

SHAYKH MUHAMMAD AFIFI AL-ʿAKITI

DEFENDING THE TRANSGRESSED
BY CENSURING THE RECKLESS
AGAINST THE KILLING OF CIVILIANS

مدافع المظلوم برّد المهامل
على قتال من لا يقاتل

*Mudāfiʿ al-Mazlūm bi-Radd al-Muhāmil
ʿalā Qitāl Man Lā Yuqātil*

INTRODUCTION BY
SHAYKH GIBRIL HADDAD



WARDA

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

SHAYKH MUHAMMAD AFIFI AL-ʿAKITI

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ʿalā Qitāl Man Lā Yuqātil*]

FATWA
AGAINST THE TARGETING OF CIVILIANS

INTRODUCTION
BY
SHAYKH GIBRIL HADDAD

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Introduction

In the Name of God, the All-Beneficent, the Most Merciful.

Gentle reader, Peace upon those who follow right guidance!

I am honored to present the following *fatwa* or “response by a qualified Muslim Scholar” against the killing of civilians by the Oxford-based Malaysian jurist of the Shāfi‘ī School and my inestimable teacher, Shaykh Muhammad Afifi al-Akiti, titled *Defending the Transgressed by Censuring the Reckless against the Killing of Civilians*.

The Shaykh authored it in a few days, after I asked him to offer some guidance on the issue of targeting civilians and civilian centers by suicide bombing in response to a pseudo-*fatwa* by a deviant UK-based group which advocates such crimes.

Upon reading Shaykh Afifi’s *fatwa* do not be surprised to find that you have probably never before seen such clarity of thought and expression together with breadth of knowledge of Islamic Law applied (by a non-native speaker) to define key Islamic concepts pertaining to the conduct of war and its jurisprudence, its arena and boundaries, suicide bombing, the reckless targeting of civilians, and more.

May it bode the best start to true education on the impeccable position of Islam squarely against terrorism in anticipation of the day all its culprits are brought to justice.

Dear Muslim reader, *as-Salāmu ‘alaykum wa-rahmatuLlāh*:
Read this luminous *Fatwa* by Shaykh Muhammad Afifi al-Akiti carefully and learn it. Distribute it, publicize it, and teach it. Perhaps we will be counted among those who do something to redress wrong, not only with our hearts as we always do, but also with our tongues, in the fashion of the inspired teachers and preachers of truth.

I have tried to strike the keynote of this *Fatwa* in a few lines of free verse, mostly to express my thanks to our Teacher but also to seize the opportunity of such a long-expected response to remind myself of the reasons why I embraced Islam in the first place.

A TAQRĪZ – HUMBLE COMMENDATION:

*Praise to God Whose Law shines brighter than the sun!
Blessings and peace on him who leads to the abode of peace!*

Truth restores honor to the Religion of goodness.

Patient endurance lifts the oppressed to the heights

While gnarling mayhem separates like with like:

*The innocent victims on the one hand and, on the other,
Silver-tongued devils and wolves who try to pass for just!*

My God, I thank You for a Teacher You inspired

With words of light to face down Dajjāl's advocates.

*Allāh bless you, Ustādh Afifi, for **Defending the Transgressed
By Censuring the Reckless Against the Killing of Civilians!***

Let the powers that be and every actor-speaker high and low

Heed this unique Fatwa of knowledge and responsibility.

Let every lover of truth proclaim, with pride once more,

What the war-mongers try to bury under lies and bombs:

Islam is peace and truth, the Rule of Law, justice and right!

Murderous suicide is never martyrdom but rather perversion,

Just as no flag on earth can ever justify oppression.

And may God save us from all criminals, East and West!

INTRODUCTION

By permission of Shaykh Afifi I have done some very light editing having to do mostly with style, spelling, or punctuation such as standardizing spacing between paragraphs, providing in-text translations of a couple of Arabic supplications, adding quotation marks to mark out textual citations, and so forth.

I also provided the following alphabetical glossary of arabic terms not already glossed by the Shaykh directly in the text.

May Allāh *Subhānahu wa-Ta'ālā* save Shaykh Muhammad Afifi here and hereafter, may He reward him and his teachers for this blessed work and grant us its much-needed benefits, not least of which the redress of our actions and beliefs for safety here and hereafter.

Blessings and peace on the Prophet, his Family, and all his Companions, *wal-Ḥamdu liLlāhi Rabb al-‘Ālamīn*.

G.F.Haddad
Day of Jumu‘a after ‘Aṣr
1 Rajab al-Ḥaram 1426
5 August 2005
Brunei Darussalam

Glossary

ahl = [1] people; [2] qualified adherents or practitioners

‘*aql* = intellect, reason

Aḥādīth al-Aḥkām = ḥadīthīc proof-texts for legal rulings

‘*amal* = deed, action

aṣl = see *uṣūl*

Āyāt al-Aḥkām = Qur’ānic proof-texts for legal rulings

bāb = chapter or legal subject

Banū Ādam = human beings

ḍābiṭ = see *ḍawābiṭ*

ḍarūra = necessity

ḍawābiṭ = pl. of *ḍābiṭ* = standard or principal rule

Doctor Angelicus = The Angelic Scholar, a title given to Thomas Aquinas, the great theologian of the Western Church.

dā’ī = summoner or preacher

dunyā = this world, this life

fā’ida = benefit

faqīh = see *fiqh*

farḍ ‘ayn = personal obligation

farḍ kifāya = communal obligation

far’ī = adj. from *far’*, see *furū’*

faṣl = see *fuṣūl*

fatwā = legal opinion, legal response

fiqh = Islamic jurisprudence, the expertise of the *faqīh*; adj. *fiqhī* = legal

fitna = strife, temptation, seduction, delusion, chaos, trial and tribulation

fiṭra = sane mind and soul, primordial disposition

fuqahā’ = pl. of *faqīh* (*q.v.*)

furū’ = pl. of *far’*, [1] branches (of the Law), secondary legal texts;
[2] corollaries, corollary legal principles

fuṣūl = pl. of *faṣl* = sections or legal particulars

Ḥadīth = a saying of the Prophet Muḥammad, upon whom blessings and peace

ḥalāl = lawful, permitted

- ḥarām* = categorically prohibited, unlawful
ḥāṣil = legal outcome
ḥukm [*sharʿī*] = legal status, legal ruling
 Iblīs = Satan
Iḥsān = Excellence, the pinnacle of religious practice
Ijmāʿ = Consensus
ijtihād = independent judgement, personal decision
inṣāf = fairness, setting things right
Jāhili = lit., ignorant; a pre-Islamic or pagan Arab
Jamāʿa = the Orthodox Community
 Jamāl al-Shuhadāʾ = The Beauty of Martyrs, the title of the murdered vizier
 Nizām al-Mulk
Jihād = moral or military struggle by the *mujāhid*
khilāf = (juridical) disagreement
khilāfiyya = fem. adjective from *khilāf* = having to do with
 (juridical) disagreement
madhhab = school of Law
makrūh = detestable, abhorrent, abominable, disliked, legally offensive
maqāṣid = pl. of *maqṣad*, objective or ends
maqṣad = see *maqāṣid*
masāʾil = pl. of *masʾala* = question or legal discussion or case
masāʾil mufaṣṣala = detailed questions and answers
masʾala = see *masāʾil*
maṣlaḥa = welfare, public/general good
mubāh = indifferently permissible
mufassir = exegete
muftī = one who formulates *fatwās* or formal legal responses
Muḥaqqiq = The Careful Examiner, a title given to Imām al-Kurdī,
 one of the last great jurists of our School
mujāhid = one who does *jihād* (*q.v.*)
mukallaf = legally-responsible Muslim
mushāraka = mutual or reciprocal matter

GLOSSARY

nafs = ego, self

nasīḥa = faithful, sincere advice

qaḍāyā = pl. of *qaḍīyya* = issue or legal context

qāḍī = judge in an Islamic court of law

qā'ida = see *qawā'id*

qātil nafsah = self-killer, suicide

qawā'id = pl. of *qā'ida* = maxim or legal principle

qawl = saying or legal position

qitāl = warfare, battle

sabab al-wujūd = raison d'être

ṣabr = patient endurance and fortitude

Ṣahābī = Companion of the Prophet Muḥammad, upon whom blessings and peace

Salaf = Pious Predecessors, early authorities

shahīd, pl. *shuhadā'* = self-sacrificing believer who dies for the sake of
God alone, "martyr"

shar'ī = adj. legitimate in the eyes of the *Sharī'a* (Islamic Law), lawful, legal

siyar = military expeditions

sunna = way, path

sūra = a chapter of the Qur'ān

Tābi'ī = Successor of the Companions

tafakkur = reflection

tafṣīl = detailed legal discussion

tahluka = self-destruction

taghrīr bil-nafs = risking one's life

tatimma = conclusion

tawakkul = reliance upon God

thawābit = pl. of *thābit* = axiom

Umma = the Muslim Community at large

uṣūl = pl. of *aṣl* = foundational principle; adj. *usūlī*

wahm = imaginative faculty or emotions

wasā'il = pl. of *wasīla*, means

wasīla = see *wasā'il*

**Defending the Transgressed
by Censuring the Reckless
against the Killing of Civilians**

Fatwa
according to
the *Madhhab* of Imām Shāfi‘ī
by
Shaykh Muhammad Afifi al-Akiti

Initial Question

If you have time to address this delicate issue for the benefit of this mercied *Umma* which is reeling in *fitna* day in and day out, perhaps a few blessed words might use a refutation of the following text as a springboard?

I would like you to read the following article which highlights some of the problems we are facing, and [shows] why it is quite possible that young Muslims turn to extremism. The article was issued by “*Al-Muhajiroun*” not long ago, headed by Omar Bakri Mohammed, and whatever our reservations about the man, it is the content I am more concerned about, and it is possibly these types of writings which need to be confronted head-on.

Excerpt from an article by a group called “*al-Muhajiroun*”:

AQD UL AMAAN: THE COVENANT OF SECURITY

The Muslims living in the west are living under a covenant of security, it is not allowed for them to fight anyone with whom they have a covenant of security, abiding by the covenant of security is an important obligation upon all Muslims. However for those Muslims living abroad, they are not under any covenant with the *kuffār* in the west, so it is acceptable for them to attack the non-Muslims in the west whether in retaliation for constant bombing and murder taking place all over the Muslim world at the hands of the non-Muslims, or if it an offensive attack in order to release the Muslims from the captivity of the *kuffār*. For them, attacks such as the September 11th Hijackings is a viable option in *jihād*, even though for the Muslims living in America who are under covenant, it is not allowed to do operations similar to those done by the magnificent 19 on the 9/11. This article speaks about the covenant and what the scholars have said regarding Al Aqd Al Amaan - the covenant of security. [...]

Shaykh Muhammad Afifi al-Akiti's *Fatwa*

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله الذي يُحَدُّ الحَرْبَ وَلَا يُحِبُّ الْمُعْتَدِينَ وَالصَّلَاةَ وَالسَّلَامَ عَلَى قَائِدِ
الْأُمَّةِ الَّذِي هُوَ أَصْبَرَ عَلَى أَذَى الْأَعْدَاءِ بِفُتُوَّةٍ كَامِلَةٍ وَمُرُوَّةٍ شَامِلَةٍ وَعَلَى
آلِهِ وَأَصْحَابِهِ وَجَيْشِهِ أَجْمَعِينَ

[In the name of God, the Merciful and Compassionate. Praise be to God Who sets the boundaries of war and does not love transgressors! Blessings and peace on the General of the Community, the most patient of men in the face of the harm of enemies, with perfect chivalry and complete manliness, and upon all his Family, Companions, and Army!]

This is a collection of *masā'il*, entitled: *Mudāfi' al-Mazlūm bi-Radd al-Muhāmil 'alā Qitāl Man Lā Yuqātil* [Defending the Transgressed by Censuring the Reckless against the Killing of Civilians], written in response to the *fitna* reeling this mercied *Umma*, day in and day out, which is partly caused by those who, wilfully or not, misunderstand the legal discussions of the chapter on warfare outside its proper context (of which the technical *fiqh* terminology varies with *bāb*: *siyar*, *jihād*, or *qitāl*), which have been used by them to justify their wrong actions. May Allāh open our eyes to the true meaning [*ḥaqīqa*] of *ṣabr* and to the fact that only through it can we successfully endure the struggles we face in this *dunyā*, especially during our darkest hours; for indeed He is with those who patiently endure tribulations!

There is no *khilāf* that all the Shāfi'ī *fuqahā'* of today and other Sunni specialists in the Sacred Law from the Far East to the Middle East reject outright [*mardūd*] the above opinion and consider it not only an anomaly [*shādhdh*] and very weak [*wāhin*] but also completely wrong [*bāṭil*] and a misguided innovation [*bid'a ḍalāla*]: the *'amal* cannot at all be adopted by any *mukallaḥ*. It is regrettable too that the above was written in a legal style at which any doctor of the Law should be

horrified and appalled (since it is an immature yet persuasive attempt to mask a misguided personal opinion with authority from *fiqh*, and an effort to hijack our Law by invoking one of the many *qaḍāya* of this *bāb* while recklessly neglecting others). It should serve to remind the students of *fiqh* of the importance of the forming in one's mind and being aware throughout of the *thawābit* and the *ḍawābiṭ* when reading a *furū'* text, in order to ensure that those principal rules have not been breached in any given legal case.

The above opinion is problematic in three legal particulars [*fuṣūl*]:

- (1) the target [*maqtūl*]: without doubt, civilians;
- (2) the authority for carrying out the killing [*āmīr al-qitāl*]: as no Muslim authority has declared war, or if there has been such a declaration there is at the time a ceasefire [*hudna*]; and
- (3) the way in which the killing is carried out [*maqtūl bih*]: since it is either *ḥarām* and is also cursed as it is suicide [*qātil nafsaḥ*], or at the very least doubtful [*shubuhāt*] in a way such that it must be avoided by those who are religiously scrupulous [*wara'*]. Any sane Muslim who would believe otherwise and think the above to be not a crime [*jināya*] would be both reckless [*muhmil*] and deluded [*maghrūr*]. Instead, whether he realizes it or not, by doing so he would be hijacking rules from our Law which are meant for the conventional (or authorized) army of a Muslim state and addressed to those with authority over it (such as the executive leaders, the military commanders and so forth), but not to individuals who are not connected to the military or those without the political authority of the state [*dawla*].

The result in Islamic jurisprudence is: if a Muslim carries out such an attack voluntarily, he becomes a murderer and not a martyr or a hero, and he will be punished for that in the Next World.

Faṣl I. The Target: Maqtūl

The proposition: “so it is acceptable for them to attack the non-Muslims in the west”, where “non-Muslims” can be taken to mean, and indeed does mean in the document, non-combatants, civilians, or in the terminology of *fiqh*: those who are not engaged in direct combat [*man lā yuqātilu*].

This opinion violates a well known principal rule [*dābiṭ*] from our Law:

لَا يَجُوزُ قَتْلُ نِسَائِهِمْ وَلَا صِبْيَانِهِمْ إِذَا لَمْ يُقَاتِلُوا

[It is not permissible to kill their (*i.e.*, the opponents’) women and children if they are not in direct combat.]

This is based on the Prophetic prohibition on soldiers from killing women and children, from the well known Ḥadīth of Ibn ‘Umar (may Allāh be pleased with them both!) related by Imāms Mālik, al-Shāfi‘ī, Aḥmad, al-Bukhārī, Muslim, Ibn Mājah, Abū Dāwūd, al-Tirmidhī, al-Bayhaqī and al-Baghawī (may Allāh be well pleased with them all!) and other Ḥadīths.

Imām al-Subkī (may Allāh be pleased with him!) made it unequivocally clear what scholars have understood from this prohibition in which the standard rule of engagement taken from it is that: “[a Muslim soldier] may not kill any women or any child-soldiers unless they are in combat directly, and they can only be killed in self-defence” [al-Nawawī, *Majmū‘*, 21:57].

It goes without saying that men and innocent bystanders who are not direct combatants are also included in this prohibition. The nature of this prohibition is so specific and well-defined that there can be no legal justification, nor can there be a legitimate *shar‘ī* excuse, for circumventing this convention of war by targeting non-combatants or civilians whatsoever, and that the *ḥukm shar‘ī* of killing them is not only *ḥarām* but also a Major Sin [*Kabīra*] and contravenes one of the principal commandments of our way of life.

Faṣl II. The Authority: Āmir al-Qitāl

The proposition: “so it is acceptable for them to attack the non-Muslims in the west whether in retaliation for constant bombing and murder taking place all over the Muslim world at the hands of the non-Muslims”, where it implies that a state of war exist with this particular non-Muslim state on account of its being perceived as the aggressor.

This opinion violates the most basic rules of engagement from our Law:

أَمْرُ الْجِهَادِ مَوْكُولٌ إِلَى الْإِمَامِ وَاجْتِهَادِهِ وَيَلْزِمُ الرِّعِيَّةَ طَاعَتَهُ فِيهَا يَرَاهُ مِنْ ذَلِكَ

[The question of declaring war (or not) is entrusted to the executive authority and to its decision: compliance with that decision is the subject’s duty with respect to what the authority has deemed appropriate in that matter.]

and:

وَلِإِمَامٍ أَوْ أَمِيرٍ خِيَارٌ بَيْنَ الْكُفِّ وَالْقِتَالِ

[The executive or its subordinate authority has the option of whether or not to declare war.]

Decisions of this kind for each Muslim state, such as those questions dealing with ceasefire [‘*aqd al-hudna*], peace settlement [‘*aqd al-amān*] and the judgment on prisoners of war [*al-ikhtār fī asīr*] can only be dealt with by the executive or political authority [*imām*] or by a subordinate authority appointed by the former authority [*amīr mansūbin min jihati l-imām*]. This is something Muslims take for granted from the authority of our *naql* [scriptures] such that none will reject it except those who betray their ‘*aqal* [intellect]. The most basic legal reason [‘*illa aṣliyya*] is that this matter is one that involves the public interest, and thus consideration of it belongs solely to the authority:

لَأَنَّ هَذَا الْأَمْرَ مِنَ الْمَصَالِحِ الْعَامَّةِ الَّتِي يَخْتَصُّ الْإِمَامُ بِالنَّظَرِ فِيهَا

All of this is based on the well known legal principle [*qā'ida*]:

تَصَرَّفُ الْإِمَامُ عَلَى الرَّعِيَّةِ مَنْوُطًا بِالمصلحة

[The decisions of the authority on behalf of the subjects are dependent upon the public good.]

and:

فیفعل الإمامُ وجوباً الأَحْظَّ للمسلمين لاجتهاده

[So the authority must act for the greatest advantage of (all of) the Muslims in making its judgement.]

Nasīha: Uppermost in the minds of the authority during their deliberation over whether or not to wage war should be the awareness that war is only a means and not the end. Hence, if there are other ways of achieving the aim, and the highest aim is the right to practice our religion openly (as is indeed the case in modern day Spain, for example, unlike in medieval Reconquista Spain), then it is better [*awlā*] not to go to war. This has been expressed in a few words by Imām al-Zarkashī (may Allāh be pleased with him!):

وجوبه وجوب الوسائل لا المقاصد

[Its necessity is the necessity of means, not ends.]

The upshot is, whether one likes it or not, the decision and discretion and right to declare war or *jihād* for Muslims lie solely with the various authorities as represented today by the respective Muslim states – and not with any individual, even if he is a scholar or a soldier (and not just anyone is a soldier or a scholar) – in the same way that an authority (such as the *qāḍī* in a court of law: *maḥkama*) is the only one with the right to excommunicate or declare someone an apostate [*murtadd*]. Otherwise, the killing would be extra-judicial and unauthorized.

Even during the period of the Ottoman caliphate, for example, another Muslim authority elsewhere, such as in the Indian subcontinent, could have been engaged in a war when at the same time the *Khalifa's* army was at peace with the same enemy. This is how it has been throughout our long history, and this is how it will always be, and this is the reality on the ground.

Faṣl* III. The Method: *Maqtūl bih

The proposition: “attacks such as the September 11th Hijackings is a viable option in *jihād*”, where such attacks employ tactics – analogous to the Japanese kamikaze missions during the Second World War – that have been described variously as self-sacrificing or martyrdom or suicide missions.

There is no question among scholars, and there is no *khilāf* on this question by any *qāḍī*, *muftī* or *faqīh*, that this proposition and those who accept it are without doubt breaching the scholarly consensus [*mukhālifun lil-Ijmāʿ*] of the Muslims since it resulted in the killing of non-combatants; moreover, the proposition is an attempt to legitimize the killing of indisputable non-combatants.

As for the kamikaze method and tactic in which it was carried out, there is a difference of opinion with some jurists as to whether or not it constitutes suicide, which is not only *ḥarām* but also cursed. In this, there are further details. (Note that in all of the following cases it is already assumed that the target is legitimate – *i.e.*, a valid military target – and that the action is carried out during a valid war when there is no ceasefire [*fi ḥāl al-ḥarb wa-lā hudnata fih*], just as with the actual circumstance of the Japanese kamikaze attacks.)

Tafṣīl I: If the attack involves a bomb placed on the body or placed so close to the bomber that when the bomber detonates it the bomber is certain [*yaqīn*] to die, then the More Correct Position [*Qawl Aṣaḥḥ*] according to us is that it does constitute suicide. This is because the bomber, being also the *maqtūl* [the one killed], is unquestionably the same as the *qātil* [the immediate and active agent that kills] = *qātil nafsah* [self-killing, *i.e.*, suicide].

Furūʿ: If the attack involves a bomb (such as the lobbing of a grenade and the like), but the attacker thinks that when it is detonated, it is uncertain [*ẓann*] whether he will die in the process or survive the attack, then the Correct Position [*Qawl Ṣaḥīḥ*] is that this does not constitute suicide, and were he to die in this selfless act, he becomes what we properly call a martyr or hero [*shahīd*]. This is because the attacker, were he to die, is not the active, willing agent of his own death, since the *qātil* is probably someone else.

An example [*ṣūra*] of this is: when in its right place and circumstance, such as in the midst of an ongoing fierce battle against an opponent's military unit, whether ordered by his commanding officer or whether owing to his own initiative, the soldier makes a lone charge and as a result of that initiative manages to turn the tide of the day's battle but dies in the process (and not intentionally at his own hand). That soldier died as a hero (and this circumstance is precisely the context of becoming a *shahīd* – in Islamic terminology – as he died selflessly). If he survives, he wins a Medal of Honour or at the least becomes an honoured war hero and is remembered as a famous patriot (in our terminology, becoming a true *mujāhid*).

This is precisely the context of the *mas'ala* concerning the “lone charger” [*al-hājim al-wahīd*] and the meaning of putting one's life in danger [*al-taḡhrīr bil-nafs*] found in all of the *fiqh* chapters concerning warfare. The *Umma's* Doctor Angelicus, Imām al-Ghazālī (may Allāh be pleased with him!) provides the best impartial summation:

If it is said: What is the meaning of the words of the Most High:

﴿وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ﴾

{and do not throw into destruction by your own hands!}
(al-Baqara, 2:195)?

We say: There is no difference [of opinion amongst scholars] regarding the lone Muslim [soldier] who charges into the battle-lines of the [opposing] non-Muslim [army that is presently in a state of war with his army and is facing them in a battle] and fights [them] even if he knows that he will almost certainly be killed. The case might be thought to go against the requirements of the Verse, but that is not so. Indeed, Ibn ‘Abbās (may Allāh be well pleased with both of them!) says: [the meaning of] “*destruction*” is not that [incident]. Instead, [its meaning] is to neglect providing [adequate] supplies [*naḡaqa*: for the military campaign; and in the modern context, the state should provide the arms and equipment and so forth for that for which all of this is done] in obedience to God [as in the first part of the Verse which says:

﴿وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ﴾

{*And spend for the sake of God*} (al-Baqara, 2:195). That is, those who fail to do that will destroy themselves. [In another *Ṣaḥābī* authority:] al-Barā' ibn 'Āzib [al-Anṣārī (may Allāh be well pleased with them both!)] says: [the meaning of] “*destruction*” is [a Muslim] committing a sin and then saying: ‘my repentance will not be accepted’. [A *Tābi'ī* authority] Abū 'Ubayda says: it [the meaning of “*destruction*”] is to commit a sin and then not perform a good deed after it before he perishes. [Ponder over this!]

In the same way that it is permissible [for the Muslim soldier in the incident above] to fight the non-Muslim [army] until he is killed [in the process], that [extent and consequence] is also permissible for him [*i.e.*, the enforcer of the Law, since the ‘*ā'id* (antecedent) here goes back to the original pronoun (*ḍamīr al-aṣl*) for this *bāb*: the *muḥtasib* or enforcer, such as the police] in [matters of] law enforcement [*ḥisba*].

However, [note the following qualification (*qayd*):] were he to know [*ẓannī*] that his charge will not cause harm to the non-Muslim [army], such as the blind or the weak throwing himself into the [hostile] battle-lines, then it is prohibited [*ḥarām*], and [this latter incident] is included under the general meaning [‘*umūm*] of “*destruction*” from the Verse [for in this case, he will be literally throwing himself into destruction].

It is only permissible for him to advance [and suffer the consequences] if he knows that he will be able to fight [effectively] until he is killed, or knows that he will be able to demoralize the hearts and minds of the non-Muslim [army]: by their witnessing his courage and by their conviction that the rest of the Muslim [army] are [also] selfless [*qilla al-mubāla*] in their loyalty to sacrifice for the sake of God [the closest modern non-Muslim parallel would be ‘to die for one’s country’]. By this, their will to fight [*shawka*] will become demoralized [and so this may cause panic and rout them and thereby be the cause of their battle-lines to collapse]. [al-Ghazālī, *Ihyā'*, 2:315-6]

It is clear that this selfless deed which any modern soldier, Muslim or non-Muslim, might perform in battle today is not suicide. It may hyperbolically be described as a 'suicidal' attack, but to endanger one's life is one thing and to commit suicide during the attack is obviously another. And as the passage shows, it is possible to have both situations: an attack that is *taghrīr bil-nafs*, which is not prohibited; and an attack that is of the *tahluka*-type, which is prohibited.

Tafṣīl II: If the attack involves ramming a vehicle into a military target and the attacker is certain to die, precisely like the historical Japanese kamikaze missions, then our jurists have disagreed over whether it does or does not constitute suicide.

Qawl A: Those who consider it a suicide argue that there is the possibility [*ẓannī*] that the *maqtūl* is the same as the *qātil* (as in *Tafṣīl I* above) and would therefore not allow for any other qualification whatsoever, since suicide is a cursed sin.

Qawl B: Whereas those who consider otherwise, even with the possibility that the *maqtūl* is the same as the *qātil*, will allow some other qualification such as the possibility that by carrying it out the battle of the day could be won. There are further details in this alternative position, such as that the commanding officer does not have the right to command anyone under him to perform this dangerous mission, so that were it to be sanctioned, it could only be when it is not under anyone else's orders and is the lone initiative of the concerned soldier (such as in defiance of the standing orders of his commanding officer).

The first of the two positions is the Preferred Position [*muttajib*] among our jurists, as the second is the rarer because of the vagueness of a precedent, and its legal details are fraught with further difficulties and ambiguities, and its opposing position [*muqābil*] carries such a weighty consequence (namely, that of suicide, for which there is *Ijmā'* that the one who commits suicide will be damned to committing it eternally forever).

In addition to this juristic preference, the first position is also preferable and better since it is the original or starting state [*aṣl*], and by invoking the well-known and accepted legal principle:

الْخُرُوجُ مِنَ الْخِلَافِ مُسْتَحَبٌّ

[To avoid controversy is preferable.]

Finally, the first position is religiously safer, since owing to the ambiguity itself of the legal status of the person performing the act – whether it will result in the *maqtūl* being also the *qātil* – and since there is doubt and uncertainty over the possibility of its either being or not being the case, then this position falls under the type of doubtful matters [*shubuhāt*] of the kind [*nawʿ*] that should be avoided by those who are religiously scrupulous [*waraʿ*]. And here, the wisdom of our wise Prophet (may Allāh's blessings and peace be upon him!) is illuminated from the Ḥadīth of al-Nuʿmān (may Allāh be well pleased with him!):

فَمَنْ اتَّقَى الشُّبُهَاتِ اسْتَبْرَأَ لِدِينِهِ وَعِرْضِهِ

[He who saves himself from doubtful matters will save his religion and his honour.] (Related by Aḥmad, al-Bukhārī, Muslim, al-Tirmidhī, Ibn Mājāh, al-Ṭabarānī, and al-Bayhaqī, with variants.)

Wa-Llāhu aʿlam biṣ-ṣawāb! [God knows best what is right!]

Fāʿida: The original ruling [*al-aṣl*] for using a bomb (the medieval precedents: Greek fire [*qitāl bil-nār* or *ramy al-naft*] and catapults [*manjanīq*]) as a weapon is that it is *makrūh* [offensive] because it kills indiscriminately [*yaʿummu man yuqātilū wa-man lā yuqātilū*], as opposed to using rifles (medieval example: a single bow and arrow). If the indiscriminate weapon is used in a place where there are civilians, it becomes *ḥarām* except when used as a last resort [*min ḍarūra*] (and of course, by those military personnel authorized to do so).

Hāṣil

From the consideration of the foregoing three legal particulars, it is evident that the opinion expressed regarding the ‘*amal* in the above article is untenable by the standards of our Sacred Law.

As to those who may still be persuaded by it and suppose that the action is something that can be excused on the pretext that there is scholarly *khilāf* on the details of *Tafṣil* II from *Faṣl* III above (and that therefore, the ‘*amal* itself could at the end of the day be accommodated by invoking the guiding principle that one should be flexible with regards to legal controversies [*masā’il khilāfiyya*] and agree to disagree); know then there is no *khilāf* among scholars that that rationale does not stand, since it is well known that:

لا يُنكَرُ الْمُخْتَلَفُ فِيهِ وَإِنَّمَا يُنكَرُ الْمُجْمَعُ عَلَيْهِ

[The controversial cannot be denied; only (breach of) the unanimous can be denied.]

Since at the very least, it is agreed upon by all that killing non-combatants is prohibited, there is no question whatsoever that the ‘*amal* overall is outlawed.

The *qā’ida*, which is expressed very tersely above, means, understood correctly, that an action about which there is *khilāf* may be excused while an action that contravenes *Ijmā’* is categorically rejected.

Masā'il Mufaṣṣala

Question I

If it is said: "I have heard that Islam says the killing of civilians is allowed if they are non-Muslims."

We say: On a joking note (but ponder over this so your hearts may be opened!): the authority is not with what Islam says but with what Allāh (Exalted is He!) and His Messenger (may His blessings and peace be upon him!) have said!

But seriously: the answer is absolutely *no*; for even a novice student of *fiqh* would be able to see that the first *dābiṭ* above concerns already a non-Muslim opponent in the case of a state of war having been validly declared by a Muslim authority against a particular non-Muslim enemy, even when that civilian is a subject or in the care [*dhimma*] of the hostile non-Muslim state [*Dār al-Harb*]. If this is the extent of the limitation to be observed with regards to non-Muslim civilians associated with a declared enemy force, what higher standard will it be in cases if it is not a valid war or when the status of war becomes ambiguous? Keep in mind that there are more than 100 Verses in the Qur'ān commanding us at all times to be patient in the face of humiliation and to turn away from violence [*al-i' rād' ani l-mushrikīn waṣ-ṣabr 'alā adhā al-a'dā'*], while there is only one famous Verse in which war (which does not last forever) becomes an option (in our modern context: for a particular Muslim authority and not an individual), when a particular non-Muslim force has drawn first blood.

Question II

If it is said: "What about the verse of the Qur'ān which says {*kill the unbelievers wherever you find them*} and the *ṣaḥīḥ* ḥadīth which says 'I have been ordered to fight against the people until they testify'?"

We say: It is well known among scholars that the following verse,

﴿فَاَقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ﴾

{kill the idolaters wherever you find them} (al-Tawba, 9:5) is in reference to a historical episode: those among the Meccan Confederates who breached the Treaty of Ḥudaybiyya [*Sulḥ al-Ḥudaybiyya*] which led to the Victory of Mecca [*Fath Makka*], and that therefore, no legal rulings, or in other words, no practical or particular implications, can be derived from this Verse on its own. The Divine Irony and indeed Providence from the last part of the Verse, {wherever you find them} – which many of our *mufasssirs* understood in reference to place (*i.e.*, attack them whether inside the Sacred Precinct or not) – is that the victory against the Meccans happened without a single battle taking place, whether inside the Sacred Precinct or otherwise, rather, there was a general amnesty [*wa-mannun ‘alayhi bi-takhliyati sabīlihi* or *nahā ‘an safki d-dimā*] for the *Jāhili* Arabs there. Had the Verse not been subject to a historical context, then you should know that it is of the general type [*‘amm*] and that it will therefore be subject to specification [*takhṣiṣ*] by some other indication [*dalīl*]. Its effect in lay terms, were it not related to the *Jāhili* Arabs, is that it can only refer to a case during a valid war when there is no ceasefire.

Among the well known exegeses of “*al-mushrikīn*” from this Verse are: ‘*an-nākithīna khāṣṣatan*’ [specifically, those who have breached (the Treaty)] [al-Nawawī al-Jāwī, *Tafsīr*, 1:331]; ‘*al-ladhīna yuḥāribūnakum*’ [those who have declared war against you] [Qāḍī Ibn ‘Arabī, *Aḥkām al-Qur’an*, 2:889]; and ‘*khāṣṣan fī mushrikī l-‘arabi dūna ghayrihim*’ [specifically, the *Jāhili* Arabs and not anyone else] [al-Jassās, *Aḥkām al-Qur’an*, 3:81].

As for the meaning of “people” [*al-nās*] in the above well-related Ḥadīth, it is confirmed by *Ijmā’* that it refers to the same “*mushrikīn*” as in the Verse of Sūra al-Tawba above, and therefore what is meant there is only the *Jāhili* Arabs [*mushrikū l-‘arab*] during the closing days of the Final Messenger and the early years of the Righteous Caliphs and not even to any other non-Muslims.

In sum, we are not in a perpetual state of war with non-Muslims. On the contrary, the original legal status [*al-aṣl*] is a state of peace, and making a decision to change this status belongs only to a Muslim authority who will in the Next World answer for their *ijtihād* and decision; and this

decision is not divinely charged to any individuals – not even soldiers or scholars – and to believe otherwise would go against the well-known rule in our Law that a Muslim authority could seek help from a non-Muslim with certain conditions, including, for example, that the non-Muslim allies are of goodwill towards the Muslims:

لا يستعين بمشركين إلا بشرطٍ كأن تكون نيته حسنةً

Question III

If it is said: “I have heard a scholar say that ‘Israeli women are not like women in our society because they are militarised’. By implication, this means that they fall into the category of women who fight and that this makes them legitimate targets but only in the case of Palestine.”

We say: No properly schooled jurists from any of the Four Schools would say this as a legal judgement if they faithfully followed the juridical processes of the orthodox Schools relating to this *bāb*; for if it is true that the scholar made such a statement and meant it in the way you’ve implied, then not only does this violate the well-known principal rule above (*Faṣl* I: “It is not permissible to kill their women and children if they are not in direct combat”), but the supposed remarks also show a lack of sophistication in the legal particulars. If this is the case, then it has to be said here that this is not among the *masā’il khilāfiyya*, about which one can afford to agree to disagree, since it is outright wrong by the principles and the rules from our *uṣūl* and *furū’*.

Let us restate the *ḍābiṭ* again, as our jurists have succinctly summarized its rule of engagement: a soldier can only attack a female or (if applicable) child soldier (or a male civilian) in self-defence and only when *she herself* (and not someone else from her army) is engaged in direct combat. (As for male soldiers, it goes without saying that they are considered combatants as soon as they arrive on the battlefield even if they are not in direct combat – provided of course that the remaining conventions of war have been observed throughout, and that all this is during a valid war when there is no ceasefire.)

Not only is this strict rule of engagement already made clear in our secondary legal texts, but this is also obvious from the linguistic analysis of the primary proof-texts used to derive this principal rule. Hence, the form of the verb used in the scriptures, “*yuqātilu*”, is of the *mushāraka*-type, so that the verb denotes a direct or a personal or a reciprocal relationship between two agents: the minimum for which is one of them making an effort or attempt to act upon the other. The immediate legal implication here is that one of the two can only even be considered a legitimate target when there is a reciprocal or direct relationship.

In reality [*wāqī'*], this is not what happens on the ground (since the bombing missions are offensive in nature – they are not targeting, for example, a force that *is attacking* an immediate Muslim force; but rather the attack is directed at an overtly non-military target, so the person carrying it out can only be described as attacking it – and the target is someone unknown until only seconds before the mission reaches its termination).

In short, even if these women are soldiers, they can only be attacked when they are *in direct combat* and not otherwise. In any case, there are other overriding particulars to be considered and various conditions to be observed throughout, namely, that it must be during a valid state of war when there is no ceasefire.

Question IV

If it is said: “When a bomber blows himself up he is not directing the attack towards civilians. On the contrary, the attack is designed to target off-duty soldiers (which I was told did not mean reservists, since most Israelis are technically reservists). The innocent civilians are unfortunate collateral damage in the targeting of soldiers.”

We say: There are two details here.

Tafṣīl A: Off-duty soldiers are treated as civilians.

Our jurists agree that during a valid war when there is no ceasefire, and when an attack is not aimed at a valid military target, a hostile soldier (whether male or female, whether conscripted or not) who is not on operational duty or not wearing a military uniform and when there is

nothing in the soldier's outward appearance to suggest that the soldier is in combat, then the soldier is considered a non-combatant [*man lā yu-qātilu*] (and in this case must therefore be treated as a normal civilian).

A valid military target is limited to either a battlefield [*maḥall al-ma' raka* or *saḥat al-qitāl*] or a military base [*mu' askar*; medieval examples are citadels or forts; modern examples are barracks, military depots, etc.]; and certainly *never* can anything else such as a restaurant, a hotel, a public bus, the area around a traffic light, or any other public place be considered a valid military target, since firstly, these are not places and bases from which an attack would normally originate [*maḥall al-ra'y*]; secondly, because there is certain knowledge [*yaqīn*] that there is intermingling [*ikhtilāf*] with non-combatants; and thirdly, the non-combatants have not been given the option to leave the place.

As for when the soldiers are on the battlefield, the normal rules of engagement apply.

As for when the soldiers are in a barracks or the like, there is further discussion on whether the soldiers become a legitimate target, and the *Qawl Aṣaḥḥ* [the More Correct Position] according to our jurists is that they do, albeit to attack them there is *makrūh*.

Tafṣīl B: Non-combatants cannot at all be considered collateral damage except at a valid military target, for which they may be so deemed, depending on certain extenuating circumstances.

There is no *khilāf* that non-combatants or civilians cannot at all be considered collateral damage at a non-military target in a war zone, and that their deaths are not excusable by our Law, and that the one who ends up killing one of them will be sinful as in the case of murder, even though the soldier who is found guilty of it would be excused from the ordinary capital punishment [*ḥadd*], unless the killing was found to be premeditated and deliberate:

أَوْ أَتَى بِمَعْصِيَةٍ تُوجِبُ الْحَدَّ

If not, the murderer's punishment in this case would instead be subject to the authority's discretion [*ta' zīr*] and he would in any case be liable to pay the relevant compensation [*diya*].

As for a valid military target in a war zone, the Shāfi‘ī School have historically considered the possibility of collateral damage, unlike the position held by others that it is unqualifiedly outlawed. The following are the conditions stipulated for allowing this controversial exception (in addition to meeting the most important condition of them all: that this takes place during a valid war when there is no ceasefire):

- (1) The target is a valid military target.
- (2) The attack is as a last resort [*min ḍarūra*] (such as when the civilians have been warned to leave the place and after a period of siege has elapsed):

وجوبُ الإنذارِ قبلَ البدءِ بالقتلِ لأنه لا يجوزُ أن يقتلَ إلا مَنْ يُقاتلُ

- (3) There are no Muslim civilians or prisoners.
- (4) The decision to attack the target is based on a considered judgement of the executive or military leader that by doing so, there is a good chance that the battle would be won.

(Furthermore, this position is subject to *khilāf* among our jurists with regard to whether the military target can be a Jewish or Christian [*Ahl al-Kitāb*] one, since the sole primary text that is invoked to allow this exception concerns an incident restricted to the same “*mushrikīn*” as in the Verse of Sūra al-Tawba in Question II above.)

To neglect intentionally any of these strict conditions is analogous to not fulfilling the conditions [*shurūṭ*] for a prayer [*ṣalāt*] with the outcome that it becomes invalidated [*bāṭil*] and useless [*fasād*].

This is why the means of an act [*‘amal*] must be correct and validated according to the rule of Law in order for its outcome to be sound and accepted, as expressed succinctly in the following wisdom of Imām Ibn ‘Aṭā Allāh (may Allāh sanctify his soul!):

مَنْ أَشْرَفَتْ بِدَايَتِهِ أَشْرَفَتْ نَهَائَتُهُ

[He who makes good his beginning will make good his ending.]

In our Law, the ends can never justify the means except when the means are in themselves permissible, or *mubāḥ* (and not *ḥarām*), as is made clear in the following famous legal principle:

وَسَبِيلُ الطَّاعَةِ طَاعَةٌ وَسَبِيلُ الْمَعْصِيَةِ مَعْصِيَةٌ

[The means to a reward is itself a reward and the means to a sin is itself a sin.]

Hence, even a simple act such as opening a window, which on its own is only *mubāḥ* or *ḥalāl*, religiously entailing no reward nor being a sin, when a son does it with the intention of his mother's comfort on a hot summer's day before she asks for it to be opened, the originally non-consequent act itself becomes *mandūb* [recommended] and the son is rewarded in his 'amal-account for the Next World and acquires the pleasure of Allāh.

WaLlāhu a'lam wa-aḥkām biṣ-ṣawāb! [God knows and judges best what is right!]

Question V

If it is said: "In a classic manual of Islamic Sacred Law I read that 'it is offensive to conduct a military expedition [*ghazw*] against hostile non-Muslims without the caliph's permission (though if there is no caliph, no permission is required).' Doesn't this entail that though it is *makrūh* for anyone else to call for or initiate such a *jihād*, it is permissible?"

We say:

لَا عَزْوَةَ إِلَّا فِي الْجِهَادِ

[There can be no battle except during a war!]

Secondary legal texts, just as with primary proof-texts (a single Verse of the Qur'ān from among the relatively few *Āyāt al-Aḥkām* or a Ḥadīth from among the limited number of *Aḥādīth al-Aḥkām*), must be read and understood in context. The conclusion drawn that it is offensive or permissible for anyone other than those in authority to declare or initiate a war is evidently wrong, since it violates the principal rule of engagement discussed in *Faṣl* II above.

The context is that of endangering one's life [*taghrīr bi-nafs*] when there is already a valid war with no ceasefire, as seen in the above example from the *Ihyā'* passage, but certainly not in executive matters of the kind of proclaiming a war and the like. This is also obvious from the terminology used: a *ghazw* [a military act, assault, foray or raid; the minimum limit in a modern example: an attack by a squad or a platoon (*katība*)] can take place only when there is a state of *jihād* [war], not otherwise.

Fā'ida: Imām Ibn Ḥajar (may Allāh be pleased with him!) lists the organizational structure of an army as follows: a *ba'th* [unit] and several such together, a *katība* [platoon], which is a part of a *sariyya* [company; made up of 50-100 soldiers], which is in turn a part of a *mansar* [regiment; up to 800 soldiers], which is a part of a *jaysh* [division; up to 4000 soldiers], which is a part of a *jaḥfal* [army corps; exceeding 4000 soldiers], which makes up the *jaysh 'aẓīm* [army]. [Ibn Ḥajar, *Tuḥfat*, 12:4]

In our School, it is offensive but not completely prohibited for a soldier to defy, or in other words to take the initiative against the wishes of, his direct authority, whether his unit is strong or otherwise. In the modern context, this may include cases when soldier(s) disagree with a particular decision or strategy adopted by their superior officers, whether during a battle or otherwise.

The accompanying commentary to the text you quoted will help clarify this for you:

[Original Text:] It is offensive to conduct an assault [whether the unit is strong (*man'a*) or otherwise; and some have defined a strong force as 10 men] without the permission of the authority ([Commentary:] or his subordinate, because the assault depends on the needs [of the battle and the like] and the authority is more aware about them. It is not prohibited [to go without his permission] (if there is no grave endangering of one's life even when that is permissible in war.) [Ibn Barakāt, *Fayḍ*, 2:309]

Question VI

If it is said: “What is the meaning of the rule in *fiqh* that I always hear, that *jihād* is a *farḍ kifāya* [communal obligation] and when the *Dār al-Islām* is invaded or occupied it is a *farḍ ‘ayn* [personal obligation]? How do we apply this in the context of a modern Muslim state such as Egypt?”

We say: It is *farḍ kifāya* for the eligible Muslim subjects of the state in the sense that recruitment to the military is only voluntary when the state declares war with a non-Muslim state (as for non-Muslim subjects, they evidently are not religiously obligated but can still serve). It becomes a *farḍ ‘ayn* for any able-bodied Muslim when there is a conscription or a nationwide draft to the military if the state is invaded by a hostile non-Muslim force, but only until the hostile force is repelled or the Muslim authority calls for a ceasefire. As for those not in the military, they have the option to defend themselves if attacked even if they have to resort to throwing stones and using sticks:

بأيّ شيءٍ أطاقوه ولو بحجارةٍ أو عصا

Furū’: When it is not possible to prepare for war [and rally the army for war (*ijtimā’ li-ḥarb*)], and a surprise attack by a hostile force completely defeats the army of the state and the entire state becomes occupied] and someone [at home, for example] is faced with the choice of whether to surrender or to fight [such as when the hostile force comes knocking at the door], then he may fight. Or he may surrender, provided that he knows [with certainty] that if he resisted [arrest] he would be killed and that [his] wife would be safe from being raped [*fāhisha*] if she were taken. If not [that is to say, even if he surrenders he knows he will be killed and his wife raped when taken], then [as a last resort] fighting [*jihād*] becomes personally obligatory for him. [al-Bakrī, *I‘ānat*, 4:197].

Reflect upon this legal ruling of our Religion and the emphasis placed upon preserving human life and upon the wisdom of resorting to violence only when it is *absolutely necessary* and in its proper place; and witness the conjunction between the *maqāṣid* and the *wasā’il* and the meaning of the conditions when fighting actually becomes a *farḍ ‘ayn* for an individual!

Question VII

If it is said today: “In the [Shāfi‘ī] *madhhab*, what are the different classifications of lands in the world? For example, *Dār al-Islām*, *Dār al-Kufr* and so forth, and what have the classical *ulema* said their attributes are?”

We say: As it is also from empirical fact [*tajriba*], Muslim scholars have classified the territories in this world into: *Dār al-Islām* [its synonyms: *Bilād al-Islām* or *Dawla Islāmiyya*; a Muslim state or territory or land or country, etc.] and *Dār al-Kufr* [a non-Muslim state, territory etc.].

The definition of a Muslim state is: “any place at which a resident Muslim is capable of defending himself against hostile forces [*ḥarbiyyūn*] for a period of time is a Muslim state, where his judgements can be applied at that time and those times following it.” [Ba‘alawī, *Bughyat*, 254]. A non-Muslim who resides in a Muslim state is, in our terminology: *kāfir dhimmī* or *al-kāfir bi-dhimmati l-muslim* [a non-Muslim in the care of a Muslim state].

By definition, an area is a Muslim state as long as Muslims continue to live there and the political and executive authority is Muslim. (Think about this, for the Muslim lands are many, varied, wide and extensive; and how poor and of limited insight are those who have tried to limit the definition of what a Muslim state must be, and whether realizing it or not thus try to shrink the Muslim world!)

As for a non-Muslim state, it is the absence of a Muslim state.

As for *Dār al-Ḥarb* [sometimes called *Arḍ al-‘Adw*], it is a non-Muslim state which is in a state of war with a Muslim state. Therefore, a hostile non-Muslim soldier from there is known in our books as: *kāfir ḥarbī*.

Furū‘: Even if such a person enters or resides in a Muslim country that is in a state of war with his home country, provided of course he does so with the permission of the Muslim authority (such as entering with a valid visa and the like), the sanctity of a *kāfir ḥarbī*’s life is protected by Law, just like the rest of the Muslim and non-Muslim subjects of the state. [al-Kurdī, *Fatāwā*, 211-2]. In this case, his legal status becomes a *kāfir ḥarbī bi-dhimmati l-imām* [a hostile non-Muslim under the pro-

tection of the Muslim authority], and for all intents and purposes he becomes exactly like the non-Muslim subjects of the state. In this way, the apparent difference between a *dhimmi* and a *ḥarbī* non-Muslim becomes only an academic exercise and a distinction in name only.

The implications of this rule for the pious, God-fearing and Law-abiding Muslims are not only that to attack non-Muslims becomes something illegal and an act of disobedience [*maʿṣiya*], but also that the steps taken by the Muslim authority and enforcers, such as in Malaysia or Indonesia today, to protect their places, including churches or temples, from the threat of killings and bombings, are included under the *bāb* of *amr bi-maʿrūf wa-nahy ʿani l-munkar* [the duty to intervene when another is acting wrongly; in the modern context: enforcing the Law], even if the Muslim enforcers [*muḥtasib*] die in the course of protecting non-Muslims.

Question VIII

If it is said: “What land classification are we in the European Union, and what is the *ḥukm* of those who are here? Should they theoretically leave?”

We say: It is clear that the countries in the Union are non-Muslim states, except for Turkey or Bosnia, for example, if they are a part of the Union. The status of the Muslims who reside and are born in non-Muslim states is the reverse of the above non-Muslim status in a Muslim state: *al-muslim bi-dhimmati l-kāfir* [a Muslim in the care of a non-Muslim state] and from our own Muslim and religious perspective, whether we like it or not, there are similarities to the status of a guest which should not be forgotten.

There is precedent for this status in our Law. The answer to your question is that they should as a practical matter remain in these countries, and if applicable, learn to cure the schizophrenic cultural condition in which they may find themselves – whether of torn identity in their souls or of dissociation from the general society. If they cannot do so, but find instead that their surroundings are incompatible with the life they feel they must lead, then it is recommended for them to leave and reside in a Muslim state. This status is made clear in the *fatwā* of the *Muhaqqiq*, Imām al-Kurdī (may Allāh be pleased with him!):

He (may the mercy of Allāh – Exalted is He! – be upon him!) was asked: In a territory ruled by non-Muslims, they have left the Muslims [in peace] other than that they pay tax [*māl*] every year just like the *jizya*-tax in reverse, for when the Muslims pay them, their protection is ensured and the non-Muslims do not oppose them [*i.e.*, do not interfere with them]. Thereupon, Islam becomes practiced openly and our Law is established [meaning that they have the freedom to practice their religious duty in the open and in effect become practicing Muslims in that non-Muslim society]. If the Muslims do not pay them, the non-Muslims could massacre them by killing or pillage. Is it permissible to pay them the tax [and thereby become residents there]? If you say it is permissible, what is the ruling about the non-Muslims mentioned above when they are at war [with a Muslim state]: would it or would it not be permissible to oppose them and if possible, take their money? Please give us your opinion!

The answer:

Insofar as it is possible for Muslims to practice their religion openly with what they can have power over, and they are not afraid of any threat [*fitna*] to their religion if they pay tax to the non-Muslims, it is permissible for them to reside there. It is also permissible to pay them the tax as a requirement of it [residence]; rather, it is obligatory [*wājib*] to pay them the tax for fear of their causing harm to the Muslims. The ruling about the non-Muslims at war as mentioned above, because they protect the Muslims [in their territory], is that it would not be permissible for the Muslims to murder them or to steal from them. [al-Kurdī, *Fatāwā*, 208]

The *dābiṭ* for this *mas'ala* is:

وَأِنْ قَدَّرَ عَلَى إِظْهَارِ الدِّينِ وَلَمْ يَخَفِ الْفِتْنَةَ فِي
دِينِهِ وَنَفْسِهِ وَمَالِهِ لَمْ تَحِبِّ عَلَيْهِ الْهَجْرَةُ

[If someone is able to practice his religion openly and is not afraid of threat to his religion, life and property, then emigration is not obligatory for him.]

Furū’: Our Shāfi‘ī jurists have discussed details concerning the case of Muslims residing in a non-Muslim state, and they have divided the legal rulings about their emigration from it to a Muslim state into four sorts (assuming that an individual is capable and has the means to emigrate):

1. *Ḥarām*: it is prohibited for them to leave when they are able to defend their territory from a hostile non-Muslim force or withdraw from it (as in the case of a border state, buffer area or disputed territory) and do not need to ask for help from a Muslim state. The reason is that their place of residence is already, technically [*ḥukman*], a ‘Muslim state’ even though not in name [*ṣūratān*], since they are able to practice their religion openly even though the political or executive authority is not Muslim; and if they emigrated it would cease to be so. This falls under the *fiqhī* classification of *Dār Kufr Ṣūratān Lā Ḥukman*, which is equivalent to *Dār Islām Ḥukman Lā Ṣūratān*.
2. *Makrūh*: it is offensive to leave their place of residence when it is possible for them to practice their religion openly, and they wish to do so openly.
3. *Mandūb*: leaving becomes recommended only when it is possible for them to practice their religion openly, but they do not wish to do so.
4. *Wājib*: it becomes obligatory to leave when it is the only remaining option, that is, when practicing their religion openly is not possible. A legal precedent is the case after the Reconquista in Spain (which is no longer the case today) when the Five Pillars of the Faith were actively proscribed, so that, for example, the Muslim houses were required to keep their doors open after sunset during the fasting month of Ramaḍān in order that the authority could see that there was no breaking of the fast.

Question IX

If it is said: “Would you say that in the modern age with all the considerations surrounding sovereignty and inter-connectedness, these classical labels do not apply any longer, or do we have sufficient resources in the School to continue using these same labels?”

We say: As Imām al-Ghazālī used to say:

إِذَا عُرِفَ الْمَعْنَى فَلَا مُشَاحَّةَ فِي الْأَسْمَاءِ

[Once the real meaning is understood, there is no need to quibble over names.]

Labels can never be relied upon; it is the meaning behind them that must be properly understood. Once they are unpacked, they immediately become relevant for all times; just as with the following loaded terms: *jihād*, *mujāhid* and *shahīd*. The result for Muslims who fail to notice the relevance and fail to connect the dots of our own inherited medieval terms with the modern world may be that they will live in a schizophrenic cultural reality and will be unable to associate themselves with the surrounding society and will not be at peace [*sukūn*] with the rest of creation. Just as the *sabab al-wujūd* of this article is a Muslim’s misunderstanding of his own medieval terminology from a long and rich legacy, the *fitna* in the world today has been the result of those who misunderstand our Law.

Pay heed to the words of Mawlānā Rūmī (may Allāh sanctify his secrets!):

Go beyond names and look at the qualities, so that they may show you the way to the essence.

The disagreement of people takes place because of names. Peace occurs when they go to the real meaning.

Every war and every conflict between human beings has happened because of some disagreement about names.

It's such an unnecessary foolishness, because just beyond the arguing there's a long table of companionship, set and waiting for us to sit down.

End of the *masā'il* section.



Tatimma

It is truly sad that despite our sophisticated and elaborate set of rules of engagement and in spite of the strict codes of warfare and the chivalrous disciplines which our soldiers are expected to observe, all having been thoroughly worked out and codified by the orthodox jurists of the *Umma* from among the generations of the *Salaf*, there are today in our midst those who are not ashamed to depart from these sacred conventions in favour of opinions espoused by persons who are not even trained in the Sacred Law at all let alone enough to be a *qāḍī* or a *faqīh* – the rightful heir and source from which they should receive practical guidance in the first place. Instead they rely on engineers or scientists and on those who are not among its *ahl*, yet speak in the name of our Law. With these “reformist” preachers and *dā‘īs* comes a departure from the traditional ideas about the rules of *siyar/jihād/qitāl*, i.e., warfare. Do they not realize that by doing so and by following them they will be ignoring the limitations and restrictions cherished and protected by our pious forefathers and that they will be turning their backs on the *Jamā‘a* and *Ijmā‘* and that they will be engaging in an act for which there is no accepted legal precedent within orthodoxy in our entire history? Have they forgotten that part of the original *maqṣad* of warfare/*jihād* was to limit warfare itself and that warfare for Muslims is not total war, so that women, children and innocent bystanders are not to be killed and property not to be needlessly destroyed?

To put it plainly, there is simply no legal precedent in the history of Sunni Islam for the tactic of attacking civilians and overtly non-military targets. Yet the awful reality today is that a minority of Sunni Muslims, whether in Iraq or Beslan or elsewhere, have perpetrated such acts in the name of *jihād* and on behalf of the *Umma*. Perhaps the first such mission to break this long and admirable precedent was the Hamas bombing on a public bus in Jerusalem in 1994 – not that long ago. (Reflect on this!)

Immediately after the incident, the almost unanimous response of the orthodox Shāfi‘ī jurists from the Far East and the Hadramawt was not only to make clear that the minimum legal position from our Sacred Law is untenable for persons who carry out such acts, but also to warn

the *Umma* that by going down that path we would be compromising the optimum way of *Iḥsān* and that we would thereby be running a real risk of losing the moral and religious high ground. Those who still defend this tactic, invoking blindly a nebulous *uṣūlī* principle that it is justifiable out of *ḍarūra* while ignoring the *far‘ī* strictures, must look long and hard at what they are doing and ask the question: was it **absolutely necessary**, and if so, why was this not done before 1994, and especially during the earlier wars, most of all during the disasters of 1948 and 1967?

How could such a tactic be condoned by one of our Rightly Guided Caliphs and a heroic fighter such as ‘Alī (may Allāh ennoble his face!), who when in the Battle of the Trench his notorious non-Muslim opponent, who was seconds away from being killed by him, spat on his noble face, immediately left him alone. When asked later his reasons for withdrawing when Allāh clearly gave him power over him, he answered: “I was fighting for the sake of God, and when he spat in my face I feared that if I killed him it would have been out of revenge and spite!” Far from being an act of cowardice, this characterizes Muslim chivalry: fighting, yet not out of anger.

In actual fact, the only precedent for this tactic from Muslim history is the cowardly terrorism carried out by the “Assassins” of the Nizārī Ismā‘īlis. Their most famous victim from a suicide mission was the wise minister and the Defender of the Faith, who could have been alive to deal with the *fitna* of the Crusades: Niẓām al-Mulk, the Jamāl al-Shuhadā’ (may Allāh encompass him with His mercy!), assassinated on Thursday, the 10th of the holy month of Ramaḍān 485, or October 14th, 1092.

Ironically, in the case of Palestine, the precedent was set not by Muslims but by early Zionist terrorist gangs such as the Irgun, who, for example, infamously bombed the King David Hotel in Jerusalem on 22nd July 1946. So ask yourself as an upright and God-fearing believer, whose every organ will be interrogated: do you really want to follow the footsteps and the models of those Zionists and the heterodox Ismā‘īlis, instead of the path taken by our Beloved (may Allāh’s blessings and peace be upon him!), who for almost half of the (twenty-three) years of his mission endured Meccan persecution, humiliation and insults? Is

anger your only strength? If so, remember the Prophetic advice that it is from the Devil. And is *ḍarūra* your only excuse for following them instead into their condemned lizard-holes? Do you think that any of our famous *mujāhids* from history, such as ‘Alī, Ṣalāḥ al-Dīn, and Muḥammad al-Fātiḥ (may Allāh be well pleased with them all!) will ever condone the article you quoted and these acts today in Baghdad, Jerusalem, Cairo, Bali, Casablanca, Beslan, Madrid, London and New York, some of them committed on days when it is traditionally forbidden by our Law to fight: Dhū l-Qa‘da and al-Ḥijja, Muḥarram and Rajab? Every person of *fiṭra* will see that this is nothing other than a *sunna* of perversion.

This is what happens to the Banū Adam when the *wahm* is abandoned by ‘*aql*, when one of the *maqāṣid* justifies any *wasīla*, when the realities of *furū‘* are indiscriminately overruled by generalities of *uṣūl*, and most tragically, as illustrated from the eternal blunder of Iblīs, when Divine *tawakkul* is replaced by basic *nafs*.

Yes, we are one *Umma* such that when one part of the macro-body is attacked somewhere, another part inevitably feels the pain. Yet at the same time, our own history has shown that we have also been a wise and sensible, instead of a reactive and impulsive, *Umma*. That is the secret of our success, and that is where our strengths will always lie as has been promised by Divine Writ: in *ṣabr* and in *tawakkul*. It is already common knowledge that when Jerusalem fell to the Crusading forces on the 15th of July 1099 and was occupied by them, and despite its civilians having been raped, killed, tortured and plundered and the *Umma* at the time humiliated and insulted – acts far worse than what can be imagined in today’s occupation – that it took more than 100 years of patience and legitimate struggle under the Eye of the Almighty before He allowed Ṣalāḥ al-Dīn to liberate Jerusalem. We should have been taught from childhood by our fathers and mothers about the need to prioritize and about how to reconcile the spheres of our global concerns with those of our local responsibilities – as we will definitely not escape the questioning in the grave about the latter – so that by this insight we may hope that our response will not be disproportionate nor inappropriate. This is the true meaning [*ḥaqīqa*] of the true advice [*naṣīḥa*] of our Beloved Prophet (may Allāh’s blessings and peace be upon him!): to

leave what does not concern one [*tark ma lā ya' nīh*], where one's time and energy could be better spent in improving the lot of the Muslims today or benefiting others in this world.

Yes, we will naturally feel the pain when any of our brothers and sisters die unjustly anywhere when their deaths have been caused directly by non-Muslims, but it *must* be the more painful for us when they die in Iraq, for example, when their deaths are caused directly by the self-destructing/martyrdom/suicide missions carried out by one of our own. On *tafakkur*, the second pain should make us realize that missions of this sort, when the means and the legal particulars are all wrong – by scripture and reason – are not only a scourge for our non-Muslim neighbours but a plague and great *fitna* for this mercied *Umma*, and desire *inṣāf* so that out of *maṣlaḥa* and the general good, it must be stopped.

To this end, we could sum up a point of law tersely in the following maxim:

لَا يَجْعَلُ الظُّلْمَ إِنْ الثَّانِيَ حَقًّا

[Two wrongs do not make the second one right.]

If the first pain becomes one of the mitigating factors and ends up being used as a justification by our misguided young to retaliate in a manner which our Sacred Law definitely and without doubt outlaws (which makes your original article the more appalling, as its author will have passed the special age of 40), then the latter pain should by its graver significance generate a greater and more meaningful response. With this intention, we may hope that we shall regain our former high ground and reputation and rediscover our honour and chivalrous qualities and be no less brave.

I end with the first ever Verse revealed in the Qur'ān which bestowed the military option only upon those in a position of authority:

﴿وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ﴾

{*And fight for the sake of God those who fight you: but do not commit excesses, for God does not love those who exceed (i.e., the Law).*} (al-Baqara, 2:190).

Even then, peace is preferred over war:

﴿وَإِنْ جَنَحُوا لِلسَّلْمِ فَاجْنَحْ لَهَا وَتَوَكَّلْ عَلَى اللَّهِ﴾

{*Now if they incline toward peace, then incline to it, and place your trust in God*} (al-Anfāl, 8:61).

Even if you think that the authority in question has decided wrongly and you disagree with their decision not to war with the non-Muslim state upon which you wish war to be declared, then take heed of the following Divine command:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُوْلِي الْأَمْرِ مِنْكُمْ﴾

{*O believers, obey Allāh, and obey the Messenger, and those with authority among you!*} (al-Nisā', 4:59).

If you still insist that your authority should declare war with the non-Muslim state upon which you wish war to be declared, then the most you could do in this capacity is to lobby your authority for it. However, if your anger is so unrestrained that its fire brings out the worst in you to the point that your disagreement with your Muslim authority leads you to declare war on those you want your authority to declare war on, and you end up resorting to violence, then know with certainty that you have violated our own religious Laws. For then you will have taken the *Shari'a* into your own hands. If indeed you reach the point of committing a violent act, then know that by our own Law you would have been automatically classified as a rebel [*ahl al-baghy*] whom the authority has

the right to punish: even if the authority is perceived to be or is indeed corrupt [*fāsiq*]. (The definition of rebels is: “Muslims who have disagreed [not by heart or by tongue but by hand] with the authority even if it is unjust [*ajā’ir*] and they are correct [*‘adilūn*]” [al-Nawawī, *Majmū‘*, 20:337].)

That is why, my brethren, when the military option is not a legal one for the individuals concerned, you must not lose hope in Allāh; and let us be reminded of the words of our Beloved (may Allāh’s blessings and peace be upon him!):

أَفْضَلُ الْجِهَادِ كَلِمَةٌ حَقٌّ عِنْدَ سُلْطَانٍ جَائِرٍ

[The best *jihād* is a true (*i.e.*, brave) word in the face of a tyrannical ruler.] (From a Ḥadīth of Abū Sa‘īd al-Khudrī (may Allāh be well pleased with him!) among others, which is related by Ibn al-Ja‘d, Aḥmad, Ibn Ḥumayd, Ibn Mājāh, Abū Dāwūd, al-Tirmidhī, al-Nasā‘ī, Abū Ya‘lā, Abū Bakr al-Rūyānī, al-Ṭabarānī, al-Ḥākim, and al-Bayhaqī, with variants.)

For it is possible still, and especially today, to fight injustice or *ẓulm* or *ṭāghūt* in this *dunyā* through your tongue and your words and through the pen and the courts, which still amounts in the Prophetic idiom to *jihād*, even if not through war. As in the reminder [*tadhkira*] of the great scholar, Imām al-Zarkashī: war is only a means to an end and as long as some other way is open to us, that other way should be the course trod upon by Muslims.

Ma shā’ Allāh, how true indeed are the Beloved’s words, so that the latter *mujāhid* or activist will be no less brave or lacking in any courage with his or her campaign for a just cause in an oppressive country or one needing reforms than the former *mujāhid* or patriot who fought bravely for his country in a just war.

فَاتَّقِ اللَّهَ وَرَاجِعْ مُفَاتَشَةَ نَفْسِكَ وَإِصْلَاحَ فَسَادِهَا وَهُوَ حَسْبُنَا وَنَعْمَ الْوَكِيلُ
وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ الْعَلِيِّ الْعَظِيمِ وَصَلَوَاتُهُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَآلِهِ
وَسَلَّمَ وَرَضِيَ اللَّهُ تَبَارَكَ وَتَعَالَى عَنْ سَادَاتِنَا أَصْحَابِ رَسُولِ اللَّهِ أَجْمَعِينَ
وَعَنَّا مَعَهُمْ وَفِيهِمْ وَيَجْعَلُنَا مِنْ حِزْبِهِمْ بِرَحْمَتِكَ يَا أَرْحَمَ الرَّاحِمِينَ آمِينَ

[Fear God, and go back to controlling your self and to curing your wickedness! For indeed, He is enough for us: what an excellent guardian! There is no help nor power except through God, the High and Mighty! May His blessings and peace be upon our master, Muḥammad, and his Family! And may He be pleased with our leaders, the Companions of the Messenger of God, one and all! And may we be together with them and in their company, and may He make us among their Troop! By Your Mercy, O Most Merciful of those who show mercy, Amen!]

May this be of benefit.

With heartfelt wishes for *salām* and *ṭayyiba*
from Oxford to Brunei,
Muhammad Afifi al-Akiti
16th Jumādā' II 1426
23rd July 2005

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