

Abu Yahya al-Libi's "Human Shields in Modern Jihad"

By Jarret Brachman and Abdullah Warius

IN THE COURSE of defending al-Qa`ida against charges of unjustly killing innocent Muslims during his April 2, 2008 "open interview," Dr. Ayman al-Zawahiri reintroduced *Hukm al-Tatarrus* (the law on using human shields) into the debate.¹ A relatively unfamiliar term to non-Muslims and Muslims alike, *al-Tatarrus* refers to God's sanctioning of Muslim armies that are forced to kill other Muslims who are being used as human shields by an enemy during a time of war.² *Al-Tatarrus* is a religiously legitimate, albeit obscure, Islamic concept that al-Qa`ida ideologues have been increasingly using in order to exculpate themselves from charges of apostasy. The method in which al-Qa`ida is promoting *al-Tatarrus*, however, seeks to facilitate the sacrifice of Muslim lives in contravention of 14 centuries of religious teachings. For instance, both al-Qa`ida in the Arabian Peninsula³ and the al-Qa`ida Organization in Yemen⁴ hid behind the protections offered by *al-Tatarrus* in their justification of terrorist attacks that resulted in significant Muslim casualties. Al-Qa`ida's use of *al-Tatarrus* was also at the heart of Sayyid

1 Ayman al-Zawahiri, "Open Interview with Shaykh Ayman al-Zawahiri," published jointly by al-Sahab Media Production Organization and al-Fajr Center for Media, April 2, 2008, part one.

2 In its most comprehensive formulation, *al-Tatarrus* also sanctions the intentional killing of non-Muslim women and children when they are being used as shields, an issue that Abu Yahya mentions briefly.

3 Al-Qa`ida in the Arabian Peninsula (AQAP) relied on the *al-Tatarrus* concept when pushed by the Arab press about why they killed so many women and children in the course of their attacks. For instance, in reaction to the al-Muhayya bombings in Riyadh, an AQAP official, Muhammad al-Ablaj, told *Majallat al-Majalla* (November 2003) that anyone who gathers in places frequented by non-Muslim enemies or who fails to flee those places is subject to the law of human shields, which protects one from God's wrath if they are unable to distinguish between killing Muslims and non-Muslims in the course of a combat operation on a legitimate target.

4 On November 7, 2007, the al-Qa`ida Organization in Yemen released the wills of the suicide attackers who conducted four coordinated attacks against oil installations in Hadramawt, Yemen in September 2006.

Imam Sharif's recent attacks against al-Zawahiri and al-Qa`ida.⁵

Although an extensive body of Islamic literature exists on the topic, al-Zawahiri cited only three sources of intellectual authority regarding *al-Tatarrus*: his own books, a brief statement on the topic by Usama bin Ladin and a short monograph penned by Abu Yahya al-Libi explicitly on *al-Tatarrus*.⁶ Al-Zawahiri's reference to Abu Yahya al-Libi, the crown prince of al-Qa`ida, can be viewed as a savvy political move, one that allays jihadist fears of an Egyptian-Libyan rift within the "high command," while simultaneously bolstering Abu Yahya's status within the movement. One could also view the reference as al-Zawahiri's attempt to refocus the global jihadist movement's attention on Abu Yahya's two-year-old work, *Human Shields in Modern Jihad*, because it offers something that al-Zawahiri believes important.⁷

Revolution in 36 Pages

At first glance, Abu Yahya's 36-page monograph seems to be little more than a dry analysis of *fiqh* (Islamic jurisprudence) on the matter of killing non-combatants. He correctly defines *al-Tatarrus* as the exemption to the Islamic prohibition against shedding innocent Muslim blood when a Muslim army is forced to kill other Muslims who are being used as shields by non-Muslim enemies. The non-Muslim enemy, Abu Yahya accurately explains, puts their Muslim captives

in places that make it impossible for the Muslim army to reach them and hit them without killing or injuring the prisoners. This serves as an obstacle in front of

5 Sayyid Imam Sharif criticizes the jihadist movement for too loosely employing the *al-Tatarrus* justification as a way of helping them to expand their circle of killing. Sayyid Imam Sharif, "First Part: Rationalizing Jihad in Egypt, the World," *al-Masri al-Yawm*, November 18, 2007. Also see Jarret Brachman, "Leading Egyptian Jihadist Sayyid Imam Renounces Violence," *CTC Sentinel* 1:1 (2008).

6 Specifically, the books Ayman al-Zawahiri referenced of his own include *The Healing of the Believers' Chests* and *The Exoneration*.

7 Although the essay is dated January 6, 2006, it was not published and widely circulated until April 16, 2006, when it appeared on the Tajdeed and Ana al-Muslim websites.

the Muslim army to stop them from attempting an attack and as a deterrent to attacking and striking.

Abu Yahya even celebrates the fact that previous Islamic scholars have dealt with the topic and conditions of *al-Tatarrus*, calling their work "a gift from God."

When one pushes past Abu Yahya's spellbinding prose and sycophantic praise of Islamic tradition, however, the enormity of his real ambition becomes shockingly clear: Abu Yahya's small essay on *al-Tatarrus* is nothing short of a religious revolution.

Early Islamic thinkers typically used three general forms of shielding in the course of their discussions on the matter: first, the intentional placement of Muslims in an enemy fort or outpost that a Muslim army wants to conquer as either residents or prisoners; second, the placement of Muslims onboard an enemy ship that a Muslim army wants to sink; or third, when an enemy force literally takes cover behind Muslims in a combat situation.

Abu Yahya begins his theological upheaval by explaining that these early thinkers were not specific enough in their discussions on the use of human shields nor did they adequately articulate the conditions under which it is permissible to shed Muslim blood in the course of warfare against a non-Muslim enemy when they take Muslims as human shields. This perceived historical failure of the early scholars to deal with *al-Tatarrus* honestly and comprehensively, whether due to their fear or embarrassment, he says, has led to a condition wherein the unjustified spilling of Muslim blood has become pervasive.⁸

As if criticizing 14 centuries of Islamic thought on the matter was not enough, Abu Yahya decides to reject the premise, saying, "I have never seen [*al-Tatarrus*

8 Although Abu Yahya does not explicitly make this point, early Islamic writings on the topic of *al-Tatarrus* are quite inaccessible to the average Muslim reader given their specialized vocabulary and dense style. Abu Yahya's approach to the concept is notably different from traditional Islamic discussions in that it simplifies matters considerably.

as an explicit concept] mentioned in hadiths of the Prophet or in the biographies of the fighting companions in this same particular way that scholars have expressed it.” By calling the conditions placed on *al-Tatarrus* by Islamic scholars something “new” (and thus an “innovation”), he grants himself the religious authority to not only reject the entire body of Islamic literature (and accompanying restrictions) on the killing of innocent Muslims, but he positions himself as the sole arbiter of what constitutes “permissibility” with regard to killing.

The Impact of Modern Warfare

After dismissing an entire tradition of Islamic scholarship out-of-hand, Abu Yahya takes on his next major challenger: the Qur’an and hadith. Instead of defending himself against the most damning Qur’anic and hadith passages regarding the prohibitions against killing innocent Muslims as one might expect, Abu Yahya flaunts his intellectual flexibility in a curious two-step. First, he embraces those passages, becoming their strongest proponent: “There are numerous hadiths to this effect; they are strict about the sacredness of Muslim blood, and they warn ardently against breaching it and not respecting it,” he ironically reminds the reader. Yet it becomes quickly apparent that his agreement with those verses is entirely disingenuous.

While the Qur’anic and hadith restrictions on killing innocent Muslims were appropriate during the early days of Islam, he suggests, they should have no bearing on warfare today because modern warfare is qualitatively different. Whereas early Islamic thinkers had to consider the implications of using a catapult against an enemy fortress in which Muslims were residing, or conducting night raids against an enemy household in which Muslims were likely present, the nature of contemporary warfare is one where the enemy uses “raids, clashes and ambushes, and they hardly ever stop chasing the mujahidin everywhere and all the time, imprisoning them, their families and their supporters.” What it means to be “directly engaged in combat,” Abu Yahya argues, has changed. By positing that Islam is in a state of constant and universal warfare, he implicitly lowers the threshold for

proving that one’s killing of innocent Muslims is just.

In short, the nature of today’s all-encompassing warfare means that the jihadist movement must find a “new perception of different ways of modern shielding which were probably not provided for by the scholars of Islam who knew only of the weapons used during their era.” In these few sentences, Abu Yahya attempts to wipe the slate clean of the most sacred and defining texts with regard to the issue of killing human shields.

The only options that Muslims have left, he explains, particularly given the ways in which non-Muslim enemies occupy Islamic countries, take large numbers of Muslims prisoner, and fight using modern weaponry are the following:

1. “Stop fighting the enemy out of fear for the lives of the human shield,” which is clearly not an actual option for Abu Yahya or al-Qa`ida;
2. “accept the idea of sacrificing the shield and engage in a fierce war using weapons of mass destruction”;
3. “or choose to engage in a long-term war against the enemy using traditional weapons,” which Abu Yahya suggests is “not advantageous because it prevents one from benefiting from the use of weapons of mass destruction because of caring for the lives of the enemy’s prisoners who would be the first victims...if they were used.”

The only viable and effective option for Abu Yahya al-Libi is the second: accepting the fact that the nature of modern warfare makes the killing of large amounts of Muslims a necessity.

Abu Yahya’s Mistakes

Abu Yahya’s revolutionary pamphlet follows suit with previous treatments on the matter by al-Qa`ida ideologues who have similarly sought to justify their killing of innocent Muslims using *al-Tatarrus* rather than objectively clarifying the conditions when its use is permissible or impermissible. In fact, Abu Yahya uses derivatives of the word “permissible” more than 20 times in his short essay and has virtually no discussion of the conditions under which the killing of innocent Muslims

is impermissible.

He also employs another trick commonly used by al-Qa`ida thinkers, which is heralding the death of those non-combatant Muslims who have been killed in terrorist attacks by calling them martyrs. Quoting the words of Ibn Taymiyya, Abu Yahya writes, “The one which allows/accepts that their death is for the sake of jihad and is analogous with the death of Muslims when fighting [for Islam], in which case they are martyrs.”

Abu Yahya’s essay contains several major oversights that one can only believe are intentional given the depth of his knowledge on the issue. The first oversight is regarding the fact that *al-*

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Tatarrus is not limited to the human body, but is commonly extended to the enemy’s use of Muslim property, including buildings, infrastructure and vehicles as a deterrent in times of war. Abu Yahya’s decision to leave out Muslim property becomes clearer when viewed in the light of his second major oversight: compensation for damage caused.

Most discussions of *al-Tatarrus* during the past 14 centuries include reference to the necessary compensation required by God for damage caused to Muslim lives, property or wealth. The most blatant evidence of Abu Yahya’s intentional avoidance of compensatory damages appears in the peculiar way that he cites the Qur’an, noting: “Never should a believer kill a believer but (if it so happens) by mistake.” Had Abu Yahya continued his quote to the next verse of the sura, he would have been forced to reveal it as,

Never should a believer kill a believer but if it so happens by mistake, compensation is

due: If one so kills a believer, it is ordained that he should free a believing slave, and pay compensation to the deceased's family, unless they remit it freely. If the deceased belonged to a people at war with you, and he was a believer, the freeing of a believing slave (is enough). If he belonged to a people with whom ye have treaty of Mutual alliance, compensation should be paid to his family, and a believing slave be freed. For those who find this beyond their means, is prescribe a fast for two months running: by way of repentance to Allah: for Allah hath all knowledge and all wisdom.⁹

As the above verse suggests, there are two general forms of compensation that are relevant to the *al-Tatarrus* discussion. The first is *kaffara*, defined as the atonement to God or repayment made for some failure to act, or harm done to another. It usually mandates that the one who spilled Muslims' blood either fast for a period of time (usually one or two months) or serve charitable acts (such as serving 60 poor Muslims food for a period of time). The second form of compensation is *diyya* (blood money), which is a monetary compensation paid as a fine to the next of kin of someone who was killed intentionally.

There is little doubt that Abu Yahya intentionally avoided discussing the religious duty to compensate the family of Muslim victims who are killed.¹⁰ This is most likely due to the fact that doing so is simply beyond al-Qa`ida's current capacity and would likely catalyze an even stronger popular backlash against the organization within Muslim populations who have been targeted. If Abu Yahya were to have tried to extend *al-Tatarrus* to Muslim property and riches, he would have further indebted al-Qa`ida to Islam for the great deal of

property damage that their attacks have caused.

Another important dimension of *al-Tatarrus* overlooked by Abu Yahya is the duty that is incumbent upon Muslim fighters who are hiding from an attacking enemy in civilian Muslim populations to compensate the local population for any damage inflicted by the enemy to that area (to include the loss of Muslim lives, property or wealth).

Conclusion

In sum, Abu Yahya al-Libi uses *al-Tatarrus* to dismiss 14 centuries of Islamic scholarship, advocate the religious permissibility of killing innocent Muslims and artificially bifurcate Islam into two halves: those who are "ignorant or obstinate" about the harm posed to Islam by its enemies, and those who are dedicated to not just "resisting" this threat but "removing" that harm. One must be "blind," he argues, if they disagree with him or refuse to sacrifice Muslim lives for the sake of his war.

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⁹ Qur'an 4:92.

¹⁰ Abu Yahya fails to deal with the lessons learned in the well-known story of the inadvertent killing of Yaman, father of Hudayfa, during the battle of Uhud, as referenced in *Fetboof al-Baldan* (1/304) by al-Belathri. During this battle, when the Prophet and his companions were in retreat, one of the Prophet's companions, Abdullah ibn Mas'ud, mistook Yaman for an enemy and killed him. In response, the Prophet obliged Mas'ud to pay the *diyya* to Hudayfa, which he then donated to charity.