

# **The Legality of al-Qaeda's Jihad**

**A Monograph  
by  
MAJ Stephen M. Pelicano  
United States Army**



**School of Advanced Military Studies  
United States Army Command and General Staff College  
Fort Leavenworth, Kansas**

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## MONOGRAPH APPROVAL

MAJ Stephen M. Pelicano

Title of Monograph: The Legality of al-Qaeda's Jihad

Approved by:

\_\_\_\_\_  
Alice A. Butler-Smith, Ph.D.

Monograph Director

\_\_\_\_\_  
Myron J. Reineke, COL, IN

Seminar Leader/Second Reader

\_\_\_\_\_  
Wayne Grigsby, COL, IN

Director,  
School of Advanced  
Military Studies

\_\_\_\_\_  
Robert F. Baumann, Ph.D.

Director,  
Graduate Degree  
Programs

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## Abstract

THE LEGALITY OF AL-QAEDA'S JIHAD by MAJ Stephen M. Pelicano, U.S. Army, 47 pages.

Usama Bin Laden, the leader of al-Qaeda, declared war on the United States in a statement issued in August 1996. With the words, "It is a duty now on every tribe in the Arab Peninsula to fight in the cause of Allah and to cleanse the land from those occupiers (Americans in Saudi Arabia)," bin Laden reminded Muslims of an ancient legal obligation to defend that region and the Muslim way of life from invaders and set in motion forces that continue to affect the United States, indeed the world, today. The United States' *National Security Strategy 2010* stated that, ". . . we reject the notion that al-Qa'ida represents any religious authority. They are not religious leaders, they are killers; and neither Islam nor any other religion condones the slaughter of innocents."

This monograph explores the relationship between al-Qaeda's ideology, and Islamic law and doctrine. This analysis of Islamic legal and doctrinal sources examines seven aspects of al-Qaeda's ideology and exposes a stunning consistency between the two. The seven aspects considered include the obligation to conduct jihad, combatants and non-combatants in jihad, jihad against non-Muslims, the treatment of captives, mutilation, martyrdom, and the handling of the spoils of war. This monograph takes a position counter to that of the *National Security Strategy* and proposes that al-Qaeda's ideology is based on the Koran and does, in fact, comply with Islamic law.

The analysis clearly shows that al-Qaeda's ideology and actions are consistent with Islamic law, even regarding the killing of innocent men, women, and children. This finding casts doubt on the notion that Islam is a "religion of peace" and brings into question the basis of current U.S. policy toward al-Qaeda and other Islamist extremists.

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## Introduction

Usama Bin Laden, the leader of al-Qaeda, declared war on the United States in a statement issued in August 1996. With the words, "It is a duty now on every tribe in the Arab Peninsula to fight in the cause of Allah and to cleanse the land from those occupiers (Americans in Saudi Arabia),"<sup>1</sup> bin Laden reminded Muslims of an ancient obligation to defend that region and their way of life from invaders and set in motion forces that continue to affect the United States, indeed the world, today. In a speech delivered a few days after the events of September 11, 2001, President George W. Bush stated that, "The terrorists are traitors to their own faith, trying, in effect, to hijack Islam itself. The enemy of America is not our many Muslim friends; it is not our many Arab friends. Our enemy is a radical network of terrorists, and every government that supports them."<sup>2</sup> A year later, President Bush reiterated his position, "Islam is a vibrant faith. Millions of our fellow citizens are Muslim. We respect the faith. We honor its traditions. Our enemy does not. Our enemy doesn't follow the great traditions of Islam. They've hijacked a great religion."<sup>3</sup>

The United States Department of State lists al-Qaeda as "the most formidable terrorist organization targeting the U.S. homeland" in its latest *Country Reports on Terrorism*, an annual report mandated by Congress.<sup>4</sup> In the same document, the United States intelligence community assessed that al-Qaeda is actively plotting against the United States, recruiting, training, and deploying operatives around the world. Al-Qaeda has also extended its operational reach by

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<sup>1</sup> Usama bin Laden, "Declaration of War Against the Americans Occupying the Land of the Two Holy Places," PBS Online NewsHour, under "Bin Laden's Fatwa," [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1996.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html) (accessed February 2, 2011), 22.

<sup>2</sup> President George W. Bush, Address to a Joint Session of Congress and the American People (Washington, D.C., September 20, 2001).

<sup>3</sup> President George W. Bush, Remarks on U.S. Humanitarian Aid to Afghanistan (Washington, D.C., October 11, 2002).

<sup>4</sup> U.S. Department of State, *Country Reports on Terrorism 2009* (Washington, DC, August 2010), 10.

forming alliances with other terrorist groups in order to increase its ability to act against the United States and their allies anywhere in the world. In a speech delivered in Cairo, Egypt, in June 2009, President Barack Obama spoke of making a “New Beginning” between the United States and Muslims around the world. He made reference to al-Qaeda and remarked that,

In Ankara, I made clear that America is not – and never will be – at war with Islam. We will, however, relentlessly confront violent extremists who pose a grave threat to our security – because we reject the same thing that people of all faiths reject: the killing of innocent men, women, and children.

Their actions are irreconcilable with the rights of human beings, the progress of nations, and with Islam. . . . The enduring faith of over a billion people is so much bigger than the narrow hatred of a few. Islam is not part of the problem in combating violent extremism – it is an important part of promoting peace.”<sup>5</sup>

With these words, President Obama reiterated existing U.S. policy toward al-Qaeda and Islam; that al-Qaeda is a violent extremist organization whose actions are diametrically opposed to Islam. Consistent with this policy, the United States’ *National Security Strategy 2010* stated that, “. . . we reject the notion that al-Qa’ida represents any religious authority. They are not religious leaders, they are killers; and neither Islam nor any other religion condones the slaughter of innocents.”<sup>6</sup>

These excerpts represent U.S. policy toward al-Qaeda, this country’s most formidable terrorist enemy, and toward Islam, purportedly an important part of the effort to find world peace. Not only does U.S. policy suggest that al-Qaeda does not represent Islam, but it also insists that the two are “irreconcilable” in their ideologies. Has Islam, a “religion of peace,” indeed been “hijacked” by a few violent extremists? Is it true that “the Quran, the holy scripture of Muslims, contains no justification for terrorism and killing innocent people” as is claimed by some Islamic

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<sup>5</sup> President Barack H. Obama, Remarks on a New Beginning (Cairo, Egypt, June 4, 2009).

<sup>6</sup> White House, *National Security Strategy 2010* (Washington, D.C., May 2010), 22.

scholars?<sup>7</sup> This monograph explores the relationship between al-Qaeda's ideology, and Islamic law and doctrine. This analysis of Islamic legal and doctrinal sources examines seven aspects of al-Qaeda's ideology and exposes a stunning consistency between the two. In every case examined, al-Qaeda's ideology and actions were found to be in compliance with Islamic law. This monograph, therefore, takes a position counter to that of the *National Security Strategy* and proposes that al-Qaeda's ideology is, indeed, based on the Koran and does, in fact, comply with Islamic law.

This monograph examines Islamic legal texts that constitute the basis for the Islamic understanding of war, the obligation to wage war, and the legal conduct of war and relates them to the proclamations and actions of al-Qaeda to determine the consistency or inconsistency between the two. The seven aspects of al-Qaeda's ideology considered include the obligation to conduct jihad, combatants and non-combatants, jihad against non-Muslims, treatment of captives, mutilation, martyrdom, and the handling of the spoils of war. If there is little or no consistency between al-Qaeda's proclamations and actions and Islamic law, then the thesis of this monograph is false.

This monograph is divided into four sections. The literature review section provides a brief review of key works on the topics of Islamic law and al-Qaeda's ideology. The authors reviewed are broken into three groups: those who consider Islam a religion of peace and al-Qaeda as an extremist outlier, those who view al-Qaeda's ideology as uniquely singular and not particularly tied to Islam, and those who consider al-Qaeda's ideology consistent with mainstream Islam. Each of these three perspectives will be examined. The origins of Islamic law section provides a background on the life of Muhammad, the sources and schools of Islamic jurisprudence, and how these laws are understood in the Muslim world. The Islamic laws of jihad

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<sup>7</sup>Masjid Tucson, "True Islam Hijacked," [http://www.masjiduntucson.org/current/true\\_islam\\_hijacked.html](http://www.masjiduntucson.org/current/true_islam_hijacked.html) (accessed March 15, 2011).

section analyzes specific legal aspects of jihad and how al-Qaeda either complies or does not comply with those laws. The conclusion section summarizes the findings of the previous analysis, draws a conclusion based on these findings, and considers the ramifications of the findings.

## Literature Review

A variety of literature was consulted to develop a general understanding of the origins of Islamic law and Islamic jurisprudence in order to determine the degree of consistency across Sunni jurists. The primary reference for Islamic law for this paper is *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law* by Ahmad ibn Naqib al-Misri (died AD 1368), edited and translated into English by Nuh Ha Mim Keller in 1991.<sup>8</sup> This text was selected because of its acceptance within the Muslim world as certified by the Imam of Damascus, Syria, the Mufti of the Jordanian Armed Forces, the President of the International Institute of Islamic Thought, and the General Director of Research, Writing, and Translation of al-Azhar University in Cairo, Egypt. Also referenced for additional perspectives on Islamic jurisprudence is *The Islamic Law of Nations: Shaybani's Siyar* which was translated into English by Majid Khadduri, another well-respected Islamic legal scholar.<sup>9</sup> Khadduri's *War and Peace in the Laws of Islam* is also referenced.<sup>10</sup> These three texts comprise the sources for the bulk of the references used to establish the Islamic laws regarding jihad. An analysis of Islamic law requires reference to the Koran and to ahadith (plural of hadith, which is explained later in this monograph. This monograph also uses the *Interpretation of the Meanings of the Noble Qur'an in the English*

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<sup>8</sup> Ahmad ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, ed. and trans. Nuh Ha Mim Keller (Beltsville, MD: Amana Publications, 1994).

<sup>9</sup> Muhammad ibn al-Hasan al-Shaybani, *Shaybani's Siyar*, trans. Majid Khadduri (Baltimore, MD: The Johns Hopkins Press, 1966).

<sup>10</sup> Majid Khadduri, *War and Peace in the Law of Islam* (Richmond, VA: Johns Hopkins Press, 1955).

*Language* as its primary source of Koranic verses.<sup>11</sup> This reference is certified by the President of Islamic Research in Riyadh, Saudi Arabia and by the General Secretary of the Islamic University in Medina, Saudi Arabia and so is well accepted in the Muslim world. The primary source of hadith is found online through the University of Southern California Center for Muslim-Jewish Engagement.<sup>12</sup> The on-line religious texts are searchable and easy to use. The ahadith available include the collections of Sahih Bukhari and Sahih Muslim which are considered to be the most reliable among Islamic scholars.

This monograph used al-Qaeda's own public statements and actions in its research to provide details about the group's ideology. Principle among these sources were Usama bin Laden's 1996 fatwa entitled, "A Declaration of Jihad Against the Americans Occupying the Land of the Two Holy Sanctuaries"<sup>13</sup> and al-Qaeda's 1998 fatwa announcing the formation of a "World Islamic Front."<sup>14</sup> These two proclamations serve as the primary sources for this analysis of al-Qaeda's ideology because they established the group's objectives and *modus operandi* early in their formation and covered the key aspects of ideology examined in this monograph.

Prior to September 2001, few Americans had ever heard the word *jihad*. Since then, most can tell you that jihad is an Islamic "holy war." The study of jihad remains of great interest to government officials, military leaders, consulting firms, think tanks, scholars, educators, students, religious leaders, and others. For the purpose of discussion, this monograph groups the authors reviewed into three perspectives. The first group holds that Islam is a religion of peace and that

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<sup>11</sup> Muhammad Muhsin Khan and Muhammad Taqi-ud-Din Al-Hilali, trans., *Interpretation of the Meanings of the Noble Qur'an in the English Language* (Riyadh, Saudi Arabia: Dar-us-Salam, 1996).

<sup>12</sup> University of Southern California, Center for Muslim-Jewish Engagement, Religious Texts Online, <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/> (accessed frequently).

<sup>13</sup> Usama bin Laden, "Declaration of War Against the Americans Occupying the Land of the Two Holy Places," PBS Online NewsHour, under "Bin Laden's Fatwa," [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1996.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html) (accessed February 2, 2011).

<sup>14</sup> Usama bin Laden, PBS Online NewHour, under "Al-Qaeda's Second Fatwa," [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1998.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1998.html) (accessed February 2, 2011).

al-Qaeda's ideology is antithetical to Islam. Mary Habeck, an Associate Professor at Johns Hopkins University, claimed that al-Qaeda rejects "modern" Islamic law and "uses violence to undo the interpretations of modernist Islam and return the entire religious community to an imagined past."<sup>15</sup> She cited three areas in which al-Qaeda deviates from Islamic law in its conduct of jihad: the definitions of combatants and non-combatants, the treatment of captives, and the handling of spoils of war. Habeck's conclusion that al-Qaeda deviates from Islamic law in these areas, however, is incorrect as is demonstrated in this monograph. She also indicated that al-Qaeda includes in its organization a number of "respected clergy who support the movement with legal rulings that validate each of al-Qaeda's policies in pursuit of the group's ultimate objectives."<sup>16</sup> Habeck did not cite any actual points within Islamic law that support her argument, nor did she indicate that there are legitimate exceptions within Islamic law that support al-Qaeda's actions.

Jack Barclay holds a fellowship at the United Kingdom defense academy and is a consultant specializing in the use of strategic communication to counter violent extremism. He holds that al-Qaeda and other "salafi-jihadi" terrorist organizations and individuals hold ideological views that are counter to Islam.<sup>17</sup> Barclay made a point in his article that the monotheistic nature of Islam (tawhid, or the oneness of Allah) and its implementation was a point of contention among Muslims. Islam's monotheistic nature, in fact, established the fundamental conflict between Islam and all polytheists and non-Islamic political and legal systems in the world. This conflict is embodied in, mandated by, and perpetuated in Islamic law and is the basis for jihad. Barclay argued that the salafi-jihadists, rather than Islam itself, are "fundamentally

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<sup>15</sup> Mary R. Habeck, "The Jihadist Laws of War," *Journal of International Security Affairs* 18 (Spring 2010); 2.

<sup>16</sup> *Ibid.*, 2.

<sup>17</sup> Jack Barclay, "Can al-Qaeda Use Islam to Justify Jihad in the United States?: A Debate in Progress," *Terrorism Monitor* VIII, no.26 (July 1, 2010), 6-10.

opposed to any and all non-Muslim political and legal systems.”<sup>18</sup> Another subscriber to this perspective is the current U.S. Administration. The National Security Strategy 2010 stated that “. . . we reject the notion that al-Qa’ida represents any religious authority. They are not religious leaders, they are killers; and neither Islam nor any other religion condones the slaughter of innocents.”<sup>19</sup> The position of the United States is that al-Qaeda’s practice of killing what many consider “innocents” is contrary to Islamic law.

A second group holds that al-Qaeda’s ideology is singular and not particularly tied to Islam. Christopher Blanchard of the Congressional Research Service referred to al-Qaeda as holding an evolving ideology only in so far as al-Qaeda expanded its declaration of war with the United States beyond the Arabian Peninsula to the global arena as illustrated by the formation of “The World Islamic Front for Jihad against the Jews and Crusaders” and the several fatwas issued by bin Laden. This ideological evolution was characterized by a change in scope rather than by any change in fundamental content. In fact, the author claimed that al-Qaeda maintained a “consistent ideological agenda.”<sup>20</sup> Blanchard, however, did not link aspects of al-Qaeda’s ideology to Islamic law. Stuart Koschade, a Professor at the Queensland University of Technology, identified two ideological inconsistencies within al-Qaeda’s ranks: the targeting of Shi’a Muslims by al-Qaeda (Sunnis) in Iraq, and the legitimacy of civilian citizens of a democracy as targets in al-Qaeda actions. Although the author identified two areas of ideological contention among Islamic jurists, he did not address the link between al-Qaeda’s actions and Islamic law. He saw these issues as ideological differences of opinion among the al-Qaeda

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<sup>18</sup> Ibid., 7-8.

<sup>19</sup> White House, *National Security Strategy 2010* (Washington, D.C., May 2010), 22.

<sup>20</sup> Christopher M. Blanchard, *Al-Qaeda: Statements and Evolving Ideology* (Washington, D.C.: Congressional Research Service, 2007), 15.

hierarchy rather than as issues of compliance or non-compliance with Islamic law.<sup>21</sup> Sarah Zabel, writing as a student at the U.S. Army War College, referred to al-Qaeda as being a part of the “larger movement of global jihad, a splinter faction of militant Islamism intent on establishing its vision of strict Islamic rule in the Muslim world through armed action.”<sup>22</sup> She implied that al-Qaeda and other global jihadist groups represent a small minority of Muslims, hold a unique vision for Islam, and practice a more strict version of Islam than the majority of Muslims. She did not relate the ideology or actions of al-Qaeda directly to Islamic law, but indicated that global jihadists such as al-Qaeda seek “to instill a stricter observance of Islam in politics, economics, and society” than mainstream Muslims.<sup>23</sup> This group of authors acknowledges that al-Qaeda is a Muslim organization, but does not attempt to link its ideology to mainstream Islam. This monograph establishes that correlation.

The third group holds that al-Qaeda’s ideology is closely aligned with mainstream Islamic doctrine. The Center for Security Policy, a Washington, DC think tank, published a report entitled “Shariah: The Threat to America,”<sup>24</sup> which maintained that the institution of Islamic law was a direct threat to the United States. The authors presented the Islamic legal basis for the conduct of jihad, demonstrated how jihad is practiced, and how this constituted a threat to the United States. The study addressed Islamic law rather than specific actors and only hinted that al-Qaeda’s actions specifically may be consistent with Islamic law. It did, however, argue that jihad has been an integral part of Islam since its inception.

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<sup>21</sup> Stuart Koschade, “*The Developing Jihad: The Ideological Consistency of Jihadi Doctrine from Al-Qaeda to the Revolutionary Fundamentalist Movement*” (paper, Social Change in the 21<sup>st</sup> Century Conference, Carseldine, Queensland, Australia, October 27, 2006).

<sup>22</sup> Sarah E. Zabel, *The Military Strategy of Global Jihad* (Carlisle, PA: Strategic Studies Institute, 2007), v.

<sup>23</sup> *Ibid.*, 1.

<sup>24</sup> Center for Security Policy, *Shariah: The Threat to America* (Washington, D.C.: The Center for Security Policy, 2010).

It is clear from the literature reviewed that al-Qaeda is a focal point for U.S. efforts to battle “violent extremists.” The official U.S. position is that al-Qaeda’s ideology, although espousing to advance Islam, does not represent the majority of Muslims worldwide and, in fact, this ideology is “irreconcilable” with Islam. Others see al-Qaeda’s ideology as disconnected from both Islam and most “mainstream” Muslims. Still others view the jihad practiced by terrorists around the world as entirely consistent with Islamic law. This monograph adopts the position that al-Qaeda’s ideology regarding jihad is based on the Koran and does comply with Islamic law, and presents an examination of both in order to draw an appropriate conclusion.

## **The Origins of Islamic Law: Immutable Principles**

The body of Islamic law is known as shariah. The terms shariah and Islamic law are often used interchangeably. There are four sources of shariah: the Koran, which is considered the revealed word of God; the Sunna, which is the words and deeds of the Prophet Muhammad; *ijma*, which is a legal ruling arrived at by a consensus of Muslim legal scholars; and *qiyas* which is a legal ruling arrived at by analogical reasoning applied to matters on which neither the Koran nor Sunna specifically rule and on which there is no *ijma*. These four sources are mentioned in their relative order of authority.<sup>25</sup> In order to gain an understanding of shariah, it is necessary to grasp some basic concepts about each of these sources.

The Koran is the most authoritative source for shariah. Muslims believe that the Koran is the word of Allah, their God, as revealed to the Prophet Muhammad over a 22 year period ending with his death in the year 632. These revelations were originally memorized or written down in bits and pieces by Muhammad’s followers and were only formally compiled into the Koran around the year 650, after the death of the Prophet. Additionally, as it is deemed to be the perfect

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<sup>25</sup> U.S. Army, *Rule of Law Handbook: A Practitioner’s Guide for Judge Advocates* (Charlottesville, VA: 2010), 110-111.

word of Allah, the Koran is considered eternally and universally applicable to Muslims and non-Muslims without need of revision or regard for the historical period.<sup>26</sup>

As the perfect word of God, the Koran constitutes the primary source of shariah. Of the approximately 6,000 verses of the Koran, however, only 500 verses address legal questions.<sup>27</sup> The Koran contains 114 chapters, or suras, that include 6,236 verses. The first 86 verses were revealed to Muhammad in the city of Mecca and the other 28 verses were revealed following his migration, or hijra, to Medina in the year 622. Although Islamic scholars determined the chronological order of these verses, the Koran is organized by the length of the verses (longest to shortest) and not chronologically. This method of organization makes it difficult to read and understand the Koran as it is unclear as to the chronology of the verses. Another factor that makes an understanding of the Koran difficult is the concept of abrogation.<sup>28</sup> Understanding abrogation, however, is essential to understanding the relative importance of the verses of the Koran. Al-Misri warned that, “whoever does not know which verses abrogate others and which are abrogated, the points upon which there is scholarly consensus, and the tenets of the faith of Ahl al-Sunna, is not safe from error if he interprets the Koran with nothing beyond the implications of the Arabic.”<sup>29</sup> Abrogation is equally true of hadith, which are discussed in a later section.

The Islamic doctrine of abrogation holds that verses in the Koran revealed to Muhammad later, supersede the verses revealed earlier. Hence, the actual chronological order of revelation of the Koranic verses becomes important to determining which are still in effect and which have been abrogated. The Koran itself addresses this: “Whatever a verse (revelation) do we abrogate

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<sup>26</sup> Center for Security Policy, *Shariah: The Threat to America*, 38.

<sup>27</sup> U.S. Army, *Rule of Law Handbook: A Practitioner’s Guide for Judge Advocates*, 110.

<sup>28</sup> Center for Security Policy, *Shariah: The Threat to America*, 38.

<sup>29</sup> Ahmad ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, ed. and trans. by Nuh Ha Mim Keller (Beltsville, MD: Amana Publications, 1994), 752.

or cause to be forgotten, we bring a better one or similar to it. Know you not that Allah is able to do all things?”<sup>30</sup> Essentially, when Allah decided to abrogate a verse, an idea, or a principle of the Koran, he simply substituted a new and better one. This doctrine of abrogation became necessary because many of the later verses revealed in Medina contradicted earlier verses revealed in Mecca. Abrogation left the newer and “better” Medinan verses in effect and the Meccan verses replaced. Likewise, the doctrine of abrogation applies to the Sunna as is indicated by: “The Messenger of Allah (Muhammad) abrogated some of his commands by others, just as the Qur'an abrogates some part with the other.”<sup>31</sup> Because Muhammad was the last prophet, abrogation ended with his death. The matter of which Koranic verses and which hadith abrogate and which are abrogated was decided long ago among the Islamic scholars and is not a matter of debate today.

Another concept important to understanding the Koran is that of progressive revelation. Progressive revelation is the idea that verses of the Koran were revealed gradually to Muhammad over a period of time. These revelations reflected the development, over time, of the Muslim community under the leadership of Muhammad. Sayyid Qutb, a 20<sup>th</sup> century Islamic scholar and member of the Muslim Brotherhood, described progressive revelation as follows: “The Qur'an did not come down all at once; rather it came down according to the needs of the Islamic society in facing new problems.”<sup>32</sup>

When the Muslims were few and weak, and it was necessary to compromise and co-exist peacefully with the Christians, Jews, and the pagans in Mecca, the Koranic verses revealed were peaceful, conciliatory, and compassionate. This period is characterized by verses such as: “To

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<sup>30</sup> Koran, 2:106. References to the Koran include the book number followed by a colon and the verse number (i.e. Koran, 2:106 refers to Verse 106 in Book 2 of the Koran.).

<sup>31</sup> Sahih Muslim, Book 3, Number 0675. References to hadith include the name of the collection followed by the book number and the hadith number (i.e. This reference indicates that hadith number 0675 is from Book 3 of the Sahih Muslim hadith collection.).

<sup>32</sup> Sayyid Qutb, *Milestones*, ed. A.B. al-Mehri (Birmingham, England: Maktabah Booksellers and Publishers, 2006), 32.

you be your religion, and to me my religion”<sup>33</sup> and “Verily, those who believe (in the Qur'an) and those who are Jews follow the Jewish (scriptures), and Christians, and Sabians, any who believe in Allah 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>34</sup> Following the migration, or hijra, to Medina, however, after the number of Muhammad’s followers and his authority had grown, the verses became aggressive, and called for jihad against the non-Muslims. This period is characterized by verses such as: “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 (Islam), (even if they are) of the People of the Book, until they pay the Jizya with willing submission, and feel themselves subdued”<sup>35</sup> and “So when you meet in battle those who disbelieve, then smite the necks until when you have overcome them, then make (them) prisoners . . .”<sup>36</sup> Unfortunately, these later verses abrogated the earlier ones.<sup>37</sup> Thus, there are Meccan verses and Medinan verses in the Koran. The Meccan verses are generally peaceful. The Medinan verses are generally violent and warlike. The Medinan verses abrogate the Meccan verses. Islamic law, therefore, is derived from the Koranic verses and hadith of the Medinan (later) period of Muhammad’s life.

The Sunna is a collection of stories of the words and deeds of Muhammad and is the second most authoritative source for shariah. Muslims believe that the Sunna reflects the general principles of the Koran and are a source of guidance in matters not specifically addressed in the Koran. The Sunna is made up of thousands of ahadith (plural of hadith), which are the

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<sup>33</sup> Koran, 109:6.

<sup>34</sup> Koran, 2:62.

<sup>35</sup> Koran, 9:29.

<sup>36</sup> Koran, 47:4.

<sup>37</sup> Gabriel Sawma, “ Abrogation in Islam and the Persecution of Christians,” Assyrian International New Agency (January 18, 2011), <http://www.aina.org/guesteds/20110118151407.htm> (accessed February 4, 2011), 5-6.

accumulated reports of the words and deeds of Muhammad from his contemporaries. The early Islamic scholars devoted their lives to collecting and determining the authenticity of thousands of hadith. It is upon these hadith that much of shariah is based. Of the Sunni Muslim scholars, those collections which are considered the most authoritative are the Sahih al-Bukhari and Sahih Muslim. References to hadiths in this monograph are to either of these two collections.

The *ijma* is the third source of shariah. Ijma is doctrinal consensus among the legal scholars on specific issues not settled by reference to the two primary sources, the Koran and Sunna. *Qiyas* is the fourth source of shariah. Qiyas is a form of analogical deduction applied to arrive at a legal ruling on matters which cannot be decided based on the Koran, the Sunna, or an ijma. Such a ruling is arrived at by applying an analogy, deductive reasoning, and any legal precedence to arrive at new case law.<sup>38</sup>

Islamic law specifies the necessary qualifications for a Muslim to issue expert legal opinion, or fatwa. These qualifications include that the Muslim must be a male freeman, have full capacity for moral answerability, be upright, possess knowledge of the rulings of Sacred Law (meaning by way of personal legal reasoning from primary texts), have sound hearing, have sound eyesight, and possess the faculty of speech. Qualification for performing legal reasoning requires knowledge of the rules and principles of the Koran, the Sunna, as well as knowledge of scholarly consensus (ijma), and analogy (qiyas).<sup>39</sup> Such qualifications enable a jurist to issue fatwas, or legal opinions.

During the first 150 years following Muhammad's death, a number of Islamic schools of law were founded by various contemporaries, or near-contemporaries, of the Prophet for the purpose of interpreting the Koran and Sunna to establish the body of Islamic law. Most eventually died out. The four mainstream schools of Sunni jurisprudence that remain today are

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<sup>38</sup> Center for Security Policy, *Shariah: The Threat to America*, 41.

<sup>39</sup> Ahmad ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, ed. and trans. by Nuh Ha Mim Keller (Beltsville, MD: Amana Publications, 1994), 625-628.

the Hanafi, Hanbali, Maliki, and Shafi'i. Though each represents a slightly differing interpretation of the Koran and Sunna, they do not represent different sects of Islam. The Hanafi school is the oldest and most prominent of the Sunni schools and has the most adherents in the Muslim world. Through the centuries, but especially during the last century, there have been dissenting opinions among the jurists regarding the Islamic laws governing jihad. The range of opinions regarding jihad among the four Sunni schools of law is generally narrow. The areas of disagreement tend to be in the areas of the actual conduct of jihad and in its termination.<sup>40</sup> "The four Sunni schools of Islamic law, Hanafi, Maliki, Shafi'I, and Hanbali are identical in approximately 75 percent of their legal conclusions, while the remaining questions, variances within a single family of explainers of the Holy Koran and prophetic Sunna, are traceable to methodological differences in understanding or authentication of the primary textual evidence," not questions about the basic principles of those laws.<sup>41</sup> This means that there is no debate among the four Sunni schools of jurisprudence over three quarters of existing Islamic laws. The remaining one quarter of Islamic laws, though debated by the scholars, vary not so much in their conclusions as in the basis from which those conclusions are drawn. Islamic laws, therefore, are largely agreed upon by the jurists regardless to which Sunni school a Muslim subscribes. Because al-Qaeda is an organization of Sunni Muslims, this monograph focuses on Sunni Islam.

### **Islamic Laws of Jihad: A Permanent State of War**

The juridical-theological meaning of the term "jihad" is "to war against non-Muslims . . . to establish the religion."<sup>42</sup> Though Islam outlawed any form of war except jihad, it also declared a permanent state of war in pursuit of establishing Islam throughout the entire world. Islamic law divides the world into the dar al-Islam (territory of Islam) and the dar al-Harb (territory of war).

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<sup>40</sup> Khadduri, *War and Peace in the Law of Islam*, 74.

<sup>41</sup> ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, vii.

<sup>42</sup> *Ibid.*, 599.

The dar al-Islam refers to territory under Muslim rule whose inhabitants are Muslims and those non-Muslim communities of dhimmis who remain there at the price of paying jizya (poll tax) and living as second-class citizens without the rights of the Muslims. The dar al-Harb is made up of all other states and communities outside the territory of Islam. Its inhabitants are considered unbelievers, or kufr, by Muslims.<sup>43</sup> *The permanent state of war exists as long as the territory of war exists and jihad is Islam's mechanism for resolving this tension.* Further, according to Khadduri,

Failure by non-Muslims to accept Islam or pay the poll tax made it incumbent on the Muslim State to declare a jihad (commonly called "holy war") upon the recalcitrant individuals and communities. Thus the jihad, reflecting the normal war relations existing between Muslims and non-Muslims, was the state's instrument for transforming the dar al-Harb into the dar al-Islam. Islam could not abolish the warlike character of the Arabs who were constantly at war with each other; it indeed reaffirmed the war basis of intergroup relationship by institutionalizing war as part of the Muslim legal system and made use of it by transforming war into a holy war designed to be ceaselessly declared against those who failed to become Muslims.<sup>44</sup>

Koranic verses of the Medinan period such as: "Fighting is prescribed for you,"<sup>45</sup> "Slay them wherever ye find them"<sup>46</sup> and "Fight the Pagans all together as they fight you all together"<sup>47</sup> and hadiths such as: "I have been commanded to fight people until they testify that there is no god but Allah and that Muhammad is the messenger of Allah" and "To go forth in the morning or evening to fight in the path of Allah is better than the whole world and everything in it" are the

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<sup>43</sup> Khadduri, *War and Peace in the Law of Islam*, 52-53.

<sup>44</sup> *Ibid.*, 53-54.

<sup>45</sup> Koran, 2:216.

<sup>46</sup> Koran, 4:89.

<sup>47</sup> Koran, 9:36.

scriptural basis for jihad.<sup>48</sup> Another Medinan Koranic verse often cited by Islamic jurists and jihadists is the so-called “Verse of the Sword:”

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.<sup>49</sup>

According to Jalaluddin Al-Suyuti, a scholar of Sunni Islam of the late 15<sup>th</sup> century, 124 verses in the Koran advocating forgiveness and peace were abrogated by this single verse. This “Verse of the Sword” orders Muslims to fight the non-Muslims until Allah’s kingdom on earth is established.<sup>50</sup> In summary, if Islam’s political end is for shariah to dominate the world, then jihad is Islam’s way of achieving that end and the world is to be locked in a permanent state of war between Muslims and non-Muslims until such time as all non-Muslims either surrender to Islam or are eliminated. Pertinent to this analysis then, and according to the Center for Security Policy, “When our shariah-compliant enemies cite from the most violent verses of the Quran to justify their actions, they are completely aligned with Islamic law and doctrine.”<sup>51</sup>

## **Al-Qaeda and Islamic Law: Seven Aspects of Jihad**

Finding information about al-Qaeda is not difficult. Though it is usually communicated in Arabic, it is quickly translated and made available through the mass media. Islamic scholars and jihadists alike are prolific in their writings, letters, or speeches, so the difficulty instead seems to be sorting through the volume of output to distill the messages. The principle mouthpieces for the al-Qaeda organization include Usama bin Laden, its leader, Ayman al-Zawahiri, his deputy,

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<sup>48</sup> ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, 599.

<sup>49</sup> Koran, 9:5.

<sup>50</sup> Gabriel Sawma, “Abrogation in Islam and the Persecution of Christians,” Assyrian International New Agency (January 18, 2011), <http://www.aina.org/guesteds/20110118151407.htm> (accessed February 4, 2011), 6.

<sup>51</sup> Center for Security Policy, *Shariah: The Threat to America*, 39.

and Abu Yahya al-Libi, one of the organization's ideologues. Some of the information available about al-Qaeda comes through documents purportedly intercepted or captured from its operatives by various law enforcement agencies around the world. Most information, however, is gained directly from the written or spoken words of al-Qaeda leaders.

There is clearly sensitivity by al-Qaeda to be perceived as operating in accordance with Islamic law to maintain legitimacy in the eyes of Muslims and to enable freedom of movement in the Muslim world. In a translated document touted as the organization's by-laws, "full adherence to the Shari'a and criterions in all of our beliefs and actions according to the Koran and the Sunna, and the interpretations of the nations' scholars" is listed as one of the general policies of al-Qaeda.<sup>52</sup> Further, the document lists as one of its general rules that, "The Emirate has the rights of the private Emirate. But due to existing state of affairs, the qualifications of the Emir should be close to that of the General Imam, because most probably the Emir of this movement might have to issue legal Fatwa to distribute the spoils and others of the Jihad rules."<sup>53</sup> The term *emir* refers to the leader of a Muslim organization. Islamic law states that "Whenever there is a group of three or more Muslims, it is sunna (traditional) for a leader (amir or emir) to be chosen. It is sunna to obey such a leader, and leaving him or not obeying him contravenes what is recommended, but is not unlawful."<sup>54</sup> Regarding al-Qaeda and their bylaws, then, it is appropriate to select an emir, but the group's members would not be breaking shariah if they were to disobey bin Laden or leave the organization. The reference to the qualifications of the emir being close to that of the General Imam for the purpose of issuing fatwas, legal opinions, is meant to provide that authority to the al-Qaeda leader, currently bin Laden. The qualifications for an

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<sup>52</sup> Al-Qaeda, *Al-Qaeda Bylaws*, <http://www.ctc.usma.edu/aq/pdf/afgp-2002-600048-trans.pdf> (accessed March 17, 2011), 4.

<sup>53</sup> *Ibid.*, 7.

<sup>54</sup> ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, 680.

imam, however, are exactly the same as those mentioned earlier for issuing fatwas.<sup>55</sup> Al-Qaeda's bylaws do not carry the authority to simply bestow the qualification to issue fatwas to the organization's leader. Those several qualifications must be met by the individual. Bin Laden does not possess these qualifications and so does not have the authority to issue binding fatwas. Those "fatwas" that he has issued, however, have not attempted to establish new legal positions. Instead, bin Laden has really only reminded Muslims of their responsibilities under existing shariah. He, therefore, has not technically issued any real fatwas.

Bin Laden issued his "fatwas" on matters of Islamic law relative to actions by al-Qaeda operatives. The tone of his messages were consistent with other Islamic rulings in that he built his cases through references to the Koran, hadith, and previous rulings by Islamic jurists. It appears that he also remained consistent with the organization's by-laws. In cases where bin Laden built cases counter to fatwas issued by other Islamic scholars, he attempted to delegitimize their rulings by claiming that the scholars were "tricked . . . into issuing Fatwas that have no basis neither in the book of Allah, nor in the Sunnah of His prophet . . ."<sup>56</sup> In a similar manner, Zawahiri, in reference to the enemies of Islam, specifically the United States, cites "their disregard for all taboos, and disrespect for the customs of wars and conflicts"<sup>57</sup> as if to suggest that the United States does not play by the same set of rules by which al-Qaeda plays. The al-Qaeda "by-laws" and these clues in bin Laden's and Zawahiri's statements strongly suggest that al-Qaeda is attempting to comply with shariah in its actions. This is an important point because al-Qaeda does play by a set of rules, though they are different from international law and difficult for non-Muslims to perceive.

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<sup>55</sup> Ibid., 625-628.

<sup>56</sup> Usama bin Laden, "Declaration of War Against the Americans Occupying the Land of the Two Holy Places," PBS Online NewsHour, under "Bin Laden's Fatwa," [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1996.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html) (accessed February 2, 2011), 21.

<sup>57</sup> Ayman al-Zawahiri, *Knights Under the Prophet's Banner* (2001), Part Eleven, 7.

This monograph examines seven aspects of jihad: the obligation to conduct jihad, jihad against non-Muslims, combatants and non-combatants, martyrdom, the treatment of captives, mutilation, and the spoils of war in an attempt to perceive the rules al-Qaeda follows. These aspects of jihad were selected because they were mentioned by the various authors as points in their arguments supporting their conclusions that al-Qaeda had “hijacked” Islam, or that Islam was a “religion of peace.” This monograph explores the Islamic law pertaining to each of these aspects of jihad and draws very different conclusions.

### **Obligation to Conduct Jihad: Communal or Personal?**

According to al-Misri’s manual of Islamic law, jihad is normally a *communal* obligation for Muslims. If a sufficient number of Muslims conduct jihad against non-Muslims to successfully accomplish the short-term objectives, then it is no longer an obligation to other Muslims. If jihad is not conducted at all, then all Muslims who are aware of the obligation, but did not act, are guilty of sin. If non-Muslims invade a Muslim country, then jihad becomes a *personal* obligation for all Muslims living in the invaded country until the non-Muslim invaders are repelled.<sup>58</sup> “Non-Muslim forces entering Muslim lands is a weighty matter that cannot be ignored, but must be met with effort and struggle to repel them by every possible means.”<sup>59</sup> Khadduri echoes al-Misri’s words and adds that, “the jihad – unless the Muslim community is subjected to a sudden attack, and therefore all believers, including women and children, are under the obligation to fight – is regarded by all jurists, with almost no exception, as a collective obligation of the whole Muslim community.”<sup>60</sup> This distinction between communal and personal obligation determines the level of response of the Muslim community, or ummah. The communal

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<sup>58</sup> ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, 600-601.

<sup>59</sup> *Ibid.*, 601.

<sup>60</sup> Khadduri, *War and Peace in the Law of Islam*, 60.

obligation requires only a partial response, but the personal obligation requires a response from every Muslim. This is a point that al-Qaeda has argued repeatedly.

In his 1996 fatwa declaring war on the “Zionist-Crusaders alliance and their collaborators,” bin Laden built his case by claiming that U.S. forces were occupying Saudi Arabia. He referred to “the occupation of the land of the two Holy Places (Arabian Peninsula) – the foundation of the house of Islam (dar al-Islam), the place of the revelation, the source of the message and the place of the noble Ka’ba, the Qiblah of all Muslims – by the armies of the American Crusaders and their allies.”<sup>61</sup> Bin Laden’s use of the term, Crusaders, was a reference to the holy wars conducted centuries ago between Christians and Muslims and was an attempt to characterize the U.S. military presence on the peninsula as an attack against Islam. Saudi Arabia is home to the cities of Mecca and Medina, both central to Islam and considered holy places by Muslims. At the time of this fatwa, U.S. forces were still in place following the build-up for Operation Desert Shield/Storm. In the northern part of the peninsula is the city of Jerusalem in which is located the al-Aqsa mosque, also considered sacred by Muslims. In addition to the nation of Israel itself, the city of Jerusalem is under Israeli control, hence bin Laden’s references to Zionist occupation on the Arabian Peninsula. Bin Laden argued that the continued presence of American and Israeli forces on Muslim lands represented an invasion by non-Muslims and made jihad a personal obligation for all Muslims per Islamic law.

The Islamic ummah, community of Muslims, transcends political boundaries and refers to the entire worldwide Muslim community. Bin Laden underscored his argument by saying, “To liberate their sanctities (holy places) is the greatest of issues concerning all Muslims; It is the duty of every Muslim in this world.”<sup>62</sup> Bin Laden went on to cite the words uttered by Muhammad on

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<sup>61</sup> Usama bin Laden, “Declaration of War Against the Americans Occupying the Land of the Two Holy Places,” PBS Online NewsHour, under “Bin Laden’s Fatwa,” [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1996.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html) (accessed February 2, 2011), 2.

<sup>62</sup> Ibid., 17.

his deathbed, “Expel the polytheists out of the Arab Peninsula” and “If I survive, Allah willing, I’ll expel the Jews and Christians out of the Arab Peninsula.”<sup>63</sup> Essentially, since Muhammad had planned to expel the non-Muslims from the Arabian Peninsula in his time, it should be carried out by Muslims today. Bin Laden’s argument for Muslims to conduct jihad is consistent with shariah.

### **Jihad Against Non-Muslims: Polytheists and *People of the Book***

Khadduri indicates that jihad is “just” when waged against non-believers and several categories of believers. Non-believers are termed polytheists and are characterized by paganism, those with no concept of a supreme deity. According to Islamic law, polytheists have only two choices: they may either accept Islam or fight.<sup>64</sup> The Koran is very clear that Muslims are to “fight the polytheists wherever ye may find them;”<sup>65</sup> to “fight those who are near to you of the polytheists, and let them find in you sternness;”<sup>66</sup> and “when you meet those who misbelieve, strike off their heads until you have massacred them”<sup>67</sup> Polytheists do not include the Scripturaries, or *People of the Book*. This group includes Jews and Christians whom Muhammad perceived as believing in the single, supreme Allah, though not in Muhammad as His prophet, or the Koran. Scripturaries have one additional alternative besides submitting to Islam or the jihad. They may choose to pay the poll tax, or jizyah, and live in Muslim territory as second-class citizens, or dhimmi, without the full rights of Muslims. The dhimmi are required to abide by a set of rules specific to them. If dhimmi were to fail to abide by those rules or choose the jihad, then

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<sup>63</sup> Ibid., 12.

<sup>64</sup> Khadduri, *War and Peace in the Law of Islam*, 75.

<sup>65</sup> Koran, 9:5.

<sup>66</sup> Koran, 9:124.

<sup>67</sup> Koran, 47:4.

they would be treated as the polytheists are treated under Islamic law and be fought until killed.<sup>68</sup>

Al-Misri states that, except for the dhimmi, “the caliph fights all other peoples until they become Muslim.”<sup>69</sup>

Qutb considered Jews and Christians to be polytheists in his interpretation of the verse, “The Jews call 'Uzair [Ezra] a son of Allah, and the Christians call Christ the son of Allah. That is a saying from their mouth; (in this) they but imitate what the unbelievers of old used to say. Allah's curse be on them: how they are deluded away from the Truth! (Koran, 9:30)”<sup>70</sup> He explained with, “Allah’s Messenger replied, Whatever their priests and rabbis call permissible, they accept as permissible; whatever they declare as forbidden, they consider as forbidden, and thus they worship them.”<sup>71</sup> In Qutb’s view, not only are the Jews and Christians blasphemous because they deny the oneness of Allah, but they are also polytheists because they “worship” their priests and rabbis. So Qutb considers the Scripturaries no different than the polytheists and as such, they have only the two choices of submission or fighting.

Al-Qaeda subscribed to Qutb’s logic and carried the argument further: Bin Laden referred to several hadith in his 1996 fatwa supporting his declaration of war against the “Zionist-Crusaders alliance and their collaborators.”<sup>72</sup> He claimed that the Saudis, “By opening the Arab peninsula to the crusaders the regime disobeyed and acted against what has been enjoined by the messenger of Allah . . . , while he was at the bed of his death: Expel the polytheists out of the Arab Peninsula; . . . and: If I survive, Allah willing, I’ll expel the Jews and Christians out of the

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<sup>68</sup> Khadduri, *War and Peace in the Law of Islam*, 80.

<sup>69</sup> ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, 603.

<sup>70</sup> Sayyid Qutb, *Milestones*, ed. A.B. al-Mehri (Birmingham, England: Maktabah Booksellers and Publishers, 2006), 70.

<sup>71</sup> *Ibid.*, 70.

<sup>72</sup> Usama bin Laden, “Declaration of War Against the Americans Occupying the Land of the Two Holy Places,” PBS Online NewsHour, under “Al-Qaeda’s First Fatwa,” [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1996.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html) (accessed February 2, 2011), 12.

Arab Peninsula.”<sup>73</sup> Both these references to Muhammad are hadith. The actual al-Bukhari hadith is,

On his death-bed Allah's Apostle put a sheet over his-face and when he felt hot, he would remove it from his face. When in that state (of putting and removing the sheet) he said, "May Allah's Curse be on the Jews and the Christians for they build places of worship at the graves of their prophets." (By that) he intended to warn (the Muslim) from what they (i.e. Jews and Christians) had done.”<sup>74</sup>

By citing these hadith, Bin Laden, like Qutb, argued that Jews and Christians were polytheists, and, therefore, lost their Scriptuary status, and so had only two options open to them under shariah and those options are submission to Islam or jihad. Additionally, by virtue of Muhammad’s utterances at his death bed, Bin Laden concludes that it is not only permissible, but also required for Muslims to wage jihad against all Christians, Jews, and all other non-Muslims currently occupying the Arabian Peninsula until they are expelled or killed. The Arabian Peninsula currently consists of the countries of Saudi Arabia, Iraq, Jordan, Syria, Yemen, Kuwait, Israel, Lebanon, Qatar, United Arab Emirates, Oman, the Palestine territory, and Bahrain. There are approximately twelve million non-Muslims living among 119 million Muslims on the peninsula.<sup>75</sup> It is unusual not to find events in at least one of these countries mentioned in the daily news.

Al-Qaeda’s fatwa issued in February 1998 was signed by Bin Laden and Ayman al-Zawahiri, then leader of another jihad group in Egypt, the Egyptian Islamic Jihad. This fatwa,

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<sup>73</sup> Usama bin Laden, “Declaration of War Against the Americans Occupying the Land of the Two Holy Places,” PBS Online NewsHour, under “Bin Laden’s Fatwa,” [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1996.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html) (accessed February 2, 2011), 12.

<sup>74</sup> Sahih Bukhari, Volume 4, Book 56, Number 660 (Bukhari’s full name was Abu Abdullah Muhammad bin Ismail bin Ibrahim bin al-Mughira al-Ja’fai) was born in AD 814 and died in AD 876. He spent sixteen years compiling this collection, and ended up with 2,602 hadith. His criteria for acceptance into the collection were among the most stringent of all the scholars of ahadith. <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/> (accessed February 2, 2011).

<sup>75</sup> Muslim Population Worldwide, [http://www.islamicpopulation.com/asia/asia\\_general.html](http://www.islamicpopulation.com/asia/asia_general.html) (accessed April 28, 2011).

again, argued that the United States and Israel were allied to fight against Islam to terrorize and kill Muslims. It stated that, “All these crimes and sins committed by the Americans are a clear declaration of war on God, his messenger, and Muslims. And ulema [Islamic jurists] have throughout Islamic history unanimously agreed that the jihad is an individual duty if the enemy destroys the Muslim countries.”<sup>76</sup> This claim is consistent with shariah as cited above. The statement goes on to issue the fatwa:

On that basis, and in compliance with God’s order, we issue the following fatwa to all Muslims: The ruling to kill the Americans and their allies – civilians and military – is an individual duty for every Muslim who can do it in any country in which it is possible to do it . . . This is in accordance with the words of Almighty God.”<sup>77</sup>

It is apparent from the wording of this fatwa that it is important to al-Qaeda to present a well-argued case, consistent with Islamic law, to call Muslims to take action as required by sharia. Al-Qaeda’s fatwa requiring Muslims around the world to conduct jihad against Americans and their allies to include their military and civilians is consistent with shariah.

### **Combatants and Non-Combatants: There are Exceptions**

Islamic law defines rules for treatment of combatants and non-combatants in jihad, but also allows for exceptions to those rules based on the situation. Khadduri lists the targets of jihad as Polytheists (pagans), apostate Muslims (those who leave Islam), dissenters within Islam, and Scriptuaries (or People of the Book).<sup>78</sup> In a section entitled “The Rules of Warfare” al-Misri states that “It is not permissible (in jihad) to kill women or children unless they are fighting against the Muslims.”<sup>79</sup> The section goes on to prohibit killing animals, unless they are being

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<sup>76</sup> Usama bin Laden, PBS Online NewHour, under “Al-Qaeda’s Second Fatwa,” [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1998.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1998.html) (accessed February 2, 2011), 2.

<sup>77</sup> Usama bin Laden, PBS Online NewHour, under “Al-Qaeda’s Second Fatwa,” [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1998.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1998.html) (accessed February 2, 2011), 2.

<sup>78</sup> Khadduri, *War and Peace in the Law of Islam*, 74.

<sup>79</sup> ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, 603.

ridden into battle, thus establishing a pattern where although certain actions may be prohibited, those actions may in fact be permitted under certain circumstances such as would give benefit to the enemy or put Muslims at a disadvantage. In shariah, regarding who should be killed, much is left to the discretion and judgment of the Muslim conducting the jihad. According to Khadduri, “The jurists agreed that noncombatants who did not take part in fighting, such as women, children, monks and hermits, the aged, blind, and insane, were excluded from molestation. If the aged and monks indirectly helped their people, they were subject to molestation.”<sup>80</sup> Other exceptions allowed by various jurists in the Hanafi and Shafi’i schools include permitting Muslims to attack an enemy that may have other Muslims (including women and children) intermingled with them with weapons that cannot discriminate between the two. The death of these Muslims is considered killing by mistake.

Another exception involved attacking the non-Muslims on the grounds of public interest. In this case, the death of a few Muslims is justified as it “would serve the greater interests of the Muslim community.”<sup>81</sup> Shaybani said that it is permissible to inundate a city with water, to burn it, or to attack it with catapults even if innocent slaves, women, children, and old men may be killed.<sup>82</sup> Finally, according to the following hadith, Muhammad himself authorized the unintended killing of women and children: “The Prophet passed by me at a place called Al-Abwa or Waddan, and was asked whether it was permissible to attack the pagan warriors at night with the probability of exposing their women and children to danger. The Prophet replied, “They (i.e. women and children) are from them (i.e. pagans).”<sup>83</sup> There is, then, quite a bit of latitude provided by Islamic law to Muslims waging jihad relative to killing innocent, non-combatant

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<sup>80</sup> Khadduri, *War and Peace in the Law of Islam*, 103-104.

<sup>81</sup> Majid Khadduri, *War and Peace in the Law of Islam*, 107.

<sup>82</sup> Muhammad ibn al-Hasan al-Shaybani, *The Islamic Law of Nations: Shaybani’s Siyar*, trans. Majid Khadduri (Baltimore, MD: The Johns Hopkins Press, 1966), 101.

<sup>83</sup> Sahih Bukhari, Volume 4, Book 52, Number 256.

women, children, the elderly, and even other Muslims. But it is legal under the conditions described.

Al-Qaeda's 1998 fatwa to "kill the Americans and their allies – civilians and military – is an individual duty for every Muslim who can do it in any country in which it is possible to do it."<sup>84</sup> In the message, bin Laden and Zawahiri accused the United States of occupying the Arabian Peninsula, killing over one million Muslims in Iraq, and supporting the Israeli occupation of Jerusalem. They went on to argue that, by Islamic law, every Muslim is personally obligated to wage jihad against these "Crusaders." This point had been made repeatedly. They also expanded the battlefield from the Arabian Peninsula, which was the subject of the 1996 fatwa, to the entire world and against any American civilians as well as the military in any country in the world where Muslims can operate. Al-Qaeda's attacks of September 11, 2001 on targets within the United States which resulted in the deaths of thousands of civilians aroused much debate regarding whether or not they could possibly be condoned by Islam. Some argued that there were faithful Muslims among those killed; therefore, such an act could not possibly be condoned by Islam. It has already been demonstrated that shariah allows for Muslim deaths under certain conditions. Abu Yahya al-Libi, an al-Qaeda ideologue has argued that "voting for rulers and paying taxes were enough to make citizens complicit in the crimes of their government."<sup>85</sup> Even without al-Libi's argument, al-Qaeda's fatwa is consistent with shariah.

## **Martyrdom**

The Koran specifically prohibits suicide: "O ye who believe! . . . (Do not) kill (or destroy) yourselves: for verily Allah hath been to you Most Merciful!"<sup>86</sup> Similarly, hadith also prohibits

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<sup>84</sup> Usama bin Laden, PBS Online NewHour, under "Al-Qaeda's Second Fatwa," [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1998.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1998.html) (accessed February 2, 2011), 2.

<sup>85</sup> Habeck, "The Jihadist Laws of War," 2.

<sup>86</sup> Koran, 4:29.

suicide: “And if somebody commits suicide with anything in this world, he will be tortured with that very thing on the Day of Resurrection.”<sup>87</sup> Martyrdom, however, is not prohibited. In fact, martyrdom is encouraged and, Muslims believe, greatly rewarded in heaven. “Let those fight in the cause of Allah Who sell the life of this world for the hereafter. To him who fighteth in the cause of Allah,- whether he is slain or gets victory - Soon shall We give him a reward of great (value)”<sup>88</sup> indicates that whether the jihadist dies or not, he will be greatly rewarded. From the hadith, “Nobody who enters Paradise will (ever like to) return to this world even if he were offered everything on the surface of the earth (as an inducement) except the martyr who will desire to return to this world and be killed ten times for the sake of the great honour that has been bestowed upon him.”<sup>89</sup> This hadith conveys the richness of the reward due martyrs and how they would gladly martyr themselves repeatedly, if they could. Some of the rewards for these martyrs include:

As to the Righteous (they will be) in a position of Security, Among Gardens and Springs; Dressed in fine silk and in rich brocade, they will face each other; So; and We shall join them to fair women with beautiful, big, and lustrous eyes.<sup>90</sup>

And on Thrones (of Dignity), raised high. We have created (their Companions) of special creation. And made them virgin - pure (and undefiled), - Beloved (by nature), equal in age,- For the Companions of the Right Hand.<sup>91</sup>

The Prophet Muhammad was heard saying: “The smallest reward for the people of Paradise is an abode where there are 80,000 servants and 72 wives, over which stands a dome decorated with pearls, aquamarine, and ruby, as wide as the distance from Al-Jabiyyah to Sana’a.”<sup>92</sup>

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<sup>87</sup> Sahih Bukhari, Volume 8, Book 73, Number 73.

<sup>88</sup> Koran, 4:74.

<sup>89</sup> Sahih Muslim, Book 20, Number 4635.

<sup>90</sup> Koran, 44:51-54.

<sup>91</sup> Koran, 56:34-38.

<sup>92</sup> Sunan At-Tirmidhi Volume 4, Book 21, Number 2687.

The prospect of such rewards and posthumous notoriety may be very motivating to some Muslims, especially those living in difficult situations, or whose upbringing immersed them in these teachings.

Al-Qaeda's 1996 fatwa, describing the young Muslim men fighting the jihad, stated that "these youths love death as you love life"<sup>93</sup> and "our youths believe in paradise after death."<sup>94</sup> Indeed, these young Muslims were raised and immersed in Islamic teachings their entire lives. The fatwa goes on to extol the virtues of martyrdom describing "the best of the martyrs are those who do *not* turn their faces away from the battle till they are killed. They are in the high level of Jannah (paradise)."<sup>95</sup> Bin Laden then detailed the rewards in store for Muslim martyrs:

A martyr will not feel the pain of death except like how you feel when you are pinched. A martyr's privileges are guaranteed by Allah; forgiveness with the first gush of his blood, he will be shown his seat in paradise, he will be decorated with the jewels of belief, married off to the beautiful ones, protected from the test in the grave, assured security in the day of judgment, crowned with the crown of dignity, a ruby of which is better than the whole world and its entire content, wedded to seventy two of the pure houries (beautiful ones of paradise), and his intercession on the behalf of seventy of his relatives will be accepted."<sup>96</sup>

Not only does martyrdom in jihad benefit the martyr, but it also benefits seventy of his family members. If there were any hesitation on the part of the would-be martyr, he would certainly receive encouragement from his family members to intercede with Allah on their behalf. Al-Zawahiri, al-Qaeda's operational planner, views "martyrdom operations" as "the most successful way of inflicting damage against the opponent and the least costly to the Mujahideen (holy warriors) in terms of casualties."<sup>97</sup> He sees the use of martyrs as a cost-effective way to wage

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<sup>93</sup> Usama bin Laden, "Declaration of War Against the Americans Occupying the Land of the Two Holy Places," PBS Online NewsHour, under "Bin Laden's Fatwa," [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1996.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html) (accessed February 2, 2011), 17.

<sup>94</sup> Ibid., 18.

<sup>95</sup> Ibid., 19.

<sup>96</sup> Ibid.

<sup>97</sup> al-Zawahiri, *Knights Under the Prophet's Banner*, Part Eleven, 7.

jihad. So, martyrdom not only benefits the martyr and his family, but it also benefits al-Qaeda by being effective and low cost. Bin Laden's promise to potential martyrs tracks exactly with shariah.

## Treatment of Captives

During the course of waging jihad, Muslims may take captives. According to al-Misri, any women or children captives become slaves. Adult males captured by Muslims waging jihad, however, have four possible fates: death, slavery, unconditional release, or ransoming in exchange for money or for another Muslim held captive by his enemy. Should the captive submit to Islam before his fate is determined, he may not be killed, but by virtue of having been captured in jihad, he is still subject to slavery, unconditional release, or ransoming.<sup>98</sup> Though shariah does not specify how jihadists are to kill non-Muslim prisoners, the Koran provides possibilities such as: "I will cast terror into the hearts of those who disbelieve. Therefore strike off their heads and strike off every fingertip of them."<sup>99</sup> Khadduri cites the following Koranic verse as indicative of how Muslim jihadists are to deal with non-Muslims, "when you meet those who disbelieve, strike off their heads until you have massacred them . . ."<sup>100</sup> Bin Laden cites the same verse in his 1996 fatwa, "so when you meet in battle those who disbelieve, then smite the necks . . ." He goes on to explain that "there is nothing between us need to be explained, there is only killing and neck smiting."<sup>101</sup>

During the past decade, there were several instances of al-Qaeda capturing non-Muslims. How they dealt with their captives is indicative of their observation of shariah. In one case,

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<sup>98</sup> ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, 604.

<sup>99</sup> Koran, 8:12.

<sup>100</sup> Khadduri, *War and Peace in the Law of Islam*, 75.

<sup>101</sup> Usama bin Laden, "Declaration of War Against the Americans Occupying the Land of the Two Holy Places," (accessed February 2, 2011), 19.

American journalist Daniel Pearl was captured by al-Qaeda operatives in Karachi, Pakistan in January 2002. In February, a videotape of his decapitation was sent to the U.S. consulate in Karachi. Khalid Sheikh Mohammed, a member of al-Qaeda in U.S. custody in 2007, admitted to the murder and decapitation of Pearl with the words, “I decapitated with my blessed right hand the head of the American Jew, Daniel Pearl, in the city of Karachi, Pakistan. For those who would like to confirm, there are pictures of me on the Internet holding his head.”<sup>102</sup>

In another case, al-Qaeda in the Maghreb (northwest Africa) kidnapped four European tourists in the Republic of Mali in January 2009. These tourists included two women, a Swiss man named Werner Greiner, and a British man named Edwin Dyer. The two women were released after several months. Details surrounding their release are vague and conflicting, but there may have been a prisoner exchange or a ransom paid. Al-Qaeda demanded the release of Abu Qatada, a terrorist linked to al-Qaeda, by the British government in return for Greiner and Dyer. This was refused. Al-Qaeda then demanded payment of a ransom of \$14.2 million for the release of Greiner and Dyer in May 2009. The ransom was not paid by either the Swiss or British governments. Dyer was beheaded shortly thereafter. Greiner was released in July 2009. It is not public knowledge whether a ransom was paid to secure his release.<sup>103</sup> In August 2010, al-Qaeda in Yemen kidnapped Colonel Ali Hussam Mohammed Salah, the deputy director of Political Security in the province of Saada, Yemen. The group demanded the return of Hussain al Tais, a member of al-Qaeda in Yemen held by authorities, in exchange for Colonel Hussam. The

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<sup>102</sup> Verbatim Transcript of Combatant Status Review Tribunal Hearing for ISN 10024, Conducted on board U.S. Naval Base Guantanamo Bay, Cuba, March 10, 2007, [http://www.defense.gov/news/transcript\\_isn10024.pdf](http://www.defense.gov/news/transcript_isn10024.pdf) (accessed March 12, 2011), 18.

<sup>103</sup> Al Jazeera, “Al-Qaeda Frees Swiss Captive,” <http://english.aljazeera.net/news/africa/2009/07/2009712125144542579.html> (accessed March 26, 2011).

government of Yemen refused to release the al-Qaeda prisoner. Colonel Hussam was executed in February 2011 “with bullets fired at the back of his head.”<sup>104</sup>

These examples of the treatment of captives by al-Qaeda illustrate the group’s attempts to obtain ransom, attempts to obtain the release of fellow Muslims held by various authorities, and the killing of captives, by “smiting above the neck.” Each course of action is clearly supported by Islamic law. Al-Qaeda acted according to shariah in each instance of kidnapping and in the treatment of its captives.

## Mutilation

Shariah prohibits mutilation of enemy corpses as indicated by the hadith, “The Prophet forbade robbery (taking away what belongs to others without their permission), and also forbade mutilation (or maiming) of bodies.”<sup>105</sup> According to one Muslim source, mutilation is defined as depriving a person of an organ of the body, as in amputation.<sup>106</sup> Khadduri says that, “the jihadist . . . if he has killed, he must not mutilate.”<sup>107</sup> In this interpretation, Khadduri distinguishes between smiting above the neck or beheading as being legitimate, while such a beheading performed after killing is considered mutilation. Shaybani likewise warns, “Kill [only] those who disbelieve in God. Do not cheat or commit treachery, nor should you mutilate anyone.”<sup>108</sup>

In a report summarizing the incident culminating in Daniel Pearl’s death at the hands of a member of al-Qaeda, the murder is described in detail:

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<sup>104</sup> Jane Novak, “Al Qaeda in Yemen executes Col Ali Hosam, PSO officer kidnapped in Saada,” *Armies of Liberation* blog, entry posted February 1, 2011, <http://armiesofliberation.com/archives/2011/02/01/al-qaeda-in-yemen-executes-col-ali-hosam-pso-officer-kidnapped-in-saada/> (accessed March 29, 2011).

<sup>105</sup> *Sahih Bukhari* Volume 3, Book 43, Number 654.

<sup>106</sup> Abdullah Muhammed, “Lashing, stoning, mutilating: Islamic law is barbaric and outdated. Defend the case of Islam,” *Jannah.org*, <http://www.jannah.org/morearticles/4.html> (accessed March 25, 2011).

<sup>107</sup> Khadduri, *War and Peace in the Law of Islam*, 86-87.

<sup>108</sup> Muhammad ibn al-Hasan al-Shaybani, *Shaybani’s Siyar*, trans. Majid Khadduri (Baltimore, MD: The Johns Hopkins Press, 1966), 76.

Ul-Haq (an al-Qaeda operative) was later quoted in his interrogation report saying, “Sheikh Khalid slaughtered him.” But then there was a problem. It’s not clear if the camera actually jammed, but the cameraman, who U.S. and Pakistani officials believe may have been the younger nephew, exclaimed the he hadn’t been able to videotape the killing. KSM (Khalid) yelled at him. Chastened, he hurriedly fixed his camera. “The camera guy was startled,” KSM later told the FBI. “He didn’t put the video in.” KSM reenacted the scene, “this time separating Danny’s head from his body,” the guard Karim said later. To prove that Pearl was alive just before the beheading, KSM pressed on Pearl’s chest to show blood still pumping through his throat.<sup>109</sup>

This concern by KSM to demonstrate to viewers of the videotape that Pearl was alive, both at the time of the botched filming, and then minutes later at the time of the decapitation, is testimony to his concern of performing mutilation. Instead, KSM’s actions suggest that the decapitation was simply the climax of the job he started a few minutes earlier. In his execution of Daniel Pearl, KSM demonstrates an awareness of applicable shariah regarding mutilation and the desire to act in compliance with it.

## **Spoils of War**

The promise of material benefits from waging jihad comes directly from the Koran in such verses as, “Allah promiseth you much booty that ye will capture, and hath given you this in advance, and hath withheld men's hands from you, that it may be a token for the believers, and that He may guide you on a right path.”<sup>110</sup> Islamic law goes into much detail regarding who is eligible for the spoils of war gained through jihad and how it is to be divided. According to al-Misri, Muslim men waging jihad are entitled to personal booty and a share of the collective spoils provided they participated in the battle to the end of it. Eligibility for the personal booty requires that the jihadist overcome enemy resistance and incapacitate or kill an enemy at the risk of his own life. In such a case, the Muslim is entitled to “whatever he can take from the enemy,

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<sup>109</sup> Asra Q. Nomani, *The Pearl Project: The Truth Left Behind, Inside the Kidnapping and Murder of Daniel Pearl* (Washington, D.C., The Center for Public Integrity, 2002), 45.

<sup>110</sup> Koran, 48:20.

meaning as much as he can take away with him in the battle, such as a mount, clothes, weaponry, money, or other.”<sup>111</sup> As for the collective spoils of the battle, they are divided into five parts of which one share is distributed to each infantryman and three shares to each cavalryman. The combatants may not take possession of their share of the spoils until the official distribution of the shares.<sup>112</sup> Shaybani indicates that the horse rider should receive two shares versus the three shares indicated by al-Misri.<sup>113</sup> Otherwise, his interpretation of the law regarding the spoils of war is the same as al-Misri’s.

Al-Qaeda’s 1996 fatwa reminded jihadists that “Allah knows that their blood is permitted (to be spilled) and their wealth is a booty; their wealth is a booty to those who kill them.”<sup>114</sup> Al-Qaeda’s 1998 fatwa incited “every Muslim who believes in God and wishes to be rewarded to comply with God’s order to kill the Americans and plunder their money wherever and whenever they find it.”<sup>115</sup> Bin Laden was reminding Muslims that one of the benefits to those who wage jihad and survive was the prospect of obtaining the spoils of war. This prospect carries two benefits to the Muslims. The first is the obvious material reward of the spoils. The second and more symbolic is the reversal of fortune by taking back from Americans that which the Americans supposedly stole or at least withheld from Muslims throughout the world. This alleged victimization of Muslims by America is part of bin-Laden’s narrative in both the fatwas of 1996 and 1998 as well as other proclamations. His promise of the spoils of war to Muslims waging jihad and the legality of their taking those spoils are both consistent with Islamic law.

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<sup>111</sup> ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, 606.

<sup>112</sup> Ibid.

<sup>113</sup> ibn al-Hasan al-Shaybani, *Shaybani’s Siyar*, 107.

<sup>114</sup> Usama bin Laden, “Declaration of War Against the Americans Occupying the Land of the Two Holy Places,” (accessed February 2, 2011), 22.

<sup>115</sup> Usama bin Laden, PBS Online NewHour, under “Al-Qaeda’s Second Fatwa,” [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1998.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1998.html) (accessed February 2, 2011), 3.

This section examined the correlation between al-Qaeda's jihadi ideology and Islamic laws in the areas of the obligation to conduct jihad, jihad against non-Muslims, combatants and non-combatants, the treatment of captives, martyrdom, mutilation, and the handling of the spoils of war. In every case of communicating its ideology, al-Qaeda was careful to base its purpose and message on Islamic law. It crafted its external communications using shariah terminology, presented reasoned arguments for its actions, and supported its arguments citing Koranic legal references. In every case, al-Qaeda's ideology on the conduct of war was consistent with those Islamic laws. The group's claim that it is a personal obligation for every Muslim man to wage jihad against Americans, Jews, and their allies wherever they can because Muslim territory and Islam itself is allegedly under attack, is consistent with shariah. Al-Qaeda's claim that the entire Muslim community is obligated to wage jihad against all non-Muslims is consistent with shariah. Al-Qaeda's claim that it is permissible in Islam for Muslims waging jihad to kill innocent civilians, to include women and children, and even other Muslims, is consistent with shariah. Al-Qaeda's efforts to recruit more young Muslim men to wage jihad through "martyrdom operations" is consistent with shariah. When those al-Qaeda recruits actually carry out those martyrdom operations, their actions are consistent with shariah. Al-Qaeda's ransoming, exchanging, and murder of captives were consistent with shariah. Al-Qaeda's beheading of Daniel Pearl and Edwin Dyer and shooting of Colonel Hussam in the back of the head are consistent with shariah. Al-Qaeda's promise of a share in the spoils of war against the enemies of Islam is consistent with shariah.

## Conclusion

This monograph began by establishing that al-Qaeda and its ideology continue to be threats to the United States and a focus of counter-terrorism efforts for this country. It then discerned three different perspectives on al-Qaeda and its ideology among the authors reviewed. The first perspective held that Islam is a religion of peace and that al-Qaeda's ideology is antithetical to Islam. A second perspective held that al-Qaeda's ideology is singular and not particularly tied to Islam. The third perspective held that al-Qaeda's ideology is closely aligned with mainstream Islamic doctrine. The paper then examined the origins of Islamic law in general, and then Islamic law regarding jihad specifically, to establish a basis for applying it to al-Qaeda's ideology and actions. During this process, it also became clear that shariah has legal, religious, political, military, and social aspects that are intertwined that can make understanding it difficult for non-Muslims.

The monograph then analyzed the correlation between al-Qaeda's ideology of waging jihad and Islamic laws in seven aspects of the conduct of jihad: the obligation to conduct jihad, the conduct of jihad against non-Muslims, the treatment of combatants and non-combatants in jihad, the treatment of captives, martyrdom in jihad, mutilation, and the handling of the spoils of war. During the course of examining each aspect, it was found that al-Qaeda's proclamations and actions are not only representative of Islam, but they are also reflective of Islam. Al-Qaeda, in fact, is not a rogue organization with a singular ideology distinct from or antithetical to Islam, it is an organization whose ideology and actions are completely aligned with Islam. Al-Qaeda's claims that all Muslims are personally obligated to conduct jihad against Americans, Israelis, and our allies are consistent with Islamic law. Al-Qaeda's declaration of jihad against all non-Muslims is consistent with Islamic law. Al-Qaeda's treatment of combatants and non-combatants in jihad is consistent with Islamic law. Al-Qaeda's beheading of Daniel Pearl and Edwin Dyer were consistent with Islamic law. Al-Qaeda's use of Muslims in so-called "martyrdom operations" is consistent with Islamic law. Al-Qaeda's promise of a share in the spoils of war

against the enemies of Islam is consistent with Islamic law. In each of the seven aspects of jihad examined, al-Qaeda's ideology and actions were found to be consistent with Islamic law. This monograph concludes, therefore, that al-Qaeda's ideology regarding jihad is, indeed, based on the Koran and does, in fact, comply with Islamic law. This position is counter to the first group of authors that included Habeck, Barclay, and the current U.S. Administration which held that Islam is a religion of peace and that al-Qaeda's ideology is antithetical to Islam. Habeck argued that al-Qaeda did not follow Islamic law in the areas of its definitions of combatants and non-combatants, the treatment of captives, and the handling of the spoils of war. This monograph demonstrated that, in fact, al-Qaeda did follow Islamic law in these areas. Barclay argued that al-Qaeda's ideological view was counter to Islam, whereas this paper demonstrated that al-Qaeda's ideology and actions are very consistent with Islamic law and traditions. The *National Security Strategy 2010* claimed that Islam does not condone the killing of innocents, yet this monograph demonstrated that Islamic law does permit the killing of innocent women and children under certain conditions and that al-Qaeda met these conditions. The notion that Islam is a religion of peace and that al-Qaeda is antithetical to Islam is, therefore, incorrect.

The conclusion of this monograph is also counter to the second group of authors that included Blanchard, Koschade, and Zabel and which held that al-Qaeda's ideology was singular and not particularly tied to Islam. Though Blanchard determined that al-Qaeda has maintained consistency in its ideological agenda, he failed to link that ideology to Islamic law. This monograph establishes that correlation. Koschade noted ideological discontinuities between al-Qaeda members, but also, did not make that ideological link to Islamic law. Zabel argued that al-Qaeda's ideology reflects an extremist view not held by mainstream Muslims. This paper concludes that al-Qaeda's "extremist" ideology does reflect mainstream Islam.

The conclusion of this paper supports the position of the third group of authors that held that al-Qaeda's ideology is closely aligned with mainstream Islamic doctrine. The Center for Security Policy summarized their position on the subject as follows: "When our shariah-

compliant enemies cite from the most violent verses of the Quran to justify their actions, they are completely aligned with Islamic law and doctrine.”<sup>116</sup> This was demonstrated to be true in all seven aspects of jihad examined in this monograph.

Al-Qaeda, then, does act according to an established, public set of rules, regardless of U.S. policymakers’ perceptions of the organization. Those rules are laid out in Islamic law. Al-Qaeda has consistently complied with that set of laws in its public statements and actions as has been demonstrated in this monograph. From a purely academic standpoint, this monograph’s conclusion simply presents a counter argument to several of the authors cited earlier. From a practical standpoint, however, this conclusion challenges the current U.S. policy toward al-Qaeda and “violent extremism.” If al-Qaeda is operating in accordance with Islamic law, then the group has not “hijacked” Islam. If al-Qaeda’s violent actions are in accordance with Islamic law, then how is Islam a part of promoting peace? If al-Qaeda is operating in accordance with Islamic law, then our National Security Strategy regarding al-Qaeda and other “violent extremists” is flawed. If the nation’s security strategy is flawed, then the security of our nation may unnecessarily be at greater risk. Policymakers cannot allow the religious aspect of al-Qaeda’s ideology to blind them to its legal, political, military, and social aspects and the resulting implications to U.S. national security. They must at least consider the possibility that Islam is not a “religion of peace”.

In June 2007, U.S. Army Major Nidal Hasan warned a group of medical personnel of potential internal threats the military could encounter from Muslim soldiers, sailors, and airmen who were conflicted about fighting other Muslims, such as al-Qaeda. Two years later, Major Hasan murdered thirteen Soldiers at Fort Hood, Texas. The importance of understanding the enemy is as important today as it was in the time of Sun Tzu. In his words,

Thus it is said that one who knows the enemy and knows himself will not be endangered in a hundred engagements. One who does not know the enemy but knows himself will sometimes be victorious, sometimes meet defeat. One who

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<sup>116</sup> Center for Security Policy, *Shariah: The Threat to America*, 39.

knows neither the enemy nor himself will invariably be defeated in every engagement.<sup>117</sup>

Information about the enemy ideology, doctrine, and laws of war is readily available to U.S. policymakers and military planners. In many cases, the enemy openly provides such information in advance of his actions. That information must be used to defeat him.

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<sup>117</sup> Sun Tzu, *Art of War*, trans. Ralph D. Sawyer (Boulder, CO: Westview Press, 1994), 179.

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