

# **Countering Global Terrorism and its Manifestations in Afghanistan: Advancing New Shariah Perspectives**

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## Abstract

Mainstream media tend to associate terrorism and violence with Islam, a claim which needs to be ascertained in the light of evidence. We explain this and show that extremism and terrorism have no religion as such. Next we characterise extremist violence and terrorism and its perpetrators. Is it correct to say that Islam is a religion of peace? We investigate this too and look at the evidence as to what Islam actually stands for. The balance of this article is devoted to an enquiry into the Qur'anic provisions on *hirabah* (banditry and terrorism) and the ensuing *fiqh* interpretations on the definition, characteristic features and punishments of this crime, suicide bombing, and a round up of Muslim responses to global terrorism. Our attempt at a fresh interpretation of the Islamic law of *hirabah* is prompted by new developments in contemporary terrorism so much so that corresponding adjustments in the law of *hirabah* have become inevitable. The last segment of this presentation puts forward suggestions toward constructing a counter-violence strategy for Afghanistan.

### 1. Introduction

Muslim jurists have been assiduous in their efforts to protect the community from those within its midst who seek to bring it harm through violence and terror. They did so through developing the Qur'anic dispensations on *hirabah*. The law of *hirabah* has also not remained static due partly to a degree of flexibility in the Qur'anic expositions of this crime which allowed space for fresh interpretations. Their creative endeavours may have been negatively affected, however, by the so-called 'closure of the door of *ijtihad*' around the fifth/eleventh century. This is partly why a contemporary observant of terrorism will note a certain gap in the *fiqhi* discourse of *hirabah*, which is of a medieval origin for the most part. The narrative we develop in the following pages is self-evident on the need for further reconstruction and renewal toward a more relevant understanding of *hirabah*. This is made possible by a re-reading of the *fiqh* discourse in light of the Qur'anic conception of *hirabah* as we present below.

### 2. Religion, Violence and War

It should be made clear at the outset that the root causes of most present day conflicts have very little to do with religion even if they may appear to have religious implications. For instance, the Israeli-Arab conflict is about land, dispossession and the right of self-determination, even if some religious fanatics

are exploiting the issue for their own ends. The conflict in Kashmir is also about the right of self-determination; it is not a Hindu–Muslim conflict. This is also true of the Mindanao conflict in the Philippines, which is not about religion but about land and historical rights, unemployment and poverty. The Rohingya conflict in Myanmar, and those of the Muslims of Thailand in its three southern provinces are also not about religion. They are about citizenship rights and disempowerment issues. The Taliban-incited violence is for regime change and ouster of foreign troops from Afghanistan.<sup>2</sup> Historically, colonialist onslaught on Muslim communities and nations was a European phenomenon entirely motivated by conquest of land and resources. Then if we look at twentieth century, the most violent century in the whole of human history, the two world wars, the holocaust, the mass carnage that happened under Adolph Hitler, Joseph Stalin, Mao Tse Tung and Pol Pot were not caused by religion or religious fanaticism. None of the four names mentioned had any religious affiliation, and some had openly renounced religion.

Instances of conflict over the understanding of religious principles have arisen in early Islamic history (mainly in the second century *Hijrah*), some of which also involved extremist interpretations of the scripture. The *Qadariyyah* (advocates of free will or *qadar*), for instance, subscribed to the view that man is the sole creator of his own conduct. The *Jahmiyyah* (followers of Jahm bin Safwan) subscribed to total predestination; the *Murji'ah* (suspenders of judgment and upholders permanently of hope or *rijā*) on the other hand suspended passing any judgment on sinners, whereas the *Kharijites* (lit. outsides) held the extremist view that committing a major sin amounts to renunciation of Islam.<sup>3</sup>

Twenty first century, the era often characterised by ‘clash of civilizations’— to use Huntington’s phrase – brought religion and violence a step closer to one another, even though civilisation is not identical with religion but has a wider scope that is inclusive of custom and culture, lifestyle and values. It would still be incorrect to say that Islam and Christianity, or Islam with any other religion for that matter, are in conflict. On the contrary, Islam shares a great deal with other

2. Cf., Chandra Muzaffar, Exploring Religion in Our Time, Pulau Pinang: Penerbit Universiti Sains Malaysia 2011, 20.

3. The *Murji'ah* were divided into two groups, one suspended passing any judgment on differences that arose among the Companions referring them to God’s judgment, and the second group which held that God forgives all sins except disbelief (*kufr*) and that faith is not obliterated by sin. See for details Majid Fakhry, “Philosophy and Theology,” in John Esposito (ed.), The Oxford History of Islam (Oxford: Oxford University Press, 1999), 277ff. See also Mohammad Hashim Kamali, The Middle Path of Moderation in Islam: The Qur’anic Principle of *Wasatiyyah*, New York: Oxford University Press, 2015, 40f.

world religions such that it is difficult to say that Islam is in conflict with them. That said, issues pertaining to religious values and beliefs, such as the cartoons issue, exaggerated interpretations of jihad, and the scope of freedom of expression have come into the picture and have led to violence. The violence we have seen in the last two decades or so is also reactive for the most part to dictatorship and disempowerment from within, and to foreign invasion and humiliation, espoused often with collapse of government and rule of law. These are also not caused by religion.

Following the Paris Charlie Hebdo attacks in 2015, the U.S Senator John McCain urged in a statement, carried in *New York Times*, in which he called for a more aggressive American military strategy across the greater Middle East, Syria and Afghanistan. Fareed Zakaria followed this with the comment that military intervention had actually been the cause of a great deal of violence and in particular suicide bombings. Zakaria went on to quote Robert Pape and James Feldman who analysed all the more than 2,100 documented cases of suicide bombings from 1980 to 2009 and concluded that the vast majority of the perpetrators were acting in response to American military intervention in the Middle East rather than out of a religious or ideological motivation. The reasons vary from a sense of adventure to radicalism, but battling a foreign (Western) intervention is often high on the list. Also quoted by Zakaria was Andrew Bacevich, who pointed out that "before Syria, Washington had already launched interventions in thirteen countries in the Islamic world since 1980. Will one more really do the trick?"<sup>4</sup>

### **3. Hallmarks of Extremism**

Extremism (*tatarruf*) is the conceptual opposite of moderation (*tawassut, i'tidal*) and almost as extensive. A person is considered extremist if he is prone to radical exaggeration, habitually choosing one of two opposites. An extremist is irreconcilably antagonistic and excessive to the point of anarchy.<sup>5</sup> Fanatics have been defined as zealous who ruthlessly stand up for an idea or conviction, ready to sacrifice much, or even themselves, for it. Roger's Thesaurus associates fanatics and fanaticism with concepts like mad, insane, dogmatic, zealous, emotional, and bigot. Fanaticism is described as a psychopathic form of sectarian behaviour. Passionate commitment to a 'fixed idea' pursued without compromise and regardless of cost to oneself and others. Clearly, fanaticism and extremism are

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4. Fareed Zakaria, "US Intervention is not the Answer," Kuala Lumpur, New Strait Times, January 29, 2015, 15.

5. Roger's Thesaurus, Ch. 710 & 31.

related. Every fanatic is bound to be extremist as well, while not every extremist is likely to pursue his excessive views with fanatic passion.

Extremism violates the limits of moderation. These limits can often be identified by reference to authoritative sources and documents, laws and constitutions, religious scriptures, moral standards and the general mores and customs of society. But since world religions and philosophies, as well as the mores and customs of societies, and the values they uphold or deny, tend to differ widely, what may one consider to be extremist or moderate under one is also likely to vary accordingly under another code of values.

Extremism is usually self-evident and easily identifiable for the most part, but it may require further scrutiny in technical and contextualised situations. Killing another person is an extremist behaviour, yet if it is done in the context of self-defence that repels an overwhelming and instantaneous attack on one's life, it would not be considered extremist. This contextualised and relative aspect of extremism also becomes evident by reference to strong political currents and sets of circumstances with the results, for instance, that the freedom fighter of one becomes the extremist and terrorist of another and so forth. Extremism is usually definitive and deliberate, yet it can also be due to ignorance and error of judgment, especially in technical matters that require specialised know-how.<sup>6</sup>

Like moderation, extremism also applies to the entire spectrum of values, good and bad, positive and negative. One can be extremist in pursuit of one's rights and liberties, as in the case of freedom of expression when used so as to offend others - almost all the provocative cartoons of the Prophet of Islam by some Danish and French publishers illustrate this. One may have the right to just retaliation, even revenge under due process, but it can be taken to excess for what may be a minor provocation, as in the case of Israeli retaliatory attacks against Palestinian rocket fire. Extremism in the interpretation of ideas can be illustrated by the IS group's interpretation of the Islamic caliphate and so forth.

Extremism has not commanded a credible majority in Muslim societies. Extremists are usually small groups of people that advocate narrow and radical

6. For instance, with reference to the Air Asia Indonesia crash that killed all of its 162 passengers and crews on 28 December 2014, the black box data showed that in the final four minutes before the aircraft crashed into the sea, it had started climbing very steeply at the rate of over 1,800 meters per minute, which is far in excess of the 300 to 600 meters for a passenger aircraft — only a fighter jet can climb at that speed. This was identified as the main cause of the crash. This may be said to be extremist behaviour in that situation, which is somewhat specialised and the relevant information is such that the layman would normally not know. It may also have been due to ignorance or an error of judgment on the part of the pilot.

views and ideologies. They are not able to persuade and influence the majority through rational debate, which is why they usually take to the street and resort to violent methods to buttress their claims. The larger than real presence of extremism is felt due to views and claims clamorously expressed, and actions taken boldly beyond the ordinary, done in order to attract attention or merely to gain sympathy. Such daring, extremists and desperate tactics shock society, they are short-lived and ultimately self-defeating.<sup>7</sup>

- One of the first markers of extremism is fanatic advocacy of one view or opinion and ignoring others, even though the person knows of the existence of other views. This kind of extremist/fanatic is in a state of denial to all else. The extremist does not even stop at mere denial but goes on to accuse others of ignorance and transgression, especially those who do not follow his or her views.

Some Muslims draw frightening conclusions from their reading of a text or principle that lead to intolerance and aggression. This may be said of persons who draw extremist conclusions from the repeated Qur'anic principle addressing the Muslims to order what is good (*al-ma'ruf*) and to forbid what is rejected and bad (Aal-`Imran, 3:104, 110; al-Tawbah, Yusuf, 9:71). This principle, also known as *hisbah* is taken to extreme when individual Muslims start acting as both prosecutor and judge of their own interpretation, proceeding to correct injustice and social wrongs not only in their own family or school but feel empowered to do this worldwide regardless of their capabilities and consequences.

Matters can get even worse when individual Muslims begin to act as judges of the Muslimness of fellow believers, practicing *takfir* and charging others with infidelity and disbelief. All this in spite of the clear Qur'anic prohibition of denying the belief of someone who considers himself a believer or even one who greets you with peace (*salam*) (al-Nisa', 4:94).

As a victim of the circumstances then reigning in Egypt, Sayyid Qutb (executed 1966) in his firebrand *Ma'alim fi I-Tariq*—Milestones—fell prey to extremism when he proclaimed the wholesale exist of Egyptian society from Islam claiming it to have engrossed in *Jahiliyyah* (typically referring to pre-Islamic ignorance in Arabia).

7. Cf., Zainal Ujang, "High hopes on Farhan," (Ujang, currently a fellow at the Oxford Centre for Islamic Studies, U.K - wrote this comment in anticipation of a public lecture Farhan Nizami the Director of that Centre was due to deliver in Kuala Lumpur), Kuala Lumpur: New Straits Times, May 26, 2014, 17.

In a similar vein those who claim that the so-called Sword Verse (ayat al-sayf al-Tawbah, 9:5) had abrogated all other verses on justice and peace, patience and tolerance, restriction of warfare and fair treatment of one's fellow humans (some 140 verses in total) proclaiming war with infidels as the norm of shariah clearly engaged in extremism. The correct position is the opposite: application of the verse (9:5) is circumscribed and limited by these much larger number of verses in the Holy Book.<sup>8</sup>

- Extremists also tend to be certain of the correctness of their cause so much so that they focus clearly and project unequivocal positions. They have a black and white view of their purpose that help create certainty in an uncertain world. That also explains why they possess an ability to attract attention disproportionate to their numbers. By contrast, the moderates tend to be reflective, see nuances and rarely exhibit certainty of that kind. Extremists tend to triumph not because of their inherent strength but more often because of the weakness and hesitancy of moderates.
- The extremists turn a blind eye to the needs and wishes of others and show eagerness to impose harsh and taxing demands on them. They are prone to ignoring people's weaknesses and refuse to acknowledge that some people may be weak, in poor health and unprepared to comply with their demands.<sup>9</sup>
- Extremists tend to be power-hungry and deny others their due. The problem may not always be a lack of formula for a reasonable solution to a contentious issue, but refusal to accede to an obvious solution. This is typical of one party's preference for the winner-takes-all option, as in the case of Israel, that generates belligerence - the very reason also for Palestine to burn on a regular basis.<sup>10</sup>

Islamic history has known three main varieties of extremism: theological, political, and practical. Theological extremism often subscribed to particular beliefs that stood in conflict with the scripture and general consensus of Muslims. A reference is made in this connection to early theological movements such as the Qadariyyah, Jahmiyyah, Murji'ah, and Bitiniyyah that emerged in the first two centuries of Islam- as already mentioned.

8. See for details Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd revised ed., Cambridge, UK, 2003, ch. On Abrogation 2202-228 at 223.

9. Yusuf Al-Qaradawi, "Min al-Ghuluww wa'l-Inhila ila'l-Wasatiyyah wa'l-Tidal," in Mu'assasat Aal al-Bayt, Mustaqbal al-Islam fi'l-qarn al-hijri al-khamis al-'ashar, Amman: n.p., 1425/2005, 303-304.

10. Cf., New Straits Times Editorial page on 'Malaysia's strategy for peace,' Kuala Lumpur, November 28, 2012, 14.

Political extremism is marked by confrontation and challenge of the authority of a lawful government, such as the Kharijites (outsiders) who emerged in Iraq and boycotted the authority of the fourth Caliph 'Ali b. Abu Talib as well as allowing the killing of all Muslims except for their own followers, only because the caliph had exercised his own judgment in that matter of arbitration (*tahkim*) that was incited by the then Governor of Sham, Mu'awiyah.<sup>11</sup>

Lastly, practical extremism, which consists of extremist conduct, such as self-immolation, excessive fasting and all-night vigil, and acts that depart from sound human nature (*fitrah*), and valid precedent. One may add to these excessive dieting to keep slim, exceedingly disciplinarian practices with one's children and the like, which are injurious and harmful.<sup>12</sup>

Most of these would appear to be extremist but may or may not be said to have been involved in terrorism, even though the lines of distinction between them cannot always be clearly demarcated.

Terrorism also partakes in practical extremism, be it local, national or international, in peacetime or war, that consists mainly of acts of terror, use of explosives and suicide bombing that inflict destruction and kill innocent people. Such activities may even occur in the course of a legitimate war that may have been duly declared by the lawful leader. The basic position of such acts of terror is the same in shariah, whether its victims are Muslim or otherwise, and whether it is against a weak, or a more powerful party or state.

Those who commit cowardly murder behind a mask of "Islam" and imagine they are taking revenge and waging jihad are in fact, in the eyes of the true Islam, murderers. It is despicable to hunt down defenceless people and shoot them in a vicious act of terror simply because they think wrongly, or insult or are hostile to Islam.<sup>13</sup>

Protection of life (*hifz al-nafs*), of all human life – is one of the higher goals and purposes (*maqasid*) of shariah. Human life must be safeguarded as a matter of priority. "One who saves the life of another," says the Qur'an, "it would be as if he saves the life of the whole of humankind." (al-Ma'idah, 5:35). The text also declares in the same verse: "And one who kills a human being without the latter being guilty of murder or corruption in the land, it would be as if he has killed

11. See for details, Kamali, The Middle Path of Moderation, 39.

12. Ibid., 40.

13. Cf., Harun Yahya, "Getting Islam's peaceful ethos across amidst terror," Kuala Lumpur, New Straits Times, January 16, 2015, 17.

the whole of humankind.” Elsewhere the Qur'an enjoins: “Slay not the life which God has made sacrosanct unless it be in the cause of justice.” (al-Isra', 17:33).

Al-Bukhari and Muslim have recorded the following hadith from the Prophet: “One who unsheathes his sword against us is not one of us.”<sup>14</sup>

In another hadith in the same chapter and source, but which is inclusive of all weapons, it is provided:

“One who raises arms against us ceases to be one of us;”<sup>15</sup>

In yet another hadith, it is provided: “All that belongs to a Muslim is forbidden to other Muslims; his blood, his property and his honour.”<sup>16</sup>

Terrorising innocent people that may or may not lead to loss of life and limb constitutes the capital crime of *hirabah*, which carries a four-fold punishment in the Qur'an - as we presently elaborate.

#### 4. Islam and Peace

One may start with posing a question: is Islam a religion of peace? The answer to this question is in the affirmative, for the following reasons:

In the Muslim historical narrative, Islam is understood to have been a progressive, tolerant, and civilising force with binding rules constraining injustice and wanton violence. Islam's self-identity as a “religion of peace” is based on the premise that Islam challenges root causes of human violence. Islamic scripture provides varied readings of warrior and pacifist perspectives, yet its numerous dispensations lend support to the construction of a comprehensive vision of peace.

The Qur'an designates Muslims as a community of the middle path “*ummatan wasatan*,” which together with its parallel concept of ‘mutual recognition’ (*tā aruf*) for friendship with other communities and nations visualise Muslims as the agents and facilitators of peace with significant ramifications for Muslim-non-Muslim relations. One also finds an elaborate articulation of methods for peaceful resolution of conflicts, such as peace through counselling (*nasiyah*), peace through conciliation (*sulh, islah*), peace through arbitration (*tahkim*), truce to facilitate negotiation (*al-hudnah*), and peace through grant of amnesty and

14. This second hadith is narrated on the authority of Salamah ibn al-Akwa' whereas the first is narrated on the authority of 'Abd Allah ibn 'Umar. Both are said to be reliable.

15. Muslim, Mukhtasar Sahih Muslim, ed. Muhammad Nasir al-Din al-Albani, Kitab al-Imarah, bab man hamala 'alayna al-silaha, hadith 1235.

16. Muhyiddin al-Nawawi, Riyad al-Salihin, 2nd ed., by Muhammad Nasir al-Din al-Albani, Beirut: Dar al-Maktab al-Islami, 1418/1998, hadith 1527.

forgiveness (*al-`afwa*).

Past history and contemporary evidence show that Islam has not been witness to any more violence than one finds in other civilisations, particularly that of the West, as manifested in colonialism, World Wars I & II, occupation and conflict in Iraq, Afghanistan, Libya, Syria and elsewhere.

Islam advocates values such as equality, love of the Creator, subjugation of passion, a dignified resistance to provocation (*hilm*), and accountability (*muhasabah*) for all one's actions. These values are supported by innumerable verses in the Qur'an. All the Five Pillars and articles of the faith, such as submission to God in prayer, giving charity, fasting, the pilgrimage of the hajj – are humanitarian and peaceful. Islam is also a strong advocate of justice and benevolence (*adl, ihsan*), wisdom (*hikmah*), and is inherently moral. It is emphatic on social justice, abolition of all forms of racism and discrimination.

Islam proposes several principles that support nonviolent resistance to provocations, such as patience (*sabr*), persuasive engagement and dialogue (*hiwar*), consultation (*shura*), withdrawal from situations of injustice. It also recommends emigration and exit (*hijrah*) from war and oppression, readiness to seize all opportunity for peace-making, as well as designating special prayers to end conflict and incitement to sedition.

Patience and perseverance are important instruments of self-control. The Prophet Muhammad has said that “power resides not in being able to strike another, but in being able to keep the self under control when anger arises.” Patience (*sabr*) is most praiseworthy when it comes from those who are able to take revenge but who choose to exercise restraint.

In the Qur'an God refers to Himself as al-Salam, or Peace, so that one could say, as a Muslim, that God is Peace and our yearning for peace is a manifestation of our yearning for God. The highest goal of Islam is to lead the soul to the 'Abode of Peace" by guiding the faithful to lead a virtuous life and to establish inner peace and harmony. God says in the Qur'an, “He it is who made the divine peace (*al-tamā ninah*) to descend in the hearts of believers” (al-Fath, 48:4), and also that “God guides him who seeks His good pleasure unto the paths of peace.” (al-Ma'idah, 5:18). The phrase “peace be unto you” is the Muslim greeting taught by the Prophet as the greeting of the people of Paradise. “In Paradise there is no idle chatter but only the invocation of peace.”(Q Maryam, 19:62) Whether one speaks of *sakinah*, or the Hebrew word *shekinah*, or for that matter *pacem* or

*shanti* (Latin and Hindi respectively), the reality emphasised by Islam remains that the source of peace is God Who is Himself Peace, hence peace becomes one of the highest goals and purposes of Islam and an integral part also of Islamic theology.<sup>17</sup>

Islam's vision of the human life on earth is underlined by harmony and peace with other creatures and inhabitants of this planet. Peace (*salam*) in Islam is not merely an absence of war; it is elimination of the grounds of violence and conflict, of waste, oppression and corruption (*fasad*). Peace, not war nor violence, is God's true purpose of human life and vicegerency (*khilafah*) in the earth.

While Islam stands for peace, it must be added, that it does not subscribe to pacifism. War is permitted in self-defence, defence of one's homeland, and repelling of manifest aggression. Absolute non-violence cannot be envisaged by a religion that combats injustice. Limited use of force is therefore permitted under certain conditions and rules that contain and control violence.

While Islam upholds the centrality of justice, a Muslim's duty is to strive for peace and justice together and to do so through peaceful means unless it becomes absolutely necessary to defend one's rights and one's homeland through the use of force.<sup>18</sup>

The balance of this article is devoted to a detailed enquiry into the Qur'anic concept of *hirabah*.

## 5. Hirabah (Banditry/Terrorism)

Literally meaning to fight or wage war, *hirabah* in Islamic law denotes highway robbery (*qat al-tariq*) and terrorism or indeed any act involving the use or threat of force that terrorise and intimidate people from passing through the streets on their way to places of business, homes, shops etc. It also covers instances of gross corruption such as poisoning of drinking water, food and air as well as criminal damage to the peace, security and economy of the state. *Hirabah* is a capital offence by general consensus of Muslim jurists of all the leading schools of law, both Sunni and Shia.<sup>19</sup> *Hirabah* is the nearest equivalent in Islamic criminal law to contemporary terrorism, notwithstanding some differences between them, as

17. Cf., Seyyed Hossein Nasr, *The Heart of Islam: Enduring Values for Humanity*, New York: HarperCollins Publishers, 2004, 218–222.

18. *Ibid.*, 272.

19. Muhammad 'Ata al-Sid Sidahmad, *Islamic Criminal Law, the Hudud*, Kuala Lumpur: A.S. Nordin, 1995, 62; see also Mohammad Shabbir, *Outlines of Criminal Law and Justice in Islam*, Kuala Lumpur: International Law Book Services, c. 2003, 173.

explained below.

It is difficult, however, to find a comprehensive definition for terrorism (and *hirabah*), as many years of fruitless attempts in the United Nations proved that it cannot be defined to everyone's satisfaction. The one factor that underlines all terrorism is causing fear, terror, and insecurity in society through the indiscriminate use of violence, which could take many forms, often for political ends. This characterisation of terrorism is also true of *hirabah*, and covers both state terrorism, and non-state violence against a particular group or government.

Sherman Jackson compares *hirabah* with 'domestic terrorism' in the United States and finds similarities between them. According to a definition attributed to the FBI, terrorism is "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political goals."<sup>20</sup> Jackson adds that a principal ingredient of this definition is clearly its focus on the inducement or spread of fear, which is also how Muslim jurists have described the *hirabah*. Another aspect in common between *hirabah* and 'domestic terrorism' is a certain lack of personal relationship between the parties in the sense that the victim and killer may not even know one another. Further details on the definition and salient features of *hirabah* are provided under our *fiqhi* discourse on *hirabah* in a separate section below. We now turn to a review of the scriptural evidence on *hirabah*.

## 6. Hirabah in the Qur'an and Sunnah

It is due to the extreme gravity of *hirabah* that the Qur'an calls its perpetrators, those who spread terror and insecurity among people, as ones who wage war on God and His Messenger. *Hirabah* in the Qur'an is envisaged as a composite crime that can subsume banditry, high way robbery, terrorism, theft, and murder. It is a prescribed/*hudud* crime consisting usually, but not necessarily, of collective or group activity committed by more than one person, but also that everyone acts on behalf of the group; if the crime is committed by one of the bandits, all of them are liable for the consequences. The principal Qur'anic verse on *hirabah* is as follows:

The only punishment of those who wage war on God and His Messenger and strive with might and main for mischief-making through the land (*fasad fi l-ard*) is execution or crucifixion, or mutilation of their hands and feet on alternate sides, or banishment from the land. Such will be their disgrace

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20. Sherman A Jackson, "Domestic Terrorism in the Islamic Legal Tradition," *The Muslim World* 91, nos. 3 & 4 (2001) 293–310, at 295.

in this world, and in the Hereafter theirs' will be a heavy punishment. Save those who repent before you overpower them. In that case, know that God is Forgiving, Most Merciful. (al-Mâ'idah, 5:33-34)

Qur'an commentators have identified the incident of 'Uraniyyin (from the tribe of 'Urainah) as the occasion of revelation of this verse: a group of people came to Madinah but found its climate unsuitable and they became unwell. They came to the Prophet and informed him of their condition. The Prophet advised them to go where the camels of charity were, drink their milk and urine rest. They did so and recovered well. But then they declared themselves apostates, killed the shepherd and drove off with the camels. Upon hearing this, the Prophet ordered some people to catch up with them. They were chased, caught and brought to the Prophet who ordered that their hands and feet be mutilated and were then thrown on stony ground until they died.<sup>21</sup>

A fuller discussion of the Qur'anic verse of *hirabah* and its wider implications for global terrorism will be presently attempted. At this juncture, we review the scholastic positions of the various schools of Islamic law on the definition and other characteristic features of *hirabah*.

## 7. A Fiqh Discourse on Hirabah

In their attempt to define *hirabah*, Muslim scholars draw a distinction between *hirabah* and rebellion (*baghy*) and then underline the characteristic features of *hirabah*. They also reflect on the punishment of *hirabah* and the role of repentance and its consequences for its perpetrators.

The Juristic discourse on *hirabah* is focused, however, on highlighting the main features of this offence rather than advancing a comprehensive theoretical framework for it. The *fiqh* discourse as such be regarded as a commentary on the principal Qur'anic verse on *hirabah* as earlier reviewed, and application also of the four-fold Qur'anic punishment for it.

*Hirabah* resembles mutiny/rebellion (*baghy*) but differs with it in that mutiny opposes a legitimate authority or government on the basis of a plausible interpretation (*tâ' wi'l*), while the perpetrator of *hirabah* does so without any such pretence.<sup>22</sup> *Hirabah* also differs from theft in that theft means taking another's

21. Abu al-Husayn Muslim bin al-Hajjaj al-Nishaburi, *Sahih Muslim*, Beirut: Dar al-Kutub al-'ilmiyah: Kitab al-Qasamah wa al-Muharibin wa al-Qisas wa al-Diyat. Bab hukm al-muharibin wa'l-murtaddin, hadith 1671, 2006, 659.

22. Wahbah al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuh*, Beirut: Dar al-Fikr, 1417/1996, 6:128.

property surreptitiously, whereas in *hirabah* property is taken openly by force. We review some of the *fiqh* definitions on *hirabah* but then in a later section raise a question whether a more relevant conception of it can be extracted from the Qur'an itself.

The Hanafi jurist, al-Kasani (d. 587/1191) defined *hirabah*, or *qaṭ al-tariq*, as "attacks upon pedestrians for the purpose of taking their property by force in such a way that people are rendered unable to pass freely through the streets. The attacker/s may be a group or a single person that possess overwhelming power to obstruct the public passage, and may be using weapons or weapon- substitutes such as sticks and stones."<sup>23</sup>

The Maliki school defined the agent of *hirabah* as "anyone who brandishes weapons in order obstruct free passage in the streets and renders it unsafe to travel by killing people, taking their money, and spreading corruption in the land. The agent of *hirabah/muharib* may be a Muslim or a non-Muslim, freeman or slave, and it may in city or countryside, by an individual or group - [all this] simply because the Qur'an has not specified the perpetrator in any such ways."<sup>24</sup>

The Shafi'i school identifies the agents of *hirabah* in similar terms but stresses that the perpetrator must be a competent person (*mukallaf*), Muslim, or a non-Muslim citizen/dhimmi or apostate who is bound by the injunctions of Islam and has overwhelming power to subjugate others, take their money and property, and it takes place away from a main city.<sup>25</sup>

The Shia Imamiyyah identifies the agent of *hirabah* as "anyone who brandishes weapons in order to terrorise passengers during night or day, on land or sea, even if the perpetrator is not a known criminal."<sup>26</sup> The crime is proven by a valid confession even if it is not repeated, or by the testimony of two just witnesses - which may include some of the suspects giving testimony against the others. This is a prescribed crime and carries a four-fold punishment as the Qur'an has specified but the head of state/Imam is entitled to select which.<sup>27</sup>

23. 'Alauddin al-Kasani, *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*, Beirut: Dar al-Kutub al-'Ilmiyyah, 1997/1418, Vol. 7, 7.

24. Sayyid al-Sabiq, *Fiqh al-Sunnah*, 21st printing, Dar al-Fath li'l-'Alam al-'Arabi, 1999, 2/298; Ibn 'Abd al-Barr (d.1070/463), *al-Kafi fi Fiqh al-Madinah al-Maliki*, Beirut: Dar al-Kitab al-'Ilmiyyah, 1418/1997, 582-83.

25. Muhammad al-Shabini al-Khatib, *Mughni al-Muhtaj ila-Ma'rifat Ma'ani al-Minhaj*, Cairo: Mustafa al-Babi al-Halabi, 1352/1933, 4/180.

26. Muhaqqiq Hilli, *Mokhtasar-e Nafi'*, tr. From Arabic into Persian by Muhammad Taqi Daneshpazhoh, Tehran: Bongah-e Tarjoma wa Nashr-e Kitab, 1343/1964, 365.

27. Ibid. Other details over the enforcement of punishment, including crucifixion, and repentance etc, do not differ significantly from the Sunni expositions of the same.

The Zahiri school defines the *muharib*/terrorist as one/s who insolently frightens the street passengers and spreads corruption through acts of terror in city or countryside, individually or collectively, exhibiting overwhelming power with or without the use of weapons.<sup>28</sup> This definition seems to be broad enough to encapsulate many of the points of the other definitions.

Based on the foregoing, Muslim jurists have held the material elements of *hirabah* to be the show of weapons by assailants ready to terrorise people and block their normal movements on public passages, killing, looting and taking of people's property forcefully especially in areas outside the main cities. Hence if one or two persons commit raids on a large caravan, plunder its property and run, they would not be committing *hirabah*, but if they so act against a small caravan manned by a few persons, they would be considered guilty of *hirabah*. There is some disagreement on whether *hirabah* can also be committed in urban areas. For Imam Malik, within the city or outside, by one person or a group of persons, be it male or female, Muslim or non-Muslim makes no difference. This is because the Qur'anic verse on *hirabah* is conveyed in general terms without any specification or exception - hence it remains general and inclusive. The Maliki school also include under *hirabah* attacks on the honour of people, their women and families, with the show of superior force. Thus if armed attacker/s enter someone's private dwelling to dishonor him and his family, be it within or outside the city area, commits *hirabah*. The Hanafi school maintains that *hirabah* takes place away from the main cities, as within the city areas the public and the authorities are likely come to the aid of the victim. Imam Shafi'i has held that an attack in the city can constitute *hirabah* if the government/Sultan is weak and lacks effective power, and the attacker is also capable of striking fear on the part of the victim/s. The Hanbali understanding of *hirabah* resembles that of the Shafi'i's in that it may be committed in cities or outside cities and the perpetrator/s may be armed with any kind of weapon, or that which may resemble a weapon, provided it can create fear and terrorise. The Shia also regard possession of weapons of any description as a requirement of *hirabah*, and the offence may take place on land or sea, day or night, by one or more persons, provided that the perpetrator/s possess the capacity to terrorise their victim/s. The majority (*jumhur*) view on this is that committing *hirabah* in cities and urban centres is an aggravating factor that renders the crime even more dangerous.<sup>29</sup>

28. Ibn Hazam al-Zahiri, al-Muhalla, Beirut: Dar al-Afaq, Vol. 11, 306.

29. Al-Mawsu'ah al-Fiqhiyyah (Kuwait), "Hirabah," Vol. 17, 157; ibn Qudamah, al-Mughni, Vol. 8, 287; Muntasir

It is essential that the assailants are superior in strength, they carry arms such that their victim/s cannot overpower them nor can they escape. *Hirabah* is also committed openly (*bi l-mujaharah*) and it differs in this respect with theft, which consists of taking another's property surreptitiously. Hence if a group of people act surreptitiously and commit theft, they would fail to fulfil the requirement of *mujaharah*. Aggravating circumstances consist of taking the property of the victim and/or killing them. As is clearly stipulated in the Qur'anic verse of *hirabah*, repentance by the terrorists before capture and arrest exonerates them from the capital punishment but does not necessarily free them from criminal responsibility for other crimes committed during the attack, such as homicide, injury and armed robbery, which combine both the public and private rights (Haqq Allah, and Haqq al-Adami). *Hirabah* is proven by the normal means of evidence, including confession and testimony by two impartial witnesses, even if the confession is made only once and not repeated.<sup>30</sup>

The Hanafis are in the minority to stipulate that the bandits must be men and that women are not given the prescribed punishment if they perpetrate the crime, as they argue that the show of power and ability to vanquish is only suited to men. If women join hands with men in banditry, according to Imam Abu Hanifah and his disciple al-Shaybani, they are not subject to the prescribed punishment. Abu Yusuf, the Imam's other disciple, has held, however, that if women directly commit killing and plunder, they are liable to the capital punishment together with men. The Maliki, Shafi'i, Hanbali and Shia schools do not regard male gender as a prerequisite of *hirabah* in the first place. Thus if women commit banditry in groups that terrorise people and obstruct their free movement, they are liable to the prescribed punishment in the same way as men.<sup>31</sup>

Whether obstructing free movement of people in the streets, attacking pedestrians and taking their money, as many *fiqh* scholars have highlighted in their discussions of *hirabah*, play the same role in contemporary terrorism gives rise to questions, as we elaborate below.<sup>32</sup> Furthermore, Imams Malik (d. 179/795) and Abu Hanifah's (d. 150/767) stipulation that *hirabah* is only committed in

Saeed Hamudah, al-Irhab: Dirasah Fiqhiyyah fi'l-Tashri' al-Jina'i al-Islami, Alexandria(Egypt): Dar al-Jami'ah al-Jadidah li'l-Nashr, 2008, 74; Mohaqiqi Hilli, Mokhtasar-e Nafi', 365.

30. Al-Qurtubi, Bidayat al-Mujtahid, II, 340-41; al-Mawsu'ah al-Fiqhiyyah (Kuwait), "Hirabah," 17, 153 & 158; 'Awdah, al-Tashri' al-Jina'i al-Islami, II, 657; Mohaqiqi hilli, Mokhtasar-e Nafi', 365.

31. Al-Kasani, Bada'i' al-Sana'i', Vol. 7, 91; al-Mawsu'ah al-Fiqhiyyah (Kuwait), Vol. 17, 156-57.

32. Ibn Qudamah (d. 620/1223) defined hirabah as "the act of openly holding people up in the desert with weapons in order to take their money." (al-Mughni, Beirut: Dar al-Kutub al-'Ilmiyyah, n.d., vol. 10:315).

unpopulated areas would also seem to be tangential to contemporary terrorism.<sup>33</sup> For instance, when a misguided Muslim youth under heavy indoctrination of IS or Taliban blows himself in order to kill and destroy the largest number – he is most likely to choose densely-populated areas and crowds as their principal targets in city areas. He is also not likely to be after taking money but to “gain direct passage to Paradise.” Nor are their nefarious acts of terror confined to unpopulated places: quite the opposite, one might say. Even the *fiqh* provision that *hirabah* is typically committed openly and defiantly of the authorities, and where the culprits exhibit overwhelming power to subjugate their victims may no longer be as relevant to contemporary terrorism either. For the latter is often committed through hit- and- run tactics wherein the terrorists usually do not declare themselves openly – especially in the case of suicide bombing. Thus it becomes manifest that many of the *fiqh* underpinnings of *hirabah* we have reviewed call for fresh examination and reconstruction in ways that could make the laws of *hirabah* more relevant to contemporary terrorism.

What remains most relevant of the *fiqh* specifications of *hirabah* and its contemporary manifestations is perhaps the spreading of fear (*ikhafah, irhab*), and the victim/s’ helplessness (*adam al-ghawth*) against it. The helplessness aspect is described so as to mean that no effective security measures can be taken to prevent it (*ta’adhdhur al-ihtiraz*). These are often seen as the constituent elements, indeed the *sine qua non* of *hirabah*, as can also be said of contemporary terrorism. Muhammad Rashid Rida (d. 1935) confirmed this when he wrote that unlike the other prescribed *hudud* crimes in which the victim may be able to defend himself, in *hirabah* he is helpless as he is overwhelmed by a superior force. Similarly in other common crimes, the criminal can be subjugated by the authorities but that this is also not certain in the case of *hirabah* as it often involves challenging the authority of the government itself.<sup>34</sup>

## 8. Punishment of Hirabah

For the prescribed punishment to be carried out, the perpetrator of *hirabah* must be adult and competent. There is disagreement, however, when a child or an insane person participates in the crime with the rest of the group. The majority (*jumhur*) have held that the prescribed punishment applies to them all, for the doubt attaches to one member of the group, and that should not come in the way

33. Al-Mughni, Vol. 10:303.

34. Muhammad Rashid Rida, *Tafsir al-Manar*, Vol. 6, 94.

of enforcing the prescribed punishment, adding that the case here may be similar to a situation where a group of persons commit adultery with one woman; all of them are punished. The Hanafi school differs and regards the participation of a child in *hirabah* as an element of doubt (*shubha*) that suspends the prescribed punishment on all of them, although they may be still be punished under *ta'zir*. Abu Hanifah's disciple Abu Yusuf, has held, and rightly so, that only the competent persons among the group who carried the actual crime of *hirabah* are liable to the prescribed punishment, and the child is not.<sup>35</sup>

The four-fold punishment that the Qur'an has prescribed for *hirabah* envisage death, crucifixion, cross-amputation of hand and foot, and banishment. There is disagreement, however, over the choice of these punishments and their combinations. While the majority of Sunni schools and the Shia Imamiyyah authorise the ruler to select one or more of these punishments in proportion to the severity of the crime, Imam Malik has held that if the assailants have killed their victim, the imam/judge has no choice but to order the capital punishment. The only choice he would have is whether or not to combine crucifixion with the capital punishment of death. If property of whatever value has been taken, the offender/s must be punished with cross-amputation, and if there has been a hold-up and looting, the offender must be sentenced to mutilation and or banishment. The other Sunni schools, and one view of the Shia Imamiyyah attributed to Shaykh Tusi, maintain that the Qur'an has provided a sequence and correlation between the crime and its punishment which the authorities should observe: the offender/s is not killed if he has not committed homicide, and not mutilated nor banished unless property is taken. Finally, if the assailant has both plundered and killed, his punishment is both death and crucifixion. A group of Muslim jurists including the Shia Imamiyyah have held, on the other hand, that the Imam has the discretion absolutely to select and determine the appropriate punishment or combination thereof regardless of whether or not homicide, hold-up and/or robbery are committed. There is also disagreement on whether crucifixion should be before or after execution, on the analysis that crucifixion can be regarded a punishment, as per Imams Abu Hanifah, Malik and the Shia Imamiyyah, only when the criminal is still alive, not after he has died. Imams Shafi'i and Ibn Hanbal have held that the Qur'anic text mentions killing first, then crucifixion, and that should be the order. This is perhaps a preferable view on the assumption that crucifixion is for public display and not necessarily to make the execution more painful. It

35. *Mawsu'ah Fiqhiyyah* (Kuwait) "Hirabah," Vol. 17, 156.

is generally held, and this is also the Shi'i position, that crucifixion is for three days only. There is general consensus that if the offender/s has neither killed nor looted, he should be imprisoned for such a period as the court deems necessary. The Hanafis and some other jurists have, furthermore, equated banishment with imprisonment on the analysis that banishment to another place will place the safety of those other people at risk, and that the purpose of banishment is best served by imprisonment.<sup>36</sup> If the bandits have taken property, the property in question must qualify the attributes of stolen goods, namely that it has market value, reaches the minimum quorum, and that it is also guarded property in which the owner has no share or ownership claim, although it may, unlike theft, have been taken openly even with the knowledge of its owner.<sup>37</sup>

A question has arisen as to whether the prescribed punishment of *hirabah* combines with liability for financial compensation and bodily injuries even after the bandits have been punished. Muslim jurists have differed in their responses. The basic principle that comes into the picture here, according to the Hanafis at least, is that prescribed punishment does not combine with liability for loss. But in their responses, most Sunni and Shia jurists have tended to separate the prescribed punishment of *hirabah* from these additional combinations. The majority across the board is of the view that if the bandits have plundered property, they are liable to return it, if it still exists, or compensate for it if it does not. Most jurists have held that only those who have actually taken the property are individually liable for compensation, as liability for compensation is not a part of the prescribed penalty *per se* and does not therefore affect one who is not directly involved. The Malikis have held, on the other hand, that each of the bandits acts on behalf of the group and they are all liable for compensation. As for bodily injuries, if the injured person has recovered, there is no retaliation (*qisas*), otherwise he or she may either retaliate, if that is possible, or grant forgiveness in exchange for financial compensation. However, if the injury has worsened and leads to death, then retaliation becomes due. The Zahiri school has held, on the other hand, that the crime of *hirabah* is committed when there is bodily injury, even if no killing or plunder is involved and the bandits are therefore liable to execution.<sup>38</sup>

The majority of Sunni schools and the Shia Imamiyyah maintain that killing by

36. Al-Qurtubi, *Bidayah*, II, 341; Awdah, *al-Tashri'*, II, 658–59.

37. 'Awdah, *al-Tashri'*, Vol. 2, 645; Mohaqiq Hilli, *Mokhtasar-e Nafi'*, 365. Hilli further mentions that normal burial ceremony should be accorded to the deceased person after three days of crucifixion.

38. Al-Kasani, *Bada'i'*, Vol. 7, 95; *Mawsu'ah Fiqhiyyah*, Vol. 17, 162; 'Awdah, *al-Tashri'* *al-Jina'i*, Vol. 2, 658–59.

the bandits need no proof of intention and that the act of killing itself makes them liable to the prescribed punishment. It makes no difference whether the homicide so committed is intentional, quasi-intentional, or erroneous. It is also immaterial as to what kind of weapons have the bandits used to commit the crime. The Shafi'i school maintains, however, that proof of intention to kill is required for imposition of the prescribed punishment, but that the terroristic features of the crime of *hirabah* need no proof of intention as that is known by the show of force and striking of fear among people.<sup>39</sup>

Fresh reflection on the conditions and component elements of *hirabah* that Muslim jurists have stipulated in their deliberations suggests that these are instructive, yet some changes are required if one were to legislate on terrorism today. The view that allows the ruling authorities to determine the attributes or component elements of the crime merits attention as it not only bears harmony with the Qur'anic dispensations on the subject, but can also accommodate the change of conditions in our time. As already mentioned, terrorists nowadays often use remote control devices connected to explosives that may or may not involve actual presence of the perpetrator/s in the crime scene. The terrorist/s may also use a minor person, as they often do, as suicide bombers. Certain other aspects of *hirabah* may also call for further reflection and review - as already discussed. The Qur'an determines the crime of *hirabah* by its principal consequences: terror, killing, injury and plunder, without specifying any details. It also lays down the essential elements of the crime, which is perhaps sufficient for the ruler and legislative authorities today to determine the component elements of *hirabah*/terrorism in the light of prevailing conditions.

## 9. Repentance in Hirabah

As for the attributes of repentance that suspends the capital punishment and its consequences, Muslim jurists have held different views. Repentance in this offence means expression of regret and remorse for committing the offence and determination not to commit it in the future. The Qur'an allows repentance only if it precedes actual subjugation of the offender by the authorities and not afterwards. It is suggested that even if the assailants surrender, they must still show that they have actually mended their ways, disarmed and abandoned what they were doing, and only then can the prescribed punishment be suspended. *Fiqh* scholars have also differed as to the consequence of repentance: does it suspend both God's

39. Ibn Qudamah, al-Mughni, Vol. 10, 309; 'Awdah, al-Tashri' al-Jina'i, II, 657.

Rights and the Right of Humans, and if so, which takes precedence. In response it is stated, in the Maliki opinion, that repentance before arrest only suspends the capital punishment of *hirabah* and nothing else. All other claims in both categories remain unaffected. This means that the authorities may impose alternative punishments, and the crime victim/s also remain entitled to claim their rights in whatever way they may have been affected, unless they grant forgiveness. The Shafi'i school maintains that the Right of Man takes priority: if homicide or bodily injury has been committed during a hold-up, it must be tried first according to the relevant rules. This view has the support of other schools too in that the assailant is not exonerated for homicide and bodily injury due to repentance or surrender. If, however, the victims' relative/s grant forgiveness or accept blood-money, and the authorities also grant pardon, action may be suspended against the terrorists. An alternative view has it that repentance suspends both of the said categories of rights except for any property that may still exist, which must be returned. It would appear that the Imam and/or judicial authorities have residual jurisdiction in regard to determining the precise consequences of a genuine repentance and surrender.<sup>40</sup>

## 10. Terrorism Then and Now: A Survey of Contemporary Opinion and Research

Murad Hofmann surveys salient instances of terrorism in recent centuries and concludes that terrorism has largely remained inconclusive and failed to achieve its desired purposes. Terrorism is not a new phenomenon, of course, as it has occurred in all periods of history by individuals and groups. Instances of targeted killing are also known in Muslim history as during the Middle ages when Ismaili "Assassins" based in al-Alamut assassinated Muslim VIPs like Nizam al-Mulk. The 19<sup>th</sup> century saw acts of terrorism practiced, for example, by Russian anarchists, and 20<sup>th</sup> century saw large scale Bolshevik State terror, or terrorism exercised by nationalist movements like the IRA, the Zionist Stern Gang, and Armenian Nationalists. They all considered terrorism as a cost-efficient and effective form of warfare for the poor, putting public pressure on governments to change their policies. In most cases, their terrorism was, however, counter-productive. "Virtually nowhere has terrorism produced the desired result. Rather in most cases, it has stiffened resistance and caused untold suffering to friends

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40. Al-Qurtubi, *Bidayat al-Mujtahid*, II, 342–3; Peters, *Crime and Punishment in Islamic Law*, 59. See also 'Awdah, *al-Tashri' al-Jina'i*, II, 658–661.

and foes alike.”<sup>41</sup>

In a book chapter entitled “The Revolt of Islam 1700 to 1993,” Nikkie Kiddie, an American Professor of Middle Eastern history, explains the rise of militancy among Muslims. She notes that with the curious exception of Wahhabism, militant jihad movement in the modern era began and grew mostly as a response to Western colonialism. The earliest ones in the eighteenth century in Sumatera and West Africa emerged in the face of “disruptive economic change influenced by the West.” In the nineteenth century, broader waves of jihad movements cropped up in Algeria, Sudan, the Caucasus, and Libya as “a direct response to French, British, Russian and Italian colonial conquest.”<sup>42</sup>

At a press interview bearing the title “There is nothing in Islam that is more violent than Christianity,” Karen Armstrong replied to questions put to her by Lisette Thooft about Islam and terrorism.<sup>43</sup> Replying to a question as to the cause of Muslim terrorism, Armstrong mentioned “A more violent way” the West has taken toward Muslims. The West imposed their own concepts of modernity, democracy and secularism on the Muslim world through colonial subjugation. “There was no self-determination. In Egypt there were 17 general elections between 1922 and 1952 - all won by the Wafd Party, which was only allowed by the British to rule. Democracy was a bad joke.” Secularism was introduced by these army officers with great violence. The Muslim clergy had their stipends confiscated, they were shot down, and were tortured to death. The Shah shot a hundred unarmed demonstrators in a holy shrine because they didn’t want to wear western clothes. And we in the West have consistently supported rulers like Saddam Hussein who denied their people any freedom of expression. All this has helped to push Muslims into violence. “When people are attacked, they invariably become extreme.” But only a tiny proportion of them actually agree with terrorism: 93% answered ‘no’ to the question in the Gallup poll whether the 9/11 attacks were justified. And the reasons they gave were entirely religious. The seven percent who said ‘yes’ - the reasons they gave were entirely political.

In response to another question whether the terrorists are traumatised, Armstrong

41. Murad Wilfred Hofmann, “Fanaticism, Extremism and Terrorism and Islam’s Position Towards these Phenomena,” conference paper presented at the International Conference in Amman on “True Islam and its role in Modern Society,” organised by the Aal al-Bayt Institute for Islamic Thought, 4–6 July 2005, 2.

42. Nikkie R. Kiddie, “The Revolt of Islam from 1700 to 1993,” in ed. Bryan S. Turner, *Islam: Critical concepts in Sociology*, Oxford: Routledge, 2003, vol. 2, 89.

43. <https://www.nieuwwij.nl/english/karen-armstrong-nothing-islam-violent-christianity/> (Accessed on 18 March 2015)

said that “some of them are, and some of them are plain wicked. Osama bin Laden was a plain criminal. But there is also great fear and despair among them. There have been surveys done by forensic psychiaters who interviewed people convicted of terrorism since 9/11. They interviewed hundreds of people in Guantanamo and other prisons. And one forensic psychiatrist, who is also an officer of the CIA, concluded that Islam had nothing to do with it. The problem was rather ignorance of Islam. Had they had a proper Muslim education they wouldn’t be doing this. Only 20% of them has had a regular Muslim upbringing. The rest are either new converts - like the gunmen who attacked the Canadian Parliament; or non-observant, which means they don’t go to the mosque - like the bombers in the Boston marathon. Similarly, the two young men, both 22, who before leaving Britain to join the jihad in Syria, ordered from Amazon copies of *Islam for Dummies*, and *The Koran for Dummies*. Furthermore, tedium is something that we have to take in our societies very seriously. Misery and a sense of no hope. Misery, oppression and injustice – great injustice and we are still unjust. Look at the Founding Fathers of the United States, who said that all men are created equal: they had no problem owning African slaves. “Liberty was only for Europeans. And it still is like that, because of the greed for oil. We give huge support to the Saudis, who give their people no human rights.”

American political scientist Steven Fish in his book entitled *Are Muslims Distinctive?* finds no evidence in countries with a larger share of Muslims experience disproportionate acts of mass political violence. He notes, in fact, as Saleena Saleem reviews him, that when it comes to violent crimes such as murder, Muslim majority countries have consistently low rates compared with Christian majority countries. Such facts get lost when the focus is on the Muslim extremists who commit the majority of violent political and terrorist acts on a global scale today. As for the role of religion, it is further noted that violent upheavals in the Middle East are driven by regional political interests rather than religion.<sup>44</sup>

Regarding the young jihadists, Zakaria observed that most of young jihadists in Europe have no background in political activism (say, Palestine), fundamentalist Islam or social conservatism. Quoting the French scholar of Islam, Oliver Roy, in support, it is stated that radicalisation in France arises around the fantasy of heroism, violence and death, not of *shahadah* and utopia. Abdelhamid Abaaoud, the ringleader of the Paris attacks, regularly used drugs and drank alcohol, as

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44. Saleena Saleem “It’s More politics than religion,” Kuala Lumpur: New Straits Times, March 24, 2016, 17.

did many of his comrades-in-arms. Today the decision to join Daesh is usually sudden and impulsive. Daesh is the ultimate gang, celebrating violence for its own sake. These young men - and some women - are usually second-generation Europeans. They are often revolting against their more traditional, devout immigrant parents.<sup>45</sup> These people are unsure of their identity, rooted in neither the old country or the new. They face discrimination and exclusion. And in this context they choose a life of rebellion, crime, and then the ultimate adventure, jihad.

These circumstances also explain why Belgian Muslims make up a disproportionate share of Daesh volunteers. Fifteen percent of native-born Belgians live below the poverty line, compared with the staggering half of the Belgians with a Moroccan background. In addition, Belgium has a particularly poor record of assimilation, because it has its own crisis of identity, torn between two cultures, Flemish and Walloon. All of this tend to paint a picture of a new kind of terrorist, one who is less drawn into terrorism through religion but has chosen the path of terror as the ultimate act of rebellion, and radical Islam holds an appeal that is easily available through the Internet and social media. As for western law enforcement activities, it is further suggested that bugging mosques, patrolling Muslim community centres and the like might be focusing attention in the wrong direction. Those terrorists might instead be in the bars, drug alleys, unemployment lines and prisons getting radicalised before they get Islamised.<sup>46</sup>

Terrorism is evidently not a monolithic category and has developed in new directions. Looking at the regional and geographical manifestations of terrorism, Azhari Karim explains: Whereas al-Qaeda and the IS group are seen to be accountable for much of the terrorist attacks in Europe (Paris, Nice and Brussels) and the united states (San Bernadino and Orlando), the majority of incidents seem to have been by individuals who acted alone.<sup>47</sup> However, in the crescent states of the Middle East stretching from Libya, Tunisia, Egypt, Sudan, Somalia and on to Afghanistan, Pakistan, Yemen, Iraq, Turkey, Syria and Saudi Arabia, groups such as al-Qaeda, Taliban, Houthis, and al-Nusrah have fought wars with the local authorities and supported in part by the IS as a means of settling old “scores” with corrupt government officials and states that are seen as overly dependent on the

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45. Fareed Zakaria, “Radicals before they were religious,” Kuala Lumpur: New Straits Times, April 2, 2016, 17.

46. Zakaria, *ibid.*

47. Azhari Karim, “Dealing with different types of ‘terrorists’,” Kuala Lumpur: New Straits Times, July 19, 2016, 15.

West for their survival. Elsewhere there are different clones of such radicalised and irredentist movements in the Ukraine (pro-Russians), China (Uighurs) and Nigeria (Boko Haram) and also in parts of South America in Columbia, Peru and Brazil. Their aims have centred on the need for change and transformation of the economy with development and social progress topping the agenda. Things are not the same in the Israeli occupied Palestine and in the countries of South and Southeast Asia. Some have resorted to violence to draw attention to their local “nationalists” problems. Others, mainly in Southern Thailand (Patani United Liberation Organisation) and the Philippines (Abu Sayyaf) struggles are mainly motivated by autonomy and self-rule. Only in the triangle of countries such as Malaysia, the Philippines and Indonesia, do we note IS or al-Qaeda-type groups whose sole purpose is to bring in a new “Islamic Order” or the “New Caliphate.” Groups, such as the Jemaah Islamiyah, al-Mauunah and Abu Sayyaf have not only resorted to kidnapping and ransom-taking but also to inflicting gross violence in their acts and reprisals against local governments and populations.<sup>48</sup>

Radicalisation by external forces has been identified as a principal means of recruitment of the region’s youth and Islamic faithful. These could come from “returnees” from the battlefronts in Iraq and Syria or from various IS-based social media postings. Another new development and source may have been the 2016 United States presidential election campaign, especially that of the Republican nominee and now President Donald Trump that made immigration especially of Muslims from the Middle East as a campaign topic assertive of a policy to disallow Muslims completely from entering the US, or to set in place extensive screening methods by the then Democratic presidential nominee, Hillary Clinton. These are likely to provide the terrorist groups with additional armoury to intensify their nefarious methods to win over new impressionable Muslim youth and others to their side.

One latest addition to an already confused scenario is the still continuing waves of mass migration of Muslims to Germany, UK, and other European destinations in 2015 and 2016. As large numbers of the young migrants from war-torn Syria, Iraq and Afghanistan entered Europe, instances of crime and terrorist attacks, such as the July 14, 2016 Nice truck attack in France that killed 86 people and some lesser incidents in Germany and Belgium alarmed the host countries of the worse possibilities. Peter Apps thus commented that “it became increasingly

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48. Ibid.

less relevant whether an attack - such as the gun attack in Munich which killed nine, or the stabbing of an orthodox Jew in France, or a machete attack on a bus in Brussels is directly related to a militant group like IS or not “provided a migrant or someone of migrant descent is involved, it all falls into the same divisive narrative.”<sup>49</sup> In many ways, what happened on the beach at Nice is exactly what groups like IS want: to deepen divisions within society.

Dealing with terrorists also pose legal challenges. Practices differ in different countries. In France, one cannot detain a terrorist suspect unless one is caught in the act or has strong evidence. In the US a suspect can be detained on the basis of evidence received from other countries. The Problem revolves around security and human rights issues. Admittedly, countries can devise their own approaches, and many countries have, in fact, proposed or passed new anti-terrorism laws according to their own needs.

## 11. Suicide and Suicide Bombing

Contemporary suicide bombing that does not distinguish between political, military and civilian targets has no precedent in Islamic law and history. Suicide bombing has become a highly disturbing aspect of contemporary terrorism such that a decisive ruling and consensus on it would be necessary to curb it. Suicide (*intihar*) does occur in Islamic law, but not in the way twenty first century Muslims are experiencing.

Suicide falls under the Qur’anic provision of ‘killing without just cause’ (*illa bi l-haqq - al-Isra*’, 17:33) simply because a person does not have the right to take his own life. Under conventional *fiqh*, suicide is not subsumed by *hirabah* or terrorism - rather it is part of the general discussion of the right of life. That is the main context but here it is treated next to *hirabah* as it has clearly become an aspect of contemporary terrorism.

Since life is a God-given gift, it may not be subjected to destruction and abuse even by oneself. This is why the shariah forbids suicide without any exception. It is a sin, for which the perpetrator is liable, in the event of an unsuccessful attempt, to a deterrent penalty of *ta’zir*. If the attempt succeeds, the person is still liable to an expiation (*kaffarah*) which may be taken from his property, according to the Shafi’is and some Hanbali jurists, whereas the Imams Abu Hanifah and Malik do not make expiation a requirement.<sup>50</sup> The Qur’anic authority on this is: “Kill

49. Peter Apps, “Is Europe overreacting to terror?” Kuala Lumpur: New Straits Times, September 3, 2016, 15.

50. Mahmud Shaltut, *al-Islam N’Aqidah wa Shariah*, 328; N’Awdah, *al-TashriN’ al-Jina’i*, I, 446; Zuhayli, *Huquq*

yourselves not, for God is truly Merciful unto you." (al-Nisa', 4:29).

Life is a trust (*amanah*) in the hands of its bearer, who is expected to safeguard and cherish it with responsibility and care. People who are driven to despair are advised to have faith in God's mercy as in the following verse:

Say: O my servants who have transgressed their souls! despair not from God's [unbounded]mercy. For God forgives all sins. (Q al-Zumar, 39:53).

The prohibition of suicide by the clear text also means that anyone who facilitates or collaborates in the act of suicide is also liable to a deterrent punishment.<sup>51</sup>

Qur'an commentators and jurists have drawn the following conclusions from this verse (4:29):

- The obvious meaning is that suicide is forbidden. It is haram for a person to kill himself. This is the obvious meaning of the text.
- It also means that 'you may not kill one another.' This is the interpretation of Ibn 'Abbas, Sa'id ibn Jubair, Ikrimah, Qatadah and others.
- No one may do something/not take an assignment that may cause his death – even if it be in pursuit of a religious duty. No one should deprive himself of the essentials of life that may lead to his death.
- One may not indulge in self-destructive crimes and consumption of lethal substances.<sup>52</sup>

According to a hadith report, a person who was engaged in a battle killed himself with a broad-headed arrow. When the Prophet was informed of it, he is reported to have said: "As for me, I will not pray over him."<sup>53</sup>

In another hadith, the Prophet has condemned suicide as follows:

The one who throws himself off a mountain cliff and kills himself will be doing the same to himself perpetually in Hell. The one who takes poison and kills himself shall be holding the same in his hand and permanently taking it in Hell, and the one who kills himself with a weapon will be piercing his body with it perpetually in Hell.<sup>54</sup>

A similar hadith proclaims that the "one who kills himself with something in this

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al-Insan, 144.

51. 'Awdah, al-Tashri' al-Jina'i, I, 447

52. Cf., Al-ÑIbadi, Min al-Adab Wa'l-Akhlaq, 164-5.

53. <http://www.islamic supremecouncil.org/understanding-islam/legal-rulings/21-jihad-classical-islamic-perspective.html?start=15> (Accessed on 21 May 2017).

54. al-Tabrizi, Mishkat al-Masabih, vol II, hadith no. 3453.

life will also be tortured by it in the fire of Hell.”<sup>55</sup>

Al-Bukhari has also recorded a long hadith to the effect that the Prophet looked at a man, engaged in a battle against the pagans, and he was by all accounts one of the most capable of Muslim warriors. But the Prophet presciently said concerning him:

He is from the people of the Hell. A man amongst the people said: “I will accompany him.” So he went along with him, and whenever he stopped, he stopped with him, and whenever he hastened, he hastened with him. The (brave) man then got wounded severely, and seeking to die at once, he planted his sword into the ground and put its point against his chest in between his breasts, and then threw himself on it and committed suicide.<sup>56</sup>

*Fiqh* manuals are silent on the issue of suicide bombing, as it has a short history and drew public attention only when Israel unleashed a new wave of aggression on street processions of the Palestinian youth (2000–2001). The upsurge ever since in suicide bombing by those claiming to be Islamic warriors has brought mixed responses from Muslim scholars. Most have not hesitated (see more below) to condemn this and also the September 11, 2001 attacks as being contrary to Islamic principles.<sup>57</sup>

It is simplistic to lump together the Palestinian suicide bombings with al-Qaeda and IS terrorist activities, as few would deny the genuine suffering of the Palestinian people nor the legitimacy of their demand for a homeland and state. It is also simplistic to equate suicide bombing with martyrdom as many have claimed. This is because suicide bombing challenges two fundamental principles of Islam: the prohibition against suicide and the deliberate killing of non-combatants.

The Muslim warrior enters a battle, not with the intention of dying, but with the conviction that if he should die, it would be for reasons beyond his control. Martyrdom does not begin with a suicidal intention, let alone the linkage of that intention with the killing of non-combatants, women and children. Suicide bombers intentionally set out to kill themselves and their victims, thus violating the norms of Islamic law and ethics.

Those who have raised the issue of ‘collateral damage’ in this context are mistaken,

55. Bukhari, Sahih al-Bukhari, Kitab al-adab, bab ma yunha Ḥānu min al-sibab, hadith no. 6105.

56. <https://sunnah.com/bukhari/64/242>

57. See for details on suicide bombing, Mohammad Hashim Kamali, *The Right to Life, Security, Privacy and Ownership in Islam*, Cambridge: Islamic Texts Society, 2008, 29–35.

because non-combatants are chosen as the direct target of suicide bombing. They are neither collateral nor incidental. Even if the cause of fighting the Israeli aggression is a valid one, that still does not justify killing non-combatants. What drives the bombers - often impressionable teenagers - on their suicidal missions are promises of a martyr's reward by the so-called religious scholars, who fuel the frustration and volatility of tender emotions with their misguided instructions.

Suicide bombing is a wider phenomenon, not always related to religion. Robert Pape, a political scientist, who studied suicide terrorism from 1980 to 2001, points out, "religion is not the force behind suicide terrorism." He says "the data shows that there is little connection between suicide terrorism and Islamic fundamentalism, or any religion for that matter," adding that the group responsible for the highest percentage (40 per cent) of all suicide attacks has been the Tamil Tigers in Sri Lanka, who are adamantly opposed to religion. Rather he suggests, nearly all suicide terrorist campaigns are "coherent political or military campaigns" whose common objectives are strategic, either to compel military forces to withdraw from their homeland, or bring down a regime they are opposed to - as in the case of Taliban suicidal missions in Afghanistan. Suicide bombing in the name of Islam is thus for the most part a "socio-political phenomenon, not a theological one."<sup>58</sup> This is also indicated in the responses many leading Muslims have given to global terrorism as discussed below.

## 12. Muslim Responses to Global Terrorism

The upsurge in suicide bombing by those claiming to be Islamic warriors has brought mixed responses from Muslim scholars. Most scholars of standing have not hesitated to condemn this and also the September 11, 2001 attacks as being contrary to Islamic principles.

The Jeddah-based Islamic Fiqh Academy affiliated to the Organisation of Islamic Conference (OIC - now Cooperation) in its sixteenth session (5-10 January 2002) condemned all forms of terrorism as follows:

Terrorism is an outrageous attack carried out either by individuals, groups, or states against the human beings. It includes all forms of intimidation, harm, threats, killing without a just cause, all forms of armed robbery, banditry, every act of violence or threat intended to fulfil a criminal scheme individually or collectively, terrify and horrify people by hurting them or by

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58. Robert A Pape, New York Times, 22 September 2003 as quoted in Imam Feisal Abdul Rauf, *What is Right with Islam is What is Right With America*, New York: Harper Collins Publishers, 2005, 146.

exposing their lives, liberty and security to danger. It can also take the form of inflicting damage on the environment, a public or private utility - all of which are resolutely forbidden in Islam.<sup>59</sup>

In November 2003, the Arab states condemned the suicide car bombing in Riyadh that killed 17 and wounded more than a hundred, mainly Arabs. The 22-member Arab League denounced the attack as 'terrorist and criminal,' while Saudi Arabia and its five neighbours in the Gulf Cooperation Council condemned it as 'cowardly and terrorist.' The then Arab League secretary-general, Amar Musa, also said such acts "only aim to destabilise...terrify and kill" innocent people.<sup>60</sup>

Muslim religious and political notables have expressed unqualified condemnation of the IS and Charlie Hebdo atrocities. Muslim international organisations and fatwa councils, including the Majlis Ulama Indonesia, the National Fatwa Council of Malaysia, and the Mufti of Saudi Arabia, denounced the brutality and violence of the IS group as violative of the core principles of Islam.

Abusive interpretations of jihad notwithstanding, jihad is also an instrument of peaceful self-education and improvement. The pathways to peace in Islam are also enriched by its teachings on human fraternity, compassion, honouring one's neighbour, avoidance of harm to others, and the rich tradition of Sufism. Islam also advocates peace through non-violence, universalism and a generally positive view of the human nature and potential.

Mahmud Shaltut, the Shaykh of al-Azhar University from 1958 to 1963, lends support to the argument that the Qur'an only allows warfare to be waged in self-defence, and he quotes verses from the Qur'an, including al-Anfal (8:61) and Mumtahanah (60:8-9), which together with al-Baqarah (2:190) and al-Hajj (22:39-40) uphold that principle.<sup>61</sup>

Another Shaykh of al-Azhar, Muhammad Sayyid Tantawi, issued a fatwa in 2001 to condemn the hostage-taking in the Philippines: "Islam rejects all forms violence. These acts of violence have nothing to do with Islam."<sup>62</sup> He also

59. See for details, eds., Ghazi bin Muhammad, Ibrahim Kalin and Mohammad Hashim Kamali, *War and Peace in Islam: The Uses and Abuses of Jihad*, Cambridge: The Islamic Texts Society, 2013, Introduction by Kamali at xv.

60. [www.utusan.com.my/utusan/content.asp?y=2003&dt=1111&pub=utusan\\_Express](http://www.utusan.com.my/utusan/content.asp?y=2003&dt=1111&pub=utusan_Express).

61. Shaykh Mahmud Shaltut, "Warfare in the Qur'an," tr. Joel Howard, in ed. Ghazi et al., *War and Peace in Islam*, (note 18 above), 43.

62. Shaykh Muhammad Sayyid Tantawi as quoted by Anicee Van Engeland Nourai: The Challenge of fragmentation of International humanitarian law," in ed. M. Cherif Bassiouni, *Jihad and Its Challenges*, The Hague: Hague Academic Press, 2010, 147.

condemned the terrorist act of September 11, 2001, in America.<sup>63</sup> The Chief Mufti of Saudi Arabia, Abdulaziz bin Abdullah al-Shaykh, also declared in 2004:

You must know Islam's firm position against all these terrible crimes. The world must know that Islam is a religion of peace, justice and guidance... Islam forbids the highjacking of airplanes, ships and other means of transport, and it forbids all acts that undermine the security of the innocent.<sup>64</sup>

The Washington-based Fiqh Council of North America issued the following fatwa and press release on July 29, 2005:

Islam strictly condemns religious extremism and the use of violence against innocent lives. There is no justification in Islam for extremism or terrorism. Targeting civilians' life and property through suicide bombings or any other method of attack is haram - forbidden - and those who commit these barbaric acts are criminals, not 'martyrs.'... we clearly and strongly state: 1) All acts of terrorism targeting civilians are haram. 2) It is haram for a Muslim to cooperate with any individual or group that is involved in any act of terrorism or violence. 3) It is the civic and religious duty of Muslims to cooperate with law enforcement authorities to protect the lives of all civilians.<sup>65</sup>

Judging by the scale of violence in war-torn Afghanistan, Iraq, Syria, Palestine, and elsewhere, Muslims are themselves the principal victims of violence: defenceless Muslim civilians, women and children for the most part.

Unless the root causes of radical extremism are addressed, many have warned that extremism and violence are likely on the rise. Once a radical group falls by the wayside, discredited or made irrelevant, another, often more radical and violent emerges. This is what IS is to al-Qaeda by upping the stake in the radicalisation contest and becoming even more destructive and violent than its predecessor.<sup>66</sup> Unless the legitimate claims of those who suffer from oppression and injustice are heard, angry and disillusioned men and women, , Sunni, Shia, Kurds and others feel that the path of violence is the only one left for them to take.<sup>67</sup>

63. As quoted in Nasr, *The Heart of Islam*, 263.

64. Quoted in Anicee Nourai, "The Challenge of fragmentation," 148.

65. <http://www.icna.org/u-s-muslim-religious-council-issues-fatwa-against-terrorism/> (Accessed on 4 December 2017) See also "US Muslim Scholars to Forbid Terrorism" <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/27/AR2005072702082.html>

66. Cf., Farish Noor, "Radicalism's pool of support," Kuala Lumpur: New Straits Times, August 25, 2014, 12.

67. Amnesty International, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq*, United Kingdom: Amnesty International Ltd., 2014.

Mark Winer wrote in an article “Fundamentalists versus Moderates” that the future of humanity may well depend on the ability of moderates within each religion to overcome their extremist co-religionists. It would appear, he added, that extremism spawns interfaith bigotry and sanctions violence, war and terrorism. A great deal therefore depends upon our understanding of the eternal conflict between extremism and moderation, and upon the strategies the religious moderates devise together to combat their common scourge.<sup>68</sup>

It is indicative of the wisdom of the early pioneers of Islam who called the Kharijites (Khawarij, lit. outsiders) by this name, and made it known from early on that this group has exited itself from the mainstream community of Muslims. They have the choice to change their behaviour and rejoin the community or else to stay as outsiders. The same can be said of *ghulat* (lit. exaggerators), the name so unmistakeably expressive of its purpose, that was given to a small group of Shia who exaggerated in their interpretations of the doctrine of Imamate so as to elevate the first Shi'i Imam, 'Ali ibn Abu Talib, to a deity.

One can hardly think that anyone could soil Islam's name so badly as the likes of IS, Boko Haram and al-Shabab militants. If there be enough realisation of this among the extremists, when they are convinced that they are doing more harm than good to the cause of their religion, “as Islamic leaders all over the world are already pointing out, their numbers will eventually diminish.”<sup>69</sup>

### 13. Revisiting the Qur'an on Hirabah

The Qur'anic phrase “waging war on God and His Messenger” put the Muslim jurists in a certain quandary as to its precise import and meaning. For it is a generic expression evidently not meant for its literal meaning, but since it is immediately followed by “making mischief in the land - *fasad fi l-ard*,” the two phrases were read together in order to provide a clearer understanding of the verse. Yet this latter phrase too is less than specific, for *fasad fil-ard* can also include a variety of criminal activities and transgressions. It is even suggested that the latter phrase is wider than the former in that spreading ‘corruption in the earth’ can include criminal activities that may not even qualify as *hirabah* or ‘waging war,’ as such. Hence the relationship between the two phrases is seen as one of the specific (*khass*) to the general (*aam*). *Hirabah* is thus seen as only

68. Mark L. Winer, “Fundamentalists vs. Moderates: the War within Judaism,” *Arches Quarterly* vol. 5 no. 9, London: The Cordoba Foundation, (Spring 2012), 117.

69. Scott Thompson, “Liberty's 9/11,” *Kuala Lumpur, New Straits Times*, January 14, 2015, 17.

one of the many manifestations of ‘*fasad fi l-ard*.’ Al-Shawkani (d. 1250/1835) wrote that the manifest meaning of ‘*fasad fi l-ard*’ is broad enough to subsume not only highway robbery but also propagation of false deities (shirk), destruction of people’s lives, looting their properties and attacking their dignity, as well as destruction of trees, waterways and livestock, aggressive dictatorship that humiliate people and so forth.<sup>70</sup> Some commentators also included under *hirabah* recidivist thieves and robbers, notorious rapists and homosexuals whose evil and mischief-making cannot be stopped by other than execution. But it seems that most understood the verse under review to be referring to bandits and those who stage armed rebellion and threaten normal peace and order in society. Ibn Hazm al-Zahiri (d. 456/1064) observed that since many other crimes such as adultery and theft were specifically mentioned in the Qur'an and the text had also assigned quantified penalties for them, what was left unspecified was the crime of banditry (*qat al-tariq*), and the verse of *hirabah* was thus understood to have contemplated it. Yet to read that particular crime into the meaning of *hirabah* and ‘spreading of corruption in the earth’ was evidently by way of interpretation that seems to have found common acceptance. In sum, unlike the other prescribed/*hudud* crimes which are mentioned specifically by name, *hirabah*/banditry is arrived at thorough juristic construction and consensus (*ijma*).<sup>71</sup>

It is not only natural but necessary for Muslim scholars and jurists to continue this interpretative endeavour by subsuming the global menace of terrorism under the umbrella of the Qur'anic concept of ‘waging war against God and His Messenger’ and as one of the greatest instances, indeed, of spreading corruption in the earth humanity has ever known. This understanding of ‘*hirabah*’ is clear from reading the clear text without recourse to any methodology or formula of reasoning, such as analogy (*qiyas*) or even *ijihad*. Muslim jurists have commonly understood ‘waging war on God and His Messenger’ as to mean waging war on the people, including of course, the Muslim community. This is clear enough. Juristic thought has reflected on a variety of related themes, as already reviewed, raising questions as to whether *hirabah* can be committed by an individual or is it a crime that only a group can commit; can it be committed within or only outside the city areas; whether or not it must involve the use of weapons; and whether or

70. Muhammad bin 'Ali al-Shawkani, *Fath al-Qadir*, Damascus: Dar al-Kalim al-Tayyib, Vol. 2, 1993, 39.

71. See for details Hasan al-Khattaf, “*Mafhum al-hirabah wa dawabituhu: Dirasah bay al-nass al-Qur'ani wa'l-turath al-fiqhi*,” in *Islamiyyat al-Ma'rifah: Majallat al-Fikr al-Islami al-Mu'asir*, Herndon, VA, Vol. 21 (1436/2015), 11 and 42.

not it is politically motivated. Most of these questions, and the responses they have received are instructive, yet contemporary terrorism has acquired different dimensions, which tend to make some aspects of the *fiqh* specifications of *hirabah* somewhat redundant. Certain manifestations of contemporary terrorism, such as suicide bombing, were also not familiar to the earlier schools and scholars and tend to fall out of the scope of their writings. That said, one also finds that the *fiqh* literature on *hirabah* is internally diverse and much of it is not supported by general consensus (*ijmā*) and thus remains open to further development and *ijtihad* in light of the pressing needs, and common good (*maslahah*) of the people. Early commentators have also made the point that the verse of *hirabah* contemplated Muslim rebels and mutineers only since repentance is normally not accepted from the unbelievers until they embrace Islam. But the majority of jurists have disputed this conclusion and maintain that *hirabah* in the way the Qur'an has addressed is not confined to Muslims and may be committed by anyone, Muslim or non-Muslim, provided that the crime is committed in a territory that is ruled by a Muslim government.<sup>72</sup>

Furthermore, it merits a mention that 'spreading of mischief/corruption in the earth' is a major theme of the Qur'an that occurs in a large number of its verses. Included in *fasad fi l-ard* are thus spreading of heresies (Q 2:11–12), destruction of the living environment (30:41), destruction of farmland, gardens and waterways (26:141f), persistent criminality (5:32), inciting enmity and hatred among people (5:64), practice and spreading of sorcery (10:79), humiliating people through Pharoanic absolutism (28:4), practice and incitement to sodomy and homosexuality (29:28), killing and brutalising innocent people (2:30), and persistent hypocrisy (2:204).

Having discussed the Qur'anic passages on 'fasad fi l-ard', al-Khattaf observes that the concept is broad enough to subsume such other criminal activities we experience in our time as drug trafficking, human trafficking, Mafia-like crime syndicates and loan sharks who kidnap people, destroy and brutalise them and their families, as well as those who stage armed rebellion and military coups that topple lawfully elected governments. To quote al-Khattaf:

This is why *hirabah* acquires enormous significance in our lives today, especially after what we witnessed in the Arab region through the so-called Arab Spring; the inciters to violence and war that invaded peoples' lives and properties, wreaked

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72. Rida, *Tafsir al-Manar*, Vol. 6, 93.

havoc on them and the lives of entire communities and their homelands.... The Qur'anic concept of 'spreading mischief in the earth' also include the agents of corruption who shake the constitutional order, play with peoples' lives and collude with enemies to carry out their sinister designs.<sup>73</sup>

We concur and add that the strong textual grounding of *hirabah* and its wide-ranging implications and relevance can hardly be overestimated in view especially of the global reaches of terrorism and emergence of organised terrorist organisations and networks. People need to be protected and laws need to be revised to equip the enforcement agencies and governments to act decisively. The world has been witness to horrendous atrocities in so many places, including of course the crimes committed by warlords and drug barons, and those who terrorise innocent people, committing genocide and crimes against humanity in the name of caliphate or any other name. There is absolutely no room for atrocity and shedding of innocent blood in shariah by anyone, including IS/Daesh, al-Qaeda, Taliban, al-Shabab, Boko Haram and the like. Justice must be served, truth uncovered and told as far as possible, or amnesty granted in the hope of a peaceful end to hostilities - except for the criminals who have committed atrocities, and only then can one nurture a realistic prospect of a peaceful future for the affected individuals and communities.

#### **14. Toward A Strategy of Counter-Violence for Afghanistan: Proposals and Recommendations**

- Terrorism in all its forms is absolutely prohibited, whether committed by individuals or states regardless of the religious affiliation of the perpetrator. It is a crime in Islam and can never be justified in its name.
- Terrorists are not to be taken as representatives of Islam. Numerous Islamic forums and leaders have denounced terrorism and made clear that such actions are contrary to the nature and central teachings of Islam.
- The ulama and mosque leaders (imams), should make rejection of terrorism and combat against it an integral part of their teachings at Friday congregational prayers, in teaching circles and other occasions.
- Terrorism is a long-term challenge. It has become entrenched; its resources and funding methods and networks have also expanded. Countries most vulnerable to local and global terrorism, such as Afghanistan, should not

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73. Al-Khattaf, "Mafhum al-Hirabah," 12.

only be content with immediate and short-term responses, but also have intermediate and long-term strategies to address it.

- It is generally recognised that the military approach to addressing global terrorism has failed, simply because it has not addressed the root causes of violence, and has fallen short also of generating better understanding.
- The path to peace and peaceful negotiations must be persistently pursued. Notwithstanding disappointments and setbacks, the Afghan government should continue to explore all peaceful approaches toward resolution of conflicts without compromising on essential justice and the rule of law.
- It is vital for all Afghans to unite and take a common stand to combat the scourge of violent extremism. Afghan political and religious leaders, civil society and the media should play leading roles in promoting the objectives of national unity. The Afghan government should work more closely with community partners, religious institutions, education centres and the media to create an anti-extremist current of opinion and environment.
- Afghans should take control, as far as possible, of peace negotiations with the Taliban themselves and find solutions to issues through consultation and engagement with all the concerned parties, including youth and women. They should not expect foreign parties to resolve their problems. This does not, however, mean that genuine cooperation with outside parties should be discouraged.
- A constitution that is cognisant of the essentials of Islam, enacted through consultative methods and promulgated by the lawfully designated leader qualifies as the command of the leaders (*ahkam ul il-amr*) that inspires obedience. Our religious leaders should play a proactive role in the realisation of a law-abiding society and due enforcement of the constitution.
- Economic development, job creation, social justice efforts and good governance hold long term solutions that nullify the strongest magnets of extremism in Afghanistan and the Muslim world.
- In a climate of insecurity and violence, it is extremely challenging to create job and investment opportunities. Capital owners are bound to be reluctant to take investment initiatives. Yet opportunities do exist and given proactive and determined attitude and cooperation, profitable investment projects can be created and explored. One is prompted in saying this especially in view of so many successful Afghan entrepreneurs (even tycoons) who own large

businesses in Dubai and elsewhere. They should not neglect Afghanistan.

- The International community should equip the Afghan national army to improve its defence capabilities according to a progressive time-based plan. When the Afghan army becomes self-sufficient, the foreign forces should plan their exit from the country. The Afghan authorities should initiate this process through consultation with the U.S and Nato commanders to plan an exit strategy, and if need be, to convene a joint session of the two Houses of Parliament, even the constitutional Loya Jirga, to approve it. A consultative decision is preferable to prevent the likelihood of subsequent disputation and disagreement.
- The Taliban should then have no basis to continue, as its main demand for foreign troops to exit Afghanistan would have been met. Their other demand for the enforcement of shariah has no credible basis. For shariah is being enforced in the courts of Afghanistan. Estimate about 90–95 per cent of the laws of Afghanistan are either derived from the shariah, and or modern laws that are on the whole shariah-compliant.
- Those who offend in the name of freedom of expression and do more of the same at sensitive times that inflame religious sensibilities are certainly not helping the cause of peace or freedom. If anyone could benefit from persistent cartoonist provocations, it would most likely be the terrorists.
- Provocation by state actors and institutions, interference in the affairs of other communities and states, and aggressive policies that exacerbate existing conflicts and threaten peace and security should be stopped.
- When dealing with instances of violent extremism, states and security forces need to avoid the trap of reacting to violence with greater violence. For that would lead to a situation where the terrorists have won an even greater victory. The whole country would then be in a state of constant fear. The government need to be firm and decisive, of course, but must in the meantime be vigilant not to let the terrorists get what they want.
- Afghanistan should continue to base its relationships with the international community on positive foundations and constructive cooperation for beneficial purposes, and in particular, with those who have helped Afghanistan in its combat against international terrorism.
- Afghanistan should also work harder for improving its ties with the neighbouring countries, including Pakistan. This is admittedly a challenging

prospect given the countless instances of failed attempts. Afghanistan should have a clear policy and identify which particular areas offer better prospects of workable relations for mutual benefits with Pakistan.

- It is essential for Afghanistan to wean itself from financial dependence on foreign donations. A time-bound plan for intermediate and long -term increase of the domestic sources of revenue should be a persistent work in progress. If Afghanistan can provide say 20–25% of its national budget now, this figure should be increased by a certain percentage every year until the country can have its own self-contained budgeting and finance its own army and government.
- Terrorism is suffocating Afghanistan's economic development prospects. To give an example, Afghanistan has extensive mineral resources which need security, investment funds and skill to exploit, and the government is unable to provide security even to some of the mines (lapis lazuli, and copper e.g) which were close to the exploitation stage, but reports indicate that they have been forcibly overtaken by terrorists and drug barons, who now exploit them through crude methods to fund their nefarious criminal operations.