

The Use of Armed Force in International Relations: The ‘Shari’ah’ Perspective*

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1. Introduction

The ‘use of armed force in international relations’ is extensively discussed from the view point of international law but not so from the *Shari’ah* (Islamic Law) perspective. International law on the use of armed force is summed up in the Latin term of *jus ad bellum*, which literally means “law to war” or justice to war. Technically, *jus ad bellum*ⁱ refers to set of rules that regulate the initiation of the use of armed forceⁱⁱ. *Jus ad bellum* rules are now laid down in the United Nations Charterⁱⁱⁱ, a multilateral treaty^{iv} to which 192 States, including all the Muslim States are parties. Generally, the Charter prohibits the use of armed force in international relations, as per Article 2 (4)^v, but allow it if used in self-defense, as per Article 51^{vi}, or its use is authorised by the UN Security Council, as per Chapter VII of the UN Charter^{vii}. *Jus ad bellum* is different from ‘*jus in bello*’ (law in war) the former regulates the initiation of armed conflict while the later, known also as the international humanitarian law (IHL)^{viii}, controls the conduct of the warring factions once armed force is used^{ix}, irrespective of whether the use of armed force was legal or illegal. The *Shari’ah* has well developed rules of both *jus ad bellum* and *jus in bello* but the later falls outside the scope of the present paper.

I am writing this paper just to demonstrate that *Shari’ah*, unlike its misperception in the West, firmly stands for peace and security of humanity and refute the unjustified claim by some people who seeks to portray Islam as an ‘inherently violent’ and ‘expansionist religion’ equating it with ‘fanaticism, intolerance’, ‘violence’ and ‘wars of aggression’. These people contend, either out of ignorance or ill motive, that the *Shari’ah* exhorts Muslims to propagate and protect the Islamic faith through the means of aggressive war. They cite the horrific terroristic attacks on the World Trade Center and the Pentagon on September 11, 2001 which they blamed Muslims for it. It is not established who carried out this attack but whoever did it could not be justified on legal, moral or religious ground. ‘Terrorism’ is abhorred by Islam and has no place in its laws, i.e., the *Shar’iah*. *Shari’ah*, firmly stands for peace and security of humanity^x. It sanctifies human life^{xi}, ensures the dignity of human kind^{xii}, guarantees faith^{xiii} and provides for the protection of public and private properties. These and other Islamic values, such as justice,^{xiv} equality of all human race,^{xv} tolerance, peaceful coexistence and harmony can be adversely affected by the use of armed force particularly when it is used unjustifiably or aggressively. To protect these values the ‘*Shari’ah*’, as will be discussed in this paper, promotes peace and generally prohibits the use of armed force.

The prohibition of the use of force under *Shari’ah* is, however, subject to certain exceptions where force inevitably can be used in response to aggression or in reaction to the serious violation of the aforementioned values. One of the exceptional circumstances which the *Shari’ah* permits, similar to contemporary international law, is the use of armed force in self-defence against aggression. Aggression breaches peace, violates the territorial sanctity of the aggressed nation, infringes human life and dignity, causes destruction of property, both public and private and defies all other values which the *Shari’ah* advocates. The restoration and preservation of these values necessitates and justifies the use of armed force against aggression. The other exceptional situation which justifies the use of armed force is the situation where people, irrespective of their race, nationality or religion, are mass murdered and forced out of their homes and towns.

This paper discusses first the idea of peace from the *Shari’ah* perspective, which can only be ensured in the absence of armed conflict or the use of armed force. To preserve ‘peace’ the *Shari’ah*, as with the UN Charter, generally prohibits the use of armed force and calls for peaceful coexistence between people of different faiths and disallows the use of armed force as an instrument for the spread of Islam. After discussing the general prohibition of the use of armed force the chapter continues to discuss the exceptional circumstances where the *Shari’ah* allows the use of armed force just to restore peace, uphold justice and to protect the sovereignty of Muslim States. The chapter examines the rule and the exceptions under Islamic law and in doing so it refers to the primary sources of the law, namely, the Quran and the *Sunnah* of the Prophet Mohammad (PBUH). Other sources of the law and the views of the Muslim scholars are also referred to. It also refers to the relevant provisions of the UN Charter because the Charter, which is a multilateral treaty to which all the Muslim nations are parties, is a legally binding international instrument. Islamic law requires Muslims to abide by their covenants, as the Quranic verse provides:

“You shall fulfil your covenants, for a covenant is a great responsibility”^{xvi}. This is the *pacta sunt servanda* of Islam which we may refer to it whenever it is necessary to explain the binding effect of the UN Charter on the Muslim nations.

2. Peace – not violence – advocated by the Shari’ah

The Arabic word *Islam* is derived from the root *Salam*, which means peace and security (*amn*). Whenever Muslims meet and greet one another, they pray for each other’s peace and security. In addition, Muslims daily raise their hands to Almighty Allah and pray in the following words, “O Allah! You are peace, peace comes from you and to you returns peace. Keep us alive, O our Cherisher, in peace and take us into the house of peace.” Who could be more loving of peace other than those who daily offer prayers of peace for others and also pray for their own peace? Peace “is a state of physical, mental, spiritual, and social harmony.”^{xvii} Peace is a condition for a harmonious human society, irrespective of the nature of that society, whether Islamic or Non-Islamic. All humans, irrespective of their race, religion or nationality are created by Allah (SWT), they are equal^{xviii} and their lives are sacred^{xix}. In Islam no one, even an individual himself^{xx}, has the right to deprive a person from his right to life unless the deprivation is sanctioned by law. No one has the right to deprive an individual from his God given rights including the right to freedom of religion. Islam calls for the quest for peace, stresses the importance of tolerance and kindness to other people^{xxi}, and promotes nonviolent methods to resist oppression, as evident from the *Sirah* (practice) of the Prophet (PBUH).

The Prophet (PBUH) never resorted to violence or force unless it was absolutely necessary to do so. The Prophet (PBUH) and his followers were oppressed by the Pagans in Mecca. In spite of the fact that Muslims were harassed, abused, tortured, and some even were murdered, they (the Muslims) did not initiate violence against the Pagans but instead called the Pagans to peace. When the oppression from the Pagans became unbearable, the Muslims first migrated to Abyssinia and then to Madinah. While in Madinah the holy Prophet (PBUH) worked tirelessly towards peace by drawing legal documents showing tolerance and respect to other religions. Such legal documents were the basis and Constitution of Madinah which was prepared under the leadership of the Prophet Muhammad (PBUH) in 622 AD and was in force until 632 AD. This Constitution brought together different people, with different cultural, ethnic and geographical backgrounds, to form a social unity enabling them to live side by side in peace. It ensured religious and political freedoms, promoted cooperation^{xxii} – not confrontation, provided a model of peaceful coexistence of different religious peoples, endorsed arbitration (*Tahkim*), not war, as a means of settling disputes and made the Prophet (PBUH) as the arbitrator of any conflicts that would arise.

The Prophet (PBUH) attempted the pacific settlement of a dispute as such a settlement preserves peace and also attract pleasure of Allah (SWT). In this regard the holy Quran provides: “In most of their secret talks there is no good; but if one exhorts to a deed of charity or justice or conciliation between men, (secrecy is permissible): to him who does this, seeking the pleasure of Allah, We shall soon give a reward of the highest (value). (An-Nisaa: 114):

لَا خَيْرَ فِي كَثِيرٍ مِّنْ نَّجْوَاهُمْ إِلَّا مَنْ أَمَرَ بِصَدَقَةٍ أَوْ مَعْرُوفٍ أَوْ إِصْلَاحٍ بَيْنَ النَّاسِ وَمَنْ يَفْعَلْ ذَلِكَ ابْتِغَاءَ مَرْضَاتِ اللَّهِ فَسَوْفَ نُؤْتِيهِ أَجْرًا عَظِيمًا

Peace is better than armed confrontation and if peace is achievable through pacific means, such as mediation and reconciliation, than the peaceful means must be resorted. The holy Quran provides: “Whosoever intercedes (mediates) for a good cause will have the reward thereof, and whosoever intercedes for an evil cause will have a share in its burden. And Allah is Ever All-Able to do (and also an All-Witness to) everything.” (An-Nisaa: 85)

مَنْ يَشْفَعْ شَفَاعَةً حَسَنَةً يَكُنْ لَهُ نَصِيبٌ مِّنْهَا وَمَنْ يَشْفَعْ شَفَاعَةً سَيِّئَةً يَكُنْ لَهُ كِفْلٌ مِّنْهَا
وَكَانَ اللَّهُ عَلَىٰ كُلِّ شَيْءٍ مُّقِيبًا

The Prophet (PBUH) is reported to have said: ‘Should I inform you of something that is higher in virtue than fasting, praying and charity?’ They said, ‘Yes O Messenger of God.’ Then the Prophet said ‘To make reconciliation between peoples that are in conflict: Enmity and malice tear up heavenly rewards by the roots.’^{xxiii} The *Shari’ah* thus promotes the pacific settlements of disputes so does basically the Charter of the United Nations (UN). The Charter, which is a multilateral treaty to which all the Muslim nations are parties, expresses in its preamble a determination ‘to save succeeding generations from the scourge of war’, ‘to practise tolerance and live together in peace with one another as good neighbours’, ‘to unite our strength to maintain international peace and security’, and to ensure ‘that armed force shall not be used, save in the common interest.’ Peaceful coexistence is desired by the UN and so is desired by Islam. Islam urges the Muslims to live in peace with non-Muslims who do not oppress the Muslims or who do not drive them out of their homes and towns because of their beliefs. It urges them not to fight the non-Muslims just because they profess religions other than Islam for, as the discussion bellow reveals, there is no compulsion in religion.

3. The use force as an instrument for the spread of Islam not permitted

The *Shari'ah* recognises the diversity of faith^{xxiv} as the Holy Quran provides: "To every People have We appointed rites and ceremonies which they must follow: let them not then dispute with thee on the matter, but do thou invite (them) to thy Lord: for thou art assuredly on the Right Way" (Al-Hajj, 22:67):

لَكُلِّ أُمَّةٍ جَعَلْنَا مَنْسَكًا هُمْ نَاسِكُوهُ فَلَا يُنْزَعُ عَنْكَ فِي الْأَثْمَرِ وَأَدْعُ إِلَىٰ رَبِّكَ إِنَّكَ لَعَلىٰ هُدًى مُّسْتَقِيمٍ

Muslims may invite non-Muslims to the way of Allah (i.e. Islam) but they must do so not through the use of force but with wisdom and beautiful preaching. "Invite (all) to the Way of thy Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious: for thy Lord knoweth best, who have strayed from His Path, and who receive guidance" (An-Nahl, 16: 125).

أَدْعُ إِلَىٰ سَبِيلِ رَبِّكَ بِالْحُكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَدِّدْ لَهُمُ الْبَالِغَةَ هِيَ أَحْسَنُ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِمَنْ ضَلَّ عَنْ سَبِيلِهِ وَهُوَ أَعْلَمُ بِالْمُهْتَدِينَ

Muslims may caution or admonish the non-Muslims to embrace Islam, which can effectively be carried out by beautiful preaching, but they should not force or compel them to do so. The holy Quran provides: "Admonish, for you are one to admonish, you are not one to compel them to believe" (Al-Ghashiya, 88: 22-23):

فَذَكِّرْ- إِنَّمَا أَنْتَ مُذَكِّرٌ
لَسْتَ عَلَيْهِمْ بِمُصَيِّرٍ

The invitation extended by Muslims may or may not be accepted by the non-Muslims. In any case, the Muslims fulfil their obligation i.e., to convey the 'Message' which Allah (SWT) want them to convey and that is it. As the Holy Quran provides: "But if they turn away, We have not sent thee as a guard over them. Thy duty is but to convey (the Message)" (Ash-Shura, 42: 48):

فَإِنْ- أَعْرَضُوا فَمَا أَرْسَلْنَاكَ عَلَيْهِمْ حَفِيظًا- إِنْ إِلَّا الْكَلِمَةَ

Where the Muslims' call is not heeded by the non-Muslims then the Muslims must not resort to force to make them to accept Islamic religion. The Holy Quran provides: "You are not one to over awe them by force. So admonish with the Qur'an all such as may fear My Warning" (Qaf, 50: 45):

لَحْنُ أَعْلَمُ بِمَا يَقُولُونَ وَمَا أَنْتَ عَلَيْهِمْ بِجَبَّارٍ فَذَكِّرْ بِالْقُرْآنِ مَنْ يَخَافُ وَعِيدِ

There is no reason to force the non-believers to believe for if Allah (SWT) wanted them to believe all of them would have believed. The Holy Quran provides: "If it had been thy Lord's will, they would all have believed, -all who are on earth! wilt thou then compel mankind, against their will, to believe" (Yunus, 10:99).

وَلَوْ شَاءَ رَبُّكَ لَأَمَنَّ مِنَ فِي الْأَرْضِ كُلَّهُمْ جَمِيعًا أَفَأَنْتَ تُكْرِهُ النَّاسَ حَتَّىٰ يَكُونُوا مُؤْمِنِينَ

All the above cited verses clearly suggest peaceful coexistence among people of different faith^{xxv}. The *Shari'ah* does not allow its followers to use force as an instrument for the spread of Islam. The Holy Quran further provides: "There is no compulsion in matters of faith. Surely the right now became distinct from wrong" (Al-Baqara, 2: 256):

لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ

History is witness that Muslim conquerors never used force for the sake of changing the religion of people they conquered as they correctly thought that sword, though may win territories, cannot win heart and force can bend heads but not minds. In his book entitled "Civilization of the Arabs," Gustav LeBon says, "The reader will find, in my treatment of the Arabs' conquests and the reason of their victories, that force was never a factor in the spread of the Quranic teachings, and that the Arabs left those they had subdued free to exercise their religious beliefs. If it happened that some Christians embraced Islam and adopted Arabic as their language, it was mainly due to the various kinds of justice on the part of the Arab victors, with the like of which the non-Muslims were not acquainted. It was also due to the tolerance and leniency of Islam, which was unknown to the other religions."^{xxvi}

Islam spread throughout the world not through the use of sword, though some cynics think otherwise, but through righteous conduct. In his book "History of the Crusades," Michel Michaud writes, "Islam, besides calling for Jihad, reveals tolerance toward the followers of other religions. It released the patriarchs, priests and their servants from the obligations of taxes. It prohibited, in special, the killing of priests for their performance of worship, and Omar Ibn Al-Khattab did not inflict harm on the Christians when he entered Jerusalem as a conqueror. The Crusades, however, did slay Muslims and burn the Jews when they entered the city." In his book, "Islam: Impressions and Studies," Count de Castri writes, "After the Arabs yielded to, and believed in the Quran, and people received enlightenment through the True Religion, the Muslims appeared with a new show to the peoples of the earth, with conciliation and treatment on basis of free thinking and belief.

The Quranic verses then succeeded one another, calling on kind treatment, after those verses in which warnings had been addressed to the heretic tribes... Such were the instructions of the Apostle after the Arabs had embraced Islam, and the Caliphs who succeeded Mohammed followed his example. This writer agrees with Robertson when he said that the people of Mohammed were the only ones who combined kindness to others and the pleasure of seeing their Faith spread. It was this affection that pushed the Arabs on the way of conquest. The Quran spread its wings behind its victorious troops that invaded Syria and moved on like a thunderbolt to North Africa, from the Red Sea to the Atlantic, without leaving a trace of tyranny on the way, except what is inescapable in every war, and never did they massacre a nation who rejected Islam... "The spread of Islam and the submission to its authority seem to have another reason in the continents of Asia and North Africa. It was the despotism of Constantinople which exercised extreme tyranny, and the injustice of rulers was too much for people to bear...^{xxxvii} Islam was never imposed by sword or by force, but it got into the hearts of people out of longing and free will, due to the talents of stimulation and captivation of people's hearts, lodged in the Quran. As Gustav LeBon writes:

The early Arab conquests might have blurred their common sense and made them commit the sorts of oppression which conquerors usually commit, and thus ill-treat the subdued and compel them to embrace the Faith they wanted to spread all over the globe. Had they done so, all nations, which were still not under their control, might have turned against them, and they might have suffered what had befallen the Crusaders in their conquest of Syria lately. However, the early Caliphs, who enjoyed a rare ingenuity which was unavailable to the propagandists of new faiths, realized that laws and religion cannot be imposed by force. Hence they were remarkably kind in the way they treated the peoples of Syria, Egypt, Spain and every other country they subdued, leaving them to practise their laws and regulations and beliefs and imposing only a small Jizya in return for their protection and keeping peace among them. In truth, nations have never known merciful and tolerant conquerors like the Arabs.^{xxxviii}

Both Muslims and non-Muslims living in an Islamic country are required to pay tax. For non-Muslims the tax collected is called 'Jizya' or poll tax and for the Muslims tax collected is called 'Zakat' (Alms Tax). The two resembles each other and in fact now most of the Muslim states do not make distinction between the two and both Muslims and non-Muslim are required to pay levy to the state treasury which is used for the common good of the society. Jizya is levied so that all the capable non-Muslim citizens of the State can contribute, each from his own money, to the general welfare of the State, and that in return for this, they can enjoy their rights as nationals of this State, including compensation from the Muslim Exchequer when they are in need. It is not collected from the weak and poor.^{xxxix} In exchange of the poll tax the Non Muslims have to be supported, protected, granted a freedom of faith, and treated on the same footing of justice and equality with Muslims.

They are called "Zimmis" (the Arabic origin, "Zimma," meaning security, protection and custody) because the said rights are guaranteed by God and His Apostle, and such was the custom the Muslim leaders followed in dealing with the Zimmis.^{xxx} The poll tax is a small sum of money indeed when compared to the services the Muslim State offers to protect the Zimmis and support the army in charge to keep them safe from others' assaults^{xxxi}. The poll tax levied on the Zimmis and by definition zimmis refer to non-Muslims who live in the Muslim countries. The institution of Zimmis does not entitle the Muslim States to collect poll tax from non-Muslims living abroad. Although a Muslim state may, if necessary, use force to collect poll tax from the zimmis living within its territory as citizens, such a force cannot be used for this purpose or for other purposes against non-Muslims living abroad in a non-Muslim country as this would amount to aggression, which the *Shari'ah* as well as contemporary international prohibits.

4. The *Shari'ah* Rule Prohibiting Use of Armed Force

The *Shari'ah* prohibits aggression so does the UN Charter^{xxxii}. The general prohibition on the use of force contain in the UN Charter, which was explained in the previous chapters, binds all States including the Muslim States. The UN Charter is a universally accepted treaty and it binds its members by virtue of the customary principle of *pacta sunt servanda* and Article 26 of the Vienna Convention on the Law of Treaty.^{xxxiii} *Shari'ah* also makes specific provisions considering treaties as binding.^{xxxiv} To this effect the Holy Quran provides the following provisions:

1. "And perform your Covenant [treaty]; verily the Covenant shall be enquired of [you shall be responsible for it]" (*Al-Isra*, 17:34):

وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

2. "O you who believe, fulfill any obligations (you may make)" (*Al-Maeda*, 5:1):

يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَوْفُوا بِالْعُقُودِ

3. “Fulfill the Covenant of Allah when ye have entered into it, and break not your oaths after ye have confirmed them: indeed ye have made Allah your surety; for Allah knoweth all that ye do” (*Al Nahl*, 16:91):

وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ وَلَا تَنْفُضُوا أَلْأَيْمَانَ بَعْدَ تَوْكِيدِهَا وَقَدْ جَعَلْتُمُ اللَّهَ عَلَيْكُمْ كَفِيلًا إِنَّ اللَّهَ يَعْلَمُ مَا تَعْمَلُونَ

4. “Excepting those of the idolaters with whom ye (Muslims) have a treaty, and who have since abated nothing of your right nor have supported anyone against you. (As for these), fulfill their treaty to them till their term. Lo! Allah loveth those who keep their duty (unto Him)” (*Al Taubah*, 9:4):

إِلَّا الَّذِينَ عَاهَدْتُمْ مِنَ الْمُشْرِكِينَ ثُمَّ لَمْ يَنْفُضُوا شَيْئًا وَلَا يظهروا عَلَيْكُمْ أَحَدًا فَأَتِمُوا إِلَيْهِمْ عَهْدَهُمْ إِلَىٰ مُدَّتِهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُتَّقِينَ

5. “...Fulfill the treaties you have made, . . . such are the people of truth who fear God” (*Al-Baqara*: 2:177):

وَالْمُؤْمِنُونَ بِعَهْدِهِمْ إِذَا عَاهَدُوا

6. “Every time they make a Covenant, some party among them throws it aside. Why, most of them are faithless” (*Al-Baqara*: 2:100):

أَوْكَلَمَا عَاهَدُوا عَاهِدًا نَبَذَهُ فَرِيقٌ مِّنْهُمْ لَبِئَ أَكْثَرُهُمْ لَا يُؤْمِنُونَ

Thus, under the *Shari'ah* Muslim States parties to any international treaty, like the UN Charter, are bound to abide by the obligation created under that treaty so long the obligation in question does not contravene the teachings of Islam. The prohibition on the use of force contain in Article 2(4) of the UN Charter is *Shari'ah* compliance and Muslim States are therefore required to abide by the treaty obligation as the sacredness of treaties, faithfulness to covenants and refraining from deceit^{xxxv} are stressed in the *Qur'anic* text, as cited above. The *Shari'ah*, like the contemporary international law, generally prohibits the use of armed force in international relation. The Holy Quran, which is one of the primary sources of *Shari'ah*, permits defensive use of armed force (as will be discussed later) but prohibits aggression for Allah does not love the aggressor.^{xxxvi} The aggressor initiates the use of armed force and such an initiation attracts the displeasure of Allah which a Muslim State never ever would like to attract. The Holy Quran instructs the Muslims to be kind and just *vis-à-vis* those who do not commit aggression and do not drive the Muslims out of their homes and towns. Specifically, it provides: “Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just” (*Al-Mumtahina*, 60: 8):

لَا يَنْهَىٰكُمْ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوا مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

The Muslim world has diplomatic relationship with the non-Muslim world so the non-Muslim world, with the exception of Israel, can be described as ‘Darul Sulh’ or the abode of peace. Israel may be described as a ‘Darul Harb’ and the Muslim world may be at war with it because it has occupied a Muslim land and for over sixty years oppressed its people. However, the Muslim world can live at peace with the rest of the non-Muslim world so long they live with the Muslims in peace. The Holy Quran provides: “Except those who join a group between whom and you there is a treaty (of peace), or those who approach you with hearts restraining them from fighting you as well as fighting their own people. If Allah had pleased, He could have given them power over you, and they would have fought you: Therefore if they withdraw from you but fight you not, and (instead) send you (Guarantees of) peace, then Allah Hath opened no way for you (to war against them)” (*An-Nisa*, 4:90).

إِلَّا الَّذِينَ يَصِلُونَ إِلَىٰ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِّيثَاقٌ أَوْ جَاءُوكُمْ حَصِرَتِ أَيْدِيهِمْ أَوْ يُقَاتِلُوا قَوْمَهُمْ وَلَوْ شَاءَ اللَّهُ لَسَلَّطَهُمْ عَلَيْكُمْ فَلَقَاتَلُوكُمْ فَإِنِ اعْتَزَلْتُمْ فَلَمْ يُقَاتِلُوكُمْ وَالْقَوَامُ إِلَيْكُمْ أَلَسَلَّمَ فَمَا جَعَلَ اللَّهُ لَكُمْ عَلَيْهِمْ سَبِيلًا

Aggression is undoubtedly an unjust and unkind act for it destroys peace and the international criminal law considers it a crime against peace which is the supreme crime. Peace not war is the basis of relations among nations so that they may exchange benefit and cooperate with each others in order to promote humanity to utmost perfection. This is a well-founded rule of international law and so is the *Shari'ah*. The peaceful relations should not be broken except in extreme urgencies that necessitate war, provided that all peaceful steps have failed in terminating the cause of dispute. This is what Islam has always promoted. The relations of Muslim nations with others are primarily based on peace and confidence. Islam refuses the killing of people merely because they embrace a different faith, nor does it allow Muslims to fight against those who disagree with them on religious questions. It urges its followers to treat such people kindly^{xxxvii}. Aggression is a mischievous conduct that creates disorder and for this reason it is opposed to Allah’s will. The Holy Quran provides: “Every time they kindle the fire of war, Allah doth extinguish it; but they (ever) strive to do mischief on earth. And Allah loveth not those who do mischief” (*Al-Maeda* 5: 64).

كَلَّمَا أَوْهَدُوا نَارًا لِلْحَرْبِ أَطْفَأَهَا اللَّهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا وَاللَّهُ لَا يُحِبُّ الْمُفْسِدِينَ

Since aggressive war is destructive of peace it has to be avoided in all circumstances even in circumstances where Muslims are provoked to initiate the use of the armed force they must decline to do unless they come under actual armed attack. This is what the *Shari'ah* ordains, as is now ordained by the UN Charter. When the enemy uses provocation the Muslims instead seek peace. As the Holy Quran provides: “But turn away from them and say Peace!” (Az-Zukhruf, 43:89).

فَأَصْفَحْ عَنْهُمْ وَقُلْ سَلَامٌ

Disputes may arise between Muslim States and non-Muslim States but they should not be resolved through the use of armed force instead they should be resolved through peaceful means. This is what the *Shari'ah* recommends as is now recommended by the UN Charter^{xxxviii}. The *Shari'ah* promote peace, as is reflected in the word ‘Islam’ itself^{xxxix}, and for this reason it generally prohibits the use of armed force for the use of force destroys peace. In addition, the Holy Quran provides: “But if the enemy incline towards peace, do thou (also) incline towards peace, and trust in Allah. For He is One that heareth and knoweth (all things)” (Al-Anfal, 8:61).

وَإِنْ جَنَحُوا لِلسَّلَامِ فَاجْتِنِحْ لَهَا وَتَوَكَّلْ عَلَى اللَّهِ إِنَّهُ هُوَ السَّمِيعُ الْعَلِيمُ

The peaceful means of settling disputes, which include diplomatic and legal means, have to be exhausted to resolve the dispute.^{xl} The diplomatic means of pacific settlement of disputes include *inter alia* negotiation (muzakarah) and mediation (*Wassatah*) while the legal means include arbitration and judicial decision. If the diplomatic means prove to be ineffective then legal means should be resorted to resolve the dispute. These are nonviolent means which the Prophet Muhammad (PBUH) often used to settle disputes involving Muslims and non-Muslims.^{xli} The reason *de'tare* for advocating pacific settlement of dispute is to ensure protection of human life. Armed force should not be used as it violates, *inter alia*, human life which the *Shari'ah* considers sacred. The Holy Quran provides: “... take not life which Allah has made sacred, except by way of justice and law: thus He commands you that you may learn wisdom” (Al-Anaam, 6:151).

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ذَلِكُمْ وَصَّوْكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ

In another place the holy Quran provides: “... If anyone killed a person not in retaliation for murder or for his spreading evil in the land, it would be as if he killed the whole of mankind. And if anyone saved a life, it would be as if he saved the whole of mankind” (Al-Maeda, 5:32).

مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا

The *Shari'ah* not only protects human life but also property and the environment in which we live. But armed conflicts destroy both property and the environment and for these reasons armed force shall never be used unless it is absolutely necessary. The use of force becomes necessary when for example the non-Muslims breach the peace of the Muslim world^{xlii} and attack or oppress the Muslims. These are the exceptional circumstances which justify the use of force under the *Shari'ah*. But, as will be discussed later, even force used under such circumstances the humanitarian rules of *Shari'ah* which include the protection of life of civilians and their property must be observed.

5 The Exceptions to the Rule prohibiting the use of armed force

Although the *Shari'ah* generally prohibits the use of armed force, it allows the use of such force in self-defence and in situation where Muslims or non-Muslims are ejected from their homes, towns and cities. The later exception can be termed as the collective use of force for humanitarian reason. In these circumstances, Muslim States may justifiably use armed force by invoking the concept of ‘jihad’. Since the concept of jihad is central in using armed force under the said circumstances it is important to know, at least briefly, what does the concept of jihad means before discussing the exceptions to the prohibition on the use of armed force.

5.1 The Concept of Jihad

The concept of jihad is usually mistranslated in the West as “holy war”. ‘Jihad’ is an Arabic term which means “strife” or “struggle”^{xliv}. Jihad in the cause of Allah (SWT) can be conducted through peaceful means as well as through coercive means^{xlv} which include the use of armed force. But force can only be used as the last resort in exceptional circumstances and only after the exhaustion of all peaceful means. Broadly speaking, jihad can be of two types, namely *al-Jihad al-Kabir* (‘greater jihad’) and *al-Jihad al-Asghar* (‘lesser jihad’). The greater jihad is “a self-imposed individual kind of jihad or struggle against the bad desires of the self”^{xlvi} and is described by the Prophet (PBUH) as the ‘best jihad’ (*al-Jihad al-Afdal*). The ‘lesser jihad’ “is used for expanding ability and power in fighting in the path of God by means of life, property, tongue and other than these”^{xlvii}. Generally, this type of jihad can be conducted through peaceful means as well as through coercive means. Coercive means, which include the use of armed force, can be used when peaceful endeavours become unable to bring brutality, viciousness and oppression to an end. The lesser jihad, which allows the use of armed force for the defence of a Muslim nation and the protection of humanity, is the concern of the present discussion.

Generally, this type of jihad is not considered as a personal duty (*fard 'ayn*), but only a general duty (*fard kifaya*) which, if accomplished by a sufficient number, the rest will no more be condemned for the neglect of that duty^{xlvii}. In this sense the administration of jihad is entirely at the hand of the Government of the Islamic State. If the Government called for jihad then the Muslims should follow. The Holy Quran provides in verse 4:59 “O ye who believe! Obey Allah and obey the Messenger and those charged with authority among you.” Al-mawardi has stated that a war cannot be waged without permission of the Caliph (Central government)^{xlviii}. As-Sarakhsy goes even further to maintain that if a foreign armed force without permission of its government takes belligerent action against a Muslim State, that does not amount to a declaration or existence of a war between the two States^{xlix}. In such cases redress may be obtained by diplomatic means and even by direct actions as the occasion may require¹.

The primary purpose of jihad is public security and the protection of the sovereignty of the Muslim State^{li}. A government which has the support of the people or is Islamic has the authority to take enforcement decisions in this regard. If, however, “the government loses support or is considered un-Islamic, then those who have the trust and support of the public can take decisions on public safety after being put in a position of authority according to Islamic law.”^{lii} Such an authority can declare jihad in the following circumstances: (1) there is an attack on a Muslim land, (2) there is “a well-founded fear that the ruler will not protect the lives and properties of Muslims” and non-Muslim citizens, and (3) there is consensus among “Muslim leaders” that jihad should be lawfully declared in defense of the population, Muslims or non-Muslims^{liii}. In these circumstances jihad becomes “*fard 'ayn* or a duty of every believer...”^{liv} Thus, when an enemy State has already attacked a Muslim State then jihad or armed struggle becomes unconditionally incumbent on every able man.

5.2 Use of Force in Self-defence

Self-defence is an exception to the general rule that the use of force is prohibited. This exception is recognised under contemporary international law and is also recognised under the *Shari'ah*. The Prophet (PBUH) did not initiate war as he used to preach Islam peacefully but the war imposed upon him as when the enemy of Muslims, the polytheists in Mecca used aggressive methods to inflict harm on the Muslims. They persecuted the Muslims and decided to kill the Prophet (PBUH) and when their intention known by the Prophet, he immigrated to Medina and was warmly welcomed by its people who pledged allegiance to him in the cause of Islam. At that time he did not fight, even in self-defence, because he had no permission from God to do so. The enemy of Islam and the Muslims not only attempted to kill the Holy Prophet, but also provoked non-Muslim tribes against him in order to put an end to his Message. When the case reached this stage, Allah gave permission to the Prophet (PBUH) to fight to defend Islam and the Muslims. The permission was given to drive away aggression and tyranny. The Holy Quran provides: “To those against whom war is made, permission is given (to fight), because they are wronged; - and verily, Allah is most powerful for their aid” (Al-Hajj, 22:39).

أَذِنَ لِلَّذِينَ يُقَاتِلُونَ بِأَنَّهُمْ ظَلِمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ

This verse recognises the right of self defense – a right which is also recognised by the UN Charter as an inherent right of states. Surely, war (*harb*) or the use of armed force is not a desirous conduct under the *Shari'ah* but when it is imposed on the Muslims or the non-Muslims aggressed or oppressed, do they have any other choice but to respond in self-defence? The Holy Prophet Muhammad (PBUH) is reported to have said: “Do not wish for an encounter with the enemy; Pray to Allah to grant you security; but when you (have to) encounter them, exercise patience, and you should know that Paradise is under the shadow of the swords.”^{lv} The Prophet (PBUH) is also reported to have said: “Whoever fights in defence of his person and is killed, he is a martyr, whoever is killed in defence of his property is a martyr, whoever is killed in defence of his family and is killed is a martyr, and whoever is killed for the cause of God is a martyr.”^{lvi} Fighting in the course of God may mean fighting in the defence of oppressed Muslim nations.

The Muslim army while using force in self-defence must abide by the *jus in bello* rules of *Shari'ah*. They must not attack civilians including men, women and children. They should not attack the wounded even though he might have been wounded fighting the Muslim army. Such a person must be provided with medical care. No prisoner of war shall be killed except in accordance with *Shari'ah*. Under the *Shari'ah* a prisoner of war can be tried for war crimes, crimes against humanity and aggression and if found guilty, the death penalty can be imposed on him or her. Places of worship, such as Mosques, Churches or Temples must not be attacked. No civilian installations should be attacked. People should not be attacked on the ground of their belief. Thus, *Shari'ah* commands that even if force used in self-defence must be limited and be conducted as humanely as possible. The Holy Prophet did fight the Meccans, the Jews and their allies, the Christian tribes in Syria, but he did so in the defence of the oppressed Muslims. Yet this did not make the Prophet (PBUH) to denounce the People of the Book. The Muslims were forced to defend themselves but they were not fighting a holy war against the religion of their enemies as Islam recognises religious freedom.

When the Prophet (PBUH) sent Zaid against the Christians at the head of a Muslim army, he told them to fight in the cause of God bravely but humanely. They must not molest priests, monks, nuns nor the weak and helpless people who were unable to fight. There must be no massacre of civilians nor should they cut down a single tree nor pull down any civilian installation. The force used in self-defence is used out of necessity and it is a generally accepted maxim in *Shari'ah* that 'a necessity is to be kept within the limits of that necessity'. The force used even in such a circumstance it must be proportionate and must not lead to transgression (such as expansion or dominance). The Holy Quran provides: "Fight in the cause of Allah those who fight you, but do not transgress limits; for Allah loveth not transgressors" (al-Baqara, 2: 190).

وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُفْتَلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ

The force used in self-defence must be within the limit permitted under the *Shari'ah* and once the oppression and its causes removed law and order must be established and the Muslim rulers must uphold justice and forbid evils. The Holy Quran provides: "They are those who, if we appointed them as rulers on earth, they would establish the Contact Prayers (Salat) and the obligatory charity (Zakat), and would advocate righteousness and forbid evil. Allah is the ultimate ruler" [22:41] The use of force in self-defence must end once the enemy is inclined towards peace. The Holy Quran provides: "But if the enemy incline towards peace, do thou (also) incline towards peace, and trust in Allah. For He is One that heareth and knoweth (all things)" (Al-Anfal, 8:61).

وَإِنْ جَنَحُوا لِلسَّلْمِ فَاجْتَحِبْ لَهَا وَتَوَكَّلْ عَلَى اللَّهِ إِنَّهُ هُوَ السَّمِيعُ الْعَلِيمُ

The use of armed force becomes unnecessary the moment the aggressor inclines towards peace. If peace is desired by the aggressor then there is no reason for the armed conflict to go on endlessly. Armed conflict has to end and the dispute has to be settled peacefully. Restoration and the maintenance of peace is as desirous act to Muslims as is to others. Islam, in fact, makes of peace a special greeting which Moslems exchange whenever they meet by saying, "Peace be unto you" (Assalamu 'Alaykum). The Muslim also utters this statement at the end of every prayer.

5.3 Use of Force for Humanitarian Reason

The *Shari'ah* allows the use of force on humanitarian ground to emancipate people from a tyrannical ruler who oppresses them on the grounds of race or religion. It requires Muslims to stand on the face of injustice and oppression, wherever they may be, and strive towards the eradication of their causes, and not to take hold of the earth, or enslave people or dominate their welfare, but to establish justice. Fighting against oppression in support of the oppressed is a fight in the course of Allah (SWA). The Holy Quran commands Muslims: "You shall fight in the cause of Allah, and know that Allah is Hearer, Knower"^{lvii}, or "You shall strive for the cause of Allah as you should strive for His cause..."^{lviii} The Prophet (PBUH) is reported to have said: "Whoever is killed for the cause of God is a martyr." Fighting in the course of God may mean fighting in the defence of oppressed Muslims and non-Muslims. When a non-Muslim State or a Muslim State began to oppress its subjects, be they Muslims or non-Muslims, to the extent of cleansing them from their homes and towns, as for example Serbia did against the Muslims in Bosnia and Kosovo, then using force to emancipate people from this type of oppression become inevitable. The Holy Quran provides: "(They are) those who have been expelled from their homes in defiance of right,- (for no cause) except that they say, "our Lord is Allah..

Did not Allah check one set of people by means of another, there would surely have been pulled down monasteries, churches, synagogues, and mosques, in which the name of Allah is commemorated in abundant measure. Allah will certainly aid those who aid his (cause);- for verily Allah is full of Strength, Exalted in Might, (able to enforce His Will)" (Al-Hajj, 22:40).

الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ بِغَيْرِ حَقٍّ إِنَّ أَنْ يَقُولُوا رَبَّنَا اللَّهُ لَوْ لَمْ يَدْفَعِ اللَّهُ النَّاسَ بَعْضَهُمْ بِبَعْضٍ لَهْتَمَّتْ صَوَامِعُ وَيَبَعُ وَصَلَوَاتٌ وَمَسَاجِدُ يُذْكَرُ فِيهَا اسْمُ اللَّهِ كَثِيرًا وَلَيَنْصُرَنَّ اللَّهُ مَنْ يَنْصُرُهُ إِنَّ اللَّهَ لَقَوِيٌّ عَزِيزٌ

The above verse advocates the use of force on humanitarian ground to emancipate people, whether Muslims or non-Muslims, from oppression and injustices. The Holy Quran further provides: "Let those fight in the cause of Allah Who sell the life of this world for the hereafter. To him who fighteth in the cause of Allah,- whether he is slain or gets victory - Soon shall We give him a reward of great (value). And why should ye not fight in the cause of Allah and of those who, being weak, are ill-treated (and oppressed)?- Men, women, and children, whose cry is: "Our Lord! Rescue us from this town, whose people are oppressors; and raise for us from thee one who will protect; and raise for us from thee one who will help!" (An-Nisa, 4: 74-5)

فَلْيُقَاتِلْ فِي سَبِيلِ اللَّهِ الَّذِينَ يَشْرُونَ الدُّنْيَا بِالْآخِرَةِ وَمَنْ يُقَاتِلْ فِي سَبِيلِ اللَّهِ فَيُقْتَلْ أَوْ يَغْلِبْ فَسَوْفَ نُؤْتِيهِ أَجْرًا عَظِيمًا (٧٤) وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ الَّذِينَ يَقُولُونَ رَبَّنَا أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمِ أَهْلُهَا وَأَجْعَلْ لَنَا مِنْ لَدُنْكَ وَلِيًّا وَأَجْعَلْ لَنَا مِنْ لَدُنْكَ نَصِيرًا (٧٥)

However, the force used in such a circumstance must not lead to arrogance in the land to raise a race above another but rather it must lead to justice, rule of law, freedom from operation.

It should also lead to the creation of an environment where people can freely practice their religion so as to attain spiritual exaltation. It must also help to establish social justice, to support the needy to live a decent life, to promote tolerance and kindness among people of different faith. These are the righteous deeds which must be promoted and evil irrespective of its forms whether aggression or oppression has to be crushed. In *Shari'ah* armed force used for whatever reason must not be used to oppress or enslave people; it is waged for the cause of Allah (SWT) and weak people, like those in Mecca who were persecuted and oppressed by the Meccan atheists. It is the duty of every believer to support people like these and relieve them from oppression, people who no longer have any supporter and thus turn to Allah for refuge. The Holy Quran provides: "Those who believe are fighting for the cause of GOD, while those who disbelieve are fighting for the cause of tyranny.

Therefore, you shall fight the devil's allies; the devil's power is nil."^{lix} The devils and their allies fight for the cause of tyranny and behave arrogantly in the land, enslaving others and depriving them of their rights to have a share in the riches of the earth. But the Muslims should fight in the cause of Allah (SWT) to spread Divine Law (which calls for justice and freedom of religion) in the world without there being any selfish intent or arrogance in the land. If the aim of the use of force is to seek justice against oppression and not to seek exaltation on earth it may result to victory. The Holy Quran provides: "We reserve the abode of the Hereafter for those who do not seek exaltation on earth, nor corruption. The ultimate victory belongs to the righteous."^{lx}

6. Conclusion

In short, the '*Shari'ah*' advocates peaceful coexistence among people of different faiths. It sanctifies human life, ensures the dignity of human kind, guarantees faith and provides for the protection of public and private properties. These and other Islamic values, such as justice, equality of all human race, tolerance, peace and harmony can be adversely affected by the use of armed force particularly when it is used unjustifiably or aggressively. To protect these values the '*Shari'ah*' promotes peaceful coexistence and generally prohibits the use of armed force. The prohibition of the use of force under *Shari'ah* is, however, subject to certain exceptions where force inevitably can be used in response to aggression or in reaction to the violation of the aforementioned values. One of the exceptional circumstances which the *Shari'ah* permits, so does the contemporary international law, is the use of force in self-defence against aggression. Aggression breaches peace, violates the territorial sanctity of the aggressed nation, infringes human life and dignity, causes destruction of property, both public and private and defies all other values which the *Shari'ah* advocates. The restoration and preservation of these values necessitates and justifies the use of armed force against aggression. The other exceptional situation which justifies the use of armed force is the situation where people are mass murdered and forced out of their homes and towns.

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^{li} 'Jus ad bellum refers to set of rules that are consulted before engaging in an armed conflict, in order to determine whether entering into armed conflict is justifiable.' See generally James Turner Johnson, *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry*. (New Jersey: Princeton University Press, 1981), 4; Moseley, "Just War Theory," in *The Internet Encyclopedia of Philosophy* (accessed February 2, 2003); available at: <http://www.utm.edu/research/iep/j/justwar.htm>; Internet.

^{lii} 'Jus ad bellum is the title given to the branch of international law that defines the legitimate reasons a state may engage in an armed conflict and focuses on certain criteria that render the conflict just.' See Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 2nd Edition. (New York: Basic Books, 1997), 44; L.C. Green, *The Contemporary Law of Armed Conflict*, Manchester, Canada: Manchester University Press, 1993.

^{liii} Charter of the United Nations, June 26, 1945, 59 Stat. 1031, UNTS No.993 (hereinafter: 'UN Charter'). The Charter of the UN was adopted at the San Francisco Conference in 1945. It created the UN, defines its functions and limitations, and outlines the rights and obligations of its member States. It is an unbending legal instrument, as per Art.108, that considers all its members, whether small or big, powerful or weak, rich or poor, as equal and sovereign, as per Art. 13.. It advocates peaceful coexistence and cooperation among its member States, as per Art. 1 (2) & (3), encourages peaceful settlement of inter-States disputes (see Arts. 2(3) & 33), forbids the UN from intervening in matters which are essentially within the domestic jurisdiction of Sovereign States^{liiii} and prohibits the use of military force in international relations (see Art. 2 (7)). The Charter expresses, in its preamble, a determination 'to save succeeding generations from the scourge of war', 'to practise tolerance and live together in peace with one another as good neighbours', 'to unite our strength to maintain international peace and security', and to ensure 'that armed force shall not be used, save in the common interest.'

^{liiv} J.E. Alvarez, 'Constitutional Interpretation in International Organizations' in J-M. Coicaud and V. Heiskanen (eds.), *The Legitimacy of International Organizations*, UN University, 2001. See also G Arangio Ruiz, 'The Federal Analogy and UN Charter Interpretation: A Crucial Issue', (1997) 8 *European Journal of International Law*.

^{lv} Article 2 (4) of the UN Charter reads: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or any other manner inconsistent with the Purposes of the United Nations."

^{lvi} Article 51 of the UN Charter provides: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to

maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence 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.”

^{vii} Chapter VII of the UN, as per Arts 39, 42 and 25, allows the use of force in response to an act of aggression or any other act that threatens or breaches international peace and security. In addition to the right of self-defence, the use of force under the collective security system is another exception to the general prohibition of the use of force

^{viii} Jus in belli or IHL rules are mainly laid down in the four Geneva Conventions of 1949 and their Additional Protocols. The Geneva Conventions of 1949 include: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 UNTS 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, 75 UNTS 85; Geneva Convention Relative to the Treatment of Prisoners of War, 75 UNTS 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287. All the four Geneva Conventions opened for signature on Aug. 12, 1949 and entered into force on Oct. 21, 1950. Protocols Additional to the Geneva Conventions of 1949 (Protocols I & II), opened for signature Dec. 12, 1977, 1125 UNTS 3 [hereinafter cited as First and Second Protocol respectively]. The two Protocols had gained a respectable number of parties- First Protocol have 138 signatories while Second Protocol have 128. The two Protocols have not been ratified by the United States, but many of their provisions are considered to be indicative of customary international law.

^{ix} “IHL is a set of rules which seek, for humanitarian reasons, to limit the effect of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. The law applies only once a conflict has begun, and then equally to all sides regardless of who started the fighting.” See ICRC’s Advisory Service issued on July 2004. See also J. G. Starke, Introduction to International Law, 10th Edition, 1989, 552; G. Schwarzberger, A Manual of International Law, 5th Edition, 1967, 196; Kapoor S.K., International Law, 11th ed. (Central law Agency, Allahabad India, 1996), 638.

^x Ali, Shaheen S., and Javaid Rehman, ‘The Concept of Jihad in Islamic International Law’, 10 Journal of Conflict and Security Law, 2005, 321-343; An-Na’im, Abdullah A., Toward An Islamic Reform: Civil Liberties, Human Rights, And International Law, Syracuse: Syracuse University Press, 1990.

^{xi} See the following Quranic verses: 6:151; 5:32; 17:31 & 17:33.

^{xii} “We bestowed dignity on the progeny of Adam” (Quran 17:70).

^{xiii} See the following Quranic verses: 6:108, 109; 10:99; 18:29; 109:1-6. & 2: 256.

^{xiv} “O you who believe ...let not hatred of a people incite you not to act equitably. Be just; that is nearer to observance of duty” (Quran 5:8) See also the following Quranic verses: 4:58; 4:135; 5:8; 5:42; 7:29 & 16:90

^{xv} “O mankind, We have created you from a male and a female, and made you into tribes and families that you may know each other. Surely the noblest of you with Allah is the (one who is the) most righteous of you. Surely Allah is Knowing, Aware” (Quran 49:13). In his Farewell Sermon, the Prophet (PBUH) declared: “Righteous actions are the only mark of distinction and not wealth, birth, or status in life.” In his Farewell Sermon, the Prophet (PBUH) declared: “Righteous actions are the only mark of distinction and not wealth, birth, or status in life.”

^{xvi} Al-Quran, 17:34.

^{xvii} Al- Quran, 5:64

^{xviii} Shari’ah upholds the right to equality and in doing so it prohibits discrimination between persons on the basis of colour, race, nationality, nobility of birth, wealth, political status, gender, etc. In Islam, superiority of a man is determined only on the basis of piety, righteousness, and moral excellence. As the Quran proclaims: “O mankind, We have created you from a male and a female, and made you into tribes and families that you may know each other. Surely the noblest of you with Allah is the (one who is the) most righteous of you. Surely Allah is Knowing, Aware” (Al-Quran, 49:13). In his Farewell Sermon, the Prophet (PBUH) declared: “Righteous actions are the only mark of distinction and not wealth, birth, or status in life.”

Al- Quran, 7:11

^{xix} Al- Quran, 5:32

^{xx} “And do not kill yourself. Verily, Allah is merciful towards you.” (Al-Qur’an 4: 29).

^{xxi} Al- Quran, 16:90.

^{xxii} ‘Help ye one another in righteousness and piety. But help ye not one another in sin and rancour.’ (Al-Maidah: 2): وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

^{xxiii} Nasirudin Al-Albani. Sahih Al- Ja’mi’ al-Saghir, hadith No: 436.

^{xxiv} The holy Quran also recognizes diversity in matters of faith by saying: “To every nation have we appointed rites and ceremonies which they follow , so let them not then dispute with thee on the matter but do thou invite (them) to thy Lord: for thou art assuredly on the Right Way” (22: 67).

^{xxv} The Holy Prophet in one of his testaments to `Ali Ibn Abi Talib (a.s.) said: The most commendable are three deeds: -First is being just to the people even against yourself. Secondly, cooperation and material help to (Muslim) brothers. Thirdly, remembrance of Allah in all circumstances.

^{xxvi} Lebon, G, The Civilization Of The Arabs, Paris, 1884, trans. 'Adil, Za'aytar, at 605

^{xxvii} Count de Castri, Islam: Impressions and Studies.

^{xxviii} Id., 128.

^{xxix} In his message to the people of Hira, Khaled Ibn Al-Walid says, "When a person is too old to work or suffers a handicap, or when he falls into poverty, he is free from the dues of the pull tax; his sustenance is provided by the Moslem Exchequer." In his book "Al-Kharaj," Abu Yusuf says, "No Jizya is due on females or young infants."

^{xxx} In his book "Futooh Al-Buldun" (Conquests of Countries), Al-Balathiri comments on this saying, "Khaled Ibn Al-Walid, on entering Damascus as a conqueror, offered a guarantee of security to its people and their properties and churches, and promised that

the wall of the city would not be pulled down, and none of their houses be demolished. It was a guarantee of God, he said, and of the Caliph and all believers to keep them safe and secure on condition they paid the dues of the Jizya."

^{xxxii} In his book "Al-Kharaj," Abu Yusuf gives the following reports: "After getting on peaceful terms with the people of Syria and collecting the dues of the Jizya and the Kharaj, news reached Abu 'Ubeida that the Byzantines had amassed their troops to attack him. The effect of this was great on Abu 'Ubeida and the Moslems. He sent messages to the rulers of cities with whose citizens he had made peace, asking them to return to their subjects the paid dues of the Jizya and Kharaj, with an instruction to tell these: 'We hereby return to you the money you have paid us, because of the news of the enemy troops amassed to attack us, but, if God grants us victory against the enemy, we will keep up to the promise and covenant between us.' When this was delivered to the Zimmis and their money returned to them, they told the Moslems: May God bring you back to us and grant you victory over them!" In his book, "The Spirit of Laws," on dealing with the taxes levied by the government, Montesquieu says, "Such levied taxes were one reason for the strange facility which the Moslems faced during conquests. People, then, preferred -- instead of being subjected to an endless series of fines which entered the rich imagination of greedy rulers -- to submit to the payment of a minimal tax which can be fulfilled and paid with ease."

^{xxxiii} See UN Charter, Art. 2 (4).

^{xxxiii} 1155 UNTS 331 (hereinafter: "VCLT"). Article 26 of the VCLT provides: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." This provision is based on the doctrine of Pacta Sunt Servanda or the customary rule that treaties are binding on the parties and must be performed in good faith.

^{xxxiv} See generally M. Cherif Bassio, 'Protection of Diplomats under Islamic Law', 74 AJIL 609.

^{xxxv} "To the Greeks, the rule of good faith formed part of universal law. To the Romans, it was part of jus gentium, which is common to every tribe and people: pacta sunt servanda. To the Muslims, it (is) part of the Shari'ah or divine law, at-taharruz `anal-ghadr (refraining from deceit), which is set forth in unmistakable terms in both the Qur'an and Traditions (of the Prophet Muhammad (PBUH))": Mohamed Hosny Mohamed Gaber, *Earthly Islamic State with Special Reference to the Evolution of the Principle of the Islamic International Law*, U Microfilms International, 1983, at 97.

^{xxxvi} Al-Quran, Al-Baqara, 2:190

^{xxxvii} See Al-Quran, Al-Mumtahina, 60: 8.

^{xxxviii} See UN Charter, Arts. 2 (3) and 33.

^{xxxix} "The Arabic word Islam is derived from the root Salam, which means peace and security. Whenever Muslims meet and greet one another, they pray for each other's peace and security. In addition, Muslims daily raise their hands to Almighty Allah and pray in the following words, "O Allah! You are peace, peace comes from you and to you returns peace. Keep us alive, O our Cherisher, in peace and take us into the house of peace." Who could be more loving of peace other than those who daily offer prayers of peace for others and also pray for their own peace?" Shaykh Muhammad Imdad Hussain Pirzada, 'London Suicide Bombings; The Islamic Perspective', April 2006, available at www.mihpirzada.com | page 2 of 4.

^{xl} Majid Khaddur, *War and Peace in the Law of Islam*, 1955, at 55.

^{xli} Sohail H Hashmi, "Interpreting the Islamic Ethics of War and Peace – Conceptions of War and Peace in the Sunna," available at www.ecla.org/articles/contemporary_issues/article_hashmi_sohail_h_1.html.

^{xlii} The Holy Quran further provides: "Others you will find that wish to gain your confidence as well as that of their people: Every time they are sent back to temptation, they succumb thereto: if they withdraw not from you nor give you (guarantees) of peace besides restraining their hands, seize them and slay them wherever ye get them: In their case We have provided you with a clear argument against them" (An-Nisa, 4:91): سَتَجِدُونَ ءآخَرِينَ يُرِيدُونَ أَنْ يَأْمَنُوا بِنِعْمَتِ اللَّهِ عَلَيْكُمْ وَيَأْمَنُوا بِقَوْمِهِمْ كُلَّ مَا رُوِيَ إِلَى الْآخِرَةِ أَرْتَابًا فَإِنْ لَمْ يَحْضُرُوا لَكُمْ وَيَقُولُوا بِاللَّحْمِ وَالسَّلَامِ وَيَكْفُرُوا بِأَيْدِيهِمْ فَخُذُوهُمْ وَأَقْتُلُوهُمْ حَيْثُ تَقْتُلُوهُمْ وَأُولَئِكَ جَعَلْنَا لَكُمْ عَلَيْهِمْ سُلْطَانًا مَبِينًا

^{xliii} See Mohamed Hosny Mohamed Gaber, *The Early Islamic State with Special Reference to the Evolution of the Principles of Islamic International Law 632-750 A.D.*, The American University, PH.D., 1962, Political Science, international Law and Relations, University Microfilms, Inc., Ann Arbor. Michigan, at 129.

^{xliv} Ibn Rushd, in his *Muqaddimaat*, divides Jihad into four kinds: "Jihad by the heart; Jihad by the tongue; Jihad by the hand and Jihad by the sword." Jihad by sword means the use of armed force.

^{xlv} Mohamed Hosny, *supra* n. 35, at 129.

^{xlvi} Muhammad Hamidullah, *The Muslim Conduct of State*, Lahore, Ashraf Publication, 1953, at 163.

^{xlvii} *Ibid.*

^{xlviii} *Ibid.*

^{xlix} *Ibid.*

^l *Ibid.*

^{li} See generally Khatib, Sayed, *The Power of Sovereignty: The Political and Ideological Philosophy of Sayyid Qutb*, London: Routledge, 2006.

^{lii} Niaz A. Shah, *Self-defense in Islamic and International Law: Assessing AL-Qaeda and the Invasion of Iraq*, New York: Palgrave Macmillan, 2008, 22

^{liii} *Ibid.*

^{liiv} Mohamed Hosny, *supra* n. 33, at 133.

^{liv} Al-Mawardi, (trans Dr Asadullah Yate), *Al-Ahkam as-Sultaniyyah*, p 57.

^{lvi} Muhammad Hamidullah, *supra* n. 38, at 165-166.

^{lvii} Al-Quran, 2:244.

^{lviii} *Ibid.*, 22:78.

^{lix} *Ibid.*, 4:76.

^{lx} *Ibid.*, 28: 83.