

A CRITICAL ANALYSIS OF THE STATUS AND RIGHTS OF NON-COMBATANTS UNDER ISLAMIC INTERNATIONAL LAW

Abstract

Islam being the religion of prohibits violence and unnecessary aggression. However, it also recognizes the importance of protecting oneself, property, territory and family, and in this circumstances, it is allowed for Muslims to pick up arms and defend themselves. But there are warfare principles and rules to be followed by Muslims, and Islam particularly emphasizes the importance of adhering to those principles and rules. Particularly, the rights of non-combatants are guaranteed and protected under the Islamic international law. This paper aims to analyse the rights of non-combatants, while also discussing the concept of terrorism being carried out by Muslim extremists and its incidence as they relate to combat and warfare principles (jihad) under Islamic international law.

Keywords: Jihad, Terrorism, War, Status and Rights, Islamic International Law, Non-combatants

1. Introduction

The belief that Islam promotes war and does not set limits for same is a fact based on fallacy. Islam as a religion of peace loathes aggression and made armed combat and legitimizes it only when it becomes of great necessity. Even in cases where Islam approves armed combat as an option and allows Muslims to participate in the aggression and hostilities, it has prescribed principles to guide the conduct of Muslims during the course of the battle. The protection of life, as we know, is a fundamental value and objective in Islam. Peace should be the normal state of affairs between people, regardless of differences in religion, philosophy, or anything else. Peace, however, is own at the cost of repelling unjust aggression against innocent people. To this end, Islam and its scholarly tradition have laid down rules regarding warfare, both what justifies a declaration of war (*jus ad bellum*) and how a just war should be conducted after its declaration (*jus in bello*).¹ The principles of *jus ad bellum* and the *jus in bello* were formulated by Muslims at a time when its contemporaries paid no heed to these rules. Islamic law therefore, is the first to have formally established a comprehensive rules regarding hostile and peaceful relations between the Muslim and non-Muslim communities.² Although very often the Arabic word *jihadis* glossed as ‘holy war’, if we were to translate ‘holy war’ back into Arabic we would have *al-harb al-muqaddas*, a term which does not exist in any form in the Islamic tradition.³ *Jihad*, both linguistically and as a technical term, means ‘struggle’, and is etymologically related to the words *mujahadah*, which also means struggle or contention, and *ijtihad*, which is the effort exerted by jurists to arrive at correct judgments in Islamic law.⁴ Historically, *jihad* has been used in several contexts, ranging from self-defence against aggression, pre-emptive self-defence, conquest, revolutionary and regime-change political violence to terrorism.⁵

In the post 11 September 2001 legal and political environment, *Islam* appears to have become one of the most misunderstood religions. Critics of Islam argue that *Islam* per se is an aggressive religion, encouraging *Muslims* to have recourse to violence, terrorism and destruction. *Islam* has been equated with fanaticism, intolerance,⁶ violence and wars of aggression⁷ – the classical *jihad* ideology is often deployed to cast doubts on the compatibility of *Islam* with modern norms of international law as enunciated in the United Nations Charter.⁸ The terrorist perpetrating the acts of terror have also claimed that it is *jihad*, and have encouraged *Muslims* to engage in these of acts terror. The terror groups have been able to develop due to their misinterpretation and distortion of the principles of *jihad*, particularly the warfare principles under *jihad*, therefore misleading people into joining their cause.

* **A. A. OWOADE, PhD**, Department of Islamic Law, Faculty of Law, University of Ilorin. Phone: 08121487171 & 08034453656. Email mymission43@gmail.com

¹ S.Hassan, *War, Islam, and the Sanctity of Life: Non-Aggression in the Islamic Code of Combat*, (Yaqeen Institute for Islamic Research, 2017), p. 3.

² A.S. Jamsheed & I. D. Arshid, *War Permitted under Doctrine of Necessity not General Rule in Islam*, p. 1.

³ B.A. Jazir, *Jihad and the Islamic Law of War* p.3,

⁴ *ibid*

⁵ M. Ssenyonjo, *Jihad Re-Examined: Islamic Law and International Law* p.43.

⁶ A. Cassese, *Terrorism, Politics and Law: The Achille Lauro Affair* (1989) p.1.

⁷ J.L. Esposito, *The Islamic Threat: Myth or Reality?* (1992) p.5.

⁸ S.S. Ali & J. Rehman, ‘The Concept of Jihad in Islamic International Law’, *Journal of Conflict & Security Law*, p.12.

The meaning, nature and scope of *jihad* are traced back to the primary and secondary sources of *Sharia* (Islamic law). The primary sources are the Qur'an (believed to be the very word of God)⁹ and the *ahadith/sunnah* (narrations concerning words and actions of Prophet Muhammad).¹⁰ The secondary sources, which represent the human understanding and articulation of the primary sources, are *ijma* (consensus among Muslim jurists in a particular age on a question of law) and *qiyas* (analogy, the process of reasoning rendering possible the extraction of the legal norm/rule — *hukm* — from previously cited sources). These secondary sources derive from the interpretation of the primary sources.¹¹ Muslims themselves have disagreed throughout their history about the meaning of the term *jihad*. In the Qur'an, it is normally found in the sense of fighting in the path of God; this was used to describe warfare against the enemies of the early Muslim community (*ummah*). In the *ahadith*, the secondmost authoritative source of the *Sharia* (Islamic law), *jihad* is used to mean armed action, and most Islamic theologians and jurists in the classical period (the first three centuries) of Muslim history understood this obligation to be in a military sense.¹²

The term *jihad* literally means to strive, or to exert one's efforts, or to earnestly work towards a desired goal or to prevent an undesired one. In other words, it is an effort (which makes one feel fatigued) that aims at bringing about benefit or preventing harm. This meaning of *jihad* is stated in the Holy Qur'an.¹³ Given the broad nature of the term *jihad*, it can be used to mean several aspects depending on the context in which it is used. According to Ibn al-Qayyim, *jihad* is of four stages: *jihad al-nafs* (striving against the self), *jihad al-shayaateen* (striving against the accursed Satan or devils), *jihad al-kuffaar* (striving against the disbelievers) and *jihad al-munaafiqeen* (striving against the hypocrites [those who undermine Islam from within]).¹⁴ The first two types of *jihad*, *jihad al-nafs* (*jihad* against one's self) and *jihad al-Shaytaan* (*jihad* against the accursed Satan),¹⁵ are considered to be obligatory upon every adult individual Muslim who is capable (*fard 'ayn*), while the last two kinds of *jihad*, *jihad* against non-Muslims and *jihad* against the hypocrites, and *jihad* against leaders of oppression and innovation, are considered to be obligatory to the community as a whole.¹⁶ *Jihad* was generally understood not as an obligation of each individual Muslim (known as *fard 'ayn*) but as a general requirement of the Muslim community (*fard kifaya*). Only in emergencies, when the *Dar al-Islam* comes under unexpected attack, do all Muslims have to participate in *jihad*.¹⁷

Jihad is a comprehensive term which is composed of several elements, only one of which involves the use of force or military means. Although it must be stated that *jihad* is more general and more comprehensive than fighting or war.¹⁸ Indeed, references to *jihad* in the Qur'an are found in twenty-four verses, most of which provide for a spiritual and peaceful non-violent understanding of *jihad*, such as being steadfast in the faith, being patient, the peaceful propagation of Islam, and personal and financial sacrifice.¹⁹ Some of these verses, which prove that *jihad* does not always mean war, are stated below:²⁰ 'Then, verily, your Lord – for those who emigrated after they had been put to trials and thereafter strove hard and fought (for the Cause of Allah) and were patient, verily, your Lord, afterward, is Oft-Forgiving, Most Merciful.²¹ O Prophet (Muhammad, peace be upon him)! Strive hard against the disbelievers and the hypocrites, and be harsh

⁹ The Quran is believed to have been revealed to the Prophet by angel Jibril for over a period of 22 years, starting from 610 CE to 632 CE.

¹⁰ The Sunnah of the Prophet are the words, deeds and tacit approvals of the Prophet.

¹¹ Ssenyonjo, p.42.

¹² G.K. Michael, *The Concept and Practices of Jihad in Islam* p.34.

¹³ Chapter 61 Verses 10-12

¹⁴ S. Muhammed & S. Al-Munajjid, Fatwa 20214: 'Ruling on Jihad and Kinds of Jihad', <<http://www.islamqa.com/en/ref/20214/jihad>> accessed on Jan. 9, 2018.

¹⁵ Ssenyonjo, p.41.

¹⁶ Muhammed & Al-Munajjid, Fatwa 20214: Ruling on Jihad and Kinds of Jihad, <<http://www.islamqa.com/en/ref/20214/jihad>> accessed on Jan. 9, 2018.

¹⁷ Ali & Rehman, 'The Concept of Jihad in Islamic International Law' *Journal of Conflict & Security Law*, p.12.

¹⁸ Ssenyonjo, p.14.

¹⁹ M. C. Bassiouni 'Evolving Approaches to *Jihad*: From Self-Defense to Revolutionary and Regime-Change Political Violence', 8 *CHI. J. INT'L L*, 119 (2007).

²⁰ S. Manisuli *Jihad Re-Examined: Islamic Law and International Law*, p. 8.

²¹ Chapter 16 (*Suratal-Nahl*) verse 110.

against them, their abode is Hell, - and worst indeed is that destination.²² This is consistent with the fact that Islam calls for peace, cooperation, and maintaining justice, and provides for the happiness and welfare of humanity as a whole, regardless of religion. This fact is declared in the Qur'an when it states²³:

Verily, Allah enjoins *Al- 'Adl* (i.e. justice and worshipping none but Allah Alone – Islamic Monotheism) and *Al-Ihsan* [i.e. to be patient in performing your duties to Allah, totally for Allah's sake and in accordance with the *Sunnah* (legal ways) of the Prophet, peace be upon him, in a perfect manner], and giving (help) to kith and kin (i.e. all that Allah has ordered you to give them e.g., wealth, visiting, looking after them, or any other kind of help), and forbids *Al-Fahsha* (i.e. all evil deeds, e.g. illegal sexual acts, disobedience of parents, polytheism, to tell lies, to give false witness, to kill a life without right), and *Al-Munkar* (i.e. all that is prohibited by Islamic law: polytheism of every kind, disbelief and every kind of evil deeds), and *Al-Baghy* (i.e. all kinds of oppression). He admonishes you, that you may take heed.²⁴

The ethics and main principles of Islam prescribe tolerance, mercy and the granting of amnesty when dealing with harsh situations, and demand that strictness, intransigence or cruelty in excess of the normal limits be avoided, in accordance with the nature of the Islamic Message as described by Almighty God addressing the Prophet in these words: 'We sent thee not, but as a mercy for all creatures.' In other words, human beings, animals, jinn and inanimate beings, and indeed all things, must be treated as thus prescribed. After the conquest of Mecca, the Prophet, (peace be upon him), was tolerant towards the *Quraysh*, the former ruling tribe there, who had excessively injured him. He told them: 'Today, there is no blame on you, go, you are set free.'²⁵

Islam lays much emphasis on the personal behavior of Muslim soldiers. In war, as in peace, the instructions of Islam are to be observed. Worship does not cease in war. Whatever is prohibited during peace is also prohibited during war. The Prophet says: 'Beware of the prayer (to God) of the oppressed... for there is no barrier between it and God, even if he (the oppressed) was a non-believer.'²⁶ Also, in one of his messages to the leader of his armies, Sa'd Ibn Abi Waqas, Umar Ibn Al-Khattab, said:

I order you and those accompanying you to be most careful about committing offences against your enemies, as the sins of the army are more fearful than their enemy. Muslims win because of their foe's disobedience to God, had it not been for this, we wouldn't have power over them, because their numbers surpass ours, they are better equipped than we are. Hence, if we are equal in wrongdoing, they would be superior to us. Unless we prevail because of our values and good deeds, we will never overcome them with our force. Never say: Our enemies are worse than us, thus they will never empower us even if we commit an offence, for many a people have been targeted and subjugated by people worse than they are.²⁷

2. Status of Non-Combatants under Islamic International Law

It is prohibited to employ methods or means of warfare that may cause grievous bodily harm or unending suffering, and it is prohibited to employ methods and means of warfare that are indiscriminate, i.e., cannot be directed against a specific military objective.²⁸ The Qur'an and Sunnah clearly provide stringent protections for noncombatants during warfare. Civilians may in no way be intentionally targeted.²⁹ Muslims engaged in *jihad* must make sure that the civilians of the area where they are waging war are protected in all circumstances. Their lives, property and freedom must be protected. There should be no cases of

²² Chapter 9 (*Surat al-Taubah*) verse 73.

²³ Manisuli S, 'Jihad Re-Examined: Islamic Law and International Law', p. 8.

²⁴ Chapter 16 (*Surat al-Nahl*) verse 90.

²⁵ Z. Wahbeh, *Islam and International Law*, p. 275.

²⁶ H. Hassan *War Ethics in Islam*, p. 15.

²⁷ A. Jamal, *Nuzum Al-Harb Fi -l-Islam (Statutes of War in Islam)*, (Maktabat al-Khangī, Cairo 1951), p. 43

²⁸ Protocol I.

²⁹ A. Ibrahim, *Principles Regulating the Conduct of Hostilities under Islamic Law Compared to the International Humanitarian Laws of the Geneva Conventions*, p. 8.

imperiousness on the part of any Muslim combatant.³⁰ Fighting can only be committed against enemy combatants as provided by the Qur'an: 'And fight in the Way of Allah those who fight you...'³¹

The Qur'an and *Hadith* prohibit the attack of specific categories of enemy non-combatants who do not share in hostilities and who are unable to do so, including women and children, the aged, the blind, the sick, the incapacitated, the insane, the clergy and *al-asif* (farmers, craftsmen and traders).³² Another protected group are religious persons (the clergy) who live in hermitages or convents. This is based on the Prophet's commands and Abu Bakr's Ten Commandments to his army leader. He reiterated the Prophet's prohibition against targeting hermits, but allowed *al-shammāsah* (the tonsured) to be killed.³³ According to some, he permitted this because whenever a war starts, the tonsured do fight, unlike the hermits.³⁴

Indiscriminate attacks on non-combatants are contrary to several principles derived from the Qu'ran including just and kind treatment,³⁵ proportionality,³⁶ humanity,³⁷ fraternity³⁸ and justice.³⁹ Targeting non-combatants is contrary to the standard of 'just and kind' treatment of non-combatants as stated in the following Qu'ran passage: 'Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion nor drove you out of your homes. Verily, Allah loves those who are just.'⁴⁰ Killing or causing bodily harm to non-combatants or civilian objects cannot meet the test of 'just and kind' treatment. During Prophet Muhammad's era, the use of force (*jus ad bellum*) was, as noted above, primarily used in self-defence and indeed subject to several humanitarian rules regulating the conduct of hostilities (*jus in bello*). In particular violence against non-combatants such as members of the following groups was prohibited: women, children, the elderly, the sick and wounded, clerics, and places of worship of Christianity and Judaism.⁴¹ It was narrated that the Prophet said to the Muslim army: 'Go out in the name of Allah and by the help of Allah, following the way of the Messenger of Allah. Do not kill any old man, infant, child or woman . . . spread goodness and do good, for Allah loves those who do good.'⁴² In another narration, the Prophet stated 'do not mutilate (the dead) bodies; do not kill children.'⁴³ Prophet Muhammad also instructed the Muslim fighters dispatched against the Byzantine army to specifically spare the female sex: 'Injure not the infants or those who are ill in bed. Refrain from demolishing the houses of the unresisting inhabitants; destroy not the means of subsistence or their fruit-trees and touch not the palm, and do not mutilate bodies and do not kill children.'⁴⁴ This example was followed by the successors of the Prophet after his death. For example, Abu Bakr al-Siddeeq, instructed the commander of his army: 'I advise you of ten things: do not kill a woman, or a child, or any old person, or cut down any fruit trees . . . Subsequently, Umar Ibn al-Khataab, warned commanders of the Muslim army as follows: 'Do not mutilate when you have the power to do so. Do not commit excess when you triumph. Do not kill an old man or a woman or a minor, but try to avoid them during the encounter of the two armies, and at the time of the heat of victory, and at the time of expected attacks.'⁴⁵

³⁰ I. D. AbdurRahman, *Shari'ah: Islamic Law*, p. 679.

³¹ The Glorious Qur'an, chapter 2 (*Suratal-Baqarah*) verse 190.

³² Sunan Bayhaqi al-Kubra, hadiths 17932, 17933, 17934, 17935, 17936, 17937, 2613 and 2614.

³³ Al-Muwatta, Vol. 2, hadith no. 965, p. 447.

³⁴ Sunan Al-Bayhaqi Al-Kubra, Vol. 9, hadith no. 17930, pp. 85 and 89.

³⁵ Chapter 60 (*Surat Al-Mumtahanah*) verse 8.

³⁶ Chapter 16 (*Surat Al-Nahl*) verses 126 – 128.

³⁷ Chapter 5 (*Surat Al-Maidah*) verse 32.

³⁸ Chapter 4 (*Surat Al-Nisa'*) verse 1.

³⁹ Chapter 16 (*Surat Al-Nahl*) verse 90.

⁴⁰ Chapter 60 (*Surat Al-Mumtahanah*) verse 8.

⁴¹ S. Manisuli, *Jihad Re-Examined: Islamic Law and International Law*, p. 29.

⁴² A. A. Muhammad, *Abwab Al-Siyar Fi Ard Al-Harb*, p. 1.

⁴³ *ibid.* it is narrated by Ibn Umar that a woman was found killed in one of these battles; so the Messenger of Allah (May Peace Be Upon Him) forbade the killing of women and children.

⁴⁴ A. Malik, *Al-Muwatta*, (Kuwait, Markaz Al-Buhuth 1997) p. 10.

⁴⁵ Q. A. Abdullah, *Kitab 'Uyun Al-Akhbar*, (Cairo, Dar Al-Kitab Al-'Arabi 1957), pp. 107 – 108.

In addition to the prohibition of fighting civilians, other rules regulating the conduct of hostilities in Islam⁴⁶ include the prohibition of collective punishments,⁴⁷ protect from retroactive punishment,⁴⁸ the prohibition of mutilation, the prohibition of cutting down trees and demolishing buildings, the prohibition of plundering and pillaging,⁴⁹ as well as respecting agreements concluded on the cessation of hostilities.

‘Suicide bombing’ is one of the main methods used by some jihadist groups and organizations to fight those who fight Muslims. While suicide is strictly forbidden in the Qur’an,⁵⁰ some Islamic scholars distinguish between ‘suicide bombing’ and what is described as ‘martyr operations’ which are considered to be one of the ‘greatest’ forms of *jihad*. According to a view, when ‘suicide bombings’ targeted at those who are actually at war against the believers are carried out, not as a result of despair and discontent or for a material gain, but as sacrificing one’s life for the cause of Allah, they represent one of the greatest forms of *jihad* rather than being labeled ‘suicide’ or ‘terrorism’. It must be noted that suicide bombings’ contradict two fundamental principles in Islam: the prohibition against suicide, and the deliberate killing on non-combatants causing indiscriminate and unnecessary suffering to civilians. Even when such operations are carried out, they are often far away from military objectives and cause direct civilian casualties or damage, which is excessive in relation to the intended military advantage which the attack is expected to produce. As Muhammad Munir has observed that when a suicide bomber targets civilians, he might be committing at least five crimes according to Islamic law, namely killing civilians, mutilating them by blowing them up, violating the trust of the enemy’s soldiers and civilians, committing suicide and, finally, destroying civilian objects or property... A suicide mission is therefore contrary to the norms of Islamic *jus in bello* and has no place in Islamic legal thought.⁵¹ Yet, *jihadis* never a tool of terrorism⁵² or waging war against the civilian population and civilian objects. Modern terrorism began near the end of the 18th century following the French Revolution. The term terror was first used in France in 1795 to describe the actions of the new French republic government to suppress counterrevolutionaries.⁵³ Terrorism came to describe the illegitimate use of politically motivated violence by non-state actors, who by definition in a state-centric era only had illegitimate purpose.⁵⁴

Terrorism is notoriously difficult to define but is generally regarded as ‘the use (or threatened use) of violence in order to achieve psychological effects in a particular target audience.’⁵⁵ Definitions of terrorism vary widely – with equally as wide implications – yet there is still a general consensus among most leading scholars as to the essential nature of the threat.⁵⁶ Terrorism violates the right to life of innocent individuals which is contrary to the clear text of Qur’an injunctions such as ‘...if anyone slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people; and if any one saved a life, it would be as if he saved the life of the whole people.’⁵⁷

The sanctity of human life is also a key factor in differentiating between both *jihad* and terrorism. Islam forbids war and killing of any single or on a mass level, Islam has prohibits unlawful killing of even a human being and has been equalized with the killing of entire human race. While the end result of terrorism is the violation of lives and unlawful killings. This is in contravention of the wordings of the Holy Qur’an in chapter 5 verse 32. Clearly, the Qur’an prohibits terrorism since its effect is not to save life but to deprive innocent persons of the right to life, contrary to several Qu’ran concepts of morality, love, compassion, mercy, modesty, selflessness, tolerance and tranquility. Even when one is wronged, the Qu’ran calls for

⁴⁶ A. Yusuf, *Fiqh Al-Jihad (The Jurisprudence of Jihad)*, (Wahba Bookshop Cairo 2009), p. 173.

⁴⁷ The concept of punishment in the Qur’an is based on the principle of individual responsibility. Chapter 74 (*Surat Al-Muddathir*) verse 38 and chapter 4 (*Surat Al-Nisa*) verse 123; chapter 35 (*Surat Fatir*) verse 18.

⁴⁸ Chapter 17 (*Surat Al-Isra*) verse 15.

⁴⁹ B. Karima, ‘As-Salamu ‘Alaykum? Humanitarian Law in Islamic Jurisprudence’, 15 *MICH. J. INT’L*. 605 (1994).

⁵⁰ Chapter 4 (*Surat An-Nisa*) verses 29 – 30.

⁵¹ M. Muhammad, ‘Suicide Attacks and Islamic Law’, 90 *Int’l Rev. of the Red Cross* (2008), p. 71.

⁵² Terrorism is condemned by Islamic States. See, e.g., *Convention on Combating International Terrorism*, Organisation of Islamic Cooperation (1999), available at <http://www.oicun.org/7/38>.

⁵³ A. Cronin, *Behind the Curve: Globalization and International Terrorism*, p.34.

⁵⁴ M. Thorup, *Terror as Policy: The Concept of Terror during the French Revolution* p.22.

⁵⁵ *Studies in Conflict & Terrorism*, Hoffman B, ‘Change and Continuity in Terrorism.’ p.18.

⁵⁶ B. Ganor, *Trends in Modern International Terrorism* p.22.

⁵⁷ Chapter 5 (*Surat Al-Ma'idah*) verse 32.

forgiveness.⁵⁸ The Qu’ran declares that: ‘Allah likes not the *Mufsidun* (those who commit great crimes and sins, oppressors, tyrants, mischief-makers, corrupters).’⁵⁹ Terrorism is one of the most serious crimes and in the Qu’ran context, those who commit terrorist acts would be among the *Mufsidun*. Terrorism is sheer destruction, disorder, fear, chaos and insecurity. Populace is wiped out, properties are destroyed even flora and fauna bear the brunt at times. Business and social activities are affected. In short life becomes standstill and the world as a hell.⁶⁰ Terrorists are, like cancer affected part of body, as soon as it is operated out it will be better for the rest of body.

The Prophet himself set this precedent in a number of his actions and directives. There are numerous narrations and traditions that emphasize protecting the lives of civilians and noncombatants.⁶¹ Hassan al-Basri, one of the most important and influential of the second generation of Muslims, described the following as violations of the rules of war: ‘...mutilation (*muthla*), [imposing] thirst (*ghulul*), the killing of women, children, and the old (*shuyukh*) – the ones who have no judgement for themselves (*la ra’y lahum*), and no fighters among them; [the killing of] monks and hermits, the burning of trees, and the killing of animals for other than the welfare [of eating].’⁶² The principles here are clear. The Islamic law of war prohibits naked aggression, the harming of non-combatants, excessive cruelty even in the case of combatants, and even addresses the rights of animals and the natural environment.⁶³ Once an enemy combatant is killed, his dead body should never be mutilated or his head cut off and raised at the point of a lance, rather, his body should be buried.⁶⁴ Therefore, on the battlefield, the old, the weak, women, children, monks, labourers, and other civilians cannot be targeted unless they forfeit that immunity by fighting themselves. Even then, force is authorized only in proportion to the threat, so killing them should be avoided if at all possible.⁶⁵ Abu Bakr also provided guidelines to this effect in his ten commandments mentioned previously in this work. Some property enjoys special protection. It is forbidden to attack any religious sites. However, it is found that wine should be poured away and that any materials denying God should be burnt. Furthermore, it is prohibited to cause damage to horses, cows, bees or any living creature except if there is a military necessity to do so or if they are slaughtered for food. In addition, jurists found that if it is approved by the commander on military necessity, Muslims are allowed to eat and give fodder to their animals from the enemy’s territories, but only a necessary amount. Thus, the decision depends on the need and necessity of destruction and whether the destruction can be avoided in anyway.⁶⁶

3. Conclusion

The warfare principles under Islamic law are aimed at protecting the combatants and non-combatants regardless of what side they fall on. The religions of Islam detests violence, but allows it in some exceptional circumstances, but nevertheless does not ignore the rights of humans which needs to be protected and preserved even in the face of war. This strengthens the notion that Islam is indeed the religion of Allah, as it preaches compassion, peace, understanding, forgiveness, gentility and tranquility.

⁵⁸*ibid*, chapter 7 (*Surat Al-A’raf*) verse 199.

⁵⁹*ibid*, chapter 28 (*Surat Al-Qasas*) verse 77.

⁶⁰*ibid*

⁶¹ Hassan S., *War, Islam, and the Sanctity of Life: Non-Aggression in the Islamic Code of Combat*, p. 7.

⁶² Ibn Kathir, *Tafsir Al-Qur’an Al-‘Azim*, (Dar-Salam.org, Riyadh 1998), p. 308.

⁶³ The Royal Aal Al-Bayt Institute for Islamic Thought, *Jihad and the Islamic Law of War*, p. 36 – 37.

⁶⁴K. Majid, *War and Peace in the Law of Islam*, p. 108.

⁶⁵*ibid*, p. 7.

⁶⁶*ibid*.