

The Legacy of Jihad

Islamic Holy War and the Fate of Non-Muslims

Edited by Andrew G. Bostom, MD

Foreword by Ibn Warraq



Prometheus Books

59 John Glenn Drive
Amherst, New York 14228-2197

THE LAW OF WAR: THE JIHAD

Majid Khadduri

INTRODUCTION

“Had thy Lord pleased, He would have made mankind one nation; but those only to whom thy Lord hath granted his mercy will cease to differ . . .”

—Qur’an 11.120

The state which is regarded as the instrument for universalizing a certain religion must perforce be an ever expanding state. The Islamic state, whose principal function was to put God’s law into practice, sought to establish Islam as the dominant reigning ideology over the entire world. It refused to recognize the coexistence of non-Muslim communities, except perhaps as subordinate entities, because by its very nature a universal state tolerates the existence of no other state than itself. Although it was not a consciously formulated policy, Muhammad’s early successors, after Islam became supreme in Arabia, were determined to embark on a ceaseless war of conquest in the name of Islam. The jihād was therefore employed as an instrument for both the universalization of religion and the establishment of an imperial world state.¹ The mission of Islam was rapidly and successfully carried out during the first century of the Islamic era—although the peaceful penetration of Islam continued—and the empire extended over a large portion of the Old World and became as large as the Roman Empire.

But the expanding Muslim state, not unlike other universal states, could not extend ad infinitum. The hitherto victorious Muslim warriors were defeated in the West at Tours (A.D. 732) and in the East found they could not proceed further than the Indian borders.² Thus the wave of Muslim expansion, strong as it was, could

Majid Khadduri, “Introduction” and “The Doctrine of Jihad,” in *War and Peace in the Law of Islam, Book 2: The Law of War: The Jihad* (Baltimore: Johns Hopkins University Press, 1955), pp. 49–73.

not complete the Sun's circle; it imperceptibly subsided where it reached its utmost limits at the Pyrenees and the Indus.³ The Muslim (world) state consequently did not correspond to the then known world. Outside it there remained communities which the Muslim authorities had to deal with, though in theory only temporarily, throughout all the subsequent history of Islam.

The world accordingly was sharply divided in Muslim law into the *dār al-Islām* (abode or territory of Islam) and the *dār al-harb* (abode or territory of war). These terms may be rendered in less poetic words as the "world of Islam" and the "world of War." The first corresponded to the territory under Muslim rule. Its inhabitants were Muslims, by birth or conversion, and the communities of the tolerated religions (the *dhimmis*) who preferred to hold fast to their own cult, at the price of paying the *jizya* (poll tax). The Muslims enjoyed full rights of citizenship; the subjects of the tolerated religions enjoyed only partial rights, and submitted to Muslim rule in accordance with special charters regulating their relations with the Muslims.⁴ The *dār al-harb* consisted of all the states and communities outside the world of Islam. Its inhabitants were often called infidels, or, better, unbelievers.⁵

On the assumption that the ultimate aim of Islam was worldwide, the *dār al-Islām* was always, in theory, at war with the *dār al-harb*. The Muslims were required to preach Islam by persuasion, and the caliph or his commanders in the field to offer Islam as an alternative to paying the poll tax or fighting; but the Islamic state was under legal obligation to enforce Islamic law and to recognize no authority other than its own, superseding other authorities even when non-Muslim communities had willingly accepted the faith of Islam without fighting. Failure by non-Muslims to accept Islam or pay the poll tax made it incumbent on the Muslim State to declare a *jihād* (commonly called "holy war") upon the recalcitrant individuals and communities. Thus the *jihād*, reflecting the normal war relations existing between Muslims and non-Muslims, was the state's instrument for transforming the *dār al-harb* into the *dar al-Islām*. It was the product of a warlike people who had embarked on a large-scale movement of expansion. Islam could not abolish the warlike character of the Arabs who were constantly at war with each other;⁶ it indeed reaffirmed the war basis of intergroup relationship by institutionalizing war as part of the Muslim legal system and made use of it by transforming war into a holy war designed to be ceaselessly declared against those who failed to become Muslims. The short intervals which are not war—and these in theory should not exceed ten years—are periods of peace.⁷ But the *jihād* was not the only legal means of dealing with non-Muslims since peaceful methods (negotiations, arbitration, and treaty making) were applied in regulating the relations of the believers with unbelievers when actual fighting ceased.

The Muslim law of nations was, accordingly, the product of the intercourse of an ever-expanding state with its neighbors which inevitably led to the development of a body of rules and practices followed by Muslims in war and peace. The practices followed by the Arabs before Islam in their intertribal warfare were

regarded as too ungodly and brutal, because they were motivated by narrow tribal interests. Islam abolished all war except the jihād and the jurist-theologians consciously formulated its law subordinating all personal considerations to ration d'état, based on religious sanction.

THE DOCTRINE OF JIHĀD

"Every nation has its monasticism, and the monasticism of this [Muslim] nation is the jihād." —a hadīth.

The Meaning of Jihād

The term jihād is derived from the verb jāhada (abstract noun, juhūd) which means "exerted";⁸ its juridical-theological meaning is exertion of one's power in Allah's path, that is, the spread of the belief in Allah and in making His word supreme over this world. The individual's recompense would be the achievement of salvation, since the jihād is Allah's direct way to paradise. This definition is based on a Qur'ānic injunction which runs as follows:

O ye who believe! Shall I guide you to a gainful trade which will save you from painful punishment? Believe in Allah and His Apostle and carry on warfare (jihād) in the path of Allah with your possessions and your persons. That is better for you. If ye have knowledge, He will forgive your sins, and will place you in the Gardens beneath which the streams flow, and in fine houses in the Gardens of Eden: that is the great gain.⁹

The jihād, in the broad sense of exertion, does not necessarily mean war or fighting, since exertion in Allah's path may be achieved by peaceful as well as violent means. The jihād may be regarded as a form of religious propaganda that can be carried on by persuasion or by the sword. In the early Makkan revelations, the emphasis was in the main on persuasion. Muhammad, in the discharge of his prophetic functions, seemed to have been satisfied by warning his people against idolatry and inviting them to worship Allah. This is evidenced by such a verse as the following: "He who exerts himself (jāhada), exerts only for his own soul,"¹⁰ which expresses the jihād in terms of the salvation of the soul rather than a struggle for proselytization.¹¹ In the Madīnan revelations, the jihād is often expressed in terms of strife, and there is no doubt that in certain verses the conception of jihād is synonymous with the words war and fighting.¹²

The jurists, however, have distinguished four different ways in which the believer may fulfill his jihād obligation: by his heart; his tongue; his hands; and by the sword.¹³ The first is concerned with combating the devil and in the attempt to escape his persuasion to evil. This type of jihād, so significant in the eyes of the

Prophet Muhammad, was regarded as the greater jihād.¹⁴ The second and third are mainly fulfilled in supporting the right and correcting the wrong. The fourth is precisely equivalent to the meaning of war, and is concerned with fighting the unbelievers and the enemies of the faith.¹⁵ The believers are under the obligation of sacrificing their “wealth and lives” (Q. 61.11) in the prosecution of war.¹⁶

The Jihād as Bellum Justum

War is considered as just whether commenced and prosecuted in accordance with the necessary formalities required under a certain system of law, or waged for justifiable reasons in accordance with the tenets of the religion or the mores of a certain society. In Islam, as in ancient Rome, both of these concepts were included in their doctrine of the *bellum justum* since a justifiable reason as well as the formalities for prosecuting the war were necessary. In both Islam and ancient Rome, not only was war to be *justum*, but also to be *pium*, that is, in accordance with the sanction of religion and the implied commands of gods.¹⁷

The idea that wars, when institutionalized as part of the mores of society, are just may be traced back to antiquity. It was implied in the concept of vendetta as an act of retaliation by one group against another. In the *Politics*, Aristotle refers to certain wars as just by nature.¹⁸ The Romans instituted the *jus fetiale*, administered by a *collegium fetialium* (consisting of twenty members, presided over by *magister fetialium*), embodying the proper rules of waging war in order to be just.¹⁹ In medieval Christendom, both St. Augustine and Isidore de Seville were influenced in their theory of just war by Cicero. St. Thomas Aquinas, who was acquainted with Muslim writings, formulated his theory of just war along lines similar to the Islamic doctrine of the jihād.²⁰ St. Thomas and other medieval writers influenced in their turn the natural law theories of the sixteenth, seventeenth, and eighteenth centuries. Grotius, the father of the modern law of nations, developed his system under the impact of the natural law theory of just war, and his ideas remained predominant until the end of the eighteenth century.²¹ Although the doctrine of war during the nineteenth century was by far less influenced by natural law than in previous centuries, the concept of just war reappeared after the First World War in the form of a doctrine of outlawing war, save that against an aggressor.

Recurring as a pattern in the development of the concept of war from antiquity, it assumed in Islam a special position in its jural order because law and religion formed a unity; the law prescribed the way to achieve religious (or divine) purposes, and religion provided a sanction for the law.

In Muslim legal theory, Islam and shirk (associating other gods with Allah) cannot exist together in this world; it is the duty of the imām as well as every believer not only to see that God’s word shall be supreme, but also that no infidel shall deny God or be ungrateful for His favors (*ni’am*).²² This world would ulti-

mately be reserved for believers;²³ as to unbelievers, “their abode is hell, and evil is the destination.”²⁴ The jihād, in other words, is a sanction against polytheism and must be suffered by all non-Muslims who reject Islam, or, in the case of the *dhimmis* (Scripturaries), refuse to pay the poll tax. The jihād, therefore, may be defined as the litigation between Islam and polytheism; it is also a form of punishment to be inflicted upon Islam’s enemies and the renegades from the faith.²⁵ Thus in Islam, as in Western Christendom, the jihād is the *bellum justum*.²⁶

In Islam, however, the jihād is no less employed for punishing polytheists than for *raison d’état*. For inherent in the state’s action in waging a jihād is the establishment of Muslim sovereignty, since the supremacy of God’s word carries necessarily with it God’s political authority. This seems to be the reason why the jihād, important as it is, is not included—except in the Khārijī legal theory—among the five pillars of Islam. The reason is that the five pillars are not necessarily to be enforced by the state; they must be observed by the individuals regardless of the sanction of authority. The jihād, in order to achieve *raison d’état*, must, however, be enforced by the state. In the technical language the five pillars—the basic articles of the faith—are regarded as individual duties (*fard ‘ayn*), like prayer or fasting, which each believer must individually perform and each is held liable to punishment if he failed to perform the duty. The jihād, on the other hand—unless the Muslim community is subjected to a sudden attack and therefore all believers, including women and children, are under the obligation to fight—is regarded by all jurists, with almost no exception, as a collective obligation of the whole Muslim community.²⁷ It is regarded as *fard al-kifāya*, binding on the Muslims as a collective group, not individually. If the duty is fulfilled by a part of the community it ceases to be obligatory on others; the whole community, however, falls into error if the duty is not performed at all.²⁸

The imposition of the jihād duty on the community rather than on the individual is very significant and involved at least two important implications. In the first place, it meant that the duty need not necessarily be fulfilled by all the believers. For the recruitment of all the believers as warriors was neither possible nor advisable.²⁹ Some of the believers were needed to prepare food and weapons, while the crippled, blind, and sick would not qualify as fighters.³⁰ Women and children were as a rule excused from actual fighting, although many a woman contributed indirectly to the war effort.

In the second place, the imposition of the obligation on the community rather than on the individual made possible the employment of the jihād as a community and, consequently, a state instrument; its control accordingly, is a state, not an individual, responsibility. Thus the head of the state can in a more effective way serve the common interest of the community than if the matter is left entirely to the discretion of the individual believer. Compensation for the fulfillment of such an important public duty has been amply emphasized in both the authoritative sources of the creed³¹ and in formal utterances of public men.³² All of them give

lavish promises of martyrdom and eternal life in paradise immediately and without trial on resurrection and judgment day for those who die in Allah's path. Such martyrs are not washed but are buried where they fall on the battlefield, not in the usual type of grave, after washing in a mosque. It is true that a promise of paradise is given to every believer who performs the five basic duties, but none of them would enable him to gain paradise as surely as participation in the jihād.³³

The Jihād as Permanent War

War, however, was not introduced into Arabia by Islam. It was already in existence among the Arabs; but it was essentially a tribal war. Its nature was peculiar to the existing social order and its rules and procedure were thoroughly integrated as part of the sunna. Since the tribe (in certain instances the clan) was the basic political unit, wars took the form of raids; mainly for robbery or vendetta (*tha'r*). This state of affairs had, as observed by Ibn Khaldūn, developed among the Arabs a spirit of self-reliance, courage, and co-operation among the members of the single tribe.³⁴ But these very traits intensified the character of warfare and rivalry among the tribes and created a state of instability and unrest.

The importance of the jihād in Islam lay in shifting the focus of attention of the tribes from their intertribal warfare to the outside world; Islam outlawed all forms of war except the jihād, that is, the war in Allah's path. It would, indeed, have been very difficult for the Islamic state to survive had it not been for the doctrine of the jihād, replacing tribal raids, and directing that enormous energy of the tribes from an inevitable internal conflict to unite and fight against the outside world in the name of the new faith.

The jihād as such was not a casual phenomenon of violence; it was rather a product of complex factors while Islam worked out its jural-doctrinal character. Some writers have emphasized the economic changes within Arabia which produced dissatisfaction and unrest and inevitably led the Arabs to seek more fertile lands outside Arabia.³⁵ Yet 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. There were other factors which created in the minds of the Muslims a politico-religious mission and conditioned their attitude as a conquering nation.

To begin with, there is the universal element in Islam which made it the duty of every able-bodied Muslim to contribute to its spread. In this Islam combined elements from Judaism and Christianity to create something which was not in either: a divine nomocratic state on an imperialistic basis. Judaism was not a missionary religion, for the Jews were God's chosen people; a holy war was, accordingly, for the defense of their religion, not for its spread. Christianity on the other hand was a redemptive and, at the outset, a non-state religion. Even when it was

associated with politics, the Church and state remained apart. Islam was radically different from both. It combined the dualism of a universal religion and a universal state. It resorted to peaceful as well as violent means for achieving that ultimate objective. The universality of Islam provided a unifying element for all believers, within the world of Islam, and its defensive-offensive character produced a state of warfare permanently declared against the outside world, the world of war.

Thus the *jihād* may be regarded as Islam's instrument for carrying out its ultimate objective by turning all people into believers, if not in the prophethood of Muhammad (as in the case of the *dhimmis*), at least in the belief in God. The Prophet Muhammad is reported to have declared "some of my people will continue to fight victoriously for the sake of the truth until the last one of them will combat the anti-Christ."³⁶ Until that moment is reached the *jihād*, in one form or another, will remain as a permanent obligation upon the entire Muslim community. It follows that the existence of a *dār al-harb* is ultimately outlawed under the Islamic jural order; that the *dār al-Islām* is permanently under *jihād* obligation until the *dār al-harb* is reduced to nonexistence; and that any community which prefers to remain non-Islamic—in the status of a tolerated religious community accepting certain disabilities—must submit to Islamic rule and reside in the *dār al-Islām* or be bound as clients to the Muslim community. The universalism of Islam, in its all-embracing creed, is imposed on the believers as a continuous process of warfare, psychological and political if not strictly military.

Although the *jihād* was regarded as the permanent basis of Islam's relations with its neighbors, it did not at all mean continuous fighting. Not only could the obligation be performed by nonviolent means, but relations with the enemy did not necessarily mean an endless or constant violent conflict with him. The *jihād*, accordingly, may be stated as a doctrine of a permanent state of war, not a continuous fighting. Thus some of the jurists argued that the mere preparation for the *jihād* is a fulfillment of its obligation.³⁷ The state, however, must be prepared militarily not only to repel a sudden attack on Islam, but also to use its forces for offensive purposes when the caliph deems it necessary to do so.

In practice, however, the *jihād* underwent certain changes in its meaning to suit the changing circumstances of life. Islam often made peace with the enemy, not always on its own terms. Thus the jurists began to reinterpret the law with a view to justifying suspension of the *jihād*, even though temporarily. They seem to have agreed about the necessity of peace and the length of its duration.³⁸ When Muslim power began to decline, Muslim publicists seem to have tacitly admitted that in principle the *jihād* as a permanent war had become obsolete; it was no longer compatible with Muslim interests. The concept of the *jihād* as a state of war underwent certain changes. This change, as a matter of fact, did not imply abandonment of the *jihād* duty; it only meant the entry of the obligation into a period of suspension—it assumed a dormant status, from which the *imām* may

revive it at any time he deems necessary. In practice, however, the Muslims came to think of this as more of a normal condition of life than an active jihād.

The shift in the conception of the jihād from active to dormant war reflects a reaction on the part of the Muslims from further expansion. This coincided with the intellectual and philosophical revival of Islam at the turn of the fourth century of the Muslim era (tenth century A.D.), when the Muslims were probably more stirred by the controversy between orthodoxy and rationalism than by fighting Byzantine encroachments on the frontiers. To certain Muslim thinkers, like Ibn Khaldūn (d. 1406),³⁹ the relaxation of the jihād marked the change in the character of the nation from the warlike to the civilized stage. Thus the change in the concept of the jihād was not merely an apologia for weakness and failure to live up to a doctrine, but a process of evolution dictated by Islam's interests and social conditions.

The Shī'ī and Khārījī Doctrines of the Jihād

Generally speaking, the Shī'ī law of the jihād is not different from the Sunnī; but in linking the special duty of prosecuting the jihād with the doctrine of *walāya* (allegiance to the imām), the concept of jihād assumed in Shī'ism a special doctrinal significance.⁴⁰ In Shī'ī legal theory, not only would the failure of a non-Muslim to believe in Allah justify waging a jihād, but also the failure of a Muslim to obey the imām would make him liable for punishment by a jihād.⁴¹ While to a Sunnī the jihād is the sure way to Heaven, a jihād without an allegiance to the imām would not constitute an imān (a necessary requirement for salvation) in the Shī'ī creed.

The jihād is regarded as one of the chief functions of the imāmate, the performance of which would fulfill one of the requirements for the best (*afdal*) qualified person for this position. If the imām fails to fulfill the jihād obligation, he disqualifies his claim as the best candidate, according to the Zaydī creed.⁴² The imām, as an infallible ruler, is the only one who can judge when the jihād should be declared and under what circumstances it would be advisable not to go to war with the enemy. If the imām finds it necessary to come to terms with the enemy, he may do so; he may even deem it necessary to seek the support of non-Muslims (including polytheists) in order to avoid risking defeat by the enemy.⁴³ Under no circumstances, however, should the imām risk a jihād if he considers the enemy too powerful for him to win a victory, namely, if the enemy is at least twice as powerful as the Muslims.⁴⁴

The disappearance of the imām, however, has left the duty of declaring the jihād unfulfilled.⁴⁵ Opinion differed as to the capacity of the mujtahids to act in the name of the imām in fulfilling the jihād obligation; but since the duty of calling the believers to battle is a matter in which an infallible judgment is necessary—since the interest of the entire community would be at stake—only an imām

is capable of fulfilling such a duty. Further, it is deemed impossible to combat evil during the absence of the imām; the jihād, accordingly, is regarded unsequential. Thus in the Shī'ī legal theory, the jihād has entered into a dormant stage—it is in a state of suspension. In contrast to the Sunnī doctrine which requires the revival of the dormant jihād when Muslim power is regained, the resumption of the jihād in the Shī'ī doctrine would be dependent on the return of the imām from his *ghayba* (absence), in the capacity of a Mandī, who will triumphantly combat evil and re-establish justice and righteousness.⁴⁶

In contrast to the Shī'ī doctrine of the jihād, the Khārijīs maintain that the jihād is a fundamental article of the faith which could not possibly be abandoned or relaxed. To them the jihād is a sixth pillar of the faith, binding individually on every believer and on the community as a whole.⁴⁷ They also go as far as to enforce imān on all who do not accept their version of Islam, Muslims as well as non Muslims, by the jihād; for, they argue, that since the Prophet Muhammad had spent almost all his life in war, all true believers must also do so. Their strict belief in their religion and their fanaticism made them uncompromising in the fulfillment of their jihād duty. Thus their conception of the state was that of a garrison state; an ever-ready community, led by its imām, to wage war on the enemies of the faith. Even if the imām does not lead in war, the jihād is incumbent on each believer to fulfill by himself, for he falls in error if he fails to do so.

The Khārijīs' conception of the jihād, in contrast to the Sunnī doctrine is that of violence rather than strife or religious propaganda.⁴⁸ To them true belief is a matter of conviction which should be imposed on reluctant individuals, not a subject of debate and argumentation; for, if evil is to be exterminated and justice re-established, obstinate heretics must be either forced to believe or be killed by the sword. This is based on a hadīth in which the Prophet Muhammad is reported to have said: "My fate is under the shadow of my spear."⁴⁹

Strict and fanatical, the Khārijīs were as fierce and brutal in war as their desert life was austere and puritanical. The humane and moral aspect of religion made little impact on their tribal character. In war they killed women and children and condemned to death prisoners of war. Although these rules were not always followed, the extremist Khārijīs, such as the followers of Nāfi' ibn al-Azraq (A.H. 686), insisted that they should always be enforced.⁵⁰

The Jihād and Secular War

Islam, it will be recalled, abolished all kinds of warfare except the jihād. Only a war which has an ultimate religious purpose, that is, to enforce God's law or to check transgression against it, is a just war. No other form of fighting is permitted within or without the Muslim brotherhood.

Throughout the history of Islam, however, fighting between Muslim rulers and contending parties was as continuous as between Islam and its external ene-

mies. The *casus foederis* of a jihād was frequently invoked on the grounds of suppressing innovations and punishing the leaders of secession from the faith. Not infrequently the naked ambition of opposition leaders who resorted to war for the sake of a throne or high political offices was too apparent to be ignored. When the caliph's prestige and power declined, lack of respect for and opposition to the central authority became fashionable among local rulers. This state of affairs accentuated the struggle for power and created instability and anarchy in the world of Islam. Ignoring existing realities, the jurists continued to argue—following the example of al-Māwardī—that ultimate authority belonged to the caliph and that no one else had the right to renounce it even if the caliph proved to be unjust and oppressive, since tyranny, it was then contended, was preferable to anarchy⁵¹—a sad comment on existing conditions.

A few publicists, in their reflections on the state of affairs as they then existed, have said that wars, in forms other than the jihād, had often recurred in the Islamic society. Paying lip service to the jihād as a religious duty, they looked upon wars as dangers which Muslim rulers should avoid. Al-Tartūshī (died A.H. 520) described “war crises” as social anomalies⁵² and al-Hasan ibn ‘Abd-Allah compared them to diseases of society.⁵³ Both of these writers, who expatiated on the ways and means of conducting fighting, advised their rulers that the best way to win wars, if they found it impossible to avert them, was to be adequately prepared militarily. Thus Muslim publicists, like their Roman predecessors, seemed to have been convinced that *si vis pacem, para bellum* [If you wish (for) peace, prepare for war].

It was, perhaps, Ibn Khaldūn (A.D. 1332–1406) who for the first time recognized that wars were not, as his Muslim predecessors thought, casual social calamities. He maintained that war has existed in society ever since “Creation.” Its real cause, which accounts for its persistence in society, is man's will-to-revenge. Man, in other words, is by nature warlike. He is forever moved to fight either for his own selfish interests or by such emotional motives as jealousy, anger, or a feeling of divine guilt. Thus the members of one group or nation, in order to attain their objectives, combined against others and the inevitable result was war.

Wars, according to Ibn Khaldūn, are of four kinds. First is the tribal warfare, such as that which existed among the Arabian tribes; second, feuds and raids which are characteristic of primitive people; third, the wars prescribed by the sharī'a, i.e., the jihād; fourth, wars against rebels and dissenters. Ibn Khaldūn contends that the first two are unjustified, because they are wars of disobedience; the other two are just wars (*'adl*).

Ibn Khaldūn was not of the opinion, as Tartūshī contended, that victory could be attained by sheer military preparedness. He believed that there are always deeper causes for victory—more important than arms and armaments—which he called *al-asbāb al-khafīyya*, that is, the hidden causes. He does not mean, how-

ever, by *khafiyya* the morale of the army (although he regards this as absolutely necessary); but rather the application of certain skills and tactics which enable an army to attain victory, such as making use of certain highlands which helps to start an offensive, and deceiving tactics which tend to mislead the enemy.⁵⁴

It is to be noted that Muslim thinkers, from the rise of Islam to the time of Ibn Khaldūn, regarded secular wars as an evil to be avoided since they were inconsistent with God's law which prohibited all forms of war except those waged for religious purposes. A close examination of society taught Muslim thinkers that secular wars were not easily avoided by fallible human beings; peace within the Muslim brotherhood needed the inspiring influence of a Prophet or the prestige and power of an 'Umar I. When the caliphs departed from the sunna of the Prophet, holy wars were no longer the only kind of warfare waged; nor were they always devoid of secular purposes. A war, called *harb*, in distinction from a holy war (jihād), was looked upon as an unnatural phenomenon which befell society only because of man's carelessness and sins. Ibn 'Abd-Allah, it will be remembered, described wars as diseases; but Ibn Khaldūn thought that their frequency in society, arising from the very nature of man, makes their recurrence as permanent as social life itself. Ibn Khaldūn based his conclusions not only on his own personal observations on the state of constant warfare that existed among the petty Muslim states in North Africa, but also on the experiences of various nations with whose history he was acquainted. Ibn Khaldūn's observation, which shows keen insight in understanding human society, is corroborated by modern research, which has demonstrated that early societies tended to be more warlike and that peace was by no means the normal state of affairs.⁵⁵ As Sir Henry Maine stated, "It is not peace which was natural and primitive and old, but rather war. War appears to be as old as mankind, but peace is a modern invention."⁵⁶ Islam, unlike Christianity, sought to establish the Kingdom of Heaven on earth; but, like Christianity, could not produce that world brotherhood and God-fearing society which would live permanently in peace. War was as problematic to our forefathers as to ourselves; they sought earnestly to abolish it by the faiths they honored no less than we do by our own faith in the scientific approach.

NOTES

For clarification of any citations, the reader is referred to the original, Majid Khadduri, *War and Peace in the Law of Islam, Book 2: The Law of War: The Jihad* (Baltimore: Johns Hopkins University Press, 1955), pp. 49–73.

1. See the section "The Doctrine of Jihad."
2. The Muslims suffered another defeat before the battle of Tours at Constantinople (AD 717–718).
3. Edward Gibbon maintains that had the Muslims been successful at Tours the Qur'an would have been taught at Oxford and Cambridge instead of the Bible (*History of*

the *Decline and Fall of the Roman Empire*, ed. Bury [London, 1898], vol. 6, p. 15); but in fact the Muslim Empire, due to internal forces, reached its utmost limits.

4. See “Status of the Dhimmis,” in *War and Peace in the Law of Islam*, bk. 2, pp. 175–201.

5. For more precise definitions of *dār al-Islam* and *dār al-harb*, see pp. 155–57, 170–71, below.

6. “The primitive nomad of the desert and steppes,” says Quincy Wright, “has a hard environment to conquer. . . . His terrain, adapted to distant raids and without natural defenses, leads him to institutionalize war for aggression and defense” (*A Study of War* [Chicago, 1942], vol. 1, p. 64).

7. The idea that intergroup relationships were normally unpeaceful goes back to Antiquity (Plato, *The Laws*, bk. 1, 2) and it recurred in the writings of medieval and modern thinkers. See Ibn Khaldūn, *al-Muqaddima*, ed. Quatremère (Paris, 1858), vol. 2, pp. 65–79; Thomas Hobbes, *Leviathan*, chap. 13; *Elements of Law*, part 1, chap. 14, 2. See also Wright, *A Study of War*, vol. 1, chaps. 6 and 7.

8. For the literal meaning of *jihād*, see Fayrūzabādī, *Qāmūs al-Munīd* (Cairo, 1933), vol. 1, p. 286. For the Quarʿānic use of *jihād* in the sense of exertion see Q. 6.108, 22.77.

9. Q. 61.10–13. See also Jurjānī, *Kitāb al-Taʿrīfāt*, ed. Gustavus Fülgel (Leipzig, 1845), p. 84.

10. Q. 29.5.

11. See Shāfiʿī, *Kitāb al-Umm* (Cairo, 1321 H), vol. 4, pp. 84–85; ʿAbd al-Qāhir al-Baghādādi, *Kitāb Usūl al-Dīn* (Istanbul, 1928), vol. 1, p. 193; Shaybānī, *al-Siyar al-Kabīr*, with Sarakhsī’s commentary (Hyderabad, 1335 H), vol. 1, p. 126.

12. See Q. 2.215, 9.41, 49.15, 61.11, 66.9.

13. See Ibn Hazm, *Kitāb al-Fasl fī al-Mīlal waʾl-Ahwāʾ waʾl-Nihal* (Cairo, 1321 H), vol. 4, p. 135; Ibn Rushd, *Kitāb al-Muqaddimāt al-Mumahhidāt* (Cairo, 1325 H), vol. 1, p. 259; Buhūtī, *Kashshāf al-Qināʾ ʿAn Matn al-Ignāʾ* (Cairo, 1366 H), vol. 3, p. 28.

14. Ibn al-Humām, *Sharh Fath al-Qadīr* (Cairo, 1316 H), vol. 4, p. 277.

15. Ibn Hazm distinguishes between the *jihād* by the tongue and the *jihād* by *raʾy* and *tadbīr* (i.e., reason) and he maintains that the Prophet Muhammad showed preference for reason over the sword. Ibn Hazm, *Kitāb al-Fasl fī al-Mīlal waʾl-Ahwāʾ waʾl-Nihal*, vol. 4, p. 135.

16. Bukhārī, *Kitāb al-Jāmiʾ al-Sahīh*, ed. Krehl (Leiden, 1864), vol. 2, p. 199; Abū Dāʿūd, *Sunan* (Cairo, 1935), vol. 3, p. 5; Dārimī, *Sunan* (Damascus, 1349 H), vol. 2, p. 213.

17. See J. Von Elbe, “The Evolution of the Concept of the Just War in International Law,” *American Journal of International Law* 33 (1939): 665–88; and Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome* (London, 1911), vol. 2, p. 180.

18. Plato, *Politics*, bk. 1, chap. 8.

19. In the *Offices*, Cicero, who may be regarded as the representative legal philosopher of ancient Rome, has discussed the rules and formalities that constitute the *bellum justum*. See Cicero, *Offices, Essays and Letters* (Everyman’s ed.), bk. 1, sec. 11–12.

20. See A. P. D’Entreves, *Aquinas: Selected Political Writings* (Oxford, 1948) pp. 59–61; John Epstein, *The Catholic Tradition of the Law of Nations* (London, 1935); William Ballis, *The Legal Position of War: Changes in Its Practice and Theory* (The Hague, 1937), pp. 32–60.

21. Hugo Grotius, *De Jure Belli ac Pacis* (1625; repr., Oxford, 1925).

22. The Prophet Muhammad is reported to have said: "I am ordered to fight polytheists until they say: 'there is no god but Allah.'" The validity of the rule of fighting polytheists is also based on a Qur'ānic injunction, in which Allah said to His Apostle, as follows: "slay the polytheists wherever you may find them" (Q. 9.5). See also Tāj al-Dīn al-Subkī, *Kitāb Mu'īd al-Ni'am wa Mubīd al-Niqam*, ed. David W. Myhrman (London, 1908), p. 27.

23. The idea that Islam would ultimately replace other religions (except perhaps the tolerated religions) is not stated in the Qur'ān, but it is implied in the objective of the jihād and expressed in the hadīth. See n22, above.

24. Q. 9.74.

25. For the forms or types of jihād, see chap. 6 in Khadduri, *War and Peace in the Law of Islam*.

26. Bassam Tibi, in an essay included in this collection (p. 331), "War and Peace in Islam," from *The Ethics of War and Peace: Religious and Secular Perspectives*, ed. Terry Nardin (Princeton, NJ: Princeton University Press, 1996), rejects the assessment by Khadduri that jihad comports with the Western notion of bellum justum, citing Khadduri's own words, and stating:

I disagree, for example, with Khadduri's interpretation of the jihad as bellum justum. As Khadduri himself observes:

"The universality of Islam provided a unifying element for all believers, within the world of Islam, and its defensive-offensive character produced a state of warfare permanently declared against the outside world, the world of war. Thus jihad may be regarded as Islam's instrument for carrying out its ultimate objective by turning all people into believers."

According to the Western just war concept, just wars are limited to a single issue; they are not universal and permanent wars grounded on a religious worldview.

27. Sa'id ibn al-Musayyib said that the jihād duty is fard'ayn. Awzā'ī and Thawrī, however, advocated a defensive jihād (Shaybānī, *al-Siyar al-Kabār*, vol. 1, p. 125) and an extremely pacifist sect, known as the Māziyāriyya, dropped both the jihād against polytheists and fasting from the articles of faith. See 'Abd al-Qāhir al-Baghdādī, *Mukhtasar Kitāb al-Farq Bayn al-Firaq*, summarized by al-Ras'anī and ed. Hitti (Cairo, 1924), p. 163.

28. For a definition of this term, see Suyūṭī, *al-Ashbāh wa'l-Nazā'ir* (Cairo, 1938), pp. 496–503; Ibn Qudāma, *al-Mughnī*, ed. Rashīd Rida (Cairo, 1367 H), vol. 8, pp. 345–46; Ibn al-Humām, *Sharh Fath al-Qadīr*, p. 278.

29. Q. 9.123: "The believers must not march forth all to war."

30. Q. 24.60: "There is no blame on the blind man, nor on the lame, nor on the sick."

31. Q. 3.163: "Count not those who are killed in the path of Allah as dead; they are alive with their Lord." A woman complained to Muhammad about the death of her son in the battle of Badr, and then she asked whether her son went to hell or paradise, Muhammad replied: "Your son is in the higher Paradise" (Bukhārī, *Kitāb al-Jāmi' al-Sahīh*, vol. 2, p. 202.) Another hadīth runs as follows: "There are one hundred stages in Paradise that are provided by Allah for those who fight in His path" (ibid., p. 200). See also Ibn Hudhayl, *Tuhfat al-Anfus wa Shi'ar Sukkān al-Andalus*, ed. Louis Mercier (Paris, 1936), chaps. 10 and 20.

32. See a speech given by Caliph Abū Bakr to Syrian expedition in Tabarī, *Ta'rikh*, ed. de Goeje (Leiden, 1890), series 1, vol. 4, p. 1850.

33. Shaybānī, *al-Siyar al-Kabīr*, vol. 1, p. 20; and Herman Theodorus Obbink, *De Heilige Oorlog Volgen den Koran* (Leiden, 1901), pp. 110–11.

34. Ibn Khaldūn, *al-Muqaddima*, vol. 2, pp. 220–21.

35. The economic factors are discussed by Carl H. Becker in *The Cambridge Medieval History* (Cambridge, 1913), vol. 2, pp. 329 ff.; Henri Lammens, *Le Berceau de l'Islam* (Rome, 1914), vol. 1, pp. 114 ff.; the Semitic migratory theory is discussed in Prince Caetani, *Annali dell'Islam* (Milan, 1907), vol. 2, pp. 831–61.

36. Abū Dā'ūd, *Sunan*, vol. 3, p. 4.

37. Ibn Hudhayl, *Tuhfat al-Anfus wa Shi'ar Sukkān al-Andalus*, p. 18.

38. See chap. 13 in Khadduri, *War and Peace in the Law of Islam*.

39. Ibn Khaldūn, *al-Muqaddima*, vol. 1, pp. 309 ff.

40. For an exposition of the Shī'ī law of the jihād, see Tūsī, *Kitāb Masā'il al-Khilāf* (Tehran, 1370 H), vol. 2, pp. 196–99; and Qādī Nu'mān, *Da'ā'im al-Islām*, ed. Āsif ibn 'Alī Faydī (Fyzee) (Cairo, 1951), vol. 1, pp. 399–466. For a translation of the Shī'ī law of the jihād, see A. Querry, *Recueil de lois concernant les Musulmans Schyites* (Paris, 1881), vol. 1, pp. 321–53.

41. 'Abd-Allah ibn Muftāh, *Sharh al-Azhār* (Cairo, 1358 H), vol. 5, p. 525.

42. See R. Strothmann, *Das Staatsrecht de Zaiditen* (Strassburg, 1912), p. 61.

43. *Ibid.*, p. 105.

44. Qādī Nu'mān, *Da'ā'im al-Islām*, vol. 1, p. 434; Hillī, *Tabsirat al-Muta'allimīn fī Ahkām al-Dīn* (Damascus, 1342 H), p. 103; Strothmann, *Das Staatsrecht de Zaiditen*, p. 91.

45. This situation has not arisen among the Zaydis, since they technically elect their imāms.

46. For an exposition of the Shī'ī doctrine of Mahdism, see Dwight M. Donaldson, *The Shiite Religion* (London, 1933), chap. 21.

47. The Khārijīs do not actually add a sixth pillar to the already recognized five pillars of the Sunnis, because they substitute jihād for imān (which to them is synonymous with Islam) and thus the number of the pillars is not increased.

48. See note 27, above.

49. Bukhārī, *Kitāb al-Jāmi' al-Sahīh*, vol. 2, p. 227.

50. Shahrastānī, *Kitāb al-Milal wa'l-Nihal*, ed. Cureton (London, 1840), pp. 90, 93; and Ras'anī's *Mukhtasar*, pp. 73, 80, 97.

51. Badr al-Dīn Ibn Jamā'a, "Tahrīr al-Ahkām fī Tadbīr Ahl al-Islām," ed. H. Koeffler, *Islamica* 6 (1934): 365.

52. Tartūshī, *Sirā' al-Mulūk*, pp. 150–53.

53. Ibn 'Abd-Allah, who wrote his book in 708 H, gives seven reasons for the recurrence of war in society: First, for the establishment of a new state (dawla) or dynasty; second, for the consolidation of an already established state or dynasty; third, the wars of a just state (dawla 'ādila) against rebels and dissenters; fourth, wars between two nations or tribes in the form of raids; fifth, the annexation of one state by another, regardless of whether the latter was just or unjust; sixth, wars for the purpose of mere robbery, not for any political purpose; seventh, intertribal warfare as those existed in pre-Islamic Arabia. Al-Hasan ibn 'Abd-Allah, *Āthār al-Uwal fī Tartīb al-Duwal* (Cairo, 1295 H), pp. 167–68.

54. Ibn Khaldūn, *al-Muqaddima*, vol. 2, pp. 65–79.

55. Ibn Khaldūn is not the first thinker who said that warfare is the normal state in society, but he was the first Muslim thinker to say so. Plato (*The Laws*, bk. 1, 2) before him as well as others after in medieval and modern times have expressed similar ideas. Hobbes, in an often quoted statement, said: "Hereby it is manifest, that during the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war, as is of every man, against every man. For war, consisteth not in battle only, or the act of fighting; but in a tract of time, wherein the will to contend by battle is sufficiently known: and therefore the notion of time, is to be considered in the nature of war; as it is in the nature of weather. For as the nature of foul weather, lieth not in a shower or two of rain; but in an inclination thereto of many days together: so the nature of war consisteth not in actual fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary. All other time is peace." (Hobbes, *Leviathan*, chap. 13). See also Leo Strauss, *The Political Philosophy of Hobbes* (Oxford, 1936), pp. 160–63.

56. Sir Henry Maine, *International Law* (London, 1888), p. 8. See also Quincy Wright, *A Study of War*, vol. 1, chaps. 6 and 7, appendixes 6, 8, 9, and 10.