

BOOK REVIEW

Is Jihad A Just War?

War, Peace, And Human Rights Under Islamic And Public International Law.

Studies in Religion and Society.
Volume 53

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The Edwen Mellen Press. UK.
P218

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The 1978-1979 Islamic revolution in Iran, the process of Islamization in Pakistan under the late President Zia-ul Haq and the Islamic ideology which inspired the freedom fighters in Afghanistan to fight against the brutal invasion of their country by a Communist superpower, have all given new impetus, hope and aspirations to the forces of Islam in contemporary world affairs. During the same period, the Western world woke up to takeovers of foreign embassies, the promotion of a third world revolution (Gaddafi), presidential assassinations (Sadat in 1981), hostage-taking, hijack-

ings, and attacks on foreign and government installations by groups such as the Islamic Liberation Organization, Jihad, Takfir Wal Hijra, Hizbollah and Islamic Jihad. These groups all shared one common concept: the legitimization of Jihad as both a weapon and a tool to curtail western hegemony in the region, and to fight the forces that were encroaching on their physical sovereignty, religious independence, and cultural identity.

But, is the meaning of *jihad* an unvarying one, which is neither open to debate nor to differing explanation? Here lies the main aim of Zawati's book "to investigate, analyze, and critically examine the theory of war under Islamic and public international law."¹ Through an examination of major Islamic legal texts and sources, the study argues that peace is the rule and war the exception in Islam, and that no obligatory state of war exists between Muslims and the rest of the world. Consequently, the Islamic division of the world into *dar al-Islam* (territory of Islam) and *dar al-harb* (territory of war), was laid down not by religious scriptures but as a result of

¹ Zawati Hilmi, "Is Jihad a Just War? War, Peace, and Human Rights Under Islamic and Public International Law" (New York. USA: The Edwen Mellen Press, 2001), p. viii.

particular historic events. These events were related to the early inception of Islam, first in Mecca, a hostile environment to the new religion, then in Medina, which represents the first true expansion and migration of Islam and Muslims and which later on led to the Islamic expansion and movement towards Al-Hijaz, the Crescent areas, Africa, and Asia. To tackle this issue, the author divides his book into four chapters.

Chapter one compares the treatment of war and belligerent occupation in Islamic legal theory, (concluding according to Sayyed Qutb that peace, is the rule, while war is the exception)², with the treatment of war and belligerent occupation in public international law, covering an array of conventions, declarations, and specific references to treaties. Furthermore, Zawati, goes on, to give a distinct categorization of *Jihad*, by relying on the works of Ibn Qayyim al-Jawziyya, and al-Mawardi, who subsume *Jihad* under two broad categories: the greater *jihad* (moral struggle) and the lesser *jihad* (armed struggle).³ Due to the nature of the study under-

taken, the author concentrates on the latter form of *jihad* (armed struggle); which includes the struggle against Muslim dissidents and unjust rulers even if they claim to be Muslims; and the struggle against non-Muslims; polytheists and the "people of the book."⁴ It is quite clear from Zawati's reference to various Islamic legal resources, that Islam affords each and every category its own set of rules, regulations, and standards of conduct, the aim of which is to ensure public security, social stability, and legal order.

In Chapter Two, a more in-depth analysis is dedicated to the relation between *jihad* and International Relations. Zawati argues that Islamic law should be viewed as a comprehensive legal system designed to preserve the interest of Muslims and to regulate their relationships with the rest of the world, in times of peace and war. It is while discussing these relationships that the author makes reference to the three territorial divisions employed by Muslim jurists: the territory of Islam (*dar al-Islam*); the territory of the covenant (*dar al-*

² Ibid, p.10.

³ Ibid, p.29.

⁴ i.e. people of who believed in the Prophet Abraham.

Sulh); and the territory of war (*dar al-harb*).⁵ He discusses the legal nature of the relations that bind these territories to *dar al-Islam* proper; these being: treaties (*al-mu'ahadat*),⁶ reciprocity (*Al-mu'amala bil-mithl*),⁷ arbitration (*al-tahkim*),⁸ neutrality (*al-hiyad*),⁹ diplomatic exchange (*tabadul al-wufud wal-safarat*)¹⁰ and foreign trade (*al-tijara al-kharijiyya*).¹¹ In each of the above-mentioned categories, the author clearly identifies Islamic rules and regulations that should be pursued in each type of relation and its sub-categories.

The issue of human rights protection in times of war and dispute under Islamic International humanitarian law is discussed in Chapter 3. An emphasis is laid on personal civilian rights related to the right to life and the prohibition of torture and inhuman treatment. Islamic International Humanitarian law considers the right to life as a sacred right, the transgression of which

is considered as a crime against the whole community. Furthermore, provisions are outlined to guarantee the fair treatment of civilians who have not taken part in war. Additionally, the protection of the right to life and the prohibition of torture and inhuman treatment are also confirmed by modern Islamic human rights law. Article 1 of the Universal Islamic Declaration of Human Rights states that "human life is sacred and inviolable and every effort shall be made to protect it"¹².

As regards the right to respect for religious beliefs, customs and traditions, Zawati makes reference to various *Quranic* verses, *Sunna* and edicts of early Muslim Caliphs. Reference is made to *Bayt a-Maqdis* (Jerusalem), which was protected by the Second Rightly Guided Caliph, Umar Ibn al-Khattab, who established the rules safeguarding the various religious groups; holy places, worshipping habits, and religious legal codes. These rights

⁵ P50.

⁶ PP55-67.

⁷ PP67-69.

⁸ PP69-71.

⁹ PP71-75.

¹⁰ PP 75-81.

¹¹ P 81-84.

¹² P92.

are also, protected in Articles 10 and 13 of the Universal Islamic Declaration of Human Rights of 1981.

The final core issue centers on the validity of undertaking Jihad nowadays; is *Jihad* a just war? This question is understood in two senses. Relevant primary sources of both Islamic and public international law are examined to establish whether *Jihad* is the *bellum justum* of Islam and whether, if so, a *jihad* can be waged by contemporary Muslim States, although they are members of the United Nations?¹³ It is pointed out that *Ibn Khaldun* used the terms "just" and "unjust" to differentiate between wars. Accordingly, wars could be either *hurub jihad wa adl* (just wars) or *hurub baghi* (unjust wars). Additionally, classic sources of Islamic legal theory maintain that all kinds of warfare are outlawed except *jihad*: an exceptional war to defend the freedom of religious belief for all humanity, and a deterrent against aggression, injustice and corruption.¹⁴ On a similar basis as modern international conventions, Islamic international law

regulates behavior during *jihad* according to humane principles and contains rules relating to preparedness, fortification, reciprocity, avoidance of non-military targets, treatment and exchange of prisoners of war, protection of civilians during war, as well as peaceful settlements, treaties and neutrality.¹⁵

Zawati's arguments make interesting reading, for all who are interested in the specificity of Islamic law, and how it regulates the conduct and application of *jihad*. Furthermore, his many comparisons and contrasts between Islamic law, and international humanitarian law give the reader the ability to understand the complicated nature of *jihad*, not only as a type of combat, but also as an Islamic lifestyle. However, on various occasions, the author loses focus and concentration when constantly mentioning, and trying to correct the arguments made by writers such as Bernard Lewis, and Samuel Huntington concerning the legal principles of *jihad*, even though neither of these writers is a professed legal expert on the subject matter. This ultimately affects

¹³ p.107.

¹⁴ p.107.

¹⁵ p.109.

the overall standard of the book. The use of Arabic and Islamic legal resources, speeches, declarations, conventions and peace treaties, help to introduce western readers to the rich, yet complicated nature of Islam, not only as a religion, but also as set of rules that regulate inter-state behavior during times of war and hostility.

Due to the nature of the subject matter tackled, it would have been more worthwhile to concentrate in detail on one specific aspect of *jihad*, without expanding into other scientific fields of study. Moreover, as pointed out earlier, the book takes the form

of a thesis that was probably published as a counter-argument against growing Western criticisms of Islam, not only as a religion but also as a set of laws and regulations extendable to the minutest transactions imaginable. Through its creative use of analogies, Zawati's argument is very clear. However, he fails to expound on the issue of whether modern Islamic International Public and Humanitarian law can and/or should take the place of secular laws that have been adapted to a plethora of differing historic systems, religious beliefs, traditions, and locally specific customs.