How Did Islam Cope with the Challenges of International Laws of War and Peace during the 19th and 20th Centuries?

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Abstract

The article examines the process of change that Islamic political and legal thought have gone through in response to the relationship of Muslim countries to non-Muslim nations in modern times. It discusses the tools and arguments used by Muslim scholars to adapt Islam to the international law and to the new form of international relations in the field of War and Peace - an area known in Islamic law as the field of *siyar* and in modern times as *siyasa shar`iyya.* I am focusing in this paper on the Islamic scholars and sages of three generations from the late 19th century and on, who sought to bridge the Sharia and modern reality embodied by Muslim countries who joined the UN Charter and committed themselves to resolve territorial conflicts in peaceful means.

Keywords: Sharia, International law, hudna, peace, war, Jihad, da`wa

Introduction

Many Muslim religious scholars and thinkers of our time quote the Qur'an, verse 256:2, "There is no compulsion in religion," to claim that Islam is a religion of tolerance, and therefore, the perception of "Western Orientalism" regarding Jihad as a military tool for expansion in the world is false.[2] Furthermore, many contemporary Muslims claim that Islam is and always was fundamentally a

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[1] Al-Qasemi College.

[2] Abd al-Hadi al-Ata 1985.

religion of peace and that an act of war against non-Muslim infidels falls within the framework of a defensive war only if non-Muslims attack Muslims in their own countries.[3]

This interpretation of Islam as theology and law (Sharia) corresponds by and large to the Conduct of contemporary international relations. In modern times, since the beginning of the 20th century, attacks by Muslim armies on non-Muslim forces took place mainly when non-Muslim armies had conquered or taken over Muslim territory (e.g., the French in Algeria, the Jews in Palestine, the Russians in Afghanistan) and when Muslim armies embarked on a defensive war or a war designed to reclaim lost territories. The wars in which Muslim forces are involved today mainly against other Muslim countries, or local terrorist operations, or are fought as part of the global Jihad (al-Qaeda and ISIS).

This interpretation applies to the new era that began in the 19th century when international law was formulated and corresponds to the political reality following the disintegration of the Ottoman Empire at the end of World War I, that is, when nation-states were evolving and they were no longer part of a broad framework of caliphates or sultanates. The new legal interpretations that accompanied this change were influenced by the global processes of the modern era and first and foremost by the development of international law and the principle that territorial disputes should be settled peacefully and not by war. They were also affected by the weakness of the Muslim World in the face of non-Muslim civilizations (the West and non-Muslim countries in East Asia).

The principle of peacefully settling international disputes, as outlined in the United Nations' Charter, has been established to prohibit self-help in interstate dispute resolution and constitutes a pinnacle of international relations. All means

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[3] Abu Zahra 1995, 95-99.

of peaceful settlement, including negotiations, good offices, inquiry, conciliation, mediation, arbitration, and adjudication, are fully embraced by international law and organizations. In particular, the international community has placed a heavy emphasis on peaceful resolution in the context of territorial disputes that are characterized by their gravity, long duration, and likelihood of escalation. Interestingly, some Islamic states that have adopted the sharia as state law choose conflict resolution methods that heavily rely on international law, such as arbitration and adjudication, and they seek nonbinding third-party methods of resolution.[4]

This article examines the process of change that Islamic political and legal thought have gone through in response to the relationship of Muslim countries to non-Muslim (infidel) nations in modern times. The central question of this essay is: What are the tools of the Sharia and what arguments have Muslim scholars used in modern times to adapt Islam to international law and to the new form of international relations? The sources used in this research are the writings of Muslim jurists and academics specializing in Sharia.

The interrelationships between theology and Islamic law enable the development of doctrine in Islam through tools of legal thinking and through interpretation of the binding legal sources - the Qur'an and the Hadith. Conceivably, this is due to the Islamic conception of the law as the expression of the divine will. Hence, revelation can be interpreted in varying ways, and, over time, the diversity of possible interpretations has produced a wide array of positions on almost every point of law. In the premodern period, the ʿulamāʾ (Muslim religious scholars) held a monopoly over interpretation of the law, but, since the 19th century, their

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[4] Powell 2015. On conflict resolution in Islam, see also Modonga 2022; Funk and Said 2009; Abu Nimer 2010.

monopoly has been challenged by Westernized elites and laypeople, particularly academic experts on Sharia.

As the expression of a religious ideal, Sharia doctrine has always been the focal point of legal activity, but it never formed a complete nor exclusively authoritative expression of the laws that govern the lives of Muslims in practice. Since the early days of Islam, Islamic law has been in a state of constant change, coping with lacunas or with new social circumstances. In modern times, rapid developments in all spheres of life catalyzed significant changes in Islamic law, which were aimed at coping with new challenges. This held true also in the area of international relations with its questions of war and peace, an area known in Islamic law as the field of *siyar* and in modern times as *siyasa shar`iyya*.[5]

Unlike many contemporary Muslim thinkers, the author of this article believes that from the time of the Prophet Muhammad until at least the 17th century, the Muslim world operated according to the classical Jihad doctrine. This doctrine holds that war is a central religious commandment, the purpose of which is to coherse infidels – members of non-Muslim faiths and religions – to accept Islam, as directed by the Qur'anic verse 8:39, which says,"And fight against them until there is no persecution and [until] the religion [i.e., worship], all of it, is for Allāh [i.e., until polytheism is no longer dominant]. And if they cease – then indeed, Allāh is Seeing of what they do." This idea is conveyed by the Muslim jurist and philosopher Ibn Rushd, as follows: "Everyone who tires himself for the sake of God has struggled in His cause only for striving with the infidels with the sword until they accept Islam or they pay the poll tax by hand while they are submissive."[6]

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[5] Khadduri, 1955, 51. See also Sein 2016; Rifa`I 2021; Tibi 2009.

[6] Al-Qurtubi 1988, 1:342.

Given the above concept, Muslim jurists, beginning with al-Shafi`i in the ninth century, observed a division between the Abode of Islam (*dar al-Islam*) – that area where the law of the land is the law of Islam – and the Abode of War (*dar al-harb*), a division which implies that the normal state of relations between the two is a state of armed hostility. However, the doctrine of Jihad is characterized by realism and recognizes the possibility that the balance of power may sometimes tilt to the detriment of the Muslims, which makes peaceful relations an option. Armistices are preferable to peace; however, peace treaties should be made only on the condition that their duration be limited, although they can be extended if necessary (the upper limit on the duration of such an agreement is ten years, but in reality, ten-year armistices were extended time and again).[7]

According to the Jihad doctrine, the "People of the Book" – Christians, Jews and Zoroastrians – were exempt from submission to Islam. They could retain their faith on condition that they accept Muslim rule, pay a poll tax, and accept certain conditions of social inferiority.[8]

In their articulation of international law, classical Muslim jurists (since the third century of Islam) focused primarily on Jihad as a military duty, and this became the predominant meaning in the legal and official literature. This concept was in action even during the Ottoman rule. For example, the sultanic decree that Sultan Selim II sent to his governor of Egypt on 17 January 1568, after he had taken over parts of India and instructed the governor to fight the Portuguese, who were still holding parts of the India, reads: "My powerful grandfathers and honorable fathers of the past, who came from our family, who's aspiration is Jihad … conquered and subdued many regions and lands, west and east, from the hands of the unbelievers, with the aid of the sword, and the result of their activity is

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[7] Reiter 2011, 21, 27.

[8] Friedmann 2003, 58-65.

victory … because the land of India must be extracted from the hands of the unbelievers who must be forcibly expelled from these surroundings… ."[9]

In the next section we will observe how, beginning in the 17th century, the Ottoman Sultanate gradually retreated from the doctrine of Jihad and moved to signing peace agreements in a way that was contrary to the classical concepts of war and peace in Islam. In the following sections, we will analyze the strain of Islamic thought that justifies a transition from the concept of militant jihad to an approach of peace.

International Law and the Ottoman Sultanate in the 19th century

International law emerged during the 17th century as part of the growth of the sovereign nation-state in Europe. It is common to view the date of birth of international law as 1648, the date of the Peace Treaty of Westphalia, a treaty that ended a thirty-year religious war in Europe and brought to light the establishment of a new power structure: an international society composed of sovereign states, each of which would rule exclusively within its own borders. This concept contradicts the concept in early Islam of striving to spread world justice by establishing a caliphate that conducts *da'wa* and Jihad against infidels.[10]

Beginning in the 16th century, the Ottoman Sultanate waged wars against the European powers, who, since the 18th century, have had the upper hand. Gradually, Europe began to regain territories conquered by the Ottomans, who were then forced to submit to the dictates of the European powers, which had previously been in the possession of Dar al-Islam.[11] Furthermore, the European

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[9] Reiter 2011, 33.

[10] Reiter 2011: note 94

[11] Hunter 1988, 286; Farid Bek 1998, 342-358.

powers imposed humiliating peace agreements on the Ottoman sultans, including the payment of reparations for the damage they had caused to their opponents, and they even levied a "war fine."[12]

Russia, for example, received in the 1774 *Kuchuk-Kainarji* Agreement permission to spread its protection over the Christian subjects of the Ottoman Empire. Russia was to be represented by an ambassador and was permitted to establish a new church in Istanbul that would operate under the auspices of the Russian ambassador. The agreement was not limited in time and in its Arabic translation was called *sulh* and *musalaha* (peace), which put an end to hostile relations.[13] Unfortunately, we do not have the *fatwa* of Sheikh Al-Islam that approved the agreement, but it can be assumed that it was approved according to the Sharia principle of *darura* (duress).

The agreements signed between the Ottomans and the European powers in the middle of the 19th century explicitly mentioned the rule of "international law" and the principle of "resolving conflicts by peaceful means," legal methods that are not compatible with the Jihad doctrine.[14]

The most prominent document in this regard was the Treaty of Paris of March 1856, which ended the Crimean War, as a result of which, the Sultan actually joined the "Concert of Europe." Hence, the Ottoman state became a member of the family of nations and of the political order led by the European powers in a framework of the western model of international relations. Articles 8 and 27 of the agreement anchored the principle of resolving disputes by peaceful means. Also, in Article 14, which dealt with navigation rights on the Danube, the parties committed themselves to the "international laws of the sea" established earlier in

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[12] Ibid.

[13] Hunter 1988, 286

[14] Farid Bek 1998, 342-358.

the Vienna Agreement, regarding navigation on rivers flowing through the territory of several countries. The agreement established, among other things, freedom of navigation on the Danube River and in the Dardanelles Straits.[15]

The rules of international law were explicitly stated in the San Stefano agreement, which was termed *sulh* (peace) in the Arabic version of the treaty signed between the Ottomans and Russia in 1878, and in which it was stated in section 2, in connection with the capitulations – the privileges granted to the consuls of the powers in the Ottoman Empire – , that these would be conducted "according to the international laws and custom of their rights in the lands of the Ottoman Empire." In this agreement, the Russian ambassador in Istanbul was given jurisdiction over Christian clergy, pilgrims, and tourists within the empire.[16]

At the end of World War I, the Ottoman state disintegrated into Arab and Muslim nation-states, who joined the League of Nations beginning in 1920. However, a change in Islamic legal thought had already begun in the late 19th century, with the work of the sages called "Modernists."

The Modernists

The acceptance of international law was sustained through an interpretative effort by Muslim sages and scholars to adapt Islamic law to the reality of modern international relations. After Muslim countries liberated themselves from European colonialism, they tended not to adopt the classical Jihad doctrine but accepted the authority of international law. They decided to join the League of Nations and then the United Nations, and hence, also committed themselves to live in peace with other countries and resolve conflicts by peaceful mechanisms.

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[15] Farid Bek 0000, 513-523.

[16] Ibid, 652-664.

It can be said that in the very act of signing the founding charter of the United Nations, there is an apparent violation of the Muslim Sharia as it had been designed since the seventh century CE. UN membership could be viewed as a permanent peace agreement between the Muslim member states of the UN and all the countries previously defined by important Muslim jurists as the Abode of War.

It is this reality that pushed contemporary Muslim legal scholars to write Sharia rulings or interpretations stating that peace agreements between a Muslim and a non-Muslim country are valid agreements and do not contradict Sharia. A new strain of Islamic thought, which sought to bridge the Sharia and modern reality, first developed among the Muslim thinkers called "Modernists," headed by the Egyptian Sheikh Muhammad Abduh (d. 1905.) At the beginning of the 20th century, most of the Muslim world was controlled by the Europeans, whether directly or through vassals, and this situation required a redefinition of the relations of the Muslim countries with their non-Muslim neighbors. The new Muslim interpretation, which can be called "adaptive" or "pragmatic," aimed to legitimize the modern reality of international relations and to accept the principles of international law in relations between states.

Most of the pragmatic Muslim thinkers criticize Western Orientalism, which in their words blackened Islam and presented it in a blanket generalization as a war-loving religion or as a religion that spread by the power of the sword.[17] Some even claimed in an apologetic tone that it was early Islam that laid the foundations for international relations, with the principle of peace between nations as their basis. However, the apologetics and criticism towards the West were only the shell from which emerged a new line of thought that incorporated Western values from the field of international relations into the Sharia.

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[17] Note 1 above.

At the same time, there are still thinkers belonging to the radical Islamic stream who sanctify the classical Islamic doctrine, but interpret it in a humane way with contemporary concepts and make a new division of unbelieving nations – espousing the idea that not everyone is an enemy that must be fought but that there are imperialist nations that are clearly enemies – versus other non-Muslim nations that Muslim countries should not view as hostile**. [18]**

The Radical Conservative Current

Before discussing the pragmatic changes, the radical and conservative current of Islamic thought on war and peace should be presented. There are still Muslim scholars who do not accept the rules of international law and whose approach is consistent with the classical doctrine presented mainly by Muslim Brotherhood groups. Scrutinizing this radical view can help one understand the dramatic difference between conservative classical thought and the *ijtihadi* approach adopted by most 20th-century Muslim sages and thinkers (an interpretive method for arriving at legal opinions that fit new situations) .

The following is an example of the radical current of thought for which Dr. Muhammad Kheir Heykal is an advocate. Heykal is a Syrian scholar who was a lecturer at the Damascus branch of the Sudanese Umm Durman University, who served as imam and preacher of the Al-Rifa'i Mosque in Damascus, and who earned his doctorate at the private Al-Imam Al-Awza'i Islamic College in Beirut in 1992 and published his dissertation in a book form in three volumes. He holds that a Muslim country has the right to declare a warlike Jihad against non-Muslim countries in order to impose the Islamic regime on them by force of arms, even if they have not attacked Muslims, provided that there is a benefit to Muslims and no harm is expected from the declaration of Jihad. Heykal aspires

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[18] Reiter 2011, 54.

to uniting the ranks of Islam and establishing a single Islamic state, which through Jihad "will lead to the liberation of all nations and peoples from tyranny and the domination of the word of Allah in all parts of the world."[19]

It is no coincidence that such an opinion is voiced by an independent cleric or academic, while most of the central sages who graduated from al-Azhar and who hold official government-paid positions have had to adapt to the new situation after the development of international law.

The New Pragmatic Current

Since the new form of Islamic thought has been developing along with the circumstances of the times, I will sort out the three generations of Muslim thinkers and religious scholars who have reinterpreted the Sharia on the subject of war and peace.

The First Generation of Pragmatic Thought: The Modernists

The first generation sages are called Modernists. Salient among them was Muhammad Abduh, who stated that the basic relationship between Islam and the non-Muslim world is a situation of coexistence and not of war. In the Modernist view, Jihad in the warlike sense was to be directed solely against the 7th-century Arab tribes of Arabia. The verses of warlike Jihad in the Qur'an were revealed to the Prophet Muhammad in a specific context and reflected one challenge or another that He and his people faced, and they do not reflect the overall approach of Islam, which is essentially a religion of peace.[20]

Abduh's student, Muhammad-Rashid Rida, defined the term *Jihad* as a defensive war. Rida wrote that the Prophet Muhammad's first wars were basically

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[19] Haykal 1996, 3: 1717.

[20] Ibid, 3: 1713.

defensive in nature and that the wars waged by the Prophet against the Byzantines were defensive, because the Byzantines conspired to push the Muslims from the frontier back into the desert, so that they would die of starvation. Contradicting himself, Rida claimed that in Islamic history, war was only resorted to *in situations with no alternative*, when the infidels refused to convert to Islam and the non-Muslim peoples residing on the frontiers refused to pay the poll tax.[21]

The choice to not wage war against non-submissive non-Muslims was not one of the alternatives on which Rida elaborated.

The Second Generation: Shaltut, Abu-Zahra, and al-Zuhayli

The members of the second generation, Mahmud Shaltut and Muhammad Abu Zahra (the Egyptians) and Wahba al-Zahayli (the Syrian), are the successors to the Modernists, they enrolled for higher studies and graduated from the Al-Azhar Institute in Cairo. They acted as sages and published their opinions between the 1950s and the 1970s.

Shaltut interpreted Jihad in the sense of personal effort only. He wrote that the war verses in the Qur'an should be considered only in the specific historical context in which they were revealed and that, in this matter, *the fuqahaa'* (jurists) of the Middle Ages were wrong (!). He claimed apologetically that the Qur'anic verses characterized relations between nations as a state of peace, long before this principle was established in modern international law. According to him, there are only three states of war: protection of the soul, protection of the religion (i.e., the campaign to spread the Muslim religion) and the protection of religious freedom. Shaltut added that the first Muslims interpreted the hostility of the Persians and the Byzantines to *da'wah* (a call to infidels to convert to Islam) as

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[21] Cook 2005, 95.

preparations for war against them, and therefore the Muslims fought back. According to Sharia, the Muslims at that time were forbidden to wait until they were attacked; they had to attack first. This interpretation does not conform to the principles of modern international law, but it shows that its creators sought to legitimize a non-belligerent approach towards the non-Muslim World. [22] Moreover, two more contradictions can be found in Shaltut's thinking in relation to international law. One is the way he justified a defensive war as "preventing the coercion of a non-Muslim state on its Muslim citizens."[23] The other is his assertion that when the harm of a peace agreement exceeds its benefit to Muslims, they may violate the agreement and wage war. Both views provide a justification for war against non-Muslim countries, but it seems that this is as far as Shaltut could go in his attempt to flex the Sharia in order to justify peace with non-Muslim countries. It can be assumed that he asserted these opinions under the assumption that the causes of a "shield war" are only a theoretical situation.

Sheikh Muhammad Abu-Zahra wrote explicitly that since political realities change, Sharia rules must be changed. For example: The *fuqaha'* of the Hanafi school made a distinction between nations that share a border with Islam, and therefore are in a state of war with Muslims, and other nations with whom Muslims can maintain non-belligerent relations (and in the modern sense, a state of peace). Abu-Zahra argued that this distinction is no longer relevant to contemporary reality, where wars can be waged in the air and by means of missiles, even between countries that do not have a common border.[24]

Abu-Zahra added that the jurists who lived during the time of the Caliphs in the Umayyad and Abbasid periods were influenced in their rulings by the seemingly

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[22] Mayer 1991, 205.

[23] Ibid, 201 quoting Peters 1977, 70.

[24] Abu Zahra 1995, 57-58.

incessant state of war between the Caliphate and other nations, and therefore they forbade the signing of permanent peace agreements. He criticizes al-Sarakhasi – one of the greatest Hanafi jurists of the 9th century – who wrote that the Qur'anic "verse of peace" was abrogated by the "verse of the sword."[25] Qur'an 9:5 is named "the Verse of the Sword," due to its call to fight the infidels wherever they can be found,[26] and Qur'an 8:61 is called "the Verse of Peace," since it instructs the Muslims to incline towards peace if the enemy inclines to it.[27] According to Abu Zahra, the majority of the Muslim jurists have ruled that peace is the natural state, and therefore, it is permissible to make a permanent *sulh* (peace) agreement, and this should be the rule of our time as well.[28]

The Syrian jurist al-Zuhayli claimed that Jihad is only a deterrent against an aggressor with the use of force, but it should not be implemented in practice through war. At the same time, he supported the obligation of Jihad against peoples who occupied Muslim territory, in terms of *haqq al-maqawama* (the right of combat resistance), which, according to him, is also recognized in international law as the right of a conquered people to defend their country and fight an occupation, as is the situation in Palestine, Afghanistan, and Iraq.[29]

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[25] On Qur`anic verses regarding Jihad between warlike and other interpretations, see Landau-Tasseron 2022.

[26] Qur'an 9:5 reads, "But once the Sacred Months have passed, kill the polytheists ˹who violated their treaties˺ wherever you find them, capture them, besiege them, and lie in wait for them on every way. But if they repent, perform prayers, and pay alms-tax, then set them free. Indeed, Allah is All-Forgiving, Most Merciful."

[27] Qur'an 8:61 reads, "And if they incline toward peace, then *you* [too] incline toward it, and put *your* trust in Allah. Indeed He is the All-hearing, the All-knowing."

[28] Abu Zahra 1995, 84; Al-Sarakhsi 1957-60, 59.

[29] Zuhayli 1962, Zuhayli 1981.

The Third Generation

In the third generation of thinkers, who began writing in the early 1980s, we find a relatively large number of writers who felt obliged to discuss the issue following the signing of the peace agreement between Israel and Egypt in 1979 and the justification of the agreement in a *fatwa* by the sages of al-Azhar, which at the time sparked controversy in the Muslim world.[30] The members of the third generation are mainly Sharia scholars who have written for and against peace agreements signed by Arab countries with Israel (i.e., Egypt, Jordan, Morocco, the Emirates, and Bahrain).[31]

The principles of the third generation regarding the state of peace with non-Muslim nations are as follows:

1. Peace is the Nature of Relations between Nations and States, Including Permanent Peace That Must Not Be Violated

Abd al-Aziz al-Khayyat, a senior Jordanian professor of Palestinian extraction, who was several times a minister in the Jordanian government and held senior positions in the Jordanian academic system, wrote that the basis of Islam's relations with non-Muslims is peace and the spread of Islam in a solely verbal manner under conditions of peace, provided that the non-Muslim society is not undermining Islam's call for conversion (*da'wa*). He bases his claim on the *hadith*, quoted from the Prophet, in which Muhammad orders his messengers to call on the infidels to accept Islam before the Muslims attack them. [32] According to him, Islam is a religion that maintains friendly relations with any country that does not fight Muslims and does not prevent the spread of its conviction in

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[30] Reiter 2011, 120-134.

[31] On this debate, see Winter 2022.

[32] Ibid.

peaceful ways. In accordance with our times, Al-Khayyat writes that honoring agreements, which is a principle of international law, is already established in the Qur'an, and adds that it is permissible for a Muslim state to have friendly relations with non-Muslim countries and thus achieve world peace.[33]

Abd al-Khaleq al-Nawawi, who was a lecturer in law and Sharia, goes even further than this and writes that all the rights of non-Muslim countries and their residents must be respected.[34] Furthermore, it is forbidden for a Muslim country to allow an armed group to be organized in its territory to attack another country, and Muslims should reciprocate the attitudes and practicesof non-Muslim countries towards Muslims (*mu`amalat al-mithl*). [35]

Muslim thinkers who present peace as the natural state between Muslims and non-Muslims hold that it is permissible to sign permanent peace agreements with infidels. For example, Abd al-Aziz al-Khayyat writes that it is permissible to establish permanent peace with non-Muslim societies, relying on six precedents: the peace agreements that the Prophet signed for a long period of time with the Jews of Al-Madinah and with the residents of Eilah, Jarba, Adhruh, Maqna, and Najran. [36]

The pragmatists claim that the majority of Islamic jurists in the first centuries of Islam believed that an agreement signed with the infidels should not be violated, except in the event that the opponents act in a way indicating their intentions to violate the agreement, such as preparing for war. [37]

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[33] Al-Khyyat, 294-297.

[34] Al-Nawawi 0000, 55.

[35] Ibid, 56-57.

[36] Al-Khayyat 1991,305 .

[37] Shouman 1999, 94.

2. Jihad as a Defensive War

Professor Muhammad Sa'id al-Buti from the University of Damascus writes that instead of the word *harb* (war) to describe Jihad, the term *hiraba* (cut off the theft and looting) should be used, according to which, when Muslims know the enemy is making preparations for war, a military action against them is a preventive war (only).[38]

3. *Da`wa* – the Spread of Islam Does Not Rrequire War

Muslim thinkers who seek to adapt Islamic law to contemporary reality claim that, in modern times, *da'wa* is an effective means of spreading Islam, and hence, the role of Jihad in its warlike sense has lost its validity. It is argued that unlike the situation in the Middle Ages, today it is possible to carry out *da`wa*, because Islamic outreach through modern means of communication can reach every corner of the world without the need for war. Sa`id al-Mahiri, for example, uses the new reality of Muslim minorities in Western countries to support this interpretation. He writes that non-Muslim countries that allow their Muslim citizens to preach Islam in a peaceful way are not enemies, and peace agreements can be signed with them to promote *da`wa*.[39] His assumption is that diplomatic relations make it possible to verbally convince the citizens of a non-Muslim country to join Islam.

4. The Non-Muslim World Is in a State of Agreement with Islam (*Dar Ahd*)

The dichotomous division of humanity into the "Abode of Islam" and the "Abode of War," which was a cornerstone of the classical Jihad doctrine, has become irrelevant nowadays because Muslim minorities live in many non-Muslim

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[38] Cook 2005, 122-123.

[39] Al-Mahiri 1995, 103-104.

countries. Their existence there makes the non-Muslim country part of *Dar Da`wa* (an area where non-Muslims are called to accept the religion of Islam), that is, an area where the Muslim minority living in it works for the expansion of Islam as a replacement for *dar al-harb* (the Abode of War), or a country where the Muslim minority is given complete freedom of religion. For this reason, a concept coined by al-Shafi`i in the second century of Islam – *dar ahd* (the Abode of Agreement) – is used today by Muslim clerics who seek to adapt Islam to the modern circumstances of international relations.

Another example of this is the words of the most popular sage in the Muslim World, Dr. Yusuf al-Qaradawi, who said that one could divide the world today such that the Abode of Islam would include all the Muslim countries, while the Abode of the Agreement would include the rest of the the world, namely, countries that are in alliance with the Muslim world and that have diplomatic ties and exchanges with it. The exceptions would be countries like Israel and the Yugoslav Serbs.[40]

Sheikh Faysal al-Mawlawi, Secretary General of Al-Jama`a al-Islamiyya movement in Lebanon, who published an opinion following the Al-Qaeda attacks in New York and Washington on 11 September 2001, stated that the United States is not an enemy of the Muslim countries, and therefore the attack against it was a serious deviation from Sharia. Al- Mawlawi argued that any country that signed the UN Charter can be considered to be within the "space of a peace and security agreement with the Muslims."[41] Moreover, today, there are Muslim minorities living in non-Muslim countries, and hence, any declaration of Jihad against a country like the U.S. (such as that of Usama bin Laden, for

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[40] http://www.qaradawi.net/site/topics/article.asp?cu_no=2&item_no=41&version=1&template_id=105&parent_id=16.

[41] Al-Mawlawi 2011.

example) endangers the Muslims living there.[42] An exception, according to him, is Israel, which, although it is a signatory to the UN Charter, has usurped Islamic land and expelled Muslims from it, and therefore, the discussion of position of the State of Israel "needs special consideration." Muslim clerics frequently rule that Israel is an enemy that holds holy Islamic land, and therefore, the commandment of Jihad applies to it. This is, for example, the ruling of Dr. Yusuf al-Qaradawi, mentioned above.[43]

5. It is Permissible to Sign Permanent Agreements Out of Fear of Military Defeat

One of the justifications for peace agreements with non-Muslim peoples in the modern era is the fear of a major military defeat that will lead to the destruction of Muslims. Another is the signing of a surrender agreement whose terms are dictated by the non-Muslim side following a defeat in a war, when the Muslim combatants have no choice but to sign. Jurists who condone the signing of surrender agreements, argue that Muslims in a state of defeat are like captives, so there is no escape from accepting the enemy's terms and paying a ransom, if that is called for.[44]

This contention of the classical jurists on the signing of surrender agreements is used by the scholars of the contemporary pragmatic current. For example, Dr. Sa`id al-Mahiri from United Arab Emirates University, writes that Muslim states have gone through difficult periods of weakness and civil wars that forced them to sign agreements with enemies that were not beneficial to Islam. In a situation of duress (*darura*), al-Mahiri fears that the enemy will kill captives or displace

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[42] Ibid.

[43] On Islamic discourses regarding peace with Israel see Winter 2022.

[44] Al-Mahiri 1995, 238.

Muslims. [45] In this regard Dr. Marwan Al-Qadumi from Al-Najah University in Nablus holds that agreements negotiated from a position of inferiority are permitted in times of necessity, in the hope that they will lead to the strengthening of Muslims in the future.[46]

Conclusion

Reinterpreting Islamic law as Sharia and *fiqh* is the main devise for adapting Muslim theology to a developing reality. Islam is a pluralistic religion based on the interpretation of the Qur'an, the Hadith, and other legal principles that are used by the *fuqaha'* when there is no explicit reference to a certain issue in the Holy Scriptures, or when the Muslim jurists seek to change a certain pattern of behavior in order to adapt to the needs of new times.

These interpretive tools are used intensively by the Muslim scholars of Sharia in modern times, because the modern era has confronted the Muslim World with dramatic challenges, mainly due to the expansion of means of communication and interactions with the West. Engagement with Western imperialism and the dismemberment of the Ottoman state into Muslim nation-states compelled Muslim countries to join the family of nations and establish diplomatic relations with non-Muslim states.

This development can be seen in the transformation of the Ottoman state, which in the first centuries of its existence still used the doctrine of warlike Jihad in its relations with the non-Muslim world, while in the 19th century it was forced to abandon the concept of warlike Jihad, sign peace agreements that contradicted classical Islamic doctrine, and gradually adopt the rules of international law, according to which countries are supposed to resolve their conflicts peacefully.

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[45] Peters 1977, 23.

[46] Qadumi 1987.

The first to produce new interpretations designed to adapt Islam to the new realities were the religious scholars called Modernists, who operated from the end of the 19th century to the middle of the 20th century, among them the Egyptians Muhammad Abduh and Muhammad Rashid Rida and the Syrian Wahba al-Zuhayli. They claimed that Islam is a religion of peace and rejected the previous interpretation, according to which Islam should be spread, even by the power of the sword.

Their students at Al-Azhar made up a second generation of *fuqaha'*, who further developed the concepts of their mentors. Another significant change occurred in the early 1980, when a third generation of Muslim jurists, scholars, and thinkers promoted the development and interpretation of the Sharia in the fields of law of war, peace and international relations, and territorial conflict resolution. In this new era, the *fuqaha'* are no longer the only ones influencing Islamic concepts and discourse; now there are academics on the faculties of modern universities who study Sharia and publish their opinions and interpretations.

The new interpretation claims that Islam has always been a religion of peace, that Jihad should be belligerent only in the case of a defensive war, and that the rules of international law have been part of Islam from its very beginnings. According to contemporary commentators, Muslim rulers are allowed to sign permanent peace agreements with non-Muslim nations and countries and not just temporary ceasefires of up to ten years, as in the past, and in particular, when a Muslim army is defeated in a battle or may lose a war. It is argued that the Islamic nations cannot fight the whole world all the time and therefore must lay down their arms and accept the new world order (controlled by the non-Muslim West), and that it is for the general good of Muslims to be in a state of peace with other countries, including countries of infidels. In modern times, the outreach of Islam – *da`wa* – can be carried out by electronic and other means, and there is no longer a need for war to spread Islam. Furthermore, the mere fact that Muslim nation-

states have joined the UN means that all non-Muslim countries are no longer considered *dar al-harb*, but rather *dar al-ahd*.

Some Muslim thinkers hold that the exception to this is countries in modern times that occupy Muslim territory, such as the Russians and Americans in Afghanistan, the French in Algeria, the Serbs in the Balkans, and the Israelis in Palestine. At the same time, there are other Muslim scholars and thinkers who justify the permanent peace and normalization agreements signed by Muslim Arab countries with the State of Israel, including the Oslo Accords between Israel and the PLO.

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