



Peace and the Limits of War

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Islam is a religion of peace. This fact is borne by both Islamic teachings and the very name of Islam. The term Islam essentially means to submit and surrender one's will to a higher truth and a transcendental law, so that one can lead a meaningful life informed by the divine purpose of creation, and where the dignity and freedom of all human beings can be equally protected. Islamic teachings assert the basic freedom and equality of all peoples. They stress the importance of mutual help and respect, and direct Muslims to extend friendship and good will to all, regardless of their religious, ethnic, or racial background.

Islam, on the other hand, permits its followers to resort to armed struggle to repel military aggression, and indeed urge them to fight oppression, brutality, and injustice. The Qur'anic term for such a struggle is jihad. Yet for many in the West, jihad is nothing less or more than a holy war, i.e. a war to enforce one's religious beliefs on others. Most Muslims would reject the equation of jihad with holy war, and would insist that a better description that captures the essence of the Islamic concept of jihad is a just war. There are still small and vocal groups of Muslims who conceive jihad as a divine license to use violence to impose their will on anyone they could brand as an infidel, including fellow Muslims who may not fit their self-proclaimed categorization of right and wrong. The confusion about the meaning of jihad, and the debate over whether jihad is a "holy war" or a "just war" is of great importance for Muslims and non-Muslim alike, particularly at this juncture of human history when the world has once again rejected narrow nationalist politics and is moving rapidly to embrace the notion of "global peace" and that of a multi-cultural and multi-religious society. It is, hence, very crucial to expose the confusion of those who insist that jihad is a holy war and who place doubts on Islam's ability to support global peace. The advocates of jihad as a holy war constitute today a tiny minority of intellectuals in both Muslim societies and the West. Western scholars, who accept jihad as a holy war, feed on the position of radical Muslim ideologues, as well as on generalization from the particular and exceptional to the general.

Given the fact that radical interpretation of Islam have had a disproportionate influence on the way the Islam's position regarding peace and war is perceived and understood, I intend to focus my discussion on rebutting the propositions of the classical doctrine of jihad, embraced by radical Muslims, showing that these propositions were predicated on a set of legal rulings [ahkam shar'iyyah] pertaining to specific questions which arose under particular historical circumstances, namely, the armed struggle between the Islamic state during the Abbasid era, and the various European dynasties. I hope I will be able to demonstrate in the ensuing discussion that classical jurists did not intend to develop a holistic theory with universal claims. I further aspire to introduce a more comprehensive conception of war and peace which takes into account the Qur'anic and Prophetic statements in their totality. This new conception is then used to establish the fundamental objectives of war as well as the basic conditions of peace.

Note: All info is taken from: Louay M. Safi , "Peace and the limits of War : Transcending Classical Conception of Jihad" , Institution of Islamic Thought , second edition , June 2, 2003 , pp. 1--38

Misunderstanding of the position of Islam vis-à-vis war and peace alluded to earlier is essentially a problem of textual explication. It is a problem of how a Qur'anic text is and ought to be interpreted. What rules did classical scholars use in deriving concepts and doctrines from Islamic sources, and what rules should Muslims use today. And because the analysis must engage the classical methods, there is no escaping from employing the terminology of Islamic jurisprudence, better known as *usul al-fih*. The legalistic and textual analysis of Islamic texts is, however, joined by a historical and analytical discussion, aimed at examining the chronology of the armed jihad between the early Islamic state and the various political communities it fought.

Chapter 1: Classical Views and Historical Conditions

The doctrine of jihad was developed in the first three centuries of Islam, and was influenced by the political structure of the day. We argue in this chapter that the ideas and doctrines advanced by early Muslim jurists were shaped, on the one hand, by the political organization of the Islamic polity, which recognized the moral autonomy of the various religious and ethnic communities that comprised it, and, on the other hand, by the imperial politics of Byzantine. The classical doctrine of jihad, and its corollary theory of the "Two Territories", are the products of their time, and should be understood as such.

Classical Doctrine of Jihad

Although the rules and principles pertaining to relations between Islamic and non-Islamic states date back to the early Madinan period, the Islamic classical doctrine of war and peace was developed by Muslim jurists [*fuqaha*] during the Abbasid era. The tenets of the doctrine can be found either in general law corpora under headings such as jihad, peace treaties, *aman*, or in certain special studies such as *al Kharaj* [land tax], *al Siyar* [biography / history], etc. The work of the Muslim jurists consists mainly of rules and principles concerning the initiation and prosecution of war, rules and principles that have been predicated on a specific perception of the role and objectives of the Islamic state in respect to other states. Classical Muslim scholars often equated the notion of jihad with that of war. The conception of jihad failed to capture the full range of its rich meaning, thereby reducing in effect the act of jihad into the act of war. While the Qur'an often uses the word jihad in reference to the act of war, it gives the term broader meaning. The term jihad was first introduced in the Makkan Qur'anic-verses [29:6 ,69] and [25:52] - long before the Muslims were permitted to fight. In the Makkan period, the term jihad was used in reference to the peaceful struggle in the cause of God:

And those who make jihad in Our [cause], We will certainly guide them to Our paths [29:69]

And whoever makes jihad he does so for his own soul . . . [29:6]

Therefore, listen not to the unbelievers, but make jihad against them with the utmost strenuousness, with [the Qur'an]. [25:52]

These three verses direct the Muslims to patiently persevere in the face of Quraysh persecution and oppression, and to use propaganda and means of persuasion to reach out and expand the truth of Islam. It follows that fighting and using military tactics is only one of several avenues through

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which the duty of jihad can be discharged. The methodology of jihad includes, among other things, peaceful resistance and perseverance against oppression and tyranny, if the general conditions of the moment indicate that this approach is the most effective way to achieve the objectives of the Muslim community. The *classical doctrine of war and peace* is founded on *three* essential propositions ¹

1. The world is divided into two territories: *dar al Islam* [the territory of Islam], the area subject to Islamic law, and *dar al Harb* [the territory of war], the area not yet brought under Islamic rule. [al Shafi'i adds a third territory, *dar al 'ahd* or the territory of covenant. His third category however is superfluous, for he stipulates that a non-Islamic state may enter into a peace treaty with the Islamic state only if it renders an annual tribute *jizyah*; this stipulation puts him therefore on the same footing with other classical writers].
2. The *dar al Islam* is under permanent jihad obligation until the *dar al Harb* is reduced to nonexistence. Jihad is, thus, the instrument of the Islamic state to propagandize Islam and expand the territory wherein Islamic law is enforced.
3. Peaceful coexistence between “*dar al Islam*” and “*dar al Harb*” is possible only when the latter renders an annual tribute of “*jizyah*” [poll tax] to the former.

The classical doctrine of war and peace has persisted over the centuries with few minor and sporadic alterations. The tenets of this doctrine have been handed down unchallenged, despite several *grave flaws* in its development and despite its *violation* of some essential Islamic principles. ² As will be argued later, this may, in part, be attributed to the political conditions existing at the time the doctrine was articulated and developed; conditions which prevailed throughout much of Muslim history. According to the classical Muslim jurists, a permanent state of war exists between “*dar al Islam*” and “*dar al Harb*”. War, however, is divided into two types. First, war of extermination against polytheists who have two options from which to choose: To either accept Islam or be extinguished. Second, war of reconciliation against the People of the Book who have three possibilities to face: To accept Islam and, thus, be left alone, to pay the *jizyah*, in which case they are entitled to retain their religion and enjoy Muslim protection, or to fight the Muslim army. ³ It is clear that war, according to the foregoing view, is the normal state of things, and that peaceful relations between the Islamic and non-Islamic states is contingent on the acceptance of Islam by the non-Islamic states or their payment of annual tributes to the Islamic state.

War of Domination:

The classical position, in response to the principles of war and peace, has been primarily predicated on three Qur'anic verses and on one hadith:

And fight them on until there is no more Fitnah [tumult oppression or persecution] and religion ⁴ should be only for Allah. [2:193]

But when the forbidden months are past, then fight and slay the polytheists wherever you find them, and seize them, beleaguer them, and lie in wait for them in every stratagem [of war], but if they repent, and establish *salah* [regular prayer] and pay their due *Zakah*, then open the way to them, for Allah is Oft-forgiving, Most Merciful. [9:5]

1: Muhammad Talaat al Ghunaimi, *The Muslim conception of International Law and the Western Approach* [Netherlands: Martinus Nijhoff / The Hague, 1399 / 1978]. p. 156 ; and Ibn Rushd, 'Chapter on Jihad' trans. Rudolph Peters in *Jihad in "Mediaeval and Modern Islam"* [Belgium: E. J. Brill, 1977], p. 24.

2: Note: The doctrine has been criticized by some contemporary Muslim writers, such as Muhammad Abu Zahrah, Mahmud Shaltut, and Muhammad al Ghunaimi.

3: Al Ghunaimi, pp. 138-39; and Ibn Rushd, pp. 24-25, and 61.

Fight those who believe neither in Allah nor the last day, nor forbid not what was forbidden by Allah and His Messenger, nor acknowledge the religion of Truth, [even if they are] of the People of the Book [earlier revelations, i.e., the Jews and the Christians] until they pay the jizyah with willing submission and feel subdued. [9:29]

I have been commanded to fight the people until they say: "There is no god but Allah." When they say that, then their lives and property are inviolable to me, except [in the case when] the [law of] Islam allows it [to take them]. They will be answerable to Allah. [5](#)

The first verse, revealed in Madinah, has been construed by some Muslim jurists and commentators as obligating Muslims to fight non-Muslims until the latter embrace Islam in the case of the polytheists, or pay jizyah, in the case of the "People of the Book". In other words, the verse has been considered as a general rule [*hukm 'am*] [6](#) which must be interpreted in association with the particular rules revealed in the verses [9:5] and [9:29]. The verse has been interpreted, in practical terms, to mean that non-Muslims should be either forced to accept Islam or be dominated by the Islamic state. Yet the immediate and direct interpretation is that the Muslims should fight non-Muslims until the latter cease "attacking" or "persecuting" them. [7](#) The second interpretation is not only more plausible and coherent, but also the "only possible explication" [*ta'wil*] of the verse when read in its context.

Fight in the cause of Allah those who fight you, but do not commit aggression, for Allah loves not aggressors. [2:190]

And slay them wherever ye catch them, and turn them out from where they have turned you out; for persecution is worse than slaughter . . . [2:191]

But if they cease, Allah is Oft-forgiving, Most Merciful. [2:192]

And fight them on until there is no fitnah and the religion is only for Allah, but if they cease, let there be no hostility except to those who practice oppression. [2:193]

The verses begin by commanding Muslims to fight those who initiate war against them, emphasizing that Muslims should never be the aggressive party. The term 'udwan, translated here as "aggression," is used in the Qur'an to indicate the *instigation of hostility*. [8](#) Some jurists claim that the verse, "fight in the cause of Allah who fight you. . ." is abrogated [*mansukh*] by the verses of Surah Bara'ah, a claim rejected by other jurists and scholars, including Ibn 'Abbas, 'Umar ibn 'Abd al 'Aziz, Mujahid, and others, who assert that it is firm rule [*muhkam*]. [9](#) Al Tabari, who also holds that the verse is not abrogated, chooses the interpretation of 'Umar ibn 'Abd al 'Aziz, who

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- 4: Religion is the translation of the Arabic term *al din* which also connotes judgement, liability, compliance, and indebtedness.
 - 5: Zakiyy al din al Mundhiri, ed. , "Mukhtasar Sahih Muslim", edited by Nasir al din al Albani, 2nd ed. [Al Maktab al Islami wa Dar al `Arabiyyah, 1392 / 1972] , p. 8
 - 6: Ibn Rushd, p. 24.
 - 7: Muhammad ibn Jarir al Tabari, "*Tafsir al Tabari*" [Cairo: Dar al Ma'arif, n.d.] , Volume 3 , pp. 572-74 Fakh al din al Razi, "*Al Tafsir at Kabir*" [Cairo: Abd al Rahim Muhammad , 1938] vol. 5, p. 145
 - 8: This meaning is demonstratable in verse [2:194] : ".....whoever then commits aggression against you, commit yet aggression against him accordingly....."
 - 9: Muhammad ibn Ahmad al Qurtubi, "Jami` Ahkam al Qur'an" [Cairo: Matba'ah Dar al Kutub al Masriyyah, 1354 / 1935] , Vol. 2 , p. 348.

construed the verse to mean: "Do not fight those who do not fight you, meaning women, children and monks." ¹⁰ Although 'Umar limits the application of this verse only to women, children, and monks, the verse itself provides a general rule which includes those who do not fight or show hostility against Muslims. As it will be argued later, the particularization [takhsis] made by 'Umar, had not been induced by the statement ¹¹ of the text ['ibarah al nass] , but rather by historical and practical considerations.

The next verse [2:191] posits the reason for which the Muslims had been instructed to declare war against the Pagan Arabs, i.e., to avenge the wrong inflicted by the latter who had fought the Muslims, driven them out of their homes, and persecuted them for professing Islam. The final verse [2:193] , prescribes the objective of war as the neutralization of the oppressive regimes that prevent people from choosing their belief and religion. It is clear from this verse that war should be carried out against the individuals and institutions that practice oppression and persecute people; not to force and coerce people into Islam. The same verse, therefore, instructs the Muslims to terminate the fighting as soon as this goal has been achieved. In other words, the previous four verses prescribe fighting only against oppressors and tyrants who use force to prevent people from freely professing or practicing their religion.

Let us now examine the verses of Surah Bara'ah, which some Muslim jurists consider to be the final words of the Qur'an concerning the principles governing the initiation of war vis-a-vis non-Muslims. Jurists are divided as to whether these verses abrogate other Qur'anic verses that address the initiation of war. Those who claim that the verses abrogate other verses on the subject base their judgement on the grounds that these verses embody general rules which cancel any other preceding rules. The abrogation, thus, is not predicated on textual evidence (nass), but rather on reasoning and speculation. It follows that the question of abrogation is a matter of opinion and, as such, is subject to discussion and refutation. "If there exists a dispute among the Muslim scholars as to whether a specific rule is subject to abrogation," al Tabari explains, "we cannot determine that the rule is abrogated unless evidence is presented." ¹² Needless to say, al Tabari means by evidence, a statement provided by the Qur'an or the Sunnah in support of the claim of abrogation. Otherwise the evidence is but another scholar's opinion.

The verses of Surah Bara'ah explicitly declare that the Muslims are to fight the polytheists until they embrace Islam: "... slay the mushrikin [polytheists] wherever you find them, and seize them, beleaguer them, and lie in wait for them in every stratagem [of war] ; but if they repent, and establish Salah and pay Zakah, then open the way for them....." [9:5] . The word mushrikin [sing. *mushrik*] in this context indicates specifically the Pagan Arabs ¹³ as it can be inferred from the first verse, which reads:

A declaration of disavowal from Allah and His Messenger to those of the mushrikin with whom you contracted a Mutual alliance. [9:1]

¹⁰: Ibid.

¹¹: According to Islamic jurisprudence, in the absence of other supportive evidence [qara'in] , the meaning rendered by the statement of the text ['ibarah al nas] prevails over any other meaning extracted by indication [isharah] , implication [dalalah] , or inference [mugtada] of the text. The previous explication is therefore obscure and open to question, for it unjustifiably suppresses [tu'atill] the direct meaning of the verse. See 'Abd al Wahhab Khallaf, 'Ilm Usul al Fiqh [Al Dar al Kuwaytiyyah, 1388 / 1968] , pp. 143-53; and 'Abd al Malik ibn 'Abdullah al Juwayni, Al Burhan fi Usul al Fiqh. ed. 'Abd al 'Aziz al Dib [Cairo: Dar al Ansar, A.H. 1400 / 1979] , Vol. I , p. 551.

¹²: Al Tabari, Tafsir, vol. 3, p. 285.

¹³: Abu Hanifah, al Shafi'i, and Malik distinguish "Arab Pagans" from "non-Arab" polytheists, and consider that the verses of Surah Bara'ah are applicable only to the former. See 'Ah ibn Muhammad al Mawardi, Al Ahkam al Sultaniyyah [Cairo: . Dar al Fikr, 1404 / 1983] , p. 124 ; Ibn Rushd, p. 24 and Muhammad ibn Idris al Shafi'i, Al Risalah, ed Ahmad Shakir [n.p. ., AH 1309 / 1891] , pp. 430-32

The reason for this all-out war against the Pagan Arabs was their continuous fight and conspiracy against the Muslims to turn them out of Madinah as they had been turned out of Makkah, and their infidelity to and disregard for the covenant they had made with the Muslims:“....Why you not fight people who violated their oaths, plotted to expel the Messenger, and attacked you first....” [9:13]

It could be said that what matters here is not the specific circumstances of the revelation, but the general implication of the text, as it is generally accepted in the principles of Islamic jurisprudence [Usul al fiqh]. The response for this argument is that the particularity [takhsis] of the previous verse is determined not by the circumstance of its revelation, but by its intent [hikmah al nass], which is also generally acceptable for limiting the application of the text.

Abd al Wahhab Khallaf wrote:

It should be noticed , that the intent of the text is to be distinguished from the circumstance of its revelation, for Muslim jurists are on consensus [ijma] that the intent of the text may be used for limiting its application, with no dissention by any of them, while the circumstance of its revelation what they refer to when they say: "...What matters is the general implication of the text, not the circumstance of its revelation..." [14](#)

Therefore, the verses 1-14 of Surah Bara'ah can be applied *only to Pagan Arabs* who lived at the time of the Prophet. The reason they had to be coerced into Islam was that they were hostile to Muslims and had *disregarded their oaths and plotted against the Islamic state* in Madinah. This understanding is reinforced by the verse [9:4] exempting those who were faithful to their treaties with the Muslims:

[But the treaties are] not dissolved with those Pagans with whom you have entered into covenant and who have not subsequently failed you in aught; nor aided anyone against you. So fulfill your engagements with them to the end of their term: For Allah loves the righteous. [9:4]

The previous argument can be also applied to the hadith: "I have been commanded to fight people until they declare that there is no god but Allah." The word "people" here implies the Pagan Arabs only. For if the word is interpreted to be all-inclusive, the rule embodied in this hadith should be also applied to the Byzantine Christians and the Persian Zoroastrians [majus]. But since this is not the case, the word "people" has an exclusive meaning and implicates only the Pagan Arabs. This explication is supported by another hadith reported by 'Abdullah ibn 'Umar ibn al Khat tab, who narrated that the Prophet said: "...I have been commanded to fight people until they declare that there is no god but Allah and that Muhammad is the Messenger of Allah, establish the Salah [prayers], and pay the zakah. If they did that, their lives and property are inviolable to me, except [in case when] the [law of] Islam allows it [to take them]. They will be answerable to Allah...." [15](#)

Clearly the word "people" here implies *only the Pagan Arabs* who, according to *Surah Bara'ah* are to be forced to accept Islam. For obviously the word *cannot be considered* to include all people, since that contradicts the *Qur'anic directions*, as well as the *practice of the Prophet*, which permit the "People of the Book" to maintain their religion. Regarding the word "people" to be all-inclusive will, therefore, violate the provisions that have been given to the "People of the Book" by the Qur'an and Sunnah.

14: Khallaf, 'Abd al-Wahhab, *Ilm Usul al-Fiqh* [Al-Dar al-Kuwaytiyyah, 1968], p. 191.

15: Al Mundhiri, Zakir al-Din, ed. *Mukhtasar Sahih Muslim*, edited by Nasir al-Din al-Albani, 2nd edn. [Al-Maktab al-Islami wa Dar al-'Arabiyyah, 1972], p. 9

Abu Hanifah and his pupil AbuYusuf contend that “only Pagan Arabs” are to be coerced into Islam. In his book “Al-Kharaj” , Abu Yusuf relates that al Hasan ibn Muhammad said:“...The Prophet, peace be on him, consummated a peace treaty with the Zoroastrians of al Hajar on the terms that they pay jizyah, but did not permit [Muslims] to take their women in marriage or to eat their slaughtered animals.” [16](#) He also stated that jizyah may be collected from all polytheists, such as “Zoroastrians” [Majus] , “Pagans”, “Fire and Stone Worshipers”, “Sabians” [Sabi'iyin] , but not from apostates or Pagan Arabs , for the latter group are to be coerced into Islam. [17](#) Al Shafi'i and Malik also contend that jizyah can be taken from polytheists. [18](#)

War of Reconciliation

We have seen in the foregoing discussion that the war of domination in which people are to be coerced into Islam did have a particular ruling [hukm khass] limited to the Pagan Arabs, for their hostility and infidelity. Most leading jurists, including Abu Hanifah and his two renowned students Abu Yusuf and Muhammad ibn al Hasan, as well as al Shafi'i and Malik, advocate only the war of reconciliation, in which the "People of the Book" and non-Arab polytheists can enter into peaceful treaties with Muslims, provided they pay an annual tribute of jizyah to the Islamic state. The war of reconciliation is therefore considered by these jurists as a general rule applicable to all non-Muslims. Muslim jurists, thus, divide the world into two territories, dar al Islam and dar al Harb, and declare that a permanent state of war exists between the two until dar al Harb is annexed to dar al Islam. This understanding is founded on verse 29 of Surah Bara'ah.

Fight those who believe not in Allah nor the last day, nor forbid what Allah and His Messenger forbade, nor acknowledge the religion of Truth, [*even if they are*] of the *People of the Book*, until until they pay the jizyah with willing submission and feel themselves subdued. [9:29]

The first outstanding remark about the verse is that it is not all-inclusive, and, thus, does not render a general rule. The verse posits four criteria for those who are to be fought among the "People of the Book" : Those who do not believe in Allah, do not believe in the last day, do not uphold that which is forbidden by Allah and his Messenger, and do not acknowledge the religion of truth. The verse, obviously, has not been phrased in away that would implicate the "People of the Book" as a whole [19](#) , but in away that sets aside a particular group of the "People of the Book".

The general rule [hukm 'am] was derived by the Muslim jurists by explication de texte [ta'wil al nass]. Al Mawardi , for example, implicates the 'People of the Book' by arguing: “...As to the saying of Allah the Almighty "those who believe not in Allah," [the statement is inclusive of the People of the Book] because, though acknowledging the Oneness of Allah, their belief [in Allah] could be refuted by one of two explications: First , [by saying that] they do not believe in the Book of Allah, which is the Qur'an. Second , [by saying that] they do not believe in the prophethood of Muhammad, peace be on him , for acknowledging the Prophets is part of the belief in Allah who commissioned them.....” [20](#)

[16](#): Abu Yusuf, Kitab al Kharaj [Cairo: al Tiba'ah al Muniriyyah, 1397 AH / 1976 AC] , p. 9

[17](#): Ibid. , p. 139

[18](#): Ibn Rushd, “Chapter on Jihad” , in *Bidayah al-Mujtahid wa Nihayah al Muqtasid*, trans. by Rudolph Peters in “Jihad in Mediaeval and Modern Islam” [Belgium: E.J. Brill, 1977] , pp. 23-24

[19](#): Such as “...Fight the ‘People of the Book’ until they pay jizyah...” , or any other statement which is phrased in a way that would include the ‘People of the Book’ as a whole; i.e. , the structure of the sentence would be “...fight those who...” or “...fight the ‘People of the Book’ who...” rather than “..fight those who...of the ‘People of the Book’...” The article *min* which has been translated as “of” is usually employed, according to Arabic Usage, for particularization and separating one group of things or people from another; see al-Juwayni, “*Al-Burhan fi Usul al-fiqh*”, [Cairo: Dar al-Ansar, 1980] vol. 1 , p. 191.

It is clear that al Mawardis reasoning stems from *neither the letter of the text, nor from its spirit*. Rather the argument presented by al Mawardis, as well as other classical jurists, has been influenced by the 'factual circumstances' and 'practical conditions', a question discussed in some length below.

From the foregoing discussion we can conclude that the phraseology of the verse [9:29] provides a particular rule [*hukm khass*] ; i.e., war in this verse is prescribed against a particular group of the "People of the Book" because of the four criteria cited above. We can also conclude that the extension of the application of these criteria to the "People of the Book" as a whole is not based on textual evidence [*nass*] but on reasoning and argumentations; and that the interpretation provided by classical jurists is debatable. Nevertheless, I will not attempt here to reinterpret the verse in consideration, nor will I go into a lengthy discussion as to whether the four criteria may implicate the "People of the Book" in general, because it will be shown later that the Prophet , as well as the first generations of Muslims, did not extend these criteria to the "People of the Book" as a whole. Instead, I will elaborate on the condition, which obligates the Muslims to terminate their offensive against the "People of the Book" :

"...Until they pay jizyah with willing submission and feel themselves subdued...."

Jizyah has not been levied on the "People of the Book" for the purpose of increasing the income of the Muslim state or promoting the wealth of the Muslim community. Nor is it levied to place financial burden on non-Muslim individuals and force them to accept Islam; for the amount of jizyah is very minimal and levied only on financially capable males, while exempting women, children, monks, or poor non-Muslims. ²¹ Rather, jizyah has a symbolic bearing only, and aims to subdue hostile states or oppressive regimes so as to assure Muslim individuals that they can propagate Islam in that community, and to assure non-Muslims that they can profess Islam without being persecuted or harassed. Al Sarakhsi proclaims:

The Purpose of jizyah, is not the money, but rather the invitation for Islam in the best manner. Because by establishing a peace treaty [with non-Muslims] war ceases, and security is assured for the peaceful [non-Muslim] , who, consequently, has the opportunity to live among the Muslims, experience first-hand the beauty of Islam, or receives admonition, which could lead him to embrace Islam. ²²

In other words, jizyah is intended to assure freedom of expression for Muslims to propagate Islam in non-Muslim territories and freedom of belief to those who may choose to embrace Islam. Because jizyah was aimed at turning hostile territories into "friendly ones" , the Muslims did not collect jizyah from those who expressed a friendly attitude toward them, or entered a mutual alliance with them, pledging thereby their military support. Al Tabari, for example, reported in his treatise on history that Suayd ibn Muqrin entered into an agreement with a non-Muslim community which read in part: "...Whoever of you provides services to us will get his reward rather than paying jizyah, and you are secured in your lives, property, and religion, and no one can change the provisions of this agreement..." ²³ Suraqah ibn 'Amr, likewise, signed a treaty with the Armenians in 22 AH / 642 AC, in which the latter were "exempted" from paying "jizyah" for supporting the

20: Al Mawardi, 'Ali ibn Muhammad, *Al-Akham al-Sultaniyyah* [Cairo: Dar al-Fikr, 1983] p. 124.

21: Ibid. , p. 125-6

22: Kamil Salamah al Duqs, *al 'Ilaqat al Dawliyyah fi al Islam* [Jeddah: Dar al Shuruq, 1396 / 1976] , p. 302

23: Ibid. , p. 302

Muslims militarily. ²⁴ Habib ibn Muslimah al Fahri, the deputy of Abu'-Ubaydah, also signed a treaty with the Antakians in which the latter were exempted from jizyah in return for services and help rendered to the Muslims. ²⁵ It was also reported in Futuh al Buldan that: "...Mu'awiyah ibn Abi Sufyan signed a treaty with the Armenians in which the institution of religion, the political order, and the judicial system of the latter were left in tact, and the Armenians were further released from jizyah duties for three years; after that they could either pay an amount of jizyah as they may choose, or, if they did not wish to pay jizyah, prepare fifteen thousand warriors to help the Muslims and to protect the Armenian land. Mu'awiyah pledged to provide logistical support, should they be attacked by the Byzantines....." ²⁶

It is clear from the foregoing examples that the early Muslims regarded jizyah as a measure for neutralizing hostile political communities and opening their territories to Muslims, and not a measure for dominating them or placing financial burdens on them. The previous perception of the real intent of jizyah is demonstratable, in a yet clearer fashion, in the friendly relations between the Islamic state and Ethiopia during the early Islamic epochs.

Peaceful Coexistence: Abyssinia and Islam

The relationship between Abyssinia and the early Islamic state is an excellent case study for rebutting the classical conception of the two territories [dar al Islam and dar al harb], which calls for a permanent war against non-Muslim political communities until they accept Islam or pay jizyah. Malik ibn Anas, the founder of the Maliki school of law, advised that the Muslims should not conquer Abyssinia predicating his opinion on a hadith of the Prophet: "Leave the Abyssinians in peace so long as they leave you in peace." He acknowledged that he was not sure of the authenticity of the statement, but said: "People still avoid attacking them." ²⁷ Abyssinia had maintained its Christian identity long after Islam was established in Arabia and North Africa. Few Muslim families could be found in the fourth Hijri century. ²⁸ From the beginning, Abyssinians showed their good will to the early Muslims who, escaping the persecution of Quraysh, had sought refuge in Abyssinia. The Muslim émigrés were welcomed by the Abyssinians and were further protected from their persecutors who sent a delegation to bring the Muslim escapees back home. Good relations between Abyssinia and the Islamic state continued, the former being the only nation to acknowledge Islam at that time. ²⁹

The peaceful relationship between Abyssinia and the Islamic state is very significant for rebutting the concept of the two territorial division of the world, and its corollary conception of a permanent state of war which does not permit the recognition of any non-Muslim state as a sovereign entity and insists that the latter should always pay a tribute to the Islamic state. For although Abyssinia had never been a Muslim nation, it was recognized by the early Islamic state as an independent

²⁴: Ibid. , citing *Tarikh al-Tabari* , vol. 3, p.236

²⁵: Al-Daqs, Kamil Salamah, *Al- 'Ilaqat al-Dawliyyah fi al-Islam* [Jeddah: Dar al-Shuruq, 1904] p. 303, citing Futuh al-Buldan, p. 166

²⁶: Al-Daqs, Kamil Salamah, *Al- 'Ilaqat al-Dawliyyah fi al-Islam* [Jeddah: Dar al-Shuruq, 1904] p. 308

²⁷: Ibn Rushd, "Chapter on Jihad" , in *Bidayah al-Mujtahid wa Nihayah al Muqtasid*, trans. by Rudolph Peters in "Jihad in Mediaeval and Modern Islam" [Belgium: E.J. Brill, 1977] , p.11 ; Majid Khadduri, "War and Peace in the Law of Islam" [NY: AMS Press, 1400 / 1979] , p. 256 ; and Fatih al-Ghayt, "Al-Islam wa al-Habashah 'Abra al-Tarikh" [Cairo: Maktabah al-Nahdah al-Masriyyah, n.d.] , p. 57, citing "Al-Sirah al-Halabiyah" ; vol. 3, p. 294

²⁸: T.W. Arnold, *The Preaching of Islam* [London: Constable and Company, 1332 / 1913] , p. 113

²⁹: Ibid. , pp. 113-4 ; Muhammad Haykal, *The Life of Muhammad*, trans. Isma'il al-Faruqi [North American Trust Publications, 1397 / 1976] , pp.97-101 ; and Ibn Hisham, *Sirat ibn Hisham*, in "Tahdib Sirah ibn Hisham", ed. 'Abdal Salam Harun [Beirut: Al-Majma' al-'Ilmi al-'Arabi al-Islami, n.d.] pp. 81-87

state that could be let alone without imposing any kind of tax on it or forcing it into the orbit of the Islamic state. Obviously, Abyssinia could not be considered apart of the territory of Islam [dar al Islam] , for Islamic rule had never been exacted therein; ³⁰ nor would it be considered apart of the territory of war [dar al Harb] , since there had been no attempt to force it into the pale of Islam or to declare a permanent war against it. The only satisfactory explanation of the peculiar position of Abyssinia is that the doctrine of the two territories was founded on a fragile basis. Some Muslim sources claim that al Najashi, the king of Abyssinia during the time of the Prophet, had embraced Islam after receiving the invitation of the Prophet. ³¹ Ibn al Athir, for instance, wrote in this regard: "...When al Najashi received the letter of the Prophet, he believed in him, following his [instructions] , and embraced Islam in the presence of Ja'far ibn Abu-Talib, then sent sixty Abyssinians to the Prophet headed by his son; the group had drowned however while sailing [to Madinah]....." ³² The story about al Najashi's accepting Islam did not affect the status of Abyssinia as a territory in which Islam did not rule, and, consequently, should be considered, according to the definition of classical writers, a territory of war. ³³

Chapter 2: Islam and Peace

A systematic examination of Islamic texts and Muslim history shows that peace is and has always been the original position and final aim of Islam. War can and must be fought, however, to repel aggression and lift oppression, but only as the last resort. War should not be seen as an instrument of the state to advance ideological commitments of the bearers of political power.

We argue in the chapter that peace must be governing principle of political action, both locally and globally. War is not, and should never be, a political choice. War in Islam has specific objectives, and these objectives revolve around defending human rights. Advancing narrow interests and imposing religious beliefs are not legitimate objectives of war in Islam.

Peace is the Essence

From its inception, the Qur'an emphasized peace as an intrinsic Islamic value. In fact, the terms Islam and peace have the same root, "salam". Furthermore, Allah has chosen the word peace [salam] as the Muslim's greeting. Reviewing the early Muslim era and reflecting on the experience

³⁰: The classical definition of dar al Islam, which was formulated by early Muslim jurists, is the territories in which the "Islamic law" is enforced. See al-Daqs , pp. 126-28 , Khadduri, "War and Peace", p. 62 ; and al-Ghunaimi pp. 155-8. Some jurists, such as al-Shawkani, expand the definition of the territory of Islam to include any area where Muslims can safely reside "even if the territory is not under Muslim rule," quoted in al-Ghunaimi, "The Muslim conception of International Law and the Western Approach" [Netherlands: Martinus Nijhoff / The Hague, 1399 / 1978] , pp. 81-87.

³¹: Zahir Riyad, *Al Islam fi Ethyubiya* [Cairo: Dar al Ma'rifah, 1384 / 1964] , p. 46

³²: Ibn al Athir, *Al Kamil fi al Tar'ikh* [Cairo: al Tiba'ah al Munniyyah, 1349 / 1930] , vol. 2, p. 145.

³³: Majid Khadduri translated the text of a letter that al- Najashi allegedly sent to the Prophet. The letter reads: "...In the name of Allah, the Merciful, the Compassionate. To Muhammad, the Apostle of God, peace be on you. May God shelter thee under His compassion, and give thee blessings in abundance. There is no god but God, who has brought me to Islam. Thy letter I have read. What thou hast said about Jesus is the right belief, for he hath said nothing more than that. I testify my belief in the King of the heaven and of earth. Thine advice I have pondered over deeply... I Testify that thou art the Apostle of God, and I have sworn this in the presence of Ja'far, and have acknowledged Islam before him. I attach myself to the worship of the Lord of the worlds, O Prophet. I send my son as my envoy to the holiness of thy mission. I testify thy words are true...." [Quoted in Khadduri, *War and Peace*, pp. 205-206].

of the early Muslim generations, one can clearly see that peace was always the original position of Muslims, and that war was either a punitive measure to annihilate tyranny and oppression, or a defensive measure to stop aggression. From the very beginning, Prophet Muhammad was instructed to use a friendly and polite approach to call people to Islam.

Invite to the way of your Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious. [16:125]

Despite the violent opposition of the Quraysh, the Prophet proceeded to summon people peacefully to Islam, and the Muslims were further commanded, for prudential reasons, not to respond to the violence of the Quraysh. As it will be discussed in more detail below, Muslim pacifism during the Makkan period was a political tool to influence change and to protect Muslims from mass destruction. After the immigration to Madinah, the Muslims were permitted to fight against those who declared war against them.

To those against whom war is made, permission is given [to fight] , because they are wronged ; and verily, Allah 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 Allah" [22:39-40]

As a result, the Muslims fought a series of battles against the Quraysh, including the Battles of Badr and Uhud. The war against the Islamic city-state of Madinah was further escalated when other Arab tribes joined with the Quraysh in the war against the infant Islamic state in an attempt to destroy it. The campaign to eliminate Muslims reached its climax in the Battle of al Khandaq [The Trench] when ten thousand fighters of the Quraysh and their allies surrounded Madinah. ³⁴ The Muslims, nonetheless, made several attempts to neutralize their foes by signing a peace treaty with the Quraysh and their allies at al Hudaibiyah. ³⁵ Unfortunately, the Arab tribesmen of Quraysh and its allies, who had thrived historically on war and developed, consequently, a warlike culture, did not respect the treaty and violated its provisions. It became, thus, quite clear that the only way to neutralize these people was by annulling the cultural basis of their hostility and infidelity, which could be only done by coercing them into Islam.

The original position of Muslims concerning the Jews of Madinah was also based on the principle of peaceful coexistence. A few months after the Prophet arrived in Madinah, he concluded a covenant of friendship, alliance, and cooperation between the Muhajirun and the Ansar on one side and the Jews on the other. ³⁶ The covenant not only recognized the freedom of religion of the Jews and assured their security, but also provided them with complete autonomy, bound with certain duties and obligations, mutually applicable on both Jews and Muslims, as the following excerpt of the document reads: "...As the Jews fight on the side of the Muslims, they shall spend of their wealth on equal par with the Muslims. The Jews have their religion and the Muslims theirs. Both enjoy the security of their own populace and clients except the unjust and the criminal among them. The unjust or the criminal destroys only himself and his family...." ³⁷

The friendly relationship between the Jews of Madinah and the Muslims continued until 'Abdullah ibn Salam, a rabbi and a prominent Jewish leader, embraced Islam. This incident, evidently, sparked grave panic among Jewish leaders, who became apprehensive about the Muslim presence

³⁴: Ibn Hisham, *Sirat ibn Hisham*, in "Tahdib Sirah ibn Hisham", ed. 'Abdal Salam Harun [Beirut: Al-Majma al-'Ilmi al-'Arabi al-Islami, n.d.] pp. 214-15 ; and Muhammad Haykal, *The Life of Muhammad*, , pp.300-302

³⁵: Ibn Hisham, pp. 256-60; and Haykal, pp. 346-54

³⁶: Ibn Hisham, p. 140; and Haykal, p. 180

³⁷: Ibn Hisham, p. 142; and Haykal, p. 181

in Madinah and feared that Islam would penetrate their ranks. It was at this stage that Jews began their campaign against Muslims; first through a war of words, aimed at refuting the Qur'anic teaching and inducing a state of suspicion about the Prophet and his message, and later through conspiring with the enemies of Islam. [38](#)

The first confrontation between Jews and Muslims took place after the Battle of Badr when some Jews of Banu Qaynuqa' violated the right of a Muslim woman by forcefully exposing her nakedness. This incident developed into fighting between a Muslim passerby and the Jewish assailants in which a Jew and the passerby were killed. Consequently, general fighting between the clan of the murdered Muslim and Banu Qaynuqa' erupted. When the Prophet was informed of the confrontation, he sent word to Banu Qaynuqa; asking them to stop the attacks and keep the covenant of mutual peace and security. Banu Qaynuqa' responded by ridiculing the Prophet's request, leaving the Muslims no option but to fight. [39](#)

Likewise, the campaign against Banu al Nadir was triggered by their infidelity and misconduct, when they openly violated the provisions of their covenant with the Muslims by sending three of their leaders, Huyayy ibn Akhtab, Salam ibn Abu al Huqayq, and Kinanah ibn al Huqayq, together with two leaders of the tribe of Banu Wa'il, to Makkah in order to instigate the Quraysh and their allies to attack the Muslims in Madinah, and to pledge their support. Indeed, the Jewish delegation was able to mobilize the Pagan Arabs against the Muslims, and their counsel led to the campaign of al Khandaq, invoking the most horrible experience the Muslims had ever had in their struggle against the Quraysh and its allies. [40](#) In like manner, the fighting between the Islamic state and both Byzantium and Persia was commenced not because the Muslims wanted to extend the dominion of the Islamic state, or dar al Islam, using the classical terminology, but rather because both the Byzantines and the Persians either assailed Muslim individuals and caravans or prevented the peaceful spread of the Islamic message.

The campaign of Dawmah al Jandal, the first campaign against the northern Christian tribes which were Byzantine protectorates, was a punitive expedition to avenge the attacks on the Muslim caravans to al Sham [Syria] by some of these tribes, such as Qada'ah and Banu Kalb. [41](#) Likewise, the campaign of Mu 'tah was also a punitive expedition to avenge several grave violations against the Muslim messengers and missionaries whom Muhammad had sent north to call people to Islam and introduce the new faith to the northern regions. For example, the Prophet sent al Harith ibn Umayr to the governor of Busrah. Upon reaching Mu'tah, al Harith met with Sharhabil Amir ibn al Ghassani, who asked him, "Are you a messenger of Muhammad ? "Al Harith answered: Yes. Then Sharhabil ordered his men to kill him, and he was executed. [42](#)

[The Prophet also sent] five men to Banu Sulayman for the sole purpose of teaching them Islam, and he endured their cold-blooded murder by their hosts. Only their leader managed to escape, and he did so purely accidentally. He also sent fifteen men to Dhat al Talh on the outskirts of al Sham in order to call its people to Islam. Therefore, too, the messengers of Muhammad and the missionaries of faith were put to death in cold-blood. [43](#)

[38](#): Muhammad Haykal, *The Life of Muhammad*, [North American Trust Publications, 1397 / 1976], pp.191-93

[39](#): Ibid. , pp.244-45, and Ibn Hisham, p. 175

[40](#): Haykal, pp. 300-301, and Ibn Hisham, p. 214

[41](#): Haykal, p. 284; and Al-Daqs, Kamil Salamah, "*Al- 'Ilaqat al-Dawliyyah fi al-Islam*" [Jeddah: Dar al-Shuruq 1904], p. 287

[42](#): Al-Daqs, Kamil Salamah, "*Al- 'Ilaqat al-Dawliyyah fi al-Islam*" [Jeddah: Dar al-Shuruq 1904], p. 287

[43](#): Muhammad Haykal, *The Life of Muhammad*, trans. Isma'il al-Faruqi [North American Trust Publications 1397 / 1976], p..387

It was also reported that the northern Christian tribes killed those among them who had professed Islam, ⁴⁴ leaving the Muslims therefore no choice but to fight them for their aggression and tyranny. These incidents, and others, triggered the campaigns of Mu'tah and al Hudaybiah, and led eventually to the conquest of al Sham and al 'Iraq.

Evidently, the doctrine of the two territorial divisions of the world, and its corollary concept of the permanent state of war, was influenced by the factual conditions that existed during the period when this conception was conceived, namely the hostile relations between the 'Abbasid caliphate and Byzantine empire. ⁴⁵ The jurists who devised the classical doctrine had, obviously, overlooked not only the peaceful coexistence between the early Islamic state and Abyssinia, but also the earlier hostility of Byzantium and its allies against the emerging Islamic state. Muhammad Abu Zahrah wrote protesting the classical doctrine:

We object to including this division [i.e. , dar al Islam and dar al Harb] in the Muslim legal theory as one of its principles. As a matter of fact, this division under the 'Abbasids corresponded to the factual relations between the Islamic state and non-Islamic state. Classical writers only intended to give a legal justification to that situation. ⁴⁶

Respecting Individual Freedom of Belief

We concluded in the foregoing discussion that, contrary to the claims of the classical doctrine of the territorial division of the world, war is not the instrument of the Islamic state to propagate Islam and extend its territory. We turn now to examine a question that closely relates to the previous argumentation: ".....Does Islam recognizes individual freedom of conscience i.e. , are people free to accept or reject Islam ?.... "And if the answer is yes, how can we explain the fact that the Muslims fought the apostates [Murtaddun] during the administration of Abu Bakr ? The answer to the first question is an emphatic "yes". The principle of the freedom of belief has been unequivocally established in two Qur'anic verses:

If it had been the Lord's will, all those who are on earth would have believed; will you then compel mankind, against their will, to believe ? [10:99]

Let there be no compulsion in religion: Truth stands out clear from error. [2:256]

The first verse was revealed in Makkah before Hijrah, while the second was revealed in Madinah after Hijrah. As al Qurtubi mentioned in his Qur'anic commentary, *Al Jami' Li Ahkam at Qur'an*, some commentators claim that the second verse has been abrogated by the verses of Surah Bara'ah which permitted the Muslims to fight the "People of the Book", while others ascertain that it has not been abrogated. Al Qurtubi quotes Abu Ja'far's interpretation of this verse: "The meaning of 'let there be no compulsion in religion' is that no one is to be forced to accept Islam. The *al* has been added to the word *din* so that their combination *al din* would indicate Islam." ⁴⁷ Nor can this

⁴⁴: Al-Daqs, pp. 287-88, citing Ibn Taymiyya "Risalah al-Qital" in *Majmu'ah al- Rasa'il al-Najdiyyah*, pp. 126-28

⁴⁵: Al-Daqs, pp. 128-29

⁴⁶: Muhammad Abu Zahrah, *Al- 'Ilaqat al-Dawliyyah fi al-Islam* [Cairo 1384 / 1964] , p. 51, quoted in Muhammad Talaat al Ghunaimi, "The Muslim conception of International Law and the Western Approach" [Netherlands: Martinus Nijhoff / The Hague, 1399 / 1978]. p. 202

⁴⁷: Muhammad ibn Ahmad al Qurtubi, "Jami' Ahkam al Qur'an" [Cairo: Matba'ah Dar al Kutub al Masriyyah, 1354 / 1935], Vol. 2 , p. 348.

principle be abrogated by the hadith: "I have been commanded to fight people until they say: 'There is no god but Allah.'" For as it was indicated above, the hadith embodies a particular rule [*hukm khash*] which is applicable only to the Pagan Arabs. Even if we were to hypothetically treat the hadith as a general rule, it could not be used to abrogate a Qur'anic verse. For while the previous hadith is an exclusively narrated hadith [*hadith ahad*] and therefore uncertain [*zanni al dalalah*], the verse, like all other Qur'anic verses, is extensively narrated [*mutawatir*] and, therefore, certain [*qat'i al dalalah*]. ⁴⁸ The claim of abrogation is clearly flawed; for both verses embody firm rule [*muhkam*]. ⁴⁹ The first verse points out in unequivocal fashion that it had not been God's that mankind should be forced to believe; and the second verse provides more explanation as to why people should not be compelled to accept Islam by indicating that "Truth stands out clear from error." Because God's will is not subject to change, and because truth stands always clear from error, the two verses are not, therefore, subject to abrogation. ⁵⁰

But if the general rule is that no one is to be forced to accept Islam, how should Muslims deal with the questions of apostasy [*riddah*] ? The classical position concerning the apostates is that they should be killed. This position is predicated primarily on two pieces of evidence: The jihad of Muslims, under the leadership of Abu Bakr, against the Arab apostates, and the Hadith: "The blood of a Muslim may not be legally split other than in three instances: the married person who commits adultery; a life for a life; and one who *forsakes his religion and abandons the community* [*jama'ah*] " ⁵¹

We should distinguish, when dealing with the question of apostasy, between two different cases. First, when a collectivity of people revolt against Muslim authority and refuse to obey the law of Islam, as was the case of the apostates [*murtaddun*] who refused to pay zakah to Abu Bakr and mobilized their forces to prevent him from collecting it. These apostates are to be fought, not because of their rejection of Islam, but because of their rebellion against and disobedience of the law. The war against them can, thus, be considered as a law-enforcement war. Second, when an individual refuses to fulfill one of his public obligations, such as a person who refuses to pay zakah to the Muslim authority, he is to be compelled to pay it, according to the opinion on the majority of the Muslim jurists-not to be fought or killed. Only when he violently resists the Muslim authorities, and uses force of arms to prevent them from discharging their duties and exacting the law, can he be fought against. ⁵² The above cited hadith vividly states that the individual apostate could be killed not merely because of his rejection of Islam, but because of his rebellion and revolt against the Muslim community. In other words, a quiet desertion of personal Islamic duties is not a sufficient reason for inflicting death on a person. Only when the individual's desertion of Islam is used as a political tool for instigating a state of disorder, or revolting against the law of Islam, can the individual apostate then be put to death as a just punishment for his act of treason and betrayal of the Muslim community. The war against the apostates is carried out not to force them to accept Islam, but to enforce the Islamic law and maintain order. Therefore, the individual apostasy, which takes place quietly and without causing any public disorder, should not be of concern to the Islamic

48: When incongruence exists between a certain [*qat'i*] and uncertain [*zanni*] rule, the certain prevails. Many leading jurists, such as al-Shafi'i and Ibn Taymiyyah, contend that a Qur'anic verse can only be abrogated by another Qur'anic verse. See al-Shafi'i, *Al Risalah*, ed Ahmad Shakir [n.p. , AH 1309 / 1891], pp. 106-7 and Salah ibn 'Abd al-Aziz al-Mansur, *Usul al-Fiqh* qd Ibn Taymiyyah, [n.p. , 1400 / 1980], vol. 1 , p. 227 and vol. 2 , p. 533.

49: The firm rule [*muhkam*] is defined by Muslim jurists as a statement whose meaning is clear and unequivocal so that it cannot be considered a subject of "explication de texte" [*ta'wil*], see . See 'Abd al-Wahhab Khallaf, *'Ilm Usul al Fiqh* [Al Dar al Kuwaytiyyah, 1388 / 1968], p. 168

50: According to Islamic jurisprudence, a firm rule [*muhkam*] is not the subject of abrogation ; see 'Abd al-Wahhab Khallaf, *'Ilm Usul al Fiqh* [Al Dar al Kuwaytiyyah, 1388 / 1968], p. 168. Al-Ghazali contends that only the verses that render legal or practical rules pertinent to "Islamic law" [*hukm shar'i*] are subject to abrogation., while verses which provide "general facts" [*hukm 'aqli*] are not. See: Abu Hamid al-Ghazali *Al-Mustafa fi 'Ilm al-Usul* [Cairo: Al-Matba'ah al-Amiriyyah, 1322 / 1804].

51: Yahya ibn Sharaf al-Din al-Nawawi, *Forty Hadith*, trans. Ezzeddin Ibrahim Denys Johnson-Davies [Beirut: Dar al-Qur'an al-Karim, 1386 / 1976], p. 59.

52: Ali ibn Muhammad al-Mawardi, *Al Ahkam al Sultaniyyah* [Cairo: Dar al Fikr, 1404 / 1983], p. 192.

authority. Only when the individual openly renounces Islam and violates Islamic law, should he be punished for breaking the law and challenging the norms and beliefs of the Muslim community and only when a group of people revolt against the Muslim authority, and refuse to implement the Islamic law in the area it controls - by failing, for instance, to establish public prayers, or by abolishing the institution of zakah-can the Islamic authority declare war against them. It follows that if a group of Muslims oppose certain views widely accepted by the general public or protest certain decisions made by the public authority, they are not to be fought as long as they do not violate the Islamic law or pose a threat to the Islamic state – i.e., by initiating war against Muslims or allying themselves with their enemies. When the Kharijite [Khawaraj] opposed 'Ali ibn Abu Talib and refused to recognize his authority, confronting him with the slogan: "authority is only to Allah," he did not declare war against them and stated that they could claim three rights: "...Not to be prevented from attending Mosques, not to be preemptively attacked, and not to be denied their share of booty so long as they fight with us....." ⁵³ "...If an opposing group revolted against a just community," al Mawardi wrote "and controlled a region, making it their exclusive territory, the group cannot be fought so long as they do not violate any rights or disobey the general law" ⁵⁴

Chapter 3: The Limits of War

We concluded, in the foregoing discussion, that the aim of war is not to propagate or spread Islam, nor is it to expand the territory of the Islamic state or dominate, *politically or militarily*, non-Muslim regions. Rather, the aim of war is to establish and assure justice, and to annihilate oppression and abolish tyranny. It is true that the right to communicate the message of Islam is protected under Islamic law, and the Islamic state must, therefore, respect and defend this right. But the obligation to protect the right of Muslims, and for this matter all religious communities, to promote their belief and values should be carried out through peaceful means and in a friendly manner. The assurance of justice and destruction of tyranny are therefore the underlying objectives of war. However, since the terms "justice" and "tyranny" cover wide ground and permit broad interpretation, they need to be translated into more concrete forms. We can distinguish five situations where the violation of the principle of justice and the excessive misconduct of tyranny call the Islamic state to war and justify its use of violence against the political entity that is implicated in such practices.

1. War against Oppression

It is incumbent upon Muslims to challenge any political authority that either uses its free exchange of ideas, or prevents people to "freely" professing or practice the religion "they chose" to embrace.

And fight them until there is no more persecution and religion is only for Allah . . . [2:193]

And why should ye not fight in the cause of Allah and of those who, being weak, are oppressed - men, women, and children, whose cry is: "Our Lord, rescue us from this town, whose people are oppressors; and raise for us from Thee one who will protect ; and raise for us from Thee one who will help." [4:75]

⁵³: Ali ibn Muhammad al Mawardi, *Al Ahkam al Sultaniyyah* [Cairo: Dar al Fikr, 1404 / 1983], p. 192.

It should be made clear here that oppressiveness of a particular regime is not to be determined by comparing the values and conduct of that regime with Islamic norms and standards, but rather by its toleration of the Muslim interaction with its subjects and the communication of Islam to the general public. Corruption and mismanagement should not be considered, therefore, the criteria that classify a particular regime as oppressive, deserving, thus, to be fought, because, it may be recalled, Muslims are commanded to invite mankind to Islam through friendly means and effect social and political change using the peaceful methods of education and moral reformation. Only when their peaceful efforts are frustrated and met with violence, are they justified to use violence to subdue the aggressive party. As it was shown above, the Prophet did not resort to war against the Pagan Arabs until they persecuted the Muslims and violated their lives and properties; nor did he fight the Jews of Madinah until they betrayed the Muslims and conspired with their enemies. Similarly, the Prophet declared war against Byzantium and its Arab allies only when they killed the messengers and missionaries who were sent to peacefully summon people to Islam and introduce to them the new revelation of God.

2. War in Defense of Muslim Individuals and Property

When wrong is inflicted on a Muslim individual by a member, or members, of another political community, whether this wrong is done to his person, by assaulting or murdering him, or to his property by robbing or unjustly confiscating it, the Islamic state is obligated to make sure the individual, or his family, is compensated for his suffering, and that his rights are upheld. Because it is beyond the scope of this paper to discuss the legal procedure of this matter, it suffices to say that the Islamic state should ensure that justice has been done to the wronged Muslim, even if that take a declaration of war against the political community that tolerates such an aggression, provided that the authority of the political community has refused to amend the wrong inflicted on the Muslim individual after it has been formally notified and given reasonable time to respond.

..... whoever then acts aggressively against you, inflict injury on him according to the injury he has inflicted on you and be careful [of your duty] to Allah and know that Allah is with those who guard [against evil]. [2:194]

3. War against Foreign Agression

The clear-cut case of foreign aggression is a military attack on the Islamic state or its allies. The Muslims, however, are not obliged to wait until the enemies launch their attack, to respond. Rather, the Islamic state can initiate war and carry out a preemptive strike if the Muslim authorities become convinced beyond a shadow of a doubt that the enemy is mobilizing its forces and is about to carry out an offensive, or if a state of war already exists between the Islamic state and its adversaries. If aggression is committed against another political entity with which the Islamic state has entered into mutual alliance, or has signed a treaty that stipulates military protection, the Islamic state is also obliged to fulfill its commitment to its ally and provide the military support needed. The conquest of Makkah was precipitated by Quraysh's attack on Khuza'ah, which was an ally of the Islamic city-state of Madinah, violating thereby a provision of the Treaty of al Hudaibiyah that prohibited such an act. [55](#)

54: Ibid, p. 53

4. War of Law Enforcement

When a proportion of the population residing within the boundaries of the Islamic state violently oppose the application of the Islamic law, or threaten the territorial integrity of the Islamic state, the Muslim authorities are justified in using armed force to subdue the rebellion. It should be emphasized, however, that what is at issue here is not just opposition to a particular public policy, but an insurrection that attempts to achieve its goals through military tactics, threatening thereby the lives and property of other members of the society. Three types of dissension, however, should be differentiated, two of which are merely causes of rebellion, which can be forcefully subdued, while the third is a case of legitimate political opposition that should be dealt with in a peaceful manner.

Apostasy:

When a group of Muslim individuals fortify themselves in an area of the Muslim territory and refuse to permit the application of certain fundamental Islamic principles or laws, such as the establishment of public prayer [*salah al jama'ah*], the payment of zakah, and the like, it is a case of apostasy, for which, the group is to be fought until its members cease their rebellion with respect to the law. It should be clear that apostates are to be fought not because they refuse to profess or practice Islam, but because they disobey the Islamic law. Therefore, nobody should be questioned or prosecuted for not fulfilling his personal duties toward Allah – for he is answerable to Allah, not to the Muslim community, insofar as his personal duties are concerned-as long as he fulfills his public duty. For example, the individual who privately neglects prayer is not subject to any punitive measures, so long as he does not publicly denounce prayer. Nor can he be forced to attend public prayers because attending congregations is a voluntary duty and matter of personal choice. He can, however, be forced to pay zakah, and can be punished for refusing to render his share to the Muslim authority because zakah is not only a personal duty, but a “public obligation” as well.

Insurrection:

When a group of Muslim individuals fortify themselves in area of the Muslim territory, refuse to implement a public policy formulated by just authority and through due procedure, and use the force of arms to prevent the authorities from taking custody and prosecuting those who do not comply with public policy, it is a case of insurrection which justifies the use of armed force by the Muslim authority to subdue the rebellion.

Political Opposition:

When a group of Muslim individuals peacefully opposes a public policy, uses a public forum to object to its application, and attempt to persuade the rest of the population to adopt their view regarding this policy, it is a case of political opposition which does not justify the use of force by the authority to circumscribe the influence of the opposition or to destroy it. The authority can, if it perceives that the opposition constitutes a threat to the general welfare, respond by initiating legal proceedings through the courts or by inducing sanctions through the institution of al Shura [consultation], or by using *any other peaceful measures that the general law* of the Islamic state permits.

55: Muhammad Haykal, *The Life of Muhammad*, trans. Isma'il al-Faruqi [North American Trust Publications 1397 / 1976] , p. 397, and Ibn Hisham, *Sirat ibn Hisham*, p. 277

Peace and the State of War

Peace in Islam does not mean the absence of war, but the absence of oppression and tyranny. Islam considers that real peace can only be attained when justice prevails. Islam, therefore justifies war against regimes that prevent people from choosing their ideals and practicing their beliefs. It does not, however, justify war against non-Muslim entities that neither prevent the preaching of Islam nor inflict wrong upon Muslims. The Islamic state should thus maintain peace with those who show goodwill to Muslims. The Islamic state is justified, on the other hand, in declaring war against those who commit aggression against it or its mission. "This movement," Sayyid Qutb wrote, "uses the methods of preaching and persuasion for reforming ideas and belief, and uses physical power and jihad for abolishing the organizations and authorities of the jahili system which prevents people from reforming their ideas and beliefs." ⁵⁶ The classical jurists, who devised the doctrine of two divisions, dar al Islam and dar al Barb, indiscriminately classify all non-Muslim communities under one category and advocate a permanent state of war against them, insisting that Muslims should not establish peaceful relations unless they are forced to. ⁵⁷ Clearly, this doctrine, which reflects the factual relationship between the Islamic and non-Islamic states during the 'Abbasid era, fails to take into account the total principles as well as the real objectives of the Islamic Ummah. As Ibn Taymiyah points out in his book *Al Syiasah al Shar'iyah*, fighting against non-Muslims is, not the aim of the Islamic state, but fighting can be employed against those who deny Muslims the right to carry out their mission – the propagation of Islam.

Fighting has been permitted so that the object of making the religion only for Allah and making the word of Allah supreme can be advanced. It has been agreed that whoever prevents [the Muslims from carrying out] this [mission] is to be fought. But those who do not fight [against the Muslims] , such as women, children, monks, elderly, the blind and the crippled, and the like, except when they fight by words or by actions, should not be killed, according to the majority of scholars. Some [scholars] , however, argue that all [unbelievers] should be killed because of their blasphemy-except women and children, because they are Muslim property. ⁵⁸ Only the first argument, however, is correct, because fighting is [permitted] against those who fight us to prevent us from calling [people] to the religion of Allah. As the Almighty said: "And fight in the way of Allah those who fight you, but commit no aggression, for Allah does not love aggressors." [2:190].

As Ibn Taymiyah states:

God has permitted taking the life only insofar as it is necessary to promote righteousness [and good behavior] "..... Therefore, any [unbeliever] who does not prevent Muslims from practicing the Religion of Allah, he hurts by his disbelief no one but his own soul". ⁵⁹

⁵⁶: Sayyid Qutb, *Milestones* [Cedar Rapids: Unity Publishing Co. , n.d.] , p. 55

⁵⁷: Majid Khadduri, *The Islamic Law of Nation; Shaybani's Siyar* [Baltimore, Md. : John Hopkins University Press, 1386 / 1966] , p. 154 and Ibn Rushd, "Chapter on Jihad" , p.22

⁵⁸: Referring to women and children as Muslim property does not reflect the pure Islamic perception of human dignity. It should be noted that although Islamic Law did not abandon the practice of enslaving prisoners of war, which was a customary law among the Arabs as well as other nations during the time of the Prophet, it did not encourage it either. On the contrary, Islam upgraded the status of the slaves from a mere "property" to persons with certain human rights, and established two measures for dealing with prisoners of war: they could either be ransomed or freed as a favor and a gesture of goodwill: "...when you have thoroughly subdued them, then take them as prisoners, and afterward either set them free as a favor or for compensation until the war terminates...." [47:4] . The practice of enslaving the prisoners of war should not be regarded, thus, as a Muslim obligation, but rather as a custom which has been tolerated by the Shari'ah, and could be abandoned by Muslims if deemed harmful to the cause of Islam.

Subsuming of all non-Muslims under one category and declaring a permanent state of war against them all is unjustified and completely wrong. It is true that a state of war may exist between the Islamic state and a hostile power, but hostility should be evident first before the state of war is declared. The Muslims, therefore, should distinguish between the peaceful and the hostile and treat each accordingly. This distinction has been made by the Qur'an; and subsequently by Prophet Muhammad and his companions, long before the doctrine of the two territorial division was articulated. Surah al Mumtahinah [verses 8-9] make it quite clear that non-Muslims are not one category but two, and state that they should be dealt with differently.

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 loves those who are just. [60:8]

Allah 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. [60:9]

Chapter 4: Principles and Realities

We Jihad we argued earlier, refers to the efforts one exerts to uphold the principles of right and justice. Jihad may be pursued by words, peaceful action, or awr. The question then is when, and according to what method, should jihad be practiced ? This chapter aims at addressing this question.

The Principles of Peace and its Strategy

If war is justified in the situations described above, a question arises as to whether Muslims are obligated to fight in these situations, no matter what the circumstances are, or whether it is simply a matter of permissibility or choices, and hence up to the Muslim community to exercise its right to declare war in such situations? To answer this question we need to differentiate between the principle of jihad as a permanent obligation incumbent upon Muslims, and the method of jihad which is to be determined after assessing the prevailing conditions of the moment, and selecting the "most appropriate method of jihad" to effectively deal with these conditions. In other words, while the Muslim Ummah is obliged to uphold the principle of jihad and satisfy its requirements, the method of honoring this principle is a question of strategy. Eliminating oppression and protecting human life, defending Muslim sovereignty and upholding the Islamic law, are objectives of the Islamic Ummah. The principle of jihad obligates the Muslims to maintain and achieve these objectives. The best way to achieve these objectives, and most appropriate method of upholding the principle of jihad is, however, a question of leadership and strategy

Throughout the Makkan period, the Muslims maintained a pacifist approach in dealing with their adversaries, despite the physical abuse and mental anguishes inflicted upon them by Quraysh. For pacifism was then the best method to effectively achieve Muslim objectives. ⁶⁰ Some might argue that Muslims did not resort to violence during the Makkan period because they were not permitted to fight at that time-an argument easily overturned when we realize that the absence of the principle of self-defense during the Makkan period was a temporary suspension of the

59: Ibn Taymiyyah, Al-Siyasah al-Shar'iyah [Dar al-Katib al-'Arabi, n.d.] , pp. 131-32

principle's application, rather than its nullification or rejection. Certainly, the Qur'an unequivocally states that the principle of self-defense and military deference is an essential element of social life and a fundamental principle around which human civilization has evolved.

and had it not been [the Will of] Allah that one set of people is repelled by another, certainly the earth would have been in a state of disorder. [2:251]

and had it not been [the Will of] Allah that one set of people is repelled by another, certainly there would have been pulled down monasteries, churches, synagogues, and mosques, in which the name of Allah is commemorated in abundant measure. [22:40]

Thus, it is up to the Muslim leadership to assess the situation and weigh the circumstances as well as the capacity of the Muslim community before deciding the appropriate type of jihad. At one stage, Muslims may find that jihad, through persuasion or peaceful resistance, is the best and most effective method to achieve just peace, as was the case during the Makkan period. At another stage, fortification and defensive tactics may be the best way to achieve these objectives, as was the case of the Battle of al Khandaq. At yet a third stage, the Muslim leadership may decide that all-out war is the most appropriate measure to bring about just peace, as was the case during the war against the Arab apostates. The selection of the method of jihad, however, is not an arbitrary decision, but one that takes into account the general conditions of both the Muslim community and its adversaries, including the military balance between the Muslims and their enemies and the morale of the Muslim army. The Qur'an circumscribed the Muslim ability to militarily confront its adversaries by two ratios [ten-to-one and two-to-one] that sets the upper and lower limits of the Muslim forces in terms of their manpower.

O Prophet, rouse the believers to the fight. If there are twenty amongst you, patient and persevering, they will vanquish two hundred: if a hundred, they will vanquish a thousand of the unbelievers: for these are people without understanding. [8:65]

For the present, Allah hath lightened your [task] , for He knows that there is a weak spot in you: but [even though] , if there are a hundred of you, patient and persevering, they will vanquish two hundred, and if a thousand, they will vanquish two thousand, with the leave of Allah: for Allah is with those who patiently persevere. [8:66]

These verses vividly state that given favorable conditions and high morale, Muslims could, by virtue of their faith, win against odds of ten to one. But when their organization and equipment are weak, and their morale falls short of the optimal situation, they are obligated to tackle no more than odds of two to one. The first situation was illustrated at the Battle of Badr where the Muslim army crushed a force threefold bigger, while the second situation is demonstratable in the Battle of al Khandaq, when Muslims, confronted with a force manifold stronger than their own, elected to fortify in their city by digging a ditch around Madinah, and thus avoided military confrontation with their enemies. [61](#)

60: Sayyid Qutb, *Milestones* [Cedar Rapids: Unity Publishing Co. , n.d.] , pp. 65-67.

61: Muhammad Haykal, *The Life of Muhammad*, trans. Isma'il al-Faruqi [North American Trust Publications 1397 / 1976] , p. 303, and Ibn Hisham, *Sirat ibn Hisham*, in "Tahdib Sirah ibn Hisham", ed. 'Abdal Salam Harun [Beirut: Al-Majma al-'Ilmi al-'Arabi al-Islami, n.d.] p. 215

Conclusion:

Evidently, the classical doctrine of war and peace has not been predicated on a comprehensive theory. The doctrine describes the factual conditions that historically prevailed between the Islamic state during the 'Abbasid and Byzantium, era, and thus, renders rules which respond to specific historical needs. The lack of a comprehensive theory of war and peace has led further to major errors in perceiving the role of war and the real objectives of the Islamic state vis-a-vis non-Muslim communities. The classical doctrine mistakenly perceives war as the instrument of the Islamic state to expand the Muslim territories and dominate non-Muslim states. As it has shown in this paper, the aim of war is to assure justice and abolish oppression and tyranny. The expansion of Islam is to be achieved through persuasion and the use of peaceful means, not by force and compulsion. Only when the peaceful effort is frustrated, is the Islamic state justified in resorting to war. Yet peace in Islam does not mean the absence of war, because Islam considers that real peace can only be attained when justice prevails. Islam, therefore, justifies war against regimes that prevent people from choosing their ideas or practicing their beliefs.

Finally, although this discussion has been confined to the conception of war and peace and issues concerning the initiation of war, it can also be extended to questions concerning the prosecution of war and the conduct of peace – e.g., treaties, prisoners of war, spoils of war, and so forth. Many of the rules pertaining to these issues *are predicated on customs, traditions, or conceptions peculiar to the historical period in which these rules were first articulated, and have thus a historically limited application.*