

*War and Peace*¹

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The Sources of Islamic Law

The Qur'an is the supreme authority in Islam and the primary source of Islamic Law, including the laws regulating war and peace. The second source is the hadith, the traditions of the Prophet Muhammad's acts and deeds, which can be used to confirm, explain or elaborate Qur'anic teachings, but may not contradict the Qur'an, since they derive their authority from the Qur'an itself. Together these form the basis for all other sources of Islamic law, such as *ijma'* (consensus of Muslim scholars on an opinion regarding any given subject) and *qiyas* (reasoning by analogy). These and others are merely methods to reach decisions based on the texts or the spirit of the Qur'an and hadith. The Qur'an and hadith are thus the only binding sources of Islamic law. Again, nothing is acceptable if it contradicts the text or the spirit of these two sources. Any opinions arrived at by individual scholars or schools of Islamic law, including the recognised four Sunni schools, are no more than opinions. The founders of these schools never laid exclusive claim to the truth, or invited people to follow them rather than any other scholars. Western writers often take the views of this or that classical or modern Muslim writer as 'the Islamic view', presumably on the basis of assumptions drawn from the Christian tradition, where the views of people like St Augustine or St Thomas Aquinas are often cited as authorities. In Islam, however, for any view of any scholar to gain credibility, it must demonstrate its textual basis in the Qur'an and authentic hadith, and its derivation from a sound linguistic understanding of these texts.

Ijtihad – exerting one's reason to reach judgements on the basis of these two sources – is the mechanism by which Muslims find solutions for the ever-changing and evolving life around them. The 'closing of the door of *ijtihad*' is a myth propagated by many Western scholars, some of whom imagine that 'the door' still remains closed and that Muslims have nothing to fall back on except the decisions of the Schools of Law and scholars of the classical period. In fact, scholars in present-day Muslim countries reach their own decisions on laws governing all sorts of new situations, using the same methodology based on the Qur'an and hadith and the principles derived from them, without feeling necessarily bound by the conclusions of any former school of law.

In the Qur'an and hadith, the fundamental sources of Islamic teachings on war and peace are to be found.

Normal Relations

The Islamic relationship between individuals and nations is one of peace. War is a contingency that becomes necessary at certain times and under certain conditions. Muslims learn from the Qur'an that God's objective in creating the human race in different communities was that they should relate to each other peacefully (49:13).¹

The objective of forming the family unit is to foster affection and mercy, and that of creating a baby in its mother's womb is to form bonds of blood and marriage between people:

¹ An extract from *The Quest for Sanity*, Reflections on September 11 and the Aftermath, A publication of The Muslim Council of Britain, September 2002; pages 206-217

It is He who created the human being from fluid, making relationships of blood and marriage. 25:54

Sowing enmity and hatred amongst people is the work of Satan:

Satan wishes to sow enmity and hatred between you with intoxicants and gambling. 5:91

Division into warring factions is viewed as a punishment that God brings on people who revert to polytheism after He has delivered them from distress:

... He is able to divide you into discordant factions and make you taste the might of each other ... 6:65

War is hateful (2:216), and the changing of fear into a sense of safety is one of the rewards for those who believe and do good deeds (24:55). That God has given them the sanctuary of Mecca is a blessing for which its people should be thankful (29:67). Paradise is the Land of Peace – Dar al-Salam – (5:127).

Justifications and Conditions for War

War may become necessary only to stop evil from triumphing in a way that would corrupt the earth (2:251). For Muslims to participate in war there must be valid justifications, and strict conditions must be fulfilled. A thorough survey of the relevant verses of the Qur'an shows that it is consistent throughout with regard to these rulings on the justification of war, and its conduct, termination and consequences.

War in Islam as regulated by the Qur'an and hadith has been subject to many distortions by Western scholars and even by some Muslim writers. These are due either to misconceptions about terminology or – above all – using quotations taken out of context.² Nowhere in the Qur'an is changing people's religion given as a cause for waging war. The Qur'an gives a clear instruction that there is no compulsion in religion (2:256). It states that people will remain different (11:118), they will always have different religions and ways and this is an unalterable fact (5:48). God tells the Prophet that most people will not believe 'even if you are eager that they should' (12:103).³

All the battles that took place during the Prophet's lifetime, under the guidance of the Qur'an and the Prophet, have been surveyed and shown to have been waged only in self-defence or to pre-empt an imminent attack.⁴ For more than ten years in Mecca, Muslims were persecuted, but before permission was given to fight they were instructed to restrain themselves (4:77) and endure with patience and fortitude:

Pardon and forgive until God gives his command. 2:109; see also 29:59; 16:42

After the Muslims were forced out of their homes and their town, and those who remained behind were subjected to even more abuse, God gave His permission to fight:

Permission is given to those who fight because they have been wronged, and God is indeed able to give them victory; those who have been driven from their homes unjustly only because they said, 'Our Lord is God' – for had it not been for God's repelling some men by means of others, monasteries, churches, synagogues and mosques, in which the name of God is much mentioned, would certainly have been

destroyed. Verily God helps those that help Him – lo! God is Strong, Almighty – those who, if they are given power in the land, establish worship and pay the poor-due and enjoin what is good and forbid iniquity. 22:39–41

Here, war is seen as justifiable and necessary to defend people’s right to their own beliefs, and once the believers have been given victory they should not become triumphant or arrogant or have a sense of being a superpower, because the promise of help given above and the rewards are for those who do not seek to exalt themselves on earth or spread corruption (28:83).

Righteous Intention

Righteous intention is an essential condition. When fighting takes place, it should be *fi sabīl illah* – in the way of God – as is often repeated in the Qur’an. His way is prescribed in the Qur’an as the way of truth and justice, including all the teaching it gives on the justifications and the conditions for the conduct of war and peace. The Prophet was asked about those who fight for the booty, and those who fight out of self-aggrandisement or to be seen as a hero. He said that none of these was in the way of God. The one who fights in the way of God is he who fights so that the word of God is uppermost (hadith: Bukharī).

This expression of the word of God being ‘uppermost’ was misunderstood by some to mean that Islam should gain political power over other religions. However, if we use the principle that ‘different parts of the Qur’an interpret each other’, we find (9:40) that by simply concealing the Prophet in the cave from his trackers, after he had narrowly escaped an attempt to murder him, God made His word ‘uppermost’, and the word of the wrongdoers ‘lowered’. This could not be described as gaining military victory or political power.

Another term which is misunderstood and misrepresented is *jihad*. This does not mean ‘Holy War’. ‘Holy War’ does not exist as a term in Arabic, and its translation into Arabic sounds quite alien. The term which is specifically used in the Qur’an for fighting is *qital*. Jihad can be by argumentation (25:52), financial help or actual fighting. Jihad is always described in the Qur’an as *fi sabīl illah*. On returning from a military campaign, the Prophet said to his followers: ‘We have returned from the minor jihad to the major jihad – the struggle of the individual with his own self.’

Jihad as an Obligation

When there is a just cause for jihad, which must have a righteous intention, it then becomes an obligation. It becomes an obligation for defending religious freedom (22:39–41), for self-defence (2:190) and defending those who are oppressed: men, women and children who cry for help (4:75). It is the duty of the Muslims to help the oppressed, except against a people with whom the Muslims have a treaty (8:72). These are the only valid justifications for war we find in the Qur’an. Even when war becomes necessary, we find that there is no ‘conscriptio’n in the Qur’an. The Prophet is instructed only to ‘urge on the believers’ (4:64). The Qur’an – and the hadith at greater length – urge on the Muslim fighters (those who are defending themselves or the oppressed) in the strongest way: by showing the justice of their cause, the bad conduct of the enemy, and promising great rewards in the afterlife for those who are prepared to sacrifice their lives and property in such a good cause.⁵

Who Is To Be Fought? Discrimination and Proportionality

In this regard we must discuss two verses in the Qur’an which are normally quoted by those most eager to criticise Qur’anic teachings on war: 2:191 (‘slay them wherever you find them’) and verse

9:5, labelled the ‘Sword Verse’. Both verses have been subjected to decontextualisation, misinterpretation and misrepresentation. The first verse comes in a passage that defines clearly who is to be fought:

Fight in the way of God those who fight against you, but do not transgress. God does not love the transgressor. 2:190

‘Those who fight against you’ means actual fighters – civilians are protected. The Prophet and his successors, when they sent out an army, gave clear instructions not to attack civilians – women, old people, religious people engaged in their worship – nor destroy crops or animals.

Discrimination and proportionality should be strictly observed. Only the combatants are to be fought, and no more harm should be caused to them than they have caused (2:194). Thus wars and weapons of destruction that destroy civilians and their towns are ruled out by the Qur’an and the word and deed of the Prophet, these being the only binding authority in Islamic law. The prohibition is regularly reinforced by, ‘Do not transgress, God does not love the transgressor’. Transgression has been interpreted by Qur’anic exegetes as meaning, ‘initiation of fighting, fighting those with whom a treaty has been concluded, surprising the enemy without first inviting them to make peace, destroying crops or killing those who should be protected’ (Baydawi’s commentary on Q. 2:190).

The orders are always couched in restraining language, with much repetition of warnings, such as ‘do not transgress’ and ‘God does not love the transgressors’ and ‘He loves those who are conscious of Him’. These are instructions given to people who, from the beginning, should have the intention of acting ‘in the way of God’.

Linguistically we notice that the verses in this passage always restrict actions in a legalistic way, which appeals strongly to Muslims’ conscience. In six verses (2:190–5) we find four prohibitions (do not), six restrictions: two ‘until’, two ‘if’, two ‘who attack you’, as well as such cautions as ‘in the way of God’, ‘be conscious of God’, ‘God does not like aggressors’, ‘God is with those who are conscious of Him’, ‘with those who do good deeds’ and ‘God is Forgiving, Merciful.’ It should be noted that the Qur’an, in treating the theme of war, as with many other themes, regularly gives the reasons and justifications for any action it demands.

Verse 2:191 begins:

Slay them where you find them and expel them from where they expelled you;
persecution [fitna] is worse than killing.

‘Slay them wherever you find them,’ has been made the title of an article on war in Islam.⁶ In this article ‘them’ is removed from its context, where it refers back to ‘those who attack you’ in the preceding verse. ‘Wherever you find them’ is similarly misunderstood: the Muslims were anxious that if their enemies attacked them in Mecca (which is a sanctuary) and they retaliated, they would be breaking the law. Thus the Qur’an simply gave the Muslims permission to fight those enemies, whether outside or inside Mecca, and assured them that the persecution that had been committed by the unbelievers against them for believing in God was more sinful than the Muslims killing those who attacked them, wherever they were. Finally, it must be pointed out that the whole passage (2:190–5) comes in the context of fighting those who bar Muslims from reaching the Sacred Mosque at Mecca to perform the pilgrimage. This is clear from v.189 before and verse 196 after the passage. In the same way, the verse giving the first permission to fight occurs in the Qur’an, also in the context of barring Muslims from reaching the Mosque to perform the pilgrimage (22:25–41).

The Sword Verse

We must also comment on another verse much referred to but notoriously misinterpreted and taken out of context – that which became labelled as the ‘Sword Verse’:

Then, when the sacred months have passed, slay the idolators wherever you find them, take them and besiege them and prepare for them every ambush. 9:5

The hostility and ‘bitter enmity’ of the polytheists and their fitna (persecution) (2:193; 8:39) of the Muslims grew so great that the unbelievers were determined to convert the Muslims back to paganism or finish them off.

They would persist in fighting you until they turn you back from your religion, if they could. 2:217

It was these hardened polytheists in Arabia, who would accept nothing other than the expulsion of the Muslims or their reversion to paganism, and who repeatedly broke their treaties, that the Muslims were ordered to treat in the same way – to fight them or expel them.

Even with such an enemy Muslims were not simply ordered to pounce on them and reciprocate by breaking the treaty themselves; instead, an ultimatum was issued, giving the enemy notice, that after the four sacred months mentioned in 9:5 above, the Muslims would wage war on them. The main clause of the sentence ‘kill the polytheists’ is singled out by some Western scholars to represent the Islamic attitude to war; even some Muslims take this view and allege that this verse abrogated other verses on war. This is pure fantasy, isolating and decontextualising a small part of a sentence. The full picture is given in 9:1–15, which gives many reasons for the order to fight such polytheists. They continuously broke their agreements and aided others against the Muslims, they started hostilities against the Muslims, barred others from becoming Muslims, expelled Muslims from the Holy Mosque and even from their own homes. At least eight times the passage mentions their misdeeds against the Muslims. Consistent with restrictions on war elsewhere in the Qur’an, the immediate context of this ‘Sword Verse’ exempts such polytheists as do not break their agreements and who keep the peace with the Muslims (9:7). It orders that those enemies seeking safe conduct should be protected and delivered to the place of safety they seek (9:6). The whole of this context to v.5, with all its restrictions, is ignored by those who simply isolate one part of a sentence to build their theory of war in Islam on what is termed ‘The Sword Verse’ even when the word ‘sword’ does not occur anywhere in the Qur’an.

Cessation of Hostilities

Once the hostility of the enemy ceases, the Muslims must stop fighting (2:193; 8:39):

And if they incline to peace, do so and put your trust in God. Even if they intend to deceive you, remember that God is sufficient for you. 8:61–2

When the war is over, the Qur’an and hadith give instructions as to the treatment of prisoners of war and the new relationship with the non-Muslims. War is certainly not seen as a means in Islam of converting other people from their religions. The often-quoted division of the world into *dar al-harb*

and *dar al-Islam* is seen nowhere in the Qur'an or hadith, the only authoritative sources of Islam. The scholars who used these expressions were talking about the warring enemies in countries surrounding the Muslim lands. Even for such scholars there was not a dichotomy but a trichotomy, with a third division, *dar al-suhl*, the lands with which the Muslims had treaty obligations.

The Qur'an and hadith talk about the different situations that exist between a Muslim state and a neighbouring warring enemy. They mention a state of defensive war, within the prescriptions specified above, the state of peace treaty for a limited or unlimited period, the state of truce, and the state where a member of a hostile camp can come into a Muslim land for special purposes under safe conduct.⁷

Treaties

The Prophet and his companions did make treaties, such as that of Ódaybiyya in the sixth year of the hijra and the one made by 'Umar with the people of Jerusalem.⁸ Faithfulness to a treaty is a most serious obligation which the Qur'an and hadith incessantly emphasise:

Believers, fulfil your bonds.5:1

Keep the agreements of God when you have made them and do not break your oaths after you have made them with God as your bond ...16:91

Covenants should not be broken because one community feels stronger than another. 16:92

Breaking treaties puts the culprit into a state lower than animals (8:55). As stated above, even defending a Muslim minority is not allowed when there is a treaty with the camp they are in.

Prisoners of War

There is nothing in the Qur'an or hadith to prevent Muslims from following the present international humanitarian conventions on war or prisoners of war. There is nothing in the Qur'an to say that prisoners of war must be held captive, but as this was the practice of the time and there was no international body to oversee exchanges of prisoners, the Qur'an deals with the subject. There are only two cases where it mentions their treatment:

O Prophet! Tell the captives you have, 'If God knows goodness in your heart He will give you better rewards than have been taken from you and forgive you. He is forgiving, merciful.' And if they intend to be treacherous to you, they have been treacherous to God in the past and He has put them into your hands. 8:70-1

When you have fully overcome the enemy in the battle, then tighten their bonds, but thereafter set them free either by an act of grace or against ransom. 47:4

Grace is suggested first, before ransom. Even when some were not set free, for one reason or another, they were, according to the Qur'an and hadith, to be treated in a most humane way (Q.76:8-9; 9:60; 2:177). In the Bible, where it mentions fighting, we find a different picture in the treatment administered to conquered peoples, for example:

When you march up to attack a city, make its people an offer of peace. If they accept and open their gates, all the people in it shall be subject to forced labour and shall work for you. If they refuse to make peace with you in battle, lay siege to that city. When the Lord your God delivers it into your hand, put to the sword all the men in it.

As for the women, the children, the livestock and everything else in the city, you may take these as plunder for yourselves. And you may use the plunder the Lord your God gives you from your enemies. This is how you are to treat all the cities that are at a distance from you and do not belong to the nations nearby.

However, in the cities of the nations the Lord your God is giving you as an inheritance, do not leave alive anything that breathes. Completely destroy them – the Hittites, Amorites, Canaanites, Perizzites, Hivites, and Jebusites – as the Lord your God has commanded you. Otherwise they will teach you to follow all the detestable things they do in worshipping their gods, and you will sin against the Lord your God. (Deuteronomy 20:10–189)

Resumption of Peaceful Relations

We have already seen in the Qur'an 22:41 that God promises to help those who, when He has established them in a land after war, '... establish worship and pay the poor-due and enjoin what is good and forbid iniquity'.

In this spirit, when the Muslim army was victorious over the enemy, any of the defeated people who wished to remain in the land could do so under a guarantee of protection for their life, religion and freedom, and if they wished to leave they could do so with safe conduct. If they chose to stay among the Muslims, they could become members of the Muslim community. If they wished to continue in their faith they had the right to do so and were offered security. The only obligation on them then was to pay jizya, a tax exempting the person from military service and from paying zakat, which the Muslims have to pay – a tax considerably heavier than the jizya. Neither had the option of refusing to pay, but in return the non-Muslims were given the protection of the state. Jizya was not a poll-tax, and it was not charged on the old, or poor people, women or children.¹⁰

Humanitarian Intervention

Humanitarian intervention is allowed, even advocated in the Qur'an, under the category of defending the oppressed. However it must be done within the restrictions specified in the Qur'an, as we have shown above. In intervening, it is quite permissible to co-operate with non-Muslims, under the proviso:

Co-operate in what is good and pious and do not co-operate in what is sinful and aggression. 5:2

International Co-operation

In the sphere of war and peace, there is nothing in the Qur'an or hadith which should cause Muslims to feel unable to sign and act according to the modern international conventions, and there is much in the Qur'an and hadith from which modern international law can benefit. The Prophet Muhammad remembered an alliance he witnessed that was contracted between some chiefs of Mecca before his call to prophethood to protect the poor and weak against oppression and said:

I have witnessed in the house of Ibn Jud'an an alliance which I would not exchange for a herd of red camels, and if it were to be called for now that Islam is here, I would respond readily.¹¹

There is nothing in Islam that prevents Muslims from having peaceful, amicable and good relations with other nations when they read and hear regularly the Qur'anic injunction, referring to members of other faiths:

God does not forbid you from being kind and equitable to those who have neither made war on you on account of your religion nor driven you from your homes. God loves those who are equitable. 60:8

This includes participation in international peace-making and peace-keeping efforts. The rule of arbitration in violent disputes between groups of Muslims is given in the Qur'an:

If two parties of the believers take up arms against one another, make peace between them. If either of them commits aggression against the other, fight against the aggressors until they submit to God's judgement. When they submit, make peace between them in equity and justice. God loves those who act in justice. 49:9

This could, in agreement with rules of Islamic jurisprudence, be applied more generally to disputes within the international community. For this reason, Muslims should, and do, participate in the arbitration of disputes by international bodies such as the United Nations. Modern international organisations and easy travel should make it easier for different people, in accordance with the teachings of the Qur'an, to 'get to know one another', 'co-operate in what is good' and live in peace. The Qur'an affirms:

There is no virtue in much of their counsels: only in his who enjoins charity, kindness and peace among people ... 4:114

Notes

1. See article on 'Tolerance' below.
2. 'Slay them wherever you find them: Humanitarian Law in Islam,' by James J. Busuttil, Linacre College, Oxford, in *Revue de Droit Penal Militaire et de Droit de la Guerre*, 1991, pp. 113–40. 3. See Chapter 6 below.
3. See article on 'Tolerance' below.
4. See A. M. al-'Aqqād, op.cit. (Cairo, 1957) pp. 187–91, quoting a survey by Ahmad Zakí Pasha.
5. See for example 3:169–72; 9:120–1 and many *hadíths* in the chapters on *jihad* in the various collections of *hadíths*.
6. Busuttil, op. cit. p. 127. The rendering he uses runs: 'Idolatry is worse than carnage'. This corrupts the meaning. It is clear from the preceding words, 'those who have turned you out' that *fitna* means persecution. This meaning is borne out by the identical verb (turning out/expelling) preceding the only other verse (2:217) where the expression, '*fitna* is worse than killing' appears. Here the statement is clearly explained: 'Fighting in [the prohibited month] is a grave (offence) but graver is it in the sight of God to prevent access to the path of God, to deny Him, to prevent access to the Sacred Mosque and drive out its people.'
7. 'Aqqad, op.cit., pp. 204–9. 8.

8. See article on 'Tolerance' below.

9. In the New Testament Jesus gives the high ideal that if someone hits you on one cheek, you should turn the other cheek. Pardon and forgiveness on the individual level is also highly recommended in the Qur'an. 'Good and evil deeds are not alike. Repay evil with good, and he who is your enemy will become your dearest friend, but none will attain this attribute save those who patiently endure; none will attain it save those who are truly fortunate' (41:34-5). And see 45:14. But when it comes to the places of worship being subjected to destruction and when helpless, old men, women and children are persecuted and when unbelievers try to force believers to renounce their religion, the Qur'an considers it total dereliction of the duty for the Muslim state not to oppose such oppression and defend what is right.

10. See article on 'Tolerance' below.

11. Red camels were proverbial in Arabia as the best one can have.