Jihad Between Islamic Jurisprudence and Practice of the Islamic State in Iraq and Syria

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Abstract

Islam is the extension of the monotheistic religions. It essentially claims for peace and tranquility but also allows war in some circumstances. War in Islam is referred to as *jihad*. However, *jihad* is border and includes spiritual struggle as well. Classical Islamic scholars interpreted combative *jihad* as self-defence against aggression and global war to spread Islam. The majority of modern scholars consider the political and cultural differences between the early periods of Islam and modern era. They interpret the concept as only self-defence and ask Muslims to resort to civil means to convey their message. However, some scholars and groups still follow the classical interpretation of the concept. Scholars generally set forth some preconditions for combative *jihad*. The preconditions are the existence of a reason, a purpose, permission of a legitimate ruler and adherence to humanitarian rules. ISIS launched intensive military attacks against the Islamic countries of Iraq and Syria between 2013 and 2014 and captured large areas after committing many atrocities and devastating the two countries. The group eventually announced an Islamic Caliphate and identified Abubakr al-Bagdadi as the Caliph. It later asked Muslims to pledge allegiance to its Caliph and join its ranks. This article argues that the ISIS war does not satisfy the Islamic jurisprudential conditions to be qualified as *jihad* because the group waged its war based on no religious reason for a political purpose without the authorization of a legitimate Islamic ruler and outside of the confines of the humanitarian rules.

Keywords: Islam, *Jihad*, Islamic jurisprudence, ISIS, The ISIS war

Introduction

"By Allah, I have never witnessed the scholars who speak about matters of *Jihad* agree on criticizing and opposing a Muslim movement as they have agreed on condemning ISIS."

Sheikh Abdullah al-Mahiseny

Islam is a monotheistic religion that claims to pacify and tranquilise life. It basically promotes the ideas of peace and tolerance among its followers and its followers and other people but allows war in some specific circumstances as well. Islam has a specific concept regarding war which is known as *jihad*. However, the scope of *Jihad* is linguistically and theologically broader and entails spiritual struggle as well.

Classical Islamic scholars refer to combative *jihad* as defensive and offensive *jihad*. Accordingly, defensive *jihad* is the use of force to defend Muslims and Islamic Caliphate from aggression and offensive *jihad* is a global war to spread Islam. Most of the modern scholars interpret combative *jihad* as only self-defence considering the political and cultural realities of today's life. They require Muslims to resort to civil means to deliver their message to the world. However, there are some few scholars and schools that believe in the same classical approach to combative *jihad*. In addition to that the classical and modern scholars generally base *jihad* on the preconditions of reason, purpose, permission of a legitimate ruler and respect to humanitarian rules.

The Islamic State in Iraq and Syria (ISIS) is a radical Islamic group whose origins date back to the beginning of 2000s. The ideology of the group originates from *Wahhabism* which is the most violent view of the school of *Salafism*. The group initiated intensive military operations against Iraq and Syria in the name of *jihad* between 2013 and 2014 and consolidated control over large parts of the two countries. It eventually declared an Islamic Caliphate and announced the Iraqi extremist, Abubakr al-Baghdadi as the Caliph of Muslims.

ISIS waged its war against Iraq and Syria in which Islam is the main state religion and the majority of their populations are Muslim. The two countries posed no threat to the other Islamic countries and Muslim communities either. The group rather aimed to establish a *Sunni* Islamic state with the support of some *Sunni* Muslim countries in the Middle East. The group's war was authorised by someone who had not religious legitimacy even after the Caliphate declaration as the majority of Muslims refused to give their *bay'a*h (allegiance) to him. ISIS moreover destroyed the two countries and perpetrated all the crimes that are known as the serious crimes of concern to mankind (The Rome Statute, 1998: Art. 5). Hence, the ISIS war dose not fulfill the jurisprudential conditions and cannot be defined as *jihad*.

The international media and politics have considered the topics of the theory and practice of *jihad* as well as ISIS and its war seriously but there is still a lack of a legal comparative study between *Jihad* and the ISIS war considering Islamic jurisprudence. The analysis of the ISIS war in light of the definition, scope and conditions of *jihad* leads to a better understanding of

Islam and the war of the global terrorist groups operate under the name of Islam.

The article attempts to illustrate the concept of *jihad* and nature of the ISIS war through answering some questions. While *jihad* is a misunderstood violent concept, what does *jihad* actually mean? What is the scope of *jihad*? Does *jihad* include combat? If yes, what is the nature of combative *jihad*? Is combative *jihad* a haphazard war or based on some jurisprudential conditions? What is ISIS? What is the true reason of ISIS for attacking Iraq and Syria? What is the actual purpose of ISIS in its war? Is the ISIS Caliph a legitimate Islamic ruler to authorise *jihad*? Does ISIS respect the humanitarian rules applicable during battle?

The article first addresses Islam in brief and clarifies *jihad* considering Islamic jurisprudence. It later introduces ISIS and examines the group's war in light of the Islamic jurisprudential conditions.

A brief overview of Islam

Islam is a monotheistic religion that has more than 1.57 billion followers today (Pew Research Center, 2009: 1). According to the historical traditions, the origins of Islam trace back to the first divine revelation sent down from God, through the angel Gabriel, to the Prophet Muhammad in 610 in Hara cave, Mecca where the Prophet used to worship God alone during the months of Ramadan (Najeebabadi, 2000: 104-105; Armstrong, 2002: 3-4). The divine messages quickly became a faith and formed Islamic religion in the second decade of the 7th century (Ahmad, 2013: 11-18). After the prophet migrated to Medina in 622, Islam shaped political, social, economic and cultural life through the foundation of Islamic State (Kaka Khel, 1982; Berween, 2003; Tahir-ul-Qadri, 2012). The Islamic State covered the whole Arabian Peninsula in the second half of the 7th century and extended to North Africa and Spain in the west and India in the east by 8th century (Karsh, 2007: 23).

Islam is theologically defined as the total and sincere submission of human to Allah (God). In Islam, God is one and incomparable who neither begets nor is born (The Quran, 112:1-4). He is the creator of all the creation (The Quran, 7:54). The sole purpose of the existence is to worship him (The Quran, 51:56). Islam, in other words, requires its adherents to surrender to God and profess to his oneness. Muslims must also believe in the angels, Prophet Muhammad and all the previous Prophets and Messengers who brought revelations and messages from God to mankind, the Quran and all the previous holy books, the authority of God over the destiny of human and the life after death (al-Uthaymeen, 2007: 20-90). These are the elements that constitute the Islamic creed. In addition, Islam requires its followers to perform some obligations including establishing five daily prayers, fasting during the whole

month of Ramadan, paying *zakat* which is giving a certain amount from assets to needy people, pilgrimage to the city of Mecca in today's Saudi Arabia once in life. These obligations are known as the pillars of Islam (al-Uthaymeen: 15-19).

Muslims believe that Islam is not a new message but the same pure primordial divine message that God delivered to the other Prophets and Messengers to guide their peoples (The Quran, 42:13; 3:84). However, it is the final, unaltered and universal version that is applicable to every single human on earth (The Quran, 33:40; 4:47; 21:107; 3:19, 85). From the logic of Muslims, Islam is more than just a mere individualistic faith; it is a comprehensive system that regulates all the life aspects from individual and family issues to social, political and economic matters. In other words, Muslims believe that Islam is a complete way of life and therefore spreading it is a duty upon every Muslim through either invitation or *jihad*.

Islam, these days, consists of two main denominations which are *Sunni* and *Shi'a*. The *Sunnis* constitute the majority of Muslims and are estimated to be between 85% and 90% and the *Shi'as* constitute the rest (Khalili, 2016: 41). Each sect entails various doctrines and schools which are all different jurisprudentially. Some schools believe in the common modern democratic means and spread Islam only through peaceful invitation while some others are very extremist that subject anyone who rejects their views to violence.

Islam and War

Islamic scholars define Islam as the submission of human to God to live in peace while critics interpret Islam as the surrender of non-Muslims to Muslims to be safe. The absolute determination of the nature of Islam as a peaceful and violent religion is not logical as Islam entails the elements of peace and violence at the same time. Islam can be concurrently a peaceful and violent religion and can be neither a peaceful nor a violent religion like all the other divine and human ideologies claimed an ideal life to mankind but also practiced violence. War is not an element of the Islamic creed but rather an ideological tool to reach a certain goal in a specific circumstance.

The Quran and traditions of the Prophet Muhammad include many instances that encourage peace and reject violence among Muslims and Muslims and other people, such as:

"Whoever kills a human being unless it be (in retaliation) for murder or mischief on earth-it is as if he had killed the entire mankind. And whoever saves a life-it is as if he had saved the entire mankind" (The Quran, 5: 32).

"Indeed, Allah commands justice, goodness and giving to relatives and forbids immorality, evil deeds and oppression. He admonishes you that you might remember" (The Quran, 16:90).

"The Muslim is the one from whose tongue and hand the people are safe, and the believer is the one people trust with their lives and wealth" (An-Nasā'I, 2007: *Hādith* No. 4998).

Likewise, Islam allows and encourages war in some specific times and circumstances. There are many terms in Islam that imply war including *ġazwah* (military expedition), *qital* (fighting), *harb* (war), *futuhat* (conquest), *fitna* (religious division or civil war) and *jihad*. *Jihad* is the most popular terminology in the Quranic verses and practices of the Prophet Muhammad. The reason is that the term of *jihad* is linguistically extensive and entails all the other terms and theologically, it is a war for the cause of God and not common human material purposes. However, *jihad* is still broader than the use of force and it is war by all means.

Jihad

Jihad is perhaps the most misinterpreted Islamic term. It is still understood to be only the use of violence by Muslims against non-Muslims not only in the mind of non-Muslims but many Muslims as well. The concept of *jihad* is much comprehensive and multi-dimensional than being restricted to the use of force. Even through *jihad* certainly includes war, war in Islam is based on reason, purpose, circumstance and official authorisation of a legitimate ruler.

Islamic scholars translate the Arabic word of *jihad* literally as 'struggle or strive'. Thus, *jihad* theologically is defined as the exertion of efforts in the way of God (Khadduri, 1955:55; Maududi, 1980: 5; *Jihad* and the Islamic Law of War, 2003: 1; Hayward, 2013: 51-52). According to the Quran and *Hadith*, striving in God's cause is not only performed through war but also spiritual means.

"And those who struggle in Our cause, we will surely guide them to Our paths. And indeed, Allah is with the good doers" (The Quran, 29:69).

"And strive for Allah with the striving that is due to Him…" (The Quran, 22:78).

"Strive in the cause of Allah with your wealth and your lives…" (The Quran, 61:11).

"A believer who strives his utmost in Allah's cause with his life and property" is the best one among the people (al-Bukhārī, 1997: *Hadith* No. 2786).

"The best *Jihad* for women is *Hajj* (pilgrimage to mecca)" (al-Bukhārī: *Hadith* No. 2784).

Since the early periods of the Islamic history, there have been wide-ranging scholarship debates over the interpretation of *jihad*. Islamic scholars have divided *jihad* into various categories. The categories generally entail spiritual and combative *jihad*. Spiritual *jihad* is inner strive against evil

temptations, doing and promoting good, avoiding and forbidding wrong and developing all the life aspects. Combative *jihad* is defined as taking part in battle in God's cause (Al-Jawazyyah, 2003: 249-250; Ibn Rushd, 1325 (1907): 259; Ibn Hazm, 1321 (1903): 135). It should be mentioned that the Combative *jihad* is regarded as the most controversial category of *jihad* among scholars.

Classical Islamic Scholarship generally divides combative *jihad* into defensive and offensive *jihad* (Mawardi, 1853: 89; Khadduri: 56-61; Peters, 1996: 3-17; Moussalli, 2009: 17-18). Scholars define defensive *jihad* as war to protect Muslims and territory of Islamic Caliphate from aggressive acts. They refer to some Quranic verses to support their argument, such as:

"Permission to fight back is granted to those who have wrongfully been attacked…, those who have been expelled from their homes unjustly…" (The Quran, 22: 39-40).

"And fight in the way of Allah those who fight against you and do not transgress. Indeed, Allah does not love the transgressors" (The Quran, 2: 190).

"…expel them from wherever they have expelled you …" (The Quran, 2: 191).

The second classical category of combative *jihad* is defined as global *jihad*. Scholars refer to offensive *jihad* as means to spread Islam and expand the territory of Caliphate. They believe that offensive *jihad* is neither aggression nor compulsory conversion but rather a way to convey Islam as the final divine message to the world. The scholarship argument on offensive *jihad* is also based on some verses of the Quran, such as:

"O you who believe! fight those disbelievers who are close to you and let them find harshness in you, and know that Allah is with those who fear Him" (The Quran, 9: 123).

"When the sacred months have passed, kill the polytheists wherever you find them and take them captives and surround them and lie in wait for them at every place of ambush. But if they repent and establish prayers and pay alms-tax, then let them go their way. Indeed, Allah is forgiving and merciful" (The Quran, 9: 5).

"And fight them until there is no more aggression and religion is for Allah. But if they cease, let there be no hostility except against the oppressors" (The Quran, 2: 193).

Unlike the classical scholars, the majority of modern scholars define combative *jihad* as the use of force in self-defence. However, they still believe in global *jihad* but not in a combative nature (al-Banna, 1978: 150-151; Ghannouchi, 1995; al-Buti, 1995: 44,92).

The scholars argue that the Prophet initially intended to convey his message only through peaceful means. He arranged academic debates to protest false beliefs and propagate Islamic principles. He delivered letters to neighboring and world kings to inform them about his divine message. He

never waged *jihad* until people refused any solution other than attacking him and his followers for insisting on the message. Based on the practice of the Prophet, the scholars believe that offensive *jihad* is not permissible as long as Muslims practice their religion and preach freely (al-Buti: 44; Kabbani).

In contrast, there are some few and unpopular scholars who follow the classical categorization of *jihad* (Qutb, 1990: 43, 50, 103, 104; Azzam). The scholars require Muslims not to neglect global *jihad* along with defensive *jihad*. However, they think differently regarding the manner of waging and the purpose of *jihad*.

The majority of classical and modern scholars hold the opinion that *jihad* must be directed under the leadership of a legitimate ruler and within the boundaries of the Islamic humanitarian rules applicable during battle (Kabbani; Moussalli: 18).

ISIS

ISIS is a radical Islamic group which has been designated as a terrorist organization. The group has long roots which specifically started from the foundation of *Jama'at al-Tawhid wa al-Jihad* (The Group of God's Unity and *Jihad*) by the Jordanian extremist, Abu Mus'ab al-Zarqawi in the beginning of 2000s (Zelin, 2014: 1). The goal of the group was initially establishing an Islamic state in Jordan but it failed there and moved to Iraq in 2002 (Hashim, 2014: 4). The group later pledged allegiance to the al-Qaeda leader, Osama Bin Laden and adopted the name of *Tanzim Qa'idat al-Jihad fi Bilad al-Rafideen* (The Organization of *Jihad*'s Base in Mesopotamia), also known as al-Qaida in Iraq, in October 2006 (Hashim: 5). On 12 October 2006, the group joined some other groups and tribes and formed *Hilf al-Mutayibeen* (The Coalition of the Scented Ones) (*Jihad* Groups in Iraq, 2006). Some days later the Coalition announced the establishment of the Islamic State in Iraq (Bunzel, 2015: 17).

In April 2010, the group appointed its Iraqi militant, Abu Bakr al-Baghdadi as its new leader after a joint United States and Iraqi air raid killed its previous leader, Abu Omar al-Baghdadi (Hashim: 7). Following the start of the Syrian civil war in January 2012, some ISIS militants established an affiliated group in Syria and named Jabhat al-Nusra (al-Nusra) (Hashim: 11). A year later, on 9 April 2013, the ISIS leader, Abu Bakr al-Baghdadi announced the merger of both ISI and al-Nusra groups and adopted the name of ISIS (Bunzel: 25). Even though al-Nusra rejected the merger and reaffirmed its allegiance to the al-Qaeda leader, Ayman al-Zawahiri (Bunzel: 25; Hashim: 11), ISIS moved to Syria in June 2014 (Al Nusra pledges Allegiance, 2014). After entering Syria, the group started fighting the Syrian regime forces and all the rebel groups which refused to join it. By the end of June 2014, ISIS captured the southeastern province of Der al-Zawr, most of the northern al-

Raqqah, the countryside of Aleppo in the north, most of the desert in the south, Yarmouk refugee camp in the southwestern Damascus, parts of the countryside of Homs in the west and the southern Palmyra city in Syria (Shaheen, 2015) and most of Anbar in the west, the entire northern Mosul in Neinawa and many cities in the northeastern Kirkuk, central Salahaddin and eastern Diyala governorates in Iraq (UNAMI and OHCHR, 5 June-5 July 2014: 2,3,4). On 29 June 2014, ISIS announced an Islamic Caliphate on the occupied territories and identified Abu Bakr al-Baghdadi as its Caliph (Hashim: 14).

The war of ISIS

ISIS Ideologically belongs to the school of *Jihadi-Salafism*. *Jihadi-Salafism* requires Muslims to return to the pure teachings and practices of the prophet Muhammad and early Islamic generation and wage *jihad* against local secular rulers and external aggressors. However, the school entails various views that some are slightly moderate and some others are quite extremist.

If we look at the ISIS practice closely, we will understand that the group is much violent than the rest of the *Jihadi-Salafi* groups such as, al-Qaeda, Taliban, al-Shabaab and Hamas. Therefore, scholars often define ISIS as a *Wahhabi* group. The *Wahhabis* are also *Salafis* but they believe themselves to be the only true Muslims and consider other Muslims as apostates or unbelievers. The pronouncement of a Muslim as an apostate or disbeliever is considered the most violent Islamic thought which is known as *Takfirism*. ISIS, in other words, can be defined as a *Takfiri* group.

ISIS started its military campaigns in the *Shi'a* predominant country of Iraq and against the *Shi'a* government of Syria while the two countries were already Muslim countries and considered Islam as the main state religion and the main source of legislation (The Iraqi Constitution, 2005: Art. 2; The constitution of the Republic of Syria, 2012: Art. 3). The two countries caused no threat to Islam, Muslims and no aggression to the territories of the other Islamic countries. If the group justified its military attacks by the fact that the two countries had adopted a secular system to rule the countries, the rest of the Arabic and Islamic world was similarly not based on the traditional Islamic governance. In addition, the territory of Iraq and Syria for the group's Caliphate raised a doubt that the group was not actually conducting *jihad* but implementing a political agenda.

ISIS operated and concentrated mainly in the *Sunni* predominant governorates in Iraq and Syria. The group eventually captured large swaths of territory and sought to establish a *de facto* state that comprised of the *Sunni* areas in Iraq and the *Sunni* areas in Syria "the *shūrā* (consultative) council of the Islamic State studied this matter after the Islamic State – by Allah's grace – gained the essentials necessary for *khilāfah* (Caliphate), which the Muslims

are sinful for if they do not try to establish" (This is the Promise of Allah, 2014). The Caliphate announcement was never the goal of the group but it was just a plausible justification to convince the Islamic public opinion of the invasion, rejection of the sovereignty and territorial integrity of Iraq and Syria and breaking the recognized border lines, strengthen its ranks through drawing the attention of the other extremists and further expand its territory to undermine the non-*Sunni* domination in the Middle East.

With the Caliphate announcement, ISIS declared Abubakr al-Baghdadi as the Caliph of Muslims and asked the local and world Muslims to give *bay'ah* to him and join the group "It is incumbent upon all Muslims to pledge allegiance to the *khalīfah* (Caliph) Ibrāhīm and support him…The legality of all emirates, groups, states, and organizations, becomes null by the expansion of the *khilāfah*'s authority and arrival of its troops to their areas…It is not permissible for a single person of you who believes in Allah to sleep without having *walā'* (loyalty) to the *khalīfah*" (This is the Promise of Allah). Although Iraq and Syria are very diverse in terms of religion and ethnicity, the majority of the two countries' populations is Muslim. The number of people who gave *bay'ah* to Abubakr al-Baghdadi and joined the group was less than several thousands and most were *Sunni* people within the areas under the control of the group. The respond of the world Muslims was similarly far less than the group's expectation and the *bay'ah* was only given by some radical groups and individuals who traveled to Iraq and Syria and joined the group. Hence, the ISIS Caliphate is not the representative of the Muslim communities and Abubakr al-Baghdadi is not a legitimate ruler to permit *jihad*. In addition, ISIS long before the Caliphate announcement had initiated war against Iraq. If the group justifies its military attacks as *jihad* because the Caliph Abubakr authorises it now, what about the war in which the group had engaged since the beginning of 2000s and caused the death and injury of hundreds of thousands of innocent people and devastation of the country (Monthly Civilian deaths from Violence).

The ISIS war is the most indiscriminate and horrific war of this century. The group violated all the humanitarian rules prescribed in the Quran, traditions of the prophet Muhammad and practices of the early Caliphs that almost all overlap the modern humanitarian rules applicable during armed conflict today. ISIS carried out many widespread and systematic attacks against the Iraqi and Syrian civilian populations and committed crimes against humanity including murder, extermination, enslavement, persecution of minorities and women on the grounds of religion, ethnicity and gender, enforced disappearance and other inhuman acts of similar character. The military operations of the group against the Iraqi and Syrian military forces were accompanied with large-scale war crimes including willful killing, attacking protected people and objects, killing prisoners of war, using

prohibited weapons, forcible displacement, rape, sexual slavery and forced pregnancy, shelling residential areas and child recruitment (UNAMI and OHCHR, 5 June-5 July 2014: 9-14; UNAMI and OHCHR, 6 July-10 September 2014: 5-17; UNAMI and OHCHR, 11 December 2014-30 April 2015: 10-23; UNAMI and OHCHR, 1 May-31 October 2015: 8-19; UNAMI and OHCHR, 1November 2015-30 September 2016: 4-15; UNHRC, 13 August 2014: 4-22; UNHRC, 14 November 2014: 4-13; UNHRC, 5 February 2015; UNHRC, 11 February 2016; UNHRC, 11 August 2016). ISIS attacked the Yazidi religious minority in the Iraqi northern Ninewa governorate with intent to destroy the group in whole. Consequently, it killed many members of the group, caused serious bodily and mental harm to many others, inflicted conditions of life with intent to destroy the group physically, imposed measures to prevent births within the group and forcibly transferred the Yazidi children to their territories (UNAMI and OHCHR, August 2016; Amnesty International, 2014; UNHRC, 15 June 2016; Human Rights Watch, 5 April 2016).

Most of the contemporary Islamic scholars have expressed their opinion on ISIS. The Saudi *Salafi* scholar, Abdul Aziz al-Fawzan defines ISIS as "a rogue, external criminal organization" (Ladadwi, 2014). The Syrian *Sufi* scholar, Muhammad al-Yacoubi describes the ISIS members as deviators (Al-Yaqoubi, 2015: xi). The Grand *Imam* of al-Azhar in Egypt, Sheikh Ahmed al-Tayeb argues that it is painful to see that crimes are committed to restore the Islamic Caliphate (Egypt's Al Azhar denounces IS, 2014). The International Union of Muslim Scholars believes that the ISIS Caliphate is 'null and void' (Prominent Scholars declare ISIS, 2014). The Egyptian Muslim brotherhood scholar, Yusuf al-Qaradawi states that it is the whole Muslim community that gives the title of Caliph and not a group (Goodenough, 2014). The Iraqi *Shiite* cleric, Ayatullah Ali al-Sistani asks people to fight the group and defend their places (Chulov, 2014).

Although the Islamic identity of ISIS is not arguable, the group is much politically motivated. ISIS, in other words, is a part of the political and military conflicts between the *Sunni* and *Shi'a* powers. The war of the group is a proxy political war in the name of Islam that is aimed at weakening the *Shi'a* domination and strengthening the *Sunni* hegemony in the region. The ISIS war not only lacks the Islamic jurisprudential elements of reason, purpose, circumstance, legitimacy of its Caliph and adherence to humanitarian rules to be defined as *jihad* but also such a war is prohibited in Islam.

Conclusion

Islam is a religion that claims to be the extension of the previous divine messages. It, like all the other religions and ideologies, promotes peace and allows war in specific circumstances. War in Islam is known as *jihad*;

however, *jihad* is war by all spiritual and physical means in the way of God. Classical scholars categorize combative *jihad* into defensive and offensive *jihad*. Defensive *jihad* is defined as self-defence against aggression while offensive *jihad* is meant to be global war to deliver the massage of Islam. The majority of modern scholars advocate the defensive nature of combative *jihad* as Muslims can easily resort to civil means to convey their message to the world. However, there are also some unpopular scholars and small radical groups who still support the idea of global combative *jihad*. In both cases, most of the classical and modern scholars believe that *jihad* must be waged under the authorisation of a legitimate ruler and Muslim fighters must respect humanitarian rules. ISIS is a radical Islamic group that was formed in 2013. However, the group was the extension of some other radical groups that had been operating in Iraq since the beginning of 2000s. ISIS attacked the *Shi'a* Islamic countries of Iraq and Syria between 2013 and 2014 to separate the *Sunni* areas from the two countries and establish a *Sunni* state. Although the group announced an Islamic Caliphate, it was not a religious goal but rather to justify the legitimacy of its state and undermine the *Shi'a* domination in the Middle East. The group further asked Muslims to pledge allegiance to its leader but the majority of Muslims refused to entrust him with such a position. Finally, ISIS violated all the Islamic humanitarian rules applicable during battle and committed all the grave crimes shock the conscience of mankind. Hence, the ISIS war does not fulfill the jurisprudential conditions of reason, purpose, authorization of a legitimate ruler and adherence to humanitarian rules. Such a war is prohibited in Islam, let alone be defined as *jihad*.

References:
1. Ahmad, Hadrat Mirza Bashiruddin Mahmud, *Life of Muhammad*, 6[ed], (UK: Islam International Publication LTD, 2013).
2. Al-Banna, Hassan, *Five tracts of Hassan Al Banna (1906–1949): A selection from the Majmu'at Rasa'il al-Imam al-Shahid. Berkeley*, (CA: University of California Press, 1978).
3. Al-Buti, Muhammad Said R, *Jihad in Islam*, (Beirut: Dar al-Fikr,1995).
4. Al-Jawazyyah, Ibn Qaiyym, *Provisions for the Hereafter (Mukhtasar Zad Al- Ma'ad)*, (Riyadh: Darussalam, 2003).
5. "Al Nusra pledges Allegiance to ISIL", *Gulf News Iraq*, 25 June 2014. Available at: <http://gulfnews.com/news/mena/iraq/al-nusra-pledges-allegiance-to-isil-1.1352029> (Accessed 25 March 2017)
6. Al-Qadri, Muhammad Tahir, *The Constitution of Medina*, (London: Minhaj-ul-Quran Publications, 2012).

7. Al-Uthaymeen, Muhammad Ibn Salih, *The explanation of the Fundamentals of Islam*, Translated by: Abu Salman Diya ud-Deen Eberle, 1ed, (Rabwah: The Islamic Propagation Office, 2007).
8. Al-Yaqoubi, Muhamad, *Refuting ISIS*, (Sacred Knowledge, 2015).
9. Amnesty International, "*Ethnic cleansing on a Historic Scale: Islamic State's Systematic targeting of Minorities in Northern of Iraq*", London, 2014.
10. An-Nasā'I, Hāfiz Abû Abdur Rahmān Ahmad bin Shu'aib bin 'Ali, *Sunan An-Nasā'I*, Translated by: Nāsiruddin al-Khattāb, Vol. 6, (Riyadh: Darussalam, 2007).
11. Armstrong, Karem, *Islam*, (New York: Modern Library chronicles Book, 2002).
12. Azzam, Abdullah, *The Defense of the Muslim Lands*, Translated by: Brothers in Ribbat. Available at: <https://islamfuture.files.wordpress.com/2009/11/defence-of-the-muslim-lands. pdf> (Accessed: 9 April 2017).
13. Berween, Mohamed, "Al-Wathiqa: The First Islamic State Constitution", *Journal of Muslim Minority Affairs*, 32 (2003), pp.103-120.
14. Bunzel, Cole, *From Paper State to Caliphate: The Ideology of the Islamic State*, Center for Middle East Policy at BROOKINGS, March 2015.
15. Chulov, Martin, "Iraqi's Highest Shia Cleric adds to pressure on Maliki over the ISIS Insurgency", *The Guardian*, 20 June 2014. Available at: <https://www.theguardian.com/world/ 2014/jun/20/iraq-highest-shia-cleric-maliki-isis-insurgency-ayatollah-sistani> (Accessed 25 April 2017).
16. "Egypt's Al Azhar denounces IS 'Criminals", *Al Monitor*, 10 September 2014. Available at: http://www.al-monitor.com/pulse/politics/2014/09/egypt-condemn-islamic-state-grand-imam-tayeb.html?utm_source=AlMonitor+Newsletter+%5BEnglish%5D&utm_campaign=d4d870cbb5-September_11_2014&utm_medium=email&utm_term=0_28264b27a0-d4d870cbb5-93069773> (Accessed 25 April 2017).
17. Ghannouchi, Rached, *"The conflict between the West and Islam: The Tunisian case "reality and prospect""*, Lecture at the Royal Institute of International Affairs, (London: 9 May 1995).
18. Goodenough, Patrick, "Self-Appointed 'Caliph' makes First Public Appearance", *CNS News.com,* 6 July 2014. Available at: <http://cnsnews.com/news/article/patrick-goodenough/self-

appointed-caliph-makes-first-public-appearance> (Accessed: 25 April 2017).

19. Hashim, Ahmed S., *From Al-Qaeda Affiliate to the Rise of the Islamic Caliphate: The Evolution of the Islamic State of Iraq and Syria (ISIS)*, Policy Report, S. Rajaratnam School of International Studies (Nanyang Technological University), December 2014.

20. Human Rights Watch, *'Women suffer under ISIS*', 5 April 2016.

21. Ibn Hazm, *Al-Fasl fi al-Milal wa al-Ahwa wa al-Nihal*, Vol. IV, (Cairo: A.H, 1321 (1903)).

22. Ibn Rushd, *Al- Muqaddimat Al Mumahhidat*, Vol. 1, (Cairo: A.H, 1325 (1907)).

23. *Jihad* and the Islamic Law of War, (Jordan: The Royal AAl Al-Bayt Institute for Islamic Thought, 2003).

24. "*Jihadi* Groups in Iraq Take an Oath of Allegiance", *The Middle East Media Research Institute*, 17 October 2006. Available at: <http://www.memri.org/report/en/0/0/0/0/0/0/1910.htm> (Accessed: 6 April 2017).

25. Kabbani, Shaykh Muhammad Hisham, "What is *Jihad*? A Scholar's Prospective", *History of Islam*. Available at: <https://historyofislam.com/contents/the-modern-age/what-is-*jihad*-a-sch olars-perspectiv/> (Accessed 1 April 2017).

26. Kaka Khel, Muhammad Nazeer, "Foundation of the Islamic State at Medina and its Constitution", *Islamic Research Institute (International Islamic University)*, 21 (1982), pp. 61-88.

27. Karsh, Efraim, *Islamic Imperialism*, (New Haven *et al*: Yale University Press, 2007).

28. Khadduri, Majid, *War and Peace in the Law of Islam*, (London: The Johns Hopkins Press, 1955).

29. Khalili, Emad, "Sects in Islam: Sunnis and Shias", *International Academic Journal of Humanities,* 3 (2016), pp. 41-47.

30. Ladadwi, Abdullāh,"Conclusive Scholarly Opinion on ISIS", *Islam 21C.com*, 10 July 2014. Available at: <https://www.islam21c.com/politics/conclusive-scholarly-opinions-on-isis/> (Accessed: 20 March 2017).

31. Maududi, Abul A'la, *Jihad in Islam*, (Beirut: The Holy Koran Publishing House, 1980).

32. Mawardi, *Al-Ahkam al-Sultaniyya*, (Bonn: Enger, 1853).

33. "Monthly Civilian Deaths from Violence 2003 Onwards", *Iraqi Body Count*. Available at: <https://www.iraqbodycount.org/database/> (Accessed: 17 April 2017).

34. Moussalli, Ahmad, *Wahhabism, Salafism and Islamism: Who is the Enemy?* (Beirut *et al*: Conflict Forum, 2009).

35. Peters, Rudolph, *Jihad in Classical and Modern Islam*, (Princeton: Markus Wiener Publishers, 1996).
36. Pew Research Center, *Mapping the Global Muslim Population*, Washington, 2009.
37. Najeebabadi, Akbar Shah, *The History of Islam*, Vol.1, (Riyadh *et al*: Darussalam, 2000).
38. "Prominent Scholars declare ISIS Caliphate 'Null and Void'", *Middle East Monitor*, 5 July 2014. Available at: <https://www.middleeastmonitor.com/20140705-prominent-scholars-declare-isis-caliphate-null-and-void/> (Accessed: 25 April 2017).
39. Qutb, Sayyid, *Milestones*, (Indianapolis: American Trust Publication, 1990).
40. United Nations Human Rights Council (UNHRC), "*(Report of the Independent International Commission of Inquiry on the Syrian Arab Republic)*" (*(Report of the International Commission of Inquiry on Syria)*", 14 November 2014.
41. *Sahih al-Bukhari*, Translated by: Muhammad Muhsin Khan, Vol. 4, (Riyadh: Darussalam, 1997).
42. Shaheen, Kareem, "Half of Syria now under Islamic State's Control", *The Hindu*, 22 May 2015. Available at: <http://www.thehindu.com/todays-paper/tp-international/half-of-syria-now-under-islamic-states-control/article7233028.ece> (Accessed: 8 April 2017).
43. The Constitution of the Republic of Syria, entered into force on 27 February 2012.
44. The Iraqi Constitution, entered into force on 15 October 2005.
45. The Quran
46. The Rome Statute of the International Criminal Court (adopted on 17 July 1998, entered into force on 1 July 2002), 2187 UNTS 90.
47. "This is the Promise of Allah", In Sunni Rebels declare New 'Islamic Caliphate', *Aljazeera*, 30 June 2014. Available at: <http://www.aljazeera.com/news/middleeast/2014/06/isil-declares-new-islamic-caliphate-201462917326669749.html> (Accessed: 17 April 2017).
48. United Nations Assistance Mission for Iraq (UNAMI) and The Office of the Higher Commission for Human Rights (OHCHR), "*A call for Accountability and Protection: Yazidi Survivors of Atrocities committed by ISIL*", August 2016.
49. UNAMI and OHCHR, "*Report on the Protection of Civilians in the Non-International Armed Conflict in Iraq: 5 June – 5 July 2014*".
50. UNAMI and OHCHR, "*Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July- 10 September 2014*".

51. UNAMI and OHCHR, "*Report on the Protection of Civilians in Armed Conflict in Iraq: 11 December 2014- 30 April 2015*".
52. UNAMI and OHCHR, "*Report on the Protection of Civilians in Armed Conflict in Iraq: 1 May- 31 October 2015".*
53. UNAMI and OHCHR, "*Report on the Protection of Civilians in Armed Conflict in Iraq: 1 November 2015-30 September 2016".*
54. UNHRC, *"Report of the International Commission of Inquiry on Syria*, 13 August 2014.
55. UNHRC, *"Report of the International Commission of Inquiry on Syria"*, 5 February 2015.
56. UNHRC, *"Report of the International Commission of Inquiry on Syria"*, 11 February 2016.
57. UNHRC, *""They Came to destroy": ISIS Crimes against the Yazidis",* 15 June 2016.
58. UNHRC, "*Report of the International Commission of Inquiry on Syria*", 11 August 2016.
59. Zelin, Aaron Y, *The War between ISIS and al-Qaeda for Supremacy of the Global Jihadist Movement*, The Washington Institute for Near East Policy, June 2014.