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THE SUNNI CONCEPT OF JIHAD IN CLASSICAL FIQH AND MODERN
ISLAMIC THOUGHT

BY

ABDULRAHMAN MUHAMMAD ALSUMAIH

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ABSTRACT

This thesis has two main purposes. First, it aims to analyse the *Shari'h* law of

Jihād, through investigation of the Quran, the Sunna and the works of earlier

prominent Muslim jurists (*fuqahā*) and therefore elucidate the nature of *Jihād* and its

components. It is the Muslims belief that the Holy Quran and the Sunna were fixed

for all time during the foundation of Islam which therefore suggests that the *Shari'h*

law itself must be unchangeable as the Holy Quran and the Sunna are its two

principal sources. However it is reasonable to assume that learned jurists, in applying

the *Shari'h* to a particular set of circumstances during their time, may interpret the

Shari'h in different ways.

The second major purpose of this thesis is to test the hypothesis that human

interpretation of the *Shari'h* law on *Jihād* will differ over time. It therefore examines

the jurists interpretations during the period from the beginning of the Umayyad

dynasty to the present day. The comparison between this period, that of the Prophet's

time and the Four Guided Caliphs is divided into three parts. The first is the Islamic

State under the Umayyad, Abbasid and Ottoman dynasties. The second is the Islamist

modernists of the nineteenth and twentieth centuries. The third is the group of

Muslim religious scholars who are known as fundamentalists in the West.

One of the key findings of this thesis is that there was a considerable

difference in the interpretation of the law of *Jihād* by the modernists. Extraordinary

though it is, this is the one exception in over thirteen hundred years in which there

seems to have been no significant changes in the interpretation of *Jihād* by the *fuqahā*.

This thesis investigates the role of the *fuqaha* in applying *Jihād* to specific situations both by Islamic rulers and by the *umma*.

This study also aims to clarify why, on the one hand the majority of classical Muslim jurists *fuqaha* supported the use of *Jihād* to overthrow a *kāfir* ruler, they, on the other hand, refused the use of force to change an unjust *Immam* as the use of such force could lead to the *fitna* inside the Islamic state. These views of earlier jurists were of noticeable importance to contemporary scholars as the theory of *Jihād* in the past concentrated on the use of force against non-Muslims, whilst nowadays different angles are adopted by some groups who claim that Muslim rulers are apostate and therefore ask their followers to use force against them. This view led modern jurists to concentrate on such views and to disprove the evidence on which these groups have based their views.

The thesis is about the law of *Jihād* and its interpretation and application in various circumstances, it is not about the practice of *Jihād* as such except in so far as changes in the way *Jihād* has been waged which have affected its interpretation by the *fuqaha* and others.

TABLE OF CONTENTS

List of Arabic Transliterations

The following system of transliteration of Arabic is used in this thesis.

Arabic script	English symbol	Arabic script	English symbol
ا	ʾ		d
ب	b	ض	ṭ
ت	t	ط	ṭ
ث	th	ظ	ẓ
ج	j	ع	ʿ
ح	ḥ	غ	gh
خ	kh	ف	f
د	d	ق	q
ذ	dh	ك	k
ر	r	ل	l
ز	z	م	m
س	ʾ	ن	n
ش	sh	ه	h
ص	s	و	w
آ	a	ي	ī or y
كَسْرَه	i	نُقْطَه	u
		نَحَّ	a

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INTRODUCTION

1. STATEMENT OF PURPOSE. This thesis has three main aims.

First, the aim of this study is to elucidate the nature of *Jihād* and analyse its components. To assign any fight with the term, *Jihād*, it must be in the cause of Allah which means that the aim of the fight is the raising of the word of Allah, establishing the law of Islam in the world and the defence of Islamic territories.

Jihād is distinguished from other conflicts such as the fight for the domination or private and national aims. *Jihād* is also distinguished from other fights which occurred inside the Islamic state like the fight against the highwaymen and the fight against a Muslim *Imām*, both these fights are not *Jihād*.

Second, to compare and contrast *Jihād* in the early years of Islam and in classical *fiqh* on the one side and the most recent writings of religious scholars, Islamists and modernists on the other side. The purpose of this comparison is to clarify the extent to which the classical doctrine of *Jihād* survives intact or is modified in contemporary writings on the subject.

Third, although the practice of *Jihād* throughout Islamic history is an important subject it occupies only a relatively small space in this thesis. The thesis is concerned with the doctrine of *Jihād* only and with its practice in so far as this affects the doctrine. For this reason this thesis will not attempt to undertake an account of the wars of Islam. Instead, it will focus attention on the dominant, and sometimes the exclusive, mode of warfare in different historical periods and their correlation with the current interpretation of *Jihād*.

2. QUALIFICATIONS.

A- The period of the study. This thesis will cover, in brief, the period from the time of the Prophet in Makkah until the present day. This period covers the Sunnī doctrine of *Jihād* from the first mission of the Prophet Muḥammad before the *Hijra* through to the writings of prominent contemporary scholars such as Mawdudī, Qutb and al-Butī. This thesis will use the period of the Prophet as it is the base on which the doctrine and application of *Jihād* has been started and established. I chose this period to examine the nature and analyse *Jihād* within the Sunnī school from its earliest beginnings through the period of the advent of Islamic fiqh. Then to compare this classical *fiqh* with the modernist interpretation of the 19th and 20th century and the Islamist revival of *Jihād* in the twentieth century.

B- In the literature of any Islamic topic it is normal for academic writers to follow the distinction between the Sunnī and the Shī'ī schools. Moreover, it is more common for academic researchers to examine a given topic within either the Sunnī or the Shī'ī schools. In the case of *Jihād* as a topic the orthodox Sunnī writings massively outnumber those by writers within the Shī'ī tradition of Islam. A choice had to be made between an examination of the FULL Sunnī position on *Jihād* or a shortened version of the Sunnī position in order to incorporate an analysis of the Shī'ī version of *Jihād*; a very important reason led to the choice of the former.

There is a significant difference between the Sunnī and the Shī'ī schools in that Shī'ī scholars hold that the twelfth *Imām* went into hiding over a thousand years ago and he is still living; one day he will return and lead the true believers in the establishment of peace and justice on earth. Thus they hold that only defensive *Jihād* is permissible in the absence of the hidden *Imām* while offensive *Jihād* will be waged upon his return[-] "However, it is clear that in the basic definition of *Jihād* there is no difference of opinion and all the scholars are agreed that *Jihād* and war must be for the sake of defence"[2]. Therefore, until the return of the hidden *Imām*, a state of temporary truce would continue between the Shī'īs and their

enemies [3]. *Jihād* itself has a strong link with al-Wilāya (the allegiance to the *Imām*) and therefore *Jihād* without al-Wilāya to the *Imām* would not constitute *Imān* (faith). Thus the twelfth *Imām* who in absence is the only one who can determine when *Jihād* should be declared or not declared[4].

Some Shi'ī jurists held that the *Imām* had two forms of authority, political and religious. In the absence of the *Imām* these affairs are divided between the ruler and the *'ulamā*, therefore the ruler has the political authority of the *Imām* while the *'ulamā* held the religious affairs. Until the present time the most important authority of the twelfth hidden *Imām* which cannot be exercised in his absence is *Jihād*. Therefore, some Shi'ī scholars avoid using the term *Jihād* for defensive war in the absence of the *Imām* and used another term 'Holy War' of defence as in their view the term *Jihād* can be used for war initiated by Muslims against non-Muslims[5].

3-. LITERATURE REVIEW. The literature relevant to this thesis may be conveniently divided into four groups:

1- The main sources of the Shari'h on *Jihād* is the Qurān and the Sunna which are the essential sources of Islamic law and the main guidelines in dealing with the question of *Jihād*.

2- The contribution of the early Muslim jurists is so essential as they began to write about the subject of *Jihād* in the early days of Islam. The classical theory of *Jihād* is based upon the prominent Muslim scholars opinions such as Ibn al-Mubārak, al- Al-Shaybānī, al-Shāfi'ī, al-Māwardī, and Ibn Taymiyya. Therefore, we can see that the Muslim jurist 'Abdullah Ibn al-Mubārk (d.187 AH) was the first Muslim scholar who wrote a separate book about *Jihād*, entitled '*Kitāb* al-*Jihād*'. Moreover, Muḥammad ibn al-Ḥasan al-Shaybānī wrote a comprehensive book under the title of al-Siyar al-Kabīr which dealt in general with the relations between the Islamic and non-Islamic states or in other words he was the first of the Muslim jurists who established the Islamic international law.

3- The views of contemporary Muslim scholars is also an important factor used in this thesis. This thesis discusses the views of the modernist school regarding the subject of *Jihād* which was established by sheikh Muḥammad 'Abduh and also the views of the Islamist school which was led mainly by al-Mawdudī and Sayyid Qutb. This thesis also used the view of some Islamic activities such as 'Azzām and Faraj. The former held that when non-Muslims enemies enter the land of Islam, *Jihād* becomes a personal obligation, thus there is no difference between it, prayer and fasting. While the latter held that present Muslim rulers are infidels and urged Muslims to use *Jihād* against these rulers to reach the main aim which is according to him the re-establishment of the Islamic state.

4- The academic views and writings on the subject of *Jihād* by al-Butī, Lewis, and Peters Rudolph is also an important principle which this thesis will discuss.

At the same time some earlier attempts in writings relating to the subject of *Jihād* are made by some Muslim and non-Muslim scholars and writers as follows:

1-Kitāb al-*Jihād*, by Ibn al-Mubārk.

2- Kitāb al-Siyar al-Kabīr, by al-Shaybānī.

3-Al-Aḥkām al-Sulṭāniyya, by al-Mawārdī'.

4-Al-Jihād fī Sabīl Allah, by 'Abdullah al-Qādrī

5-War and Peace in the Law of Islam, by Majid Khaduuri.

6-Islam and Colonialism, by Peters Rudolph.

7-Jihad in Islam, How to Understand and Practise it, by Muhammad Said al-Buti.

The first three books are in Arabic and very old. The first book was written in the second century of the *Hijra* (8th CE) and is concerned only with the Prophet's traditions which deal with *Jihād*. The writer mentioned two hundred and six of the Prophet's traditions which deal with this subject. The second book was also written during the second century and is considered a comprehensive work regarding the relations between Muslim and non-Muslims. It is a *fiqh* work and the author based his view mainly on the Ḥanafī

4

school. It can be used as an excellent reference on the subject of *Jihād*. The third one was written in the fifth century and dealt with the Islamic governance, the nature of that governance and the responsibility of the Muslim leader. *Jihād as* one of the duties of the Muslim *Imām* is briefly mentioned.

The fourth book is a recent book, the second edition published in 1992, it is also in Arabic and concentrates on subjects like the morals of *Jihād*, the character of the leader of the Muslim army and the features of the army itself. The author clarified the factors of the victory and the defeat of the Muslim troops, although he did not discuss the views of earlier Muslim scholars and did not compare them with contemporary ones. Also he did not mention the different applications of *Jihād* and the views which support the use of force against Muslim rulers.

The fifth book is in English and covers some subjects such as the types of *Jihād*, military methods, maritime warfare, Muslim and non-Muslim territory, and treaties, but did not discuss recent issues.

The book of Peters is also in English and is one of the most important books which discusses and concentrates on the armed resistance of Muslim countries against Western Colonialism in modern history. Peters was able to show in his study that the use of *Jihād* was the main factor used by the leaders of the politico-religious movements amongst local populations against Western domination.

The book of al-Buti was originally published in Arabic in 1994 and recently translated to English by Munzer Adel Absi. It deals mainly with the use of force by some of the more recent Islamic groups against their rulers. He attempted to show that *Jihād* was not legislated until the establishment of the first Islamic state in Medinah by the Prophet, therefore, it follows that *Jihād* was not legislated before the establishment of the Islamic state.

However, the present thesis is distinguished as it discusses the subject of *Jihād* in detail both according to earlier and comparative views and those of western scholars. Moreover it examines some of the most sensitive subjects which are related to *Jihād* such as the use of force against Muslim leaders and also the re-establishment of the Islamic caliphate. It also uses the period of the Prophet Muḥammad, the Four Rightly Guided Caliphs, and the work of the Islamic fiqh as its base for the doctrine and the application of *Jihād*.

4- HYPOTHESES. This thesis has some important hypotheses as follows:

1- It is hypothesised that *Jihād* takes two forms, military and non-military. In both cases it involves struggle or strife in the cause of Allah but only in the case of military *Jihād* are weapons and military means employed. Amongst the non-military forms of *Jihād* distinguished are the educational and the family's *Jihād*.

2- The spiritual act against one's evil is a kind of *Jihād* but it is the lesser *Jihād*. The greater *Jihād* is the military *Jihād* in the cause of Allah. This hypotheses revises a well known hadith according to which the spiritual *Jihād* is the greater and military *Jihād* is the lesser.

3- The doctrine of military *Jihād* forms part of the *Shari'h* which as God's law for the human race is immutable. It is suggested that any changes that may occur to the doctrine do not form part of the *Shari'h* but are a part of the human interpretation and application by the jurists. This hypothesis is tested both by examining the reasons for the immutability of the *Shari'h* as a whole and by examining the interpretation of it in *fiqh* and other non-juristic literature on *Jihād*.

4- The main change in Sunnī *Jihād* doctrine is made by the Islamic modernists and not by contemporary Islamists or by earlier jurists of classical Muslim fiqh. This change is that *Jihād* should be exclusively defensive warfare.

5- Military *Jihād* is always a conflict between Muslims and non-Muslims but it is not necessarily a conflict between the Muslim and non-Muslim states. This hypothesis about the doctrine of *Jihād* is based on the nature of the Sharī'h as a personal, not a territorial, law. That is, it applies to individual Muslims, and to groups of Muslims which may include states. This implies that *Jihād* need not be as structured as conventional warfare between states.

6- Not every case of armed conflict between Muslims and non-Muslims will be a case of *Jihād*, it is only *Jihād* when Muslims participate in the conflict in the cause of Allah.

7- The only person who is entitled to summon the *Umma* to *Jihād* is the *Imām*. No other member of the *Umma* has this authority.

8- The role of religious scholars is to advise rulers on the application of the law of *Jihād* and if there are differences in their advice the ruler is free to decide. However, mainly these differences between the *'ulam*ā are mainly on subsidiary matters.

9- Not any member of the *Umma* can consider a Muslim ruler as an infidel. This judgement might lead to a (*fitna*) discord inside the Islamic *Umma*.

10- Islamic Sharī'h not only determines the purpose for which *Jihād* must be fought but also the means that are permissible to the Muslim warriors in its pursuit just as the purpose is limited in the cause of Allah. So within the permissible means limitations are put on human and non-human targets, types of weapons used and those forbidden.

11- Modernist writers distinguish offensive from defensive *Jihād* and claim that only the defensive form is legitimate. It is argued that the distinction is false and that the view of defensive *Jihād* is an innovation in the doctrine of *Jihād*.

12- No innovation in the doctrine is made by the contemporary Islamists armed struggle against the apostate and the *kāfir* ruler in the cause of Allah and it is also legitimate because

it is the individual duty of every Muslim as it does not require the existence of the Islamic state and its leader like *Jihād* which is a collective duty.

5-SOURCES AND METHODS.

A- Sources. Due to the juristic requirements of an original legal study of the subject of *Jihād*, this thesis will rely basically on the principle primary sources of the Shari'h, Qurān and the Sunna. Moreover, this thesis will also use the other primary sources, namely the works of Muslim jurists (*fuqaha*). The views of the four major schools of Islamic law, Mālikī, Ḥanafī, Shāfi'ī, and Ḥanbalī will be the main bases of the study. The views of the prominent Muslim scholars such as Muḥammad al- Al-Shaybānī, al-Mawārdī, Ibn Taymiya, and Ibn Qudāma who are a part of these schools will also be some of the major scholars regarding the classical Islamic fiqh which this study will use. The writings of modernists like Muḥammad 'Abdu, Abu Zahra, al-Zuhilī, and Islamist like Qutb, Mawdudī and contemporary prominent jurists like Ibn Bāz will also be primary sources which this thesis will use.

The works of western writers like Peters Rudolph, and Bernard Lewis and their views regarding the subject of *Jihād* will also be taken as primary sources for this thesis.

Secondary sources on the subject of *Jihād* include books, journals and other articles which were used in this study, including those by non-Muslims scholars.

B- Methods. Because the subject matter of the thesis is, to a considerable extent the subject matter of Islamic *fiqh*, it might be useful to show how the methodology of this thesis differs from *fiqh*. *Fiqh* can be understood as an authoritative statement including judgement based on the Shari'h and its application made by an expert religious scholar. In order to make these authoritative statements the religious scholar must undertake an extensive and highly specialised educational training in Islamic jurisprudence. Only then does he have the expertise required to make an authoritative pronouncement on the Shari'h to which members

8

of the *'ulamā* will defer, yield and accept. Any statement of fiqh made by religious scholars are made within the context and centres of the tradition of one of the four schools of *fiqh*.

However, the Islamic Shari'h is divine law revealed to the Prophet relating to the conduct of human life in this world. So the Qurān and the Sunna together constitute the Shari'h. Therefore there is no confusion between the Shari'h and the fiqh as the latter is the body of rules and injunctions which are derived from both the Qurān and the Sunna. Whereas *Shari'h* which is the Qurān and the Sunna is unchangeable, *fiqh* is based on the human understanding and interpretation of it in dealing with the contemporary issues, fiqh is therefore changeable[6].

The conventions and traditions of each law school have a strong determining influence on the content of the juristic pronouncement of any religious scholar working within that particular school. The methodology in this thesis differs from fiqh in the following ways:

1- It is written from the standpoint of academic scholarship and has no authoritative religious status for Muslims even though it is concerned with the meaning of the Shari'h on the subject of *Jihād* and examines the Holy Qurān and the traditions of the Prophet for that purpose.

The writer of this thesis does not consider himself as a Muslim scholar but a researcher who obtained his bachelor's degree in Islamic studies which affords him the ability to use the efforts of both Muslim and non-Muslim scholars in the interpretation and analysis of this subject. At the same time this thesis used the views of the four schools of Islamic fiqh as a primary source. Moreover, this thesis deals with this subject by using the efforts of Muslim and non-Muslim scholars and also the work of academic, modernist, and Islamist writings to provide clear informative facts on the subject of *Jihād*.

2- As a result, this thesis has achieved not a *fatwa*, but the work of an academic researcher who supports his views with the works and writings of prominent Muslim scholars. Moreover, there is a major difference between a Muslim and a non-Muslim

researcher, as the latter uses the Holy Qurān, the first source of Islamic law, and the Sunna as a normal source of references and can put himself in a position to accept or reject any text which he thinks is not suitable for his argument. Whilst the former believes that the Qurān is the words of Allah as revealed to the Prophet Muḥammad and any Muslim who rejects one letter of it shall no longer be a Muslim. The Sunna is the second primary source, "Nor does he say (aught) of (his own) desire. It is no less than inspiration sent down to him" (H.Q.S53. A3-4) (H.Q means the Holy Quran),it is composed of the sayings, deeds, and actions approvals of the Prophet. It has three status: the confirmative rules of the Qurān, the interpretation of some verses of the Qurān, and the establishment of some rules which are not in the Qurān. Therefore a Muslim writer has to follow the Sunna as ordered by Allah to do so "So take what the Messenger gives you and refrain from what he prohibits you ..." (H.Q.S59. A7), "O ye who believe obey Allah and obey the Messenger ..." (H.Q.S4. A59).

6- CONTENTS. This thesis is divided into seven chapters.

Chapter One will look mainly at the views of the prominent earlier Muslim scholars (*fuqah*ā) on aspects of *Jihād* such as definition, purpose and the forms of *Jihād*. The stages which *Jihād* passed during the time of the Prophet will be clarified. Moreover, when *Jihād* can be considered to be in the cause of Allah will be discussed.

Not every fight in Islamic law can be called *Jihād*, Chapter Two will look briefly at different kinds of fighting such as the use of force to change the head of an Islamic state to see if it can be considered as a type of *Jihād*.

Chapter Three is an examination of *Jihād* in relation to earlier military codes and norms. Its purpose is to show that the Islamic law of warfare was not derived from any previous military codes or norms. Thus, Islamic law of *Jihād* is based on the Qurān and Sunna and it established principles regarding warfare and urging its followers to apply such principles.

The fourth chapter looks at the period of the Prophet and the Four Rightly Guided Caliphs to see how they applied *Jihād* and if there is any new application of *Jihād* which did not occur during the time of the Prophet. This chapter will clarify that the Prophet did not engage in *Jihād* with unbelievers before the establishment of the Islamic state and the foundation of the leader of this state. This chapter also looks, in brief, at some of the Islamic states established after the death of the fourth caliph, 'Alī, until the Ottoman Empire to see how such states applied the principles of *Jihād*.

The fifth chapter will discuss the views on *Jihād* of contemporary Muslim scholars regarding several issues such as definition, purpose, defensive and offensive to see if the contemporaries hold the same views as those of earlier scholars or not. Also the differences between the modernist and Islamist scholars on the aim of *Jihād* will be raised and discussed to see if they held the same views of the earlier scholars that the aim of Jihad is to raise the word of Allah high and to establish the Islamic law on the earth or not.

Chapter Six will clarify a new application of *Jihād* which is against Western colonialism by discussing the Egyptian resistance against the French and the 'Urābī revolt against the British. This chapter will also discuss the important issue of *Jihād* against Muslim rulers. A case study is made of the al-*Jihād* group of Egypt which considers the ruler as apostate and that the Muslim *Umma* has to use *Jihād* to re-establish the Shari'h.

Chapter Seven is the conclusion to this thesis and the most important findings of this research are summarised.

NOTES TO INTRODUCTION

[1] Mehdī Abedi and Gary Legenhausen. *Jihad* and Shahdat. The Institute for Research and Islamic Studies. 1986, pp 15-16.

[2] Ayatullah Murtada Mutahhari, *Jihad* and Shahdat. The Institute for Research and Islamic Studies, 1986, p 103.

[3] Etan. Kohlberg. Belief and Law in Imami Shaism. Variorum. Aldershot. Great Britain, 1991. p 78.

[4] Elbakry, Mohamed Mokbel. The Legality of War in al-Shari' h al-Islāmiyā (The Islamic Law) and Contemporary International Law. Ph. D, The University of Glasgow, 1987. p 243.

[5] Mehdi Abedi and Gary Legenhausen. pp 18-19.

[6] Al-Qattān, Mannā', al-Tashrī' wal-Fiqh fil-Islam. pp 15-20.
-Al-Nimr. ' Abulmun' im. al-Ijtihād. pp 8-11.

CHAPTER ONE

THE LAW OF JIHAD

INTRODUCTION

The discussion of *Jihād* in classical Islamic works means the relation between Muslims and non-Muslims. The law and doctrine of *Jihād* was laid down by the earlier Muslim scholars in the works on Islamic (*fiqh*) during their discussion of international relations between the Islamic and non-Islamic states. Later, some earlier Muslim scholars who wrote about international relations called such subjects al-Sīyar. Al-Sarakhāsī defined the meaning of al-Sīyar by saying that Sīyar describes the conduct of Muslims in their relations with the non-Muslims as well as the people which Muslims have made treaties with, the *dhimmi*, the apostates and with rebels[1].

The subject of *Jihād* was discussed by many of the earlier prominent Muslim scholars like al-Shaybānī, al-Shāfi'ī, al-Māwardī, al-Sarakhāsī, and Ibn Taymiya. Those scholars based their views mainly on the Qurān and the Sunna which are the main sources of Islamic law. The Qurān is the words of Allah as revealed to the Prophet Muḥammad in its precise meaning and wording. The Qurān was revealed on various occasions to have given the desired solution to many problems. The Sunna is the second primary source; it is composed of the sayings, deeds, and actions of the Prophet. It has three statues: the confirmative rules of the Qurān, the interpretation of some verses of the Qurān, and the establishment of some rules which are not in the Qurān.

This chapter will look mainly at the legal classical thought on some subjects of *Jihād* such as the concept, the legal qualification, the purpose, and the forms of *Jihād*. Moreover, the role of the Muslim ruler in declaration and termination of *Jihād* will be discussed.

13

THE MEANING OF JIHAD

Jihād is an Arabic expression. The definition of *Jihād* in the Arabic lexicon is that it derived from the Arabic word *Jāhd* meaning struggle or striving [2]. According to the dictionary of Islam *Jihād* means "An effort, or a striving"[3]. Netton said that *Jihād* "derives from an Arabic root meaning basically to strive" [4]. Al-Qāderī mentioned that the word *'Jāhd'* has more than twenty meanings in the Arabic dictionaries[5].

Islamic schools of *fiqh* define the word *Jihād* as follows. The Mālikī school have adopted the definition of *Jihād* as the fighting of unbelievers by Muslims for the raising of the word of Allah[6]. The Shāfi'ī school defines *Jihād* as fighting in the cause of Allah [7]. The Hanafī school says that *Jihād* means the call to Islam and fighting those who did not except it. The Hanabalī school explains that *Jihād* means the fighting of non-believers[8].

THE DISTINCTION BETWEEN JIHAD, AL-QITAL AND AL-HARB

The word *Jihād* is used in the Qurān more than thirty two times [9], mostly to refer to fighting in the cause of Allah especially the Medinah verses[1] where it is used twenty six times[10] these are some of the clear examples: "Go ye forth, (whether equipped) Lightly or heavily, and strive and struggle, with your goods and your persons, in the cause of Allah. That is best for you, if ye (but knew)" (H.Q.S9, A41). "When a Sura comes down. Enjoining them to believe in Allah and to strive with his Messenger, those with wealth and influence among them ask thee for exemption, and say: leave us (behind): we would be with those who sit (at home)" (H.Q.S9, A86).

At the same time the term *Jihād* was initially revealed in Makkah Quranic verses; dealing with different aspect such as the striving of parents to force their children to worship a god other than the True God "We have enjoined on man kindness to parents: but if they

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[1] which was revealed to the Prophet Muhammad from Allah in Medinah.

(either of them) strive (to force) thee to join with Me (in worship) anything of which thou hast no knowledge, obey them not ..." (H.Q.S29. A8). Also the call and the invitation of pagans to Islam by the Prophet by use of the Qurān is another aspect of the Makkah's *Jihād* "Therefore listen not to the unbelievers, but strive against them with the utmost strenuousness, with the (Qurān)" (H.Q.S25. A52).

The term *Jihād* is restricted, Islamically, to Muslims alone in their fight for the cause of Allah. According to Qureshi, "Islam abolished all kinds of warfare except *Jihād*" [11]. At the same time it maybe used as the Muslim jurist Sayyid Qutb said when he explained in his interpretation of this verse "And strive in his cause as ye ought to strive, (with sincerity and under discipline)" (H.Q.S22, A78); as the endeavour *Jihād* the *Jihād* against evil and decay [12]. *Jihād* could mean the Muslim striving to fulfil his responsibility wherever it is required in practical life. Both al-Bukhārī and Muslim reported a conversation between the Prophet Muhammad and a man who came to him and asked permission to join *Jihād*, the Prophet asked him "Are your parents living? the man said yes, the Prophet then said carry on *Jihād* in serving them" [13]. *Jihād* is also used in Makkah before *Hijra* as the evidence and persuasion which means that Allah asked the Prophet to discuss and explain the religion to non-Muslims [14]. Therefore this verse in the Qurān explains the meaning "Therefore listen not to the Unbelievers, but strive against them with the utmost strenuousness, with the (Qurān)" (H.Q.S25, A25). Hence Mawdudī clarified the wide meaning of *Jihād* as "To change the outlook of the people and initiate a mental revolution among them through speech or writing is a form of *Jihād* ... and to expend goods and exert physically for this cause is *Jihād* too" [15].

At the same time there is no big difference between the words *Jihād* and Qitāl (fighting). They are used with the same meaning in the Qurān [16] "Truly Allah loves those who fight in his cause in battle array, as if they were a solid cemented structure" (H.Q.S61, A4). "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)" (H.Q.S4, A74). According to Sayyid Qutb, the fighting in this verse in the cause of Allah is because Islam does not know any fighting except in the

cause of Allah. Islam does not recognise fighting for booty, domination or for private or national glory [17]. Al-Mawdudī also supported this view when he said "God accepts only such needs as are executed for the purpose of obtaining his Goodwill and the doers seek to serve no personal or collective objectives" [18]. So the word *Jihād* is used more often than Qital in the Qurān but both of them when used in fighting mean in the cause of Allah. Afzalur Rahman supports this view when he says that Qitāl means fighting for the cause of Allah and is one aspect of *Jihād* [19].

The term *Harb* (war) is mentioned six times in the Qurān [20]. On the other hand dār al-*Harb* is not used in the Qurān, al-Zuhilī states that this terminology mentioned in the Sunna and in one of the peace treaties is confirmed by Khālid bin al-Walīd who was one of the Prophet's followers [21]. On the other hand the meaning of dār al-*Harb* is the areas under the rule of non-Islamic law. The Muslim scholar Abu Hanīfah laid three conditions regarding the transformation of the territory of Islam into the territory of war:
1- The absence of security for Muslims and the protected non-Muslims who are *dhimmahs*.
2- The application of the law of unbelievers.
3- The neighbourhood to the territory of war [22]. *Dār al-Islām* is a territory which is under Islamic rule. If the majority of the inhabitants in the territory are non-Muslims but the territory itself submits to the rule of a sovereign Muslim state, the territory will remain *dār al-Islām*.

At the same time al-*Harb* refers to the fighting itself not the aim of the fighting because the aim of the fighting in Islām has to be in the cause of Allah only. War used in the pre-Islamic era was for personal purposes; Islam wanted to use a different terminology to stress its distinct aims [23]. According to al-Mawdudī, "Islam purposely rejected the word *harb* and other Arabic words bearing the same meaning of war and used the word *Jihād* which is with struggle though more forceful and wider in connotation ... but the *Jihād* of Islam is not merely struggle it is a struggle for the cause of God, for the cause of God is an essential condition for *Jihād* in Islam" [24]. It is used in the Qurān for the same reason "Every time they kindle the fire of war Allah doth extinguish it" (H.Q.S5. A64). In another verse it is used with the same meaning "The punishment of those who wage war against Allah and

his Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land" (H.Q.S5. A33). Khadduri agreed that Islām cancelled all kinds of warfare except *Jihād*[25].

Could we say that the word war is to be used for non-Muslims only? The answer to this question is that the word 'war' was, and is still, being used to refer to fighting between Nations and States for the achievement of individual or national interests. If the Islamic state wages war against non-Muslims or fighting breaks out inside the Islamic state for such purposes, it will be not *Jihād*; it will be war[26]. This terminology can be used in reference to either Muslims or non-Muslims.

THE LEGAL QUALIFICATION (HUKM) OF JIHAD

From this section, this dissertation will discuss *Jihād* as a military meaning in the cause of Allah. *Jihād* is regarded by the majority of Muslim jurists as a collective duty (*fard Kifāya*) of the whole Muslim community with which to propagate Islām[27]. This obligation is fulfilled when a sufficient number of Muslims perform it. From Islām's point of view, if the whole Muslim community does not take part in *Jihād* they fall into error[28]. There is an important benefit which the Islamic state gets from the *Jihād* duty on the community rather than on the individual. The Islamic state is needed for scholars, experts, workers etc,[29] and if the whole community participates in *Jihād* then the national interest of the Muslim state is affected. At the same time the crippled, blind and sick are exempt from fighting[30] "It is no fault in the blind nor in one born lame, nor in one afflicted with illness" (H.Q.S24. A61). Muslim jurist al-Thawrī says that fighting idolaters is not an obligation unless the initiative comes from them. Then they must be fought in fulfilment of Allah's clear instructions. He uses these two verses to support his view "But if they fight you slay them" (H.Q.S2. A191) also "and fight the pagans all together as they fight you all together" (H.Q.S9. A36). At the same time the majority of Muslim jurists use much stronger evidence from both the Qurān and the Sunna of the Prophet which supports their view. Allah said in the Qurān "Not equal are those believers who sit (at home), except those who are disabled and those who strive

17

and fight in the cause of Allah with their goods and their persons Allah hath granted a grade higher to those who strive and fight with their goods and persons than to those who sit (at home) unto all (in faith) hath Allah promised good" (H.Q.S4. A95).

This verse explained that in a time of *Jihād* those people who give their goods and lives must be rewarded more gloriously than those who did not participate. If the *Jihād* is compulsory for the whole Muslim community then those who stay back will receive punishment from Allah. This is not mentioned in this verse. Another verse also clarifies this idea "It is not for the believers to go forth together, if a contingent from every expedition go forth to devote themselves to studies in religion, and admonish the people when they return to them that thus they (may learn) to guard themselves (against evil)" (H.Q.S9 A122).

There is also some proof from the Sunna of the Prophet Muḥammad (p.b.u.h). Abu Sa'īd al-Khudrī, relates that the Holy Prophet proposed to send a force towards the Banu Laḥyān tribe for *Jihād* and directed that "out of every two men one should join the force for (*Jihād*) and further that the recompense of both will be equal" (narrated by Muslim). Another version of Muslim says: The Holy Prophet said: "one out of two men should go forth for *Jihād*, and then addressing those who stayed behind he (the Prophet) said: those of you who look after the family and property of those who have joined the force shall have his recompense of the *Mujāhid* (fighter)" [31]. There is further evidence to confirm that *Jihād* is a collective duty and that during the battles and the skirmishes between the Prophet and non-Muslims the Prophet and his companions did not participate in all the fighting but sometimes he sent some of his followers. Also the Prophet never went to battle without leaving some followers behind. All this evidence together implies that *Jihād* in general is a collective obligation.

Jihād becomes a collective duty of the whole *Umma* when the leader of the Muslim state the (*Imām*) appoints the Muslim army, or part of it, or certain persons for participation in *Jihād*, this kind of *Jihād* is called (*istinfār*) [32]. In this case *Jihād* is compulsory and an individual for those appointed by the *Imām* both in defence circumstances or during *Jihād* for the rising of Allah's word. This is supported by Haykal [33]. The obedience of the *Imām* is

based on the following evidence. From the Quran "O ye who believe! what is the matter with you, that when ye are asked to go forth in the cause of Allah, ye cling heavily to the earth ... Unless ye go forth, he will punish you with a grievous penalty, and put others in your place" (H.Q.S9 A38-39). From the saying of the Sunna of the Prophet, 'Aiesha [2] has related that the Prophet said: "Since Makkah had fallen migration by Muslims is no longer necessary; but *Jihād* in the cause of Allah and a longing for it remains incumbent whenever you are called upon to do so (by the *Imām*), you should respond" (al-Bukhārīar and Muslim) [34]. From these proofs according to al-Shokānī the *Imām*'s appointed people have to participate in *Jihād*[35].

Some Muslim scholars such as al-Māwardī al-Shafāi'ī and Ibn Qudāma mention that the *Imām* should raid the non-Muslim territories at least once a year. On the other hand there is some excuse from those scholars to the annual *Jihād* such as the weakness of the Muslim state[36]. Those scholars give some evidence to strengthen their view such as this verse in the Qurān "See they not that they are tried every year once or twice? yet they turn not in repentance, and they take no heed" (H.Q.S9 A126). *Jihād* is seen as a collective duty at least once a year. The second proof is the *al-Jizyah* which is paid yearly from *Ahl al-Dhimmah* instead of *Jihād* against them. This evidence is not strong enough to demonstrate the necessity of the annual *Jihād* because *al-Jizyah* is a security tax against internal and external attacks and also for the protection of *Ahl al-Dhimmah* rights inside the Islamic state. Also there are some scholars: al-Muḥlī, al-Sautī, and al-Sa'dī who explain the tried 'tested' as the affliction of disease and drought[37]. Another proof which does not support the view of the compulsory annual *Jihād* is that we do not come across any evidence from the Sunna of the Prophet Muḥammad which requires that Muslims have to engage in an annual *Jihād* against nonbelievers.

The previous paragraphs clarify *Jihād* as a collective duty. In some cases it become an individual duty.

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[2]The wife of the Prophet Muḥammad (p.b.u.h).

19

1- If the enemy attacks or threatens the Islamic state by a sudden attack. The duty becomes upon those who are being attacked including women and children. If this part of the Islamic state does not have sufficient ability to defend themselves and repel the enemy's attack then it becomes an individual duty upon their Muslim neighbours[38].

2- *Jihād* becomes an individual obligation when the Muslims and non-Muslims were attending the battlefield, the Muslim fighter (*mujāhid*) has to stay until the end of the state of war[39]. There is some evidence which support this view. "O ye who believe! when ye meet a force, be firm, and call Allah in remembrance much (and often); that ye may prosper" (H.Q.S8. A45). Another verse also explains this "O ye who believe! when ye meet the unbelievers in hostile array, never turn your backs to them. If any do turn his back to them on such a day unless it be in a stratagem of war, or to retreat to a troop (of his own) he draws on himself the wrath of Allah, and his abode is Hell, an evil refuge (indeed)" (H.Q.S8. A15-16). The Sunna supported this view when the Prophet said "O people do not desire a combat with the enemy, but pray to Allah for safety. But when you are face to face with the enemy, be steadfast and remember that Paradise lies under the shadow of the sword" (al-Bukhārī and Muslim)[40]. The mujāhideyn we mean here are those who volunteer for fighting without being appointed from the *Imām*, also those who volunteer to fight in the collective obligation of *Jihād* to make the word of Allah supreme[41].

Al-A'lyānī, Haykal and 'Abd al-dāim state that all Muslim jurists agree that the whole Muslim community has to fight, including able persons, women, children and old people, when the Islamic state is subjected to a non-Muslim attack[42]. Al-'Alyānī considers the protection of Muslim land as one of the aims of *Jihād*[43]. This kind of *Jihād* in Islām is considered a personal duty.

Within the traditional juristic treatment of these issue there is a clear distinction being made between *Jihād* that is defensive where the duty is individual and *Jihād* which is not in defence of the Muslim community where the obligation is communal not individual. In the first case military action is defensive or could be counter action and in the second one

20

military action is attacking the non-Muslims for the purpose of propagation of Islām. The old jurists did not draw an explicit distinction between offensive and defensive *Jihād*.

THE DIFFERENT STAGES OF JIHAD IN ISLAM

When the earlier scholars discussed the stages of *Jihād* during the period of the Prophet they have divided it into four stages:-

1- In the beginning of the mission of Islām and when the Prophet (p.b.u.h) began to ask the Quraish to believe and follow him and to worship Allah at Makkah, this call spread rapidly in Makkah. Therefore, after a short time his followers started to increase and at the same time to feel growing pressure from the unbelievers who began to torture the followers of the Prophet, especially those who were weak and did not have groups or tribes to defend them. The Prophet's followers asked him many times to allow them to oppose and resist the Quraish, but the Prophet did not allow them to do so because he was commanded by Allah to be patient and not to fight the unbelievers [44]. Allah said in the Qurān "Invite (all) to the way of the 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" (H.Q.S16, A125-126). The second reason is that they were few in number[45].

The first period of Islām was to establish and build the new mission. The new mission needed a strong ability to establish the new Islamic state[46]. The peaceful call of the Prophet to the Quraishi convinced some of them to accept Islām[47]. The organised *Jihād* was used partly as a means of dissuading individual Muslims from fighting unbelievers. However there are some examples during the early period of Islām in Makkah where according to al-Tabarī, Sa'd bin Abī Waqās one of the Prophet's followers was attacked whilst praying by unbelievers and he responded by attacking one of the unbelievers with a bone causing a wound to his head[48]. The main point in this incident is that the Prophet

agreed that individual Muslims were allowed to defend themselves if they could but the Prophet does not treat this as a case of *Jihād*.

2- When the Prophet (p.b.u.h) emigrated from Makkah to Medinah he began to establish the Islamic state. Muslims were permitted to fight for the first time: "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. 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 ..." (H.Q.S22, A39-40). According to Ibn al-Qayyim (d. 691 AH) this is the first verse which permits fighting [49]. This is the first verse which gave the Muslim state the right to *Jihād* in self defence. In Medinah they had a sufficiently organised state to resort to force to protect themselves. In this thesis we will discuss some of Prophet Muḥammad's battles which happened with non-Muslims which approve the right of Muslims to use the defence of *Jihād*.

3- The third stage is that Allah ordered Muslims to fight those who fight them "Fight in the cause of Allah those who fight you but do not transgress limits; for Allah loveth not transgressors" (H.Q.S2 A190).

4- Then Allah ordered Muslims to fight all unbelievers [50]. According to Peters "Finally the unconditional command to fight all unbelievers was sent down. "And fight them on until there is no more persecution, and religion becomes Allah's in its entirety" (H.Q.S8 A39)[51].

Ibn al-Qayyim clarified the relation between the Prophet and the unbelievers from the start of Prophethood to his death by saying that the first revelation from Allah to the Prophet was to read and to memorize these revelations by himself and not to call any one to accept Islam "Proclaim! (or read) in the name of thy Lord and cherisher, who created" (H.Q.S96. A1). After that Allah revealed "O thou wrapped up (in a mantle). Arise and deliver thy warning" (H.Q.S74. A1-2). So this was the sign of the Messengership. Allah ordered his Messenger to call his near relatives to Islam first, then his people, then the Arabs

who were around them, then all the Arabs and finally the whole world. Therefore the Prophet spent thirteen years from the beginning of his Messengership calling the people to accept Islām without fighting or paying *Jizyah*.

When the Prophet emigrated from Makkah to Medinah, Ibn al-Qayyim mentioned that *Jihād* passed by the four stages which were clarified earlier. He then added, when Surat At-Tuba was revealed, the treatment of non-believers as clarified that *Jihād* should be declared against the People of the Book until they agreed to accept Islam or pay *Jizyah*. *Jihād* should also be declared against the Polytheists. So the non-believers fell into three groups in relation to the Prophet; Muslims, those who have the status of *dhimmah* and those who are in the status of war[52].

THE PURPOSE OF JIHAD

The early Muslim Jurists did not discuss in detail the purposes of *Jihād*. This subject was likely to have been well known to the public or considered to be of minor importance. Many contemporary Jurists did not give this subject the importance it needed. In this section we will discuss some of the purposes for which *Jihād* has been mentioned by some Muslim jurists:

1- Islam has given the Muslim community the right to fight against non-Muslims' military aggression from outside the Islamic state. There is strong evidence from the Qurān and the Sunna and from old and contemporary Muslim jurists in support of this principle.

a- The evidence from the Qurān. Allah said "Fight in the cause of Allah those who fight you ... and slay them wherever ye catch them and turn them out from where they have " (H.Q.S2, A190-191). In the second verse Allah said "The prohibited month and so for all things prohibited there is the law of equality. If then any one transgress the prohibition against you, transgress ye likewise against him" (H.Q.S2, A194). Also from the third verse "And fight the Pagans all together as they fight you all together" (H.Q.S9, A36).

b- In the Sunna of the Prophet Muḥammad there are many examples during his battles with non-Muslims which clarify the right for Muslims to fight non-Muslim aggression.

(i) The Battle of Uḥud: This battle took place in the third year of the *Hijra*, between he Prophet with his companions, and the Quraish tribe with their allies. Quraish prepared a big army which consisted of 3,000 soldiers and marched against the Prophet's city of Medinah. The reason for this battle was the debacle of the Quraish in the Battle of Badr[3], and the domination of the Prophet on the route of the Quraish caravans to Syria. The Prophet held a council of war to discus this situation with his companions. The Prophet and some of his senior followers suggested remaining in Medinah city where they could protect the city from inside, but younger Muslims desired to go out to meet the enemy and protect the city from outside, by remaining in the city they felt they would seem cowards and lose their power and reputation in the eyes of the Arab tribes [53]. The result of the battle was that the Quraish were victorious[54].

(ii) The Battle of Khandaq (Trench): After the Battle of Uḥud, Quraish decided to break the Prophet's Power under the instigation of the Jewish leader. They and their allies attacked Medinah in the fifth year of the *hijra*. They laid siege to Medinah and became entrenched in battle for twenty four days, with a confederacy army of ten thousand warriors[55]. According to Watt, "Muḥammad had adopted another form of defence, indeed, one hitherto unknown in Arabia. Wherever Medinah lay open to cavalry attack he had dug a trench, the Khandaq"[56]. Haykal described the reaction of the Quraish and their allies when they arrived at Medinah they were surprised because they found an impassable trench surrounding the whole city; a wholly unexpected kind of defence[57]. The Quraish and their

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[3]This battle took place in the second year of the *Hijra* between Muslims under the Prophet

Muḥammad leadership and the Pagans Quraish tribe. The Prophet with his followers. won the battle. It was a great victory for the Muslim state because it was the first battle between Muslims and non-Muslims in Islamic history.

allies failed to destroy the Prophet and his companions, and after twenty four days of siege they completely withdrew. Watt explained the result of the failure of the Quraish attack; the most important point being that the Quraish and their allies had exerted their strength to dislodge the Prophet from Medinah and failed. He remained there, more influential than ever as a result of the failure of the attack[58].

From what has been mentioned we can conclude that the Qurān and the Sunna the main sources of Islamic law[59] prove that Muslims have the right to apply *Jihād* in defence against non-Muslims aggression.

c- Muslim jurists: All classical jurists agree that the aggression towards Muslims from non-Muslims is one of the purposes of *Jihād*. Ibn Taymiya says that if the enemy wanted to attack Muslims, then Muslims have to fight back[60]. Ibn al-Qayyim also states that Muslims are permitted to fight in self defence [61]. Al-Sarakhāsī[4], concurs stating that *Jihād* was lawful in repelling non-Muslim aggressors[62]. Ibn Qudāma mentioned that if the unbelievers attacked a Muslim city, then the duty becomes upon all the citizens of this city who are being attacked to engage in *Jihād*[63].

d- Kinds of aggression: As mentioned earlier, Muslims have the right to wage *Jihād* against outside non-Muslim aggression, but does the aggression have just one kind or are there different aggressions? In fact the aggression towards Muslims has different forms as follows:

(i) Aggression from non-Muslims towards Muslim lands: the 'ribāt' is the safeguarding of Islamic frontiers against attack by non-Muslims. As such it can be regarded as synonymous with the word *Jihād* [64]. This type of *Jihād* is based on injunctions continued within the Qurān and the Sunnā.

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[4]The scholar who explained the famous book of al-Shaybānī, which is called al-Siyar al-Kābir.

From the Qurān "Against them make ready your strength to utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies ..." (H.Q.S8. A60)[5].

From the Sunna°, Sahl bin Sa'd states that the Prophet said: "Guarding the border land (even) for a day is better than the world and all that contains ..." (al-Bukhārī and Muslim)°⁵.

If the Islamic state or part of it is seen to be under the occupation or colonization of non-Muslim forces, all Muslims have to fight to liberate their land from occupation. This liberation is call *Jihād*. However Peters claims that "Armed defence against attacks against Muslim lives and properties, remains obligatory, but this is not to be called *Jihād*"[66]. But Peters did not mention any evidence which supports his views. Against Peters' view we must point out that most of the Prophet's battles such as Badr, Uḥud, and the Trench were against Quraish attack who aimed to eliminate the new Islamic state in Medinah by killing Muslims. So the Prophet and his followers engaged in such fights to protect their religion, state, lives, and properties from the unbelievers attack and all of these battles can legitimately be called *Jihād*. Moreover, as we mentioned, all Muslim jurists agreed that the defence of Muslims against outside attacks is one of the forms of *Jihād*. When al-Butī discussed the duty of the *Imām* to declare *Jihād* he mentioned the duty of Muslims in this *Jihād* by saying "When an enemy invades a Muslim country aiming at, assaulting people's lives honour, or

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[5]Another verse "O ye who believe persevere in patience and constancy; vie in such perseverance; and fear Allah; That ye may prosper" (H.Q.S3. A200).

°Salmān relates that he heard the Prophet say: "Guarding the frontiers of an Islamic state for a day and a night is better than a month's fasting and praying at night; and if anybody dies (while guarding the frontiers), the work which he was performing, will be continued ..." (Muslim). Also 'Uthmān relates that he heard the Prophet say: "Guarding the frontiers of an Islamic state for a day for the sake of Allah, is better than a thousand days of other good works" (al-Tirmidī). 'Abdullah bin 'Umar who was one of the Prophet's followers stated that jihad is for combating the unbelievers, and the ribāt for safeguarding the believers (Khadduri, p 81).

possessions; in which case all Muslims (government and people) should raise as one to push back the enemy"[67].

(ii) Aggression towards Muslim individuals: Islamic law gives the Muslim state the right to fight back against the non-Muslims' aggression which is aimed at Muslim individuals [68]. According to Sābiq and al-Zuḥilī Muslims individual defence against non-Muslims aggression is one of the purposes of *Jihād* [69]. From the Sunna of the Prophet Muḥammad (p.b.u.h), we could see that he announced *Jihād* in some battles for the protection of Muslim individuals. The Battle of Banu Qaynuqā' which took place in the second year of the *Hijra*[70] between the Prophet Muḥammad and the Jews tribe Banu Qaynuqā' serves as an example. The reason for this battle was that when a desert Muslim woman came to the Jewish market of the Banu Qaynuqā' some Jews asked her to remove her veil, she refused, so one of them tacked her skirt with a pin to the wall. When she stood up, her nakedness was exposed. The Jews laughed and the woman cried. A Muslim who was present killed the man who was responsible but his friends avenged him and killed the Muslim. The Prophet regarded this incident as a cause belli, blocked Banu Qaynuqā' for fifteen days, and the Jews surrendered. After some negotiations they were forced to leave Medinah with their women and children within three days, in which time they could collect their money, they had however to leave their arms behind [71]. According to Haykal "The Prophet decreed that the Banu Qaynuqā' should evacuate Medinah in punishment for their misdeeds[72].

This incident establishes that the Prophet invoked *Jihād* against the Jewish tribe in response to aggression from them. Any Muslim killed in the battle was considered a martyr. One could conclude from this incident that a Muslim state has the right to declare *Jihād* against non-Muslim aggression. The Prophet also described some types of defensive fighting and considered any person killed in this kind of fighting a martyr (*shahid*). He said that "One who dies while defending his property, is a martyr; one who dies in his own defence is a martyr; one who dies defending his religion is a martyr; and one who is killed while protecting his family members is a martyr" (Abu Dāwd and Tirmidhī) [73]. This kind of fight by a person or group on a Muslim's life, money, or dignity was not however consider by Muslim jurists as a kind of *Jihād*[74].

27

(iii) Aggression towards Muslim's valuable properties: the Islamic religion gives its followers the right to defend their wealth against non-Muslim's aggression. Six months after the Battle of Banu Qurayzah, which was in the fifth year of the *Hijra*, a group led by 'Uyaunah Ibn Husan raided the outskirts of the city of the Prophet and his followers, seized their camels, killed their camel herdsman and captured his wife. One of the Prophet's followers was 'Amr bin al-AKw'a, he followed them and called for help. The Prophet Muhammad alerted his companions and sent some of them to pursue the riders immediately, he followed a little later with another force. The Muslim force overtook the enemy's rear, seized the stolen camels and liberated the captive woman[75]. The above mentioned example from the Prophet Sunna leads us to conclude that Muslim state can declare *Jihād* if their wealth is attacked by non-Muslim forces. Al- Zuhilī mentions that fighting in the defence of Muslim's valuable properties is one of the purposes which *Jihād* serves[76].

(iv) The defence of *Ahl al-Dhimmah* (protected people): *Ahl al-Dhimmah* are those non-Muslims who are Jews, Christians and others such as the Magi[7] who have concluded a permanent agreement with a Muslim authority getting protection and security for their lives, religion, family and property in return for paying *al-Jizyah* (poll tax) and pledging loyalty to the Islamic state[77]. *Dhimmah* is an Arabic word which means contract, safety and security. So they were called by this name in Islamic society because they were guaranteed contract by Allah, His Messenger and the Islamic community[78]. This contract is permanent and establishes rights and obligations for both parties, the Islamic government as well as the *dhimmah*[79]. The principle of *al-Jizyah* is derived from the following verse in the Qurān "Fight those who believe not in Allah nor the last day nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of truth, from among the people of the Book, until they pay the *Jizyah* with willing submission, and feel themselves subdued" (H.Q.S9, A29). The Prophet also levied the *Jizyah* upon the Magians

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[7]Magi are not consider as Jews or Christians but are treated as Jews and Christians with regards to

he protection and security of their lives when they live inside the Islamic state. They refuse to except slam instead staying with their religion and paying *al-Jizyah*.

of Bahrain and the fourth guided caliphs also levied the *Jizyah* on the People of the Book during the great conquest and all those who fell into this category[80].

The *Jizyah* itself does not have a fixed limit but the *Imām* is the right person to decide how much each individual should pay according to their means[81]. Hence, the second caliph 'Umar, "fixed the *Jizyah* at 48 *dirhams* for the wealthy, 24 *dirhams* for the middle class and 12 *dirhams* for those who did not fit in the first two categories"[82]. However, Muslim scholars have different views regarding the reason for the obligation from *dhimmah* to pay the *Jizyah*. The Mālikī jurists hold that the obligation of the payment of the *Jizyah* is so they would not be killed[83]. The Shāfi'ī and Ḥanbalī scholars hold that it is instead of their killing and also to live inside dār al-Islam 'the Muslim state'. The Ḥanafī scholars however, hold that it is for the protection of the *dhimmah* inside the Islamic state because Islam exempts non-Muslims from the defence of its state[84]. The latter view is supported by Dr. Zidān and Dr. al-Qaradāwī as it is not imposed on women, minors, the blind, the disabled, the mentally impaired and monks since they had dedicated their lives to worship in their churches, as well as those who are unable to perform military service[85].

Dr. al-Qaradāwī, adds another reason for placing this tax on non-Muslims; "It is similar to that used by governments of any age to justify their taxes. All citizens should pay some of the expenses for public services established for the common good, such as courts, police, public works, repairing of roads and bridges, as well as all other services which lead to the enjoyment of a normal life for all"[86]. To clarify this point he also added that as the *dhimmah* are not required to fulfill any Islāmic religious duties such as paying the *Zakat* or participating in *Jihād* so this is the main reason for the obligation of the *jizyah*. Therefore, this tax will be cancelled if non-Muslims who are under the *dhimmah* conditions participate with Muslims in defending the Islāmic state against its enemies[87].

Moreover, earlier Muslim scholars held that a *dhimmi* is from the people of 'dār al-Islam[88]. On the other hand modern scholars hold that *dhimmies* are citizens of the Islāmic state "a *dhimmi* is a bearer of Islāmic nationality" according to al-Qaradāwī[89].

We have some evidence which leads us to determine that the Muslim state has to defend *Ahl al-Dhimmah*. The caliph 'Umar bin al-Khatab, on his death bed, said: "I urge him (the next or new caliph) to take care of those non-Muslims who are under the protection of Allah and his messenger (p.b.u.h.), in that he should observe the convention agreed upon with them, and fight on their behalf (to secure their safety) ... he should not over-tax them beyond their capability"[90]. 'Ali bin Abi Talip the fourth Caliph said that *Ahl al-Dimmah* paid *al-Jizyah* so that their wealth and blood is the same as ours[91]. So, this tax grants non-Muslims the protection of the Islamic state and if the Islamic state becomes unable to provide this protection, it might not have the right to collect this tax. This rule was followed by Abu 'Ubaidah during the period of the second caliph 'Umar, when he returned the money 'Jizyah' to the citizens of Syria; as the Romans were gathering troops to regain it and he did not have enough power to protect them, therefore, he returned the *Jizyah* with the following announcement "We have returned your money to you because we have been informed of the gathering of enemy troops. You people, according to the conditions stipulated in the contract, have obliged us to protect you. Since we are now unable to fulfil these conditions, we are returning your money to you. We will abide by the conditions as agreed upon if we overcome the enemy"[92]. This rule also followed in several treaties which were concluded between the Muslim commanders and the non-Muslims such as the following one which was laid down by Khalid bin al-Walid "If we are able to protect you, we have the right to your *Jizyah*, otherwise we do not, until we overcome the enemy"[93].

Therefore Muslim Jurists established that *al-Jizyah* is the main reason for the protection given to *Ahl al-Dhimmah*. This view is supported by the Muslim Jurist al-Mawardi who says that the Muslim leader has to protect *Ahl al-Dhimmah* [94]. The famous Muslim Jurist al- Al-Shaybani also emphasizes the importance of the defence of *Ahl al-Dhimmah* in many places in his famous book al-Siyar al-Kabir he considered that the protected people are the same as Muslims regarding their wealth, family, and as individuals[95]. A prominent Muslim scholar Ibn Hazm, says "If one is a *dhimmi*, and the enemy comes with his forces to take him, it is our obligation to fight the enemy with soldiers and weapons and to give our lives for him, thus honouring the guarantee of Allah and His

Messenger (peace be on him). To hand him over to the enemy would mean to dishonour this guarantee " [96]. The Mālikī jurist, Shaha al-Deen al-Qarāfī also says "The covenant of protection imposes upon us certain obligations toward the *Ahl al-Dhimmah*. They are our neighbours, under our shelter and protection upon the guarantee of Allah, His Messenger (peace be upon him) and the religion of Islam. Whoever violates these obligations against any one of them by so much as an abusive word, by slandering his reputation, or by doing him some injury or assisting in it, has breached the guarantee of Allah, His Messenger (peace be on him), and the religion of Islam"[97].

Since the status of *Dhimmah* is the same as Muslims according to Islāmic law it then logically follows that defensive war against aggression to the *Dhimmah* has the same legal status as aggression against wealth, family and individual Muslims.

However, Peters claims that "The direct purpose of *Jihād* is the strengthening of Islam, the protection of believers and voiding the earth of unbelief"[98]. Peters cannot be correct, the aim of *Jihād* is not voiding the earth of unbelief because upon paying *al-jizyah* from *dhimmah* unbelievers were not only to be left to pursue their life in peace but also to be protected by the Muslim state [99]. Islamic law does not insist that non-Muslims embrace Islam under duress, but they can embrace Islam freely if they wish. Islam protects the freedom of religion and places of worship under its regime[100]. Allah says in the Qurān "Let there be no compulsion in religion" (H.Q.S2. A256). According to Mawdudi, "Muslims are enjoined to invite people to embrace Islam and advance arguments in favour of it, they are not asked to spread this faith by force. Whoever accepts it does so by his own choice" [101]. Zidan confirmed this principle when he said that "Islam does not force a human being to change his faith and accept Islam though it invites him to it. But the call for Islam is one thing and the compulsion to accept it is another ... so the Islamic government does not interfere with the belief and worship of the non-Muslims"[102]. Asad also agreed with this principle when he wrote "The religious commandments of Islam cannot be binding upon non-Muslims"[103].

2- The Propagation of Islam. This principle is the most important aim of the purposes of *Jihād* in Islām, According to the earlier Muslim scholars, the Muslim state has to wage *Jihād* to enable Islamic law to apply to non-Muslim territories and to raise Allah's words highest. Most of the earlier jurists supported this view. Al-Shaybānī and al-Sarakhāsī take a similar position in dealing with this when they say that Muslims are ordered to fight for the purpose of strengthening the Islamic religion. Al- Sarakhāsī added that the injunctions about *Jihād* were revealed in stages and the final stage was the absolute command from Allah to Muslims to fight non-believers[104]. The famous Muslim jurist al-Shafāi'ī says that Allah made *Jihād* an obligation after it had been a matter of choice [105]. Muslim jurist Ibn Taymiyā emphasized that Muslims received the order from Allah after the emigration to Medinah to fight unbelievers. He added that the reason for *Jihād* is to raise the word of Allah and to make religion for Allah alone, which means extending Islam to the world. Ibn Taymiya quotes much evidence both from the Qurān and the Sunna of the Prophet Muḥammad to support this point of view[106]. Ibn al-Qayyim said that in the final stage of *Jihād* Allah ordered Muslims to fight all unbelievers[107].

Ibn Rushd mentioned that the main aim of *Jihād* of the People of the Book either to convert to Islām or to pay the *Jizyah*. He added that this view based on the following verse "Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the Religion of Truth, from among the People of the Book, until they pay the *Jizya* ..." (H.Q.S9. A29)[108].

These jurists have some strong evidence which supports their view. This part will look at some of this evidence.

a- From the Qurān the verses which impose the obligation to fight the non-believers Allah says "O Prophet strive hard against the unbelievers and the hypocrites and be firm against them. Their abode is Hell an evil refuge indeed" (H.Q.S9 A73). Allah says in other verses which loosely translated say "O ye who believe fight the unbelievers who are near to you and let them find harshness in you and know that Allah is with those who fear him" (H.Q.S9 A123). Another verse "And strive in His cause as ye ought to strive" (H.Q.S22

A78). Also "Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and his Messenger, nor acknowledge the religion of truth, from among the People of the Book until they pay the *Jizyah* with willing submission and feel themselves subdued" (H.Q.S9 A29).

Moreover, earlier Muslim scholars mentioned that the following verse "But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war) but if they repent and establish regular prayers, and pay *Zakat* then open the way for them: For Allah is oft-forgiving, Most Merciful" (H.Q.S9. A5), which they called (ayat al-Sayf) the Sword Verse[109] and also "Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and his Messenger, nor acknowledge the religion of truth, from among the People of the Book until they pay the *Jizyah* with willing submission and feel themselves subdued" (H.Q.S9. A29) had (naskh) abrogation all the verses which had revealed before Surat al-Tauba (S9) which regulating the dealing with the unbelievers[110] such as "Fight in the cause of Allah those who fight you but do not transgress limits; for Allah loveth not transgressors" (H.Q.S2 A190), so when the situation of the Prophet and his followers had changed, the Sword verse was revealed, abrogating the other verses[111].

Therefore, in the first period of Islam the Prophet was ordered by Allah to avoid a confrontation with the polytheists in Makkah "Therefore expound openly what thou art commanded and turn away from those who join false gods with Allah" (H.Q.S15. A94) but at the end of the life of the Prophet and when the Islamic state had the upper hand Surat al-Tauba which was the last Sura of the Qurān was revealed to abrogate the previous ones[112].

So according to the previous view Ibn Rushd mentioned that Muslim scholars agreed that all polytheists should be fought as the following verse says "And fight them on until there is no more persecution and religion becomes Allah's in its entirety ..." (H.Q.S8. A39)[113].

b- The evidence from the Sunna of the Prophet Abu Musā al-Ash'arī has said: "The Holy Prophet was asked which of the three persons carries on *Jihād* for the sake of Allah, one who fights to show his chivalry, or one who fights for the sake of self-respect and honour, or one who fights ostentatiously. The Prophet replied one who fights to uphold the message of Allah, is the person who carries on *Jihād* in cause of Allah" (Bukhārī and Muslim) [114]. The Prophet is reported to have said "I am ordered to fight the people until they say: there is no god but Allah ..." (al- Bukhārī and Muslim) [115]. Muslim also reported that when the Prophet decided to send any leader to fight non-Muslims he ordered him to give the enemy three options, they adopt Islam, pay *al-Jizyah* or, if they refuse then fight them [116]. The letters and messengers which the Prophet sent to the Emperor Heraclius the leader of the Byzantine empire and also to the Persian Emperor Khusrau asked them to embrace Islam "From the Messenger of Allah Muḥammad to Heraclius the great of Rome. Peace be on him who follows the right path. I invite you to adopt Islam; if you accept you will be safe and Allah will reward you twice, but if you reject, it will be a sin and you will be answerable on behalf of your people [117]. These letters could lead us to determine that the Muslim leader has to inform non-Muslims about Islam[118].

c- The great conquest of non-Muslim countries such as Syria, Iraq, Iran, during the period of the fourth Caliphs leads us to look at the reasons for this conquest. If we examine negotiations between the Muslim army leaders and non-Muslim leaders during the period of the fourth caliph we can see that they gave non-Muslims three options. For example the Muslim leaders Khālid bin al-Wālid and Abu 'Ubayda during their conquest of Syria and Iraq gave non-Muslims the three options; adopting Islam, or, if they refused, to pay *al-Jizyah*, and if they refused to pay then they faced war [119]. According to Haykal it become established that the Prophet's companions gave the three options to non-Muslims and he concludes that the main aim of *Jihād* is the calling of non-Muslims to Islam and the application of Islamic law in non-Muslim countries[120]. Dr Zidān also states that during the period of the fourth caliphs non-Muslim countries abolished their independent system and became part of the Islamic state[121].

In conclusion the Qurān, the Sunna and the Muslim jurists all support the view that the Muslim state can wage *Jihād* to make the world of Allah supreme. The first Muslim state established during the Prophet's period was weak and could not take offensive action. But at the end of the Prophet Muḥammad's life after establishing and strengthening the first Islamic state, we could see that he marched to conquer Makkah in the eighth year of the *Hijra* with ten thousand well armed men to raise the word of Allah and to apply Islamic law. According to Aḥmed "This was the largest force that had marched from Medinah"[122]. The Prophet Muḥammad occupied the city without any fighting[123].

THE CONCEPT OF JIHAD IN THE CAUSE OF ALLAH

The terminology of the word 'in the cause of Allah' is part of the special terminology which Islam has established. 'In the cause of Allah' means that the intention[8] of all Muslim action is for the cause of Allah however no one can decide if the intention of the Mujāhid is in the cause of God except Allah[124]. If, therefore, a Muslim gives away something in charity and the main purpose or intention is to receive only some material or moral benefit from society, this act would be not regarded as an act in the cause of Allah. If though the Muslim desires to please Allah by affording assistance to a poor person or by establishing a humanitarian establishment for the collective well-being of society thereby helping needy people, even though the enterprise would be profitable, this charitable act would be deemed to be in the way of Allah[125].

The term 'in the cause of Allah' is a comprehensive concept and takes many forms. The spending of Muslim money on humanitarian activities is one of these elements. A

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[8]This tradition from the Prophet makes clear the intention "That intention determines the worth of

a person's actions and he will attain what he intends. If by immigration his aim is to please Allah and His Messenger then his migration is for this purpose: and if he migrates seeking the attainment of some worldly object, or for the sake of marrying a woman as such his migration will be reckoned for that particular object" (al-Bukhārī and Muslim).

Muslim who is serving his parents does so in the cause of Allah. A Muslim who is spending his money to support the Islamic army likewise is doing so in the cause of Allah[9].

The term 'in the cause of Allah' is used in *Jihād* for the same purpose [10]. The aim of *Jihād* should be the raising of the word of Allah and the establishing of the law of Islam in the world. The objectives of *Jihād* should be completely free from private interests and has no role to play in expansionism or profit; private or public [126]. These principles which limit the meaning of *Jihād* in the cause of Allah are clarified in the Qurān [11] and with the Prophet in the following traditions: "The Prophet was asked: Which of the three persons carries on *Jihād* for the sake of Allah, one who fights to show his chivalry, one who fights for the sake of self-respect and honour, or one who fights ostentatiously? The Prophet replied: The one who fights to uphold the message of Allah, is the person who carries on *Jihād* in the cause of Allah" (al-Bukhārī and Muslim)[127].

In another tradition a Bedouin asked the Prophet "A man may fight for the sake of booty, and another may fight so that he may be mentioned by the people, and a third may fight to show his position; which of these is regarded as fighting in Allah's cause? The Prophet said, he who fights so that Allah's word (Islam) should be superior, fights for Allah's cause" (al- Bukhārī)[128].

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[9]"And spend of your substance in the cause of Allah, and make not your own hands contribute to (your) destruction: But do good; for Allah loveth those who do good" (H.Q.S2. A195).

[10]AS Allah says in the Qurān "Go ye forth (whether equipped) lightly or heavily, and strive and struggle, with your goods and your persons, in the cause of Allah. That is best for you, if ye (but knew)" (H.Q.S9. A41).

[11]"O ye who believe when ye go out in the cause of Allah, investigate carefully, and say not to any one who offers you a salutation: Thou art none of a believer! coveting the perishable goods of this life: with Allah are profits and spoils abundant. Even thus were ye yourselves before, till Allah conferred on you His favors: therefore carefully investigate. For Allah is well aware of all that ye do" (H.Q.S4. A94).

If we examine negotiations between Muslim and non-Muslim army leaders during the great conquest of non-Muslim countries in the period of the Fourth Rightly Guided Caliphs we can see that the main reason for *Jihād* is to call non-Muslims and to make them abstain from the worship of man and to get them to worship Allah and apply Islamic law on earth[12]. According to Khaaduri "In the campaigns against the Byzantines and Persians, the Arab commanders addressed invitations officially to their enemies, inviting them first to accept Islam or pay tribute, before they launched their offensives. The official invitation was, in its most complete form, presented by a commission of a few prominent warriors who carried the invitation either verbally or in written form, to the enemy commander, which contained, essentially, an invitation to adopt the new faith"[129].

Some western writers claim that the economic problems within the Arabic peninsula led the Muslims to seek more fertile lands and other income from outside their land[13].

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[12]There are outstanding cases of negotations which illustrates the character and aim of these negotations between Muslims and non-Muslims such as the negotation which took place before the battle of al-Qadisiyya (637 AD) betwee the Muslim envoy al-Mughira bin Shuba and Rustem. the Persian commander. Rustem opened the negotation by asking this question: "Why did you come here? Al-Mughira replied that our Prophet has ordered us to fight you till you worship Allah alone or give *Jizya*" (al-Bukharī. v4. p 255). Another negotation between Rustem and another envoy who was Rabi bin Amer leads to the same conclusion Rustem opened the negotation by putting the same question "Why did you come here? Rabi. replied: "Allah has sent us to ask you people to abstain from the worship of man and to worship Allah" (Ibn Kathir. al-Bedaia wa al-Nehaia. v7. p 39).

[13]The economic factors are discussed by Professor Bernard Lewis "The Arabian tribes would probably never have been conquered had not the conquests in the north provided an attractive solution to the internal economic problems of the peninsula" (The Arabs in History. 1964. p 52). Nutting states similar reasons for the early Muslim conquest "The Muslim conquest of the Arabian peninsula was now completed. and with a secure base behind them. the Arabs were in a position to move into fresh fields. Syria. Palestine and Iraq seemed to offer both the nearest and the easiest prospects. All three countries were of the utmost strategic and economic importance"(Anthony Nutting. The Arabs. 1964. p36).

Moreover some writers claim that the battles of the Prophet against Polytheists were to increase the power, wealth and prestige of the first Muslim state in Medinah[14].

These views are backed up by little evidence. Khadduri, replying to such suggestions says that "This theory plausible as it is in explaining the outburst of the Arabs from within their peninsula is not enough to interpret the character of a war permanently declared against the unbelievers even after the Muslims had established themselves outside Arabia"[130]. At the same time the main 'Arabic sources of Muslim history did not mention that Muslim armies confiscated non-Muslim possessions during the early Islamic conquests in the reign of the Four Rightly Guided Caliphs. The only cause recognised by the Prophet as *Jihād* by the previous traditions was in the cause of Allah; not in the cause of wealth or other private benefits. According to Waddy, regarding the purpose of *Jihād* "It is quite clear that they did not go out to acquire wealth, land, riches, though these were a by-product. Their purpose was to fight in the path of God"[131].

If the economic purpose was the main reason for *Jihād* then why has Islamic law determined that the protection and security of the lives, religion and property of *al-Dhimmah* should be guaranteed in return for paying al-*jizyah*. There are some examples of political treaties negotiated by the Prophet himself and the Muslim caliphs who came after him which gave the non-Muslims security for their lives, property, and freedom of religious practices as long as they remained loyal to their pacts [15]. According to abu-Zahra, ·· _

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[14]This view is stated by Professor Bernard Lewis "The immigrants. economically uprooted and not wishing to be wholly dependent on the Medinese, turned to the sole remaining profession, that of arms". He also explained the purposes of the expeditions against Makkan commerce "On the one hand they helped to maintain a blockade on the city which alone could ultimately reduce it to submission to the new faith. In the second place, they increased the power, wealth and prestige of the Umma in Medinah" (The Arabs in History, 1964, p 44).

[15]According to Hamid Allah. the Prophet made a peace treaty with the leader of the Christians at Najrān (now a city in the Kingdom of Saudi Arabia). The Prophet promised to protect their churches, cloisters, houses of prayer and save their religion, their lives and their property in return for paying al-jizyah. The Prophet also made a treaty with one of the Christian leaders. Ibn al-Harith

during the 8th century AD Qutayba bin Muslim Albāhelī (a Muslim army leader) conquered some territory of the Samarqand[16] without giving its citizens the option of adopting Islam, paying *al-jizyah* or war. The citizens complained to the Muslim Caliph, 'Umar bin 'Abdulaziz. The Caliph's decision was to order the leader of the army and his troops to withdraw from the territory to allow the citizens to choose one of the three options. After the execution of the order, some of the citizens choose Islam and others choose to pay the *Jizyah*[132].

We can conclude that the Mujāhid urges participation in *Jihād* solely for the cause of Allah and not for any other purpose "God accepts only such needs as are executed for the purpose of obtaining His good-will and the doers seek to serve no personal or collective objectives"[133]. "Islam outlawed all forms of war except the *Jihād*, that is, the war in Allah's path" according to Khadduri[134].

In researching this subject it was found that most of the old and contemporary Muslim scholars did not discuss or establish a clear view regarding the meaning of *Jihād* in the cause of Allah. To clarify this meaning this research will try to establish a criterion that will help us to understand and define the concept of *Jihād* in the cause of Allah. Our

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bin al-Kamā. saying "I (Prophet Muhammad) promise to protect Christians, their churches, cloisters, houses of prayer, lives, property ... and safeguard their religion and beliefs from what I protect myself ... and people of Islam from my nation" (Majmw'āt al-Wāthāiq al-Syāsyah, Dār al-Nfāis, Beirut, 1983 AD, pp 175-190). Also the second Caliph 'Umar bin al-Qatāb followed the instructions of the Prophet and made many treaties with non-Muslims. The best model in this case is the treaty which the Patriarch of Jerusalem signed with the Caliph 'Umar. The Patriarch demanded that the treaty of Jerusalem should be signed by the Caliph himself rather than by his representative. The Caliph agreed and came to Jerusalem and signed the treaty. The most important aspect of the treaty stated as follows: 'Umar, prince of the believers, has guaranteed to the people of Jerusalem: their lives, property, churches and crosses ... Their churches will not be dwelt in [by foreigners], nor will they be destroyed or ruined in any part. Nor will their crosses or property [be destroyed]" (Khadduri, pp 213-214).

[16]It was a part of the Soviet Union.

discussion will be based on an examination of the main purposes of some of the Prophet's battles, he being the "second legislator" of the Islamic law; to see the main reasons for these battles, as all of his battles were in the cause of Allah. From the study of these reasons we might also establish some principles which could be characterise the meaning of *Jihād* as a military action in the cause of Allah. The following are some forms of *Jihād* which applied during the life of the Prophet and the period of the fourth guided caliph and which were clearly in the cause of Allah.

1- The defence of the Islamic religion: This kind of *Jihād* is one element of the comprehensive concept 'in the cause of Allah'. It has been applied during the life of the Prophet Muḥammad. The battle of Badr is a clear example. The Quraish tribe marched from Makkah to support their caravan from Muslim attack, when they received news that their caravan had escaped and was on its way to their land the aim was changed. The Quraish decided to attack the new Islamic state and destroy its religion. This aim could be realised when the Prophet himself started to pray to Allah to help the new Muslim *Umma*. Since the main aim of the non-believers army was to destroy the new religion he said "O Allah, give us the assistance which you promised. O Allah, if this little army perishes, when will you be worshipped again" [135]. Allah responded to the Prophet's prayer "Remember ye implored the assistance of your Lord and He answered you: I will assist you with a thousand of the angels ranks on ranks" (H.Q.S8. A9). The Prophet was thus engaged in battle with his companions for the defence of the Islamic religion against the non-Muslims' aggression.

The battle of Khandaq (Trench), has been mentioned briefly earlier. In this battle the Quraish tribe prepared big armies with their allies to destroy the Islamic state and its religion in Medinah. The Prophet and his companions·defended their religion and state by using a new military method; the trench. After twenty days of siege the non-Muslim army withdrew without any positive result. From these incident we can conclude that the Prophet used *Jihād* in the defence of the religion as an element in the cause of Allah.

Prophet. The battles of Badr, Uḥud and Trench are clear examples of this. The Quraish tribe had many reasons for attacking the first Islamic state in Medinah and one of these was to terminate the Muslim community. In all battles the Prophet and his followers were in a defensive situation against the non-Muslim aggressors and had to protect themselves . The Qurān orders Muslim to fight in self-defence "Fight in the cause of Allah those who fight you ..." (H.Q.S2. A190). The Prophet declared *Jihād* in self defence in the cause of Allah in all of these battles.

3- The defence of Muslim land: This kind of *Jihād* has been applied in the Sunna of the Prophet. There are many examples which support this but the battle of Trench was a particularly clear example. The non-Muslim army laid siege to the Islamic state for twenty days and the Muslim *Umma* under the leadership of the Prophet defended their land against this aggression. So the Prophet used *Jihād* in the cause of Allah in defence of the Muslim land. Dr al-A'lyānī states that all Muslim jurists agree that the whole able Muslim community has to be involved in *Jihād* against non-Muslim attack[136].

4- The defence of Muslim wealth against non-Muslim aggression: The battles of Badr, Uḥud and the trench could be good examples regarding this element. The Prophet and his companions were involved in *Jihād* against non-Muslim aggression to protect their wealth. If the Quraish tribe could have defeated the first Islamic state they would have seized their wealth and property. A second incident occurred in the fifth year of the *Hijra*, a group of non-Muslims raided the outskirts of the Islamic state, seized camels, killed a herdsman and captured his wife. One of the Prophet's companions followed them and called for help. The Prophet alerted his followers and sent some of them to pursue the raiders, he followed a little later with another force. The Muslim force overtook the enemy's rear, seized the stolen camels and liberated the captive woman[137]. The above mentioned incidents make clear that the Prophet declared *Jihād* in the cause of Allah in defence of Muslim wealth against non-Muslim aggression.

5- Attacking the enemy who is preparing to attack the Muslim state. The battle of Banī al-Mustaliq (al-Murysi') is a good example of this. This battle took place in the fifth

41

year of the *Hijra* between the Prophet with his companions and Banī al-Mustaliq, a branch of the Khuzā'ah tribe.

The first reason for this battle was that the Khuzā'ah tribe were joining the Quraish army in the attack on the Prophet and his companions during the battle of Uḥad[138]. Secondly, victory over the Muslims by the Quraish encouraged other tribes to attack the Muslim state in Medinah. The leader of the Banī al-Mustaliq armed his tribe to launch further attacks against the Islamic state[139].

The Prophet was therefore determined on attacking Banī al-Mustaliq before they attacked him. He marched on them and attacked them near the al-Murysi' water where, after a brief resistance, they were defeated. Ten men were killed and the remainder were taken as prisoners of war. The Prophet distributed war booty among his followers, and married the daughter of the chief of the tribe. At this point, all Muslims set free the prisoners[140].

We observe that in this battle when the Prophet become aware that the Banī al-Mustaliq tribe was going to attack the Islamic state, he decided to attack them inside their land. This attack from the Prophet was a *Jihād* in the cause of Allah. The Islamic state therefore has the right to attack an enemy inside their country if they plan to attack Muslims.

6- The propagation of Islam: There are some strong examples from the era of the Prophet which support the view that he declared *Jihād* in the cause of Allah against non-Muslim states to propagate Islam.

A- The Skirmish of Mwatah: This skirmish took place in the eighth year of the *Hijra*. The reason for this skirmish according to al-Wāqidī, was that the Prophet had sent a messenger to the Byzantine governor of Busra, this messenger had been intercepted and put to death by Shurḥabil bin 'Amr from the Ghassān tribe at Mwatah[141]. Al-'Umarī, states that the reason for the battle mentioned by al- Wāqidī, is weak; he is the only scholar who puts forwards this reason. Al-'Umarī adds that the real reason was the propagation of Islam[142].

42

The Prophet prepared three thousand Muslims and sent them to Mwatah under the leadership of Zayd bin Hārithah. In the event of Zayd's death Ja'far bin Abu Tālib was to be the leader, and if Ja'far should fall 'AbudAllah bin Rawāhah was to take his place. The Byzantine's army consisted of 200,000 soldiers 100,000 Byzantine and 100,000 from Arab tribes[143]. The two armies met at Mwatah. The two leaders of the Muslim army, Zayd and Ja'far were killed. The Muslim army appointed Khālid bin al-Wālid as leader. After some further fighting Khālid decided to lead the Muslim army back to the capital of the Islamic state[144]. In this encounter the Muslim army losses were only 13 [145] killed; Muslim writers say that the Byzantine losses were heavy though no figures are given.

B- The battle of Tabuk:[17]. It was in the ninth year of the *Hijra*. The reason for this battle as given by al-Wāqidī and ibn Sa'ad was that the news reached the Prophet that the Byzantines were mobilizing a huge army to invade the Islamic state. The Prophet decided to meet them[146]. Ibn Kathīr says that the Prophet marched to meet the Byzantines to propagate Islam. They were as Allah says in the Qurān the nearest nation to him and he was also keen to[18] propagate Islam [147]. Some Muslim jurists such as S Qutb support this idea[148]. The Muslim army consisted of 30,000 men.

The Prophet reached Tabuk and camped for twenty days without any confrontation between his army and the Byzantines. In Tabuk the Prophet met the Governor of Aylah, the people of Jarbā and Adhruh; they agreed to pay *Jizyah* to the Prophet in return for the signing of peace treaties for all of them[149].

In the battle of Mwatah we could conclude that the Prophet sent his army to the north of the Arabic Peninsula in a *Jihād* mission to propagate Islam and to apply Islamic law

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[17]Tabuk now is a city in the north west in the Kingdom of Saudi Arabia.

[18]"O ye who believe! Fight the unbelievers who are near to you and let them find harshness in you: and know that Allah is with those who fear Him" (H.Q.S9. A123).

to that part of land. This initial battle could not achieve this mission but after the death of the Prophet and within a few years during the period of the fourth caliph the Islamic state conquered these countries in a *Jihād* and applied Islamic law as the Prophet wanted. In the second battle the Prophet marched to Tabuk and declared *Jihād* in the cause of Allah to propagate Islam and to apply Islamic law on the world.

7- The fight against apostasy: This kind of fight did not appear during the life of the Prophet but at the beginning of the period of the first caliph Abu Bakr, shortly after the Prophet died, many of the Najd tribes decided not to pay *Zakat* to the new governor of the Islamic state; in so doing they had rejected one of the five pillars of Islam and disobeyed the new leadership. According to Kennedy "The tribes of Najd tried to arrange a compromise whereby they remained Muslims but no longer had to pay the tax to Medinah" [150]. The caliph prepared the *Umma* for *Jihād* in the cause of Allah against the apostasy and sent a large army under the command of Khālid bin al-Walīd [151]. The apostasy was defeated and the tribes agreed to pay *Zakat* and to be under the control of the Islamic state. Muslim jurists al- Māwardī [152] and Ibn Qudāma [153] consider this fighting as fighting against non-Muslims. Ibn Taymiya states that any group which belonged to Islam and who then rejected some of the clear Islamic Sharī'h should face *Jihād*. He added that all Muslims agree with this as the first caliph Abu Bakr has done[154]. The war against apostasy which the first caliph announced is *Jihād* in the cause of Allah.

After the *Ridda* 'apostasy' according to Professor Hitti, "Islam was presently united and ready to march"[155], to raise the word of Allah. Syria in the north of the Arabic Peninsula were the first to be marched upon.

8- The defence of *Ahl al-Dhimmah*: We discussed this subject earlier and clarified that *Ahl al-Dhimmah* refers to those non-Muslims who have concluded a permanent agreement with a Muslim authority getting protection for their lives, religion, family and property for the paying *Jizyah*, if subject to an attack are entitled to be defended by the Muslim in honour of the agreement. According to Abu Zahra when the Muslim army during

the great conquest had conquered Homes[19] and signed a protection agreement when the Romans decided to attack the city, the Muslim army's leader Abu 'Ubaydah[20] thought that, despite the agreement, his army could not protect the city as they were affected by a dangerous disease. The leader returned them their money and informed them that if they could defeat the Romans they would reinstitute the agreement. The Muslim army did duly win[156].

This incident shows us that the security of *Dhimmah* inside the Islamic state and the protection for them from any attack are the essentials of the *Dhimmah* agreement. The Muslim army leader returned to the *Dhimmah* their tax when he thought that his army was not able to keep to the agreement. Al-Shaybānī and al-Sarakhāsī considered the defence and help of *Ahl al-Dhimmah* as an obligation on the *Imām* of the same status it would have been had they been Muslims [157]. Al-Māwardī states that the *Imām* has to take *Jizyah* from *Ahl al-Dhimmah* in return for their protection[158]. In his book al-Firq, *Imām* al-Qarāfī al-Mālikī, quoting from Marātīb al-Ijmā' by Ibn Ḥazm states "Muslim who have entered into a pact of *dhimmah*, should fight until the death with those who try to oppress non-Muslims in the Islamic state in order to abide by the guarantee given to them by Almighty Allah, His Messenger, upon whom be peace. Otherwise they will be considered as traitors"[159].

During the Tartars invasion of Syria Ibn Taymiya went as emissary to Qatlo Shah, a Tartar army leader, to negotiate the release of all prisoners of war both Muslim and non-Muslim. He agreed to free the Muslim prisoners only. Ibn Taymiya, insisted on the release of non-Muslims because they were under Muslim protection. His persistence paid off, and the non-Muslims were released[160]. As has been mentioned Muslim scholars considered the status of *Ahl al-Dhimmah* the same as that of Muslims. Contemporary Muslim scholar, al-

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[19]now is a city in the republic of Syria.

[20]Abu 'Ubaydah was one of the closest of the Prophet's followers.

45

Qaradāwī, says that "The *fuqahā* of the various Islamic legal schools agree that Muslims must protect the non-Muslims from any oppression, and must protect their lives, as they are bound to do for all who live in the Islamic state" [161]. Abu 'Ubaid the prominent Muslim scholar agrees that the fight to protect *Ahl al-Dhimmah* is *Jihād* [162]. This theses clarifies that in the defence of Muslims it is *Jihād* in the cause of Allah. As the defence of *Dhimmah* has the same legal status and Abu 'Ubaid has said this, then clearly it is *Jihād* in the cause of Allah.

9- The broken treaties from non-Muslims: This kind of *Jihād* has been applied during the era of the Prophet in the cause of Allah. When the Prophet had emigrated from Makkah to Medinah, according to Ibn Hishām, he established an agreement with all the Jewish tribes in Medinah. Each party agreed, in a signed document, not to support an enemy against the other side. When the city was attacked, both sides vowed to protect it [163]. Payne states that the Prophet drew up a document with the Jews, which granted them equal rights of citizenship and full religious liberty [164].

During the siege of the Islamic state in the battle of Trench the Qurayzah tribe despite being signatories to the treaty decided to violate it and to attack Muslims from inside the city. The Prophet sent a delegation to Banu Qurayzah in an attempt to persuade them to abide by the treaty and support the Muslim state, they refused [165]. According to Payne "The Jewish tribe of the Banu Qurayzah was found to be in direct communication with the enemy. The Prophet's army had been terrified when it became known that the Banu Qurayzah were in league with the enemy" [166].

After the military failure of the Quraish and their allies, and their complete withdrawal, the Prophet, by way of reprisal, decided to attack the Banu Qurayzah for violating the treaty and supporting the Prophet's enemies. He announced *Jihād* and marched with his followers to the Banu Qurayzah forts and lay siege to them for twenty five days. During the siege, some negotiations occurred between the two parties, the Banu Qurayzah requested surrender on certain conditions, but the tribe were told to surrender unconditionally. In the end they agreed [167]. The Prophet therefore had declared *Jihād* in the

cause of Allah against those who had broken the treaty. This indicates that the Islamic state has the right to do so against non-Muslims who signed a treaty with an Islamic state and then tried to attack Muslims. The Muslims attack will be *Jihād* in the cause of Allah.

10- The fight against the Khawārij[21] : This kind of fight did not occur during the period of the Prophet. The appearance of this sect and the application of this *Jihād* appeared during the period of the fourth caliph, 'Alī. The Khawārij were not the only sect who appeared during this period, but their views and beliefs continued to appear within Muslim society until the appearance of the False Messiah, according to Ibn Taymiya [168]. Muslim jurists such as Ibn Taymiya considered the fight against this sect as *Jihād* against non-believers. *Jihād* against the Khawārij or any group who believe similarly is an element of the comprehensive concept of *Jihād* in the cause of Allah.

FORMS OF JIHAD

Some of the previous sections have clarified the meaning of *Jihād* in Islamic law. Essentially this means fighting in the cause of Allah and ensuring Allah's word reigns supreme. Sometimes it can also refer to *Jihād* against evil and decay. Some authors distinguish the lesser *Jihād* which is the fight in the cause of Allah by using military power against non-believers is a minor struggle (smaller *Jihād*) from the greater *Jihād* which is a more spiritual act which involves fighting one's evil tendencies [169]. According to Khadduri the *Jihād* by heart is concerned with combating the devil and escaping his persuasion to evil. It is so significant in the eyes of the Prophet Muḥammad that it is regarded as the greater *Jihād* [170]. Waddy also clarified his view regarding the greater and lesser *Jihād* when he said "The greater *Jihād* is fighting one's animal tendencies. It is internal rather than external: striving in the path of God to overcome one's animal side ... the lesser *Jihād* fighting on behalf of the community" [171]. They have established their argument on the saying (*ḥadith*)

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[21]This research will discuss the views of this sect in detail in the next chapters.

of the Prophet Muḥammad when he returned from one of his battles. He said "we have returned from the smaller *Jihād* to the greater *Jihād*, his followers asked what is the greater *Jihād* and he answered the *Jihād* of one's evil" (al-Bayhaqī).

To discuss this view we could say this *ḥadith* regarded by famous Muslim scholars in *ḥadith* such as al-Bayhaqī, al-Suyutī and a contemporary scholar al-Albānī as a weak *ḥadith* [172]. Al-Bannā also makes the same point which confirms that this *ḥadith* is a weak one. Al-Bannā also added that this idea has been spread to turn Muslims away from the importance of *Jihād* [173]. The fighting of the Muslim's evil is correct but not as the greater *Jihād* or as more important than *Jihād*, because *Jihād* always means the fighting in the way of Allah when it is used without qualification. It could be one of the meanings of *Jihād*; it is an important factor to prepare the *Mujāhid* for the *Jihād* by fighting his evil so that he is ready to raise Allah's word [174]. In the Qurān Allah ordered all Muslims to strive against non-believers, one's sinful nature and all evil and corruption [175] "And strive in his cause as ye ought to strive, (with sincerity under discipline)" (H.Q.S22 A78). The *Jihād* could be accomplished in different ways such as:

In the first place *Jihād* of hands [176], which means supporting the right and correcting the wrong and helping the *Mujāhids* by offering them any assistance they may need [177]. The Prophet is reported to have said "Anybody among you notices something evil, should correct it with his own hands, and if he is unable to do so, he should prohibit the same with his tongue; if he is unable to do this, he should at least consider it as bad in his heart; this is the lowest degree of faith" (Muslim) [178]. The Prophet notified his followers of his preference which is meant to prevent people from committing abominable acts.

In the second place *Jihād* of tongue, which means exerting oneself to convince non-Muslims to adopt Islam, helping the Muslim state by raising their warriors moral or speaking up against tyranny [179]. It was reported that the Prophet Muḥammad was once asked "what is the best type of *Jihād*, he said: speaking truth before a tyrant ruler (reported by al-Nasāī) [180]. Muslims had a custom before fighting started, designed to strengthen the morale of the

Muslim army by reading some Quranic verses on *Jihād*, and reciting chivalrous poetry which raised certain moral qualities such as courage, faith and honour[181].

In the third place *Jihād* of heart, which means the protecting of oneself from evil and the hating of the forbidden in Islamic *Shariī h*[182].

In the fourth place *Jihād* of wealth, some Muslim jurists such as Ibn al-Qayyim deemed this kind of *Jihād* as a compulsory one because in the Qurān Allah ordered Muslims to fight in the way of Allah by themselves and their wealth[183] such as in this verse "Go ye forth, (weather equipped) lightly or heavily, and strive and struggle, with your goods and your persons, in the cause of Allah. That is best for you, if ye (but knew)" (H.Q.S9. A41). The contribution of money could be a help in supporting the *Jihād* ists by providing about weapons and any requirements they may need "O ye who believe shall lead you to a bargain that will save you from a grievous chastisement? That ye believe in Allah and his Messenger, and that ye strive (your utmost) in the cause of Allah, with your wealth and your persons ..." (H.Q.S61 A10-11).

THE ROLE OF THE IMAM IN THE DECLARATION OF JIHAD

The *Imām* is the chief of both the civil and military authorities. He also appoints civil governors as well as military leaders. The Prophet and some of the Muslim leaders who came after him often took the field as the commander of the army but on the other hand, sometimes they appointed commanders who took their responsibilities in the controlling of *Jihād*. Hence out of the fifty-five battles and detachments[22] during the life of the Prophet, he commanded twenty six or twenty seven of them and the rest were commanded by some of his followers[184]. So the important question is: Does the *Imām* have to give his permission for a *Jihād* to declared?

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[22]The expedition commanded by the Prophet himself. were called ghazwas and those commanded

by some of the Prophet followers were called sariyyas.

To answer this question. The obedience of the *Imām* is essential in the Islamic religion "O ye who believe! obey Allah, and obey the Messenger, and those charged with authority among you ..." (H.Q.S4. A59), the previous verse clarifies this "Obey Allah and obey his Messenger" is immediately followed by the words which were in authority among the Muslim community. The Prophet clarified the importance of the obedience of the Muslim leader in many traditions such as "One who obeys me, obeys Allah, and one who disobeys me disobeys Allah; and the person who obeys the man in authority obeys me, and he who disobeys the man of authority disobeys me" (al-Bukhārī and Muslim)[77] . Islam has always emphasised leadership and whenever Muslims are collectively engaged in a matter of common importance a person will be chosen to lead [186]. As well as this Muslim scholars such as Ibn Qudāma and al- Al-Shaybānī state that a *Jihād* can be solely called by the *Imām* and the *Umma* has to obey him[187], the later jurist added that the importance and authority of the *Imām* remains supreme; *Jihād* remains obligatory on the Muslim *Umma* and Muslims have to fight even if the head of the state is unjust[188].

As mentioned earlier *Jihād* is a collective as well as an individual duty. An example of the later case is if the Islamic state was threatened by a sudden attack from non-Muslims, it is the duty of every believer including women and children to protect themselves and their religion without an authorization from the *Imām*[189]. The following verse clarifies the right of the Muslim *Umma* to fight against non-Muslim aggression "Fight in the cause of Allah those who fight you ... " (H.Q.S2. A190).

The Sunna of the Prophet also has dealt with this situation. After the battle of Qurayzah a group of non-believers raided the outskirts of the city of Medinah, seized their camels, killed their shepherds and captured his wife. One of the Prophet's followers sought the attackers and fought them without permission from the Prophet, the Prophet agreed on this action[190].

Whilst examining early Islamic political history we see that even if the Muslim *Imām* died the Muslim *Umma* did not stop *Jihād* until a successor was appointed[191].

Jihād is also a collective duty for the whole Muslim community, in which Islam can be propagated. It is a state instrument; the *Imām*, as head of the state is therefore the person responsible for protecting the religion and managing the different civil and military affairs which are essential to the Islamic state[192]. The declaration of *Jihād* is one of the responsibilities of the head of the Islamic state. He does this after consulting with his advisors[193]. In addition to *Jihād* the *Imām* is also responsible for the appointing of the field commanders, [194] again after the relevant consultations: The Muslim *Umma* and the *Mujāhidyyn* have to fulfill certain basic duties such as obedience and loyalty to the *Imām* and to the commander of the army. This principle was clear during the battles of the Prophet when he was the head of state and also responsible for declaring *Jihād* and appointing field commanders[23]. Also when we examine the era of the Four Right-Guided Caliphs after the death of the Prophet and most of the Islamic states who were later established we see that the declaring of *Jihād* and the appointing of the field commanders remained an instrument in the hands of the head of the Islamic state.

TERMINATION OF JIHAD

The aim of the collective *Jihād* is to raise the word of Allah, to establish his law in this life and to spread Islam without force to anyone who wishes to change his faith. This aim can be attained in three ways. In the first place, non-Muslims can be converted to Islam, in this case the Islamic state has to accept their conversion and terminate *Jihād*. They then have the same rights and obligations as other Muslims. The termination of *Jihād* after the acceptance of Islam is mentioned many times in the Qurān and the Sunna. "Say to the desert

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[23]The Qurān clarifies the authority of the Prophet who was the head of the Islamic state to declare and request that Muslims participate in jihad in the following verses "O Prophet rouse the believers to the fight ..." (H.Q.S8. A65). Also another verse "O ye who believe! what is the matter with you, that when ye are asked to go forth in the cause of Allah, ye cling heavily to the earth ..." (H.Q.S9. A38). All Muslim heads of state are vested with the same authority.

Arabs who lagged behind: Ye shall be summoned (to fight) against a people given to vehement war: then shall ye fight, or they shall submit ... " (H.Q.S48. A16).

From the Sunna we have some traditions which assure the protection of those who embrace Islam during *Jihād*. According to Muslim, when one of the Prophet's followers asked him would he kill a non-Muslim enemy with whom he had fought, if in the struggle he had received a cut, lost the prisoner but later recaptured him, and if at this point the non-Muslim had embraced Islam, the Prophet answered no [195]. In another incident reported by Muslim, the Prophet sent a detachment to an Arab tribe during the mission, one of the Prophet's followers named Osāma, told the Prophet that he had killed one of the non-Muslim troops after he had said "There is no God but God". The Prophet asked Osāma: "Did you kill him after he said there is no God but God?" Osāma answered that the person was afraid of death. Then the Prophet said: "Did you see his heart to check if he embraced Islam to save his life or not? Osāma said that the Prophet continued to ask this question until he wished that he had not been a Muslim before and could now adopt Islam with a fresh start and a clear conscience[196]. These traditions[24] indicate clearly that the head of the Islamic state has to terminate *Jihād* when non-believers embrace Islam[197].

In the second place, *Jihād* can also be terminated if non-Muslim states agree to conclude a permanent agreement with a Muslim state without converting their faith to Islam. In this case they will be under *Ahl al-Dimmah* category and will obtain a special status from the Islamic authority. Under this agreement they will getting protection for their faith, lives, families and properties in return for paying *jizyah*[25]. Al- Māwardī advises the *Imām* to

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[24]There are also many traditions which support this principle, the Prophet is reported for example to have said "I have been commanded (by Allah) that I should continue my contention with the people till they bear witness that there is none worthy of worship, except Allah, and that Muḥammad is his Messenger ... " (al-Bukhārī and Muslim). Another tradition says that when the Prophet decided to send any leader to fight non-believers, he ordered them to give the enemy three options: a- they adopt Islam b-pay *jizyah*- if they refuse then fight them (Muslim).

[25]We have discussed the state and the protection of *Ahl al-Dhimmah* earlier in this chapter.

continue fighting with the enemy until victory is achieved [26] and he added that the continuation in *Jihād* is indispensable until the *Imām* gets one of four results, the two result which are relevant to our subject are: first the enemy of Islam will adopt Islam and have the same rights and obligations as Muslims, secondly the enemy will agree to pay *jizyah* to get protection from the Islamic state[198].

In the third place, Muslim scholars are also determined that *Jihād* can be terminated if the Islamic state has suffered drastic hardship and the Muslim leader feels that the Muslim army is not powerful enough to continue fighting. In this case the *Imām* might well come to a peace treaty with the enemy[199]. The peace treaty with the non-Muslim enemy is permitted by divine legislation "How can there be a covenant before Allah and his Messenger, with the Pagans, except those with whom ye made a treaty near the sacred mosque? As long as these stand true to you, stand ye true to them: For Allah doth love the righteous" (H.Q.S9. A7). The Prophet concluded a treaty with the Quraish, known as the al-Ḥudaibiyah treaty, the duration of this treaty was ten years and is regarded by many Muslim jurists as a model for subsequent treaties. The *Imām* is not to exceed the period of the Ḥudaibiyah as a result. Muslim jurists also mentioned that the *Imām* has to resume *Jihād* after the expiration of the period of the treaty if the Islamic state was in a position to do so. Alternatively if the *Imām* feels that the Islamic state is still not in a position to resume *Jihād*, he may renew the treaty for a similar period or a lesser one[200]. Hence the Ḥanafī and Shāfi'ī schools mentioned that a peace treaty with a non-Muslim state should not exceed ten years. Their argument is based on the period of the Ḥudaibiyah treaty. A few jurists say that the Ḥudaibiyah treaty did not last ten years, and therefore the peace treaty which the *Imām* could conclude should be less than ten years[201].

A few Muslim jurists say that if the *Imām* feels that his state is not powerful enough to resist non-Muslim aggression he could pay tribute to the enemy and conclude a peace

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[26]Al-Māwardī quotes this verse which urges Muslim to be patient during a jihad against non-

believers "O ye who believe! persevere in patience and constancy; vie in such perseverance: strengthen each other; and fear Allah; that ye may prosper" (H.Q.S3. A200).

treaty with them to avoid attack. Muslim jurist Abu 'Ubid, states that under Umayyad rule Mu'āwiya the Muslim caliph, concluded a peace treaty with the Byzantines in which he paid tribute in order to avoid attack on the Islamic state[202].

This research has found silence on the issue of an unsuccessful *Jihād*. Perhaps defeat is regarded as unlikely or at least unthinkable[203]. Some modern Muslim scholars do believe that the *Imām* has the right to conclude a peace treaty with a non-Muslim state if to sign such a treaty is clearly to the advantage of the Islamic state[204].

The Prophet concluded the al-Ḥudaibiyah treaty with non-believers even though his side were in the stronger position. This treaty establishes the right of the Muslim leaders to conclude peace treaties on a temporary basis when to do so is considered in their interests.

CONCLUSION

The law of *Jihād* according to the early prominent Muslim scholars has been discussed. It is clear that earlier scholars agreed that *Jihād* is a collective obligation, this means that when a limited number of Muslims carried out this obligation the remaining Muslims are exempted. However, in certain cases this obligation might become an individual one upon every able-bodied person such as when the Islamic state or part of it comes under attack by non-Muslim forces.

Previous scholars also agreed that it is not allowed for Muslims to declare *Jihād* and attack non-Muslims before the summons of Islam has reached them. This agreement is based on the following verse "... nor would we punish until we had sent a messenger (to give warning)" (H.Q.S17. A15).

The aim of *Jihād* according to earlier Muslim scholars is to defend the Islamic state against non-Muslim aggression and also to raise high the word of Allah by applying the Islamic law to the whole world.

This chapter clarified the point that not every battle applied by Muslims can simply be called *Jihād* but to call such a battle *Jihād* it must be in the cause of Allah. This term is a comprehensive concept and means that the declaration of *Jihād* should be free from any private or individual interest but only to defend Muslim countries and also to establish the law of Islam.

Jihād on the other hand has many forms; it could be by hands, tongue, and heart but when the term *Jihād* is used without qualification it means a military *Jihād* in the cause of Allah as clarified. According to the great earlier scholars who established the Islamic fiqh their definitions of the term *Jihād* is the fighting of unbelievers in order to raise high the word of Allah.

Also, this chapter demonstrates that earlier Muslim scholars agreed that the declaration of the collective *Jihād* is not a personal decision but it is one of the main responsibility of a Muslim ruler.

This chapter as we have seen concentrated mainly on the theory of the concept of *Jihād* according to the views of earlier scholars. As this thesis is concerned mainly with the military *Jihād*, chapter two therefore will discuss some types of fighting which could have occurred between Muslim and non-Muslim states and also between the Muslims themselves to see which types of fighting is deemed by Muslim scholars as *Jihād* and which are not, and why?

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CHAPTER TWO

THE KINDS OF FIGHTING AND WHICH ARE CALLED JIHAD IN ISLAMIC LAW

INTRODUCTION

Muslim jurists distinguish between two kinds of *Jihād*: that against non-believers and that against Muslims. An early Muslim jurists, al-Māwardī, mentions two categories regarding the *Jihād* of non-believers. First, the *Jihād* against *al-Mushrikin* (polytheists), second, the *Jihād* against *Ahil al-Kitāb* (people of the book). Al-Shaybānī does not subdivide as al-Māwardī does but he gives the same information [1]. Al- Māwardī during his discussion about the fighting against Muslims does not make clear that it is *Jihād*, but he does subdivide the fighting against Muslims into three categories: first, against *Ahil al-Rida* (apostates), second, against *Ahil al-Baghī* (rebels), and third, the fighting against *al-Muhāribūn (highwaymen)* [2].

On the other hand, wars according to Ibn Khaldun could be divided into four kinds. Firstly is the tribal warfare, secondly, raids which are characteristic of primitive nations, thirdly, the wars which prescribed by the sharī'h which means *Jihād*, and fourthly, wars against rebels. He added that the first two wars are unjustified because they are wars of disobedience while the other two are just wars [3].

This chapter will deal with some fighting in Islamic law, it will clarify the different kinds of it, such as the using of force to change the head of the Islamic state (*Imām*), or the

fight against the People of the Book. The question why this is called *Jihād* is posed, and answered.

THE JIHAD AGAINST AL-MUSHRIKIN (POLYTHEISTS)

The general view of the Muslim jurists regarding the treatment of polytheists is that Islam ordered its followers to fight those polytheists who deny the unity of Allah. They are given two choices; either to accept Islam or face fight[4]. In several Qurānic verses Muslims are under an obligation to fight polytheists. "But when the forbidden months are past, then fight and slay the pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war) but if they repent and establish regular prayers and pay *Zakat* then open the way for them: for Allah is oft-forgiving most merciful" (H.Q.S9. A5). S. Qutb, in his interpretation of this *Sura* states that, this *Sura* was established in an attempt to build the relationship between the Islamic state and the whole polytheist population in the Arabic peninsula, as well as with the people of the book. Before this verse it states that polytheists had twenty two years to embrace Islam but some of them were still against it. When the time limit mentioned expired, they were given the opportunity to embrace Islam or face *Jihād*. Those who deny the unity of Allah do not have a place in the Arabic peninsula [5]. In another verse it states "O Prophet strive hard against the unbelievers and hypocrites and be firm against them. Their abode is Hell, an evil refuge indeed" (H.Q.S9 A73).

In the *ḥadith* the Prophet Muḥammad is reported to have said "I have been ordered to fight with the people till they say none has the right to be worshipped but Allah, and whoever says none has the right to be worshipped but Allah, his life and property will be saved by me except for Islamic law and his accounts will be with Allah (either to punish him or to forgive him)[6]. From the Islamic historical point of view the Prophet Muhammad after establishing and strengthening the first Islamic state waged the *Jihād* against Arab polytheists until they accepted Islam[7]. According to Khadduri "All the jurist, perhaps

without exception, assert that polytheism and Islam cannot exist together" [8]. In other words *Jihād* is a sanction against polytheism and polytheists who reject the embracing of Islam.

At the same time there are some Muslim jurists such as Mālik, al-Aozā'ī, and Ibn al-Qayyim who hold a different view; polytheists have the same right as the people of the book and the Magi namely have the right to pay *al-jizyah*. Their evidence is the saying of the Prophet that when he decided to send any leader to fight non-Muslims he ordered them to give the enemy three options, that they adopt Islam, if they refused then ask them to pay *al-jizyah*, if they refused to pay *al-jizyah*, they were to be fought. This *hadith* is strong evidence that the Prophet allowed the taking of *al-jizyah* from all non-Muslims [9]. The Prophet took *al-jizyah* from the people of Bahrain who were Magi and not the people of the book [ ]. He also concluded a peace treaty with the Arab Christians at Najran [ ] guaranteeing them security, with regards to their life, property and religion and leaving them a certain tribute, *al-jizyah*, as a token of protection [2]. The final proof is that the refusal to accept the *jizyah* from polytheists is deemed as forcing people to embrace Islam by duress which conflicts with Islamic law [3] as has been mentioned earlier. Islam does not force people to change their faith. They can do so freely if they wish "Let there be no compulsion in religion: truth stand out clear from error" (H.Q.S2 A256). This view is more acceptable. This kind of fighting is called *Jihād* in Islamic law because it is against non-Muslims, to raise Allah's words highest and to apply the religion of Allah which is Islam.

THE JIHAD AGAINST THE PEOPLE OF THE BOOK (AHIL AL-KITāB)

Islamic law showed leniency to the people of the book who are the Jews and Christians, because when Allah sent the last Messenger Prophet Muhammad, they had accepted belief in Allah but not in His Prophet Muhammad or the Qurān [14]. Islamic law divides people into two major groups; Muslims and non-Muslims. This division is based on the acceptance of Islam. At the same time Islam rejects all other differences between people

whether based on colour, race, origins or any other differences, because of the message of Islam which was sent to all mankind[15]. This argument is based on many verses in the Qurān such as "O mankind we created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you" (H.Q.S49 A13). Therefore *Jihād* is waged against the people of the book to raise the word of Allah and to apply Islamic law not to force people to embrace Islam. At the same time according to many Muslim jurists such as Sayyid Qutb Islamic law is a comprehensive system for mankind which deals with political, international and social relations as well as religious matters [16]. Allah says in the Qurān "And if any fail to judge by what Allah hath revealed they are wrong-doers ... Do they then seek after a judgement of (the days of) ignorance? but who, for a people whose faith is assured, can give better judgement than Allah" (H.Q.S5 A45,50). The Prophet Muhammad (peace be upon him) applied *Jihād* against the People of the Book[1].

Muslim jurists without exception agree that Islam gave the people of the book three possible choices before the waging of *Jihād*. This view is based on this verse "Fight those who believe not in Allah nor the last day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of truth, from among the people of the book until they pay the *Jizyah* with willing submission and feel themselves subdued" (H.Q.S9 A29).

Also the following tradition of the Prophet is a strong proof of these choices that when he decided to send any leader to fight unbelievers he ordered them "... When you meet your Polytheist enemies, summon them to three things. Accept whatsoever they agree to and refrain then from fighting them. Summon them to become Muslims. If they agree, accept their conversion. In that case summon them to move from their territory to the

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[1]For information about the application of this kind of *Jihād* during the period of the Prophet see chapter four in this thesis.

Abode of the Emigrants. If they refuse that, let them know that then they are like the Muslims Bedouins and that they share only in the booty [*ghanīmah and fay*] when they fight with the Muslims. If they refuse conversion, then ask them to pay *jizyah*. If they agree, accept their submission. But if they refuse, then ask Allah for assistance and fight them" (Muslim)[17]. Hence from what has been mentioned these possible choices are:-

1- That they adopt Islam and are subject to Islam, they would enjoy the same rights and duties as do all Muslims.

2- If they refuse to adopt Islam then they must pay *al-jizyah*. In this case they will be *dhimmah*, under this contract they will receive protection and security for their lives, families, and property under the Islamic state with the right to practise their own religion. According to Muslim scholars this contract was first applied by the Prophet after the conquest of Makkah in the ninth year of the *Hijra*. The Prophet entered into peaceful agreement with the Christians of Najran who became *dhimmah*[18]. On the other hand prior to this agreement the Prophet had concluded some form of agreement with non-believers like the Jews at Medinah and the Quraish in Makkah. These were not considered as *al-dhimmah* agreements because there was no specific rule regarding non-Muslims before the revealing of the previous verse. These agreements were the basis of the *dhimmah* contract [19]. The status of *dhimmah* is a good opportunity which offers non-Muslims the chance to hear witness and feel the justice and equality with direct contact with the Muslim community which may lead them to embrace Islam freely.

3- If they refuse both of the above choices, they will face *Jihād*, according to the Qurān "Fight those who believe not in Allah ... the people of the book until they pay the *jizyah* ..." (H.Q.S9 A29).

Early successors also had followed the rule of Summon before fighting which was laid down by the Qurān and the Prophet himself. This rule sometimes led to a peaceful

70

settlement between Muslim armies and their enemies such as the surrender of a number of towns in Iraq and Syria. During the early Muslim conquest, the commander often waited for three days after the invitation to Islam had been sent to the enemy which included the three choices before actual fighting took place. Abu 'Ubaid mentioned that the second caliph 'Umar, ordered one of his commanders to summon the enemy and wait for three days before he started the fight [20]. The following is a letter sent by Khālid Ibn al-Wālid before the capture of Medinah "From Khālid Ibn al-Wālid to the Persian princes. Peace be on those who follow the path of the truth. Thanks be to Allah who humiliated you and caused the collapse of your kingdom ... those who pray our prayer ... and eat our meals are Muslims and will have the same rights as ours. After you receive my letter send me guarantees and you will have peace; otherwise, in the name of Allah, I shall send you men who like death as much as you like life"[21].

Hence this kind of fighting is called *Jihād* in Islamic law because it is against non-believers, with the aim of making Allah's word supreme and applying Islamic law. This kind of *Jihād* is a collective duty.

THE FIGHT AGAINST AHIL AL-RIDDA (APOSTASY)

An apostate according to al-Māwardī, is a person who was born a Muslim or converted to Islam who then renounced it and embraced any other religion [22]. Alternatively they have rejected any one of the five pillars of Islam [2]. Therefore the Muslim jurist Ibn

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[2] The five pillars in Islam are. 1- Shahādah (the witness) which means that there is no God but Allah and that Muḥammad is his Messenger. 2- The five daily prayers 3- Zakat, the mandatory tax which is paid every year from wealthy people at a certain designated minimum. 4- *Sawam* (fasting). In Islam Muslims fast for one month a year this is called Ramaḍan. The fast starts at dawn and ends at sunset. during the period of fasting Muslims abstain from eating, drinking, and sexual intercourse. 5- *Hajj* (Pilgrimage). Every Muslim has to perform a pilgrimage to Makkah at least once in his or her life on the condition that the Muslim can financially and physically make the trip.

Taymiya states that the first caliph Abu Bakr declared *Jihād* against the apostate who agreed to follow all Islamic pillars except *Zakat*. He added that all the Prophet's followers agreed to fight people who are praying and fasting but refrain from paying *Zakat*[23]. The apostate has two forms.

a- The personal apostate. This is a Muslim or group of Muslims who reject Islam for another religion, they do not have power and live still under the Islamic state's authority. In this case Muslim jurists advise the Muslim leader (*Imām*) to negotiate with them and try persuading them to return to Islam. There are different views regarding the period of negotiation. It is three days according to Ibn Qudāma[24] and Abu 'Yalā[25]. Al- Māwardī mentioned that according to some jurists the *Imām* has to kill them immediately which means there is no time for negotiation but other jurists stipulate three days to give them time to show penitence and return to Islam[26]. The period of negotiation depends on the circumstances and the mental ability of the apostate[27]. If they refuse to return to Islam then the Muslim leader according to the majority of Muslim jurists has to kill them[28]. This view is based on evidence from the Qurān and the Sunna of the Prophet. From the Qurān "If anyone desires a religion other than Islam (submission to Allah) never will it be accepted of him ... How shall Allah guide those who reject faith after they accepted it and bore witness that the Messenger was true ... Of such the reward is that on them (rests) the curse of Allah, of his angels and all mankind" (H.Q.S3 A85-87). From the Sunna the Prophet is reported to have said "Whoever changed his religion (Islam) kill him". This *hadith* is in al-Bukhārī's book. Another *hadith* states that the life of a Muslim may only be taken in three cases ... one of which is that "... he forsakes and separates himself from the Muslim community...".

b- The second form concerns Muslims who renounce Islam for any other religion and are a large and powerful enough force to challenge and defy the Islamic authority. In this case the Muslim leader (*Imām*) has to fight against them. At the same time Muslim jurists advise the Muslim leader to negotiate with them before the fighting begins to try to

convince them to return to Islam. If the good offices fail and the apostates refuse to return to Islam then they have to face a fight. During negotiations they should be notified that fighting will follow if they do not go back to Islam. In this kind of conflict the Islamic state will not accept a peace treaty or the paying of *al-jizyah* because Islamic law does not accept Muslims rejecting Islam. Once war starts the rules governing it are the same as for war against non-Muslims. They do have special treatment regarding the result of the war. Their property is confiscated or divided as spoil, and the property of those killed in battle is taken over by the Muslim state[29]. Muslim jurists use the same evidence as they use in the previous case regarding the legitimacy of waging war against apostates.

In Islamic history the phenomenon of apostasy occurred almost as soon as the Prophet was dead. Many of the Najd [3] tribes sent representatives to the Islamic state in Medinah to ask, whether remaining Muslims, they would not have to pay *Zakat* and also to accept the new political leadership after the death of the Prophet [30]. The first caliph Abu-Bakr warned them to return to obedience and pay the *Zakat*. The negotiations with the apostates broke down and they refused to pay the *Zakat*. The caliph fought them with a large army under the command of Khālid Ibn al-Wālid. He met some of the apostates and defeated them. The most important encounter was that of Yammam at the battle of 'Aqrabā known in Islamic history as the "Garden of Death" on account of the great number of deaths on both sides. In this battle the apostates were defeated, and most of them agreed to pay *Zakat* and to be under the control of the Islamic state in Medinah. Thus the fast and strong reaction of the first caliph Abu Bakr's *Jihād* against *ridda* restored the political unity of the Islamic state and confirmed the strength of the Islamic *shar ī'h*. Is this kind of fighting called *Jihād*, civil or political war? The reaction of the first caliph is clear; he treated the rebels as non-Muslims[31], because they refused to respond to one of the five Islamic pillars, the *Zakat*. The majority of the Prophet's companions advised the caliph Abu Bakr to delay the *Zakat* and not to fight the *ridda* until the Muslim state prepared itself to fight. The caliph strongly

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[3]Najd now is a territory in the center of the kingdom of Saudi 'Arabia which contains Riyadh city, the

capital of Saudi 'Arabia.

refused and fought them. He said in a famous speech: "By God, if they were to withhold a camel's shackle from me, which they paid to the Prophet, I would fight them for it"[32].

These events could lead us to conclude that they were not Muslims. To raise the words of Allah and apply Islamic law on those who were under Islamic control but had enough power to defy the Islamic authority in Medinah the first Muslim caliph did not hesitate to wage *Jihād* against them, thus confirming the supremacy of Islamic law. According to Muhammad "The Sunnī traditionalists view of the *ridda* war was that it was a *Jihād* " [33]. Furthermore Muslims jurist Ibn Qudāma considers that fighting against apostates is an advancement on the fighting against non-believers [34]. Muslim scholars considered Muslim deaths in those battles as martyrs.

THE FIGHT AGAINST AL-BUGHAT (REBELLION)

Rebellion is defined as dissidence against the rightful authority of the Muslim leader without right. Muslim writer 'Awda says that rebellions have three elements. 1- Dissidence against the authority of the Muslim *Imām*. 2- The dissidents have enough power to support their challenge to the Islamic state. 3- They use armed revolt against the lawful Muslim authority [ ]. The rebellion could become a civil war. This includes cases where Muslim troops rebel against the authority of the Muslim state. At the same time the *Imām* should try to persuade them to abandon their rebellions and return to obedience under the Islamic state[*]. If they refuse, the Muslim leader has the right to fight them until they conform to the Muslim authority [ ].

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[*]This refers to the situation during after the assassination of the third caliph and during the period of the fourth caliph.

If rebels do not have power[5] and do not renounce the authority of the Muslim leader, then they do not cause any political or military problems to the Islamic state[6] and according to al- Māwardī, they are not to be fought[37]. Muslim scholars usually cite the following verse to support their views on the treatment of rebels which is according to Fadl "The most important factor taken into consideration by Muslim jurists"[38] "If two parties among the believers fall into a fight, make ye peace between them: but if one of them transgresses beyond bounds against the other, then fight ye (all) against the one that transgresses until it complies with the command of Allah; but if it complies, then make peace between them with justice, and be fair: for Allah loves those who are fair (and just)" (H.Q.S49. A9).

Muslim jurists deduced two important principles from these verses. First, they held that the rebels remain Muslims despite their rebellion as the previous verse considers both sides as parties among the believers. Second, the object of the fight of the rebels is to stop and end their rebellion not to kill or eliminate them[39].

The political meaning of al-Bagh ī (rebellion) was well-known in the Islamic state after the assassination of the third Caliph, 'Uthmān bin 'Affān. A riot began in Muslim society when a man named 'AbdAllah bin Saba began to incite the people against the third caliph under the pretence that 'Alī bin Abī Tālib was more deserving of the caliphate. Furthermore, he accused the caliph of allowing administrative decay and nominated his relative for an important position in the Islamic state[40]. It is difficult to accept that one rebel could have such a far reaching effect on the populace, and maybe there were others who

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[5]A rebel is some one who has the power and the intention to actively oppose and attempt to overthrown

the ruler. A person or a group who has this intention but no power does not count as a rebel. A person or group who has this intention but expresses it in word but not in action is not a rebel. A person or group who has the power but no intention to overthrow the ruler is not a rebel.

[6]In a western context this distinction is between rebels who actively oppose the government and dissidents

who never try to actively oppose or overthrown it but simply express their verbal opposition.

contributed to the revolt [41]. This view is agreed by 'Armoush when he says that many people were involved in the work of planning within the Muslim regions to deliberately shatter the Islamic state from inside[42].

Evidence of this is to be found in the Kufa, Basra and Egypt regions, from where around 1,000 men emerged to march on Medinah city[43] under the guise of a pilgrimage, but their real aim was to change the caliph[44]. These rebels wanted to replace the rightful Muslim *Imām* by force in an action *baghī*.

The rebels laid siege to the house of the caliph for forty days. According to Kennedy, the struggle finally ended when the rebels assassinated the third caliph whilst he was reading the Qurān. The murder of the caliph 'Uthmān, whose blood was shed by Muslim rebel hands, left the Muslim community stunned[45]. The assassination was one of the most traumatic incidents in early Islamic history[46]. The assassination of the third caliph was the cause of great suffering in the Islamic state. It opened up a civil war and the fourth Caliph 'Alī faced the first civil war in Islamic history during his period of nearly six years as caliph.

As a result of the murder of the third caliph, the rebels who had taken Medinah, tried to appoint a caliph from among the Prophet's followers, 'Alī bin Abī Tālib, Talḥa bin 'Ubayd Allah and al-Zubayr bin al-'Awwām. They failed because all three men realized the problems that the Muslim community would face. The rebels insisted on the Muslim community appointing a caliph within two days under the threat that they would kill the three main followers of the Prophet and many of the Muslim community in Medinah if this was not done[47]. Finally 'Alī bin Abī Tālib under considerable pressure, agreed to be the fourth caliph.

After the murder of the third caliph and the appointment of the fourth, a dangerous division in the Muslim community developed. The Muslim *Umma* was split into three.

Firstly, the group which demanded punishment of the murderers of the caliph 'Uthmān. This demand grew up around four important followers of the Prophet namely; Talḥa bin 'Ubayd Allah, al-Zubayr bin al-'Awwām, 'Aish bent Abu Bakr and Mu'āwiya bin Abī Sufyān[48].

Secondly, the group which wanted to implement a policy aimed at an immediate reduction of tension. Because the political position in Medinah was not under the control of the caliph and because of the large number and strength of the rebels, the caliph could not carry out punishment of the rebels. This group was lead by the caliph[49].

Thirdly, there were some of the Prophet's followers who were retired from political life and did not support any of the two parties such as 'Abdullah bin 'Umar, Saad bin Abī Waqqās and Abu Dharr[50].

As a result of this division inside the Islamic state during the period of the fourth caliph there existed three battles: two of them were civil wars between the caliph and other Muslims who demanded immediate punishment of the murderers of the third caliph, the battle of *al-Jamal* (camel) and the battle of *Siffyn*. The third one, the battle of Nahrawān, was between the caliph 'Alī and his former supporters the Khawārij.

THE BATTLE OF CAMEL 656 AD.

This battle broke out between the caliph 'Alī with his supporters and the three Muslim leaders Talha, al-Zubayr and Aisha. They left the Hijāz to seek support in Basra in the hope of bringing the murderers of the third caliph to justice. Caliph 'Alī followed them to Iraq for discussions in an attempt to settle existing differences through peaceful channels [51]. When the caliph arrived near Basra, he sent a special envoy to negotiate a settlement with the three Muslim leaders. In the end, they reached a peace treaty and the three leaders agreed to join the Muslim government. However, within caliph 'Alī 's army were the rebels

who had assassinated caliph 'Uthmān, and they realized that if both parties agreed on peace they would be caught and punished. Following an urgent meeting, they decided to launch a night-time military offensive against another Muslim group to provoke fighting between the two groups and breach the peace treaty [2]. According to Muir, "Both armies, understanding that negotiations were in progress, went to rest that night in security such as they had not felt for many weeks ... The regicides, during the night, carried their design into execution. Led by them, squadrons of Bedouin lances bore down, ... upon the Basra. In a moment all was confusion. Each camp believed that it had been attacked by the other"[53].

Confrontation occurred at the battle of camel, so called because 'Aisha the wife of the Prophet was riding a camel which became the rallying point of the battle. In the fighting, ten thousand men were killed from both sides. Talḥa and al-Zubayr were among them [i]. According to Muir, "The field was covered with 10,000 bodies in equal proportion on either side ... It was a new experience to bury the dead slain in battle not against the infidel, but believer fighting against believer" [55]. After this battle and the defeat of the other Muslim group caliph 'Alī held authority in Iraq, Egypt and Hijāz.

THE BATTLE OF SIFFIN 657 AD.

The defeat of the first Muslim rivals by the Caliph 'Alī did not put an end to civil war. In Syria, Mu'āwiya bin Abī Sufyān, who was the governor of Syria and Caliph 'Uthmān's relative, also demanded that the murderers of 'Uthmān should be punished, irrespective of Caliph 'Alī 's political position. In fact Mu'āwiya refused to acknowledge Caliph 'Alī until he had punished the murderers of 'Uthmān. Therefore the political situation in the Islamic state was shaky .

Consequently, Caliph 'Alī marched to Syria in an attempt to convince the leader to acknowledge his authority and join the Muslim government. Meanwhile Mu'āwiya was marching to *Siffyn* where he set up camp to wait for the caliph and his army [55]. As in the battle of Camel, Caliph 'Alī started direct negotiations and sent special envoys, but without

success. According to Muir, 'Alī sent three chiefs to demand that, for the good of the commonwealth, Mu'āwiya should tender his allegiance but the latter demanded that the murderers of 'Uthmān should be brought to justice" [59]. After several months the second battle took place between the two Muslim groups. "There was a marked reluctance to do battle and for three months the armies confronted each other with little more than occasional skirmishes"[60]. When the battle seemed to be turning in Caliph 'Alī 's favour the Syrians held up leaves from the Qurān and appealed for arbitration. This halted the battle.

The Caliph 'Alī knew that arbitration would cause confusion in his party, but he was forced by a number of his followers to accept it and to appoint a representative. The battle of *Siffyn* and the matter of arbitration had been taken as points of protest against Caliph 'Alī [61]. After the arbitration new ideas had appeared in the theatre of Islamic political life and these led to the battle of Nahrawān and the ending of the Caliph's life.

THE BATTLE OF NAHRAWAN 659 AD.

After the arbitration the Caliph 'Alī was rejected by some of his followers who felt that he was wrong because he accepted the people's arbitration and not the Qurān 's[62]. On his return to Iraq twelve thousand men split off from his army. The Caliph sent his envoy, 'AbdAllah bin 'Abbās, to persuade them to rejoin, most were persuaded but a minority refused [63]. These people were known as Khawārij. They objected to the caliph because he had agreed to arbitration while they deemed that Allah was the only true arbitrator. The caliph and those who thought like him were deemed to be not just wrong but also to be unbelievers. They had therefore to embrace Islam and could at that point have been dealt with again[64].

The Khawārij disagreed with the caliph but as they were few they did not take any offensive action against the Islamic state. The caliph offered them three rights; he did not attack them, they were permitted to perform and say their prayers in the mosques, and shared the spoils with Muslims if they participated in *Jihād* [65]. The Khawārij started

79

aggressive action against the Islamic state and killed some Muslims without justification. The Caliph 'Alī failed to deliver these murderers before the *Sharī'h* court. The caliph marched against them and crushed them. The majority of them were killed in the battle of Nahrawān[66].

As a result of the political events in the Muslim state following the assassination of Caliph 'Uthmān, the rebellion in the Islamic state led to the assassination of the Caliph 'Alī in the mosque of Kufa in Iraq not by one of his rival's party, but by a member of the Khawārij namely 'Abdulrahman bin Muljim in the year 40 AH / 661 AD[67].

All this poses the question, is this kind of fight properly called *Jihād* or not? The Muslim jurists agree these wars are not *Jihād* because *Jihād* is the fighting of unbelievers in the cause of Allah for the rising of the word of Allah. They also make clear that the aim of fighting the rebels is to stop the rebellion not to kill them [68]. The Caliph 'Alī said after the battle of Camel, referring to all those died "By God, all of them who die with pure heart will be admitted by God to paradise" [69]which leads us to conclude that this kind of fighting cannot be classified as *Jihād*. The fight against al-Khawārij however is *Jihād* because the Caliph 'Alī considered it so. Some Muslim jurists such as Ibn Taymiya agreed with this when he equalled *Jihād* against non-Muslims as *Jihād* against al-Khawārij since they regarded Muslims wealth and lives as lawful. They deemed that Muslims are unbelievers, even the first and the second Caliph, Abu Bakr and 'Umar. Ibn Taymiya added that they applied the teachings of the Qurān but did not follow the Sunna[70].

THE KHAWĀRIJ CONCEPTION OF JIHAD

In the Arabic language the word Khawārij is derived from the verb *kharaja*, which means 'went out'. The majority of Sunnī scholars have specified Khawārij as meaning everyone who separated himself from the Muslim *Umma* or community [71]. According to

Kennedy "Probably because they had gone out from 'Alī's army, they were known as Khawārij"[72]. This sect was first known in Islamic history as mentioned earlier, during the period of the fourth Caliph 'Alī. When the caliph was forced to accept arbitration during the battle of *Siffyn*, the group who was forced initially to accept the arbitration ultimately rejected its result and by so doing also rejected the authority of the fourth caliph, and split away from 'Alī's army and decided to strike out on their own because he had accepted the authority of the arbitrators. So this section will highlight the views of the Khawārij regarding some important affairs such as *Jihād*, the caliphate and the faith of the other Muslims.

This party believed that the person who commits major sins becomes an unbeliever[73]. They also believed that they were the only true Muslims in the world and everyone had to embrace Islam and rejoin with them again.

This sect also has a different theory about the caliphate to that of the Sunnī. The Khawārij believed that it is unnecessary for the caliph to be from amongst the Quraish, he could be from any tribe or even from other nations who are not Arabs [74]. The caliph must be elected by the Muslim community regardless of a particular tribe. On the other hand the Sunnī scholars believed that the caliph should be from the Quraish tribe [75]. After the arbitration between 'Alī and Mu'āwiya they split off from the caliph's army and elected their own caliph. Some writers such as Professor Hitti, deem this movement the first religio-political sect in Islamic history[76].

The Khawārij believed that *Jihād* was a fundamental article of Muslim faith; *Jihād* is against those who did not accept their view of Islam, Muslims as well as non-Muslims. As mentioned earlier the Khawārij believed that the person who commits major sins becomes an unbeliever. The Muslim scholar Ibn Taymiya mentioned that they considered only their land as *'dār al-Islam'*, the land of Islam, and the Muslim land as *'dār al-Harb'* i.e non-Muslim land. They regard wasting Muslims lives and seizing their wealth as lawful [77]. So

their faith must be imposed by force even going so far as to kill those who do not accept it. They believe they must be ready to wage *Jihād* on the enemies of the faith under the leadership of their *Imām* and if the *Imām* will not lead them in *Jihād* each believer has to fulfil this obligation by himself and if he fails to do so he falls into error[78].

There are two important characteristics of the Khawārij faith which lead them to stray from the right path of Islam.

A- Weakness in the understanding of the Qurān and the Sunna and a weakness concerning Islamic knowledge in general. When the Caliph 'Alī accepted arbitration they protested against him and later used the expression 'God alone can decide'; this they derived from the Qurān[7]. The meaning of this expression is correct in that the judgement belonged to Allah but it could not be applied in this case; the Caliph 'Alī told them their words were right but not their intention.

B- As a result of the first point they claimed that those who did not accept their faith or committed major sins would be considered unbelievers. This led them to establish a very dangerous precedent in Islam in that, although they regarded Muslims' lives, wealth and trust in their faith as lawful, they could still wage *Jihād* against them. The Khawārij, according to Khadduri claimed that *Jihād* is a sixth pillar of the Islamic religion [79]. The question which arises here is whether the Khawārij sect who appeared after the arbitration between the Caliph 'Alī and Mu'āwiya is still to be found within Islamic societies today? Ibn Taymiya says that the Khawārij were not only those who had appeared after the arbitration, but the Khawārij and their views continue within Muslim society and will do so until the appearance of the False Messiah[ ]. Ibn Taymiya has based his view on the

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[7]This expression is used three times in the Qurān in the Sura 6 verse 57, Sura 12 verse 40 and 67 for example Allah says "... The command is for none but Allah: He had commanded that ye worship none but Him ..." (Sura 12, A40).

tradition of the Prophet Muhammad which clarified the important characteristics of these people.

However, does any Muslim group in the present time hold similar views to the Khawārij? We think that the *al-Takfir wal-Hijra*[8] group hold a similar view regarding their viewpoint of the society. So to clarify their view and to see if there is any connection between their views and the Khawārij who appeared during the time of the Fourth Guided Caliph 'Alī, we will mention in brief how such a group was established and also some of the important views which they held.

This group was led by Shukrī Mustafā who was born on 1 June 1942 near Asyut in Upper Egypt. He obtained his diploma from an Islamic charity school and then enrolled in the college of agriculture at the university of Asyut[81].

Shukrī was a member of the Muslim Brotherhood and he was arrested by the Nāsser regime in 1965 which was the year of the greatest number of arrests during the time of Nāsser while he was distributing the leaflets of the Brotherhood group inside the university campus[82].

In 1967 the Egyptian authority asked the prisoners who were members of the Muslim Brotherhood group to support President Nāsser, some of them agreed and others refused who deemed that the government and all the Muslims society were *Kuffār* (infidels)[83].

Shukrī Mustafā joined the later group which was led by a young al-Azhar graduate 'Alī 'Abduh Ismā'īl, who remained a leader of this group until 1969 when he renounced

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[8]The word *Takfir* means that to call some one as non-believer and word *Hijra* means the migration and separation from society.

the *takfir* views and also from the leadership of the group. In fact the renunciation of sheikh 'Alī slowed the movement but did not halt it[84].

The abandonment of the leading of the group by sheikh Ismā'īl gave Shukrī Mustafā the opportunity to lead the group, so the leadership passed from the hands of sheikh Ismā'īl the Azhar graduate to Mustafa whose Islamic knowledge was limited. Therefore when Mustafā was released from prison in 1971 as a result of President Sādāt's "rectification revolution" of 15 May, this helped him to complete his degree and to start developing his group and his da'wa and enabled him to gain a wide reputation inside the Islamic groups. Within a short time he was able to increase the number of his followers, and in 1976 the members of his group were around two thousand[85].

The previous section clarified how the *al-Takfir wal-Hijra* group had been established and the circumstances which supported its establishment and also the limited Islamic background which the leader of this group had. Therefore, what are the most important views of this group?

1- Separation from Muslim society. Muslim society in their opinion is not really Muslim, as a result they claim that Muslim society in general is non-Muslim and a *jāhiliyya* society same as the *jāhiliyya* society during the time of the Prophet. At the same time this group had implemented their actual view of *hijra* or the withdrawal from the *jāhiliyya* society to the mountains when some of its followers were arrested at the beginning of 1973 [86]. The hijra itself claims a strong relation between the *jāhiliyya* society and Islam as it was applied by the Prophet himself when he emigrated from Makkah, the society of *jāhiliyya*, to Medinah, the society of Islam. But the view of the *al-Takfir wal-Hijra* group is not accepted, as the society during the time of the Prophet was of non-believers whilst the society in which this group lived was a Muslim one.

2- The new sects claimed that a Muslim who commits major sins becomes as a non-Muslim[87].

3- In their view the land of Islam has become a land of non-Muslims so all people in the land of Islam are non-believers except those who belong to their group. This means that the wealth of Muslims is lawful [88]. Furthermore, the member who quits their group is an apostate and death would be his punishment[89].

4- They claimed that it is not compulsory for the members of their group to do the Friday prayer as the society is a *jāhiliyya* society and their group which represents the Muslim society is weak. Therefore, they will do such prayer if their group has the power[90].

The views of this Muslim extremist sect are similar to Khawārij which leads some writers to establish that Khawārij views are the main source for these sects [91]. On the other hand the relationship between *al-Takfir wal-Hijra* group and the Khawārij can be divided into two phases.

In the first phase the initial appearance of the views of these extremist sects did not relate to the Khawārij because the circumstances of their first appearance were in the prisons of Egypt where the opportunity to gain knowledge was absent. The following incident will prove this. As al-Sāmirāiī has said when he discussed with one of the suspected Muslim extremists clarification from him as to how close to the views of the Khawārij his sect were. The suspect argued they were not similar he argued that during custody these views emerged from within and from memorising the Qurān and the Sunna. He added that during their custody they did not have any book and had they had, it would have been seized [92]. Most of the members of these sects are not specialists in Islamic studies and do not even have a good general knowledge of Islam [93]. According to Ibrāhīm, twenty-nine out of thirty-four of the (al-Takfir wa al-*Hijra*) sect were university graduates

or undergraduates at the university at the time of their arrest. He also added that just over a half of the students arrested were studying science, pharmacy and engineering[94].

In the second phase in the following period some leaders of the Muslim extremist sects could read the Khawārij views after discussions with some Muslim scholars and they perhaps made use of what they had learnt. Doubtless some sect leaders made use of this information and prevented some of their followers from gaining information which would have helped them to recognise the similarities between the sect and the Khawārij[95]. Some of their followers on recognising these similarities abandoned their view[96]. The development of their ideas and discussions during the later period were a clear example of their reliance on the Khawārij views [97].

THE FIGHT AGAINST AL-MUHARIBIN (HIGHWAYMEN)

Al- Muḥāribūn are those who commit robberies, murder and corruption, often as armed highwaymen [98]. The Islamic law concerning their treatment is provided in the Qurān in the following verse "The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter" (H.Q.S5, A33). Some Muslim jurists advise the Muslim leader to discuss with the highwaymen and persuade them to leave their weapons and to surrender themselves to the Islamic authorities [99]. The majority of Muslim jurists agree that highway robbers should be punished by the *Imām*[100].

Is this kind of fight to be called *Jihād*? To answer this question we can say that this kind of fight is not *Jihād* as it is against Muslims. Muslim jurist al- Māwardī discussed the situation of the highwaymen and did not mention that the fighting against them is *Jihād*[101].

86

Muslim jurist Ibn Taymiya also considers that fighting against highwaymen is to enable the *Imām* to apply the Punishment of the Islamic *Sharī'h* on those which mentioned in the Qurān, then he quoted verse number 33 which we mentioned in the previous paragraph. He added that the fighting against these group if they are Muslims are different from the fighting against non-believers. He also did not mention that this kind of fighting is *Jihād*[102].

However, Professor Lambton, claimed that al- Māwardī divided *Jihād* into two types: *Jihād* against unbelievers and *Jihād* against believers. He added that al- Māwardī subdivided the latter into three categories, *Jihād* against apostates, against rebels and against a*l- Muḥāribūn*[103]. By the reading of al-Mawārdīs book al-Aḥkām al-Sultaneeh it seems he deemed that the emirate of *Jihād* is particularly concerned with fighting with the Mushrikīn[104]. He also did not mention that the fight against the rebels or a*l- Muḥāribūn* was a kind of *Jihād* but instead considered such war as a fight[105].

THE FIGHT AGAINST THE MUSLIMS IMAM

Muslim scholars al-Māwardī[106] and Abu Y'alā[107], state that all Muslim scholars agreed that the appointment of the Muslim *Imām* is an obligation. Ibn Taymiya indicated the importance of the appointment of Muslim *Imām* when he said "The authority over the affairs of the people is the greatest religious duty. In fact religion cannot be established at all without this authority"[108]. Muslim scholars mentioned strong proofs which support the obligation of the appointment of the *Imām*. "O ye who believe! obey Allah, and obey the Messenger, and those charged with authority among you ..." (H.Q.S4. A59). Ibn Katheir says that the meaning of "you" applies to rulers and scholars[109]. Al-Dumayjī then says that the appointment of Muslim *Imām* is obligatory as Allah orders Muslims to obey the rulers so a ruler cannot be obeyed if he is not appointed[110]. "... So judge between them by what Allah hath revealed, and follow not their vain desires ..." and also "And this (He commands): judge thou between them by what Allah hath revealed, and follow not their

vain desires ..." (H.Q.S5. A48 and 49) the establishment and the application of the Islamic *Shar ī‘*h can not be achieved accept after the foundation of the Muslim *Imām*[111].

The Sunna of the Prophet also supports the creation of obligation by the appointment of the Muslim *Imām* "He who withdraws his hand from obedience (to the *amir*) will have nothing in his favour when he meets Allah on the Day of Resurrection; and he who dies without having considered himself bound by a pledge of allegiance (literally, while there is no pledge of allegiance on his neck) has died the death of the Time of Ignorance (as an unbeliever) (narrated by Muslim). According to Zidān and al-Dumayjī, the pledge of allegiance is an obligation and it cannot be practised unless by the appointment of the Muslim *Imām* so the appointment of *Imām* is necessary [112]. The other tradition that the Prophet has laid down is that "When three people set out on a journey they should appoint one of them as a leader" (Abu Dāwd) [113]. Muslim scholar Ibn Taymiya says that if the Prophet order his *Umma* to appoint one of them in a journey so the appointment of the *Imām* is more important because Allah has prescribed the enjoining of the good and the prohibition of the evil as a duty. This cannot be implemented without power and authority [114].

Also from the Sunna the Prophet established the first Islamic state in Medinah and he was himself the leader of that state. This action from the Prophet is a clear indication of the important and the obligation of the foundation of the leader of the Islamic state[115].

The immediate choosing of the first caliph Abu Bakr by the Muslim community in Medinah after the death of the Prophet, the nomination of the first caliph to ‘Umar as his successor and the nomination of the second caliph of a committee of six from the Prophet followers to choose his successor, are strong evidence of the necessity of the appointment of the Muslim *Imām*[116].

The emigration of the Prophet to Medinah and the establishment of the first Islamic state in history led to the unity of the Muslim *Umma*. This unity continued until the defeat of the last Islamic caliphate 'the Ottoman' in 1924 despite the weak stages which the Islamic caliphate faced; but it remained representative of this unity for all of these centuries. The question then arises does the Muslim *Umma* have to be under one state and leadership or it could be under many states and leaderships? Muslim scholars have two point of view:

The first view is that the Muslim *Umma* has to be under one leadership[9]. This is the view of the majority of the Muslim scholars according to the view of the prominent Muslim scholar An-Nawawi [117]. At the same time some Muslim scholars who support this view hold that it could be more than one *Imām* inside the Islamic state if the *Imām* can not make control on the whole state such as in the case of the expansion of the Islamic state[118]. This view might be acceptable during the old era while the communication between the head of the state and the rulers of the territories of this state was so weak but during the present period this view is not persuasive. This is supported by Ridā and Haykal[119].

The second opinion holds that a Muslim state could be under more than one *Imām*. This is the view of some of the Sunnī scholars such as al-Qurtubī, and some of the Khawārij[120].

The first view has strong evidence to support it such as the following verses from the Qurān, "And hold fast, all together, by the rope which Allah (stretches out for you), and be not divided among yourselves ..." (S3, A103), "Be not like those who are divided amongst themselves and fall into disputations after receiving clear signs: for them is a dreadful chastisement" (S3, A105) and "And obey Allah and His Messenger; and fall into no disputes, lest ye lose heart and your power depart; and be patient and persevering: for Allah

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[9]This leadership could be an imām, caliph, the prince of the believers or president while its rule the

Muslim umma by the Islamic law (Jāber. husain Muhsen. al-Tāreekh le Jamā't al Muslemeen. Dār al-Wafā. al-Manswrah 1409 AH. 1989 AD, p 98.

is with those who patiently persevere" (S8, A46). All these verses are urging Muslims to be united and the unity between the Muslim *Umma* can not be achieved except by the unity under one leadership[21].

The Sunna of the Prophet has many traditions which support the unity of the Muslim *Umma* under one political leader such as: "He who has pledged allegiance to an Imām giving him his hand and the fruit of his heart, shall obey him if he can, and if another person tries to usurp the Imām's ights, smite that other person's neck" (Muslim)[22] "If, while you are united under one man's leadership, anyone tries to break your strength or to disrupt your unity, kill him" (Muslim)[23]. Asad says with regard to the previous tradition "In accordance with the principle of Muslim unity so strongly emphasized in Qurān and Sunna, any attempt to disrupt that unity must be regarded as a crime of the highest order-in fact, as high treason- and must be punished severely[24].

The second group support their view by saying the main aim of the foundation of the *Imām* is to facilitate and manage the affairs of Muslims, so this aim can be achieved by the foundation of more than one *Imām*[25].

This view is not strong enough as during the time of the Four Rightly Guided Caliphs we saw that the Islamic state ruled a large part of the world with one caliph without effecting the affairs of Muslims. At the same time this group did not provide any evidence from both the Qurān and the Sunna to support their view.

The fight against the leader of the Islamic state (*Imām*) has three possible situations. This section will clarify these parts and if the Muslim *Umma* or part of it leads a fight against the *Imām* we consider where it is justified to use the term *Jihād* or not.

1-THE FIGHT AGAINST THE JUST IMAM

The just *Imām* follows the orders of Allah and his Prophet Muhammad and is responsible for the implementation of Islamic law in the Islamic state[126]. Muslim jurists such as al-Māwardī and Ibn-Taymiya stress that the obedience to the *Imām* is an obligation of the Muslim *Umma*[127].

Obedience to the *Imām* is based on the following evidence both from the Qurān and the Sunna: "O ye who believe obey Allah, and obey the Messenger, and those charged with authority among you" (H.Q.S4. A59). The Qurānic command to obey Allah and the Apostle is immediately followed by the words of those charged with authority and leads us to say that the obedience to the *Imām* or the Islamic government is a Muslim religious duty [128]. If the Muslim *Umma* differs from the *Imām* on an issue, "refer it to Allah and His Messenger" (H.Q.S4. A59). According to the previous verse al-Māwardī says that Allah has imposed on us the obedience to those who have authority on us[129]. According to the previous verse Professor Lewis also says "This verse from the Qurāning point of most Islamic teaching about politics ... Ruler and subject alike are bound by certain obligations imposed on them by the Holy Law, both towards God and towards one another, and the primary and essential duty owed by the subject to the ruler is obedience. The consensus of Muslim religious, legal, and political writing is overwhelmingly clear on this point. The duty of obedience to legitimate authority is not merely one of political expedience. It is a religious obligation, defined and imposed by Holy Law and grounded in revelation. Disobedience is therefore a sin as well as a crime"[130].

There are many examples regarding the obedience of the *Imām*: Anas bin Mālik relates that the Prophet said "Listen and obey even if an ill-shaped negro slave whose head is like a dried grape, is appointed as authority over you" (al-Bukhārī)[131]. Abu Hurairah

relates that the Prophet said: "You are bound to hear and obey the orders of the authority, in hardship and in ease; willingly or unwillingly, and even when you are treated unjustly" (Muslim)[132]. In another *hadith* Abu Hurairah relates that the Prophet said: "One who obeys me, obeys Allah, and one who disobeys me disobeys Allah, and the person who obeys the man in authority obeys me, and he who disobeys the man of authority disobeys me" (al-Bukhārī and Muslim) [133]. Another *hadith* also explains this, Ibn 'Abbās relates that the Prophet said: "If a person notices something unpleasant in the action of a ruler he should put up with it patiently for one who leaves the ruler by a span of hand, dies a death of ignorance" (al-Bukhārī and Muslim) [134]. Hence the majority of the Muslim Sunnī jurists support the view that the just *Imām*, even if in error, must be obeyed[135].

All Muslim jurists agree that the obedience of the just Muslim *Imām* is obligatory and the fight against him is prohibited[136].

2- THE FIGHT AGAINST THE APOSTATE OR THE DISBELIEVING GOVERNOR

Muslim jurists state many conditions which the Muslim *Imām* has to fulfil. One of these conditions is that he has to be a Muslim[137]. According to al-Dumayjī, all Muslim jurists agree that the Muslim *Umma* has to fight against the apostate or disbelieving leaders if they have the ability to do so but if they do not then they have to make every effort to overthrow the regime [138]. Muslim jurists have strong evidence to support their view.

There are some verses from the Qurān which oblige Muslims not to give their obedience to non-Muslims: "And never will Allah grant to the unbelievers a way (to triumph) over the believers" (H.Q.S4. A141). Allah says in other verses which loosely translate as "O ye who believe take not the Jews and the Christians for your friends and protectors: They are but friends and protectors to each other and he amongst you that turns to them (for friendship) is of them verily Allah guideth not a people unjust" (H.Q.S5. A51).

Also "O ye who believe obey Allah, and the Messenger, and those charged with authority among you" (H.Q.S.4. A59). The meaning of 'among you' in this verse will be clear for as Asad said, that the community's allegiance to those in authority from among Muslims is conditional upon those in authority being in obedience to Allah and his Messenger[139].

From the Sunna, 'Ubādah bin Sāmit, relates: "We covenanted with the Prophet to hear and to obey under all circumstances whether adverse or favourable, pleasant or unpleasant; to put up when discriminated against and superseded, and never to dispute the command of the men of authority except in a case of open infidelity, violation of faith, you will have sanction from Allah to tell the truth in all circumstances and to care in the cause of Allah any censure or rebuke" (al-Bukhārī and Muslim)[140].

As can be seen from the previous paragraphs the fight against apostate or disbelieving governor is called *Jihād*. Muslim jurist Ibn *Hajar* states that the Muslim *Umma* has to declare *Jihād* against any non-believing governor if they are in a position to do so[141].

3- THE FIGHT AGAINST THE UNJUST IMAM[10]

Muslim scholars have two points of view regarding the fight against the unjust *Imām*.

-The first opinion is that the Muslim *Umma* does not have the right to fight the unjust *Imām* unless their unjust deeds lead them to open infidelity; violation of faith i.e clear disbelief such as if they converted from Islam to another religion. The first proof from the Qurān "And never will Allah grant to the unbelievers a way (to triumph) over the believers" (H.Q.S4. A141). The second proof is from the Sunna of the Prophet when he said: "... And never to

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[10]The unjust *Imām* is who charcterized by one of two characteristic. the injustice and the transgression.

dispute the command of the men of authority except in a case of open infidelity, violation of faith" (al-Bukhārī and Muslim). Also if they cease holding prayers and force the *Umma* to do so. The evidence of this point is the tradition where the Prophet said: "Your best leaders and rulers are those whom you love and who love you (in return), and for whom you pray and who pray for you; and your worst leaders and rulers will be those whom you hate and who hate you, and whom you curse and who curse you. The narrator of this tradition adds: We requested: O! Messenger of Allah shall we not disassociate from them? He said: No so long as they establish the prayers among you, No so long as they establish the prayers among you" (Muslim), or if they rule the *Umma* by non divine law because the *Imām* has to govern the *Umma* by Islamic law. The evidence for this principle is this verse "If any do fail to judge by what Allah hath revealed, they are unbelievers" (H.Q.S5. A44). This view is supported by the majority of Muslim Sunnī jurists[42]. It is based on much evidence from the Sunna and political Islamic history for example:-

a) The Prophet said "... And never to dispute the command of the men of the authority except in a case of open infidelity, violation of faith, (*kufr*) for which you have a clear proof from Allah ..."[143]. Salamah bin Yazīd asked the Prophet "O Messenger of Allah please let me know if we may be placed under such rulers who may require from us their due, but may refuse to give us fully our due; what are your orders for us in this matter? The Prophet avoided giving him a reply, but he repeated his question; and therefore the Prophet said: you should listen to them and obey them. They are answerable for their obligations and you are answerable for yours" (Muslim)[144]. The other tradition from the Prophet concerns his saying "If a person notices something unpleasant in the action of a ruler he should put up with patiently, for one who leaves the ruler by a span of hand, dies a death of ignorance" (al-Bukhārī and Muslim)[145].

In another example the Prophet said " You are bound to hear and obey the orders of the authority, in hardship and in ease; willingly or unwillingly, and even when you are treated unjust" (Muslim) [146]. The Prophet also has warned his *Umma* "He who raises arms

94

against us (*umma*) ceases to be one of us" (al-Bukhārī). Another tradition with the same meaning "He who unsheathes his sword against us ceases to be one of us" (Muslim). "The blood, property and honour of a Muslim must be sacred (*ḥarām*) to every other Muslim" (Muslim). This tradition makes clear that the life of the Muslim is inviolable and none shall be deprived of Muslim life except by due process of law [147]. Ibn Taymiya states that the Sunnī Muslim jurists agreed to give up the fight during the trial between Muslims in the *umma* (like that between the Caliph 'Alī and some of the Prophet companions after the assassination of the third caliph) because they have strong traditions from the Prophet Muhammad supporting their view[148].

b) The position of some of the Prophet's followers who retired from political events after the death of the third caliph and did not participate or support any Muslim party during the civil war inside the Islamic state[149]. So the rest of the Muslim *umma* has to follow those companions who did not participate in this trial.

c) The majority of Muslim jurists also support their view with reference to the troubles and fights which happened between Muslims inside the Islamic state such as the fight between the Caliph 'Alī and some of the Prophet's followers in the battle of Camel and the battle of *Siffin* with Mu'āwiya the governor of Syria, the battle of Nahrawān between the Caliph 'Alī and the Khawārij and many fights which happened between some of the sons of the Caliph 'Alī against some of the Umayyad state rulers. It can be seen that these fights did not lead to good results and the opposition parties could not overthrow their government but in fact these oppositions led to blood baths and major troubles between Muslims inside the Islamic state[150].

- The second view is that the Muslim *Umma* has to use force to fight the unjust *Imām*. This view is supported by some of the Sunnī jurists and the Khawārij. Those scholars put forward evidence to support their view as follows.

a) They mentioned some verses from the Qurān and some of the Prophets traditions which both requests and orders Muslims to work together to remove wrong "Help you one another in righteousness and piety, but help ye not one another in sin and rancour: fear Allah: for Allah is strict in punishment" (H.Q.S5. A2). Also this verse "Let there arise out of you a band of people inviting to all that is good, enjoining what is right and forbidding what is wrong: They are the ones to attain felicity" (H.Q.S3. A104). At the same time the Prophet considered the removal of wrong by action as the highest form of faith. This meaning can be concluded from these traditions of the Prophet "If any of you sees something evil, he should set it right by his hand; if he is unable to do so, then by his tongue; and if he is unable to do even that, then within his heart but this is the weakest form of faith" (Muslim). Also "By him in whose hands is my, life (Allah the almighty), necessarily you should enjoin virtue and check evil, or else Allah will certainly send chastisement upon you. And then you will pray but your supplications will not be accepted" (Trimidhī). The other tradition that Abu Bakr cites is for Muslims to recite this verse: "O ye who believed! Ye have charge of your own souls. He who erreth cannot injure you if ye are rightly guided. Unto Allah ye will all return; and then He will inform you of what ye used to do" (S5. A15). I have heard the Prophet saying: When the people see a cruel person is committing aggression, and do not prevent him, it is likely that Allah would afflict them with His chastisement (Abu Dāwd, Trimidhī and Nasāī).

These jurists conclude that leaving the unjust *Imām* in full power to govern the Muslim *Umma* is wrong and against the orders of Allah and his Messenger. In examining this evidence both from the Qurān and the sunna, we find that they are dealing in general with supporting right and removing wrong inside the Muslim *Umma* but they are not against the unjust *Imām*. The words of the Prophet concerning the removal of wrong by action does not mean that Muslims have the right to rise in rebellion against a government whenever it contravenes any Islamic law[51]. We know this because the first party of jurists gave strong proof from the Sunna which orders the Muslim *Umma* not to use force to change an unjust *Imām*. Therefore this tradition is a clear example from the Prophet that the

96

Muslim has to exercise patience with an unjust government "If anyone sees in his amir something that displease him, let him remain patient; for, behold, he who separates himself from the united community by even so much as a handspan and dies thereupon, has died the death of the time of ignorance" (al-Bukhārī and Muslim).

b) They state that all Muslim jurists are agreed that if any Muslim group refused to respond to one of the five Islamic pillars or one of the important principles of Islamic law, the Muslim *Umma* has to fight them[152]. The agreement of Muslim jurists on this point is mentioned and supported by Ibn Taymiya[153].

In examining this proof we can say that in general it is correct but needs a very important condition; namely the ability and sufficient force to ensure its success which will lead to the change of the unjust *Imām* as mentioned earlier. *Jihād* for the propagation of Islam is a collective duty for the Muslim *Umma* if the Muslims feel that they have enough power to declare *Jihād* against non-Muslims. The fighting against an unjust *Imām* needs the same condition[154].

c) The third proof concerning the position of some of the Prophet's followers who supported one of the two parties during the battles of Camel and *Siffin* after the assassination of the third caliph which led to civil wars inside the Islamic state[155].

In examining this evidence we find that all of the Prophet's followers who fought against the Caliph 'Alī did not mention that he was an unjust *Imām* but they engaged in a fight because they wanted the caliph to punish the murder of the Caliph 'Uthmān. The Caliph 'Alī held a different opinion because the political position in the capital of the Islamic state was not in his favour due to the large number and strength of the rebels.

The first view has strong proofs which lead us to determine that the Muslim *Umma* does not have the right to fight against an unjust *Imām* unless they have the ability and power to do so[156]. Can we justifiably call this kind of fighting a *Jihād*?

If an unjust *Imām* leads the *Umma* to violate the faith such as to governing by non-divine law, or ordering the *Umma* to live contrary to Islamic law [11]and if the *Umma* has the ability to fight him and does so, this fight is a *Jihād*. If the unjust leader commits deviations which lead the *Umma* to determine that he is not capable of governing and the *Umma* has the ability to fight and change him, this fight is not a *Jihād*. This is supported by Haykal[157].

CONCLUSION

The fight against the ruler of the Islamic state has been discussed and we come to the conclusion that while Muslim scholars deemed the fight against an apostate or disbelieving ruler as *Jihād* on the other hand they prohibited the fight against a just Muslim ruler.

At the same time this chapter also shows the relation of views between the Khawārij who appeared during the time of the Fourth Guided Caliph and the *al-Takfir wal-Hijra* group in that both of them held that the land of Islam is the same as the land of non-believers, and that any Muslim who commits a major sin becomes as a non-Muslim and they are the only true Muslims.

This chapter clarified that not every fight carried out by an Islamic state can be simply call *Jihād*. The fight against polytheists and the People of the Book for example can

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[11] The Prophet has stated in a recorded *hadith* by al-Bukhārī and Muslim "It is obligatory upon a Muslim to listen and obey (the authority) whether he likes it or not: save when he is asked to do something sinful. If he is asked to do a sinful act then there is no hearing and obedience".

be consider as *Jihād* while the fight against highwaymen is not the same, as the main aim of *Jihād* is not the expansion or the increasing of the income of the Islamic state but to defend the Islamic state and to raise the word of Allah high and to apply the Islamic law on the whole earth. Therefore when Muslims became involved in *Jihād* against non-Muslims, Islamic law established principles and rights regarding warfare and ordered its followers to comply. Chapter three will show theses principles and clarify the views of Muslim jurists regarding these principles.

NOTES TO CHAPTER TWO

1. Al-Māwardī. al-Aḥkām al-Sultaneeh. dār al-Kutub al-'Ilmiyya, Beirut. 1405 AH. 1985 AD. pp 46 and 182.

-Al-Shaybānī. al-Siyar al-Kabir. pp 75-77.

2. Al-Māwardī. al-Aḥkam al-Sultaneeh. p 69.

3.Ibn Khaldun. 'Abd al-Rahman ibn Muhammad. al-Muqadimah. Dar al-Qalam. Beirut. 1406 AH. 1986 AD. p 270.

-Also see Khadduri. Majid. War and Peace in the Law of Islam. pp 70-71.

4.Fatānī. Ismā'il. Ekhtelāf al-Dāreen. Dār al-Salām. Cairo. 1410 AH. 1990 AD. pp 119-120.

5.Qutb. Sayyid. Fi Delāl al- Qurān. v 3. pp 1586-1602.

6.Al-Bukhari. Sahih al-Bukhari. translated by Muhammad. Muhsin Khan. v4. p 124.

7.Muhammad. Sherif. The concept of Jihad and Civil War in Early Islam. M.PHIL. University of Exeter. 1985. p 34.

8.Khadduri. Majid. War and Peace in the Law of Islam. p 75.

9.Ibn al-Qayyim. al-Jawziyya. Ahkām Ahl al-Dimmah. ed. Taha Said. Dar al-Kutub al-'Ilmiyya. Beirut. 1415 AH. 1995 AD. v1. pp 21-22.

-.Fatānī. Ismā'il. Ekhtelāf al-Dāreen. p 122.

10.Al-Balādharī. Ahmad ibn Yahyā. Futuḥ al-Buldān. Muassasat al-Ma'ārif. Beirut. 1407 AH. 1987 AD. p 107.

11.Najran now is a city in the southern region of the Kingdom of Saudi Arabia.

12.Hamid Allah. Muhammad. Majmw'āt al-Wāthāiq al-Syāsyah. Dār al-Nfāis. Beirut. 1403 AH. 1983 AD. pp 174-186.

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74.Al-Shahristānī, Muḥammad. al-Milal wa al-Nuḥal. p 108.

75.Such as Mālik. al-Shafāi'ī. Abu Hanifa and Ibn Hanbal. Some scholars such as Al- Māwardī. Ibn

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153. Ibn Taymiya, Ahmad. Fatāwa Ibn Taymiya. v28. pp 357-358.

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CHAPTER THREE

ISLAMIC LIMITATION ON WAGING JIHÀD

INTRODUCTION

War is an ubiquitous phenomenon in human history. Islamic history is not exceptional; violent conflicts have been frequent between Muslim and non-Muslim states. The main objective of *Jihād* was neither the achievement of victory nor the acquisition of the enemy's wealth but to raise the word of Allah high and the application of His law to the whole world. Islamic law therefore laid down some moral principles which belonged to the *Mujahid*s before *Jihād* and urged its followers to comply. At the same time Islamic law also established principles and rights regarding warfare such as the use of mass destruction, the rights of non-Muslim warriors, treaties between Islamic and non-Islamic states, and the treatment of prisoners of war and it urged its followers to apply such law. Allah says in the Qurān "Fight in the cause of Allah those who fight you but do not transgress limits; for Allah loveth not transgressors" (H.Q.S2. A190). This chapter will look at these morals and principles to see the views of Muslim jurists regarding such principles and also how Islamic law could put forward a new ideology and certain general principles regarding such matters.

On the other hand, when we mentioned the different views of Muslim scholars does this mean that they have different views on the matter and if yes, why?

To answer this question we have to say that the views of Muslim jurists are seeking the correct legal opinion based on the interpretation of the Qurān or the Sunna[1]. The four famous schools of *Fiqh* were founded on the basis of al-Ijtihād (endeavour) as practised by the founders of those schools; Abu Ḥanifa, Mālik, al-Shāfi'ī and Ibn Ḥanbal. All schools of *Fiqh* are agreed on the Qurān and the Sunna in all respects. Those scholars were unified on the

basic principles of Islam, such as faith and worship, so all of them agreed that the pillars of Islam are five not four or six. At the same time they do not have the same view on all legal opinions[2] but differences on the subsidiaries are possible.

The modern scholar Abu Zahra mentioned some of the conditions which a scholar should have before practising *Ijtihād*. For instance, he must have a good knowledge of the Arabic language, the Qurān and the Sunna, the causes of revelation and analogical deduction[3].

This chapter has many examples which will give a clear picture of the different views adopted by prominent Muslim scholars on subsidiary matters such as the use of fire against non-Muslim or the human targets which Muslim forces have to respect.

GENERAL RULES OF WEAPONS

In Islam, a Muslim state must make itself ready to counter its enemies. This principle is clear in the Holy Qurān "Against them make ready your strength to the utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies, of Allah and your enemies ..." (H.Q.S8. A60). The expression 'steeds' which is indicative of the horse was one of the most important of the tools from among the accoutrements of fighting at the time of the Prophet. So Allah in this verse ordered Muslims to prepare the tools of war in accordance with their ability according to Ibn Katheir[4]. S. Qutb explains that this means Islam has to prepare its followers for *Jihād* by any means of strength, since weapons are always changing in accordance with improvements of technology: Allah in this verse orders Muslims to make themselves ready for *Jihād* by owning and producing modern weapons to be ready to defend the Islamic state and to propagate Islam[5]. On the other hand, S. Qutb did not explain the exact meaning of strength.

The Prophet Muhammad (peace be upon him) also advised his *Umma* to take an interest in throwing. Abu Hammad relates that he heard the Prophet recite from the pulpit a verse "Make ready for them all thou canst of armed force" the Prophet elucidating on this point said:

that armed force means archery; beware, armed strength means archery, beware, armed strength means archery (Muslim) [6]. Another tradition was that the Prophet passed by a party of some people who were practising archery; the Prophet said to them: "O the Children of Ismā'īl, practise archery, for your ancestor (Prophet Ismā'īl) was also an archer" (al-Bukhārī) [7]. Some writers stated that these traditions of the Prophet are an indication of strength, it includes all weapons which throw out to the enemy from long distance such as artillery, rockets, bombs or any other such weapon[8].

Regarding the use of personal weapons such as swords, daggers, spears and arrows, this research did not come across any discussion from Muslim jurists regarding the use of such weapons which means that there was no disagreement between jurists regarding the use of such weapons. Ibn Rushd mentioned that Muslim jurists agreed to kill non-Muslims by using the previous weapons[9]. Dr. al-Zuḥilī mentioned that the use of such weapons is lawful without any disagreement and he mentioned the following of certain of the Prophet's traditions which support this view such as "That the gates of Paradise lie under the shadow of swords ..." (Muslim)[10], "A person who received training in archery, but has abandoned it, is not one of us, he is guilty of disobedience" (Muslim)[11], "Allah will admit three persons to paradise on account of one arrow, firstly the person who manufactures it with the best perfection, secondly the man who shoots it, and thirdly the person who picks and hands it up to the archer. So, O people! learn archery and horse riding. I prefer that you should learn archery rather than riding ..." (Abu Dāwd)[12].

GENERAL USE OF WEAPONS

In Islam, Muslim jurists discussed the use of weapons such as fire, mangonels[1] and poison arrows by Muslim authorities and laid down rules which regulated the use of such weapons. At the same time, in some cases, there are differences between Muslim jurists according to their

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[1] A machine for throwing stones which nowadays have been replaced by artillery, bombs and rockets.

evidences and views. This section will clarify the view of the Islamic schools in this matter and to see the similarities and the differences between Muslim jurists.

1- THE USE OF MANGONELS

Muslim jurists such as al-Shaybānī, al-Sarakhāsī[13] and al-Zulaʻī[14] from the Hanafī school allowed Muslims to use mangonels against non-Muslim enemies. They mentioned that the reason of such use is to overcome and eliminate their forces. Al-Sarakhāsī added that this act is a way to get a reward from Allah as He says in the Qurān "... or trod paths to raise the ire of the Unbelievers, or gain any gain from an enemy: For Allah suffereth not the reward to be lost of those who do good" (H.Q.S9. A120). They based their argument on some of the Prophet's Sunna such as this tradition narrated by Abu Huraira, said Allah's Apostle sent us in a mission and said, "If you find so-and-so and so-and-so, burn both of them with fire" when we intended to depart, Allah's Apostle said, "I have ordered you to burn so-and-so and so-and-so, and it is none but Allah who punishes with fire, so, if you find them kill them" (al- Bukhārī) [15]. Also the use of the mangonel by the Prophet during the siege of al-Ṭāif[2] is further proof by the Hanafī school[16].

Muslim writers who wrote on the Islamic international relations[17] did not mention the view of the Mālikī jurists regarding the use of mangonels. During the research of this subject I found al-Qurtubī (d.463 AH) from the Mālikī school who made mention of the use of this weapon which means that some of this school allowed the use of such a weapon[18].

The Shāfiʻī allow the use of mangonels. This allowance by al- Shāfiʻī was based on the following verse "But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war) ..." (H.Q.S9. A5), and on the use of this weapon by the Prophet during the siege of al-Ṭāif[19].

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[2] Al-Ṭāif is a city of the Thaqīf tribe. This battle took place in the eight year of the *Hijra* between the Prophet's army and the Thaqīf tribe.

The Ḥanbalī jurists allowed the use of mangonels because the Prophet used them during the siege of al-Ṭāif [20]. Ibn Qudāma added that the use of mangonels in war is usual, as is the use of arrows [21].

Contemporary Muslim scholar Abu Zahra discussed the reason for the use of mangonels against the Thaqīf tribe during the siege of al-Ṭāif and reached the conclusion that it was not for the destruction of the stronghold itself but to weaken the enemy strength and then to overcome them, according to Abu Zahra's view [22].

Some contemporary Muslim scholars such as Dr.al- Zuḥilī, Dr. al-Qāderī and Dr. Haykal concluded that from the use of the mangonels by the Prophet it is allowable to use some modern weapons which have the same characteristics of the mangonels such as bombs and rockets [23].

2- THE USE OF FIRE

The discussion of the use of fire by Muslim jurists against non-Muslim enemies leads us to say that the use of such a weapon has two objectives:

A-The use of fire against people.

The Ḥanafī jurist al-Shaybānī said that the burning of non-believers is reprehensible if they fall as prisoners of war. He based his argument on the following traditions of the Prophet when he sent a detachment "If you find so burn him with fire" when they intended to depart, the Prophet said "If you find him kill him, and it is none but Allah who punishes with fire". Also the other tradition when the Prophet sent Mu'ādh bin Jabal to Yemen he told him "If you find so burn him with fire" when Mu'ādh departed he asked him to come back and he told him "none but Allah who punishes with fire so if you find so kill him" [24].

112

The Mālikī jurists did not allow the use of fire against people according to Muslim jurist Ibn Rushd[25] he did not mention any evidence to support this view.

The Shāfiʿī jurist al-Māwardī prohibited the use of fire against live or dead non-Muslims. He mentioned the following tradition of the Prophet to support his view "Do not punish people by the punishment of Allah"[26] which means fire.

The Ḥanbalī jurist Ibn Qudāma mentioned that Muslim scholars agreed on the prohibition of burning the enemy by fire. Ibn Qudāma mentioned the following tradition to support his view, one of the Prophet's follower said that when the Prophet appointed him as a leader of one of the Muslim detachments he told him "If you find so burn him with fire" when the companion departed the Prophet asked him to come back and he told him "If you find so kill him and do not burn him as none but Allah who punishes with fire"[27]. The Ḥanbalī scholar Abu Y'alā added that it is unlawful to burn live or dead non-believers according to the saying of the Prophet "Do not punish people by the punishment of Allah"[28].

B-The use of fire against enemy properties and trees.

The Ḥanafī jurists allowed the use of fire against non-Muslim strongholds to reduce their fighting ability. They based their views on the following verse "... or trod paths to raise the ire of the unbelievers, or gain any gain from an enemy: For Allah suffereth not the reward to be lost of those who do good" (H.Q.S9. A120). Also some of the Prophet's Sunna such as when the Prophet ordered one of his companions, Osāma, to attack one of the non-believers territory and to use fire against them. Also the Prophet himself used fire against some of the trees inside non-Muslim's territories[29].

The Mālikī jurists allowed the use of fire to destroy non-Muslim strongholds, the Mālikī jurist al-Qurtubī did not mention any evidence regarding the use of fire[30]. Al- Zuḥilī added that *Imām* Mālik allowed the use of fire if it was the only way to gain victory against non-Muslim enemies[31].

113

With regarding to the use of fire against properties and trees of non-Muslim enemies, the Shāfiʿī jurists held that if Muslims could reach victory without the use of fire then it is not allowed, but if the Muslim army could not reach victory except by using fire, in this case it is lawful. This is also the view held by al-Awzāʿī and al-Thawrī jurists according to Ibn Qudāma[32]. This school provided proof to support their view such as this verse "Whatever ye cut down (O ye Muslims!) of the tender palm-trees or ye left them standing on their roots, it was by leave of Allah ..." (H.Q.S59. A5). Also the Prophet himself cut and burned some of the Jew's trees and burned their houses.

The Ḥanbalī jurists held that Muslims can use fire against enemies strongholds if victory cannot be reached except by the use of fire as in the following verse "Whatever ye cut down (O ye Muslims!) of the tender palm-trees or ye left them standing on their roots, it was by leave of Allah ..." (S59. A5). Regarding the burning of enemy trees, the Ḥanbalī jurists held that if the enemy burnt Muslims' trees, the Muslims can do likewise to pressures them to stop burning Muslims' trees. They used the cutting and burning of the trees of the Jewish tribe Banu an-Nadīr by the Prophet as proof of their view[33].

Muslim jurist Ibn Rushd[34] mentioned some of the Muslim jurists views regarding the use of fire against enemies which contained the allowance and the prohibition of such weapons as previously stated. He went on to say that some Muslim scholars held that a Muslim authority can use fire against a non-Muslim enemy in reciprocity, if this type of weapon was used by the enemy. He added that the reason for this difference between jurists can be found in the following evidence. Allah says in the Qurān " ...Then fight and slay the Pagans wherever ye find them ..." (H.Q.S9. A5). This is the proof of jurists who support the use of fire, those against use the following tradition of the Prophet as mentioned earlier " ... I have ordered you to burn so-and-so and so-and-so, and it is none but Allah who punishes with fire, so, if you find them kill them" (al- Bukhārī)[35].

The Islamic schools of *Fiqh* discussed another important point which bears a strong relation to the use of fire and mangonels against property of the non-Muslim enemy; the use of

114

their families or Muslim prisoners of war as shields inside their property to prevent the Muslim army attacking them. In dealing with this point Islamic schools hold the following views:

The Ḥanafī school allowed the use of fire and mangonels even if the enemy used their families or Muslim prisoners of war as shields. They said that avoiding the use of such weapons against the enemy could lead to the cessation of *Jihād* itself[36].

Imām Mālik did not allow the use of fire or mangonels if the enemy used their families as shields[37]. They used the traditions of the Prophet which prohibits the killing of women and children such as during one of the Prophet's battles, a woman was found killed so the Prophet forbade the killing of woman and children[38].

The Shāfiʿī jurists allowed the use of such weapons if the enemy used their families as shields as the Prophet used the mangonels against the people of Ṭāif while their women and children were with them inside their stronghold. At the same time if the enemy used Muslim or *Dhimmah* prisoners of war as shields, they were advised not to attack on condition that the retreat of the Muslim army would not lead to their defeat[39].

The Ḥanbalī jurists allowed the use of such weapons if the enemy used their women and children as shields as the Prophet used the mangonels against the people of Ṭāif while their women and children were inside their strongholds as the leaving of such weapons could lead to the cessation of *Jihād*. On the other hand if the enemy used Muslim prisoners of war as shields in this case the Ḥanbalī jurists did not allow the use of such weapons except the necessity of war to overcome non-Muslims[40].

3- THE USE OF POISONED ARROWS

Muslim jurists al-Shaybānī and al-Sarakhāsī from the Ḥanafī school permitted the use of poisoned weapons. The permission to use such weapons according to those jurists is a false

115

military tactic and this the proof which they based their view on [41]. The Mālikī jurist, Khalīl, advises against the use of poisoned arrows on the enemy[42].

This research did not come across any views from the other Islamic schools regarding the use of poisoned arrows. Although, Dr. al-Zuḥilī mentioned that the view of the Mālikī school is different from the other schools who agreed the use of such weapons[43] which means that the views of other schools are the same as those of the Ḥanafī.

From what has been mentioned from the views of the prominent Muslim jurists we can conclude that the Islamic state has the right to use fire and poisoned arrows against the enemy in cases such as:

1-If destruction is the only way to achieve victory.

2-If the enemy uses his properties and national resources in war against a Muslim army.

3-To force the enemy to stop fighting in order to reduce the human loss of life.
Muslim jurists allow the use of all weapons which were available during their time such as the burning of buildings, if the same methods were used by their enemies.

ILLEGITIMATE TARGETS

Islam has defined illegitimate targets in *Jihād* and granted rights to those who have no military role in fighting and ordered Muslims to obey these rules; *Jihād* in Islam is not against places or people but an enemy regime. There are two kinds of targets human and non-human. Below we clarify the rights which Islam has granted to both human and non-human targets.

116

HUMAN TARGETS

This section will discuss human targets such as, women, children, and civilians to see how Islamic law treated them and does it establish and grant protection of such categories or not?

Women and Children. Islam prohibits the killing of women and children. There are some examples and evidence from the behaviour of the Prophet and during the period of the Fourth Caliph which supports this principle. According to al- Bukhārī, "During some of the Ghazawāt 'battle' of the Prophet a woman was found killed. Allah's Apostle disapproved of the killing of women and children"[44]. At another tradition narrated also by al- Bukhārī "During some of the Ghazawāt of Allah's Apostle, a woman was found killed, so Allah's Apostle forbade the killing of women and children"[45].

The first Caliph, Abu Bakr, followed the directions which were laid down by the Prophet when he recommended to the warriors of the Islamic army "Do not mutilate, do not kill children, do not kill women or old people ... you will pass by people who devote their lives in cloisters, leave them and their devotions" (al-Ṭabarī)[46].

The second Caliph, 'Umar also followed the same rules regarding the treatment of women and children, he ordered one of his leaders "Do not kill women, do not kill children" [47]. On the other hand Muslim scholars explained that a person who does not have one of the following three signs will be defined as children. Firstly, those who reach sexual maturity by having a wet dream or awakening 'attain puberty'. This sign is mentioned in the Qurān "O ye who believe! Let those whom your right hands possess, and the (children) among you who have not come of age ask your permission (before they come to your presence) on three occasions ..." and also "But when the children among you come of age, let them (also) ask for permission ..." (H.Q.S24. A58-59). Secondly, the growing of pubic hair. Thirdly, to reach the age of fifteen[48].

All Islamic schools of *fiqh* do not allow the killing of women and children. They used the previous traditions of the Prophet and the Abu Bakr's recommendation as a proof to support their view[49].

Old People

Islam has protected the rights of non-Muslim elderly who do not participate with their enemy in battle, as they are too old and infirm, and would not be able to endure the assignments of war. The Prophet therefore ordered his followers " ...Do not kill old people ..." [50]. According to the Muslim jurist al-Shokānī, the Prophet said "Go in the name of Allah do not kill old people ..."[51].

The first caliph Abu Bakr had clarified the treatment of old people when he recommended to the warriors of the Islamic army "Do not mutilate, do not kill children or old people" [52]. The second caliph 'Umar also recommended to one of the Muslim army's leader "Do not kill old people ..."[53].

On the other hand if the elderly participate with the warriors on the battlefield or if they participate in the advising of military tactics, which means that they participate in the war directly or indirectly, then they are to be treated as warriors by the Muslim authority[54]. This view is based on the agreement of the Prophet of the killing of Durayad ibn al-Summah who was more than one hundred years old during the battle of Hunayan as he was the military advisor of his tribe during this battle[55].

At the same time this research did not come across any information regarding the definition or the age which any person has reached to be treated as an old person which could lead us to say that the definition of the term 'old is' comparative.

Monks

The law of Islam forbids the killing of monks if they do not fight against Muslims. The Prophet ordered his followers and all Muslims not to kill monks instead they should protect their lives. There are some examples from the Prophet's life and some of his followers who governed Islamic state after him which confirm this principle. Ibn 'Abās said that when the Prophet sent his warriors he ordered them "Go in the name of Allah to fight unbelievers ... do not kill children or cloister dwellers (monks) ..."[56]. Also the first caliph, Abu Bakr ordered his warriors " ... You will pass by people who devote their lives in cloisters, leave them and their devotions ..."[57].

On the other hand Islamic schools of *fiqh* have two views regarding the killing of old people and monks as follows:

The Ḥanafī[58], Mālikī[59] and Ḥanbalī[60] Jurists held that the killing of old people and monks are not allowed. They based their view on some proofs such as the following Quranic verse "Fight in the cause of Allah those who fight you but do not transgress limits; for Allah loveth not transgressors" (H.Q.S2. A190). So the old person who does not participate in fight should not be killed. The traditions of the Prophet which prevent the killing of old people " ... Do not kill old people ..."[61] and "Go in the name of Allah do not kill old people ..."[62]. Also "Go in the name of Allah to fight unbelievers ... do not kill children or cloister dwellers (monks) ..."[63]. They also mentioned the recommendation of Abu Bakr to the Muslim army " ... do not kill old people"[64].

The Shāfi'ī jurists held two views regarding the killing of old people and monks the first is same as the rest of the Islamic school which has been mentioned as they considered them as women and children according to the Shāfi'ī scholar al-Māwardī[65]. The second view which is the favourite to them[66] is that they allowed the killing of old people and monks. They based their argument on some proof as this verse "But when the forbidden months are past, then fight and slay the Pagans wherever ye find them and seize them beleaguer them and lie in wait for

119

them in every stratagem (of war) ..." also "Fight those who believe not in Allah nor the Last Day nor hold that forbidden which hath been forbidden by Allah and His Messenger nor acknowledge the religion of truth from among the People of the Book until they pay the *Jizyah* with willing submission and feel themselves subdued" (H.Q.S9. A29). They also mentioned the Sunna of the Prophet to support their view such as this the agreement of the Prophet of the killing of Durayad bin al-Summah who was more than one hundred years old during the battle of Ḥunayan [67]. They also used this tradition the Prophet has said "Kill the old men of the Polytheists and save the lives of their children"[68]

The other jurists responded to the view of the Shāfiʿī and said that the verses which they mentioned not for the old people and monks but it is general evidence for the fighting of non-Muslims. They also comment on the killing of Durayad bin al-Summmah as he was the military advisor of his tribe during the battle Ḥunayan[69].

Therefore, respect for non-combatants is a foundation of Islamic law, war in Islam is limited to the combatants on the battlefield. According to the Muslim jurist, Ibn Taymiya, the purpose of war is to raise Allah's word to the highest. Whosoever interferes with this should be fought, but those such as women, children, monks and old people who do not interfere with his word and are incapable of fighting should not be fought. Whosoever does not prevent Allah's religion from being established are not to be fought[70], he cites the clear Quranic order "Fight in the cause of Allah those who fight you, but do not transgress limits, for Allah loveth not transgressors" (H.Q.S2. A190).

The Islamic scholar, Abu Zahra says that when the first caliph Abu Bakr sent Muslim army leaders to fight the unbelievers he informed them not to interfere or harm the monks because monks who stayed at the cloisters were to be protected[71].

Civilians

Women, children, old people and monks are civilians but as they discussed earlier, this section will clarify civilians who from age of fifteen and the mature persons who do not participate in fighting and also are excluded from killing. Muslim scholars have two points of view regarding the treatment of civilians as follows:

Firstly, According to the opinion of Ḥanafī, Mālikī and Ḥanbalī schools, that if civilians did not participate in the fight then they may not be killed but if they take part in the fight even by giving advice then they may be killed[72]. This party based their views on proof such as the following verse "Fight in the cause of Allah those who fight you" (H.Q.S2. A190). Therefore those who did not participate in the fight by any kind of help may not be killed. Also the Prophet's traditions which have been mentioned which order Muslims not to kill those who did not participate in fight. The Prophet says when he saw a slain woman "She was not one who would have fought". These jurists regard the ability to fight as the justification for the killing. Therefore the directions from the first and second Caliph to their armies not to kill those who do not take part in the fight have been mentioned based on this important understanding of the principle.

Secondly, The Shāfi'ī school and Ibn Ḥazm allowed the killing of all categories but women and children who did not participate in the fight may be excluded[73]. This view is based on proof, in the Qurān "But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war); But if they repent, and establish regular prayers and pay zakat then open the way for them: for Allah is oft-forgiving, most merciful" (H.Q.S9. A5). They mention another verse "Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of truth, from among the people of the Book, until they pay the Jizya with willing submission, and feel themselves subdued" (H.Q.S9. A29).

To support their view they stated the following tradition: The Prophet has said "Kill the old men of the Polytheists and save the lives of their children"[74]. The Prophet also has agreed to the killing of Durayd ibn al-Summah who was a very old man during the battle of Hunayan[75]. From what has been mentioned these jurists regard unbelief as the justification for killing all categories except women and children.

In examining these proofs, we find that the verses which they used are general but the verse which the first party has used is especially for those who do not participate in the fight. Regarding the saying of the Prophet "kill the old men of the Polytheists and save the lives of their children" they said that if this tradition is correct it is dealing with the old people who participate with his people even by consultation such as the situation of Durayd[76]. Also the Prophet's agreement to the killing of Durayd; he was the main advisor for the non-believers during the fight which meant that he was participating with his tribe indirectly. The recommendations from the caliphs regarding the treatment of non-combatants during the Islamic conquest of non-Muslim states in the period of the Forth Caliph demonstrate that a Muslim army has the right to fight those who participate directly or indirectly in the battle field.

Ibn Taymiya also mentioned that the consensus of scholars were agreed to exclude from the killing persons who did not participate in war such as women, children, monks, old people, the blind and handicapped except if they participated in war by action or saying. He added that some scholars deemed that all categories of persons have to be killed except women and children but Ibn Taymiya supported the first view which is the view of the majority of Muslim scholars. He quoted this verse which is a clear example about fighting against those who fight Muslims "Fight in the cause of Allah those who fight you but do not transgress limits; For Allah loveth not transgressors" (H.Q.S2. A190)[77].

From what has been clarified we can summarize that Muslim jurists agree that civilians who do not take part in fighting are excluded from killing but if they participate in the war then the Muslim army has the right to kill them[78]. Their view is the favourite as they have strong

evidence from both the Qurān and the Sunna and also from the instructions of the first Muslim caliphs which supports and strengthens their view.

Prisoners of War

Muslim jurists have adopted the definition of prisoners of war as those who the members of the enemy forces falling into the hands of Muslim authorities[79]. It seems clear that war is the main reason for prisoners of war. On the other hand, Muslim scholar Ibn Taymiya mentioned another class of prisoners of war, such as when one of the unbelievers lost his way and was captured and detained by the Muslims or captured by trick[80]. It seems that these prisoners, which were mentioned by Ibn Taymiya, are unbelievers in a state of war with a Muslim state and there is no a treaty between both sides [81]. The detachment of Nakhlah[3] is the proof of the latter situation when two prisoners fell into captivity. These two prisoners were the first taken in Islam and they were released in return for ransom. These two captives were taken without real war as the main mission of this detachment is to collect information about the Quraish [82] tribe who were in a state of war with the Prophet [83]. Islamic law declared a new set of principles regarding the treatment of prisoners of war. These principles are derived from the Qurān "Therefore, when ye meet the unbelievers (in fight), smite at their necks, at the length, when ye have thoroughly subdued them, bind (the captives) firmly: therefore (is the time for) either generosity or ransom: until the war lays down its burdens" (H.Q.S47. A4). These principles are also derived from the Sunna of the Prophet during his battle with un-believers. This chapter will discuss in detail the treatment of prisoners of war in Islamic law as laid down by Muslim jurists.

The Wounded

Islamic law gives rights to the wounded enemy who fall into the hands of the Muslim authority. It is decreed that the Muslim state has to give first aid to any wounded enemy on the

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[3]This detachment took place in the seventeenth of the *Hijra* of the Prophet to Medinah. During this detachment one of the Quraish was killed and he was the first who was killed by Muslims.

battlefield. If the wounded require further care, they have to be taken for treatment or even to a hospital and given the necessary care humanely[84], as they are unable to defend themselves. The Prophet ordered his followers during the conquest of Makkah "Do not attack the wounded"[85]. According to al-Qāsmī, the wounded persons of the enemy have to be treated with kindness [86]. The Muslim army, therefore are not allowed to kill the wounded of non-Muslim fighters on the battlefield, but if the wounded fighter does not fall into captivity or surrender, and continues fighting, in this case he is consider a legitimate target, so the Muslim army has the right to treat him as a warrior, not a wounded enemy. This is supported by Dr. al-Zuḥilī[87].

Sanctity of Corpses

It was normal practice before the advent of Islam, that each side would mutilate the dead bodies of its enemy, but Islam laid down rules for the treatment of enemy corpses and Muslims were ordered to comply with them.

In accordance with these rules the Prophet ordered his followers not to mutilate corpses. Ibn Hishām wrote about the battle of Uḥud, that the unbelievers mutilated the bodies of Muslims who had been killed on the battlefield by cutting off their ears and noses. The stomach of Ḥamza (the uncle of the Prophet) was split open by Hind (the wife of Abu Ṣufyiān, the leader of the Quraish army), she took out his liver and chewed it. The Prophet was outraged at the sight of these mutilated bodies. As a result, the Prophet decided that after the next battle, in revenge, he would mutilate thirty bodies of the Quraish. A revelation from Allah urged Muslims to show patience "And if you punish, let your punishment be proportionate to the wrong that has been done to you, but if ye show patience that is indeed the best (course) for those who are patient" (H.Q.S16, A126). The Prophet then relented and instructed his followers not to mutilate the dead bodies[88].

The above example shows, that by setting out rules for the treatment of enemy bodies, Islam has regulated the normal human reaction of retaliation, revenge and the taking of the law

into one's own hands. Had it not done so, events such as the battle of Uḥud could have been repeated well into recent history.

Islam also urged its followers to respect the dead bodies of the enemy on the battlefield by interring or returning the corpses to their authorities. After the battle of Badr, the Prophet ordered his companions to bury the bodies of their enemies, the Quraish tribe, in the well of Badr[89] as he had done with the dead bodies of his followers.

On the other hand, we can conclude from what has been mentioned that the Muslim army could establish an agreement with the opposing party to cease fire for a specific period of time to give both sides time to carry their corpses off the battlefield [90]. In the battle of Trench (which took place between the Prophet and his followers and the Quraish with their allies), a warrior from the Quraish side was killed and his body fell into the trench which the Muslim army had dug for the defence of Medinah. The Quraish offered ten thousand *dirhams* to the Prophet and asked him for the dead body of the warrior to be handed over to them. The Prophet refused this offer and said I don't sell dead bodies, you can take away the corpse Also both sides could establish an agreement to exchange corpses[91].

NON-HUMAN TARGETS

Islamic law also dealt with non-human targets such as places and houses of religious worship and laid down certain rules which grant rights to such places as follows:

Places of Religious Worship

Islamic law grants protection to buildings of religious worship[92] and considers them illegitimate targets. The Prophet granted protection to the churches of the Christians at Najrān

for this reason "I (Muḥammad) promise to protect them (Christians), their churches, cloisters, the houses of their prayers, places of their monks ..."[93]. During the period of the second caliph, 'Umar, when the Islamic army conquered Jerusalem, he made a treaty with the Christians for the protection of their churches and monasteries "This is the protection which the servant of Allah, 'Umar ibn al-Khattāb, the commander of the faithful extends to them (non-Muslims) the safeguarding of their lives, property, churches, crosses, and of their entire community. Their churches are not to be occupied, demolished, or damaged, nor are their crosses or anything belonging to them to be touched ..."[94].

Muslim scholar Ibn Rushd mentioned that Muslim scholar al-Awzā'ī did not support the destruction of enemy places of worship based on the Abu Bakr's instructions as mentioned earlier[95]. Sheikh Abu Zahra and Dr. al-Qāderī mentioned that there is an important principle in Islamic wars, the avoidance of destruction except if the enemy uses civilian places for military purposes[96].

Houses, Trees and Animals

In Islamic law there is a general rule which asks Muslim authorities to avoid the destruction of enemy property such as houses, trees, animals, factories etc, either during or after war. Therefore, during the Prophet's life when he sent any of his followers to battle he ordered them to "Make easy not difficult"[97]. These arguments are also based on Abu Bakr's instructions to one of his army leaders "Do not mutilate, do not kill children or old people, do not kill women, do not cut the heads off the palm trees or burn them, do not cut down fruit trees, do not slaughter sheep, cows or camels, except for food. You will pass by people who devote their lives in cloisters, leave them and their devotions" (al-Ṭabarī)[98]. According to Khadduri, on this instruction Muslim jurists accepted the doctrine of unnecessary destruction and the *mujāhidin* were advised to refrain from the shedding of blood or the destruction of enemy property if it was not necessary for the achievement of their objective[99].

126

The Ḥanafī jurists allowed the killing of enemy animals and the cutting of their trees to diminish the enemy's ability[100]. They based their view on the above mentioned verses of Allah, and in order that He might cover with shame the rebellious transgressors" (H.Q.S59. A5) and the cutting of trees of the Jewish tribe Banu an-Nadir by the Prophet is further evidence.

The Mālikī jurists allowed the destruction of enemy houses and the cutting of their trees. They mentioned the above verse to support their view. On the other hand they outlawed the killing of enemy animals except for eating[101].

The Shāfi'ī jurists allowed the destruction of enemy houses. They added that the cutting of enemy trees and palm-trees are not allowed except for eating or for military benefit to force the enemy to surrender or to conclude a peace treaty. Their views were also based on the above mentioned verse. They mentioned also that the cutting of grapes in the vineyards by the Prophet during the siege of al-Ṭāif was the reason for their acceptance of Islam. The Shāfi'ī jurists outlawed the killing of enemy animals except for eating[102].

Al-Ḥanabalī jurists, al-Awzā'ī and al-Thawrī jurists accepted the doctrine of unnecessary destruction of the enemy based on Abu Bakr's instructions[103]. The Ḥanbalī jurists outlawed the killing of enemy animals. They also prohibited the cutting and burning of the enemy's trees except as a retaliation in the event of the enemy performing the same act[104]. They based their argument on this verse "When he turns his back, his aim everywhere is to spread mischief through the earth and destroy crops and progeny but Allah loveth not mischief" (H.Q.S2. A205).

Muslim jurist Ibn Ḥazm supported the burning of the enemy's trees, food, properties and their destruction. He based his argument on verse number 5 in Sura 59 which we mentioned earlier and also on this verse "But was reckoned to their credit as a deed of righteousness, whether they suffered thirst or fatigue, or hunger, in the cause of Allah, or trod paths to raise the ire of the Unbelievers, or gain any gain from an enemy: For Allah suffereth not the reward to be lost of those who do good" (H.Q.S9. A120). He also supports his view by mentioning

the tradition of the Prophet when he burnt and cut the palm trees of the Banu al-Nadir's[4] tribe. He argued that Abu Bakr's instructions to the Muslims army is not compulsory but advisory[105].

Some modern scholars and writers such as Abu Zahra states that the destruction and cutting of the enemy's trees are not lawful in Islam. Abu Zahra based his view on Abu Bakr's instructions to the Muslim army. To support his view he mentioned al- Awzā'ī argument which was in answer to Abu Ḥanifa's argument regarding the treatment of the enemy's trees and animals which has been clarified. Al-Awzā'ī states, that the Qurān and the Sunna should be interpreted in the light of the practice established by Abu Bakr and the companions of the Prophet who knew the interpretation of the Qurān and the Sunna better than Abu Ḥanifa and who disagreed with Abu Bakr's instructions[106].

Abu Zahra discussed some of the proofs which some Muslim jurists mentioned to support their views such as the cutting and burning of the Banu al-Nadir's tribe as this was the best way to force them to surrender when they were becoming a danger to Muslims. He argued that the order from the Prophet to his companions to burn the vineyards of the Thaqīf tribe in order to force them to surrender and to save their blood. However, the Prophet did not burn them. Abu Zahra also added that the destruction against the enemy could be lawful when it is necessary for military purposes such as when the enemy uses properties or vegetation for their defence or to harm the Muslim army, in this case the Muslim army are obliged to attack or destroy them[107].

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[4]This battle took place in the fourth year of the *Hijra*. The reason for this battle was that the Prophet went with some of his companions to the Banu al-Nadir tribe who were his allies and requested their assistance in collecting the payment of blood money due to Banu 'Amir, for the killing of two of their men, as Banu al-Nadir were their allies. They pretended to acquiesce to the Prophet's demand but instead they planned to kill him while he was sitting with his companions at the wall of one of the Jew's houses. However he left before they could put their plan into action, having been warned by divine revelation. The Prophet, therefore sent an envoy with an ultimatum that they had to leave the city within ten days but they refused. The Prophet marched on them and after a siege of fifteen days including the burning of their palm trees, the tribe surrendered. They were to leave the city with their personal belongings, but without their arms. The following verse was revealed in this incident "Whatever ye cut down (O ye Muslims!) of the tender palm-trees, or ye left them standing on their roots, it was by leave of Allah ..." (H.Q.S59. A5).

128

THE MORALS OF JIHAD BEFORE FIGHTING

Islam has established certain rules and morals and asks its followers to comply with them before they begin to participate in *Jihād*, some of the rules are given below.

1- The fear of Allah. Allah orders Muslims to fear Him at all times even his Messenger Muḥammad also has ordered the same "O Prophet! fear Allah, and hearken not to the unbelievers and the hypocrites: Verily Allah is full of knowledge and wisdom" (H.Q.S33. A1). Allah Praised the fearing of Him "... And take a provision (with you) for the journey, but the best of provisions is right conduct. So fear Me, O ye that are wise" (H.Q.S2. A197). The Prophet also ordered his *Umma* to fear Allah in general "Maintain an awful respect for Allah, observe the five time prayers ...; you will then enter the Paradise of your Sustainer" (al-Tirmidhī)[108]. The Prophet used to recommend to the leaders of the Islamic army and detachments when he appointed them to fear Allah. Al-Sarakhāsī states that the fear of Allah is the main factor of the victory[109] then he quoted this verse which clarified the connection between victory and fearing of Allah "Yea if ye remain firm, and act aright, even if the enemy should rush here on you in hot haste, your Lord would help you with five thousand angels clearly marked" (H.Q.S3. A125).

2- The sincerity of *Jihād* to Allah. In Islam all work has to act with sincerity toward Allah "And they have been commanded no more than this: To worship Allah, offering Him sincere devotion, being true (in faith) ..." (H.Q.S98. A5). The Prophet clarified the importance of sincerity of worship in this tradition "Intention determines the worth of person's actions and he will attain what he intends. If by immigration his aim is to please Allah and His Messenger then his migration is for this purpose; and if he migrates seeking the attainment of some worldly object, or for the sake of marrying a woman and as such his migration will be reckoned for that particular object" (al- Bukhārī and Muslim)[110].

Jihād is a kind of worship which then should be performed towards Allah so the Prophet used to recommend to his army leaders to be sincere of his *Jihād* towards Allah. He also answered the person who asked him whether a person who fights to show his chivalry, or for

the sake of self-respect or who fights ostentatiously, is in the cause of Allah? The Prophet replied "One who fights to uphold the message of Allah, is the person who carries on *Jihād* in the cause of Allah" (al- Bukhārī and Muslim) [111]. According to al-Mawdudi "God accepts only such needs as are executed for the purpose of obtaining His Goodwill and the doers seek to serve no personal or collective objectives" [112].

3- Muslims who are involved in *Jihād* must believe that victory comes only from Allah after Muslims take all human measures. In the Qurān Allah says "Allah made it but a message of hope for you, and an assurance to your hearts: (in any case) there is no victory except from Allah, The Exalted, the Wise" (H.Q.S3. A126).

Therefore during the battle of Badr, when the Prophet had taken all measures humanly possible to prepare his followers to fight the non-believers, and then he looked to the enemy's army and their equipment and compared them with his small group and poor equipment; as he knew that victory comes from Allah, he began to pray to Allah to give him victory, he said according to Ibn Hishām "O Allah give us the assistance which you promised. O Allah if this little group is defeated when will you be worshipped again" [113]. Then Allah revealed "Remember ye implored the assistance of your Lord. And He answered you: I will assist you with a thousand of the angels ranks on ranks" (H.Q.S8. A9).

4- The mutual consultation between the leader of the army and his advisers. Mutual consultation (*al-Shura*) is a very important principle in the Islamic state, so there is a Sura in the Qurān which is called al-*Shura*. Allah said in the *Shura* "Those who respond to their Lord, and establish regular prayer who (conduct) their affairs by mutual consultation, who spend out of what we bestow on them for sustenance" (H.Q.S42. A38). Moreover Allah urged the Prophet himself to conduct mutual consultation with his companions "It is part of the mercy of Allah that thou dost deal gently with them. Wert thou severe or harsh-hearted, they would have broken away from about thee so pass over (their faults), and ask for (Allah's) forgiveness for them, and consult them in affairs (of moment) then, when thou hast taken a decision, put they trust in Allah. For Allah loves those who put their trust (in Him)" (H.Q.S3. A159).

The Sunna of the Prophet gives a clear example of the application of this principle. Before the battle of Badr the Prophet consulted the situation with his companions. After Abu Bakr and 'Umar presented their views, al-Miqdād bin 'Amar stood up and said, O Messenger of Allah we are with you. By Allah we shall never say to you as the Jews had said to Moses, go alone with your Lord and fight with Him for us, while we remain here and await your return, rather we say go forth you and your Lord to fight for we are fighting with you. The Prophet said speak out O men and give me your advice. The Prophet wanted to hear al-Ansār's view who on the day of al-'Aqabah pledged to protect the Prophet from any attack inside the Medinah city. The leader of al-Ansār Sa'ad bin Mu'ād realised that the Prophet was waiting for them to speak and to give their view. Sa'ad said we have believed in you and we have witnessed that what you have brought to us is the truth. We have covenanted with you to hear and to obey. Go ahead with whatever you decide on, we are with you. By Him who sent you as a Prophet, if you lead us toward the sea we shall enter into it with you and no one of us will stay behind. We do not fear that you cause us to face our enemy tomorrow. We shall hold fast to our ground and stand firm or press forward toward the enemy in solid rank. We hope that Allah will show you such of our deeds as you may not be disappointed therein but may be proud of it. Lead us forth with Allah's blessing [114]. After this mutual consultation between the Prophet and his companions, he decided to meet the non-believers in Badr.

After the battle of Badr the Prophet also applied mutual consultation when he discussed the situation of the non-Muslim prisoners of war with his followers. He asked Abu Bakr, 'Umar, and Sa'ad bin Mu'ād for their opinions. Abu Bakr suggested taking ransom from them because they were the Prophet's relatives and also this ransom would help the Islamic state and encourage the prisoners to become followers of Islam. 'Umar and Sa'ad bin Mu'ād both suggested killing the prisoners, because of their harsh treatment to the Prophet and his followers in Makkah. Another follower al-Ḥubāb bin al-Mundher suggested that the prisoners should be taken to a wooded valley and burned to death [115].

During the battle of Uḥud the Prophet held a council of war with his followers to discuss the reaction of the Islamic state against the invasion by non-Muslims, the Quraish tribe. The Prophet and some of the older companions suggested remaining inside the capital of the Islamic

state where they could protect the city from inside. On the other hand some of the young companions suggested going out to meet the enemy and protect the city from outside. Eventually the Prophet decided on this course[116].

During the battle of Khandaq (Trench) when the Quraish tribe and their allies attacked Medinah with a huge army consisting of ten thousand warriors, the Prophet consulted this situation with his companions. Salmān al-Fārisī advised the Prophet to dig a trench around the open approach to the city to defend it [117]. The Prophet adopted this idea and the enemy lay siege to Medinah for twenty four days without any positive result.

We observe, therefore, that the Prophet did not decide on important affairs by himself. As he is the Prophet he has the power to order his followers to do as he says and they will obey him; there is a direct order from Allah to all Muslims to follow the Prophet "O ye who believe! obey Allah, and obey the Messenger ..." (H.Q.S4. A59). Another verse "And obey Allah and the Messenger; That ye may obtain mercy" (H.Q.S3. A132). But, the Prophet wanted to establish mutual consultation, instructions for which he received from Allah to consult with his followers on important affairs, at the end of which he could decide on a suitable solution and also as a guidance to the Muslim rulers who will come later to apply the same method.

Therefore the Muslim rulers who governed after the Prophet applied the principles of mutual consultation. The first caliph, Abu Bakr consulted with his councillors before sending military expeditions to the Romans. The second caliph, 'Umar similarly held many *shura's* concerning military and administrative affairs including the establishment of the date of the *Hijra* as well as the establishment of a department of revenue after the conquest of Iraq and when the national income was increased to secure the continuation of a national income for the Islamic government[118]. According to al-Naḥawī, the second caliph consulted with Muslims regarding this point. One of them advised him to establish a social security system, having observed a similar system and codification in the al-Sham kingdom. The caliph decided to establish this new system for the Islamic government[119].

As a result of what has been mentioned, mutual consultation occurs in Islam, not only in political matters but in every important aspect such as social, educational, economic and war affairs. Muslim jurist Ibn Taymiya mentioned that it is indispensable in matters where no revelation is available for the leader of the Muslim state to consult. He said it was reported by Abu Hurairah (one of the Prophet followers) that the Prophet practised the *Shura* with his followers more frequently than anyone else he had seen[120]. Rashīd Ridā mentions in his commentary al-Manār, that part of the principles of Islamic law is that the *Imām* has to consult with his advisers even if he thinks his sole opinion is right, as a group decision is preferable to the findings of an individual[121]. Also, Asad explained the verse which we mentioned earlier "Who conduct their affairs by mutual consultation" (S42.A38). He said that "This injunction must be regarded as the fundamental operative clause of all Islamic thought relating to statecraft ... the word 'amr' affair in this injunctive refers to all affairs of a communal nature and therefore also to the manner in which the government of an Islamic state is to be established"[122].

5- The stillness in the battlefield. In general Muslims are not allowed to flee from the enemy in the battlefield except when it is to find a better tactical position or to join another Muslim group in order to strengthen their or his position[123]. There are warnings in the Qurān and in the hadith[5] against fleeing from the battlefield. "O ye who believe! when ye meet the unbelievers in hostile array, never turn your backs to them. If any do turn his back to them on such a day unless it be in a stratagem of war, or to retreat to a troop (of his own) he draws on himself the wrath of Allah, and his abode is Hell, an evil refuge (indeed)" (H.Q.S8. A15-16). Another verse "O ye who believe! when ye meet a force, be firm, and call Allah in remembrance much (and often); That ye may prosper" (S8. A45). In the following hadith the Prophet deems the fleeing from the battlefield as a great sin "Avoid seven most dangerous things. The companions asked: O Messenger of Allah! what are these things. He answered: Making anybody or anything as partner with Allah, practising magic, killing without justification a living being whose life has been declared sacred by Allah, practising usury, misappropriating the property of an orphan, running away from the infidels in battle and slandering chaste innocent believing women" (al- Bukhārī and Muslim)[124].

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[5]The saying of the Prophet.

On the other hand there are exception to this rule and different views regarding this matter which are mentioned by Islamic jurists as follows:

The Ḥanafi's school opinion is that if Muslims number the same as half of the enemy, then they have to stay in the battlefield if they have the ability and enough forces. They state this verse to support their view "For the present, Allah hath lightened your (burden), for He knoweth that there is a weak spot in you: But (even so), if there are a hundred of you, patient and persevering, they will vanquish two hundred, and if a thousand, they will vanquish two thousand, with the leave of Allah: for Allah is with those who patiently persevere" (H.Q.S8. A66). Muslims may flee if the number of the enemy forces are more than twice that of the Muslims. They added, when the Muslim army numbers are 12,000, and its word and aim is one they never flee regardless of the number of the enemy. They based this view on the ḥadith that 12,000 will not be defeated[125].

The Māliki jurists allow the retreat of the Muslim army if their number were less than half of their enemy. If the Muslim army numbers are 12,000, they never retreat even if the number of the enemy army are more than twice their number. They also permit retreat if the Muslims were faced with certain death[12o].

The Shāfi'ī jurists mentioned that if the number of the enemy's army were not more than twice the Muslims then they have to remain in the battlefield if they did not fear destruction, but they may flee in two cases 1-to find a good tactical position 2- or to join another group of Muslims. The Shāfi'ī jurists hold that if the number of the non-Muslims were more than twice of Muslims then Muslims must retreat, if they felt that they will be defeated [127]. They mentioned this verse which supports the view of fleeing "... And make not your own hands contribute to (your) destruction ..." (H.Q.S2. A195).

The view of the Ḥanabalī jurists are close to that of the Shāfi'ī, they did not permit retreat if the number of the enemy was not twice the Muslims. But if the enemy's number exceeded twice the number of Muslims and they felt that they will win then it is more proper to

stay. They also allow the retreat of the army if they thought that they will be defeated or destroyed but if they felt that they will be destroyed if they retreat or stay then it is more proper for them to stay and become martyrs[128].

6- The reading of the Qurān and reciting of poetry. The reading of the Qurān and reciting of poetry are one of *Jihād* morals which is important to strengthen the moral of the Muslim army before *Jihād*. The Muslim armies used to say *takbīr* (Allah is the greatest) before the actual start fight [129]. The Prophet is reported to have said during the battle of Khaibar "... The Prophet raised both his hands and said Allahu Akbar. Khaibar is ruined, for when we approach a nation (i.e.enemy to fight) then miserable is the morning of the warned ones" (al-Bukhārī)[130].

During the battle of Trench the Prophet recited poetry. Al- Bukhārī designated a section in his book al-Saḥīḥ under this title, 'The Recitation of Poetic Verses in the War', then he states this ḥadith narrated al-Barā "I saw Allah's Apostle on the day (of the battle) of the Trench carrying earth till the hairs of his chest were covered with dust and he was a hairy man. He was reciting the following verses of ʿAbdullah bin Rawāḥah: O Allah, were it not for You, We would not have been guided, nor would we have given in charity, nor prayed. So, bestow on us calmness, and when we meet the enemy, then make our feet firm, for indeed, the enemy has revolted against us: Yet, if they want to affect us we oppose their affection". The Prophet used to raise his voice while reciting these verses[131].

7- The using of flags. Muslim armies used flags during *Jihād* as their symbol and also as a sign of the raising of the word of Allah[132].

During the era of the first Muslim state we could observe that the Prophet used flags in some battles. According to al-Bukhārī that on the day of the battle of Khaibar the Prophet said "Tomorrow I will give the flag to somebody who will be given victory (by Allah) and who loves Allah and His Apostle and is loved by Allah and His Apostle", so the people wondered all night as to who would receive the flag and in the morning everyone hoped that he would be

that person. Allah's Apostle asked, "where is ʿAlī? He was told that ʿAlī was suffering from eye-trouble, so he applied saliva to his eyes and invoked Allah to cure him. He at once got cured as if he had had no ailment. The Prophet gave him the flag ..."[133].

Another incident occurred during the battle of Mu'tah which took place in the eight year of the *Hijra* when the Prophet sent an army which consisted of 3,000 men north to the Arabic Peninsula to meet with the Byzantine to propagate Islam under the leadership of Zayd bin Hārithah. In the event of Zayd's death Ja'far bin Abu Ṭālib was to be the leader of the Army and if he fell ʿAbdAllah bin Rawāḥah was to take his place. All three leaders were killed while they held the banner of the Muslim army. Ibn Hishām mentioned that Zayd fought while he held the banner of the Prophet, which could mean that the Prophet gave him the banner before they left the capital of the Islamic state[134].

8- The invitation of non-Muslim enemies to Islam. The main reason of *Jihād* is to raise the word of Allah and to summon the people to embrace Islam "If anyone desires a religion other than Islam (submission to Allah) never will it be accepted from him; and in the Hereafter he will be in the ranks of those who have lost" (H.Q.S3. A85). The concept of summoning is mentioned both in the Qurān and in the Sunna "... Nor would we punish until we had sent a Messenger (to give warning)" (H.Q.S17. A15). The Prophet has said "I have been ordered to fight with the people till they say, none has the right to be worshipped but Allah, and whoever says, none has the right to be worshipped but Allah, his life and property will be saved by me except for Islamic law and his accounts will be with Allah (either to punish him or to forgive him)" [135]. Khadduri states that the Prophet Muḥammad and his early successors had followed the rule regarding the invitation of the unbelievers to Islam which was laid down by the Prophet himself[3o].

Muslim jurists agreed in general that an invitation to Islam has to be sent to the non-Muslim enemies before the start of fighting but at the same time some schools have different views regarding some details.

The Ḥanafī, Shāfiʿī and Ḥanbalī jurists considered that the invitation of non-Muslims to Islam before fighting is obligatory but they think it's recommended for those who have been summoned or the summons has reached them before. If the Muslim army attack without an invitation having being offered, only the Shāfiʿī jurists hold that Muslims are responsible for those who are murdered in fight and have to pay blood money[137]. Some of the Ḥanbalī jurists hold that those who had received an invitation such as the people of the Book and the Magi should never be re-invited but pagans should be notified. Ibn Qudāma who is one of the famous Ḥanbalī jurists commented on this view thus, that the invitation to Islam is recommended for those who were not summoned, even from the people of the Book, the Magi or from the Pagans[138].

The Mālikī jurists held that an invitation should be sent to non-Muslims before fighting even if the summons had reached the enemy before[139].

From what has been mentioned we can say that the summons is obligatory for those who had not received any information about Islam before fighting according to the verse which we mentioned earlier (S17. A15). There is a ḥadith from the Prophet which says that when he decided to send any leader to fight non-Muslims, he ordered them to give the enemy three options, to adopt Islam. or to pay *jizyah*, or if they refuse then to fight (Muslim).

It is also recommended for those who received information about Islam before. There is a ḥadith which supports this view, on the day of the battle of Khaibar, the Prophet gave ʿAlī bin Abī Ṭālib the flag of the war. ʿAlī asked the Prophet "Should I fight them till they become like us (Muslim)? The Prophet said go to them patiently and calmly till you enter the land. Then, invite them to Islam. and inform them what is enjoined upon them, for, by Allah, if Allah gives guidance to somebody through you, it is better for you than possessing red camels" (al-Bukhārī) [140]. So the Prophet ordered ʿAlī to invite them to Islam whilst they had received information about it before.

In another case, if the non-Muslims prepared themselves to attack Muslims, the summons in this case is not required. In the battle of al-Muraysi' which took place in the fifth year of the *Hijra* between the Prophet and Bani al-Mustaliq, a branch of the Khuza'ah tribe', the Prophet determined on attacking the Bani al-Mustaliq. They had not been summoned to Islam as they joined the Quraish tribe in the attack on the Prophet and his followers during the battle of Uḥud. Also the victory over the Muslims by the Quraish encouraged other tribes to attack the Muslim state in Medinah. The leader of this tribe armed his people in order to launch further attacks against the Islamic state[141].

The summons is not required if the enemy attacks the Muslims by surprise and the Muslims were in a defence situation [142]. This principle could be concluded from some of the Prophet's defensive battles such as Badr, Uḥud and the Trench. During our research of the defensive battles we could not come across any information concerning the Prophet's use of the invitation to those non-Muslim attackers.

THE QUALIFICATIONS OF MUJAHID

Muslim scholars have defined certain qualifications needed for *Mujāhid* in order to allow them to fight in the cause of Allah. These may be stated as follows:

1- The *Mujāhid* must be Muslim. *Jihād* is a religious duty for the purpose of the raising of the word of Allah and in the cause of Allah as has been previously mentioned. This is supported by most of Muslim jurists such as al- Shāfi'ī and Ibn Qudāma[143] Muslims cannot trust non-Muslim to fight alongside. The proof which support this comes from the Qurān "O Prophet! rouse the believers to fight ..." (H.Q.S8 A65). And also "It is not for the believers to go forth together if a contingent from every expedition go forth ..." (H.Q.S9 A122). However al-Shaybānī and al-Sarakhāsī from the Ḥanafī school, see no reason why non-Muslims could not be employed in *Jihād*. They do say though that the *Imām* has the right not to get help from non-believers[144].

2- The *Mujāhid* must be a mature and sound-minded person, because the reaching of sexual maturity is a condition of commandment in Islamic law [145]. During the battle of Uḥud, the Prophet Muḥammad refused some young Muslims offer to participate in *Jihād*, such as 'Abdulah ibn 'Umar, Osāma bin Zayd and Zayd bin Thābt when they were fourteen years old, but allowed them to participate in *Jihād* a year later, in the battle of Trench[146].

3- The *Mujāhid* must an able bodied person [147]. Allah is excluding the person who is not able to participate in *Jihād* "There is no blame on those who are infirm, or ill, or who find no resources to spend (on the cause), if they are sincere (in duty) to Allah and his Messenger" (H.Q.S9 A91). In another verse "On no soul doth Allah place a burden greater than it can bear" (H.Q.S2 A286).

4- The *Mujāhid* must be male. Women were excused from *Jihād* when it is a collective duty, 'Ayesha relates: "I once requested the Holy Prophet (p.b.u.h) o' Messenger of Allah we (the women folk) consider that *Jihād* in the cause of Allah is the best deed, then may we not go forth fighting in the cause of Allah? the Prophet said: the best form of *Jihād* in the cause of Allah for you is the pilgrimage, free from all vices and defects" (al- Bukhārī) [148]. But if *Jihād* became a personal duty then she could participate in it; the women could take part in a collective *Jihād* by helping the *Mujāhid* in supporting works such as nursing the wounded and preparing food. In the time of the Prophet Muḥammad, women accompanied him on his expeditions and acting both directly and indirectly in war [149]. The Muslim jurist al-Shaybānī allowed older women to join the collective *Jihād* to help indirectly[150].

5- The *Mujāhid* must be independent economically. He must not be under debt, and has wealth enough to support himself and his family while he is away for *Jihād* unless he is excused by his debtor or he allowed him to participate in *Jihād* while he does not excuse him [151]. The Prophet Muḥammad said "Allah forgives all sins of a martyr except his debt" another version "Being slain in the cause of Allah is enough to atone for everything except debt" (Muslim)[152]. The *Mujāhid* self-support is acceptable during the old era, but during the present time states are responsible for securing weapons and monthly payment for fighters. So if a Muslim state is

able to provide those requirements then a *Mujāhid* has to participate in the collective *Jihād* if he is asked by the Muslim government. This is supported by Haykal[153].

6- Before a *Mujāhid* could go to *Jihād* he must get his parent's permission, except when the *Jihād* became a personal duty there was no need for permission[154]. 'Abdullah bin Mas'ud says that he asked the Holy Prophet which action is most favourite with Allah the almighty. He answered: "performing the Ṣalāt (or offering prayers) in time. I asked: thereafter? He said good treatment of parents. I submitted; then which next? He said: fighting or struggling in the way of Allah (al- Bukhārī and Muslim)[155]. Also a man came and sought permission for *Jihād*, the Prophet asked him: Are your parents living? the man said yes, the Prophet said: then carry on *Jihād* in serving them: this service is as good as *Jihād* (al- Bukhārī and Muslim) [156]. Al-Shaybānī add that the permission is also required when either or both parents is not Muslim. This permission will be not valid only if the motive of preventing permission is the desire of preventing their son to fight their co-religionists[157].

7- The *Mujāhid* must be free born, because a slave was under no *Jihād* obligation except when his master allowed him to do so. But if the *Jihād* became a personal duty then he has to fight even without a permission from his master[158].

TREATIES

The normal relationship between Islamic and non-Islamic states is a state of hostility according to the old Muslim scholars' view, but a peace treaty is not against Islamic *shari'h* if it is concluded with the non-Muslim enemies when the Islamic state is weak or suffering from emergency conditions[159]. A treaty (muwād'ah or sulḥ) according to Muslim jurists is a peaceful agreement between Muslims and non-Muslims to terminate the fight between the two parties for a specific period[160].

Treaties with non-Muslims is permitted by the Quran and the Sunna. "...If he belonged to a people with whom ye have a treaty of mutual alliance, blood-money should be paid to his family ..." (H.Q.S4. A92). Also "How can there be a covenant before Allah and His Messenger with the Pagans except those with whom ye made a treaty near the sacred Mosque? As long as these stand true to you, stand ye true to them: for Allah doth love the righteous" (H.Q.S9. A7). And "But if the enemy incline towards peace, do thou (also) incline towards peace, and trust in Allah: for He is the one that heareth and knoweth (all things) (H.Q.S8. A61).

The Prophet concluded a peace treaty with the Quraish tribe in the sixth year of the *Hijra* which known as al-Hudaibiyah[°] treaty. Both sides agreed to lay down their arms for ten years. During this time each party shall be secure, and neither shall injure the other. So on the basis of the Quran and the Sunna. Muslim jurists agreed that a peace treaty with non-Muslims is allowed by the leader of the Islamic state or his representatives if it serves Muslim interests[161]. Muslim jurists on the other hand did not define a standard of the Muslim interests. Hence it could be the weakness of the Islamic state, the shortage of its numbers, the hope that the enemy will be converted to Islam or will pay the *jizyah* according to Mahjup[162].

Islamic schools agree that a treaty must concluded for a specific period of time[163]. The Shāfi'īs hold that a treaty should not be longer than four months when the Muslim state is in a strong position. They support their view by mentioning the following verse "A (declaration) of immunity from Allah and His Messenger to those of the Pagans with whom ye have contracted mutual alliances:- Go ye, then for four months (as ye will) throughout the land ..." (H.Q.S9. A1-2). If the Islamic state is weak then a treaty should not be longer than ten years according to the Shāfi'īs and the Hanbliis scholars. The treaty of al-Hudaibiyah was the model which those scholars based their view on as it was concluded by the Prophet for ten years. The undefined time of a treaty could stop *Jihād*[104]. The Shāfi'īs allow another view that a treaty could be

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[°]The Prophet with a handful of his companions proceeded to Makkah with intention to make pilgrimage. The Quraish tribe prepared to fight and not allow the Prophet to enter Makkah. After some negotiations both parties agreed to sign the al-Hudaibiyah Treaty.

concluded for an undefined length of time on the condition that the *Imām* has the right to revoke the treaty at any time[165].

The rest of the Islamic schools hold that the period of the treaty is the *Imām's* responsibility but the treaty must be concluded for a specified period of time [166]. Their evidence includes the treaty of al-Ḥudaibiyah where the Prophet specified the period of time, which means that the Muslim leaders have to specify the period too.

On the other hand some Muslim scholars such as Ibn Taymiya and Ibn al-Qayyim hold that a treaty could be concluded without defining a period of time[167].

Once the treaty is concluded Islam orders his followers to live up to its terms unless the *Imām* fears an imminent attack from the enemy[168]. The Qurān urges the Muslims not to break treaties "Fulfil the Covenant of Allah when ye have entered into it, and break not your oaths after ye have confirmed them ..." (H.Q.S16. A91). Another verse "(But the treaties are) not dissolved with those Pagans with whom ye have entered into an alliance and who have not subsequently failed you in aught, nor aided any one against you. So fulfil your engagements with them to the end of their term: for Allah loveth the righteous" (H.Q.S9. A4).

Muslim scholars allowed that the Islamic state could pay money to the enemy in return of the signing of a peace treaty in case of necessity and under exceptional circumstances [169]. Al-Shāfi'ī allowed such a treaty if the Muslims are being threatened with extermination[170]. They based their view on the battle of Trench when the Quraish tribe and their allies lay siege to the capital of the first Islamic state. The Prophet sent a messenger to the Ghatafān tribe who was with the Quraish during the siege and offered them one-third of the date harvest of Medinah in return for the signing of a peace treaty between both sides which would lead to their withdrawal from the siege. After a mutual consultation between the Prophet and some of his followers over their desire to continue their fighting, he decided to withdraw his offer [171]. However, the fact that the Prophet was prepared to do that action according to Muslim jurists has allowed such action in the future.

The second proof according to al-Sarakhasi is the following tradition from the Prophet "Put your money in place of yourself and yourself in place of your religion" so the payment of money is allowed in return of the sign of such treaties to save the individual and the religion[172].

Some scholars compared the payment of the money in return for a peace treaty when the Muslims threatened to exterminate Muslim prisoners in the hands of the enemy who may be ransomed[173].

However a treaty is terminated either when the agreed period between the two parties expired "So fulfil your engagements with them to the end of their term..." (H.Q.S9.A4). Or if the Muslim's enemy violated the treaty[174] "But if their oaths after their covenant and attack your faith, fight ye the chiefs of unfaith..." (H.Q.S9.A12). A Muslim *Imam* can terminate the treaty when he has evidence that the enemy is planning to break the treaty[175] "If thou fearest treachery from any group, throw back (their covenant) to them, (so as to be) on equal terms: for Allah loveth not the treacherous" (H.Q.S8.A58).

The Hanafis hold that, if it is the interest of the Muslims, the Imam has the right to terminate a treaty with the enemy. So if, for example, the Muslims have reached an agreement with the enemy, whereby the enemy pays the sum of 3,000 dinars in return for three years of peace, and the Imam realises a year later that it is in the interest of the Muslims to end this treaty, he will have to repay 2,000 dinars to the enemy for the remaining [two year] period[176]. When the treaty is terminated by the Islamic state Muslim schools agreed that the enemy should be allowed some time in order to spread the news to all parts of his country[177].

On the other hand, the peace treaties are different from the treaties which were concluded with the *dhimmah*, as the last were designed to be a perpetual pact; even when some of its terms were violated by a few it remained binding upon the other side. When the *dhimmah* treaty came into force the *dhimmah* and their territory became part of the Islamic state. So according to khadduri, the *dhimmah* treaties are a form of constitutional guarantee which are given by the Muslims to the *dhimmah* rather than between equals[178].

However, the aim of treaties between Islamic and non-Islamic states during some periods of the Islamic state differed from those treaties which were signed during the early times of the Islamic state, some of these treaties followed political purposes. During the Umayyad rule the Caliph 'Abd al-Malik concluded peace treaties with the Byzantines while he was busy fighting against the insurgents in Iraq[179].

Under the Abbasid rule, some of their caliphs also concluded treaties with the Byzantines for many reasons such as to stop frequent violations of the frontiers and the ransom treaties which were to release prisoners of war by exchange or by paying a certain amount of money between both sides[180]. According to Salem, the first exchange of prisoners of war occurred during the year 805 AD. The Muslim prisoners of war numbered 3,700, after 22 days all Muslim prisoners in the Byzantine empire were released[181].

The other type of treaty which was concluded between the Muslim and Crusader authorities was for the purpose of a cease-fire, therefore making travel easy for pilgrimage or civilian purposes. Such treaties were concluded between Ṣalāḥ al-Din (Saladin) and Richard Coeur de Lion to facilitate Pilgrimage[182].

THE TREATMENT OF PRISONERS OF WAR

THE TREATMENT OF PRISONERS OF WAR BEFORE ISLAM

The practice of taking prisoners of war at the end of the war itself is a very old one. The Romans regarded prisoners of war of other nations as public property which means they were enslaved, sold on the private market, used for public works or distributed to the amphitheatres[183]. The Persians treated their prisoners of war cruelly; they were tortured, blinded

and then killed or crucified. The Hebraic also treated their prisoners in the same manner of as the Persians[7] according to Khadduri[184].

However, Christians had certain principles regarding the treatment of prisoners of war. The Christian theologians agree that it is unlawful to slay the innocent such as women, children and clerics, "by the Middle Ages the power of the Church was such that it was able to forbid Christians knights from using certain weapons as hateful to God" according to Green[185]. On the other hand Christians also treated prisoners of war with cruelty which could lead us to say that the application of these principles is perhaps limited to people of the same religion. According to Rosas "These usages relating to prisoners of war as well as the laws of war in general in Western Europe were not as such considered applicable in wars with non-Christian societies"[186].

On the other hand, in wars during the pre-Islamic era, the Arabs took prisoners the same as other nations, hence, how then did they deal with their prisoners during this period?

The Arabic tribes treated their captives with relentless cruelty and tortured them. Some tribes even prevented their captives from eating and drinking. 'Alī mentions that one such prisoner of war died because he was refused drink[187]. The Arabs may kill their prisoners and there are instances of such killing "In Arabia, Rome, Persia, and in other parts of the world, human beings were killed, burnt or buried alive, and slaughtered like animals or tortured to death for the sake of fun ... custom or tradition" according to Mālik[188].

Some Arab kings incinerated prisoners and corpses, al-Mundhir bin Imru al-Qays collected prisoners of war and burned them. Another leader invaded the Benī Tammī tribe killing 150 people whose corpses he burned[189].

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[7]"When thou comest nigh unto a city to fight against it ... thou shalt smite every male therefore with the edge of the sword: but the women, and the little ones, and the cattle, and all that is in the city, every all the spoil therefore, shalt thou take for a prey unto thyself ..." (Deut. xx, 10-17).

During the Arabic wars it was not forbidden to mutilate the dead bodies of the enemy, even prisoners of war were kicked in certain parts until they died. 'Alī mentions the example from Arabic history of one of the Arabic tribal leaders who was defeated in war, and so killed himself and his followers, out of fear that the enemy would mutilate their bodies[190].

During that time, enslavement of prisoners of war was known and practised, according to Khadduri, "Enslavement by war is an ancient custom which existed in the ancient East and was practice in pre Islamic Arabia"[191]. Prisoners were, therefore, the chief source of slaves of the Arabic tribes. Moreover, some of the Arabic tribes used prisoners as hostages to impose political restrictions upon the defeated. If they rebelled, the victors would kill the prisoners[192].

Nevertheless, Arabs before Islam had some good rules regarding prisoners of war such as ransoming them by taking ransom from the prisoner himself or from his tribe. There was no specific amount, but it depended on the social position of the prisoner. Sometimes it was around 300 to 500 camels, but it even reached 2,000 camels. Some of the Arabic tribes also may have released their prisoners without ransom[193].

From what has been mentioned regarding the good treatment of prisoners of war in the Arabic Peninsula during the pre-Islamic period, it seems that it was not such a phenomenon and did not follow specific rules but was individual to each tribe, or its members, who dealt with prisoners according to their own interests.

TREATMENT OF PRISONERS OF WAR IN ISLAMIC LAW

Islamic law has established the proper treatment of prisoners of war. This treatment determines on the basis of instruction from Allah in the Qurān and from the conduct of the Prophet during his life. This section will clarify the most important principles concerning the treatment of prisoners of war from battles which occurred during the life of the Prophet and also from principles which then the Muslim scholars established.

146

The good treatment of prisoners of war

Allah had urged all Muslims to treat prisoners of war well by feeding them "And they feed, for the love of Allah, the indigent, the orphan, and the captive, (saying) we feed you for the sake of Allah alone: No reward do we desire from you, nor thanks" (H.Q.S76, A 8-9).

The Prophet also ordered his followers to treat prisoners well while they were in captivity. When the Prophet returned to Medinah from the battle of Badr, he asked his followers to treat the prisoners well [194]. According to the Encyclopaedia of Seerah, when the captives from the battle of Badr were brought to Medinah, after they had oppressed the Muslims for thirteen years in Makkah forcing them to leave their money, property and home town, the Prophet urged his companions to be kind to the prisoners and show them generosity. The followers of the Prophet followed his instructions. They treated the prisoners well and fed them better than they did themselves or their families[195].

In this battle, one prisoner called Abu 'Aziz bin 'Umayr reported that when they arrived in Medinah, he was given bread (which was very expensive at that time) for lunch and dinner while the Prophet's followers ate dates[196].

According to abu-Dāwd, a captive from an Arabic tribe having been taken by the Prophet, told him that he was hungry and thirsty, and so the Prophet had him fed[197]. Muslim also reported that when Thumamah bin Athāl who was a leader of an Arabic tribe was taken captive by the Prophet's followers, he was sent food and milk, before being released[198].

Moreover, Islamic law grants rights to the wounded prisoners of the enemy. It is decreed that the Muslim army has to give first aid to any wounded enemy on the battlefield. If the wounded require further care, they have to be taken to a treatment area and given the necessary care humanely. The Prophet ordered his followers during the conquest of Makkah "Do not attack the wounded" [199], as they are unable to defend themselves. According to al-Qāsmī, the wounded of the enemy have to be treated with kindness[200]. The Muslim army, therefore, are

not allowed to kill the wounded of non-Muslim fighters on the battlefield, but if the wounded fighter does not fall into captivity or surrender, and continues fighting, then the Muslim army has the right to treat him as a warrior, not as a prisoner of war.

At the same time during the battles which occurred between the Prophet and the non-believers, he dealt with the prisoners in different ways which was considered a model upon which Muslim scholars based their views on the treatment of prisoners of war as follows:

1- The ransom of prisoners of war. The Prophet applied this principle when he took ransom from the non-Muslim Quraish tribe in return for the release of two prisoners from the skirmish of Nakhlah, in spite of having received no advice or order from Allah on how to deal with the prisoners of war. This gives us an insight into the development of Islamic law during the Prophet's battles. He also released most of the prisoners after the battle of Badr for a ransom. It was from one thousand to four thousand *dirhams* for each person according to the wealth of the prisoners [201]. It is written in the Qurān that Muslims should release prisoners of war with or without ransom depending on the circumstances "Therefore, when you meet the unbelievers (in fight) smite at their necks, at length, when ye have thoroughly subdued them, bind (the captives) firmly: therefore (is the time for) either generosity or ransom" (H.Q.S47, A4).

2- The release of prisoners of war without ransom. The Prophet released some prisoners from among the prisoners of the Quraish tribe after the battle of Badr without ransom. For example, 'Abdulah bin al-Rabī' and others who were very poor were released. One called 'Amr bin Hudāfa asked the Prophet to release him because he was poor, and had many daughters, therefore he could not pay the ransom x^{202}. The other prisoners could read and write, and the Prophet asked them to teach the young Muslims, in this way they could pay the ransom and gain their freedom[203].

The above example lead us to conclude that ransom could be paid in money or kind. The Islamic religion takes a particular interest in science and education, as it leads to a nation's development and progress. Allah urges Muslims to read, indeed the first revelation to the

Prophet was Surat Iqraa (read); Allah said "Proclaim (or read) in the name of thy Lord and cherisher, who created- created man, out of A leech-like clot. Proclaim and thy Lord is most bountiful. He who taught (the use of) the pen. Taught man that which he knew not" (H.Q.S96. A1-5).

According to Ibn Hishām, at the time of the al-Ḥudaibiya treaty a Muslim army captured forty or fifty Quraishs warriors and took them to the Prophet, all were released without ransom[204].

3- The exchange of prisoners of war. The Prophet applied this principle, 'Amr bin Abu Sufiān was a prisoner of war taken by Muslims during the battle of Badr. He was the son of the leader of the Quraish. The Prophet exchanged 'Amr for one of his followers, Sa'ad bin al-Nu'mān, a very old man who had been arrested by Abu Sufiān. The Prophet released his prisoner and took his follower from the Quraish[205].

4- The killing of prisoners of war. The Prophet killed two prisoners from the battle of Badr. These two prisoners had been brutal and cruel to the Prophet and his followers and committed atrocities in Makkah. The Prophet, therefore, dealt with them as war criminals. According to Bā-Shmyl, when the Prophet ordered the execution of 'Uqbah bin Abi Mu'āyt, the latter asked the Prophet: "Do you want to kill only me from the Quraish?. The Prophet said: "Yes indeed". Then he said to the people: "Do you know what this man had done to me? He came to me while I was sitting behind al-Maqām (a place inside the Holy Mosque in Makkah) and he put his foot on my neck and pressed very hard until I thought that my eyes would come out of my head. Once he threw a sheep amnion on my head while I was prostrating. Further, he came one day and strangled me very hard with his dress until Abu Bakr came running and shoved him away saying: How dare you! Do you want to kill a man whose fault is saying that His Lord is Allah[206].

The second prisoner was al-Nadr ibn al-Ḥārith; he was killed because whenever the Prophet preached or recited the Qurān to Quraish, he would come after him and start telling fables and the history of the Persian Kings. The following two verses explained this

circumstance "And they say tales of ancients, which he has caused to be written and they are dictated before him morning and evening" (H.Q.S25. A5). Allah also said about him "When to him are rehearsed our signs, tales of the ancients he cries" (H.Q.S68. A15). "al-Nadr and 'Uqbah were terribly hard on the Muslims in Makkah and had inflicted upon them all the harm and injury they could" according to Haykel [207]. Payne confirms that "Two of the captives were killed al-Nadr, who had ridiculed the revelations of Muḥammad, saying they were a collection of Persian tales, and 'Uqbah, who had once attacked Muḥammad in the Kaaba"[208].

Evidently both men were was criminals in the language of the modern age. The Prophet had been in a state of war with the Quarish since he emigrated from Makkah and established the first Islamic state in Medinah. We can observe the skirmishes and battles which had happened between the Prophet and the Quraish tribe from the Skirmish of Nakhlah until he conquered Makkah; meanwhile the al-Ḥudaibiyah treaty which was ratified between the Prophet and the Quraish tribe removed the grounds for war because it contained mutual consent to remove war and lay down their arms for ten years. The Prophet therefore, did not kill them because they were prisoners of war, however, they were executed for their crimes as previously mentioned. And so they were treated as criminals of war.

5- Enslavement of prisoners of war. Enslavement either in war or peace time, is a fact of ancient history, which was practised in the Persian and Arabic civilizations as well as in the Roman, Jewish and Christian religions "Enslavement by war is an ancient custom which existed in the ancient East and was practised in pre-Islamic Arabia" according to Khadduri [209]. Siddiqi confirms that "The institution of slavery appears to have existed since very early times as a thorn in the side of the glorious traditions of mankind"[210].

Islam tried to tight the custom of slavery which already existed in the Arabic Peninsula, by allowing only one method of slaves which was prisoners of war. The Prophet took enslaved prisoners of war in some battles. In the battle of Ḥunayān, he captured several thousand slaves of the Ḥwāzin tribe and when they declared their desire to embrace Islam, they sent a delegation to the Prophet to ask him to release their prisoners and property. The Prophet asked

them what they wanted most, they chose their prisoners, he then set them free [211]. After the battle of al-Muraysy', the Prophet captured more than seven hundred of the Bani al-Mustaliq people. Later however, he married the daughter of the chief of the tribe, the spoils of war being distributed amongst his followers, and all slaves were released in appreciation of the Prophet[212]. After the battle of Banu Qurayḍah, the Jewish tribe, according to the Prophet's follower, Sad bin Muadh, the leader of the Aws tribe who was in alliance with the Banu Qurayḍa, so that their women and children were made captives (slaves) and their property declared as spoils of war[213].

However, Islamic law made efforts to raise the moral standards of the slave. The Prophet urged his followers to treat them well. He used to say, "They are your brothers give them to eat what you eat, and give them to wear what you wear". He advised his companions not to say my slave or my slave-girl, but to say my son and my daughter. He also advised his followers not to give them so much work that they could not to do it all, if they gave them a lot of work, then they had to give them assistance[214].

On the other hand Islamic law afforded the slave several possible ways of gaining emancipation:

1- Islamic law says that if certain faults are committed by Muslims the penalty should be the freeing of their slaves. These are as follows:

a- Killing by mistake. Allah says "Never should a believer kill a believer except by mistake, and whoever kills a believer by mistake it is ordained that he should free a believing slave and pay blood-money to the family deceased, unless they remit it freely" (H.Q.S4, A92).

b- Swearing; Allah said "Allah will not call you to account for what is void in your oaths but he will call you to account for your deliberate oaths: for expiation, feed ten indigent persons, on the scale of the average or clothe them, or give a slave his freedom" (H.Q.S5, A89).

c- The Muslim who says to his wife 'Zihār[8] has to free a slave as a penalty. Allah says "But those who pronounce the word Zihār to their wives, then wish to go back on the words they uttered (it is ordained that such a one) should free a slave before they touch each other. This are ye admonished to perform and Allah is well acquainted with (all) that ye do" (H.Q.S58, A3).

2- Islam ordains that slaves should be allowed to purchase their liberty and to bid with their master for emancipation. In such cases, the slave may not be able to afford the freedom price, so the Muslim government has to support him. In the Qurān Muslims were urged to free slaves "And if any of your slaves ask for a deed in writing (for emancipation) give them such a deed if ye know any good in them: yea, give them something yourselves out of the means which Allah has given to you ..." (H.Q.S24. A33). According to Siddiqi, sums should be advanced to the slaves from the public treasury to purchase their liberty[215].

3- Islamic law grants freedom to the child whose mother is a slave "The child of a slave woman should follow the condition of the father, while the mother should become free at his death" according to Siddiqi[216].

4- Islamic law urges its followers to free slaves for the reward of Heaven "The pious Muslim is urged to free a slave as a recommended act to be amply rewarded in Heaven" according to Khadduri[217].

THE TREATMENT OF PRISONERS OF WAR ACCORDING TO OLD MUSLIM JURISTS

Muslim jurists hold that Muslim *Imām* has a choice between several recommendations with regards to the treatment of non-Muslim prisoners of war as follows:

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[8]It is an old Pagan custom which means that the husband's relationship with his wife will be "as the back of the mother's husband", which implies a divorce and frees the husband from any responsibility for conjugal duties.

Firstly, Muslim schools of jurists agreed that the *Imām* may kill prisoners of war. This view is based upon the unconditional command from Allah to fight the non-Muslims (H.Q.S9. A5) and also "... Smite ye above their necks and smite all their finger-tips off them" (H.Q.S8. A12). Also the killing of prisoners by the Prophet during the battle of Badr [218]. Al-Awzā'ī jurist, recommended that before the execution of prisoners, they should be given the opportunity to adopt Islam, if they should do so, their lives would be protected[219].

Some of the earlier jurists[9] on the other hand held that the killing of prisoners of war is reprehensible. They based their main argument upon the Quranic verse "Therefore, when ye meet the unbelievers (in fight), smite at their necks; at length, when ye have thoroughly subdued them, bind (the captives) firmly: therefore (is the time for) either generosity or ransom ..." (H.Q.S47. A4). The release of the prisoners from the battle of Badr by the Prophet also lent support to their view. They also mentioned a tradition according to one of the Prophet's follower, Ibn 'Umar who said when a prisoner was brought before him "By Allah, as for someone who is trussed up, I shall not kill him"[220].

With regard with this subject al-Shaybānī argues that if a Muslim leader faces difficulties with the transport of human booty, he may kill the males. The explainer of al-Shaybānī's book, Al-Sarakhasi held that this action would stop the benefit of the non-believers from their males [221]. Al-Shaybānī and al-Sarakhāsī, however did not mention any evidence to support their view.

Secondly, the Muslim *Imām* may release prisoners of war without ransom. This is agreed by most of the Muslim schools of law. The Hanafi's school on the other hand hold that the freeing of the prisoners are unlawful. They support their view by saying that the following verse allowed the release of prisoners "When ye have thoroughly subdued them, bind (the captives) firmly: therefore (is the time for) either generosity or ransom ..." (H.Q.S47. A4) are

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[9]Such as 'Atā ibn abi Rabāh. d. 734 ad. al-Hasān al-Basrī. d. 728 ad. and Hammad ibn abi Salama. d. 738 ad.

abrogated by the following verse which is unconditional command to fight the unbelievers "Then fight and slay the Pagans wherever ye find them ..." (H.Q.S9. A5). So the prisoners who were released by the Prophet were before the abrogation and in the view of the Prophet himself not by the revelation according to the Hanafī[222]. Al-Shaybānī added that the Arab Pagans during the battles of the Prophet are not included in the (saby)[10] but they have to except Islam or to face death. He also said that those released may rejoin their army and fight Muslims again[223].

Some scholar's response to the Hanafi's view is to accept the later verse dealing with the case of prisoners of war after the ending of war and therefore there is no connection between the fight itself and its outcome. Moreover, after the second verse was revealed the Prophet released the Quraish warriors at the time of al-Hudaibiya treaty[224]. He also granted freedom to the Quraish during the conquest of Makkah.

Thirdly, the Muslim leader may take ransom or release the prisoners in exchange for Muslim prisoners. This is agreed by most of the Muslim school of law. The Hanafi's school, however, holds that the Muslim *Imām* has no such right, except in case of necessity. They argue that the verse, Q 47, A 4 has abrogated by, Q 9, A 5. To support their view they said that the following verse was revealed after the battle of Badr and was against the action of the Prophet which was the accepting of ransom from Quraish tribe prisoners "It is not fitting for a Prophet that he should have prisoners of war until he hath thoroughly subdued the land. Ye look for the temporal goods of this world; but Allah looketh to the Hereafter: and Allah is Exalted in might, Wise" (H.Q.S8. A67). On the other hand, some Hanafī scholars allowed the exchange of prisoners as the salvation of Muslims is more deserving than the killing of non-Muslim. Those scholars used the incidents of the exchange of prisoners of war which occurred during the battle of the Prophet which has been mentioned to support their view[225].

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[10]The meaning of saby is that women, children and prisoners of war of the enemy become property of the Muslims and are part of the booty.

Fourthly, the Muslim *Imām* may enslave prisoners of war. All the Muslim schools agree on this course of action. Muslim scholars mention some proof which support their view such as the following verse "... When ye have thoroughly subdued them, bind (the captives) firmly: therefore (is the time for) either generosity or ransom ..." (H.Q.S47. A4) which according to Ibn 'Abbās means that Allah gave his Messenger regarding prisoners to choose between to kill, ransom or enslave them[226].

The application of slavery from the Prophet himself during some of his battles such as the enslavement of the 'saby' of the Huwāzin tribe, the Bani al-Mustaliq and Banu Quraydah is strong evidence of this view. Also the enslavement of the prisoners of war which occurred and was applied by the Prophet's followers during the great conquest and the period of the fourth caliph was also further proof[227].

On the other hand old Muslim jurists agree that prisoners who convert to Islam after being captured may not be killed[228]. Certain incidents during the life of the Prophet assure old jurists to keep this view.

According to ibn Abi-Shiba, when the Prophet sent his warriors to fight, he ordered them not to kill anyone within sight of a mosque or within the hearing of the call to prayer in that area[229].

Another incident, when the Prophet sent Khālid bin al-Walīd to an Arab tribe to call them to Islam, he attacked them (even though he had heard the call to prayer), captured them and ordered his army to kill them. Some of his army obeyed his order, but the others refused, and released the prisoners as they considered them to be Muslims. When the Prophet heard the story, he grew angry and reprimanded the leader of the troops for killing the prisoners; in contrast he praised those of his followers who had released their prisoners[230].

Also according to Muslim, the Prophet sent a detachment to an Arab tribe. After the mission, one of the Prophet's followers named Osāma, told the Prophet that he had killed one

of the non-Muslim troops after he had said 'There is no god but God'[11]. The Prophet asked Osāma: "Did you kill him after he said, there is no god but God?" Osāma answered that the person was afraid only of death. Then the Prophet said: "Did you see his heart to check if he embraced Islam to save his life or not?" Osāma said that the Prophet continued to ask this question until he wished that he had not been a Muslim before and could now adopt Islam with a fresh start and a clear conscience[231].

The earlier Muslim jurists also dealt with the prisoner who embraced Islam as a Muslim leader may enslave a non-Muslim prisoner of war who embraces Islam during his captivity but if he was a Muslim before he fell into captivity then the Muslim authorities have to release him. This is the Ḥanafī school of opinion expressed by al-Shaybānī and also the Ḥanbalī school who added that prisoners may be released without ransom as it is lawful to release non-Muslim as Muslim prisoners are more deserving[232]. The al-Shāfʿī school held that Muslim leaders may enslave, take ransom or release without ransom their prisoners of war[233].

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[11]In Islam this saying is a mean that the person embraces Islam.

CONCLUSION

This chapter clarifies that prominent Muslim scholars who established the great schools of *Fiqh* also established the law of warfare and rules governing different aspects and rights of warfare such as the use of weapons, human and non-human targets and the treatment of prisoners of war.

At the same time this law is entirely independent and did not borrow any principles from any other system or law of past cultures as this law is based primarily on the Qurān and the Sunna.

On the other hand this chapter shows that in some cases Muslim scholars have different views on particular matters. The reason for such differences are the seeking of the correct legal opinion by those scholars based on the interpretation of the two main sources of Islamic *sharī'ħ*, the Qurān and the Sunna. However, those scholars were agreed on the basic principles of Islam such as the number of the pillars of Islam. So the differences between those scholars are restricted to subsidiary matters such as the period of the treaty between Muslim and non-Muslims; while some of them held that it could be concluded for a specific period of time, we came across instances where others hold the view that it could be concluded without a specified time.

This chapter also makes clear that *Jihād* is a type of worship, so it should be performed for Allah and under specific moral guidance which Islam urged Muslims to comply with before they become involved in *Jihād*.

Chapters one to three have discussed the theory of the concept of *Jihād* and the principles of warfare according to earlier scholars. Therefore, chapter four will clarify the application of *Jihād* from the period of the Prophet until the Ottoman caliphate to see how he applied *Jihād* and if the Islamic states who were later established applied and followed the same principles of *Jihād* which were applied by the Prophet.

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CHAPTER FOUR

THE HISTORY OF JIHAD FROM THE TIME OF THE PROPHET
UNTIL THE OTTOMAN EMPIRE

INTRODUCTION

When we study the life of the Prophet Muḥammad from the beginning of his mission in Makkah to his emigration and the establishment of the first Islamic state in Medinah until his death, we come across some important affairs regarding the application of *Jihād*. That he did not allow his followers in the beginning of his mission to use force even if such force was used to defend themselves, but when he emigrated to Medinah and established the first Islamic state the picture changed; Muslims were allowed for the first time to declare *Jihād* in self defence. Moreover, at the end of his life and when the Islamic state was in a strong position to take initiating action, the prophet applied another form of *Jihād* which aimed to establish the divine law and to eliminate man made law.

Therefore, this chapter looks at the period of the Prophet to see how he applied such *Jihād* to the Arabs and also to the People of the Book.

Also this chapter will clarify that during the period of the Fourth Rightly Guided Caliphs a new form of *Jihād* not previously used during the period of the Prophet now appeared, how did this come about and what was the reaction? Moreover, this chapter looks in brief at some of the Islamic states which were established after the Fourth Rightly Guided Caliphs, the Umayyad, the Abbasid, and the Ottoman states to see if these states applied the same principles of *Jihād* which applied during the period of the Prophet or not?

175

Moreover, the *fatwa* of *Jihād* which was declared by the prominent Muslim scholar Ibn Taymiya against the Tartars claimed that they embraced Islam at the end of the period of the Abbasid Caliphate. This will be discussed to see why such a *fatwa* was declared and on what criteria did Ibn Taymiya base his *fatwa*.

JIHAD DURING THE PERIOD OF THE PROPHET

At the beginning of the mission of Islam the Prophet Muḥammad started to ask his people in his city of Makkah to follow him and become Muslim. A Muslim scholar Ibn al-Qayyim, mentioned that Allah had ordered his Prophet at the start of his mission to use the *Jihād* of evidence a good style of speech, and the use of the Qurān to call the unbelievers to Islam "Therefore listen not to the unbelievers, but strive against them with the utmost strenuousness with the (Qurān)" (H.Q.S25. A52)[1]. So the first verses revealed to the Prophet in Makkah were orders from Allah to his Messenger to invite and ask people to follow him and worship Allah alone. "O thou wrapped up (in a mantle)!. Arise and deliver thy warning!. And the Lord do thou magnify" (H.Q.S74. A1-4). The Prophet went from house to house and gave the people of Makkah with great compassion and love the Message of Allah which is Islam. In return his people in Makkah showered abuses on him but he continued to encourage them to the right path [2]. The following verse explains the suffering which the Prophet faced from his people in Makkah "We know indeed the grief which their words do cause thee: It is not thee they reject: It is the signs of Allah, which the wicked deny" (H.Q.S6. A33).

When the followers of the new mission started to increase in Makkah the Quraish tribe realised the danger from these new Muslims and began to put pressure on them such as the torture of the companions of the Prophet, especially those who did not have tribes or clans to defend them. The Prophet's companions asked him many times to allow them to defend themselves and oppose the Quraish aggression. Ibn Hishām stated that every tribe began to attack its Muslim members to dissuade them from their religion. He mentioned

176

examples of the torture that some Muslims had faced in Makkah. One believer, Bilāl bin Rabāḥ who was a slave was taken by his master to the sand under the burning sun, a heavy stone was laid on his chest and he was left there to die, Bilāl kept on repeating "Allah is one, Allah is one) he stayed in this position until Abu Bakr bought him from his master and set him free[3]. The Prophet did not give them the permission to do so; as he was commanded by Allah not to fight the non-believers but to invite them by words and to show patience "Invite (all) to the way of the Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious: for the Lord knoweth best, who have strayed from his path and who receive guidance" (H.Q.S16. A125-126).

Sheikh Shaltut also said that whenever the companions of the Prophet asked him to resist the oppression and to revenge themselves on the oppressors, the Prophet held them back and asked them to be patient and used to say to them "I have not been ordered to fight"[4].

Allah also ordered his Messenger to use the Qurān as a kind of *Jihād* against unbelievers [5] "Therefore listen not to the unbelievers, but strive against them with the utmost strenuousness, with the Qurān" (H.Q.S25. A52) while some of the Prophet's followers, especially the young Muslims, asked him to give them permission to defend themselves and fight the non-believers in Makkah, he did not allow them to do so "I am commanded by Allah to be patient so do not fight them"[6]. The following verse is a clear sign of the command of Allah to the Muslims not to use force in Makkah "Hast thou not turned thy thought to those who were told to hold back their hands (from fight) but establish regular prayers and spend in regular Zakat? ..." (H.Q.S4. A77). According to Lings, Muslims were restrained from violence as revelations continually enjoined patience upon the Prophet and his followers[7] "And have patience with what they say, and leave them with noble (dignity)" (H.Q.S73. A10).

Therefore when the Prophet saw the increasing of torture against his followers he advised them to emigrate or to escape to Abyssinia where a king ruled without injustice, a

177

land of truthfulness. This was the first emigration in history of Islam and the number of Muslims were ten men and four women [8]. A second emigration was advised by the Prophet to Abyssinia, and the third happened when the Prophet himself emigrated to Medinah.

However, Muslim scholar Sayyid Qutb suggested several possible reasons for restraining the new Muslims from fighting the unbelievers during the Makkan period in spite of the fact that some of the Prophet's followers had the ability to do so. He confirmed that his reasoning is only a suggestion and it could be right or wrong as only Allah knows the exact reasons for restraining Muslims from *jihād* in Makkah[9].

The Makkan period may have been a stage of training and preparation in a particular environment, for a particular nation and under particular conditions. This period was to train the individual Arab to be patient and to follow the discipline of a community which was under the direction of the Prophet[10].

It might be that the peace mission could be the most effective mission inside the Quraish environment who were proud of their honour. There was already much tribal warfare during the pre-Islamic period in the Arabic Peninsula based on blood feuds. if such warfare were to continue then this impression of Islam would never have been erased[11].

Another reason may have been the avoidance of bloodshed in every Makkan's house as at that time there was no organised power inside the Quraish for the torture of Muslims but the believers were tortured by their own guardians. The permission to fight would lead the unbelievers to claim, in fact this was claimed by Quraish about Islam even if fighting was not allowed, that Muhammad divided sons from fathers. What would be the outcome if Islam permitted fighting?[12]

Another reason might be that Allah knew that the peaceful call of the Prophet to the unbelievers convinced some of those who tortured Muslims to accept Islam such as 'Umar bin al-Khattāb[13].

It might be that the new Muslims were few in number and they lived only in one city, Makkah, if fighting had been allowed it might have lead to the destruction of Islam, idolatry would have continued and the Islamic system would have been never established[14].

It might be that the patience of the new Muslims in Makkah was a lesson to all Muslims who came after them to use the same measures if they faced like conditions.

The second covenant of 'Aqabah between the Prophet and the new Muslims from Medinah which established the emigration of the Prophet to Medinah showed that the Prophet and the new Muslims in Medinah knew that they would face war from the Quraish. Ibn Hishām in his book al-Sirah al-Nabawiyyah clarified the movement of this pledge of allegiance; seventy three men and two women from Medinah met the Prophet with his uncle al-'Abbās, who had not yet converted to Islam, he said that we have protected Muḥammad even against those of his own people. If you find yourselves capable to do so then you may proceed. But if you would leave him to his enemy then leave him with us. Then the Prophet said, I covenant with you on the condition that you will protect me as you protect your women and children. The other party agreed to covenant with the Prophet on this condition. The leader of them said, yes we will protect you as we protect our women and children, we are the people of wars and the people of the sword, having inherited it from father unto son[15].

So both sides, the Prophet and the new Muslim groups realised the seriousness of this covenant and the bloody confrontation which they would face from the Pagan Arabs in the Arabic peninsula. Also the Quraish tribe deemed this covenant as war because the leaders of the Quraish tribe came to the People of Medinah the morrow after this covenant and asked them why they had covenanted with Muḥammad because they did not want to wage war against Medinah as they would support and protect the Prophet [16]. The Muslims of Medinah, according to al-'Umarī, pledged allegiance to the Prophet for obedience,

179

support and war [17]. Al-Buṭī also mentioned that this covenant made clear the importance of *Jihād* and the defence of the Prophet and the new mission. He added that this covenant was the base for the emigration of the Prophet to Medinah as it contained some important principles; *Jihād* and the defence of Islam by force was one of these principles[18].

When the Prophet emigrated from his own city, Makkah, to Medinah he began to establish the first Islamic state and Muslims were allowed for the first time to fight and declare *Jihād* in self defence. Allah says in the Qurān "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. (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 ..." (H.Q.S22. A39-40). And also the order from Allah to Muslims to fight those who fight them "Fight in the cause of Allah those who fight you but do not transgress limits; for Allah loveth not transgressors" (H.Q.S2. A190). So the Prophet had many skirmishes[1] before the battle of Badr such as Nakhlah[2]. All of these skirmishes were against Quraish and the only one which resulted in killing which was Nakhlah[19].

In the second year of the *Hijra* Allah orders Muslims to fight until there is no polytheism or atheism "And fight them on until there is no more persecution, and religion

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[1] The historians call the fights which were led by the Prophet himself as battles and the fights which were led by one of the Prophet's followers as skirmishes (Aḥmad. al-Sirah al-Nabawiyyah. p 326).

[2] This took place in the month of Rajab on the seventeenth month of the Hijra. The Prophet sent 'Abdullah bin Jaḥsh who was the leader of this group consisting of eight of the Muhājirun. who came from Makkah to Medinah and were related to the Quraish. The aim of this skirmish was that they should march to Nakhlah to observe the Quraish. This group encountered a small caravan of the Quraish and a minor struggle ensued. During the struggle. one of the Quraish was killed. one fled to Makkah and two were taken captive (Ibn Hishām. v 2. pp 207-210).

becomes Allah's in its entirety but if they cease, verily Allah doth see all that they do" (H.Q.S8. A39).

After the establishing of the new Islamic state in Medinah the Prophet established in the first year of the *Hijra* [20] a treaty between Muslims and Jews in Medinah which was commonly known as the constitution of Medinah which granted their freedom of religion[3] and position in the Muslim society [21]. the leadership of the Prophet[4]. It was agreed by all parties in Medinah that no one would make a treaty of peace or declare war or establish any political relation with the outsider [5] without clear permission from the Prophet himself. So the real political power in Medinah was in the hands of the Muslim under the leadership of the Prophet[22].

On the other hand this treaty is different from the other treaties which were concluded with the *dhimmah* as it was "a constitution for the Islamic state in its embryonic stage rather than a loose alliance of tribes. In this the Prophet Muḥammad had attempted to dissolve the narrow tribal loyalties within a new superstructure, by shifting their focus of attention to a new religion and state" according to Khadduri[23], while the *dhimmah* treaty is a permanent agreement[24] between Muslim political authorities and the People of the Book who are Jews, Christians and others such as the Magi. The latter will get full protection of their lives and religion in return for paying al-*Jizyah* "They accepted the *dhimmah* agreement so their blood is as our blood and their possessions are as ours". "The life,

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[3] The Jews of Banu 'Awf from a nation with the believers. The Jews shall have their own religion and

the Muslims shall have their own religion (Hamid Allah. 1983. p 61).

[4] Anything which you may disagree upon is to be referred to Allah and to Muḥammad His Prophet

(Hamid Allah. 1983. p 61).

[5] Quraish should not be helped nor her supporters. The Muslims and the Jews will have victory over

those who may attack Medinah (Hamid Allah. 1983. p 62).

property and honour of dhimmee is to be respected and protected exactly like that of a Muslim citizen" according to al-Maududi [25]. So in general the *dhimmah* is the same for Muslims in rights and also in duties [26]. The *dhimmah* agreement was legislated in the eighth year of the *Hijra*[27] after the conquest of Makkah[28] when the following verse revealed "Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of truth from among the People of the Book, until pay they *Jizyah* with willing submission, and feel themselves subdued" (H.Q.S9. A29).

When the Prophet therefore established the Islamic state and became leader of this state he started to apply *Jihād* against the Polytheists in the Arabic Peninsula. He defended the Islamic state against the aggression of the unbelievers in many battles such as Badr, Uḥud and the Trench because in the beginning of the Islamic state; it was not strong enough to take offensive action. At the end of the Prophet's life and after strengthening the Islamic state, we must realise that the strategy of the Muslim state had changed. He began to offer the Polytheists a choice of conversion to Islam or the sword and in this way he eliminated them from the Arabian Peninsula. The Peninsula was integrated under one leadership which was an Islamic one.

The Prophet did not declare *Jihād* until three conditions were fulfilled. The first was the permission from Allah to Muslims to fight "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. (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 ..." (H.Q.S22. A39-40). This is the first verse which permits fight in the Qurān according to Ibn al-Qayyim[29]. The second was the establishment or founding of the Islamic state and the third one was the leadership of jihād. The first and the second conditions were founded after the emigration to Medinah and the third condition is the declaration of *Jihād* by the proper Muslim authority, here with the Prophet as the head of the Islamic state.

At the same time, this research did not come across any of the Prophet's traditions which indicate that *Jihād*, as a collective duty, cannot be declared until the establishment of the Islamic state. This principle can only be concluded from the application of the Prophet himself when he did not get involved in *Jihād* except after the establishment of the first Islamic state in Medinah.

On the other hand, the third condition which is the foundation of the Imam is mentioned by the Prophet in some traditions "He who obeys me, obeys God; and he who disobeys me, disobeys God. And he who obeys the amir, obeys me; and he who disobeys the amir, disobeys me. Behold, the Imam is but a shield from behind which the people fight and by which they protect themselves" (al-Bukhārī and Muslim). Another tradition "Military expeditions will continue from the beginning of the message until the last of my *Umma* fights the antichrist not being effected by the injustice of a tyrant or the justice of a just ruler"[30].

Some Muslim jurists dealt with this issue and mentioned that there should be an *Imām* to lead *Jihād* or to appoint leaders to take responsibility if *Jihād* was to propagate Islam and to raise high the word of Allah. Al-Māwardī mentioned in his famous book, al-Ahkām al-Sultaneeh that the *Imām* has many commitments: *Jihād* is one of the leadership responsibilities[31]. Ibn Qudāma says in his book al-Mughnī that the *Imām* was responsible for the affair of *Jihād* [32]. Ibn Taymiya said that Jihad can not be applied except by power and leadership and Muslims have to fight with the *Imām* irrespective of whether he is just or unjust[33]. Those scholars held their views according to the views of most of the *sunnī* scholars who held that the appointment of the Muslim *Imām* is obligatory [34]. The obligation of the appointment of *Imām* is evident from both the Qurān and the Sunna. Allah says "O ye who believe! obey Allah, and obey the Messenger, and those charged with authority among you ..." (H.Q.S4. A59). The meaning of those charged with authority among you according to Ibn Katheir are princes and scholars[35]. Hence it is a clear order from Allah to the Muslim *Umma* to obey their leaders which cannot be practised until the foundation of

the Muslim Imam, therefore it is compulsory upon Muslims to appoint an *Imām*. The following verse is also an order from Allah to the Muslim *Umma* to apply the Islamic law which cannot be put into effect except after the foundation of the *Imām* [36] "And this (He commands): judge thou between them by what Allah hath revealed, and follow not their vain desires ..." (H.Q.S5. A49).

The Sunna of the Prophet also has many traditions regarding the importance of the obedience of the head of the Islamic state which support the obligation of the appointment of the *Imām* "He who withdraws his hand from obedience (to the *amir*) will have nothing in his favour when he meets Allah on the Day of Resurrection; and he who dies without having considered himself bound by a pledge of allegiance (literally, "while there is no pledge of allegiance on his neck") has died the death of the Time of Ignorance (as an unbeliever) (Muslim)[37]. "He who has pledged allegiance to an *Imām*, giving him his hand and the fruit of his heart, shall obey him if he can and if another person tries to usurp the *Imām*'s rights, smite that other person's neck" (Muslim)[38].

After the death of the Prophet, the choosing of the first caliph, Abu Bakr by the Muslim community in Medinah was decided after the famous debate of Saqifat banī Sā'idah between both sides which led to the acknowledgement of Abu Bakr as the leader of the Islamic *Umma*. A good presentation from 'Umar bin al-Khattab reminded the meeting that the Prophet had chosen Abu Bakr to lead the prayer which is the most important religious duty of Muslims and prayed behind him[39]. Abu Bakr nominated 'Umar as his successor after a deep discussion with some of the Prophet's followers[40]. Also, 'Umar nominated a committee of six from the followers of the Prophet to choose his successor and the committee should decide by a majority vote[41]. The above is a clear indication of the importance of the appointment of a Muslim leader in Islam to apply Islamic law. Therefore, the importance of leadership in Islam is expressed by Ibn Taymiya when he said "The authority over the affairs of the people is the greatest religious duty. In fact religion cannot be established at all without this authority because Allah has prescribed as a duty the enjoining of the good, the prohibition of the evil and the support of the oppressed. In the

same way all that He has been prescribed in terms of fighting for His sake, the establishment of justice and the enforcement of the penal code cannot be implemented without power and authority"[42].

At the same time if *Jihād* became an individual duty such as in the event of the non-Muslims attacking Muslim land, in this case Muslim jurists such as al-Shaybānī[43] Ibn Qudāma[44], and al-Sarakhāsī[45] did not make a condition that an *Imām* should be found to lead and declare Jihad or even to ask his permission in the case of the presence of an Imam. This is also the view of most of Muslim scholars. The following example strongly supports this view. During the fifth year of the *Hijra* a group raided the outskirts of Medinah, seized their camels, killed their camel herdsman and captured his wife. One of the Prophet's followers 'Amr bin al-Akwa', followed the attackers and attacked them by using arrows until the Prophet sent off his companions to help 'Amr and to attack the attackers. The Muslims overtook the enemy's rear, liberated and seized the stolen camels and the captive woman [46]. Hence, the Prophet's follower, 'Amr followed the attackers and fought them in defence of Muslims without the permission of the Prophet and the Prophet did not blame him on his reaction.

However, the reason for the first confrontations between the first Islamic state in Medinah and the 'Arab Polytheists in the 'Arabic Peninsula was that this religion made a general declaration of the universal Lordship of Allah and the freedom of humans from servitude to any being other than God and it based their law on the divine one. This concept which Sayyid Qutb mentioned led the surrounding Polytheistic society, which was based on human authority in some form or another to rise against the new concept to protect their own religion and to preserve their own interests which Islam may affect and the suppression of which Islam may achieve[47]. Shaltut also mentioned that the mission of the Prophet Muhammad was the unity of the Creator and the worship only of Him and the belief in Him[48]. These conditions in the Arabic Peninsula forced the Islamic state to prepare itself for defence and to protect the religion of Islam.

So the first wars, previously mentioned were forced upon the Islamic state in Medinah by unbelievers; it was natural for the Polytheistic societies to attack Islam for the reasons shown.

The question then arises was the first Islamic state forced to take action after eight years since the Prophet had emigrate to Medinah to eliminate all the Polytheistic societies in the 'Arabic Peninsula and to establish the great Islamic state on the whole Peninsula and could this action be in defence of the Islamic state?

I think the answer is no. The Prophet marched on and conquered Makkah in the eighth year of the *Hijra* not in defence of the Islamic state but to destroy the base of Paganism inside the 'Arabic Peninsula and eliminate the man made law and to establish the divine law on the Peninsula. Allah then revealed "When comes the Help of Allah, and victory. And thou dost see the people enter Allah's religion in crowds. Celebrate the praises of thu Lord and pray for His forgiveness: For He is oft-returning (in forgiveness)" (H.Q.S110. Al-3).

The other application of *Jihād* which the Prophet had applied was against the people of the Book. This kind of *Jihād* has two forms, against the Jews and the Christians.

As has been mentioned, when the Prophet emigrated to Medinah he concluded a treaty with the Jews which was known as a constitution of Medinah and protected their freedom of religion and other rights. Both sides were to live together as peaceful citizens, with freedom of worship granted. This treaty was signed by the Jews without any pressure, as the Muslim state at that time was in the process of becoming established, and had not sufficient political ability to compel them to sign such a treaty. By this treaty the Jewish tribes at Medinah became a part of the Muslim state.

The first encounter between both sides occurred in the second year of the *Hijra* after the battle of Badr during the battle of Banu Qaynuqā'. The reason for this battle according to al-Omari, was that after the battle of Badr and when the Muslims defeated the

unbelievers the victory affected the Jews inside Medinah. They realised that the Prophet's success would increase his political power so they began to express their hostility against Muslims such as the attacks against Muslim woman inside their market which led the Prophet to declare *Jihād* against this tribe, block them for fifteen days and forced them to leave the city after their surrender

The second confrontation between the Prophet and the Jews occurred after the battle of Banu Qaynuqā'. The reason for this battle was that the Prophet asked the Jewish tribe, Banu al-Nadir who were his allies for their assistance in collecting the payment of blood-money due to Banu 'Amir, for the killing of two of their men, as Banu al-Nazyr were their allies. They professed to acquiesce to the Prophet's demand but instead they planned to kill him while he was sitting with his companions at the wall of one of the Jew's houses. However he left before they could put their plan into action, having been warned by divine revelation. According to Watt, "He explained to his companions that he had a divine warning that al-Nadir were planning a treacherous attack on him ... they could easily have rolled a stone onto his head and killed him as he sat by the house"[49].

The Prophet, therefore sent an envoy with an ultimatum, they had to leave the city within ten days, but they refused. The Prophet then marched on them and after a siege of fifteen days, the tribe surrendered. The Prophet ordered them to leave the city with their personal belongings, but without their arms[50]. A full Sura of al-Hashr (H.Q.S59) in the Qurān has clarified the confrontation between the two parties[6].

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[6]"It is He who got out the unbelievers among the People of the Book from their homes at the first gathering (of the forces). Little did ye think that they would get out: And they thought their fortresses would defend them from Allah! But the (wrath of) Allah came to them from quarters from which they little expected (it), and cast terror into their hearts, so that they destroyed their dwellings by their own hands and the hands of the believers take warning, then, o ye with eyes (to see)". (H.Q.S59. A2).

The third confrontation between the two groups occurred in the fifth year of the *Hijra* after the battle of Trench. The origins of this battle came after the battle of Uhud, when the Quraish tribe decided to break the Prophet's power. They and their allies attacked Medinah by laying siege to the city and became entrenched in battle for twenty four days, with a confederacy army of ten thousand men. The Jewish Quraydah tribe decided to violate the treaty which was the constitution of Medinah and to attack the Prophet and his followers from inside the city[51]. Haykal said that when the delegation from one of the Jewish tribes went to Makkah, the Makkans asked questions about the Banu Quraydah; the leader of the delegation answered that they had remained within Medinah in order to plot against Muhammad and to attack his men from behind once the Makkans had launched their attack[52].

Consequently, Allah clarified this betrayal when he said, "Behold they came on you from above you and below you and behold the eyes swerved and the hearts gaped up to the throats and ye imagined various (vain) thoughts about Allah. In that situation were the believers tried they were shaken as by a tremendous shaking" (H.Q.S33. A10-11).

Thereafter the Prophet sent a delegation to Banu Quraydah in an attempt to persuade them to abide by the treaty and support the Muslim state[7], but they refused. After the military failure of the Quraish, their allies attack, and their complete withdrawal, the Prophet, by way of reprisal, decided to attack this tribe for violating the treaty and supporting the enemy of the Islamic state. He marched with his followers to the Banu Quraydah forts and laid siege to them for twenty five days. During the siege, some negotiations took place between both sides, the Banu Quraydah requested surrender on certain conditions, but the tribe were told to surrender unconditionally[53].

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[7] This article from the treaty itself which clarify this principle "The Muslim and the Jews will have victory over those who may attack Medinah".

In the end, the Jewish tribe surrendered unconditionally. Some of the Prophet's followers from the Aws tribe, who were in alliance with the Banu Qurayḍah before Islam, asked the Prophet to forgive the Banu Qurayḍah. The Prophet suggested that their fate should be decided by one of their allies to which they agreed. The Prophet appointed the leader of the Aws tribe, Sad bin Muad, as judge. Both parties were to abide by his decisions. He decreed that all the men be put to death, their women and children taken as captives, and their wealth confiscated as war booty[54].

From what has been mentioned we could derive that the Prophet declared *Jihād* against the Jewish tribes at Medinah after the establishment of the Islamic state and under the leadership of the Prophet when they violated the treaty between both sides. Also, he did not ask them to pay *jizyah* as an alternative to *Jihād* because the payment of such tax was not legitimate according to Ibn Katheir[55] except the following verse revealed in the ninth year of the *Hijra* "Fight those who believe not in Allah nor the Last Day, nor hold that forbidden by Allah and His Messenger, nor acknowledge the religion of truth, from among the People of the Book, until they pay the *jizyah* with willing submission, and feel themselves subdued" (H.Q.S9. A29).

According to the convention of Medinah the Jews become a part of the Islamic state "The Jews of Banu 'Awf from a nation with the believers"[56]. This convention also guaranteed their rights such as mentioned but at the same time when they violated the treaty we did not come across anyone of the writers of Islamic history who mentioned an individual Muslim who committed a hostile act against the Jews, but the reactions against them were taken under the control of the leader of the Islamic state, the Prophet himself. From this principle we could conclude that Muslim individuals do not have the right to transgress against non-Muslims who live inside the Islamic state. If they act against the articles of the treaty which has agreement between both sides or if they act against the interest of the Islamic state the leader of the Islamic state is the person responsible for dealing with such deeds.

The second variety of *Jihād* against the People of the Book is *Jihād* against the Christians. The Prophet applied this form of *Jihād,* when Allah had revealed the verse, S9.A29 and the following verse "O ye who believe! Fight the unbelievers who are near to you and let them find harshness in you ..." (H.Q.S9. A123). The interpretations of these two verses according to the Muslim scholar Ibn Katheir[8] are as follows, when the Prophet had completed the integration of the Arabic Peninsula in the ninth year of the *Hijra* Allah ordered him in those two verses, to fight the People of the Book unless they accept Islam or pay the *jizyah.* He added, that the battle of Tabuk[9] was the application of this order as the Prophet marched on the Byzantine to propagate Islam as they were the nearest nation to him. Allah said in the previous verse "who are near you"[57]. In this battle the Prophet met the governor of Aylah, the people of Jarbā and Adhruh, they agreed to pay *jizyah* to the Prophet in return for signing a peace treaty for all of them. The Prophet on his return from Tabuk also made peace with the Christian prince of Dawmah in return of paying *jizyah* [58]. Ibn Taymiya deemed *Jihād* in this battle as collective duty for raising the religion of Islam and frightening the enemy[59].

In this battle the Muslim army did not engage in any fight against the People of the Book but on the other hand the Prophet applied some of Allah's orders such as the treaties which the Prophet agreed to sign with some Christians in return for paying *jizyah.*

As in the case of the Jews, it has been shown that the Prophet did not declare *Jihād* against the Christians to propagate Islam except after the establishment of the Islamic state with the foundation of the leadership of this state.

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[8]He is one of the famous scholars in the interpretation of Qurān.

[9]It was occurred in the ninth year of the Hijra. The Muslim army consisted of 30,000 persons. The Prophet camped with his army for twenty days without any confrontation and actual fighting between his army and the Byzantine.

At the same time after the emigration and the establishment of the Islamic state by the Prophet in Medinah the relationship between the Prophet and the Quraish tribe in Makkah was a state of war[60]. This concept could be concluded from the language of the second covenant of 'Aqabah which clarified that both the Prophet and the new Muslims from Medinah realised that they would face war from the Quraish. The following words from the leader of the Medinah group who agreed to receive the Prophet in their city is a clear indication; "We will protect you as we protect our women and children, we are the people of wars and the people of the sword, having inherited it from father unto son"[61]. The Quraish tribe also deemed this covenant between the Prophet and the people of Medinah as war when they tried to convince them to cancel their covenant with the Prophet as it would lead to war between both sides[62].

Therefore, after the establishment of the Islamic state the Prophet started to attack the Quraish tribe's caravans to Syria which had to pass between Medinah and the coast[63] in such as the battles and the expeditions of Sayf al-Baḥar[10], al-Abwā[11],

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[10]This expedition took place in the first year of the Hijra under the leadership of Hamzah bin 'Abdul Muṭalib the uncle of the Prophet with thirty emigrants to intercept a caravan belonging to Quraish. The two parties met each other and prepared for fighting. Majdī bin 'Amr, who was allied to both sides could managed to prevent a fight between both sides (Ibn Hishām, v 2, pp 202-204 an al-Mubarakpuri, p 202).

[11]This battle took place in the second year of the Hijra under the leadership of the Prophet to intercept a camel caravan belonging to Quraish tribe. He marched until he reached al-Abwā a place between Makkah and Medinah but he did not met the Quraish. It was the first battle under the leadership of the Prophet (See Ibn Hishām, v 2, p 198, al-Umarī, v 2, pp 345-346 and al-Mubarakpuri, p 203).

Buwāṭ [12],al'Ashayrah[13] and Nakhlah. This was often receiving the permission to fight from Allah; "To those against whom war is made permission is given to fight ..." (H.Q.S22. A39). Haykal mentioned that according to historians these expeditions and raids had two objectives "First to seize the caravans of the Quraish, on their way to or from al-Sham during the summer, in order to take possession of the goods which they carried; second to cut off the Quraish caravan routes to al-Sham"[o4].

This state of war between the Muslim state and the non-believers in Makkah continued until both sides agreed to sign the al-Hudaibiyah treaty. This treaty suspended war for ten years, during which both parties would live in full security and neither will raise sword against the other[o5]. This treaty was a temporary suspension of war but the state of war resumed between both sides after the violation of the treaty from the Quraish which led to the conquest of Makkah and to the termination of the Pagans power in the Arabian Peninsula. This outcome led to the end of the state of war between the Islamic state under the leadership of the Prophet and the Quraish tribe in Makkah.

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[12] This battle took place in the second year of the Hijra, the Prophet also led this battle at the head of 200 followers and marched to Buwaṭ to intercept a caravan belonging to the Quraish tribe. When the Muslim army reached Buwaṭ the caravan had left (see Ibn Hishām. v 2. p 205. al- Umarī. v 2. p 346 and al-Mubarakpuri. p 203).

[13]This battle took place in the second year of the Hijra under the leadership of the Prophet to intercept a Quraish caravan. When he reached al-'Ashayrah the caravan had left some days before (Ibn Hishām v 2. pp 205-206 and al-Mubarakpuri. p 204).

JIHAD IN THE PERIOD OF THE FOURTH CALIPHS

As already shown, the Prophet applied two forms of *Jihād*, against the Pagans and the People of the Book. In the beginning of the period of the first caliph Abu Bakr, a new form of *Jihād* had appeared, Jihad against apostasy. As soon as the Prophet was dead many of the Najd tribes decided not to pay *Zakāt* to Abu Bakr, the new caliph of the Islamic state. Those tribes rejected one of the five pillars of Islam and also obedience to the new governor. According to Kennedy "The tribes of Najd tried to arrange a compromise whereby they remained Muslims but no longer had to pay the tax to Medinah"[66]. The caliph prepared the *Umma* for *Jihād* and sent a large army under the command of Khālid bin al-Walīd[67]. According to Professor Hitti "In a series of short but sharp battles, abu Bakr conquered the seceders one after the other ... Islam was presently united and ready to march"[68]. The apostates were defeated and agreed to pay *Zakat* and also to be under control of the Islamic state. So most of the rules on apostasy were taken from the practice of the first caliph in fighting of these groups[69]. reign[70].

From the Sunna the Prophet is reported to have said "Whoever changed his religion (Islam) kill him". Another hadith states that the life of a Muslim may only be taken in three cases ... one of which is "... he forsakes and separates himself from the Muslim community...".

So during the discussion regarding *Jihād* against apostasy between the caliph and 'Umar the caliph clarified why he decided to fight them. 'Umar asked the caliph "How will you fight against them while the Prophet has said, I have been commanded to fight people till they declare that there is no God save Allah. Then one who affirmed this, he made his life and property secure from me except to the extent of his obligations, and he is accountable to Allah (for his faith)". Abu Bakr said: "By Allah, I shall certainly fight that person who discriminates between Prayer and *Zakat*[14]. By Allah! If they hold back from me even equal

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[14]*Zakat* is (Allah's) right in a person's wealth.

193

to a piece of rope of a camel which they paid during the days of the Prophet, then I shall fight against them for holding this piece of rope back". 'Umar then said, after this I realised that Allah has made the matter of fighting renegades for the recovery of *Zakat* quite clear to Abu Bakr and appreciated that he was right" (al-Bukhārī and Muslim)[71]. Ibn Taymiya states that if any group belongs to Islam and then they reject some of the clear Islamic *Sharih*, all Muslims agree that they have to face *Jihād* as Abu Bakr waged it against the Najd tribes[72].

The first caliph also applied the same kind of *Jihād* which was applied by the Prophet against the People of the Book. When the first caliph defeated the apostasy in the Arabic Peninsula, the Islamic state became united again and was ready to march into Syria to the north of the peninsula, this came first. So early in 633, the caliph organised three columns to conquer Byzantine territory. In July 634, the Byzantine's army was defeated by the Muslim army at Ajnadyn. In September 634 the Byzantine were also defeated at Yarmouk, opening the doorway to Syria[73].

During the period of the second and the third caliphs the kinds of *Jihād* which applied at that period were Jihad against the People of the Book and the Magi[15] who were treated as the People of the Book. This kind of *Jihād* was almost the same as that which was applied during the period of the Prophet and the first caliph, hence we will restrict ourselves to those periods.

On the other hand during the period of the fourth caliph, 'Alī, a new application of *Jihād* appeared; *Jihād* against the Khawārij. This sect was first known in Islam during the period of the rule of the fourth caliph 'Alī when the caliph was forced to accept the arbitration between him and Mu'āwiya bin Abī Sufyān, the governor of Syria. After the arbitration, the Khawārij split off from the caliph's army and they proceeded to elect their

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[15]For more information about the treatment of the Magi see chapter two in this these.

own caliph. They believed that *Jihād* should be waged against those who did not accept their view of Islam, that they were the only true Muslims and that any Muslim who commits major sins becomes a non-Muslim[16]. So it was the responsibility of the true believers to uproot the disbelievers from the Islamic community[74]. They started to act aggressively against Muslims who did not belong to their sect and consequently did not accept their views. Their cruelty against the Islamic state led them to kill Ibn al-Khubāb, his wife and another four women. The caliph was aware of the Khawārij danger, so he sent an envoy to ask them to deliver up these murderers but they refused to do so and killed the envoy too. The caliph then marched on them and crushed them in the battle of Nahrawān[75].

This act from the fourth caliph established a new application of *Jihad* against the Khawārij or those who support such views and use arms against the lawful Muslim authority, as al-Māwardī stated [76]. At the same time this act from the fourth caliph against this sect based upon proof from the Sunna of the Prophet which led the famous scholar al-Bukhārī to address a chapter in his book under the title of 'killing the Khawārij'. The Prophet is reported to have said "During the last days there will appear some foolish young people who will say the best words but their faith will not go beyond their throats and will go out from (leave) their religion as an arrow goes out of the game. So, where-ever you find them, kill them, for who-ever kills them shall have reward on the Day of Resurrection" (al-Bukhārī)[77]. Another tradition that Abu Sa'yd al-Khudrī answered was a question about al-Harauriyya, he said "I do not know what al-Harauriyya is but I heard the Prophet saying there will appear in this nation, he did not say from this nation a group of people so pious apparently that you will consider your prayers inferior to their prayers, but they will recite the Qurān, the teachings of which will not go beyond their throats [17] and will go out of their religion as an arrow darts through the game" (al-Bukhārī)[78].

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[16]For more information see chapter two in this theses.

[17]They will not behave according to the Quranic teachings.

In the following tradition the Prophet gave a sign about the Khawārij who appeared during the period of the forth caliph when he said "The sign by which these people will be recognised will be a man whose one hand (or breast) will be like the breast of a woman (or like a moving piece of flesh). These people will appear when there will be differences among the people (Muslims). Abu Sa'yd who mentioned this tradition added: I testify that I heard this from the Prophet and also testify that 'Alī killed those people while I was with him. The man with the description given by the Prophet was brought to 'Alī" (al-Bukhārī)[79]

Ibn 'Umar one of the Prophet's followers used to consider the Khawārij the worst of Allah's creatures, he also said "These people took some verses that had been revealed concerning the disbelievers and interpreted them as describing the believers" (al-Bukhārī)[80].

Hence Ibn Taymiya drew a conclusion from the traditions which have been mentioned, upon *Jihād* of the Khawārij. He mentioned that the fourth caliph fought them and all the Prophet's followers agreed that despite their much praying, fasting and reading of the Qurān, they regarded Muslims lives and wealth as lawful by killing Ibn al-Khubāb and by riding the Muslim's cattle. He added that they deemed the third and fourth caliphs and the majority of Muslims as disbelievers. Also they acted according to the Qurān but they did not follow the Sunna of the Prophet as it is incompatible with the Qurān according to their faith[81].

Al-Tabarī[82] used two names for this sect, the Khawārij and al-Harauriyya. The second name was the one used by the Prophet in the traditions when he foretold the appearance of this group. Ibn Taymiya[83] also takes a similar position in dealing with their name as al-Tabarī.

There are two views about the nature of fight against the Khawārij one view represented by al-Māwardī and the other one by Ibn Taymiya:

Al-Māwardī has divided wars between Muslims into three categories: 1-against ahil al-Baghī (rebels).2-against ahil al-Rida (apostates).3-and against al-Muḥāribin (highwaymen)[84]. Al-Māwardī clarified his view on the rebels when he mentioned that the bughāt is a group based on a point of view or interpretation. During his discussion of the war against the rebels he did not distinguish between the war against the Khawārij and the rebels. This point was clear in al-Māwardī book when he mentioned that if rebels did not renounce the authority of the Muslims *Imām*, they did not set apart their own land and they were separated under the authority of the Muslims Imam then they are not to be fought. He supports his idea by mentioning the three rights which were offered by the caliph 'Alī to the Khawārij; that he would not start an attack on them, they were not prevented from performing their prayers in the mosques, and were not restrained from sharing war spoils if they participated in *Jihād* with the caliph and other Muslims[85].

Al-Māwardī also added that if this group of dissidents from the Muslim authority additionally carried out a secession of their lands as well as their persons within the Muslim state and did not renounce its authority, they are not to be fought. So the *Imām* could not commence attack until the bughāt attacked. To support his view he states that the fourth caliph did not fight the Khawārij except when they killed some Muslims and the caliph failed to sue the murderers because the Khawārij claimed that all of them killed those people [86]. He clarified the main reason for the war against rebels is to stop the rebellion, not to kill the rebels. With regard to the possessions of the rebels, if the Muslim authorities damage or confiscate the rebels possessions they have to pay compensation or return them. Damage that occurs during war is not the responsibility of the Muslim authority according to al-Māwardī. He also added that those rebels who are prisoners in the hands of the Muslim Imam have to be released after the rebellion has ended. Also the dead from the rebels are granted the washing of their bodies and prayer such as any Muslim[87].

Hence from what has been mentioned, and also as al-Māwardī. included the Khawārij and their affairs inside the section of the rebels, this leads us to conclude that al-Māwardī. deemed the Khawārij as a sect of rebels.

Ibn Taymiya on the other hand has a different view regarding the fight against the Khawārij. He states that those who thought the fight against the Khawārij was the same as the fight of the caliph 'Alī against Muslims in both the battle of Camel and *Siffyn* are wrong. He added that many of the Muslim jurists had the same view but this is a mistake[88]. Ibn Taymiya holds this view because the traditions from the Prophet which have been mentioned earlier and also mentioned by Ibn Taymiya himself, according to him lay dawn *Jihād* against the Khawārij [89]. Hence the fourth caliph fought the Khawārij by order of the Prophet which is mentioned in some earlier traditions "So where ever you find them kill them"[90].

He added that the fourth caliph fought the Khawārij with the remainder of the Prophet's followers, and not one of the them fought with the Khawārij against the fourth caliph during the battle of Camel and *Siffyn*. The remainder of the Prophet's companions was divided into three categories, some fought with the caliph himself, some against him and the third group did not support any of the two groups[91].

So their money, wealth and weapons are lawful to the Muslim's authority according to Ibn Taymiya as what the fourth caliph 'Alī. has done to the Khawārij when he defeated them[92]. The view of Ibn Taymiya is superior as it has strong evidence from the Sunna and from the application of the period of the fourth caliph.

The Khawārij therefore established a new concept of faith and *Jihād* in Islamic theory. The new faith is that they were the only true Muslims inside the Islamic Umma and the others are unbelievers. The new concept of *Jihād* which they established is that, *Jihād* against those who did not follow their faith which means those who are not part of their sect. Also, in their opinion it is compulsory to fight the *Imām* if he disagrees with the Sunna

of the Prophet according to al-Shahristānī [93] which clarifies the anomaly in their view and their faith that did not follow the Sunna but the Qurān only as Ibn Taymiya stated[94]. So they were in conflict with their faith in establishing the necessity of the fight of the Muslim *Imām* if his act disagreed with the Sunna.

'Alī's treatment of the Khawārij set principles of which most of the Muslim jurists deduced and established rules in dealing with this sect.

JIHAD DURING THE PERIOD OF THE UMAYYAD CALIPHATE

The assassination of the last fourth guided caliph, 'Alī. bin Abī. Talib in year 40 / 660 and the resignation of the leadership of caliphate of the 'Alī.'s son al-Hasan to Mu'āwiya bin Abī. Sufyān in year 41 / 661 led to the establishment of the Umayyad Caliphate by Mu'āwiya [95]. This Caliphate remained until it was overthrown in 132 / 750 by the Abbaside Caliphate.

The research of the period during this caliphate raises some important principles of *Jihād* and tries to see if this caliphate applied the same principle of *Jihād* as those applied during the period of the Prophet and the fourth guided caliphates?

At the beginning of the establishment of the Umayyad Caliphate, the founder Mu'āwiya bin Abī. Sufyān, was one of the Prophet's followers and did not began to wage *Jihād* until he had stabilised and strengthened the Islamic state which had an internal crisis that led to civil war after the assassination of the third rightly guided caliph, 'Uthmān and during the whole period of the fourth caliph 'Alī which ended in his assassination[96]. Mu'āwiya therefore did not apply Jihad until two conditions were fulfilled, firstly, the founding and strengthening of the Islamic state and secondly, the founding of the leader of the state who was Mu'āwiya. These principles were applied by the founder of the Umayyad Caliphate as it was applied by the Prophet Muḥammad as clarified in this chapter.

199

Therefore, Mu'āwiya concluded a temporary peace treaty[18] with the Byzantines and he paid money to them in order to concentrate on his fighting against the Muslim rebels in Iraq [97]. The Umayyad caliph 'Abd al-Malik also concluded a peace treaty with the Byzantines to whom he paid tribute in order to avoid attack whilst engaged in fighting the insurgents in Iraq. When he had eliminated the revolution he resumed Jihad against the Byzantines again [98]. Shaban mentioned that 'Abd al-Malik paid 1,000 *dinars* a week to the Byzantines to stop their attack[99].

The most important principle is the purpose of *Jihād*. As we have seen it was the raising of the word of Allah high during the previous Islamic period. During the Umayyad caliphate the main purpose of their Jihad was the raising of the word of Allah and the expansion of the land of the Islamic state [100]. However, some writers considered that the extension of the Islamic state under the Umayyad was as great as under the Fourth Rightly Guided Caliphs[101]. Kennedy mentioned the expansion of the geographical frontiers during the reign of one of the Umayyad caliphs, al-Walīd, when Spain was invaded in 711 and almost became under the Islamic state authority in 716. Muslim armies also turned their attentions to southern France[102].

On the other hand, the financial benefit which the Umayyad caliphate had acquired from Jihad cannot be omitted but it was not the main reason for their Jihad. Dr. 'Aqil mentioned that the acquisition of extra resources for the state was an advantage which the Umayyad derived from their Jihad[103].

Moreover to support this view we can observe that during certain periods of the Umayyad caliphs they increased the amount of *jizyah* from non-Muslims whilst they also continued to obtain *jizyah* from Muslims newly converted to Islam [104] as if they were unbelievers to support the treasury. Professor. Hitti, mentioned that non-Arabian Muslims in

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[18]For more details regarding this type of treaty see chapter three in this thesis.

general and Persian Muslims in particular were dissatisfied, because they were reduced to the position of clients and were not exempted from the poll tax which is generally paid by non-Muslims[105]. Beliaev also dealt with this point when he says that in Iraq, Egypt, Khurāsān and North Africa the viceroys ordered *jizyah* to be taken from new Muslims who were not to be taxed according to Islamic law. So they were treated the same way as non-Muslims[106].

Therefore, the reform of this policy carried out by the caliph 'Umar II was that new Muslims were not to be taxed as other Muslims was considered a revolutionary aspect of the financial reforms of the 'Umar II programs [107]. According to Beliaev "The caliph ordered his viceroys to cease collecting poll tax from the new Moslems, actually declaring himself in favour of including them in the *dīwān*, the lists of Arabs who received permanent subsidies out of the state treasury; it became known thus that conversion to Islam "saves the soul and the money"[108]. The reaction from the princes of the Islamic regions such as Egypt Basra and Khurāsān towards this program was that it would effect the treasury of the Islamic state. For example the Prince of Egypt asked the caliph to exempt his region from this policy, a strong answer came from the caliph to this demand saying that, Allah sent his Messenger to call people to Islam not to collect money[109]. This gives us a clear indication of the deep-seated nature of this policy inside the political system of the Umayyad caliphate.

The financial reforms which the caliph 'Umar II applied did not last long as they were brought to an end by his early death in 101 / 720 His period in power was two years and five months and a return to the old policy was brought about by his successor Yazyd II[110]. "At all events, his successors reverted to the traditional Umayyad policy of fiscal exploitation of the people, which was ultimately to be the downfall of the dynasty" according to Beliaev[111].

On the other hand, some writers such as Beliaev, Shaban and Kennedy claimed that caliph 'Umar II stopped Jihad "He was also against the policy of *Jihād*"[112]. "Where

Sulaymān's policies had been cautious and ambiguous, 'Umar II's were clear and radical. Sulaymān had continued with the campaigns; 'Umar stopped every one of them. No sooner was he firmly in power than he recalled the expedition besieging Constantinople, and ordered a retreat from all the advanced outposts established within the Byzantine territories", according to Shaban[113]. "He also forbade any further foreign wars and adventures"[114]. This view is not persusive as the evidence which these writers provide are not strong enough to support their view. It might be that the recalling and withdrawal of the Islamic army from the siege of Constantinople, the surrender of the Muslim base inside the Byzantine territories and the moving of Muslims to another place by the order of 'Umar II are the most important supporting pieces of evidence of this view. The reason for the withdrawal of the siege of Constantinople was the weather factor, especially the snow during winter time and the meagreness of the Muslim supplies which affected the ability of the Muslim army as they spent a long time on this siege without any success. So the withdrawal was for the benefit of the Islamic state and also to protect the lives of the Muslim army[115] . The withdraw was from the fortified borderline city which was inside the Byzantine territory and too far from Islamic supplies[116]. So this measure taken by the caliph was also to protect Muslims from attacks by the Byzantines[117].

Therefore, Jihad during his period was not stopped but certain circumstances of the Islamic state had changed as it was so vast that the priority was its defence. So he returned to the summer and winter attack system to conquer non-Muslim territories and to give the Islamic state the initiative[118]. Moreover, Ibn al-Athyr also mentioned that during the period of 'Umar II the Islamic army attacked some regions of India [119]which proved the continuation of Jihad during 'Umar II's period.

Islamic conquests established a huge state in a short time. Therefore, when 'Umar II became caliph the most important work in his concern was internal policy. As a result he was mostly concerned with assimilation inside the Islamic state [120]. To solve this problem he took an interest in the equal rights and responsibilities for every Muslim, whether Arab or

not "The cumulative effect of this mass of detailed instruction meant a major change in the internal policy of the provinces, sweeping away anomalies and setting up guide-lines for an assimilated society" according to Shaban[121].

On the other hand, Muslim writers also mentioned some points regarding the decrease of the application of Jihad during his period as he tried to use diplomatic measures to convince non-Muslims to convert to Islam. He started to send letters to rulers of territories such as the Kings of India to call them to Islam and to clarify that their duties and rights would be same as other Muslims and they would also be allowed to continue to govern their regions [122]. He also concentrated on the calling of non-Muslims inside the Islamic state to Islam and sending Muslim scholars to carry out this mission. This method was a noticeable success, most of the citizen of Morocco converted to Islam according to al-Balādhirī and Ibn al-Athīr[123].

In general there are three options given to the non-Muslim enemies: the adopting of Islam, the paying of *jizyah* or, if they refuse the first two they will face war as applied during the Umayyad caliphates[124]. There are some examples regarding this matter. During the period of the founder of the Umayyad caliphates, Mu'āwiya, there was a temporary treaty between the Islamic state and the Byzantines. When the time of the treaty was terminated, the caliphate decided to surprise and attack the enemy but one of his army told him that he had heard the Prophet say "Who had a treaty with the people, he has to observe it until the period of the treaty is over, then they give the enemy warning of its intentions". After this debate the Muslim leader retreated with his army and did not attack the enemy [125]. Another example, during the period of the caliph 'Umar II, Qutayba bin Muslim Albāhilī (a Muslim army leader) conquered some territory of the Samarqand without giving its citizens the option of adopting Islam, paying *jizyah* or war. The citizens complained to the Muslim Caliph, 'Umar bin Abdul'aziz. The Caliph's decision was to order the leader of the army and his troops to withdraw from the territory to allow the citizens to choose one of the three options. After the execution of the order, some of the citizens choose Islam and others choose to pay the *jizyah*[126].

During the period of the Umayyad caliphate this research did not come across any information regarding the development of the weapons used by Muslim armies. This means that this caliphate continued to use the same weapons as used during the previous period such as personal weapons. He also continued to use mangonels against enemies strongholds. In some confrontations they also used fire against enemy properties and cut supplies to water canals to force the enemy to surrender according to the Muslim historian Ibn al-Athīr[127].

The Umayyad caliphate organised raids in both summer and winter: on the return of military groups from the winter the summer military groups would take-over[128]. The use of such a policy helped the Islamic state to be in an offensive position against non-Muslim states and to take advantage of initiative military action[129].

A remarkable sign during the period of the Prophet and the Four Guided Caliphs was that Islamic conquests relied on Muslim volunteers who were not subordinated to the military organization. The Umayyad caliphs began to abandon this way and started to rely on regular soldiers who received a fixed salary if they fought or not. During the period of 'Abd al-Malik, al-Hajjāj began to recruit the nucleus of the standing army by trying to find enough tribesmen to enrol in the new force. To encourage the enrolment of such forces he fixed the rate of pay at 300 *dirhams* a year [130]. In addition to this, the caliphate also used mercenaries[131].

JIHAD DURING THE PERIOD OF THE ABBASID CALIPHATE

The Caliphs of Abbasid originated from 'Abbās, uncle of the Prophet Muḥammad. They reigned until 656 / 1258 when they were overthrown by the Mongols[132]. The Umayyad caliphate fell in 132 / 750 as a result of factors from which the Abbasids derived benefits in the establishment of their state in the same year. Some of the factors were:

-The partisans of the ʿAlī Caliphate. The dissenting Shiites refused the rule of the Umayyad Caliphs because they felt that they oppressed the children of the ʿAlī caliph, especially in some parts of the Muslim state such as Iraq [133]. According to Hitti "The dissentient Shiites, who never acquiesced to the rule of Umayyad usurpers and never forgave them the wrong they perpetrated against ʿAlī and his son al-Husayn, became now more active than ever"[134].

-While Islam spread to a huge part of the world and many non-Muslim converted to Islam specially in Persia most of the Umayyad Caliphs did not apply Islamic law regarding exempting the new Muslims from paying *jizyah* which made them discontented[135].

-The monarchy which was established by the Umayyads state developed a new system of rule unlike that of the Prophet and the fourth Guided Caliphs. This new system led to discontent among many groups inside the Islamic state[136].

-National disputes occurred between some Arab tribes and the Umayyad rulers. There were also disturbances in the Khurāsān region, far from the sovereign Umayyads state, and this region contained many Muslims Persians and Slaves who were discontented with the Umayyad rulers[137].

-The Abbasids exploited their relationship with the Prophet as they belonged to al-ʿAbās, the uncle of the Prophet. They considered themselves closer to the Prophet than the Umayyads, and started to press their claim to the leadership of the Muslim state by emphasizing the rights of the house of Hishām in order to take advantage of the support of ʿAlī's Shiites[138].

In the month Rabī' I 132 / October 750 Abu al-Abbas with the title of al-Saffāh was acknowledged as the first Abbasid Caliph[139] and while he was busy with the beginning

of the establishment of the Abbasids Caliphate which contained opposition from some of the Islamic regions such as Syria who supported the Umayyad Caliphate, the Byzantine in the following year 133 / 751 attacked one of the Muslim towns 'Malteeh' and destroyed it, according to the Muslim historian al-Dhahabī [140]. Therefore the Abbasid caliphate was not able to take an offensive position until the state was strong enough during the period of the Caliph al-Mansur who remained in power from 754-775[141]. As it happened, during the Umayyad Caliphate the Abbasid Caliphate was not in a strong position to declared Jihad until two important factors were achieved, the foundation and strength of the Islamic state and also the foundation of its leadership. According to Shaban "As the internal situation was under control, Mahdī decided that his army would be best employed against the Byzantines. Beginning in 778 / 161, a series of increasingly aggressive summer expeditions alarmed the enemy and the situation soon deteriorated into an all-out war"[142].

After the strengthening of the Abbasid state, the caliphs of this state started to strengthen the Islamic frontiers and build new towns for the same purpose[143], as an example, the Caliph al-Mahdī in 163 / 780 himself went out with his army and established a new base at Raqqa from which his son led a successful expedition into the Byzantine territory[144]. However, al-'Ash deemed that the reason for the conquest during the Abbasid Caliphate was for the defence of the Islamic state, so the wars between the Abbasids and the Byzantines were frontier wars [145]. In general the most important characteristic of the war between the Abbasid and the Byzantine states was that the Byzantine state was the main enemy of the Islamic state. Also these wars were seasonal clashes and each sides' entrance to the land of the other side depended upon their strength and the internal status according to Professor 'Umar [146]. So most of the Abbasid caliphs gave their attention to the fortified borderline cities. Professor 'Umar also added an important point, that while the state of war continued between the Abbasid and the Byzantine state; the great days of the Islamic conquest had gone[147].

Therefore to secure the Islamic frontiers we can observed that the Abbasids continued to apply the system of summer and winter *Jihād* against Byzantine but during the internal crises we can see that these type of raids were withheld[148] as the state did not have the ability to carry out both missions at once.

The Abbasid Caliphate took care of the establishment of the regular army whose names were on the *diwān* 'records' and paid on a monthly basis. Kennedy [149] mentioned that the basic rate was eighty *dirhams* a month for each soldier for most of the early Abbasid period while Hassan[150] mentioned that the rate was twenty *dirhams* per month. In any case, these two views confirmed the monthly payment for regular soldiers in the Abbasids army.

To realise the number of the Abbaside regular army in some periods such as during al-Mahdī Caliphate, Ibn al-Athīr said in year 165 / 781 al-Rashīd, the son of the caliph put an army of 95,793 men apart from volunteers in the field against the Byzantines. This force reached the sea on the coast opposite Constantinople and forced the Byzantines to sign a peace treaty[151]. On the other hand Professor Shaban raised an important point when he said that when al-Mahdī appointed his son al-Rashīd as governor of all the western provinces of the Abbasid empire it meant that the revenues of these provinces were assigned to war affairs on this important front[152]. Therefore, the affairs of war consumed a large part of the revenue of the state. Kennedy, also referred to an interesting point that the sole income of the soldiers was from the salary of the army. To clarify the importance of the soldiers' salaries, Kennedy made a comparison between them and the building labourers who helped in the construction of Baghdad. He said that those people were paid between one and two *dirhams* a month, and found that the soldiers were still better off than the majority of the population [153]. By using the monthly regular payment to the soldiers an important point maybe achieved in that the caliphate guaranteed their allegiance and had a ready army to fight at any time.

Therefore, when al-Mahdī was succeeded by his son ,al-Hādī, whose period lasted only for little over a year he feared that some might object to his succession, he

quickly arranged to pay all the members of the army in Baghdad two years stipend to secure their allegiance [154]. Therefore, the payment of the troops was one of the largest items in the budget[155].

During the period of the Abbasids Caliphate some of the caliphs applied a new plan for the army which was the establishment of new cites for the army which can be called military cities. Therefore, the Caliph al-Mu'tasim whose rule lasted from 833-842 was to build the new city of Samarra for his army which was about sixty miles to the north of Baghdad to be away from the demands of population of Baghdad[156]. The new troops of his army were called 'Turks'. According to Shaban "It was significantly known by the public as the 'Askr, the army camp. Indeed this was the true purpose of building the new city"[157].

To ensure that the new recruits 'Turks' did not become involved with local interests but concentrated on military missions, al-Mu'tasim prohibited intermarriage between the civil and military communities. He had to buy female slaves and marry them to members of his army. To support such measures he granted allowances to these wives[158]. As a result of this the members of the army were from different minority groups. This meant that the members of the army became separated from the rest of society "Ashinas, for example, though he ruled over half the caliphate, never learned to speak Arabic properly"[159] during the reign of al-Wathiq caliph. Therefore, the leaders of the army were among the most important political figures in the caliphate[160].

Nevertheless, when al-Wāthiq was dead, he did not appoint any successor. After a mutual consultation the brother of the former caliph al-Mutawakkil was appointed as a new caliph in 247 / 861 by the consultation of the Turkish army leaders and ministers[161]. Therefore, the influence of the army leaders in political affairs led to the killing of the caliph himself and to the appointment of his successor and this affected the position of the whole caliphate[162].

A peculiar feature of the Byzantine and Abbasid wars was that both armies in their advance into each others' territories bought their supplies from their enemy[163]. Therefore during the al-Mahdī caliph period there were three peace treaties signed between Muslims and Byzantines in which they agreed to pay a tribute and to set up markets on the route of the Muslim army[164].

The main reason for the establishment of the advance stronghold 'thughur' was for fighting the enemy or defending the Islamic state frontiers but in some periods of the Abbasids Caliphate these advanced strongholds due to the proximity to the borders helped to play a role of trade between Islamic and Byzantines states and become trade centres for both states products and any other goods that passed through their territories[165].

During the first period of the Abbasids Caliphate the war relations between them and the Byzantines were that their battle had its ups and downs and in some cases the scale of balance was in the hand of the Abbasids even though the majority of the battles were frontier battles. As a result of that the Byzantines were forced to pay an annual tribute 'jizyah' to the Islamic states. On the other hand, during the second period of this Caliphate the picture changed. So during the ninth century the scale of balance was in the hand of the Byzantines as their strength and the internal crises which affected the strength of this caliphate caused the establishment of a separatist movement inside the Islamic state[166]. "But when the power and prestige of the caliphs declined, the emperors of Constantinople stopped payment of tribute and even frequently crossed the borders of the empire"[167] in order to require the Muslims who lived in the frontier regions to pay tribute to them[168].

The payment of *jizyah* from the Byzantines to Muslims continued during the period of the Abbasids when their position was stronger, so in the year 165 / 781 a three year peace treaty was signed between both sides in which the Byzantines agreed to pay 70,000 *dinars* a year[169].

During the period of the Abbasids Caliphate especially when the conflict resumed between them and after the Byzantines ceased their internal conflict, the exchange of prisoners of war between both sides occurred. This type of treatment may have happened under a treaty called 'fidā' ransom treaties. The purpose of such treaties was to release prisoners of war by exchange or by paying a certain amount of money agreed between both sides. By using this system the victorious side could collect a considerable amount of money for the state treasury[170]. Professor Khauddri said that the ransom treaty as a system organized by treaties was made during the Abbasid Caliph, Hārun al-Rashīd in 181 AH according to the Arab historians and the Muslim prisoners who were released, numbered about 3700[171].

The exchange of prisoners of war between both sides occurred through diplomatic channels. So in most exchange negotiations the Byzantines sent envoys to the Abbasids, asking them to accept the exchange. In some cases and during the description of the exchange of prisoners by Arab historians a good arrangement came into view as during the exchange which happened in the year 231 AH, when each side built a bridge and exchanged prisoners one by one. The Muslim prisoners of war released over a ten day period numbered 4,362[172]. An exchange such the one which happened during the period of the Caliph Hārun al-Rashīd in year 189 AH was the first exchange to affect all Muslim prisoners in Byzantine captivity according to al-Dhahabī[173].

In early Islam, diplomacy was used to deliver the massage of Islam, paying *jizyah* before the commencement of fighting or the exchange of prisoners of war after the termination of fighting. During the Abbasid Caliphate this diplomacy served peaceful purposes, such as the exchange of gifts, the commercial relations and the negotiation of ransom treaties[174].

Regarding the use of weapons this caliphate continued to use the same weapons which were used during the previous period such as personal weapons. This period also continued to use mangonels against enemy strongholds[175].

During this period the destruction of cities and the use of fire had occurred but noticeably the destruction and burning of enemies cities was a mutual action between Abbasids and Byzantine states[176].

The Abbasid Caliphate used oil in warfare for shooting flaming arrows at the enemy. Shaban mentioned that it was used in year 197 / 811 during the siege of Baghdad and in 222 / 837 in the fight against Babak [177]. Hassan also added that there were people responsible for shooting oil and wore special clothes to protect them from the fire and to enable them to plunge into the burning strongholds[178]. Therefore both Islamic and Byzantine states used this important commodity "Neither the Arabs nor the Byzantines were blind to the value of this important commodity" according to Shaban[179].

They used tanks which were an offensive instruments made from wood, covered with iron and carried on wheels also has a strong head made from iron to pull down the walls of the enemy. They were also used as ladders to climb the walls of the enemy[180].

The Abbasids also used engineers during the wars. Dr. Hassan mentioned that this group had a leader responsible solely for them. He also added that they had used field hospitals during their wars and camels carried the wounded and sick soldiers to the field hospitals[181].

An important event which took place during the second period of the Abbasid Caliphate was the retaking of Jerusalem by Saladin in the year 583 / 1187. This city was first conquered during the period of the second guided caliph 'Umar when the Patriarch Sophronius made a condition that the city would only surrender to the caliph. As Jerusalem was much revered by the Muslims, it was the only city that the Caliph 'Umar should come in person to take possession[182]. This city fell into the hands of the Crusaders in year 492 / 1099 during the second period of the Abbasid Caliphate, which was weak. Noticeable during this period was the multiplicity of the independent movements, the establishment of states inside

the Islamic state itself and the power of the caliphs which was nominal, such as the mentioning of the name of the Abbasid caliph during the Khutba of the Friday prayer[183]. Therefore, the Ayyubid state was one of the Islamic states established during the weakness of the Abbasid caliphate.

The importance of the city of Jerusalem retaken by Saladin to Muslims is because it holds the third holy mosque and the place of the nocturnal journey[184] of the Prophet Muḥammad[19] and also as it was a part of *dār al-Islām* 'the land of Islam,' where there is Muslim rule and the Islamic Sharī'h is applied. Hence, if the enemy attacked or occupied this land or part of it, it becomes the duty of those who are being attacked to defend it and if they could not then it becomes an individual duty upon their Muslim neighbours[185]. According to the majority of Muslim scholars *dār al-Islām* cannot be converted to a land of disbelief even if it was occupied by non-Muslims[186].

Therefore, as we have seen, Jerusalem was the main concern of Muslims during the period of Saladin and they did not settle until it was retaken by the Islamic army under the leadership of Saladin [187]. On the other hand during the seventeenth century the Crusades evicted the remaining Muslims from Spain[188] while it was under the rule of the Muslim authorities; The implementation of Jihad to retake Spain was not fully discussed by Muslim scholars even up to and including the present day as opposed to the question of Palestine which has been given much consideration with regard to the use of *Jihād*. Therefore, the question then arises, is Spain not a part of the territory of Islam?

This problem was not a question to which the early Muslim scholars or even the founders of the great juristic and theology paid much attention, as it seemed there was no good reason to discuss such matters during the progress of Muslim armies in the early period. There was no doubt that such progress would continue until in the not too distant

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[19]The Prophet Muḥammad's midnight journey to the seven heavens.

future their task to raise Allah's word would be achieved. On all three major fronts in Europe, Asia and Africa, Islamic power during different caliphates continued to advance. That advance might be delayed from time to time by treaties especially during internal conflicts, but it was always resumed[189].

So, the debate on such matters could be derived from the discussion of *dār al-Islām* and *dār al-Kufr* which was laid down by prominent Muslim scholars. As has been mentioned *dār al-Islām* is the territory ruled by Muslims and the Islamic Sharī'h is applied. The key of this matter is the transformation of *dār al-Islām* into *dār al-Kufr*. Abu Hanīfah laid down three conditions regarding the transformation of territory of Islam to territory of disbelief: 1-The application of the law of non-Muslims. 2-The bordering of the territory of war. 3-The absence of the security of Muslims and the protected people of non-Muslims 'the *dhimmah*'[190]. Abu Yusuf and Muḥammad al-Shaybānī from the Hanafī school mentioned a noticeable condition that the territory of Islam can transformed into a territory of disbelief if the laws of non-Muslims are openly applied[191]. So according to this view if any Muslim countries are occupied by non-Muslims or apply the law of unbelievers it will be transformed to the territory of unbelief.

Dr. al-Qāderī, discussed this concept and emphasized that if the territory of Islam applied the law of unbelievers it will become a territory of unbelief even if most of the inhabitants are Muslims but this does not mean that all the inhabitants are non-Muslim. He also added that even if the unbelievers who govern an Islamic country apply some of the Islamic Sharī'h it will still remain the territory of unbelief as the power should be in the hands of Muslims as mentioned earlier by the Hanafī school[192].

Dr. Haykal, also followed the previous view, but on the other hand he added a new view to *dār al-Islām* and *dār al-Kufr*. He said that if any country was conquered or ruled by Muslims in the past or if the inhabitants of that country or the majority of them were Muslim it should be called an Islamic country (*al-Bilād al-Islāmīa*) not the land of Islam. So it became necessary that. the defence of such countries be made compulsory upon

213

Muslims and also the recovery of such countries if they fall into the hands of unbelievers is also compulsory upon Muslims. He added that Muslim scholars who mentioned this view and those who hold that Muslims have to declare *Jihād* against non-Muslims while they are in their countries to raise the word of Allah high with greater reason would support *Jihād* against those who occupied Islamic countries[193].

Dr. Haykal mentioned such a view to reply to the opinion of Dr. al-Buṭī who said that if we call the countries which fell into the hand of non-Muslims as *dār al-Harb*, the result will be that it is not compulsory to retake it again such as Palestine[194].

Professor. Lewis, in dealing with the acceptance of non-Muslim rulers by Muslims mentioned that jurists were able to compromise on this issue that territories which are not under Muslim rule have become part of the House of War, and when circumstances permit exposed to *Jihād* and re-conquest[195].

The discussion of the transformation of *dār al-Islām* into *dār al-Kufr* and the example of Spain and Palestine when Muslim populations suddenly found themselves under the rule of non-Muslims leads us to ask an important question, do they have to depart to Muslim lands, or to stay under the new rulers who are non-Muslims?

To answer the above, we can say that such a question did not arise during the early days of the Islamic state as it was the era of great conquest, but the problem which arose was the treatment of non-Muslims who live outside the House of Islam and also the relations with non-Muslims who live inside, the *dimmah*, but the situation in which Muslims might find themselves under the non-Muslim rulers did not arise, according to Lewis[196].

The jurists have given varied answers to this question. Some jurists mention that it was the duty of all Muslims to leave such territories and rules as these rules would make it impossible for them to fulfil their obligations as Muslims and also might lead them and their families into the danger of apostasy. The emigration of the Prophet from Makkah to

Medinah was quoted as an example. The Prophet did not stay under Pagan rule in Makkah but left it with his followers to another place where they could established an Islamic state and live a Muslim life. So it is the duty for Muslims who find themselves in the same situation to do as the Prophet had done and later on they or their descendants would return to conquer the territory which had been lost[197].

It seems that previous jurists based their views on the Abu Hanīfah students, Abu Yusuf and Muḥammad al-Shaybānī's who held on that the territory of Islam could be transformed to the territory of unbelief if it is occupied by non-Muslims or applied the law of unbelievers. These views may be adopted by some scholars during the modern era. Dr. al-Buṭī mentioned that Sheikh al-Albānī released a *Fatwā* which held that Muslims who lived now in Palestine have to leave their country as it is under non-Muslim rule and it is transformed from *dār al-Islām* to *dār al-Kufr*[198]. The view of al-Buṭī on the other hand that *dār al-Islām* never transformed to *dār al-Kufr* and the applying of Islamic Sharī'h is not a condition to consider the territory as Islamic, but it is a basic duty that Muslims must implement the Islamic Sharī'h [199].

Other jurists such as al-Mazārī presented another solution that Muslims might remain under non-Muslim rulers and be obliged to obey their orders on condition of the observance and enforcement of Islamic law to protect their religious and social order, at the same time it is their duty to seek to overthrow such rule as and when they have the ability and a reasonable prospect of success, to do so[200].

The qualification of emigration from the territory of *Kufr* to the territory of Islam was clarified by Dr. Haykal[201] as follows:

1- Emigration might be compulsory in three cases:

a- If Muslims could not fulfil their obligation as Muslims.
b- If they fear that this rule might subject them to the danger of leaving Islam.

c- If the Muslim Imam asks them to emigrate to a territory of Islam to support such a state.

Haykal derives this from the following verse "When angels take the souls of those who die in sin against their souls. They say in what (plight) were ye? They reply: weak and oppressed were we in the earth. They say: was not the earth of Allah spacious enough for you to move yourselves away (from evil)? Such men will find their abode in Hell, what an evil refuge" (H.Q.S4. A97). In general those who are unable to emigrate are exempted "Except those who are (realy) weak and oppressed Men, women, and children who have no means in their power, nor can they find a way (to escape). For these, there is hope that Allah will forgive: For Allah doth blot out (sins) and forgive again and again" (H.Q.S4. A98-99).

2- It might be desirable for those who are able to practise their religion and also be able to emigrate at any time. Also if remaining inside the non-Muslim land could lead to the call of non-Muslims to Islam[202].

3- Remaining in non-Muslim land can be compulsory if the Muslims who live there are able to overcome the non-Muslim rules by themselves or with support from the Islamic state[203].

The view of Dr. Haykal is the most convincing as some Muslim countries are ruled by non-Muslims or apply man-made law by their rules while in most cases the most inhabitants of such countries are Muslims. So the name (al-Bilād al-Islāmīa) which was addressed by Haykal is appropriate. Hence the defence and the salvation of such countries from the non-Muslim rulers and also from the rulers who applied the man-made law is compulsory upon Muslims to establish the Islamic Sharī'h if they have the ability to do so.

JIHAD DURING THE PERIOD OF THE MUSLIM SCHOLAR IBN TAYMIYA

After the period of the fourth guided caliphs and mainly during the period of the Umayyad and the Abbasid states the application of Jihad against non-believers continued at different levels by the rulers of these states as previously mentioned. The following section discusses *Jihād* during the period of the prominent Muslim scholar, Ibn Taymiya born immediately after the fall of the Abbasid Caliphate by the Tartars in year 656 / 1258. The importance of such a study shows that after the Tartars invaded the Islamic state they embraced Islam. Nevertheless, Ibn Taymiya declared his *fatwa* that Muslims had to apply Jihad against Tartars. So why he declared such a *fatwa* and what was the evidence upon which Ibn Taymiya based his *fatwā*? Moreover, the *fatwā* of Ibn Taymiya was also considered as the main reference of most of the Jihad groups who declared Jihad against their government in the Arabic world in the present day. From what has been mentioned we think that the views of Ibn Taymiya on such a subject needs to be highlighted.

In the middle of the seventh century of the *Hijra*, the Tartars (Mongols) invaded the Islamic state which was under the Abbasid and occupied most of it. In 1258 AD the Tartars under the leadership of Hulaqu, laid siege to Baghdad, the capital of the Islamic state. Al-Musta'sim the Muslim caliph sent an envoy to offer Hulaqu unconditional surrender. According to Nutting, Hulaqu sent a message to the caliph, to the effect that he would be left on his throne if he surrendered forthwith in person with all his retinue. When they assembled, Hulaqu butchered them all, male and female alike. The Pagans Tartars entered the capital and over a million people of the Baghdad population including women, children and babies were killed. They also set fire to the great libraries and schools that had given the capital of the Islamic state the cultural leadership of the world [204]. Hulaqu allowed the city one week for his army; they destroyed the city's mosques, killed many of the jurists and plundered the money and the valuables of the citizens[205].

For five hundred years, Baghdad had been a centre of palaces, mosques, libraries and colleges. The Muslim world was thunderstruck at the news of destruction of the capital

of the Islamic state and the murder of the Muslims caliph[206]. For the first time since the Prophet's death for more than six hundred years, Islam was without a caliph[207]. The Muslim historian, al-Sayṭī (d, 911 AH) mentioned that Muslims were without a caliph for three years and a half[208].

In the following year the Tartar army attacked Syria and captured Damascus and Aleppo and according to Nutting, every Muslim captured in the fighting was killed he added that fifty thousand were put to death in Aleppo only[209].

The Tartars adopted Islam in the year 1280 under their king Ghazan according to al-Sayṭī[210] and Professor Hitti [211]. In these bloody events the famous Muslim scholar Ibn Taymiya lived. He was born in the year 661 of the *Hijra*, 1263 AD to a family of jurists and was brought up at the height of the Mamluk era[212]. So with regard to the political situation which has been clarified in brief earlier, Jihad was an important factor during the period of Ibn Taymiya's life. In his book al-Siyāsa al-Shar'iyya he confirmed this view when he states "The best of the forms of voluntary service man can devote to Allah. The jurists agree in proclaiming it superior to pilgrimage and to the 'Umra, as well as to prayer and supererogatory fasts, as is shown in the Qurān and the Sunna ... there are people who insist on striving to accomplish the most taxing acts prejudicial to their material prosperity, despite the minimal advantage they can draw from them, whereas *Jihād* is far more profitable and useful than any other arduous action" as the benefit of *Jihād* is universal for the doer and the others in present life and in the day after[213].

The Tartars laid siege to Damascus in the year 699 of the *Hijra*, so Ibn Taymiya was asked about the Tartars who attacked the Islamic state, killed, captured and plundered Muslims. They also insulted Muslims' Mosques, claimed that they themselves were Muslim and claimed too that they were not to be fought as they were Muslims and did not uproot Muslims[214].

Ibn Taymiya answered the question by legitimising Jihad against the Tartars who were Muslims, by using two methods. The first was the qualification of *Shar ī h* of such party and the second was the information about the Tartars which Ibn Taymiya held.

He stated that, as established by the Qurān, the Sunna and the agreement of the Muslim scholars that every party must be fought whosoever departs from one of the clear *Shar ī h* of Islam, such as prayers and Zakat till they pray and pay Zakat, even if they pronounce the two professions. As Allah says in the Qurān "And fight them on until there is no more persecution and religion becomes Allah's ..." (H.Q.S8. A39) "so if part of religion becomes Allah's and some not to Him the fight is compulsory until becomes all to Allah"[215].

From the *Shar ī h* point of view Ibn Taymiya started to clarify his view by mentioning two cases in which Muslims who departed from some of the *Shar ī h* had been fought. A Jihad which was declared by the first caliph Abu Bakr and agreed by the Prophet's followers who participated in this Jihad against the apostasy who refused to pay the Zakat to the Islamic state after the death of the Prophet while they complied with the rest of the Islamic Sharia such as performing prayers and fasting the month of Ramadān, was the first case[216].

The second case was that of the Khawaraij, who deemed that they were the only Muslims and that other Muslims are non-believers even 'Uthmān and 'Alī the third and fourth caliph. They regarded Muslims' lives and wealth as lawful. The caliph 'Alī therefore fought them by the order of the Prophet and all Muslims agreed that the Khawārij had to be fought [217]. The reaction to this question which Ibn Taymiya used gives us a clear indication that some Muslim scholars during that period tried to convince people that the fight against Tartars was the same as the fight against Al-Bughāt which Ibn Taymiya refused and proved the differences between them as stated earlier.

Another question addressed to Ibn Taymiya contained that both sides, the Tartars and the Islamic state are unjust, what should Muslims do? Should they be restrained from helping both sides and fighting against both sides?[218].

The response of Ibn Taymiya to this question clarified the injustice of his contemporary world and his rejection of such behaviour "he faced a society whose pathology acutely perceived, one in which injustice, now a supreme principle, offended his Muslim conscience" according to Kepel[219]. Ibn Taymiya therefore, made a comparison between the two parties and reached the conclusion that the leaving of jihad with the unjust prince who governed Egypt and Syria at that time would lead the other group who were the Tartars to further damage the religion and to take-over the earth.

He added that the fight with the unjust prince, even if it did not lead to the full application of the Islamic *Sharīh*, but at least to make most of it compulsory. He then quoted some of the Prophet's traditions which supported the fight with unjust leaders "You will be governed by rulers who are unjust, treacherous and iniquitous, so whoever agrees with their falsehood and supports them in their tyranny then he is not of me and I am not of him. Whoever opposes their falsehood and lends no support to their tyranny he is of me and I of him". "Section of my *Umma* will not seize to make plain the truth undeterred by those who opposed them until the day of judgement". Another tradition "Military expeditions will continue from the beginning of the message until the last of my *Umma* fights the antichrist not being effected by the unjust of tyrant or the justice of a just ruler"[220].

Therefore, He concluded that Muslims called to perform Jihad under an unjust ruler did not commit any sins in the support of their rulers if their performance came from their obedience to Allah[221].

The second evidence on which Ibn Taymiya based his answer or his *fatwā* about the legitimacy of fighting the Tartars the information about them which he had and which also contained some important matters such as:

220

During their first invasion of Syria they killed many Muslims and captured more than 100,000 women. They also raped many Muslim women and seized Muslim wealth[222].

The majority of their army did not perform prayers and they did not have a person who called them to prayer nor a person who led them in prayer. Most of them also did not pay Zakat[223].

Some of the Tartars favoured the religion of Jews or Christians and some of them preferred Islam. Ibn Taymiya therefore states that all Muslim jurists agreed that those permitted to follow any religion except Islam will be unbelievers[224].

There is no connection between their fight and the religion of Islam but the main reason is the rule only. So in their situation they are invaders and warriors of Muslims. He who therefore fights to support his rule will be exalted even if he is not a Muslim and he who does not support or fight them will be allowed their blood even if they were Muslims. They also believed that their king Jenghiz Khan was a son of Allah[225].

Regarding the law, they did not govern by the law of Allah *Sharīh* but they governed according to their laws which agreed with Islam in some cases but not in others[226]. Professor Lewis clarified this point when he mentioned that the Muslim rules of Syro-Egyptian had wars with the pagan Mongol rules and such wars from the Muslim point of view are *Jihād*. The conversion of the pagan Mongol rules to Islam raised a new problem, could such war between Muslims be considered as *Jihād?* The answer came from the fourteenth century jurist Ibn Taymiya "Since they continued to practise and impose the laws of Jenghiz Khan ... those who follow such laws are infidels and should be combated until they comply with the laws of God"[227]

Ibn Taymiya then discussed another point which was that some Muslims left the Muslim army to join with the Tartars against Muslims. He reached the conclusion that those

who left the Muslims for the Tartars are apostates and more deserving of being killed than the Tartars themselves because in _Shar ī ḥ_ the punishment of the apostate is greater than the original non-believers[228].

From what has been mentioned we could conclude that the great Muslim scholar Ibn Taymiya did not issue his _fatwā_ which was the compulsory use of Jihad against the Tartars except after a comprehensive and comparative study. The first by studying their reality and the second by studying the primary source of the _Shar ī ḥ_, the Qurān and the Sunna and then compare the Tartars with the apostates and the Khawaraij who appeared during the period of the fourth guided caliph and how those caliphs dealt with them. In fact, the period of the fourth caliph was the main principle on which he based his _fatwā_

Even the rulers during the period of Ibn Taymiya were unjust as he himself agreed, he ordered Muslims to fight with them as they were better than the rulers of the Tartars and they were the only Muslim leaders at that time, according to Ibn Taymiya, who could stop the invasion of the Tartars and by their defeat Islam may be saved.

This _fatwā_ from Ibn Taymiya was issued in the defence of the Islamic state against the invasion of the Tartars as we have seen earlier, moreover Muslims were under the leadership of the king al-Nāsir[229] which meant that they had a political leadership who took the responsibility of a declared jihad against the Tartars. Ibn Taymiya also took into consideration and described the political situation inside the Islamic state during that time which led him to support the unjust rulers. The people of Yemen were weak and they could not participate in _Jihād_ so, they declared their obedience to the Tartars. Most of the people of Hijāz departed the _Shar ī ḥ_ and indulged in heterodoxy. The land of Africa was governed by the Bedouins who deserved _Jihād_ against them. Most of the far west was under the control of the Christians, therefore, they could not perform _Jihād_ against the Christians because they were weak and not in a position to apply _Jihād_. After this excellent presentation of the political life of the Islamic world Ibn Tayimya then concluded that the

people of Egypt and Syria were the only people who could fight in defence of Islam against the Tartars[230].

JIHAD DURING THE PERIOD OF THE OTTOMAN STATE

The Ottoman state was established by a son of Ertugrul, Ottoman, the founder of the dynasty at the end of the thirteenth century. Ertugrul helped the Seljuk Sultan Alaeddin against the Byzantines while they were at war. They were defeated by the Sultan and his new ally Ertugrul. Therefore, the Sultan granted land to Ertugrul and his tribe as a reward for his help. Ertugrul died in the year 687 AH, and was succeeded by his son Ottoman. In the year 699 AH, the Mongols attacked the Seljuk state and killed Sultan Alaeddin, and his son, and dismantled the Seljuk state. Ottoman therefore had the opportunity to be the leader of the Seljuk and to extend and expand his power and territory without intervention[231].

When the founder of the Ottoman state, Ottoman, established his state he did not begin to declare Jihad until it was strong enough to take an offensive position under his leadership. When he had achieved this he began to attack the Byzantines, his neighbours. Al-Muḥāmī mentioned that he asked the Byzantines to adopt Islam and become Muslim, if they refused they would have to pay *jizyah*, or face war. He added that some of them adopted Islam, some agreed to pay *jizyah* while others faced war [232]. We could remark that when the founder of the Ottoman state declared Jihad against his non-Muslim neighbours the state was not as big as the Umayyad and Abbasid states but it had the basis of a collective *Jihād*, the state and the leadership. Also when the Prophet declared *Jihād* against non-Muslims the Islamic state was not too big but it was in a strong position to take offensive action.

Therefore, when Muslims conquered a huge amount of land which contained Iran and Central Asia and reached the borderlands of China and India, Europe was the most

223

important infidel enemy; no other Muslim state except the Ottoman Empire could wage *Jihād* between the House of Islam and Europe[233].

After the death of Ottoman, his son Orkhān was appointed ruler. He completed what his father had started "In 1326, Orkhān crowned the work of his father, while the latter lay on his deathbed at Sogud, with the conquest of Bursa" according to Brockelman[??] . Abu-Ghounaymah reported from some Turkish historians that the testament of Ottoman to his son Orkhāns contained the importance of *Jihād* for raising of the word of Allah high and he asked him to carry on and not leave this mission. Moreover, many of the protocols and laws which were issued by the Ottoman sultans were issued under the title 'My Sublime State is a Muḥammaden State '[235]. These were a clear indication that at the beginning of the establishment of the Ottoman state that the aim of their wars against non-Muslims was *Jihād*. However, under the later Ottoman Sultans wars were sometimes declared for different purposes such as the rule or for political purposes. The support of the king of France during his war against the king of Austria by sultan Sulaymān I in 1526 is a clear proof of such purposes[236].

Moreover, the aim of the Ottoman sultans was to conquer the city of Constantinople as the Prophet had mentioned in a tradition that it would be conquered and he praised the army and his leader. So Muslims tried to conquer this city eleven times, seven of them during the two centuries of Islam[237] but they could not achieve their aim. The founder of the Umayyad Caliphate, Mu'āwiya had very nearly succeeded when he tried in two previous sieges of the city. So, the Umayyad Caliph Sulaymān, decided to crush the Byzantine empire itself by a massively strong siege of Constantinople, but the unexpected death of the caliph forced the Muslims to leave the siege and withdraw[238].

Sultan Muḥammad II decided to conquer Constantinople, he besieged the city and asked the Emperor to surrender the city for its protection, but he refused. The sultan therefore broke through the city and the Emperor was killed [239]. According to Brockelman,

"It was only by a general frontal assault on May 29, 1453, that the enemy forced his way into the city. The Emperor was killed in the street fighting"[240]. So the conquest of Constantinople confirmed the fact that the Ottoman state became a true European power[241].

The threat by the Ottomans on Europe was two sided; a conquest inside the European land, so their military power reached the very heart of Christendom and a challenge to Christendom from the rival Muslim faith which led some Europeans to adopt the religion of the new conqueror[242].

The system of the army during the period of the establishment of the Ottoman state was that they gather during time of war and disperse when over. Therefore, during Orkhān's rule, he established a new system based on regular soldiers. He took the finest young Christian prisoners of war gave them an Islamic education. They trained for a life of arms under very strict military law to be ready for *Jihād*. These new soldiers did not become involved with local and internal interests but concentrated on military missions and they were a main factor in the Ottoman military success [243]. They lasted until the year 1241 / 1826. During this long period they began to intervene in domestic and political affairs. Therefore, their influence on political affairs led to the appointment, separation and killing of some Ottoman Sultans. The state could not put an end to their influence except during the period of the Sultan Maḥmud II when he exterminated their power[244]. According to Lane-Poole, "Thus was formed the famous corps of the Janissaries, or new troops which for centuries constituted the flower of the Ottoman armies ... they had to be summarily exterminated in the present century by Sultan Maḥmud II"[245].

There is no evidence from Islamic law which recommends the new treatment of prisoners of war as established by Sultan Orkhān. The orders from Allah to Muslims is different, Allah said in the Qurān "Therefore when ye meet the unbelievers (in fight) smite at their necks. At length, when ye have thoroughly subdued them, bind (the captives) firmly:

therefore this the time for either generosity or ransom" (H.Q.S47. A4). The conduct of the Prophet towards prisoners of war[20] was in no way similar to this treatment.

The first period of the Ottoman state had achieved some important political aims such as the contraction of the Byzantine power in Asia and the opening of the European gate to Muslims[246].

The acceptance of the payment of *jizyah* from non-Muslims had applied during the Ottoman state. This application could be easily observed during the long period of this state. Therefore, the founder of this state attacked the Byzantines and opened many cities and strongholds, one of which was Prousa 'Bursa' which was taken by his son. The people of this city paid *jizyah* amounting to 30,000 Byzantine gold pieces [247]. Also during the middle of the fourteenth century the Sultan Murād I with his troops met the prince of Bulgaria with his troops, he granted peace against the payment of *jizyah* and the surrender of Silistria city[248]. During the period of this Sultan he signed a treaty with the Raguse republic in return for payment of *jizyah* which was 500 gold pieces a year. Sultan Muḥammad II decided to conquer Morea and Serbia, but they conveyed to him that they would pay the *jizyah* which was 12,000 ducats and 80,000 ducats respectively, to which the sultan agreed[249].

To support their position and to establish new alliances, some of the Ottoman Sultans and their immediate families married into European Royal families such as the prince of Serbia[250].

Certain treaties which were signed between the Ottoman Sultans and their enemies contained that while the other side has to pay *jizyah* and remain as governors on their territories they have to support the Ottoman army with soldiers during wars against the state enemies[251].

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[20]For more details regarding the treatment of prisoners of war see chapter three in this thesis.

The treaty which was signed between the Ottoman Sultan Sulaymān I and the King of France in 942 / 1536 was very important as it included some important articles such as the cease-fire between both sides during the period of their life. It did not allow the use of force by the Ottoman Sultan upon the French merchants nor their servants, ships and its contents such as equipment, artillery and ammunition to support him except if they agreed voluntarily to do so. This treaty also concluded that both sides have to release all slave citizens of the other side whether this slavery occurred by purchase or as prisoners of war. Also each side had to undertake not to convert any of the citizens of the other to slavery whether by buying or prisoner of war. This treaty made France the first and the only European country whose citizens enjoyed privileges inside the Ottoman state according to al-Muhāmī[252].

During the sixteenth century some European countries established political relations with the Ottoman states by sending Ambassadors to reside in Istanbul. The first French and English ambassadors arrived in 1535 and 1583 respectively. On the other hand the Ottomans did not send any ambassadors on a permanent basis during that time as the Ottoman view according to Davison was "that the foreigners came in the role of petitioners"[253].

During wars between non-Muslim countries we can see that some of the Ottoman sultans supported one side against the other. This kind of alliance was applied during the period of Sultan Sulaymān I, when he supported the king of France against the king of Austria in 1526 by leading an army which numbered more than 100,000 soldiers[254]. The Ottomans in their early wars in the Balkan peninsula sometimes made use of local Christians. In their later wars, they found themselves involved in European struggles with Christians both supporting and opposing them. So since the beginning of the sixteenth century, most of the Ottoman wars were *Jihād*, their causes were Islam, their enemy the non-Muslims, their dead were martyrs[255], but later the picture changed in some of the causes for war as previously mentioned.

Regarding the treatment of prisoners of war, in many cases the Ottoman Sultans did apply Islamic law regarding the proper treatment of non-Muslim prisoners of war. This was exemplified by Sultan Murād with the prince of Bulgaria and his people when he ordered his troops to treat prisoners well, and also Sultan Orkhān with the citizens of Izmid[256]. This was not always the case, however, Sultan Bayezid by contrast killed many non-Muslim prisoners of war after the battle of Nicopolis[257]. This may have been reciprocal or the result of the non-Muslim forces being stronger. When the Ottoman troops conquered Constantinople, some of them began to despoil the city, until the sultan ordered them to halt. It would have been better had the army been given Islamic instructions before the attack to prevent them from committing any infringements against the enemy.

Some of the Ottoman Sultans applied certain Islamic law regarding non-Muslim states, in particular the acceptance of *jizyah* and the protection of their lives and religion such as after the conquest of Bursa during the period of the founder of the Ottoman state. The citizens were given protection and treated well. Also Izmid city fell into Orkhāns hands, he treated the citizens well and gave them freedom of religion and worship. Furthermore, anyone who wanted to emigrate could do so and take all his property and wealth with him. The Prince of Bulgaria signed a treaty with the Sultan Murād but he broke the agreement. So the sultan's troops attacked and besieged the prince and his army in the city of Nicopolis in the year 1389 AD. Bulgaria was annexed to the Ottoman Empire and the prince fell into captivity. They treated him and its citizens well, and returned him to power again [258]. "He was shut up again in Nicopolis, this time having to surrender unconditionally, but retained his throne and his life"[259].

Professor Lewis indicated the level of the religious tolerance during the period of the Ottoman state by saying "Until the eighteenth century tolerance was a quality neither expected nor admired by many Europeans. They reproached the Turk, not because he imposed his doctrines by force-how else would one impose them?- but because his doctrines were false, that is, not Christian. In fact, however, the Turk did not impose his doctrines by

force but instead allowed his subjects to follow their own religions, provided that they respected Muslim supremacy and paid their taxes. The result was that in the seventeenth century the Turkish capital was probably the only city in Europe where Christians of all creeds and persuasions could live in reasonable security and argue their various schisms and heresies. Nowhere in Christendom was this possible"[260]. This conduct which was applied by some of the Ottoman Sultans derives from the instructions of Islamic law, which does not request unbelievers to embrace Islam under duress, but orders its regime to protect the freedom of religion and places of worship for non-Muslims inside the Islamic state, with the possibility of embracing Islam freely if they so wish.

During the first two centuries of the establishment of the Ottoman state, it was usual for the sultan himself to lead in important wars to encourage the troops to fight strongly. This had been changed by Sultan Sulaymān I, so the Ottoman army was now led by their commander. This system effected the morale of the army on the long run[261].

In the middle of the fifteenth century the Ottomans started to use artillery for the first time during the period of Sultan Murād II during the confrontation between them and the Byzantines. So during the siege of Constantinople, Sultan Muḥammad II used fourteen pieces of artillery against the city[262]. The use of artillery by the Ottomans has a connection with trade relations with Europe as they opened their market to the European merchants. Therefore, the European product in strong demand from the Ottomans was weaponry, even though such weapons were needed for the fight against Christendom and were also sold by Christian merchants[263].

Sultan Sulaymān I, began during his time to organize the army. To do so he divided them in to three groups in accordance with their period of service. He arranged their salary according to the group. He also granted salaries to the soldiers who were affected by permanent disability. To realise the number of the regular army al-Muḥāmī mentioned that they were 300,000 soldiers, 50,000 of them orderly and the rest were not. He also added that number of the artillery were 300 and military ships also 300[264].

To secure the allegiance of the army the Ottoman Sultans began at the end of the fifteenth century to give a stipend to the Ottoman Janizaries. Therefore when Bāyezid II was appointed as Sultan he granted the Janizaries who were the strike power in the Ottoman army stipend to secure their allegiance[265].

The Ottoman Empire began to weaken in the seventeenth and eighteenth century, although the real fall occurred after the first world war. Therefore, the second siege and withdrawal of Vienna which was followed by defeats in the field and loss of cities and provinces followed by a peace treaty of Carlowitz signed in 1699. This treaty marked a critical turning point between Europe and Islam. For centuries past the Ottoman state had been the leading power of Islam and also led the conflict between Muslims and their Western Christian neighbours, but the real power had started to decline. The seventeenth century began with equality between the two powers but ended with the beginnings of defeat. For the first time, the Ottomans were forced to sign a peace treaty, the terms dictated by their enemies. The eighteenth century also was a time of decline for the Ottoman state, as they were not be able to expand the power of Islam but instead they were pressed by their European enemies to retain lands which they already held[266].

Indicative of the range of the Ottoman power in the eighteenth century, war was launched by Russia against them. This war ended in total disaster; the Treaty of Kucuk Kaynarca of 1774 which gave Russia very important advantages; the Russians were given the right to open consulates wherever it pleased inside Ottoman lands. It had the right to build a church in the capital of the Ottoman state ,Istanbul, therefore had the right to intervene and protect all the Orthodox Christians of the Ottoman state[267].

In the nineteenth century this weakness continued which led some neighbouring countries to attack the Empire, such as Russia. Therefore, in the year 1294 / 1877 AD, they declared war in an attempt to occupy a large portion of the Empire. They almost reached the capital Istanbul, but with the intervention of Britain, a treaty was concluded at San

Stefano. This treaty weakened the dominance of the Ottoman Empire over Europe, and gave the Russians a chance to reduce the number of Muslim citizens in Europe by giving them a time limit of three years to sell their properties and leave the countries or otherwise come under Russian control[268].According to Lane-poole, "By this treaty, which records the partial dismemberment of Turkey, with the consent of Europe, in spite of all the pledges of 1856, Serbia, Montenegro, and Rumania were declared independent"[269].

The engagement of the Ottoman Empire in the first world war with Germany against the allies between 1914-1918, was the signal of the real decline of the Empire. There was no response to the Ottoman Sultans's appeal for Jihad against the allied armies on Muslim territories at that time. The reasons were that most of the Muslim leaders opposed this war because it was between non-Muslims, so the Islamic state had no reason to become involved in such a confrontation. The Ottoman state was not ready for action because of its weakness and lost most of its power. The Empire also lost the hegemony of many lands. Additionally the western countries dominated a large part of the Islamic state[270]. According to Professor Lewis "In November 1914, after the outbreak of war, the Ottoman authorities even proclaimed a Jihad, or holy war, against the Allies and called on Muslims everywhere, including especially those under Allied rule, to do battle in the Islamic-that is, the Ottoman-cause. Understandably, the summons to a holy war for Islam under the aegis of the Young Turks and their German and Austrian comrades-in arms had little appeal, and the response was minimal"[271].

The effects of the first world war on the Ottoman Empire, therefore, went well beyond military defeat and hastened the decline of the Empire itself. According to Davison "The Allied victors were discussing at Paris, and at a subsequent series of conferences through 1919 and into the spring of 1920, the terms of peace to be imposed on the Turks. Secret wartime agreements among the Allies had laid down a scheme for partition of the Ottoman Empire not only of its Arab areas, but also of Turkish Anatolia"[272].

CONCLUSION

This chapter demonstrated that in the beginning of the Islamic mission the Prophet did not allow his companions to use force against the unbelievers in Makkah but when he emigrated to Medinah they received the permission from Allah to declare *Jihād* in self defence and then to establish the *Shari h* on the whole of the Arabian Peninsula. At the same time, the Prophet applied another kind of *Jihād*, against the Polytheists and against the People of the Book.

On the other hand after the death of the Prophet and during the period of the first and the last Guided Caliphs, two new kinds of *Jihād* had been applied, *Jihād* against apostates and *Jihād* against the Khawārij. However, *Jihād* against the apostates which was applied by Abu Bakr clarified that any Muslim group who rejected one of the five pillars of Islam will be consider as apostates and the Islamic state has to apply *Jihād* against such a group. Also while this *Jihād* did not exist during the time of the Prophet but the application of this *Jihād* by the First Caliph was based upon very strong evidence both from the Qurān and the Sunna as shown.

Also the application of *Jihād* against the Khawārij by the caliph 'Alī did not exist during the life of the Prophet but 'Alī based this kind of *Jihād* on strong evidence from the Sunna and also all the Prophet's followers who were still alive agreed on the caliph's action. This chapter also clarified the main views of the Khawārij such as they deemed the third and the fourth Guided Caliph and the majority of Muslims as unbelievers. They also followed the Qurān but not the Sunna.

This chapter also showed that the kind of *Jihād* which applied during the Umayyad, the Abbasids, and the Ottoman states was mainly against the People of the Book and the main reason for such *Jihād* was for the extension of the Islamic state. Moreover, all the three states did not apply *Jihād* against non-Muslims until two conditions were fulfilled, the founding and strengthening of the state and also the establishing of the leader of the state.

232

This chapter also makes clear that the prominent Muslim scholar Ibn Taymiya did not legitimise the use of *Jihād* against the Tartars until a comprehensive study of their reality and also by the study of the Qurān and the Sunna. To be in a good position to do a comparison between their views and the apostates and the Khawārij he studied the period of the Four Rightly Guided Caliphs and the groups which appeared during their time to be in a position to learn good lessons from the treatment of such caliphs to both groups.

This chapter clarifies the application of *Jihād* during the period of the Prophet until the time of the Ottoman caliphate. At the end of this chapter, the views of earlier scholars regarding the subject of *Jihād* will have been clarified. Also, the next chapter will argue the comparative views of the issues of *Jihād* between earlier and contemporary scholars which will enable us to differentiate between both sides.

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239.Al-Muhāmī, Muhammad Faryyd, Tārikh al-Dawla al-'Alyya al-'Othmānya, pp 163- 164.

- Abu-Ghunymah, Zyād, Jawānb Mudya fi Tārikh al-'Othmānyyn al-Atrāk, p 269.

240.Brockelman, Carl, History of the Islamic Peoples, p 277.

241.Davison, Roderic H. Turkey A Short History, p 31.

242.Lewis, Bernard, Islam and the West, pp 72-73.

243.Al-Muhāmī. Muhammad Faryyd, Tārikh al-Dawla al-'Alyya al-'Othmānya, pp 123-124.

-Hason. 'Alī. Tārikh al-Dwla al-'Othmānyya, al-Maktab al-Islāmī, p 85.

-Davison. Roderic H. Turkey A Short History, p 25.

244. Al-Muhāmī. Muhammad Faryyd. Tārikh al-Dawla al-'Alyya al-'Othmānya, pp 123-124, 278 and 429-431.

-Hason. 'Alī. Tārikh al-Dwla al-'Othmānyya, pp 45 and 85.

-Shāker. Mahmud. al-Tārikh al-Islāmī. al-'Ahd al-'Othmānī, pp 63-64.

245.Lane-Poole. Stanley. Turkey. T. Fisher Unwin. London. New York. 1888. p 27.

246. Al-Muhāmī. Muhammad Faryyd. Tārikh al-Dawla al-'Alyya al-'Othmānya, p 137.

-Hason. 'Alī. Tārikh al-Dwla al-'Othmānyya, p 16.

247.Shāker. Mahmud. al-Tārikh al-Islāmī. al-'Ahd al-'Othmānī, p 62.

- Al-Muhāmī. Muhammad Faryyd. Tārikh al-Dawla al-'Alyya al-'Othmānya, pp 119-120.

248. Hason. 'Alī. Tārikh al-Dwla al-'Othmānyya, pp 50-51.

249. Al-Muhāmī. Muhammad Faryyd. Tārikh al-Dawla al-'Alyya al-'Othmānya, pp 131-132 and 165-168.

250.Ibid. pp 132,133,137 and 154.

-Hason. 'Alī. Tārikh al-Dwla al-'Othmānyya, p 19.

251. Al-Muhāmī. Muhammad Faryyd. Tārikh al-Dawla al-'Alyya al-'Othmānya, pp 137 and 139.

-Hason. 'Alī. Tārikh al-Dwla al-'Othmānyya, p 20.

Al-Muhāmī. Muhammad Faryyd. Tārikh al-Dawla al-'Alyya al-'Othmānya, pp 223-230.

-Hason. 'Alī. Tārikh al-Dwla al-'Othmānyya, pp 68-69.

-Also Davison. H. Roderic. Turkey A Short History. p 47.

253.Davison. H. Roderic. Turkey A Short History, p 47.

254. Al-Muhāmī. Muhammad Faryyd. Tārikh al-Dawla al-'Alyya al-'Othmānya, p 217.

-Hason, 'Alī, Tārikh al-Dwla al-'Othmānyya, p 67.

255.Lewis, Bernard, Islam and the West, p 169.

256.Shāker, Mahmud, al-Tārikh al-Islāmī, al-'Ahd al-'Othmānī, p 82.

-Al-Sumaih, 'Abdulrahman, Prisoners of war and their Treatment under Islamic Law, p 131.

257. Al-Muhāmī, Muhammad Faryyd, Tārikh al-Dawla al-'Alyya al-'Othmānya, p 144.

258.Ibid, p 124.

-Shāker, Mahmud, al-Tārikh al-Islāmī, al-'Ahd al-'Othmānī, p 64.

-Hason, 'Alī, al-'Othmānywn wa al-Bulqān, al-Maktab al-Islāmī, Beirut and Damascus, 1406 AH, 1986 AD. pp 52-53.

259.Brockelman, Carl, History of the Islamic Peoples, p 269.

260.Lewis, Bernard, Islam and the West, pp 80-81.

261.Al-Muhāmī, Muhammad Faryyd, Tārikh al-Dawla al-'Alyya al-'Othmānya, p 252.

262.Ibid, pp 158 and 161.

263.Lewis, Bernard, Islam and the West, p 74.

264.Al-Muhāmī, Muhammad Faryyd, Tārikh al-Dawla al-'Alyya al-'Othmānya, p 251.

-Hason, 'Alī, Tārikh al-Dwla al-'Othmānyya, p 48.

265.Al-Muhāmī, Muhammad Faryyd, Tārikh al-Dawla al-'Alyya al-'Othmānya, p 179.

-Davison, H. Roderic, Turkey A Short History, p 57.

266.Lewis, Bernard, Islam and the West, pp 19-20.

267.Lewis, Bernard, Islam and the West, p 21.

-See also Davison, H. Roderic, Turkey A Short History, p 65.

268.Al-Muhāmī, Muhammad Faryyd, Tārikh al-Dawla al-'Alyya al-'Othmānya, pp 662-663.

-Hason. 'Alī. Tārikh al-Dwla al-'Othmānyya. pp 171-177.

269.Lane-Poole. Stanley. Turkey. T. Fisher Unwin. London. New York. 1888. p 362.

270.Hason. 'Alī. Tārikh al-Dwla al-'Othmānyya. p 231.
-Lewis. Bernard. Islam and the West. p 22.

271.Lewis. Bernard. Islam and the West. p 138.

272.Davison. Roderic. H. Turkey A Short History. The Eothen Press. Huntingdon. England. 1991, p 119.

CHAPTER FIVE

A COMPARATIVE STUDY OF OLD AND MODERN MUSLIM SCHOLARS ON JIHAD

INTRODUCTION

The previous chapters dealt with some important issues: the definition, the purpose of *Jihād* and the fundamental relation between the Islamic and non-Islamic states. It also discussed some of the issues which have a strong link to *Jihād* such as treaties between Muslim and non-Muslim states and the treatment of non-Muslim prisoners of war. These clarifications and discussions were based mainly on some classical scholars opinions and not so much on contemporary scholars.

Therefore, the purpose of this chapter is to clarify such matters according to the views of some contemporary Muslim scholars and writers to see if they continue to use and support the same views which have been used by the old scholars or not? If yes, did they continue to use the outdated terminology or did they modernise it? If however the answer is negative, then why did such contemporary scholars hold such views and what is the evidence on which they based their views?

THE DEFINITION OF JIHAD

During their discussion of the etymology of *Jihād*, old Arabic lingual scholars stress that this word has a wider meaning. They mentioned more than twenty meanings[1], it was defined as "make every effort"[2] or "effort and striving"[3].

The prominent scholar, Ibn al-Qayyim, says that *Jihād* against one self is placed at the head of *Jihād* against the outside enemy; who could not make *Jihād* against himself he could not do *Jihād* against his enemy. He added that a Muslim could not fight the previous two enemies unless he does *Jihād* against the devil " Verily Satan is an enemy to you: so treat him as an enemy ..." (H.Q.S35. A6). Ibn al-Qayyim also mentioned that when the Prophet was sent as a messenger he received an order from Allah to do *Jihād* against unbelievers by using evidence and eloquence "Therefore listen not to the unbelievers, but strive against them with the utmost strenuousness, with the (Qurān)" (H.Q.S25. A52)[+].

At the same time, we believe that ʿAbd Allah ibn al-Mubārak (d.187 AH) was the first Muslim scholar who wrote a separate book about *Jihād*. In his book entitled *'Kitāb al-Jihād*[6] he mentioned two hundred and six of the Prophet's traditions dealing with different aspects of *Jihād* such as its virtues and the reward of the martyr in the Hereafter.

On the other hand, modern writers support such meaning but develop the old term as used by the early scholars and put it in modern shapes such as *'Jihād al-Daʿwah'* to propagate Islam amongst the non-believers[7] by argument and peaceful means[-]. This meaning is found in the Qurān "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..." (H.Q.S16. A125). Some modern scholars such as al-Buṭī hold that *'Jihād al-Daʿwah'* is the most important principle of the law of *Jihād*. He clarified thereafter the meaning of *'Jihād al-Daʿwah'* as the concept of *(al-amr bilmaʿruf wal nahy ʿn almunkar)*, commanding what is good and forbidding what is abominable. He added that this kind of *Jihād* legislated at the beginning of Islam by the Prophet and later with his followers to call the pagans to Islam. This kind of action was named by Allah as *Jihād* when this verse was revealed to the Prophet whilst in Makkah "Therefore listen not to the unbelievers, but strive against them with the utmost strenuousness, with the (Qurān)" (H.Q.S25. A52)[8].

As part of *Jihād al-Da'wah* some writers[9] used this terminology, *Jihād al-Lisān wa al-Qalam*, (*Jihād* of the tongue and the pen). It is found in the Qurān in the following verse "Say thou: This is may way I do invite unto Allah with a certain knowledge I and whoever follows me. Glory to Allah and never will I join gods with Allah" (H.Q.S12. A108). This means that the use of modern communications and media for the call to Allah is a part of *Jihād*.

The development of Islamic values, teaching and training of Muslims in a Muslim society are very important, and according to Muslim writers these values could come under the meaning of educational *Jihād*[10].

The care of the family members by instructing them in decent values within the Muslim society is part of *Jihād*'s aim and could come under the title of family's *Jihād*[11]. "O ye who believe! save yourselves and your families from a fire ..." (H.Q.S66. A6).

Rāshid al-Ghannouchī[1], gave the concept of *Jihād* a wider conception than previous Muslim scholars when he said that it contains striving for the support of Islam, inside ourselves and in our environment[12]. Therefore, any political, economic, scientific and any other work which assists Islam such as a struggle for the good of Muslim society and against corruption is a type of *Jihād*.

A book edited by the former Sheikh of al-Azhar Jād al-Haqq 'Alī Jād al-Haqq states in the chapter on *Jihād*, that the notion of *Jihād* alone does not mean war. It added if we want to talk about war we have to add *'al-Jihād al-musallah'* "armed *Jihād*", in contrast to the everyday *Jihād* against ignorance, *Jihād* against poverty, *Jihād* against illness and disease. According to this textbook, the search of knowledge is the highest level of *Jihād*[13].

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[1]He is the head of the Tunisian Ḥarakat an-Nahdah al-Islāmiah (Islamic Renaissance Movement).

Al-Mawdudī also gave the word *Jihād* a comprehensive meaning and made a connection between the different meanings of this terminology when he said that " Islam wishes to press into service all forces which can bring about a revolution and a composite term for the use of all these forces is *Jihād*. To change the outlook of the people and initiate an intellectual revolution among them through speech or writing is a form of *Jihād*. To alter the old tyrannical social system and establish a new just order of life by the power of the sword is also *Jihād* and to expend goods and exert physically for this cause is *Jihād* too"[14].

In dealing with the meaning of the word *Jihād* AbūSulaymān held that the word *Jihād* does not mean warfare alone, but the striving of a Muslim to fulfil his responsibility and to serve the Islamic cause and principles is a kind of *Jihād*. The active expression of the Islamic commitment, responsibility and the feeling of duty wherever it is required in practical life is also under the meaning of *Jihād*. He mentioned the following tradition of the Prophet to support his previous view when a man came to the Prophet and ask him to join Muslim troops in *Jihād*. The Prophet asked the man if his parents were alive and the man answered "yes", the Prophet told him "Then strive in serving and providing for them"[15].

At the same time most of the Islamic schools defined the legal meaning of *Jihād* as the fight against unbelievers who have refused to adopt Islam nor pay *jizyah*[16].

On the other hand. many modern writers concentrate on the moral and spiritual *Jihād* and give less concern to the *Jihād* which uses force except after the establishment of the Islamic state and if the non- Islamic states try to stop the call of Allah[17].

Al-Qādirī held that *Jihād* has a wider meaning but the military *Jihād* against unbelievers is the principal meaning[18].

Some modern authors fear that the emphasis on the moral and spiritual *Jihād* may divert Muslims from the necessary struggle which is *Jihād* by use of force. Therefore, they stress that *Jihād* means the fighting in the way of Allah when it is used without qualification and it is mainly what early Muslim scholars refer to when writing about this subject[19]. At the same time the previous view held by some of the modern scholars were also held by early Muslim scholars Ibn Rushd who held that when the word *Jihād* is used without any qualification it means the use of the sword against unbelievers[20].

B. Lewis, says that the majority of classical theologians, jurists and traditionalists understood the obligation of *Jihād* in a military sense while the modernizers and reformists in the nineteenth and twentieth centuries argued that *Jihād* should be understood in a moral and spiritual concept[21].

On the other hand, some Arab Presidents tried to use the word *Jihād* in their internal politics under the pretext of gaining benefit for their countries such as the obtaining of economic independence. This particular application occurred in Tunisia, where in February 1960 President Bourquiba put forward the view that fasting for the month of *Ramaḍān* is too long and would have a detrimental effect on a poor and developing country. He said that Muslims are allowed to break fast if they are in *Jihād* against their enemy, therefore according to Bourquiba, a developing country was in a state of *Jihād* to obtain economic independence by development. So, he argued that the citizens of Tunisia could eat and drink during *Ramaḍān* as they were in a state of *Jihād* to develop their country. To support his new view of the meaning of *Jihād* Bourquiba tried to obtain a *fatwā* from the *muftī* of Tunis but he refused to respond to such a request. Moreover, the nation of Tunisia observed the fast despite the call of the president and finally the president found himself compelled to withdraw from his project[22].

In Egypt during the Nasserist period and the war against Israel, the Manual of Orientation of the Supreme Command of the Egyptian Forces, issued in 1965 *Jihād* in the cause of Allah against the unbelievers. Moreover, in reply to questions from the troops

whether *Jihād* has lapsed or was still in force, the reply, was *Jihād* is still relevant at the present time and can be interpreted in terms of striving for social justice and human betterment. *Jihād* also can be waged against those who oppose or resist the achievement of these aims such as imperialism, Zionism and the Arab reactionaries[23].

The use of the term *Jihād* by some of the Arab leaders established a connection between this term and the defence of the fatherland. This use of such language would help to expel any distinction between Muslims and non-Muslims who fight together for the defence of their fatherland. So during the October war of 1973, between the Arabs and Israel some Egyptian Christians fought within the Egyptian army including a number of senior officers. The respect of Christian beliefs could be recognized in the guidance manual of the army which supports both Christian and Muslim religious beliefs[24]. Moreover, during that war, the Rector of Azhar University at the time declared that *Jihād* is an obligation for all without distinction between Muslims and Christians. All who are killed in this war would be martyrs of the fatherland. He added that this view is confirmed by all the divine laws revealed to the People of the Book[25].

THE LEGAL QUALIFICATION OF JIHAD

Jihād is regarded by the majority of early Muslim jurists as a collective duty (*farḍ Kifāya*) of the whole Muslim community with which to propagate Islam, so when a part of the Muslim community perform this duty, it is not be a duty on others[26]. According to al-Qurtabī, scholars agree that *Jihād* is a collective duty not a personal duty[27].

Jihād according to early Muslim scholars could also be a personal duty (*farḍ 'Ayn*) if the non-Muslim enemy attacks or threatens the Islamic state by an attack. The duty becomes upon those who are being attacked including women and children and no permission of husbands and parents is required. If this part of the Islamic state does not have

sufficient ability to defend itself and repel the enemy's attack then it becomes an individual duty upon their Muslim neighbours[28].

In dealing with *Jihād* as a collective duty, modern Muslim scholars have two points of view: The first is that scholars who hold and support the view that defence is the main aspect of *Jihād* and deny the use of *Jihād* against non-Muslims outside the Islamic state did not give an interest to *Jihād* as a collective duty as such kind of *Jihād* is not in agreement with their view which does not use force outside Islamic territory [29]. "There are only three reasons for fighting, viz. repelling aggression, protecting the Mission of Islam and defending religious freedom" according to sheikh Shaltut[30], who was the sheikh of al-Azhar from October 1958 until his death on the 13 of December 1963.

The second is that some modern Muslim scholars support the view of the early scholars that *Jihād* is a collective duty to propagate Islam[31]. Sheikh 'Abdul'aziz Bin Bāz. [2] holds the same view as the early scholars that *Jihād* is to raise the word of Allah high and to propagate Islam. One of the conditions according to Bin Bāz is that the Muslims must have the capability to do such *Jihād*. He also added that such *Jihād* must be performed after calling non-Muslims to accept Islam or pay *Jizyah*[32].

Sheikh Bin Bāz mentioned some proof both from the Qurān and the Sunna to support his view "And fight them on until there is no more persecution and the religion becomes Allah's ..." (H.Q.S2. A193), "And fight them on until there is no more persecution and religion becomes Allah's ..." (H.Q.S8. A39) and ""But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war); But if they repent and establish regular prayers and pay *Zakat* then open a way for them: For Allah is Oft-forgiving Most Merciful" (H.Q.S9. A5). The evidences from the Sunna which are used by sheikh Bin Bāz are "I am ordered to fight the people until they say: There is no God but Allah" (al-Bukharī and

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[2]He is the present Muftī (grand scholar) of the Kingdom of Saudi Arabia (1996 ...).

Muslim) [33], and also "I have been ordered to fight against people until they testify that there is no God but Allah and that Muhammad is the Messenger of Allah, and until they perform the prayer and pay the *Zakat*, and if they do so they will have gained my protection for their lives and property ..." (al-Bu ḥ arī and Muslim)[34].

Modern Muslim scholars agree and support the view of early Muslim scholars that *Jihād* becomes an individual obligation when the non-Muslim enemy attacks a Muslim territory[35]. According to S.Quṭb, Muslims have to fight for the defence of their religion and for the weakest peoples[36]. Abu-Zahra says that the Prophet Muhammad fought for repelling aggression[37]. Al-Bannā stated that *Jihād* is a duty for the Muslim *Umma* for the purpose of pushing back non-Muslim aggression[38]. Shaltot says that *Jihād* in Islam is for the defence of non-Muslim aggression[39]. Al-Zuḥilī mentioned that the defence of the non-Muslims aggression is the motivition of fighting in Islam [40]. Bin Ḥāj states that *Jihād* is for the support of right which is Islam when it is attacked by the false[41]. Further the assembly of Islamic jurists in Makkah says that some purposes of *Jihād* are the self defence and pushing back of aggression [42]. These scholars used the same evidences which the earlier scholars have used to support their view. So when an enemy invades a Muslim country, all Muslim governments and people should rise as one to push back the enemy according to Professor al-Buṭī[43].

Regarding *Jihād* as personal duty (*farḍ 'Ayn*) Dr. 'Azzām holds that *Jihād* in Afghanistan[*] and Palestine is a personal duty upon Muslims. He holds such a view because when the enemy enters the land of Muslims *Jihād* becomes a personal obligation according to all the jurists. He added that when *Jihād* becomes individual there is no difference between it and prayer and fasting. This is also according to Abu Ḥanīfā, Mālik and al-Shāfi'ī. Perhaps, 'Azzām held such view because he spent eight years among the

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[*]His book was published before the liberation of Afghanistan by the *mujāhidyn*.

Mujahidīn in Afghanistan and found that they were in need of money but their need for men to perform *Jihād* with them was more severe[44].

Dr. 'Azzām then established a comparison that when *Jihād* becomes individual there is no difference between the person who leaves *Jihād* and the one who eats without excuse during the day in the month of *Ramaḍān*[45].

He also deemed that *Jihād* remains an individual obligation and by wealth in every place that the non-Muslims have occupied and the Islamic community remains sinful until the last of Islamic land is freed from the unbelievers and the only people who are absolved from the sin are the *mujāhidyn*[46].

To clarify his view Dr. 'Azzām mentioned that *Jihād* during the period of the Prophet had different types. Some of the battles were optional such as the battle of Badr. Some battles were *farḍ 'Ayn* upon every Muslim such as the battle of the Trench and Tabuk, while the battle of Khaybar was a collective duty (*farḍ Kifāya*). On the other hand *Jihād* after the time of the Prophet and during the time of the companions and the successors was mostly a collective duty (*farḍ Kifāya*) because *Jihād* was for new conquests[47].

Dr. 'Azzām also held the view that *Jihād* is an obligation upon Muslims for a lifetime, the same as prayers and fasting. As a Muslim is not allowed to pray one day and abandon prayer on other days and also fast the month of *Ramaḍān* one year and abandon fasting in the following year, it is also the same regarding *Jihād*, so a Muslim cannot perform *Jihād* one year and abandon it for some years if he is able and capable to continue the performing of *Jihād*[48].

The donation of money does not exempt a Muslim from bodily *Jihād* when it is *farḍ 'Ayn*, regardless of the amount of money given just as it is not correct to give money to the poor instead of performing prayers according to 'Azzām[49].

However, Dr 'Azzām's conception of *Jihād as a* life-long obligation upon Muslims has a weak foundation as it is based on the disparity between prayers and fasting. We are aware that both prayers and fasting are part of the Five Pillars of Islam and are obligatory, whilst *Jihād* is not part of the Five Pillars of Islam. Moreover, if we examine the battles of the Prophet against non-believers we determine that not all of the Prophet's followers participated in such battles as some were a collective duty and others personal, Dr. Azzām also mentions this in his writings. Therefore, we can see from the study of the Prophet's Sīra that *Jihād* as a life-long obligation could not be practicable as many of the Prophet's companions did not participate in all of his battles.

THE MAIN AIM OF JIHAD

This subject did not receive much attention in classical literature[50] but from their arguments of this subject, once could conclude that early Muslim scholars hold the view that the main aim of *Jihād*[+] is to propagate Islam and to enable the Islamic *Sharī'h* to be applied to the whole world[51]. According to Ibn Rushd, scholars are agreed that the reason of warfare against the People of the Book is either conversion to Islam or the payment of *jizyah*[52].

[+]For more information about this subject see chapter one of this thesis.

264

On the other hand, this is not the only view, scholars such as al-Thawrī took a different position when he says that, the fight against non-believers is not compulsory except if they initiate it. He supported his view by the following verses "But if they fight you slay them ..." (H.Q.S2. A191) also "And fight the Pagans all together as they fight you all together ..." (H.Q.S9. A36) [53]. Al- Shaybānī responded to al-Thawri's view by mentioning the following verses which orders Muslim to fight unbelievers "Fight those who believe not in Allah ..." and "O ye who believe fight the unbelievers who are near you ..." (H.Q.S9. A29 and 123). And "And strive in His cause as ye ought to strive ..." (H.Q.S22. A78)[54].

On the other hand the previous verses (S9. A29 and 123) and this verse "But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war); But if they repent and establish regular prayers and pay *Zakat* then open the way for them: For Allah is Oft-forgiving Most Merciful" (S9. A5), also the following *ḥadith* "I am ordered to fight the people until they say: There is no God but Allah" (al-Buḥarī and Muslim)[55] are the basis on which most Muslim scholars based their argument, that the Islamic state has to declare *Jihād* against unbelievers to raise Allah's word highest and to enable Islamic law to be apply to non- Islamic lands. The previous *Sura 'al-Tauba'* according to the famous interpreter of the Qurān, Ibn Katheir, is the last one which was revealed to the Prophet[56].

So Muslim scholars [57] deem that this *Sura* has *'naskh'*[5] abrogated all the stages of *Jihād* which was three stages and established the fourth one which is the fight against unbelievers

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[5]These term refers to certain parts of the Quranic revelation, which have been abrogated by others. Naturally the abrogated passage is the one called *'mansuk'*, while the abrogating one is called *'nasikh'*. The principle of abrogation is referred to in the Qurān itself "None of our revelation do we abrogate or cause it to be forgotten, but we substitute something better or similar: knowest thou not that God has power over all things" (S2. A106). When the message of Islām first appeared it presented something new and different to mankind from the way of their life, so it was introduced to their laws in stages. The Qurān brought important changes gradually to allow Muslims to adjust to the new prescriptions such as the prohibition of drinking of wine which was very widespread in pre- Islamic period and which took two stages

except if they adopt Islam or pay *jizyah* as previously clarified in the first chapter of this thesis.

On the other hand contemporary scholars and writers have different views regarding the main aim of *Jihād*. By surveying the field of modern literature on *Jihād* we can see that those scholars established a link between the main aim of *Jihād* and the defence and offence *Jihād*. Therefore, on the question of the offensive or defensive purposes of *Jihād* modern Muslim writers can be classified into two schools, first the modernists who argue that the purpose of *Jihād* is defensive and the Islamist who argues that the purpose of *Jihād* is offensive and defensive. So this section will discuss both views and see how the leaders of these schools presented their views and who they used the proof to support their views and which of them tried to support the views of the early scholars.

THE MODERNIST SCHOOL

The principle of the defensive *Jihād* is one of the most important subjects concerning *Jihād* in Islamic theory, it is discussed and supported by many contemporary Muslim scholars. In fact the idea that *Jihād* is defensive warfare started and became current in the Middle East at the end of the nineteenth century, especially in Egypt which was, and still is, one of the most important and influential countries in the Arabic world; its effect on culture is considerable. According to Lammers "At the turn of this century *Jihād* was officially described as war fought in self-defence against attacks by non-Muslim states"[58].

This idea was first put forward by the famous Egyptian scholar sheikh, Muḥammad 'Abduh and his student, sheikh Muḥammad Rashid Ridā. In formulating the defensive *Jihād* theory Muḥammad 'Abduh wrote many texts. This idea is made clear when he said that the wars of the Prophet were all for defending the truth, and its followers, and protecting the religion of Islam or if non-Muslim countries hindered the peaceful

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in the Qurān and the third one led to the prohibition of wine (S4. A43. 2. A219 and 5. A 93-94) (Denfeer. Ahmad. Ulum al- Qurān. The Islamic Foundation. 1983. pp 104-105).

propagation of Islam. He also urged the leader of a Muslim state instead of using force to use the modern facilities for the propagation of Islam [59]. Muḥammad 'Abduh also wrote that "The wars of the Prophet were all for defending the truth and its followers, and protecting the religion of Islam... The early wars fought by the companions of the Prophet were for protecting the call of Islam"[60]. Rashid Rida also takes a similar view when he states in his book *"Tafsyyr al-Manār"* regarding the interpretation of the Quranic *Sura* 9 verse 29 which deals with *jizyah* says that Muslims have to stop fighting and accept *jizyah* from non-Muslims in the self-defence fight. Furthermore, if the non-Muslim state persecutes Muslims who live in their countries then the aim of fighting in Islam is the defence against enemies aggression[61].

This trend has affected the modern viewpoint of the purpose of *Jihād*. If we examine the work of modern Muslim scholars on the aim of *Jihād*, we are led to conclude that they support the defensive aspects of *Jihād* and deny its use outside the Islam territory[6] unless the non-Muslim countries deny the Islamic state an opportunity to call the people to Islam or if Muslims living inside the state are being oppressed[62]. "There are three reasons for fighting, to stop aggression, to protect the mission of Islam and to defend religious freedom" according to sheikh Shaltut. He added that these are the only cases in which Allah has made fighting lawful [63]. Abu-Zahra described the reason for the wars of the Prophet as protecting the call of Islam [64]. Al-Zuḥilī clarified some of the purposes of *Jihād* which included protection of the freedom of Islam and the protecting of the spread of the call of Islam [65]. Sābiq also confirms that *Jihād* is lawful for the protection of the call of Allah and to oppose anyone trying to stop it or who is torturing those who accept it[66].

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[6]During this century this new trend has affected most authors who are dealing with political and international relations in Islamic theory such as Muhammad abu Zahra in his book al- 'Ulāgāt al-Dawliyyah fil- Islām '. Muḥammad Shaltut in his book 'Min Hadi al- Qur'ān. and Wahba al- Zuḥilī in his book 'Athār al-ḥarb'.

This trend gathers strength by gaining evidence from the Qurān to support its view "Fight in the cause of Allah those who fight you but do not transgress limits; For Allah loveth not transgressors" (H.Q.S2. A190)[7]. Prominent contemporary Muslim scholar Muḥammad al-Ghazālī mentioned that the previous verse contained the endless qualification of *Jihād* until the day of judgement and all verses mentioned in the Qurān agree with this verse [77]. While earlier scholars deemed that the previous verse is dealing with categories who do not take part in the fighting such as the old, children and women[68]. Ibn Katheir in his interpretation regards this verse as meaning Muslims are only allowed to fight those persons who are in a position to fight them. Also he added that the meaning of transgress is do not fight persons who are not in a position to fight you such as women, children and monks[69].

At the same time the modernists deem that the following verses are the base which regulates the relationship between Muslim and non-Muslim states. However they rejected the interpretation of these verses by early Muslim scholars [8]. The modern trend started to re-interpret the verses that were previously understood and interpreted by some of the Prophet's followers and early well known scholars which gave the command to Muslim states to fight unbelievers until they accepted Islam or paid *jizyah*[70].

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[7]Another verse "The prohibited month for the prohibited month, and so for all things prohibited there is the law of equality. If then any one transgresses the prohibition against you, transgress ye likewise against him but fear Allah and know that Allah is with those who restrain themselves" (S2. A194). Also "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) (S4. A90). "But if they violate their oaths after their covenant, and attack your faith, fight ye the chiefs of unfaith: For their oaths are nothing to them: That they may be restrained" (S9. A12). Another verse "But if the enemy incline towards peace, do thou (also) incline towards peace, and trust in Allah: for He is the One that heareth and knoweth (all things) (S8. A61).

[8]The interpretation of these verses has already been mentioned during the discussion of the purposes of *Jihād*.

They interpreted the following verses which are a clear command from Allah to Muslims to fight unbelievers until they become Muslims or pay *jizyah* "And fight them on until there is no more persecution and the religion becomes Allah's. But if they cease, let there be no hostility except to those who practise oppression" (H.Q.S2. A193). They mentioned *Jihād* in the previous verse only in the case of self-defence against non-Muslims aggression [71]. In dealing with the previous verse sheikh Shaltut said that it is an order from Allah to Muslims to fight in the way of Him those who fight them and to pursue and scatter them as they had scattered the Muslims [72]. Sheikh Sābiq also clarified the meaning of this verse which supports their view when he said that the war of Islam ended by protecting the Muslims religion and gave them their freedom to worship Allah[73]. On the other hand, the majority of the earlier Muslim commentators such as al-Qurṭubī[74], Ibn Katheir [75], and al Ṭabrī[76] interpret this verse differently when they say that the meaning of (*fitna*) trial is to eliminate the polytheism and also to stop the affliction from unbelievers against Muslims.

Also the following verse "But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war)" (H.Q.S9. A5), the modernist stated that *Jihād* in this verse is directed towards non-believers who did not have a peace treaty with the Islamic state or to those who had broken their treaty with Muslims[77].

Also the modernist re-interpreted this verse "Fight those who believe not in Allah nor the last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the Religion of Truth, from among the people of the Book, until they pay the *jizyah* with willing submission, and feel themselves subdued" (H.Q.S9. 29). They deny that this verse contains a direct command to fight the people of the Book, arguing instead that it refers to the people of the Book who violated their treaty and intervened to stop the propagation of the Islamic mission[78]. According to Shaltut this verse commands Muslims to fight a certain group which is characterised as that they do not believe in Allah and previously they had broken their pledges and hindered and assailed the

propagation of Islām [79]. The Quranic verse is re-interpreted so as to apply to some of the People of the Book and not as previously to all the People of the Book.

Modernists also interpret the following verse as a tactical instruction to protect the Islamic state and not as a general command to fight all unbelievers[80] "O ye who believe! Fight the Unbelievers who are near to you and let them find harshness in you: and know that Allah is with those who fear Him" (H.Q.S9. A123). Sheikh Shaltut mentioned that the meaning of unbelievers is "those hostile polytheists who fight the Muslims, commit aggression against them, expel them from their homes and their property and practise persecution for the sake of religion". To clarify the meaning of "who are near to you" he said when the enemies are manifold it is compulsory upon Muslims to fight the nearest first of all then the next nearest in order to clear the road from enemies geographically[81].

Sheikh Muḥammad al-Ghazālī also said that the meaning of "who are near to you" in the previous verse as the Roman who came from Europe and occupied Arab lands and closed all doors and put obstacles in front of the Islamic mission[82]. The new trend also re-interprets the tradition of the Prophet[9], I am ordered to fight the people until they say: there is no God but Allah [83] that the word 'people' in this tradition refers to the Polytheist Arabs who had committed aggression against the Prophet and the new Islamic state [84]. Al- Buṭī said that the meaning of this tradition is the Prophet saying I have been ordered by Allah to defend any aggression against the calling of people to Islam even if this defence requires fighting against aggressors[85].

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[9]The full quotation of this tradition is that the Prophet said "I have been commanded (by Allah) that I should continue my contention with the people till they bear witness that there is none worthy of worship, except Allah. and that Muhammad is His Messenger. and (they) establish prayer and pay the *zakat* (the poor due). When they have done this. they and their properties will be secured against me. subject to their obligations under Islam and their accounting with Allah" (al-Bukhārī and Muslim).

They also used the following verse which put forward by al- Zuḥilī[86] to support their view. The verse reads "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) (H.Q.S4 A90). The earlier Muslim scholar Al-Jassās gives a different interpretation; he says that this verse is dealing with those who enter to the non-Muslim countries which have a peace treaty with an Islamic state, in this case they will gain the same privileges as the main people. He also added that there are no Muslim scholars who forbid fighting with non-Muslims[87].

They also mentioned that the battles of the Prophet were all defensive wars[88]. In discussing this proof we could say that during the first period of the Islam most of the Prophet's battles were in the defence of the Islamic state but at the end of his life and when the Islamic state had the upper hand the strategy of the Prophet had changed. So he marched on and conquered Makkah in the eighth year of the *Hijra* not in defence of the Islamic state but to propagate Islam and to eliminate the polytheism from the Arabic Peninsula. He also engaged in the battle of Tabuk against the Byzantine for the same aim. Moreover, the sources of Islamic law are not only the deeds of the Prophet Muhammad but also the Qurān which is the primary source and the Sunna of the Prophet which contains the sayings, deeds, or practice and silent approval[89].

We have seen during our discussions on the purposes of *Jihād* that the early Muslim scholars used the term defensive *Jihād* but not offensive *Jihād* which leads some of the Islamist Muslim scholars to say that this term is not applicable to Islamic *Jihād* because the most important objective of *Jihād*, in their view, is to bring an end to the domination of one human being over another and of all man-made laws and to give the law of Allah, '*Sharī ῾h*', the opportunity to be applied to the whole world. They added that Islam has both a conceptual and practical programme for the happiness and progress of mankind; it resists any government that is based on man-made laws. The aim of Islam is to introduce this programme universally and to set up governments that will apply this program but not try to force people to change their faith and accept Islam [90]. Khadduri states that the Quranic rule

regarding *Jihād* did not make any distinction between the defensive or the offensive[91]. Allah says in the Qurān "Against them make ready your strength to the utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies, of Allah and your enemies ..." (H.Q.S8. A60).

As we have seen earlier, the disagreement between the modernists and the early scholars is in their interpretations of the Quranic verses dealing with *Jihād* and the relationship with non-Muslim states. When the modern scholars accepted the principle of peaceful relations between the Islamic state and the non-Muslim states[92] they tried to establish a new theory which is a compromise between the original principles of *Jihād* and the new peaceful relations desired with non-Muslim states, that is that offensive *Jihād* for Islamic state is abandoned and *Jihād* for purely defensive purposes is retained. This has led them to adopt a new interpretation of the verses of the Qurān dealing with this issue.

Moreover, under the leadership of sheikh Muḥammad 'Abduh this school rejected the interpretation of the verses which dealt with *Jihād* as defined by earlier Muslim scholars. This rejection was to re-formulate Islamic doctrine in the light of modern thought. In reaching this concept they claimed the right of *'ijtihād'* (independent judgement) which means the right to reject the views of the early scholars and to re-interpret the main sources of Islam in the light of modern thought[93]. Also they tried by such action to change the picture of Islam which has painted by Western influence and Christian attacks who claimed that Islam used *Jihād* to impose its belief upon peoples. This view was clarified by Qutb when he said "If this stage of the Islamic movement is viewed in proper perspective, then there is no room to say that the basic aim of the Islamic movement was defensive in the narrow sense which some people ascribe to it today, defeated by the attacks of the treacherous orientalists. Those who look for causes of a defensive nature in the history of the expansion of Islam are caught by the aggressive attacks of the orientalists at a time when Muslims possess neither glory nor do they possess Islam ... Those of our contemporary Muslim scholars who have been defeated by the pressure of current conditions and the attacks of treacherous orientalists do not subscribe to this characteristic of Islam. The

orientalists have painted a picture of Islam as a violent movement which imposed its belief upon people by the sword. These vicious orientalists know very well that this is not true, but by this method they try to distort the true motives of Islamic *Jihād*. But (these defeated scholars) search for reasons of defence with which to negate this accusation"[94].

THE ISLAMIST SCHOOL

The Islamist jurists have adopted a position similar to that of the old scholars and they mentioned that the attacks by orientalist on the purposes of *Jihād* and the underdevelopment which the Muslim *Umma* are faced led some scholars to establish that *Jihād* has no other aim than the defence of Muslim lands and its inhabitants[95].

Muslim scholar al-Bannā said that Allah has obligated *Jihād* for every Muslim, he added that all knowledgable Muslims agree that -*Jihād* is a collective duty for the spread of Islam [96]. The prominent contemporary scholar al-Albānī explained the meaning of *Jihād* as a collective duty of the carrying of Islam to the whole world to allow Islam to govern it[97].

Al-Mawdudī who was one of the first modern scholars to deny the concept of the offensive and defensive *Jihād*, "The two terms offensive and defensive by which the nature of welfare is differentiated are not all applicable to Islamic *Jihād*. These terms are relevant only in the context of wars between nations and countries ... but when an international party rises with a universal faith and ideology and invites all peoples as human beings to embrace this faith and ideology and admits into its fold as equal members men of all nationalities and strives only to dismantle the rule of an opposing ideology and set up in its place a system of government based on its own ideology, then in this case the use of the technical terms like 'offence' and 'defence' is not germane ... Islamic *Jihād* is both offensive and defensive at one and the same time. It is offensive because the Muslim party assaults the rule of an opposing ideology and it is defensive because the Muslim party is constrained to capture state power in order to arrest the principles of Islam in space-time forces"[98].

Sayyid Qutb also denies the concept of defensive *Jihād* which most of the modern Muslims scholars try to support and convince Islamic thought about the right of their methodology when he said after mentioning some verses which deal with *Jihād* "With these verses from the Qurān and with many traditions of the Prophet (peace be on him) in praise of *Jihād*, and with the entire history of Islam, which is full of *Jihād*, the heart of every Muslim rejects that explanation of *Jihād* invented by those people whose minds have accepted defeat under favourable conditions and under the attacks on Islamic *Jihād* by the shrewd orientalists. What kind of a man is he who, after listening to the commandment of God and the traditions of the Prophet and after reading about the events which occurred during the Islamic *Jihād*, still thinks that it is a temporary injunction related to transient conditions and that it is concerned only with the defence of the borders"[99]. This is a clear attack on the modernist position on *Jihād*.

The old scholars who discussed the subject of *Jihād* and argued that the defence of the Islamic state never drew the distinction between offensive and defensive *Jihād*, this distinction appeared to have been drawn for the first time within the Islamic *fiqh*[10] by modernist writers.

Islamist scholars[11] support the old views but they do it in two new ways, firstly they reject the modernist distinction between offensive and defensive *Jihād* and secondly they use the old concepts and put them in a modern packing. By using phrases like 'liberation of man', 'revolutionary ideology', 'practical program' borrowed from modern political usage [100] they were able to see modern and forward thinking whilst maintaining the long-established meanings and aims. "This religion is really a universal declaration of the freedom of man from servitude to other men and from servitude to his own desires, which is also a form of

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[10] *Fiqh* means the rules and injunctions duduced from the Qurān and the *Sunna* by Muslim scholars (AbuSulaymān. Towards an Islamic Theory. p 167).

[11] Such as Sayyid Qutb. 'Abul A'la al-Mawdudī and Muhammad Qutb.

human servitude; it is a declaration that the sovereignty belongs to God alone and that He is the Lord of all the worlds" according to Sayyid Qutb[101].

Al-Mawdudī and Sayyid Qutb, who in my view were the leaders of the new trend, support the old views with regard to the aim of *Jihād* in the modern age and hold that *Jihād* is the way to destroy the international social system and rebuild its own system which leads to the establishment of the dominion of Allah on earth. "In reality Islam is a revolutionary ideology and programme which seeks to alter the social order of the whole world and rebuild it in conformity with its own tenets and ideas. Muslim is the title of that international revolutionary party organized by Islam to carry into effect its revolutionary programme. And *Jihād* refers to that revolutionary struggle and utmost exertion which the Islamic party brings into play to achieve this objective" according to al-Mawdudī [102].

Sayyid Qutb also states his view of establishing the kingdom of Allah on earth by saying "The establishing of the dominion of God on earth, the abolishing of the dominion of man, the taking away of sovereignty from the usurper to revert it to God, and the bringing about of the enforcement to the Divine *Sharī'ah* and the abolition of man-made laws cannot be achieved only through preaching. Those who have usurped the authority of God and oppressed God's creatures are not going to give up their power merely through preaching; if it had been so, the task of establishing God's religion in the world would have been very easy for the Prophet of Allah"[103].

Al-Mawdudī and Qutb also hold that while *Jihād* does not seek to interfere with the faith but at the same time does not allow non-Muslims to apply their system which is a man-made law; the law governing civil affairs will be the law of God 'the *Sharī h* '[104]. This means that non-Muslims could practise their religion under the rule of the Islamic *Shari h*. Mawdudī as his explanation of the following verse "Let there be no compulsion in religion: Truth stands out clear from error ..." (H.Q.S2. A256), said "this verse means that the system of Islam, embracing belief, morals and practical conduct cannot be imposed by compulsion"[105].

275

During his discussion of the subject of *Jihād*, Qutb concentrated on the freedom of man from servitude to others, so as a response to the modern writers who limited the meaning of *Jihād* to defence he agreed that we could call the movement of *Jihād* a defensive one but the defence of man against all those elements which limit his freedom. Those element could be beliefs as well as political systems[106].

To support their view Islamist scholars point out that the battles of the Prophet were all defensive with the aim of defending the truth and its followers as the Islamic state was surrounded by enemies [107]. So the Polytheists of Quraish fought the Prophet and his followers from the start of his mission. They tortured and chased the believers from their houses and subjected them to all kinds of maltreatment. Furthermore, they tried to assassinate the Prophet himself and also marched with their forces to eliminate the Islamic state at Medinah. The Jews of Medinah on the other hand were not attacked by the Prophet until they had broken their treaty with the Prophet and started to support the Quraish tribe against the Muslims. Therefore, it appears clear, that they were the first to commit aggression and the Prophet only fought them after they fought him[108].

Some battles which lend support to their view include the battle of Badr[12], Uhud[13], and Khandaq (Trench)[14] against the Quraish tribe and the battle of Banu Qurayẓah [15]

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[12]This battle took place in the second year of the *Hijra* near the Medinah city the center of the Islamic state. The battle was between the Prophet Muhammad and the Quraish (the tribe to which the Prophet himself belonged). The main reason for this battle was that the Prophet decided to intercept the Quriash caravans which contained expensive merchandise and route it not too far from Medinah. The Quraish left their city .Makkah. with a great army consisting of 1.000 soldiers to protect the caravan. However. the leader of the caravan changed the route and saved it. As a result he sent a message to his tribe to inform them that the caravan had been saved. and asked them to return. The leader of the army refused to return. he insisted on fighting the Prophet and his followers which meant the object of the Quraish army had changed from protecting the caravan to fighting the Islamic state. The Prophet's force did not come to fight but knew that if they withdrew to their city the Quraish

against the Jew tribe. Most of the Prophet's battles were in the initial period during the establishment of the Islamic state, therefore all of his battles were near the capital of the Islamic state which leads us to conclude that the first *Jihād* of the Islamic state was a defensive one.

However, at the end of the Prophet's life having completed the establishment and strengthing of the Islamic state, things were clearly different. At this point the Prophet started to take the initiative in dealing with unbelievers and began the propagation of Islam [109]. As a result of this the Prophet marched to conquer Makkah[16], he also sent letters and messengers to world leaders at that time. Moreover, the great conquest of non-Muslim

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army would follow them and attack the city. After a mutual consultation with some of his followers the Prophet decided to fight. The Muslim's force consisted of 312 men. The result of the battle was that the Muslim won: it was a great victory for the Islamic state. The Muslim losses were 14 killed whereas the Quraish lost 140: 70 killed and 70 left as prisoners of war.

[13]This battle has been discussed on page 1&1 The Prophet decided to met the Quraish army outside Medinah city to protect his state from the enemy invasion. Muslim forces lost the battle.

[14]This battle has been clarified on pages 24-25 which demonstrates that the Prophet protected the capital of the Islamic state by using a new defence style against the Quraish tribe aggression with their allies .

[15]When the Prophet emigrated to Medinah he concluded a treaty with Jewish tribes. This treaty included that each party agreed not to support any enemy against the other. So during the siege of the Madina in the battle of Trench the Banu Qurayẓah violated the treaty by deciding to attack the Islamic state from inside. So this act led to the battle of Banu Qurayẓah which occurred in the fifth year of the *Hijra*. For more information about this battle see chapter one in this thesis.

[16]This battle took place in the eighth year of the *Hijra*. The Prophet marched to conquer Makkah with ten thousands Muslims to propagate Islam and to apply Islamic law on the whole Arabic Peninsula.

277

countries for the propagation of Islam during the period of the Four Rightly Guided Caliphs demonstrated that the most important aim of *Jihād* is to propagate Islam. Sayyid Qutb clarified the aim of *Jihād* during the period of the Fourth Caliphs when he says "can any one say that if Abu Bakr, 'Umar or 'Othman had been satisfied that the Roman and Persian powers were not going to attack the Arabian peninsula, they would not have striven to spread the message of Islam throughout the world? How could the message of Islam have spread when it faced such material obstacles as the political system of the state, the socioeconomic system based on races and classes, and behind all these, the military power of the government?"[110].

To support their view modern scholars who uphold those of earlier scholars also added that the Islamic state could use the marḥaliyyah[17], the gradual evolution in the relationship between the Prophet Muhammad and the unbelievers in the Arabian Peninsula. To explain the marḥaliyyah we can see that when the Prophet began to ask the Quraish to accept Islam and his following increased, they began to ask the Prophet to allow them to oppose the unbelievers but the Prophet refused because at that stage the religion and its followers were still weak. When the Prophet emigrated to Medinah his state was still in a defensive position and was in no way able to take any initiative against unbelievers. For this reason he signed a treaty with the non-Muslim Quraish tribe called al-Ḥudaibiyah[18] even

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[17]The marḥaliyyah is given this meaning by the famous Muslim scholar Ibn-Taymiya in his book 'al-Ṣārm al-Maslwl'. p 221 and also by Sayyid Qutb in his book. 'Fi Zelāl al- Qurān. v 3. p 1547.

[18]This treaty was signed in the sixth year of the *Hijra*. In this year the Prophet decided to visit Makkah as a pilgrim. He left his city with 1.400 of followers. When the Quraish heard this they prepared to fight and intended to stop the Prophet and his followers entering Makkah. The Prophet and his followers arrived and camped in al-Hudaibiya outside Makkah. The negotiations started with both sides sending envoys. After a long discussion both sides agreed to enter the al-Hudaibiyah treaty. The most important articles of this treaty are that a- Both sides agreed to lay down their arms for ten years. b- Whoever wishes to enter into a treaty with the Prophet Muhammad or the Quraish can do so. c- This year the Prophet with his companions will withdraw from Makkah. next year he may return and remain for three

Hence Ibn Taymiya summarized the marḥliyyah for the Muslim *Umma* when he says that if Muslims are weak and do not have the strength or ability then they can make use of the verses of patience and forgiveness[19]; for those who have power and ability they should use the verses concerning the fights with the leaders of the unbelievers who attack the Muslim faith[20] and the verse of fighting with the people of the Book[21] until they pay *jizyah*[111].

Sayyid Qutb also takes a similar position regarding marḥaliyyah by devolving the old ideas in a modern formulation when he says that " Islam is a practical movement which progresses stage by stage, and at every stage it provides resources according to the practical

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agreed to enter the al-Hudaibiyah treaty. The most important articles of this treaty are that a- Both sides agreed to lay down their arms for ten years. b- Whoever wishes to enter into a treaty with the Prophet Muhammad or the Quraish can do so. c- This year the Prophet with his companions will withdraw from Makkah, next year he may return and remain for three days.

[19]The verses of patience and forgiveness are "Hast thou not turned thy thought to those who were told to hold back their hands (from fight) but establish regular prayers and spend in regular *Zakat*? When (at length) the order for fighting was issued to them, behold! a section of them feared men as or even more than they should have feared Allah ..." (H.Q.S4. A77). The other verse is "Tell those who believe, to forgive those who do not hope for the days of Allah: It is for Him to recompense (for good or ill) each people according to what they have earned" (H.Q.S45. A14).

[20]The verse which deals with this case is "But if they violate their oaths after their covenant, and attack your faith, fight ye the chiefs of unfaith: For their oaths are nothing to them: That thus they may be restrained" (H.Q.S9. A12).

[21]The verse is "Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of truth, from among the people of the Book, until they pay the *Jizyah* with willing submission and feel themselves subdued" (H.Q.S9. A29).

279

needs of the situation and prepares the ground for the next one. It does not face practical problems with abstract theories, nor does it confront various stages with unchangeable means. Those who talk about *Jihād* in Islam and quote Quranic verses do not take into account this aspect, nor do they understand the nature of the various stages through which this movement develops, or the relationship of the verses revealed at various occasions with each stage"[112].

THE RELATION BETWEEN ISLAMIC AND NON- ISLAMIC STATES

As the different views between early and modernist scholars regarding the aim of *Jihād* have been discussed the question then arises is the relationship between the Islamic state and other states, peace or war?

From reading the old scholars views on *Jihād*, that *Jihād* is a collective duty to propagate Islam and the head of the Islamic state should at least once a year organize a military raid into the non- Islamic territories[113]. Those scholars gave an excuse to not perform the annual *Jihād* such as weakness of the Islamic state which could lead us to say that the fundamental relation between the Islamic and non- Islamic states according to early jurists views is war. "According to the jurists, the natural and permanent relationship between the world of Islam and the world of the unbelievers was one of open or latent war" according to Lewis[114].

These beliefs of the early Muslim scholars are based on their twofold division of the world; *dār al-Islām* and *al-Ḥarb*. The relation with both houses according to these scholars did not mean an endless conflict between them but a permanent state of war not a continuous fight. Therefore, some scholars according to Kadduri argued that the preparation for *Jihād* is a fulfilment of its obligation [115]. The universalism of Islam which is not special to any nation or territory also supports the continuous state of war between the two houses. In several Quranic verses, this characteristic is clearly shown "We have not sent

thee but as a (Messenger) to all mankind, giving them glad tidings and warning them against sin ..." (S34. A28), also "Say: O men I am sent unto you all as the Messenger of Allah ..." (S7. A158) and "We sent thee not but as a Mercy for all creatures" (S21. A107).

The views of a twofold division of the world held by earlier scholars the first is *dār al-Islām* and the second is *dār al-Ḥarb* could be seen by some contemporary Islamist scholar such as sheikh Mawdudī when he says "... As a party, it has no home to defend; it upholds certain principles which it must protect. Similarly this party does not attack the home of the opposing party, but launches an assault on the principles of the opponent. The objective of this attack, moreover, is not to coerce the opponent to relinquish his principles but to abolish the government which sustains these principles" [116]. So instead of *dār al-Islām* and *dār al-Ḥarb*, he used the concept of 'the party of Islam ' and 'the opponent party' which mean that he may not agree with modern principles of international law based on the foundation of different countries and are equal in rights and sovereignty[117].

Sayyid Quṭb also held the same view when he said that there is only one place which can be called *dar al- Islam*, in such place the *Sharīḥ* has full authority. Quṭb then clarified his view to the rest of the world by saying that the remainder of the world is the home of hostility *(dār al-Ḥarb)*. The relationship between the two houses has two cases, peace with a contractual agreement, or war[118].

On the other hand, in the opinion of the early scholars the status of war was the fundamental relationship between the Islamic state and others due to the situation of war between the Islamic state and the others during the first centuries, the duty to propagate Islam and also the universality of Islam, according to the modernist scholars[119].

The modernists since the second half of the nineteenth century, took a different view in that the relationship between Islamic and other non- Islamic states had a peaceful character[120]. They hold that the principle of peaceful relations is firmly rooted in the Qurān and cite the following verses and tradition to support their view: "But if the enemy incline

towards peace, do thou (also) incline towards peace, and trust in Allah: for He is the one that heareth and knoweth (all things)" (Q.S8. A61); "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)" (Q.S4. A90); "O ye who believe when ye go out in the cause of Allah, investigate carefully, and say not to any one who offers you a salutation 'Thou art none of a believer' coveting the perishable goods of this life ..." (Q.S4. A94), and "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" (Q.S60. A8). The tradition is that the Prophet is reported to have said "O people! Do not desire a combat with the enemy, but pray to Allah for safety. But when you are faced with the enemy be steadfast and remember that the Paradise lies under the shadow of swords ..." (al-Bukhārī and Muslim)[121].

The modernists also mentioned that the call of the Prophet was peaceful but the polytheists fought the Prophet from the onset of his mission and attacked him after his emigration to Medinah. Also the Jews of Medinah were not attacked by the Prophet until they had broken their treaty with him and began to express their aggression towards the first Islamic state. The Prophet therefore, only fought those who fought him[122].

In dealing with the most important rules of peace and war in *Jihād*, al- Buṭī said that world peace is the centre of the legislation of Islam. He mentioned the following verse to support his view "O ye who believe! Enter into peace all of you and follow not the footsteps of the Satan for he is to you an avowed enemy" (H.Q.S2. A208). At the same time this peace can exist only in the environment of justice. Therefore when the enemy occupied some land of *dār al-Islām* in this case the peace between the two sides does not exist as the condition of justice is not found[123].

Some Islamist scholars support the views of the early scholars regarding the relationship between Islamic and non- Islamic states and hold that the Islamic state has to destroy non- Islamic systems and re-establish the law of Islam. According to the Muslim

scholar Mawdudī "In this manner, an International Revolutionary Party is born to which Qurān gives the title of 'Ḥizb Allah' and which alternatively is known as Islamic Party or the *Umma* of Islam. As soon as this party is formed, it launches the struggle to obtain the purpose for which it exists. The rationale for its existence is that it should endeavour to destroy the hegemony of an un-Islamic system and establish in its place the rule of that social and cultural order which regulates life with balanced and humane laws, referred to by the Qurān with the comprehensive term, the word of God"[124].

Sayyid Quṭb also took a similar position when he said that the final stage of the movement of *Jihād* directly after the period of the Prophet was the only stage which should be followed. He added that when Islam strives for peace it does not mean that the part of the earth where the followers of Islam reside remains secure. The peace which Islam desires according to Quṭb is the obedience of all people that must be for Allah alone. Quṭb cited the view of Ibn al-Qayyim, that after the *Sura* of 'al-Tauba' was revealed the people of the world fell into three groups. One, Muslims who believed in the Prophet, two those with whom he had peace and the third those who continued to fight against him[125].

He clarified his view regarding this subject when he says "There is only one place on earth which can be called the home of Islam and it is that place where the Islamic state is established and the *Sharīh* is the authority and God's limits are observed, and where all Muslims administer the affairs of the state with mutual consultation. The rest of the world is the home of hostility. A Muslim can have only two possible relations with dār al-Ḥarb: peace with a contractual agreement, or war"[126].

Moreover the status of war is not only the normal relationship between Islamic and non- Islamic states according to the views of al-Mawdudī and Sayyid Quṭb but a world revolution to eliminate the rule of the non- Islamic system and the re-establishing in its stead of the Islamic system. This revolution is not limited to a single state or a few countries but the real aim of Islamic *Jihād* is to extend the sway of the Islamic system all around as far as its resources can carry it to bring about a universal revolution. "Islam requires the earth not

just a portion, but the whole planet not because the sovereignty over the earth should be wrested from one nation or several nations and vested in one particular nation, but because the entire mankind should benefit from the ideology and welfare programme ... towards this end, Islam wishes to press into service all forces which can bring about a revolution and a composite term for the use of all these forces is *Jihād*" according to al-Mawdudī[127].

Quṭb also had argued that Muslims have the right to take the initiative by using *Jihād*, as Islam is not the inheritance of any particular race or country but it is God's religion and for the whole world. So from this concept Islam has the right to destroy all obstacles to give human beings the opportunity to accept or refuse the religion of Islam[128].

Regarding the call of Muslims to continue their *Jihād* in Afghanistan against the former USSR, Dr. 'Azzām mentioned that the stopping of *Jihād* could be one of the reasons for the domination of the disbelievers and the spread of *fitna* which is *shirk*. He quote the following verse to support his view "And fight them on until there is no more persecution and the religion becomes Allah's ..." (H.Q.S2. A193)[129].

On the other hand, Mawdudī denied the terminology of Neutrality as Islamic law divides non-Muslim nations into two groups, those who have treaties with Muslims and those who have not. Those who have a treaty and comply with the articles of the treaty with Muslims cannot be subject to military actions. However, the other group who do not have a treaty with Muslims are in the state of war with them[130].

According to early Muslim scholars as previously stated one of the purposes of *Jihād* is to propagate Islam. The letters of the Prophet to the leaders of the world during that time were a clear indication that the main obstacles which prevented people from accepting the call to Islam were the non- Islamic regimes. The following letter of the Prophet to al-Muqauqas 'the grand chief of Copts of Egypt' "I extend to you the invitation to accept Islam. Embrace Islam and you will be safe. Accept Islam, and Allah will give double the reward and if you turn away, upon you will be the sin of your subjects"[131]. The

negotiations between Muslims and the leaders of the world during the conquest in the period of the Four Rightly Guided Caliphs is also a clear indication of this principle. The negotiation between Rustum, the Persian commander and al-Rabī' one of the Muslim commissioners before the battle of al-Qadisiyya is proof of this aim. When Rustum asked, why did you come here? al-Rabī' replied, Allah has sent us to ask you people to abstain from the worship of man and to worship Allah[132].

At the same time both Islamist and modernist scholars took a similar position when they agreed that *Jihād* can be declared if the non- Islamic states deny the Islamic state the opportunity to calling their people to Islam,[??] which means when *al-Da'wah* obstructed then military *Jihād* must be suspended by the Islamic state as Muslims received the order from Allah to convey the message of Islam to all human beings without exception. Muslims will be held accountable on the day of judgment for not propagating Islam according to Kurdi. He added that Muslims must fight the powerful when they try to prevent their people from knowing any doctrine except that dictated to them. The Islamic state is to eliminate such power and liberate the people that they may freely choose the creeds they want[134]. The base of universality of the religion of Islam is based in the Qurān "We have not sent thee but as a (Messenger) to all mankind, giving them glad tidings, and warning them (against sin), but most men know not" (H.Q.S34. A28). Also another verse "We sent thee not, but as a Mercy for all creatures" (H.Q.S21. A107).

Sayyid Quṭb also agreed with this view but when he dealt with it he gave it a wide concept when he said "It may happen that the enemies of Islam may consider it expedient not to take any action against Islam, if Islam leaves them alone in their geographical boundaries to continue the lordship of some men over others and does not extend its message and its declaration of universal freedom within their domain. But Islam cannot agree to this unless they submit to its authority by paying *jizyah*, which will be a guarantee that they have opened their doors for the preaching of Islam and will not put any obstacle in its way through the power of the state"[135].

Mawdudī held the same view when he explained some of the Quranic verses which deals with same subject such as "And be not like those who started from their homes insolently and to be seen of men, and to hinder (men) from the path of Allah ..." (H.Q.S8. A47). He said that the object of the Quraish army was to defeat the forces of truth and justice, to suppress and obliterate the only group which sought to uphold the truth. They did not want any person to champion the cause of truth and justice. They tried to obstruct the spread of the truth, to prevent people from responding to the righteousness. This directive from Allah was not meant just for the time of the Prophet, it is equally applicable today, and will remain applicable in all times to come. Therefore, *Jihād* in this case is compulsory upon Muslims; to remove the group who tried to prevent people from joining the group of truth. He added that bloodshed is bad, but one group of people imposing its ideology prevents another from accepting the truth, which is Islam, in this case it becomes a more serious crime. So it is legitimate to remove such an oppressive group by the force of arms[136].

Some contemporary Muslim scholars discussed an important issue which was that Muslims might find themselves under non-Muslim rules and subject to *kufr* rulers and also facing injustice for themselves or their religion, so what is the duty of Muslims to support their brothers?[22]

Contemporary Muslim scholars such as Mawdudī[137], Abu Zahra[138] Shaltut[139] and al-Zuḥilī[140] discussed such a situation and mentioned that Muslims have the right to declare *Jihād* in this case.

Therefore, sheikh Abu Zahra[141], deemed that a transgression against one Muslim is a transgression against all Muslims. To support his view he quoted the following traditions of the Prophet which clarify the importance of cooperation between Muslims without condition "The bonds of brotherhood between two Muslims are like the parts of a house,

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[22]For more information about the view of the old scholars see chapter four in this thesis.

one part strengthens and holds the other" (al-Bukhārī and Muslim) and also "A Muslim is the brother of another Muslim; he does not harm him nor does he hand him over to his enemy ..." (al-Bukhārī and Muslim).

Sheikh Mawdudī, also said that Muslims who have the power to declare *Jihād* to free their brothers from such aggression should do so. Muslims who live outside the Islamic state have the bond of religious brotherhood with the Muslim residing in the Islamic state. As a result of that if Muslims living in a non- Islamic state are persecuted and seek help from the Islamic state or its citizens, it is compulsory upon the latter to help them as Muslims are never free of the bond of religious brotherhood[142]. The view of Muwdudi is derived from the following verse when he explained it in his book 'Towards Understanding the Qurān "... As to those who believed but did not emigrate ye owe no duty of protection to them until they emigrate; but if they seek your aid in religion it is your duty to help them, except against a people with whom ye have a treaty of mutual alliance ..." (H.Q.S8. A72). Hence, Mawdudī, makes a condition with regarding to helping Muslims in the case of the Islamic state being bound in a treaty with a non- Islamic state who inflicts oppression on its Muslims residents, the oppressed Muslims cannot be helped in accordance with the moral obligations upon the Islamic state as a result of that treaty. However they could be helped when the period of the treaty has been completed[143].

During his discussion relating to the incentives of *Jihād*, Dr. 'Azzām mentioned that the protection and the lifting of injustice off those who are weak and oppressed in the land is one of many reasons for *Jihād*. To support his view he quotes this verse "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 help" (H.Q.S4. A75)[144].

287

JIHAD AS A WAY TO ESTABLISH THE ISLAMIC STATE

This subject is not seen to be discussed in detail by the earliest scholars of Islam. One may argue why should such a discussion be necessary when the Islamic state existed until its collapse under the Ottoman state in 1924, since its establishment by the Prophet (peace be upon him) in Medinah 14 centuries previously. But during this long era, lapses in the application of the *Shari'h* were seen in some places at some point in time, as said by Professor Lewis "In the fourteen centuries of Islamic history, few Muslim governments adhered strictly to the *Sharī'h*. But where they failed to conform to the *Sharī'h*, it was by error or avoidance, not by direct challenge"[145].

On the other hand early Muslim scholars discussed the fighting against non-Muslims governors and unjust *Imām* which are linked with the establishment of the Islamic state as mentioned in chapter two. All Muslim scholars agreed that the non-Muslim ruler cannot rightfully govern an Islamic state and if this happened the Muslim *Umma* has to remove him if they have the power to do so but if they do not then they have to do what they can to remove such governors [146]. Hence, from this perspective we could understand that the Muslim scholar Ibn Taymiya has addressed his *fatwā* in that *Jihād* against the Tartars is compulsory upon Muslims as he could prove that they were unbelievers and Muslims had the ability to fight the Tartars.

The fight against an unjust *Imām* has two points of views according to early Muslim scholars as mentioned. The first is that the *Umma* does not have the right to use power against such an *Imām* because of the *'fitna'*, riot which it would create. This view is supported by the majority of Muslim scholars [147]. The other view is that Muslim *Umma* has to fight the unjust *Imām* to overthrow his regime and to establish the Islamic state[148].

Hence what has been mentioned was the view of the early Muslim scholars but some modern scholars and writers on the other hand discussed this concept by raising and developing the view under argument of establishing the Islamic state by the use of *Jihād*.

Contemporary Muslims have differing opinions with regard to the fight against an unjust *Imām* in establishing an Islamic state. There are three points of view regarding this matter. In this section we will clarify and discuss these points.

The first view is that Muslims have to avoid the use of force to change politics as the use of such force might lead to short term benefits and immediate results but also lead the *Umma* into potentially dangerous scenarios. This view is supported by scholars such as al-Albānī who state that the right way for the salvation of the Muslim *Umma* from unjust leaders is to repent from sin. He added that Muslims have to teach themselves and their families the right way of Islam [149]. He quotes "... Verily never will Allah change the condition of a people until they change what is in themselves ..." (H.Q.S.13. A11).

Professor al-Buṭī took a similar stance when he said that the development of Muslim society based upon the Islamic system is a result of their invocation to Allah and the deep influence of Islam upon an individual and their family. He added that if Muslims performed the duty of the propagation of Islam they have to leave the result to Allah. Propagation is his duty but the result is not his responsibility[150]. He also said that *Jihād* is a collective duty upon the Muslim community under their *Imām*'s leadership and the collective duty will not be achieved except after the establishment of the Muslim community. He clarified that the Prophet Muḥammad did not fight to establish or obtain the first Islamic state in Medinah but after the establishment of this state *Jihād* was then legitimised to protect the present state not to establish it, so *Jihād* legislated to defend that already in existence. To support his view he said that if this way of *Jihād* had been legitimised the Prophet would have been the first to fight the non-believers in Makkah in order to establish the Islamic state but he had never done so. He then raised this question, what is the method which should be used to establish Islamic rule? He replied that the method of the Prophet who spent thirteen years in Makkah was to call and guide the unbelievers to Islam till they formed a nation and then a state[151].

So what is the type of this form of *Jihād* which Muslims should apply nowadays inside Islamic societies? Professor Al-Buṭī mentioned that there are a great number of Muslims who have not a clear concept about the Islamic system of the Islamic state. There are many Muslims who are fascinated by Western Democracy and its slogans and also by Western Civilization which led them to believe that Muslims should apply Western systems such as banking and social systems. Also there are some Muslims who have a struggle about the important concept of the Islamic belief that Allah is One. So al- Buṭī too wonders where are those who should be applying *Jihād* by trying to solve these problems and free those people from the domination of Western Civilization and its legacy, and to convince them that the Islamic state is a reality and that the Islamic system is friendly to humanity. This *Jihād* according to al- Buṭī is the key to the second *Jihād* which is the combative one to defend Islam[152]. This view by al- Buṭī supports the gradual re-Islamicization of Muslim society. Society is the strongest factor in the demand for the establishment of the Islamic state.

The second view led by al-Mawdudī and Sayyid Quṭb gives *Jihād* a wider concept when they consider it a way to establish the dominion of God on earth and to terminate the dominion of man and to give the *Sharīh* the opportunity to be applied on earth. The aim of Islam is to free all mankind from every authority except that of God. Islam also is not a declaration of freedom of specific nations such as the Arabs but it is to the whole of mankind according to Quṭb[?]. al- Mawdudī took a similar position when he says that the objective of Islamic *jihād* is to eliminate the rule of non- Islamic systems in any state and to establish in its stead an Islamic system of state rule [154]. So the scope of the application of the *Sharīh* is not just inside the Muslim lands but governs the whole world.

Why should Islam use *Jihād* to eliminate all systems and re-establish the Islamic system inside Islamic lands? This question is the most important one in Quṭb's view because it has a strong link with the main concept on which Quṭb based his theory, the worship of Allah alone and this principle will not be achieved except under the Islamic system. The aim of Islam is to free the human being throughout the earth from servitude to anyone other

than Allah as He is the Sustainer of the whole world and Islam wants to bring the whole of mankind to its Sustainer and free them from the worship of any, other than God, as the object of the religion of Islam is all humanity and its area of action is the whole earth [155]. So "since the objective of the message of Islam is a decisive declaration of man's freedom, not merely on the philosophical plane but also in the actual conditions of life, it must employ *Jihād*", according to Qutb[156].

Therefore, why does Qutb support the Islamic system? because "according to the Islamic concept and in actuality, God's rule on earth can be established only through the Islamic system, as it is the only system ordained by God for all human beings, whether they be rulers or ruled, black or white, poor or rich, ignorant or learned. Its law is uniform for all, and all human beings are equally responsible within it. In all other systems, human beings obey other human beings and follow man-made laws. Legislation is a Divine attribute; any person who concedes this right to such a claimant, whether he considers him Divine or not, has accepted him as Divine"[157]. So as Islam is the religion of God, it is not the heritage of any particular race or country and then has the right to take the initiative by using *Jihād*[158].

Al-Mawdudī in his support for the establishment of the Islamic system, argues while the evil system needs a government for its existence, likewise a Muslim party can never gain power without a government. By extrapolation, for the establishment of the Islamic system the power in the hands of the wicked rulers needs to be shifted to the hands of the Muslims[159].

The concept of the worship of Allah as mentioned has a link with another concept in Qutb's view which is the Divine authority. This authority could be found in the Islamic society which is based on Divine authority and submission to one God [160]. The achievement of the establishment of the Divine authority and the declaration that the sovereignty belongs to Allah alone means a challenge to all others forms of systems based on the concept of the sovereignty of man.

Hence, how would the Islamic *Shar̄ı h̄* be applied on the whole world? It could be applied by changing local systems in the Muslim countries first and then a world revolution as such a revolution cannot be confined within geographical borders "the initial stages it is incumbent upon members of the party of Islam to carry out a revolution in the State system of the countries to which they belong, but their ultimate objective is no other than to effect a world revolution" according to al- Mawdud̄ı [161].

At the same time changing world systems based on the rule of man over men and the servitude of one human being to another does not mean that Islam intends to force its beliefs on people because Islam is not merely a belief but according to Quṭb the word religion includes more than belief, religion means the system and a way of life. So the system which should govern the people on earth should be based on the worship of Allah and derive its law from Him alone, then every individual is free to adopt any belief he desires. Therefore from the wide concept of religion in Islam there is room for all kinds of people to follow their own beliefs, while submitting to the laws which are based on the worship of Allah alone[162].

Al-Mawdud̄ı also discussed the faith of non-Muslims and clarified the real objective of the Islamic *Jih̄ad* when he says that *Jih̄ad* does not interfere with the faith, worship, ideology or social custom of the people but on the contrary it allows them perfect freedom of religious belief. Islamic *Jih̄ad* on the other hand does not agree to give them the right to administer state affairs according to their system which, based on man made made law, according to Islam is evil[163].

Quṭb deems that the foundation of the whole world is based on *Jāhiliyyah*[23]. This *Jāhiliyyah* is based on the rebellion against Allah's sovereignty on earth by making some people lords over others. This rebellion against the sovereignty of God leads to the oppression of His creatures. The nature of the modern *Jāhiliyyah* is the same as the

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[23]Ignorance of the Divine guidance.

292

Jahiliyyah which was in existence before the first period of Islam or deeper; it covers people's beliefs and ideas, habits and arts, rules and laws. In any system other than Islam, people worship others in some form or another but only in the Islamic system all people become free from servitude of some people to others to worship Allah alone and also they become free from deriving guidance and bowing to others except to Allah alone. This new concept which the Islamic system has could be presented to mankind and it is a vital message of which mankind has as knowledge. At the same time, this new system cannot be appreciated unless it takes a concrete form. So to bring this new system to mankind, the Muslim *Umma* needs a vanguard with which to set out this determination and then keep walking on the path[164].

Why then does the Islamic party or the Muslim vanguard use the peaceful way to call the people who live inside *Jāhiliyyah* societies to Islam first and they could then apply Islamic *Shari'h* on the whole earth? Because according to Qutb this *Jāhiliyyah* is not an abstract theory but always takes the form of a living movement, so any attempt to eliminate this *Jahiliyyah* and to bring people to Islam by a theoretical way will be useless. This new system, which is Islam, should come into the battlefield against the Jahili systems as an organised movement and a viable group[165].

Therefore the first objective of this group or vanguard is to change the practice of this society or the *Jāhily* system which is fundamentally at variance with the Islamic system. So according to Qutb the method of Islam is very practical, it comes into conflict with the *Jahiliyyah* which is based upon ideas and beliefs and also has a practical system of life which supports political and material authority. The Islamic movement then faces this fact by such methods as the calling of people to reform ideas and beliefs and also it uses physical power and *Jihād* to eliminate the organisations and authorities which support such systems as those which prevent people from reforming their ideas and beliefs[166]. Hence, Qutb established a difference between the relation with people and their *Jāhily's* systems, the calling to Islam and the reforming of people's beliefs on the one hand and the use of *Jihād* against their systems on the other.

From what has been said we could conclude that this view supports the use of *Jihād* as a way of establishing the Islamic state and to give the *Sharīh* the opportunity of being applied on the whole world. So to achieve this object *Jihād* should then eliminate the rule of non-Islamic systems and allow the Islamic one to free all mankind from submitting to the sovereignty of man-made laws to Allah's law. This trend gave concern to the society represented by the vanguard or Islamic party who are the base which could lead the Muslim *Umma* to abolish man-made laws and establish the application of the *Sharīh* instead. Also, this trend did not consider Muslim society or even their governors as non-believers but Qutb pointed out the word of *Jāhiliyyah* works against the sovereignty of Allah's law on earth. The meaning of this word is not that the Muslim society is non-Muslim but it means according to Qutb that the systems which govern people are not worked under the instructions of the law of God. Therefore he says "We are also surrounded by *Jāhiliyyah* today, which is of the same nature as it was during the first period of Islām, perhaps a little deeper" [167]. Hence, Yusif al-'Azm, produced a good interpretation of the meaning of *Jāhiliyyah* in Qutb thoughts when he pointed out that there is a distinction to be made between disbelief and *Jāhiliyyah*. Qutb uses the terminology of *Jāhiliyyah* to refer to intellectual, moral, and ethical underdevelopment. Al-'Azm added in this sense it is legitimate to call or to deems today's society *Jāhily* [168].

Qutb was realistic when he clarified that the distance between the attempt of the revival of the Islamic *Umma* and the attainment of leadership is so great. He referred the reason of this distance to the absence of a Muslim *Umma* leading mankind. This leadership of mankind on the other hand passed to other ideologies and nations. Nevertheless, Qutb was optimistic when he says that it is necessary to revive Islam even if the distance between the revival and the world leadership is so vast; as the revival is the first step which must be taken [169].

During the reading of al-Mawdudī 's book '*Jihād* in Islm' and Qutb's book 'Milestones' we could not find any evidence to support the view that both scholars

encouraged Muslims to use force against their governments. Al-Mawdudī states that the Muslim party will eliminate un-Islamic Governments and establish the Islamic state in their stead if they have the ability to do so[170].

Qutb holds the same position "Signposts did not recommend the use of bombs and guns, it did preach Muslim emancipation through the movement and not through words alone" according to Kepel[171]. So Qutb clarified this concept when he mentioned that the revival of the Muslim *Umma* needs the Islamic vanguard to lead the *Umma* first and then the whole of mankind. This vanguard has to take the companions of the Prophet as a model who were the sole Quranic generation. This understanding could lead us to say that Qutb tried to call the vanguard's attention to follow the same way as that which the Prophet used to establish the first Muslim society and then the first Islamic state in the world "at one time this Message created a generation, the generation of the companions of the Prophet without comparison in the history of Islam, even in the entire history of man ... the spring from which the companions of the Prophet drank was the Holy Qurān; only the Qurān as the *Hadith* of the Prophet and his teachings were offspring of this fountainhead"[172].

At the same time both scholars did not mention in their previous books, practical methods which could be used by the Muslim Party or the vanguard according to Mawdudī's and Qutb's views respectively to eliminate the un-Islamic governments and establish the Islamic state in their stead and then lead the whole of the mankind. On the other hand, when Mawdudī discussed the Islamic revolution he concentrated on the necessity of the spiritual transformation of the society in order to strengthen the true Islamic moral in people[173].

The third view is *Jihād* as the only way to re-establish the Islamic state, therefore it is the duty of every Muslim to participate in *Jihād* to achieve this objective. This is the view of the *Jihād* group. The question then arises as to how this aim could be achieved?

295

This aim could be achieved by declaring *Jihād* against those Muslim rulers who are, in their view, considered as infidels as they moved aside the Islamic *Sharīh* and replaced it by man made laws after the defeat of the Ottoman Islamic Caliphate in the first quarter of this century. Hence, the establishment of the Islamic state is the first step to re-establish the Islamic caliphate[174].

The importance of the establishment of the Islamic state that the Muslim *Umma* cannot apply Islamic *Sharīh* except under an Islamic state and the application of *Sharīh* is compulsory upon the them "And this (He commands): Judge thou between them by what Allah hath revealed" another verse "If any do fail to judge by what Allah Hath revealed, they are unbelievers" (H.Q.S5. A49 and 44).

The infidel rulers according to this trend have the power which supports their systems and governments and to apply man-made law on their people; the replacement of such systems needs a power, this power is *Jihād* [175]. This view is expressed by 'Abdal Salām Faraj in his book 'The Forgotten Duty[24]. The assassination of President Anwar al-Sādāt of Egypt was a clear example of the application of the *Jihād* group principles "Sādāt, according to them, was a Muslim only in name. By setting aside the *Sharīh* and its true exponents, and introducing a Western and therefore infidel system of law and adjudication, society and culture, he had proved himself to be an apostate" according to Lewis[176].

At the same time the view of the *Jihād* group regarding the declaration of *Jihād* against rulers to establish the Islamic state did not change but continued to follow the Faraj's view. According to 'AbdulHakeem who is one of the prominent scholar's of this group in the present day said that *Jihād* is compulsory for all Muslims to overthrow the present Muslim governments and re-establish the Islamic state and all Muslims will fall into error as a sufficient number of Muslims did not carry out this obligation[177]. He also urged the

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[24]To see more information see chapter four in this thesis.

leaders and the members of Islamic movements to carry out the establishment of the Islamic state, so if any Islamic movement has the support from the Muslim public and is capable of overthrowing the apostate governors they have to do so and if they do not have capability they have to work to achieve it[178].

'AbdulHakeem took a similar position with Faraj when he discussed some views of the recent Islamic movements who according to him say that they could build the Islamic state through *da wa* 'preaching'. Some say that they can establish associations and encourage people to pay charity and support the needy families. Other say that they could establish the Islamic state by teaching the children of Muslims their religion. He added that this effort could help but will not build the Islamic state which according to him will be establish by *Jihād*[179].

Old Muslim scholars consider *Jihād* as an individual duty if the Muslim land is occupied by non-Muslims. These days, according to 'AbdulHakeem, *Jihād* is the duty of each individual Muslim as Muslim countries are occupied by non-Muslim rulers and their supporters even if they have Muslim names and those do not belong to the Muslim *Umma*. Hence in the Islamic countries, the enemy is at home[180].

'AbdulHakeem also holds the view that as the laws which rules the Muslims in present day are infidel laws, so the situation of the *dār al-Islām* (the land of Islam) has changed to the *dār al Kufr* (the land of non-Muslims)[181].

In the conclusion of his book, 'AbdulHakeem points out that the target of the *Jihād* group is to build a body of Muslims to fight in order to raise the word of Allah high. This body has to work by any means possible in applying *Jihād* to establish the Islamic state, to re-instate the rightful caliphate, to fight against the dictators who govern Muslim countries, to defend the religion of Allah, and to support Muslims everywhere. He also specified that *Jihād* is the way in which this body could achieve its aims[182].

On the other hand al- Buṭī responded to some of the thinkers of the *Jihād* groups views by saying that the applying of the Islamic *Sharīh* is not a condition for considering a land as *dār al-Islām*. At the same time it is one of the duties of Muslims to apply the Islamic *Sharīh* in *dār al-Islām*. Therefore, if Muslims fail to apply the rules of Islam in their territory, this failure does not make their territory a non-Muslim land. Also Muslims who fail to apply the Islamic *Sharīh* will be responsible before Allah for this short coming and be guilty of sins[183].

Professor al-Buṭī clarified the way which the territory of *dār al-Ḥarb* could become under the name of *dār al-Islām* by saying that the sovereignty of Islam over a certain land makes this land to be a part *of dār al-Islām* whether this land is populated by Muslims or non-Muslims. Moreover this territory will not transfer to *dār al-Ḥarb* and it will remain under the rule of *dār al-Islām* even it became weak or under the control of colonialism[184].

The main aim of today's *Jihād* groups, according to Faraj and 'AbdulḤakeem is the establishment of the Islamic state as has been mentioned. Al-Buṭī responded to such view by maintaining that the combative *Jihād* is addressed by Allah to the Muslim community represented by its *Imām* while the other rules such as prayers, pilgrimage and *zakat* are individual rules upon all Muslims. The obligation of *Jihād* needs an appropriate social atmosphere, the achieving of such atmosphere requires an independent *Jihād*. It needs a faithful and strong group. This group has to be large in numbers to be the foundation of the Islamic state or society. This group can never be founded by fighting but by the call of people to Allah's Religion and such call requires great sacrifice and patience[185].

Contrary to al-*Jihād* thinkers who deemed that the enemy at home are the infidel rules, al-Buṭī is from the scholars who believe that *Jihād* was made legitimate for the defence of the Islamic state, therefore he stated that Allah did not legislate *Jihād* until He had endowed Muslims with both territory and state. In the early period of Islam when non-Muslims tried to destroy the Religion of Allah and disrupt the first Muslim state in Medinah,

because of such aggression, Allah legislated *Jihād* to defend their state. Al-Buṭī then reached the conclusion that combative *Jihād* was never legislated to establish a Muslim state. To support his view he added that the Prophet Muhammad never fought to gain or to establish an Islamic land but he fought after Allah had given him land and state. He also said that if such *Jihād* was legislated the Prophet would be the first to have declared *Jihād* against the unbelievers in Makkah in order to establish the Islamic state there but he never did that[186].

Al-Buṭī supported the use of *Jihād* at the present time to defend the land of Islam even if this land has been divided into smaller independent countries and also the defence of Islamic regimes which are governing countries belonging to Islam regardless of the fact that these regimes are applying Islamic *Sharīh* or not, as this land remains the land of Islam forever[187]. This view seems to be a response to those who hold that *Jihād* against the enemy, who according to them are the present Islamic countries rulers, should be given priority over *Jihād* against the enemy who have occupied some Muslim countries such as Palestine[25], or those who mentioned that if the Jewish forces invaded Egypt, their reaction would not be to support the Egyptian army and fight against the Jewish forces but would instead flee to a secure place[26].

At the same time, the establishment of the Islamic state has a strong link with the fight against the unjust *Imām*. The view of the early Muslim scholars regarding this subject has been discussed in chapter two and demonstrated that those scholars hold two views. Firstly, that Muslims do not have the right to fight the unjust *Imām* unless their unjust deeds lead them to open infidelity, secondly, that Muslims have to use force to fight the unjust *Imām*.

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[25]This is the view of 'Abdal-Salām Faraj, see Kepel Gilles. p 203.

[26]This is the view of the leader of al-*Takfir* wa'l-*Hijra* group, Shukrī Musṭafā, see Kepel Gilles, p 203.

Contemporary scholars such as sheikh 'Umar 'Abdulrahman on the other hand hold that the oppressive or corrupt ruler should be overthrown even if such action may lead to 'fitna'[27]. He did not consider the troubles which could be the result of using force against an unjust Imām as 'fitna' but instead he regarded it as a struggle for reform since its ultimate aim would be the raising of truth and the uprooting of corruption. He supported such a view whilst he mentioned that the majority of Muslim scholars believe that the revolt against such an Imām is prohibited as such a revolt could lead to the fitna[188].

Regarding Muslim rulers and their application of the Sharīh in Muslim societies, Sheikh 'Abdulrahman discussed this important subject and mentioned that there are two types of rulers. The first is the Muslim who in most case rules by the Sharīh but falls into error and digresses from it occasionally but he does it knowing full well that such action is forbidden and also it is a sin. The second ruler on the other hand is the ruler who claims that he is a Muslim but refuses to apply the Islamic Sharīh and preferring rather to rule according to man-made law and also imposes such law on the people as a substitute for the Divine Sharīh. Are these two rulers the same? 'Abdulrahman answered that they are not the same. The first ruler who has some time fallen into error is clearly a Muslim but the second is an enemy of Allah and a kafir (non-believer). He quoted the following verse "What! have they partners (in godhead), who have established for them some religion without the permission of Allah ..." (H.Q.S42. A21), and then added that whoever does this is a Kafir even if he may pray and fast and claim to be a Muslim[189].

He also made a distinction between the two rulers by saying that the ruler who replaces the Sharīh with another law in one or two instances and maintains the necessity of its application but not out of rejection of the Sharīh means that he rules according to his own wishes. His behaviour is the result of disobedience and he is a sinner, but the one who replaces the Sharīh with another law is a Kafir[190].

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[27]Fitna means her trouble.

He mentioned the following example to make the picture of the two rulers more clear by saying that the ruler who rules by the *Sharīh* and finds that his son has committed theft and out of pity for him did not apply the *Sharīh* by the cutting off of his son's hand. This is a case of disobedience against the *Sharīh* as by this action he did not obey and refused to implement the revelation of Allah but he did not give preference to any other law nor did he make any new law applicable to theft cases as had he done so then it would be a replacement of the *Sharīh* and according to 'Abdulrahman it would be act of disbelief[191].

Professor al-Butī also discussed this subject and said that the revolt against Muslim's *Imām* is unlawful even if he is a tyrannical ruler and Muslims and their scholars have to deny the *Imām's* oppression. He added that if the *Imām* declared a manifest *'buwāhan' Kufr* in this case Muslims have to revolt against such a ruler. At the same time he mentioned that some people hold that Muslims have to revolt against Muslim rulers who do not fully apply the Islamic *Sharīh* as by this action they become non-believers and they deemed that such a revolt is the proper *Jihād*[192].

In response to the previous view al-Butī clarified the meaning of the manifest *Kufr* by saying that the apostasy has three forms: it could be by saying, deed or sarcasm. He mentioned some examples to clarify such forms, so the rejection of any of the five pillars of Islam is under the first form, any deed which could be contradicted with one of the pillars of Islam is under the second form and faith as the prostration to the idol, and sarcasm about any of the pillars of Islam or sarcasm about the Qurān is the third form. He added that the previous base cannot be applied except upon single persons not groups, so such people claimed that the rulers of the Arabic and Islamic countries are unbelievers as they do not rule by the *Sharīh* according to the following verse "... If any do fail to judge by what Allah hath revealed, they are unbelievers" (H.Q.S5. A44). Al-Butī said that the failing to rule by the *Sharīh* cannot be under any of the three previous form of the apostasy as such deeds could be under worldly interest, for reasons of laziness or the refusal of the Islamic *Sharīh*. Therefore we are not be able to specify any of these reasons except by proof, so if we do not have enough proof on any one of these reasons we are not in a position to call

any Muslim an unbeliever. He then concluded that the revolt against Muslim rulers is prohibited except if one of those ruler declared a manifest *Kufar* according to the previous base mentioned earlier[193].

At the same time sheikh Bin Bāz also discussed the revolt against Muslim rulers by saying that revolts against such rulers are not allowed except if the *Imām* declares a manifest *Kufr* and the *Umma* has the ability to revolt on condition that such revolt does not lead to *fitna*. Sheikh Bin Bāz clarified in which case a Muslim can be deemed as a *kāfir* (un-believer) by saying that if he regards some sins such as the drinking of wine and adultery as lawful. So if the Muslim ruler applied such sins, in this case this ruler is a *kāfir* and the *Umma* has the right to use force against such ruler and replace him by a just Muslim ruler. He added Muslims have to have enough force to overthrow such a ruler and also they have to make sure that this force does not lead the *Umma* to *fitna* [194]. So if the *Umma* does not have the ability to change such a ruler how they can treat with him? They have to obey him in right but not in sins until Allah brings the alternative ruler (the Muslim ruler) according to sheikh Bin Bāz[195].

THE ROLE OF IMAM IN DECLARATION OF JIHAD

Early Muslim scholars mentioned that the declaration of *Jihād* is the responsibility of the *Imām* and the *Umma* has to obey him [196]. This view is according to the collective *Jihād* but when it is a personal duty, the foundation of *Imām* is not essential for the declaration of *Jihād*[28].

Contemporary Muslim scholars, such as Mawdudī and al- Zuḥilī follow the same view as those of the old scholars, yet, Mawdudī, deems that the most important principle

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[28]For more information see chapter one in this thesis.

of the principles of war is obedience to the *Imām*; any military action even if it is a small one cannot be taken without the permission of the *Imām*[197].

Mawdudī mentioned the following incident which occurred during the period of the Prophet to clarify the importance of such matters. During the expedition of *Nakhlah* which took place in the second year of the *Hijra* when the Prophet sent eight persons and directed them to follow the movements of Quraish and collect information regarding their plans, but not to engage in fighting. This expedition took place during the month of *Rajab* which is one of the sacred months. On their way back to Medinah they came across a trade caravan belonging to the Quraish. They killed one person and captured two and took the caravan.

The Prophet did not accept this conduct as this incident took place without his approval. Therefore, when a member of the expedition went to visit the Prophet, he told them that he had not permitted them to fight and declined to receive his share of their booty. The followers of the Prophet also condemned their act and told them that they had not been ordered to fight. So Allah revealed the following verse which clarifies that fighting during the sacred months is, without doubt, an evil act but so is the torture and the driving of Muslims from their homes and also the persecution of Muslims and trying to convert them to non-Muslim[198]. "They ask thee concerning fighting in the Prohibited Month, say: Fighting therein is a grave (offence); but graver is it in the sight of Allah to prevent access to the path of Allah, to deny Him, to prevent access to the sacred Mosque and drive out its members. Tumult and oppression are worse than slaughter ..." (H.Q.S2. A217).

Dr. al-Zuḥilī also says that the Muslim *Imām* is the first person responsible for the declaration of *Jihād* and not one Muslim should fight the unbelievers by his own decision as such action would disorganise the relations between Muslims and their enemies[199].

Professor al-Buṭī also mentions that the declaring of combative *Jihād* is amongst the main duties of the *Imām*. He adds that he is the only responsible person who can

declare, lead and terminate *Jihād* and no individual Muslim can use any of these duties without the permission or order of the *Imām*. So when Muslims are under a non-Muslim invasion, all Muslims and the *Imām* should rise as one to fight the enemy and there is no need of such mission[200].

Regarding the responsibility of the Muslim caliph, in the text of the proposed constitution for an Islamic state issued by *Ḥizb al-Taḥryr* [29] in 1979 it is constituted that he leads the army and that he also has the right to declare war[201].

TREATIES BETWEEN MUSLIMS AND NON-MUSLIMS

As mentioned earlier the relation between Islamic and non- Islamic states is not peaceful according to old jurist views. This view does not mean actual hostilities between both sides but it means that the world of war does not have the legal status under Islamic law but has the non-recognition status. This status does not mean the impossibility of negotiations and the concluding of treaties between them[??] . Therefore, early and contemporary Muslim scholars agree that the Islamic state could conclude a peace treaty with non-Muslims to terminate the fight between both sides. Most of the early Muslim scholars agree that such treaties between Islamic and non- Islamic states must be concluded for a certain time. Once the treaty is concluded Muslim authorities are strict to stick to its articles[203]. Contemporary Muslim scholars follow the same view of the old scholars. So when the treaty is concluded between Islamic and non-Islamic state it does not bind the two governments only but in fact it binds the Muslim nation as a whole including its individuals not to violate the obligations of the treaty[204].

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[29]This party was established by Sheikh Taqi al-Din al-Nabhānī in the early fifties of this century.

Contemporary Muslim scholars, on the other hand hold that the Islamic state could conclude eternal peace treaties with non-Muslim states[205]. They support their view by mentioning certain proof as follows:

a- The fundamental relationship between the Islamic and non- Islamic states is peace, so permanent treaties between both sides are supported by such relations [206]. They base this view on the authority of the Qurān "But if the enemy incline towards peace, do thou (also) incline towards peace, and trust in Allah: For He is the One that heareth and knoweth (all things)" (H.Q.S8. A61). The point of note regarding the peace treaty in this verse, is that even if the party holding the fundamental relations is not peaceful as clarified earlier, it mentions that as soon as the enemy asks for reconciliation, Muslims should welcome the move and not hesitate to make such peace even if they are unsure about the enemy's sincerity in their request. This could allow the enemy time to prepare for a new war[207]. On the other hand, Qutb makes a condition on such treaties, which states that if the enemy do not obstruct the way of the Islamic mission, this gives Muslims the opportunity to call people to Islam. At the same time all the people should be free to hear the call of Islam and to embrace Islam without any oppression if they wish[208].

Al-Butī also took a similar position when he agreed that Muslims can conclude a permanent peace treaty with others and added that such peace is not only between Muslims and others but also between all people on the condition that Muslims have the freedom to carry out the mission of calling others to Islam[209]. Moreover, al-Butī mentioned a condition to the signing of a peace treaty between Muslims and others in that the other side should not occupy any of the Muslim's land but if they set foot and occupy some land of dar al- Islam, Muslims are obliged to defend their land and the enemy should be repelled by all means possible. He added that Muslims have the right to conclude a peace treaty with non-Muslims if they are compelled to do so. Regarding this the Prophet said "Allah has pardoned my *Umma* for their mistakes, forgetfulness and what they have done under duress" (al-Tabarānī). On the other hand he confirmed that Muslims have to plan and to cooperate in bringing back all their usurped lands. Al-Butī used the Sunna of the Prophet

to support such a view by saying that there is no evidence which confirms that the Prophet made any peace treaty with non-Muslim enemies who entered Muslim lands aggressively[210].

The discussion of such subject by al-Buṭī was a response to some of al-Azhar scholars who approved the Egyptian Government Peace Treaty of Camp David with Israel. Therefore, he mentioned the Sunna evidence on which those scholars based their view, that the Prophet consulted with the two leaders of the Muslim tribes in Medinah during the battle of Trench to conclude a peace treaty with the Ghatafān tribe, one of the many tribes who took part in a blockade in Medinah during that battle, on the basis of giving them one third of the Medinah crops. The two leaders asked the Prophet whether it was Allah's injunction, in which case they had to obey, or something for their security from the Prophet himself. The Prophet answered them that he tried to protect them from the non-Muslims aggression. They told the Prophet that they did not want this solution and they would not give them except the sword. The Prophet then said let it be so. Al-Buṭī then concluded from the previous incident that it was no more than a consultation between the Prophet and his followers and not legislation since all Muslim scholars agree that the Prophet's sayings, deeds and decisions are the second primary source of Islamic Sharīʿh while his common discussions and consultations are not deemed as an evidence[211].

At the same time, al-Buṭī mentioned an interesting point that the Imām is the person responsible to sign a peace treaty because it involves all Muslims but if there is no supreme Imām for all Muslims as nowadays, then all Muslim leaders and rulers must be agreed on this peace. He quoted the following article from the constitution of Medinah which was established by the Prophet in the first year of the Hijra as proof of his view "Muslim's peace is one, no believer should conclude peace in a fight except with the others on the basis of equality and justice between Muslims"[212].

b- They mentioned the following verse which according to them is a clear sign for the Islamic state to conclude a permanent treaty with non-Muslim states "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)" (H.Q.S4. A90). Some modern writers hold that this verse deals with the permanent peace and that peace is permitted to those who surrender to the Islamic state[213].

c- Those scholars state that when the Prophet emigrated to Medinah and concluded a treaty with the Jews to protect their rights and their freedom of religion, he did not lay down a specific time for this treaty as according to them this was strong evidence that the Islamic state concluded a permanent peace treaty with the non-Muslim authorities[214]. Also a peace treaty which was concluded between the Prophet and the Arab Christians at Najran guaranteeing them security regarding their lives, property and religion in return of paying jizyah[215]. On the other hand to support the view of the early Muslim scholars, Helāl said that the Prophet did not specify a time for the constitution of the Medinah treaty but at the same time he laid down a specific time with the non-Muslim Quraish tribe which was ten years when he concluded the al-Ḥudaibiyah treaty with them in the sixth year of the Hijra[216]. The treaty of the People of Najrān which the Prophet concluded was classified under the dhimmah treaty which considered their territory as part of the Islamic state while a peace treaty with a non- Islamic state is concluded on an equal bases.

d- Modern Muslim scholar abu-Zahra says that the status of war which was the fundamental relation between the Islamic and non- Islamic states after the ending of the period of the fourth caliph and the establishment of the Umayyad and the Abbasid states later prompted Muslim scholars during that time such as al- Shaybānī and al- Shāfi'ī who established the Islamic international relations to adopt the view that a peace treaty should be concluded in a specific period of time[217].

From what has been said we could conclude that the Islamic state has the right to enter into a peace treaty with non- Islamic states without a defined period of time. This view is supported by the Qurān, the Sunna, the famous early Muslim scholars Ibn Taymiya and Ibn al-Qayyim and most of the modern scholars as shown.

TREATMENT OF PRISONERS OF WAR

With regard to the treatment of prisoners of war both early and modern Muslim scholars agree that Muslim leaders have to treat them well while they are in captivity. This view is based both on the Qurān and the Sunna as clarifies in this thesis. This research also clarified the view of the earlier Muslim scholars when non-Muslim prisoners fall into captivity that the *Imām* has to follow several choices: he may kill, release with or without ransom, or exchange for Muslim prisoners or enslave them.

On the other hand, contemporary Muslim scholars hold that the leader of the Muslim state may choose one of three courses on the basis of the Quranic verse "Therefore, when ye meet the unbelievers (in fight), smite at their necks, at length, when ye have thoroughly subdued them, bind (the captives) firmly: therefore (is the time for) either generosity or ransom: until the war lays down its burdens" (H.Q.S47. A4). The three courses of action are:

A- To release prisoners on payment of a ransom[218]. This follows the example of the Prophet in the case of the prisoners of the Skirmish of Nakhlah, and also the majority of prisoners at the battle of Badr who paid ransom in return of their release.

B- The leader of the Muslim state may set the prisoners free without ransom[219], following the example of the Prophet in the case of the prisoners of the battle of Badr and also the prisoners before the al-Ḥudaibiya treaty. Mawdudī mentioned that Islamic law for prisoners of war holds that the Islamic authorities may release them with or without ransom or to hold them in captivity and treat them well[220].

C- He also may release them in exchange for Muslim prisoners in enemy captivity [221] as the Prophet did in many incidents such as the prisoner from the Thaqyyf tribe, when he exchanged him for two of his followers and also the exchange of the son of the Quraish's

leader Abu Sufyān after the battle of Badr for one of his followers who was arrested by Abu Sufyān.

As a result of this view modern Muslim scholars refused the other choices as supported by early Muslim scholars, to kill and enslave non-Muslim prisoners of war. They argue that the Qurān[30] did not mention the killing or enslaving in dealing with this subject but made only two recommendations, free with or without ransom[222]. Sheikh Abu Zahra added that "The Prophet did not establish any slavery on free person"[223]. However, if a non-Muslim authority kills or enslaves Muslim prisoners in this case the Islamic state has the right to kill and enslave non-Muslim prisoners according to contemporary Muslim scholars in a reciprocal fashion[224].

However, regarding killing and enslaving of prisoners of war, modern scholars do not support their view with strong proof as previously mentioned. Moreover, during this research we came across some incidents which support the view that the Prophet killed and enslaved prisoners such as the killing after the battle of Badr, Uḥud and Banu Qurayẓah and also the enslavement which occurred to both the Banu Qurayẓah and the Hawāzin tribes.

At the same time the early Muslim jurists recommendations to Muslim leaders regarding the treatment of prisoners of war is a clear sign that the Muslim *Imām* has the right to choose one of the five alternatives which support and serve the Islamic state's position after a mutual consultation with Muslim advisers[225].

To support this view the treatment of non-Muslim prisoners of war applied during some periods of the Islamic states followed the recommendations of early Muslim jurists for the interest of these states. Hence, during the Abbasid state there were many cases of the exchange of prisoners between the Islamic state and the Byzantine empire which was in the interest of both states such as the exchange of prisoners between both sides or for ransom.

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[30]"... Therefore (is the time for) either generosity or ransom" (S47, A4).

Al-Ṭabarī mentioned many incidents which strengthen what has been said when he mentioned that in the year 192 AH, the two states exchange prisoners. The Muslim prisoners released in a 7 day period numbered 2,500[226]. He also mentions that in the Year 223 AH, the emperor of Byzantine attacked a Muslim city, killing many of the civilian men, women and children, and burning the city. He took the rest into captivity and mutilated them. In retaliation, caliph al-Mutasim attacked the Byzantines and burst into Amoriah city, killing many warriors and taking some into captivity. Al-Ṭabarī added that six thousand prisoners were killed after this battle in retaliation for the death of Muslims[227].

Early Muslim jurists hold that the leader of the Islamic state may not kill a person who embraces Islam whilst he is in captivity but he may enslave him as previously clarified. Modern Muslim scholars on the other hand hold different views in that the embracing of Islam should protect the freedom of a prisoner of war as it protects his life[228].

CONCLUSION

This chapter clarifies the agreement between earlier Muslim scholars and their present counterparts that the definition of the term *Jihād* is "To make every effort". At the same time the latter re-developed the old term into a modern shape such as *Jihād allisān wa alqalam* (*Jihād* of the tongue and the pen). Moreover, some contemporary Muslim thinkers give the term *Jihād* a wider concept when they hold that any work for the good of Muslim society and against corruption is a type of *Jihād*.

While the main purpose of *Jihād* according to earlier scholars is to apply the Islamic law on the whole world we found that modern Islamist scholars have adopted the same position as the earlier scholars. On the other hand, for the purpose of the reformulation of Islamic principles and for the defence of Islam against attacks by Western writers the modernist scholars reject the imitation of the earlier scholars *(taqlid)* and claim and support

their right to reinterpret the sources of Islam (*ijtihād*) which leads them to uphold that the concept of *Jihād* ; is for the defence of the Islamic countries.

The abolition of the Ottoman Caliphate in 1924 caused a hard reaction inside Islamic countries. This situation led some Muslims at the end of the Twentieth century to claim that laws ruling Muslims today are infidel laws and to urge Muslims to use *Jihād* to overthrow their rulers and to re-establish the Islamic caliphate. This view faced rejection from some scholars who denied the use of force to re-establish the Islamic caliphate and instead they call for the teaching of the Muslim societies the education and the morals of Islam in order to change the societies firstly from inside.

The relation between Muslims and non-Muslims does not mean actual hostilities between both sides according to earlier Muslim jurists. Therefore, those jurists agreed that a Muslim state can conclude a peace treaty on condition that it must be for a limited period of time. Contemporary scholars on the other hand hold the same view but they added that such state could conclude a peace treaty with non-Muslims without limiting the time.

As we have seen the main aim of this chapter is to show the comparison between earlier and contemporary scholars regarding some aspects of the theory of *Jihād*. Chapter six therefore will discus the application of *Jihād* in the modern Islamic era.

NOTES TO CHAPTER FIVE

1. Al-Qādirī. 'AbdAllah bin Aḥmad. al-Jiāhd fi Sabeel Allah. v 1. p 48.

2.Al-Kāsānī. Abu Bakr bin Mas'wud. Badāi' al-Ṣnāi'. Dār al-Kutub al-'Imiyya, Beirut. 1406 AH. 1986 AD. v 7. p 97.

3.Al-Ragheb. Hasan bin Muḥammad. al-Mufradāt. Karatchi. n.d.

4.Ibn al-Qayyim. Zād al-Ma'ād. v 3. Mu'assasat al-Risāla. Beirut and Maktabat al-Manār al- Islāmiyya. Kuwait. 1405 AH. 1985 AD. pp 5-7.

5.Bin al-Mubārak. 'AbdAllah. Kitāb al-Jihād. al-Maktaba al-'Asriyya, Beirut. 1409 AH. 1988 AD. p 12.

-See also. Peters. Rudolph. Islam and Colonialism. p 106.

6.Shadīd. Muḥammad. al-Jihād fi al-Islām. Mu'assasat al-Risalā. Beirut. 1401 AH. 1981 AD. p 9.

-Al-Buṭī. Muḥammad. al-Jihād fi al-Islām. Dār al-Fikr. Beirut and Damascus.1414 AH. 1993 AD. p 20.

7.Abu-Zahra. al-'Ulāgāt al-Dawliyyah fil- Islām. Dār al-Fikr al-'Arabi. Cairo. n.d. p 90.

8.Al-Buṭī. Muḥammad. al-Jihād fi al-Islām. pp 20-21and 46.

9.Maḥmud. 'Alī. Rukn al-Jihād. Dār al-Tawī wa al-Nashr al- Islāmiya. Cairo. 1415 AH. 1995 AD. pp 41-43.

10. Shadīd. Muḥammad. al-Jihād fi al-Islām. p 52.

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11.Al-Qādirī. v 1. p 427.

12.Al-Ghannouchī. Rāshid. Maqālāt. Dār al-Karawān. Paris. 1984. p 176.

13.Tibi. Bassam. The Dialog Conference on the Ethics of War and Peace. 1993. un published paper. p 20.

14.Al-Mawdudī. Jihad in Islam. p 7.

15.AbuSulayman. 'AbdulHamid. Towards an Islāmic Theory of International Relations. p 136.

16.Al-Qādirī. v 1. p 49.

17.Abu-Zahra. al-'Ulāqāt al-Dawliyyah fil-Islām. p 94.

- Al-Ghannouchī. Rāshid. Maqālāt. p 176.

18. Al-Qāderī, v 1, pp 66 and 78.

19. .Mawdudī, Abul A'la. Jihad in Islam. International Islamic Federation of Student Organization. n.d. p 5.

-Al-'Alyānī, 'Alī, Ahmmiat al-Jihād. p 117.

20. Ibn Rushd. Bidāyat al-Mujtahid. v 2, p 259.

21. Lewis. Bernard, The Political Language of Islam. The University of Chicago Press. Chicago and London. 1991. p 72.

22. Lewis. Bernard. Islam and the West. pp 149-150.

23. Ibid. p 151.

24 Ibid. p 152.

25. Peters. Rudolph. Islam and Colonialism. p 134.

26. -Ibn Qudāma. 'Abdullah bin Ahmad. al-Kāfī fi Fiqh al-Imām Ahmad bin Hanbal. Dār al-Kutub al-'Imiyya . Beirut. 1414 AH. 1994 AD, v 4, p 116.

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CHAPTER SIX

JIHAD IN EGYPT

INTRODUCTION

From reading previous chapters we are in the position to understand some important factors about *Jihād* such as the views of earlier Muslim scholars regarding this subject; the application of *Jihād* during the period of the Prophet passing the period of the Four Rightly Guided Caliphs until the time of the Ottoman state. The study of such periods clearly indicates that the application of *Jihād* was mostly performed outside the Islamic state and concentrated upon the raising high the word of Allah and strengthening the position of the Islamic state.

On the other hand while some of the previous chapters mainly discussed the theory and application of *Jihād* outside the Islamic state, this chapter will look at a new application of *Jihād*. This new kind of *Jihād* was not applied outside, but inside, the Islamic state against Western colonialism at the end of the eighteenth and beginning of the nineteenth century, and also the beginning of the twentieth century during the expansion of Western industrial capitalism [1]. Therefore this chapter will clarify ,in brief, two of the Islamic revolutions against European colonialism, first is the Egyptian resistance against the French occupation of Egypt, and second is the 'Urābī revolution against British occupation. We shall see how such revolutions organised themselves as a politic-religious movement and derived benefit from the Islamic influence inside the Egyptian population and see the influence of the *'ulama* in motivating its citizens in such revolutions.

On the other hand, since the definitive disappearance of the Ottoman caliphate in 1924, the re-establishing of the Islamic state supposed that rulers who rule Muslims and did not apply Islamic *sharī h* are unjust or non-Muslim.

This argument also deemed such rulers as apostate and as a result of that the external enemies who deserved *Jihād* were transferred to the enemy at home.

The murder of President Anwar al-Sadāt of Egypt on the sixth of October 1981 was an important event expressed by the application of the theory of the apostate ruler which was held by al- *Jihād* group and the way in which Muslims have to face such rulers. President Sādat in their view was a Muslim in name only as he had put aside the *shari'h* and in its place introduced and supported the infidel Western systems and cultures. So *Jihād* must be waged against iniquitous rulers in order to remove them and re-establish and re-apply the Islamic state and the *shari'h.*

So the main aim of *Jihād* against such rulers is the establishing of the Islamic state. This subject is one of the most important matters being discussed in both the Islamic and western countries at the present time.

However support for using *Jihād* to oppose unjust governors, to seize power and to establish an Islamic state is led by the *Jihād* group. They expressed their view through 'Abdal Sālam Faraj in his book 'The Forgotten Duty'. This chapter also will clarify their views and the proof they used in support of their views and also the reaction of Muslim scholars.

THE EGYPTIANS REVOLUTION AGAINST FRENCH OCCUPATION

At the end of the eighteenth century, the Islamic state suffered from different confrontations with the West. It was no longer the case that the final Ottoman victory over Europe was just a matter of time as it was thought to be when Ottoman armies reached the gate of Vienna in 1693 and for several decade later. The Islamic state began to face European expansion and the beginning of the age of European domination when they annexed or occupied many parts of the Islamic state and penetrated and influenced the rest of it "the eighteenth century, despite some occasional successes, was a bad time for the Muslim powers, which, far from being able to fulfil their religious duty of expanding the frontiers of

Islam, were hard pressed to retain what they already held ... By 1828 Russia was in possession of the territory now forming the three former Soviet republics of Georgia, Armenia, and Adherbaijan. The French expedition to Egypt, led by General Bonaparte in 1798, had considerable impact in that country but ended in defeat and produced no territorial change"[2].

At the end of the eighteenth century and according to the strategic position with which Egypt was to be distinguished at that time, drew the attention of the contesting European powers, Britain and France.

In July 1798, the French leader, Napoleon Bonaparte landed near Alexandria with his army which consisted of approximately 40,000 soldiers to occupy Egypt[3]. The French invasion of Egypt was prompted by several factors, some of which were:

a-The strategic position of Egypt in the Mediterranean which would support France in cutting off British communication with the East[4].

b-The achievement of their desire to establish a French Empire in the East by the occupation of Egypt which held an important strategic position[5].

c-The weakness of the Mamluk military organisation which governed Egypt at that time. Also the Mamluk did not have sufficient support from the Egyptians due to their tyrannical treatment of the inhabitants. This factor led Bonaparte to suppose that the Egyptians were prepared to welcome the French army as their deliverers[6].

Therefore, in his first proclamation to the Egyptians issued from his ship outside Alexandria on July 2, 1798 and recorded by the famous Egyptian historian al-Jabartī in his book 'Ajāib al-Athār, Napoleon tried to convince the Egyptians that he came to support their religion and to secure their rights "In the name of Allah, the Beneficent, the Merciful. There is no God but Allah, who has neither son nor partner in His sovereignty ... O people of Egypt, you have been told that I have come to this region only in order to do away with your

religion; but this is an outright lie. Do not believe it! Tell the liars that I have come to you only to secure your rights from the hands of the unjust, and that I, more than the Mamluks, worship Allah and revere His Prophet and the Glorious Qurān. Tell them too, that all men are equal before Allah, and that what differentiates them from one another is intelligence, virtue, and knowledge alone ... O shaykhs, qadis, immas and notables of the country, tell your nation that the French too are sincere Muslims ... Blessings and blessings on the inhabitants of Egypt who join us without delay ... but woe and woe again unto those who place their reliance on the Mamluks in waging war against us, for thereafter they shall find no way of salvation nor shall any trace remain of them"[7].

So on the third of July 1798 the French army entered and captured Alexandria after a brief resistance from the Egyptians who tried to defend their city despite their shortage of weapons and poorness of capabilities. After the occupation of Alexandria, Bonaparte advanced to Cairo and within three weeks of his landing the Mamluk forces had been routed and Cairo had surrendered[8].

During the advance of the French army to Cairo the scholars and notables of the city held meetings to discuss how correctly defend the city. The craft guilds led the voluntary contributions of money, food and arms and the citizens poured out of the city to fight against the foreign invasion of the infidels. Al-Jabartī described the situation in Cairo when he said "until the streets of Cairo were absolutely deserted and you found no one but women in their houses, along with young children and the infirm who were unable to move" [9]. On the other hand, the Mamluks who were the governors of the city were taking the precaution of securing their wealth and valuables ready to flee the city in the event of a French victory.

When Bonaparte occupied Cairo he tried to satisfy and convince its citizens, in particular, and the inhabitants of the country in general, that he came to help them. To achieve his aim he had tried to alter the views of the Egyptians by his first written proclamation which claimed that he worshipped Allah, revered the Qurān and the Prophet Muhammad as previously mentioned and the "showy celebration by the French army of the Prophet's birthday in August 1798"[10], but he failed. The Egyptian resistance in the Delta and

Upper Egypt and the reaction of the citizens in both the first and second revolts Cairo were the results of the French failure.

Some writers have mentioned various reasons for the first Cairo revolt against the French invaders one of which was the imposition of new taxes such as the house tax. The collection of taxes from the citizens was enforced by the establishment of *the maḥkamat al-qaḍāyā* (tribunal of lawsuits) which collected a specific percentage from the litigants[11]. Al-Jabartī mentioned the establishment of this tribunal by the French when he said "They provided this diwan with guiding rules and principles consisting of evil innovations"[12].

The main factor which contributed to the first Cairo revolution was that the Egyptians never regarded the French as their liberators but reviled them and dealt with them as infidels[13]. Moreover, the letters from the Ottoman Sultan which were sent to the Egyptians asked them to declared *Jihād* against the French infidels. The scholars also played an important role by motivating the citizens to raise the revolt and involve in *Jihād* against the French. To achieve their goal we can see that those scholars used the mosques and the Friday prayers as a means of motivating the Egyptian for *Jihād*[14]. Therefore it was the sheikhs who led the first revolt against the French in Cairo in October 1798[15].

This first revolt was suppressed by the French army within three days and without much difficulty, due to the big differences in both weapons and abilities between the two parties. Nevertheless, it was a clear indication to the foreign occupier that Muslims in Egypt would not accept their occupation and that liberation was only a matter of time.

The Ottoman army in the year 1800 under the command of the Grand Vizier marched through Syria to attack the French army in Egypt. On his way he captured al-Arish. In January 1800 an agreement was reached between the Ottomans and the French, under the command of Kleber, after the return of Bonaparte to France. Under the terms of the agreement the French army was to evacuate Egypt and return to France by transportation provided by the Ottoman state. Meanwhile, the British Government was reluctant to see the French forces in Europe reinforced and supported by the French forces in Egypt. Therefore,

they refused to support the agreement except in the case of the French army leaving its weapons behind[16].

After the failure of the al-'Arish negotiations the Ottoman army advanced to Cairo and were defeated by the French under the leadership of Kleber at the battle of Heliopolis. During the battle of Heliopolis, the second of Cairo's revolutions was taking place. This revolution lasted for one month from the 20th of March until the 20th of April, once again the 'ulama (scholars) played an essential part in motivating the citizens to declare Jihād and to revolt against the French army. The Egyptians responded to the call and many of them joined the resistance whilst others showed generosity in their contribution and support of the fighters[17].

When the Ottoman army was defeated by the French, they returned to Cairo and laid siege to the city. Kleber ordered his army to bombard the city with cannons making it possible to enter the city and despoil it. So, the French invaders were able to destroy the second revolution of Cairo[18].

Having spent three stormy years of occupation in Egypt, the French army were forced to withdraw its forces in 1801 due to Ottoman and British opposition and local resistance as previously stated[19]. When the French evacuated Egypt it reverted to the authority of the Ottoman state. During the period of the French occupation and the Egyptian resistance to it several essential points occurred:

At the beginning of the French invasion of Egypt the Ottoman state did not intervene and support the Egyptians although Egypt was a part of the Ottoman state. This reaction was a clear indication of the weakness of the Ottomans as such and their position encouraged France to attack Egypt. Moreover, when they tried to intervene they were defeated as in the battle of Heliopolis.

Muslim scholars played an important role both in the first and the second of Cairo's revolutions when they led and motivated the citizens to declare Jihād against the French. These scholars applied the 'defence Jihād ' which as agreed by earlier and contemporary

scholars meant that if Muslims were attacked by non-Muslims they have to declare *Jihād* and protect themselves and their religion. Therefore, al-Azhar played an essential role in both revolutions. To support this argument we can see that during the first revolution the centre of the resistance was the al-Azhar. Sheikh, al-Sādāt, al-Sharqāwī and other *'ulama* led the opposition of the French from inside al-Azhar. The significant of this revolution was that the citizens recognized the *'ulama* of al-Azhar as their leaders and protectors against the French[20].

Therefore when the Egyptians were defeated in this revolution the French forces entered al-Azhar mosque and destroyed the student strongbox, the lamps of the mosque, threw about copies of the Holy Qurān and other books and spoilt any goods which they found[21]. The execution of six of al-Azhar's *'ulama* by Napoleon after the first revolution [22] was also a strong proof of the role of al-Azhar against the French occupation.

When the French army occupied Egypt, it was without a direct ruler as the Mamluks were defeated. So the *'ulamā* led the movement of *Jihād* without a direct ruler, and in such cases, Muslims have to protect themselves and their religion without the authorization and the foundation of a ruler[1]. Also the application of fight by the Egyptians against the French army was a 'defensive *Jihād*' and in such a *Jihād* both early and contemporary Muslim scholars agree that all capable Muslims who are attacked have to fight in *Jihād* against non-Muslim invaders[23].

There is a strong link between Muslims and *Jihād* to raise the word of Allah high. Also this link could be stronger if a Muslim country found itself under attack by non-Muslims. Therefore, in the case of Egypt the picture was so clear that the Egyptians interacted with the call of *Jihād* and participated strongly against the French invaders in accordance with their ability.

During the occupation of Egypt by the French we can see that the loyalty of the Muslims in Egypt was to the Ottoman state which was representing the leadership of the Islamic state. Therefore, they responded to the letters sent from the Ottoman sultan urging

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[1] For more information about the permission of *Imām* in declaring *Jihād* see chapter one in this theses.

them to involve in *Jihād* and revolt against the French. Richmond, deemed that the first revolution of Cairo was a fruit of this letters[24].

The relationship between Muslims is very strong and the key to this relationship is the Islamic faith in which Muslims participate. For Muslims "religion was not only universal but also central in the sense that it constituted the ultimate basis and focus of identity and loyalty. It was religion that distinguished and united those who belonged to the group and marked them off from those outside the group, even if they lived in the same country and spoke the same language. Muslims of different countries, speaking different languages, share the same memories of a sacred past, the same awareness of corporate identity, the same sense of a common predicament and destiny"[25]. Therefore, such relationship and unity between Muslims could be seen during the second revolt of Cairo as one of the main motivations of this revolt was the battle of Heliopolis between the Ottoman and the French armies. When the Egyptians knew about the battle they raised the revolt and *Jihād* against the French to support the Ottoman army firstly, and also to save themselves from the French occupation secondly.

THE 'URABI EPISODE[2] AND THE RESISTANCE AGAINST BRITISH OCCUPATION

During the nineteenth century, Egyptian society underwent a social, economic and educational transformation. This was established during the period of Muhammad 'Alī[26], when Egyptian soldiers took the place of foreign mercenaries and also a small class of professional technicians who were Egyptian[27]. 'Alī used foreign experts, mainly French, to educate and improve the army, he established some military institutes and recruited the Egyptian peasants for the first time in the modern history. He also paid attention to education by building specialized schools of engineering and medicine. He engaged French engineers and doctors to teach in these schools. As a result, some western specialist books were translated into Arabic to be taught in these schools. Those students who excelled were sent to

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[2]Although the 'Urābī episode is often describe as a revolution but it will be labeled here as a revolt. There was no transformation of the political system from monarchy to a republican system (as in 1951) but only the replacement of the existing rulers within the same system of government and the same loyalty

complete their studies in European countries such as France [28]. Stevens said that Muhammad 'Alī "believed that secular, or non-religious education was essential for the supporting elements of military forces"[29].

Another important change in Egyptian society at that time was the increasing European influence connected with the development of the cotton industry which was one of the most important accomplishments of Muhammad 'Alī. To achieve this development 'Alī relied on French technicians which led cotton to became the principal export of Egypt[?]. The manifold projects during the period of the son of 'Alī, Sa'īd (1854-1863) and grandson, Ismā'īl (1863-1879) were an important factor in attracting Europeans to Egypt. The building of the Suez canal by the French government during the period of Said also proved a great reason for the immigration and the interference of foreigners in Egyptian affairs. The article of the agreement between the two sides contained that the French company were provided with land on a lease of ninety nine years to include mineral rights, unpaid labour and the cost of engineering studies[31]. The profits would be divided as follows, 75 percent going to the shareholders, 15 percent to the Egyptian government and 10 percent to the promoters[32].

This transaction involved Egypt in financial commitments which it could not meet which in turn affected Egypt's financial position. Therefore Egypt had to sell its shares in the canal to the British government and its 15 percent to the French bankers and finally found itself without any ownership in the company[33]. According to Stevens, the construction of the canal facilitated the interference of Europeans in Egyptian affairs more than ever[34]. To realise the effect of this project on the Egyptian treasury, in 1877 the budget of the state was 9.5 million pounds, 7.5 million pounds had to be paid as interest and repayments[35]. The extravagant loans especially during the period of the khedive Ismā'īl led to the bankruptcy of the Egyptian state in 1876 which led to the control of the revenues and the affairs of the Egyptian state by Britain and France. To meet the demands of the creditors the foreign powers imposed a financial plan to reduce the public debt, so the expenses of the Egyptian state were cut and taxes were raised. The plan also affected the Egyptian army by reducing

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to the Ottoman sultan, the former is a revolution while the later is revolt.

their number but this reduction mainly affected the Arab army officers and not the Turco-Circassians who held the more important positions in the army[36].

Also, the army suffered neglect at the hands of the governors of Egypt. There was discrimination between the Egyptian and the Turco-Circassian officers that the latter held positions of command and also obtained all the advantages. The national officers complained of ill treatment from their leaders and were deprived of their promotion. Ahmad 'Urābī, a colonel in the Egyptian army began to convince the Egyptian officers for the collation and the demand of their rights, he then became the spokesman of the disaffected officers[37]. Ahmad 'Urābī organized a movement for better pay, promotions and no discrimination against Egyptians in the army. This was not the first movement by officers in Egypt; in 1878 Egyptian officers complained of the payment delay of their salaries and the forced retirement of 2,500 Egyptian officers, more than 600 officers and around 2,000 soldiers rebelled and brought down and replaced the ministry, this victory urged 'Urābī to do the same[38].

The start of the revolt began in January 1881 when 'Urābī and two Egyptian officers presented a petition to the prime minister demanding the resignation of Rifqī, the minister of defence, the appointment of a national minister, and an improvement of the promotional system in the army. They were arrested for insubordination, but their troops laid siege to the ministry and released their officers by force and thus repeated their demands. The khedive Tawfīq then submitted to their demand and replaced the minister of defence[39].

This incident and the successes achieved by 'Urābī supported and strengthened his position in the political events of Egypt and also encouraged some Egyptian civilians to join the officers movement. Therefore, from 1881 onwards, the picture and demands of both groups changed; the restoration of the Council of Delegates *(Majlis al-Nuwwāb)*, the dismissal of Riyad as prime minister and the raising of the army's number were political demands and the National Party *(al-Ḥizb al-Waṭanī)* was the voice of these political demands of both groups[40].

The khedive Tawfīq was forced to accept the political demands presented by 'Urābī. This acceptance gave 'Urābī much popular support and he became Egypt's national leader, the rescuer of the *Umma* and spokesman for the National Party[41]. Also as a result of this revolt khedive Tawfīq appointed a new cabinet in February 1882, in which 'Urābī was appointed Minister of War. Whilst in this position, 'Urābī had broken the monopoly held on the higher military ranks by the Turco-Circassians. The Council of Delegates on the other hand began to criticize the government and especially the sections which were run by foreigners. Under pressure from the British and French governments the khedive dismissed 'Urābī as Minister of War, rioting broke out in Alexandria after a quarrel between a western citizen and an Egyptian. The rioting intensified when it appeared that the nationalists had begun to gain ground and support from the citizens[42].

These events led the British and French governments to send a fleet to Alexandria. Therefore, the khedive moved to Alexandria and put himself under the protection of the British forces. According to Peters, the Egyptian population from all over the country gathered around 'Urābī and asked him to defend Islam and the country[43].

So, the road was ready for the intervention of France and Britain in Egypt but a change of government in France in 1882 led France to withdraw from the joint plan of intervention[44].

Therefore, in 1882 the British fleet bombed Alexandria and its troops invaded the country. This invasion was carried out under the claim that the Egyptians were fortifying Alexandria against the British, while the true reasons were the protection of the British financial and commercial interests and control of the Suez Canal[45].

After the invasion, 'Urābī organized the population in fighting against the British army. 'Urābī's resistance was supported by the majority of Egyptians who opposed foreign intervention and the *'ulamā* also supported him. He held a meeting to strengthen his position and deemed that orders from the khedive and his ministers were not to be considered [46].

A notable aspect of this meeting was that while 'Urābī's revolt rejected the rule of the Khedive, it declared its obedience to the Ottoman Sultan.

At the same time Khedive realised the strength of 'Urābī's position which led him to issue proclamations which deemed 'Urābī a rebel and also to show that the British army came to Egypt to restore law and order and was acting under his command. He warned the Egyptians not to participate in war or to support Urābī[47].

On the other hand to get the greatest support from the population the 'Urābīs used propaganda through leaflets, newspaper articles and speeches by 'ulama or during Friday prayers to encourage popular support of the 'Urābī movement[48].

When the British army invaded Egypt and bombarded Alexandria, *Jihād* was the best ideology for mobilizing the people to fight against the non-Muslim invaders. So on July the 11th 1882, the day Alexandria was bombed, some of al-Azhar scholars asked the people during the Friday prayers to participate in *Jihād* against the British.

The following sermon by Sheikh Ḥamid al-Damanhurī, a member of the Egyptian *'ulamā*, will clarify the reaction of those *'ulamā* "Everyone is familiar with the duty of contributing his share for the support of the religion. Thus the rich must help the army according to their capabilities with provisions and they shall protect it against starvation and feed it. For the army is the fortified stronghold for the defence against the enemy and against the despicable traitor (i.e. the khedive). Those who sacrifice themselves in support of their religion will attain success and acceptance (with Allah). Those who rush forward to protect their honour and dignity will achieve what they have desired and hoped for. So be determined, O people of religious zeal! Make haste, O people of Islamic ardour! Offer your assistance, O community of the Guide, the Announcer, the Warner (Prophet Muhammad)! "Fight the unbelievers who are near to you and let them feel a rough temper in you and know that Allah is with those who show piety" (H.Q.S9. A123). Think but of the victory that Allah has promised to us and be patient, for patience makes difficult things easy"[49].

The following sermon by sheikh Muḥammad Abu al-Wasl also clarifies the position of the '*ulamā* in supporting the 'Urābī's resistance against the British "O servant of Allah! It has become manifest that the English have come to wage war in order to plunder our property and to rape our women (which Allah may prevent) ... May Allah assist the Muslims by means of the Egyptian troops and may He help them with His divine providence ... O, sons of the land, free yourselves from shame and ignominy. Cause the English to taste a painful punishment and prepare for them whatsoever force and cavalry ye are capable of gathering "Against them make ready your strength to the utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies, and others besides, whom ye may not know, but whom Allah doth know. Whatever ye shall spend in the Cause of Allah, shall be repaid unto you, and ye shall not be treated unjustly" (H.Q.S8. A60). Allah is the patron and helper of those who fight in the way of Allah. Victory comes from Allah, the Mighty One, the Wise One[50].

However, during the negotiations between the Ottoman and British states the latter asked the Sultan to proclaim 'Urābī as a rebel to affect his position and to weaken the morale of his troops. The Ottoman state responded to this request. The Khedive began to distribute a proclamation in some news papers and among the officers which did affect the morale of some officers.

On the other hand not all of the Azhar's '*ulamā* supported the 'Urābī revolt. Those who did not, used the proclamation of the sultan who considered 'Urābī a rebel as the key to their argument. The following sermon by sheikh Ḥamzah Fatḥ Allah strengthens the support of this argument "O Lord, do not lead us to perdition (as a punishment) for what some fools amongst us have done. O servants of Allah, you surely know how often I have emphasized with conclusive arguments that the Islamic community will only attain success by activating the Religion, which is based upon high moral principles and enjoins that *dhimmis*, *musta'mins* and unbelievers with whom a pact or peace treaty has been concluded be treated well and friendly. These are the four categories to which (as we have previously stated) all foreigners in Islamic countries without exception belong" he urged Muslims to follow the Quranic order "against them make ready your strength to the utmost of your power ..." (H.Q.S8. A60) by using all kinds of modern equipment but unfortunately the unbelievers who

are the British benefited from this order. Sheikh Ḥamzah then addressed his words to 'Urābī who is according to him a rebel by saying "The result has been that the proficiency of these ignorant rebels in the military arts and their experience in inflicting damage to the enemy was such that they faced the modern English military equipment, which had been produced only a few months or even weeks before, with antique armaments that for generations had been eaten by rust, covering it in thick layers"[51].

Nevertheless, 'Urābī continued his preparation to defend the country and he was able to gather 19,000 troops according to al-Rāfi'ī [52]. Also many civilians responded to the 'ulamā's' call to Jihād and participated in the defence of the country while others contributed money, livestock and food to support the Egyptian army[53].

This resistance lasted two months and after a series of battles the Egyptian resistance came to an end with the surrender of 'Urābī on September 14th at the battle of al-Tel al-Kabir. The Egyptian army was disbanded and the leaders of the Egyptian resistance were tried and sentenced[54].

During a review of the events of 'Urābī's revolt and the resistance against the British occupation of Egypt we have come across some important points including the revolt which began with internal military demands such as the improvement of the promotion system and the payment of the Egyptian officers but when these demands highlighted the political position of 'Urābī he made an alliance with the National Party and the demands were changed to national ones such as the restoration of the Council of Delegates and increasing the number of the Egyptian army.

This revolt did not depose the Khedive Tawfīq who was the governor of Egypt and also the 'Urābī declared their obedience to the Ottoman Sultan who was the sultan of the majority of Muslim countries. Moreover 'Urābī sent a petition to the Sultan asking him to intervene or Egypt will fall into the hands of British[55].

When the British army invaded Egypt, this revolt declared resistance against the British troops. This type of war was a "defensive *Jihād*".

The notable subject during these events was that the legitimate ruler of Egypt, Khedive Tawfīq gave the British troops permission to invade the country under the pretence that these forces were under his command and came to Egypt to restore order which had been disrupted by the Urābīs. At the same time this revolt refused such claims and declared *Jihād* to protect the country even this *Jihād* was against the order of the legitimate government. So, was the Egyptian resistance to the British forces "*Jihād*", when their legitimate ruler was against such a declaration and was the person who had asked for invasion?

The declaration of *Jihād* against the British army was carried out with the agreement of the *'ulama* who supported such defence and deemed it "*Jihād*" in the cause of Allah to defend the country from the non-Muslim invasion as previously clarified. This thesis demonstrates that if Muslims were attacked by non-Muslims, as in this case, they have to protect themselves, their religion and country without authorization from their ruler. This thesis also clarifies that Muslim scholars agree that if the non-Muslims attacked Muslims, the duty then falls on those who are being attacked including women and children to carry out *Jihād* to defend themselves. If this part of the Islamic state does not have sufficient ability to defend themselves and repel the enemy's attack then it becomes an individual duty upon their Muslims neighbours[56].

In the case of the Egyptian resistance the legitimate ruler was the person who gave the non-Muslim forces permission to invade a Muslim country in order to support his authority and to secure his political position. If Muslims are obliged to declare *Jihād* to protect themselves from non-Muslim invasion without the permission of the *Imām*, and also Muslim scholars mentioned that when the Islamic state is subjected to non-Muslim attack the whole Muslim community has to fight including every able bodied person, women, children and old people[57]. Therefore, it is with greater reason if the legitimate ruler is the person who asked the non-Muslim forces to invade his country as in the case of Egypt, in these circumstances Muslims have to declare *Jihād* and defend themselves and their country.

The ideology of *Jihād* is most important as it can mobilize Muslim nations especially if this ideology is adopted by the *'ulamā* and the enemy are non-Muslims. During the Egyptian resistance to the British army, the *'ulamā* played an essential role in mobilizing the people to support the 'Urābīs in their fight against the British troops. The response of the Egyptians was very strong and was evident from the fact that many people joined the national army, many of them contributed money for equipment and needs of the national army.

The resistance and the application of *Jihād* by the Egyptians against both the French and English is a clear indication that the nature of *Jihād* was always a conflict between Muslims and non-Muslims, but not necessarily a conflict between the Muslim and non-Muslim states. As we have seen, during these resistances the Egyptians were involved in *Jihād* not as a state against state as they were not under a direct ruler but as Muslim citizens against non-Muslim states. This reaction is then a clear indication that the nature of Islam is personal not territorial.

Some contemporary Arab[58] and Western [59]writers treat the French and the English occupation of Egypt as a form of colonialism. "Napoleon's ultimate aim was the colonization of Egypt for the benefit of France" [60]. "The relationship between Britain and Egypt from the time when the British first intervened in that country's affairs until they abandoned any further attempts to control Egyptian territory was, in fact, a relationship, of colonial power towards colony"[61]. It is correct to put forward such an argument in the twentieth century but was such an argument raised at the time these events took place?

From reading al-Jabarti's book "Ajāib al-Athār', an Egyptian historian and a contemporary of the French invasion of Egypt, he did not mention the term colonialism. Also when the *'ulama* of al-Azhar used the mosques to motivate the citizens to participate in *Jihād* against the French they dealt with them as infidels. On the other hand during the 'Urābī revolt and during the fight between the Egyptians and the English army we saw that the terminology improved and some scholars such as sheikh Muḥammad 'Abduh mentioned that the British came to occupy Egypt[62].

JIHAD TO ESTABLISH THE ISLAMIC STATE

The ideology and actions of the al-*Jihād* group mark a critical shift in the Islamic movements in the Arab countries when they did not show concern for the change and improvement of the Islamic society. This group led by their thinker 'Abad al-Salām Faraj adopted the ideology of using *Jihād* against iniquitous governors and their regimes [63], to destroy their power and establish the Islamic state.

The aim of this group is the establishment of an Islamic state. Faraj considers that the establishment of the Islamic state is compulsory for all Muslims; it is the core of the Islamic Caliphate.

The Prophet proclaimed the construction of the Islamic state and the re-establishment of the Caliphate, also these were Allah's orders and it is the duty of every Muslim to spare no effort in executing that order[64]. He quotes some verses which support this view "If any do fail to judge by what Allah hath revealed, they are Unbelievers" also "And this (He commands): Judge thou between them by what Allah hath revealed" (H.Q.S5. A44 and 49).

Faraj concentrates on *Jihād* as he sees it as very important for the future of Islam, he adds that *Jihād* has been neglected by contemporary scholars despite the fact that they know that *Jihād* is the only way to re-established the greatness of Islam. He also considers *Jihād* as the only effective way for the establishment of the Islamic state. He tried to put *Jihād* in the place of knowledge by saying that knowledge is a collective duty whilst *Jihād* is an individual one. It seems that he held such views to effect the authority of al-Azhar and its scholars who in Faraj's view are scholars of knowledge not scholars of *Jihād*. This view is expressed clearly by Faraj when he asked, what did the scholars of al-Azhar do to protect Islam when Napoleon invaded Egypt and entered with his troops and their horses the mosque of al-Azhar?[65]. The former sheikh of al-Azhar, Jād al-Ḥaqq realized the aim of Faraj when he responded to this view by saying that the scholars of al-Azhar were those who led the

Egyptian population *Jihāds* against Napoleon and were able to drive out colonialism from Egypt[56].

The achievement of re-establishing the Islamic Caliphate in their view is that by declaring *Jihād* against rulers who are considered by Faraj as infidels while ordinary people were Muslims those rulers have power and the only way to dethrone them is by force "Today's rulers are apostates from Islam, nourished at the table of colonialism, be it Crusader, Communist, or Zionist. All they have preserved of Islam is its name"[57].

He considers that the contemporary Muslim rulers are apostates; they invoke the name of Allah to govern Muslims in opposition to the principles which are revealed in the Qurān. Since the defeat of the Islamic caliphate in 1924, the rulers have torn up all of the Islamic laws and replaced them with infidel laws 'the man made laws' which are imposed on Islamic states by these rulers [8]. The task, therefore, is to remove the infidel rulers and restore the Islamic state. The first task was the assassination of president Anwar al-Sādāt, this was achieved on the sixth of October 1981. The second task however was not achieved.

The reader of Faraj's book could realize that the famous Muslim scholar Ibn Taymiya (d, 728 AH, 1328 AD) was the main thinker for this group. Faraj based his view of the declaration of *Jihād* against contemporary rulers on a *fatwā* which was issued by Ibn Taymiya against the Tartars who conquered Muslim countries and applied non Islamic laws. So Ibn Taymiya ordered Muslims to involve themselves in *Jihād* against the Tartars, Faraj also ordered a *Jihād* against rulers and their regimes who did not govern their countries by the Islamic law '*sharī'h*' but applied western laws in Muslim countries as the Tartars had done"[9].

Faraj therefore, raised this question in his book: Do we live in an Islamic state '*dār al-Islām*' which applies Islamic law or is it a non-Muslim state '*dār al-Ḥarb*' which applies the law of the infidel?

He has chosen the *fatwā* of Ibn Taymiya which was the answer to a question about the status of a city called Mardin. This town had been ruled by Islamic law, but when it fell into the hands of Tartars they applied infidel law. The people of the town were Muslims and the law was man made law. Ibn Taymiya was answered "It is a composite that has elements of both; it is neither the land of peace - where the laws of Islam hold sway - nor the land of war - whose population are infidels - but lies in a third zone. The Muslims have relations with those of its inhabitants who are worthy of it and they combat, as they deserve, those who place themselves outside the *shari 'h* " [70]. So war was declared on the infidels who were the state and the governors, Islam and then peace was proposed for the population who were Muslims.

As Ibn Taymiya has legitimated *Jihād* against the Tartars "It is established by the Qurān, the Sunna, and the *Ijmā'* [3] that one must fight whosoever departs from the *shari 'h* of Islam, even if he pronounces the two professions [4] of faith"[71]. In Faraj's view the situation of the Tartars was the same as the Muslim rulers of today. As then the laws that rule the Muslims today are infidel laws. Faraj concludes therefore, that if the *Jihād* against the Tartars is legitimate which Ibn Taymiya says, then it is equally legitimate to declare *Jihād* against Muslim rulers today.

Faraj supports his view by using the following text in Ibn Kathir's commentary regarding the explanation of this verse "Do they then seek after a judgement of (the days of) ignorance? But who, for a people whose faith is assured, can give better judgement than Allah?" (H.Q.S5. A50). Ibn Kathir writes: "Allah rejects all that lies outside His law; He is the Universal Arbiter of all good, and He who prohibits all evil. He has done away with all private opinions, with whim, with arbitriness, with all that is characteristic of men who base themselves not on the *shari 'h* but, like the people of *jāhiliyya*, govern according to their pleasure, in ignorance, or rather, in the manner of the Tartars, according to the 'policy of the prince' *(al-siyasa al-malikiyya)*. This expression refers to their prince, Genghis Khan, for he gave them the '*yasaq*' which is a code assembling laws borrowed from the Jews, Christians,

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[3] The unanimous agreement of the Sahābah 'companions of the Prophet', or scholars in general, on a point of Islamic law (The Evolution of *Fiqh*, Bilal Philips, 1989, p 147).
[4] The Muslim creed. There is no God but Allah and Muhammad is the Prophet of Allah.

Muslims, and others, apart from many other laws issued directly of his own concepts and his own whim. It is impiety to allege that such a system of law is the basis of a government founded on the Qurān and the Sunna of the Prophet; it is imperative to combat the infidel until he is brought to govern in accordance with the injunctions of Allah and His Prophet, from which one must not depart even in the slightest"[72].

When Faraj asked for the declaration of *Jihād* against today's rulers he compared them with the apostates during the period of the first caliph Abu-Bakr who refused to pay Zakat to the new political leadership after the death of the Prophet and the Khawārij who rejected the authority of the fourth caliph 'Alī[73]. Faraj was concerned to place his views within the Islamic *shari'h*, he mentioned that all Muslims agreed that *Jihād* becomes an individual duty *'fard 'ayn'* upon all Muslims, male and female, if the enemy occupies a part of the Islamic land. He added that the enemy nowadays is within the land of Islam itself. *Jihād* against the rulers is an individual thing such as fasting and prayer, he quotes these verses to support his view "O ye who believe! Fasting is prescribed to you ..." and "Fighting is prescribed upon you ..." (H.Q.S2. A 182 and 216). He concludes that rulers must be fought as Crusaders who invaded the Muslim land were fought[74]. So the 'Forgotten duty' did not accept all ideas that *Jihād* could be interpreted as a spiritual concept.

Upon this understanding of *Jihād*, Faraj therefore, mentions that some people say that the goal of *Jihād* today is the liberation of Jerusalem from the Jews who occupy the holy land. Then he added that it is the legal obligation for all Muslims but at the same time it is not the direct battle and not the right way to liberate the holy land. He explained his view as follows:

First, the fight against the enemy at home 'who are the Muslim leaders' takes priority over the fight against the enemy abroad.

Secondly, if victory is achieved, who will benefit from it? Is it the Islamic state or the infidel regime who will support himself by this victory, he concludes, therefore that *Jihād* must be waged under Muslim command.

Thirdly, the responsibility for the existence of colonialism in Islamic countries belongs to the infidel rulers. To start fighting against imperialism is useless, therefore, we must concentrate on our Islamic problem which is the establishment of Allah's law in our countries and to raise Allah's word high. The first priority therefore, is the waging of *Jihād* against the infidel leadership and the establishment of the Islamic system[75].

The aim of the al-*Jihād* group is to establish the Islamic state by using *Jihād* as the primary instrument. Faraj drew upon some views of the contemporary Islamic movements. He chose, as an example, views on the reconstruction of Egyptian society and responded to these views as follows.

There are some people who say that we have established an Islamic party the same as existing parties. Faraj answered that if this were true it would achieve the opposite of its aim, namely, the destruction of the infidel state. If he followed existing parties he would participate in political life, including the legislative assemblies and this effectively would support the building of the infidel state[76].

Other groups say that Muslims have to seek control of the higher positions and fill the posts with Muslim doctors, Muslim engineers, and so on, the infidel regime would then collapse automatically and give way to Muslim rule. Faraj responded to this by saying one only needed to hear this argument to realize that it was pure fantasy[77].

Others say that the way to build the Islamic state will be through *da'wa* 'preaching' alone, this would establish a wide band of Muslims. Faraj answers, by asking how, can *da'wa* achieve any success when all the communications are controlled by the infidel regime, which makes war on the religion of Allah[78] ?

Those who are weak to participate in *Jihād* say that the way to establish the Islamic state is the practice of *'hijra'* emigration to some other country, establishing the Islamic state there, and then return as conquerors. Faraj replied that they have to build the Islamic state in

345

their own country, then leave it as conquerors[79]. He then quoted these verses with the meaning as he mentioned, the only way to establish the Islamic state "Fighting is prescribed upon you, and ye dislike it. But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you ..." (H.Q.S2. A216). and "And fight them on until there is no more persecution, and religion becomes Allah's in its entirety ..." (H.Q.S8. A39).

Some say by establishing associations under state control but at the same time encouraging people to perform their prayers, almsgiving, and the act of charity. He added that this is one of Allah's orders, but could these acts of charity establish the Islamic state? The immediate answer must be, no. Moreover these associations are under state control and directed by it[80].

There are some who say that we must apply ourselves to Islamic studies; how can we declare *Jihād* if we are not educated in our religion? Faraj answered this view that these people have to be aware of *Jihād* because the judgement of Islam is very easy to learn and in a very short time. To delay *Jihād* for the reason of lack of education is a sorry reason[81].

The notable point in Faraj's view is that he was not the first Muslim to accuse Muslim rulers of infractions of the *shari'h* of Islam and consider them as apostates as this view was held by the Khawārij who deemed that the Fourth Caliph 'Alī and other Muslims who agreed to arbitration were unbelievers and that they were the only true Muslims and any ordinary Muslim who did not follow their view would also not be Muslim[5].

Therefore, from what has been mentioned, we can conclude that the author of the 'Forgotten Duty' deems that anything other than immediate *Jihād* against today rulers who are in his view infidels is a waste of time. He also holds that *Umma* have to work and be involved in *Jihād* against infidel rulers to establish the Islamic state even if this *Jihād* is doomed to fail. He added that the *Umma* must try to do so as this is the order of Allah to us to build the Islamic state and the result is not our responsibility[82].

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[5] For more information about the Khawārij and their views see chapter two in this thesis.

On the other hand, Faraj did not support the view of Khawārij regarding the ordinary Muslim because by reading his book we come across the fact that he did not consider them as unbelievers.

THE RESPONSE OF OF SHEIKH AL-AZHAR TO FARAJ'S VIEW

The previous section clarified the views of 'Abdal al-Salām Faraj who was the thinker of al- *Jihād* group in Egypt; some writers and scholars discussed his views. This section will clarify the response and the rejection of sheikh Jād al-Ḥaqq (the sheikh of al-Azhar during that time) to some of Faraj views and to see the evidence and the argument used by sheikh Jād al-Ḥaqq.

In the beginning of his discussion sheikh Jād al-Ḥaqq concentrated on the link between the Arabic language and the understanding of the Qurān, as it was revealed to the Prophet Muhammad who was an Arab and his language was Arabic "We have sent it down as an Arabic Qurān, in order that ye may learn wisdom" (H.Q.S12. A2). He concentrated on this link in order to clarify that a sound understanding of the Arabic language is compulsory to understand the primary source of Islam, the Qurān. The use of such relation clarifies the difference between sheikh Jād al-Ḥaqq and Faraj who was neither specialized in Arabic nor in Islamic studies[83].

Sheikh Jād al-Ḥaqq concentrated on the main issue of Faraj's book, which is *Jihād*, by discussing his understanding of this subject. Faraj was of the opinion that this important duty was forgotten by contemporary scholars. Jādd al-Ḥaq said that the linguistic meaning of *Jihād* is "effort", whilst he divided the legal meaning of *Jihād* into two; *Jihād* in war and *Jihād* in peace. The first form is *Jihād* against non-Muslims and the second one is the spiritual *Jihād*[84]. Therefore, *Jihād* according to Jād al-Ḥaqq meant not only the fight against the unbelievers. *Jihād* could be used against the unbelievers by means of hand, money, tongue and heart [85]. Sheikh Jād al-Ḥaqq also mentioned the following ḥadith when the

347

Prophet returned from one of his battle, he said "we have returned from the smaller *Jihād* to the greater *Jihād*, his followers asked what is the greater *Jihād* and he answered the *Jihād* of one's evil" (al-Bayhaqī). Jād al-Ḥaqq said that this is not a fabricated ḥadith[86].

Regarding the legal qualification of *Jihād*, Faraj had held that *Jihād* nowadays is a personal (individual) duty upon Muslims against infidel rulers who govern Muslim countries as the use of *Jihād* is the way to establish the Islamic state as previously mentioned. In response to this view sheikh Jād al-Ḥaqq divided the legal qualification of *Jihād* into two phases, firstly, *Jihād* was a personal duty *'farḍ ʿayn'* during the period of the Prophet upon those who were ordered by the Prophet to fight. Secondly, after the period of the Prophet the status of *Jihād* fell back to the status of a collective duty *'farḍ kifāya'*. Also it can be an individual obligation only if Muslim territory is occupied by non-Muslims. To support the spiritual *Jihād* which works against the view of the *Jihād* groups, Jād al-Ḥaqq said that such *Jihād* is a personal duty upon every Muslim at all times[87].

In dealing with the legal qualification of *Jihād* sheikh Jād al-Ḥaqq quoted the following ḥadith which was used by Faraj to support his view regarding the legal qualification of *Jihād* "I was sent with the sword shortly before the Hour of Resurrection until Allah alone will be worshipped with no partner, and He placed my subsistence under the shadow of my spear ..." by saying that it is a correct ḥadith, but at the same time sheikh Jād al-Ḥaqq does not agree with the interpretation used by Faraj. He said that this interpretation is the same as the one used by Orientalists in that Islam is the religion of the sword and spread by the sword.

Jād al-Ḥaqq rejected such views by linking this subject with the obligations in religion, he quoted the following verses to support this issue "Let there be no compulsion in religion ..." (H.Q.S2. A256), "Invite (all) to the way of thy Lord with wisdom and beautiful preaching ..." (S16. A125), "... Wilt thou then compel mankind, against their will, to believe!" (S10. A99), "... And say to the People of the Book and to those who are unlearned: "Do ye (also) submit yourselves?" if they do, they are in right guidance, but if they turn back, thy duty is to convey the message; And in Allah's sight are (all) His servants" (S3. A20) and "It is true thou wilt not be able to guide every one whom thou lovest; but Allah guides those whom He will and He knows best those who receive guidance" (S28. A56).

they are wrong-doers" (S5. A45) and "... If any do fail to judge by what Allah hath revealed, they are those who rebel" (S5. A47).

Regarding the last three verses sheikh Jād al-Ḥaqq mentioned that the Khawārij deemed that a Muslim who commits a major sin is an unbeliever. The last three verses were the proof supporting this view. Jād al-Ḥaqq on the other hand said such a view is incorrect. He added that the meaning of "If any do fail to judge by what Allah hath revealed" are those who left the law of Allah and did not govern by what Allah had revealed totally are unbelievers, wrong-doers and rebels. He reached the view that a Muslim who commits a major sin is a Muslim sinner but not an unbeliever. So those who were deemed Muslim governors, who omitted some of the Islamic *shari 'h* and did not apply it, as unbelievers do not have any proof both from the Qurān and the Sunna [90]. Also in response to such a view sheikh bin Bāz mentioned that if a Muslim regards some sins such as the drinking of wine as lawful he would be a *kāfir*, and the *Umma* has to revolt against him. At the same time sheikh bin Bāz imposed an important condition upon such revolt when he said that the *Umma* could do so if they have the ability but if not they have to obey their rulers in lawfulness but not in sin until Allah sends the right Muslim ruler[91].

The writer of the "Forgotten Duty" raised the following Question, "do we live in an Islamic state"? He answered that the state is governed by infidel laws, despite the majority of its population being Muslim. Therefore, the laws that rule Muslims today are infidel laws[92].

Sheikh Jād al-Ḥaqq rejected this view by mentioning the performance of some pillars of Islam by the people such as prayer, existence and the building of mosques, Zakat, and the pilgrimage. He added that the law of Islam is valid in the Egyptian state even if this state applied man-made laws in certain matters like penalties and interest. The application of such laws did not mean that the *Umma* and the state are infidel because both ruler and ruled believe in the law of Allah " *shari 'h*". To clarify this view Jād al-Ḥaqq stated that all of us, ruler and ruled do not believe in the legality of interest even if we deal with it[93].

350

So to clarify that the action of the Prophet does not work in acting counter to the Qurān he mentioned that the Qurān is the basis of Islam and the Sunna of the Prophet is to explain the Qurān. If this is so, then, according to Jād al-Ḥaqq this hadith is in disagreement with the Qurān. Therefore, to remove such meaning he added that the meaning of the previous hadith was for the protection of the mission of Islam when it was under non-Muslim attack[88].

Sheikh Jād al-Ḥaqq also argued against other ideas on the same subject used by the writer of "The Forgotten Duty" that the Prophet in the beginning of the Islamic mission said to the Quraish in Makkah "Listen O Quraish I have come to you with slaughter". Jād al-Ḥaqq also made a strong link between this example and the understanding of the Arabic language and came to the conclusion that the meaning of the term slaughter can mean "killing" or "destruction" but slaughter in the saying of the Prophet has a metaphorical meaning. It could be taken to mean that he would call God against them or to call God to purify themselves as he brought to them the correct religion as he did not kill anyone at Makkah. Jād al-Ḥaqq mentioned some verses to support that slaughter cannot be the right meaning which the Prophet meant[89] "Let there be no compulsion in religion" (H.Q .S2. A256), "It is true thou wilt not be able to guide every one whom thou lovest ..." (S28. A56) and "So obey Allah and obey His Messenger but if ye turn back the duty of our Messenger is but to deliver (the Message) clearly and openly" (S64. A12).

As mentioned, the main reason for the declaration of *Jihād* by the *Jihād* groups against the Egyptian government was that they deemed this government did not govern Muslims by the principles revealed in the Qurān but instead they governed by man-made laws. Sheikh Jād al-Ḥaqq discussed this important view and supported it stressing that Muslims have to obey and follow the Qurān and the Sunna. He quotes some of the following verses which emphasize this matter "But no by thy Lord they can have no (real) Faith until they make thee judge in all disputes between them ..." (H.Q.S4. A65), "He who obeys the Messenger obeys Allah ..." (S4. A80), "... If any do fail to judge by what Allah hath revealed, they are unbelievers" (S5. A44), "... And if any do fail to judge by what Allah hath revealed,

Sheikh Jād al-Ḥaqq then raised the following question, what is the way to the full application of the Islamic *shari'h*? He also added another question which is one of the main thoughts in Faraj's book "The Forgotten Duty": Does the non application of the divine laws permit the rebellion and killing of the ruler[94]?

To answer the previous question sheikh Jād al-Ḥaqq quoted some of the Prophet's traditions which explain that there are good and bad rulers but Muslims have to obey both of them. This obedience is conditional on their performance of the prayer "The best of your Imams are those whom you love and who love you, those whom you bless and who bless you. The worst of your Imams are those whom you despise and who despise you, those whom you curse and who curse you" his companions asked him "O Messenger of Allah, should we not resist them?" the Prophet replied, "Not so long as they establish the prayer" (Muslim). He also mentioned the following hadith "There will be placed over you imirs[6] whom you will acknowledge and whom you will disavow, whoever feels aversion to them is without blame and who denies them is free but who is pleased with them follows, they asked but Messenger of Allah, shall we not fight them? He said, not so long as they perform the prayer" (Muslim)[95].

So what is the right way to deal with a Muslim ruler who does not apply the full Islamic *shari'h* while he performs the prayer? Sheikh Jād al-Ḥaqq replied to such question by saying that the giving of good advice which should be given by Muslims and also when such a ruler asks his people to obey him in committing sin, in this case Muslims do not have to obey him[96].

Sheikh Jād al-Ḥaqq then discussed the verse of the sword which was used by Faraj to support his view regarding the use of force against the rulers who rule Muslim countries[97] "But when the forbidden months are past, then fight and slay the Pagans wherever ye find them and seize them, beleaguer them and lie in wait for them in every stratagem (of war); But if they repent and establish regular prayers and pay Zakat then open the way for them: For Allah is Oft-forgiving, Most Merciful" (H.Q.S9. A5).

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[6]Amir means ruler.

Sheikh Jād al-Ḥaqq points out that *Jihād* in this verse is directed towards non-believers who did not have a peace treaty with the Islamic state. The Qurān also distinguished between the treatment of the Arab polytheists and the People of the Book. Jād al-Ḥaqq also refuted the view that in this verse *'naskh'* abrogated all the stages of *Jihād* which are three and established the fourth one which is the fight against unbelievers excepting if they adopt Islam or pay *jizyah*. He said that this verse is aimed at polytheists and not Muslims who perform the prayer and pay the Zakat. He added that this concept is clear at the end of the same verse "... But if they repent and establish regular prayer and pay Zakat then open the way for them ...". So the killing of Muslims by using the previous verse is not correct as it deals with polytheists only according to Jād al-Ḥaqq[98].

As the great Muslim scholar Ibn Taymiya has legitimated *Jihād* against the Tartars, Faraj used the same *fatwā* to legitimate the use of force against contemporary Muslim rulers who according to Faraj are infidels as mentioned earlier. Sheikh Jād al-Ḥaqq points out this view by Faraj and clarifies the differences between the rulers of Egypt and the Tartars by using the description of Ibn Taymiya himself when he said that the majority of the Tartars did not perform prayer and did not have a prayer caller and a person to lead them in prayer. Also they seized Muslim's wealth and killed many Muslims during their invasion of Muslim countries. They considered their leader who was Genghis Khan as a son of God. Sheikh Jād al-Ḥaqq said that Ibn Taymiya considered the Tartars as non-Muslims and he did not issue his *fatwā* until he collected full information about them which led him to issue such *fatwā*[99].

After the previous description by sheikh Jād al-Ḥaqq, he then asked whether the modern Egyptian army who defeated Israel during the war of the 10th of the month of *Ramadan* could be compared with the Tartars as the Egyptian army fought while they fasted and every army camp had a mosque and also had prayer leaders to lead them in their prayers[100]. It is so clear that the use of such comparisons by sheikh Jād al-Ḥaqq is to weaken and cancel the use of Ibn Taymiya's *fatwā* by al-*Jihād* groups as this *fatwā* was issued against people who were not Muslims while the modern Egyptian army is Muslim.

352

Finally there is a notable remark regarding the theory of *Jihād* in Egypt which was discussed earlier, the previous sections made clear that the two Egyptian revolts against the French and the English and the call of *Jihād* by the *'ulamā* met with a good response from the population during their participation in the public armies against the invaders.

Therefore we can ask why this call met with such a great response while the call of *Jihād* against present Muslim rulers as adopted by Faraj did not meet with the same response?

We think that both of the revolts against the French and the English were against non-Muslim invaders, so all the public capacity including the *'ulamā* gathered to support them and be involved in *Jihād* against the two invaders. Hence, the enemies were invaders and non-Muslims.

On the other hand, the picture of Faraj's presentation was different as his call for *Jihād* was against Muslim rulers, and all Muslim jurists agreed that Muslims do not have the right to revolt against just rulers. On the other hand the majority of Muslim scholars agreed that Muslims do not have the right to revolt against oppressive rulers unless they have enough power to revolt successfully as mentioned and also the call was not supported by the prominent scholars, on the contrary sheikh Jād al-Ḥaqq discussed and cancelled out most of Faraj's views.

CONCLUSION

This chapter shows that at the end of the eighteenth and beginning of the nineteenth century Muslim countries became exposed to a new confrontation with Europe. The result of this confrontation was that millions of the Muslim found themselves under the direct control of European colonial occupation. To face such new colonization and to revolt against Western domination we saw that a new application of *Jihād* has been applied; *Jihād* along with the resistance among the Muslim population to Western colonialism such as the revolt in Egypt to the occupation of France and Britain was continuous as been mentioned.

353

This chapter also demonstrates that the application of *Jihād* could play an essential role in anti-Western colonial resistance in the Islamic world as this doctrine was the main principle which motivated the Egyptians to resist and revolt against French and British invaders.

Muslim scholars played an important role in anti-colonial resistance in clarifying the importance and justification of *Jihād* against non-Muslim invaders and then to achieve a practical way of mobilizing Muslims to become involved in *Jihād* in order to free their countries from Western domination. Thus, they became the main factor in developing opposition movements to European colonialism.

The application of *Jihād* was not the main aim of some movements such as the 'Urābī's revolt, but when his political position was highlighted and political events developed, the doctrine of *Jihād* offered the best ideology to mobilize the people against the British invaders.

This chapter also clarified that while earlier *Jihād* was mainly against non-Muslims external enemies, we found that during the present time the picture was changed by some Muslim groups such as al-*Jihād* who held that *Jihād* should be declared against rulers who rule Muslim countries who in their view are apostate. So, in other words *Jihād* should be declared and applied inside the Islamic states to re-establish the caliphate. The main reason why the al-*Jihād* group condemned the rulers of Islamic countries as apostates was because they deemed that the laws which rule Muslims at the present time are infidel laws and they will not be removed except by force.

In response to the main view of al-*Jihād* group we saw that sheikh Jādd al-Ḥaq said that if the Muslim ruler applied man-made law in certain matters like interest he will not be a *kāfir* as he believes in the *Sharīʿh* and a Muslim who commits major sins remains a Muslim sinner and not an unbeliever.

On the other hand, while al-*Jihād* group according to Faraj's view considered the rulers of Muslim countries are apostates and urged Muslims to revolt against them, they did not apply the same concept of apostate upon all Muslim citizens.

By the end of chapter six the subject of this thesis which is the concept of *Jihād* in classical fiqh and modern Islamic thought will have been discussed and clarified. The next chapter will be the conclusion of this subject and the most important finding of this thesis will be summarised.

NOTES TO CHAPTER SIX

1.Peters. Rudolph. p 39.

2.Lewis. Bernard. Islam and the West, pp 21-22.

3.Mansfield, Peter. Nasser's Egypt. Penguin Books. England. 1965. p 16.

4.Ibid. p 16.

-Stevens. Georgiana. Egypt Yesterday and Today, Holt. Rinehart and Winston, Inc, New York. 1963, p 61.

5.Marlowe. John. Anglo-Egyptian Relations 1800-1953. The Cresset Press. London. 1954, p 13.

6.Ibid. p 14.

7.Wendell. Charles. The Evolution of the Egyptian National Image from its Origins to Ahmad Lutfi al-Sayyid, University of California Press. Berkeley Los Angeles London. 1972. pp 85-89.

8.Marlowe. John. Anglo-Egyptian Relations 1800-1953. p 14.

9.Wendell. Charles. The Evolution of the Egyptian National Image from its Origins to Ahmad Lutfi al-Sayyid. p 94.

10.Ibid. p 101.

11.Anīs. Muhammad and Harraz. Rajab. Thawart 23 July 1952 wa Usuluha al-Tārīkhiyih. Dār al-Nahda al-'Arabiyya. Cairo. 1969. pp 34-37.

12.Wendell. Charles. The Evolution of the Egyptian National Image from its Origins to Ahmad Lutfi al-Sayyid. p 100.

13.Marlowe. John. Anglo-Egyptian Relations 1800-1953. p 17.

14. Anes. Muhammad and Haraz. Rajab. Thawart 23 July 1952 wa Oswlwhā al-Tārykhyah. pp 36-37.

15.Ahmed. Jamal Mohammed. The Intellectual Origins of Egyptian Nationalism. Oxford University Press. London. 1960, p 3.

16.Marlowe, John, Anglo-Egyptian Relations 1800-1953, pp 18-19.

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a weak not a fabricated ḥadith.

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CHAPTER SEVEN

CONCLUSION

Our discussion concerning the subject of *Jihād* leads to the following conclusions:

1- Aims of *Jihād*. The classical Islamic schools of *fiqh* defined the term *Jihād* as mainly the fighting of unbelievers by Muslims in the cause of Allah and for raising the word of Allah. This is the main definition of the four schools of the classical *fiqh*. From their definition it is clear that they attached two important conditions for any fight to be consider as *Jihād*. First, it must be in the cause of Allah and not for expansionism or for the taking of spoils. The term 'in the cause of Allah' is a comprehensive concept and means that *Jihād* must be free of any private or individual interest. Secondly, it should be against non-Muslims. So when Allah mentioned the fight between Muslims He did not call for *Jihād*, but action against rebels "If two parties among the believers fall into a fight, make ye peace between them, but if one of them transgresses beyond bounds against the other, then fight ye (all) against the one that transgresses until it complies with the command of Allah; but if it complies, then make peace between them with justice, and be fair: for Allah loves those who are fair (and just)" (H.Q.S49. A9).

The classical jurists (*fuqahā*) held that the main aim of *Jihād* is to propagate Islam and to enable the Islamic *Shari h* to be applied to the whole world. The classical *fuqahā* on the other hand deemed that the defence of an Islamic state is a form of *Jihād*, but according to them, it is not the fundamental aim of *Jihād*. Nevertheless, the key change to the doctrine of *Jihād* by the modernists is that, *Jihād* solely as a defensive means of warfare began to appear at the end of the nineteenth century. They believed that the main aim of *Jihād* is for the defence of the Islamic state and that the wars of the Prophet were all for this purpose. This view was used by the modernists for the reformation of Islamic principles and for the defence of Islam against attack from Western writers. This reformulation of Islamic principles led them to reject the view of

363

classical Muslim *fuqahā* and claimed for themselves the right to reinterpret the main sources of Islam, the Qurān and the Sunna.

Jihād is regarded by the majority of the classical Muslim *fuqahā* as a collective duty to propagate Islam. This view is still supported by those Islamists who continue to hold the same views. Modernist scholars on the other hand rejected this as the main aim of *Jihād*. In their view, it is not the use of force outside the Islamic state but the defence of Muslims within their land that is its purpose.

2- Fight against Rebels and Apostates. When the *fuqahā* discussed the fight against rebels they used the following verse as a base on which they established their argument "If two parties among the believers fall into a fight, make ye peace between them, but if one of them transgresses beyond bounds against the other, then fight ye (all) against the one that transgresses until it complies with the command of Allah; but if it complies, then make peace between them with justice, and be fair: for Allah loves those who are fair (and just)" (H.Q.S49. A9). Thus, when al-Māwardī discussed the fight against the rebels he also mentioned the previous verse and said regarding the fight against the transgressor, this means fighting with the sword in order to suppress the rebellion and to prevent any opposition[i]. He did not consider such fighting as *Jihād*.

This thesis clarifies that classical Muslim jurists considered the fight against disbelieving and apostate rulers who rule Muslim countries as *Jihād*. On the other hand they outlawed a fight against a just Muslim ruler.

The Muslim *Umma* may find itself under the rule of an unjust ruler, in this case the *Umma* do not have the right to fight against this ruler unless they have enough power to do so and the use of force will not lead to (*fitna*), blood baths or civil war within the Islamic state.

Muslim jurists agreed that any Muslim group which rejects one of the five pillars of Islam will be considered as apostates and the Muslim authority has the right to use *Jihād* against this group, as did the First Rightly Guided Caliph.

It was found that apostasy, may have two forms: 1- A personal apostate in which any Muslim or group of Muslims who reject Islam for another religion but do not have power and continue to live under the authority of the Islamic state; In this case Muslim jurists advise the *Imām* to negotiate with them and try to persuade them to return to Islam. If they refuse then the *Imām*, according to the majority of Muslim jurists, is obliged to kill them. 2- The second form is that of Muslims who renounce Islam for another religion and have the numbers and power to challenge and defy the Islamic authority, in such cases Muslim jurists advise the *Imām* to negotiate their return to Islam, and if they refuse, then he is obliged to fight them.

However, this type of *Jihād* did not appear during the life of the Prophet but during the period of the first caliph Abu Bakr. The use of *Jihād* by the first caliph against the apostates is based on very strong evidence from both the Qurān and the Sunna such as "If anyone desires a religion other than Islam never will be accepted of him ..." (H.Q.S3. A85). The Prophet is reported to have said "Whoever changes his religion (Islam) kill him".

This thesis clarified that rebellion is defined as dissidence against the rightful authority of the Muslim leader without the right and with power. Muslim jurists advise the *Imām* to try to persuade them to abandon their rebellion and return to subjection of the *Imām*. If they refuse then the Muslim leader has the right to fight them until they conform to Muslim authority. On the other hand if dissident groups or rebels who are without power and who do not renounce the authority of the *Imām*, then they are not to be fought.

The fight against the rebels did not appear during the life of the Prophet but during the time of the fourth caliph ʿAlī. Moreover, the fight against rebels is not *Jihād* as they are still Muslim and the main reason for fighting them is to curb the rebellion and not to kill them. On the other hand, if the rebels hold the same views of the Khawārij in that they are the only true Muslims and all

other Muslims are unbelievers, they are applying the Qurān but not following the Sunna. They consider the lives and wealth of Muslims as lawful and as a result believe that *Jihād* should be waged against Muslims who do not follow their faith. So the fight against any rebels who hold the same views of the Khawārij is *Jihād* because the caliph 'Alī consider it so and as did some of the prominent Muslim scholars such as Ibn Taymiya.

This thesis shows the relationship of the views between the Khawārij and the *al-Takfīr wal-Hijra* groups. They both held that the land of Islam became the land of unbelievers, that any Muslim who commits a major sin is a non-believer, and that they are the only true Muslims. Any Muslim who does not join their group would be considered a non-Muslim. The appearance of *al-Takfīr wal-Hijra* towards the end of the twentieth century draws support to Ibn Taymiya's view which is drawn from his interpretation of the Prophet's tradition. The views of the Khawārij which first appeared during the period of the Fourth Rightly Guided Caliph, 'Alī, will continue to appear within Muslim society until the appearance of the False Messiah.

This thesis shows that when Ibn Taymiya issued his *fatwā* which was the compulsory use of *Jihād* against the Tartars who claimed that they were Muslims he based his *fatwā* on a comprehensive and comparative study. He scrutinized their practice and found that the majority of their army did not perform prayers, or pay *Zakāt*, some of them favoured the Jewish or Christian religion and the main reason for their fight was to conquer. They believed that their king was a son of Allah, and they did not govern by the Shari'h but according to their laws which did not agree with Islam in all cases. Ibn Taymiya then compared them with the apostates and the Khawārij therefore issued his *fatwā*.

3- **General Issues of** *Jihād*. The Qurān which is the word of Allah and the Sunna which contains all the sayings, deeds and actions or silent approval of the Prophet are the most important primary sources of Islamic law which governs *Jihād*..

Jihād in the cause of Allah has many forms such as: 1-The defence of the Islamic state. 2-The self-defence and defence of the Muslim individual. 3-The defence of Muslim land. 4-The

defence of Muslim wealth. 5-Attacking the enemy who is preparing to attack the Muslim state. 6-The propagation of Islam. 7-The fight against apostasy. 8-The defence of *Ahl al-Dhimmah*. 9-The broken treaties from non-Muslims. 10-The fight against the Khawārij.

This study shows that there is not a big difference between the words *Jihād* and *Qitāl* as they were used with the same meaning in the Qurān, *Jihād* in the cause of Allah and to raise the word of Allah high. At the same time, while the word *ḥarb* refers to the aim of fighting itself and was used by the different nations before Islam we saw on the other hand that the word *Jihād* used by Muslims only, as *Jihād* in Islam has only one aim which must be in the cause of Allah.

The declaration of *Jihād* is one of the responsibilities of the head of the Islamic state. No one of the *Umma* hold this authority. However, if the Islamic state is attacked by unbelievers it is the duty of every believer to protect himself and his country without waiting for authorisation from the *Imām*. Moreover, in event of the death of the head of the Islamic state, Muslims are obliged to continue their *Jihād* until a successor is appointed.

According to classical Muslim jurists, the legal qualification of military *Jihād* is the collective duty (*fard kifāya*) of the whole Muslim *Umma* with which to propagate Islam. This obligation is fulfilled when a sufficient number of Muslims perform it. This can become the personal obligation of every able Muslim such as in the event of the Islamic state or part of it coming under attack by the forces of unbelievers.

Classical Muslim jurists established the law of warfare which governs the different aspects of *Jihād*. This law was entirely independent and did not borrow any principles from previous laws or systems but was based on their interpretation of the Qurān and the Sunna. Moreover, in some cases, classical Muslim jurists have different views on particular matters; the reason for such differences arose from seeking a correct legal opinion. These differences were found to be also possible on subsidiary matters such as the treatment of prisoners of war and the period of a treaty between Muslims and non-Muslims.

This thesis demonstrates that in Makkah the Prophet did not allow his followers to apply *Jihād* against the oppression and barbarism of the Quraish. When he emigrated to Medinah Muslims were allowed by revelation for the first time to use *Jihād* against unbelievers. So *Jihād* as a collective duty was not applied by the Prophet until two conditions were fulfilled, first the establishment of the first Islamic state in Medinah and second the foundation of the head of this state who was the Prophet himself.

This thesis shows the agreement between earlier and contemporary scholars on the definition of the term *Jihād* which is "to make every effort". Contemporary scholars re-developed the old term into modern shape such as the educational *Jihād* which means the development of Islamic values, teaching and training of Muslims within Muslim society. Moreover, some contemporary thinkers give the term *Jihād* a wider and a more comprehensive concept when they mention that any work which benefits the Muslim society and is against corruption is a type of *Jihād*.

Earlier Muslim jurists agreed that a Muslim state can conclude a peace treaty with a non-Muslim state on condition that it must be for a limited period of time. Contemporary scholars hold the same view but made an important addition in that such a state could conclude a peace treaty with a non-Muslim state without time limits.

Both earlier and contemporary Muslim scholars agree that Muslim leaders have to treat well non-Muslim prisoners of war whilst in captivity. Earlier scholars mentioned that the *Imām* has the right to follow one of the following options with non-Muslim prisoners: He may kill, release with or without ransom, exchange them for Muslim prisoners or enslave them. Contemporary Muslim scholars on the other hand hold a different view; that the leader of the Islamic state may choose one of three options: To release them on payment of ransom, to set them free without ransom or to release them in exchange for Muslim prisoners in enemy captivity

4- **Forms of** *Jihād*. This thesis concludes that while the spiritual act which involves fighting one's evil and decay is a form of *Jihād*, it is not a greater *Jihād*, as the greater one is the fight for the cause of Allah against unbelievers by use of military power.

Jihād has many forms, such as tongue, hand, and heart. The teaching and training of Muslims in a Muslim society could be classified as an educational *Jihād*. The care of the family could also be given the title of family *Jihād*. However, when the term *Jihād* is used without qualification it means a military *Jihād* in the cause of Allah.

5- Contemporary Applications of *Jihād*. At the end of the eighteenth and beginning of the nineteenth century Muslim countries found themselves under the direct control of European colonial administration. To face this colonization Muslims used *Jihād* to resist this aggression such as the revolt by the Egyptians against the French and British occupation.

The *'ulamā* played an essential role for mobilizing the people in both resistance against the French and the British occupation. The response of the Egyptians to the call of the *'ulama* was very strong which means that the *'ulamā* is a major factor in mobilizing Muslims to apply *Jihād*.

This study clarified that the application of *Jihād* by the Egyptians against the French and English occupations confirmed that *Jihād* is not necessarily a conflict between Muslim and non-Muslim states but also between individual Muslims and non-Muslim state.

The use of *Jihād* to establish the Islamic state at the present time by the al-*Jihād* group according to their thinker Abd al-Salām Faraj, is based on the argument that the rulers of Islamic countries are apostate and the laws which rule Muslims are infidel laws and therefore the only way to change those rulers and re-establish the Islamic caliphate is the use of *Jihād* by Muslims against their rulers.

In the past Muslim jurists concentrated on the use of *Jihād* against non-Muslims as *Jihād* was mainly against non-Muslim external enemies. During the present time we find that some Muslim groups believe that *Jihād* should be declared against rulers who rule Muslim countries and who, in their view, are apostate. So *Jihād*, according to them should be applied inside the Islamic countries to overthrow their rulers and to re-establish the caliphate. This view led

prominent jurists such as sheikh Jādd al-Haq, Bin Bāz and al-Butī to concentrate on these views and disprove the evidence which these groups have based their argument.

The reaction of contemporary scholars such as sheikh Bin Bāz to the previous view is a clear sign of the heated argument between the two sides. He said that the revolt against Muslim rulers is not allowed except when the ruler declares a manifest *Kufr* such as; if he considers the drinking of wine and adultery as lawful. In this case he will be a *kāfir* and the *Umma* are obliged to revolt, on condition that they have enough power and this revolt does not lead to *fitna*. The notable point of sheikh Bin Bāz's answer is that, even if he deemed such a ruler as a *kāfir* he does not allow the use of force to overthrow him except if the *Umma* has enough forces and also that the use of this force will not lead the *Umma* to *fitna*. However, while Faraj condemned the state as a non-Muslim state and urged Muslims in general and his group in particular to declare *Jihād* against those states he, on the other hand, did not consider the society as non-Muslim.

This leads us to say, that not one member of the *Umma* can state that the ruler of his country is apostate as this judgement could lead the Muslim societies to disaster. At the same time prominent scholars are the only persons who can consider Muslim rulers as apostate in accordance with his ability to use the main sources of Islam and ask the *Umma* to apply a revolt and use *Jihād* against these rulers.

6- The Contribution of this Thesis. This thesis established a criterion regarding the concept of *Jihād* in the cause of Allah. This criterion is based mostly on the study of the main reasons for the battles of the Prophet Muhammad, as he is the "second legislator" of the Islamic law. This criterion has not been previously discussed by either the earlier or contemporary Muslim scholars. In particular this comparison study between earlier and contemporary scholars deals with such important issues of *Jihād* as, the definition, the qualification and the purpose of *Jihād*; the fundamental relations between Islamic and non-Islamic state; the treatment of prisoners of war, has helped us to understand the similarities and the differences between both sides which is also an important contribution to this thesis.

A second important contribution to the study of the concept of *Jihād* is the systematic comparison between the classical *Fiqh* and contemporary Muslim scholars and activists subrisingly, perhaps, such a systematic comparison has never been previously under taken.

7- Suggestions for Further Research. Finally the researcher tried in this thesis to clarify the subject of *Jihād* according to earlier and comparative views from both Muslim and non-Muslim jurists. However, it may be proposed that for the purpose of understanding further the different aspects of *Jihād*, expanded studies could be undertaken. For instance, a comparative study between the views of the Sunnī and the Shiʿī regarding *Jihād* could be made the subject of a thesis. The deep study of some of the modern Islamic movements such as the al-Jihād group could also form a thesis. Such studies would indeed help to give wider knowledge of the subject of *Jihād* and its application in Islamic law.

A study of the practice of *Jihād* throughout history could be made. At present the history of Islamic warfare is very patchy, for example after the various studies made of the battles of the Prophet and the early Caliphs there is a major gap in the study of Islamic warfare until we came to the period of Saladin, thereafter there are numerous gaps until the extensive study of warfare as practised by the Ottoman state. None of these earlier warfares have been linked with the practice of *Jihād* in the modern world whether in the form of armed struggle against imperialist rule or against alleged apostate rulers.

"Al- Māwardī, al-ḥkām al-Sultaniyya, pp 74-75.

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374

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