

THE ISLAMIC LEGAL POLITICS IN INTERNATIONAL RELATIONS

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Abstract

This paper (Sharia politics in Islamic international relations) deals with the nature of international relations in Islam. Islam established important international principles for this, including mercy, peace, justice, and respect for human dignity. The paper represents the belief of some that Islam was based on the edge of the sword, and that it legitimized the means of force to spread it. However, the reality confirms that Islam came with detailed rules that regulated the relationship of mankind with his Creator and the relationship between human beings. And that the nature of Islam requires understanding, persuasion, and explaining the content of the message to all people, and this nature is not compatible with the use of force of any kind. Accordingly, this paper has been divided into three main sections, first section deals with the organization of Islam for international relations, the second section, deals with war as an exception in international relations in Islam, and the third section deals with causes of war in Islam. The paper concludes several results, the most important of which is that the legal policy in international relations is based on combining two things, namely, adherence to the provisions and rules of Islamic law, while achieving the circumstantial interests of the Islamic state and benefiting from the experiences of relevant human societies, in a manner that does not contradict with Islamic law.

Keywords: War in Islam, Peace in Islam, International relations, international treaties, Methods of fighting, Motivation for war.

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Introduction

Human nature requires the establishment of relations between all nations, in order to build their ability to exist, whether politically, economically, or militarily...etc.

These relations are often concluded through treaties and agreements that aim to eliminate the threat of wars and their despairs. This is due to the lack of a solid policy for international dealings, which is often imbued with a spirit of interest as required by the parties contributing to the establishment of such policy.

Hence, the necessity requires finding a policy based on cooperation, brotherhood, and peace among all nations. However, it can be said that such policy cannot be found in man-made legislation; no matter how accurate it is, because it is not flexible and limited to reality. But to what extent can we talk about the existence of such a policy in Islamic law (*Shari'a*)?

The nature of Islam has a global human tendency that aims to find a just global entity to protect individuals, regardless of race and color. Islam has established important international principles for this, including mercy, peace, justice, equality, and respect for human dignity in various circumstances. All of which indicated that the origin and basis of international relations between all human beings is peace.¹

1. Preliminary: International relations before and after Islam

Without a doubt, there is a fundamental difference between these two stages of the development of international relations with regard to the first stage before the seventh century AD. Closing its borders and preventing any foreigner from entering it, and the tribe was in force in these groups, the path of blood in the body, and this in turn led to killing the spirit of cooperation between the human groups in those ages. There is no doubt that among these groups there are similarities in tribalism and tribalism, and the bond that unites its members is the bond of blood, and the members of these tribes and groups include the weak and slaves who resort to tribes that are not bound by blood or kinship.

As for the constitution of these groups or tribes, it is a collection of Bedouins and traditions that are formed in their life and rulings are issued by the sheikh of the tribe. Stemming from individuals, other tribes are considered enemies, and therefore the supreme constitution that binds these tribes is the constitution of permanent war between tribes, and history is full of examples of tribal conflicts before Islam, which occurred for the most trivial reasons, for example but not limited to, we find that (the war of *Al-Basus*) Which led to the destruction of two largest Arab tribes, and this war lasted more than forty years, and its cause was the killing of *Kulaib bin Rabi'ah* from the tribe of Tha'lab, who darted the camel of *Al-Basus*, so *Al-Basus* hired her nephew *Jassas*, and he killed *Kulaib*, then it was what was known a *Al-Basus* war.²

As for the seas, they were subject to the rule of pirates who seized ships and their cargo and killed their captains among other heinous crimes. Thus, the prominent feature in international relations before Islam was the permanent wars, social domination, the extension of power and the subjugation of others in international dealings until Islam came and eliminated all this and established justice. Between people, whether they are individuals or groups and countries.³

As for the course of international relations after the advent of Islam, it took a new curve based on brotherhood, cooperation and peace as the foundations of its foundation and a general principle that cannot be abandoned. And the basis for that is the Almighty's saying: "O humanity! Indeed, we created you from a male and a female, and made you into peoples and tribes so that you may get to know one another. Surely the most noble of you in the sight of Allah is the most righteous among you. Allah is truly All-Knowing, All-Aware". (*Al-hujurat: 13*)⁴

It is possible to deduce from this verse that all of humanity is of one origin, and that God's goal in making them into different tribes is to get to know one another and the basis of differentiation is piety in its broadest sense, as well as the fact that the discourse is inclusive for all people and that this

¹ - Dr. Muhammad Abu Zahra, *The Origins of International Relations in Islam*, Dar Al-Fikr Al-Arabi, Kuwait, 1964, p. 57.

² Dr. Ahmed Shalabi, *International Relations in Islamic Thought*, The Egyptian Renaissance Bookshop, Cairo, fifth edition, 1987, p. 21

³ Dr. Omar Ahmed Al-Farjani, *The Origins of International Relations in Islam*, first edition, 1984, the General Establishment for Publication and Advertising, Tripoli, p. 18

⁴ <https://quran.com/en/al-hujurat/13>

brotherhood is not based on love, peace and harmony between all groups and groups, and in the end and in the prohibition of killing in preserving human dignity, and thus it is likened to those who kill. This is based on the Almighty's saying: "That is why We ordained for the Children of Israel that whoever takes a life—unless as a punishment for murder or mischief in the land—it will be as if they killed all of humanity; and whoever saves a life, it will be as if they saved all of humanity".⁵

Thus, humankind is in dire need of returning to such a constitution at a time when genocide is known as a result of weapons of mass destruction in our contemporary time.

This is despite the efforts made by international humanitarian law to protect the victims of armed conflicts and place restrictions on the freedom of the warring parties to use weapons and equipment during the fighting. This applies in particular to weapons that hit indiscriminately, or those that cannot be controlled in terms of their effects on civilians and objects, or that are likely to cause useless suffering or unwarranted pain.

What indicates Islam's call to peace is that fighting does not take place except after three measures have been exhausted, which is the call to Islam in wisdom and good preaching; otherwise they are called to pay the *jizyah*. Should they refused to pay; Moslems will fight them. Also, the prophet (PBUH) commanded his companions: "Do not wish to meet the enemy, and ask God for forgiveness and wellness"

Furthermore, the call to follow Islam should be based on wisdom and exhortation, not by the force of the sword, i.e. by force, as God Almighty says, "Invite 'all' to the Way of your Lord with wisdom and kind advice"⁶.

Islam also calls for internal and external extrapolation, and for Muslims to have good relations with others, and also calls for non-aggression towards others. Thus, Islam endorsed the principle of non-aggression towards others fourteen centuries ago, and this principle was endorsed by Western jurisprudence in the middle of the twentieth century.

However, it's wrong to say that Islam is a law of war, and the following statement can be cited: "It is a grave mistake to say that the Islamic law in matters of conduct and international relations is mostly the law of war. Despite, this may have evidence in the history of the behavior of some rulers or in the history of Islam. However, the texts of the original legitimacy, that is merely relied upon, indicates the opposite, which is that Islam considers peace as a basic rule in its legislative system, and that these texts did not deal with the rules of war except in exceptional circumstances in which war is considered legitimate. Therefore, it is not possible for any action or disposition that contradicts these explicit sacred texts."⁷

It is important to point out finally that the word peace and its derivatives are mentioned in more than 100 verses of the Holy Quran, although the word war and its derivatives are only mentioned in six verses.

2. Chapter one: Islam's organization of international relations

International relations in their conduct and organization have been affected clearly by Islamic principles, and what concerns us here is the extent to which Islam organizes international relations in the state of peace, provided that dealing with international relations in time of war is elsewhere in this research. What is the similarity - if we say - between this organization and the contemporary

⁵ *Al-ma'idah*: 32

⁶ *Sūrat l-naḥl*: 125 (Yusuf Ali)

⁷ Dr. Subhi al-Mahmassani, *Law and International Relations in Islam*, House of Knowledge for Millions, Beirut 1982, p. 50

organization of it? In short, what is the extent to which Western jurisprudence is affected by lofty principles regarding the organization of international relations?

It can be said first of all that Islam knew a precise organization in foreign relations. It is difficult to comprehend this organization in all its aspects, but it is possible to refer to the most important articles related to the organization of international relations, especially in Islamic treaties and diplomatic representation, as well as neutrality and the right to self-determination. Most of these principles were not reached by man-made rule until the beginning of the twentieth century, thirteen centuries after Islam organized them, and this is clear evidence of the validity of Islamic teachings for every time and place.

With regard to treaties, Islam has known them since the beginning of the Islamic call, and the Qur'anic verses enshrined them as a basis for avoiding wars, and this is from God's mercy to humanity. And authorized to contract on behalf of their groups, and this is what we find at the present time what is called the international capacity to contract, but Islam differs with the modern view of the international community, while only states are allowed to conclude treaties, you find that Islam allowed all groups to conclude treaties, there is no difference whether the parties are states groups without the requirement of the international personality.

It is also necessary for the validity of the treaty to be mutually agreed, so it cannot be concluded by coercion, fraud, or deception. Or the ruler with the treaties concluded by the war commander, because of the possibility of reviewing them, adhering to them, and not violating them. It is not possible to find even one example of the Muslims breaking a covenant they made with others.⁸

Among the conditions referred to by the Islamic Sharia is that the expressions are clear and accurate in text and purpose in order to avoid problems that may occur in the future because the goal of the treaty is to limit the problems, not to multiply them.

The best evidence for this is the non-adherence to accuracy in the formulation of General Assembly Resolution 242/1967 regarding the Palestinian issue, as the failure to use accuracy by the international community is the reason.⁹

And among the most important conditions, the most important of which is the agreement with the provisions of Islamic law and all that is stipulated in the treaty, because the Prophet, may God's prayers and peace be upon him, said: "If there is a condition that is not in the Book of God, then it is invalid, and if there are a hundred conditions, then God's judgment is more deserving and God's condition is more reliable."¹⁰

Islam also dealt with the problem of accession to the treaty by others, so it permitted this accession by others, and one of the most prominent treaties in the early days of Islam was the Treaty of *Hudaybiyyah*, which allowed entry or joining, whether to the Messenger's pact or the pact of the infidels, for whoever wanted, and likewise, the Covenant of Safety authorizes non-Muslims to enter the Islamic countries. These treaties are considered complete parties, and Islam knows all kinds of treaties, whether commercial or political or others.

⁸ At the forty-ninth session of the United Nations General Assembly, the General Assembly adopted a resolution in which it reaffirmed the essential role played by the Vienna Convention in the field of diplomatic relations, called upon all States to strictly observe the provisions of the Convention, and urged them to take effective measures with a view to suppressing acts of violence committed against Diplomatic missions and diplomats. See the work of the forty-ninth session of the United Nations General Assembly on 7/26/1994, p. 324.

⁹ For more on this matter www.palestine-studies.org

¹⁰ Al-Durar al-Saniyyah, Majmoo' al-Fatawa: 31/58

As Islam knows two types of treaties, there are permanent treaties that cannot be violated unless the other party breaks them, including *Ahl al-Dimmah* (or *Dhimmi*) contract that is concluded between the Islamic state and non-Muslims, whether they are individuals or groups. Islam and to serve them in order to gain control over Islam and its people on the one hand, and on the other hand, Islam has defined temporary treaties that may be limited to the parties, such as a security contract, or not exclusive to the parties, such as a truce or reconciliation contract.¹¹

As for how treaties end and expire in Islam, they end in different types in three cases or one of them:

A - The expiration of its period and circumstance, by the expiry of its objective, if it was temporary.

B- The enemy's breach of the covenant by performing prohibited acts according to that covenant.

C - The emergence of signs of betrayal and perfidy, and this point is vague, because betrayal and treachery may not appear clearly because they are intangible matters, and therefore it is necessary to make sure of that with real certainty, not just doubting it.¹²

Among the foundations that Islam has organized in international relations is the principle of sovereignty, whether it is external sovereignty, according to which glory and independence are provided to the Islamic State by other countries, and its broad lines can be found in the Almighty's saying: "...And Allah will never grant the disbelievers a way over the believers.."¹³

So sovereignty, then, belongs to Islam and their state as long as its people adhere to Islam in a real sense, or it is internal sovereignty according to which all those in the abode of Islam are subject to the Muslim ruler who implements the orders of Islamic law, whether they are Muslims or non-Muslims.¹⁴

Islam has also dealt with the organization of the principle of neutrality and organized it in the best way, contrary to what is understood in our present time, because what is hidden of sovereignty and the policy of neutrality is greater than what is apparent. Neutrality is permissible in the case of a strong state against a weak state. In this case, the principle of neutrality is proposed and the principle of relief for the distressed is applied.¹⁵

The neutrality system was known in Europe in the nineteenth century, in order to achieve two goals: The first: Maintaining peace and security among European countries, by creating a state that separates two powerful states or those known for their permanent hostility.

The second: preserving the integrity of weak states, and thus achieving a kind of international balance. Based on the above, we find that neutrality is characterized by three characteristics:

1- It is a permanent system, not a temporary one, i.e. it does not end with the end of the state of war.

2 - It arises as a result of an international treaty concluded between two or more countries.

3 - It applies to the entire territory of the state and not to a specific part of it.¹⁶

Finally, Islam has dealt with the issue of implementing diplomatic representation, even if there were only temporary missions in early Islam, and this can be deduced from the Almighty's saying: "If one

¹¹ Muhammad Hafez Ghanem, *Public International Law*, Dar Al-Nahda Al-Arabiya, Cairo, 1967, pg. 504

¹² *Ibid.*, 505.

¹³ *Sūrat l-nisāa* (The Women):141 (Yusuf Ali)

¹⁴ Dr. Najeeb Al-Armanazi, *International Law in Islam*, Ibn Zaydun Press, Syria, first edition, 1962, p. 113

¹⁵ *Ibid.*, 113.

¹⁶ Dr. Mahar Malandi and Dr. Majed Al-Hamwi, a collection of lectures on public international law published on the web, pg. 52: http://www.parliament.gov.sy/SD08/msf/1435497397_.pdf

amongst the Pagans ask thee for asylum, grant it to him, so that he may hear the word of Allah; and then escort him to where he can be secure”¹⁷

Through this verse, Muslim jurists unanimously agreed on the legitimacy of the security contract and the protection of messengers and ambassadors due to Islam’s protection of humanity regardless of the different races and religions. They also permitted the entry of a diplomatic envoy into Islamic lands without the need for a security contract and to treat them with good Islamic treatment due to the impact of this on their behavior and their understanding of the Islamic religion in its true meaning.

The glorious Islamic law (*Shari’ah*) was a forerunner in determining the personal immunity of diplomats before other international agreements and legislations, and it was stated in it that “the messengers, their servants, their followers, and those who arrive with them from among the messengers of kings or others, are safe and preserved in lives and money”¹⁸.

Also it was mentioned that: “The Messenger secured both sides. This is how it had taken place in the Jahiliyyah and Islam. The matter of reconciliation or fighting cannot be resolved except by the Messenger, and the Messenger must be safe in order to be able to perform the message...¹⁹.

It was also said that: “... Kings always preserve each other’s immunity, and honor their messengers to an extent that raises their prestige and prestige, even at a time when disputes arose, and danger arose between kings. Messengers would come and go, and they would deliver the messages as they were assigned without Harm touches them, or their celebration is less than what is customary, because any behavior other than this is disgraceful for its individual”²⁰.

Referring to the glorious Islamic Sharia, we find that it was a precedent over other agreements and laws in exempting the diplomatic envoy from taxes and customs duties, and this was what came in the heritage books.

“It is not permissible to charge a warrior who he entered our home as a messenger or a trader that we are forced to do.”²¹

According to “*Al-Kharaj*” (landevy) book: “...if he says, ‘I am the messenger of the king who sent me to the king of the Arabs, and this is his book with me, and what I have with me of utensils, luggage and slaves, then these are to him, so he shall be trusted and accepted if it is a known matter, because the like of what he carried is only on the like of what was mentioned. Upon his saying, it is a gift from the king to the king of the Arabs, and there is no way to be himself or his belongings, weapons, slaves, and money attacked, unless he has something that he has especially to carry for trade.”²²

Referring to the previous text, it becomes clear to us that a messenger is not exempted from paying customs duties that the Islamic state enforced on commercial business; however he shall be exempted from paying customs duties with regard to goods that are not intended for trade.

¹⁷ Sūrat l-tawbah: 6 (Yusuf Ali)

¹⁸ Abi al-Abbas Ahmed bin Ali al-Qalqashandi, Sobh al-Asha in the construction industry, Part Fourteen, The Egyptian Institution for Authorship, Translation and Publishing, Cairo, pg. 68.

¹⁹ Muhammad bin Hassan al-Shaibani, Explanation of the Book of Seer al-Kabir, Part One, Misr Press, Cairo, first edition, 1958, pg. 296.

²⁰ King Tusi’s regime, politics of namah or the course of kings, Arabization d. Youssef Bakkar, House of Culture, Doha, second edition, 1987, p. 133

²¹ Abi Zakariya Yahya bin Sharaf Al-Nawawi, Mughni Al-Muhtaj to Know the Meanings of the Words of Al-Minhaj, Part Four, Mustafa Al-Halabi Library, Cairo, first edition, 1958, pg. 247.

²² Abi Yusuf Yaqoub bin Ibrahim, The Book of Excesses, The Salafi Press, Cairo, the edition not mentioned, pg. 188.

Meanwhile, it happened in the past years that there were many violations against diplomatic envoys in a way that was not known before, as diplomats were kidnapped and some of them were killed or attempts to kill them²³.

In summary of the above, a comparison must be made between Islamic law (*Sharia*) and public international law as a constitution for contemporary international relations. It should be noted that the comparison that aims to clarify the best is not possible because international law is positive law. In order for the balance to be correct, it must be done between two things that are similar and in some respects, otherwise it becomes invalid. The contemporary custom has been done to conduct such a budget between Islamic law and positive laws, and these budgets do not mean that the positive system has become a similar to Islamic law, and this will not be absolute because Islamic law is prepared and in fact it is the basis and the establishment of all positions, and that they are not subject to that Deny this fact, because it does not change the matter, because the Islamic law is the source of all man-made laws because it is comprehensive for all aspects of life, and there is no other law comparable to it.

The comparison can be summarized in the following points:

- 1) The source of Islamic law is divine. The Qur'an is a revelation, and the Sunnah is likewise. As for man-made legislation, they are just human ideas emanating from the culture of those who framed them. Therefore, the latter does not know stability, but continuous change and permanent modification, unlike the first, i.e. Islamic law (*Sharia*).
- 2) Islamic law, as divine, is free from discrimination and fanaticism, and everyone is equal before it, and no one is better than another except by piety and good deeds. As for man-made legislation, no matter how keen it is on justice, it is not devoid of fanaticism and racism, and does not respond to the demands of equality and justice.
- 3) Islamic law, including the origins of international relations, is closely linked to faith, as it is complementary to faith, and therefore it receives respect and commitment to it by individuals in the Islamic community, while man-made legislation is completely separated from the beliefs of individuals and therefore does not receive respect and commitment.
- 4) The Islamic Sharia believes that the origin of humanity is one, and therefore it made peace the origin of international relations and war as an exception. As for positive international law, its first and last basis is war. The "law of the jungle" is perpetuated.
- 5) Islam has permitted treaties and warned against violating them by Muslims, contrary to the positive law that is based on custom and does not respect treaties. Rather, there are cases that show the nullification of treaties, especially treaties of neutrality before the passage of a significant period of time, and this indicates the futility of treaties.

Finally, Islam preceded man-made laws and legislations in devoting and regulating the principles of international relations fourteen centuries ago, while man-made legislations did not define them except in the fifteenth century.²⁴

²³ On November 4, 1979, Iranian students took 52 diplomats and employees of the American embassy in Iran as hostages, after the fall of the Shah's regime in Iran. On November 29, 1979, the United States filed a lawsuit against Iran before the International Court of Justice, accusing it of violating its international obligations because it encouraged and did not punish the behavior of the students. On May 24, 1980, the court issued its final judgment in the case and decided that the Iranian government should release the hostages, that no member of the diplomatic and consular corps of the United States should be detained to be brought to trial or testify, and that the Iranian government should repair the damage done to the United States. On January 20, 1981, the hostages were released after 444 days of their detention. For more details on the case, see: Harris, D.j. cases and materials on international law, sweet and Maxwell, 1991. P: 337-340.

It can be said that man-made legislation, even if the principles of international relations are known, these principles remain just scraps of paper that do not bind individuals and are taken by the major powers as a pretext for destruction if signs of danger appear to their interests, even if this leads to a violation of those principles because these countries work in their interest in the name of those principles and principles.

Islam did not explain the most important principles of international relations, but rather comprehensively included them in a detailed manner, because Islam is a religion and a state, and these foundations or pillars are many that cannot be limited and discussed in a topic because they are specialized studies for each principle. Respect for human dignity, and the latter is not limited in the case of war, but is often abused in the case of peace. Therefore, we will discuss the study of these two principles according to their Islamic perspective.

With regard to these principles, Islamic law has made it clear that these two principles are considered among the natural rights of human beings, and therefore they cannot be overlooked, whatever the considerations are. Thus, Islam has made human beings equal, whether in rights or duties, without regard to gender, language, race, or religion. This principle applies whether to religious duties or worldly relationships.

The consequence of applying these principles is the birth of freedom as a basis and starting point for achieving equality for humanity in its rights and duties. Among the most important forms of this freedom we find:

A- Freedom of belief and faith: This freedom that Islam granted to mankind has not been granted by any religion before, so it left the freedom of choice to man, whether to follow the Islamic religion or other religions, so no one is forced to follow the Islamic religion, because God Almighty says: "There is no compulsion in religion".²⁵ This verse is the definitive basis for responding to those who claim that Islam was established at the edge of the sword, as well as the Almighty's saying: "If it had been thy Lord's will, they would all have believed,- all who are on earth! wilt thou then compel mankind, against their will, to believe!"²⁶

Thus, the will of God shows people the ways of good and the ways of evil and leaves them the freedom to choose what they want without coercion or coercion.²⁷

B- Freedom of opinion and thought: This is another type of freedom that has the greatest impact on human souls in order to consolidate justice for them.

Thus, it is incumbent on the one who takes charge of people's affairs to consult them on new matters, so he takes the opinion of the group, because it does not converge on a mistake. In consultation, the nation is righteous and correct in order to avoid tyranny by opinion, even if he is a great scholar, and he must take any opinion into consideration. Thus, we found that God had admonished him in some matters because he did not take the opinion of his companions. Among these incidents, what is related to the prisoners of *Badr*, in which the Messenger took his opinion and the opinion of *Abu Bakr*, but left the opinion of *Umar ibn al-Khattab* and those who agreed with him, so a severe verse of admonition was revealed to the Messenger (PBUH), in his saying, the Almighty: "It is not fit for a prophet that he should take captives until he has thoroughly subdued the land. You 'believers' settled with the fleeting

²⁴ Dr. Ashraf Muhammad Gharaibeh, *Al-Wajeez in Public International Law*, University Book House, al-Ain, 2018, first edition, p. 33

²⁵ Al-Baqara: 256 (Wikipedia)

²⁶ Sūrat yūnus (Jonah):99, (Yusuf Ali)

²⁷ Muhammad Pasha Al-Makhzoumi, *Thoughts of Jamal Al-Din Al-Afghani*, al-Ahlia for Publishing, Distribution and Printing, 2003, p. 179.

gains of this world, while Allah's aim 'for you' is the Hereafter. Allah is Almighty, All-Wise* Had it not been for a prior decree from Allah, you would have certainly been disciplined with a tremendous punishment for whatever 'ransom' you have taken".²⁸

Hence, the opinion is originally in the management of Islamic collective affairs and the investigation of the right or agreement in the interest is one of the obligatory duties of the person in charge.²⁹

As for equality as one of the foundations and pillars of international relations, it can be said that this equality is real. It is guaranteed in Islam. In the opposite, it's formally and violated in man-made legislations. It is possible to refer to excerpts from the farewell sermon, which shows that the origin of humanity is united: "...O people, your Lord are one, your religion is one, and your origin is one. All of you belong to Adam, and Adam is from dust."³⁰

The *Dhimmi*s was treated like Muslims in reducing financial tax installments when needed or in case of disability or old age, and the enemy was reassured of the justice of Muslims more than the justice of his own kind if he fell into captivity or committed a punishable crime, and the people of the conquered countries felt the mercy of Muslims emanating from the mercy Their religion and the lack of costs imposed on them in contrast to the previous costs of the Islamic conquest.³¹

This is crucial evidence to the justice of Islam and its equality for human beings in terms of rights and duties, even if nationalities and religions differ. Thus, equality is a basis for achieving justice, and the latter can only be achieved through consultation and non-tyranny of opinion. This is because the author of the rulings is basically God Almighty, and He is the most knowledgeable of His worshipers, and this is in contrast to the man-made laws that those who hold power put them in order to be in line with his interests, and therefore we find that these constitutions and those man-made laws often change overnight, as a result of the change of rule in the hands of the authors of these Constitutions and laws.³²

As for the principle of human dignity in positive legislation, countries are working as a witness for the sake of this principle, but without seriousness despite the large number of international instances and agreements in this field, and it can be taken an example of it in the 1949 Geneva Institutes of the year 1949 How many cases in which human dignity was violated, whether human rights or public freedoms, and the states and bodies charged with that did not intervene in order to put an end to that. All that can be assumed is that these bodies and those treaties were nothing but ink on paper and there is no point in establishing or codifying them, even if states ratify that.³³

If this respect in peacetime is based on respect and harmony in relations between Muslims and others, will this continue if the state of peace changes, in which the combatant is not known from the non-combatant? In this regard, Islam made it clear that human dignity is the first, so his humanity must be preserved, and put an end to that. It can be said that the highest respect humanity has reached in times of war is represented in the words of the Messenger: "Invade in the name of God and for the sake of God. Fight those who disbelieve in God, so invade, but without treachery, and do not mutilate, and do not kill a newborn..."³⁴

²⁸ (al-Anfal: 67-68), <https://quran.com/en/al-anfal/>

²⁹ Ramadan Zir, *International Relations in Peace*, the Jamahiriya House for Advertising and Publishing, Tripoli, Libya, first edition, 1989, p. 52.

³⁰ Dr.Wahba al-Zuhaili, *The System of Government in Islam*, al-Risala Foundation, Beirut, first edition, p. 353.

³¹ *Ibid.*,

³² *Ibid.*,

³³ Ali Muhammad Shambesh, *Political Science*, the Jamahiriya Publishing and Advertising House, Libya, third edition, 1988, pg. 252.

³⁴ *Ibid.*, p332.

Hence, Islam is very keen to devote these and other principles and to indicate the extent of their application, whether it is a state of war or peace. He did not leave any case without regulation, and he preceded modern legislation in that regard, especially with regard to respect for human dignity, equality, or other basic principles on which the science of international relations is based. It can be said that contemporary international relations, no matter how accurate they are, must be subject to modification or change. The more it is derived from Islamic law, the more just, stable and lasting it will be in the life of mankind, to be a blessing rather than a curse.

3. Chapter Two: War as an exception in international relations in Islam

As we referred to in chapter one, peace is the origin of international relations, and the state of war is only an emergency situation out of necessity. However, this case was not left absolute in the Islamic Sharia, but was defined by limits and restricted by conditions and motives that must be met in order to confer legitimacy. Islam has preceded other man-made organizations to clarify this fact, for God Almighty says: “Had Allah not repelled a group of people by ‘the might of’ another, corruption would have dominated the earth, but Allah is Gracious to all.”³⁵

In order to discuss this point - and before that - we must take a brief look at the Christian and Jewish view of the war.

Judaism imposed war on its people under the name of general killing, and wiping the inhabitants out of the conquered lands, as it was mentioned in the fifth book of the Psalms, “If your Lord brings you into a land to possess it, then fight them until you wipe the inhabitants of the open land out, and do not give them a covenant and never have pity on them.”

As for Christianity, it absolutely forbade war, as Christ advised Saint Peter saying “Then Jesus said to him, “Put your sword back into its place. For all who take the sword will perish by the sword.”³⁶

We conclude that the origin of Christianity is peace and the absolute prohibition of war, but did Christianity remain as it is? In short, no.

Because there is practical and realistic evidence indicating that, for example, the many wars between the warring Christian peoples, as well as the Crusades after the emergence of Islam. The reason for this change is the distortion of the Gospels, and employing it as required by the interest, especially after the state took control over the Church and the collapse of the latter's authority.

As for the period prior to the advent of Islam or what is called *Jahiliyyah*, the grinding wars for influence and control and satisfying the desire for revenge, whether they were defensive or offensive wars, this is the general law that distinguishes the relations between human groups, and these wars were not organized and were out of control.

This is generally the view of the pre-Islamic religions of war and its status among humans. So what is the Islamic view of the state of war? Is it offensive or defensive and what is the evidence for that? What is the motive and drive for the outbreak of such wars? What are the restrictions that the Islamic Sharia brought as a humanitarian law with mercy and humanity for all mankind with regard to war matter? These questions and other questions are what we will try to answer.

Meanwhile, Islam has regulated everything related this case, such as the case of the initiation of war, the rules and the end of war. All cases have been carefully organized and exceptional as war should not be allowed except for utmost necessity.

³⁵ Al-Baqarah, 251 (<https://quran.com/en/al-baqarah/250-260>)

³⁶ Afif Abdel-Fattah Tabbara, *The Spirit of the Islamic Religion*, Dar Al-Ilm for Millions, Beirut, 1988, p. 390

In terms of the rules of war, Islam organized wars and the Muslim jurists were divided in this regard: The *Hanifa*, *Shafi'i*, and *Hanbali* scholars see that everything that would break the power of the enemies, whether heavy or light means should be used. However, they do not permit the burning of any of the enemy.

As for the *Malikis*, they permit the Muslims to choose conquering the enemy, but it is not permissible in any way to burn the enemy, but fire can be used to burn the enemy's fortresses if there is fear for the Muslims, or that the fire is the only way to conquer the enemy, or the enemy begins to use it against the Muslims.³⁷

The means used in fighting included white weapons such as daggers, swords, knives and bayonets, and heavy shells can also be used, as the Messenger (PBUH), used the catapult and the *al-Arada*, which were two warships, to throw stones against the people of *Ta'if*.³⁸

Islam also permits the siege of the enemy, whether by land or sea, so that supplies do not reach the army and they are forced to surrender, or for an economic purpose to eliminate the enemy and remove his material and moral strength and weaken it. The siege was applied during the life of the Messenger, as he used to send envoys and companies and go out on raids before and after Badr battle, in order to cut off the enemy's trade.³⁹

In addition, Islam recognizes the means of breaking the unity of the enemy's force, which is a legitimate mean in order to cause dissension and division in the enemy side. The Messenger used it with *Ubaidah ibn al-Hisn*, who was the chief of *Ghatafan* tribe, and gave him a third of the city's palm trees yield in order to let the parties (*al-Ahzab*) down and to leave them with his army.⁴⁰

As for espionage in the Islamic war, it is also legitimate, and this spy may be an infidel (warrior) spy, a *dhimmi*, or a treaty. The infidel spy may be killed. As for the *dhimmi* spy or the covenanter, there is a jurisprudential difference. Some of jurists say that it's permitted to end the covenant, but the other sees the permissibility of killing him because he broke the covenant and betrayed security. As for the Muslim spy, he shall not be killed according to the *Hanafis* and *Shafi'is*.⁴¹

As for the termination of war, Islam has shown five ways to end the war between Muslims and their enemy, namely:

First: The enemy's conversion to Islam, because the enemy responds to Islam, and thus their blood is preserved.

Second: Entering into a contract with Muslims, whether it is temporary or permanent.

Third: The conquest of the enemy's lands and the entry of Muslims into them.

Fourth: Withdrawing from the fighting and leaving the war, by the decision of the commander or because of the damage that the enemy inflicts.

Fifth: Ending war through arbitration, or what is called in our contemporary time, ending disputes by sound means.

³⁷ D- Hamed Sultan, *International Law Rulings in Islamic Sharia*, p. 115

³⁸ *Ibid.*, 116.

³⁹ *Ibid.*, 116.

⁴⁰ The Book of Interpretation of Ahmed Hatiba - The Ansar's Position on the Prophet's Opinion on Giving a Third of the Fruits of Medina to the Ghatafan Tribe - The Comprehensive Library (shamela.ws)

⁴¹ Islamic rule on agents and spies | Volume 1 | Page 13 | The sayings of the jurists in the ruling of the spy | Research and issues | C (ketabonline.com)

In addition to all this, Islam regulated the impact of war on people and properties, and this can be summarized as follows:

- 1- The effect of war on people: With regard to people, Islam has established rules and foundations for its treatment of prisoners, and this treatment is characterized by mercy, compassion, and humane treatment, as the Messenger, may God's prayers and peace be upon him, said: Treat the prisoners well, and the Almighty's saying: "And they feed food, out of love for Him, the poor, the orphan, and the captive. We only feed you. For God's sake, we do not want any reward or thanks from you".⁴²

Accordingly, the Muslims used to tie the prisoner in the mosque so that his fate would be decided, whether by converting to Islam or granting him favors with or without compensation, or by exchanging prisoners, and he would provide the prisoner with food, drink and medicine, and he would not be forced to reveal the secrets of his army, and his fate would be determined by the opinion of the imam, whether that opinion led to killing, enslavement, or granting him Freedom.⁴³

As for the apostate prisoners, they are treated severely for abandoning Islam. This type of prisoner is killed, whether a man or a group, when he confirms his atheism and if he forms an army to fight the Muslims.⁴⁴

- 2- The effect of the war on properties and real estate: As for the properties and real estate owned by the enemies, they become spoils for the *mujahideen* (Muslim Soldiers), because the Messenger (PBUH) said: "The spoils are for those who witnessed the war."⁴⁵

Further, some light must be shed on the nature of war in Islam. Is it offensive or defensive war?

It can be said in this regard that Islamic jurisprudence has been divided into two groups⁴⁶:

The first: they believe that the war is defensive, because the fighting did not start until after the resumption of all possible means to leave the fighting. After the failure of the call to Islam and the failure to take the covenant, it must be resorted to a more severe means, which is confrontation. Islam did not legislate fighting until after the Messenger and his companions had suffered from harm, torment and abuse that no one had met before him, and that Islam, even if it legislated war and *jihad*, it had specified the reasons for that in The Almighty says: "Permission is granted to those who are being persecuted, since injustice has befallen them, and God is certainly able to support them. They were evicted from their homes unjustly, for no reason other than saying, "Our Lord is God".⁴⁷

This verse gave the oppressed the right to ward off injustice from himself in all ways, and it also specified that the Muslim should not be the first and that he should not transgress this aggression or retaliation more than what he assaulted, and this is evidenced by the words of God Almighty: "Fight in the cause of Allah 'only' against those who wage war against you, but do not exceed the limits. Allah does not like transgressors"⁴⁸.

This verse absolutely forbids aggression and indicated that the response should be in kind. In this verse, manifestations of defensive war are permissible.

⁴² Al-Insan: 8-9, "We feed you only for the countenance of Allah. We wish not from you reward or gratitude", <http://quran.ksu.edu.sa/translations/english/579.html?a=5600>.

⁴³ [Conclusion in the provisions of the prisoners in Islamic jurisprudence | Al-Dorar Al-Shamiya \(eldorar.info\)](http://eldorar.info)

⁴⁴ Ibid.

⁴⁵ [Al-Durar Al-Saniyyah - The Hadith Encyclopedia - Explanations of Hadiths \(dorar.net\)](http://dorar.net)

⁴⁶ Shams al-Din, Muhammad ibn Ahmad al-Khatib al-Shirbiny, Mughni al-Muhtaj al-Muhtaj al-Minhaj, Vol. 4, Al-Halabi Press, Egypt, pg. 210

⁴⁷ Surah Al-Haj: 39-40, <https://www.islamicstudies.info/tafheem.php?sura=22&verse=39>

⁴⁸ Al-Baqarah:190, <https://quran.com/en/al-baqarah/190>

Also, the Messenger (PBUH), used to urge his companions not to wish to face the enemy and urge them to ask God for forgiveness and well-being in this world and the Hereafter.⁴⁹

It is also possible to find a supporting evidence for this through the practice of the Prophet's campaigns were characterized by the nature of defense, not attack, for the sake of worldly and fleeting gains.

The second: They believe that war should be offensive, not defensive, and their evidence for that is the nature of the verses that call for fighting. As it is absolute, where the Almighty's saying: "Fighting has been made obligatory upon you 'believers', though you dislike it. Perhaps you dislike something which is good for you and like something which is bad for you. Allah knows and you do not know."⁵⁰

In addition to Almighty's saying: "Fight those who do not believe in Allah and the Last Day, nor comply with what Allah and His Messenger have forbidden, nor embrace the religion of truth from among those who were given the Scripture, until they pay the tax, willingly submitting, fully humbled."⁵¹

As for their rational evidence, Islam came to reform the corrupt beliefs and systems of life. And if this is not achieved with the best, then the language of the sword and force should be used.⁵²

Based on the evidences of both parties, it is clear that the war is defensive, not offensive, and it was not offensive except in specific circumstances. This opinion is not affected by the weakness and debilitation that befell Muslims that history has not witnessed, so the necessity of *jihad* is the necessity of the means, not the purposes, since what meant by fighting is guidance and other things of martyrdom.

On the above, we conclude that Islam has legislated the fighting in a critical period where it was necessary to fight to defend the *da'wah* (mission) and protect its adherents, but it organized it in the best organization in contrast to man-made legislation.

4. Chapter Three: The motive for war in Islam

There is no doubt that any phenomenon does not occur unless there are motives and events behind it, and based on this principle, *jihad* as a phenomenon and a social necessity. It must occur or arise there through the impact of some motives. These motives differ from one segment to another and from one belief to another. As they differ between the doctrines and ideologies in a given society. Therefore, in this chapter, we will discuss the Islamic motives behind *jihad*, so what are these motives?

Islam, as we have previously indicated, came as a mercy to the worlds and compassion for humanity as a whole. Therefore, it cannot be said that it will legislate duties on humanity without lofty goals or simply to mistreat mankind, especially the fighting and the collapse, destruction and devastation it causes.

However, according to the jurisprudential rule "necessity has its provisions", Islam has legitimized *jihad* against humanity and made it legitimate for them, but within limits - we have already referred to it - and the legitimacy of that depends on the legitimacy of the motives that war and fighting aimed at. Therefore, Islam, unlike contemporary man-made legislation, did not aim at aggression, domination and arrogance, and disbelief was not the reason for *jihad*. Thus, unbelief was not the reason for *jihad*, and if it were so, Islam would not have excluded children, women, the elderly, and everyone who did not participate in war or aggression against Muslims from fighting.

⁴⁹ <https://www.islamweb.net/ar/fatwa/250915/>

⁵⁰ Al-Baqarah:216, <https://quran.com/2?startingVerse=216>

⁵¹ At-Tawbah: 29, <https://quran.com/9?startingVerse=29>

⁵² Shams al-Din, Muhammad ibn Ahmad al-Khatib al-Shirbiny, Mughni al-Muhtaj to know the meanings of the words of the Shafi'i methodology, Part 4, Al-Halabi Press, Cairo, pg. 215

Al-Mawardi says, “It is not permissible to kill women and children in war or in other than that, unless they fight Muslims, for the prohibition of the Prophet (PBUH), however if they fight Muslims, women and children are fought facing forward, but they are not killed running away.”⁵³

Thus, it is clear that the motive for *jihad* was to uphold the word of God, to spread the Islamic religion, to convince people, to prevent aggression, and to grant people complete freedom of belief.

Accordingly, we conclude that whoever fights so that the word of God is supreme is the one who is considered in the way of God, even if he achieves gains after that, and this motive can be detailed in more legal motives, including:

- A. Repelling injustice and aggression on behalf of Muslims and the oppressed: We have previously said that Islam is based on freedom and this freedom is non-existent if a strong group dominates over the oppressed group. In a specific region or a specific place, according to the Almighty’s saying, “And what is wrong with you that you do not fight in the cause of God and for the oppressed among men, women, and children who say, ‘Our Lord, drive us out of this city whose people are oppressive, and appoint for us from Yourself a protector, and appoint for us from Yourself a helper’”⁵⁴.
- B. Self-defense: This motive is considered a natural right for all mankind in order to preserve all other rights such as freedom and equality. All countries have settled on it and confirmed it in their basic laws in order to preserve their existence and sovereignty.

This allows every state that has been attacked by it to respond to the attack in the same way by all possible means, even if it requires the use of force against the aggressor, as God Almighty says: “There will be retaliation in a sacred month for an offence in a sacred month, and all violations will bring about retaliation. So, if anyone attacks you, retaliate in the same manner. But be mindful of Allah, and know that Allah is with those mindful of Him”.⁵⁵

- C. Protection of the Islamic mission (*Da’wah*) and the freedom to spread and embrace it.

By studying the circumstances at the beginning of the Islamic mission and the harm that the early Muslims suffered by the infidels of *Quraish*, even the Messenger (PBUH) suffered that harm and persecution. In spite of all that, the Messenger was trying to fix that with wisdom and praying for the best, but the eyes were blinded and the hearts were hardened, and the Messenger made every effort to reassure those who were subjected to torture that their date was Paradise and that relief was near.

Hence, God Almighty imposed *jihad* in order for the Islamic mission to spread and secure its protection against those who transgress against it, but as previously indicated, this *jihad* and that fight was not absolute for aggression or domination and arrogance in the land, but rather it was to raise the word of God in the land by protecting the Islamic mission, spreading it and securing protection for those who follow Islam, especially from the oppressed group of people.⁵⁶

Given that the base is legal fight, i.e. *jihad*, and given that it aims that the religion is entirely for God and that the word of God is supreme, whoever prevents this will be fought. However, for those who are not among the people who resist and fight, such as women, children, the elderly, monks, and the like, then he should not be killed according to the majority of Muslim scholars, because God Almighty says: “Fight against them if they persecute you until there is no more persecution, and your”

⁵³ 0500AH/0450AbuHasanMawardi.AhkamSultaniyya.JK001309-ara1 at master · OpenArabic/0500AH · GitHub

⁵⁴ Al-Nisa: 75, <https://quran.com/4?startingVerse=75>

⁵⁵ Al-Baqarah: 194, <https://quran.com/2?startingVerse=194>

⁵⁶ Dr. Al-Zuhaili, *The System of Government in Islam*, p. 89

devotion will be to Allah 'alone'. If they stop 'persecuting you', let there be no hostility except against the aggressors"⁵⁷

Likewise, jihad was enforced for the sake of God is a repelling of sedition that may afflict Muslims. Examples of this are what happened after the death of the Messenger (PBUH), the state of apostasy, and the wars that raged between Muslims and apostates at the beginning of the caliphate of *Abu Bakr Al-Siddiq*.

On the above, it is clear to us that the causes of war in Islamic law were limited to upholding the word of God and not for any other reason. Therefore, Islam has paid great attention to organizing war in terms of motives and goals, due to its knowledge of the innate nature of human beings that love control, revenge and arrogance. Thus, Islam is unlike man-made legislation that, even if it permits the war, it did not make it limited by goals and bound by rules.

5. Conclusion

The emergence of Islam at the beginning of the seventh century AD is one of the most important historical events in the world. The message of Islam, from its inception, was a comprehensive message and a global Mission addressed to all peoples and nations. In a short period of time, Islam spread over east and west, and people entered Islam in droves at a rapid rate, which is a miracle unparalleled in history.

Thus, the Islamic civilization was humane in its principles, international in its scope, and it made a significant contribution to the world civilization, and in all its scientific, economic and social manifestations.

It was also famous for its immortal law, which established a complete approach to life, including all aspects of religion, morals and law.

Although international relations, knowingly, are still in their infancy, what Muslims have created in this regard is far from denial or claim.

Islam has a view of international relations that differs in its basis from that adopted by contemporary public international law. Islam does not count on the existence of independent political entities, each of which has an independent legal system, so that none of them is subject to international legal rules without their consent. Rather, Islam aims to unite human beings under one legal system, which is the Islamic Sharia. Islamic law is directed to all people, without discrimination on the basis of origin, race or language. It is agreed upon by Muslim jurists that Muslim countries are one, no matter how many its regions are, how far its regions are, and how different its rulers are.

Based on the above, we conclude through this research the following results:

- 1- The positions of Islamic Legal politics (*Sharia*) in international relations are based on a combination of two principles, namely, adherence to the provisions and rules of Islamic *Sharia*, while achieving the circumstantial interests of the Islamic state and benefiting from the experiences of relevant human societies, in a manner that does not contradict Islamic *Sharia*.
- 2- The Islamic legal politics provided humanity with an integrated platform for life that includes all fields, political, economic, social, etc.
- 3- Islam presented valuable and sublime teachings of which history has not known anything like it, and this confirms the validity of this religion for every time and place.

⁵⁷ Al-Baqarah:193, <https://quran.com/2?startingVerse=193>

4- The Europeans translated and transferred the great History book of *Al-Sir* composed by *Al-Imam Al-Shaybani*, where this book is considered the basis of contemporary international relations, in which the *Imam* dealt with everything related to the principles of international relations, whether in a state of peace or in a state of war, and this was before any thinker touched on that.

5- Islam preceded all man-made legislation in clarifying the types of weapons that can be used so that this shall not imply treachery against the enemy. The Almighty said: "Prepare against them what you 'believers' can of 'military' power and cavalry to deter Allah's enemies and your enemies as well as other enemies unknown to you but known to Allah. Whatever you spend in the cause of Allah will be paid to you in full and you will not be wronged".⁵⁸

The same is true, with regard to the positive law of contemporary wars, as it permitted these means, but without preventing treachery in military operations.

6- Islam has regulated and defined the cases of damage and destruction of facilities and others, and divided them into three categories, namely:

- 1- What needs to be destroyed because it may hinder the military movement, so it is permissible to destroy them.
- 2- What there is no need to destroy, and Islam forbids destroying it.
- 3- What there is no need to destroy or keep it, and this is not permissible to destroy.

These principles were not known before Islam, so the armies used to destroy and burn everything they find in front of them, whether the need arises for that or not. However, after being influenced by Islam, it started restricting these practices and punishing those who did not respect these practices and punishing those who did not respect these principles, and this is what was stipulated in the Hague Convention of 1899 regarding land war, which considers that damage is forbidden except for war necessity.

7- Finally, we can say that no matter how much humanity reaches in the present or in the future in the field of international relations, this organization will not reach the level of the Islamic organization for it, because the latter is a heavenly and moral organization that is in line with the development of humanity, in contrast to man-made systems, which are mere practical provisions that are quickly subject to development and modification.

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