

Northumbria Research Link

Citation: Badar, Mohamed and Nagata, Masaki (2017) Modern Extremist Groups and the Division of the World: A Critique from Islamic Perspective. Arab Law Quarterly, 31 (4). pp. 305-335. ISSN 0268-0556

Published by: Brill

URL: <http://doi.org/10.1163/15730255-12314024> <<http://doi.org/10.1163/15730255-12314024>>

This version was downloaded from Northumbria Research Link:
<http://nrl.northumbria.ac.uk/id/eprint/30118/>

Northumbria University has developed Northumbria Research Link (NRL) to enable users to access the University's research output. Copyright © and moral rights for items on NRL are retained by the individual author(s) and/or other copyright owners. Single copies of full items can be reproduced, displayed or performed, and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided the authors, title and full bibliographic details are given, as well as a hyperlink and/or URL to the original metadata page. The content must not be changed in any way. Full items must not be sold commercially in any format or medium without formal permission of the copyright holder. The full policy is available online: <http://nrl.northumbria.ac.uk/policies.html>

This document may differ from the final, published version of the research and has been made available online in accordance with publisher policies. To read and/or cite from the published version of the research, please visit the publisher's website (a subscription may be required.)

Modern Extremist Groups and the Division of the World: A Critique from Islamic Perspective (Part II)¹

Mohamed Badar^a and *Masaki Nagata*^b

^a Reader in Comparative and International Criminal Law and Islamic Law, Northumbria Law School, Northumbria University, Newcastle, UK
mohamed.badar@northumbria.ac.uk.

^b Doctoral candidate, Brunel University London, UK
masaki.nagata@brunel.ac.uk.

¹ Part 1 of this study appeared in (2017) 31 *Arab Law Quarterly* under the title ‘The Radical Application of the Islamist Concept of Takfir’.

Abstract

Modern extremist groups have revived the use of certain concepts of Islamic dogma and wilfully misinterpreted them as a means of achieving their own ends. *Dae'sh* (also known as Islamic State of Iraq and Syria) is the most striking example of such a group. They have made declarations of *takfir* (excommunication) regarding Muslim rulers, maintaining that only *Dae'sh* land is *dar al-Islam* (abode of Islam) and that other lands are *dar al-kufr* or *harb* (abodes of unbelief or war), just as the Khawarij sect believed in the 7th CE. They do not employ the concept of *hijra* (migration) in its traditional, defensive sense but rather as a means of strengthening their own power by recruiting from around the world and launching military *jihads*, all in order to 'reclaim' the *dar al-kufr* and establish an Islamic state. This paper examines the evolution of these terms throughout Islamic history, their misinterpretation by extremist groups and their modern legal status.

Key words

Dae'sh (ISIS/IS); *dar al-Islam* (abode of Islam); *dar al-kufr* or *harb* (abodes of unbelief or war); *hijra* (migration); military *jihad*

1 Introduction^[AA1]

Islam and the concept and practice of *jihad* are closely entwined. *Jihad* is perhaps the most well-known ‘Islamic’ word to non-Muslims, but arguably also the most misunderstood and misinterpreted, even by Muslims themselves. Calls for *jihad* have been made by many rulers throughout Islam’s military history; one of the greatest heroes of the Islamic world, Saladin (d. 590 AH / 1193 CE), called for men throughout his land to join in a *jihad* against their enemies.²

The modern-day emergence of extremist groups has had a profound effect on the understanding and usage of Islamic dogmas, such as *jihad* and *hijra*. The claims made by such groups to religious legitimacy is one reason for their success in soliciting funding and attracting believers willing to fight and die in their wars against those who object to their particular understanding of Islam. However, their aims are clearly just as political or ideological as religious, if not more so. Religious justifications are provided in an attempt to legitimise their actions, but these are means to an end; Islamic concepts have been interpreted and utilised, in ways not intended by the Prophet, in an attempt to achieve political goals.

The twin dogmas of *jihad* and *hijra* have been used by Muslim leaders from the Prophet onwards, although their usage has continually evolved throughout history. *Hijra* was used by the Prophet as a means to maintain the coherence of his group of believers and ensure that his fledgling Islamic society was able to defend itself. There were no military *jihad*s in the Prophet’s time. However, mediaeval scholars and rulers used *hijra* and *jihad* differently, and these usages have further evolved with their re-introduction by modern extremist groups and their joint use with the term *takfir* (excommunication).

This paper illustrates how extremist groups have misinterpreted the Islamic dogmas of *hijra* and *jihad* and argues that there is no legitimacy to their modern usage of these terms. There are three sections to the paper. In the first of these a number of key definitions and original usages are discussed: the Islamic division of the world into *dar al-Islam* and *dar*

² Ibn al-Athir, *The Chronicle of Ibn al-Athīr for the Crusading Period From Al-Kāmil Fī'l-Ta'rīkh, Part 2: The Years 541-589/1146-1193, The Age of Nur al-Din and Saladin*, translated by D.S. Richards (Aldershot: Ashgate, 2007), 318. See also, Bahā' al-Dīn Ibn Shaddād, *The Rare and Excellent History of Saladin, or, Al-Nawādir al-Sultaniyya Wa'l-Mahasin Al-Yūsufiyya*, translated by D.S. Richards (Aldershot: Ashgate, 2002), 72.

al-harb; *hijra*; and *jihad*. The first of these, the partition of land into separate zones of belief and unbelief, was a device formulated by mediaeval scholars and was deeply influenced by the prevailing political and social circumstances. Similarly *hijra* was not originally an obligation for all Muslims to migrate from *dar al-harb* to *dar al-Islam*; the first *hijra* was a recommendation and furthermore was not to an abode of Islam. Finally, *jihad* began as a purely spiritual term; the Prophet did not equate it with physical hostilities, neither fighting those who did not fight him nor seeking to oppress their societies.

In the second section of the paper the use and evolution of these dogmas throughout Islamic history is illustrated. There are a number of cases relating to the undertaking of *hijra* from *dar al-harb* to *dar al-Islam*, but the legitimacy of all of these have been questioned and remain controversial. Although certain scholars and groups have relied on Shari'a when making their calls for military *jihad*, there is actually no basis in Shari'a for such campaigns; military *jihads* are man-made. Scholars of the medieval period conflated *qital* (fighting) with *jihad* (spiritual war), thus creating a new form of *jihad* by the sword (military *jihad*).

Finally, the third section of the paper discusses the modern usage of *hijra* and *jihad* by extremist groups. These terms are no longer used in a spiritual or defensive way, but have become synonymous with wars conducted in order to establish an Islamic state. The calls of modern extremist groups for *hijra* from *dar al-harb* to *dar al-Islam* cannot be legitimised with reference to Shari'a, as the circumstances pertaining at the time of the Prophet's *hijra* from Mecca to Medina are simply not those pertaining today and the purpose behind it was very different. Today, *hijra* are being called for in order to realise certain extremist groups' understanding of an 'Islamic state', based on the belief that *hijra* is still an obligation for all Muslims. *Dae'sh* have issued calls for *hijra* simply in order to recruit warriors for their military *jihad*. They have also sought to employ declarations of *takfir* (excommunication) in combination with military *jihad* and *hijra*, also in an attempt to further their ultimately political aims.

1.1 Definitions of key terms used by modern extremist groups

This first main section provides fundamental definitions of four key terms: *dar al-Islam*, *dar al-harb*, *hijra* and *jihad*, none of which were originally intended to be used as war-related terms against unbelievers or non-Islamic rulers. *Dar al-Islam* and *dar al-harb* were expressions used to reflect the mediaeval political and social circumstances that divided Muslims and non-Muslims; neither term is based on Shari'a. *Hijra* was a word used by the Prophet to refer to his followers' attempts to escape from persecution and establish a new Islamic community. Finally, *jihad* is used in Shari'a to refer to spiritual war, not to actual fighting.

Dar al-Islam and dar al-harb

Classical Muslim jurists traditionally divided the world into two abodes, *dar al-Islam* (the abode of Islam) and *dar al-harb* (the abode of war) or *dar al-kufr* (the abode of unbelief). According to *The Encyclopaedia of Islam* 'Dar al-Islam...is the whole territory in which the law of Islam prevails'³ while *dar al-harb* are 'those countries where the Muslim law is not in force'.⁴ Traditional Islam considers any territory not under the rule of Shari'a to be *dar al-harb*. Although, many mediaeval and contemporary scholars mention the legal division between the two abodes, the partition of the world was not a device employed by the Prophet or his Companions and the Qur'an and *Sunna* are both silent on this issue, as are the scholars of Islam's first century.⁵ It is striking to note that although the belief that the world is divided into two has been commonly referred to by scholars throughout Islamic history, there is actually no legal basis for this in Shari'a.⁶

³ A. Abel, 'Dar al-Islam' in H.A.R. Gibb et al (eds.), *The Encyclopaedia of Islam*, Vol. 2, (2nd edn, Leiden: Brill, 1965), 127.

⁴ *Ibid.*, p. 126.

⁵ Several *hadith* mention the 'land of war' and the 'land of Islam', such as *Jami' At-Tirmidhi*: '...when the Imam has left the land of war, and returned to the land of Islam, he applies the punishment on those deserving'. See, Al-Tirmidhi, *English Translation of Jami' At-Tirmidhi*, translated by Abu Khaliyl, Vol. 3 (Riyadh: DarusSalam, 2007) number. 1450 at 236. However, these terms were not originally used in any legal sense to divide the world between Islamic and other lands, but rather were geographical divisions.

⁶ The Qur'an does refer to paradise, however, as in these two examples: 'For them [a people who take heed] will be the home of peace (Paradise) with their Lord' (Qur'an 6:127); and 'Allah calls to the home of peace and guides whom He wills to a Straight Path' (Qur'an 10:25). Paradise is considered to be a place where believers can practice their religion safely and live peacefully. The mediaeval Islamic scholar Ibn Kathir defined it as somewhere where 'residents are safe due to their access to the straight path' and Muslims are 'free from defects and miseries'. See, Ibn Kathir, *al-Misbah al-munir fi tahdhib tafsir Ibn Kathir = Tafsir ibn Kathir*, abridged by a group of scholars under the supervision of Safi-ur-Rahman

It is clear therefore that the notion of a world divided into two abodes, *dar al-Islam* and *dar al-harb*, was one that was developed some time after the Prophet's era. By the mediaeval Islamic period however this division was clear; the partition between *dar al-Islam* and *dar al-harb* and those that live there, that is, between the lands of belief and unbelief and between Muslims and non-Muslims, was one that deeply impacted all aspects of life. Scholars based this division on social and legal arguments, and there were very different approaches to *dar al-Islam* and *dar al-harb*. In the mediaeval period *dar al-harb* was considered to be forbidden land, and scholars held that travel beyond the Muslim frontier was not allowed. Ibn Abi Zayd al-Qayrawani (d. 386AH/ 996CE) stated that 'Trading to the territory of the enemy and to the land of the Sudan is disapproved'.⁷ Al-Mawardi (d. 448AH/ 1058 CE) stated that if someone left *dar al-Islam* for *dar al-harb* he would forfeit his wealth, but that this would be restored to him if he returned to Islam.⁸

The division of the world by mediaeval scholars into zones of peace and of war was thus borne of mediaeval understandings of the lands beyond the Muslim regions and of the need for security, both of which became bound into the development of the concept of, and calls for, *jihad*. The historical context was crucial. The Muslim partition of the world they knew was deeply affected by the permanent state of war during the Islamic expansion of the mediaeval period. Khaled Abou El Fadl argues that the permanent war footing between Muslims and non-Muslims had little to do with religion; rather, it was because many jurists held that non-Muslims posed a potential threat to Muslims as people, rather than to Islam as a religion.⁹ Even the term used to denote the border between *dar al-Islam* and *dar al-harb* implied this sense of unease regarding what lay beyond; the word *thughur* (pl. *thaghr*) was used, whose basic meaning is 'gap, breach, opening'.¹⁰ Moreover, it was seen as a zone, rather than a

al-Mubarakpuri, Vol. 3, (Riyadh: Darussalam, 2000) 466, 590.

⁷ Ibn Abi Zayd al-Qayrawani (d. 386AH/ 996CE) cited in *Corpus of Early Arabic Sources for West African History*, translated by J.F.P. Hopkins, edited and annotated by N. Levtzion & J.F. Hopkins (Cambridge: Cambridge University Press, 1981) 55.

⁸ Al-Mawardi, *Al-Ahkam as-Sultaniyyah: the Laws of Islamic Governance*, translated by Asadullah Yate (London: Ta-Ha Publishers, 1996), 85.

⁹ Khaled Abou El Fadl, *The Great Theft: Wrestling Islam from the Extremists* (New York: Harper San Francisco, 2007) 226.

¹⁰ C.E Bosworth, 'Al-Thughur' in *The Encyclopaedia of Islam*, edited by an editorial committee consisting of H.A.R. Gibb et al, Vol. 10, (Leiden: Brill, 2000) 446.

boundary line; according to Brauer this partly reflects the sense of a frontier in all those areas where Muslim territory met non-Muslim, often Christian, areas.¹¹ In the mediaeval age, the lands beyond *dar al-Islam* were viewed as being inherently dangerous, and the no-man's land between, the *thughur*, was seen as a zone to be utilised as the first line of defence; Bauer notes that it was studded with small fortresses that served both as protection for the adjacent Muslim territories and as bases for raids into heathen lands.¹²

Muslim and non-Muslim lands were seen quite differently in the mediaeval Islamic world. Muslims were constantly threatened, or felt threatened, by enemies beyond *dar al-Islam*. The Muslim world was surrounded by a variety of 'heathen' lands and polities, and from early in Islamic history there was a strong shared consciousness that the community of believers was faced on many fronts by *dar al-harb*, 'the land of war of the Quranically mandated permanent state of Holy War'¹³ Jurists developed a theory which portrayed the world beyond Islam as '*dar al-harb*' and proclaimed conflict, in part the result of Islamic expansionism, to be the default relationship between it and the Muslim world.¹⁴

Despite the fact that the Qur'an and *Sunna* do not divide the world into lands of Islam and war, and that this division is seen as a mediaeval innovation, many scholars trace the notion of *dar al-harb* back to the Prophet's time, citing the historical experience of Islam during his era. There are two key factors in the origins of the Islamic division of the world, namely the *hijra* (migration) of the Prophet and his followers from Mecca to Medina, and the treaty between the Companions of the Prophet [the Rightly Guided Caliphs] and the unbelievers. The *hijra* to Medina is crucial because after migrating the Prophet formed a religious group or society (*umma*) whose sense of difference contributed to the emergence of the concept that the world was divided into believers and non-believers. Brauer notes that from the earliest days of Islam in Mecca and Medina '*dar al-Islam* was governed by the Prophet's preaching and the Qur'anic

¹¹ Ralph W. Brauer, 'Boundaries and Frontiers in Medieval Muslim Geography' *Transactions of the American Philosophical Society* 85(6) (1995): 1-73, 16-18.

¹² *Ibid.*, p. 15.

¹³ *Ibid.*, p. 11.

¹⁴ Gamal M. Badr, 'A Survey of Islamic International Law', *American Society of International Law: Proceedings of the Annual Meeting* 76 (1982): 56-61, 56-57.

command that all true believers should be brothers inhabiting one single ‘*umma* under a single imam, and hence there could not exist any internal frontiers”.¹⁵ This structure of a single political unit under one ruler continued under the Rightly-Guided Caliphs and even through to the rule of the Umayyad caliphs from Damascus, albeit with some reservations.¹⁶

Hijra

The Islamic division of the world along the lines of belief has been significantly influenced by the concept of *hijra* and by the migrations undertaken by the Prophet and by his followers in the years thereafter. Although *hijra* is commonly translated into English as ‘migration’, it has a broad meaning and usage. Not only does it signify physical migration from one place to another, it also carries the theological sense of escaping from evil and of ‘separation from one’s family and clan and attachment to others’.¹⁷ According to *The Encyclopaedia of Islam*: ‘...*hidjra* [*hijra*] properly does not mean “fight” as it has been traditionally translated but connotes primarily the breaking of the ties of kinship or association.’¹⁸

Calls for *hijra* have been made throughout Islamic history by scholars or leaders seeking to move from areas of non-Muslim rule to those already ruled by Muslims or to those, which a successful migration could convert into Muslim land.¹⁹ A justification for such a migration away from the land of an un-Islamic ruler can be seen in the mediaeval Islamic textbook, *The Reliance of the Traveller*, which noted that Muslims whose ruler has left Islam or abandoned Shari’a should either rise up or migrate.²⁰

The meaning of *hijra* has constantly evolved, and even during the

¹⁵ Brauer, *supra* note 11 at 8.

¹⁶ *Ibid.*, p. 8.

¹⁷ W Montgomery Watt, *Muhammad: Prophet and Statesman* (London: Oxford University Press, 1961), 91.

¹⁸ W. Montgomery Watt, ‘Hidjra’ in H.A.R. Gibb et al (eds.), *The Encyclopaedia of Islam*, Vol. 3, (Leiden: Brill, 1971) 366.

¹⁹ Although calls to *hijra* were mainly made to Muslims, migrations were also undertaken by unbelievers who accepted invitations to migrate to Muslim lands. Furthermore, migration was used to spread the Islamic religion to new areas. Umar II (d. 101AH/ 720CE) wrote that ‘we open it [land] up to whosoever may emigrate of the bedouin, and who sells his cattle and removes from his bedouin abode (*dar a’rabiyyatihi*) to the abode of emigration [*dar al hijra*] and to do battle with our foe’. See H. A. R. Gibb, ‘The Fiscal Rescript of ‘Umar II’, *Arabica* 2(1) (1955): 1-16, 3-4.

²⁰ Ahmad Ibn Naqib Al-Misri, translated by Noah Ha Mim Keller, *The Reliance of the Traveller: a Classic Manual of Islamic Sacred Law* (Dubai: Modern Printing Press, 1991), 640-641 (o25.3).

Prophet's own lifetime two forms of migration were recognised. The first form was simply for the purpose of escaping from persecution, as was the case in the very first *hijra*, made in 615 CE to Abyssinia; migration was thus not initially to prove one's Muslim belief, and furthermore it was voluntary, not obligatory. This first migration followed a recommendation by the Prophet;²¹ despite Abyssinia being a Christian Kingdom and thus not *dar al-Islam*, the Prophet believed that his followers would be able to freely practice their religion there. The emigrants noted that the Abyssinians were 'in peace about our faith; we worshipped Allah and we were not hurt, nor we heard any word displeasing to us'.²²

The second *hijra*, however, from Mecca to Medina, was both an escape from persecution and an attempt to establish an Islamic community in a new place. This *hijra* sought to dispense completely with any unwanted or unneeded customs, beliefs or ties based on blood or tribal affiliation from the pre-Islamic or Meccan eras, instead creating new relationships based on the religion of Islam.²³ It was one of the pivotal events of Islamic history, and has been cited by scholars as the model migration from *dar al-kufr* to *dar al-Islam*. It was obligatory but was not simply seen as a move from persecution or to *dar al-hijra*, but also as part of creating a new Islamic community; from this time many scholars have viewed migration from *dar al-harb* to *dar al-Islam* as being compulsory for all Muslims.

Many Qur'anic verses mention the Prophet's *hijra*; verse 4:97, for example, asks 'Was not the earth of Allah spacious enough for you to emigrate therein?' Ibn Kathir notes that this verse refers to those Muslims who chose to stay and live alongside non-believers, even though they could have migrated.²⁴ Verse 4:100 also touches on the obligation to migrate: '... whosoever leaves his home as an emigrant unto Allah and His Messenger,

²¹ Ibn Hishām, *The Life of Muhammad : A translation of Ishāq's Sīrat rasūl Allāh*, with introduction and notes by A. Guillaume (Karachi: New York : Oxford University Press, 1978) 146-150; Mamar Ibn Rashid, *The Expeditions: An Early Biography of Muhammad*, edited and translated by Sean W. Anthony, foreword by M.A.S. Abdel Haleem, (New York: New York University Press, 2014) 113; Al-Tabari, *The History of Al-Tabari Vol. 6: Muhammad at Mecca*, translated and annotated by W.Montgomery Watt and M.V.McDonald, (New York: State University of New York Press, 1988) 98-101.

²² Ibn Hishām, *The Life of Muhammad: A translation of Ishāq's Sīrat rasūl Allāh*, with introduction and notes by A. Guillaume, (Karachi: New York: Oxford University Press, 1978) 146.

²³ The Second *hijra* was recorded by Al-Tabari. See, Al-Tabari, *The History of Al-Tabari Vol. 6: Muhammad At Mecca*, translated and annotated by W. Montgomery Watt and M.V. McDonald, (New York: State University of New York Press, 1988) 139-152.

²⁴ Ibn Kathir, *supra* note 6, Vol.2, at 559.

and death overtakes him, his reward is then surely incumbent upon Allah'. Ibn Abbas recorded that verse 4:100 was revealed regarding an old man from Mecca who died on the migration to Medina; both he and Ibn Kathir emphasised that anyone who begins the migration but dies on route can expect the same reward from God as Muslims who complete the journey.²⁵

Jihad

As with *hijra*, *jihad* is a broad term that has evolved through the centuries of Islamic history and has been understood and interpreted in a multitude of ways. In contrast to the Prophet's understanding, in contemporary Islam it is most commonly translated as 'Holy War' or actual physical fighting against unbelievers. This is a scholarly interpretation, but not one drawn from the Qur'an – it is the construction of mediaeval scholars. However, despite the mediaeval and modern-day interpretation of *jihad* as implying war and physical struggle, *jihad* is also one of the most mystical concepts in Islam. It is seen as an expression of religion both inwardly and outwardly, and is considered to be 'a method of bringing religion into practice'.²⁶ According to *The Encyclopaedia of Islam* it 'etymologically signifies an effort directed towards a determined objective....an effort directed upon oneself for the attainment of moral and religious perfection'.²⁷ In Arabic it implies patience and perseverance and is a call against evil temptation and lust.²⁸ [AA2] This is reflected in the Qur'anic position on *jihad*, which makes no mention of war. Although Allah ordered the Prophet to undertake *jihad* against disbelievers and hypocrites ('Strive hard against the disbelievers and the hypocrites' [Qur'an 9:73]), there was no specific mention of physical fighting. Both the Qur'an and *Sunna* view *jihad* as a struggle on behalf of God, and as a religious duty for all Muslims. The Qur'an calls on Muslims to 'strive hard and fight in the Cause of Allah' [Qur'an 61:11] and 'strive hard with your wealth and your lives in the Cause of Allah' [Qur'an 9:41]. Such efforts are considered to be a religious

²⁵ Ibn Abbas, *Tafsir Ibn 'Abbas: Great Commentaries on the Holy Qur'an*, translated by Mokrane Guezzou, (Amman: Royal Aal al-Bayt Institute for Islamic Thought, 2007) 99; *ibid.*, p. 562.

²⁶ Ignaz Goldziher, *Muslim Studies: (Muhammedanische Studien)*, edited by S. M. Stern, translated from the German by C. R. Barber and S. M. Stern, Vol. 2, (London: George Allen & Unwin, 1971), 354.

²⁷ Emile Tyan, 'Djihad' in *The Encyclopaedia of Islam*, *supra* note 3 at 538.

²⁸ Mostafa Fadel, *Islamic Law and Modern Life* (Political Science 249 WR-1 Islamic Law Judge Mostafa Fadel, guest lecturer, Summer, 1964) 88-89.

obligation or responsibility and a fundamental Islamic principle that, if followed, will lead to paradise.²⁹ Similarly, when *jihad* is mentioned in *hadith* they do not explicitly reference physical fighting. In one *hadith* the Prophet was asked ‘Which is the best deed?’, to which he replied ‘To believe in Allah and His Messenger’ and then ‘To participate in *Jihad* in Allah’s Cause’;³⁰ there was no specific reference to war.

In the first century of Islam *jihad* was thus simply a spiritual term; it implied peaceful truthfulness and personal struggle. Neither the Prophet himself nor the scholars that immediately followed him considered *jihad* to imply physical fighting against an enemy. The Prophet stated that ‘The best [form] of *Jihād* is a just word spoken to an oppressive *Sultan*....[or]....an oppressive *Amir*’,³¹ and for ‘Abd Allah ibn ‘Umar (Abdullah ibn Umar; d.74AH/ 693CE), ‘The greatest *jihad* and holy war is the battle against the soul, and the chief of all unbelievers is the soul’.³² Ibn Battal (d. 449 AH/ 1057 CE) said that ‘A manCE) said that AH/ ttle against the soul, and the *jihad*’,³³ while Ibn Qayyim (d. 751AH/ 1350CE) also emphasised this personal aspect:

And because the best form of *Jihad* is speaking the truth in spite of the severest opposition, such as when one speaks it while he fears the power of another, the Messenger had an abundant share of that and he was the most perfect and complete among mankind in doing so. And since making *Jihad* against an enemy is secondary to *Jihad* of oneself, as the Prophet said: the *Mujahid* is one who performs *Jihad* of his self in obedience to Allah.th*Jihad* of the self takes precedence.³⁴

²⁹ ‘Alī ibn Abī Talib, *Nahjul Balagha: Sermons, Letters, and Sayings of Imam Ali* (Qum: Ansariyan, 1981), 105.

³⁰ Muhammad ibn Ismail al-Bukhari, *The Translation of Meanings of Sahih Al-Bukhari*, translated by Muhammad Muhsin Khan, Vol. 2, (Riyadh: Darussalam, 1997), number. 1519, at 345.

³¹ Abu Dawud, *English Translation of Sunan Abu Dawud*, translated by Nasiruddin al-Khattab, Vol. 4, (Riyadh: Darussalam, 2008), number 4344, at 542.

³² *The Sea of Precious Virtues (Bahr al-Fava'id): a Medieval Islamic Mirror for Princes*, translated from the Persian, edited, and annotated by Julie Scott Meisami (Salt Lake City: University of Utah Press, 1991), 16.

³³ Ibn Hajar al Asqalani, *Selections from Fath Al-Bari*, translated by Adal Hakim Murad, (Cambridge: Muslim Academic Trust, 2000), 16-17. [Italic added]

³⁴ Ibn Al-Qayyim, *Provisions For the Hereafter (Mukhtasar Zad Al-Ma'ad)*, abridged by Imam Muhammad Ibn Abdul Wahhab At-Tamimi (London: Darussalam, 2003), 246.

Jihad can also embody the fulfilment of religious obligation. Abdul-Rahman ibn Abi Bakr (d. 44AH/ 666CE), a Companion of the Prophet, viewed going to the mosque to pray as a form of *jihad*: ‘Someone who goes to the mosque in the morning or the afternoon with no intention of going anywhere else, either to learn good or teach it, is like someone who does *jihad*...’³⁵

When ‘Aishah, one of the Prophet’s wives, asked him for permission to join *jihad*, the Prophet replied ‘Your *Jihad* is (the performance of) *Hajj* [pilgrimage]’.³⁶ The Qur’anic views on *jihad* are broad; Qur’an 22:78 exhorts Muslims to ‘....strive hard [*jihad*] in Allah’s Cause as you ought to strive....So perform As-Salat [worship God], give Zakat [tax] and hold fast to Allah....’

Elaboration of *hijra* and *jihad*

Even at a relatively early stage in Islamic history the meaning and usage of both *hijra* and *jihad* had evolved and were no longer those of the Prophet’s time, that is, terms referring to the migration of the Prophet and to a personal spiritual struggle on behalf of God. This second main section examines how the Islamic dogmas of *hijra* and *jihad* were developed from their original usage in the first century of Islam through to their employment by modern extremist groups such as *Dae’sh*.

There are many examples of Muslim land becoming *dar al-kufr* (or *harb*), prompting leaders or scholars to call for Muslims to migrate to *dar al-Islam* or *dar al-hijra*. Over the centuries scholars and others elaborated the meaning of *hijra* to encompass a ‘decisive repudiation of unbelief’;³⁷ Abu Ubayd (d. 224AH/ 838CE), for example, argued that emigration

³⁵ Imam Malik *Al-Muwatta*, compiled by Yahya ibn Yahya al-Laythi, translated by 'A'isha 'Abdarahman at-Tarjumana and Ya'qub Johnson, editor-in-chief Idris Mears, (Norwich: Diwan Press, 1982), 70 (9.18.56).

³⁶ Al Bukhari, *supra* note 30, Vol. 4, number. 2875 at 89.

³⁷ Roger Webster, ‘*Hijra* and the Dissemination of Wahhabi Doctrine in Saudi Arabia’, in Ian Richard Netton (ed.), *Golden Roads: Migration, Pilgrimage and Travel in Medieval and Modern Islam* (Richmond, Surrey: Curzon Press, 1993) 11.

(*hijra*) itself was what distinguished believers from unbelievers.³⁸ However, after the Prophet's time *hijra* was not only used in this 'defensive' sense but also as a tool with which to launch military *jihad* and take over land or convert it from *dar al-harb* to *dar al-Islam*. Similarly, the meaning of *jihad* gradually evolved after the Prophet's time from a fulfilment of religious obligations to physical fighting in a holy war against Islam's enemies. The original sense of *jihad* was supplemented by a new meaning, namely one of military activity or actual physical fighting.

The Qur'an uses the term *qital* (fighting), not *jihad* (striving hard), to refer to warfare.³⁹ During the Prophet's era *jihad* was clearly seen as a form of spiritual war, with *qital* being used to denote physical warfare. Abou El Fadl notes that '[e]very reference in the Qur'an to *qital* is restricted and limited by particular conditions; but exhortations to *jihad*, like the references to justice or truth, are absolute and unconditional'.⁴⁰ The Qur'an only allows *qital*, or actual physical fighting, for self-defence, while *jihad* is seen as striving or fighting for Allah's cause. *Qital* is thus restricted in its application, whereas *jihad* can be interpreted very widely to cover both mental/spiritual and physical activities. However, the two terms became increasingly conflated after the Prophet's time. Afsaruddin notes that 'after the first/eighth century, the notion of *jihad* was reduced in juristic and administrative literature increasingly often to just physical combat, thus becoming practically synonymous with *qital* (fighting)'.⁴¹ The difference between *qital* (fighting) and *jihad* (striving hard) became blurred during the mediaeval period, and ultimately it simply disappeared.

The historical experience of *hijra* and *jihad*

After the second migration, that from Mecca to Medina, and the resultant division of the world into Islamic and non-Islamic zones, the meaning of *hijra* changed. From this time the most common reason for *hijra* from a land of unbelief or war to a land of belief was a change in a ruler's belief.

³⁸ Abū 'Ubayd al-Qāsim ibn Sallām, *The Book of Revenue = Kitāb al-Amwāl*, translated by Imran Ahsan Khan Nyazee, introduced by Ibrahim M. Oweiss, (Reading: Garnet, 2002), 216.

³⁹ Abou El Fadl, *supra* note 9, at 223.

⁴⁰ *Ibid.*, p. 223.

⁴¹ Asma Afsaruddin, 'Qital', in Oliver Leaman (ed.), *The Qur'an: An Encyclopedia* (London: New York: Routledge, 2006) 520.

Throughout Islamic history there have been scholars and extremist groups who have maintained that certain Muslim rulers should not be considered to be Muslim, and that therefore their lands have become *dar al-kufr* or *dar al-harb*.

This represented a crucial break with the Qur'an and *Sunna*, neither of which define any form of boundary between *dar al-Islam* and *dar al-harb* (or *kufr*). This idea, that even lands ruled by a self-declared Muslim can be treated as non-Muslim, and the related notion that the world can therefore be divided into zones of belief and unbelief, can be traced back to the 7th CE Khawarij sect. They held that all territories were *dar al-kufr* until conquered for (their particular understanding of) Islam.⁴² Territories could switch between these two states of belief depending on the religious affiliation of their rulers. If a ruler or his people turned against Allah or sinned, *hijra* from his land and *jihad* against it become obligatory.⁴³

The possibility of *dar al-Islam* becoming *dar al-harb* has been reiterated by many scholars through the centuries. For example, Ibn Taymiyyah argued that this could happen if Islamic law was not enacted. Similarly Shāh 'Abdul 'Azīz (1746-1824), an Islamic scholar in 19th century British India, argued in a *fatwa* that there were three ways that *dar al-Islam* could become *dar al-harb*: prohibition of Islamic rules, introduction of infidel rules or protection rights not being honoured.⁴⁴ An example of *dar-al-Islam* changing to *dar al-kufr* (or *harb*) is that of Sokoto, Nigeria. In 1903, Nigeria fell to the British, leading the Sokotan Caliph (Muhammadu Attahiru; d. 1903 CE) to declare that Sokoto was no longer part of *dar al-Islam*.⁴⁵

The obligation to move to Muslim land has also been repeated by scholars throughout history, particularly during periods of invasion by unbelievers or foreign powers. During the Mongol invasion in the 13th CE, Ibn Taymiyyah called on all Muslims to permanently migrate from *dar al-harb* (in this case, land ruled by the Mongols), as he held that Muslims can

⁴² Ahmad Ibn Taymiyyah, *Fatawa Ibn Taymiyyah*, Vol. 19, (Maktabat al Ma'arif n.d.) 73.

⁴³ Muhammad Khalid Masud, 'The Obligation to Migrate: the Doctrine of Hijra in Islamic Law' in Dale F. Eickelman and James Piscatori (eds.), *Muslim Travellers: Pilgrimage, Migration, and the Religious Imagination* (London: Routledge, 1990) 34.

⁴⁴ Saiyid Athar Abbas Rizvi, *Shāh 'Abd al-'Azīz: Puritanism, Sectarian, Polemics and Jihād* (Canberra: Ma'rifat Publishing, 1982), 228-229.

⁴⁵ Basheer M. Nafi, 'Fatwa and War: On the Allegiance of the American Muslim Soldiers in the Aftermath of September 11', *Islamic Law and Society* 11(1) (2004): 78-116, 87.

only live in lands regulated by Shari'a.⁴⁶ Similarly, the mediaeval jurist Ahmad Al-Wansharishi (d. 914AH/ 1508CE) issued a *fatwa* regarding a Muslim who chose to remain in Marbella in southern Spain after its re-conquest by Christian 'unbelievers'. He declared that Muslims residing in a land ruled by heathens can never be free from Christian contamination, as they will inevitably be in constant contact with them, and that they should leave immediately for a land ruled by Muslims.⁴⁷

Jihad and hijra

Declarations of *jihad* are often made together with calls for *hijra*; this is unsurprising, as migrations and calls for them are more frequent during periods of war. Both are considered by certain scholars and rulers to be religious obligations for all Muslims, and several Qur'anic passages refer to them together; verse 8:72, for example, mentions '...those who believed, and emigrated and strove hard [*jihad*] and fought with their property and their lives in the Cause of Allah...'. The same verse also states that those who have not undertaken *hijra* are not protected until they have done so. Similarly, Qur'an 3:195 refers to '...those who emigrated and were driven out from their homes, and suffered harm in My Cause, and who fought, and were killed (in My Cause)...'

The link between *hijra* and *jihad* is seen throughout Islamic history and can be traced back to the second migration, the Prophet's *hijra* from Mecca to Medina. In the following years migration became a means of expanding Islamic rule, with Mohammed's successors calling on Muslims to emigrate to garrison towns (*amsar*) and other locations in the *dar al-hijra* (abode of emigration). The second Caliph 'Umar was the first to develop the concept of *hijra* in this way. He stressed that emigration to garrison towns would help those believers already living there, and encouraged it by noting that

The booty [*fay*'] belongs to the people of the newly established garrison towns (*amsar*) and to those who joined them, gave them

⁴⁶ Ibn Taymiyyah cited from Denise Aigle, *Mongol Empire Between Myth and Reality: Studies in Anthropological History* (Leiden: Brill, 2014), 273.

⁴⁷ L. P. Harvey, *Islamic Spain 1250 to 1500* (Chicago: London: University of Chicago Press, 1990), 56-57.

assistance and stayed with them.⁴⁸

This was a clear evolution from the earlier use of *hijra*. The Prophet's migration to Medina was for self-defence and not for expanding Islam's territory, but the second Caliph 'Umar explicitly linked the two by viewing the destinations of Muslim migrations as potential bases for further expansion: 'Establish for the Muslims a place where they can migrate (and settle) (*dar hijrah*) [*dar al-hijra*] and from which they can wage holy war. Do not place a great river (*bahr*) between me and the Muslims.'⁴⁹

The connection between *hijra* and *jihad* can also be seen in the process of founding the Fatimid Caliphate. Abu 'Abdullah al-Shi'i (d. 298 AH/ 911CE), an Ismaili *da'i* (religious leader) in the 10th CE, ordered all his followers to move to Tazrut after he had conquered it, as he considered it to be *dar al-hijra*. Believers from across the whole region moved to Tazrut and then joined the *jihad* to further expand his territory.⁵⁰

Another example of the combination of *hijra* and *jihad* in the establishment of Islamic rule was the Almoravid movement of the 11th CE, founded by Ibn Yasin (d. 451AH/ 1059 CE). He had observed un-Islamic practices in Sanhaja (Morocco), such as men taking more than four wives, and so started to 'teach them religion and to explain the Law and the *Sunna*'.⁵¹ When he realised the difficulty he faced in teaching Islam and religious obligations to the people of Sanhaja, he undertook a *hijra* to an island with his seven companions.⁵² His Islamic community grew there to the point where he could call upon his followers and disciples, the *murabitun* or Almoravids (a thousand Sanhaja nobles), to make *jihad* or Holy War on those Sanhaja tribes who opposed them.⁵³

A far more recent example is that of Usman dan Fodio (d. 1817CE),

⁴⁸ Al-Tabari, *The History of Al-Tabari Vol. 12; The Battle of al-Qādisīyah and the conquest of Syria and Palestine*, translated and annotated by Yohanan Friedmann, (Albany: State University of New York Press, 1992), 203.

⁴⁹ *Ibid.*, p. 143.

⁵⁰ Ibn Hayyūn, *Founding the Fatimid State: the Rise of an Early Islamic Empire*, annotated English translation of al-Qādi al-Nu'mān's *Iftitāh al-Da'wah* by Hamid Haji, (London: I.B. Tauris in association with the Institute of Ismaili Studies, 2006), 89-90, 96.

⁵¹ Ibn Abi Zar (d. 715AH/ 1315CE) cited in *Corpus of Early Arabic Sources*, *supra* note 7, at 239.

⁵² *Ibid.*, p. 240; Jamil M. Abun-Nasr, *A History of the Maghrib* (London: Cambridge University Press, 1971), 93; Ivan Hrbek (ed.), *General History of Africa III: Africa from the Seventh to the Eleventh Century* (Paris: London: Berkeley: James Currey, 1992) 179.

⁵³ Ibn Abi Zar (d. 715AH/ 1315CE) cited in *Corpus of Early Arabic Sources*, *supra* note 7, at 240.

the founder of the Sokoto Caliphate in Nigeria. Fodio's tutor, Shaykh Jibril (Jibril ibn 'Umar), had tried to reform Hausland's Muslim rulers and had written a polemic in which he criticised them for altering or abandoning the Shari'a and thus for being unbelievers.⁵⁴ Fodio called for a *hijra* to Gudu in Sokoto state, and for a *jihad* to overthrow non-Islamic customs and to establish Muslim law.⁵⁵ He stressed that migration remained an obligation for Muslims, that *jihad* was closely connected to *hijra* and that the concept of *dar al-Islam* needed to be re-defined.⁵⁶ All Fodio's views were directed by his belief that his homeland, Hausland in Nigeria, was dominated by a corrupt ruler, Sarkin Gobir Nafata (the Sultan of Gobir, Yunfa dan Nafata; d.1808).⁵⁷ Fodio criticised the Sultan for practising paganism and being a polytheist; his *jihad* was one of 'truth against falsehood' and was aimed at purifying religion and 'putting an end to evil practices'.⁵⁸ He saw *jihad* as an obligation, as a land ruled by heathens or polytheists was no longer *dar al-Islam*, it was *dar al-kufr*.

Another connection between *jihad* and *hijra* can be seen in Abu Ubayd's argument that believers who have joined the *jihad* are to be afforded the same legal protection and status as Muslims living in Muhajirun land [*dar al-Islam*]; in other words, he classed these two concepts as being equivalent for some purposes. The practical effect of this for Abu Ubayd was that in certain circumstances *hijra* was actually *not* obligatory, for if a believer had joined *jihad* he was excused from performing *hijra*.⁵⁹

These historical examples illustrate the close links between *jihad* and *hijra* and show that some scholars consider both to be obligatory for Muslims, even being seen as proof of one's belief (*iman*). Ibn Qayyim, citing Qur'an 2:218,⁶⁰ stated that '*Jihad* is not complete without *Hijrah*,

⁵⁴ A. D. H. Bivar and M. Hiskett, 'The Arabic Literature of Nigeria to 1804: A Provisional Account', *Bulletin of the School of Oriental and African Studies, University of London* 25(1/3) (1962): 104-148, 141-143.

⁵⁵ Nana Asma'u, *Collected works of Nana Asma'u, Daughter of Usman dan Fodiyo, 1793-1864*, Jean Boyd and Beverly B. Mack (East Lansing: Michigan State University Press, 1997), 135-136.

⁵⁶ Masud, *supra* not 43 at 38.

⁵⁷ Muhammad Bello and E. J. Arnett, *The Rise of the Sokoto Fulani*, being a paraphrase and in some parts a translation of the Infaku'l Maisuri of Sultan Mohammed Bello by E.J. Arnett, (Kano: Emirate Printing Department, 1922) 47-48.

⁵⁸ *Ibid.*, p. 63.

⁵⁹ Abū 'Ubayd, *supra* note 38, at 218.

⁶⁰ (Qur'an 2:218): 'Verily, those who have believed, and those who have emigrated (for Allah's Religion) and have striven hard in the Way of Allah, all these hope for Allah's Mercy. And Allah is Oft-Forgiving,

nor are *Hijrah* and *Jihad* complete without faith and belief'.⁶¹

Military *jihad*

Jihad is a collective obligation (*fard al-kifaya*), which means that the duty is incumbent on all Muslims; however, as *The Reliance of the Traveller* notes, 'if someone undertakes it, then the obligation has been fulfilled and the sin and responsibility is lifted from the rest'.⁶² The *jihad* is actually only an individual (*fard al-'ayn*) duty in two situations under traditional Islam. The first of these is if non-Muslims invade an Islamic nation, in which case it is an individual obligation upon all to attempt to repel the invaders. The second situation is upon those fighting in a battle line, when running away is forbidden.⁶³ Finally, it's worth noting that *jihad*, in its physical warfare sense, was traditionally subject to other limitations. A debtor could not embark on holy war without his creditors' permission, while those with living parents needed their permission to join *jihad*.⁶⁴

The above historical examples indicate that *jihad* was indeed interpreted by medieval scholars as actual physical fighting, and that as Crone argues 'In classical law *jihad* is missionary warfare'.⁶⁵ This understanding of *jihad* can be readily understood from mediaeval Islamic textbooks and other scholarly works; *The Reliance of the Traveller*, for example, notes that '*Jihad* means to war against non-Muslims'.⁶⁶ Some mediaeval scholars argued that *jihad* should be used for converting unbelievers to Islam. Ibn Khaldûn (d. 808AH/ 1406 CE) stressed its obligatory nature:

In the Muslim community, the holy war is a religious duty, because of the universalism of the (Muslim) mission and (the obligation to) convert everybody to Islam either by persuasion or by force.⁶⁷

Most-Merciful'.

⁶¹ Ibn Qayyim, *supra* note 34 at 250.

⁶² *The Reliance of the Traveller*, *supra* note 20, at 33 (c3.2).

⁶³ 'Ali ibn Tahir al-Sulami, *The Book of the Jihad of 'Ali ibn Tahir al-Sulami (d. 1106)*, text, translation and commentary by Niall Christie (Farnham, Surrey: Ashgate, 2015), 209.

⁶⁴ *The Sea of Precious Virtue*, *supra* note 32 at 28.

⁶⁵ Patricia Crone, *God's Rule: Government and Islam* (New York: Columbia University Press, 2004), 364.

⁶⁶ *The Reliance of the Traveller*, *supra* note 20 at 599 (o9.0).

⁶⁷ Ibn Khaldûn, *The Muqaddimah: An Introduction to History*, translated from the Arabic by Franz

Similarly, Ibn Taymiyyah considered physical warfare to be essential for *jihad*, and cited verse 8:39 to explain its aim: ‘And fight them [disbelievers] until there is no more *fitnah* [sedition/temptation] and the religion will all be for Allah alone’.⁶⁸

In mediaeval times military *jihad* against unbelievers was a ruler’s duty; he was required to ‘make *jihad* against those who resist Islam after having been called to it until they submit or accept to live as a protected *dhimmi* (unbeliever)-community’.⁶⁹ Indeed, Al-Farabi noted that one of the conditions of power was to undertake *jihad*: ‘he [the ruler] should be able to go on the holy war (*jihad*)’.⁷⁰

Although the Prophet did not introduce military *jihad*, some scholars have sought to justify such actions by referring to his actions against unbelievers. Some have argued that the treatment of such people actually changed *during* the Prophet’s lifetime from mere warnings to actual physical fighting. For example, Ibn Qayyim noted that during the Meccan period the Prophet was not allowed to fight anyone, then after the move to Medina he was permitted to fight those who fought him, and then finally he was allowed to instigate hostilities against those disbelievers who had no covenant with Islam.⁷¹

Certain scholars argue that the Prophet himself made references to military *jihad* and that the Qur’an prescribes it. For example, Ibn Qayyim argued that ‘Allah commanded his followers to forgive non-believers, and to wait until they were strong enough to fight’,⁷² while Sayyid Qutb noted that Allah’s order not to fight while in Mecca was only temporary.⁷³ Some scholars have sought to defend military *jihad* by pointing to certain subtle differences in the words used in Qur’anic verses revealed while the

Rosenthal, Vol. 1, (Princeton, N.J: Princeton University Press, 1980), 473.

⁶⁸ Ibn Taymiyyah, *The Religious and Moral Doctrine of Jihad* (Birmingham: Maktabah al Ansaar Publications, 2001), 28.

⁶⁹ Al-Mawardi, *supra* note 8 at 28 (italic added). Also see *The Reliance of the Traveller*, *supra* note 20 at 647 (o25.9).

⁷⁰ Al-Farabi, *Al-Farabi Fusul Al-Madani (Aphorisms of the Statesman)*, edited with an English translation, introduction and notes by D.M. Dunlop, (Cambridge: Cambridge at the University Press, 1961), 51.

⁷¹ Ibn Qayyim, *supra* note 34 at 340-341.

⁷² *Ibid.*, p. 297.

⁷³ Sayyid Qutb, *Milestones*, with a forword [sic] by Ahmad Zaki Hammad (Indianapolis: American Trust Publication, 1990), 53; Sayyid Qutb, *In the Shade of the Qur’an = Fī zilāl al-Qur’ān*, Vol. 7, (Markfield: Islamic Foundation, 2003), 15.

Prophet was in Mecca to those revealed during the subsequent Medinan period. The Meccan verses make no mention of military activities against unbelievers; verse 29:69, for example, notes ‘...those who strive hard in Us (Our Cause), We will surely guide them to Our Paths’. Some scholars point to this as proof that fighting was prohibited in the Meccan period. Al-Qurtubi (d. 671 AH/ 1273CE) argues that ‘There is no disagreement that fighting was forbidden before the Hijra by the words of Allah’; he highlights Qur’an 41:34 (‘Repeal the bad with something better’) and other Meccan verses.⁷⁴

Some scholars believe that the first verse to reference military jihad was Qur’an 22:39,⁷⁵ which states that ‘Permission to fight is given to those who are fighting them....’. Similarly, verse 2:190 allows Muslims to fight those who attack them: ‘And fight in the Way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not the transgressors.’

Certain scholars thus believe that military jihad is prescribed in the Qur’an and Sunna. Their arguments regarding jihad have provided the basis for the beliefs and actions of many modern extremist groups.

The modern use of *hijra* and *jihad* as Islamic dogma

The evolution of the twin Islamic dogmas of *hijra* and *jihad* are crucial in understanding modern extremist groups. The shift in meaning of *jihad* from spiritual ‘fighting’ to actual physical warfare against an enemy has profoundly affected the ways in which such groups operate. *Dae’sh* have used these terms in their attempts to establish an Islamic caliphate in Iraq and Syria. They consider all other rulers in Muslim majority states to be apostates; as with the Khawarij in the 7th CE they only consider their own land to be *dar al-Islam* and view all other lands, even if nominally Islamic, as *dar al-kufr*. Whether Muslims can or cannot practice their religion or live safely in such ‘heathen’ lands is irrelevant to them. Their worldview

⁷⁴ Al-Qurtubi, *Tafsir al-Qurtubi: Classical Commentary of the Holy Qur’an*, translated by Aisha Bewley, Vol. 1, (London: Dar al-Taqwa, 2003), 490.

⁷⁵ Abu Muhammad 'Abdullah Ibn Abi Zayd al-Qayrawani, *A Madinan View: on the Sunnah, Courtesy, Wisdom and History*, translated by Abdassamad Clarke, (London: Ta-Ha, 1999), 142; Ibn Qayyim, *supra* note 34 at 298; Ibn Kathir, *supra* note 6, Vol. 6, at 582-583.

allows for only two lands, one ruled by them and one not; there is ‘no third camp present’.⁷⁶ One either subscribes to their model, beliefs and practices or one belongs to the enemy camp of disbelief (*kufir*) and hypocrisy, and is thus their enemy.⁷⁷

Extremist groups today also make declarations of *takfir* (excommunication) against certain Muslim rulers, just as the Khawarij did. *Dae’sh* have made such declarations in order to start military *jihads* and change *dar al-harb* or *kufir* into *dar al-Islam*, an Islamic state.⁷⁸

Division of the world and *hijra* today

As with the traditional Islamic approach to the division of the world, certain scholars argue that *dar al-Islam* by definition should be ruled by Shari’a, lest it become *dar al-kufir* or *dar al-harb*. Sayyid Qutb, for example, notes that ‘The main criterion in considering an area as a ‘land of Islam’ is whether Islamic law is implemented in it or not’.⁷⁹ The land can become *dar al-kufir* regardless of whether the majority of the population are Muslim or not, or whether the ruler is Muslim or not.⁸⁰ Extremist groups believe that a Muslim should not live in *dar al-kufir*, viewing it as a sin. As with Al-Wansharishi’s *fatwa* in the 15th CE, *Dae’sh* criticise such Muslims.⁸¹ Other groups and scholars have also called for modern-day migrations. Sayyid Qutb, for example, argues that the requirement to migrate is as obligatory now as it ever was:

Once there is a place on earth, any place, where Islam rules and where one can feel secure declaring one’s faith and fulfilling one’s religious duties, then one must migrate in order to live under the banner of Islam and enjoy the sublime standard of life Islam affords.⁸²

⁷⁶ ‘The Return of the Khilafah’ (*Dabiq*, issue 1, 2014) 10-11.

⁷⁷ *Ibid.*, p. 11.

⁷⁸ See Mohamed Badar et al., “The Radical Re-interpretation of the Islamic Concept of Takfir”, *Arab Law Quarterly* 31 (2017), 6-7. Check the right title please

⁷⁹ Sayyid Qutb, *supra* note 73, Vol. 4, at 81.

⁸⁰ *Ibid.*, p. 81-82.

⁸¹ ‘Shari’ah Alone Will Rule Africa’, (*Dabiq*, issue 9, 2015) 55-56. Interestingly, and as with Abu Hanifa, *Dae’sh* state that punishment for *hudud* offences might not be applied in the land of Sham (Syria) because before *Dae’sh* invaded: ‘Shām was *dārul-harb* and...*hudūd* should not be implemented therein!’

⁸² Sayyid Qutb, *supra* note 73, Vol. 3, at 286.

As well as scholars, contemporary extremist groups such as Boko Haram also issue calls for *hijra*.⁸³ The most high profile recent case is again that of *Dae'sh*, who consider *hijra* to be a test for those Muslims living in *dar al-kufr*.⁸⁴ Citing the words of the mediaeval jurists Ibn Qudāmah (d. 620AH/ 1223CE) and Al-Mawardi (d. 448AH/ 1058CE),⁸⁵ *Dae'sh* continually reiterate their belief that *hijra* is an obligation for all Muslims, wherever they are in the world. They believe that *hijra* carried out by Muslims living in *dar al-kufr* is a statement of their belief, but in fact their calls are fundamentally different from that of the Prophet or that made by Fodio in the 19th century. These earlier calls were made for the purpose of avoiding persecution by rulers and others, but *Dae'sh* believe that the mere act of living alongside unbelievers is a sin regardless of whether Muslims are being persecuted or not.

Dae'sh portray *hijra* as a 'chance to live under the shade of the Shari'ah alone'.⁸⁶ From their very beginnings *Dae'sh's* goal has been to establish an Islamic state in the Middle East governed solely by Shari'a, along with the secondary aim of securing a base from which their sphere of control can be steadily expanded across the region and world.⁸⁷ Their particular interpretation of Shari'a law holds that they are justified in proclaiming al-Baghdadi their leader (Caliph), in founding an Islamic state and in seeking to expand that state through war.⁸⁸ Their use of *hijra* thus differs greatly from that of the Prophet.

***Jihad* today: Wars against Islamic rulers**

The fundamental aim of Shari'a is to secure social stability. It prohibits fighting against rulers, and so *Dae'sh's* attempts to overthrow rulers in the name of God, and the calls by others to do the same elsewhere, are highly controversial from an Islamic law standpoint. *Jihad* against the rulers of

⁸³ The founder of Boko Haram, Mohammed Ali, called for a *hijra* from Maiduguri in Borno State to Kanama in Yobe state. See Oluwaseun Bamidele, 'Defeating Boko Haram Terrorism: Who is Winning this War?', *Strife Journal*, (4) (2014): 45-51, 48.

⁸⁴ 'The Murtadd Brotherhood', (*Dabiq*, issue 14, 2016) 19.

⁸⁵ 'The Law of Allah or the Law of Men', (*Dabiq*, issue 10, 2015) 52.

⁸⁶ 'From Hypocrisy to Apostasy', (*Dabiq*, issue 7, 2015) 61-62.

⁸⁷ 'The Return of the Khilafah', *supra* note 76 at 8.

⁸⁸ 'From the Battle of Al-Ahzab to the War of Coalitions', (*Dabiq*, issue 11, 2015) 10.

one's own state, in other words civil war, is one of the biggest issues confronting Muslim society today. Abd al-Salam Faraj, whose work partly inspired the assassination of Egyptian President Sadat in 1981, noted in his pamphlet *The Neglected Duty* that the 'first battlefield for *jihad* is the extermination of these infidel leaders and to replace them by a complete Islamic Order'.⁸⁹ Along with other modern extremist groups, *Dae'sh* consider military *jihad* against infidels or un-Islamic rulers to be a religious obligation for all Muslims. Indeed, fighting un-Islamic rulers has been encouraged and justified by certain scholars and groups throughout Islamic history. The Khawarij sect, for example, considered the fourth Caliph Ali to be an apostate and called for war against him, while Ibn Taymiyyah considered the Mongol rulers of the 14th CE to be un-Islamic and called for *jihad* against them.

The concept of *jihad* is closely related to the Islamic notion that the world is divided into *dar al-Islam* and *dar al-harb*; Muslim leaders have often made declarations of *jihad* against rulers of the latter areas, such as the Byzantine empire in the mediaeval period, to protect *dar al-Islam* from infidel invasion and for other reasons. *Jihad* can also be used internally, as declarations of struggle against Muslim rulers perceived to be non-believers. Abul Ala Maududi stated that 'the objective of the Islamic 'Jihad' is to eliminate the rule of an un-Islamic system and establish in its stead an Islamic system of state rule'.⁹⁰ This explains why calls for *jihad* are still being used in combination with *hijra* by contemporary extremist groups aiming to overthrow infidel rulers. *Dae'sh*, for example, note that 'Hijrah has been a pillar inherent to jihad, particularly in eras void of darul-Islam [*dar al-Islam*]'⁹¹ and that 'One first performs *hijrah* to the lands of *jihād*'.⁹² *Jihad* for *Dae'sh* means physical warfare against infidel governments and other enemies, and encompasses the duty to perform *hijra* and to achieve *shahadah* (the basic statement of the Islamic faith: 'There is no god but Allah and Muhammad is the prophet of Allah'). In addition to pledging to protect the frontiers of their Islamic state, it's notable that

⁸⁹ Appendix: translation of Muhammad Abd al-Salam Faraj's text entitled *Al-Faridah al-Gha'ibah*, 'The Neglected Duty' in Johannes J.G Jansen, *The Neglected Duty: the Creed of Sadat's Assassins and Islamic Resurgence in the Middle East* (New York: Macmillan, 1986), 193 (§70).

⁹⁰ Maulana Abul Ala Maududi, *Jihad in Islam* (Beirut: The Holy Koran Publishing House, 2006), 22.

⁹¹ 'The Return of the Khilafah', *supra* note 76 at 34.

⁹² 'They Plot And Allah Plots', (Dabiq, issue 9, 2015) 13.

Daesh's call to *jihad* requires their followers to acknowledge the leadership of Abu Bakr al-Baghdadi; the concept of *jihad* is thus clearly a crucial one to their ideology and agenda.⁹³[AA3]

FIGURE 1

⁹³ They have called upon Muslims to eradicate any *shirk* or heretical behaviour and customs and to unite behind the Caliph (al-Baghdadi) in *jihad*. They view *hijra* as an Islamic obligation and as the first step in establishing a caliphate. See, Mohamed Elewa Badar, 'The Self-Declared Islamic State (Da'esh) and *Ius ad Bellum* under Islamic International Law', (2017) 1 *The Asian Yearbook of Human Rights and Humanitarian Law* 1-39, 19 (forthcoming)

05
KHILAFAH



04
TAMKIN



03
DESTABILIZE TAGHUT



02
JAMA'AH



01
HIJRAH

However, military *jihad* against a ruler is actually prohibited by Islam in two ways. Firstly, under Islamic law *bughāh* (rebels) and *muharibun* (terrorists) are not treated the same. Although *bughāh* literally means transgressors, to be a rebel is not in itself a crime under Islamic law. The four traditional schools of law have defined ‘rebels’ in the Islamic context as a group of Muslims that are organised in order to fight a ruler and that claim to have just cause (*ta’wīl*) for their actions.⁹⁴ Notably, the Islamic laws of rebellion (*aḥkām al-bughāh*) enable both parties to such conflicts, the rebels and the state, to engage as equal partners in many respects. For example, it affords legal recognition to the rebels for any judgments they pass, providing they do not contradict Islamic law.⁹⁵ However, *Dae’sh* are considered to be *muharibun* (terrorists), not *bughāh* (rebels). Some scholars believe that modern uprisings and wars started by extremist groups against so-called ‘un-Islamic’ rulers can be considered to be *hirabah*. The Qur’an defines this Arabic term, which derives from a root meaning ‘warfare’ or ‘combat’, as meaning waging war and causing corruption.⁹⁶ Shaykh Tusi (d. 460AH/ 1067CE) notes that people who bear arms against the state and enter into armed conflict, whether in Muslim or non-Muslim territory, are known as *muharib*; they are to be punished by death under traditional Islamic law.⁹⁷

The second way in which military *jihad* against a ruler is prohibited by Islam relates to the fact that the words and deeds of many of those scholars and groups who support such actions and issue calls for it directly contradict those of the Prophet, who expressly forbade wars against rulers. He stated that any rulers who came after him who did not follow his examples and ways, as outlined in the *Sunna*, should be obeyed ‘even if your back is flogged and your wealth is taken’.⁹⁸ The disunity of Muslim

⁹⁴ Mohamed Badar et al, ‘The Origins and Evolution of Islamic Law of Rebellion -Its Significance to the Current International Humanitarian Law Discourse’ (XXX), 20.

⁹⁵ Mohamed Badar et al, ‘The Origins and Evolution of Islamic Law of Rebellion -Its Significance to the Current International Humanitarian Law Discourse’ (XXX), 23-24.

⁹⁶ Chrystie Flournoy Swiney, ‘Hirabah’, in John L. Esposito (ed.), *The Oxford Encyclopedia of the Islamic World*, Vol. 2, (New York: Oxford University Press, 2009) 407.

⁹⁷ Shaykh Tusi, *Al-Nihayah: Concise Description of Islamic Law and Legal Opinions (al-Nihayah fi Mujarrad al-Fiqh wa al-Fatawa)*, translated by A. Ezzati, (London: ICAS Press, 2008), 485.

⁹⁸ Imam Muslim, *Sahih Muslim*, translated by Nasiruddin al-Khattab, Vol. 5, (Riyadh: Darussalam, 2007), number. 4785, 181. See also, Al Bukhari, *supra* note 30, Vol. 9, number. 7143 at 162-163.

groups and social disorder were considered to be a greater evil than unjust rulers. Similarly, Ahmad ibn Hanbal (d. 241AH/ 855CE) stated that

....bearing up under the rule of whatever government there is, just or unjust; believing that we should not take up arms against rulers, even oppressive ones; not holding anyone who professes the oneness of God to be an Ingrate [*Kafir*], even if he commits grave sin...⁹⁹

The Prophet did not use *jihad* as a rallying cry for war or as a means to overthrow rulers but rather to seek peace with his neighbours, proclaiming ‘Leave the Ethiopians alone so long as they leave you alone, and leave the Turks alone so long as they leave [you] alone’.¹⁰⁰ Imam Malik (d. 179AH/ 795CE) noted that ‘People continue to avoid an attack on them [the Ethiopians], implying that this injunction seems to have held after the Prophet’s time, at least for a certain period.’¹⁰¹ Any physical fighting that occurred during the Prophet’s time was simply self-defence on the part of the nascent Islamic society, and was for the protection of believers. Maḥmūd Shaltūt (d. 1963), the Shaykh of Al-Azhar between 1958-1963, stated that

the Messenger only fought those who fought him, and...his fighting had no other aims than repelling oppression, warding off rebellion and aggression and putting an end to persecution for the sake of religion.¹⁰²

⁹⁹ Ibn al-Jawzi, *Virtues of the Imam Ahmad ibn Hanbal*, edited and translated by Michael Cooperson, Vol. 1, (New York: New York University Press, 2013), 327.

¹⁰⁰ Abu Dawud, *supra* note 31, Vol. 4, number.4302 at 518.

¹⁰¹ Ibn Rushd, *The Distinguished Jurist's Primer: A Translation of Bidāyat Al-Mujtahid*, translated by Imran Ahsan Khan Nyazee, reviewed by Muhammad Abdul Rauf, Vol. 1, (Reading: Garnet Publishing, 1994-1996), 455-456.

¹⁰² Rudolph Peters, *Jihad in Medieval and Modern Islam: the Chapter on Jihad from Averroes' Legal Handbook Bidāyat Al-Mudjtahid'and the treatise Koran and Fighting'by the late Shaykh al-Azhar Maḥmūd Shaltūt*, translated and annotated by Rudolph Peters, (Leiden: Brill, 1977), 75. Similarly, Abu-Zahra noted: ‘The Prophet (P.B.U.H) emigrated to Madina wherein started a new sort of jihad. It was to fight in defence of the newly established Muslim State, so as to repel the repeated aggressive attacks launched by the Unbelievers against the Faithful who had been still under the Unbeliever’s control and to safeguard them against being forced to renounce their faith’. See, Muhammad Abu Zahra, ‘The Jihad (Striving)’ in Academy of Islamic Research, *The Fourth Conference of the Academy of Islamic Research: Rajab 1388 September 1968* (Cairo: Al Azhar Academy of Islamic Research, 1970), 65-66.

Islamic scholars have sought to classify ‘just’ and ‘un-just’ war. The mediaeval scholar Al-Farabi (d. 339AH/ 950CE) considered that a defensive war was a just war, for example to ‘ward off an enemy who has come against the city’.¹⁰³ An offensive war could also be classified as a just war in very limited situations, such as for the ‘acquisition of a good for the people of the city’.¹⁰⁴ All other wars were seen as unjust, for example if a ruler made war for the purpose of conquest only.¹⁰⁵ Abu Zahra, a contemporary Islamic scholar, has argued that fighting is only permissible for self-protection and for defending one’s faith and community.¹⁰⁶ The calls for military *jihad* against rulers, made by *Dae‘sh* in order to establish a caliphate, therefore lack legitimacy under the Islamic just-war theory and are not allowed within Islam.

The status of *hijra* in Shari‘a after the Prophet’s time

Dae‘sh’s division of the world is legally controversial from a Shari‘a point of view. It is open to question whether *hijra* from *dar al-kufr* to *dar al-Islam* is an obligation for Muslims in the modern context. Firstly, there is debate regarding whether those Qur’anic verses that relate to *hijra* have been abrogated or not.¹⁰⁷ Some mediaeval jurists held that *hijra* can be an obligation if Muslims are not able to freely practice their religion. For example, Al-Nawawi (d. 676AH/ 1277CE) stated that *hijra* was merely a recommendation if a Muslim could practice his religion, but if he was deprived of this then *hijra* become an obligation.¹⁰⁸ Similarly, Al-Wansharishi noted in a *fatwa* that the requirement to migrate for those whose land is occupied by tyrants ends only for those unable to migrate; all

¹⁰³ Al-Farabi, *supra* note 70 at 57 (no. 63)

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ Abu Zahra, *supra* note 102 at 52.

¹⁰⁷ Al-Shāfi‘ī noted that ‘To “abrogate” means to cancel an obligation’. See Muhammad ibn Idrīs al-Shāfi‘ī, *The Epistle on Legal Theory*, edited and translated by Joseph E. Lowry, (New York: New York University, 2013). Richard Bell explained that the doctrine of abrogation (*naskh*) was supported by the concept that ‘certain commands to the Muslims in the Qur’an were only of temporary application, and that when circumstances changed they were abrogated or replaced by others. See, Richard Bell, *Bell’s introduction to the Qur’an*, completely revised and enlarged by W. Montgomery Watt, (Edinburgh: Edinburgh University Press, 1970), 87-88.

¹⁰⁸ Al-Nawawi, *Minhaj et Talibin: A Manual of Muhammadan law*, translated into English from the French edition of L.W.C. Van Den Berg by E.C. Howard, (London: W. Thacker & Co., 1914), 463.

others must leave.¹⁰⁹ Moreover, some scholars and groups argue that the obligation to undertake *hijra* still stands today because of the Prophet's statement that 'The *hijra* does not cease as long as the unbelievers are to be fought'.¹¹⁰

However, some scholars believe that those Qur'anic verses which mention *hijra* have been abrogated, and therefore that any obligation to undertake *hijra* has been ended. For example, both Abu Ubayd and Ibn Khaldûn argued that the Prophet's statement that '[t]here is no emigration after the conquest of Makka [Mecca]' meant there was no longer any obligation to perform *hijra*.¹¹¹ It should be noted that the purpose of the Prophet's *hijra* and of those that came after were very different; indeed, this is the main reason for the topic being so controversial. The Prophet based his calls to his followers to migrate on Allah's instructions to him; as discussed earlier, they were for the purpose of protecting his believers (in the case of the first *hijra*, to the Christian kingdom of Abyssinia) and for establishing a new Islamic community or *umma* (as in the second *hijra*, from Mecca to Medina). The Prophet ordered these migrations for safety and security, not because *dar al-Islam* had become *dar al-harb*. In the case of the first migration this was to Abyssinia, not an Islamic land but simply a place where Muslims could freely practice their religion.¹¹²

All *hijra* after the Prophet's time, and hence after the first two migrations, were based on interpretations by scholars. Despite the arguments made by some scholars and groups, it seems clear that there is no legal basis in Shari'a for these *hijra*. They differ from the first two migrations because, to varying degrees, they all seem to have been politically motivated. The *hijra* to garrison towns developed and led by the second Caliph Umar, for example, were far from being straightforward religious obligations. Crone argues that at this time a *dar al-hijra* was 'simply an armed camp or mobilization centre to which one went to fight the infidels whoever and wherever they might be'; if an individual then

¹⁰⁹ Appendix B, 'Al- Wansharishi's 'Asna al-matajir,' in *al-Mi'yar al-mu'rid*, in Alan Verskin, *Islamic Law and the Crisis of the Reconquista: the Debate on the Status of Muslim Communities in Christendom* (Leiden: Brill, 2015), 147.

¹¹⁰ Abū 'Ubayd, *supra* note 38 at 218.

¹¹¹ *Ibid.*, p. 222. See also, Ibn Khaldûn, *supra* note 67, Vol. 1, at 255-256.

¹¹² Ibn Hisham, *Sirat Ibn Hisham: Biography of the Prophet*, abridged by 'Abdus-Salam M. Harun, (Cairo: Al-Falah Foundation, 2000), 56.

chose to abandon the military life, the *hijra* would also come to an end.¹¹³

The 15th century experience of *hijra* in Islamic Spain was similarly far from being a purely religious migration; given the context, it was simply not possible to replicate the Prophet's *hijra* from Mecca to Medina. Abou El Fadl argues that the *fatwa* issued by Al-Wansharishi was heavily influenced by the social and political conditions prevailing at the time and was not based on previous legal thought; he therefore concludes that the *fatwa* was inevitably a product of the intensity of Christian/Islamic rivalry, and that the deep sense of humiliation that Al-Wansharishi felt is evident in his use of language.¹¹⁴ Nevertheless, although Al-Wansharishi's call for *hijra* has been much criticised, it is worth noting that the Muslim population in Granada declined due to Muslim emigration to North Africa.¹¹⁵

Usman dan Fodio's nineteenth-century call for *hijra* was also an attempt to replicate the Prophet's *hijra*, but as with Al-Wansharishi in the 15th century Fodio's call to migrate was made under very different circumstances from those prevailing in the Prophet's time. Although both the Prophet's and Fodio's followers were facing persecution, the legality of Fodio's *hijra* has been questioned. Firstly, his *hijra* was mainly based on his belief that the Qur'anic obligation to undertake *hijra* still held. Secondly, his *hijra* was strongly affected by the political situation at the time. Doi argues that Fodio's *hijra* was more political than religious; it helped to maintain the 'faith, confidence and cohesion' of popular political movements engaged in the struggle against the British occupiers, and was actually a 'political struggle in the name of God'.¹¹⁶

Only the Prophet's *hijra* can be fully recognised as valid, and the legitimacy of all other *hijra* throughout Islamic history can be questioned. *Dae'sh's* calls for *hijra* to test one's belief and to establish an Islamic caliphate are not legitimate from the perspective of Shari'a.

Takfir and military jihad

¹¹³ Patricia Crone, 'The First-Century Concept of "Hijra"', *Arabica* 41 (3) (1994): 352-387, 367.

¹¹⁴ Khaled Abou El Fadl, 'Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries', *Islamic Law and Society* 1 (2) (1994): 141-187, 155.

¹¹⁵ David Coleman, *Creating Christian Granada: Society & Religious Culture in an Old-World Frontier City, 1492-1600* (Ithaca: Cornell University Press, 2003), 16.

¹¹⁶ 'Abdurrahman I. Doi, *Islam in Nigeria* (Zaria, Nigeria: Gaskiya Corp, 1984), 50.

Ibn Qayyim argued that *jihad* can take four forms: against the self (*nafs*), against Satan, against disbelievers and hypocrites and finally against perpetrators of injustice, evil deeds and religious innovations.¹¹⁷ *Jihads* of the third type, against hypocrites, have often been made against rulers who have been judged to be false Muslims. Calls for military *jihad* and *hijra* against such rulers are typically made after declarations of *takfir* have been issued against them. A *takfir* is a pronouncement that a particular Muslim or Muslims are unbelievers (*kafir*). The practice of making such a declaration in its raw and unvarnished form consists of declaring a person's religious belief (*iman*) as impure or as false and wrong. As such, it is an institutional act of religious censure used to deprive a Muslim of their Islamic status; in short, it is excommunication.¹¹⁸

Takfir have always been closely intertwined with both military *jihad* and *hijra* (from *dar al-harb* to *dar al-Islam*). The concept originated in the 7th CE and has been the main theoretical device used by extremist groups and scholars throughout the whole of Islamic history. The first *takfir* were issued with reference to the rebellious Khawarij sect, just after the Prophet's time: 'Whoever rebelled against the legitimate *imam* [ruler] accepted by the people is called a Kharijite [Khawarij]'.¹¹⁹ As with *Dae'sh*, the Khawarij sect believed that they were the only true Muslims and that all others were unbelievers.¹²⁰ The Khawarij rebelled after the battle of Siffin (657CE), objecting to the Fourth Caliph 'Ali's arbitration with Mu'awiya (founder of the Umayyad Dynasty of the Caliphate; r.661-680).¹²¹ They argued that 'Ali had followed human, not divine, judgment; his action was clearly *kufir*, and they thus declared a *takfir* upon 'Ali and his fellow arbiters.¹²² The Khawarij believed that 'Judgment belong[s] to God alone',¹²³ and contended that anyone doing otherwise should be punished by death.¹²⁴ They argued that acts of disobedience to Allah can turn

¹¹⁷ Ibn Qayyim, *supra* note 34 at 249-250.

¹¹⁸ Ibrahim A. Karawan, 'Takfir' in John Esposito (ed.), *The Oxford Encyclopaedia of the Modern Islamic World*, Vol. 5, (New York: Oxford University Press, 2009) 311.

¹¹⁹ Muhammad b. 'Abdul al-Karīm Shahrastānī, *Muslim Sects and Divisions: the Section on Muslim Sects in Kitāb al-milal wa 'l-nihal*, translated by A.K. Kazi and J.G. Flynn, (London: Kegan Paul International, 1984), 98.

¹²⁰ Mohamed Badar et al., "The Radical Re-interpretation of the Islamic Concept of Takfir", *Arab Law Quarterly* (2017), 7. Masaki check the right title

¹²¹ Shahrastani, *supra* note 119 at 98-99.

¹²² *Ibid.*, p. 99.

¹²³ *Ibid.*

¹²⁴ Al-Tabari, *The History of al-Tabari, Vol. 17: The First Civil War: From the Battle of Siffin to the death of*

Muslims into *kafirs* (unbelievers) and lead to excommunication, even if they have not formally converted to another religion.

Such beliefs have been reiterated throughout Islamic history. For example, Ibn Taymiyyah declared a *takfir* against the Mongol ruler of Syria and called for a *jihad* against him. He based his calls on the fact that the Mongols were combining their man-made *Yasa* code (Mongol customary law) with Shari'a, rather than ruling via Shari'a alone. Ibn Taymiyyah considered that false Muslims, such as the Mongols, were worse than unbelievers, as they still claimed to be Muslim.¹²⁵

In mediaeval times, and indeed both before and since, military *jihads* have been conducted not only against non-Muslims but also against 'false' Muslim rulers. Some have argued that campaigns against such Muslims are one of the most important types of *jihad*. Ibn Taymiyyah, for example, noted that 'The most serious type of obligatory Jihaad [*jihad*] is the one against the unbelievers and against those who refuse to abide by certain prescription of the Shari'ah...'¹²⁶ The theoretical background to this type of military *jihad*, that is, against false Muslims, is the concept of *takfir* or excommunication. In fact, modern *hijra* cannot be explained without reference to this concept.

Some contemporary extremist groups also make *takfir* declarations against rulers, and they consider the lands of such leaders to be *dar al-kufr* or *harb*. An early example of this was the 1970s Egyptian group *Al-Takfir wa'l-Hijra*, headed by Shukri Mustafa, who declared that the government and society as a whole was heretical (*takfir al-mujtama'*).¹²⁷ They isolated themselves from mainstream society by forbidding state education or employment and only allowing internal marriage.¹²⁸ Those Muslims that contravened these rules, even the Muslim Brotherhood, had declarations of *takfir* made against them and were classed as *kafirs*.¹²⁹ As a result, all those residing outside the abode of *al-Takfir wa'l-Hijra* were deemed to be

¹²⁵ *Alī A.D. 656-661/A.H. 36-40* (New York : State University of New York, 1996), 101.

¹²⁶ Ibn Taymiyyah, *supra* note 68 at 9-10.

¹²⁷ *Ibid.*, pp. 33-34.

¹²⁸ Umar Abdullah Kamel, *Al-Khawarij al-Judud: Al-Mutatariffun [The Neo Khawari: The Extremists]* (Cairo: Maktabat al-Turath al-Islamic, 1998), 131.

¹²⁹ Ahmad Jali, *Dirasah 'an al-Firaq fi Tarikh al-Muslimin: Al-Khawarij wa al-Shi'a* (Riyadh: King Faisal Centre for Islamic Research and Studies, 1988), 109.

¹²⁹ *Ibid.*, p. 112.

infidels.¹³⁰ Similarly, *Dae'sh* have declared that certain rulers should not be classed as Muslim and thus that their lands are *dar al-kufr*, but in fact these rulers have not converted to another religion and are not being controlled by other (non-Muslim) rulers. Rather, *Dae'sh* have proclaimed that these leaders are false simply because they rule their lands using a combination of Shari'a and man-made legal systems, rather than with Shari'a alone.

Takfir has no legal basis in Shari'a and is actually prohibited by it. Although the term itself does not appear in the Qur'an, its position is clear: people do not have the right to excommunicate others, and calling a Muslim 'kafir' (unbeliever) is prohibited: '...say not to anyone who greets you (by embracing Islam): "You are not a believer"' [Qur'an 4:94].¹³¹ The Prophet warned Muslims '....not to declare a person a disbeliever for committing a sin, and not to expel him from Islam by an action'.¹³² Only God holds the right to decide whether one is a believer or not, and this decision can be made only in the hereafter.

Mediaeval Muslim scholars had not even anticipated that Muslims might be living in areas of *dar al-harb*, under non-Muslim rulers; rather, they focussed on people who had converted to Islam while living in *dar al-harb*.¹³³ This mediaeval understanding, namely that Muslims can by definition only live in *dar al-Islam*, is one of the reasons why calls for *hijra* have been made so many times by certain scholars and groups.

Some mediaeval scholars and modern extremist groups have clearly prohibited Muslims from living in *dar al-harb*. For example, Al-Wansharishi's *fatwa* noted that 'Dwelling among the unbelievers, other than those who are protected and humbled peoples (*ahl al-dhimma wa'l-saghar*), is not permitted and is not allowed for so much as an hour of a day'.¹³⁴ He argued that living in *dar al-harb* is prohibited 'because of the

¹³⁰ *Ibid.*, p. 116.

¹³¹ See also (Qur'an 6:108).

¹³² Abu Dawud, *supra* note 31, Vol. 3, number. 2532, at 223.

¹³³ See, Al-Tabari, *Al-Tabari's Book of Jihad*, a translation from the original Arabic with an introduction, commentary, and notes by Yasir S. Ibrahim, with a foreword by Yitzhak Nakash, (Lewiston, N.Y.: Edwin Mellen Press, c2007), 169; Muhammad al-Shaybani, *The Islamic Law of Nations: Shaybānī's Siyar*, translated with an introduction, notes, and appendices by Majid Khadduri, (Baltimore: John Hopkins Press, 1966), 138-140; Shaykh al-Tusi, *Al-Nihayah: A Concise Description of Islamic Law and Legal Opinions*, translated by A Ezzati, (London: ICAS, 2008), 217.

¹³⁴ Verskin, *supra* note 109, Appendix A, 'Al- Wansharishi: On the Leader of the Muslims of Christian Marbella' at 138-139.

filth, dirt, and religious and worldly corruption which is ever-present.¹³⁵ *Dae'sh* have similarly criticised Muslims living in *dar al-kufr*, including those who have migrated to the West. According to *Dae'sh* these people have had their identities altered through exposure to Western unbelief and by living in *mushrik* (polytheist) lands, and they have been negligent regarding their religious obligations.¹³⁶

Both the Qur'an and *Sunna* are silent on the reclassification of *dar al-Islam* as *dar al-harb* or *kufr*; this change was effected by later scholars, as was the construction and development of the concept of *takfir*. The conditions to be met for *dar al-Islam* to become *dar al-harb* were noted in the mediaeval textbook *The Reliance of The Traveller*:

(a) that the security of Muslims through their leader no longer exists and the security of non-Muslims has taken its place; (b) that they have been surrounded on all sides such that it is impossible for the aid of Muslims to reach them; (c) and that not a single one of Islam's rules remains therein.¹³⁷

The first two conditions are security-related, while condition (c) is a legal issue. Even this last condition however, 'not a single one of Islam's rules remain therein [*dar al-Islam*]', cannot be said to apply to Muslim majority states today, as they clearly do employ certain Islamic rules. It is thus hard to see how these three conditions could be satisfied without land being occupied by a truly non-Muslim ruler. It should be noted here that the mediaeval understanding of how a land could change from *dar al-Islam* to *dar al-harb* was one that was highly dependent upon the particular circumstances pertaining at the time, namely a state of almost permanent war between Islam and its non-Islamic neighbours; all three conditions above reflect these circumstances.

There was no reason or need for mediaeval scholars to distinguish between physical war and spiritual war, between *qital* (fighting) and *jihad*, because the Muslim community was under continual attack from outside. They had to fight to survive as a community and religion. As the three

¹³⁵ *Ibid.*

¹³⁶ 'The Murtadd Brotherhood', *supra* note 84 at 13.

¹³⁷ *The Reliance of the Traveller*, *supra* note 20 at 946, (w43.5).

conditions in *The Reliance of The Traveller* make clear, *Dar al-Islam* becomes *dar al-harb* when Muslim land is attacked and taken over by non-Muslims; it does not change through declarations of *takfir*.

Conclusion

None of the three concepts discussed in this paper, namely military *jihad*, *hijra* (from *dar al-Islam* to *dar al-harb*) and *takfir*, are recognised by Shari'a. All the campaigns of military *jihad* and the *hijra* migrations from *dar al-harb* that were undertaken in the mediaeval period were direct responses to the particular circumstances pertaining at the time. There are no references in Shari'a that can be read as implying that *jihad* and *hijra* are obligatory for Muslims.

However, *Dae'sh* have reinterpreted *hijra* in the modern-day setting as a means of encouraging support for and realising the creation of an Islamic state or caliphate. Their call to perform *hijra* is based on their assertion that the world is dominated by man-made laws and un-Islamic rulers; their declarations of *takfir* against Muslim rulers are thus similar to those made by the Khawarij in the 7th CE against Caliph Ali, the fourth caliph. The Prophet's instructions to his followers to obey their rulers have been turned on their head by *Dae'sh*'s call for 'true' believers to disobey their Muslim leaders and launch military *jihads*. They do not treat *jihad* as a religious or spiritual concept in the sense that the Prophet did, but as a device with which they can call for and justify the killing of unbelievers and even fellow Muslims, although of course they do not class those Muslims living beyond *Dae'sh* land as true believers anyway. These Islamic concepts have thus been dangerously re-interpreted by modern extremist groups. They do not use *hijra* as a means to secure the survival of new Islamic communities, as the Prophet did, but in violent attempts to conquer non-Islamic territory or establish a new Islamic state. As with *hijra*, *jihad* is also being used to encourage terrorism. This bears no relationship with the Prophet's original intention or understanding of the term. In his era the terms *hijra* and *jihad* simply related to religious obligations, but *Dae'sh* use both to encourage and justify murder and war.

The question of whether there is any obligation for *hijra* in contemporary Islam is a controversial topic, but needless to say the

political, social and religious conditions pertaining around the time of the Prophet's *hijra* are clearly not those we witness today. None of the *hijra* after the Prophet's time have been free from political motivation, and they cannot be justified in either religious or legal terms. Taking these various factors into account, there is surely no longer any obligation for emigration to the land of *Dae'sh* in order to overthrow its ruler and establish an Islamic state.

Similarly, *Dae'sh's* division of the world between *dar al-Islam* (for which read land controlled by *Dae'sh*) and *dar al-harb* seems hard to justify given the lack of any legal basis in Shari'a. Their claims form part of their overall political agenda rather than being based on religious arguments. There are no definitions of *dar al-Islam* or *dar al-harb* in the Qur'an or *Sunna*, and the separation of the world into zones of belief and non-belief was mainly the work of mediaeval scholars. The Qur'an only mentions the 'home of Paradise', a place where believers can live safely and practice their religion freely; sadly, the difference between this vision and the reality of *Dae'sh's* practices could not be starker.