



# The Characterization of ISIL Under International Law and Islamic *Sharia*

ID No. 1112

(PP 240 - 261)

<https://doi.org/10.21271/zjhs.27.6.15>**Ayad Yasin Husein Kokha**

College of Law, Salahaddin University–Erbil

Junior Thyssen Fellow at the Institute for Advanced Study: Central European University (IAS CEU).

I acknowledge the sponsorship of the IAS Fellowship and the financial assistance of IAS CEU and CEU Budapest Foundation for this article received between October 1<sup>st</sup>, 2021, and June 30<sup>th</sup>, 2022.

[ayad.husein@su.edu.krd](mailto:ayad.husein@su.edu.krd)**Received: 01/04/2023****Accepted: 07/05/2023****Published: 15/12/2023**

## Abstract

A curious phenomenon has appeared on the contemporary international scene: The Islamic State of Iraq and the Levant (ISIL). They seized vast areas of Iraq between 2014 and 2017 and committed appalling crimes against innocent civilians in the areas they controlled. They targeted certain minorities with particular viciousness, persecuting them in the name of religion in contravention of both humanitarian principles and the religious precepts of Islam. This paper attempts to characterize the nature of ISIL in the form they took during their armed conflict against the Iraqi and Kurdistan regular armed forces and against the anti-ISIL international coalition forces. This characterization will be done through the lenses of both international law and *Sharia*. ISIL misinterpreted certain *Quranic* verses by neglecting traditional rules of interpretation for the *Quran* and *Sharia* in order to legitimize their extremist ideology and horrible actions. This understandably contributed to an increase in Islamophobia in non-Muslim nations. Methodologically, this paper's analysis draws upon the foundational texts and views of scholars of both international and *Sharia* law. It concludes that ISIL is neither a state under international law nor is it Islamic according to the *Sharia*. By carefully classifying the nature and essence of ISIL as an organization and by clarifying certain ambiguities concerning their legal status under both international law and *Sharia*, this article aims to help legal and religious scholars improve their conceptual clarity on the matter, and thereby also improve the consistency and precision of their rulings and provisions going forward.

**Keywords:** ISIL Characterization, International Law & *Sharia*.

## 1. Introduction

### 1-1. Research Background

Iraq's population is known to be comprised of many races, nationalities, and religions. Historically, Mesopotamia (Iraq) is regarded as one of the world's first centres of civilisation. Consequently, Iraq's culture has historically been enriched through a diverse array of different groups, customs, traditions, folklores, languages, religions, and successive empires, much of which was inherited by the contemporary state established in the early 1920s. The country is still home to various historical minorities, some of which have inhabited the area for over twenty centuries, such as the Yazidis, Zoroastrians, Mandaeens-Sabian, etc. These minorities can be divided into various racial, ethnic, linguistic, and religious sub-groups. Some Iraqi minorities may be further sub-divided into smaller minorities on a doctrinal or religious basis, e.g. the Christian minority. Some of Iraq's minorities are found exclusively in



Iraq, such as the Shabak minority in Nineveh Plain. For further information (Salloum 2017, at 121-122).

The historical background on the topic in question begins in 2003 when the United States of America ('US') sent troops to Iraq. Following their military victory, the US proceeded with a misguided '*de-Baathification*' strategy which aimed to dismantle all of Iraq's state institutions rather than focusing narrowly on those which were inextricably tied to Saddam Hussein's outgoing dictatorial regime. The US's worst move in terms of its long-term consequences was the decision to initiate the wholesale dissolution of the Iraqi army in cooperation with the new Iraqi government, which resulted in a security vacuum that was filled by the emergence of militias and the illegal interference of other states in Iraq's domestic affairs. This led to political instability, chronic insecurity, and endemic corruption. These problems then manifested themselves in the form of widespread racism, sectarianism, and identity-based violence between, *inter alia*, the Shia, Sunni, Christian, and Kurd communities. Iraq consequently becomes a safe haven for terrorists, who came from all over the world and eventually established militias, one of which was the so-called Islamic State of Iraq and the Levant ('ISIL'), which was established in 2013. ISIL went on to seize vast areas of Iraq's northern and central provinces. These areas included Nineveh Plain (Mosul Province and surrounding areas; the second largest governorate in Iraq after Baghdad and the historical home of most Iraqi minorities), and parts of the Kirkuk, Diyala, Anbar and Saladin governorates. The areas seized were populated by unarmed and defenseless civilians, including many members of Iraqi minorities such as the Yazidis, Christians, Turkmans, Kakayis, and Shabaks. These minorities were persecuted in the name of religion and in contravention of humanitarian principles and religious precepts (Kokha 2019, at 62-63).

These circumstances allowed ISIL to perpetrate systematic criminal campaigns in the period between 2014 and 2017 which may amount to core international crimes within the framework of international criminal law ('ICL'), including genocide, crimes against humanity, and war crimes. Acts perhaps amounting to these core international crimes include systematic mass killings, serious bodily and/or mental harm (including the infliction of slow deaths) against religious and ethnic minorities, the enslavement of minority women, and the recruitment of minority children as soldiers. Furthermore, ISIL destroyed sacred and heritage sites, as well as pillaged and confiscated property in a manner that resulted in forcible displacement on a huge scale. As a result, many Iraqis became internally displaced persons ('IDP') and refugees; most of these victims were civilians hailing from these religious and ethnic minorities. ISIL's acts against Iraqi civilians constituted an internal crisis but have also had significant international repercussions (Kokha 2019, at 62-63).

The world was surprised by the emergence of ISIL; whose ideology of religious extremism legitimizes the invasion of basically anywhere. What's more, ISIL established effective control over areas of Syria due to the instability caused thereby major protests and the civil war that followed from 2011 onwards. ISIL also operates in other countries, including Yemen, Libya, Egypt, Mali, Somalia, north-eastern Nigeria, and Pakistan, though with less intensity; in those countries, their *modus operandi* generally involves the maintenance of sleeper cells that conduct occasional terrorist attacks (Muir 2016 and Waltman III 2016, at 9-10).

In contrast, in Iraq and Syria, ISIL swept across vast areas where they began to exercise quasi-governmental powers, declared themselves a state, imposed arbitrary laws, and called for attacks in many other countries. The type of terrorism practiced by ISIL was hitherto unknown this century, and it continues to represent a real threat to national and international peace and security. Many of ISIL's acts potentially amount to the 'core international crimes' of genocide, crimes against humanity, and war crimes under Article 5 of the Rome Statute of the International Criminal Court ('ICC') ('Rome Statute', 2002) and under several resolutions of the United Nations Security Council ('UNSC') [e.g. see S/RES/2160 (2014); S/RES/2161



(2014); S/RES/2169 (2014); S/RES/2178 (2014); S/RES/2199 (2015) and S/RES/2249 (2015)].

ISIL members who are accused of perpetrating core international crimes have to receive no impunity under ICL and the Rome Statute. They must take personal criminal liability and be tried before a criminal competent court, in order to ensure that justice is done on behalf of the downtrodden, compensating the latter fairly. Regrettably, Iraq is not a party to the Rome Statute, and the international community has not established any effective judicial mechanism to initiate accountability through the UNSC so far. Whereby, there is an urgent need to avoid the recurrence of such atrocities, it is therefore significant for Iraq to join/ratify the Rome Statute, as well as amend or enact a new penal code to criminalize such grievous crimes (Kokha 2019, at 104-105).

### **1-2. Research Problematic Issues**

The name ISIL *per se* raises many legal and religious problems, taking into consideration their words and actions, particularly, ISIL claim that they represent true Islam. ISIL misused the *Quran* – the main source of Islam and *Sharia* – to justify their false ideology and unlawful practices by neglecting traditional rules of interpretation for the *Quran* and *Sharia*. This has elicited strong feelings of Islamophobia amongst non-Muslim people. For analysing these problems, this study discusses ISIL's understanding of Islamic Sharia and creating a statehood and compares that with what is logical and firm under Sharia and IL.

### **1-3. Research Questions**

ISIL and their actions undoubtedly constitute a curious and rather unique phenomenon that has appeared on the contemporary international scene, and this paper poses several urgent questions necessary for tackling the problem, at least from the perspectives of international law ('IL') and *Sharia*. These questions include: How did the name ISIL come about, and what does it mean? To put it in another way: how does one characterize ISIL? How did this dangerous group appear as a serious player in the contemporary international arena? What is the position of IL and jurisprudence on this matter? What is ISIL's subjective interpretation of the *Quran* regarding the origin of their alleged state, radical ideas and horrific actions? And then, what is the *Sharia* attitude toward such topics under the reliable rules for *Quranic* interpretation?

### **1-4. Research Importance and Objective**

The significance of this paper lies in its characterization of ISIL under both international and *Sharia* law. This characterization aims to objectively and carefully study what this entity (ISIL) really is and to thereby remove any ambiguities which could impair or forestall legal action against them. This characterization must therefore be formulated precisely, so that legal and religious scholars may thereby improve the conceptual clarity of their rulings and provisions on the matter going forward.

### **1-5. Research Methodology**

This paper's analysis draws upon the foundational texts of both IL and *Sharia*, and it also incorporates the views of scholars of IL and *Sharia*. Additionally, the research follows a normative juridical legal research method, i.e., jurisprudentially, it employs the comparative approach to the characterization of ISIL within the normative standards set by *Sharia* and IL to reach the truth of ISIL conception and thus create future associated provisions. This study is also restricted to the legal characterization of ISIL's words and deeds as a militia during their 2014–2017-armed conflict against Iraqi and Kurdistan regular armed forces (Peshmerga) and anti-ISIL international coalition forces.



### 1-6. Literature Review

By searching and reviewing certain previous studies, the researcher has assigned the most relevant and important ones which are: ‘**Is ISIS a State: The Status of Statehood in the Age of Terror**’ (Novogrodsky 2018); ‘**ISIS’s Interpretation of the Holy Quran: A study for the main cover line of the first and second issue of the *Dabiq* magazine**’ (Ahmed 2021); ‘**ISIL: Its Essence, Origin, Terrorism and Objectives**’ (Shandhab 2014); and ‘**The Rise of ISIS and the Future of Iraq’s Security**’ (Mossallanejad 2016). It becomes clear that the topics of the current research paper are found separately in jurisprudential books and articles in scattered chapters/sections. Such literature examined separately the characterization of ISIL, whether within IL or Islamic *Sharia*, however, there were no independent studies related to the research title under consideration in a unified research paper like this, which analyzes, collects and compares this topic under both sides.

### 1-7. Research Outline

The remainder of this paper is divided into two core sections and a conclusion. The first of these core sections (Section 2) defines what the term ISIL refers to and introduces associated terminology. The second core chapter (Section 3) examines potential characterizations of ISIL and their crimes under both IL and *Sharia*. In the concluding chapter (Section 4), a concise analysis of ISIL and associated characterizations - legal and religious - are discussed briefly under both *Sharia* and IL.

## 2. On Defining ISIL and Associated Terms

There are several names used by authors and practitioners to refer to this extremist group, including ‘**ISI**’, ‘**ISL**’, ‘**ISIL/Da’esh**’, ‘**IS**’ and ‘**ISIS**’. This section asks: what do these abbreviations mean, and which is the most appropriate?

ISIL was formed by Iraqi Sunni Muslims drawn primarily from the remnants of the Baathist Regime (led by Saddam Hussein, the former President of Iraq from 1979 until 2003) and the *al-Qaeda* Branch in Iraq. *Al-Qaeda* in Iraq was originally founded in 2004 by Abu Musab al-Zarqawi, a Jordanian who worked with former officers of the Baathist Regime in military operations against US forces and successive Iraqi governments post-2003. Al-Zarqawi’s given name was Ahmad Fadil Nazzal al-Khalayila, though he was better known as Abu Musab al-Zarqawi. He was a Jordanian jihadist who had previously run a terrorist training camp in Afghanistan. After relocating to Iraq, he became infamous for bombings, beheadings, and attacks against US troops post-2003. He formed the *al-Tawhid wal-Jihad* group in 1999. Abu Musab al-Zarqawi opposed the presence of US and Western military forces in the Islamic world. In late 2004, he joined *al-Qaeda* and pledged allegiance to Osama bin Laden, the founder and first leader of *al-Qaeda*, who was killed in Pakistan on May 2, 2011 by US special forces. His group then became known as the *al-Qaeda* Branch in Iraq. In September 2005, he declared an ‘all-out war’ on Shias in Iraq due to the Iraqi government’s offensive against insurgents in Sunni towns such as Mosul, Saladdin, and Anbar. He directed suicide bombers all over Iraq to attack American soldiers, Shia militias, and Shia civilians. He was killed in Baqubah City (Diyala Governorate-Iraq) by a US airstrike on June 7, 2006 (Riedel 2008, at 85–115; Gold *et al.* 2017, at 9 *et seq.*; and Mossallanejad 2016, at 2 *et seq.*).

After Abu Musab al-Zarqawi’s death, the group became a breakaway faction of *al-Qaeda* that was later renamed **Islamic State in Iraq (ISI)**. The breakaway of this faction was announced on October 15, 2006, and was led by Abu Bakr al-Baghdadi, also known as the Caliph (i.e., head of state). At that point, the group existed exclusively in the Iraqi provinces of Baghdad, Anbar, Diyala, Kirkuk, Saladin, Mosul, and some parts of Babylon and Wassit (Abdul-Mohsen 2015, at 221-222).



Notably, Abu Bakr al-Baghdadi's given name was Ibrahim Awad Ibrahim Ali Muhammad al-Badri al-Samarrai. Former US President Donald Trump announced that on October 27, 2019, Abu Bakr al-Baghdadi had detonated his explosive jacket after being surrounded by American special forces at the end of a tunnel in Idlib (Syria). He added that Abu Bakr al-Baghdadi's body was disfigured, but DNA tests had confirmed his identity (Mossallanejad 2016, at 3-4; Pompeo 2019; and France 24: 2019)

Subsequently, Abu Bakr al-Baghdadi sent members of this group to Syria in mid-2011 to establish another group called **Al-Nusra Front**, also known as the **Islamic State of the Levant (ISL)**, taking advantage of the deteriorating security situation in Syria, which had come about due to mass demonstrations against Bashar al-Asad regime; given that the 'Levant' or 'Al-Sham (in Arabic)' refers to the Greater Syria region, which designates a wider geographic area than the modern state of Syria, encompassing modern-day Syria, Lebanon, Jordan, Palestine, Israel, Cyprus and Turkey (Hogeback 2021). Later, in April 2013, Abu Bakr al-Baghdadi announced the unification of the two groups under the new name **ISIL (the Islamic State of Iraq and the Levant)**. This group grew significantly and rapidly on the ground and following their capture of Mosul in mid-June 2014, Abu Bakr al-Baghdadi announced the formation of 'The Islamic Caliphate' and declared himself the Caliph of all Muslims on June 29, 2014. Accordingly, the name ISIL was officially shortened to **Islamic State (IS)**. However, the group continued to be referred to as ISIL/ISIS by the public and certain practitioners due to the obviously controversial implications of the name IS, a name which implies that the group represents true Islam and all true Muslims (Kirovska 2017, at 10; and Salah and Dirabroosh 2021, at 18-21).

Although the group removed the words 'Iraq' and 'the Levant' from the acronym ISIL by renaming themselves 'IS', the term 'ISIL' in English is equivalent to the widely-used Arabic acronym '*Da'esh*', knowing that this acronym stands for '*al-Dawla al-Islamiya fi al-Iraq wa al-Sham*' the equivalent to the 'Islamic State in Iraq and Levant (al-Sham)'. Many practitioners use the term '*Da'esh*' to refer to the group. The acronym is intended to sound unpleasant, to attribute disrespect to the group, and to ignore the meaning of its full name. See (Hogeback 2021; Kaufman *et al.* 2015). This designation (ISIL/*Da'esh*) is widely used and also corresponds with the language used by the UN in all its Security Council Resolutions and in other international documents and reports (see the 2017 UNSC Resolution S/RES/2379; and UNAMI Report 2020, at IV et seq.). Thus, ISIL seems to be the most appropriate name for the group in a legal context.

Noteworthy, ISIL is even more commonly known as **ISIS (Islamic State of Iraq and Syria)**. Nonetheless, the acronym ISIL is more accurate, as it covers areas that the group affects and targets outside of Iraq and Syria. Though less accurate, ISIS has become entrenched in the international political lexicon and continues to be used by many politicians (Hogeback 2021).

Regardless of the name used, there is a consensus that ISIL are an armed militia that follow an extremist Salafi-Jihadist ideology which embrace a *Takfiri* approach against all individuals and organizations that refuse to pledge allegiance to their so-called Caliphate. ISIL deems anyone who refuses to declare his/her loyalty to ISIL and pledge allegiance to its ruler as an infidel or even an apostate who therefore deserves to be put to death. ISIL aims to re-establish what they call the 'Islamic Caliphate State and the Application of *Sharia*' on the basis of their harsh interpretations of Islam's teachings (Kirovska 2017, at 9).

ISIL has fought both civilians and military personnel, labelled those who disagree with their views as apostates, infidels, and hypocrites, and maintained that all such opponents must be killed. During their totalitarian rule from 2014 to 2017, approximately eight million people lived under total or partial ISIL control across vast areas of Iraq and Syria. These areas were the primary arena in which ISIL conducted their criminal activities (Muir 2016 and Waltman III 2016, at 9–10). ISIL members are also present in other countries, including Yemen, Libya,



Egypt, Mali, Somalia, north-eastern Nigeria, and Pakistan. ISIL membership is diverse in nationality; many of their military leaders are Iraqis or Libyans, while many of their religious leaders are Saudis or Tunisians (Abdul-Hakim 2015, at 61). Thus, ISIL is a military-religious rebel organization, consisting of different nationalities who adopt the slogan ‘there is no life without the sword’. This is a clear indication of the group’s ideological rejection of any suggestion that their aims can be achieved through peaceful means. ISIL leaders urge their members to live a life of rigor, courage, and ruthlessness, all while using historical events and figures to motivate them to undertake hostile and aggressive acts in the present (Maarouf 2017, at 23).

ISIL is a radical Islamic group that has a highly organized leadership structure. The group aims to establish an Islamic political and religious state based on its extremist interpretation of *Sharia* (Wallace *et al.* 2017, at 567). ISIL is therefore described by some as an unrecognized proto-state that follows a jihadist doctrine. A proto-state, quasi-state, or ‘violent non-state actor’ is a political entity that has some of the characteristics of a state but is not considered fully established. The phrase has been used to describe Islamist militant groups that control territory such as ISIL. ISIL are unable to make a successful *de jure* claim to sovereignty because their institutional violence against minority communities is unconscionable to the international community; simply put, no states are willing to consider violent non-state actors who behave like ISIL as candidates for statehood. ISIL has consequently remained in a constant state of warfare and possesses *relatively* little wealth. ISIL operated a bureaucracy, maintained a monopoly on violence within the territory it controlled, collected taxes, and had a semi-regular army. It could thereby be deemed an authoritarian proto-state that finances itself via mafia methods and supports itself by attracting youths from other countries. See (Lia 2015, at 31-32; and Word Finder 2021). ISIL rejects democracy, elections, and political participation, declares *Takfir* against all other rulers and their states’ military and civil institutions if they do not follow ISIL’s interpretations of the *Quran*. It has even declared *Takfir* against other Islamic movements (even other Salafi-Jihadist movements) simply for their failure to pledge allegiance to ISIL (Salah and Dirabroosh 2021, at 20).

### 3. Characterization of ISIL

The following subsections characterize ISIL’s activities under both IL and *Sharia*.

#### 3-1. IL Characterization of ISIL

Whether ISIL is regarded as a state, violent non-state actor or terrorist organization under IL is a complicated question that hinges on the essence and actions of the group. This highlights areas in which the enactment of new international legal norms to counter the novel phenomenon of ISIL and other such groups may be desirable. Egyptian scholar Al-Ashaal has noted that the new phenomenon of armed extremism as practiced by ISIL is somewhat comparable to the old category of mercenaries, as both phenomena are characterized by the recruitment of foreign fighters. One of the main reasons for the emergence of ISIL was the fact that Iraq’s Sunnis had suffered persecution and severe discrimination under successive Iraqi governments after the increase of sectarian conflict in Iraq post-2003, thus, the majority of ISIL are Sunni citizens recruited from the remnants of the former Baathist regime and *al-Qaeda* in Iraq. ISIL expounds a philosophy with many victims that have utilized the Islamic religion in pursuit of various political agendas. ISIL exploits the passion and enthusiasm of young people and convinces them to commit various serious crimes including deadly attacks on minorities and the forcible imposition of ISIL’s identity on the population at large (Al-Ashaal 2015).

There is considerable debate among jurists on the extent to which ISIL can be considered a state in the legal sense, with the majority of opinions holding that ISIL cannot be deemed a state (Mahmood 2021, at 32-33). Despite their effective control over certain regions, the presence of a population under their control, and the establishment of institutions to manage



them (i.e., political authority and a monopoly on force), the international community via the UNSC has identified ISIL as a terrorist group, dashing any possibility that ISIL may gain international legitimacy and rendering their declaration of statehood invalid from an IL perspective (Alvarez-Jimenez 2017, at 356; and Kenny 2017, at 130).

However, a minority of jurists *do* consider ISIL a state under IL due to the fact that they possessed several fundamental/traditional pillars of statehood, namely territory, a permanent population, and political authority (Corten 2016, at 53) Under this so-called factual theory of statehood, one could argue that ISIL ought to have been considered a state because they had established sophisticated (albeit horrific) governmental institutions. This *de facto* state of affairs was even acknowledged by the UN (Human Rights Council 2014, para. 13). Following ISIL's territorial aggrandizement during the 2014-2017 period, several official bodies, such as relief organizations, UN agencies, transactional corporations, and neighboring States have been forced to engage with a violent non-state actor that captures land, operating and acting as if it were a sovereign state (Novogrodsky 2018, at 59).

A few days after the Paris attacks, on December 1, 2015, the French Minister of Defense (Jean-Yves Le Drian) stated that ISIL is certainly not a state in the legal sense of the term; one cannot, therefore treat them as a state by, e.g., formally declaring war on them. From a strategic point of view, however, there is indeed a way of dealing with a 'proto-state' with control over a territory the size of Great Britain that contains a population of millions of people and military and financial capacities exceeding that of many recognized states. ISIL attempts to exercise traditional sovereign powers and has certain attributes resembling established welfare states. The French Minister's declaration clearly illustrates the ambiguities inherent in the question of ISIL's legal characterization. Jean-Yves Le Drian is against labelling ISIL as a State for 'juridical' purposes, but euphemistically refers to them as a 'proto-State' for 'strategic' purposes. Moreover, he clearly highlights the consequences of his choice of classification by pointing to the matter of war. Curiously, he refers to the declaration of war, an institution that has been legally obsolete for decades. The French minister seems to consider war possible, relating to the specificities of the situation on the ground, regardless of the impossibility of declaring it against ISIL (Corten 2016, at 53-54).

Considering the two positions outlined above, I would characterize ISIL as an armed militia group that ought to be regarded as a violent non-state actor in the arena of international relations but which lacks any formal legal personality as a state under IL. While ISIL temporarily acquired some cornerstone attributes of a *de facto* state and declared themselves to be one, they cannot be considered a state from the perspective of IL as creating a new state cannot be isolated from the implementation of the IL system and its associated charters, e.g. the capability of bearing rights and obligations under Articles 4 and 136 of the UN Charter and the establishment of relations with other states (the UN Charter 1945). No state has officially recognized ISIL, and attaining the recognition of other states is a crucial requirement for strengthening a new state's legitimacy within contemporary IL and international relations (Abou-El-Wafa 2010, at 423-225; and Crawford 2006, at 37-93). This is due to the criteria of state creation stipulated in Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, which sets forth four criteria for the recognition of statehood: a permanent population, a defined territory, a government, and the capacity to enter relations with the other States (Montevideo Convention on the Rights and Duties of States 1933).

The basic criteria to create the state, according to the factual (constitutive) theory, are built upon the 'principle of effectiveness'. Despite the fact that ISIL had a strong government from 2014 to 2017, that government was independent to an extent that actually undermines their claim to statehood from an IL perspective, as their administration did not follow – nor consider itself bound by – the will of other state(s) as expressed through treaties, and therefore ISIL seemingly lacked the capacity to enter into relations with other states. Furthermore, it



appears that ISIL's administration lacked the prerequisite effectiveness for statehood, as its governmental authorities did not exercise a sufficient and consistent degree of authority over clearly defined regions and populations due to the continuous battles they were waging against Iraqi, Syrian, and Kurdish forces as well as the international coalition. ISIL failed to uphold these four pillars of statehood in a stable and permanent manner, and instead sporadically shifted from one region to another in response to the vicissitudes of armed conflict. ISIL were an insurrectionary group of Iraqi, Syrian, and international nationals exercising *de facto* powers of a temporary nature. Rebellion is a temporary status that is inherently unstable, and ISIL were swiftly defeated. However, if ISIL had consolidated their power over a specific area and population, then they would have had a claim to statehood under the factual theory, though thankfully their hopes in this regard have remained unfulfilled. In any case, ISIL had disrespected the rules of IL related to the prohibition of the use of force by attacking several states and committing mass atrocities and human rights abuses. Given all this, it is clear that ISIL lacked statehood (Longobardo 2017, at 217-218; and Tomuschat 2015, at 223 *et seq.*).

Alongside the aforesaid classical criteria, there are other contemporary criteria that have to be considered in creating strong and unified statehood, such as the permanence, willingness and ability to observe international law, a certain degree of civilization, recognition and legal order. To sum up, until a state is recognized for what it is, and only then, can its fundamental standard be known. The fundamental rule is an answer to the questions of existence, identity, and continuity (Crawford 2006, at 89-95). The institutional character of the modern state is manifested in the separation between the natural person of the rulers and the abstract perception of the public power, whereby the ruler exercises his mere function temporarily as an administrative agent and an apparatus of the state merely, regardless of any privilege for his person. This allows the state to continue and be strengthened, which makes it a legal-rational authority that respects the basic rights and freedoms of individuals (Kanso, at 14).

The amazing truth is that ISIL never sought international recognition, membership in international organizations, nor the establishment of treaties and conventions with existing states; they never wanted to become part of the *ordre établi*. For this reason, one must pay attention to the fact that ISIL's purported ultimate purpose was to radically change the international community and create a global state, i.e., the Universal Islamic State (Longobardo 2017, at 228).

Thus, under traditional and contemporary IL criteria, no one seriously claims that ISIL is a state, nor is the application of statehood to ISIL defended by any believer. Thus, the use of the word 'state' in reference to this group ought to be avoided at all costs in the diplomatic language (Corten 2016, at 54).

It appears from the foregoing assessment of ISIL that they definitely cannot be legally deemed a 'state' for the purposes of IL. The follow-up question that naturally arises is then: to what extent should ISIL legally be considered a terrorist organization? I will attempt to address this question below. Although terrorist actions are contrary to the religious, moral, and social values of all civilized people and must be combated at their roots, the international community has not yet been able to agree on a definition of this devastating phenomenon. The term 'terrorism' is used in both national and international political discourse to condemn and stigmatize the actions of the individuals or groups to whom it is applied. It is significant to mention that this condemnation does not *ipso facto* turn terrorists into outlaws (Walter 2003, at 22).

However, in jurisprudential terms, the Egyptian scholar (M. Cherif Bassiouni) has noted that "Terrorism is a strategy of violence designed to instill terror in a segment of society in order to achieve a power-outcome, propagandize a cause, or inflict harm for vengeful political purposes. That strategy is resorted to by state actors either against their own population or against the population of another country. It is also used by violent non-state actors, such as





insurgent or revolutionary groups acting within their own country or in another country. Lastly, it is used by ideologically motivated groups or individuals, acting either inside or outside their country of nationality, whose methods may vary according to their beliefs, goals, and means” (Bassiouni 2002, at 84).

Simply put, terrorism can be understood as actions intended to inculcate fear and terror in society, i.e., using violence, dread, or any other kind of illegal force to achieve ideological and/or political objectives. It is sufficient for this study’s purposes to refer to definitions contained in both the Iraqi Anti-Terrorism Law (‘IATL’ No. 13 of 2005), and the Anti-Terrorism Law in the Iraqi Kurdistan Region (‘ATLIKR’ No. 3 of 2006), given the fact that the ISIL suspects currently held in Iraqi prisons will be dealt with according to the definitions contained in these two pieces of counter-terrorism legislation.

The Iraqi legislature in Article 1 of IATL has defined terrorism as “Every criminal act committed by an individual or an organized group that targets an individual or a group of individuals or groups or official or unofficial institutions and causes damage to public or private properties, with the aim of disturbing the peace, stability, and national unity or to bring about horror and fear among people and create chaos to achieve terrorist goals” (‘IATL’ No. 13 of 2005). The Kurdistan legislature in Article 1 of ATLIKR has defined terrorism as “every organized use, threat, incitement and glorification of violence by an offender who resorts to such activities pursuant to an individual, collective or random criminal enterprise with intent to cause terror, fear, panic and chaos to disturb public order, or endangering the security and safety of society and the Kurdistan Region, the lives of citizens, their freedoms and their sanctities, harming individuals, damaging the environment or natural resources or public or private property to achieve political, ideological, religious, sectarian or racial goals” (‘ATLIKR’ No. 3 of 2006).

In view of the foregoing, can such definitions be applied to ISIL’s actions? Can ISIL be considered a terrorist organization?

Whosoever looks at the ideas, positions, policies, and actions embodied in ISIL’s killing, slaughtering, and imprisoning of civilians, or has otherwise witnessed the way in which they expelled civilians from their homes, spread terror and fear among them, and used the harshest methods to try to completely reinvent society on the pretext of spreading their distorted understanding of Islam, will harbor no doubts that ISIL meets the aforementioned definitions of terrorism provided for in either piece of the above-mentioned (i.e., Iraqi or Kurdistan) counterterrorism legislation (Shandhab 2014, at 49). ISIL can thus be classified as a terrorist entity. The question which thereby arises is: should ISIL’s terrorism be categorized as non-state terrorism committed by individuals or by a group? Alternatively, should it be categorized as state terrorism?

Unlike many terrorist organizations, ISIL had the capability to do far more than kill people here and there; their militant activities were organized more like a regular army. This was clearly visible in the areas they controlled, with their military operations against *Peshmerga* and Iraqi forces in Mosul and other areas closely resembling regular warfare. ISIL sometimes adopted dual methods, such as detonating cars and suicide bombers in the style of a lone terrorist incident, only to then rapidly follow up with a conventional military assault on the same area (Mahmood 2021, at 32-33).

Further, ISIL resorted to ‘illegal means’ when they killed and bombed civilians and used them as human shields in pursuit of their ideological objectives, all of which constitute clear violations of the rules of international humanitarian law (‘IHL’). Thus, although ISIL is not a state for IL purposes, they are still a *de facto* entity that can nonetheless be subject to IL as a violent non-state actor for the purposes of IHL, human rights law, customary IL, and ICL.

Through the UNSC, the international community has designated ISIL as a ‘terrorist’ group. To underscore that (the 2014 UNSC Resolution S/RES/2170) defined ISIL as a ‘terrorist



organization', unanimously and unequivocally condemned them, and requested that UN member states disarm ISIL militias (Mahmood 2021, at 32-33; and Kenny 2017, at 130).

In resolutions S/RES/2160 (2014), S/RES/2161 (2014), S/RES/2169 (2014), S/RES/2178 (2014) and S/RES/2199 (2015) [See the full texts of UNSC Resolutions], the UNSC strongly condemned ISIL's terrorist acts. As ISIL's membership was drawn primarily from the membership of the former Baathist Party and *al-Qaeda* in Iraq, they could also be considered a designated terrorist group simply by virtue of their parent organization *al-Qaeda* having already been designated as such. ISIL's goals were inherited from *al-Qaeda*, and ISIL commit terrorist crimes in a similar vein to *al-Qaeda* (Warrick 2015, at 244). However, ISIL can be distinguished from *al-Qaeda* and other extremist-terrorist movements in that they were not simply a transitional terrorist threat in Iraq like *al-Qaeda* was, but instead had the organizational capacity to occupy large areas in Iraq and Syria, declare the creation of a new state, maintain a semi-regular army, and perpetrate a plethora of serious crimes and terrorist acts in a systematic manner Mahmood 2021, at 33-34).

In a related context, the former Special Adviser (Karim Asad Ahmad Khan) and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL ('UNITAD'), which founded through the UNSC Resolution S/RES/2379 (2017), described ISIL as a 'terrorist group' in a formal letter dated 15 November 2018 and addressed to the President of the UNSC. The letter stressed the terrorist nature of ISIL's actions and noted that evidence collected, preserved, and stored in Iraq documents a long list of heinous actions perpetrated against civilians. Then, the letter argued that such acts "might amount to war crimes, crimes against humanity, and genocide... in Iraq" (Letter of the Head of the UNITAD 2018).

### 3-2. Sharia Characterization of ISIL

It is important to point out that ISIL's discourse misuses *Quranic* verses to support their agenda. ISIL's articles in the main cover line of the first and second issues of their *Dabiq* magazine are good examples of this. *Dabiq* was ISIL's official magazine and was one of their key publications. It was published online in both Arabic and English versions. The first issue came out in July 2014, and the final issue (15), came out on July 13, 2016. According to this magazine, ISIL's main objectives were to disseminate *Tawhid*, to encourage the faithful to migrate to ISIL territory, and to encourage participation in their holy war. ISIL claims that people do not have any choice but to follow them or be killed on the basis of several *Quranic* verses. Hence, ISIL attempted, via *Dabiq*, to misconstrue and misapply certain *Quranic* verses, parts of the Prophet Mohammed's speeches, and norms from Islamic tradition in order to support their false words and deeds in defiance of the *Sharia* (*Dabiq* issues, 2014-2016; and Ahmed 2021, at 186; and Frissen *et al.* 2018, at 491-503).

In the first cover line of this magazine, ISIL listed one of the most significant parts of their creed, which is the attempt to legitimize the rightfulness of their political leadership (*Khilafah* or *Imamah*, which mean Arabic terms refer to the political leadership in Islamic history) by invoking two *Quranic* verses. Hence, the main cover, headlined "*Imamah* is from the *Milah* [religion] Ibrahim", indicates that their political leadership derives from Abraham's religion, as in God's saying: "When Abraham's Lord tested him with certain commands, which he fulfilled, He said, 'I will make you a leader for people' Abraham asked, 'and will you make leaders from my descendants too?' God answered, 'My pledge does not hold for those who do evil'" (The *Quran*, *al-Baqara* Chapter, at Verse 124). For ISIL, this verse means that God tested Abraham with certain 'commands', demanding that he emigrate from his land and separate for God's sake, and after he obeyed, God rewarded him with both religious and political leadership. ISIL interpreted God's commandments in this verse concerning emigration, patience, and opposition to infidels in a creative way in order to connect their



mission with Abraham's and to argue that God has granted ISIL the political and religious leadership once possessed by Abraham (*Dabiq magazine*. Vol. 1, 2014, at 26).

In contrast, authentic books concerning the interpretation of *Quranic* verses show that in the *Quranic* account of Abraham's story, God's commandments are unspecified. Moreover, a detailed look through the Prophet *Mohammed's* sayings – the second source of *Sharia* and interpretation of the *Quran* after the *Quran* itself – reveals no sayings of the Prophet *Mohammed* (the founder of Islam) dealing directly with this subject. Nonetheless, ISIL concocted an exegesis that suited their own purposes. The word 'command' is not used in this verse of the *Quran* in the same sense as ISIL used it, and God's commandments to Abraham are not stated in *Quran*; God did not command Abraham to take any political position. Thus, ISIL's claim that they had fulfilled all of God's commandments is utterly groundless (Ahmed 2021, at 171-173).

ISIL has argued that anyone who turns away from them is deemed to fall outside of Islam's fold based on their claimed political leadership of Abraham's religion. This means anyone who refuses to recognize ISIL's alleged state's authority is an apostate and therefore an enemy to be fought (Ahmed 2021, at 173). ISIL supported this view by citing the following *Quranic* provision: "And who would turn away from the religion of Ibrahim except one who makes a fool of himself. Truly, we chose him in this world, and indeed in the Hereafter, he will be among the righteous" (The *Quran*, *al-Baqara* Chapter, at Verse 230). ISIL used this verse to claim the right to battle anyone who wants to rebel against them, as their so-called state purportedly originated from Abraham's religion. Nonetheless, ISIL's claims are null, as a proper exegesis of Abraham's story reveals that he did not hold any political positions. He was merely a prophet of God and a religious leader, and monotheism was the main pillar of his religion, and therefore, only those who reject *Tawhid* ought to be regarded as outside the fold of his religion. ISIL's alleged state, therefore, does not originate from Abraham's religion, as Abraham's religion lacked political leadership (Ahmed 2021, at 173-176).

The second issue of the *Dabiq* magazine cover emphasized the rejection of 'the freedom of religion', another key foundation of ISIL's creed. According to ISIL, Islam does not recognize the freedom of faith. Pursuant to ISIL, humanity's two choices are the form of Islam exemplified by ISIL and their wholesale destruction, i.e., humankind may choose ISIL or their doom. ISIL used the story of the flood of Prophet *Nuh* in the *Quran*, indicating that God had destroyed the nation of *Nuh* by the flood for disobeying God's instructions (*Dabiq magazine*. Vol. 2, 2014, at 26), citing the fact that God said: "And We had certainly sent *Nuh* to his people, [saying], "Indeed, I am to you a clear warner. That you do not worship except Allah. Indeed, I fear for you the punishment of a painful day" (The *Quran*, *al-Hud* Chapter, at Verses 25-26). Furthermore, ISIL mentioned another verse: "Because of their sins they were drowned and put into the Fire, and they found not for themselves besides Allah any helpers" (The *Quran*, *al-Nuh* Chapter, at Verse 25). ISIL interpreted these verses to argue that the freedom of choice in religious matters is unacceptable, as the flood was due to their denial of the truth, and it resulted in the punishment of anyone who rejected God's instructions in this life. Thus, *Nuh* did not confer upon his nation any option other than the choice between following the truth or falsehood, with the flood as punishment for those who chose the latter. The story goes that the survivors were the minority, while the majority perished in the flood (*Dabiq magazine*. Vol. 2, 2014, at 5-9).

This article is a weak self-serving argument that ISIL uses to affirm their view. They exploited the *Quranic* storyline about the flood of *Nuh* to imply that people nowadays have no choice but to accept the truth as represented by ISIL or to perish. Considering the basic interpretation rules (Ahmed 2021, at 171-172 & 174), there is no relationship between Islam as understood by ISIL and *Nuh's* religion. ISIL ought to be conscious that the laws of antiquated nations or religions cannot be applied by Islam. Instead, Islam has its own independent legal system that differs from those of others (Ahmed 2021, at 175-176).



However, under the *Sharia*, ISIL may be classified as *Kharijites* (dissidents) from the Islamic religion, i.e., as people who rebel against the provisions of *Sharia*. The emergence of such groups is by no means unprecedented in Islamic history (*The Imam al-Albani Center...*, 2014, at 7).

The majority of Muslim scholars believe that the first *Kharijites* emerged after separating from the army of al-Imam Ali bin Abi Talib (the fourth caliph of the Muslims after the Prophet Mohammed). This separation occurred due to the breakdown of Ali's arbitration with the *Kharijites* concerning the rightfulness of the assassination of al-Imam Othman Bin-Affan (the third caliph of the Muslims). Subsequently, the *Kharijites* rejected Ali's rule and rebelled against the Rashidun Caliphate and its institutions. One of the most prominent Muslim scholars, Ibn Taymiyyah, characterized *Kharijite* insurgents as outspoken heretics who fought against the Islamic state under a *Takfiri* doctrine and an isolationist faith (*al-Muhtazili*). Ultimately, Ibn Taymiyyah placed the *Kharijites* in the category of oppressors and aggressors *-dhalama wa idwaniyon-* (Tabeeb and Tarbak 2014, at 155-157).

The evolution of ISIL is closely linked to the structure of Abu Bakr al-Baghdadi's central leadership. Baghdadi directly supervised the councils which governed ISIL affairs, with each council having authority over important ISIL institutions that supported and strengthened ISIL in both *matériel* and morale. These councils include *inter alia* the *Shura* (Advisory), Military, Propagation of Virtue and the Prevention of Vice, Security and Intelligence, Financial, and Media Councils. Abu Bakr al-Baghdadi frequently consulted with these councils, but final decisions rested with him alone. Among the most important of such councils was the *Bait al-Mal*, the traditional Islamic term for a government treasury. ISIL was at one point the richest group in the history of jihadist movements, far surpassing its parent organization (*al-Qaeda*) in terms of wealth and sources of funding. ISIL had diverse domestic sources of funding to cover operational expenses, and thus – uniquely among Salafi-jihadi organizations – they were not exclusively reliant on external donations. From 2014 to 2017, ISIL became a powerful organization capable of administrating its own financial affairs in the areas they controlled. They cultivated a wide range of funding sources which were administered under the direct supervision of Abu Bakr al-Baghdadi and managed by his relatives and assistants through the *Bait al-Mal*. Sources of ISIL funding included *inter alia* the energy trade, looting, the confiscation of assets in areas under ISIL control, the black market and contraband trade, tax revenue, extortion via the ransom of foreign hostages, and the proceeds of ISIL-run agricultural enterprises (Manna, 2015, at 103-106).

ISIL's objective was to establish a caliphate in Sunni-majority areas and rule about 40% of Iraq's land area, particularly in Mosul, Saladdin, Anbar, and parts of Diyala and Kirkuk due to the immense economic potential of these strategic territories, which provided considerable sources of financing for ISIL's military operations. These sources of financing included, *inter alia*, oil and gas deposits. Upon occupying these areas, ISIL's sources of finance multiplied, leading to ISIL's relative longevity from 2014 until 2017; some previously ISIL-held Iraqi provinces produced around 80,000 barrels of oil per day. ISIL also occupied areas of geographical and logistical importance in Syria; they seized border crossings to control smuggling operations and acquire equipment, people and fighters, as well as seizing regions rich in oil wells, agricultural crops, and other forms of wealth. ISIL were mainly concentrated in the Syrian eastern zone (Raqqqa governorate) due to the region's proximity to Iraq, which allowed ISIL fighters to move seamlessly between the two countries. (Salah and Dirabroosh 2021, at 17-20; and Akoum 2015, at 90)

ISIL's media foundation, which played a major role within their organizational structure, was similarly effective for ISIL and similarly destructive for the people of Iraq. ISIL recognized the exceptional potential of modern media generally, and of social networking sites in particular, for the dissemination of their Salafi-jihadi ideology and to attract young people from all over the world to come to Iraq and Syria for Jihad. ISIL's media strategy



spread its message through both carrot and stick; the concept of ‘electronic jihad’ became one of the main pillars of ISIL’s strategy from its inception, and ISIL media channels were used to spread panic and fear across the world unprecedentedly. Indeed, ISIL’s sophisticated media strategy has become one of their most dangerous and effective basic weapons. Using the world’s newest and most technologically advanced production technology, ISIL produced videos of a production quality rivaling major television stations, documented their ‘fieldwork’, and highlighted their strength through the circulation of horrific images, videos, and news of their conquests in Iraq and Syria. Ultimately, these media operations delivered ISIL’s message to a wider audience, won them new recruits, and made them globally infamous for their brutality (Atwan 2015, at 240).

Many of ISIL’s overt and broadly-publicized actions violate fundamental provisions of the Islamic religion as laid out in the *Quran* and *Sharia* by confusing mercy with violence and spreading extremism through their extensive media eco-system. For instance, ISIL’s chief spokesman and propagandist, Abu Muhammad al-Adnani, announced in an Arabic language video that “we have armies in Iraq and an army in Syria full of hungry lions who drink blood, eat bones ..., finding nothing tastier than blood ...” (Tabeeb and Tarbak 2014, at 160). The *Quran* clearly contradicts these obscene ramblings, with God Almighty teaching that “...when those who believe in Our revelations come unto thee, say: Peace be unto you! Your Lord hath prescribed for Himself mercy...” (The *Quran*, *al-An’am* Chapter, at Verse 54).

Further, ISIL perpetrated many extrajudicial individual and mass killings. Such killings are unambiguously criminalized as murder under Islam’s *Sharia*. Suicide operations are similarly prohibited. According to the *Quran* and *Sharia*, the suicidal will be immortalized in the fire on the Day of Judgement. Furthermore, forced conversions to Islam violate the *Quran* by virtue of the well-known verse (Tabeeb and Tarbak 2014, at 163), which stipulates that “[t]here is no compulsion in faith...” (The *Quran*, *al-Baqara* Chapter, at Verse 256). ISIL have committed various types of atrocities and have proudly publicised them on social media to intimidate people. Such atrocities include *inter alia* the beheading of prisoners with knives, the mutilation of their bodies, the burning and/or burying of prisoners alive, the brutal mistreatment of women as spoils of war, and the misuse of children as child soldiers for suicide attacks, fighting, and the killing of captives. In addition, ISIL humiliated and tortured prisoners and the wider population under their control through frequent beatings, amputations, and other such acts which are more difficult to comprehensively enumerate due to a dearth of accurate and complete data (Tabeeb and Tarbak 2014, at 160-162). Undoubtedly, such heinous acts are condemned and rejected by all religions, laws, and humanitarian norms, ancient and modern alike. In stark contrast to this, ISIL slaughter innocent people, and mutilate their corpses but nonetheless declare themselves to be the embodiment of Islam’s values and the legitimate leaders of all Muslims. One *Sharia* scholar (Sheikh Muhammad Saeed Raslan) points out that Islam’s *Sharia* does not even permit an animal to be slaughtered in front of another, as to do so would be inhumane (Tabeeb and Tarbak 2014, at 166). The provisions of Islam are undoubtedly violated by ISIL’s bloodthirsty atrocities.

#### 4. Conclusion (Final Observations)

The international community has consistently used the English term ‘ISIL’ as the equivalent of the widely-used Arabic acronym ‘*Da’esh*’, and thus the international *opinion juris* is that ISIL is the proper designation for the extremist group, notwithstanding that ‘IS’ is a more accurate abbreviation for the English translation of the name that ISIL calls themselves. This designation (ISIL/*Da’esh*) corresponds with the language used by UNSC in all its Resolutions and in other international documents and reports. Thus, ISIL seems to be the most appropriate name for the group in a legal context.

ISIL are an armed militia that follow an extremist Salafist-Jihadist ideology that embrace an extreme *Takfiri* approach against all individuals (both civilians and military personnel) and



organizations that refuse to pledge allegiance to their ruler; i.e., ISIL declare *Takfir* against all other rulers and their states' military and civil institutions if they do not follow ISIL's interpretations of the *Quran*, and similarly declare *Takfir* against other Islamic movements (even other Salafi-Jihadist movements) for their failure to pledge allegiance to them. ISIL deems such individuals to be infidels, hypocrites, or even apostates who deserve to be put to death. ISIL aims to re-establish what they call the 'Islamic Caliphate State and the Application of *Sharia*' i.e., to create an Islamic political and religious state on the basis of their harsh interpretation of Islam's teachings. During ISIL's totalitarian rule from 2014 to 2017, millions of people lived under total or partial ISIL control across vast areas of Iraq and Syria, a territory larger than that of many recognized states. ISIL is a military-religious rebel organization, consisting of different nationalities who adopt the slogan of 'there is no life without the sword', a clear ideological rejection of any suggestion that their aims can be achieved via peaceful means. As stated earlier, ISIL ought to be considered an authoritarian proto-state that finances itself via mafia methods and attracts youths from other countries. ISIL rejects democracy, elections, and political participation.

ISIL is a radical Islamic group that has a highly organized leadership structure. The fact that the classification of the alien phenomenon that is ISIL is ambiguous under the contemporary public IL system highlights that the enactment of new international legal norms to cope with and counter this alien phenomenon may be desirable. ISIL can nonetheless be characterized as an armed militia group and a *de facto* violent non-state actor in the arena of international relations that lacks any *de jure* personality as a subject of IL. While ISIL temporarily acquired certain cornerstone attributes of statehood in addition to their declaration of statehood, e.g. territory, a permanent population, and political authority, they definitely cannot be deemed a state for the purposes of IL, as creating a new nation cannot be isolated from implementing the IL system and its associated charters, and ISIL did none of this. No state has officially recognized ISIL, and they therefore lack legitimacy within contemporary IL and relations.

Further, pursuant to the aforesaid definitions of terrorism, ISIL can be deemed a terrorist entity as their words and deeds are full of hate speech and incitements to violence, and even more so because they have publicly perpetrated the killing, slaughtering, and imprisoning of civilians, expelled civilians from their homes and used the harshest methods to try to completely reinvent society on the pretext of spreading their distorted understanding of Islam, and thus, they can definitely be said to spread terror and fear amongst the broader community.

The international community has firmly condemned ISIL's terrorist acts and has labelled them as a 'terrorist' group and organization through numerous UNSC resolutions [UNSC Resolutions S/RES/2160 (2014), S/RES/2161 (2014), S/RES/2169 (2014), S/RES/2170 (2014), S/RES/2178 (2014) and S/RES/2199 (2015)] (See UNSC Resolutions). ISIL has also been designated a terrorist group simply by virtue of their parent organization *al-Qaeda* having already been designated as such, especially since their membership stemmed primarily from former Baathist Party and *al-Qaeda* members in Iraq, and they have committed terrorist crimes of even greater seriousness than *al-Qaeda* ever did. Despite this, ISIL can be distinguished from *al-Qaeda* and other extremist-terrorist movements by the fact that they are not a transitional terrorist threat in Iraq like *al-Qaeda* was, but instead had the organizational capacity to occupy large areas in Iraq and Syria, gain a robust economy, declare the creation of a new state, maintain a semi-regular army, and perpetrate a plethora of serious crimes and terrorist acts in a systematic manner. ISIL sometimes adopted dual methods, such as detonating cars and suicide bombers in the style of a lone terrorist incident, only to then rapidly follow up with a conventional military assault on the same area. ISIL resorted to 'illegal means' when they killed and bombed civilians and used them as human shields in pursuit of their ideological objectives, all of which is in clear violation of the rules of IHL, human rights law, customary IL, and ICL.



Indeed, the legal capacity of ISIL highlights many issues concerning the application of IL that arise during armed conflict. For instance, it affects justifications for going to and/or continuing the war against ISIL (*jus ad bellum* or *jus in bello*), especially while ISIL had great capabilities and effective control over extensive territories. Given that "*jus ad bellum* refers to the conditions under which States may resort to war or to the use of armed force in general. The prohibition against the use of force amongst States and the exceptions to it (self-defence and UN authorization for the use of force), set out in the United Nations Charter of 1945, are the core ingredients of *jus ad bellum*. *Jus in bello* regulates the conduct of parties engaged in an armed conflict. IHL is synonymous with *jus in bello*; it seeks to minimize suffering in armed conflicts, notably by protecting and assisting all victims of armed conflict to the greatest extent possible" (ICRC 2015).

It is known that the international community authorizes self-defense measures in accordance with Article 51 of the UN Charter when a state faces an armed attack by another state. The legality of conducting self-defense against attacks by violent non-state actors is also up for debate, so classifying ISIL as a state would simplify any claims to self-defense that may justify airstrikes against their strongholds. However, the question of whether ISIL ought to be considered a state is relevant to ascertaining the applicable rules of IHL. If ISIL is deemed a state, the rules relating to international armed conflicts must be applied. If, however, ISIL is considered to be a violent non-state actor and their actions are not supported by the principle of the self-determination of peoples (both of which happen to be the case), then the rules governing non-international armed conflicts are applicable (Longobardo 2017, at 206-207).

Despite the fact that ISIL is unrecognized as a *de jure* entity and is deemed an illegitimate terrorist organization in the realm of IL, it is still subject to the latter for the purposes of maintaining international peace and security. Consequently, the UNSC has issued several resolutions that strongly condemn ISIL as a grave threat to international peace and security, and have come to the firm resolution that the perpetrators must be held accountable before competent tribunals. Most significantly, UNSC Resolution 2249 (2015) condemns ISIL in strong terms as a group which "...constitutes a global and unprecedented threat to international peace and security..." and urges UN Member States to adopt 'all necessary measures' to suppress and prevent their terrorist acts on Iraqi and Syrian territory. Additionally, the UNSC has described ISIL as an 'extremist group' that has perpetrated terrorist actions against civilians in general and against minorities of different religious or ethnic backgrounds in particular, all in violation of IHL. It controlled natural resources and significant territories in Iraq and Syria and enlisted foreign fighters (the 2015 UNSC Resolution S/RES/2249). Thus, ISIL posed – and continues to pose – a serious threat that impacts all regions and countries, even those far from conflict zones, and this necessitates measures by the international community in order to counter the threat.

Even though ISIL defied the international community in an unprecedented manner, prosecuting their crimes remains a formidable challenge. As mentioned previously, ISIL committed heinous crimes against minorities publicly and systematically in the name of religion in Iraq and also in other parts of the world. The international community moved toward fighting ISIL to halt its spread and to combat the threat to international peace and security. To this end, an international coalition was established from 2014 to 2017 against ISIL. It involved over 73-nations to support the troops involved on the ground [the Iraqi armed forces and the Peshmerga forces of the Kurdistan Regional Government KRG)] (Human Rights Watch Report 2018). Whereby the multinational military operations against ISIL in Iraq intensified over 2017, a trend exemplified by the major operations to retake Mosul and Telafar. The coalition restricted ISIL's criminal activities and retook the territory they had gained over the previous three years. After the territorial defeat of ISIL in 2017, the Iraqi government and Peshmerga forces detained thousands of fighters and other suspected





ISIL members, including women and children. However, due to loopholes in the domestic penal code, the Iraqi and Kurdistan judiciaries relied exclusively on anti-terrorism laws for the sake of expediency. This is problematic because charging suspected ISIL members with violations of counter-terrorism law does not give due regard to the seriousness of ISIL's most heinous crimes, as the crimes listed in local counterterrorism laws are neither co-extensive with the serious (core) international crimes committed in ISIL-controlled territories, nor bring justice to the victims.

Therefore, there is a considerable gap in contemporary IL provisions insofar as the ISIL phenomenon is concerned, and no ISIL member implicated in the commission of core international crimes against unarmed civilians has yet been prosecuted according to public IL and within the framework of ICL, IHL, international human rights law and customary IL. To do this would, of course, require the establishment of an international criminal tribunal with the competence to do so. Practically, an important UNSC Resolution has dealt with ISIL judicially, the UNITAD was formed under UNSC Resolution 2017/2379, to work with the Iraqi government to collect and preserve evidence of ISIL atrocities that may assist the prosecution of ISIL members for the commission of core international crimes. Despite this, no ISIL detainees have been brought before any courts with the competence to hand down convictions for core international crimes, despite the overwhelming evidence directly implicating ISIL in the commission of such offences. Strangely, the international community's clear intention to prosecute ISIL perpetrators – embodied in the decision to establish UNITAD – has not translated into action, and ISIL detainees are still being convicted and occasionally executed under counterterrorism laws in Iraqi and Kurdistan courts without any charges being brought for ISIL's well-documented commission of core international crimes. The ongoing expedited trials on the national level will likely lead to the obliteration of evidence and will potentially undermine the work of UN committees.

Here, it is noteworthy that the Iraqi Kurdistan Parliament held Session No. 12 on 5/5/2021 to consider the first reading of the draft law entitled 'The Special Criminal Court for ISIL Crimes in Kurdistan Region-Iraq', which has been referred to by the Prime Minister of the Kurdistan Region on 4/28/2021 (Kurdistan Parliament – Iraq 2021). Regrettably, the Federal Supreme Court issued a resolution in case No. 71/Federal/2021 on 13 June 2021, which overturned this bill, stating that it is unconstitutional to establish exceptional or special courts in the Kurdistan region to consider crimes of genocide, crimes against humanity, and war crimes in respect of prosecuting ISIL suspects. Moreover, it rejected such a bill containing the possibility of appointing non-Iraqi judges and prosecutors, and the power to issue death sentences to Iraqis and foreigners. All of this is due to avoid undermining Iraq's judicial sovereignty (Federal Supreme Court 2022, at 205-208). Therefore, Iraq, including Kurdistan region, is still without a competent court to hold ISIL accused accountable for major international crimes. This would provide an additional way to conduct further research in academia in this aspect.

Further, as ISIL were not completely obliterated geographically nor militarily in 2017, they continue to represent an ongoing security threat. ISIL fighters still control some remote and mountainous areas in Iraq, and their sleeper cells continue to utilize the guerrilla tactics of hit-and-run and ambush in certain sub-regions, launching attacks, killing civilians, seizing properties, and destroying properties if they are unable to confiscate them. ISIL thereby continue to pose a real and persistent danger to these areas' inhabitants. The status quo thus constitutes 'a ticking time bomb' capable of detonating at any moment, as was the case with the 2021 Taliban recapture of Afghanistan. Terrorism is a global issue that threatens the whole world and not just Iraq or Syria, and therefore the matter must be addressed globally. To this end, the risks and legal impasses discussed in this paper are deserving of in-depth consideration and debate amongst the academic community.





With regards to the provisions of the *sharia*, this paper has refuted the political interpretations of the *Quran* that ISIL has used to legitimize their atrocities and alleged state. Their official *Dabiq* magazine was full of far-fetched exegeses of *Quranic* verses that suited and upheld their ideological tendencies and which did not take due account of the authentic rules for *Quranic* interpretation adopted by most Muslims. ISIL deliberately misconstrued the text of two *Quranic* verses (124 and 230 of *al-Baqara* Chapter) by claiming that God had granted the Prophet Abraham both political and religious leadership. They argued that political leadership was a part of Abraham's religion and that they had followed the path of Abraham, and therefore that God had likewise granted ISIL political-religious leadership. This allowed them to argue that there was a direct connection between their so-called state and Abraham's religion. Consequently, anyone in rebellion against them was to be deemed to fall outside the fold of the great religion of Islam. Under this bogus argument – which lacked any sound scientific basis, especially considering previous debates which proved that Abraham never held any political and/or leadership position – they declared their alleged state.

Further, ISIL used certain *Quranic* verses (25-26 of *al-Hud* and 25 *al-Nuh* Chapters) concerning the story of the flood of Prophet *Nuh* to justify their claim that Islam does not permit the freedom of religion. This was to justify ISIL's quest to push their interpretation of the Islamic religion onto all other peoples. However, the author has clearly demonstrated that this exegesis is incorrect, because basic interpretation rules emphasize that the provisions of the other old traditions or religions are not automatically applicable in Islam, which has its own independent legal system, and as there is no relationship between Islam and *Nuh's* religion in their provisions, the verses in question bear no direct relevance to the question of religious freedom in Islam. Thus, even if ISIL's claims were valid hypothetically, it is well known that the provisions of Islam are entirely different from the laws of the Prophet *Nuh's* religion.

In this vein, there is further *Quranic* evidence that goes against ISIL's pretensions and which prove that Islam does not prohibit religious freedom at all. The *Quran* has guaranteed the freedom of faith in more than one verse, and foremost amongst them is the one where God says “[t]here is no compulsion in faith...” (The *Quran*, *al-Baqara* Chapter, at Verse 256). Ultimately, this paper concludes that all the arguments advanced by ISIL to achieve their despicable objectives lack any validity. ISIL, thus, do not represent the true view of Islam. Instead, they present a distorted image of *Sharia* by employing invalid exegeses of certain *Quranic* verses in order to legitimize their false words and heinous deeds. This has also had the effect of causing widespread Islamophobia amongst the people of non-Muslim nations.

ISIL ought to be considered *Kharijites* (dissidents) from the Islamic religion, i.e., as people who are objecting to the provisions of *Sharia*. The evolution of ISIL is closely linked to the structure of Abu Bakr al-Baghdadi's central leadership. Baghdadi directly supervised the councils governing ISIL affairs, with each council having authority over important ISIL agencies that supported and strengthened ISIL in both *matériel* and morale. Among the most important of such councils was the Bait al-Mal (treasury). ISIL was at one point the richest group in the history of jihadist movements, far surpassing its parent organization (*al-Qaeda*) in terms of funding sources.

The same applies to ISIL's media foundation, which played a key role within their organizational structure and became one of their most serious and instrumental weapons. It helped them lure thousands of foreign fighters to come to their territories and join their ranks; this concept of 'electronic jihad' grew to be one of the main pillars of ISIL's military strategy. ISIL used sophisticated media techniques to produce their videos, which were often of a production quality that rivalled major television stations. These videos documented ISIL's horrific atrocities in order to gain publicity and spread panic across the world in an



unprecedented manner. Unquestionably, the *modus operandi* of such appalling crimes is condemned and rejected by the Islamic *Sharia*.

Many of ISIL's actions violate fundamental provisions of the Islamic religion as laid out in the *Quran* and *Sharia* by confusing mercy with violence and spreading extremism through their extensive media eco-system. Additionally, ISIL perpetrated many extrajudicial individual and mass killings. Such killings are unambiguously criminalized as murder under Islam's *Sharia*. According to the *Quran*, God says "And whoever kills a believer intentionally, their reward will be Hell—where they will stay indefinitely. Allah will be displeased with them, condemn them, and will prepare for them a tremendous punishment" (The *Quran*, *An-Nisa* Chapter, at Verse 93). And "That is why We ordained for the Children of Israel that whoever takes a life—unless as a punishment for murder or mischief in the land—it will be as if they killed all of humanity; and whoever saves a life, it will be as if they saved all of humanity..." (The *Quran*, *al-Ma'idah* Chapter, at Verse 32). Suicide operations are similarly prohibited, without doubt, violate unambiguous stipulations in the *Quran*, God says "... And do not kill 'each other or' yourselves. Surely Allah is ever Merciful to you. And whoever does this sinfully and unjustly, We will burn them in the Fire. That is easy for Allah" (The *Quran*, *An-Nisa* Chapter, at Verses 29-30). There is also the prohibition of oppression, whereby the *Quran* stipulates that "... when they assume authority, they strive throughout the land to spread mischief in it and destroy crops and progeny. Allah does not like mischief" (The *Quran*, *al-Baqara* Chapter, at Verse 205). God adds: "Who does more unjust than those who fabricate lies against Allah? They will be brought before their Lord, and the witnesses will say: These are the ones who lied against their Lord. Surely Allah's curse is upon the wrongdoers" (The *Quran*, *al-Hud* Chapter, at Verse 18).

Given the above analysis, it can be concluded that ISIL may be considered the most dangerous armed organization on the battlefield of Iraq and Syria. In its heyday between 2014 and 2017, it was more developed structurally, militarily, economically, and geographically than *al-Qaeda* and other jihadist organizations ever were before. ISIL and many of their actions violate the *Sharia*, and therefore ISIL's ideology cannot be said to arise from Islam, nor can Islam be said to permit actions such as those ISIL committed. ISIL's infamy has seriously distorted the image of true Islam and their actions have subverted Islam's innocent teachings. ISIL have exploited the enthusiasm of young people and have convinced them to perpetrate the gravest crimes by re-interpreting certain *Sharia* texts in a radical way in order to pursue various political agendas.

To summarize: ISIL is neither a state at IL, nor Islamic under *Sharia*. From an IL perspective, one can say that ISIL is an armed terrorist-militia group as a *de facto* violent non-state actor in the arena of international relations. Despite declaring themselves to be a state, ISIL lacks the legal personality of statehood according to IL standards. The difference between ISIL and most other terrorist organizations is the control that they previously exercised over large territories and the institutions they established to govern them. Notwithstanding all of this, ISIL remain subjects of IL and must be held accountable for the violation thereof. As far as *Sharia* provisions are concerned, ISIL are seditious and alien to Islam, and their purported implementation of *Sharia* has in practice led to a series of heinous actions that flagrantly violate widely-accepted *Sharia* fundamentals. ISIL should be classified as one of the most dangerous terrorist movements in the world.

## 5. References

- The Holy *Quran*.
- Abdul-Hakim, M. (2015) *The Giant of the Last of Age Sufyani ISIL... and the Black Banners of the End of Times* [in Arabic]. Damascus: Dar Al-Kitab Al-Arabi.
- Abou-El-Wafa, A. (2010) *The Mediator in the Public International Law* [in Arabic]. 5<sup>th</sup> ed. Cairo: Dar Al-Nahda Al-Arabia.
- Ahmed, F. (2021) *ISIS's Interpretation of the Holy Quran: A study for the main cover line of the first and second*



- issue of the *Dabiq* magazine, *ZANCO Journal of Humanity Sciences*, 25(2).
- Akoum, F. (2015) *ISIL: The Black Book* [in Arabic]. Cairo: Dar Amili.
- Al-Ashaal, A. (2015) *ISIL Under International Law: Legal Analysis* [in Arabic], [Online]. Available at: <[https://www-aljazeera-net.translate.google.com/news/humanrights/2015/2/11/-/تنظيم-داعش-في-نظر-القانون-الدولي?x\\_tr\\_sl=ar&x\\_tr\\_tl=en&x\\_tr\\_hl=en&x\\_tr\\_pto=sc](https://www-aljazeera-net.translate.google.com/news/humanrights/2015/2/11/-/تنظيم-داعش-في-نظر-القانون-الدولي?x_tr_sl=ar&x_tr_tl=en&x_tr_hl=en&x_tr_pto=sc)> Accessed: 2 October 2022.
- Alvarez-Jimenez, A. (2017) From *Al-Qaida* in 2001 to ISIL in 2015: The Security Council's Decisions on Terrorism and Their Impact on the Right to Self-Defense Against Autonomous Non-State Actors, *Minnesota Journal of International Law*, 26(2).
- Atwan, A. (2015) *The Islamic State: Roots, Savagery and Future* [in Arabic]. 3<sup>rd</sup> Ed. Beirut: Dar al-Saqi.
- Bassiouni M. Ch. (2002) Legal Control of International Terrorism: A Policy-Oriented Assessment. *Harvard International Law Journal*, 43(1).
- Corten, O. (2016) *L'«ÉTAT ISLAMIQUE», UN ÉTAT? ENJEUX ET AMBIGUÏTÉS D'UNE QUALIFICATION JURIDIQUE*, in *Daech et le droit* [in French]. 1<sup>st</sup> Ed. Panthéon Assas.
- Crawford J. (2006) *The Creation of States in International Law*. 2<sup>nd</sup> ed. Oxford University Press.
- Dabiq* magazine. All issues in PDF format at the Clarion Project (2014-2016), Islamic State's (ISIS, ISIL) Horrific Magazine, [Online]. Available at: <<https://clarionproject.org/2014/09/10/islamic-state-isis-isil-propaganda-magazine-dabiq-50/>> Accessed: 30 December 2022.
- Dabiq* magazine. Vol. 1 (July 5, 2014), at 26, available at Clarion Project, [Online]. Available at: <<https://clarionproject.org/docs/isis-isil-islamic-state-magazine-Issue-1-the-return-of-khilafah.pdf>> Accessed: 30 December 2022.
- Dabiq* magazine. Vol. 2 (July 27, 2014), at 26, available at the Clarion Project Website: <<https://clarionproject.org/docs/isis-isil-islamic-state-magazine-Issue-2-the-flood.pdf>> Accessed: 30 December 2022.
- Federal Supreme Court (2021) *Rulings and Resolutions of the Federal Supreme Court* [in Arabic], Vol. 12, Baghdad: Dar Al-Iraqiya for printing, publishing and distribution, 2022.
- France 24 (2019) *Trump announces death of IS group leader Abu Bakr al-Baghdadi*, WEB NEWS, [Online]. Available at: <<https://www.france24.com/en/20191027-live-trump-makes-major-statement-amid-reports-of-al-baghdadi-death>> Accessed: 27 May 2022.
- Frissen, Th., Toguslub, E., Van Ostaeyenc, P. & d'Haenensa, L. (2018) Capitalizing on the Koran to fuel [Online]. Available at: violent radicalization. A taxonomy of Koranic references in ISIS's *Dabiq*. *Journal of Telematics and Informatics*, 35(2).
- Gold Z. & Faber, P. (2017) *Al-Qaeda in Iraq (AQI): An Al-Qaeda Affiliate Case Study*. Washington: The Center for Naval Analyses.
- Hogeback, J. (2021) *Is It ISIS or ISIL?* Encyclopedia Britannica, Inc., [Online]. Available at: <<https://www.britannica.com/story/is-it-isis-or-isil>> Accessed: 21 April 2023.
- Human Rights Council (2014) *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*. Twenty-seventh session: Agenda item 4: Human rights situations that require the Council's attention. UN Doc A/HRC/27/CRP.3, 19 November 2014, [Online]. Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/223/56/PDF/G1422356.pdf?OpenElement>> Accessed: 19 November 2022.
- Human Rights Watch (2018) *World Report: Events of 2017*, USA: Sept. 16, 2017, at 285, [Online]. Available at: <[https://www.hrw.org/sites/default/files/world\\_report\\_download/201801world\\_report\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf)> Accessed: 26 May 2022.
- ICRC (2015) *What are jus ad bellum and jus in bello?* International Committee of the Red Cross, 22 January 2015, [Online]. Available at: <<https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0>> Accessed: 2 May 2023.
- Kanso, W. *The Modern State: Characteristics and Functions* [in Arabic], Konrad-Adenauer-Stiftung Jordan, [Online]. Available at: <<https://www.kas.de/documents/279984/280033/The+Modern+State+Paper.pdf/8fde4e95-71eb-9078-5f04-d71e5a9a31c7?version=1.0&t=1629032607078>> Accessed: 1 May 2023.
- Kaufman, J., Mustafa, Sh. & Littlefield, H. (2015) *What Using The Name 'Dae'sh, Rather Than 'ISIS' or 'ISIL,' Really Means*. Northeastern University Publications, [Online]. Available at: <<https://news.northeastern.edu/2015/11/24/3qs-what-using-the-name-dae'sh-rather-than-isis-or-isil-really-means/>> Accessed: 5 March 2021.
- Kenny, C. (2017) Prosecuting Crimes of International Concern: Islamic State at the ICC?, *Utrecht Journal of International and European Law* 33(84).
- Kirovska, G. (2017) *Prosecuting ISIS under International Criminal Law*. BA Liberal Arts and Sciences-Major Law in Europe. Tilburg University.
- Kokha A. Y. H. (2019) The Extent to Which ISIL's Acts Against Iraqi Minorities Amount to Genocide. *Quebec Journal of International Law*, 32(2).
- Kurdistan Parliament – Iraq (2021) The Iraqi Kurdistan Parliament is conducting the first reading of the draft law on the criminal court for ISIS crimes, and the second reading of the draft law of the Ministry of Electricity [in



- Arabic], [Online]. Available at: <<https://www.parliament.krd/arabic-news/posts/2021/may/-القراءة-برلمان-كوردستان-بحري-القراءة/>> Accessed: 2 May 2023.
- Lia B. (2015) Understanding Jihadi Proto-States, Perspectives on Terrorism: Terrorism Research Initiative: *Leiden University*, 9(4).
- Longobardo, M. (2017) The self-proclaimed statehood of the Islamic State between 2014 and 2017 and International Law, *Anuario Español de Derecho Internacional*, 33.
- Maarouf, M. (2017) *ISIL Passed Through Here* [in Kurdish]. Erbil: Jungle Press.
- Mahmood, Q. (2021) *Mechanisms for the Prosecution of ISIL Members Accused of International Crimes* [in Arabic]. Beirut: Zein Juridique Publications.
- Manna, H. (2015) *The Caliphate of ISIL* [in Arabic]. Beirut: Bissan for Publishing Distribution & Information.
- Montevideo Convention on the Rights and Duties of States (1933) The treaty was ratified by 19 Latin American states and the US, 165 I.N.T.S. 19.
- Mossallanejad, A. (2016) The Rise of ISIS and the Future of Iraq's Security, *Geopolitics Quarterly* 11(4).
- Muir, J. (2016) *The 'Full Story' of Islamic State* [in Arabic], BBC News: Middle East, [Online]. Available at: <[https://www.bbc.com/arabic/middleeast/2016/04/160427\\_islamic\\_state\\_group\\_full\\_story](https://www.bbc.com/arabic/middleeast/2016/04/160427_islamic_state_group_full_story)> Accessed: 15 October 2021.
- Novogrodsky, N. B. (2018) Is ISIS a State: The Status of Statehood in the Age of Terror. *Berkeley Journal of International Law*, 36(1).
- Pompeo, M. R. (2019) *On the Death of Abu Bakr Al-Baghdadi*. Press Statement: The U.S. Department of State, [Online]. Available at: <<https://2017-2021.state.gov/on-the-death-of-abu-bakr-al-baghdadi/index.html>> Accessed: 1 March 2023.
- Riedel, B. (2008) *The Search for al-Qaeda*. Washington: Brookings Institution Press.
- Salah, M. & Dirabroosh, H. (2021) Contemporary Jihadist Organizations and Reasons for their Emergence [in Arabic], *ZANCO Journal of Humanity Sciences*, 25(1).
- Salloum, S. (2017) *Protection of Religious, Ethnic and Linguistic Minorities in Iraq: Analytical Study in International: Regional and National Frameworks* [in Arabic]. Baghdad: Iraqi Al-Amal Association.
- Shandhab M. (2014) *ISIL: Its Essence, Origin, Terrorism and Objectives* [in Arabic]. Beirut – Lebanon: Arab Scientific Publishers, Inc.
- Tabeeb, A. & Tarbak, T. (2014) *Media treatment of issues related to ISIL: An analytical descriptive study* [in Arabic]. Master's thesis. Larbi Ben M'hidi University of Oum El Bouaghi, Algeria.
- The Anti-Terrorism Law in the Iraqi Kurdistan Region (2006) No. 3 of 2006 [in Kurdish] (Presidency of Kurdistan Region, Erbil on July, 16, 2006) 61, *Al-Waqai Al-Kurdistaniya* (The official gazette which allocated to dissemination of laws in Iraqi Kurdistan).
- The Iraqi Anti-Terrorism Law (2005) No. 13 of 2005 [in Arabic]. (Publications of the Presidency Council of Iraq: Baghdad on November, 9, 2005) 4003, *Al-Waqai Al-Iraqia* (The official gazette which allocated to dissemination of laws in Iraq).
- The Rome Statute (1998) Adopted in Rome on 17 July 1998, came into effect on 1 July 2002, UN Secretary-General, Treaty Series, 2187(38544).
- The UN Charter (1945).
- The Imam al-Albani Center for Scientific Studies and Research (2014) *Yesterday's Kharijites-Dissidents... Today's Takfiris: ISIL as a Model* [In Arabic]. Publications of the Scientific Symposium held at the Imam al-Albani Center for Studies and Research Association in Jordan.
- Tomuschat, Ch. (2015) The Status of the 'Islamic State' under International Law. *Berliner Wissenschafts-Verlag*, 90(3/4).
- UNITAD (2018) *Letter dated 15 November 2018 from the Special Adviser and Head of the UNITAD addressed to the President of the Security Council*. S/2018/1031 UNSC, [Online]. Available at: <<https://www.unitad.un.org/sites/www.unitad.un.org/files/general/16.11.2018.pdf>> Accessed: 6 February 2022.
- United Nations Assistance Mission for Iraq (UNAMI) and Office of the United Nations High Commissioner for Human Rights -OHCHR- (2020) *Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL*. Baghdad, Iraq, International Report: January 2020, [Online]. Available at: <[https://www.ohchr.org/Documents/Countries/IQ/UNAMI\\_Report\\_HRAAdministrationJustice\\_Iraq\\_28January2020.pdf](https://www.ohchr.org/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf)> Accessed: 25 March 2021.
- UNSC Resolution S/RES/2170 (2014): adopted at its 7242<sup>nd</sup> meeting, 15 August 2014, [Online]. Available at: <[https://undocs.org/S/RES/2170\(2014\)](https://undocs.org/S/RES/2170(2014))> Accessed: 29 April 2021.
- UNSC Resolution S/RES/2249 (2015): adopted by UNSC at its 7565<sup>th</sup> meeting, 20 November 2015, [Online]. Available at: <[https://undocs.org/S/RES/2249\(2015\)](https://undocs.org/S/RES/2249(2015))> Accessed: 5 May 2022.
- UNSC Resolution S/RES/2379 (2017): adopted at its 8052<sup>nd</sup> meeting, 21 September 2017, [Online]. Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/296/25/PDF/N1729625.pdf?OpenElement>> Accessed: 31 September 2021.
- UNSC Resolutions [S/RES/2160 (2014); S/RES/2161 (2014); S/RES/2169 (2014); S/RES/2178 (2014);



- S/RES/2199 (2015) and S/RES/2249 (2015): UNSC/Documents, [Online]. Available at: <<https://www.un.org/securitycouncil/content/resolutions-0#main-content>> Accessed: 19 May 2022.
- Wallace, D., McCarthy, A. & Reeves, S. (2017) Trying to Make Sense of the Senseless: Classifying the Syrian War Under the Law of Armed Conflict, *Michigan State International Law Review*, 25(3).
- Walter, Ch. (2003) *Defining Terrorism in National and International Law* (Paper presented at the Max Planck Society Conference on *Terrorism as a Challenge for National and International Law*, 24 January 2003. Heidelberg, [Online]. Available at: <<https://iusgentium.ufsc.br/wp-content/uploads/2017/03/1-2-Defining-Terrorism-in-National-and-International-Law-Christian-Walter.pdf>> Accessed: 12 Nov. 2022.
- Waltman III, G. (2016) *Prosecuting ISIS*, University of Mississippi School of Law, [Online]. Available at: <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2537044](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2537044)> Accessed: 21 November 2021.
- Warrick, J. (2015) *Black flags: The rise of ISIS*. New York: Doubleday.
- [Word Finder](#) (2021), [Online]. Available at: <<https://findwords.info/term/proto-state>> Accessed: 11 April 2021.
- Yassir Abdul-Mohsen, *The Third World War: ISIL, Iraq, and Managing Savagery* [in Arabic] (Beirut: Press Corporation of Distribution and Publishing, 2015).

**تكيف تنظيم داعش في ضوء القانون الدولي والشريعة الإسلامية****ایاد یاسین حسین**

كلية القانون، جامعة صلاح الدين - أربيل

زميل معهد الدراسات المتقدمة - جامعة أوروبا الوسطى (2021-2022)

**المخلص**

ظهرت ظاهرة غريبة على الساحة الدولية المعاصرة الا وهي ما تسمى بـ"الدولة الإسلامية في العراق والشام" (تنظيم داعش). لقد استولوا على مساحات شاسعة من العراق بين أعوام 2014 و 2017 وارتكبوا جرائم مروعة ضد المدنيين الأبرياء في المناطق التي سيطروا عليها، وقد استهدفوا أقليات معينة بشراسة خاصة، واضطهدوهم باسم الدين بما يتعارض مع المبادئ الإنسانية وتعاليم الإسلام. تحاول هذه الورقة البحثية تكيف طبيعة داعش بالشكل الذي اتخذته خلال نزاعهم المسلح ضد القوات المسلحة النظامية العراقية والكرديستانية وضد قوات التحالف الدولي المناهضة لداعش. سيتم هذا التكيف من خلال المعايير المعتمدة القانون الدولي والشريعة الإسلامية. لقد أساء تنظيم داعش تفسير آيات قرآنية معينة من خلال إهمال القواعد التقليدية لتفسير القرآن والشريعة من أجل إضفاء الشرعية على أيديولوجيتهم المتطرفة وأفعالهم الشنيعة، حيث ساهم هذا بشكل ملحوظ في زيادة ظاهرة الإسلاموفوبيا في الدول غير الإسلامية. من الناحية المنهجية، يعتمد تحليل هذه الورقة على النصوص التأسيسية ووجهات نظر علماء القانون الدولي والشريعة. ويخلص إلى أن داعش ليست دولة بموجب القانون الدولي وليست إسلامية وفقاً للشريعة. من خلال التوصيف الدقيق لطبيعة وجوه داعش كمنظمة ومن خلال توضيح بعض جوانب الغموض المتعلقة بوضعهم القانوني بموجب كل من القانون الدولي والشريعة الإسلامية، تهدف هذه المقالة إلى استرشاد علماء القانون والشريعة إلى تحسين وضوحهم المفاهيمي بشأن هذه المسألة، وبالتالي تحسين اتساق ودقة أحكامهم ونصوصهم القانونية والشريعة في المستقبل.

**الكلمات الدالة:** تكيف تنظيم داعش، القانون الدولي، الشريعة الإسلامية.**پۆلێنکردنی رێکخراوی داعش له رۆشنایی یاسای ئیوودهوڵهتی و شهريعهتی ئیسلامی****ایاد یاسین حسین**

کۆلیژی یاسا، زانکۆی سهلاحه ددین-ههولێر

هاورپێی پهیمانگای توێژینهوه پێشکوهتوووهکان-زانکۆی ئهوروپای ناوهراستی (2021-2022)

**پوخته**

دیاردیهکی نامۆ لهسهه گۆرپانی ئیوودهوڵهتی هاوچهرخ دهركهوت، ئهويش بهناو "دهوڵهتی ئیسلامی له عێراق و شام (رێکخراوی داعش)". له تیوان سالانی 2014 بۆ 2017 دهستیان بهسهه ناوچهیهکی بهرفراوانی عێراقدا گرت و لهو ناوچهیهکی دهستیان بهسهردا گرت تاوانی ترسانکیان له دژی خهڵکی مهدهنی بێتاوان ئهنجامدا، ههلبهته به توندیهکی تايهت ههندیک كه مینهیان كرده ئامانج كه به پێچهوانهیه بنه ما مروييه كان و رینوینیه ئیسلامیه كان به ناوی ئاینهوه گۆشهگیریان لیکردن. ئهم توێژینهوهیه ههول دهوات سروشتی رێکخراوی داعش بهو شیوهیه پۆلێن وههلبهسهنگیتیت كه له کاتی شهپه چهكداریهكهیان له دژی هێزه چهكداریهکانی عێراق و كوردستان و هێزهکانی هاوچهوانی ئیوودهوڵهتی دژ به داعش دهركهوت. ئهم ههلبهسهنگاندنهش له رێگهی ستاندارده پهسهندكراوهکانی یاسای ئیوودهوڵهتی و شهريعهتی ئیسلامهوه ئهنجام دهدریت. ههلبهته داعش ههندیک تايهتی قورئانی به چهواشه لیکداوهتهوه بۆ شهريعهتدان به ئایدۆلۆژیای توندپهرو و كرداره قهزوه و نهکانیان به پشتگوێخستنی پێسا پیاوهكراوهکانی لیکدانهوهی قورئان و شهريعهت، ئهمهش بهشداریهکی بهرچاوی كردوووه له سههههه لانی ئیسلاموڤۆبیا له ولاتانی غهیره موسلماندا. له رووی میتۆدۆلۆژییهوه، شیکاری ئهم توێژینهوهیه له دهق و روانگی بناغهی زانایانی یاسای ئیوودهوڵهتی و شهريعهتهوه وهرگیراوه. توێژینهوهكه بهو ئهنجامه دهگات كه داعش به پێی یاسای ئیوودهوڵهتی دهوڵت نییه و به پێی شهريعه ئیسلامیه ئیسلام نییه. له رێگهیه ههلبهسهنگاندنی وردی سروشت و ناوهروکی داعش وهك رێکخراویك و به دیارکردنهوهی ههندیک له ناروونیهکانی پهيوهست به پێگه یاسایان له ژێر رۆشنایی ههردوو یاسای ئیوودهوڵهتی و شهريعهتی ئیسلامیدا، ئامانجی ئهم توێژینهوهیه رێنوینیکردنی زانایانی یاسایی و شهريعهته بۆ باشتکردنی پوونی تیکه بئشپیان سهبارته بهم پرسه و بهم شیوهیه بهكدهنگی و وردی دهق و حوكمهکانی یاسایی و شهريعهتیان له دهاهاتودا باشت بکن.

**وشه کلێبیهکان:** ههلبهسهنگاندنی رێکخراوی داعش، یاسای ئیوودهوڵهتی، شهريعهتی ئیسلامی.