

السيادة الدولية وأثرها على مفهوم الجهاد
دراسة مقارنة

إعداد

فاطمة كساب الحمود

المشرف

الأستاذ الدكتور عبد الله زيد الكيلاني

المشرف المشارك

الدكتور عدنان محمود العساف

قدمت هذه الأطروحة استكمالاً لمتطلبات الحصول على درجة الدكتوراه

في الفقه وأصوله

تعتمد كلية الدراسات العليا
هذه النسخة من الرسالة
التوقيع... التاريخ... ٢٠٠٧

كلية الدراسات العليا

الجامعة الأردنية

أب، ٢٠٠٧

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التوقيع

عبدالكريم


- أعضاء لجنة المناقشة

١- الدكتور عبد الله زيد الكيلاني، مشرفاً رئيساً.
أستاذ الفقه وأصوله.

٢- الدكتور عدنان محمود العساف، مشرفاً مشاركاً.
أستاذ مساعد الفقه وأصوله.

٣- الدكتور محمود علي السرطاوي، عضواً.
أستاذ الفقه وأصوله.

٤- الدكتور علي محمد الصوا، عضواً.
أستاذ الفقه وأصوله.

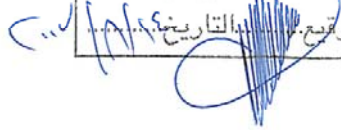
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تعتمد كلية الدراسات العليا
هذه النسخة من الرسالة
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(1) See: Benoist, Alain, (1999). **What is Sovereignty?**, pp. 100-101. available at:
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(5) See: Starke, J. G. (1977). **Introduction to international law**, London, Butterworths, p. 66.

(6) Benoist, **What is Sovereignty?**, a previous reference, p. 100.

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(2) Benoist, **What is Sovereignty?**, a previous reference, P 105.

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(1) See: **Draft Declaration on Rights and Duties of States 1949**, International Law Commission, United Nations, article 14, available at the website of the International Law Commission:
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فَأَدَّاهُ : فَادَّاهُ () () ()

الْمَلَائِكَةُ وَهِيَ قَائِمَةٌ يُصَلِّي فِي الْمَحْرَابِ أَنَّ اللَّهَ يُشْرِكُ بِحَيِّ مُصَدِّقًا بِكَلِمَةٍ مِنَ اللَّهِ وَسَيِّدًا وَحَصُورًا وَبِنَاءٍ مِنَ الصَّالِحِينَ () ()

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عَلَيْهِمْ

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عَلَيْهِمْ : أَذِنَ لِلَّذِينَ يُقَاتِلُونَ بِأَنَّهُمْ ظَلَمُوا وَإِنَّ اللَّهَ عَلَىٰ صِرْهِمَ لَقَدِيرٌ () وَمَا لَنَا أَلَّا نُقَاتِلَ فِي سَبِيلِ اللَّهِ وَقَدْ أُخْرِجْنَا مِنْ دِيَارِنَا وَأَبْنَائِنَا ()

عَلَيْهِمْ

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عَلَيْهِمْ : وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْحَيْلِ تُرْهَبُونَ بِهِ عَدُوَّ

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وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى

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عليه السلام : إِذَا جَاءَ نَصْرُ اللَّهِ وَالْفَتْحُ { } وَرَأَيْتَ النَّاسَ

يَدْخُلُونَ فِي دِينِ اللَّهِ أَفْوَاجًا { } فَسَبِّحْ بِحَمْدِ رَبِّكَ وَاسْتَقْبِرْهُ إِلهَ كَانَ تَوَّابًا ()

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﴿١﴾ : إِلَّا الَّذِينَ يَصِلُونَ إِلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ ()

﴿٢﴾ : إِلَّا الَّذِينَ عَاهَدْتُمْ مِنَ الْمُشْرِكِينَ ثُمَّ لَمْ يَنْتَضُواكُمْ شَيْئًا وَلَمْ يُظَاهِرُوا عَلَيْكُمْ أَحَدًا فَأَتُوا إِلَيْهِمْ

عَهْدَهُمْ إِلَى مُدَّتِهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُتَّقِينَ () ﴿٣﴾ : كَيْفَ يَكُونُ لِلْمُشْرِكِينَ عَهْدٌ عِنْدَ اللَّهِ وَعِنْدَ

رَسُولِهِ إِلَّا الَّذِينَ عَاهَدْتُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ فَمَا اسْتَقَامُوا لَكُمْ فَاسْتَقِيمُوا لَهُمْ إِنَّ اللَّهَ يُحِبُّ الْمُتَّقِينَ () ﴿٤﴾

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وَيَا قَوْمِ أَوْفُوا الْمِكْيَالَ وَالْمِيزَانَ بِالْقِسْطِ وَلَا تَبْخَسُوا

الْعَيْتَةَ -

النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْتُوا فِي الْأَرْضِ مُفْسِدِينَ ()

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ﷻ: وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا () ﷻ: لَا يَتَمَنَّوْنَ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوا فِي

الدِّينِ وَلَمْ يُخْرِجُوا مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ ()

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أَلَا تَقَاتِلُونَ قَوْمًا نَكَهُوا أَيْمَانَهُمْ وَهَمُّوا بِإِخْرَاجِ الرَّسُولِ وَهُمْ بَدَّوْكُمْ أَوْلَ مَرَّةٍ أَخَشَوْهُمْ فَاَللَّهُ أَحَقُّ أَنْ تَخْشَوْهُ إِن كُنتُمْ مُؤْمِنِينَ (١) وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ (٢) وَإِنَّ اللَّهَ عَلَىٰ صَرِّهِمْ لَقَدِيرٌ (٣)

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﴿عَلِيٌّ﴾ : فَلَا تَهْتُوا وَتَدْعُوا إِلَى السَّلَامِ وَأَنْتُمْ الْأَعْلَوْنَ وَاللَّهُ مَعَكُمْ وَكُنْ

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﴿عَلِيٌّ﴾ : فَمَنْ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ ()

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﴿عَلَّمَهُ﴾ : إِنَّ اللَّهَ يَأْمُرُ بِالْعَمَلِ وَالْإِحْسَانِ (١)

﴿عَلَّمَهُ﴾ : يَا أَيُّهَا

الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاَنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ

وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ (١) ~ :))

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﴿عَلَّمَهُ﴾ : وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ (١) (((١)

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يَعِدِ اللَّهُ إِذَا عَاهَدْتُمْ وَلَا تَنْقُضُوا الْإِيمَانَ بَعْدَ تَوْكِيدِهَا وَقَدْ جَعَلْتُمُ اللَّهَ عَلَيْكُمْ كَفِيلًا إِنَّ اللَّهَ يَعْلَمُ مَا تَعْمَلُونَ {١}
وَلَا تَكُونُوا كَالَّذِينَ قَضَيْتَ غَزَاهَا مِنْ بَعْدِ قُوَّةٍ أَنْكَاثًا تَتَّخِذُونَ أَيْمَانَكُمْ دَخَلًا بَيْنَكُمْ أَنْ تَكُونَ أُمَّةٌ هِيَ أَرْبَى مِنْ أُمَّةٍ
إِنَّمَا يَبْلُوكُمُ اللَّهُ بِهِ وَلَيُبَيِّنَنَّ لَكُمْ يَوْمَ الْقِيَامَةِ مَا كُنْتُمْ فِيهِ تَخْتَلِفُونَ ()

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بِسْمِ اللَّهِ : وَمَا لَكُمْ لَا تقاتلونَ فِي سَبِيلِ اللَّهِِ وَالْمُسْتَضْعَفِينَ مِنَ

الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ الَّذِينَ يَقُولُونَ رَبَّنَا أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمِ أَهْلُهَا وَاجْعَلْ لَنَا مِنْ

لَدُنكَ صَبِيرًا ()

بِسْمِ اللَّهِ : وَإِنْ اسْتَضْرَبْتُمْ فِي الدِّينِ فَعَلَيْكُمْ النَّصْرُ إِلَّا عَلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ ميثاقٌ وَاللَّهُ بِمَا

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حَذِّ الْعَوْفَ وَأْمُرَ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ ()

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يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَحْلُوا شَعَائِرَ اللَّهِ وَلَا

الشَّهْرَ الْحَرَامَ وَلَا الْهَيْئَ وَلَا الْقِلَابِدَ وَلَا أَمْثِلَ الْبَيْتِ الْحَرَامِ يَتَّبِعُونَ فَضْلاً مِنْ رَبِّهِمْ وَرِضْوَانًا ()

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صلى الله عليه وسلم: يَسْأَلُونَكَ عَنِ الشَّهْرِ الْحَرَامِ قِتَالٍ فِيهِ قُلْ قِتَالٌ فِيهِ كَبِيرٌ وَصَدٌّ عَن سَبِيلِ

اللَّهِ وَكُفْرٌ بِهِ وَالْمَسْجِدِ الْحَرَامِ وَإِخْرَاجُ أَهْلِهِ مِنْهُ أَكْبَرُ عِندَ اللَّهِ وَالْفِتْنَةُ أَكْبَرُ مِنَ الْقَتْلِ ()

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 - **The Encyclopedia of Islam, DJIHAD**, a previous reference, Vol. II, p. 538.
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وَالَّذِينَ جَاهَدُوا فِينَا لَنَهْدِيَهُمْ سَبِيلَنَا () :)) :

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الشَّيْطَانُ لَكُمْ عَدُوٌّ فَأَخِذُوهُ عَدُوًّا ()

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إِنَّ الَّذِينَ آمَنُوا وَالَّذِينَ هَلَجَرُوا وَجَاهَدُوا
 فِي سَبِيلِ اللَّهِ أُولَئِكَ يَرْجُونَ رَحْمَةَ اللَّهِ وَاللَّهُ غَفُورٌ رَحِيمٌ (١)
 : إِمَّا الْمُؤْمِنُونَ الَّذِينَ آمَنُوا بِاللَّهِ
 وَرَسُولِهِ ثُمَّ لَمْ يَرْتَابُوا وَجَاهَدُوا بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ فِي سَبِيلِ اللَّهِ أُولَئِكَ هُمُ الصَّادِقُونَ (٢).

اتَّقُوا خِيفًا وَّثِقَالًا وَجَاهِدُوا بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ فِي سَبِيلِ اللَّهِ ذَلِكَ خَيْرٌ لَكُمْ إِنْ كُنْتُمْ
 تَعْلَمُونَ (٣)

فَلَا تُطِيعِ الْكَافِرِينَ وَجَاهِدْتُمْ بِهِ جِهَادًا كَبِيرًا (٤)
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 إِكْمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ حَتَّى تَضَعَ الْحَرْبُ أَوْزَارَهَا ()
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() كُتِبَ عَلَيْكُمُ الْقِتَالُ وَهُوَ كُرْهٌ لَّكُمْ ()

() إِنَّ اللَّهَ يُحِبُّ الَّذِينَ يُقَاتِلُونَ فِي سَبِيلِهِ صَفًّا كَأَنَّهُمْ بُتْيَانٌ مَّرْضُوعُونَ ()

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يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَكُونُوا كَالَّذِينَ كَفَرُوا وَقَالُوا لِإِخْوَانِهِمْ إِذَا ضَرَبُوا فِي الْأَرْضِ أَوْ كَانُوا غُرُبَىٰ لَوْ كَانُوا عِنْدَنَا مَا مَاتُوا وَمَا قُتِلُوا ()

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(8) See: Johnson, James, (1997). **The Holy War Idea in Western and Islamic Traditions**, Pennsylvania, 1st edition, The Pennsylvania State University Press, pp. 37-38.

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(1) See: Johnson, **The Holy War**, a previous reference, p. 34.

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(4) See: Johnson, **The Holy War Idea**, a previous reference, p. 33.

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<http://www.awu-dam.org/politic/02/fkr2-010.htm>

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<http://www.darislam.com/home/alfekr/subfekr/index4.htm>

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كُئِبَ عَلَيْكُمُ الْقِتَالُ وَهُوَ كُرْهٌ لَّكُمْ (١) ﷺ :

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<http://www.albayan-magazine.com/files/tanseer/tanseer/27.htm>

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<http://www.almeshkat.net/books/list.php?cat=28>

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- وَقَاتِلُوا الْمُشْرِكِينَ كَافَّةً كَمَا يُقَاتِلُونَكُمْ كَافَّةً ()
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- : قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ

مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ

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وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا

تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ () () .

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See: AbuSulayman, AbdulHamid A. (1993). **Towards an Islamic Theory of International Relations: New Directions for Methodology and Thought**. 2^{ed} edition, The International Institute of Islamic Thought, U.S.A. Virginia, pp. 43-48, 91.

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وَقَاتِلُوا ﷺ :

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<http://www.iico.org/al-alamiya/issues-1426/issue-180/terror.htm>

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http://www.islamtoday.net/articles/show_articles_content.cfm?id=37&catid=185&artid=2040

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فَإِذَا اسْلَخَ الْأَنْهَارُ

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<http://www.islamonline.net/Arabic/contemporary/2003/07/article04c.shtml>

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ﷺ: قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا (١)

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ﷺ: يَا أَيُّهَا الرَّسُولُ بَلِّغْ مَا أُنزِلَ إِلَيْكَ مِنْ رَبِّكَ

وَأِنْ لَمْ تَفْعَلْ فَمَا بَلَّغْتَ رِسَالَتَهُ (١)

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((١)) ﷺ: وَلَوْ شَاءَ رَبُّكَ لَأَمَنَّ مِنَ فِي الْأَرْضِ كُلَّهُمْ جَمِيعًا أَفَأَنْتَ تُكْفِرُ

النَّاسَ حَتَّىٰ يَكُونُوا مُؤْمِنِينَ (١) ﷻ

ﷻ: فَهَلْ عَلَى الرَّسُولِ إِلَّا الْبَلَاغُ الْمُبِينُ (١) ﷻ: وَمَا تُرْسِلُ الْمُرْسَلِينَ إِلَّا

مُبَشِّرِينَ وَمُنذِرِينَ (١) .

ﷻ: ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحُكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ

وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِمَنْ ضَلَّ عَنْ سَبِيلِهِ وَهُوَ أَعْلَمُ بِالْمُهْتَدِينَ (١)

ﷻ: لَا إِكْرَاهَ فِي

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<http://arabic.islamicweb.com/christianity/Mafahim.doc>

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يَا أَيُّهَا الَّذِينَ آمَنُوا قَاتِلُوا الَّذِينَ يَلُونَكُمْ مِنَ الْكُفَّارِ وَلْيَجِدُوا فِيكُمْ غِلظَةً وَعَلَّمُوا أَنَّ

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خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ (١)

﴿١﴾: وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ

خَلِيفَةً (١) ﴿٢﴾: وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ (٢)

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شَاهِدًا وَمُبَشِّرًا وَنَذِيرًا {م} وَدَا عِيَا إِلَى اللَّهِ بِأَيْدِيهِ وَسِرَاجًا مُنِيرًا (٣)

() ﴿٤﴾

﴿٥﴾: كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ

وَتَنْهَوْنَ عَنِ الْمُنْكَرِ (٤)

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 - Boisard, Marcel, (1988). **Jihad: A Commitment to Universal Peace**, U.S.A., American Trust Publications, pp. 8-9. and Parvin, Manoucher, and Sommer Maurie, (1980). **Dar al-Islam: The Evolution of Muslim Territoriality and Its Implications for Conflict Resolution in the Middle East**, International Journal of Middle East Studies, Vol. 11, No. 1, pp. 3-6.
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وَمَا أَرْسَلْنَاكَ إِلَّا كَافَّةً لِلنَّاسِ بَشِيرًا وَنَذِيرًا ﴿١٠٤﴾

وَلْتَعَذِّرْ أُمَّ الْقُرَىٰ وَمَنْ حَوْلَهَا ﴿١٠٥﴾

وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ ﴿١٠٦﴾

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<http://www.darislam.com/home/esdarat/dakhl/alaam/data/fihrist.htm>

() ﴿١﴾ : وَإِنْ جَنَحُوا لِلسَّلْمِ فَاجْنَحْ لَهَا

وَتَوَكَّلْ عَلَى اللَّهِ إِنَّهُ هُوَ السَّمِيعُ الْعَلِيمُ { } وَإِنْ يُرِيدُوا أَنْ يَخْدَعُوكَ فَإِنَّ حَسْبَكَ اللَّهُ هُوَ الَّذِي أَيْدِكَ بِتَصْرِهِ

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() ﴿٢﴾ : فَإِنْ اعْتَرَفْتُمْ فَلَمْ

يُقَاتِلْكُمْ وَأَلْفَوْا إِلَيْكُمْ السَّلَامَ فَمَا جَعَلَ اللَّهُ لَكُمْ عَلَيْهِمْ سَبِيلًا ()

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http://www.liveislam.net/browsearchive.php?sid=&id=17002

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عَلَيْكَ : وَاصْبِرْ عَلَىٰ مَا يَقُولُونَ وَاهْجُرْهُمْ هَجْرًا

جَبِيلًا ()

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عَلَيْكَ : يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا عَدُوِّي وَعَدُوَّكُمْ أَوْلِيَاءَ تُلْقُونَ إِلَيْهِم بِالْمَوَدَّةِ وَقَدْ

كَفَرُوا بِمَا جَاءَكُمْ مِنَ الْحَقِّ () عَالِيَةً : قَدْ كَانَتْ لَكُمْ أُسْوَةٌ حَسَنَةٌ فِي إِبْرَاهِيمَ وَالَّذِينَ مَعَهُ إِذْ قَالُوا

لِقَوْمِهِمْ إِنَّا بُرَاءُ مِنْكُمْ وَمِمَّا تَعْبُدُونَ مِنْ دُونِ اللَّهِ كَفَرْنَا بِكُمْ وَبَدَا بَيْنَنَا وَبَيْنَكُمُ الْعَدَاوَةُ وَالْبَغْضَاءُ أَبَدًا حَتَّىٰ تُؤْمِنُوا بِاللَّهِ

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http://alminbar.al-islam.com/Mehwar_erhabM.aspx?nid=488&pno=1

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<http://saaaid.net/book/open.php?cat=1&book=1313>

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وَدَّ كَثِيرٌ مِّنْ أَهْلِ الْكِتَابِ لَوْ يَرُدُّونَكُمْ مِن بَعْدِ إِيمَانِكُمْ كُفَّارًا حَسَدًا مِّنْ عِنْدِ أَنفُسِهِمْ مِّنْ بَعْدِ مَا تَبَيَّنَ

لَهُمُ الْحَقُّ (١) ﷺ: مَا يَوْمُ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَلَا الْمُشْرِكِينَ أَنْ يُنَزَّلَ عَلَيْكُمْ مِنْ خَيْرٍ مِنْ

رَبِّكُمْ (٢) ﷺ: وَلَنْ تَرْضَىٰ عَنْكَ الْيَهُودُ وَلَا النَّصَارَىٰ حَتَّىٰ تَكْفِيَ مِلَّتَهُمْ (٣)

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لَا يَتَّخِذُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوا فِي الدِّينِ وَلَمْ يُخْرِجُواكُم مِّن دِيَارِكُمْ أَنْ

تَبْرؤُهُمْ وَيَقْسُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُسْطَبِينَ {٨} إِمَّا يَتَخِطُّوا اللَّهُ عَنِ الَّذِينَ قَاتَلُوكُمْ فِي الدِّينِ

وَأَخْرَجُواكُم مِّن دِيَارِكُمْ وَظَاهَرُوا عَلَىٰ إِخْرَاجِكُمْ أَنْ تَوَلَّوهُمْ وَمَنْ يَتَوَلَّهُمْ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ (٩)

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أَحْبَبْتَ وَلَكِنَّ اللَّهَ يَهْدِي مَنْ يَشَاءُ وَهُوَ أَعْلَمُ بِالْمُهْتَدِينَ () ()

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وَلَنْ تَرْضَىٰ عَنْكَ الْيَهُودُ وَلَا

النَّصَارَىٰ حَتَّىٰ تَمُوتَ أَوْ تَكُونَ مِنَ الْمُمَاتِ وَلَا يَزَالُونَ يُقَاتِلُونَكَ حَتَّىٰ يَرُدُّوكُمْ عَنْ دِينِكُمْ إِنِ اسْتَطَاعُوا (١)

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<http://www.islamonline.net/iol-arabic/dowalia/mafaheem-Aug-2000/mafaheem-2.asp>

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لِكُلِّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمَنْهَاجًا ﷻ :

وَلَوْ شَاءَ اللَّهُ لَجَعَلَكُمْ أُمَّةً وَاحِدَةً وَلَكِنْ لِيَبْلُوكُمْ فِي مَا آتَاكُمْ فَاسْتَبِقُوا الْخَيْرَاتِ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنَبِّئُكُمْ بِمَا كُنتُمْ فِيهِ تَخْتَلِفُونَ (١).

وَلَوْ لَا دَفَعُ اللَّهُ النَّاسَ بَعْضَهُمْ بِبَعْضٍ ﷻ :

لَفَسَدَتِ الْأَرْضُ وَلَكِنَّ اللَّهَ ذُو فَضْلٍ عَلَى الْعَالَمِينَ (٢) ﷻ : وَلَوْ لَا دَفَعُ اللَّهُ النَّاسَ بَعْضَهُمْ بِبَعْضٍ لَهَادَمَتِ صَوَامِعُ وَبِيْعٌ وَصَلَوَاتٌ وَمَسَاجِدُ يُذَكَّرُ فِيهَا اسْمُ اللَّهِ كَثِيرًا (٣).

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ ﷻ :

مِنْ ذَكَرٍ وَأُنْثَى وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ (٤)

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﴿﴾: قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا ()

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﴿﴾: ادْعُ إِلَى سَبِيلِ

رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِمَنْ ضَلَّ عَنْ سَبِيلِهِ وَهُوَ أَعْلَمُ

بِالْمُهْتَدِينَ () ﴿﴾: قُلْ هَذِهِ سَبِيلِي أَدْعُو إِلَى اللَّهِ عَلَى بَصِيرَةٍ أَنَا وَمَنِ اتَّبَعَنِي ()

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﴿﴾: أَدِّنْ لِلَّذِينَ يُقَاتَلُونَ بِأَنَّهُمْ ظَلَمُوا وَإِنَّ اللَّهَ عَلَى

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نَصْرِهِمْ لَقَدِيرٌ {٣} الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ بِغَيْرِ حَقٍّ إِلَّا أَنْ يَقُولُوا رَبُّنَا اللَّهُ (١) يُخْرِجُونَ الرُّسُولَ
وَأَيَّاكُمْ أَنْ تَتُومِنُوا بِاللَّهِ رَبِّكُمْ (٢)

- وَيُنَادِيهِمْ رَبُّكَ بِأَسْمَاءِ بَنَاتِهِ لَمَّا نَسُوا مَا كَانُوا يَكْفُرُونَ وَإِنَّ أَحَدًا مِنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجْرَهُ حَتَّى يَسْمَعَ كَلَامَ اللَّهِ ثُمَّ اتَّبَعَهُ مَأْمَنَةً ذَلِكَ بِأَنَّهُمْ قَوْمٌ لَا
يَعْلَمُونَ (٣)

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وَالْفِتْنَةُ أَشَدُّ مِنَ الْقَتْلِ ()

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<http://alibakeer.maktoobblog.com/?post=16869>

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<http://www.geocities.com/adelzeggagh/IR.html>

وَيْلٌ لِلْمُطَفِّفِينَ ﴿١﴾ الَّذِينَ إِذَا

اكتالوا على الناس يستوفون ﴿٢﴾ وإذا كالوهم أو وزوهم يحسرون (١)

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا

قَوَامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَحْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ أَلَّا تَعْلَمُوا اعْبُدُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ
بِمَا تَعْمَلُونَ (١)

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وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ وَلَا تَتَّقُوا الْإِيمَانَ بَعْدَ تَوْكِيدِهَا وَقَدْ

جَعَلَهُمُ اللَّهُ عَلَيْكُمْ كَفِيلًا إِنَّ اللَّهَ يَعْلَمُ مَا تَعْمَلُونَ ﴿١﴾ وَلَا تَكُونُوا كَالَّذِينَ هَضَمْتَ غَزَلَهَا مِنْ بَعْدِ قُوَّةٍ أَنْكَاثًا تَكْفُرُونَ
أَيْمَانَكُمْ دَخَلًا بَيْنَكُمْ أَنْ تَكُونَ أُمَّةٌ هِيَ أَرْبَىٰ مِنْ أُمَّةٍ (١)

وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ

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مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهَبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ ()

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تِلْكَ الدَّارُ الْآخِرَةُ نَجْعَلُهَا لِلَّذِينَ لَا يُرِيدُونَ عُلُوًّا فِي الْأَرْضِ وَلَا

فَسَادًا وَالْعَاقِبَةُ لِلْمُتَّقِينَ ()

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وَلَوْلَا دَفَعُ اللَّهُ النَّاسَ

بَعْضُهُمْ بِبَعْضٍ لَّفَسَدَتِ الْأَرْضُ وَلَكِنَّ اللَّهَ ذُو فَضْلٍ عَلَى الْعَالَمِينَ ()

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وَقَاتِلُوا فِي سَبِيلِ اللَّهِ

سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ (١) سَبِيلِ اللَّهِ: وَقَاتِلُوا الْمُشْرِكِينَ

كَأَنَّهُمْ كَمَا يُقَاتِلُونَكُمْ كَأَنَّهُ (١) سَبِيلِ اللَّهِ: فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ

اللَّهَ مَعَ الْمُتَّقِينَ (١) سَبِيلِ اللَّهِ: أَذِنَ لِلَّذِينَ يُقَاتِلُونَ بِأَنَّهُمْ ظَلَمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ (١)

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(2) See: Worley, Robert, (2003). **Waging Ancient War: Limits on Preemptive Force**, U.S. Army War College, Strategic Studies Institute, p. 20. available at:
www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=276 - 13k

(1) See: Yoo, Johon, (2004). **Using Force**, University of Chicago Law Review, Vol. 71, No. 3, pp. 6-7. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=530022

(3) See: O'Connell, Mary, (2002). **The Myth of Preemptive Self-Defense**, American Society of International Law, pp. 5-6. available at: <http://www.asil.org/taskforce/oconnell.pdf>

(5) See: Yoo, **Using Force**, a previous reference, p. 7.

(1) See: O'Connell, **The Myth of Preemptive Self-Defense**, a previous reference, pp. 8-9.

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(6) See: Yoo, **Using Force**, a previous reference, p. 8.

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فَمَنْ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ

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وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعَدُّوا إِنَّ اللَّهَ لَا يُحِبُّ

الْمُعْتَدِينَ (١) جَلَّالَهُ: يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاؤُ قَوْمِ

عَلَىٰ أَلَّا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ (٢).

جَلَّالَهُ: (((١)))

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Basic Principles of The Legal Status of The Combatants Struggling Against Colonial and Alien Domination and Racist Regimes. Available at: <http://documents.un.org/mother.asp>

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ : اهْزُؤْاْ خِفَافًا وَثِقَالًا وَجَاهِدُواْ

بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ فِي سَبِيلِ اللَّهِ ذَلِكَ خَيْرٌ لَّكُمْ إِن كُنتُمْ تَعْلَمُونَ () :

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(3) See: Epstein, Lee, and Ho, Daniel, and king, Gary, (2003).**The Supreme Silence During War**, New York University, p. 3, available at: www.nyu.edu/classes/nbeck/q2/king.propensity.pdf
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(1) See: Finn, Allen, (2004). **Distinguishing Terrorism From Guerrilla Warfare**, The Ornerly American, available at: <http://www.ornery.org/essays/2004-03-10-1.html>

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- وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ ()

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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وَأَذِمْذِكُمْ اللَّهُ إِحْدَى الطَّائِفَتَيْنِ

أَهْمَا لَكُمْ وَتَوَدُّونَ أَنَّ غَيْرَ ذَاتِ الشُّوْكَةِ تَكُونُ لَكُمْ ()

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وَلَقَدْ كَرَّمْنَا بَنِي

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فَإِذَا لَقَيْتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّى إِذَا أَتَحْتُمُوهُمْ فَشُدُّوا الْوَتَاقَ فَإِنَّمَا مِنَّا بَعْدُ وَإِنَّمَا فِدَاءٌ

حَتَّى تَضَعَ الْحَرْبُ أَوْزَارَهَا ()

فَإِذَا اسْلَخَ الْأَشْهُرُ الْحُرُمَ فَاقْتُلُوا

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حَسْبِيَ اللَّهُ عَلَيْهِ تَوَكَّلْتُ وَإِلَيْهِ أُنِيبُ

عَرَضَ الذُّبَابُ وَاللَّهُ يُرِيدُ الْآخِرَةَ وَاللَّهُ عَزِيزٌ حَكِيمٌ {٣٧} لَوْلَا كِتَابٌ مِّنَ اللَّهِ سَبَقَ لَمَسَّكُمْ فِيمَا أَخَذْتُمْ عَذَابٌ عَظِيمٌ

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فَإِذَا اسْلَخَ الْأَشْهُرَ الْحُرْمَ فَاقْتُلُوا الْمُشْرِكِينَ ﷺ :

وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ هِنَّةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ ﷻ ()

فَإِنْ كَانُوا ﷻ :

وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ ()

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- : مَا كَانَ لِنَبِيِّ أَنْ يُكُونَ لَهُ أُسْرَى حَتَّى يُبْعِنَ فِي الْأَرْضِ ()

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فَإِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّىٰ إِذَا أَتَحْتُمُوهُمْ فَشُدُّوا الَّتَاكُ فَإِمَّا مِمَّا بَعْدُ وَإِمَّا فِدَاءً - وَاللَّهُ :

حَتَّى تَضَعَ الْحَرْبُ أَوْزَارَهَا () :

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Fragmented Arabic text including words like "العلاج", "الطبيب", and "المرضى" with various punctuation marks such as parentheses and colons.

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وَأَوْحَىٰ إِلَيَّ هَذَا الْقُرْآنُ ﷺ :

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ﷺ :

قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا () ﷺ :

لَأُنذِرَكُمْ بِهِ وَمَنْ بَلَغَ ()

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مَا كَانَ مُحَمَّدٌ أَبَا أَحَدٍ مِّن رِّجَالِكُمْ وَلَكِن

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رَسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ ()

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الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتَمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيْتُ

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لَكُمْ الْإِسْلَامَ دِينًا ()

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ () ﷺ :

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كَلَّمَكَ : كِتَابٌ أَنْزَلْنَاهُ إِلَيْكَ لِتُخْرِجَ النَّاسَ مِنَ

الظُّلُمَاتِ إِلَى النُّورِ بِإِذْنِ رَبِّهِمْ إِلَى صِرَاطٍ الْعَزِيزِ الْحَمِيدِ ()

الظُّلُمَاتِ إِلَى النُّورِ بِإِذْنِ رَبِّهِمْ إِلَى صِرَاطٍ الْعَزِيزِ الْحَمِيدِ ()

يَا أَيُّهَا الَّذِينَ آمَنُوا اسْتَجِيبُوا لِلَّهِ وَلِلرَّسُولِ إِذَا دَعَاكُمْ لِمَا يُحْيِيكُمْ ()

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يَا أَيُّهَا الرَّسُولُ بَلِّغْ مَا أُنزِلَ ()

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إِلَيْكَ مِنْ رَبِّكَ وَإِنْ لَمْ تَفْعَلْ فَمَا بَلَّغْتَ رِسَالَتَهُ ()

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وَكَيْفَ

وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ هَيْبَةً وَنُكْرًا لِلَّهِ فَإِنْ اضْمَرُوا بِكُمْ فَلَا مَجْرِمَ إِلَّا عَلَى

قَاتِلُوا أَيْمَةَ الْكُفْرِ إِنَّهُمْ

الظَّالِمِينَ

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لَا أَيْمَانَ لَهُمْ لَعَلَّهُمْ يَنْتَهُونَ ()

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ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحُكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ () -

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فَمَنْ شَاءَ فَلْيُؤْمِنْ

وَمَنْ شَاءَ فَلْيُكْفُرْ

فَأِنَّمَا عَلَيْكَ الْبَلَاغُ وَعَلَيْنَا الْحِسَابُ

وَمَنْ شَاءَ فَلْيُؤْمِنْ وَمَنْ شَاءَ فَلْيُكْفُرْ

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<http://www1.umn.edu/humanrts/arabic/SGreligion.html>

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A.94.XIV-Vol.1, Part 1

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 -Also See: the Permanent Court of International Justice, **The Interpretation of the Greco-Bulgarian Communities**, July 31, 1930, p. 8. Available at:
 http://www.worldcourts.com/pcij/eng/decisions/1930.07.31_greco_bulgarian/
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وَقَاتِلُوهُمْ ﷻ :

حَتَّىٰ لَا تَكُونَ هِتَّةً وَيَكُونَ الدِّينُ لِلَّهِ فَإِنِ ائْتَمَوْا فَلَا عُدْوَانَ عَلَيِ الطَّالِبِينَ (١)

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(((١) :

ﷻ : إِنَّ الَّذِينَ فَتَنُوا الْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ مِمَّ لَمْ يَكُونُوا فَالَهُمْ عَذَابٌ

جَهَنَّمَ وَالَهُمْ عَذَابُ الْحَرِيقِ (٢)

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- ﷻ : وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ الَّذِينَ يَقُولُونَ رَبَّنَا

أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمِ أَهْلِهَا وَاجْعَل لَّنَا مِن لَّدُنكَ وَلِيًّا وَاجْعَل لَّنَا مِن لَّدُنكَ نَصِيرًا (١)

(((١) ﷻ وَمَا لَكُمْ

لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ))

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- إِنَّ الَّذِينَ آمَنُوا وَهَاجَرُوا وَجَاهَدُوا بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ فِي سَبِيلِ اللَّهِ وَالَّذِينَ آوَوْا وَنَصَرُوا أُولَئِكَ
بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ وَالَّذِينَ آمَنُوا وَلَمْ يُهَاجِرُوا مَا لَكُمْ مِنْ شَيْءٍ حَتَّى يُهَاجِرُوا وَإِنْ اسْتَنْصَرُوكُمْ فِي الدِّينِ
فَعَلَيْكُمْ النَّصْرُ إِلَّا عَلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ وَاللَّهُ بِمَا تَعْمَلُونَ بَصِيرٌ {٣٣} وَالَّذِينَ كَفَرُوا بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ إِلَّا
تَعْمَلُوهُ تَكُنْ فِتْنَةٌ فِي الْأَرْضِ وَفَسَادٌ كَبِيرٌ (١)

وَعَلَيْكُمْ

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وَالَّذِينَ آمَنُوا مِن بَعْدُ وَهَاجَرُوا وَجَاهَدُوا مَعَكُمْ فَأُولَئِكَ مِنكُمْ

وَأُولُوا الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ ()

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عَلَيْكَ

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وَالَّذِينَ

إِلَّا تَقْلُوهُ تَكُنْ هِنَةً فِي الْأَرْضِ وَفَسَادٌ كَبِيرٌ () ()

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وَأَنِ اسْتَنْصَرُوكُمْ فِي

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وَإِنْ اسْتَنْصَرُواكُمْ

فِي الدِّينِ فَاعْلَمُوا أَنَّهُمْ لَمْ يَكُنُوا عَلَى قَوْمِكُمْ وَبَيْنَهُمْ مِيثَاقٌ ()

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<http://www1.umn.edu/humanrts/arab/b003.html>

(Ethnology) -"Ethnology." **The Concise Oxford Dictionary of Archaeology**. Oxford University Press, 2002, 2003. *Answers.com* 01 May. 2007. <http://www.answers.com/topic/ethnology>

A.94.XIV-Vol.1, Part 1

<http://www1.umn.edu/humanrts/arab/b020.html>

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: عَجَلِك

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ^(١).

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﴿عَجَلِك﴾ : وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ^(١)

الَّذِينَ يَقُولُونَ رَبَّنَا أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمِ أَهْلُهَا وَاجْعَل لَّنَا مِن لَّدُنكَ وَلِيًّا وَاجْعَل لَّنَا مِن لَّدُنكَ نَصِيرًا^(١)

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ : قُلْ هُوَ الَّذِي أَنْشَأَكُمْ وَجَعَلَ لَكُمُ السَّمْعَ وَالْأَبْصَارَ وَالْأَفْئِدَةَ قَلِيلًا مَّا تَشْكُرُونَ ()

وَلَقَدْ كَرَّمْنَا بَنِي

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ : مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ

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(3) See: **The Barcelona Traction Case (Second Phase)**, Judgment of 5 February 1970, p. 33. Paragraph 33-34. Available at the website of International Court of Justice:

<http://www.icj-cij.org/docket/files/50/5387.pdf>

(1) See: Dissenting Opinion of Judge Tanaka, **The South West-Africa Cases (Second Phase) 1962**, pp. 297-298. Available at the website of International Court of Justice: <http://www.icj-cij.org/docket/files/46/4945.pdf>

<http://www.un.org/arabic/aboutun/sgs/sg7bio.htm>

(3) See: Annan, Kofi, (1999). **Two concepts of sovereignty**, The Economist Journal, September 18th, available at: <http://www.un.org/News/oss/sg/stories/kaecon.html>

عَلَّاهُ

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عَلَّاهُ : قُتِلَ أَصْحَابُ الْأَحْزَابِ () :

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وَمَا تَقَمُّوا مِنْهُمْ إِلَّا أَنْ يُؤْمِنُوا بِاللَّهِ الْعَزِيزِ الْحَمِيدِ () () .

عَلَّاهُ : إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ

بِعَمَّا يَعْظُمُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا ()))

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عَلَّاهُ : يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُونَ () .

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(1) See: Grimstad, Kyree, (2001). **Humanitarian Intervention: Historical, Legal and Moral Perspectives**, Research dissertation presented for the approval of the Senate in fulfillment of part of the requirements for the degree of Master of Laws, The University of Cape Town, p. 3. available at: web.uct.ac.za/depts/pbl/grimstad.pdf

(4) Cited by: Henning, Ted, (2005). **Humanitarian Intervention: When is it Legal?**, San Francisco State University, The International Relations Journal, p. 42. available at: bss.sfsu.edu/ir/irjournal/00+Journals/IRJ_Spring-Summer05.pdf
(Originally taken from: **Oppenheim's International Law**, Robert Jennings and Arthur Watts, Ninth Edition 1991, pp. 41-42).

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(2) See: Brownlie, Ian, (1963). **International Law and the Use of Force by States**, Oxford, Clarendon Press, p. 340.

(3) See: Grimstad, **Humanitarian Intervention**, a previous reference, p. 15.

(4) See: Wheeler, Nicholas, (2002). **Saving Strangers: Humanitarian Intervention in International Society**, Oxford, Oxford University Press, Available at:

<http://www.questia.com/PM.qst?a=o&d=110113451>

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(Provide Comfort)

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(3) See: Ortega, Martin, (2001). **Military intervention and the European Union**, Paris, Institute for Security Studies of WEU, p. 37. available at: www.iss-eu.org/chailot/chai45e.pdf

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<http://www.palestine-info.info/arabic/terror/articles/qararat.htm>

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- يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاؤُ قَوْمٍ عَلَىٰ أَلَّا تَعْلَمُوا

اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ ()

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إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أَوْلَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىٰ أَن تَعْدِلُوا وَإِن تَلَوُّوا أَوْ نَعَرَضُوا فإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ

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عَلَّ

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وَمَا لَكُمْ لَا تَقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ الَّذِينَ يَقُولُونَ رَبَّنَا

أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمِ أَهْلُهَا وَاجْعَلْ لَنَا مِنْ لَدُنْكَ وَلِيًّا وَاجْعَلْ لَنَا مِنْ لَدُنْكَ نَصِيرًا () .

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(3) See: Grimstad, **Humanitarian Intervention**, a previous reference, p. 5.

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عَلَّامٌ

صِبْغَةَ اللَّهِ وَمَنْ أَحْسَنُ مِنَ اللَّهِ صِبْغَةً

عَلَّامٌ

وَنَحْنُ لَهُ عَابِدُونَ ()

وَمَنْ يُعْظَمِ شَعَائِرَ اللَّهِ فَإِنَّهَا مِنْ تَقْوَى

الْقُلُوبِ ()

شَجَرِيَّتِهِمْ ثُمَّ لَا يَجِدُوا فِي أَنفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا ()

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عَلَّامٌ

عَلَّامٌ

: الَّذِينَ إِنْ مَكَانَهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ وَأَمَرُوا بِالْمَعْرُوفِ وَنَهَوْا عَنِ الْمُنْكَرِ وَلِلَّهِ عَاقِبَةُ

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شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَا نُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ ()

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وأخرد عوانا أن الحمد لله رب العالمين
والصلاة والسلام على خاتم المرسلين وعلى آله وصحبه أجمعين

International Sovereignty and its Impact on the Concept of Jihad: A Comparative Study

By
Fatima kassab AL-Hmoud

Supervisor
Prof. Abdullah AL-Kelani

Co-Supervisor
Prof. Adnan AL-Assaf

Detailed Description

- Significance of Study:

Islam and its theory of International Relations face a fundamental challenge attributed to the fact that, on one hand, present status of relations among Islamic States suffer from differences specifically, and, on the other hand, these differences exist among the members of the International community in general. This has resulted in changing a great part of the world into a fighting field, instead of a world of peace and co-existence. Since September 11, an endless series of studies had been issued accusing Islam, as a religion, of being responsible, and maintaining its self-seclusion and solidity from the other part. Whereas, the scientific methodology calls for a precise differentiation between Islam as a religion and a sacred heavenly message, and the behavior of any one who embraces Islam. This is because the latter has not necessarily a pure understanding of it. It is worth noting that people may differ in interpreting Islam; coming close its essence. Therefore, the behavior of an individual or a group of Muslims cannot be a positive or negative indicator of the Manners Islam. That does not deny the necessity of self-reviewing and addressing the areas of defect and disorder. Some groups ascribed to Islam own a claimed legislation which justifies their acts of violence. So, their violence is a result of a certain philosophy that they adopt, and a fruit of a special trend of jurisprudence, with a special point of view, concepts, and evidence upon which this class of people depend. Hence, its vital for scholars of Islam to discuss this subject and negate their approach. They should also explain the real features of Islam to everyone who misunderstand and offend it, either at the Arab Islamic level or at the international level. As a step towards a better understanding and communication, the researcher has chosen the subject of this PhD: "International Sovereignty and its Impact on the Concept of Jihad: A Comparative Study".

This research shows that Jihad –the most misunderstood concept- is originally just a means to which the Islamic state turns -in certain circumstances- primarily to practice

its legitimate right to defend its land, also to defend, within certain conditions, the tortured minorities -Muslims or non-Muslims- who live outside the Islamic region. Further, Islamic state may turn to Jihad to accomplish its missionary dogmatic function, which obliges followers to pass on the Islamic Da'wa (Call) to all people and nations. If the foreign political regimes prevent its citizens from listening to the Call and confiscate there freedom in choosing the faith they want; in this condition -which is called in Islamic Jurisprudence the case of ordeal- the Islamic Law obliges the military intervention by striving to up-lifting those barriers for the sake of the people.

Nowadays, International Sovereignty grants the state an absolute legitimate authority over all of its lands and citizens within its region, which prevents any aggression or intervention from other states. This is applied except in specific cases, nevertheless, these excepted cases do not include Jihad as a means to inform the Islamic Mission.

This study shows the extent to which the Islamic Law accepts this concept, and the extent of its agreement or disagreement with dogmatic function of the Islamic State. This PhD also looked into the possibility of using the devices and legislations of the contemporary World Order to help in eliminating and removing the case of ordeal, so that Muslims would not feel obliged to use military force. However, the aim of Islam to preach Da'wah, which is a primary objective, where Jihad for most scholars is merely a means for achieving it. Consequently, it is important to ask, whether or not there are still barriers preventing informing the Islamic Call. Taking into account what has been achieved by the scientific technological revolution in the world of telecommunication nowadays. Moreover, many international variables in the political and social regimes and human rights have made Islamic call "Da'wah" more accessible; therefore, there is no difference or contradiction between the requirements of Islamic Call "Da'wah" and the requirements of International Sovereignty.

The Objective of the study:

Main Objective is to find the answer to the question: what is the impact resulting from preferring the International Sovereignty to the concept of Jihad?

Secondary Objectives are to find answers to the following questions:

- What are the differences between the concept of Sovereignty in the Islamic political regime and its corresponding concept in the Western ideology?
- What is the origin of Muslims relations with others?
- Does the Islamic Law prevent using the devices of the contemporary World Order to attain the aims of Islamic State?

*** Methodology:**

This dissertation has been carried out by using several academic methodologies of research, such as:

1- The comparative methodology between the Islamic Jurisprudence rulings and the verdicts of International Law, with reservation to the differences of the two ideologies, and devotion to raise the significance of the Islamic approach. Also, the researcher used the analytical methodology dealing with the holy texts of Qur'an and Sunnah, and some historical incidents of first four Caliphs, Al-Rashdy era. This is in addition to the descriptive and inductive methodologies.

2- Induction of the ruling of Jurists from the authentic sources of the Four Sunni Schools of Islamic Jurisprudence (Fiqh), and dealing with the secondary sources as subordination references, taking into consideration the importance of putting these sources on its chronological order in the page margin.

3- In her selecting of proper rulings, the researcher advocated the rulings which are compatible with the Systematic characteristic of the Islamic Shari'a, and its domains which define the sub-judgments due to the general Islamic objectives, and to the Islamic comprehensive view of humanity, life, and universe, and the right considerations of rules of nature and human sociology.

*** Abstract of the thesis's contents:**

This dissertation is divided into four chapters:

Chapter one is entitled: International Sovereignty in the Mundane Legal Thoughts; it contains definition of International Sovereignty, and a brief review of its historical development. Also, this chapter defines the characteristics of Sovereignty, and shows the relationship between Sovereignty and the natural rights of the state.

Chapter two is entitled: International Sovereignty in the Islamic Political System. In this chapter the researcher puts forth the basic principles of the Islamic International Sovereignty, and that includes: definition of Islamic International Sovereignty, originating its legitimacy, and the restrictions dominating it in Islam.

Chapter three is entitled: The Concept of Jihad and Its Motives in A Comparison with the International Law. And it contains: the general meanings of Jihad, and its Jurisprudence's definition, then it shows the basis upon which the Muslims relationship with others is built, the factors causing conflict between members of the International Community, and the legitimate reasons for using force according to the International Law.

Chapter four is entitled: The impact of International Sovereignty on the Concept of Jihad; This is divided into two topics, the first of which shows its impact on the

Defensive Jihad, and topic two defines its impact on the other kind of Jihad, and that is Jihad for sake of humanity.

Conclusions:

The most significant results achieved by the researcher are as follows:

1- The International Sovereignty is defined idiomatically as: An authority with a special nature which gives the state the right to practice its specializations in accordance with its will, and with an independent, exclusive, and comprehensiveness form.

2- The concept of Sovereignty was established on different dependences through the human history, and ended in the modern age, through the free contract bond, or the free will.

3- The International Sovereignty traditionally enjoys certain characteristics which are: Absoluteness, oneness, being unable to split, abdication and abortion. However, these characteristics have been lately amended as a result of the developments occurred in modern times.

4- The state practices its sovereignty through two streams: the internal sovereignty which represents its relationship with its region and subjects. and the external sovereignty which represents its relationship with the international community.

5- The most significant impacts resulted of enjoying sovereignty, are: individuality of the state regarding practicing its power and authority within its regional outstanding, and the independence in managing its international relations.

6- The International Sovereignty directly related with the natural rights confirmed to the state at time of its establishment such as: the right of existence and survival, its right of equality, and its right of independence.

7- The International Sovereignty in the Political Islamic System can be defined as: An authority with a special nature which gives the Islamic State the right to practice its specializations in accordance with its will, in an independent, exclusive, and comprehensive form.

8- The legitimacy of Internal Sovereignty of the Islamic State is constant through the Constitution of Mdeenh, and the legal scripts which ordered that the Islamic state should be enjoying its right of survival, obedience and help. This in addition to, its right of unity, the right to confront the danger of internal revelations.

9- The legitimacy of foreign Sovereignty of the Islamic State is constant considering the tools legislated to organize the external relations such as: Diplomatic exchange, treaties, economic and commercial exchange, using power for Defence, concluding laws prevention of the foreign interference in the affairs of subjects of Islamic State.

10- The International Islamic sovereignty enjoys the characteristic of personal control that's appears from the restrictions controlling it in the Islamic political system, these restrictions are; the Islamic legislation, individual's rights and freedoms, public interest,

doctrine of justice and virtue care, doctrine of fulfilling treaties and agreements, and doctrine of respecting international conventions

11- Jihad in its general meaning implies spiritual significance, the aim of which is to continuous and serious work aiming at the reform of individual souls and the whole human community. But idiomatically it is specified for the wary fighting to make the word of Allah (God) superior.

12- The basis upon which the Muslims relationship with others is built, is the Islamic Da'wa (Call); indicated by the legal texts which confirmed the universality of Islam, and obligation to pass on the Islamic Da'wa (Call) to all people and nations; These legal texts also showed that fighting non-Muslims is neither due to blasphemy nor to polytheism association with God (Allah). Also this basis can be derived from jurist's texts that assert Jihad as an action of defence and protection.

13- Tacking the Islamic Call as a focal point for the Islamic state's foreign relation with others, makes peace, war, and treaties instruments and tools serving of the Islamic Call, turning to this or that due to the available means of communication used for informing people the Call; the margin of religious freedom allowed by the political regimes of different states of external dealing of the Islamic state, that defined by the principle of balance taking into consideration the reality of World Order, and what has excreted of associations and International Laws.

14- The motives for conflict in the International Relations basically referred to the states depending on power in the administrating its International relation without honoring the set of moral values.

15- In their attempt to control the use of power and to achieve security, the state sought several types and methods such as: domination type, power equilibration type, agreement type or purposeful counsel seeking to keep security through a world institutional order, such as; the United Nations whose charter differentiated between the single and collective usage of power; as the first was stated illegal except for the case of self-defense, and while the second was allowed in certain situations, such as; the state of aggression, and the case violating the International security and word peace.

16- There is an a basic agreement between the requirements of jihad to repel aggression, and the requirements of International Sovereignty, as the particular aspects that have been affected -Preemptive Self-Defense and Guerrilla Warfare- have emerged from the restrictions settled by the International Legislation on the state sovereignty.

17- Jurists of the International Law are divided regarding the issue of Preemptive Self-Defense into two groups: the first prevents it, and the other allows it. Islamic jurisprudence agrees with the party that believes in the broad paraphrase of the concept of Self-Defense, and it accepts the restrictions which had been laid to allow Preemptive Self-Defense.

18- The contradiction in the issue of Preemptive Self-Defense can be removed by re-composing the article (51) from the United Nations Charter, and granting states the right of self-defense in the cases of imminent adversary's attack.

19- The International Legislations specified certain conditions to be able to entitle irregular troops (Guerrillas), if captured, to be treated as ordinary prisoners of war: these conditions are: to obey the conventional laws of warfare, to be headed by a person responsible for his followers, carrying arm openly, and wear special uniforms.

20- Verdict of the Guerrilla Warfare in the Islamic Jurisprudence, is a must and individual duty on each Muslims whose country is being under occupation, and on their followers if needed. This makes it impossible for Islamic Jurisprudence to be in agreement with the International laws in fulfilling each of the conditions; the one point of openly carrying arms and of wearing a special uniform. The mere meeting point is represented in the condition of respecting the conventional laws of warfare, with the precaution of Islamic Jurisprudence against depriving legitimacy from the Guerrillas, in such cases when the enemy with his outrageous violation is the first and direct reason behind forcing guerrillas to use some types of self-defense.

21- Legislations of Islamic Jurisprudences are in harmony with one another in relation to the issue of Guerrilla Warfare, either those that go with the interest of the Islamic state, or against it. The Islamic International Law had firmly laid many bases, collectively forming a clear conspicuous theory of Islamic Jurisprudence stand of the Guerrilla Warfare against the Islamic forces. Originally, the general understanding is to protect civilians from killing, but he who chooses to participate in fighting, will be fought; if he is arrested he will enjoy the attributes of a prisoner of war, and what is related to it of his legitimate rights determined to him as a human being, with no considerable condition except for the one that states that he should be killed if he commits any crimes that deserve his killing in return; without taking into account the fact that he has openly carried arms and wore a special uniform.

22- The basic goals of Jihad include: protecting human rights, and achieving the general benefit of the whole humanity with all of its different sects. This appears clearly in the Jihad aim to protect the Islamic Call for worshipping Almighty-God (Allah), Jihad for defending -within certain conditions- the tortured minorities -Muslims or non-Muslims- who live outside the Islamic region. This justifies nominating Jihad for the interest of humanity in all of the above-mentioned cases, as the objective of Jihad in these cases basically concentrates on protecting the basic normal rights of human groups; even those who do not hold the nationality of Islamic states, despite of following the Islamic creed in some forms.

23- Protecting the basic Human Rights considering both Islamic Jurisprudence and International Laws, as they equally agree upon it as an objective.

24- Human Rights is now considered a commanding rule obligating the state to respect them in all cases, a matter that rationalized the concept of international sovereignty in a way to make it a protecting factor, instead of a factor of despotism, and in a form directing the state's behavior towards serving these rights, and modifying the immunity resulted from this concept, that it has become acceptable to put the state that violates this obligation under questioning. This development agreed with what was stated by Islamic Jurisprudence as restrictions on the state sovereignty, in a way causes it to lose its legitimacy and its right of obedience, in case of violating the basic rights of a human.

25- It is clear through observing the world traditional mechanisms, which were laid by the International Community to protect Human Rights, that these mechanisms are enabled to prevent the states from violating these rights.

26- The International Community's comprehension of the previous failure of the mechanisms to protect Human Rights had led the international community to turn to the military interventions to prevent or stop the violation of human rights.

27- The military human interventions, which was congratulated by the United Nations and supported by a great number of jurists of the International Law, finally means the admission to take action in the form of military intervention as a mechanism to protect basic Human Rights at time of violation, and this is the basic concept upon which the whole idea of Jihad for the interest of humanity is based.

28- The existence of objective measures controlling the issue of Human Intervention in all of its forms is a crying necessity, lest the Human Intervention diverts from its original destination, which is stopping the suffering of humanity, and lest theologies be taken pretence behind waging wars against humanity.

29- The measures laid by ((International Commission of Intervention and State Sovereignty)) for the accepted Human Intervention -with the reserving the standard of the just cause- do not contradict the requirements of Jihad for the interest of humanity.

- Recommendations:

The researcher recommends the following.

1- It is necessary to reform the United Nation's system beginning with the Security Council, either through enlarging its membership, or through reforming the mechanism of decision-making by canceling the veto rights, or restricting using it to the maximum limits, by, at least, making the decisions related to Human Rights out of the jurisdiction of this veto right. Also, strengthening the role of the General Assembly to fulfill the purpose of its existence as a representation of all the members of the United Nations, by granting it authority to make decisions for the security council, and granting its resolutions the quality of obligation instead of their merit of moral.

2- The need to get the Islamic States unified in a regional organization with substantial presence and to make their basic objective entrusted with the duty of Jihad for the

interest of humanity, and mutual Defense against the external aggression. In addition to the necessity of laying serious plans by leaders of the Islamic states seeking to unit these states under any form or type of unity that grants them respect and honor from other states in the region.

3- Necessity to give the subject of Islamic Call more care and recognition by the Islamic States. One idea may established specialized departments for the affairs of Islamic Call at their embassies abroad, and take all required action to activate the role of the Muslem minorities in other states in passing on the Islamic Call, and influencing the process of decision-making in the states in which they reside, to make it a way for conquest in our age.

4- It is very important to work hard for benefiting from the international systems and its legislations to be used in serving the interests of Islam and Muslims, through the effective participation to submit and introduce our civilization and cultural identity, as an attempt to make changes in such systems and legislations as much as possible. It is necessary to work to reveal the legal Islamic principles, and to make them part of the International Law sources due to the article (38/C/3) from the United Nations Charter, which states that the principles acknowledged among the states are to be part of its designated sources.

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International Sovereignty and its Impact on the Concept of Jihad: A Comparative Study

**By
Fatima Kassab AL-Hmoud**

**Supervisor
Prof. Abdullah AL-Kelani**

**Co-Supervisor
Prof. Adnan AL-Assaf.**

Abstract

This thesis deals with the issue of international sovereignty and its impact on the concept of Jihad. It aims at presenting the juristic control, which exists in the international relations of the Islamic jurisprudence, as well as showing the human bases on which it depends, its own restraints regarding using military forces, and the coexistence areas it offers for collaboration and peace. To reach these goals, the researcher compares between the bases on which Islamic jurisprudence and recent international law depend, taking into account the rights which each one of them seeks to protect on the international level through rising the issue of sovereignty and its impact on the concept of Jihad, showing the rights which Jihad aims at protecting, and displaying the agreement and disagreement points between them, as well as the methods that can be used to put an end for their disagreement points in a way that infests the features of human justice and civilized progress, which distinguish the Islamic international laws, putting an end to the fact that many people panic when hearing the word "Jihad".