Violence, Islam and Human Rights: Islam, a Religion of Peace or a Religion of War?

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Abstract

At a time of terrorist actions, the civil wars in Afghanistan and in Iraq as well as the caricatures of the Prophet and Pope XVI's speech about violence in Islam, it is urgent for the Islamic academic community to speak about a major issue: the notions of peace and war in Islam.

This paper will explore and analyze these notions, putting an emphasize on Islam as a religion of peace promoting human rights and humanitarian values; the author will of course approaches and presents the explanations as to why Islam is a religion of violence, only to dismiss these arguments. There are indeed authors presenting Islam as a religion of violence that carries deep inside the seeds of hatred, racism and many other values that are against human rights. These authors are usually Orientalists. This paper will explain who and why these theories are wrong. Then there are extremist groups presenting distorted interpretations of Islam as to justify massive killings (terrorism, WMD, suicide attacks); the author of the paper will take few examples as to explain how these movements rely on distorted and nihilist views of Islam.

The author will then define the different movements in favor of seeing Islam as religion of peace promoting concord, peace, human rights and humanitarian values. There are the apologists, apologizing for the aggressively of the notion of Jihad (the author disagrees with this stance); There are hardline authors such as al Mawdudi who have a more aggressive stance regarding the role of Islam in war; despite this position, it is important to know that such authors always keep minimum human and humanitarian standards. Eventually the authors will present the viewpoint of Muslim

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scholars who perceive Islam to be a religion of peace (the author of the paper associates herself with this viewpoint).

It is necessary to underline the importance and the power of advancing the argument that Islam is a religion of peace promoting concord, human rights and humanitarian values. This argument comes at a time of terrorist acts carried out in the name of Islam and it is essential to have scholars reminding that Islam carries a deep peace legacy and that in that sense jihad is perceived as a deterring weapon or a defensive notion.

Keywords: Violence; Islam; Human Rights; War.

1. Introduction

Since the event of September 11th 2001, the four concomitant attacks on the American soil committed by al Qaeda in the name of Islam, Muslims and their religion have been branded as a green peril. However what very few Westerners and Western scholars know or accept is that Islam is inherently a religion of peace promoting human rights values in times of peace and humanitarian values in times of war. To what extent do Islamic human rights fit universal standards is not the topic of this paper; this paper only seeks to argue that despite all the attempts of discredit, Islam is a religion of peace and has an ethic of war.[1] Jihad, the notion of war in Islam, is indeed restricted to certain situations; Islamic rules of war spell out not only grounds for war and rules for warfare but also humanitarian standards.

However, the truth is that the definition of jihad and when it applies is discussed among Muslims themselves.[2] However when one looks at history and the jihad led in the modern era, it is obvious that the notion of jihad has evolved and has adapted to changes in international relations since the theory of jihad was elaborated.[3] There is however today a period of reinterpretation of the notion caused not only because of 9/11 but also by the new challenges Islam and Muslims have to face. The argument of this paper is that despite the general belief that Islam strives for war, it is firstly a religion of peace and contains an ethic of war and peace.

The first part of this paper explains why Muslims state that Islam is a religion of peace. It also lies down the ethics of peace and war in Islam. Secondly, the paper explains what the humanitarian standards are. The third part of the paper is devoted to human rights principles Islam put forward as to promote peace. The fourth part is about Islam as a religion of war and distorted interpretations of war that lead to extreme violence.

2. Islam as a Religion of Peace

2.1. Islam as a Religion of Peace

Islam if often described by moderates Muslims, liberal Muslims and reformists as a religion of peace. [4] There are indeed many sources for peace in Islamic

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1. See: Hashemi, 2002: 194-215.
2. See: Hashemi, 2002: 194-215.
3. See: Hashemi, 2002: 194-215.
4. See: An Naim, 1988: 307.

law such as the Quran: According to 59:23 "Allah is the source of peace and the bestower of security". In 7:56 it is said "Do not promote disorder in the earth after peace has been established". And in 109:6 "unto you your religion and unto me my religion" is understood as prohibiting the use of force against non Muslims except when non Muslims threaten Muslims.

The Qur'an calls its way 'the paths of peace' (5:16). It describes reconciliation as the best policy (4:128), and states that God abhors any disturbance of the peace and bloodshed (2:205). This verse repeated in the Qur'an no less than 114 times.[1] The ideal society, according to the Qur'an is Dar as-Salam, that is, the house of peace (10:25). The Qur'an presents the universe as a model which is characterized by harmony and peace (36:40).

Muslims must always seek peace and resort to war only if there are no other solutions.[2] There are therefore strict rules of international law regarding treaties: the treaty ensures peace, friendship, alliance and cooperation. It can be use as to cease the hostilities.

War is the last resort and peace the normal state of life. There is war only when all peaceful means of reconciliation have been exhausted; if there is a flicker of hope that peace can be reached, it is then compulsory to seize this opportunity: " But if they incline to peace, you also incline to it, and (put your) trust in Allah. Verily, He is the All-Hearer, the All-Knower" (8: 61).

This is why Muslims argue that Islam is inherently a religion of peace. Besides grounds for war are limited and there are many warfare rules limiting violence. Islam is not a non-violent religion as it contains rules for war.[3] But war is never glorified.[4] The aim of violence when it is resorted to is to protect and to extend the Pax Islamica.[5] As this is the premises for most Muslims scholars (except for extremists and we will analyze the viewpoints in part 4 of the paper[6]), the scholars are more interested in setting limits to war and legitimate means. So they focus rather on the *jus in bello* than de *jus ad bellum* and they rather search to justify wars (grounds for war).[7]

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1. KHAN Maulana Wahiduddin Khan, The Man islam Builds, available at: www.alrisala.org/Articles/mailing_list/ man_islam_builds.htm.
2. See: Khan, 1978: 210.
3. See: Tibi, 2002: 178.
4. See: Tibi, 2002: 178.
5. See: Hashemi, 1999: 104.
6. See: Bennoune, 1994: 617.
7. See: Hashemi, 1999: 104.

So war does exist in Islam. The equation is simple: God has created men and they belong to different tribes. The world is divided between those who follow Allah ad the others. Wars might occur among them if the latter do not respect the former.[1] Besides, violence is inherent to human nature.

Muslims live in the dar al Islam which is the territory of peace. Indeed this part of the world has institutions that ensure peace, justice and security for all. Anyone who threatens this safe heaven should be fought. Anyone who threatens Muslims anywhere should be fought as Islam is a religion of peace and mercy[2] but does not accept violations of its system of peace and violations of Muslims' rights.

As al Mawdudi summarizes it "So just as it is incorrect to say that Islam uses the sword to convert people, it is equally wrong to say that the sword has played no part in propagating Islam". (Mawdudi, 2001:19)

As a conclusion, we can say that jihad regulates the use of force in Islam just as the United Nations charter permits and regulates the use of force in the world. That is why jihad is brought under control and subjected to law.[3] Islam has outlawed all wars except for jihad[4] as limiting violence is a necessity for a religion of peace.[5]

2.2. The Grounds for War in Islam

Islam is a religion of peace (Quran 24:55 and 5:127).[6] However war is a reality in the human realm because violence is inherent to human nature.[7] Consequently, God did nor rule out war but set up limits to it (Quran 2:216). According to Ibn Khaldun "wars and different kinds of fighting have always occurred in the world since God created it". (Khaldoun, 1967) War is endemic to human existence. Therefore the traditional Islamic understanding of war sees war as a universal and inevitable aspect of human existence. It is a feature of human society sanctioned, if not willed, by God Himself. The issues of war and peace thus fall within the purview of divine legislation for humanity.

There is no need to take unnecessary burden on the shoulders by waging

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1. See: Boisard, 1977: 5.
2. See: Boisard, 1977: 6.
3. See: Bennoune, 1994: 620.
4. See: Mir, 1991: 114.
5. See: Zawati, 2001: 41.
6. See: Boisard, 1977: 6.
7. See: Boisard, 1977: 7.

unnecessary wars:[1] *Jihad al qital* is to be avoided and is no good in itself; it can only be waged for good reasons.[2] Reformist Muslims think of peace as the normal state of live (Quran 61:8). War is led only to maintain the balance of power.[3]

To know the rules of war, one first has to give a definition of the notion *jihad*: contrary to what some Orientalists, classic Islamic scholars and extremists have said, *jihad* is not a war waged against the Unbelievers to impose a religion and universalize Islam. *Jihad* set up war and humanitarian rules and sets limits to the battlefield.[4]

There are different sort of *jihad*, greater and lesser: *Jihad* is a determined effort[5] to go beyond a problem against Satan, oneself or against an opponent; it can also be an argument, a financial struggle or a war (then it is called a *qital*).[6] Therefore *jihad* does not always mean a war. Besides, there is no such thing as a Holy War:[7] the notion of Holy War doesn't even have a translation into Arabic. Majid Khadduri speaks however of a *bellum iustum* in Islam but no such thing exists as *jihad* is morally justified in itself (as we will see later).[8]

Shari'a answers to the following questions: when is it legitimated to go to war? Who can call for *jihad*? Who participates? Where is the war supposed to be taking place? Against who is it led? What means are allowed?[9] A fair war is a defensive war relying on the principle of self defense (Quran 2:190, 22:39). *Jihad* is also necessary to protect Islam (Quran 22:40) and the oppressed (Quran 4:75). So when Islam is threatened, when an Islamic country is under attack or when Muslim people are oppressed, *jihad* is legitimated. War cannot be led for the booty or for a heroic purpose.[10] There is no personal duty as some scholars said to lead a war against the Unbelievers.[11] Eventually treaties have to be respected and honored (Quran 8:72): there can be no war if a peace treaty has been signed.

What is a lawful war? The concept of just war does not exist in Islam and

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1. See: Khan, 2003: 134.
2. See: Khan, 1978: 210.
3. See: Anas, 1994: 393.
4. See: Khan, 2003: 133.
5. See: Mir, 1991: 113.
6. See: Haleem & Ramsbotham, 1998: 67.
7. See: Haleem & Ramsbotham, 1998: 67.
8. See: Khadduri, 1955: 63-64.
9. See: Kelsay, 1993: 60.
10. See: Kelsay, 1993: 67.
11. See: Khan, 1978: 207.

the Western distinction between just and unjust war is unknown;[1] any war led for the reasons mentioned before (self defense, defense of Islam, defense of the oppressed) is morally justified. Just wars are limited to one issue while *jihad* is universal and permanent:[2] if one of the reasons to wage war is filled, there is no questioning about the morality of the war. The morality is to bring peace to the entire humanity, so there is an ethical ground to war; a just world is the purpose of *jihad*.

Eventually, the distinction between jus ad bellum and jus in Bello does not exist in Islam:[3] the grounds for war and the legitimated means in warfare are intermixed. Instead the earth is divided in two: *Dar al-Islam* and *Dar al-Harb*. The *Dar al-Islam* is the territory of peace, the domain of justice and the *Dar al-Harb* is the territory of war where a collection of non Muslim nations stay and are free to live as they want as long as they do not threaten Islamic countries. The division does not exist as such in the Quran or the *Hadiths*. The existence of *Dar al-Islam*, house of peace, comes from the Quran (Quran 10:25) but the *Dar al-Harb* was invented by the classicists to justify a permanent state of war.[4]

At the core of *jihad* lay the ideas of restrain and abstention from using force (Quran 2:190):[5] Jihad is not led to convert people as it is often said but to defend oneself and the community.[6] The Holy Quran explains that war should be waged only if there are no other solutions and it should be done respectfully of humanitarian principles. There are however schools of thoughts, the Orientalists and the Classicists, that perceive *jihad* as war against the Unbelievers and as a green peril.[7]

3. Humanitarian Values in Islam
3.1. Islamic Humanitarian Values in Islamic Law

The laws of war and humanitarian rules in Islam are quite ancient and were shaped in the 7th century/1st century of Hegira. The Prophet Muhammad had a lot of interactions with other tribes and nations; he soon faced the need to have a set of rules that would regulate an Islamic behavior and pattern in international

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1. See: Tibi, 2002: 178.
2. See: Tibi, 2002: 178.
3. See: Boisard, 1977: 3.
4. See: Fadl, 1999: 149.
5. See: Draz, 1949: 197.
6. See: Sheik Waheb, 2005: 280.
7. See: Hadar, 1993.

relations. Islamic international law symbolizes how Islam sees the world, the Islamic discourse on the world and the Islamic actions within the international community.[1] The creation of an international Islamic international law has influenced international humanitarian law, developed in the 19th and 20th centuries.[2]

There is no Islamic public international law branch as such: Islamic law is a system, an "inseparable whole"[3] that is not divided into branches such as criminal law or public law. Islamic public law is called *as siyar*.[4] The *siyars* about war, or *jihad* (the *qital* approach of *jihad* as we will see later), are extremely detailed and contain the laws of war, law of treaties and humanitarian rules.

The legal aspect in Islam is very important because *Shari'a* (Islamic law and its interpretations) and the jurisprudence (*fiqh*) rule every aspect of life.[5] It is consequently necessary to know the Islamic legal sources to understand how the humanitarian rules were shaped.

There are four sources of law: The first source of law is the Quran, the Holy Book. Then there is the *Sunna* which is a compilation of the Prophet's words, decisions and actions (compiled in *Hadiths*). The third source of law is *ijma*, the consensus of learned Muslim scholars, the *Ulemas*, deciding on a legal issue; and the fourth one is human reasoning (*ray* for the Sunnis, *aql* for the Shiites) of the *Ulemas*. The process used to interpret this legal corpus called *Shari'a* is the process of *ijtihad*. The *Ulemas* who practice *ijtihad,* the exegesis, of the Quran and the Sunna, and who issue a legal decision through *ijma* or human reasoning, are *motjaheds*.[6] These two main sources of Islamic law are then interpreted either by a group of *mojtaheds* who reach an *ijma*, a consensus on a legal matter, or by one learned cleric, a *mojtahed*, who will give a legal opinion, a *fatwa*.

The role of Quran and *hadiths* is very important on the matter of shaping humanitarian principles: when the Quran was revealed and the Prophet was alive, there were many wars and feuds going on:[7] therefore Islamic law reflects this. For example the Quran says: "Fight in the cause of God with those who

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1. See: Murielle, in Keppl, Baudouin & Jean Noël, 1997: 25-35.
2. See: Boisard, 1980: 432.
3. See: Boisard, 1977: 8; Mohaghegh Damad, 2003: 253.
4. See: Kruse, 1956: 4; Ameur, 1997: 33.
5. See: An Naim, 1988: 315.
6. See: Schacht, 1964: 1-5.
7. See: Mottahari, 1998.

fight against you, but do not commit transgression; For God dislikes those who transgress (Quran 2:190)".[1]

A good example of *hadith* regulating a humanitarian principle is "Do not kill an old person, a child, a woman; do not cheat on the booty, do well: God likes the ones who act right". (Hadith quoted in Sultan, 1986: 57) Another *hadith* reports that the Prophet said: "Prisoners are your brothers and companions. It is because of God's compassion that they are in your hands. They are at your mercy, so treat them well as if you were treating yourself, with food, clothes and housing". (Quoted in Erekoussi, 1960: 650) Or "Do not be eager to meet the enemy but ask God for safety; yet, if you meet them, persevere and have patience; and know that Paradise is under the Shadow of Swords". (Hadith reported by Bukhari and quoted by Khan Mian Rashid Ahmad, 1978: 211)

Some scholars have seen a similarity between these four sources of law and the four sources of international law laid down in Article 38 of the International Court of Justice's statute:[2] International agreements are like the Quran, custom is the *Sunna*, general principles or law are found in the *ijma* and scholarly opinions are the *fatwas* that are the products of *ray* or *aql*.

These sources of law have shaped what Islamic humanitarian law is today, mainly regarding the concept of war, or *jihad*. [3]

3.2. Humanitarian Restrictions

If there is a war, it has to be waged according to the *fi sabil illah*, in of way of Allah, which means that divine principles and duties must be respected:[4] war should be limited and humanitarian principles enforced. Islamic humanitarian principles are to be found in the Quran and the Sunna: Proportionality (Quran 16:126-128); Humanity (Quran 5:32); Compassion; Non discrimination; Dignity; Equality and fraternity (Quran 4:1); and Justice (Quran 16:90).

Any war should be made according to these key principles. From these principles, modern Islamic intellectuals have identified Islamic humanitarian rules:[5] Prohibition of torture, killings and unnecessary sufferings; No excess and wickedness; Non combatants cannot be killed (women, children that are

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1. I use the English translation of the Quran: Nikayin Fazlollah, Quran-A Poetic Translation from the Original (The Ultimate Book, 2000).
2. See: Khaddouri, 1955: 9; Bennoune, 1994: 607.
3. See: Hashmi, 2002: 194-215.
4. See: Haleem, 1998: 67.
5. See: Khan, 1978: 211; Boisard, 1977: 8-9; Erekoussi, 1960: 645.

not warriors, slaves, servants, blind, incapacitated, old people, crippled people…); Respect of prisoners of war; No mutilation of men; No killings of mutilation of animals; No destruction of religious symbols; No destruction of herds; No destruction of trees; No devastation of harvests; No destruction of houses and cities and belongings; No killing of hostages; No expulsion from homelands ; No rape; No blockade; No massive destructive arms; Limitation of the Battlefield in time and space; Help to the wounded and sick; No massacre and right to surrender; No acts of revenge; No poisoning

The acts permitted are: Killing warriors in the battlefield; Killing of imprisoning children or women that are warriors; Killing of imprisoning anyone who plays a role in war (logistical, food provisions, weapons supplies or helping in mapping the war;[1] Propaganda; Ruses; All kind of weapons but there a condition with the use and the aim: killings must be done with dignity, no pain and no torture;[2] Night attacks; Booty; Food may be ordered from the enemy country; fines.

War crimes are also forbidden: genocide is a non respect of the humanitarian principle of equality;[3] the crime of torture and other ill-treatments are also forbidden as it is contrary to the principle of dignity.[4] These are divine orders and cannot be disrespected: the foundation of Islamic humanitarian law is therefore "do not transgress".[5]

Mohaghegh Damad goes as far as finding similar categorization of wars:[6] non international armed conflicts cover war against armed thieves and bandits, war against rebels and the Muslims seceding from the main branch of Islam; and there are also international armed conflicts. Islamic law is even more protective in the case of non international arm conflicts than the Geneva Conventions.[7]

Anyone who reads the Geneva Conventions will be struck by the similarities between these Islamic humanitarian principles and international humanitarian law. The treatment of enemy prisoners as a good example of a common working ground: prisoners of war have rights and they have to be treated well according to the Quran: "As long as they go straight with you, go straight with them". (Quran 9:7) *Hadiths* are also useful: the status of prisoners should be

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1. See: Belkhodja, in Torrelli Maurice, 1992: 136.
2. See: Hamidullah, 1977.
3. See: Dakkak, 2000: 93.
4. See: Dakkak, 2000: 152.
5. See: Haleem, 1998: 69.
6. See: Mohaghegh Damad, 2003: 289-93.
7. See: Mohaghegh Damad, 2003: 264.

respected as the Prophet said "Pay respect to the dignitary of a nation who is brought low". (Hadith reported by Ibn Asakir and quoted by Khan, 1978: 223) Caliph Abu Bakr said to his officials that no prisoners should be tied in chains, handcuffed and they shall be provided with food.[1] (Quran 8:76) They should be provided with clothes and adequate housing.[2] A prisoner cannot be killed, mutilated or tortured. His dignity should be preserved as he is a creature of God. Prisoners may be tried if they have offended committed a major offence against Islam but not for belligerent acts. Children and mother should not be separated. Prisoners have to respect the rules and if they try to run away, they will be brought back but not punished except for the breach of parole. The future of the prisoners is to be decided by the commander: they might be beheaded, enslaved, released by paying a ransom or released and exchanged.[3] These duties are divine and there is a divine punishment for anyone who would not respect these humanitarian rules.

4. Human Rights at War and Islam

So any Muslim will openly say that the Quran contains verses calling to war, as much as the Bible (Old Testament Jesus Christ taught his followers to *"love your enemies, bless those who curse you, do good to those who hate you, and pray for those who spitefully use you and persecute you."* (Matthew 5:44) The verses of the Quran pertaining to war are open to interpretations and not embedded within historical context. Besides, most of these verses give commands about how to lead the war. There are also verses of tolerance, peace and human rights to balance this war verses.

Other than the fact that no non-Muslim community has even been eradicated from the Muslim domain, one should remember that the Quran strive first for a state of peace: 'And God calls to the home of peace'. This is the message of Islam to mankind. The Quran also promotes many human rights values in time of war and peace: According to Hassan al Banna, there are many human rights values that have to kept in war such as mercy and morality:[4] Muslims must maintain this principle when at war as to restrain themselves. The Qur'an obliges them to restrain themselves from fighting, preserve the prisoners they have taken so that they may offer them, afterwards, their freedom or exchange

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1. See: El Dakkak, 2000: 158.
2. See: Mohaghegh Damad, 2003: 289-93.
3. See: Mohaghegh Damad, 2003: 285.
4. See: Al Banna, The Way of Jihad, available at: http://islamic-world.net/book/jihad_preface.htm.

them for their brothers who have been taken by the enemy. As Abu Bakr said "Do not deceive, do not dishonor a treaty, do not mutilate the dead; nor should you kill a child, an old man or a woman".

According to Islam, there are three basic elements, all rooted in human rights, that are essential in building a peace culture are: Compassion, Forgiveness and Respect for all. There are many verses in the holy Quran and *hadith,* which emphasize on compassion. For instance, the Prophet said: "O people, be compassionate to others so that you may be granted compassion by God". Regarding forgiveness, the Quran says, "When they are angered, they forgive". The Quran has number of verses that promote forgiveness. Once a person came to the Prophet and asked him "O Prophet, give me an advice by which I may be able to manage all the affairs of my life". The Prophet replied: "Don't be angry. Even if people provoke you, don't lose temper and forgive those who make you angry. Adopt forgiveness as your behavior". As for respect for all, there is a very interesting story, recorded by Al-Bukhari in this regard. The Prophet once saw a funeral procession passing by a street in Madina. The Prophet was seated at that time. On seeing the funeral, the Prophet stood up in respect. At this one of his companions said: "O Prophet, it was the funeral of a Jew (not a Muslim)". The Prophet replied: "Was he not a human being?" He said that every human being is worthy of respect. There may be differences among people regarding religion and culture, but everyone has to respect the other. Because Islam says that all men and women are brothers and sisters. And all are creatures of one and the same God. These three principles are the basic pillars, which can lead to the formation of a peaceful society. They apply in times of peace and in time of war. The above references are enough to show that Islam is a culture of peace.[1]

There are also human rights principles that have to be maintained during wartime such as human dignity of the Muslim combatants and of others: to keep ones' dignity is a respect for yourself but it also means the combatant is responsible for his acts and deeds.[2] This principle of dignity relies on the principle of equality: all men are equal.

There are human rights duties towards the enemy such as justice: "Believers, be upright for God, and faire and just in giving witness, do not allow your hatred for some people to swerve you to injustice (5:8).

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1. India Times, editorial, Islam the religion of Peace, http://spirituality.indiatimes.com/articleshow/995419914.cms.
2. See: Erekoussi, 1960: 650.

There is also the respect for freedom of religion: no one can be forced to convert to Islam: "Let there be no compulsion in religion" (2:256).

Islam is a religion of peace and depends on human rights to maintain its policy. Just like the United Charter proclaims that the respect for human rights ensures a state of peace in the world, respect for human rights in times of war and peace in Islam ensures peace. So all Muslims have to pursue peace, even with their enemies, have to ensure justice even to their enemies and have to be fair.

5. Islam, a Religion of War? Distorted Views of Islam Fostering Violence
5.1. Orientalists Viewpoints

According to Orientalists and Western liberals, *jihad* is a war against western values such as democracy.[1] Some go as far as saying that humanitarian principles are just an invention of apologetic Islamic scholars.

Viewpoints such as the one of Orientalists are fed by scholars' work such as the one of Majid Khadduri who declares that *jihad* is a Holy War and a propagation of faith by war.[2] According to him, the mission of *jihad* is the universalization of Islam through violence.[3] In this scheme humanitarian principles would just be tools for conversion. For example, Islamic humanitarian law protects prisoners of war and non combatants: that would be for the purpose of converting them to Islam. This analyze is contrary to the Quran that clearly states that violence should never be used to convert people (Quran 2:256).

Others such as Yadh Ben Achour affirm that the battles led by the Prophet were waged only for territorial purposes and for the booty, such as slaves: the fact that prisoners of war could be enslaved rather than killed would be perceived as a way to increase the booty and not as a humanitarian principle.

Paul Tavernier asserts that Iran and Iraq led a total war against each other, without respecting the difference between combatants and civilians; he assumes that the two governments were probably referring to the Islamic legal tradition that accepts such a treatment.[4] First of all, the Islamic tradition clearly forbids the killings of civilians and non combatants.[5] Furthermore, Iran did not lead a total war at the beginning:[6]

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1. See: Boroumand, 2002: 5.
2. See: Stephens, 1877: 98-99.
3. See: Khadduri, 1955: 51.
4. See : Tavernier, 1993: 56.
5. See: Al Zuhili, 2005: 87-858.
6. See: Kelsay, 1993: 74-75.

Indeed the Islamic Republic of Iran considered the Iraqis to be victims of Saddam Hussein's policies and therefore civilians should be spared.[1] It changed mid-way when Iran realized the Iraqis were not rebelling against the unjust ruling of Saddam Hussein and it then became a total war.

These analyzes are the premises for Samuel Huntington's assertions that Islamic law and its specificity will lead to a clash of civilizations.[2] According to him, there is no possible conciliation between Islamic law and international law: Islam justifies another type of law and prefers diversity to universality.[3] His opinion is that Islamic humanitarian law just as Islamic law and Islam is a deviation from the Western world and has set up its own rules that are incompatible with democracy.[4] According to this stance, Islam is perceived as the religion of the sword and is fed by hatred against the West.[5] This position is reinforced by classic readings of *jihad*.

5.2. Classicists Viewpoints

There are different Muslim schools of thought regarding the definition of *jihad* and the definition of humanitarian principles. The categorization made by Mustansir Mir is really useful in that prospect as it helps to see the divergences and to understand the issues and the consequences of the statements made by these schools.[6]

Classic legal interpretations transform *jihad* into a war of religion waged against the world to achieve the universality of Islam and establish an Islamic hegemony. *Jihad* is therefore a personal duty for each Muslim.[7] As a consequence humanitarian standards are lowered: Al Shaybani allows the killing of captives[8] and Al Mawardi agrees with the killing old men.[9] Humanitarian principles are limits that classicists would like to hide or ignore in the name of a purpose.

Neo classicists have a tougher stance: Al Mawdudi is the most radical: *Jihad* is at the center of all his religious and political beliefs as it is the only way to achieve Islamic hegemony.[10] *Jihad* is both defensive and offensive.[11] He

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1. See: Chubin & Tripp, 1988: 38.
2. See: Huntington, 1997: 109.
3. See: Kian-Thiebaut, 2002: 7.
4. See: Huntington, 1997: 112.
5. See: Boroumand & Boroumand, 2002: 5.
6. See: Mir, in Messeir & Dajani, 1991: 113-123.
7. See: Mir, in Messeir & Dajani, 1991: 114-115.
8. See: Khaddouri, 1955: 9.
9. See: Mawardi, 1996.
10. See: Mawdudi, 2001: 19.
11. See: Mawdudi, 2001: 19.

agrees on the existence of human principles such as the ones lay down by the Prophet and is proud of the existence of humanitarian principles within Islam.[1] He has however a rather narrow interpretation: humanitarian principles are to be respected as long as the "enemy" respects the same rules. If the other side does not respect the rules, total war should be waged.[2] He refers only to the Quran and the *hadiths* and seems to refuse human reasoning when it comes to humanitarian principles: He limits the rights of prisoners to the right not to be tied to be killed or not to be tortured with fire; but there is nothing about treating prisoners of war fairly.[3] Sayyid Qutb also has a defensive concept of *jihad*. *Jihad* should universalize Islam:[4] Muslims are commissioned to enter into the battlefield, seize control of the political power and establish God's rule.[5] Abdul Rahman's leads a *jihad* to remove unjust rulers and struggle against western domination[6] though he keeps some humanitarian principles.[7] In general, humanitarian principles are respected as long as the enemy respects them, and they are limited to the strict minimum.[8] These intellectuals' viewpoints are very important as they are today invoked by terrorists.[9] It is essential to underline the fact that these classicists never denied international humanitarian law; even al Mawdudi who criticized Islamic rulers who forgot Islamic standards and referred only to international humanitarian standards respects international humanitarian law. It allows us to understand how far away the extremist interpretations are from Islam, even from the neo-classicists stance.

5.3. Extremist Viewpoints: Terrorism and Islam

Extremist interpretations have regain strength and influence as to justify the use of force and the indiscriminate targeting of civilians. Their argument is that the aim of war (*jihad al qital*) is to propagate Islam, the end justifying the means. The recrudescence of nihilist terrorist groups such as Al Qaeda or al Zarqawi's troops in Iraq has an impact on the warfare methods: These groups use weapons, tactics and methods that target anyone anywhere. Therefore these transnational groups questioned the traditional Islamic distinction between combatants and civilians.

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1. See: Mawdudi, 1980.
2. See: Mawdudi, 1980: 39.
3. See: Mawdudi, 1980: 40-41.
4. See: Qutb Sayyid, Milestones (Cedar Rapids, 1981).
5. See: Qutb, Fi Zilal al Quran, (Al Zarahba Al Shariah 1980).
6. See: Rahman, 1990.
7. See: Mir, in Shakeel (ed), 1991: 118-19.
8. See: Al Zarkawi, 2005: 389-392.
9. See: Al Zawahiri, 2005: 345.

Extremists misread Sayyid Qutb, Abul Rahman and al Mawdudi who all have radical views: *jihad* should universalize Islam in a struggle against the West. Their followers justify terrorist actions based on these aggressive interpretations of *jihad*; they have adapted humanitarian principles freely to their wars in the name of the propagation of Islam. The terms used by Al Zawahiri or Al Zarqawi justify radical actions. For example, Al Zawahiri finds it legal to target Muslims non combatants.[1] Algerian Islamists did cut throat so as not to make their victims suffer but their targets were civilians.[2]

The ideologues of Al Qaeda and nihilist terrorist groups justify the killings of civilians. Suleiman Abu Ghaith, a leader of Al Qaeda who has evaluated the number of Muslims killed in the world by the United States said 4 millions of Americans should be killed in return.[3] For these extremist intellectuals or terrorist ideologists, civilians have become legitimated targets: Abd al-Azziz al Jarbou denounces the moral decadence of the United States, source of perversion that has be eliminated, and is supported in this by Hamud bin Uqla al Shuaibi et de Ali al Khudeir al-Khudeir.

The argument is to widen the notion of combatants to civilians: the people living in the incriminated countries have ways of life that are not Islamic; therefore they are perverted by the system they belong to. Besides, according to Human bin Uqla, by voting in a democratic way, civilians accept the policies led by the governments and are therefore perceived as a support for this perverted government. Sheikh Ali al Khudeir justified the killings in the Twin Towers in 2001 because civilians working there were involved into capitalism, were working for the state or for offices linked to the system.[4] Therefore they were combatants representing indirectly their government.

There are *fatwas* justifying the killing of civilians such as the one Ali bin Khudeir al-Khudeiri who justifies the killings of civilians in the 11 September 2001 attacks: "it is legitimate to kill al infidel Americans"; or Sheikh Yusuf Al Qaradawi even issued a fatwa on September 3, 2004 to encourage the killing of American civilians working in Iraq. In an audio recording, Al Zarqawi

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1. See : Lacroix, 2005: 238-39.

2. See: Bennoune, 1994: 605.

3. See: Bush, 2004, Available at: http://www.washingtonpost.com/wp-dyn/articles/A9946-2004Jun2.html

4. See: The Middle East Media Research Institute, "Contemporary Islamist Ideology Authorizing Genocidal Murder", Special Report No 25, January 27, 2004.
   Available at http://memri.org/bin/articles.cgi?Page=archives&Area=sr&ID=SR2504

rejected the critics made that he didn't make a distinction between civilians and combatants: He said "Islam does not make target differences between militaries and civilians but between Muslims and unbelievers". (Ulph, 2005) Therefore it is legitimated to spill civilians' blood. Eventually Said al Din Al-Ansari, member of Al Qaeda justifies the killing of civilians on September 11: the people were working in a fortress that belong to the state and hosted enemy combatants so therefore the protection of the civilians inside the towers was the one of the enemy army.[1]

These examples demonstrate the limits of working on similarities and common grounds between Islamic humanitarian law and international humanitarian law. These extremist interpretations do exist and anyone dealing with humanitarian law has to take them into account; There are many Islam with different interpretations of the *Shari'a* and when establishing a dialogue or a conversation with these different trends of Islam, one must keep in mind that the discussion must concern all aspects of Islam, even the most extreme. The aim of this discussion is to keep channels of communication open with the hope of changing these extremist interpretations regarding the conduct of hostilities.

Terrorism is relevant issue as it targets civilians. Martin Kramer states "Islam is no more inclined to terrorism than any other monotheistic faith".[2] In Islam, massive killings, blood bath and such sufferings are not acceptable and they are forbidden against civilians.[3] The Quran says "Do not take life, which Allah has forbidden, unless it be by right; if anyone, is slain unjustly, we indeed have given his heir the right if retribution". (Quran 17: 33)

These new interpretations of Islam are actually anti-Islamic and go against the Quran and hadiths such as "Fighting is of two kinds: the one who seeks Allah's favour, obeys the leader, given the property he values, treats his associates gently and avoids mischief, will have the reward for all the time whether he is asleep or awake; but the one who fights in a boasting spirit, for the sake of display or to gain a reputation, who disobeys the leader and does mischief in the earth will not return with credit or without blame". (Haleem and al, 1998: 98) Abdulaziz bin Abdullah al-Ashaykh, the mufti of Saudi Arabia, argued that "hijacking planes, terrorizing innocent people and shedding blood constitute a form of injustice that cannot be tolerated by Islam, which views them as gross

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1. See: Ghazwa, 2002: 10-12.
2. Martin Kramer, "Hijacking Islam: A religion in danger of deteriorating into a manifesto for terror", National review online, September 19, 2001. Available at: http://www.nationalreview.com/comment/comment-kramer091901.shtml
3. See: Hashmi, 2002: 171.

crimes and sinful acts". (Wiktorowicz and Kaltner, 2003: 1) Muhammad Sayyid al-Tantawi, the rector of al-Azhar University in Cairo, issued a similar condemnation: "Attacking innocent people is not courageous; it is stupid and will be punished on the Day of Judgment. . . . It's not courageous to attack innocent children, women and civilians. It is courageous to protect freedom; it is courageous to defend one and not to attack". (Agence France Press, September 14, 2001)

Terrorists work outside the realm of Islam and Islamists are the plaintiff, the judge and the executioner except that they execute of innocents.[1] Therefore terrorism goes against principle of justice, proportionality and compassion.

However these extremist Salafist interpretations are countered by classicist and reformist Muslims.[2] The task of these Islamic intellectuals is to deal with various issues such as the conciliation of Islamic humanitarian law with international humanitarian law; create new modern interpretations of Islamic law; and face new challenges in the conduct of hostilities such as rape, terrorism, weapons of mass destruction, torture, assassination and guerrilla insurgency;[3] It is consequently essential for Islamic intellectuals to solve these issues and to give them a proper Islamic response so that international humanitarian law would know how to address these issues based on this Islamic expertise.

Besides there is a debate between the people arguing in favour of the verse of the sword (Quran 9:5) and the ones supporting the verses of peace. The first have revived the concepts of *Dar al-Islam* and *Dar al-Harb*. The *Dar al-Islam* is the territory of peace, the domain of justice and the *Dar al-Harb* is the territory of war where a collection of non Muslim nations stay and are free to live as they want as long as they do not threaten Islamic countries. The division does not exist as such in the Quran or the *Hadiths*. The existence of *Dar al-Islam*, house of peace, comes from the Quran (Quran 10:25) but the *Dar al-Harb* was invented by the classicists to justify a permanent state of war.[4] Mohammad Talaat al-Ghumaimi dismisses this division and replace with an Islamic ethic of saving lives.[5]

6. Conclusion

Conduct of hostilities are severely regulated in Islam and are very pragmatic;

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1. See: Haleem, 1998: 97.
2. Not all Salafist movements are violent.
3. See: Fadl, 2001; Hashmi, 1999: 154.
4. See: Fadl, 1999: 149.
5. See: Ghunaimi, 1968: 184.

however with the rise of extremist nihilist transnational groups taking new Islamic stances, these rules of war have been shattered. It is essential now for Islamic intellectuals to establish order in these interpretations and take over thanks to a modern interpretation of *ijtihad*. It is urgent to give a prompt reply to these extremists interpretation of Islam as to de-legitimize them and this could be done only by the adherence to international law. To adhere to this international system, Islamic law needs to be reformed. In the meantime, humanitarian workers and agencies have to deal with extremists actions.

The Quran says Muslims should always be reasonable, prescribes them to always search for a middle way between what is right and wrong, and orders them to dislike extremism.[1] However extremism does exist: how could international humanitarian law address this issue?

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1. See: Haleem; Ramsbotham; Risaluddin & Wicker, 1998: 97.

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