

COMMENTARY

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# Refuting Da'esh properly: a critical review of the "Open Letter to Baghdadi"

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## Abstract

The emergence of the "Islamic State" or Da'esh in the Syrian war brought a whole new dimension to the war on terror. To counter the "Islamic State" ideology, Islamic scholars from all around the world issued a document titled "Open Letter to Baghdadi" containing refutations towards the "Islamic State". There are a number of issues that this document may have clarified, such as the refutation towards the "Islamic State" claim of "global caliphate". However, there are quite a number of problematic points which may be counterproductive to the purpose of this letter in the first place. It is the objective of this article to identify some of these problems which may include a lack of representation of prominent Islamic schools of thought, incorrect application of Islamic law, or lack of observation on actions conducted by the "Islamic State".

**Keywords:** The "Islamic State", Islamic law, Jihad, Terrorism

## Introduction

The Syrian and Iraqi war is probably the largest ongoing humanitarian crisis currently ongoing. In Syria alone, it has been estimated that around 211,000 people have been killed and over 7.6 million people have been displaced since March 2011 until March 2015 (Syrian Network for Human Rights or SNHR, cited in World Bulletin, 2015).

The group "Islamic State" (referred to as Da'esh), formerly the "Islamic State of Iraq and Syria" or ISIS, seemed to become the actor which has most attention from the world. Different reports reveal different numbers, but they all show that the civilian deaths caused by the Syrian Government is overwhelmingly larger compared to those caused by Da'esh (the SNHR, for example, reports that Da'esh killed a little over a thousand civilians, while the Syrian Government killed 176,678). However, it seems that the world is more united against Da'esh.

Although initially being a branch of Al Qaeda, Da'esh has defected and replaced Al Qaeda as the number one enemy in the global war on terror, Da'esh had so many things that Al Qaeda did not have. This includes an army capable of fighting an open war<sup>1</sup> and social media

savvy. They also have control over vast amounts of territory spreading from parts of Iraq and Syria and manage it in a way that really closely resembles statehood (At-Tamimi 2015a). Their cruelty seems unparalleled, which includes but not limited to crucifixion and burning captives alive.

A large number of extremists have pledged their support to Da'esh such as the Al-Shabaab of Somalia—although other extremist groups such as Al Qaeda and the Taliban are in war with them—and scores of these extremists are crossing the globe to join and fight for Da'esh. There are also some areas of Da'esh control beyond Iraq and Syria, such as in Libya and Egypt (in Sinai, see CNN 2015). Da'esh operations do not only include military attacks in the Syrian and Iraqi war but also terror operations in other states such as France, Yemen, and Saudi Arabia.

While there are efforts to combat Da'esh through physical warfare, the Muslims of the world are fighting them on a different front as well. This is because the war against Da'esh—and Islamic extremism in general—needs more than just military operations but also an approach to eliminate extremist ideologies.

Although the number of Muslims joining or sympathizing with Da'esh does seem large, the fact remains that there is an overwhelmingly and exponentially larger number of Muslims against Da'esh. The Pew Research

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Center (2015), for example, released a research indicating that there is an overwhelming number of Muslims are against the Da'esh ideology<sup>2</sup>. Using the same holy sources of the Islamic belief as Da'esh does, i.e., the *Qur'an* and *Sunnah*, waves of Muslims throughout the world from various schools of thoughts and interpretation joined in an "ideology war" to protest and refute Da'esh views of Islam.

Among these efforts, 126 Islamic scholars from all around the world signed a document called "the Open Letter to Baghdadi" (hereinafter, the Open Letter), referring to the Da'esh leader Abu Bakar al-Baghdadi. This document is 17 pages long (excluding the list of signatories) and contains 24 points of refutation towards Da'esh and was signed on 19 September 2014. This article focuses on this Open Letter and sees whether or not it conveys its message well.

### The message of the Open Letter

Da'esh came with an ideology which is not just extreme but seemingly having scholarly basis. One of their characteristics would be their *takfiri* ideology (unjustly and too easily declaring a fellow Muslim as apostate). This ideology may be the root of how Da'esh easily attacks and kills fellow *Sunni* Muslims including non-combatants. Is it easy to dismiss their actions as "unislamic"? Apparently, it is not that simple. Al Baghdadi called out democracy as deceptive (Al-Baghdadi 2014) and declared that its participants as apostates. In Da'esh's handbook *Muqarrar fi al-Tawhid*<sup>3</sup>, they declare as apostates (punishable by death) all who participate in the process of democracy and seek judgment through civil laws. This reasoning does seem to be along the lines of the *Qur'an* in 5:44 explicitly saying that those who take laws beside from what Allah revealed are *kaafir* or disbelievers.

Apart from an ideology promoting unjust killing, the method in which they commit these killings are also exceptionally brutal. An example to this was their burning of the Jordanian pilot. This act was claimed to find basis in the *Qur'an*, 16:126 prescribing retaliation—Jordanian jets bombarded Da'esh positions so they burnt him in retaliation—as well as some narrations (The Washington Post 2015).

One cannot easily dismiss Da'esh's claims without a proper academic refutation towards the Da'esh ideology. Therefore, numerous scholars or committees around the world have already issued scholarly refutation against Da'esh. The Open Letter, however, seems to intend to bring it to another level.

The Open Letter presents two elements in refuting the Da'esh ideology. First, it is supposed to represent the world's Muslim community uniting as one for no other purpose than to show the world (the Muslim world, the non-Muslim world, and Da'esh also) that Da'esh's twisted ideology is alone and isolated from the Muslim world.

Second, it is a scholarly refutation to show that this is not just an overwhelming number of Muslims outnumbering the minority, but that this majority has proper basis for their claim while Da'esh does not have such proper basis. This is because differences of opinion in Islamic law are not settled by majority vote, but by referring to the primary sources of the Islamic belief, i.e., the *Qur'an* and *Sunnah* to find which opinion is stronger (see the Quran in 4:59, and Al-Albani 1993: vi-xviii).

Further, seeing that scholars are invited from the entire world to suggest that the whole Islamic world is against Da'esh, this is not a mere *fatwa* (or legal opinion, which is not binding per se to the community) but rather seems to be an attempt to achieve a consensus or *ijma*. The use of this term has its own significance in Islamic law, since *ijma* is a recognized and very authoritative source of Islamic law after the *Qur'an* and *Sunnah* (Hallaq 1997: 75), which makes it binding to the entire Muslim community including the Da'esh. Al-Shafi'i opines that an *ijma* must include the entire Muslim community, while Al-Ghazali says that such an *ijma* is practically impossible (at that time), so only the most qualified scholars count (Khatturi, 1987: 38) which is also the view of Al-Uthaymeen for a different reason, i.e., because laymen shall not be involved in matters requiring much scholarly knowledge<sup>4</sup> (Al-Uthaymeen 2008: 100). This is why the Open Letter involves a very large number of esteemed Islamic scholars from various countries.

The Open Letter, in their 24 points of refutation, tried to capture the main points of where IS ideology is misguided and has resulted in catastrophe.

The first five points relate to general methodology, such as what are the requirements to issue a *fatwa* (ruling), the requirement of mastery of the Arabic language, oversimplification, differences of opinion, and taking account of contemporary times in deriving legal rulings. The Open Letter essentially points out that the way Da'esh derives their rulings fail to satisfy these requirements.

From point 6 onwards, the Open Letter refutes IS in selected topics of Islamic law. The points range from "Killing Innocents" (point 6) and "Killing Emissaries" (point 7) to "Emigration" (point 24). The Open Letter then mentions how Da'esh has violated Islamic laws relating to those points.

To end the message, the Open Letter sort of "teases" Da'esh by citing a narration attributed to Ali bin Abi Thalib (one of the major companions of Prophet Muhammad and the fourth Caliph of Islam) essentially mentioning a prophecy about the future where there will be "feeble insignificant folk" which, according to the Open Letter, fits Da'esh.

Finally, there is a list of the 126 scholars (and affiliation) who signed the document. There are scholars from all parts of the world, including but not limited to:

- Africa: HE Sultan Muhammad of Nigeria, Dr. Sameer Budinar of Morocco
- South Asia: Prof. Din Syamsuddin (Indonesia), Prof. Osman Bakr (Malaysia)
- Middle East: Prince Ghazi bin Muhammad (Jordan), Seyyed Abdullah Fadaaq (Saudi Arabia)
- Europe: Wahid al-Fasi al-Fahri (Italy), Abdul-Majeed Khayroun (Netherlands)
- America: Hamza Yousuf (USA)

### Problematic parts

This section will elaborate the problematic parts of the Open Letter. It will start by elaborating the lack of representation in the Open Letter in contrast to what may seem to be its intention (i.e., to have the Muslim world united against Da'esh). Then, it will continue discussing the weaknesses of the arguments set by the Open Letter by explaining point by point.

#### A. Representation

The most obvious problem in the list of scholars is that it suspiciously lacks scholars from the *Salafi* creed. The only one that seems to be affiliated to the *Salafi* creed is Ali Hasan Al-Halabi from Jordan (No. 49 in the list of scholars, mentioned in short as Ali Al-Halabi). Even within the *salafis*, Al-Halabi is seen negatively as not representing the *Salafi* view. For example, the Saudi Arabia Committee of Fatwa, which is among the central authorities in the *salafi* scholarship, declares that Al-Halabi in his books calls to the *irja* sect (Al-Lajnah, nd [a]: Ftw No. 21517) which is a deviant sect according to the *salafis*, labeled as *bid'ah* or “innovation” (Al-Lajnah, nd [b]: Ftw No. 21436). It is also understood that going against *bid'ah* is essential in the *salafi* creed (Qadhi 2013: 2).

There is only one scholar from Saudi Arabia—very well known to be the center of mainstream *salafism* (Qadhi 2013: 6)—which is Seyyed Abdullah Fadaaq (No. 42 in the list of scholars in the Open Letter). The one scholar from Saudi Arabia just had to be a follower of *Sufism*, which *salafis* have declared as a deviant sect (Al-Lajnah, nd [c]: Ftw No. 9848). Not only that the *salafi* creed is one of the big modern creeds which is managing the holy lands of Mekkah and Madinah, the *jihadi* groups such as Al Qaeda and Da'esh also claim to be *salafis*. Yasir Qadhi mentions *Takfiri Salafis* and Radical *Jihadi Salafis*—Al Qaeda and Da'esh are typically listed among those labels—to be among the sub-creeds of *salafism* (Qadhi 2013: 8-9).

It is therefore very essential to involve them in this Open Letter for representation of the entire Muslim community, while also approaching the

Islamic creed whose followers may be the closest and most prone to joining extremists like Da'esh. This is why, for example, Al-Halabi is involved in Indonesia's efforts to combat radicalism through its *Badan Nasional Penanggulangan Terorisme* (National Body for Terrorism Anticipation, see CNN Indonesia 2015). With such necessity, it is still a wonder why the *salafis* are very lacking in the Open Letter (although, separately, the *salafi* major scholars and even the Grand Mufti of Saudi Arabia has issued fatwas against Da'esh).

#### B. The Question of Slavery

The case of slavery is an intriguing one. The start of the Islamic civilization did not abolish slavery. There are clear instructions from the *Sunnah* on humane treatment of slaves, which includes feeding and clothing them at the same level as the master, and the prohibition to overburden a slave, and that the master shall help the slave in heavy works (Al-Bukhari 1979a: No. 30 and Muslim 1972c: No. 4092-4096). It is also prohibited to hit them without serious fault (Muslim 1972c: No. 4078-4089) and to force them into prostitution (Quran, 24:33)

Further, it was highly encouraged to set them free in various verses of the *Qur'an* and *Sunnah* (such as the Quran, 90:11–13). When the slave wishes to be set free, all that the slave has to do is ask for it and even then he/she is entitled to some wealth from the master upon release (Quran, 24:33). While there are still some elements of slavery in Islam that is against modern human rights, but certainly this cannot be said in the same breath and level with the other common practices of slavery.

The majority opinion in medieval scholarship says that when a Muslim army conquers an army from the “People of the Book”<sup>5</sup>, it is up to the Muslim leader to decide the fate of the war captives: execution<sup>6</sup>, release<sup>7</sup>, or enslavement, based on what the leader considers to be in the best interest of the Muslims (Ibn Rushd 2000: 456). This does seem to be the only way that a person can be enslaved; therefore, Islamic law according to the medieval scholars eliminates other but not all means to enslave people.

The problem in point 12 of the Open Letter with regard to slavery is not on the substance, as it have legitimate grounds for its argument. The problem is the phrases saying that “*No scholar of Islam disputes that one of Islam's aims is to abolish slavery...*” and “*...Muslim consensus on the prohibition of slavery...*”. How can the Open Letter depart from the opinion of the medieval scholars,

while the latter does indeed have legitimate basis to their opinion?

To answer this, they seem to use the word “consensus” or *ijma*. However, is it true that there was an *ijma* on the prohibition of slavery?

The Open Letter seems to refer to the world movement in abolishing slavery, and the Slavery Conventions may indeed be among the landmark events. It is true that a majority of Muslim nations are parties to the Slavery Conventions in 1926 and 1956. The problem is that the slavery abolition voice from the Muslim world was not necessarily through the consensus of scholars, but rather the leader of nations as parties to the Slavery Conventions instead of scholars. This is not to mention that much of the Islamic world at the time were colonialized (e.g., Saudi Arabia, Jordan, Indonesia, etc.) and the Ottoman Empire has just collapsed.

The scholars, on the other hand, are not really unanimous. The Saudi Arabia Committee of Fatwa issued a fatwa reaffirming the position of the medieval majority (Al-Lajnah, nd: Ftw. 1977).

They also issued another fatwa that emphasized that all *Imams* (great scholars) agree that this law is still applicable today (Al-Lajnah, nd [d]: Ftw. 515). This is apart from Saudi Arabia being party to the Slavery Conventions<sup>8</sup>. Even Az-Zuhayli, one of the most prominent contemporary Shafi'i scholar—despite the Al-Azhar fatwa (Dar Al-Ifta, [nd])—reaffirms this position (Az-Zuhayli 2011: 84-86) while also emphasizing the need to gradually eliminate slavery (Az-Zuhayli 1998: 5916).

It is very acceptable for the Open Letter to take the position of the scholars who are in favor of eliminating slavery, since the arguments in favor of this position does find legitimate basis.

However, to claim that there is a universal consensus is simply far beyond truth. Claiming “majority” is probably the best, rather than claiming a universal consensus while oppositions do exist.

### C. “Killing Innocents” and *Takfir*

The Open Letter mentions the prohibition to kill innocent people in point 6, mentioning how Da'esh has killed non-combatants simply because they disagree with Da'esh. It is well understood that this point has legitimate basis in Islamic law, and certainly this is a good message to those who are not well informed on what Islam says about killing persons who are either non-combatants or have special status (emissaries). The problem is that the way these points were carried out are not convincing or are even—to some extent—naïve.

Point 6 on the prohibition to kill innocents is probably to some extent related to point 8d on the rules of the conduct of *jihad*. Since this is a situation of armed conflict, there are different rules that apply where some persons are legitimate targets during war, but it is clear that persons not taking any participation in the hostilities are not legitimate targets (see, for example, in Malik 1992: 21/10, and Az-Zuhayli 2011: 34-35). The problem is that Da'esh thinks that these non-combatants deserve to be killed for another reason.

Some of the persons (combatants and non-combatants alike) were killed due to Da'esh declaring them as apostates. Now this issue becomes very linked to point 6 of the Open Letter regarding the question of *takfir* (declaring a person as a non-Muslim). The Open Letter did make a sufficient explanation on the Islamic laws regarding *takfir* in general, but did not seem to refer to Da'esh ideology of *takfir* in particular or connect it with the issue of “killing innocents”.

An example to Da'esh ideology on *takfir* was mentioned in Part II, i.e., how they declare participants of democracy and civil laws as apostates. While it is true that the Qur'an in 5:44 says that persons not following the laws of Allah are disbelievers, this verse cannot be seen in isolation and absent context. The Open Letter points out that “not using Allah's laws” do not always fall under disbelief (*kufir*), rather it may also fall under *fusuq* (evildoers) or wickedness (*dhulm*) as per the Qur'an in 5: 45 and 47.

However, not only that this was explained in a separate part of the Open Letter (i.e., point 21 on Rebellious against Leader), this argument is insufficiently comprehensive in capturing Da'esh's ideology.

First, The Open Letter has not refuted the Da'esh's blanket judgment that democracy is against Islam is a form of apostasy. There is a rich body of scholarship on this matter, and numerous *fatwas* around the world supporting this that could be cited (see Samuddin 2013: 387-414 for a long list of *fatwas* on the permissibility of democracy). Second, the Open Letter did not take into account that Da'esh has made a distinction between “not using the laws of Allah” resulting in *takfir* and merely a “lesser disbelief” not resulting in *takfir* (*Muqarrar fi al-Tawhid*, nd: 35-37)<sup>9</sup>. These points have to be addressed and refuted or else the Open Letter's argument is refuted before delivered.

Another interesting example of Da'esh ideology of *takfir* is that *takfir* is not performed on those who

differ, criticize, or fight the IS (Dawlah Al-Islamiyah, nd: 4). The Open Letter in point 6 has noted that innocents have been killed for exactly this reason, but did not link it to *takfir* while Da'esh cases of civilian murders are highly related to it. It is paramount to assess these Da'esh claims of their *takfir* ideology. It would certainly be more powerful to point out how Da'esh fails to live up to their own claim.

Pointing out these instances of reckless *takfir* resulting in the "killing of innocents", as mentioned previously, would bring more substance and factual contexts to the arguments of the Open Letter. On the other hand, the point on *takfir* does seem to explore much of theory but not any particular action of Da'esh making reckless *takfir* except one. The one case mentioned was that of a Da'esh fighter killing persons claiming to be Muslims but failing to answer basic Islamic questions. While this is also a case of reckless *takfir*, it may easily be seen rather as a case of weeding out impostors. Pointing out systematic evidences of IS committing *takfir* defeating their own principles would send a much stronger message.

#### D. Points on Jihad

*Jihad* seems to be a large part of what Da'esh is calling to. They call all Muslims to join the fight against the disbelievers (Al-Baghdadi 2014). The Open Letter attempts to refute Da'esh ideology on *jihad* on a number of levels, which are mostly in point 8. Included among them would be rules on intentions, reasons, and goals of *jihad*, persons protected during warfare, treatment of war captives, and also the protection of emissaries (albeit in a separate point, i.e., point 7). Half of the problem of this section lies, again, on which part of *jihad* rules Da'esh did not follow. The Open Letter mentions in point 8a with regard to "intention behind jihad" essentially that *jihad* has to be for Allah only. However, it does not mention what evidences show that Da'esh does *jihad* for any other intention. What is more is that if the Open Letter even attempts to infer such intentions, they will risk contradicting their own argument in point 9c mentioning that one may not recklessly interpret another's intention. With regard to rules on the reason of *jihad*, the Open Letter essentially mentions in 8b that *jihad* should be done only to fight transgression or oppression and that there is no such thing as offensive *jihad*. The first problem to this is that Da'esh easily mentions how their acts are responses to oppression by tyrant governments, such as what they have claimed in Iraq in 2013 while still using

the name ISIS (At-Tamimi 2013). Al Baghdadi has also elaborated on how the world seems to be attacking Muslims on all fronts to justify his call to fight (Al-Baghdadi 2014). Certainly, the Open Letter should have realized and responded to this fact.

But then, Da'esh cannot deny either that the war they are fighting is also expansive. After all, their slogan "*baqiyah wa tatamaddad*" does mean "lasting and expanding". The Open Letter does mention that not all scholars (albeit majority) say that there is no offensive jihad. Medieval scholars have agreed that *jihad* is *faradh al-kifayah*<sup>10</sup> (ibn Rushd 2000: 454 and 464), and even modern scholars such as az-Zuhayli mentioned the same, further explaining that *jihad* is *faradh al-kifayah* when the non-Muslims are in their own land—which may imply offensive *jihad* (Az-Zuhayli 2011: 29).

However, despite the difference of opinions, all of those speak of *jihad* against the *kuffar* or disbelievers. It is well known that Da'esh has on so many occasions attacked fellow *Sunni* fighters from either the Free Syrian Army, Kurdish groups, or other *jihadi* groups. IS easily justifies this by making *takfir* on these fellow Muslims, so technically they are not attacking Muslims—in their own perspective. This is more evidence not only on how dangerous the Da'esh ideology of *takfir* is, but also on how few facts on the field that the Open Letter manages to incorporate to strengthen their critic towards Da'esh. Point 8d mentions about the rules of conduct of *jihad*, and the author wishes to mention particularly the argument regarding the treatment towards war captives where Da'esh has executed numerous captives. The Open Letter is indeed correct when pointing out that Prophet Muhammad did not kill captives during battle except in special circumstances (i.e., towards persons committing special crimes and not for mere belligerency), also that it is encouraged to treat the war captives well and provide amnesty. However, what to make out of this as precedent? Does it mean that there is a blanket prohibition to execute war captives for mere belligerency? This is indeed the position of the modern scholar Al-Qardhawi (2010: 708-710) and of some medieval scholars (Ibn Rushd 2000: 456). However, this position even in the medieval scholarship seems to be a minority. The majority said, as mentioned much earlier, that it is within the discretion of the Muslim leader to determine the fate of the war captives which includes

execution, if the leader believes that it will serve the best interest of the Muslims (Ibn Rushd 2000: 456). Modern scholars say the same, such as the Saudi Arabia Committee of Fatwa (Al-Lajnah, nd: Ftw. No. 515 and 1977) and Az-Zuhayli (2011: 87-88 and 1998: 5913-5914). Most Islamic nations have become party to international humanitarian law treaties which prohibit summary executions of war captives, and—unlike the *ijma* which requires scholars—this decision lies on the leaders. Yet this also means that it is in the discretion of the leader of Da'esh to execute these prisoners. Does it make sense to easily take the opinion of the minority scholars and ignore the majority, when many argue that “Da'esh does not represent the majority of Muslims”? This may show that Da'esh follows the majority and anti-Da'esh scholars follow the minority, possibly implying that Da'esh is more authoritative.

It may be best to address the majority opinion honestly and reconcile it with the minority. For example, following the line of the majority, how does one decide that executing war captives is in the best interest of the Muslims? By following the precedent of Prophet Muhammad, who sees that there is interest to execute war captives only when they have committed special crimes apart from mere participation in belligerency—conforming also to the minority opinion.

Further, it would be important to point out that Da'esh has violated even the opinion that they claim to follow. The Human Rights Council (2016: 14-15) reported that there has been numerous summary executions in detainment facilities, clearly without any instruction from the leader of Da'esh but acts of individuals. As mentioned above, the scholars of the past and present rule that captives may be executed by the discretion of the leader and not individual soldiers. Therefore, it may seem that Da'esh's conduct is following no legitimate scholar. Last in this category would be point 7 on the prohibition of killing emissaries. It is true that Islam prohibits killing an emissary, even one that belongs to the adverse party (Hamidullah 2011: 151, see also Abu Dawud 2008: No. 2755). The problem is that the context of the aforementioned rules refers to diplomatic representatives or envoys. Interpreting the word “emissary” let alone the law relating to it to include journalists may be a very far stretch. If one were to play with loose definitions, Da'esh can easily respond by saying that even honest reports of Da'esh activity helps encouraging the west to attack further therefore

participating in the hostilities—practically making the journalists a legitimate target (see Az-Zuhayli 1998: 5855).

The Open Letter also mentioned that aid workers such as David Haines are supposed to fall under the category of emissaries as well. Can aid workers from NGOs can count as “emissaries” which deserve special immunity alike diplomatic representatives? This will require some extra explanation, which certainly deserves to be mentioned. Instead, the Open Letter once again resorted to very loose definitions of aid workers as “... emissaries of mercy and kindness...”. However, rather than insisting on putting unconventional occupations under the category of “emissary”, it would be much more simple to generally classify them under the “non-combatant” classification pursuant to point 6 on “innocent people” or point 8d on “rules governing *jihad*” specifically on persons that should not be targeted during war.

#### E. *The Question of Emigration*

The final point of the Open Letter, i.e., point 24, seeks to refute the Da'esh call for emigration or *hijrah* of Muslims from wherever they are to the land Da'esh controls. Al Baghdadi himself has made this call and pointed out that it is compulsory to emigrate to Da'esh (Al-Baghdadi 2014). Note that a large number of extremists from all over the world have answered this call and entered Iraq and Syria to join Da'esh, although there is a decrease in numbers of those joining them now (Foreign Affairs 2016).

In its refutation, the Open Letter uses a narration from Prophet Muhammad saying “*There is no emigration after the Conquest [of Mecca], but jihad and [its] intention [remain]. And when you are called to war, march forward.*”. From what it seems, this narration is understood by the Open Letter to mean that Da'esh call to emigration will be against Prophet Muhammad's call to no longer emigrate. The problem with this is that there is another narration of Prophet Muhammad saying “*Migration will not end until repentance ends, and repentance will not end until the sun rises in the west.*” (Abu Dawud 2008: No. 2473). In the Islamic belief, the reference of “...the sun rises in the west...” is one of the signs of the end of days (Al-Bukhari 1979b: 68). How do we understand these seemingly two contradictory narrations? Al-Shafi'i mentions that there are no contradictive narrations. Narrations that seem contradictive would have different context of application, such as one narration referring to a general

situation while the other being exceptions on specific circumstances (Khadduri 1987: 180-181). Although there are instances where certain narrations would abrogate the other, Al-Shafi'i also explains that would usually be clear evidences in that narration indicating such abrogation. This should be seen together with Al-Uthaymeen's position, where he mentioned that one would resort to seeking possible abrogation only when the narrations cannot be reconciled (Al-Uthaymeen 2008: 85)

Particularly regarding these two narrations, the two narrations apply to different contexts.

Al-Uthaymeen mentioned that the first narration "*There is no emigration after the Conquest...*" speaks only about emigration from Makkah and was not intended to be a general rule (Al-Uthaymeen 2002: 9). The second narration "*Emigration will not end...*" explains how the general command of emigration has not ceased. The concept of emigration in Islam is to emigrate from "lands of disbelief" to the lands of Islam (Al-Uthaymeen 2002:10). Having said that, two narrations are not contradictive after all. Makkah used to be a hostile "land of disbelief" towards the Muslims which was why Muslims emigrated to Madinah. Therefore, after the Muslims took over Makkah, it is no longer a "land of disbelief", which still satisfies the concept of emigration.

It is therefore baseless to refute Da'esh's call for emigration by saying that "the command to emigrate is no more", and scholars should know better. It may seem so much persuasive to refute Da'esh in this topic by pointing out that the majority of the world's Muslims are already living in Muslim lands. Except, of course, Da'esh declares these Muslim-majority nations as "lands of disbelief". This goes back to the point of *Takfir* which is a separate area of refutation.

Another point to mention is that there are also a lot of Muslims living in the "lands of disbelief" and sometimes even persecuted such as the Rohingya Muslims in Myanmar. However, one can easily argue that even when these Muslims should emigrate, they should do so to a Muslim land and this Open Letter should be full of arguments as to why Da'esh does not fall under that category. Even the caliphate claims have been properly refuted in point 22.

#### F. *The Athar of 'Ali*

The Open Letter ends with a narration attributed to Ali bin Abi Thalib. The full text of this narration is:

When you see the black flags, remain where you are and do not move your hands or your feet. Thereafter

there shall appear a feeble insignificant folk. Their hearts will be like fragments of iron. They will have the state. They will fulfill neither covenant nor agreement. They will call to the truth, but they will not be people of the truth. Their names will be parental attributions, and their aliases will be derived from towns. Their hair will be free-flowing like that of women. This situation will remain until they differ among themselves. Thereafter, God will bring forth the Truth through whomever He wills.

In that same page, the Open Letter interprets this narration so that it fits Da'esh's characteristics:

- "... *black flags ...*": Da'esh's flag is black
- "... *feeble and insignificant folk ...*": weakness in understanding religion and morality.
- "... *hearts will be like fragments of iron...*": i.e., massacre of captives and torture
- "... *they will have the state...*": Da'esh claims to establish an Islamic State
- "... *fulfill neither covenant nor agreement...*": Da'esh has betrayed some agreements
- "... *call to the truth but they will not be people of the truth...*": Da'esh calls to Islam but are not merciful as Prophet Muhammad instructed
- "... *names will be parental attributions and their aliases will be derived from towns. Their hair will be free-flowing like that of women...*": this fits the description of many known Da'esh fighters.
- "... *until they disagree among themselves...*": Da'esh fights its own "parent", i.e., the Al Nusra Front (Al Qaeda in Syria).

The "... *remain where you are...*" part, according to the Open Letter, is to be understood as "do not join them".

Certain parts of the Open Letter interpretation to this narration are incorrect. For example, parental attributions in names such as Abu Muhammad or Umm Rayhanah (Father of Muhammad or Mother of Rayhanah) which, in Arabic, is known as *kunyah*. Also, aliases derived from towns such Al-Tunis or Al-Baghdadi (The Tunisian or The Baghdadi). It is correct that lots of IS members are known with such attributes to their names. However, using *kunyah* names is part of Islamic teachings as an act of *mustahab* or "encouraged but not compulsory" (An-Nawawi 1427 H: 8/254-255). Using towns in names is something that many Muslims do including famous scholars. For example, Imam Al-Bukhari, Imam An-Nasai, Nassirudin Al-Bani Ahmad Khattib Al-Minangkabawi, Mahmoud al-Misri, Ali Al-Halabi (who is in the list of scholars of the Open Letter), and so many others. Why is the

Open Letter giving negative association to these matters?

However, the worst part of this is to see this narration from the perspective of *hadeeth* sciences. This narration is known as *mawquf* narration: a companion saying or doing something, different from *marfu'* narration: a companion narrating from Prophet Muhammad. Therefore, it is prima facie dubious that this narration contains a prophecy which is a matter of the unseen or *ghaib*, which in Islam is only known from the Qur'an or from Prophet Muhammad (*marfu'* narrations). Scholars have mentioned that the companions of Prophet Muhammad cannot say such matters unless they must have heard it from Prophet Muhammad himself but just not narrating them in the manner of other *marfu'* narrations. Therefore, *mawquf* narrations containing *ghaib* matters are ruled as *marfu'* narrations or known as *marfu' hukman* (Ath-Thahhan 1415 H: 98-100). But can we accept this?

Any person who is learned in Islam should know that there are heavy restrictions on whether or not we can accept narrations like this and take it into account. As a general rule, all statements or actions attributed to Prophet Muhammad contained in these kinds of narrations must undergo a careful study on its chain of narrators to be graded based on its authenticity. If the narration is proven to be authentic, only then it can be taken into consideration (Al-Uthaymeen 2008: 98).

The narration cited in the Open Letter was taken from Kitab Al-Fitan by Nu'aym bin Hammad, one of the teachers of the most famous *hadeeth* compiler Imam Al-Bukhari. However, the scholars of *hadeeth* have a negative opinion on Nu'aym bin Hammad himself. He is known as a weak transmitter of *hadeeth* and some even allege him as a fabricator, and his book Kitab al-Fitan is specifically mentioned to contain fabricated and dubious narrations and therefore must not be used as basis for anything (see for example: Adz-Dzahabi 2006: 10/609). Does this mean absolute rejection? Sometimes, narrations with weak proof of authenticity can be accepted with very strict requirements. Anshari Taslim (2015: 8-9) mentions that these requirements must include:

- That the weakness of authenticity must not be fatal,
- That the narration only speaks of virtuous acts or *fadhilah amal*, nothing about law or belief (*aqeeda*),
- That, in using the narration, it shall not be said with certainty that Prophet Muhammad did or

said it, for example it should be said "there is a narration that say that Prophet Muhammad said.." as opposed to "Prophet Muhammad said.."

It is clear that only one of the criteria is satisfied, i.e., the third. Certainly, this criteria should be seen differently, since it refers to a rule that specifically prohibits lying in the name of Prophet Muhammad (Muslim 1972a: No.1-4), and this narration is not directly attributed, although of course lying in general is also prohibited (Muslim 1972b: No. 2607c). However, similarly, since this particular narration is ruled as *marfu' hukman* then it is likely that similar care should be given. The Open Letter only mentions that Nu'aym bin Hammad narrates such a statement from Ali bin Abi Thalib.

However, the other criteria are not satisfied. In terms of quality of authenticity, fabrication is considered as a fatal weakness to authenticity (Taslim 2015: 8). In terms of scope of material, the content of this narration does not fall under the exception of *fadhilah amal* but rather the *ghaib*—which is part of *aqeeda*. Therefore, this narration should not be accepted.

With such fatal weakness, why was this narration brought up in the first place? The Author still wonders. It is so ironic since "using weak narrations" was also used by the Al-Azhar Committee of Fatwa in refuting Da'esh in another case, i.e., the burning of the Jordanian Pilot (Dar al Ifta, nd[b]). Bear in mind also that the list of scholars signing Open Letter includes ten members of the Al-Azhar Committee of Fatwa. There are better and more authentic narrations to point at Da'esh, such as the following:

Narrated Yusair bin `Amr: I asked Sahl bin Hunaif, "Did you hear the Prophet (ﷺ) saying anything about Al-Khawarij?" He said, "I heard him saying while pointing his hand towards Iraq." There will appear in it (i.e., Iraq) some people who will recite the Qur'an but it will not go beyond their throats, and they will go out from (leave) Islam as an arrow darts through the game's body. (Al-Bukhari 1979b: No. 68)

The *Al-Khawarij* is labeled as a deviant sect originally appearing not long after Prophet Muhammad died and was responsible of the murder of Ali bin Abi Thalib as the fourth Caliph. They easily make *takfir* on Muslims who commit sins and would encourage rebellion against rulers (As-Shalabi 1429 H: 13-14).

Numerous scholars and even Fatwa Committees have declared Da'esh as *Al-Khawarij*, such as the Saudi Arabian senior scholar Abdul Muhsin



Al-Abbad (1435 H) and the Islamic Supreme Council of Canada (2015). Even Al Qaeda sympathizers such as Majelis Mujahidin Indonesia declares the same (Republika 2014).

This narration is also a prophecy, where Prophet Muhammad hints that the *Al-Khawarij* will come from Iraq. Although the original *Al-Khawarij* movement in the seventh century AD actually did start in Iraq, yet this prophecy may have predicted a similar movement coming from Iraq. Before Da'esh and before ISIS, they were the Islamic State of Iraq under Abu Umar Al-Baghdadi established in 2007, before that they were Al Qaeda in Iraq, and before that they were Jamaat Al Tawhid wa al Jihad also in Iraq (At-Tamimi 2015a: 117).

Would this not be a better insult towards Da'esh?

### Conclusions

This article is not in any way suggesting that the Muslim world shall not rally against extremism, and certainly not suggesting either that Da'esh cannot be refuted. There is indeed a large case against Da'esh, and the "ideology war" continues. Numerous scholars or fatwa committees have individually analyzed and refuted Da'esh. Scholars are working together with governments and communities to combat Islamic extremism so that Da'esh will find themselves with lesser supporters and eventually die out. For example, as mentioned previously, Indonesian Da'esh supporters have repented after approached by Islamic scholars.

The numbers of people joining Da'esh are on the decline (Foreign Affairs 2016) while defection from it is on the rise (Inquisitr 2015). There are yet to be any studies directly linking the Open Letter to these phenomena, although clearly it is not among the top motivations of the latter. It is hoped, however, that the Open Letter can contribute into the already existing general movement against Da'esh and extremism. Further, it may serve as a declaration to the world that Muslims all over the world is against Da'esh and their ideology and therefore one shall not easily attribute the acts of Da'esh to the Islamic faith.

The author merely regrets the irony of the Open Letter. It could have been a monumental masterpiece of the most brilliant minds of the Muslims of the world brought together in one letter, paving a smoother path to destroying Da'esh and their extreme ideology. If that was indeed the intention, certainly it should (a) not leave out important actors relevant to the subject matter, and (b) present accurate and honest analysis regarding the issue dealt with. With such grand range or participation and high profile signatories, is it not an embarrassment if the Open Letter fails to fulfill those two points?

While Al Ghazali mentioned that an *ijma* was difficult due to practical difficulties of the past world (Khadduri 1987: 38), globalization and the luxuries of

modern day technology makes a proper *ijma* so much more feasible. Why harm this by deliberately ignoring important actors—in this case the *Salafi* scholars? It is understood that the reason Al-Ghazali and Al-Uthaymeen argued that an *ijma* should involve only the qualified scholars and exclude the laymen is due to the need of quality analysis of Islamic law. Why harm this with mistakes that the most qualified scholars should have been able to avoid?

It is the author's hope that a new letter could be authored. This new letter shall learn from its predecessor and not make the same mistakes.

### Endnotes

<sup>1</sup>At the height of Al Qaeda's fame as the no. 1 enemy, they did not have an army. However, in recent developments, Al Qaeda branches Jabhat al-Nusra (Syria) and Al Qaeda of the Arabian Peninsula (AQAP) ended up forming armies to defeat the Syrian government (or the Houthis rebels, in case of the AQAP). Yet during this period, they are not known to commit acts of terror like Da'esh.

<sup>2</sup>This report makes no summary of worldwide Muslims against Da'esh but mentions individual States. For example, almost 100 % of Lebanon is against Da'esh (compared to less than 1 % saying "don't know"), 84 % of the Palestinian territories (6 % in favor), 79 % of Indonesia (6 % in favor), and 94 % of Jordan (3 % in favor).

<sup>3</sup>This is a Da'esh issued document authored by Turki Binali at p. 37 and has been documented and translated by At-Tamimi (2015b)

<sup>4</sup>To deduce laws and present *fatwas*, it is required that the scholar should have knowledge on the legal basis of the Qur'an and Hadeeth (and knowledge of its authenticity or lack thereof) and able to derive rulings from them, has knowledge of *nasikh-mansukh* (abrogation), principles of *ushul al fiqh* such as *taksheesh* (specific rules overriding general ones), and mastery of the Arabic language (Al-Uthaymeen 2008: 128-129)

<sup>5</sup>i.e., Christians or Jews

<sup>6</sup>Only for military-aged men

<sup>7</sup>Can be in exchange for ransom or unconditional

<sup>8</sup>And probably this is why Saudi scholars were not involved in the Open Letter

<sup>9</sup>See also Fatwa Committee of Da'esh in Raqqa, *Jihad and its Rulings*, Fatwa No. 20 regarding those fighting alongside the Free Syrian Army, documented and translated by At-Tamimi (2015c)

<sup>10</sup>Communal obligation, meaning that some Muslims—but not all—must do it. Or else, the entire Muslim community will bear the sin.

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