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# Islam and Warfare

Context and Compatibility with  
International Law

Onder Bakircioglu



# Islam and Warfare

The question of how Islamic law regulates the notions of just recourse to and just conduct in war has long been the topic of heated controversy, and is often subject to oversimplification in scholarship and journalism. This book traces the rationale for aggression within the Islamic tradition, and assesses the meaning and evolution of the contentious concept of jihad. The book reveals that there has never been a unified position on what Islamic warfare tangibly entails, due to the complexity of relevant sources and discordant historical dynamics that have shaped the contours of jihad.

Onder Bakircioglu advocates a dynamic reading of Islamic law and military tradition; one which prioritises the demands of contemporary international relations, and considers the meaning and application of jihad as contingent on the socio-political forces of each historical epoch.

This book will be of great interest to scholars and students of international law, Islamic law, war and security studies, and the law of armed conflict.

**Onder Bakircioglu** is a Senior Lecturer in the School of Law at the University of Leicester.

“This is a scholarly, rigorous, thoroughly documented and intellectually honest account of the ambiguity and complexity of the Islamic doctrine of jihad. By persuasively demonstrating that war and peace are always outcomes of human agency, this book is an eloquent call to moral choice and political action, beyond stale polemics of absolute text or abstract doctrine.”

Prof Abdullahi Ahmed An-Na’im

“With admirable scholarly mastery, Onder Bakircioglu, explores the nature of jihad in Islamic thought about war and peace, demonstrating conclusively that there is no authoritative doctrine available to resolve interpretative controversies so central to current debates about Islamic extremism. An indispensable study for legal specialist, and indeed, for anyone concerned with a deep understanding of the bearing of Islam on the regulation of warfare.”

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with International Law

**Onder Bakircioglu**

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# Introduction

Islam as a religio-political force has, in recent decades, drawn the world's attention through such phenomena as the Iranian Revolution,<sup>1</sup> the unyielding mujahideen resistance against the Soviet invasion of Afghanistan, and the assassination of Egypt's President Sadat by a militant Islamic group. However, it was when al-Qaeda and its affiliates were established to have been behind the 11 September 2001 (9/11) attacks in the US that the age-old images of Islam – the dogmatic, backward and fanatical religion – were significantly revitalised within the Orientalist<sup>2</sup> discourse.<sup>3</sup> The 9/11 attacks also fuelled apprehension about jihad and its potential implications, including massive terrorist attacks on Western nations, the re-establishment of the caliphate,<sup>4</sup> the subjugation and murder of non-Muslims and Islamic world conquest through the use of brutal force.<sup>5</sup>

- 1 The Islamic takeover of power in Iran was one of the most significant non-communist mass uprisings of the last century, which threatened vital economic and political interests of the Western world in the region. The Iranian revolution also marked Islam's revival as a force to be reckoned with in regional and international politics. See A. Dawisha, 'Islam in Foreign Policy: Some Methodological Issues' in: A. Dawisha (ed.), *Islam in Foreign Policy* (Cambridge: Cambridge University Press, 1983) 1.
- 2 For an analysis of Western representations of 'the Orient', see E. W. Said, *Orientalism* (London: Penguin Books, 2003).
- 3 As Minou Reeves points out, Islam's image in the West, over the course of some 13 centuries, has been stubbornly biased and consistently negative, which deeply permeates the European consciousness. An overwhelming majority of European writers frequently portrayed Muhammad as a man with serious moral faults. Likewise, many a churchman, politician, historian, orientalist, dramatist, and philosopher had attributed to Islam in general and Muhammad in particular offensive and even fiendish characteristics. See M. Reeves, *Muhammad in Europe: A Thousand Years of Western Myth-Making* (New York: New York University Press, 2000) 81–82.
- 4 The institution of the caliphate was abolished in 1924 by the People's Republican Party in Turkey, which, departing from the theocratic Ottoman legacy, aimed to reshape Turkey and its institutions according to a secular system inspired by the West. See K. H. Karpat, 'Modern Turkey' in: P. M. Holt *et al*, *Cambridge History of Islam* (Cambridge: Cambridge University Press, 1992) 527, 533.
- 5 J. Strawson, 'Holy War in the Media: Images of *Jihad*' in: S. Chermak *et al* (eds.), *Media Representations of September 11* (Westport: Praeger, 2003) 17–18.

## 2 Introduction

The impact of the 9/11 attacks was so great that even balanced portrayals of Islam were eclipsed by stereotypical images of a fundamental, anti-Western, and warmongering religion that bore the hallmarks of medieval prejudices and rhetoric. The popular representation tailored for the Western audience has reflected Islam as monolithic, intrinsically aggressive, and determined to wage interminable wars against the interests and values of the Western civilisation.<sup>6</sup> A cursory analysis of popular news coverage<sup>7</sup> reveals that Islam itself is largely held responsible for the constant threat of violence posed by some militant groups claiming to be acting under the duty of jihad, a term which has long entered into common usage, albeit largely misinterpreted.<sup>8</sup> Regrettably, the misreading and/or misrepresentation of the Islamic attitude to war and peace has strengthened the long-held prejudice that incessant military struggle is an intrinsic feature of Muslim foreign policy. While terrorism in the name of religious belief is not a phenomenon peculiar to Islam, there now exists a prevalent stereotypical Western perception that crudely considers Islamic terrorism a basic component of jihad.

The caricaturisation of Islam as the arch-enemy of the Judaeo-Christian tradition owes its main sources to the extremist discourse and acts of terrorism engaged in by radical non-State actors. Ironically, the exaggeration, and at times demonisation, of the 'Islamic threat' is akin to the 'Communist threat' theme that dominated the Cold War period during which American national security strategists often portrayed communism as an 'international conspiracy . . . directed generally against the inherent dignity, freedom, and sacredness of the individual, . . . [as well as] against the Judaeo-Christian code of morals on which . . . [the] Western civilisation rest[ed]'.<sup>9</sup> The dissipation of the 'spectre of communism' appears to have granted the chance for Western policymakers to turn to scaremongering against Islam.<sup>10</sup>

6 As Peters poignantly reminds us, Islamic warfare 'has always appealed to Western imagination. The image of the dreadful Turk, clad in a long robe and brandishing his scimitar, ready to slaughter any infidel that might come his way and would refuse to be converted to the religion of Mohamet, has been a stereotype in Western literature for a long time. Nowadays this image has been replaced by that of the Arab 'terrorist' in battledress, armed with a Kalashnikov gun and prepared to murder . . . innocent Jewish and Christian women and children'. R. Peters, *Islam and Colonialism: The Doctrine of Jihad in Modern History* (The Hague: Mouton Publishers, 1979) 4.

7 See generally, E. Said, *Covering Islam: How the Media and the Experts Determine How We See the Rest of the World* (London: Vintage, 1997).

8 *Jihad* is commonly mistranslated as holy war; yet neither the Quran nor the *hadith* contains the concept of holy war, which was coined by Europeans in the eleventh century, referring to the Crusades. See G. Marranci, *Jihad: Beyond Islam* (New York: Berg, 2006) 18; L. Napoleoni, 'Modern *Jihad*: The Islamist Crusade' (2003) 23 *Sais Review* 53, 65.

9 NSC-17, 'The Internal Security of the United States' (June 28, 1948) cited in: D. Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity* (Minneapolis: University of Minnesota Press, 1998) 27.

10 While the phenomenon of Islamophobia is not new, many Muslim communities in Europe have lately been subject to increasing levels of hostility, suspicion, prejudice,

The assumption that Islam poses a radical challenge to what the West stands for is strengthened by the scholarship and journalism of oversimplification that largely inform the Western audience of Islam and its military aspect. This oversimplified representation of Islam is further supported by Huntington's 'clash of civilizations' model, formulated in the wake of the post-Cold War era, which mainly advanced the view that ideological or economic reasons would no longer play as prominent a role as the cultural, historical, traditional, and, most importantly, religious factors as the principal sources of divisions and conflicts between nations. Presenting a rather negative image of Islam, Huntington claimed that Islam is simply 'a religion of the sword . . . [which] glorifies military virtues'.<sup>11</sup> Huntington further overstressed the warlike aspect of Islam by noting that 'Muhammad himself . . . [was] a hard fighter and a skilful military commander', and that 'the Koran and other statements of Muslim beliefs contain few prohibitions on violence, and a concept of nonviolence is absent from Muslim doctrine and practice'.<sup>12</sup> The fact that there is no plain or uncontested stance towards war and peace in Islam is largely obscured by this portrayal, which crudely considers hostility to be an inherent feature of Islam.<sup>13</sup> This outlook, in other words, views Islam itself as one of the material sources of potential conflicts, a conclusion based on dubious generalisations and not fully in accord with historical realities.<sup>14</sup>

negative stereotyping, and verbal or physical harassment. It is recognised that irrespective of its daily forms, whether racism, discrimination, or violence, Islamophobia constitutes a clear violation of human rights and a grave threat to social cohesion. In its thought-provoking report, the Runnymede Commission on British Muslims and Islamophobia identified the dominant stereotypical tendencies characterising Islamophobia, such as considering Islam monolithic, static, unresponsive, authoritarian, inferior, or primitive, and viewing Muslims as aggressive, manipulative, backward, and self-righteous in their beliefs and values. The report calls for serious action to eradicate Islamophobia in order to reduce discrimination, hatred, and aggression on grounds of religion, colour, ethnicity, or cultural practice. See *Islamophobia: Issues, Challenges and Action*, A Report by the Commission on British Muslims and Islamophobia (London: Trentham Books, 2004) 21ff; also see The Parekh Report, *The Future of Multi-Ethnic Britain: Report of the Commission on the Future* (London: Profile Books, 2002) 245–246; I. Ramberg, *Islamophobia and its Consequences on Young People: Seminar Report* (Strasbourg: Council of Europe Publishing, 2004) 6ff.

11 S. P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996) 263; S. P. Huntington, 'The Clash of Civilizations?' (1993) 72 *Foreign Affairs* 22, 49; J. Rehman, *Islamic State Practices, International Law and the Threat from Terrorism: A Critique of the 'Clash of Civilisations' in the New World Order* (Oxford: Hart Publishing, 2005) 1–2.

12 Huntington (1996), supra note 11, 263.

13 J. Rehman, 'Islam, "War on Terror" and the Future of Muslim Minorities in the United Kingdom: Dilemmas of Multiculturalism in the Aftermath of the London Bombings' (2007) 29 *Human Rights Quarterly* 831, 832ff; F. Halliday, *Islam and the Myth of Confrontation* (London: I.B. Tauris, 2003) 107.

14 To support his conclusions, Huntington, among others, argues that 'Islam is an absolutist faith. It merges religion and politics and draws a sharp line between those in the *Dar al-Islam* [Abode of Islam] and those in the *Dar al-Harb* [Abode of War]. As

Undoubtedly, Islam, since its inception, has confronted other civilisations, including the West, for a variety of economic, political, and religious reasons. As two major world religions, Islam and Christianity not only posed mutual threats to one another's very existence, but also presented ideological and moral challenges to one another's outlook, for both claimed monopoly on truth, with their alternative visions of religious belief and ideal behaviour, and universality in their missions. Whilst the Islamic world had been far ahead of the Christian West during the Middle Ages in economic, military, scientific, and cultural spheres,<sup>15</sup> the balance had tilted towards the West with the industrial and scientific revolution, which later culminated in the subordination of many non-European nations to Western powers through colonial and imperial enterprise. With the end of the classical colonial period in the post-1945 world, international conflicts became less frequent owing to the much greater destructive capacity of conventional warfare, a phenomenon that led some non-State actors to employ asymmetric military means to target nation-States. It is within such a context that some Muslim groups, with the aim of defending their version of Islamic values against their perceived enemies, have resorted to acts of terrorism.

Although such atrocities as the 9/11 and 7/7 attacks were sought to be justified with reference to Islam,<sup>16</sup> the tendency to view Islam mainly through the lens of terrorism, intolerance, and brute force blurs the fact that Islam possesses a rich potential to promote peace; that Islamic warfare is subject to strict limitations, and jihad does not connote terror and aggression; and that militant groups do not represent billions of Muslims who, in the main, denounce indiscriminate violence. Accordingly, the abuses of the doctrine of jihad by self-proclaimed contemporary jihadists should not encourage the use of blatant anti-Islamic rhetoric, claiming that Islam itself contains the seeds for wanton violence; for this would deepen mutual misunderstanding, fear, resentment, hatred, and disaccord between the Western and Islamic worlds.

a result, Confucians, Buddhists, Hindus, Western Christians, and Orthodox Christians have less difficulty adapting to and living with each other than any one of them has in adapting to and living with Muslims.' Huntington (1996), *supra* note 11, 264. This claim, however, misses two important points: first, the categorical distinction between *Dar al-Islam* and *Dar al-Harb* had been drawn by Muslim scholars during the imperial period of Islam, congruent with the political exigencies of the era, and hence the distinction is man-made, and not based on eternal principles; second, Huntington completely ignores Islam's superior medieval record on tolerating religious minorities belonging to the category of the 'People of the Book'. These points will be revisited later.

15 As Lewis points out, 'in the period which European historians see as a dark interlude between the decline of ancient civilization – Greece and Rome – and the rise of modern civilization – Europe, Islam was the leading civilization in the world, marked as such by its great and powerful kingdoms, its rich and varied industry and commerce, its original and creative sciences and letters'. B. Lewis, *The Crisis of Islam: Holy War and Unholy Terror* (London: Phoenix, 2004) 4.

16 Within the last decade, militant groups also conducted terror attacks in Istanbul (2003), Madrid (2004), and Mumbai (2008) – all ostensibly committed under the duty of jihad.

It is, then, the duty of responsible scholarship to promote an accessible and fair account of Islamic ‘just war’ tradition in an effort to dispel illusions about jihad, a concept which has long been misused and abused on account of ignorance or ideological prejudice. This book explores issues surrounding Islamic tradition on warfare, aiming to highlight its guiding principles within the historical context in which they took on their defining characteristics. By examining this controversial subject, this book seeks to challenge the mainstream perception<sup>17</sup> that jihad is merely a religiously sanctioned aggressive warfare to propagate Islam, a religion which, according to this crude perception, poses a danger to humanitarian values, and violates the basic principles of modern international law. Refutation of these blanket assertions can plausibly be done by disclosing the complexity of the normative framework of Islamic warfare. It is, however, imperative to note at the outset of such an endeavour that in every religious, ethical, and ideological system there surfaces, at some point, a certain degree of cleavage between the theory and practice. Such variance may particularly arise in the fog of war wherein military necessities and human frailty might engulf religio-ethical principles.

Among the key research questions of this study are: Are the primary sources of Islam open to re-interpretation to effectuate a change in (re)reading the legal parameters of Islamic warfare? Does the concept of jihad necessarily connote aggressive force or acts of terrorism? What are the main intellectual stands on the use of force in Islam? Do Islamic principles on matters of war and peace comply with the principles of modern international law, which envisage unilateral force merely in self-defence? In an attempt to answer these questions, the book first provides a historical and contextual survey of the sources of Islamic law with a view to illustrating their continuing relevance to the debate on jihad and its interpretation. The second part traces the origins and evolution of the Islamic use of force discourse. This overview is divided into two parts: the first examines Islamic *jus in bello* rules, while the second explores Islamic *jus ad bellum* norms, which will be the main focus of the study. This survey clarifies how the sources of Sharia in general, and warlike verses of the Quran in particular,<sup>18</sup> have developed over time, laying the groundwork for the forthcoming analysis of how jihad is to be

17 There is, indeed, a tendency to exaggerate threats posed against the Western world by the militant, religious movements grouped together under the assumed monolithic rubric of ‘Islamic totalitarianism’. These radical movements are portrayed to regard such Western notions as individual rights and freedoms as the height of depravity, and to have an agenda of waging jihad against all those who refuse to embrace the dogmas of Islam. Hence, Muslim totalitarians, as the argument runs, single-mindedly seek to eradicate the Western culture and values in order to bring about the global triumph of Islam. See generally, Y. Brook; A. Epstein, “‘Just War Theory’ vs. American Self-Defence’ in: E. Journo (ed.), *Winning the Unwinnable War: America’s Self-Crippled Response to Islamic Totalitarianism* (Plymouth: Rowman & Littlefield, 2009) 81–82.

18 For the benefit of non-specialist readers, this book employs a simple form of transliteration whereby common Arabic terms, such as Sharia, Quran, jihad, *ijtihad*, Shia, or Sunni, are restricted to roman letters and no diacriticals are used to stress pronunciation.

interpreted according to the contemporary context of international relations. The third part of the book assesses the opposing doctrinal views on the meaning and implications of Islamic warfare. Finally, the fourth section, accompanied by examples of Islamic State practice, proposes a contextual interpretation of jihad in the United Nations (UN) era. The study will end with a summary of the main conclusions reached.

While modern works on Islam generally produce a single-sided representation of jihad, exclusively highlighting either the peaceful or warlike aspects thereof, this book aims to capture the phenomenon in its overall matrix. This undertaking will reveal that there has never been a unified position on what Islamic warfare actually entails, due to the complexity of relevant sources, and discordant historical dynamics that have shaped the contours of jihad. The main theoretical framework of the study is then predicated upon the major premise that the exact meaning and application of jihad has hitherto been contingent on the socio-political forces of each historical epoch. Linked with this premise, this work advocates a dynamic reading of Islamic military tradition, for blind adherence to antiquated concepts that are not responsive to new challenges fails to bring into play just and practicable responses to the demands of contemporary international relations. Hence, the primary objective of this study is to promote the view that jihad may and should solely be confined to peaceful and defensive measures, a proposition supported by a socio-legal research methodology that benefits from a wide range of perspectives drawn from legal scholarship, history, international relations theory, and theology.<sup>19</sup>

19 It must be noted that the book's scope is essentially limited to the Sunni approach (Sunnis constitute the majority of Muslims worldwide) to just warfare, as the task of adequately treating the relevant Shia perspective requires a separate monograph.

# 1 Main Sources of Islamic Law

## Introduction

Islam possesses some important characteristics of a legal system, which seeks to regulate the behaviour of its adherents in accordance with its ideal paradigm of what constitutes right and wrong, and demands the believer to follow (by means of thought and deed) its precepts, which are believed to have originated from God's will. Classical Islamic jurisprudence rests on a monotheistic outlook that regards God as the ultimate source of law, for He alone is taken to be the ultimate sovereign whose omnipotence over human affairs stems from His status as the sole creator of the entire universe. Humankind accordingly needs no further justification to be subordinate to His will. Unsurprisingly, in relation to the Lord (*rabb*), Islam characterises humans as servants (*abd*).<sup>1</sup> The word 'Islam', likewise, derives from the Arabic term *salam*, which has a two-fold meaning: peace and submission (with the suggestion of total submission to God).<sup>2</sup> A Muslim, then, is a person who unconditionally submits to God to the exclusion of any other revered entity.

The question of how the Islamic law regulates the notions of just recourse to, and just conduct in, war requires a brief examination of the origins, development, and hierarchy of Islamic law. Rejecting a literal and narrow approach, this book advocates the need for a historical and contextual re-reading of the main sources of Islam, whose varied interpretation informs the ongoing debate on the Islamic use of force discourse and its compatibility with contemporary political and legal exigencies. By providing an overview of the sources of Islam, this chapter aims to set the stage for the subsequent analysis of Islamic *jus in bello* and *jus ad bellum* norms.

1 W. M. Watt, *Islam and Christianity Today* (London: Routledge, 1983) 125.

2 For various uses of the word *salam*, see B. Lewis, *The Political Language of Islam* (Chicago: The University of Chicago Press, 1988) 78ff.



## I. Primary Sources

### A. *The Quran*

Islamic tradition deals with questions of war and peace in its main sources, which include the Quran, the sacred book of Islam, guiding sayings and deeds of the Prophet (*hadith*), and the individual as well as collective opinions formed by jurists over the centuries since the death of the Prophet Muhammad. It must be made clear at the outset that while there is a consensus over the authenticity of the Quranic text and the traditions and sayings attributed to the Prophet, as recorded by reliable chroniclers,<sup>3</sup> the manner in which these sources has hitherto been interpreted varied considerably. While alive, the Prophet often settled controversies over alternative readings of the Quran, yet his demise compelled the Muslim community to call upon their own resources to determine the true meaning of divine revelations. Hence, Islamic tradition as a whole is a rich composite of binding divine sources and man-made doctrines developed over the course of Islamic history.

The Quran (which literally means recitation or reading) constitutes the most important source of Islam, which is composed of the divine revelations received by Muhammad, whose chief mission was to form an orderly and moral world operating in accordance with sacred messages delivered by God. Consisting of these revelations, the Quran is the primary and most authoritative source of Islamic law.<sup>4</sup> The Quran is the sole Muslim Scripture and it would be misleading to call it the Muslim Bible. This is certainly not to overlook the similarities between Christianity and Islam; these religions have much in common (some of which will be discussed within the context of just war). Both, for instance, emerged from within the same ancient Middle Eastern civilisations; both had adopted the Jewish tradition of ethical monotheism, a prophetic mission of spreading the knowledge of one God and His commandments preserved in sacred texts; and both largely drew upon Greek thought and science, as well as institutions shaped to an important degree by Hellenistic and Roman elements.<sup>5</sup> Nevertheless, unlike the Old and New Testaments, the Quran is not composed of texts written over a long period of time by various authors; it is rather a single text dictated by a single

3 The most credible *hadith* collectors include Sahih al-Bukhari, Sahih Muslim, Ahmad ibn Hanbal, Sahih al-Sijistani, Abu Isa al-Tirmidhi, and al-Nasai. These chroniclers compiled the *hadith* literature about 200 years after the Prophet's demise. See further, N. J. DeLong-Bas, *Wahhabi Islam: From Revival and Reform to Global Jihad* (London: I.B. Tauris, 2004) 52; S. Hasan, 'Islamic Jurisprudence: Sources and Traditions Creating Diversity in Human Relationships' in: S. Hasan (ed.), *The Muslim World in the 21st Century: Space, Power, and Human Development* (London: Springer, 2012) 25ff.

4 F. A. Hassan, 'The Sources of Islamic Law' (1982) 76 *American Society of International Law Proceedings* 65, 66.

5 B. Lewis, *Islam: From the Prophet Muhammad to the Capture of Constantinople*, Vol. II (Oxford: Oxford University Press, 1974) xviii.

author over the course of two decades,<sup>6</sup> with certain distinct messages, injunctions, and truths considered to be universally valid.

Inasmuch as the Quran is believed to contain the literal word of God, it is deemed the most authentic record of Islamic law,<sup>7</sup> incarnating the final, inimitable, and infallible injunctions of everlasting validity. God in the Quran affirms Islam's complete nature, saying that '[t]his day have I perfected your religion for you, completed My favour upon you, and have chosen for you Islam as your religion'.<sup>8</sup> Although the Quran expresses that 'to every people (was sent) a Messenger',<sup>9</sup> and that there is no difference between these Prophets,<sup>10</sup> Muhammad closed the line of Messengers<sup>11</sup> by reintroducing the original, unadulterated teaching of God, which had not been preserved in its pristine form in earlier scriptures.<sup>12</sup> Muslims thus believe that the Quran had been bestowed on humankind though Muhammad, 'the seal of the Prophets',<sup>13</sup> as being God's final effort to repair and reconstruct the original, but distorted and forgotten, message preached by other Prophets since Abraham.<sup>14</sup>

The Quran accordingly presents Islam as the very religion that had been preached by earlier Prophets including Abraham, Noah, Moses, and Jesus,<sup>15</sup> who themselves were thus originally Muslims. Among other prophets, Muslims ascribe

6 The Muslim belief that the Quran represents the unalterable word of God conveyed solely through the medium of Muhammad is unique in that neither the Torah nor the Gospel had been communicated and preserved as such. While some orthodox Jews believe that the Torah had been dictated to Moses on Mount Sinai, the nature of Moses' mediation in recording the divine commandments, the time of the completion of the Torah, and the possible involvement of other authors in the writing of the Old Testament remain controversial. Most scholars, however, believe that both the canonisation and formation of the Old Testament transpired at a date considerably later than what the Bible claims. See further, D. Stern, 'Sacred Text and Canon' in: A. A. Cohen; P. Mendes-Flohr (eds.), *20th Century Jewish Religious Thought* (Philadelphia, The Jewish Publication Society, 1987) 841, 842ff; S. D. Fraade, *Legal Fictions: Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectaricians and Sages* (Leiden: Brill, 2011) 478ff.

7 Hassan, *supra* note 4, 66.

8 Q. 5:3. This study relies upon authoritative scholar Yusuf Ali's translation of the Quran. See A. Y. Ali, *The Meaning of the Holy Qur'an*, 11th ed. (Beltsville: Amana Publications, 2008) 1297. In cases of difficult verses, the reader may refer to the following website for a comparison of various English translations of the Quran: <http://www.studyquran.org/EnglishTranslations.htm>.

9 Q. 10:47.

10 Q. 2:136.

11 Q. 33:40.

12 Ali, *supra* note 8, 56.

13 Q. 33:40.

14 Q. 2:127–130.

15 According to the Quran, there are no people who did not receive a messenger (Q. 10:47), hence humankind is not in a position to claim that it has not been warned adequately. See further E. E. Calverley, 'Mohammad, Seal of the Prophets?' 1936 (26) *The Muslim World* 79–82; J. P. Berkey, *The Formation of Islam: Religion and Society in the Near East, 600–1800* (Cambridge: Cambridge University Press, 2003) 48ff.

to Abraham a prominent standing, for he is considered to be a perfect model for the faithful, the harbinger of monotheism, and hence the founding father of Judaism, Christianity, and Islam.<sup>16</sup> Muslim tradition, in other words, rooted Islam within the soil of monotheism, a phenomenon which rendered the appeal of the Quran far more acceptable to those who had already been familiar with the monotheistic conception of the universe. This point is confirmed by some early sources,<sup>17</sup> including *The Armenian History*, written circa 660, which recorded that ‘a certain man from among those same sons of Ismael [i.e. Arabs] whose name was Mahmet [Muhammad], a merchant’, acting as if by God’s command, started preaching the path of truth. ‘He taught them to recognize the God of Abraham, especially because he was learned and informed in the history of Moses.’ Similar to the Jewish tradition, since ‘the command came from on high’, the followers ‘came together in the unity of religion’, abandoning their idols and turning ‘to the living God who appeared to their father Abraham’.<sup>18</sup> Muhammad, in this sense, had never rejected the legacy of his predecessors; rather, he saw himself part of a long series of Prophets who had been appointed by God to preach the divine truth. Like Abraham, Muhammad preached monotheism and advised his followers to comport themselves in a manner of righteousness and piety.<sup>19</sup> Again, similar to Christ, he reminded humankind of resurrection, the Day of Judgement, and of the punishments and rewards in the hereafter.<sup>20</sup>

16 Muslims, and some Roman observers and missionaries, believe that Abraham’s child Ishmael, whom Sarah’s maidservant, Hagar, bore to Abraham, was banished from his home. For when Sarah gave birth to Isaac, she wished him to receive Abraham’s inheritance, and thus had Abraham cast Hagar and Ishmael out into the desert near Mecca, where Ishmael eventually became the father of Arabs. See further John L. Esposito *et al* (eds.), *The Islamic World: Past and Present*, Vol. I (New York: Oxford University Press, 2004) 7.

17 For a brief illustration of how monotheism impacted on the spread of Islam, see I. Ishaq; A Guillaume (trans.), *The Life of Muhammad: A Translation of Ibn Ishaq’s Sirat Rasul Allah* (Oxford: Oxford University Oxford, 1955) 93.

18 Sebeos; R. W. Thomson (trans.), *The Armenian History Attributed to Sebeos*, Vol. I. (Liverpool: University of Liverpool, 1999) 95–96.

19 See Q. 2:131–133.

20 It is to be noted that while there is no consensus in Christian theology as to whether the atoning sacrifice of Christ has been sufficient to wipe away the sins of Christians, regardless of the merit or repentance of the sinner, Muslims unequivocally reject the doctrine of the all-atoning bodily sacrifice of Jesus through crucifixion and resurrection. According to Islam, faith and deeds performed in the body are the sole determinants of one’s fate in the afterlife: ‘if any do deeds of righteousness . . . and have faith they will enter heaven’, the Quran declared (Q. 4: 124). Thus no Messenger may be relied upon for salvation, for each person is responsible for his own inner and outer attitude. This suggests that what Muslims believe and do in this world would eventually translate themselves into rewards or sufferings in the afterlife. See further D. Thorsen, *Exploration of Christian Theology* (Grand Rapids: Baker Academic, 2010) 28.3.3ff *cf.* J. L. Esposito, *What Everyone Needs to Know About Islam* (Oxford: Oxford University Press, 2011) 31–35.

### 1. The Compilation of the Quran

Islamic tradition holds that the Quran is revealed to the Prophet Muhammad by God through the medium of angel Gabriel.<sup>21</sup> Muslim theology and jurisprudence consider the entire corpus of the Quran as having sprung from Muhammad's reception of divine revelations (*wahy*). The form of such revelations had been described to be verbal, visual, or otherwise in character.<sup>22</sup> Bukhari relates a tradition on the authority of the Prophet's wife, Aisha, who described the account of the first direct revelation: while in seclusion for peaceful contemplation in a cave near Mecca, Gabriel commanded Muhammad to read the first lines of Sura 96.<sup>23</sup> Puzzled when the unlettered Prophet could not recite, the angel pressed him hard until he yielded and managed to read the first five verses of the Sura. As the Messenger recounted what had taken place, his first wife Khadija and her Christian cousin Waraqa assured him of the sacredness of his mission.<sup>24</sup> Following a brief period of interruption, Muhammad regularly received further revelations, during the process of which he reportedly entered into a trancelike state. These revelations came down in instalments in Mecca and Medina over a 22-year period, until the demise of Muhammad (AD 610–632).<sup>25</sup>

The Quran is revealed in Arabic,<sup>26</sup> containing 114 chapters (*suras*), 6,236 verses (*ayat*), and a total number of 77,934 words.<sup>27</sup> The entire corpus of the Quran was completed during the lifetime of Muhammad, who called upon his scribes to record what had been revealed to him. The Prophet's recitations had initially been written down on whatever material came to hand, including palm leaves, shoulder-blades of camels, wood pieces, and parchment. Under Muhammad's supervision, these fragmented pieces were subsequently collected into *suras* or chapters. However, while the Quran existed in its full, albeit fragmented, form since the first revelation, the written material was not brought together into a single codex during the Prophet's lifetime. The assembly of the whole Quran was a lengthy and arduous task, the completion of which has been attributed to various people among the Prophet's companions, including the four immediate successors as caliphs. Nonetheless, most commentators concur that an official codex had

21 See Q 53:1–18.

22 According to the tradition, the divine inspiration was revealed to the Prophet sometimes 'like the ringing of a bell', and sometimes the Angel came 'in the form of a man' who conveyed the divine message verbally. *Hadith* Reported by al-Bukhari, *Hadith of Bukhari*, Vol. I, *Hadith* 1:2.

23 See Q 96:1–5.

24 Al-Bukhari, *supra* note 22.

25 See generally J. E. Campo (ed.), *Encyclopedia of Islam* (New York: Infobase Publishing, 2009) 590; M. Cook, *The Koran: A Very Short Introduction* (New York: Oxford University Press, 2000) 5.

26 'We have sent it down as an Arabic Quran, in order that ye may learn wisdom', the Quran declares (Q 12:2).

27 G. Sawma, *The Quran Misinterpreted, Mistranslated, and Misread: The Aramaic Language of the Quran* (New York: Adibooks, 2006) 98.

been collected under the rule of Uthman, the third caliph, within 20 years of Muhammad's demise.<sup>28</sup>

Uthman concerned himself with ascertaining whether or not the texts he assembled had been directly recited by the Prophet. During this process, the main Quranic material was that collated by Muhammad's chief secretary, Zaid ibn Thabit. Uthman is known to have ordered an authorised version of the Quran to be assembled and copied, and commanded his governors to destroy all variant texts.<sup>29</sup> For one of the main challenges lay in the fact that Arabic was the language of desert nomads, and its spoken form was far more sophisticated than its written form at a time when written Arabic lacked vowels or diacritical marks. This led to the acknowledgement of seven variant, but equally authoritative, readings (*qeraat*) of the Quran, which could have caused significant controversy over the meaning. But when the Quran was redacted and an authoritative version was adopted, this conclusively put an end to alternative readings due to assorted spellings. This redacted version, effected by a number of learned *sahaba*, 'has since remained unchanged and unchallenged'.<sup>30</sup>

## 2. *The Content and Structure of the Quran*

As noted above, Muslims consider the Quran to embody an authentic record of God's eternal and unalterable word.<sup>31</sup> Incorporating an amalgamation of legal and ethical principles, as well as ritualistic and moral exhortations, the Quran provides the fundamental substance of the Islamic law (Sharia),<sup>32</sup> and imposes

28 For a detailed account of the collection process of the Quran, see J. Burton, *The Collection of the Quran* (Cambridge: Cambridge University Press, 1977) 139ff.

29 The dominant view among Muslim scholars is that no alteration had occurred in the Quran, and thus the text that has reached us today was directly revealed to the Prophet. For a discussion about whether any possible alterations (*tahriif*) and/or any additions or omissions have taken place, see A. al-Qaism al-Musawi al-Khui, *Prolegomena to the Quran* (New York: Oxford University Press, 1998) 135ff; cf. Burton, *supra* note 28, 138ff.

30 M. C. Bassiouni, 'Evolving Approaches to Jihad: From Self-Defence to Revolutionary and Regime-Change Political Violence' (2008) 8 *Chicago Journal of International Law* 119, 119.

31 However, the intransigence with which the Muslim scholars defend the integrity of the Quran has been challenged by some Western scholars who questioned the Muslim account by arguing that the Quran, as we know it today, had been assembled at a much later period out of a fragmentary prophetic tradition, and of a large quantity of exegetical material developed during the course of polemics engaged with Jews and Christians. For more on this revisionist theory, see M. Ruthven, *Islam in the World*, 2nd ed. (Oxford: Oxford University Press, 2000) 81ff; cf. J. L. Esposito, *The Oxford Encyclopaedia of the Modern Islamic World*, Vol. III. (Oxford: Oxford University Press, 1995) 386.

32 Originally, the term Sharia referred to the practical side of religion and this is how it appears in the Quran: '[t]hen we put thee on the (right) Way of Religion: so follow thou that (Way)' (Q. 45: 18). Muslim lexicographers note that the word Sharia is connected to such concepts as 'path', 'road', 'way', or 'highway'. But, in its broader sense, Sharia came to designate the rules and legal provisions that govern the lives of Muslims.

a clear set of legal and moral obligations on Muslims.<sup>33</sup> The Quran covers the basic components of mundane and spiritual existence, envisaging guidelines for legitimate and ideal behaviour concerning important aspects of life. Lessons of right conduct in daily matters, and wisdom in spiritual matters, may thus be sought from the Quran, which is deemed to have confirmed, subsumed, or restored God's earlier revelations.<sup>34</sup> In view of the fact that God's ordinance is essentially embodied in the Quran, it is only natural that Muslims are required to abide by the moral and legal framework thereof. In fact, according to the Quran's religio-legal matrix, the ideal life in this world is one which is lived according to the relevant Islamic precepts and injunctions (whether ritualistic, moral or legal in character). The Quran, in this sense, consists of a system of duties and responsibilities, which, if duly performed, may not only give the believer an inner satisfaction in the temporal world, but also assure him a place in Heaven.<sup>35</sup>

Muslim scholars usually distinguish between three main categories of ethico-legal injunctions in the Quran. The first pertains to the doctrine of belief in God, His messengers and the Day of Judgement; the next is essentially concerned with ethical human conduct; and the third part is associated with practical or daily actions of believers under Islamic law.<sup>36</sup> These categories are then subdivided into relevant sections, which, among others, deal with rituals, private and public issues, domestic and international politics (including matters of diplomacy, war and peace), and other transactions. Whilst the Quran incorporates a detailed set of practical, legal, and moral rules, when its meaning remains obscure or when it is silent on a particular matter, other sources of Sharia (which will be explored below) may be drawn on to generate answers for the problem at hand. The Quran, in this context, may be compared with a constitution that provides the key material on issues of social, political, legal, and practical nature. It is the role of the scholar, jurist, or legislator to explain or flesh out, while remaining loyal to the letter and spirit of the main text,<sup>37</sup> such general norms to address what is necessitated by concrete circumstances. Naturally, the ever-changing needs of societies require

See F. Griffel, 'Introduction' in: A. Amanat; F. Griffel (eds.), *Islamic Law in the Contemporary Context* (Stanford: Stanford University Press, 2007) 2–3; Ali, *supra* note 8, 1297.

33 M. H. Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Texts Society, 1989) 18; A. An-Naim, 'The Rights of Women and International Law in the Muslim Context' (1988) 9 *Whittier Law Review* 491, 492.

34 Q. 10:37; F. Rahman, *Islam & Modernity: Transformation of an Intellectual Tradition* (Chicago: The University of Chicago Press, 1982) 2.

35 See further, J. Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1982) 11; M. Khadduri, 'Nature and Sources of Islamic Law' (1953) 22 *The George Washington Law Review* 3, 7ff.

36 See further M. I. Dien, *Islamic Law: From Historical Foundations to Contemporary Practice* (Edinburgh: Edinburgh University Press, 2004) 37ff.

37 To be sure, when detailed rules are deduced from the Quran, whose commands are deemed to have been issued by the Supreme Legislator, the jurist must strictly remain loyal to the very letter, purpose, and overall framework of the Quran and relevant prophetic traditions to avoid blasphemy.

appropriate refinement and elaboration of Quranic norms through human reasoning.

It is worth mentioning that a notable portion of the Quran's content had essentially been informed by the prevailing socio-political, economic, and religious circumstances of its day; thus, many moral, religious, and social pronouncements of the Quran, even though divinely inspired and transcendental, answer some of the problems faced at the time of Muhammad's ministry. As some of the early verses make clear, the Quran was primarily concerned with the acute problems of its time, which included such issues as polytheism, idolatry, the exploitation and maltreatment of the poor, malpractices in trade, and the overall injustice affecting the society.<sup>38</sup> The Quran addressed these phenomena, whether explicitly or implicitly, mainly when the occasion had arisen. The practical facet of the Quran becomes quite evident when considering that a remarkable part of Quranic revelations was handed down to Muhammad over the course of 22 years in response to pragmatic questions. Not surprisingly, therefore, the Quran contains a rich repository of practical guidance on real-life situations, with injunctions regulating a vast field, from issues of international relations and matters of war and peace down to the habits of everyday life such as relations between spouses, child custody, eating, drinking, and personal hygiene.

In addition to containing moral and spiritual injunctions whose validity cross the borders of time and space, the Quran, then, responded to some of the important socio-political problems of its period. It is thus safe to maintain that the main contours of the Quranic text took shape against a concrete socio-historical background. Some scholars went so far as to maintain that Islam invalidated all previous legal systems since the Quran provided a comprehensive account of everything.<sup>39</sup> Some other scholars, however, particularly Hanafi jurists, claimed that only those pre-Islamic rules and practices which had not been expressly abrogated by the divine will could be recognised as valid.<sup>40</sup> Evidence suggests that Islam did not repudiate the validity of all pre-Islamic doctrines; particularly during the early period of Islam, when Islamic laws were in their nascent stages, there occurred widespread adoption of many legal and administrative institutions and practices of the newly conquered territories. There were, in Hasan's words, 'multiple influences on Muslims in places where they have adopted many social and cultural practices of pre-Islamic origin'.<sup>41</sup> This was natural as the expansion

38 Likewise, issues surrounding Muhammad's prophetic career also find reflection in the Quran, which include the initial Meccan rejection of Muhammad's prophethood and message, and, in the later Medina period, the disagreement with the Jews and controversy with some Christians. See Rahman, *supra* note 34, 2–5; Khadduri, *supra* note 35, 8.

39 Q. 16: 89; Q. 6: 38.

40 Khadduri, *supra* note 35, 3.

41 M. Hasan, *Moderate or Militant Images of India's Muslims* (Oxford: Oxford University Press, 2009) 102.