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## Are Muslims Obligated to Engage in Holy War?

Beverly Moran  
*Vanderbilt University*

Rahimjon Abdugafurov  
*Emory University*

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# Are Muslims Obligated to Engage in Holy War?

Beverly Moran\* & Rahimjon Abdugafurov\*\*

## ABSTRACT

In the early twenty-first century, some—Muslims and non-Muslims alike—believe that Islam requires Muslims to engage in holy war or *Jihād*. This article concludes that this early twenty-first century notion that Muslims are obligated to wage holy war is based on a failure to appreciate that *Jihād* was never a universally agreed upon concept in Islam nor was there ever a universal obligation to participate in *Jihād*. In order to support the assertion that Muslims are not obligated to engage in holy war, this article looks to canonical texts from the *Hanafi* School of Islamic Law from the ninth through the fourteenth century CE. These texts are called *Fatwā* collections because they compile legal opinions on a wide variety of matters. The first observation that the article presents is that some of these canonical *Fatwā* collections do not even address the question of *Jihād* while other *Fatwā* collections treat *Jihād* in at least three different ways. Thus the article demonstrates that the earliest Muslim legal scholars of the *Hanafi* School did not share a uniform understanding of what constitutes holy war nor did they agree on who is obligated to become a holy warrior. Indeed, the article concludes that early legal scholars especially disagreed on the obligation to engage in *Jihād* and on who qualifies to call for *Jihād*. Hence it is false to claim that Muslims are obligated now (or have ever been obligated) to engage in *Jihād*.

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\* Professor of Law and Professor of Sociology, Vanderbilt University.

\*\* Doctoral Candidate, Emory University. The authors would like to acknowledge Professor Devin Stewart for his valuable insights and comments on this article.

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## I. INTRODUCTION

Although world events put a lie to the claim of one unified Muslim world, scholars and laymen alike reify terms like Muslim world, Islamic world, and *Sharī‘ah* as if these phrases accurately capture abstract meanings completely divorced from diversity and easily shared across space, time, language, and culture. Among all the misunderstood phrases surrounding Islam, no word is used so casually and knowingly as *Jihād*.

This article uses early Islamic *Fatwā* collections to demonstrate that at the dawn of Islamic Law *Hanafī* Islamic jurists were not in accord on the meaning of *Jihād*.<sup>1</sup> Thus the article concludes that there has never been an obligation for Muslims to engage in holy war or to become holy warriors precisely because there is no uniform understanding, much less appreciation, of *Jihād* in Islamic Law.

## II. FATWĀ COLLECTIONS

During his life, the Prophet Muhammad answered his followers’ questions and his answers were Islamic Law. After the Prophet’s death, the faithful needed a different means of deriving legal rules for their daily life and religious practice: hence the birth of Islamic Law.

By the tenth century CE, Islamic jurists generally agreed that legal opinions begin with the *Qur’ān* so that opinions based on the *Qur’ān* have higher standing than those based on inferior evidence.<sup>2</sup> If the *Qur’ān* is silent, then the jurist turns to the traditions of the Prophet Muhammad, also known as *Hadith*.<sup>3</sup> When the *Qur’ān* and *Hadith* were unclear or silent,

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<sup>1</sup> *Fatwā* collections presented in this article illustrate Peter Mandaville’s explanation of how ideas, words, and theories, change as people carry them from one place to another. Mandaville explains how a theory may take on new meanings that differ from earlier meanings as old ideas collapse into local notions in the new location. PETER MANDAVILLE, TSANSNATIONAL MUSLIM POLITICS: REIMAGINING THE UMMA 83–84 (2001).

<sup>2</sup> MUHAMMAD SALLĀM MADKŪR, INTRODUCTION TO ISLAMIC LAW (Beverly Moran & Rahimjon Abdugafurov trans., 2007).

<sup>3</sup> The *Hadith* are classified based on their authenticity. The most authentic prophetic tradition has an *isnād* (a complete chain of informants relating directly back to of the Prophet). Traditions that lack a

Islamic jurists developed other sources to support their legal opinions. This process of deriving legal rules using sources other than clear statements from the *Qur'ān* and *Hadith* is called *Ijtihād* or utmost effort. *Ijtihād* describes the jurist's creative use of approved evidentiary sources to produce a legal opinion.<sup>4</sup>

*Fatwā* in Islamic Law is an opinion from a jurist to a believer issued at the believer's request.<sup>5</sup> Some *Fatwās* survive for centuries, while others emerge as Muslims ask their religious leaders for answers on matters unheard of in past generations. Authors, their scribes, or students, often compile *Fatwās* into collections. These *Fatwā* collections are not uniform in form, subject matter, or length. Rather, *Fatwā* collection writers employ creativity in compiling their works. Some *Fatwā* collections employed in this study are comprised of several volumes (up to twenty) while others are *Mukhtaṣar* (concise) *Fatwā* books condensed into one volume. *Jihād* is not absent from some collections because of the collection's size. *Jihād* is sometimes covered in a one-volume collection and ignored in a larger work.

*Fatwā* production has its own method with topics usually divided into *Kitābs* (literally books, but equal to chapters). Within each chapter or *Kitāb*, there are one or more *Bābs* (literally doors) or sections. Each *Bāb* is dedicated to a subtopic that is relevant to its *Kitāb*, and within each *Bāb* there are often several *Faṣls* (subsections) which discuss themes related to the *Bābs*. Hence, authors connect chapters, sections, and subsections thematically so that a typical *Fatwā* collection might be organized as *Kitāb* (chapter), *Bāb* (section), and *Faṣl* (subsection).

Some *Fatwā* collections depart from the usual method of organizing opinions that generally requires the author to replicate an earlier work's structure. Instead of incorporating all the sections found in earlier works, later authors sometimes limit their own *Fatwā* collections to a single topic or just a few topics. 'Ala al-Dīn Abu Bakr b. Mas'ūd al-Kasānī (died 587/1191) is one example of an author who focused on only some topics

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fully proven *isnād* are subject to doubt and may be rejected as distorted or fraudulent.

<sup>4</sup> The methods used by Islamic jurists to perform *Ijtihād* include:

- *Ijma'* or community (If a community of Muslim scholars unanimously agrees upon a legal question, this agreement rises to the level of *Qur'an* and *Hadith*);
- *Qiyās* (a method of deriving law through analogy);
- *Istihsān* or making a decision based on what is good for the community at large;
- *Maṣlaḥah al-mursalah* or a common good;
- *'Urf* or a local tradition;
- *Shar'un min qablinā* or laws of religions before Islam (of Judaism and Christianity);
- *Madhhab Ṣaḥābi* or opinions of the companions of the Prophet; and
- *Ṣadd Ḍara'i* or preventing evil.

<sup>5</sup> DEEB AL-KHUDRAWI, DICTIONARY OF ISLAMIC TERMS 396 (2004) (*Fatwā* is "a formal legal opinion. A religious or judicial sentence pronounced by a *Mufti* or *Qadi*.").

contained in earlier *Fatwā* collections while dropping other topics entirely. When later authors make these sorts of edits to earlier works, their changes indicate departures from early legal scholars' attitudes towards the topics discussed in a *Fatwā* collection.<sup>6</sup>

Most *Fatwā* collections cover *Jihād* under the *Kitāb* known as *Siyar*. *Siyar* is the plural form of the word *Sīyrah*. In a legal context, *Siyar* refers to the distance passed while performing an act, such as travelling in non-Muslim lands or engaging in *Maghāzī* (military incursions into non-Muslim lands).<sup>7</sup> *Siyar* is sometimes translated as a campaign against the enemy. *Jihād* is often a *Bāb* within the *Kitāb* known as *Siyar* along with other *Bābs* covering sub-topics such as *Maghāzī*, the taxation of non-Muslims, religious conversion, apostasy, and rebellion.

Unlike, for instance Roman Catholic or Eastern Orthodox Christianity, Islam lacks a central body whose legal opinions are binding on all Muslims.<sup>8</sup> In the absence of religious hegemony, numerous legal opinions often appear on the same question. Conflicts in legal opinions not only exist between different *Madhhabs* (Islamic schools of thought), but within the same school. The absence of a single institution that can produce legal opinions binding on all Muslims is an important point for *Jihād*. For example, recently, forty Saudi Arabian jurists produced a *Fatwā* commanding all Muslims to a holy war against the Russian and Iranian forces supporting Bashar al-Assad in Syria.<sup>9</sup> These Saudi jurists belong to the minority *Wahhabi* or *Salafi* faction. Their *Fatwā* cannot bind all Muslims.

### III. MADHHABS

The word *Madhhab* derives from the root *dha-ha-ba* which, when used as a verb, means to go in a certain direction. Thus, the noun *Madhhab* indicates the legal way or method that particular Muslims follow when performing prayers, making marriage contracts, and the like. Each Muslim's *Madhhab* comprehensively navigates his or her spiritual and corporeal actions.

<sup>6</sup> For more information on the structure of *Fatwā* collections, see Wael Hallaq, *From Fatwā to Furu': Growth and Change in Islamic Substantive Law*, 1 ISLAMIC L. & SOC'Y 29 (1994).

<sup>7</sup> BURHĀN AL-DĪN ABU AL-ḤASAN 'ALĪ B. ABU BAKR AL-MARGHĪNĀNĪ, AL-HIDĀYAH SHARĪH BIDĀYAT AL-MUBTADI 217 (1996).

<sup>8</sup> Attempts to create such institutions or bodies took place in the early days of Islam but they never worked. See ROBERT CREWS, FOR PROPHET AND TSAR: ISLAM AND EMPIRE IN RUSSIA AND CENTRAL ASIA 33–39 (2006).

<sup>9</sup> See *Moscow Mufti Dubs Saudi Clerics' Decision to Declare Jihad Against Russia as "Independent Action"*, INTERFAX RELIGION (Oct. 7, 2015), [www.interfax-religion.com/?act=news&div=12381](http://www.interfax-religion.com/?act=news&div=12381) (describing a Russian Mufti's response to the Saudi *Fatwā*).

Until recently, a *Madhhab* was similar to a state within the United States in that a state controls the laws within its geographic jurisdiction always subject to the greater law of the entire United States, i.e., the U.S. Constitution. Thus, just as an Oklahoma citizen would probably not ask a California lawyer for an opinion on Oklahoma law, a Muslim from a group that follows one *Madhhab* would not seek a legal opinion from an *Imam* (Islamic Jurist) from a different *Madhhab*.

The analogy between states and *Madhhabs* starts to break down in the new world of global connectivity where seeking and offering legal opinions has changed because of cyberspace. Today an American Muslim may ask for a *Fatwā* from an Egyptian *Imam*, as territorial boundaries melt away in the face of the World Wide Web. Thus, the concept of *Madhhab* and legal jurisdictions has blurred.

In the beginning of Islam, there were numerous legal schools. As time passed, some *Madhhabs* became famous while others faded. Today there are four recognized legal schools within *Sunni* Islam each named after the original founder: *Hanafī*, *Ḥanbalī*, *Mālikī*, and *Shāfi'ī*. While statistics differ, usual estimates place *Sunni* Muslims at 90 percent of the world's muslim population followed by about 9.5 percent *Shī'ah*. Within the division of *Sunni* Muslims, approximately 45 percent are *Hanafīs*, followed by 28 percent *Shāfi'īs*, 15 percent *Mālikīs*, and 2 percent *Ḥanbalī*.<sup>10</sup> There are over five divisions within *Shī'ah* Islam as well. These *Sunni* and *Shī'ah* schools differ on legal, doctrinal, and theological grounds. To be clear, this article is limited to conflicts regarding holy war within the *Hanafī* School. The *Hanafī* School represents the largest single group of Muslims by *Madhhab*.<sup>11</sup>

#### IV. WHAT IS *JIHĀD*?

Despite the Western emphasis on *Jihād* as a military campaign, *Jihād* is in fact an immensely complicated concept. The word *Jihād* comes from the three-letter root *ja-ha-da* meaning to make an effort.<sup>12</sup> The most important *Jihād* is the effort to discipline one's *Nafs* (animal self) that urges the soul toward worldly pleasure.<sup>13</sup> Nevertheless, in this article, we limit our discussion to *Jihād* as a military campaign either in defense of one's homeland, or in the form of an aggressive war for domination known in contemporary Western thought as "spreading Islam by the sword."

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<sup>10</sup> THE ROYAL ISLAMIC STRATEGIC STUDIES CENTRE, THE MUSLIM 500: THE WORLD'S 500 MOST INFLUENTIAL MUSLIMS 1, 28 (2015), <http://themuslim500.com/downloads/151001-TheMuslim500-2016v009%2823|48%29-Web-Low.pdf>.

<sup>11</sup> *Id.* at 28.

<sup>12</sup> See Section II of this article for a discussion of *Ijtihād*.

<sup>13</sup> MUHAMMAD B. MUFLIH AL-MADISI, AL-ADAB AL-SHA IYYAH 131 (1987).

V. *HANAFĪ* LEGAL SCHOOL

The *Hanafi Madhhab* is one of the four legal schools of *Sunni* Islam, and is the legal school for close to half the world-wide Muslim population. The founder of the *Hanafi* school is Nu'mān b. Thābit b. Zū'ā b. Marzubān (born 80/699, died 150/767), also known as *Imām A'zam* or Abū Hanīfah. Our goal here is to introduce one important contribution that Abū Hanīfah made to Islamic law that is crucial to our discussion of *Jihād*: the distinction between *Farḍ* and *Wājib*.

Abū Hanīfah divided all human activity into seven categories:

1. *Farḍ* – an action that is obligatory for all Muslims (such as praying and fasting) that every Muslim must perform in order to call oneself a Muslim. Scholars divide *Farḍ* actions into two subcategories: obligations demanded of each individual and community obligations. The terms are *Farḍ 'ayn* (an obligation required of everyone individually) or *Farḍ Kifāyah* (a collective duty of the Muslim community).<sup>14</sup>
2. *Wājib* – an action that is secondary in obligation to a *Farḍ* obligation. Although scholars consider the act obligatory, the failure to do the act does not eject a Muslim from the religious community. For example, additional prayers might be prized, or even required, but the failure to perform additional prayers is not grounds for expulsion from the faith.<sup>15</sup>
3. *Mustahabb/Sunnah* – an action that brings reward to any Muslim although the failure to do the act does not make the person a sinner. For example, although growing a beard is a good thing, not having a beard is not grounds for shame.<sup>16</sup>
4. *Halāl* – permissible, permitted. For example, Muslims are permitted to eat *Halāl* meat.
5. *Mubāḥ* – an action that is without reward or punishment; neutral.
6. *Makrūh* – an action that is frowned upon.
7. *Harām* – an action that is prohibited and sinful.

Abū Hanīfah's distinction between *Farḍ* obligations and *Wājib* obligations is not accepted by other *Sunni Madhhabs*. Rather, the *Hanbalī*, *Mālikī* and *Shāfi'ī Madhhabs* use the terms *Farḍ* and *Wājib* interchangeably as synonyms.<sup>17</sup> In contrast, *Hanafi* legal scholars classify obligations with

<sup>14</sup> AL-KHUDRAWI, *supra* note 5, at 399.

<sup>15</sup> *Id.* at 522–23 (2004).

<sup>16</sup> JOSEPH SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 121 (1982).

<sup>17</sup> *Id.*

absolute textual proof from the *Qur'ān* or *Hadith* as *Farḍ* and obligations based on *Ijtihād*, rather than on a textual proof, as *Wājib*.<sup>18</sup> The key is that when an obligation is not derived from *Qur'ān* or *Hadith* the evidence supporting the obligation is of a secondary nature and thus, according to the *Ḥanafī* School, the failure to perform the obligation cannot exclude a person from the Muslim community.<sup>19</sup>

## VI. EARLY *ḤANAFĪ* JURISTS

The compilers of each of the *Ḥanafī Fatwā* collections show vastly different attitudes towards *Siyar* and *Jihād*. The authors discussed here classify an obligation to participate in *Jihād* in several different ways. In some texts, *Jihād* is presented as *Farḍ*, either *Farḍ Kifāyah* (collective duty) or *Farḍ 'ayn* (an individual obligation). Other texts present *Jihād* as *Wājib*. A declaration that an action is *Wājib* places the obligation second in rank after *Farḍ*. Thus, not performing a *Wājib* act does not justify expulsion from the Muslim community, as does failure to perform a *Farḍ* act.

Whether an author leaves out the topic of *Jihād*, or treats *Jihād* as *Farḍ* or *Wājib*, is an important question because the placement of *Jihād* as *Farḍ* or *Wājib*, or the absence of any discussion of *Jihād* at all, reveals the scholar's attitude toward *Jihād*. For example, for those later *Ḥanafī* jurists who designate *Jihād* as *Farḍ Kifāyah* or *Farḍ 'ayn*, the Muslim leader's role is crucial. *Farḍ Kifāyah* is a completely different obligation from *Farḍ 'ayn*. The community's leader designates who among the community must perform the *Farḍ Kifāyah* (collective obligation). In contrast, if a leader declares *Jihād* as *Farḍ 'ayn*, then the obligation falls on each individual. Hence, even when the action is *Farḍ*, a Muslim does not decide whether *Jihād* is a collective or an individual duty. Instead, the leader of the Muslim state or the community holds the right to declare an obligation to engage in *Jihād* and whether the obligation is for the community or the individual.<sup>20</sup>

Below are three classifications of *Jihād* from the early *Ḥanafī* School:

1. The authors completely ignore *Jihād*,
2. The authors treat *Jihād* as *Wājib* (an obligation derived from secondary sources and inferior in importance), and
3. The authors treat *Jihād* as obligatory.

Overreaching the entire discussion is the fact that the founder of the *Ḥanafī Madhhab*, Abu Hanīfah himself declared *Jihād* as *Wājib* and neither

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<sup>18</sup> For further information, see AHMAD B. 'UMAR AL-ḤAZIMĪ, SHARḤ NAZM AL-WARAQĀT, at chs. 9, 12, <http://shamela.ws/browse.php/book-36110/page-170>.

<sup>19</sup> *Id.*

<sup>20</sup> To some *Ḥanafī* scholars presented here, *Jihād* is *Farḍ Kifāyah* (collective duty) unless the Muslim community is attacked at which point *Jihād* becomes *Farḍ 'ayn* (an individual obligation).

*Farḍ Kifāyah* nor *Farḍ ‘ayn*.<sup>21</sup> Thus, the *Ḥanafī Madhhab* legal scholars who present *Jihād* as *Farḍ* actually oppose the founder of their own legal school.

Conflicts within *Madhhabs* emerge as concepts like *Jihād* change meaning and significance over time. Abū Hanīfah, the founder of the *Ḥanafī* legal school, ruled that *Jihād* was *Wājib* because *Jihād* cannot be supported directly by the holy texts.<sup>22</sup> This ruling which presents *Jihād* as *Wājib* is provided by many *Ḥanafī* legal scholars.<sup>23</sup> Yet, as centuries passed, later *Ḥanafī* legal scholars categorized *Jihād* as *Farḍ Kifāyah* or *Farḍ ‘ayn*, in opposition to their founder.<sup>24</sup> As soon as some scholars moved away from Abū Hanīfah other scholars within the *Ḥanafī Madhhab* noted the conflict between the newer approach and the founder of the *Ḥanafī* School.<sup>25</sup>

Today close to half of all Muslims are within the *Ḥanafī* School and *Ḥanafī* authors have three distinct views of holy war and holy warriors.<sup>26</sup> These facts inform us that *Jihād* is a complex topic and the obligation to engage in the military form of *Jihād* is not universal.

#### A. *Jihād* Not Mentioned

1. Abu Abdullah Muhammad b. al-Ḥasan al-Shaybānī (born 132/749, died 189/804) author of *al-Jāmi’ al-Saghīr* (*The Small Collection*)

In *al-Jāmi’ al-Saghīr* (*The Small Collection*) Abu Abdullah Muhammad b. al-Ḥasan al-Shaybānī dispenses with the traditional *Bāb* entitled *Siyar* and instead names his *Bāb* “*Kharāj*” which is usually one section within the chapter *Siyar*.<sup>27</sup> When al-Shaybānī changes the traditional name of the chapter from *Siyar* to *Kharāj* (taxes and tributes from non-Muslims) he telegraphs that taxes and tributes from non-Muslim are more important to him than *Jihād*.<sup>28</sup>

<sup>21</sup> MUHAMMAD B. AHMAD AL-SARAKHSĪ, SHARḤ KITĀB AL-SIYAR AL-KABĪR 1, 131, [https://ia801707.us.archive.org/15/items/060638/01\\_60638.pdf](https://ia801707.us.archive.org/15/items/060638/01_60638.pdf).

<sup>22</sup> AHMAD B. UMAR AL-HAZIMĪ’S HAZIMI, SHARH NAZM AL-WARAQAT, at chs. 9, 12, <http://shamela.ws/browse.php/book-36110/page-170>.

<sup>23</sup> *Id.* at 131.

<sup>24</sup> As noted by BURHĀN AL-DĪN ABU AL-MA’ALĪ MAHMUD B. AHMAD ABD AL-’AZĪZ IBN MAZA AL-BUKHĀRĪ in his AL-MUHĪT AL-BURHĀNĪ FĪ AL-FIQH AL-NU’MĀNĪ 5 (2004).

<sup>25</sup> *Id.*

<sup>26</sup> As we summarize in the current work employing several legal texts from the *Ḥanafī* school.

<sup>27</sup> AL-KHUDRAWĪ, *supra* note 5, at 143.

<sup>28</sup> ABU ABDULLAH MUHAMMAD B. AL-ḤASAN AL-SHAYBĀNĪ, AL-JĀMĪ’ AL-SAGHĪR MA’ SHARHIH AL-NAFĪ’ AL-KABĪR 470 (1990).

2. Al-Zāhir Abu Al-Layth Nasr b. Muhammad B. Ibrāhīm Al-Samarqandī (died 375/985) author of *Fatāwa al-Nawāzil (Legal Opinions of Jurisprudential Cases)*

Al-Samarqandī, another early *Hanaḥī* scholar does not have a section on *Siyar* or on its subsections, including *Jihād*.

#### B. Jihād is Wājib

1. Abu Abdullah Muhammad b. al-Ḥasan al-Shaybānī (born 132/749, died 189/804) author of a book entitled *al-Siyar al-Kabīr*

Abu Abdullah Muhammad designates *Jihād* as *Wājib*. We know about his treatment of *Jihād* as *Wājib* through Muhammad b. Ahmad al-Sarakhsī's (died 490/1096) commentary named *Sharḥ Kitāb al-Siyar al-Kabīr* on al-Shaybānī's *al-Siyar al-Kabīr*. Al-Sarakhsī also gives the names of other scholars such as al-Thawrī and al-Kasānī who viewed *Jihād* as *Wājib*.<sup>29</sup>

2. Fakhr al-Dīn Ḥasan b. Mansūr al-Uzgandī al-Farghānī (died 295/907)

Fakhr al-Dīn Ḥasan is originally from a city called Uzgand in the Fergana Valley of Central Asia. He is imminently famed among *Hanaḥī* legal scholars. In his *Fatāwā Qaḍīkhān*, he writes that *Jihād* is *Wājib* and states that waging wars against non-Muslims is not *Fard*. Such action will become *Fard* if non-Muslims attack the Muslim lands.<sup>30</sup> The author also provides other scholars' views in his collection regarding *Jihād*.<sup>31</sup>

3. Abu Ja'far Aḥmad b. Muḥammad b. Salāmah al-Ṭaḥāwī (died 321/933) author of the collection *Mukhtaṣar al-Ṭaḥāwī (Ṭaḥāwī's Concise fatwā Book)*

Al-Ṭaḥāwī does not follow the usual way of constructing the *Siyar* section of his collection. First Al-Ṭaḥāwī introduces the section by stating that: "Abu Ja'far said: *Jihād* is *Wājib*, but Muslims are free of the obligation as long as there is no need for them to engage in military campaigns."<sup>32</sup> Next, Abu Ja'far Ahmad places his discussion of *Jihād* in

<sup>29</sup> AL-SARAKHSĪ, *supra* note 21.

<sup>30</sup> FAKHR AL-DĪN ḤASAN B. MANSŪR AL-UZGANDĪ AL-FARGHĀNĪ, *FATĀWĀ QAḌĪKHĀN* 1, 188 (2d ed., 1892), [http://ia802609.us.archive.org/31/items/waq99001/02\\_99002.pdf](http://ia802609.us.archive.org/31/items/waq99001/02_99002.pdf).

<sup>31</sup> *Id.*

<sup>32</sup> ABU JA'FAR AḤMAD B. MUḤAMMAD B. SALĀMAH AL-ṬAḤĀWĪ, *MUKHTAṢAR AL-ṬAḤĀWĪ* 281 (1950).

*Kitāb al-Siyar wal-Jihād* (*The Book of Military Campaigns and Holy Wars*) rather than in *Siyar*.<sup>33</sup> Finally, he provides opposing opinions of jurists who designate *Jihād* as *Farḍ ‘ayn* (individual obligation) or *Farḍ Kifāyah* (collective duty).

4. Muḥammad b. Aḥmad al-Sarakhsī (died 490/1096) author of *Sharḥ Kitāb al-Siyar al-Kabīr*

In *Sharḥ Kitāb al-Siyar al-Kabīr*, al-Sarakhsī rules *Jihād* as *Wājib*. This author also enlists the views of Abu Ḥanīfa, the founder of the Ḥanafī School, and Abu Abdullah Muhammad b. al-Ḥasan al-Shaybānī (born 132/749, died 189/804) who ruled that *Jihād* was *Wājib*.<sup>34</sup>

5. Burhān al-Dīn Abu al-Ma’ali Mahmud b. Ahmad Abd al-’Aziz ibn Maza al-Bukhārī (died 616/1219) author of *al-Muhīt al-Burhānī fī al-Fiqh al-Nu’mānī* (*Evidential Ocean in Nu’man’s Ḥanīfa Jurisprudence*)

Al-Bukhari’s work is compiled in nine volumes with a section on *Kharāj* right after ‘*Ushr* and before the book of fasting. This may indicate the importance of *Kharāj* both for the author and possibly for his time. Al-Bukhārī uses the term *Faṣl* to divide the topic into eight parts within his section on *Kharāj*. In other words, al-Bukhārī treats *Kharāj* as a section on its own rather than as one subsection within *Siyar*.

Al-Bukhārī starts the subgenre of *Siyar* with defining *Siyar* and *Jihād*. He elaborates on each topic: for example, who should participate in military campaigns, who may be killed, women’s participation in *Jihād*, Muslims entering a non-Muslim land, captives, allocation of spoils, maintenance of the army, apostasy, and others.

As for the nature of *Jihād*, al-Bukhārī is a crucial scholar because he already noticed in the thirteenth century the conflict among Ḥanafī legal scholars on the nature of the *Jihād* and the strength of the obligation to perform *Jihād*. The first sentence he writes in the beginning of the part on *Siyar* is an explanation of the nature of *Jihād*:

Abu Ḥanīfa, may God be pleased with him, said: *Jihād* is *Wājib* to Muslims . . . and the expression of the *mashā’ikh* became conflicted in that regard. Some of them said: *Jihād* is *Wājib* to Muslims and if the call falls upon them, it becomes *farīdah*, and this speaker differed between *Wājib* and *farīdah* and this speaker seems to incline toward what Abu Ḥanīfa, may God be pleased with him, said. And the

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

difference between *Wājib* and *farīdah* is obvious . . . .<sup>35</sup>

Al-Bukhārī continues to elaborate on the conflict among legal scholars in terms of the nature of the *Jihād*. He also uses different *Qur'ānic* verses and other evidence in his elaborations of the conflict. It is also apparent that as a scholar in the school of *Ḥanafī*, al-Bukhārī treats Abu Ḥanīfa with special respect and finds his ruling to be true on the nature of *Jihād*, that it is *Wājib* and not *Farḍ*.<sup>36</sup>

### C. Collective Duty

Note that the authors presented here who either ignore *Jihād* or treat *Jihād* as unsupported by direct statements in either the *Qur'an* or the prophetic traditions are the closest contemporaries to the Prophet who died in 632 CE. Several centuries after the Prophet's death and the establishment of the *Ḥanafī Madhhab*, the first *Ḥanafī* jurist asserted that *Jihād* was an obligation directly founded on sacred texts.

1. Najm al-Dīn Ibn Ḥafṣ al-Nasafī (died 537/1142), *Ṭilbat al-Ṭalabah Fī al-Iṣṭilāhāt al-Fiḥiyyah (Students' Requests in Legal Terminologies)*

In *The Students Request for Legal Terminologies* Najm al-Dīn Ibn Ḥafṣ al-Nasafī treats *Siyar* extensively while also providing a legal dictionary.<sup>37</sup> According to Al-Nasafī, *Jihād* is *Farḍ Kifāyah* (collective duty), in which certain individuals, rather than everyone, participate. Al-Nasafī is one of a few scholars depicted here who supports his views with *Qur'ānic* verses.<sup>38</sup>

2. Sirāj al-Dīn Abu Muhammad 'Ali B. 'Uthman B. Muhammad al-Taymī al-Ushī (died 569/1173) author of *al-Fatāwa al-Sirājiyyah (Siraj's Legal Opinions)*

*Siraj's Legal Opinions* is the most comprehensive collection presented in this article in terms of precision, content, and extensive coverage of *Siyar*. Al-Ushī has a separate Book devoted to *Siyar* covering such topics as the proper usage of military drums, the times of *Jihād*, manners during war, etc. Al-Ushī outlines the *Siyar Kitāb* as: (1) *Jihād*, (2) Captives, (3) Peace, (4) a non-Muslim entering a Muslim land, (5) a Muslim entering non-

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<sup>35</sup> BURHAN AL-DIN ABU AL-MA'ALI MAHMUD B. AHMAD ABD AL-'AZIZ IBN MAZA AL-BUKHARI, AL-MUHIT AL-BURHANI FI AL-FIQH AL-NU'MANI 5 (2004).

<sup>36</sup> *Id.* at 5–7.

<sup>37</sup> NAJM AL-DIN IBN HAFṢ AL-NASAFI, *ṬILBAT AL-ṬALABAH FI AL-IṢṬILĀHĀT AL-FIQHIYYAH* (1893).

<sup>38</sup> AL-NASAFI, *ṬILBAT AL-ṬALABAH* 79 (1893).

Muslim lands in peace, (6) Spoils of War, (7) Occupation of non-Muslim land, (8) Conversion, (9) Apostasy, (10) the Head Tax, (11) Rebellion, (12) Blasphemy and (13) miscellaneous topics.<sup>39</sup> Al-Ushī starts each section with the views of earlier jurists on the topic.

Al-Ushī believes that *Jihād* is *Farḍ Kifāyah* which means it falls only on certain individuals in the community rather than on everyone. Al-Ushī writes

but if the call [for *Jihād*] is general, in that case [it] will be *Farḍ ‘ayn*—required of everyone—and the people of the faith will be called upon men, women, and slaves will go out [to war] without permission from their lords.<sup>40</sup>

Before killing the enemy, al-Ushī writes, the *Imām* has to offer non-Muslims conversion twice, even after that, “women, children, people with mental disabilities, and the elderly cannot be killed.”<sup>41</sup> The author also describes *Jihād* as defense rather than aggression. *Jihād* is what happens if non-Muslims attack Muslim lands.

3. ‘Ala al-Dīn Abu Bakr b. Mas’ūd al-Kāsānī (died 587/1191) author of *Badā’i al-Ṣanā’i fī Tartīb al-Sharā’i* (*The Marvels of Deeds and The Order of the Laws*)

The *Marvels on Deeds and the Order of the Laws* comprises ten volumes with *Siyar* located close to last as the ninth volume. Al-Kāsānī covers fifteen related subtopics on *Siyar* ranging from the obligatory nature of *Jihād* in the section entitled *ahl al-jihād* (people of the military campaign) to allocation of booty, apostates, and captives.

Al-Kāsānī provides Qur’ānic and prophetic evidence in the beginning of each *Faṣl* (subsection) and then moves to practical matters, such as the amount of *Jizyah* or *Kharaj* or the punishment for a non-Muslim who commits a crime in a Muslim land.

Al-Kāsānī’s views are very similar to al-Ushī’s in terms of the obligatory nature of *Jihād* as well as what actions are prohibited during *Jihād*. Al-Kāsānī’s subsections are: (1) Obligatoriness of *Jihād*, (2) who is obligated to participate in *Jihād*, (3) what authorizes a religious leader to conduct military campaigns, (4) what is required of conquerors, (5) who may and may not be killed, (6) what is permissible to leave in the land of war, (7) what can be taken to the land of war, and many others.<sup>42</sup>

<sup>39</sup> SIRĀJ AL-DĪN ABU MUHAMMAD ‘ALĪ B. ‘UTHMAN B. MUHAMMAD AL-TAYMĪ AL-USHĪ, AL-FATĀWA AL-SIRĀJIYYAH, DĀR AL-KUTUB AL-‘ILMIYYAH 291 (1979).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 291–292.

<sup>42</sup> ALA AL-DĪN ABU BAKR B. MAS’ŪD AL-KĀSĀNĪ, BADĀ’Ī AL-ṢANĀ’Ī FĪ TARTĪB AL-SHARĀ’Ī

4. Burhān al-Dīn Abu al-Ḥasan ‘Ali b. Abu Bakr al-Marghinānī (died 593/1196) author of *al-Hidāyah Sharḥ Bidayat al-Mubtadī*

Burhān al-Dīn Abu al-Ḥasan ‘Ali comprehensively treats *Siyar* in the fourth volume of the eight volume work. Within the *Siyar* chapter are nine *Babs* (subsections) and six *Fasls*. *Bab istīlā’ al-kuffār* (section on the occupation of the infidels) covers *Jihād*, allocation of funds acquired during the war, Muslim merchants travelling in non-Muslim lands, non-Muslims residing in Muslim lands, female non-Muslims emigrating to a Muslim land on account of marriage, etc.

The section starts with the legal meaning of *Siyar*. The author first provides a verse from the *Qur’ān* on *Siyrah* and then a tradition from the Prophet on *Jihād* and its status as *farḍ kifāyah*. Al-Marghinānī then provides stipulations on the defense against the enemy as *farḍ ‘ayn*.<sup>43</sup> The author also gives examples on the topic from other *Fatwā* books without any reference but the commentator gives guidance in the footnotes. In this regard, though al-Marghinānī’s *al-Hidāyah* is immensely famous among *Sunni* Muslims, the author does not offer something new in his work. In other words, it is mostly repetition of earlier legal scholars.

5. Husām al-Dīn ‘Ali b. Makkī al-Rāzī (died 598/1201) author of *Khulāsāt al-Dalā’il Fī Tanqīh al-Masā’il (Conclusions of Evidence in Rectifying Legal Issues)*

*Conclusions of Evidence in Rectifying Legal Issues* is comprised of two volumes. Makkī al-Rāzī places the subgenre of *Siyar* towards the end of the second volume but treats the topic in seventy-one pages. Al-Rāzī covers many topics related to *Siyar* such as entrance of Muslims into non-Muslim territory and apostasy.

Al-Rāzī’s methodology shows what was important in terms of *Fatwā* production during his time. Having a separate section for the topic of *Siyar* and a subsection on the topic of rebellion (*Baghāt*) signals that rebellion and tribute from non-Muslim lands are important topics during this historical period.

Al-Rāzī also makes a distinction between *Jihād* and fighting non-Muslims. In other words, he is one of the scholars who sees *Jihād* as a military defense. Al-Rāzī starts the section with his view that “*Jihād* is *farḍ ‘ala al-kifāyah*.” If a group from the community participates in *Jihād* then the rest of the community is free of obligation. However, if no one from the

community participates in *Jihād*, then the entire community has sinned.<sup>44</sup>

Al-Rāzī writes that children, slaves, women, the blind, crippled, or one-armed are free of any obligation to participate in *Jihād*. However, he repeats the earlier legal scholars' view that "if the enemy attacks the land, defense becomes *farḍ* to everyone: a wife goes without her husband's permission, and the slave without the permission of the master."<sup>45</sup>

6. Abu al-Barakah Abdullah b. Ahmad al-Nasafī (circa. 620/1223-710/1310) author of *Kanz al-Daqā'iq* (*Treasure of Accuracies*)

Ahmad al-Nasafī has a section on the topic of *Siyar* after he provides legal definitions of the term. The first subsection after the opening of the section on *Siyar* concerns booty with the next subsection on the distribution of booty. Ahmad al-Nasafī has separate subsections on tithe, land tax, and the head tax usually imposed on non-Muslims, Apostates and Rebels. These are topics that are often passed over in other collections.

Al-Nasafī's treatment of *Jihād*, is quite imitative of earlier scholars such as al-Ushī, al-Nasafī and al-Marghinānī. Even the way he defines the linguistic and legal usages of the term employs similar wordings from earlier books. Al-Nasafī's original contributions include additions of subsections on distribution of booty, types of taxes, apostasy, and rebellion all of which were helpful to the rulers of his time. Ahmad al-Nasafī does not follow Abu Ḥanīfa in terms of making *Jihād Wājib* but instead designates *Jihād Farḍ kifāyah* and *Farḍ 'ayn* so that he falls into the category of legal scholars whom al-Rāzī finds conflict with Abu Ḥanīfa.

## VII. CONCLUSION

The word *Jihād* appears frequently in the American press. For American audiences, *Jihād* incorrectly implies an obligation to participate in holy war. Almost half of all Muslims follow the *Ḥanafī* School of *Sunni* Islam. Within that School of Islamic thought, there are three very different attitudes toward who is obligated to engage in *Jihād*, who qualifies to call for *Jihād*, and whether *Jihād* is *Farḍ*, *Wājib* or not worth mentioning at all. These differences inform us about the complexity of the topic. There is no single source or authority that supports the idea of a Muslim's obligation to engage in holy war. Further, because Islam lacks an institution or person who can obligate others, even a religious leader's call to engage in *Jihād* does not produce a religious obligation under Islamic law.

<sup>44</sup> HUSĀM AL-DIN 'ALI B. MAKKĪ AL-RĀZĪ, KHULĀSAT AL-DALĀ'IL FI TANQĪH AL-MASĀ'IL 353 (2007).

<sup>45</sup> AL-RĀZĪ, KHULĀSAT AL-DALĀ'IL 354 (2007).

This article attempts to repudiate the misconception that there is universal agreement on holy war and the obligation to be a holy warrior by demonstrating that early Muslim scholars within the same legal school never agreed on the nature of *Jihād*, whether *Jihād* is an obligatory act required of every Muslim, or if *Jihād* is an obligation that is secondary in rank. These differences in the works of the legal scholars mentioned here support the view that there is no Islamic obligation to engage in holy war or be a holy warrior.