

Islam and international law

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Abstract

This article by an Islamic scholar describes the principles governing international law and international relations from an Islamic viewpoint. After presenting the rules and principles governing international relations in the Islamic system, the author emphasizes the principles of sovereignty and non-interference in the internal affairs of other States and the aspiration of Islam to peace and harmony. He goes on to explain the relationship between Muslims and others in peacetime or in the event of war and the classical jurisprudential division of the world into the abode of Islam (dar al-islam) and that of war (dar al-harb). Lastly he outlines the restrictions imposed upon warfare by Islamic Shari'a law which have attained the status of legal rules.

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While the voices of “the clash of civilizations” are echoing loud, and the so-called “war on terror” is influencing the fate of some communities and many groups of individuals in various countries of the world, it is appropriate to recall the humanitarian values that rally nations and peoples around them. From an Islamic point of view we believe that the difference between people is one of God’s firmly established traditions, and that it is the source of wealth and harmony of the entire human race. There are many Islamic principles that

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endorse this standpoint. We shall explain some of them in general, those that apply to the relationship between Muslims and others in peacetime or in the event of war. We shall point out that Islamic States belong to the international community with all its organizations and instruments. We shall also take into account the existence of armed conflicts and situations of occupation inside and outside Islamic countries, despite the aspiration of the Islamic nations to live in peace and harmony with all nations and races.

Rules governing international relations in peacetime

Basic principles

It is well known that Islamic preaching, including Islamic values and ethics, law and doctrine, has a universal tendency, for it aspires to see welfare prevail and Muslim principles spread throughout the entire world. It does so not for economic, material, racial, imperialist or nationalistic interests, but in order to achieve salvation, happiness, welfare, justice and prosperity for humanity as a whole, both in this life and the hereafter. Doctrine is based on recognition and confirmation of the absolute oneness of God both in Divinity and Lordship, without any blemish of atheism or paganism. Thus belief in God alone, belief in His angels, belief in His revealed books to His messengers, the hereafter and the acts of God are the pillars of this religion.

There is no coercion in the Islamic religion, and no compulsion at all in the dissemination of this doctrine. Freedom, persuasion, dialogue and tolerance are the foundation of the work by Islamic preachers for Almighty God.

People are equal in terms of humanity, respect for human rights and human dignity, and no category or individual is better than others except in piety and good deeds. Cooperation is a principle that all people are required to observe. God says:

“Mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that you may know each other. Verily the most honoured of you in the sight of God is (he who is) the most righteous of you. And God has full knowledge and is well acquainted (with all things).”¹

He also says:

“Let there be no compulsion in religion: truth stands out clear from error ...”²
This is the principle of freedom of religion.

During dissemination of the Islamic message, the principle and slogan are: put the mind and logic into gear, and enforce justice. God mentions this in many verses, such as this one: “Say: O People of the Book! Come to common terms as between us and you: that we worship none but God, that we associate no partners with Him; that we erect not, from among ourselves, lords or patrons

1 Qur’an, (Translation by Abdullah Yussuf Ali, Dar el-liwa, Riyadh, Saudi Arabia (nd), Reprint of Third Edition, Lahore 1938), 49/13.

2 *Ibid.*, 2/256.

other than God. If then they turn back, say ye, 'Bear witness that we (at least) are Muslims (bowing to God's will)',³ and also

"And dispute ye not with the People of the Book, except with means better (than mere disputation), unless it be with those of them who inflict wrong (and injury): But say, 'We believe in the Revelation which has come down to us and in that which came down to you, our God and your God is One, and it is to Him we bow (in Islam).'"⁴

The principle of peace and security is a firmly established rule that should not be violated in any way, except in the case of aggression by others and when the enemy resorts to arms. God says:

"Ye who believe! Enter into Islam whole-heartedly, and follow not the footsteps of the evil one, for he is to you an avowed enemy."⁵

The rule governing the relationship between Muslims and People of the Book (Jews, Christians and others) is the ideal, most rational and unmistakable methodology, expressed in two verses of the Qur'an:

"God 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 God loveth those who are just! God only forbids you, with regard to those who fight you for (your) faith, and drive you out of your homes, and support (others) in driving you out, from turning to them (for friendship and protection). It is such as turn to them (in these circumstances), that do wrong."⁶

In their long history since the days of the Prophet, Muslims have been committed to following this path. Thus the Prophet's Message and that of his Companions and followers was a faithful expression of the one and only message, addressed to the world's monarchs, princes and leaders:

"Join Islam and you will be unharmed, otherwise you would have committed the same sin as the common people (farmers, workers, traders and others). O People of the Book! Come to common terms as between us and you: that we worship none but God, that we associate no partners with Him, that we erect not, from among ourselves, lords or patrons other than God ..."⁷

In their diverse wars with Arabs, Persians or Romans, Muslims resorted to combat only in defence of their existence, to repel aggression, to empower themselves in order to raise the banner of freedom among all nations on an equal footing, to declare the absolute truth, namely servitude and submission to God alone, without any influence from an oppressive sultan, an unjust ruler or a despotic leader.

The State of Islam (the Caliphate⁸) was the only system based on the emancipation of the individual and society from the phenomenon of

3 *Ibid.*, 3/64.

4 *Ibid.*, 29/46.

5 *Ibid.*, 2/208.

6 *Ibid.*, 60/8-9.

7 *Cf. ibid.*, 3/64.

8 The political-religious State comprising the Muslim community and the lands and peoples under its domination in the centuries following the death (AD 632) of the Prophet Muhammad.

“domination and subordination” that prevailed in human society. For “domination and subordination”, Islam substituted justice, consultation (*shura*), equality, mercy, freedom and brotherhood, which are the most noble Islamic foundations in the politics of government.⁹

In light of those fundamental values and premises, we can identify the rules of peace and security according to the Islamic doctrine and legislation and Muslim practices.

Rules in the Islamic system that relate to the international order

To establish the landmarks for external or international relations, the Islamic system provides for manifold rules. The most important of them can be summed up as follows.¹⁰

Human brotherhood

Muslims are committed to Almighty God’s guidance, as expressed in the Qur’an, when He confirms the unity between creatures and the Creator, the unity of the human race, and fully fledged human brotherhood. Almighty God is the Creator and people are His creation, and His will and wisdom require that people be disparate in their intellectual faculty, opinions, ideas, beliefs and doctrines. People are free to choose what is in their best interest, in light of the divine revelation and the messages of reformist prophets and messengers from ancient times to the era of the Seal (the last) of the Prophets, Mohammed Ibn Abdullah, God’s blessings and peace be upon them all. After having made their choice and put their freedom into practice, people are responsible for the soundness of their choice. Their obligation is to choose what is to their real benefit, in such a way as to achieve their salvation and happiness in this life and the hereafter. Specifying the path to salvation, which consists in following the messages of prophets and messengers, peace be upon them, God says:

“Mankind was one single nation, and God sent messengers with glad tidings and warnings, and with them He sent The Book in truth, to judge between people in matters wherein they differed, but the People of the Book, after the clear signs came to them, did not differ among themselves, except through selfish contumacy. God by His Grace guided the believers to the truth, concerning that wherein they differed. For God guides whom He will to a path that is straight.”¹¹

9 Hamed Sultan, *Ahkam al-qanun ad-duwali fi-ash-shari`a al-islamiyya* (Rules of international law in Islamic *Shari`a*), Dar an-nahda al-`arabiyya, Cairo, 1970, p. 115.

10 Sheikh Rachid Ridha, *Al-wahy al-muhammadi* (Muhammadan Revelation), Dar-al-manar, Cairo, 1955, p. 228, and by the same author, *Tafseer al-manar (al-manar exegesis)*, Dar-al-manar, Cairo (nd), Vol. 10, pp. 139-144; Mohammed Abu-Zahra, Introduction to the *as-siyar al-kabir* of Mohammed Ibn al-Hassan ash-Shaybani, Cairo (nd), pp. 41-53 and Wahbeh M. al-Zuhili, *Athar al-harb fi-l-fiqh al-islami* (The effects of war in Islamic law), reprint of the 3rd ed., Dar-al-fikr, Damascus, 1998, pp. 141-147.

11 Qur’an, 2/213.

Warfare is only for defence, to prevent injustice and fend off aggression. Persons should not be maimed, nor should they be starved, made to suffer thirst, tortured, severely abused, assaulted or their property plundered, in violation of the sanctity of human brotherhood, except when necessity so requires and to ward off aggression.

Honouring the human being and preserving human rights

To honour the human being, to protect each person's existence and to preserve their rights, regardless of their attitude or behaviour, are considered by the Holy Qur'an as basic elements in the perception of humankind. God says "We have honoured the sons of Adam, provided them with transport on land and sea, given them for sustenance things good and pure, and conferred on them special favours, above a great part of Our Creation."¹²

The rights of the human being, whom God created and for whom He ensured a basic and permanent livelihood, namely the right to life, freedom, equality, justice, consultation and ethical conduct, are the essential and fundamental principles that should be preserved. Relations with other human beings should be governed by those principles, under all circumstances, in dialogue and debate, in peaceful coexistence, in peace and in war.

Thus, in God's legislation and religion it is prohibited to harm or inflict injury on any human being because of their religion. Nor should they be coerced into changing their religion. Their dignity should be inviolable, they should not be tortured in a way that offends their dignity. Their honour should not be attacked, nor should their modesty be violated. They should not be oppressed, nor should they be subjected to any practices that contravene morality and codes of ethics. These are the fundamental principles to which Muslims or pious people of any religion are committed.

Commitment to the rules of ethics and morality

Ethics are the container of religion, the pillar of civilization, setting the basis and standards for dealings and relations between individuals and States alike: no human being, nation or State should be treated in a way that transgresses the values of ethics and morals, especially the criteria of virtue and nobility of spirit. It follows that enslavement, degradation, oppression and coercion for any reason whatsoever are prohibited. Demolition, destruction, the expulsion of human beings from their homes, houses or land are also forbidden, as is violation of the sanctity of honour and cherished values, even if the enemy's behaviour is deemed excessive, base or dishonourable. He should not be treated in like manner, on the basis of reciprocity, because honour is one of God's sacrosanct values on earth. It is inviolable and untouchable, regardless of whether the person is an ally or an enemy, and irrespective of that person's sex, religion, belief or doctrine. Any offence or sin is a prohibited act and incurs guilt, whether it is committed by friend or foe.

12 *Ibid.*, 17/70.

In one of his messages to the leader of his armies, Sa'd Ibn Abi Waqas, Omar Ibn Al-Khattab¹³ (may God be pleased with them) said: "I order you and those accompanying you to be most careful about committing offences against your enemies, as the sins of the army are more fearful than their enemy. Muslims win because of their foe's disobedience to God, had it not been for this, we wouldn't have power over them, because their numbers surpass ours, they are better equipped than we are. Hence, if we are equal in wrongdoing, they would be superior to us. Unless we prevail because of our values and good deeds, we will never overcome them with our force. (...) Never say: Our enemies are worse than us, thus they will never empower us even if we commit an offence, for many a people have been targeted and subjugated by people worse than they are."¹⁴

Justice and equality in rights and duties

Justice in dealing with others is a natural right; it is also the basis for the survival of the governmental system. Oppression is a harbinger of the destruction of civilizations and prosperity, and of the collapse of the system. Hence, Almighty God says: "*God commands justice, the doing of good ...*",¹⁵ whereby the doing of good is added to justice to eradicate any rancour from people's minds and foster friendship among them. God also says:

"O ye who believe! Stand out firmly for God, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety: and fear God. For God is well-acquainted with all that ye do."¹⁶

The Divine Saying related by the Prophet enjoins: "O My subjects! I forbade injustice to Myself, and forbade it among yourselves. Do not do others injustice".¹⁷ There is also a very famous and timeless saying by Caliph Omar, "Since when did you enslave people who were born free?"

The right to equality in rights and duties and to litigation are natural rights, and the latter is complementary to and expressive of the right to justice. Hence no group or person, not even a monarch, should be treated with favouritism, with discrimination over others. The Prophet (peace be upon him) says: "People are equal like the teeth of a comb",¹⁸ and in another saying, "If Fatima, daughter of Mohammed [my daughter], stole, I would cut off her hand."¹⁹

One of the rare examples of justice in dealing with other nations is the story of the Samarkand people, who complained to the Omayyad Caliph Omar Ibn Abdul Aziz (717-720) about the Muslim commander Qutayba's injustice and discrimination when he conquered their country without any prior warning. Omar sent his

13 Omar I, Second Caliph of Islam (634-644).

14 Jamal Ayyad, *Nuzum al-harb fi-l-Islam* (Statutes of war in Islam), Maktabat al-Khangi, Cairo, 1951, p. 43.

15 Qur'an, 16/90.

16 *Ibid.*, 5/8.

17 Related by Muslim Ibn al-Hajjaj (according to Abi Dhar al-Ghaffary), in his *Sahih* (The Genuine).

18 Related by Abu Hatem-ar-Razi, in his *Ulal al-Hadith*, and others.

19 Related by the authors of the six books of Hadith, except for Ibn Majah.

judge to settle the matter. His decision was that Arabs had to withdraw from the conquered territory and to go back to their camps, unless a new conciliation pact was concluded or the conquest had taken place after due warning.

Mercy in peace and war

The ethics and main principles of Islam prescribe tolerance, mercy and the granting of amnesty when dealing with harsh situations, and demand that strictness, intransigence or cruelty in excess of the normal limits be avoided, in accordance with the nature of the Islamic Message as described by Almighty God addressing the Prophet in these words: “We sent thee not, but as a mercy for all creatures.” In other words, human beings, animals, jinn and inanimate beings, and indeed all things, must be treated as thus prescribed. After the conquest of Mecca, the Prophet, peace be upon him, was tolerant towards the Quraysh, the former ruling tribe there, who had excessively injured him. He told them: “Today, there is no blame on you, go, you are set free.”

Honouring covenants and commitments, as long as the other party is faithful to its own pledges (pacta sunt servanda)

This is the basis for building up trust, esteem and respect. Islam therefore prohibited perfidy and treason in all circumstances. Many Qur’anic verses made the fulfilment of covenants, contractual obligations or promises mandatory. For example, Almighty God says: “Ye who believe! Fulfil (all) obligations”²⁰ and “Fulfil the Covenant of God when ye have entered into it, and break not your oaths after ye have confirmed them, indeed ye have made God your surety, for God Knoweth all that ye do.”²¹

It is forbidden to assist depressed groups seeking aid from the Muslim community, if to do so would contravene agreements. God says: “But if they seek your aid in religion, it is your duty to help them, except against a people with whom ye have a treaty of mutual alliance (...).”²²

Reciprocity, unless contrary to the fundamental principles of virtue and ethics

Although the principle of reciprocity is an ancient one, Islam embraced it in dealing with others in time of peace and war alike to make justice reign, establish standards of fairness and impartiality, and ensure that the enemy would not overstep limits in its deeds and conduct. However, if the fundamental ethical and moral principles are breached, Muslims should not do the same. For instance, Islam proscribes the mutilation of bodies in war, or disfigurement by amputating the nose, cutting off the ear or lips, or slicing the belly open, even if the enemy practises such acts. In a clear and brief *hadith*, the Prophet (peace be upon him) says: “do not mutilate”. At least one fundamental verse should be mentioned: “And if ye punish, let your punishment be proportionate to the

20 Qur’an, 5/1.

21 *Ibid.*, 16/91.

22 *Ibid.*, 8/72.

wrong that has been done to you; but if ye show patience, that is indeed the best (course) for those who are patient.”²³

Recognition of the international personality of other States

The rise of the concept of statehood went hand in hand with recognition of the international personality of States, which was consolidated by the principle of “equal sovereignty among all members of the international community.” This is an acceptable principle from the Islamic point of view, for its purpose is to enable every State to live in freedom, security and peace, and be dedicated to fulfilling its obligations toward its people.

No State has the right to infringe upon the sovereignty of another State, nor is it entitled to invade it or control its destiny and its wealth, as otherwise its sovereignty will be impaired. Furthermore, no State is entitled to interfere in the affairs of other States. The evidence that Islam respects this principle lies in its recognition of the principle of international peace and security for all States. The long history of Islam shows that the Muslim States have been faithful to a policy of peace with other nations and peoples.²⁴

The Qur’an unequivocally provided that other States and peoples should be recognized:

“And be not like a woman who breaks into untwisted strands the yarn which she has spun, after it has become strong. Nor take your oaths to practise deception between yourselves, lest one party should be more numerous than another . . .”²⁵ In other words, beware of breaking your oaths like the unwise woman who broke her yarn after having spun it with precision and perfection, thus letting it unravel into strands. When you use your oaths or pledges to deceive others and expose them to danger, you pretend to respect the oath while concealing your intention to break it and incline toward others, who are more powerful and wealthier. The words “*more numerous than another*”, are an unambiguous recognition of the diversity and multiplicity of nations, peoples and States.

It is also prohibited to interfere in other nations’ affairs or attempt to weaken the structure of another State, as Muslims have no right to act in this manner. Consequently, this is a recognition or acknowledgement of the existence of other nations and a prohibition of any attempts to eradicate them or the standards they have set for their guidance.

Precedence given to the principles of peace, human brotherhood and international cooperation

Islam is keen to reach solutions with other nations on the basis of peace and security, the recognition of partnership in shared interests, and respect for the bond

²³ *Ibid.*, 16/126.

²⁴ See H. Sultan, *op. cit.* (note 9), p. 118.

²⁵ Qur’an, 16/92.

of human brotherhood, since all creatures exist by divine order and divine will. Hence, it is prohibited to kill any human being except for a legal reason, otherwise it would be considered an aggression against the Creator's own creation.

A group of Muslim legal scholars have decided that the basis (general rule) of the relationship between Muslims and others is peace and not war, for God mentions this in many verses, including:

- “Ye who believe! Enter into peace whole-heartedly, and follow not the footsteps of the evil one, for he is to you an avowed enemy;”²⁶
- “O believers! When ye go forth to the fight for the cause of God, be discerning, and say not to everyone who meeteth you with a greeting, ‘Thou art not a believer’ in your greed after the chance good things of this present life!”²⁷
- “Therefore, if they withdraw from you but fight you not, and (instead) send you (guarantees of) peace, then God hath opened no way for you (to war against them);”²⁸
- “But if they (the enemy) incline towards peace, do thou (also) incline towards peace, and trust in God: for He is the One that heareth and knoweth (all things).”²⁹

Accordingly, those legal scholars decided that the reason for combat in Islam is to fight those who are outside the law or to fend off aggression, and not atheism or religious difference. The evidence is that the killing of civilians or non-combatants is prohibited, and *dhimma* (covenant) agreements are concluded with non-Muslims who live in the abode of Islam in peace and without complaints. Furthermore, Islam encourages new venues for interaction and trade with other nations, in order to establish good relations between Muslims and others.

The legal scholar Ibn as-Salah says: “the original opinion is to keep the atheists and settle them down, because Almighty God does not wish to exterminate the creatures, nor did He create them to be killed. However, they may be killed because they inflict injury and not as a punishment for their atheism. Life on earth is not for punishment, but punishment is in the hereafter ... If the matter is as such, then it is not allowed to say: killing them is the rule.”³⁰

Advocates of the opposing view hold that the rule in the relationship between Muslims and others is war, not peace. This is a confirmation, or rather a description, of bad relations that prevailed in the past because of continuous attacks on Muslims and recurrent wars between Muslims and others. The aim of that counter-trend was perhaps to boost the morale of combatants so that they would not lay down their arms, relax and rest, but would be ready for combat, determined to persevere against adversaries who were surrounding Muslims on all sides. Its supporters argue that in the large-scale wars (*maghazi*, expeditions

26 *Ibid.*, 2/208.

27 *Ibid.*, 4/94.

28 *Ibid.*, 4/90

29 *Ibid.*, 8/61.

30 *Makhtut* (manuscript) *fatawa* Ibn as-Salah, Dar al-kutub of Cairo, No. 337, p. 224.

or campaigns), of which 27 were campaigns against Arabs at the time of the Prophet, Muslims were victims of aggression. The same applies to wars against other adversaries such as the Crusaders, Tartars or Mongols.

Unfortunately wars of aggression are not confined to those examples, but are frequent in the history of nations in both ancient and modern times. Nonetheless, the conduct of war must be subject to legal rules. In the following section light will therefore be shed on some relevant Islamic principles.

International relations in the event of war

War obviously has an impact on relations between the belligerents. Each party or group perceives the other as the adversary, is keen to defeat him and to achieve victory and supremacy. The desire to win and defeat the enemy might induce the parties to commit even the gravest offences and crimes. It was therefore necessary to impose restrictions on warfare to regulate both the start and the conduct of hostilities. There are also rules relating to the end of hostilities. Four main points are emphasized below.

The purpose of the classical jurisprudential division of the world into two or three abodes

It is common among Muslim legal scholars to divide the world into two abodes: the *abode of Islam* (*dar al-islam*) and that of *war* (*dar al-harb*); some scholars add a third one, the *abode of covenant* (*dar al-`ahd* or *dar as-sulh*). The abode of Islam consists of countries where the power lies with Muslims, where the rules of Islam are implemented and Islamic rituals are performed. People of that abode are Muslims and people of the covenant (non-Muslims who live in Islamic territory according to a covenant). The abode of war comprises countries which are outside the scope of Islamic sovereignty and where the religious and political rules of Islam are consequently not implemented; its people are belligerents. The abode of covenant consists of those regions that have concluded peaceful trade pacts, a conciliation agreement or a long-term truce with Muslims. In addition, Islamic history gives examples of neutrals such as the Abyssinians, the Nubians and the Cypriots.

In fact, this division has no textual support, for no provision is made for it either in the Qur'an or in the Hadith. It is instead a transient description of what happens when war flares up between Muslims and others. It is a narration of facts, similar to those confirmed by scholars of international law, namely that war splits the international community into two parties: belligerents, in particular the States involved in war; and non-belligerents and neutrals, which comprise the remaining members of the international community.

In reality, in Islamic jurisprudence, as asserted by Imam Al-Shafi'i (767-820), and in contemporary international law, the world is one abode.³¹ If there is no

31 Ad-Dabboussi, *Ta'is an-nazar*, al-matba`a al-adabiyya, Cairo (nd), p. 58.

security and war prevails instead of peace, there will be two zones: one peaceful and the other belligerent. The opinion advocated by some Orientalists and other writers, who claim that the abode of war is waged in permanent antagonism against the abode of Islam, is not acceptable. We consider that the antagonism is temporary and limited to the actual areas of combat or armed conflict.

War as a necessity in Islamic *Shari'a*

In international law, war is an armed conflict between two or more States; relations between the belligerents and between belligerents and neutrals are determined by international law. There are numerous, renewed and complex causes of war.³²

In the Arabic language, war, *jihad* and conquest can have the same meaning, namely to fight against the enemy. However, the term "*jihad*" has become widespread in Islamic jurisprudence. Al Raghīb al-Asfahani said in his *Mufradat al-Qur'an* that "*jihad* and *mujahada*, or militant struggle, mean exerting the utmost effort in fending off the enemy". One of the classical Sunni jurists of the Maliki school, Ibn 'Arafa, also defined *jihad* as "warfare waged by a Muslim against a disbeliever, with whom he has no oath, to raise the word of God Almighty, or against his presence in or penetration into the [Muslim] territory."³³

Jihad is lawful in Islam as a necessity to suppress aggression. It was prescribed in the second year of the Hegira,³⁴ after Muslims had patiently borne for fourteen years the harm done to them by the pagans. The proof can be found in God Almighty's words:

"To those against whom war is made, permission is given (to fight), because they are wronged, and verily, God is Most Powerful for their aid. (They are) those who have been expelled from their homes in defiance of right, (for no cause) except that they say, 'Our Lord is God.'³⁵ The divine words, "they were wronged", and "those who have been expelled from their homes" illustrate the reason for the legality of war, namely that Muslims are oppressed by others (the unbelievers). Whereas God had forbidden warfare in more than seventy verses,³⁶ this was the first verse that prescribed it, as confirmed by another verse:

"Fighting is prescribed for you, and ye dislike it. But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you. But God knoweth. And ye know not."³⁷

Nevertheless, religion was not the motive for warfare in *jihad*, nor was its purpose to subordinate others and compel them to convert to Islam. *Jihad*

32 See H. Sultan, *op. cit.* (note 9), p. 245.

33 Ibn Rushd, *al-muqaddimat al-mumahhidat*, as-sa'ada Press, Cairo, 1905, Vol. I, p.258; al-Khirashi (the First Sheikh of al-Azhar), *fath al-Jalil 'ala mukhtasar al-'Allama Khalil*, Boulaq Press, Cairo, 1880, Vol. III, p. 107.

34 The Hegira (*Hijra*) is the emigration of the Prophet from Mecca to Medina in AD 622 (= year 1 of the Hegira, the first year of the Muslim Era).

35 Qur'an, 22/39-40.

36 Related also by Abdul Razzaq and Ibn al-Mundhir from az-Zuhry in al-Alussi's *tafsir*, Idarat at-tiba'a al-amiriyya, Cairo, 1853, vol. XVII, p. 162.

37 Qur'an, 2/216.

was intended instead to ward off injustice, champion the cause of the weak and drive back the enemy. As pointed out by a European Orientalist, Thomas Arnold, those great conquests that laid the foundation of the Arab Empire were not the outcome of a religious war to spread Islam. On the contrary, they were followed by a widespread apostasy movement away from Christianity, so much so that Christianity itself was thought to be the Arabs' target. From then on, Christians perceived the sword as a tool of Islamic preaching.³⁸

Islam did not acknowledge war as a national policy, a method of conflict resolution or a means to satisfy a desire for hegemony or to gain spoils. As already explained above, war is not deemed lawful except when an absolute necessity calls for it. Muslims do not desire it, nor do they thirst to shed the blood of other human beings. Thus, the Prophet (peace be upon him) said, "Do not wish to meet the enemy. Ask God for protection from evil. But if you meet the enemy, be firm and mention God a lot."³⁹

Before the declaration of either war or *jihad*, the enemy should be made to choose one of three options: Islam, as a token of peacefulness; reconciliation or a peace treaty with Muslims; or finally war, if the enemy insists on waging war. It is evident that giving the choice between three options excludes the character of compulsion.

There is conclusive evidence that Islam was not spread by the sword, and that there is a clear difference between propagating Islam through wisdom and good advice and declaring *jihad* to confront aggression. This evidence and other arguments show that compulsory conversion to Islam did not occur in the history of Islamic preaching, as underscored by God's words "Let there be no compulsion in religion: Truth stands out clear from error ..."⁴⁰

The Islamic perception of the motive for warfare

The motive for warfare in Islam is not the difference in religion or an attempt to impose the Islamic doctrine or a racist, social class on others, nor does it stem from a nationalistic tendency or material or economic interests. Omayyad Caliph Omar Ibn Abdul Aziz said to one of the rulers in the Caliphate who complained about the shortage of *kharaj* (land tax) resources because of the conversion of many people to Islam, "God sent Muhammad with the Truth as a guide and not as a tax collector."

According to the majority of Muslim jurists, the motive for warfare is to respond to an attack and aggression. No human being is to be killed for merely contravening Islam, but to ward off aggression by him. Because they are not engaged in warfare, civilians or non-combatants clearly may not be either killed or attacked. The Prophet (peace be upon him) prohibited the killing of women,

38 Thomas Arnold, *ad-da'wa ila-l-islam* (The Islamic Preaching), (Arabic translation), Cairo, 1957, 2nd ed., p. 47.

39 Related by al-Bukhari and Muslim in their *Sahih*, from Abi Hurayra in other words: "If you meet them, be patient".

40 Qura'an, 2/256.

children and priests. If non-Muslims choose to conclude peace and conciliation pacts, they may do so. They are not compelled to do anything else. God Almighty says: "But if they (the enemy) incline towards peace, do thou (also) incline towards peace ..." ⁴¹ and "And say not to any one who offers you a salutation: 'Thou art none of a believer!' ..." ⁴²

There are three kinds of circumstances that legitimize warfare in Islam, namely: ⁴³

- a) aggression against Muslims, either individually or collectively, as preachers for Islam, or attempts to make Muslims apostates or the launching of war against Muslims. God the Almighty says: "To those against whom war is made, permission is given (to fight), because they were wronged ..." ⁴⁴ and "And slay them wherever ye catch them, and turn them out from where they have turned you out, for tumult and oppression are worse than slaughter, ..." ⁴⁵
- b) assistance for the victims of injustice, whether individuals or groups. God the Almighty says: "And why should ye not fight in the cause of God and those who, being weak, are ill-treated (and oppressed)? Men, women and children, whose cry is: 'Our Lord! Rescue us from this town, whose people are oppressors ...' " ⁴⁶
- c) self-defence and to ward off attacks on one's homeland. God the Almighty says: "Fight in the cause of God those who fight you, but do not transgress limits, for God loveth not transgressors." ⁴⁷

Some verses urge Muslims to fight only when battles have already started, not before. Preparation for warfare is necessary to prevent the adversaries of Muslims from gaining the advantage over them. God the Almighty says: "Against them make ready your strength to the utmost of your power ..." ⁴⁸

Ibn Taymiyya (1263-1328) said that "the Prophet's (peace be upon him) conduct was that he did not wage war against any disbelievers who made truce with him. He never began the fighting against any of the disbelievers, and had God ordered him to kill every disbeliever, he would have begun with killing and warfare." ⁴⁹

He also said that "permission of warfare for Muslims is based on the fact that the others have the permission of warfare." Ibn Taymiyya's disciple, Ibn Qayyim al-Jawziyya (d. 1350) says that "the prescription of warfare for Muslims is against those who wage war against them, not those who do not". As mentioned above, God the Almighty says: "Fight in the cause of God those who

41 *Ibid.*, 8/61.

42 *Ibid.*, 4/94.

43 W. al-Zuhili, *op. cit.* (note 10), pp. 93-94.

44 Qur'an, 22/39.

45 *Ibid.*, 2/191.

46 *Ibid.*, 4/75.

47 *Ibid.*, 2/190.

48 *Ibid.*, 8/60.

49 Ibn Taymiyya, *risalat al-qital*, p. 125.

fight you, but do not transgress your limits, for God loveth not transgressors.”⁵⁰ This short verse is relevant both for *jus ad bellum* (in particular as regards self-defence/no aggression), and for *jus in bello* (in particular the distinction between combatants and non-combatants). To sum up, legitimate war in Islam is fair war, namely that those who wage war against Muslims are to be fought.

Legal restrictions in war

If war does take place, it is subject to clear regulations under Islamic *Shari'a*. Religious teachings had an evident effect on the emergence of the rules of war, which attained the status of legal rules based on three fundamental requirements: necessity, humanity and chivalry. The following principles have accordingly been prescribed since the early days of Islam:

- a non-combatant who is not taking part in warfare, either by action, opinion, planning or supplies, must not be attacked;
- the destruction of property is prohibited, except when it is a military necessity to do so, for example for the army to penetrate barricades, or when that property makes a direct contribution to war, such as castles and fortresses;
- principles of humanity and virtue should be respected during and after war;
- it is permitted to guarantee public or private safety on the battlefield, to prevent as far as possible the continuation of warfare.

The conduct of hostilities is strictly regulated by the Holy Qur'an, the words of the Prophet (peace be upon him) and the commands of Abu Bakr as-Siddiq (632-634), the First Caliph of Islam, as well as those of other Muslim commanders, as can be seen from the basic texts.

One of the best known *hadiths* is “Move forward in the Name of God, by God, and on the religion of God's Prophet. Do not kill an elderly, or a child, or a woman, do not misappropriate booty, gather your spoils, do good for God loves good doers.”⁵¹

Abu Bakr reiterated several commandments, inspired by Prophetic guidance, to his commander Yazid Ibn Abi Sufyan. This is the text of his famous decree: “I prescribe ten commandments to you: do not kill a woman, a child, or an old man, do not cut down fruitful trees, do not destroy inhabited areas, do not slaughter any sheep, cow or camel except for food, do not burn date palms, nor inundate them, do not embezzle (commit *ghulul*),⁵² nor be guilty of cowardliness.”⁵³

Omayyad Caliph Omar Ibn Abdul Aziz wrote to one of the rulers in the Caliphate, “We have been informed that when the Prophet of Allah, (peace be upon him) sent any military company, he used to tell them: ‘Proceed with your

50 Qur'an, 2/190.

51 Related by al-Bayhaqi (according to Malik ibn Anas).

52 *Ghulul* means misappropriation of booty or spoils of war.

53 Related by Imam Malik. See Jalal-u-din al-Sayuti, *tanweer al-hawalik, sharh a'la muwatta' Malik*, al-Halabi Press, Cairo (nd), Vol. II, p. 6.

expedition in the Name of Allah, and for the sake of Allah, wage war against the disbelievers.⁵⁴ Do not be deserters, nor commit perfidy, nor mutilate (your enemy). Do not kill a newborn. Repeat this to your armies and companies, it's God's will, Peace be upon you'.⁵⁵

Those two sets of instructions and similar codes of conduct constitute both mandatory injunctions and prohibitions. No Muslim is allowed to overstep or violate them unless absolute military necessity so requires, for instance by uprooting a tree or demolishing a wall used by the enemy to prevent the Muslim army from advancing. Yet let us compare these nascent religious commitments and their nobility of spirit with what is being done today, unnecessarily and unjustifiably, in many armed conflicts and situations of military occupation.

Since captivity as a result of war is an important issue in every conflict, we would like to conclude this paper by recalling the principle of humane treatment applicable to that category of victims. Islam recommends that prisoners of war (captives) be treated kindly, as God the Almighty says: "And they feed, for the love of God, the indigent, the orphan and the captive."⁵⁶ The Prophet (peace be upon him) says: "I command you to treat captives well."⁵⁷ They are often either released through "grace bestowed on them without any return", or are exchanged for money or in return for other captives. The sick and the wounded should be given medical treatment, and the dead should be buried to preserve their dignity.

54 i.e. those who have overstepped the limits in atheism and have attacked Muslims.

55 Related by Malik, *tanweer al-hawalik*, *op. cit.* (note 53), p. 7.

56 Qur'an, 76/8.

57 Related by al-Tabarani (according to Abu Âziz al-Jumahi), *as-sunan al-kubra*, da'irat al-ma'arif al-usmaniyya, Hyderabad, 1st ed., 1935.