resort to jihad. Thus, the propagation of Islam by peaceful means as the Prophet's *Sunnah* (practice) evidenced during his lifetime became the rule and not the exception. This reflected the true spirit of Islam as expressed in the following explicit passage of the Qur'an, rejecting compulsion in conversions in an explicit verse: "There is

⁵⁶ For the complex nature of the science of exegesis, *ibn usul al-fiqh*, see Bassiouni and Badr, 1 UCLA J Islamic & Near E L (cited in note 11); Hallaq, *A History of Islamic Legal Theories* (cited in note 11).

⁵⁷ For the life of the Prophet, see A. Guillaume, *The Life of Muhammad: A Translation of Ibn Isbaq's Simt Rasul Allah* (Oxford 1955). See also Karen Armstrong, *Muhammad: A Western Attempt to Understand Islam* (Victor Gollancz 1991); Muhammad Husayn Haykal, *The Life of Muhammad* (Baker and Taylor 1976) (Isma'il al-Faruqi, trans).

⁵⁸ See Hamidullah, *Muslim Conduct of a State* (cited in note 55); Zawati, *Is Jihad a Just War?* (cited in note 15).

⁵⁹ One exception is the war arising out of Ali's Khilafa which gave rise to the Shi'a movement and the ensuing violence between Sunni and Shi'a. But see Seyyed Hossein Nasr, Hamid Dabhashi, and Seyyed Vali Reza Nasr, *Shi'ism: Doctrines throughout Spirituality* (SUNY 1988).

no compulsion in religion.”⁶⁰ The true spirit is also expressed in the following passage of the Qur’an addressing the People of the Book: “Those who believe, and those who are Jews, Christians and Sabians—whoever believe in God and the Last Day and doeth right—surely their reward is with their Lord, and there shall no fear come them, nor shall they grieve.”⁶¹

The Muslim’s right to freedom of religion, including freedom to propagate it, was new in the seventh century, but it is the norm in the contemporary era of human rights.⁶² Only when that is prohibited by non-Muslims can there be a call for jihad. Nevertheless, it should be noted that early interpretations of the right to propagate were also interpreted as “convert or submit,” which was a form of compulsion, except for the People of the Book, if they paid *jizya* or if they had a treaty with the Muslim nation.⁶³

Later, Abu al-Walid Muhammad ibn Muhammad ibn Rushd (d 1198), known in the West as Averroes, reminded Muslims of the spirituality of jihad as expressed by the Prophet and argued that Islam’s expansion was intended to be

⁶⁰ Qur’an 2:256 (author’s translation).

⁶¹ Id at 2:62 (author’s translation).

⁶² See Universal Declaration of Human Rights, GA Res. 217A (III) (Dec 10, 1948), available online at <<http://www1.umn.edu/humanrts/instr/b1udhr.htm>> (visited Apr 21, 2007); International Covenant on Civil and Political Rights (Dec 19, 1966), 999 UN Treaty Ser 171 (entered into force Mar 23, 1976), available online at <<http://www.ohchr.org/english/law/ccpr.htm>> (visited Apr 21, 2007); European Convention for the Protection of Human Rights and Fundamental Freedoms (Nov 4, 1950), 218 UN Treaty Ser 221, available online at <<http://www.itcilo.it/english/actrav/telearn/global/ilo/law/coeprot.htm>> (visited Apr 21, 2007); American Convention on Human Rights (Nov 22, 1969), 1144 UN Treaty Ser 144, available online at <<http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm>> (visited Apr 21, 2007); African Charter on Human and Peoples’ Rights (Jun 27, 1981), 21 ILM 58 (1982), available online at <<http://www1.umn.edu/humanrts/instr/z1afchar.htm>> (visited Apr 21, 2007); Council of the League of Arab States, Arab Charter on Human Rights, (Sep 15, 1994) (reprinted in 18 Hum Rts LJ 151 (1997)), available online at <<http://www.law.wits.ac.za/humanrts/instr/arabhrcharter.html>> (visited Apr 21, 2007). For a contemporary Muslim perspective, see Mahbulul Islam, *Freedom of Religion in Shari’ah: A Comparative Analysis* (A.S. Noordeen 2002).

⁶³ The following orders were given by the Prophet to the commanders of any armies and are applicable to any expedition:

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 immigrants [Madinah]. 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 together with the [other] Muslims. If they refuse conversion, then ask them to pay *jizya*. If they agree, accept their submission. But if they refuse, then ask God for assistance and fight them”

Sahih Muslim, *hadith* 4294, Book 19.

by peaceful means.⁶⁴ However, political doctrines that derived from the *Salafi* movement⁶⁵ argued that Muslims had to fulfill their duty by jihad. They interpreted the exhortations of the Qur'an and the *hadith* as a sacred and permanent duty that is to be carried out by the collective as well as by every person able to carry it out. Thus it became a dual obligation: a sacred permanent duty that is non-derogable, though postponable for reasons of practicality; and a collective as well as an individual duty that did not need to be sanctioned by those in power. The sacred, permanent, and non-derogable duty derives from the belief that every Muslim must struggle, including by violent means if peaceful means are not sufficient, to establish Islam on Earth. In contemporary times, the proponents of this view believe that the duty to establish Islam on earth extends to: stopping the decline of Islam within the Muslim *ummah* (whose meaning includes smaller communities of Muslims); opposing corrupt or deviant Muslim leaders and regimes; confronting the imperialistic/hegemonistic anti-Muslim forces; reconstituting the ideal Muslim *ummah* and restoring it to its earlier greatness; and separating Muslim values, governance, and economic system from Western values and systems. It is this doctrinal view that contemporary violent jihadists rely upon to advance what modern political scientists call revolutionary doctrine.

IV. THE CONDITIONS AND LIMITS OF JIHAD

From the days of the Prophet, jihad was subject to conditions as to its rightfulness, which we would today call the right to legitimate self-defense. But even so, legitimate use of force was also subject to limitations with respect to who could order it, whether it was a right or a duty, who should be involved in it, and how it should be conducted.⁶⁶ The latter question, namely the means by

⁶⁴ For Ibn Rushd's views on this and other matters, see Mukhtar ibn Tahir, ed, *Fatawa ibn Rushd* (Dar al-Gharb al-Islami 1987).

⁶⁵ A puritanical fundamentalist Sunni movement based on the return to the origins of Islamic practices in the days of the Prophet and the first four *khalifa*, founded by Ibn Taymiyyah in Syria during the period 1313–1328. The movement is based on a literal interpretation of the Qur'an. Taqi Al Din Ahmad Ibn Taymiyya (1263–1328), *Al-Siyasa al shar'iyya fi islah al ra'i wa al-ra'iyya* (*Governance According to Shari'a Law in Reforming Both the Ruler and the Ruled* (Cairo 1971) (Muhammad Ibrahim al-Banna and Muhammad Ahmad Ashur, Dar Es-Sha'b, trans). Ibn Taymiyya is credited with being the intellectual framer of a doctrine allowing the resort to violence against unworthy rulers based on jihad. Among his modern intellectual followers is Sayyid Qutb, who expounded on Ibn Taymiyya's position in application to domestic regime-change. His doctrinal view was adopted in the 1950s by the Muslim Brotherhood in connection with regime-change.

⁶⁶ See M. Cherif Bassiouni, ed, 2 *Al Watha'iq al-Dawliya al-Ma'neyya bi Huquq al-Insan: Al-Watha'iq al-Islamiya wal-Iqlimia* (*International Protection of Human Rights: Islamic and Regional Instruments*) (Cairo: Dar El Shorouk 2003).

which jihad taking the form of war was to be conducted, was strictly answered. Even in jihad, there were prohibitions against violence directed toward women, children, the elderly, the sick and wounded, clerics, and places of worship of Christianity and Judaism. They were not, however, consistently followed except in the days of the Prophet⁶⁷ and during some of the first four successors, and also throughout the expansion of Islam in North Africa, Spain, and Southern Europe, and more particularly by the practices of Salah Al-Din el-Ayyoubi in his war of liberation in Palestine and Syria against the crusaders.⁶⁸

Traditional Sunni doctrines prevailed among Muslims until the Shi'a movement developed after the disputed *khilafa* of Ali ibn Abi Talib (599–661 CE), the Prophet's cousin and son-in-law (and who was assassinated by his political opponents, as was his predecessor). Ali's followers claim that the *khilafa* could only follow from the Prophet's descendants.⁶⁹ The Shi'a movement justified the use of force by Muslim against Muslim on the basis of legitimacy in the *khilafa*. This was the beginning of an ever-expanding extension of jihad to a variety of internal regime-changes, which has nothing to do with the original self-defense doctrinal foundation of jihad.

Early Sunni doctrine, however, was that forceful jihad was only for self-defense and was a permissible use of force against non-Muslim controlled areas where: a threat to the Muslim *ummah* could arise; the propagation and practice of Islam was opposed; the non-Muslims refused to sign a treaty with the Muslim *ummah*; or the *jizya* was resisted by the People of the Book.⁷⁰

Between the seventh and twelfth centuries CE, the four major Sunni schools of jurisprudence, their various sub-schools, and the Shi'a scholars, whose approaches to the interpretation of the Shari'ah are in part different from the Sunni,⁷¹ developed various—though similar—doctrines of jihad. In time, however, the different schools and sub-schools in both *Sunni* and Shi'a traditions came to different exegeses of Qur'an and *hadith* texts. Notwithstanding these

⁶⁷ With the exception of the war against the Jewish tribe of Qurayza, see note 4.

⁶⁸ For a general discussion, see Christopher Tyerman, *God's War: A New History of the Crusades* (Belknap 2006); *Les Croisades* (1096-1270) (Historia Special 1999); Amin Maalouf, *The Crusades through Arab Eyes* (Thetford 1984); Karen Armstrong, *Holy War: The Crusades and Their Impact on the Modern World* (Anchor Books 2001).

⁶⁹ See Nasr, Dahbashi, and Nasr, *Shi'ism: Doctrines* (cited in note 59).

⁷⁰ These doctrinal limitations did not find their counterpart in Western legal doctrine until after WWI when the 1919 Treaty of Versailles labeled Germany's breach of treaties with its neighbors was a breach of international law. See Jackson Maogoto, *War Crimes and Realpolitik: International Justice from WWI to the 21st Century* 53 (Lynne Rienner 2004); M. Cherif Bassiouni, *World War I: "The War to End All Wars" and the Birth of a Handicapped International Criminal Justice System*, 30 Denv J Intl L & Poly 244, 256 (2002).

⁷¹ See Bassiouni and Badr, *The Shari'ah* (cited in note 11); Hallaq, *A History of Islamic Legal Theories* (cited in note 11).

divergences, nearly all doctrines focused more on jihad's warlike aspects rather than on its spiritual aspects, except for the ascetic spiritual *Sufi* movement which was essentially pacifist.⁷² Most of these doctrines extended jihad to justifiable aggression, something akin to contemporary doctrines of preemptive use of force. These differences have subsequently been exploited by political fundamentalist doctrine which argues for the use of force as part of internal regime-change,⁷³ and more recently, to justify indiscriminate violence against the US and Western countries declared to be enemies of Islam.⁷⁴ Detractors of Islam,⁷⁵ as well as Orientalists,⁷⁶ focus heavily on the warlike aspect of jihad as a way of discrediting Islam.

V. JIHAD IN CONTEMPORARY POLITICAL DOCTRINE AND PRACTICE

The recent evolution of doctrinal pronouncements on jihad is mostly revealed in the pronouncements of politically violent fundamentalist groups who lack the theological qualification to make such pronouncements. Even a cursory reading of these alleged *fatwa(s)* justifying indiscriminate violence reveals on its face that, for all practical purposes, jihad as the basis of a just war based on self-defense has all but disappeared.

The new nature of jihad surfaced within some groups in their struggle for independence during the colonial era between the First and Second World Wars.⁷⁷ But the nationalist movements in Arab countries between 1920 and 1960, as well as in Asian Muslim countries, were not based on jihad. Thus, jihad in the de-colonization period was not a salient part of the discourse legitimizing violence against foreign oppressors—national liberation was all the legitimacy

⁷² J. Spencer Trimingham, *The Sufi Orders in Islam* (Oxford 1971).

⁷³ The authors cited at note 50 describe these doctrines and how they are interpreted and used by different political groups.

⁷⁴ This is essentially claimed by a range of jihadist organizations as they have become known in the West. Their views are described in the texts cited at note 50.

⁷⁵ Such detractors include Judith Miller, *God Has Ninety-Nine Names* (Simon & Schuster 1996); Milton Viorst, *Sand Castles: The Arabs in Search of the Modern World* (Knopf 1994); Bernard Lewis, *The Political Language of Islam* (Chicago 1988); and Martin Kramer, *Political Islam* (Sage 1980). For a critique of these and other writers, see Edward Said, *Covering Islam: How the Media and the Experts Determine How We See the Rest of the World* (Pantheon 1997).

⁷⁶ For a description of this genre of literature, see Edward Said, *Orientalism* (Pantheon 1979).

⁷⁷ Jihad was not invoked during the period of the Turkish Ottoman Empire (1327–1924 CE), though the Sultans of that empire sometimes referred it for exhortative purposes to rally the masses behind a given military campaign. It was not invoked by the Arab insurgency working with the British Empire against the Turkish Ottoman Empire. See T.E. Lawrence, *Seven Pillars of Wisdom: A Triumph* (Wordsworth 1997).

needed. Some politically engaged Sunni scholars of that time undertook the effort of distinguishing between legitimate nationalist doctrine of war of national liberation and jihad.⁷⁸ The call to jihad was used by only a few who wanted to stimulate religious fervor in the armed struggle against colonialism. But that was a small minority view at a time when the secular nationalist movement was predominant between the 1920s and the 1960s. Subsequently, jihad was expanded by some scholars and political doctrines to apply to the struggle against Muslim regimes deemed corrupt and subservient to imperial and neo-imperial powers. By the time of the 1948 Palestine War, the Egyptian-based Muslim Brotherhood (which in 1948 sent a unit to fight against what was then referred to as the Zionist settlers) started calling the struggle for Palestine jihad. Thus they included in jihad's meaning certain contemporary nationalistic notions pertaining to wars of national liberation. It follows that the contemporary Hamas movement in Palestine and Hezbollah movement in Lebanon rely on jihad as a part of their doctrine of armed struggle against Israel.⁷⁹ There is no doubt, however, that starting in 1948, there were many pronouncements by Al-Azhar University and by the Academy of Islamic Research in Cairo and by other established Muslim religious institutions, that the struggle against Israel is in the nature of jihad. But it would be enough to refute the validity of this transformation of jihad to point out that in Lebanon, Israel, and Palestine, there is no issue pertaining to the freedom of practice and propagation of Islam. Israel's occupation of Palestinian territories and, at one time, of Lebanese territories has nothing to do with the religion of Islam. This is why the governments of Egypt, Syria, Jordan, Iraq, and Lebanon, all of which were at one time at war with Israel, never claimed jihad as a legal basis for their wars with Israel. However, the views of Hezbollah, Hamas, and for that matter, the popular view in most of the Muslim world is that Israel's de-population of Jerusalem, its creeping annexation of the West Bank, and its repressive policies

⁷⁸ Among them are the late Sheikh Mahmoud Shaltut, former al-Azhar's rector and Sheikh Mustafa el-Margahi (cited in note 55), and Sheikh Muhammad Abu Zahra, the University of Cairo's professor of Shari'ah and a leading expert whose many writings were published between 1950 and 1970. These and other authors maintain that jihad has to be related to defending the freedom of practicing and propagating Islam. They followed the lead of two great contemporaries (early 1900s), reformer Sheikh Mohammed Abdou and Sheikh Jamal el-Din el-Afghana, for whom the propagation of Islam was to be by peaceful means, thus implicitly rejecting the early notion of jihad that some doctrines espoused when religious differences were to be resolved by war.

⁷⁹ For an insightful recent book that goes into the religious background of the conflict, see Rosemary Radford Reuther and Herman J. Reuther, *The Wrath of Jonah: The Crisis of Religious Nationalism in the Israeli-Palestinian Conflict* (Harper & Row 2002). See also Khaled Hroub, *Hamas: Political Thought and Practice* (Inst for Palestine Studies 2000); Augustus Richard Norton, *Amal and the Shi'a: Struggle for the Soul of Lebanon* (Texas 1987).

leading to the continued migration of Palestinian Muslims, fall within the meaning of jihad for Islam.

Since the end of the Second World War, Islamic fundamentalism, as it is derogatorily known in the West but not in the Muslim world, has gained many adherents among the estimated 1.4 billion Muslims of the world. This is similar to the phenomenon observed in other historical revolutionary movements against dictatorial and corrupt regimes. The ideological dimension, however, was replaced with the religious one.⁸⁰ This approach led to the extension of the armed struggle to domestic Muslim regimes deemed to have strayed from the proper application of the Shari`ah. Muslim revolutionary groups thus selectively used a variety of doctrinal writings on jihad to justify their ends and to misleadingly claim that these ends justify their means, even when these means are explicitly prohibited by the Shari`ah, such as killing innocent civilians.⁸¹

What characterizes all these doctrinal developments in internal Muslim power struggles is the search for the legitimization of armed force against perceived enemies, domestic and foreign. This brought about new unorthodox exegeses of Qur`anic and *hadith* texts. The blatant politicization of the permissible use of force under contemporary political jihad doctrine, which was developed selectively by politically-motivated clerics and leaders of radical movements advocating violence, is also accompanied by a rejection of traditional Shari`ah limitations on the ways and means of conducting warfare. The proponents of these views ignore the correlative obligations that provide for limitations on the permissible use of violence and on the targets against which such violence can be directed. In short, resort to violence, as these groups justify it by extrapolations of traditional doctrines of jihad, overtakes the well-established limits on the permissible means of violence, and not necessarily with regard to the grounds that must exist to justify resort to violence. This is how assassinations and suicide bombings resulting in the deaths of innocent civilians are improperly rationalized.

As violent revolutionary groups throughout the Muslim world broke up into smaller ones, each proclaiming its own brand of jihad doctrine and pursuing violence by unrestricted means, their views acquired popular acceptance even

⁸⁰ Every revolution in history has sought a basis for legitimacy—the 1798 French Revolution and the 1917 Marxist Revolution are some of the more bloody ones. For a general discussion, see Albert Parry, *Terrorism: From Robespierre to Arafat* (Vanguard 1976).

⁸¹ The worst examples can be seen in the sectarian killings, maiming, and torture in Iraq occurring in the last two years between Shi`a and Sunni. There is, categorically, nothing in Islam that justifies these crimes, and to invoke Islam in justification of these crimes rises to blasphemy if one applies Shari`ah law.

when these views were opposed by religious establishments.⁸² Some of these groups adopted the practice of simply declaring a given ruler to have become a *kafir*—meaning that he had strayed away from Islam, which they deem equivalent to committing a crime punishable by death.⁸³ In this way, such groups justified assassinations and other acts of impermissible violence. Other groups took to declaring that no person among their enemies is innocent, thus justifying suicide bombings and other forms of indiscriminate violence against non-combatants.⁸⁴ Jihad became the instrumentalized religious doctrinal basis for legitimizing those Islamic organizations' resort to unlawful violence as a means either of achieving the ultimate goal of the ideal Islamic state or of fighting the enemies of Islam, be they external or internal.⁸⁵ Thus, it has been carried out not only against domestic regimes, but also on an international scale in what we call terrorism.⁸⁶

Assuming that jihad is the legitimate basis for what is referred to as the *jus ad bellum*, it is still subject to the *jus in bello* which, as stated above, was part of the Shari'ah long before it was part of Western international law.⁸⁷ As said above, nothing in the Shari'ah or in jihad allows a breach of certain limits of the use of

⁸² The current Rector of Al-Azhar and the Mufti of Egypt have on several occasions denounced these views and practices, which are referred to as "terrorism."

⁸³ This is contrary to the Shari'ah. The death penalty in the Shari'ah is limited and it is subject to trial with procedural safeguards. See M. Cherif Bassiouni, *Death as a Penalty in the Shari'a*, in Peter Hodgkinson and William A. Schabas, eds, *Capital Punishment: Strategies for Abolition* 169 (Cambridge 2004). See also Aly Aly Mansour, *Hudud Crimes*, in M. Cherif Bassiouni, ed, *The Islamic Criminal Justice System* 195 (Oceana 1982).

⁸⁴ The history of ideologically-motivated assassinations, which were a precursor to suicide bombings, arose out of the history of the Sicarii Zealots who attacked Romans and also prominent Jews who collaborated with the Romans. See Martin Hengel, *The Zealots* (T & T Clark 1989); Richard A. Horsley, *The Sicarii: Ancient Jewish Terrorists*, 59 J Religion 435 (1979). For assassination as an ideologically-motivated terror violence technique in the Muslim World, see Bernard Lewis, *The Assassins: A Radical Sect in Islam* (Oxford 1967) and W.B. Bartlett, *The Assassins: The Story of Medieval Islam's Secret Sect* (Sutton Straud 2001). For the history of Kamikaze suicide attacks during WWII, which numerically produced the greatest harmful outcome, see Richard O'Neil, *Suicide Squads* (Ballantine 1981) and Albert Axell and Hideaki Kase, *Kamikaze: Japan's Suicide Gods* (Longman's 2002). For a description of the use of terror violence in Judaism, Christianity, and Islam, see also David C. Rappaport, *Fear and Trembling in Terrorism in Three Religious Traditions*, 78 Am Pol Sci Rev 672 (1984).

⁸⁵ See text accompanying notes 41–44.

⁸⁶ See Bassiouni, 43 Harv Intl L J at 83 (cited in note 7); M. Cherif Bassiouni, *Terrorism: The Persistent Dilemma of Legitimacy*, 36 Case W Res J Intl L 299 (2004). For example, Osama bin Laden's call for jihad against the United States—which resulted in such attacks as those against the US embassies in Dar es Salaam (Tanzania) and Nairobi (Kenya), against the USS Cole off the coast of Yemen, and against the World Trade Center and the Pentagon in 2001. See M. Cherif Bassiouni, *The Face of Terror: Nations Have Struggled with Extremism Even as They Employed It*, Chi Trib C1 (Oct 21, 2001).

⁸⁷ See note 9. See also Bassiouni, *A Manual on International Humanitarian Law* (cited in note 14).

force. Moreover, in addition to the Shari`ah, armed conflicts are regulated by positive law,⁸⁸ which is permissible under the Shari`ah.

The first application of human rights in Islam came about in what is commonly called the Treaty of Madina in the first year of the *hejira*.⁸⁹ In this agreement between the Prophet and those who followed him in migration from Makkah to Madina, as well as the different tribes belonging to different religions including Christians and Jews who lived in and around Madina, a covenant was established providing for equality of all citizens before the law, supremacy of the law for each religious community, non-discrimination between persons of different tribes and religions, and guaranteed freedom of religion for Muslims, Christians and Jews. This was followed in the year 6 AH by the Treaty of Hudeibiya between Muslims and their enemies in Makkah.⁹⁰ It provided for non-aggression, protection of life and property, and prisoner exchange. The most noteworthy Muslim text applicable to the law of armed conflict is the Admonition of Abu Bakr, the first *kehalifa* of Islam after the death of the Prophet, to the Muslim troops before engaging in the Syrian campaign, 12 AH.⁹¹ This text is probably the closest to contemporary international humanitarian law, but in view of the time of its promulgation, it is also the precursor of contemporary international humanitarian law. In it there are specific admonishments for the protection of civilians in every respect, prohibitions against any attack or destruction of civilian property, and the command to treating prisoners with dignity, including the prohibition of torture and other cruel or demeaning treatment. The Abu-Bakr instructions even prohibit cutting down fruit-bearing trees or destroying crops belonging to the enemy. Lastly, the Jerusalem Pledge of Umar Ibn el-Khattab, second *kehalifa*, 15 AH, deserves mention.⁹² This followed the defeat of the Romans at the Battle of Yarmouk in 638 CE which preceded the Muslim army's entry into Jerusalem. Umar Ibn el-Khattab made a pledge on behalf of all Muslims and for all times to protect the religious places of worship of Jews and Christians and to allow freedom of access to them by their respective coreligionists. Subsequent practices, however, have not always evidenced the application of these early commandments, though one positive example shines through in history, and that is the behavior of the

⁸⁸ For example, reprisals that constitute violations of international humanitarian law are prohibited. See Fritz Kalshoven and Liesbeth Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law* 104 (ICRC 2001). Similar rules, however, clearly existed under the Islamic law of armed conflict, but not the limitations on reprisals. For the Islamic law application, see Khadduri, *War and Peace* (cited in note 14).

⁸⁹ See Bassiouni, 2 *Al Watha'eq al-Dawlia al-Ma'neyya bi Huquq al-Insan* (cited in note 66).

⁹⁰ Id at 30.

⁹¹ Id at 34.

⁹² Id at 37.

Muslim army under Salah Al Din el-Ayyoubi during the Second Crusade, where he treated the Christian crusaders with fairness and humanity—something which the Crusaders had not done to the Muslims.⁹³

Since World War II, there have been a number of conflicts in which impermissible violence was used by state and non-state actors.⁹⁴ The latter, because of the military imbalance and power asymmetry between non-state actors and the occupying power or the established regimes, have resorted to unlawful use of violence as a means of redressing that imbalance. In conflicts of a non-international character, which include de-colonization, regime-change and wars of national liberation, the opposing sides have always advanced the legitimacy of their causes through labels which connote legitimacy. Thus, what is jihad to some is terrorism to others, and what is self-defense to some is terrorism to others.⁹⁵ Self-characterization of legitimate violence is not enough to justify the unlawful use of violence by any party to a conflict, no matter how legitimate the cause may be.⁹⁶

VI. CONCLUSION

The history of Islam throughout its fifteen centuries has witnessed political turmoil and upheavals and also periods of peace and stability, during which the sciences and the arts have made extraordinary strides and contributed significantly to other civilizations. Political violence has existed in every civilization, and while this is not the place to discuss comparative manifestations of political and cultural violence, the Muslim world has, in the last two hundred years, suffered at the hands of Western imperial powers. Recently the Muslim world has started to selectively strike back against the Western world, represented by the US responding in kind, thus fueling predictions of a “clash of

⁹³ See Amin Maalouf, *The Crusades through Arab Eyes* (cited in note 68).

⁹⁴ See M. Cherif Bassiouni, *Crimes against Humanity in International Criminal Law* (Kluwer 2d ed 1999). What is seldom addressed is the use of terror-violence by governments, particularly extensive aerial bombardment such as the bombing of the city of Dresden, Germany in 1945 resulting in the death of 35,000 civilians, and the bombings of Hiroshima and Nagasaki in August 1945, resulting in the estimated death of 200,000 people. Both events by far supersede all of the terrorism bombings that have occurred since WWII. See, for example, Robert A. Pape, *Bombing to Win: Air Power and Coercion in War* (Cornell 1996).

⁹⁵ See, for example, Bassiouni, 43 Harv Intl L J at 83 (cited in note 7); Bassiouni, 36 Case W Res J Intl L at 299 (cited in note 86); M. Cherif Bassiouni, *Perspectives on International Terrorism*, in M. Cherif Bassiouni, ed, *International Terrorism: Multilateral Conventions 1937–2001* 1 (Transnational 2001); Howard S. Levie, *Terrorism in War: The Law of War Crimes* (Dobbs Ferry 1993); Walter Laqueur, *The Age of Terrorism* (Little Brown 1987).

⁹⁶ Protagonists to a given conflict tend to self-define their conduct and that of their opponents to characterize one or the other as lawful or unlawful instead of relying on objective legal standards. Thus what is terrorism to some is heroism to other.

civilizations.”⁹⁷ The mutual escalation of violations may well lead proponents of the proposition that there is a conflict of civilizations between the Muslim world and the Judeo-Christian Western civilization to a self-fulfilling prophecy. Against the backdrop of an anti-Islam and anti-Muslim campaign since September 11, 2001 by some segments of the neo-conservatives, the Protestant Christian right, and others among American pro-Israel supporters, Muslim masses have become more willing to accept the new anti-American and anti-Western approach to political jihad. As stated above, jihad has become a revolutionary doctrine painted over with a broad-brush of theological color to give it the appearance of legitimacy. This revolutionary doctrine can be explained by historic, social, political, and economic events that have impacted the Muslim masses.

As of the sixteenth century CE, the power and influence of Muslims waned, and they became the ruled instead of the rulers. Since the eighteenth century CE, Muslims became the dominated instead of the dominant. The post-colonial era of the twentieth century was even more painful. It brought about independent Muslim states administered by corrupt and inefficient national regimes frequently subservient to the prior colonial powers or to the new neo-imperial power, the US.⁹⁸ To have been oppressed and exploited by foreign powers was bad enough for the Muslim masses, but to continue being subjected to these conditions, and even worse, subjected to these conditions by their own leaders, is not only painful but demeaning. As popular anger and frustration boils over throughout the Muslim world, inevitably individuals and small groups of Muslims find new popular leaders who claim that violent jihad is a justified course of conduct.

To some among the downtrodden masses, violence is seen as the only means of expression left to them.⁹⁹ From there, it is only a small step to take their violence internationally. Their aim is particularly at America because they perceive it as the source of the contemporary evils that befall the Muslims. They see America’s policies as supporting corrupt and inefficient regimes in the

⁹⁷ For a general discussion, see Samuel Huntington, *Clash of Civilizations* (Touchstone 1997).

⁹⁸ See Chalmers Johnson, *The Sorrows of Empire: Militarism, Secrecy, and the End of Republic* (Owl 2004).

⁹⁹ It should not be overlooked that as reward for death in jihad, the *mujahid* is to receive a place in heaven. Thus, the *mujahid* in the path of Allah does not die, but lives eternally in heaven. There cannot be a greater inducement for jihad than that. In addition, some interpreters of the Qur’an suggest that a martyr in jihad shall have a number of *hur al’ ain*, beautiful virgins, as part of his enjoyment. There is even an absurd debate as to whether there will be seventy-two or seventy-four in number, their physical description, the repeated development of their virginity, and the male’s ability to ensure ongoing and permanent sexual satisfaction. Surely if heaven alone was not sufficient, then this additional inducement should motivate some youth among the downtrodden masses of the 1.4 billion estimated Muslims. However, contrary to popular belief, fanned by Muslim detractors, there have been fewer Muslim suicide bombers (under 100 during 2003–06) than Tamil ones. See Pape, *Dying to Win* (cited in note 9).

Muslim world, blindly supporting Israel even against the Palestinians' most elementary rights, and bent on being anti-Muslim. To many in the Muslim world, violent jihad is the answer to their various predicaments irrespective of who the victims may be. Their legitimacy of purpose trumps all else—the end justifying the means. In time, proponents of the strategy of terror-violence against the US and the West have acquired credibility, not to say legitimacy, even though their strategy includes resorting to indiscriminate violence against innocent civilians, which is in violation of Islamic precepts. Unjustifiable as these tactics are, their proponents see them as the only way to balance the asymmetry of the forces they face. It is also perceived as the only way left to redress injustices for which no other remedies seem forthcoming. This is the case in Palestine and Iraq.

As manifestations of violence by Muslims increase in different parts of the world, so do anti-Islam sentiments, particularly in the Western world. In turn, this generates anti-Western reactions among Muslim masses. The invasions of Afghanistan and Iraq and the use of torture by the US during the occupation of these countries and in Guantanamo have contributed to negative Muslim reactions.¹⁰⁰ Reciprocal negative perceptions between the Western and Muslim worlds continue to escalate, threatening peace and security in Muslim countries and elsewhere in the world.

The language of political violence has never been seriously studied in the Muslim world, even by governments who have an extensive state security apparatus to combat religious extremism, such as in Egypt, Palestine, Syria, and Jordan. There are no centers that study the language of violence and more particularly the relationship between the terminology of violence and its public resonance and impact. The term jihad is surely a powerful one in the Muslim psyche. It evokes the legitimate self-defense struggle of the Prophet and his followers in the glorious days of early Islam. What can be more powerful and more moving to the downtrodden masses in the contemporary Muslim world than jihad? These masses can see in this era of global communications what the modern world has to offer and of what then they are deprived. But, if these masses could also see how frequently, how improvidently, and how dubiously the term jihad has been used by unqualified political violence proponents, their reactions may well be different.

Surely mathematical formulas can be used to measure, for example, the frequency of use of the term jihad and its connection to the echo of legitimate

¹⁰⁰ See M. Cherif Bassiouni, *The Institutionalization of Torture under the Bush Administration*, 37 Case W Res J Intl L 389 (2006). It should be noted that Muslim culture is permeated with a strong sense of pride. Offenses to pride often lead to violence as justified revenge-taking. That is part of popular cultural perception.

jihad. Social psychologists and psychologists can also contribute to the understanding of the trigger-recall psychological mechanism in response to certain words and also, how word usage has been transformed to suit political purposes. Until these socio-psychological responses are decrypted for the general Muslim public, the new meanings of jihad will remain appealing. What is more self-empowering and uplifting than the one word slogan of jihad to rally Muslims around the holy war against their historic and contemporary oppressors?¹⁰¹ For the last two decades in Egypt, the Muslim Brotherhood has successfully used a similar formula to frame its political opposition to the Mubarak regime, namely, the slogan “Islam is the answer.” As jurists have long known, it is how a question or issue is framed that determines its outcome.

What needs to be emphasized is that the resort to force as part of jihad in the early days of Islam was justified on the basis of self-defense and on the fact that there was no freedom to propagate Islam or for Muslims to practice it freely in non-Muslim controlled areas. However, it must also be said that the history of Islam is characterized by recurring violence claimed to be justified by jihad, even when it was not. To argue otherwise is revisionist history.

¹⁰¹ From December 2006 through February 2007, WorldPublicOpinion.org conducted surveys in Egypt, Morocco, Pakistan, and Indonesia with the assistance of the START Consortium at the University of Maryland, which reveal that in all four countries, large majorities believe that the US seeks to “weaken and divide the Islamic world.” World Public Opinion, *Muslims Believe US Seeks to Undermine Islam*, available online at <http://www.worldpublicopinion.org/pipa/articles/home_page/346.php?nid=&id=&pnt=34&lb=hmpg2> (visited Apr 21, 2007). The editor of WorldPublicOpinion.org, Steven Kull noted that, “While U.S. leaders may frame the conflict as a war on terrorism, people in the Islamic world clearly perceive the U.S. as being at war with Islam.” A high percentage of people in these countries believe this: 73 percent in Indonesia and Pakistan, and 92 percent in Egypt. Similarly large numbers believe that the U.S. is trying to keep “control over the oil resources of the Middle East (average of 79 percent), as well as trying to “spread Christianity in the region” (average 64 percent).

Further, large majorities in these countries support the goals of having the U.S. “remove its bases and military forces from all Islamic countries” (64 percent in Indonesia, 92 percent in Egypt, average 74 percent). Large numbers, almost half, also support attacks on U.S. troops in Iraq, Afghanistan, and the Persian Gulf. In Egypt, at least eight in ten persons approve of attacking U.S. troops in the region, while 52 percent of Moroccans support attacks in the Persian Gulf, and 68 percent in Iraq. However, Pakistanis are divided on the issue, and Indonesians oppose the attacks. Equally large numbers believe in the goal of expanding Islam’s role in their societies, including imposing a “strict application of the sharia” and keeping “[w]estern values out of Islamic countries,” as well as unifying “all Islamic countries into a single Islamic state or caliphate.”

However, despite these numbers, the people do not want to be isolated from the world; for example, an average of 75 percent say it is good that “the world is becoming more connected through great economic trade and faster communication” and 57 percent agree that “a democratic political system” is a good way to govern. 82 percent also agree that in their country “people of any religion should be free to worship according to their own beliefs.”

Whatever justifications may have existed throughout the history of Islam, jihad in the name of the propagation of the faith can no longer be sustained in an era where freedom of religion, practice, thought, and speech are internationally guaranteed human rights.¹⁰² Thus, conflicts such as those between Palestinians and Israelis and between Chechnyans and Russians cannot be characterized as jihad, since they do not involve the religion of Islam. These conflicts are controlled by other aspects of Islamic law, which also recognizes in these cases the applicability of positive law, namely, international humanitarian law.¹⁰³

Jihad in Islamic history has a mixed record. Quite clearly, however, it is subject to interpretation, and has been subject to manipulations, essentially for political reasons or in order to achieve a political goal. It is also the subject of different interpretations in the four traditional Sunni schools, as well as in the different Shi'a doctrines. Precisely because of that mixed record, there is nothing that prevents the development of a contemporary doctrinal approach to jihad which would be equivalent to the contemporary international law of self-defense subject to the limitations on the methods and means of warfare in accordance with contemporary international humanitarian law.¹⁰⁴

Freedom of religion is a basic human right universally recognized. No state, irrespective of its majority population's religion, can violate the religious freedoms of others.¹⁰⁵ This applies to Muslim states as well as to others. The Qur'an states in *Surat al-Hujurat*: "O Mankind, We have created you male and female, and made you into tribes and nations, that you may know one another (not that you may despise each other). Surely, the noblest among you in the sight of God is the most righteous of you. God is All-knowing, All-aware."¹⁰⁶ This verse and others evidence the universality of humankind, notwithstanding its diversity. Other verses of the Qur'an reveal that man was created with the spirit of the Creator. How then can a believer in Islam engage in killing, torturing, and humiliating another human being created by God and infused with His Divine Spirit? No political doctrine of jihad can override this higher religious value. And

¹⁰² See text accompanying note 57.

¹⁰³ See M. Cherif Bassiouni, *Evolution of International Humanitarian Law and Arms Control Agreements*, in Bassiouni, ed, *A Manual on International Humanitarian Law* 1, 21–31 (cited in note 14).

¹⁰⁴ See Bassiouni, *A Manual on International Humanitarian Law* (cited in note 14).

¹⁰⁵ Paradoxically, countries that profess to be Islamic are the ones which most restrict freedom of religion, whether by People of the Book in such countries as Afghanistan and Saudi Arabia, or by others, such as the Baha'i's faith which is repressed in Iran, Afghanistan, and Saudi Arabia and openly opposed in Egypt. See M. Cherif Bassiouni, *Freedom of Religion in Egypt: The Baha'is' Case*, in José Luis de la Cuesta, Iñaki Dendaluze, and Enrique Echeburúa, eds, *Criminología y Derecho Penal al Servicio de la Persona* (San Sebastian 1989).

¹⁰⁶ Qur'an 49:13 (author's translation, revealed in Medina).

yet tragically, this higher religious and humanistic value is violated with scant reaction from the Muslim religious establishment and from knowledgeable secular Muslims intellectuals. Jihad, like many other aspects of Islam, has its theoretical and practical aspects—both being frequently quite apart from one another. In fact, both dimensions are fragmented as they reflect a much greater diversity in Islam than its proponents, including myself, tend to reflect in their words. Perhaps all concerned should heed to a *hadith* by the Prophet: “if you see a wrong: you must right it with your hand, if you can or your words or with your stare, or in your heart, but that is the weakest of faith.”¹⁰⁷

¹⁰⁷ See I *Sahih al-Muslim*, *Hadith* No 79. It is narrated on the authority of Tariq b. Shihab:

It was Marwan who initiated (the practice) of delivering khutbah (address) before the prayer on the 'Id day. A man stood up and said: Prayer should precede khutbah. He (Marwan) remarked, This (practice) has been done away with. Upon this Abu Sa'id remarked: This man has performed (his duty) laid on him. I heard the Messenger of Allah as saying: He who amongst you sees something abominable should modify it with the help of his hand; and if he has not strength enough to do it, then he should do it with his tongue, and if he has not strength enough to do it, (even) then he should (abhor it) from his heart, but that is the least of faith.