

## MAKING A CASE AGAINST MODERN TERRORISM: CRITICAL ANALYSIS OF THE WARFARE PRINCIPLES UNDER ISLAMIC INTERNATIONAL LAW

### **Abstract**

The word 'jihad' means 'struggle' or 'striving' (in the way of God) or to work for a noble cause with determination, but the word has been conceptualised to include 'warfare principles' as one of the forms of jihad. Since the event of 9/11, the term jihad and even the religion of Islam have been associated with fanaticism, intolerance, violence and wars of aggression. As such, jihad is perhaps the most misrepresented of ideas in the West's understanding of Islam. Jihad has been used by terror groups as a defence for their acts of terror as evidenced by the 'Declaration of the World Islamic Front for Jihad Against the Jews and Crusaders' by Osama bin Laden. This article seeks to analyse the concept of jihad (warfare principles) under Islamic international law, the relationship between jihad and modern terrorism being carried out by Muslim extremists or if it is merely a misappropriation and distortion by Muslim extremists as part of their violent campaign against the West and their own governments, and the foremost religious terror group known as al Qaeda so as to have insight into the emergence of religious terror groups, their beliefs, operations and structure.

**Keywords:** Jihad, Terrorism, Modern Terrorism, al-Qaeda

### **1. Introduction**

Although very often the Arabic word *jihad* is glossed as 'holy war', if we were to translate 'holy war' back into Arabic we would have *al-harb al-muqaddas*, a term which does not exist in any form in the Islamic tradition.<sup>1</sup> *Jihad*, both linguistically and as a technical term, means 'struggle', and is etymologically related to the words *mujahadah*, which also means struggle or contention, and *ijtihad*, which is the effort exerted by jurists to arrive at correct judgments in Islamic law.<sup>2</sup> Historically, *jihad* has been used in several contexts, ranging from self-defence against aggression, pre-emptive self-defence, conquest, revolutionary and regime-change political violence to terrorism.<sup>3</sup> In the post 11 September 2001 legal and political environment, *Islam* appears to have become one of the most misunderstood religions. Critics of Islam argue that *Islam* per se is an aggressive religion, encouraging *Muslims* to have recourse to violence, terrorism and destruction. *Islam* has been equated with fanaticism, intolerance,<sup>4</sup> violence and wars of aggression<sup>5</sup> – the classical *jihad* ideology is often deployed to cast doubts on the compatibility of *Islam* with modern norms of international law as enunciated in the United Nations Charter.<sup>6</sup> The terrorist perpetrating the acts of terror have also claimed that it is *jihad*, and have encouraged *Muslims* to engage in these acts of terror. The terror groups have been able to develop due to their misinterpretation and distortion of the principles of *jihad*, particularly the warfare principles under *jihad*, therefore misleading people into joining their cause.

### **2. Conceptualising Jihad: Islamic Perspectives**

The meaning, nature and scope of *jihad* are traced back to the primary and secondary sources of *Sharia* (Islamic law). The primary sources are the *Qur'an* (believed to be the very word of God)<sup>7</sup> and the *ahadith/sunnah* (narrations concerning words and actions of Prophet *Muhammad*).<sup>7</sup> The secondary sources,

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<sup>1</sup>B. A. Jazir, *Jihad and the Islamic Law of War* p.3,

<sup>2</sup>*ibid*

<sup>3</sup>M. Ssenyonjo *Jihad Re-Examined: Islamic Law and International Law* p.43.

<sup>4</sup>A. Cassese *Terrorism, Politics and Law: The Achille Lauro Affair* (1989) p.1.

<sup>5</sup>J.L. Esposito, *The Islamic Threat: Myth or Reality?* (1992) p.5.

<sup>6</sup>S.S. Ali & J. Rehman 'The Concept of Jihad in Islamic International Law' *Journal of Conflict & Security Law*, p.12. <sup>7</sup>The Quran is believed to have been revealed to the Prophet by angel Jibril for over a period of 22 years, starting from 610 CE to 632 CE.

<sup>7</sup>The Sunnah of the Prophet are the words, deeds and tacit approvals of the Prophet.

which represent the human understanding and articulation of the primary sources, are *ijma* (consensus among Muslim jurists in a particular age on a question of law) and *qiyas* (analogy, the process of reasoning rendering possible the extraction of the legal norm/rule — *hukm* — from previously cited sources). These secondary sources derive from the interpretation of the primary sources.<sup>8</sup> *Muslims* themselves have disagreed throughout their history about the meaning of the term *jihad*. In the *Qur'an*, it is normally found in the sense of fighting in the path of God; this was used to describe warfare against the enemies of the early *Muslim* community (*ummah*). In the *ahadith*, the second most authoritative source of the *Sharia* (Islamic law), *jihad* is used to mean armed action, and most Islamic theologians and jurists in the classical period (the first three centuries) of *Muslim* history understood this obligation to be in a military sense.<sup>9</sup>

The term *jihad* literally means to strive, or to exert one's efforts, or to earnestly work towards a desired goal or to prevent an undesired one. In other words, it is an effort (which makes one feel fatigued) that aims at bringing about benefit or preventing harm. This meaning of *jihad* is stated in the Holy *Qur'an*.<sup>10</sup>

Given the broad nature of the term *jihad*, it can be used to mean several aspects depending on the context in which it is used. According to *Ibn al-Qayyim*, *jihad* is of four stages: *jihad al-naafs* (striving against the self), *jihad al-shayaateen* (striving against the accursed Satan or devils), *jihad al-kuffaar* (striving against the disbelievers) and *jihad al-munaafiqeen* (striving against the hypocrites [those who undermine Islam from within]).<sup>11</sup> The first two types of *jihad*, *jihad al-naafs* (*jihad* against one's self) and *jihad al-Shaytaan* (*jihad* against the accursed Satan),<sup>12</sup> are considered to be obligatory upon every adult individual *Muslim* who is capable (*fard 'ayn*), while the last two kinds of *jihad*, *jihad* against non-*Muslims* and *jihad* against the hypocrites, and *jihad* against leaders of oppression and innovation, are considered to be obligatory to the community as a whole.<sup>13</sup> *Jihad* was generally understood not as an obligation of each individual *Muslim* (known as *fard 'ayn*) but as a general requirement of the *Muslim* community (*fardkifaya*). Only in emergencies, when the *Dar al-Islam* comes under unexpected attack, do all *Muslims* have to participate in *jihad*.<sup>14</sup> *Jihad* is a comprehensive term which is composed of several elements, only one of which involves the use of force or military means. Although it must be stated that *jihad* is more general and more comprehensive than fighting or war.<sup>15</sup> Military *jihad* is one of the most questionable and controversial aspects of *jihad* because of its implications on national and international peace and security as well as its compatibility with international law.<sup>16</sup> The warfare principles of *jihad* are classified under the military *jihad*. However at this juncture, the issue of modern terrorism has to be discussed and how it relates to the warfare principles of *jihad*.

### **3. Modern International Terrorism**

In recent years, the academic world has witnessed a surge of research and academic programs in the field of homeland security and counterterrorism. After the attacks of 9/11, the threat of global terrorism immediately topped the international agenda.<sup>17</sup> However, modern terrorism started years ago before this incident. Modern terrorism began near the end of the 18th century following the French Revolution. The term terror was first used in France in 1795 to describe the actions of the new French republic government to suppress

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<sup>8</sup>M. Ssenyonjo *Jihad Re-Examined: Islamic Law and International Law* p.42.

<sup>9</sup>G.K. Michael *The Concept and Practices of Jihad in Islam* p.34.

<sup>10</sup>Chapter 61 Verses 10-12

<sup>11</sup>S. Muhammed & S. Al-Munajjid *Fatwa* 20214: 'Ruling on Jihad and Kinds of Jihad', <<http://www.islamqa.com/en/ref/20214/jihad>> accessed on Jan. 9, 2018.

<sup>12</sup>Ssenyonjo *Jihad Re-Examined: Islamic Law and International Law* p.41.

<sup>13</sup> Muhammed & Al-Munajjid, *Fatwa* 20214: Ruling on Jihad and Kinds of Jihad, <<http://www.islamqa.com/en/ref/20214/jihad>> accessed on Jan. 9, 2018.

<sup>14</sup>Ali & Rehman, 'The Concept of Jihad in Islamic International Law' *Journal of Conflict & Security Law*, p.12.

<sup>15</sup>Ssenyonjo p.14.

<sup>16</sup>*ibid*

<sup>17</sup>B. Ganor *Trends in Modern International Terrorism* p.21.

counterrevolutionaries.<sup>18</sup> Terrorism came to describe the illegitimate use of politically motivated violence by non-state actors, who by definition in a state-centric era only had illegitimate purpose.<sup>19</sup> Terrorism is notoriously difficult to define but is generally regarded as ‘the use (or threatened use) of violence in order to achieve psychological effects in a particular target audience.’<sup>20</sup> Definitions of terrorism vary widely – with equally as wide implications – yet there is still a general consensus among most leading scholars as to the essential nature of the threat.<sup>21</sup> Even without a clear definition of what terrorism is, or isn’t, there are three consistent aspects considered fundamental to the overall concept. First, terrorism is about someone’s perception of justice<sup>22</sup> and always has a political nature involving actions designed to garner widespread public attention and precipitate political change. Second, terrorists are distinguished by their non-state character. Even when organizations receive material support such as weapons and funding from state sources, they remain rogue actors operating under their own auspices and carrying out their own agendas. Third, terrorists deliberately target innocent civilians by using surprise attacks that do not adhere to international norms and accepted standards for use of force. All of these characteristics are intentionally and strategically employed to achieve maximum psychological effects to intimidate and instill fear in the public domain.<sup>23</sup>

Modern terrorism is regarded as a form of psychological warfare intended to spread fear and anxiety among the target population. This fear is translated into political pressure on decision makers to change policies in such a manner that will serve the terrorist’s interests. As such, modern terrorists attempt to exploit the liberal values of democratic states, forcing governments to adhere to their demands as a result of the physical, psychological, and economic ramifications of terrorist attacks.<sup>24</sup> In many cases, a terrorist attack is random, aimed not at someone specific, but rather a group that shares a common trait and symbolizes the organization’s broader target (Americans, Israelis, ‘infidels,’ Westerners, etc.). By simultaneously transmitting several messages, these attacks intensify the sense of anxiety felt by the target group, which leads civilians to pressure decision makers and their government into changing policies and agreeing to terrorists’ demands.<sup>25</sup>

### **Religious Terrorism**

The Religious terrorism emergence was precipitated by three major events in the Islamic world.<sup>26</sup> The Iranian Revolution, the beginning of a new Islamic century, and the Soviet Union’s invasion of *Afghanistan* all paved the way for religious fundamentalism to gain momentum and eclipse secular and political beliefs that motivated previous waves of terrorism.<sup>27</sup>

The origins of *al-Qaeda* and the more recent rise of the Islamic State in Iraq and Syria (ISIS) suggest violence motivated by religious fundamentalism.<sup>28</sup> The main threat they pose is that of radical Islamic terrorism primarily aimed at promoting a radical religious world view.<sup>29</sup> These organisations intend to impose their belief and religious views by perpetrating acts of terror. This is a problem occurring all over parts of the world. Dozens of active terrorist organizations use religion to justify their violent actions, but during the last

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<sup>18</sup>A. Cronin *Behind the Curve: Globalization and International Terrorism*, p.34.

<sup>19</sup>M. Thorup, *Terror as Policy: The Concept of Terror during the French Revolution*. p.22.

<sup>20</sup> Hoffman B, ‘Change and Continuity in Terrorism.’ *Studies in Conflict & Terrorism*, p.18.

<sup>21</sup>Ganor p.22.

<sup>22</sup>Cronin p.33.

<sup>23</sup> E. Walls *Waves of Modern Terrorism: Examining the Past and Predicting the Future*. p.54.

<sup>24</sup>*ibid*

<sup>25</sup>Ganor p.37.

<sup>26</sup> Walls p.54.

<sup>27</sup>C. H. Gupta *Waves of International Terrorism: An Explanation of the Process by which Ideas Flood the World*, p.35.

<sup>28</sup> Walls, p.56.

<sup>29</sup>Ganor, p.39

three decades, *al-Qaeda* has inflicted the most damage and continues to view the United States its sworn enemy and most important target.<sup>30</sup> The attack on the World Trade Centre in September 11, 2001 established religious terrorism fully and it garnered international recognition since then. Subsequently, other terror groups have been established and they mostly have pledged allegiance to *al-Qaeda*.

After the September 11 attacks, intense focus was directed at destroying *al-Qaeda* and understanding its operational structure and chain of command.<sup>31</sup> Regardless, there are many organizations, groups, and cells around the world. These movement is headed by *al-Qaeda*, which, despite the many setbacks it has endured since September 11, 2001, is still capable of carrying out ‘direct attacks’ through activists reporting directly to its authority or ‘indirect attacks’ through proxy organizations – radical Islamic terrorist organizations and networks that share a similar fundamentalist Islamic ideology, aspirations, and interests. Some of these organizations, such as Egyptian, Bangladeshi, and *Afghan Jihadi* groups, were established by *Osama bin Laden* under the umbrella of his ‘International Islamic Front for *Jihad* against Jews and Crusaders.’<sup>32</sup> It is therefore trite to briefly discuss the terror group known as *al-Qaeda*.

### ***Al-Qaeda***

After 10 years of supporting *Afghan* fighters against the Soviet occupation, a group of ‘*Afghan Arabs*’<sup>33</sup> gathered in *Peshawar, Pakistan* to form an organization that would begin a worldwide *jihad* after the Soviets withdrew from *Afghanistan*.<sup>34</sup> This meeting in August 1998 of a dozen or so elite members of the Muslim world marks the birth of *al-Qaeda*, ‘the base,’ that was comprised of upper-middle-class, educated Muslims from prominent *Saudi* and *Egyptian* families,<sup>35</sup> including *Osama bin Laden*, whom the group took as their leader and could help finance operations using his personal wealth.<sup>36</sup> The *al-Qaeda* core ideology was to defend the collective Muslim nation<sup>38</sup> and achieve a utopian dream predicated on the idea that ‘Islam is the Answer’<sup>37</sup> to fix declining stability and weak nationalism in *Arab* states.<sup>38</sup> In the early 1990s, *Osama bin Laden* moved *al-Qaeda*’s base of operations from *Sudan* to the mountains of *Afghanistan* where the group could run training camps and were afforded protection by the local *Taliban*. *Al-Qaeda*’s early success can be traced back to this tactical decision to find sanctuary and receive secondary material support in remote areas of the world that were untouched by the political and economic benefits of globalization.<sup>39</sup> *Al-Qaeda* experienced a shift in organizational structure post 9/11, partly in response to the American military campaign that followed the attacks. The occupation of *Afghanistan*, the destruction of the organization’s administrative and operational infrastructure, loss of support from the *Taliban* and a significant amount of manpower, and the demolition of training camps, recruitment offices and facilities, effectively forced *al-Qaeda* to change its structure and method of operation. Without autonomous territory in *Afghanistan* from which to operate, or freedom of movement for the organization’s leaders and activists, the hierarchical structure of the organization and the control level of the organization’s leadership over its activists were severely damaged.<sup>40</sup> The dynamic nature of the terrorism phenomenon has also been represented by *al-Qaeda*’s changing methods of operation and organizational structure. Until the September 11th attacks, *al-Qaeda* operated as an organized hierarchy with a top leadership level, a mid-rank level, and a lower level

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<sup>30</sup> Walls, p.58.

<sup>31</sup> *ibid*

<sup>32</sup> Ganor, p.48.

<sup>33</sup> V. Hippel *Responding to the Roots of Terror* p. 98.

<sup>34</sup> M. Sageman *Ripples in the Waves: Fantasies and Fashions*. p.119.

<sup>35</sup> *ibid*

<sup>36</sup> Walls, p.67,

<sup>38</sup> Sageman, p.27.

<sup>37</sup> *ibid*

<sup>38</sup> Walls, p.78.

<sup>39</sup> Cronin, p.38.

<sup>40</sup> Ganor, p.34. <sup>43</sup>*ibid*

of activists carrying out orders and directives from above. As such, the September 11th attacks were carried out as a result of an organized decision-making process and complex preparations over a long period of time.<sup>43</sup> In the past several years, *al-Qaeda* has undergone an additional developmental process. In addition to its reliance on proxy organizations to conduct terror attacks, *al-Qaeda* has focused on spreading its ideology through international media, mosques, and Islamic community centers, and – most significantly – through the worldwide web. The organization seeks to inspire young *Muslims* around the world, and especially in Western countries, to perpetrate attacks in their immediate environment. This phenomenon, known as

‘Homegrown terrorism,’ is the current trend in radical Islamic terrorism. It works to influence the hearts and brainwash the minds of many young people around the world – first- and second generation *Muslim* immigrants, converts to *Islam*, and others – creating a radicalization process within various *Muslim* communities.<sup>41</sup>

#### 4. Making a Distinction between *Jihad* (Warfare Principles) and Modern Terrorism

The main difference between *jihad* and terrorism is that while *jihad* is a religious ideology, it has been misconstrued and wrongly utilised to support modern terrorism. Modern terrorism is an unethical practice that may or may not have anything to do with religion. Today, the terms *jihad* and modern terrorism are commonly used interchangeably, and the scenario that they are the same is basically propaganda utilised by the media and some extremist groups like *al-Qaeda*. This problem is attributed to the fact that *Muslims* and scholars do not all agree on the definition of *jihad*. In *Islam*, *jihad* is a term that refers to the religious duty of *Muslims*. It is recommended under *jihad* that *Muslims* should take up arms against enemies of *Islam*. *Jihad* is a personal struggle and a religious duty, while terrorism is a violent act with the intention to frighten. Where *jihad* explains contours terms to describe the salient features strongly rooted in a broad process of ethical, social transformation and a forwarded move towards humanism and human communities, terrorism depicts death, stagnation, coercion, making social life incomprehensible and hazardous.<sup>42</sup> *Jihad* is basically meant for the eradication of harmful trends and developing society, while terrorism directs to destruction of the people and society. Terrorism involves committing crimes against humanity with physical and mental torture of army personals as well as civilians, destruction of public and private property and infrastructure to inject fear and harassment among the masses, while *jihad* is against these things.<sup>43</sup> In other words *Jihad* is obligatory against such actions. Unlike terrorism, *jihad* is never done to fulfill any human desires or worldly objectives: it aims only at the establishment of an *Islamic* order according to *Allah*’s commandment. Nothing can fill the gap between two, no matter how one try to portray actions of individuals and groups into *jihad* as it is highly unjust and misleading to equate the wrong actions of a few with the noble concept of *jihad*.<sup>44</sup> *Islam* forbids war and killing of any single or on a mass level, *Islam* has prohibits unlawful killing of even a human being and has been equalized with the killing of entire human race.

*Jihad* eliminates injustice, oppression, fear and harassment, savagery and lawlessness and terrorism and the wronged gets relief. Although some blood is shed in the battlefield but this blood is for supremacy of justice, equity and peace in society.<sup>45</sup> That is why the blood of the martyr is so sacred that on its first drop falling on the battlefield, *Allah* forgives all the sins of the martyr. Those who die in this cause are not deemed dead but alive before *Allah* Almighty with special blessings.<sup>46</sup> Terrorism, on the other hand is sheer destruction,

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<sup>41</sup>*ibid*

<sup>42</sup>H. Abbasi & M. Mehfooz, ‘Jihad and Terrorism: A Metaphor in Conflict.’ *International Journal of Philosophy and Theology*, p.4.

<sup>43</sup> A. Latif & S. M. Hafiza ‘Terrorism and Jihad: An Islamic Perspective’ *Journal of Islamic Studies and Culture*, p.8.

<sup>44</sup>*ibid*

<sup>45</sup>*ibid*

<sup>46</sup>*Ibid*

disorder, fear, chaos and insecurity. Populace is wiped out, properties are destroyed even flora and fauna bear the brunt at times. Business and social activities are affected. In short life becomes standstill and the world as a hell.<sup>47</sup> Terrorists are, like cancer affected part of body, as soon as it is operated out it will be better for the rest of body. *Jihad* is a means of eliminating those diseased organs of human body in the interest of mankind.<sup>48</sup> The sanctity of human life is also a key factor in differentiating between both *jihad* and terrorism. *Islam* forbids war and killing of any single or on a mass level, *Islam* has prohibits unlawful killing of even a human being and has been equalized with the killing of entire human race. While the end result of terrorism is the violation of lives and unlawful killings. This is in contravention of the wordings of the Holy *Qur'an* in chapter 5 verse 32.

## **5. Conclusion and Recommendations**

*Jihad* has nothing to do with terrorism and the two are opposite in nature both in theory and action. Terrorism is evil while *Jihad* is blessing; terrorism is human suffering and destruction whereas *jihad* is a healing effect against all sufferings and destruction. Terrorism has no civilized norms with no limits, *jihad* is a measured and calculated. Terrorism endangers fabric of society and wipes out noble human values while *jihad* aims at restoring justice, equality, rule of law, respect for human beings, peace and tranquility.

This article conclusively states that the warfare principles of *jihad* is different from modern terrorism, based on the arguments above by stating clearly what *jihad* is and what modern terrorism connotes. They are two separate terms inasmuch as terrorist base their acts of destruction and violence on the warfare principles. Distinctions between both terms were made, and the origin of modern religious terrorism was traced all the way back to *al-Qaeda*, with the practices of *al-Qaeda* also examined as well as its major attack of 9/11.

As earlier stated, *Muslims* themselves are at disagreement as to what *jihad* truly preaches. This issue has to be resolved by the *mujtahidun*, by giving an interpretation as to the meaning of the warfare principle, and that *Islam* is a religion of peace and this has been stated countless times, as the name itself means peace. The *ummah* also must stand united in defending their religion against terrorists who claim to fight *jihad*. There must also be public teachings of the true meaning of *jihad*, articles can be written on it, and there can also be engagements on the social media platform all over the world. In the contemporary environment, Islamic fundamentalism has been linked to the terrorist activities all over the world. With the Global War on Terror, there is a growing perception of a linkage between Islamic teachings and terrorism. In order to operate in such an environment, it is imperative to discover how the Islamic teachings are being exploited by terrorists. This will suggest effective ways to counter the terrorist's strategy, which appears to be drawing its power from religious doctrine. Effectively coping with the phenomenon of terrorism requires local and international action on two levels – addressing both terrorists' motivation and their operational capabilities. It is a state's responsibility and duty to protect its citizens, and so it must work to reduce terrorist organizations' operational capabilities through preventative and offensive action (and sometimes also defensive action) based on intelligence resources. Effectively countering the threat of terrorism requires a well-coordinated and multi-disciplinary campaign that takes advantage of all possible resources – intelligence, economic, security related, and diplomatic

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<sup>47</sup>*ibid*

<sup>48</sup>*ibid*