

ISLAM, WAR AND INTERNATIONAL HUMANITARIAN LAW

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Abstract

The focus of this paper is to assess critically the compliance of Islam to international humanitarian law, which is a vital component of modern international law. The rapid growth and development of the nation-state in 17th century Europe with the Peace of Westphalia (1648), and the apparent decline of traditional religious authority in the Western world, led to the creation of a new body of law to regulate relationship between states. The international humanitarian law is aimed at regulating the conduct of war in line with global best practice. While nation-states are not expected to surrender their sovereignty to the United Nations, it is expected of all nations to comply with global consensus on humanitarian principles. Under international law the rules governing resort to force is the central element meant to preserve international order. Islam justifies the use of force as the last option, after the failure of persuasion, to compel conversion and territorial expansion. It is the opinion of this paper that Islam as the second largest world religion, and a benefactor of human progress and civilization should undergo a comprehensive reformation aimed at conforming it theology, philosophy, jurisprudence and law to international norms in the 21st century.

Keywords: Islam, war, jihad, international humanitarian law, religion

Introduction

Islam has not accepted the stark reality of the existence, workability and permanency of the international system. Islam has rejected the international system as a Western creation through the platform of colonialism without global consensus. The Islamic position is clearly stated in the *Encyclopedia of Islam*:

The idea of international law developed out of Anglo – American and European experiences in the wake of world wars 1 and 2, and addressed those parties concerns. Many states that existed at the time and the many that have formed since the close of World War 2 were excluded from the

negotiations that created the system of modern international law (Campo, 2009: 440).

If Islam does not accept the reality, and irreversibility of the nation–state phenomenon and the international system, is it possible for Islam to comply with the provisions of international humanitarian law? Commenting on the victory of the nation-state over traditionally structured society, Youssef Choueiri posits thus:

The nation – state, with its present boundaries, economy, social configurations and educational establishments, finally emerged as permanent facts overriding all attempts to side-step it. Religion was subordinated to nationalism, socialism, popular democracy and a plethora of novel goals (1990: 63).

Historical development of international humanitarian law

Portions of international laws that specify the conduct and termination of war are classified as laws of war, or international humanitarian law. From the horrible experience of World War II, it became necessary for the international community to regulate war. In the past, war was waged with unrelieved barbarity. There was no restraint in methods of war and there was no discrimination between combatant and non-combatant. The vanquished forces faced torture, slavery, mass death and looting. With the emergence of independent states in Western Europe the stage was set for the attainment of civilized standard of warfare.

In 1625, Hugo Grotius blazed the trail with the publication of his epochal work *On the Law of War and Peace (De Jure Belli ac pacis)*. Grotius devoted a greater part of his book to laws that are meant to regulate warfare. The fear of the destructive power of weapons in the middle of the 19th century led to concerted effort toward mitigation of warfare. Grotius posited that the “justness” or otherwise of the cause of war was irrelevant to the legal duty of observing the laws of war by the belligerents. The second outstanding contribution of Grotius to international humanitarian law was his *Temperamenta Belli*, which was added to his work on *The Law of War and Peace* (1625). In the preface, Grotius condemned the barbarity which characterized the Thirty Years War which ended at the “Peace of Westphalia”, in 1648:

Throughout the Christian world, I observed a lack of restraint in relation to war such as even barbarous races would be ashamed of. I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up, there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes (Grotius, 2001:29).

The Declaration of Paris on Maritime Law, abolished privateering in 1856. The General Orders of President Lincoln (No. 100), which was prepared by Francis Lieber, and issued during the American Civil War contributed tremendously to international awareness on the need to put in place laws to regulate warfare. Contemporary humanitarian law can be traced back to the agitations and advocacy of public spirited individuals in the 19th century. During the Crimean War (1853-56), the Russian Pirogov sensitized the collective conscience of humanity on the need to protect the wounded and the sick in war front. Pirogov ideas were embodied in the book *Course of Military Surgery* which was published in 1862. Jean-Jacques Rousseau in his *Social Contract* replaced the distinction between just and unjust war with combatants and non-combatants. Florence Nightingale and Clara Barton touched the heart of civilized humanity in their courage to help the wounded in battle during the War of Spanish Succession and the American Civil War.

Another important historical landmark in the development of humanitarian law was the publication of the book *A Memory of Solferino* (1863), by the Swiss Henry Dunant, who was appalled by the inhumanity and brutality that characterized the battle of Solferino in 1859. In 1863, The International Committee for the Relief of the Wounded, which later became International Committee of the Red Cross, was founded to render humanitarian services to war victims. In 1864, the Geneva Convention for the amelioration of the condition of the wounded in battlefields was adopted. The Convention recognized the neutrality of ambulance, military hospitals and medical personnel in war fronts.

In 1868, the Declaration of St. Petersburg prohibited the use of small explosive. Following the negative consequences of World War I, the Covenant of the League of Nations observed that armed aggression aimed at violating the territorial integrity of a sovereign state was a matter of grave international delinquency. In 1928, the Treaty for the Renunciation of War, also known as the Pact of Paris and the Kellogg-Briand Pact condemned recourse to war and 63 states rejected war as a strategic national policy. The International Military Tribunal at Nuremberg that tried German war criminals after World War II applied the principles of the Treaty in the judgment. The ruling of the tribunal in 1946 further criminalized various unwholesome behavior and actions in war scenario. The Preamble of the United Nations Charter condemned war as a national policy.

- We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...

Fundamental principles of international humanitarian law

Legal regulation of warfare is sometimes seen as a contradiction, war *prima facie* is the deliberate option to apply force in the resolution of disputes, which excludes the application of lawful means. Experience has also shown that in war, civilized and humane standards are deliberately ignored. War among nations is a political action which is undertaken when other measures have failed. War offers the greatest opportunities for man's inhumanity against man and the highest manifestation of man's depravity. As a deliberate and purposive violence for political objectives, it is unreasonable to allow war to damage the normal functions of human society. *The New Encyclopaedia Britannica* has this to say:

Law in war balances the advantages of maintaining a rational humanity against military necessities. It therefore allows for the application of all necessary force to compel the enemy to submit but attempt to restrain excesses in the use of force. ... Neither is the relationship between the belligerents exclusively one of violent confrontation. Even during war there is a need for many non- hostile contacts between enemies. Flags of truce, armistices, safe-conducts, and other such contacts are possible only on the basis of legal regulation (540).

It is mandatory under international humanitarian law for all parties in the warfare to conduct their hostilities with reasonable compliance to and in accordance with recognized conventions and laws of war. Perhaps, the greatest problem in international humanitarian law is the enforcement of the laws of war. Laws of war can be enforced through reprisals, judicial punishment of war crimes and pressure from the international community. Taking of hostages as a means to achieve any result is now considered atavistic. Reprisals are illegal acts of war in retaliation to illegal actions from the enemy. The purpose of reprisal is to compel the enemy to conform to the laws of war. On the categories, and nature of crimes and punishments, *The New Encyclopaedia Britannica* writes:

War crimes include crimes against peace (involving the planning and waging of aggressive war), crimes against humanity, genocide, and violations of the laws and customs regulating the conduct of war. Obviously, only persons capable of influencing the policy of a government, and not the ordinary soldier or officer, can be guilty of crimes against peace. Crimes against humanity are such crimes as murder, enslavement, or persecution committed against civilians in furtherance of other war crimes. Genocide

signifies crimes committed with the intention of destroying, in whole, or in part, members of a national or other group (540).

Military officers in command structures are expected to display vigilance to ensure that laws of war are not violated by their troops. Military officers are criminally liable for every violation, even when they plead ignorance. Junior officers who execute illegal orders are also liable on conviction. The exercise of military force by one state against another is legally controlled by the Charter of the United Nations. Article 51 of the Charter has limited the use of force to self-defense:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security (qtd. in Shaw, 1977: 788).

The actual meaning and interpretation of Article 51, has divided lawyers and scholars into variegated, contending schools of thought. While some people are of the opinion that self-defense is only permissible when there is armed attack, others are of the opinion that States have right in international law which antedates the Charter, which covers preventive action against imminent attack (The New Encyclopedia Britannica 540). Malcolm Shaw (1977: 788) elucidates on the possible interpretation of Article 51:

... self-defense can only be resorted to if an armed attack occurs; and in no other hand, there are writers who maintain that the opening phrase in article 51 specifying that nothing in the present Charter shall impair the inherent right of ... self-defense means that there does exist in customary international law a right of self-defense over and above the specific provisions of article 51, which refer only to the situation where an armed attack has occurred. This view is somewhat strengthened by an examination of the *travaux préparatoires* of the Charter, which seems to underline the validity of the use of force in legitimate self-defence.

Another fundamental principle in humanitarian law is the arena in which war is conducted. The area of combat covers the territories and territorial waters of the belligerent states, the high seas, and the air space above the areas. Neutral territory may be attacked if the neutral power fails to stop enemy troops from using their area as operating base. Military targets of the enemy may be attacked. Such military based include fortifications,

military encampments, armory, warships, war planes and war factories. International humanitarian law prohibits any form of attack on hospitals, hospital ships, medical aircraft, educational, cultural and religious property. While pillage is forbidden, confiscation of any property in war can only be allowed where there was a genuine need.

In humanitarian law, there is a limit to the methods and weapons that belligerents may use against the enemy. Treachery and torture is strictly forbidden. While espionage is allowed, spies may be punished to serve as deterrence. *The New Encyclopaedia Britannica* has also listed some of the weapons that are forbidden by law:

... all arms, projectiles, or materials calculated to cause unnecessary suffering and unnecessary death are forbidden. Poison and poisoned weapons are prohibited. Most opinion also agrees on forbidding dum-dum bullets (designed to expand or flatten easily in the human body), suffocating and poisonous gases, bacteriological warfare, and radiological weapons. Regarding nuclear weapons, the preponderance of legal opinion has condemned the effects of nuclear radiation (541).

Belligerents are expected to distinguish between combatants and non-combatants. Civilian territories are to be excluded from the range of attack. Civilized warfare must avoid any method of attack that will lead to “superfluous”, which is condemned in Article 35 paragraph 2 of the 1977 General Protocol. The Preamble of the 1868 St. Petersburg Declaration is still valid: “That the only legitimate object which States should endeavor to accomplish during war is to weaken the military force of the enemy” (2). The International Court of Justice in its Advisory Opinion on the legality of threat, or use of Nuclear Weapons issued the following directives:

The cardinal principles contained in the texts constituting the fabric of humanitarian law are the following: The first is aimed at the protection of the civilian population and civilian objects and establishes the distinction between combatants and non-combatants; states must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets. According to the second principle, it is prohibited to cause unnecessary suffering to combatants; it is prohibited to use weapons causing them such harm or uselessly aggravating their suffering (qtd. in Shaw, 1977: 813).

The islamic concept of international humanitarian law

The purpose of this sub-chapter is to ascertain factually and logically whether or not the principles of international humanitarian law can be applied in Islamic warfare. As a precautionary measure, Hamed Sultan(1988:30) has said that the Islamic concept of international humanitarian law is an essential element of the Islamic legal system, which

by its very nature is of divine and sacred origin, Sultan has also raised the argument of historical context, which has to do with the criteria of time and environment.

Islam emerged in the seventh century, whereas the modern concept of international humanitarian law did not crystallize until the second half of the twentieth century. There are therefore thirteen centuries between the birth of these two concepts. And if we compare, with 13 centuries of hindsight, the state of the world and society then with conditions today, we are bound to conclude that the change which has occurred in all walks of life has been so great as to represent a genuine upheaval.

The world at the birth of Islam according to Sultan was dominated by warfare, domination, servitude, slavery and ignorance.

Power was asserting itself in all walks of life and was absolute. The societies of the day had little or no social or economic structure. Any notion of state, territory, frontier, nationality, organized relations, information or communications was either lacking or unknown. The purpose of Islam was to fill that somber vacuum; the aim of its fundamentally religious and civilizing mission was to achieve and assert the will to cohesion and action of a new community which thereafter was to become master of its own destiny (1988:30).

Some Muslim scholars have argued that since Islam was born into warfare in the seventh century, it was impossible for Islam to function as a new religion, without overpowering contending religions, in this case, Judaism and Christianity.

Islamic system of humanitarian law does not recognize any distinction between the various types of war. *Jihad* can be waged to propagate Islam. It can be defensive directed against apostates, schismatics or rebels, the rules governing war in Islam are the same. Sultan writes:

... under Islam there can be no distinction between international and non-international armed conflicts. The very notion of the state was non-existent in the seventh century, and the same applies to struggle against colonial domination, foreign occupation and racist regimes by peoples exercising their right to self-determination. Although all these are modern notions inconceivable to the societies living in the seventh century, Islam covers them all without drawing any distinction (1988:32).

One of the basic principles in Islamic laws of war is that belligerents should display mercy, clemency and compassion in fighting the enemy. The *Mujahidun* is not expected to transgress, or exceed the limits of justice and equity in dealing with the enemy. The Muslim warrior is expected to know that fighting in the path of God against infidels; he must recognize the dignity and integrity of the human person. To that extent, mutilation, torture and any degrading treatment is prohibited. In the thirteenth century warfare,

it was a common practice to inflict phallotomy on enemies killed in battle. As far back as thirteenth century, Islam made such a practice unlawful.

On the plight of prisoners of war, Islam teaches that since the aim of armed conflict is to break hostile resistance, enemies who are *hors de combat* as a result of surrender or capture, should neither be tortured, nor put to death. It is a religious duty for the Moslem soldier to help and take good care of prisoners of war. In Islamic laws of war, people who are arrested on the charge of espionage are tried on the basis of their religion, age and circumstances of confession. Sultan writes:

If the accused is a Moslem and makes a full confession of his offence, he is usually given a correctional sentence because he has presumably acted not from any lack of faith but through cupidity. This treatment is based on a precedent from the times of the Messenger, who pardoned a Moslem who had written a compromising letter to the Quaraishites. If the accused, although not a Moslem, is a Moslem subject (*dimmi*) and voluntarily confesses, he is treated as a Moslem and incurs the same penalty. If the spy belongs to the enemy and is arrested on Moslem territory, however, he incurs the death sentence (1988:36).

Islamic humanitarian law prescribes that the crime must be proven beyond reasonable doubt, and there must be a voluntary confession before the accused can be executed. Islamic courts will insist on voluntary confession or statements from two witnesses before the accused can be sentenced to death. In Islamic law, a spy is not a prisoner of war. The protection of civilian population and civilian objects are reasonably covered in Islamic laws of war. It is reported that whenever Muhammad sent out a battalion, or an army, he always counseled the commanding officers to remember their allegiance to God: "Fight in the name of God, fight those who deny God; kill not children and do not betray, mutilate or commit perfidy" (qtd. in Sultan, 1988:37).

Omar, the second caliph is quoted to have said: "Oppress nobody, for God loves not oppressors. Be not cowardly in combat, cruel in strength, nor abusive in victory. Kill not the aged, women or children and be mindful not to kill them during skirmishes or Calvary incursions" (qtd. in Sultan, 1988: 37). Rahman Doi (1981: 36) in his interpretation of Hadith 14 on the shedding of blood observed that "Even in case of killing or slaughtering, a Muslim should be mindful of the fact that the edge of his knife is sharp enough at the time of killing so that the thing killed should not suffer".

Quranic Justifications For War

War is an integral dimension of Islamic theology, jurisprudence and law. There is an eschatological promise for gallant soldiers of *Allah*. "He will- admit you to gardens watered by running streams; He will lodge you in

pleasant mansions in the garden of Eden. That is the supreme triumph” (sura 61:12). Three Arabic words are used in the Quran to explain Islamic doctrine of war: *qital* (fighting, murder, killing, infanticide); *jihad* (struggle, striving, war); and *harb* (war). Armed aggression and violence are inherent in all the meanings of the three Arabic derivatives. Scholars are in agreement that there is a Quranic *casus belli*. There is a clear mandate for Muslims to wage war against the enemies of Islam. The first Quranic endorsement of war is sura 22:39 -40.

Permission to (engage in fighting) is given to those against whom war is waged because they have been wronged; verily God is able to give them victory. Those who have been expelled from their homes unjustly and only for saying: God is our Lord; had not God permitted people to defend themselves against (the aggression of) others, monasteries, churches, synagogues and mosques, wherein the name of God is oft-mentioned, would be pulled down; certainly God will support those who support Him...

Muslims are permitted to wage war for self, and territorial defence. Muslims are also authorized to resist any attempt by anybody, or institution to stifle their fundamental and inalienable human rights. Islam cannot condone any form of injustice, deprivation or tyranny. Muslims have a duty to defend religious liberty and the protection of sacred sites like churches, mosques, synagogues and monasteries. In sura 4: 75-76, Muslims are commanded to fight, defend and liberate the oppressed and socially weak Muslims:

Would not you fight in the way of God for al-mustad’afin (the oppressed socially weak Muslims) from men, women and children who pray: Our Lord take us from this city of the oppressive people and appoint for us from your side a guardian, and appoint for us from your side a protector. Those who have believed fight in the way of God and those who disbelieve fight in the way of Satan, so fight the allies of Satan; surely the plot of Satan is weak.

In this text, fighting to put an end to religious persecution of the Muslim minority is permissible in Islamic *casus belli*. Some Islamic exegetes have argued that sura 22:39 -40 is not the first Quranic justification for war, but sura 2:190-193.

And fight in the way of God those who fight against you but (do not transgress); indeed God does not like transgressors. (190).

And fight them wherever you find them and expel them from wherever they expelled you, and *fitnah* (persecution) is more grievous than killing, and do not fight them at the sacred Mosque until they fight you therein, but if they fight you, then kill them; such is the recompense of unbelievers. (191)

But if they (cease), then, indeed God is most forgiving, most merciful. (192).

And fight them so that /until there is no *fitnah* (persecution) and religion (without *fitnah*) is for God, but if they *intahaua* (cease) then there is no fighting/hostility except against the persecutors. (193)

Majority of Islamic scholars are of the opinion that sura 2:190-194 was specifically, and historically revealed in relation to the incident of *al-Hudaybiyah*, when Meccans were permitted to defend themselves against external aggression from the enemies. In a wider interpretation, Muslims rely on the same text to defend themselves against attack from the enemies.

The text “fight in the way of God” is clarified by four interpretations:

1. “Those who fight against you” Muslims are permitted to fight in self-defence.
2. “*La ta ‘tadua* – This is a prohibition against initiation of aggression by Muslims. It is also interpreted as the Islamic *jus in bello* (rules regulating the conduct of war). It is a prohibition against targeting of non-combatants, such as women, children, the aged, clergy and those who have a covenant of peace with Islam. On a serious note, it is a prohibition against mutilation, burning, destruction, cutting down of trees, animal killing except for food, it is also in “*La ta ‘tadua*” that Islam prohibits a surprise attack on the enemy without a declaration of war, and fighting for vested interest, gain or glory (Al-Dawoody, 2009:104).
3. Quran forbids Muslims from fighting inside, or around the precinct of the Mosque, except in self-defence.
4. Quran recognizes the need for a ceasefire. Fighting cannot continue if the enemy *intahaua* (desist). If there is cessation of fighting from the enemy, then the Islamic army must stop hostility.

Some Islamic exegetes have expanded the meaning of “cessation of fighting” to cover the ending of religious persecution and ceasing from unbelief in God and paying the *jizyah* if they are Jews or Christians. Ending of unbelief is another expression for conversion to Islam. Persecution (*fitnah*) to Muslims is “more grievous than killing” and is a Quranic justification for war. Some exegetes have interpreted *fitnah* to cover unbelief in God while others view it as abandoning Islam under torture. In sura 2:216 -217, Quran command the faithful to fight:

Fighting has been enjoined on you though it is hateful to you; but you may hate a thing while it is good for you and you may like a thing while it is bad for you; and God knows and you do not know. (216)

They ask you about fighting in the sacred month: say fighting therein is (a) grave (sin), and /but debarring from God’s way and unbelief in Him and the Sacred Mosque and expelling its people from it are /is grave (sin) in

the sight of God; and *fitnah* is graver than killing; and they will continue to fight you until they turn into renegades from your religion...(217)

Muslims are commanded to fight non-Muslims until there is no persecution on earth “And fight them until there is no *fitnah* (persecution) and *yakun kulluh lillah* (religion is wholly for God) ...(sura 8:39). If *fitnah* means persecution of Muslims to compel them to abandon their religion, then Quran justifies defensive war against enemies of Islam, but if *fitnah* also means unbelief, then there is a Quranic justification of offensive military action to expand the territories of Islam through forced conversion.

When the sacred months have passed, kill the polytheists wherever you find them and capture them and besiege them and wait for them in every place of ambush...(sura 9:5).

Fight those who do not believe in God, nor the Last Day, nor prohibit what God and His messenger prohibited, nor follow the religion of the truth, from among those who were given the scripture until they pay the *jizyah*... (sura 9:29).

Muslims are expected to make comprehensive preparation for war to prevent the adversary from meeting them unguarded, “Against them make ready your strength to the utmost of your power” (sura 8:60).

What is Jihad?

The Arabic word *Yihad* (jihad), does not mean ‘holy war’ as erroneously understood in contemporary Western scholarship. The two words ‘holy war’ is neither found in the Quran, nor in the Sunna. Islam does not describe any war as holy. *Jihad* means ‘effort’ and ‘struggle’ with oneself in the quest for God. That is the authentic and literal interpretation of sura 22:78 “Fight for the cause of God with the devotion due to Him. He has chosen you”. There are other passages of the Quran where the word *jihad* is interpreted as a concerted ‘struggle’ or ‘battle’. “Have faith in God and His apostle, and fight for God’s cause with your wealth and persons” (sura 61:11).

To determine the war zone, Islam divides the human society geographically into two – *dar – al – Islam* (the house of peace), and *dar – al – harb* (the house of war). The house of peace is the territory occupied by Muslims, while the house of war is occupied by infidels. *Dar – al – Islam* is under strict obligation to be at war with *dar – al – harb* and to compel the latter to accept Muslim rule. It is the religious duty of Muslim rulers to wage war (by all permissible and practical means), against the enemy territory. The goal of the incessant combat attack is to compel conversion into Islam and territorial expansion. Jihad is a condition of permanent warfare. Even when military hostilities are suspended for overriding strategic and logistic considerations, jihad must continue through psychological and political

means (Smaldone, 1977: 69).

The Encyclopedia of Islam defines *jihad* thus:

Literally, the Arabic word *Jihad* means to strive or struggle (in the path of God); it often refers to religiously sanctioned warfare. The Quran advocates *jihad* to extend God's rule (Sura 2:192; 8:39), promising reward in the afterlife for those who are killed in battle (Sura 3: 157 - 158), (169 -172) and punishment for those who do not participate (Sura 9:81, 48:16), (Campo, 2009: 397).

The Islamic jurist, Majid khudduri (1955:55-56) defines *jihad* thus:

The term *Jihad* is derived from the verb *jahada* (abstract noun, *juhd*) which means "exerted". Its juridical – theological meaning is exertion of one's power in Allah's path, that is, the spread of the belief in Allah and in making His word supreme over the world. The individual's recompense would be the achievement of salvation, since the *Jihad* is Allah's direct way to paradise... The *Jihad*, in the broad sense of exertion, does not necessarily mean war or fight since exertion in Allah's path may be achieved by peaceful means as well as violent means. The *Jihad* may be regarded as a form of religious propaganda that can be carried on by persuasion or by sword.

Hilmi Zawati (2001:13-14) has this to say concerning *jihad*:

Linguistically speaking, the term *Jihad* is a verbal noun derived from the verb *jahada*, the abstract noun *juhd*, which means to exert oneself, and to strive in doing things to one's best capabilities. Its meaning is, in fact extended to comprise all that is in one's power or capacity. Technically, however, *Jihad* denotes the exertion of one's power in Allah's path, encompassing the struggle against evil in whatever form or shape it arises.

Bassam Tibi (1998:54) has led us into a deeper Islamic semantic clarification of the word *jihad*. *Jihad* is the Islamic platform for conversion and expansion of *dar-al-Islam*. The spread of Islam, and winning of new converts is to be achieved through *jihad*. Tibi defines *jihad* as "effort in the pursuit of peace, that is, spreading the true religion of peace all over the world" (1998:54):

Muslims are expected to spread their religion through *da' wa* /mission, which entails the obligation to enhance their territoriality as the abode of peace. This effort in the pursuit of peace, that is, spreading the true religion of peace all over the world, is called *Jihad*, which literally means "exertion...". It is simply an opening (*futuhat*) of the world to Islam aimed at encompassing all humanity, and the effort is based on the belief that the

message the Prophet Muhammad received from Allah constitutes - the true religion for all of humanity (Tibi, 1998:54)

Another meaning of *jihad* according to Tibi is “an opening (*futuhah*) of the world to Islam aimed at encompassing all humanity” (1998:54). *Da’wa*, is aimed at converting the entire world into Islam “based on the belief that the message the Prophet Muhammad received from Allah constitutes the true religion, for all humanity” (Tibi, 1998:54). In Islamic theology and jurisprudence, the Quran is the final revelation of God to all mankind. Humanity does not have any choice either to accept this authentic and inspired final message or not. Religious liberty is completely ruled out in Islamic theology, philosophy and jurisprudence. Since God has spoken, humanity must conform to the message. Tibi writes:

It is difficult to convey to Western readers the Islamic meaning of Jihad, not as war, but rather as a peaceful undertaking for the sake of humanity. In this meaning jihad is simply a religious duty Muslims must fulfill, in carrying out Allah’s message. The *da’wa*/ call to Islam, like Christian evangelism, is supposed to be peaceful (1998: 54).

Tibi is fully committed to truth in scholarship. As a Muslim and as a scholar, one would have expected him to twist the truth and put up a weak and false defense of Islam and Jihad. The first phase of Jihad is peaceful through persuasion, and the peacefulness of Jihad is completed through the acceptance of Islam. Tibi affirms the painful consequences for rejecting the peaceful approach:

But if the peoples to whom Muslims bring the message of Islam do not submit to it voluntarily, Muslims are entitled to use force in defending the *Da’wa* against resistance of the unbelievers. This struggle is called *qital* / defense. Again, Muslims use of force is not considered to be a *harb* / war, but rather a righteous reaction to the unbelievers hindering of the spread of the *da’wa* as call to Islam (Tibi, 1998 : 54).

According to Tibi, when Muslims use force to propagate Islam, such an exercise cannot be described as war. The use of force for conversion to Islam is a righteous indignation to the unbelievers hindering of *da’wa*. To that extent, use of force, no matter the severity and the human toll cannot be interpreted either as violence, or war. Tibi argues further:

Islam’s image of itself is to be a religion of peace. Muslims are obliged to carry out this *da’wa* /mission worldwide. The *da’wa* as call to Islam is conceived to be a peaceful mission but the non-Muslims hinder the peaceful spread of this mission. For Western observers the *futuhah* of Sunni Islam are wars, and resisting the spread of Islam may to them seem a just war, but Muslims view these issues in a different manner. In the classical doctrine, the use of force for the spreading of Islam is not war but rather

Jihad, in the worst case a “defensive war,” for Jihad is never an aggression (1998: 55).

Tibi’s conclusion on Jihad is equally commendable:

But notwithstanding how Muslims may see their own actions, it is broadly understood, in the East and the West and elsewhere, that every substantial use of armed force is by all reasonable standards an all out war. The contradiction lies in the classical doctrine itself. It forbids the use of force as simply aggression but allows it as legitimate if it serves the spread of Islam (1998 : 55).

Those who live in *dar – al –harb* worldwide cannot have peace except they accept Islam individually and collectively. According to Islamic tradition, Prophet Muhammad in his lifetime issued letters to “all the kings of the infidels” – Chosroes in Persia, Caesar in Byzantium, the Negus in Ethiopia – summon them to embrace the new faith and submit to its rule and law” (Lewis, 1990: 88). Hans Kung writes:

War as a political means is accepted, ventured and – in most cases – won. It can therefore hardly be denied that, from its very beginnings, Islam is militant in nature... It should nonetheless be stressed that the prophet – for example, in the peace treaty with the Meccans or with Christian communities and the remaining Jews – evidenced not only a willingness to fight but also a willingness to make peace (Kung, 2005 :260).

Commenting on the declaration of *jihad*, Bernard Lewis (1990: 89) informs us that “this war was to continue until all mankind either embraced Islam or submitted to the authority of the Muslim state. Until this purpose was achieved there could theoretically be no peace.”. The *Encyclopedia of Islam* affirms the fact that *jihad* is imminent: “Islamic law presumed an ongoing state of warfare between the two, except for limited truces under specific circumstances” (Campo, 2009: 398).

Conclusion

Majority of Muslim scholars and jurists are of the opinion that the motive for warfare in Islam is to respond to attack and aggression. Islam cannot condone any form of aggression against believers, either individually or collectively. “To those against whom war is made, permission is given (to fight), because they were wronged... (sura 22:39). Muslims are to fight to defend and liberate victims of injustice and oppression. Muslims are not expected to be war mongers. They are not expected to initiate warfare. Ibn Taymiyya (1263 –1328) wrote: “The Prophet’s conduct was that he did not wage war against any disbelievers who made truce with him. He never began the fighting against any of the disbelievers, and had God ordered him to kill every disbeliever he would have begun with killing and warfare” (Taymiyya,

risalat al – qital: 125). Ibn Qayyim al – Jawziyya, a disciple of Ibn Taymiyya avers: “the prescription of warfare for Muslims is against those who wage war against them, not those who do not” (qtd. in al-Zuhili, 2005:281). Rules of Islamic warfare are clearly prescribed both in the *Quran* and in the *Sunna*. The declaration of war must be preceded by an invitation for infidels to join Islam:

Join Islam and you will be unharmed; otherwise you would have committed the same sin as the common people. O people of the Book! Come to common terms as between us and you: that we worship none but God, that we associate no partners with Him that we erect not, from among ourselves, Lords or patrons other than God (sura 3:64).

Islam does not wage war without a peaceful invitation for mass conversion. War is only inevitable when the infidel has deliberately rejected Islam. Rejection of Islam is interpreted as unbelief. Muslims are commanded by the Quran to fight and eradicate unbelief in human society. In Islamic warfare there is no cessation of hostility without the enemy ending unbelief, which is another expression for conversion to Islam. The simple fact is that the only condition for peace on earth is conversion into Islam. Islam has also proposed strategies and possibilities to end war. An Islamic war can come to an end through cessation of hostilities that is achieved when the enemy surrenders and ends unbelief. The outright victory of the Muslim can bring the war to a successful ending. The humiliated enemy army may accept a treaty of peace, which is armistice. The fact is that Islam must have the potential to win before there is any plan for a negotiated settlement of the conflict. Islam cannot afford to go to the negotiation table from the position of weakness and impending defeat.

Islam recognizes the rights of the enemies at war. There is a line drawn between the combatants and non-combatants in the enemy territory. Prophet Muhammad specifically directed that women, children, the aged and the infirm should not be killed. The Prophet was quoted to have commanded: “Do not kill the monks in monasteries”, or “Do not kill the people who are sitting in places of worship (Musnad of Ibn Hanbal).

In a battlefield, the Prophet saw the corpse of a woman on the ground and said: “She was not fighting, how then she came to be killed?” (qtd. in Maudidi, 1939:40). Muhammad prohibited torture, or burning of the enemy with fire. Muslim soldiers are not expected to attack a wounded soldier, who is no longer capable of fighting. Prisoners of war are not to be slain. Muslims are also instructed by the Prophet not to mutilate the corpse of their enemies, and that corpses of the enemy should be handed over to their families on request.

The fact is that many people who are fighting the cause of political Islam around the world, especially terrorists do not comply with Islamic

humanitarian law. This is problematic, if anybody is fighting the cause of Islam; it is binding on that person to comply with Islamic laws of war. If there is any humanitarian dimension in warfare, then the principles of international humanitarian law should be respected by combatants. If there was any reason for fighting *ab initio*, then it is obligatory for soldiers to obey the rules of war.

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