

## The Islamic Doctrine of Peace and War

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### Introduction

The four horsemen of the Apocalypse - Death, Famine, Plague, and War - have traced a bloody cause of sorrow, destruction, and devastation through human history. Technology has now made it frequently possible to overcome two of the dreaded horsemen, Plague and Famine. Encounters with the third horseman, Death, have been postponed by that same technology; in many parts of the world, for example, average life expectancy has substantially risen. Ironically, while technology blunted the impact of these three horsemen, it has made all the more dreadful the ravages of the fourth horseman, War. This refers to the absolute deadliness of nuclear technology, and the increasing lethality of non-nuclear technology, such as poison gases, "smart bombs", and chemical and biological agents.<sup>1</sup>

Despite its terrible costs, war seems to be a human habit that

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can range in scope and intensity from small, localized conflicts to global struggles that directly or indirectly involve most of the Earth's population. We can see war as part of an operational continuum that includes four major segments: peaceful competition, peacetime competition (characterized as low-intensity conflict), conflict, and war.<sup>2</sup> Most wars of recorded history are internal wars: wars between groups contending for power within a nation. The perception of civil wars is that they are not isolated and discrete developments but are part of a much larger struggle that can affect international relations by drawing in a major power on the side of one of the two major antagonists. This was particularly the case of a number of civil wars during the half-century of the Cold War, as either the United States or the Soviet Union perceived one side as an ally of its rival. A frequent scenario was that one or the other superpower increased both intensity and the duration of a civil war by pouring support into a nation, to counter supposed advances by friends or allies of the other superpower.<sup>3</sup>

## War and Culture

The literature on war abounds with links between particular cultures and the ways they approach and fight wars. We will examine links between culture and war in two major settings: In the West and the world of Islam. These two worldviews offer guidance to their respective adherents on the normative questions about war. Islam

clearly prescribes when a just war can be fought and also prescribes definite limitations on means that can be used in prosecuting it. In contrast to Islam, Christian teachings are much more ambiguous, for early Christians interpreted the Gospel as enjoining pacifism. We will first make reference to Western/Christian scholarship on issues of war, and then the study proceeds to examine Islamic teachings on war and peace as embodied in the Qur'an, the Sunnah, and Muslim legal thought as it developed since the Abbasid era.

### **The Western/Christian Concept of War**

Although war has always characterized Western/Christian societies, there have frequently been agonizing moral conflicts between war itself and the Western Christian ideals of being peacemakers, turning the other cheek, and not killing. The first serious attempts to link Christianity and war came at the start of the crusades, when the leaders of the Roman Catholic Church developed the idea of a "Holy War" - in this case a war to redeem the holy sites of Christianity in Palestine from Muslim foes. However, this idea of "holy war" held only if the enemy was non-Christian, and Christian ethicists struggled to develop ideas that would justify war even between or among Christians. The result was the doctrine of "just war" that evolved in the Middle Ages and early modern period. The first major Christian thinker to accept the proposition that engaging in warfare might be

justifiable, and to enunciate principles for judging the morality of particular wars, was St. Augustine. The principles that he put forward were elaborated by subsequent Catholic thinkers to form the theory of just war. As a doctrine just war is concerned with when war is morally justified and how and against whom it should be conducted.<sup>4</sup> Much of the history of international law and treaties is concerned with putting the principles of just war into general effect. Gradually there emerged other links between Christianity and warfare. During the reformation, for example, Protestant and Catholic Christians battled each other in the belief that they were doing what God wanted. The most devastating of all these wars erupted in the Holy Roman Empire. As a result of this war (1618-1648), known as the Thirty Years' War, much of the Holy Roman Empire was left a wasteland, with cities destroyed, villages emptied, and wolves prowling streets and towns. The Western tradition has thus been to justify war, even by a Christian society and even against other Christians, and to view war as more or less rational and perhaps even inevitable. Perhaps the best example of this view of war is the work of the nineteenth-century Prussian strategist, Karl von Clausewitz, whose text "On War" is in many ways still at the heart of Western thinking. To Clausewitz, war was essentially part of a spectrum along which international politics could be conducted; it was, in his famous dictum, "a continuation of politics by other means".<sup>5</sup> In this Western tradition, emphasis is placed on two major

goals: destruction of the enemy's forces and control of the enemy's territory. In many ways, chess is an excellent analogy for the Western style of war, with its direct confrontational style and its emphasis on putting the rival player's pieces out of commission.

### **The Concept of War in Islam**

As in Christianity, the orientation of Islam is towards peace. Islam is intended to bring human beings into harmony with Allah (SWT), the self and fellow human beings. However, many Western writers express stereotyped opinions portraying Islam as the most warlike of all religions. This has been particularly the case since the attacks on the World Trade Center and the Pentagon in the U.S.A. in September 2001. Those attacks prompted a wave of writings accusing Islam of promoting terrorism, extremism and fanaticism. In a recent study, Samuel P. Huntington wrote that contemporary global politics is the age of Muslim wars, and that these wars have replaced the Cold War as the principal form of international conflict. He stated that five of the seven states listed by the U.S. State Department as supporting terrorism are Muslim, as are a majority of foreign organizations listed as engaged in terrorism.<sup>6</sup> Earlier, the same writer predicted that the post-Cold War era would witness a "clash of civilizations" that would involve the Western civilization and Islam.<sup>7</sup> Some Western analysts, however, narrow their perspective to "radical Islam" as the source

that nurtures violence and extremism.<sup>8</sup> The major contention of this paper is that such a Western point of view does not correlate with the true spirit of Islam and that it disregards the absoluteness of Muslim doctrine on this matter. The Islamic classical doctrine of war was developed during the Abbasid period. This doctrine is predicated on three fundamental elements:

1. The world is divided into two domains: Dar-ul-Islam, literally territory of safety, which denotes the area where Islamic law prevails. The second domain is Dar-ul-Harb, literally the territory of war, an area not yet subject to Islamic law. Imam Shafii adds a third domain: Dar-ul-'Ahd, alternatively called Dar-ul-Sulh, which indicated non-Muslim territories involved in treaty granting sovereignty to a Muslim state but maintaining a measure of autonomy.<sup>9</sup>

2. Muslims are under permanent Jihad (holy war) obligation until Dar-ul-Harb is subdued and annexed to Dar-ul-Islam.

3. An amicable relationship between Dar-ul-Islam and Dar-ul-Harb can be maintained if the latter pays Jizyah (poll tax) to the former.

According to this understanding, early Muslim jurists maintain that a perpetual state of war exists between the two domains (Dar-ul-Islam and Dar-ul-Harb). This bellicose condition implies that war is the normal state of things, and that peaceful coexistence between Muslims and non-Muslims is dependent on the latter's acceptance of Islam or

their payment of Jizyah to the formers. There are obvious flaws in this view because it violates some basic Islamic principles, and has been criticized by some contemporary Muslim writers.<sup>10</sup>

In defense of their position, classical jurists use evidence from the Qur'an and the Sunnah. From Surat Al-Baqarah they use three verses:

“Fight in the cause of Allah those who fight you  
But do not transgress limits; for Allah loveth  
Not transgressors.” (Verse 190)

“And slay them wherever ye catch them,  
And turn them out  
From where they have turned you out;  
For persecution is worse than slaughter;  
But fight them not at the sacred Mosque,  
Unless they (first)  
Fight you there; but if they fight you,  
Slay them  
Such is the reward of these who reject faith.” (Verse 191)

And:

“And Fight them on until there is no more  
Persecution  
And the religion becomes Allah's.  
But if they cease,  
Let there be no hostility

Except to those who practice oppression.” (Verse 193)

The first verse (190) stipulates that war is permissible in self-defense, and under well-defined limits. When persecuted, war must be undertaken with vigor, but not vindictively, but only to restore peace and freedom for the worship of Allah. Under no circumstances certain limits must not be overstepped: women, children, old and infirm men should not be maltreated, nor trees and crops cut down, nor peace withheld when foe comes to terms.

The second verse (191) illustrates the unfolding of events that happened at al-Hudaibiya in the six year of Hijra. Many Muslims were exiles from Makkah where the pagans persecuted Muslims, prevented them from visiting their homes, and even kept them from performing the pilgrimage. This was intolerance, oppression, and autocracy on the part of the pagans. Despite that Muslims reached an agreement with their foes to prevent bloodshed, which they scrupulously observed while the other party failed to do that.

The general spirit of this verse is that Islam is the religion of peace, goodwill, mutual understanding, and good faith. But it will not acquiesce in wrongdoing, and its men will hold their lives cheap in defense of honor, justice, and the religion which they hold sacred. If the pagans want forcibly to prevent Muslims from exercising their sacred rites, they have declared war on Islam and it would be cowardice to ignore the challenge or to fail in rooting out the tyranny.

The third verse stipulates that if the opposing party ceases to persecute Muslims, hostility ends with them as a party, but it does not mean that Muslims become friends to oppression. Muslim fight is against wrong: there should be no rancour against men; war should not be used to force and coerce people into Islam.<sup>11</sup>

It becomes crystal clear that the three verses alluded to above, sanction war only against oppressors and tyrants who prevent Muslims from freely practicing their faith.

Some of the classical jurists consider the first fourteen verses of Surat At-Tauba as laying the foundation of Jihad against pagans. Attention is usually drawn to verse five, which reads:

“But when the forbidden months  
 Are past, then fight and slay  
 The pagans wherever ye find them,  
 And seize them, beleaguer them,  
 And lie in wait for them.  
 In every stratagem (of war);  
 But if they repent,  
 And establish regular prayers.  
 And pay zakat  
 Then open the way for them;  
 For Allah is oft forgiving,  
 Most merciful.”

The verse is definitive in urging Muslims to fight the pagans, subdue them until they embrace Islam. The mushrikin (polytheists) should be fought as long as they show no signs of desisting from their treacherous designs by right conduct, which the state of war supervenes-between Faith and Unfaith. The verse stipulates that when war becomes inevitable, it must be prosecuted with agility and vigor. But even then there is space for repentance and amendment on the part of the enemy, and if that happens, the duty of the Muslim party is forgiveness and the establishment of peace.

The following verse explicitly declares that even among the enemies of Islam, there may be individuals who may be in a position to require protection. Full asylum is to be given to them, and they should be escorted to a place where they can be safe. Some leading jurists argue that the term polytheists in the fifth verse specifically refers to the pagan Arabs because of their continuous conspiracy against Muslims and their disregard for covenants they had made with the Muslim party. Because of their treason they had to be coerced into Islam.<sup>12</sup> The validity of this assertion is reinforced by the fourth verse, which exempts non-Muslims who discern fidelity and not treachery as far as their treaties with Muslims are concerned.

Some classical scholars interpret the Qur'an and the Sunnah as requiring Muslims to fight not only pagans but also People of the Book (Jews, Christians, and others with revealed scriptures) who do not

believe in the Last Day, do not enjoin good and forbid evil as Allah requires, and do not recognize the religion of truth. This conviction is based on the verse that says:

“Fight those who believe not  
In Allah nor the last day,  
Nor hold that forbidden  
Which hath been forbidden  
By Allah and his Messenger,  
Nor acknowledge the religion  
Of truth, from among  
The People of the Book  
Until they pay Jizyah  
With willing submission  
And feel themselves subdued.” (9:29)

However, other Muslim scholars have severely criticized this position as misreading the Qur’an. The interpretation of the classical jurists would render some Qur’anic verses inexplicable. Far from being ordered to coerce all non-Muslims to embrace Islam, Muslims are told that there should be no compulsion in religion, as one verse puts it:

“Let there be no compulsion  
In religion: Truth stands out  
Clear from error: Whoever  
Rejects Tagut and believes



In Allah hath grasped  
 The most trustworthy  
 Hand-hold, that never breaks.  
 And Allah hearth  
 And knoweth all things.”

In fact if Allah had willed it, all people would be believers; it is not the right of anyone to exert pressure on others and force them to accept faith against their free will. Verse 99 in Surat Yunus is explicit on this:

“If it had been thy Lord’s will,  
 They would all have believed, -  
 All who are on earth!  
 Wilt thou then compel mankind,  
 Against their will, to believe!”

The message of this verse is clear: forced faith is no faith. Muslims must guard against the temptation of forcing faith. Thus holding a creed other than Islam does not render an individual or a community an enemy against whom jihad may be invoked. The historical evidence is in tandem with the above Qur’anic injunctions. We refer here to the cordial relationship between Christian Abyssinia and the early Islamic state. While maintaining its Christian identity, Abyssinia courted few Muslim families who took refuge there to escape the Qurayshi persecution.<sup>13</sup> That peaceful coexistence is a practical rebuttal for the

idea of dividing the world into an abode of Islam and an abode of war and its corollary conception of a permanent state of war.<sup>14</sup> We may conclude that contrary to assertions of the classical jurists, war is not the instrument of the Islamic state to spread Islam and extend its territory or to subjugate non-Muslims; rather, the aim of war is to establish and assure justice, and remove oppression and tyranny.<sup>15</sup>

Islam recognizes that antagonism between individuals, groups, and nations is permanent and inevitable. In Surat Hud a verse makes this point very clearly:

“If thy Lord has so willed,  
He could have made mankind  
One people: but they  
Will not cease to differ.” (11:118)

With this perception in mind, war not only represents an inevitability but also a fundamental necessity for the harmonization of the world, by means of mutually neutralizing human beings.

The second half of verse 251 of Surat Al-Baqarah stipulates:

“...And did not Allah  
Check one set of people  
By means of another,  
The earth would indeed  
Be full of mischief:  
But Allah is full of bounty

To all the worlds.”

Thus, in Islam there exists a doctrinal element, which is combative, and a historical tradition of war. However, battle is permitted only to check injustice. War must necessarily be waged as a form of self-defense; hostilities must be carried out with decency and according to divine ways. The permission to wage war is full of reservations. Intervention becomes a moral obligation, more so in the case of persecution of a believer. Islam requires believers to defend not only the Muslims but also Jews and Christians. As one Western writer observes this kind of military intervention corresponds to what international law calls as “humanitarian intervention” and the assertion of basic human rights.<sup>16</sup> To recapitulate, the Islamic doctrine of war precisely defines the various motives which entrusted believers with the authority to take up arms: to safeguard the Islamic faith; to defend, maintain, and consolidate the Islamic community; to counter any plots which seek to turn believers away from their religion; to guard what is recognized by divine and human laws; to protect one’s own person; to right an injustice committed toward one’s brothers in religion as well as monotheists who have paid their capitation taxes.<sup>17</sup> We now turn to study the restraints which Islam imposes in the conduct of war.

### **Restraints in the Conduct of War**

Islam prescribes detailed rules for the conduct of a just war. These

established rules cover the whole war process, from the beginning to the end of hostilities. They draw their obligating force from the fear of Allah. It is reported that every time the Prophet (p.b.u.h.) sent an army, he advised the commander to fear Allah and ordered the soldiers to perform good deeds, that is, to behave with decency.<sup>18</sup> The overriding aim here is the prohibition of excess which is the very postulation of modern war law. If a just cause of war has been established and the legitimate authority has sanctioned the war, notice must be given to the enemy. The enemy must also be given options other than fighting. These options would include an invitation to accept Islam, to migrate to territory controlled by Muslims and have the same privileges and obligations as the Muslim migrants, or to come under protection of the Islamic state by paying the Jizyah. If the enemy accepted any of these options, Muslims were to desist from fighting. It is only when all these options were refused that Muslims were allowed to fight.<sup>19</sup>

From the early years of the Arab-Muslim conquest, Muslims adopted a spirit of tolerance toward their foes. This happened at an era when violence knew neither a restraining law nor feeling for subjugated peoples. The Islamic ethics in the conduct of military operations is best summarized in the instructions of Abu Bakr al-Siddiq to his soldiers:

“Remember that you are always under the gaze of Allah and at the threshold of your death, and that you will account for your deeds on the Last Day...when you are fighting for the glory of Allah,



acquit yourselves as men, without heaving your backs; but let not the blood of women, children, or the aged a blemish on your victory. Do not destroy palm trees, do not burn houses or wheat fields, never cut down fruit trees and do not kill cattle unless you are forced to eat them. When you grant a treaty or a capitulation, take care to fulfill their conditions. As you advance, you will come across religious men who live in monasteries and who serve Allah in prayer; leave them in peace, do not kill them and do not destroy their monasteries..."<sup>20</sup>

What Caliph Abu Bakr said should not be interpreted as a piece of ceremony that contains pious recommendations, but should be seen as strict legal obligations which engage the personal responsibility of the combatant. If war strategy is recommended to him, treachery and trickery are strictly forbidden. Muslim soldiers are strictly forbidden from torturing the wounded foes or leaving them to die by not giving them water and food. Salah ud-Din al-Ayubi, the great Muslim commander, liberated hundreds of crusader prisoners when he realized that he did not have enough supplies of food to feed them.<sup>21</sup> Salah ud-Din was strictly following the Prophet's instructions concerning the treatment of war captives with regard to food, clothing, and habitation. The Qur'an instructs in Verse 8 of Surat Al-Insan:

"And they feed, for the love of Allah,

The indigent, the orphan, and the captive."

The Qur'an, fiqh, and historical tradition all provide detailed

instructions concerning the status of prisoners of war. This took place at a time when the accepted tradition and norm was to ransom one's captives and physically liquidate those who did not have the means to buy their freedom. After the decisive battle of Badr, the Prophet (p.b.u.h.) decided to free the prisoners for a light ransom and to keep those who could not pay; however, this last group of captives was freed as soon as they had each taught ten Muslim children to read and write.<sup>22</sup>

Cases of unconditional liberation of prisoners of war are not rare in Muslim history. The Prophet (p.b.u.h.) unconditionally ordered the liberation of all captives when Makkah was captured, and Salah ud-Din released the Christians who had no means of paying for their freedom when the Muslims retook Jerusalem. Noncombatants should be shown respect and kindness as well. This implies that hostilities are limited in their objectives (combatants) and space (the battlefields). Thus, the period of combat is reduced.<sup>23</sup> It should be noted that the term noncombatants extends to include all adult males who have not had any active part in combat: peasants, workers, merchants and members of medical and paramedical personnel who are taking care of the wounded of both sides.<sup>24</sup> The prohibition against harming noncombatants implies the ban on certain arms of indiscriminate nature as well as the extent to which the enemy can be harmed. If, for instance, Muslims are besieging an enemy area where there are women

and children, the Muslim army is not allowed to set fire to nor flood the besieged area. During those days “fire” and “flood” correspond to what we classify today as weapons of mass destruction because they do not discriminate between combatants and noncombatants.<sup>25</sup>

During combat, Muslims are required to grant asylum to the enemy who ask for it. This is done through the institution of aman (guarantee of safety).<sup>26</sup>

A final point stressed by the Islamic doctrine of war is that there is nothing in that doctrine which opposes the idea of a third party remaining uninvolved in combat. This corresponds to what we call today “neutrality”. The Qur’an prohibits Muslims from attacking a group of people, which have not displayed any hostility toward them.<sup>27</sup> Accordingly, international relations are supposed to remain peaceful as long as the outside world has an agreeable and tolerant attitude toward Muslims.

### Termination of Hostilities

There are two ways to bring an end to war: a decisive military victory or a negotiated settlement. Islamic law recognizes diplomatic immunity. Even in the absence of aman, a representative from the enemy side could proceed unhindered to the Islamic leadership, as he is viewed as being on a legitimate diplomatic mission.<sup>28</sup> This is to ensure that avenues for surrender or negotiation are to remain open

during the conflict. Should the Muslims achieve a decisive victory, the lives and liberties of the defeated population are to be safeguarded; they must be treated with justice, respect, and compassion. Pillage, plunder and illegal seizure of property is strictly forbidden. Civilian citizens of conquered territories fall under the “protection” of Islam. They could continue to live there freely, subject to their own legislation. Even at the height of the crusades, resident Christians were generally not molested. With regard to land, it might be kept intact as state property or divided among Muslim warriors. However, the indigenous population might be allowed to retain it provided they pay the *kharaj* or land tax as a rental fee to the authorities. As for the vanquished prisoners of war, the Qur’an recommends that they be released on receipt of a ransom or set free without ransom as an act of generosity.<sup>29</sup>

### **The Doctrine of Peace in Islam**

Islam designates a number of pacific instruments to conduct and organize the international relations of Islamic States with the rest of the world. Foremost among these pacific instruments are:

- a. Negotiations
- b. Treaty-making
- c. International Trade
- d. Exchange of emissaries and diplomatic missions

## Negotiations

Of all the procedures used to resolve differences and cultivate good relations between the Muslim State and other states is understandably negotiation. It consists basically of discussions between the interested parties with a view to reconciling divergent opinions, exchange benefits, or at least understanding the different positions maintained. Negotiation does not involve any third party, and so differs from other forms of dispute management. Islam acknowledges that this instrument as eminently suited to the clarification, if not always resolution, of complicated disagreements.<sup>30</sup>

From its inception, the Islamic state had utilized extensively this instrument. The Prophet (p.b.u.h.) conducted negotiations before his hijrah with a delegation representing the Khazraj tribe, in which he called them to accept Islam, and to help him disseminate the Da'wah, a series of similar negotiations with the Medinan Aws and Khazraj followed.<sup>31</sup> Negotiations leading to the treaty of Hudaibya between the Prophet (p.b.u.h.) and the polytheists of Makkah, those following the Badr Battle and the second year of Hijrah, and the Muslim Wars against the Persians during the Rashidun era, are all examples of tough negotiations that took place between the Muslim State and its adversaries. Both the Qur'an and Sunnah contain irrefutable evidence to sanction this foreign policy instrument. One example from the Qur'an suffices:

"But if the enemy  
 Incline towards peace,  
 Do thou (also) incline  
 Towards peace, and trust in  
 Allah: for He is the One  
 That hereth and knowth  
 (all things)." (61:8)

The interpretation of this verse is clear and straightforward: it requires Muslims to be always ready for the good fight lest it be forced on them; even in the midst of the fight they must be ready for peace if there is any inclination towards peace on the side of their foes. There is no merit in fight by itself. It should be a joyful duty not for itself, but to establish the reign of peace and righteousness and Allah's law. The implication here is that the Muslims should negotiate if the other side agrees to that. The behaviour of the Abbasid and Umayyad states with the Romans and others was in tandem with the above stipulation.<sup>32</sup>

### **Treaties as a Foreign Policy Instrument of the Islamic State**

The Shar'iah views treaties and treaty making as a primary instrument for regulating the relations between the Islamic state and its non-Muslim counterparts during peace and war. Muslim jurists usually classify this topic in a number of categories; most important among these are the following:

1. Legality of Treaties and Treaty making in Islam.
2. Types of Treaties that a Muslim state can negotiate with a non-Muslim state.
3. Stages of treaty making.
4. Requirements of a valid treaty.
5. Termination of a treaty.

Perhaps the best description concerning the status of a legal treaty from an Islamic viewpoint is embodied in a letter from Caliph Ali Ibn Abi Talib to his governor over Egypt, Al-Ashtar al-Nakhi'.<sup>33</sup> In that document the Caliph ordered his governor over Egypt to negotiate treaties with his adversaries if those treaties did not contravene the Shari'ah and served the interests of the Ummah; in addition, he instructed him to honour his promises. The Shari'ah recognizes a number of stages for the validity of a treaty. These are: (a) negotiations; (b) drafting the treaty; and (c) the signing and ratification of the treaty.<sup>34</sup>

The above stages refer to the formalities of making treaties. The first stage is that both parties must consent to negotiate a matter of common interest to both of them. The Shari'ah requires that negotiators representing their respective states must produce a "full powers" document as evidence that they have indeed the power to conclude the treaty in question. This shari'ah provision provides security to all parties to the treaty that they are making agreements with persons

competent to do so.<sup>35</sup> It follows that any act relating to the making of a treaty by a person not authorized as required will be without any legal effect.

Once an agreement on a treaty has been reached, it must be drafted in a written form before its adoption. The Shari'ah requires that the provisions and words of the draft be concise and clear so as to avoid any conflicting interpretations of the treaty later on.<sup>36</sup> One of the enduring problems facing courts and tribunals and lawyers, both in the municipal and international law spheres relates to the question of interpretation. No wonder, the Shari'ah emphasizes the accuracy of the phraseology of treaty draft. It should be noted that the shari'ah acknowledged that treaties may be made or concluded by the parties in virtually any manner they wish i.e. there is no prescribed form or procedure as to how a treaty is formulated.<sup>37</sup> Once a treaty has been drafted and agreed by authorized representatives, it has to be adopted by the states concerned before it becomes a binding legal obligation. This adoption will take place by the consent of the parties involved. That consent is given to the text of the treaty by signature followed by the ratification by the competent authorities of the Muslim state.<sup>38</sup> Within this framework, there is a controversy as to which treaties need to be ratified. Some Muslim jurists maintain that ratification is necessary, while others maintain that signatures to treaties are enough for the validity of a treaty.<sup>39</sup>

Finally, the Shari'ah designates the procedure for the duration, invalidity and termination of the operation of treaties. A treaty may be terminated in accordance with a specific provision in the treaty or otherwise at anytime by consent of the Muslim state and the other party after consultation. A treaty may, of course, come to an end if its purposes and objects have been fulfilled or it is clear from its provision that it is limited in time and the requisite period has lapsed.<sup>40</sup> The Shari'ah specifies a number of factors that would invalidate treaties e.g. error, fraud and corruption, and coercion. The Islamic state may invoke an error in a treaty as invalidating its consent to be bound by the treaty, if the error relates to a fact or situation which was assumed by the Islamic state to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by that treaty. Likewise, where an Islamic state consents to be bound by a treaty as a result of the fraudulent conduct of the other negotiating state, the Muslim state may invoke the fraud as invalidating its consent to be bound. Equally, where the non-Muslim state directly or indirectly corrupts the representative of the Muslim state in order to obtain the consent of the latter to the treaty, that corruption may be invoked by the Muslim side as invalidating the consent to be bound. Of more importance than error, fraud or corruption in the Islamic law of treaties is the issue of coercion as invalidating consent. When consent has been obtained by coercing the representative of the Muslim state, whether

by acts or threats directed against him, according to the Shari'ah, the treaty shall be without any legal effect.<sup>41</sup>

Finally, the Shari'ah considers a treaty void if, at the time of its conclusion, it conflicts with a peremptory rule of the Shari'ah from which no derogation is permitted. This general rule implies that the Islamic state before concluding a treaty with other states must ensure that both the subject and content of that treaty are in congruence with Islam.<sup>42</sup> International Trade as an Instrument of the Islamic State Islam encourages trade among nations. Apart from the material benefits that may accrue from international trade based on the law of comparative advantage, trade creates interdependence among trade partners. This economic interdependence prevents states from going to war against each other and encourages the propensity for peace. Furthermore, more trade brings a shift from a high politics emphasis on military security issues to low politics emphasis on welfare; thus geo-economic interests will come to eclipse geopolitical interests in importance for most trade partners. Muslim jurists draw our attention to a number of Qur'anic verses which encourage trade between the Islamic states and non-Islamic ones. For example:

“Allah forbids you not,  
With regard to those who  
Fight you not for (your) faith  
Nor drive you out

Of your homes,  
 From dealing kindly and justly  
 With them: for Allah loveth  
 Those who are just." (60:8)

The implication of this verse is important; even with unbelievers, unless they are rampant and out to destroy Muslims and their faith, Muslims are urged to deal with them kindly and equitably. This would include exchange of economic benefits between the two sides. Likewise, the Sunnah abounds with signals encouraging trade with non-Muslims.<sup>43</sup> However, the Shari'ah recognizes certain guidelines for economic exchanges between Muslims and non-Muslims. For instance, all economic transactions should be within the framework of the Shari'ah. Riba or usury is prohibited in any transaction.<sup>44</sup> Secondly, priority in economic transactions should be given to other Muslim states and groups, as it is thought that this will accelerate integration among Muslim markets. Thirdly, the major objective of such transactions is to serve the interests of the Islamic state and its subjects. Fourth and last, in all its economic and trade transactions, the Muslim state is expected to uphold the highest standard of morality e.g. concerning the quality of the goods and services exchanged.<sup>45</sup> Exchange of Emissaries and Embassies as a Foreign Policy Instrument of the Muslim State It is fitting to begin our discussion by reciting one verse from the Qur'an:



"O mankind! We created you  
 From a single (pair)  
 Of a male and female,  
 And made you into nations  
 And tribes, that you may  
 Know each other." (13:49)

This verse is addressed to all mankind and not only to the Muslim brotherhood. As it is, mankind is descended from one pair of parents. Their tribes, races, and nations are but convenient labels by which we may know certain differing characteristics. However, before Allah they are all one. Some Muslim jurists have used this verse as the basis for the exchange of emissaries between the Muslim state and its non-Muslim counterparts.<sup>46</sup> The Sunnah abounds with references to the rules covering the exchange of emissaries, how they should be received, and the immunities they enjoy in the host state.<sup>47</sup> The Islamic state in its formative years did not know the institution of permanent missions as it is practiced today. However, Muslims exchanged emissaries with non-Muslims on ad hoc basis. It was only towards the end of the Abbasid era that the sending of permanent missions had become firmly rooted. From its early years the Islamic state considered it unjustifiable to harm an emissary sent from another state as a means of influencing the other state; though it was then natural to kill a messenger who brings an unpleasant message, or to use another

state's official as a hostage or bargaining chip. The Prophet (p.b.u.h.) spared the two messengers of Musailama al-Kazzab from being killed despite the fact that they had upheld the latter's claim to prophethood. From the very beginning, the Shari'ah institutionalized the doctrine of 'aman' or immunity and safety of foreign emissaries as long as they are accredited to the Muslim state. This practice is today the bedrock of international law.<sup>48</sup>

However, flagrant violations of the sanctity of embassies and emissaries do occur. For instance, in 1979 Iranian students seized and occupied the U.S. embassy compound in Tehran, holding U.S. diplomats hostage for more than a year. The Islamic government of Iran did not directly commit this act but did condone it and refused to force the students out of the embassy. Such violations were not confined to Muslims alone, but some leading Western nations engaged in such practices in 1984 following an anti-Libyan demonstration outside Libya's embassy in London, shots from inside the embassy's compound were fired resulting in the death of a British policewoman. British security personnel laid siege to the embassy premises, and later on stormed it to look for suspects. Again in 1997, the U.S. and France put pressure on Georgia and Zaire, respectively, to lift immunity from two of their diplomats in order to allow the U.S. and France to prosecute those diplomats for reckless driving that killed children.<sup>49</sup>

However we have to differentiate between the Islamic doctrine on the



peaceful conduct of foreign policy and the practices of some Muslim states which may deviate from that doctrine. When we compare this Islamic doctrine with its current Western counterpart, we find that the two are in perfect harmony. Islamic theory is congruent with the norms of international law.

### **Conclusion**

The forgoing discussion has shown that with regard to armed combat, Islam is endowed with moderation and wisdom such as could benefit humanity today. All excesses are banned. War is not an act of retaliation, but an effort to drive out injustice and oppression. Precise restrictions are imposed as to the manner of carrying out military operations, how to treat enemy military personnel, and civilians of occupied territories. In short Islamic war has a particular nature: it is just in its causes, defensive in its initiative, decent in its proceedings, pacific in its end, and humanitarian in its treatment of the conquered army. If Islam abhors war and considers it as an evil to be avoided, it encourages its antithesis, peace. The Shari'ah considers the cultivation of amicable relations with non-Islamic states as wajib i.e. duty if the Muslim state. To achieve that end, the Shari'ah designates four mechanisms for the maintenance of peace and order among nations, these are: negotiations, treaty-making, exchange of emissaries and missions, and trade and economic transactions. The Shari'ah specifies

scrupulously the juristic modes for the operation of these instruments in the foreign policy of the Muslim state. □

**Notes:**

1. For further discussion on the lethality of modern warfare, see Jonathan Schell, *The Fate of Earth*, New York: Alfred A. Knopf, 1982, pp. 56-67.
2. James Gallagher, *Low Intensity Conflict: A Guide for Tactics, Techniques, and Procedures*, Harrisburg, Penn.: Stockpole Books, 1991, pp. 83-91.
3. Joel Krieger, *The Oxford Companion to Politics of the World*, New York: Oxford, 1993, p. 231.
4. For more details see Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York: Basic Books, 1992, pp. 67-85.
5. Karl von Clausewitz, *War, Politics, and power*, Translated and edited by Edward M. Collins, Regnery Publishing Inc., 1997, pp. 21-27.
6. Samuel P. Huntington, *Newsweek*, Special Edition 2002, December 2001, pp. 19-21
7. Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order*, NY: Simon & Schuster, 1996, pp. 216-221.
8. See for instance Francis Fukayama, *Newsweek*, Special Edition 2002, December 2001, p. 15.
9. For more on these distinctions see Mohamed Talaat al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach*, Netherlands: Nijhoff/ The Hague, 1978, pp. 118-125
10. Among these who criticized the classical doctrine of war are Mohamed Abu Zahrah, Mahmood Shaltout, and Mohamed al-Ghunaimi, A coherent critique is provided by Louay M. Safi, see his article " War and Peace in Islam", *The American Journal of Islamic Social Sciences*, Vol. 5, No. 1, 1988.
11. In our interpretations of these verses we depended on " The Holy Qur'an: English Translation of the Meaning and commentary", Al-Madinah; King Fahad Holy Qur'an Printing Complex, 1980.
12. Abu Hanifah, al-Shafii and Malik, all top jurists, agree that the verses of only to the Arab pagans. Cited in al-Mawardi, *Al Ahkam al Sultaniyah*, Cairo: Dar al Fikr, 1983, pp. 92-97.
13. Majid Khadduri, *War and Peace in the Law of Islam*, New York: AMS Press, 1979, p. 256.
14. Louay Safi, *War and Peace in Islam ...op. cit.*, p. 40.
15. Mohamed Abu Zahrah, *Al 'Alagat al Dawliyah fi al Islam (International Relations in Islam)*, Cairo: The Supreme Council for Islamic Affairs, 1964, pp. 54-60.
16. Marcel A. Boisard, *Jihad: A Commitment to Universal Peace*, Indianapolis: American Trust Publications, 1991, p. 35.
17. *Ibid.*
18. Majid Khadduri, *The Islamic Law of Nations, Shaybani "Siyar"*, Baltimore: Johns Hopkins, 1966, pp. 75-76.
19. Imam Muslim, *al Jami al Sahih*, translated by Abdul Hamid Siddiqi. Lahore: Ashraf Press, 1972, pp. 87-92.
20. Mohamed Abu Zahra, *Concept of War in Islam*, Cairo: The Supreme Council for Islamic Affairs, 1987, p. 59
21. *Ibid.*, p. 63.
22. Cited in Marcel A. Boisard, *Jihad: A Commitment to Universal Peace, op.cit...*

p.52.

23. Muhammad Z. Khan, "Islam and International Relations", *The Islamic Review* (July 1956): 8.
24. Majid Khaddari, *The Islamic Law of Nations....* op. cit pp. 77-78
25. See Farhad Malekian, *The Concept of Islamic International Criminal Law: A Comparative Study*, London: Graham and Trotman Limited, 1994, pp.203-210.
26. Cited in al Bukhari, *Sahih al Bukhari*, translated and edited by Muhammad Asad, Gibraltar: Dar al Andalus, 1981, pp. 45-46.
27. Verse 90, Surat An -Nisa.
28. Majid Khadduri, *The Islamic Law of Nations....*op.cit., p. 80.
29. See verse 4, Surat Muhammad.
30. Wahba al-Zuhaily, *al-Mufawadat fi al-Islam wa al-Mufawadat al-Dawliya*, Beirut: Dar al-Kutub al-'Ilmiya, 1985, p. 68.
31. Al-Shawkani, *Nel al-Awtar*, Beirut: Dar al-Kutub al-'Ilmiya, 1985, p. 23
32. Mohd al-Sadiq 'Afifi, *Tatawur al-Tabadul al-Diplomasi fi al-Islam*, Cairo: al-Anglo al Misriya, 1986, pp. 36-41.
33. For the full text of the letter see: *Nahj al-Balaqah li 'Ali Ibn Abi Talib*, edited by Ibn Abi al-Hadid, Cairo: Al-Babi al-Halabi, 1329 H.
34. see for instance: Wahba al-Zuhaili, *al-Mufawdat fi al-Islam*, Alexandria: Manshaat al-Ma'arif, 1989, pp. 56-71.
35. Mohd al-Sadiq 'Afifi: *Al-Islam wa al-Mu'ahdat al Dawliyah*, Cairo: Anglo-alMisriya Press, 1985, p. 112.
36. Al-Sarkhasi, *Sharh al Siyar al-Kabir li al-Shaibani*, edited by Salah ed-Din al-Munjid, Cairo: Ma'ahad al-Makhtutat al-Arabiya, 1972, pp. 80-87.
37. Ibn Taimiyah, *al-Qaw'iyid al-Nuraniya al-Fiqhiya*, edited by Mohd Hamid al-Faqi', Cairo: Maktabat al-Sunnah al-Muhammadiya, 1370 H. pp. 33-39.
38. see Al-Shatibi, *Al-Muwafaqat fi Usul al-Ahkam*, commentary by Hassanein Mohamed Makhluf, Damascus: Dar al-Fakr, 1980, pp. 67-71.
39. See al-Galgashandi, *Subh al-'Asha fi Sin'at al-Inshaa*, Cairo: al-Marba'a al-Amiriya, 1931, p. 19.
40. Mohd Tala'at al-Ghunaimi, *Qanun al-Salam fi al-Islam*, Alexandria: Mansha'at al-Ma'arif, 1989, p. 110
41. *Ibid.*
42. Mahmoud Shaltout, *Al-Islam 'Aqida wa Shari'ah*, Cairo: al-Idara al-'Ammal lil Thaqaqah al-Islamiya bi al-Azhar, 1959.
43. For instance Ibn Qaym al-Jawziya, *Ahkam Ahl al-Jizya*, commentary by Subhi al-Salih, Beirut: Dar al-'Ilm lil Malayyin, 1983.
44. See for instance verses 275, 276, and 278 in Al-Baqarah; and verse 130 in Al-i-'Imran
45. see verse 8 in Hud
46. See for instance, Mohd Talaat al-Ghunaimi, op cit., pp. 584-85.
47. See for instance, Ibn Hisham, *Al-Sira al-Nabawiya*, edited with commentary by Mohd Muhy eddin A/Hamid, Cairo: Dar al-Hidaya, 1980, pp. 559-560, 600-601.
48. Ja'afar A/Salam, *Qawa'id al-'Alaqat al-Dawliya fi al-Qanun al Dawli wa fi al Shari'ah al-Islamiya*, Cairo: Maktabat al-Salam al-'Alamiya, 1981, p. 287.
49. these examples are cited in Joshua S. Goldstein, *International Relations*, New York: Addison Wesley, 2001 8, pp. 282-302.