

THE TERM *JIHAD* IN ISLAMIC JURISPRUDENCE WITH REFERENCE TO MODERN INTERNATIONAL LAW: A CRITICAL EXAMINATION

Nehaluddin Ahmad*

Mohd Wafiq bin Mohd Jafree**

Abstract

The term “*jihad*” carries with it several negative connotations, where the term can be linked with acts of violence, extremism, and terrorism. This article goes against such views and argues that *jihad* is defensive in nature. It is to be contended that *jihad* can be utilized as a cause for self-defence, not as a means to enable aggression. In addition, the role of *jihad* under Islamic law will be compared briefly within the context of modern international law. Moreover, this article will further clarify the term “*jihad*” by reviewing its meaning and common misconceptions. This article also highlights that the term *jihad* is misunderstood, it is essentially a tool of self-defence and a last resort against oppressors and mandates that all other efforts must be tried before turning to violence. The claim that *jihad* is a holy war against non-Muslims is thus untrue from a philosophical and theoretical standpoint and does not reflect the fundamental principles of Islamic jurisprudence. Instead, this paper argues that *jihad* is a cause for self-defence rather than a cause of aggression.

Keywords: Islamic International Law, International Law, *Jihad*, Self-Defence, *Jus ad Bellum*, Just War.

I INTRODUCTION

The term “*jihad*” carries several misconceptions pertaining to its definition. At first glance and to the uninformed, the term “*jihad*” may refer to Islamic extremism or acts of Islamic terrorism. In the West, “*jihad*” has frequently been mistranslated as a form of “holy war” for Muslims to act against non-believers of the Islamic faith.¹ To fuel such misinformation further, the language of “*jihad*” has also been abused and employed by Islamic extremists to justify their acts of terrorism.² With these instances, “*jihad*” can be

* MA, LL.B., LL.M. (Lucknow University, India), LL.M. (Strathclyde University, UK), LL.D. (Meerut University, India). Professor of Law, Sultan Sharif Ali Islamic University (UNISSA), Brunei Darussalam. Email: ahmadnehal@yahoo.com.

** LL.B. & BSL, LL.M. (Sultan Sharif Ali Islamic University), Faculty of Shariah and Law, Sultan Sharif Ali Islamic University, Brunei Darussalam. Email: wafiqjafree@gmail.com

¹ Asma Afsaruddin, ‘*Jihad*’, *Encyclopedia Britannica* (Article, 12 May 2023) <<https://www.britannica.com/topic/jihad>>.

² Brian Handwerk, ‘What Does “*Jihad*” Really Mean to Muslims?’, *National Geographic* (Article, 25 October 2003) <<https://www.nationalgeographic.com/culture/article/what-does-jihad-really-mean-to-muslims>>.

misinterpreted by the uninformed majority, as an act of aggression to be waged against non-Muslims. This view, however, is a misconception and this article aims to go against such an aggressive interpretation of “*jihad*.” Instead, this article will strive to clarify the language of “*jihad*”, where it is a cause for self-defence rather than a cause for aggression under Islamic international law. The term “*jihad*” will also be compared to in the context of modern international law.

The term “*jihad*” rose to popularity after the 9/11 attacks on the United States of America (US) more than ten years ago. The US and other Western nations generally assert that those responsible for the 9/11 attack adhered to the Islamic philosophy of *jihad* in order to wage war against the US and its allies around the world. Since then, several Islamic nations that are supposedly sheltering terrorists have been targeted by the US and its allies as part of a shared enemy that must be terrorized. There are now two schools of thought that approach *jihad* from quite distinct perspectives. The first is the usage of the term “*jihad*” by terrorists who interpret it literally without considering the context, leading to the continued use of the traditional definition of the term given by jurors in the past. The second viewpoint is that of individuals who believe that *jihad* is a threat to human life and should be eliminated from its foundation. According to this viewpoint, Western rulers attempted to destroy Muslim nations under the pretext of fighting terrorism without seeking a more thorough justification.³ Hence, this article strives to provide clarity to the term “*jihad*” in the context of Islamic international law, in contrast to these views. This article also highlights that *jihad*, understood as war, is essentially a tool of self-defence, and a last resort against oppressors. This paper explores that *jihad* is a cause for self-defence rather than a cause of aggression.

II THE CONCEPT OF *JIHAD*

The Arabic word *jihad*, which appears in the Quran in a variety of situations and can refer to a variety of non-violent conflicts, such as the struggle to become a better person, literally means “struggle” or “striving.” This is categorized as “*jihad* of the self,” a crucial topic in Islamic devotional literature. Yet, in the unique context of Islamic international law, *jihad* typically refers to a violent conflict against foreigners. Islamic legal scholars of the Middle Ages distinguished between two primary types of military *jihad*: aggressive *jihad*, which involved pre-emptive or offensive attacks ordered by governmental authorities, and defensive *jihad*, which involved violent resistance to intruders.⁴ However, in this article, it is contended that *jihad* is a cause for self-defences rather than a cause of aggression.

The Quran’s injunction to battle (the word *jihad*’s literal meaning) in God’s way and the teachings of the Prophet Muhammad p.b.u..h and his early Companions serve as the foundation for the significance of *jihad*. *Jihad*, when used in its broadest sense, refers to the responsibility placed on all Muslims, both as individuals and as a community, to carry out and accomplish God’s will: to live a moral life and to grow the Islamic community

³ Ramlan *et al*, ‘The Concept of *Jihad* in Islam’ (2016) 21(9) *IOSR Journal of Humanities and Social Science* (IOSR-JHSS) 35.

⁴ Mohammad Hassan Khalil, ‘So, what really is *jihad*?’, *The Conversation* (Article, 20 June 2019) <<https://theconversation.com/so-what-really-is-jihad-118660>>.

through preaching, teaching, leading by example, writing, etc. *Jihad* also encompasses the duty and right to protect the community and Islam from enemies. The call to *jihad* has inspired Muslims to defend Islam throughout history.⁵

The term “*jihad*” has gained remarkable popularity since the turn of the 20th century, being used by terrorist, resistance, and liberation groups alike to justify their actions and inspire their supporters. In Afghanistan, the Afghan Mujahiddin, the Taliban, and the Northern Alliance have engaged in *jihad* against foreign powers and among themselves. Muslims have also engaged in *jihad* in Bosnia, Kosovo, Chechnya, the southern Philippines, Kashmir, and other places. The Armed Islamic Group of Algeria has launched a *jihad* of terror against the Algerian government, and Osama Bin Laden and al-Qaeda have waged a global *jihad* against Muslim nations and the West. Palestine has described its conflict with Israel as a *jihad*.⁶

The significance of *jihad* is founded in the Quran’s instruction to “struggle or exert” oneself in the way of God (the literal meaning of the word *jihad*). The Quranic teachings have been critical to Muslim self-awareness, piety, mobilization, expansion, and defence. *Jihad* as a struggle refers to the difficulty and complexities of leading a decent life: working against the evil inside oneself - to be virtuous and moral, making a sincere effort to conduct good actions and contributing to the reformation of society. It can also imply resisting injustice and oppression, propagating and defending Islam, and constructing a just society by preaching, teaching, and, if necessary, military conflict or holy war, according to one’s circumstances.⁷

In a well-known Prophetic tradition, the non-violent and violent forms of *jihad* are contrasted. Muhammad reportedly informed his companions, “We return from the lesser *jihad* to the greater *jihad*,” upon his return from war, according to Muslim legend. The bigger *jihad* is the more challenging and significant battle against one’s ego, selfishness, greed, and evil.⁸

Throughout Islamic history, the idea of *jihad* has been utilized and abused and has numerous connotations. Although it has long been a significant aspect of Islamic tradition, some Muslims recently argued that *jihad* is a universal religious duty for all sincere Muslims to participate in the *jihad* in order to support a worldwide Islamic revolution.⁹ This article will advocate that *jihad* is in contrast to this perception.

III JIHAD AS A CAUSE FOR SELF-DEFENCE

As stated previously, *jihad* can be a cause for self-defence. This view subscribes to the just war theory. Islam’s concept of *jihad*, or combat in defence of human life and religious freedom, has legal parallels with the just war idea recognized by current international law.

⁵ John L. Esposito, ‘Unholy War: Terror in the Name of Islam and What Everyone Needs to Know about Islam’, *United Nations Alliance of Civilizations* (Article) <https://www.unaoc.org/repository/Esposito_Jihad_Holy_Unholy.pdf>.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

In Islam, the term “*jihad*” refers to a much broader idea that includes challenging deeds of kindness and spiritual conflict with evils. *Jihad* in the *Quran* and *Sunnah* provides rules of non-aggression, proper declaration, right intention, war as a last resort, and proportional retaliation, which foreshadow many aspects of the modern concept of the just war theory, which covers both *jus ad bellum* (justice to war) and *jus in bello* (justice in war).¹⁰

Jihad, taken in its broadest meaning, refers to the fight each believer faces as they pursue God’s way. These battles can be won with the sword or the heart (or mind). Islam distinguishes between two types of *jihad*: There are two types of conflict: 1) the effort against the lower self, to purify the heart, shun evil, and improve oneself; and 2) the struggle against the oppressors and aggressors who perpetrate injustice.¹¹ Yet, *Jihad*’s aim was not to subjugate people or force them to convert to Islam; neither was religion the driving force behind its conflict. *Jihad* was instead meant to combat injustice, stand up for the weak, and expel the adversary. Due to a lack of public awareness on the subject and misuse of the term by a small number of Muslims and extremist groups who did not adhere to the Islamic doctrine for the conduct of war, the term “*jihad*” is frequently misinterpreted by the media.¹²

Islam only permits the use of force when it is justified and under specific circumstances. Islam views the murder of one person without due process as the murder of all humankind. In the *Quran*, God declares:¹³

“Whoever kills a human being without (any reason like) murder or corruption on earth, it is as though he had killed all mankind” (*Quran*, Surah al-Maeda 5:32)

Jihad is therefore essentially a form of self-defence rather than conquest. It is a reaction to military aggressions, and not merely to religious disagreements or differences.¹⁴

The world has a lot of misconceptions about Islam as a result of the terrorist incident that occurred in the US on September 11, 2001, also known as “9/11.” Al-Qaeda, an extremist organization established in 1989 by Osama bin Laden and others, was responsible for carrying out this attack. Although they had targeted numerous other nations, people, and sites, the “9/11” attack was the most brutal. Their goal was to construct an international Islamic society based on their radical agenda.

Al-Qaeda is not the only extremist organization on the globe; others include the Taliban, the Islamic State of Iraq and the Levant (ISIL), and others.¹⁵ In actuality, these organizations frequently engage in violence against one another and attack both Muslims

¹⁰ Justin Parrot, ‘*Jihad* in Islam: Just-War Theory in the *Quran* and *Sunnah*’, *Yaqeen Institute* (Article, 15 May 2020) <<https://yaqeeninstitute.org/read/paper/jihad-in-islam-just-war-theory-in-the-quran-and-sunnah>>.

¹¹ Esposito (n 5).

¹² Amanda Kretsch, ‘The Misconception of *Jihad* in America’, *Digital Commons* (Article, 2016) <<https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1109&context=ulra>>.

¹³ Asghar Ali, ‘Theory of War and Peace in Islam’, *Irenees* (Article, September 2009) <http://www.irenees.net/bdf_fiche-analyse-931_en.html>.

¹⁴ Parrot (n 10).

¹⁵ ‘Global Terrorism Index’, *Economics and Peace* (Article, 2016), <<https://www.economicsandpeace.org/wp-content/uploads/2016/11/Global-Terrorism-Index-2016.2.pdf>>

and non-Muslims.¹⁶ They maliciously cite verses from the *Quran*, traditions of the Prophet p.b.u.h, and opinions of jurists taken out of their original contexts to justify their heinous deeds, which genuinely does not reflect Islam and is not consistent with the true spirit of *jihād*. When determining the meaning of their scriptures, they frequently quote these sources directly and frankly without mentioning the *Asbab al-Nuzul* (the reasons of revelation).¹⁷ For instance, the *Qur'an* states:

“Fight those of the People of the Book who do not [truly] believe in God and the Last Day, who do not forbid what God and His Messenger have forbidden, who do not obey the rule of justice, until they pay the tax and agree to submit.” (Quran, Surah at-Taubah 9:29)

This verse was revealed before the Battle of Tabuk, according to *al-Tabari* (d. 923). The death of the Prophet's emissaries by a Roman ally, which sparked the Battle of Mut'ah, was the fundamental cause of this conflict. The first act of war that precipitated the clashes at Mut'ah and Tabuk, according to Ibn Qayyim (d. 1350), was done by the Romans.¹⁸ Hence, in this situation, Muslims were permitted to fight as a form of self-defence, according to traditional Muslim jurists. This verse, according to its *Asbab al-Nuzul*, cannot be reasonably used as a proof of a violent Islam and it cannot be applied to justify attacks on non-Muslims in the name of Islam.

Another example of a Hadith mostly used by extremists is: Another example of a Hadith mostly used by extremists is:

“I have been commanded to fight the people until they say there is no God but Allah...” (Sahih al-Bukhari 25)

Extremists are categorically mistaken when they interpret this verse from the *Quran* to suggest that Islam demands non-stop combat with non-Muslims until they convert to Islam. The people mentioned in this passage are those who often breach the peace, which excludes Jews, Christians, and other people of faith, according to Anas ibn Malik (d. 709), who revealed the true meaning of this verse.¹⁹ This understanding is consistent with the extraordinary circumstances outlined in Islam to combat aggressors. In contrast to what the extremists have argued, this verse is therefore not always appropriate.

The idea that the Prophet p.b.u.h never forced anyone to adopt Islam was further emphasized by Ibn al-Qayyim. Only those who attacked the Prophet p.b.u.h initially faced a war with him. The *Quran's* text, which states the following, lends credence to this viewpoint:²⁰

¹⁶ Ibid.

¹⁷ Parrot (n 10).

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Parrot (n 10).

“There shall be no compulsion in [acceptance of] the religion. The right course has become clear from the wrong.” (Quran, Surah al-Baqarah 2:256)

As a matter of fact, the Prophet p.b.u.h utilized *da'wah* (invitation) by composing and delivering letters requesting that other kings accept Islam. Among them were Caesar (the King of Rome), Mundhir bin Sawa (the Governor of Bahrain), Muqawqas (the Vicegerent of Egypt), Chosroes (the Emperor of Persia), and many others. Although only some embraced Islam and others did not, the Prophet p.b.u.h never declared war against them to force them to embrace Islam.²¹

The *Fee Sabil Lillah* (in the name of God), also known as the martyrdom operation, is another false philosophy that extremist groups have developed. They misappropriated a passage from the *Quran* in this context to support suicide bombing, falsely portraying it as a mission of martyrdom. For example, the Quran states:²²

“Against them make ready your strength to the utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies of Allah and your enemies and others besides, whom ye may not know but whom Allah does know. Whatever you spend in the cause of Allah, shall be repaid unto you and you shall not be treated unjustly.” (Quran, Surah al-Anfaal 8:60)

This verse was given before the Battle of Badr, which only took place as a result of the adversaries' desire to assassinate and attack Muslims in Madinah.²³ As a result, the genuine meaning of this Quranic verse is that fighting is only acceptable in self-defence and never when attacking someone without a legitimate reason. Hence, the radical ideology of suffering martyrdom in God's name through acts like suicide bombings is not an accurate reading of the *Quran*. Islam forbids the use of suicide bombers.²⁴ Killing oneself can never be justified under any circumstance. God says in the Quran:

“O you who believe! ... Do not kill yourself, for truly Allah has been to you Most Merciful. If any do that in rancour and injustice, soon shall We cast him into the Fire.” (Quran, Surah an-Nisaa 4:29-30)

Jihad, or battle in the sense of fighting against oppressors, is thus only used as a last resort in Islam and is only used as a means of self-defence. Most significantly, though, all attempts at peaceful resolution must be made before engaging in combat. Only under extremely strict restrictions is this kind of *jihad* permitted. Hence, terrorism and the interpretation of the *Quran* by extremists are wholly against Islamic law. As a result of their inadequate comprehension of the real meanings of *jihad* as they are presented in Islam, misconceptions about *jihad* are prevalent in the media. Without a doubt, the *Jihad*

²¹ Nighat Ruhkasana and Mussarat Jamal, 'The Methodology of the Prophet in Calling to Allah' (2014) 5(3) *Journal of Social Sciences Research* 828.

²² Esposito (n 5).

²³ Ahmad Riyadi, 'Penafsiran Surah al-Anfal Ayat ke-60 Melalui Pendekatan Semiotika' (2017) *Jurnal Studi Islam Indonesia* 1.

²⁴ Kretsch (n 12).

shows that Islam is a religion of peace rather than one that supports terrorism when read and understood in the context of the just war theory. In actuality, there are significant parallels between Islamic international law and the current conception of just war theory and the resulting nonviolent tenets.

IV THE THEORIES OF *JIHAD*

It is to be mentioned that there are two theories of *jihad* in relation to the use of force; these are namely: the defensive and offensive theories.²⁵ This article aims to assert that the correct view to be taken is that *jihad* is to be used defensively with regard to the use of force.

A Defensive Theory

The *Qur'an* (22:39) allows the use of force in self-defence: 'Permission [to fight] is given to those against whom fighting is launched, because they have been wronged.'²⁶ It was the first time soon after the Prophet Muhammad p.b.u.h moved to Medina from Mecca²⁷ in 622 AD, that the *Qur'an* gave permission to use force in self-defence.²⁸ Verse 22:39 is written in the passive tense, 'against whom fighting is launched',²⁹ and therefore indicates that permission is given when Muslims are 'wronged', i.e., attacked. Verse 22:40 sheds some light on what the *Qur'an* means by wronging: '[they are] the ones who were expelled from their homes without any just reason, except that they say "Our Lord is Allah".' Permission to use force is therefore predicated on 'wronging' Muslims. This position is reinforced by verse 2:190: '[f]ight in the way of Allah against those who fight you and do not transgress. Verily, Allah does not like the transgressors.' This verse was revealed one year after Prophet Muhammad p.b.u.h migrated from Mecca to Medina.³⁰ 'Fight in the way of Allah against those who fight you' has two meanings. First, it allows Muslims to fight those who fight them, a reflection of the permission given in verse 22:39. The phrase 'who fight you' shows that Muslims cannot be aggressors.³¹ This verse forbids aggressiveness but makes an exemption for the use of force in self-defence. Secondly, it exclusively refers to soldiers engaged in genuine combat (*qital*). "[A]nd do not transgress" denotes that it is forbidden to go beyond Allah's bounds, including using force against aggressors or for self-defence. The two verses in the *Qur'an* that discuss personal defence are verses 22:39 and 2:190, although verse 22:39 serves as the main passage on this topic.³²

²⁵ Niaz A. Shah, 'The Use of Force under Islamic Law' (2013) 24(1) *European Journal of International Law* 344.

²⁶ The translation of the *Qur'an* by Muhammad Taqi Usmani, *The Meaning of the Noble Quran* (2006).

²⁷ A.Y. Ali, *The Meaning of the Noble Quran* (1989), 832.

²⁸ A.M. Daryabadi, *The Glorious Quran: Text, Translation and Commentary* (2002), 603.

²⁹ Ali (n 27).

³⁰ M. Asad, *The Message of the Quran* (1997), 512.

³¹ Daryabadi (n 28).

³² Shah (n 25).

The verse “What has happened to you that you do not fight in the path of Allah and for the oppressed among men, women, and children,” the *Qur'an* (4:75) authorizes the use of force to defend other Muslims who are being persecuted and are powerless to defend themselves. Here, the meaning is different. Verse 4:75 authorizes the use of force to defend individuals who are being persecuted for practising Islam and are unable to defend themselves, in contrast to verse 22:39, which permits the use of force in self-defence. The need for employing force to defend the weak and oppressed Muslims is that they must be subjected to an oppression that is so terrible that it forces them to flee their homes, such as genocide or torture.³³

The use of force in self-defence and to defend those Muslims who are being persecuted but are unable to defend themselves is clearly justified by the *Qur'an*. Verse 4:75 specifies that Muslims have the right to use force to defend oppressed and defenceless fellow Muslims, but it does not forbid doing so when doing so would be morally justifiable. The *Qur'an* contains evidence that can be used to create a rule that will safeguard any oppressed people who are powerless to defend themselves. For instance, the *Qur'an* (5:32) declares that whomever saves a person's life “is as though he had rescued the life of all of humanity.” Such a regulation would be developed in accordance with the *Qur'an's* higher ideals and message (2:213), which state that all people are members of one family and that the *Qur'an* (21:170) is a kindness for all people.³⁴

In certain cases, the *Qur'an* (49:9) permits using force against non-Muslims as well: “[i]f two groups of the believers fight each other, seek reconciliation amongst them.” And if one of them acts aggressively toward the other, fight that person until they submit to Allah's order. So, if it does, try to work out a fair settlement so that justice is maintained. Once more, it is okay to defend oneself against attackers. Verse 49:9 does not address the issue of an armed battle among Muslims or authorize the use of force by a ruler against revolt, according to the circumstances of its revelation. Many theories exist on the circumstances of its revelation, but it appears that the verse during the lifetime of Prophet Muhammad p.b.u.h addressed events such as a street fight or a family dispute.³⁵ Prophet Muhammad's immediate successors and later jurists were the ones who understood verse 49:9 to permit the use of force by a ruler against revolt. To support their interpretation, they use Fourth Caliph Ali's conflict with the rebels as an example.³⁶ Thus, this verse became a basis for using force against rebellion.

The *Qur'an* clearly provides support for the defensive theory of *jihad*. According to this idea, it is acceptable to use force in self-defence, to defend Muslims who are being oppressed but are unable to defend themselves, to avert a humanitarian crisis, and to put down a Muslim ruler's rebellion.

³³ Ibid.

³⁴ Ibid.

³⁵ I. Ibn Kathir, *Tafseer Ibn Kathir* (trans. Junaqghari, 2005), v, 67; A. Elahi, *Anwarul Bayan* (2008), v, 178.

³⁶ N.A. Shah, *Islamic Law and the Law of Armed Conflict: The Armed Conflict in Pakistan* (2011), 66–67.

B *Offensive Theory*

The advancement of laws governing the use of force and the universality of the Islamic religion serve as the foundation for the aggressive philosophy of *jihād*.

The progression argument claims that in the early years of Islam, or the Meccan period, the Qur'an prohibited the use of force and encouraged patience instead (610–622 AD).³⁷ Nonetheless, *jihād* was permitted in self-defence during the Medinan period after Prophet Muhammad moved to Medina and established a Muslim community (622–632 AD). According to this theory, verses 9:5 and 9:29 abolished all verses pertaining to self-defence in the final year of the Medinan period (9 AH), making *jihād* a perpetual responsibility for Muslims of all ages.

In elaborating each stage of the progression argument in Mecca, *jihād* was not allowed.³⁸ The following verses are cited to support this argument:

- i. *"The one who defends himself after having been wronged; there is no blame on such people" (42:41).*
- ii. *"Blame, in fact, is upon those who wrong people and make mischief on earth unjustly" (42:42).*
- iii. *"And if one observes patience and forgives, it is, of course, one of the courageous conducts" (42:43).*
- iv. *"(O Muslims), many among the people of the Book desire to turn you, after your accepting the faith, back into disbelievers – all out of envy on their part, even after the truth has become clear to them. So, forgive and overlook till Allah brings out His command" (2:109) [emphasis added].*

There is scholarly consensus on this point: *jihād* was not allowed in Mecca. In Medina on the other hand, a new command (verses 22:39 and 2:190) was revealed and force was thus allowed in self-defence, a command alluded to in verse 2:109.³⁹ The following two verses are cited in support of this argument:

- i. *"Permission (to fight) is given to those against whom fighting is launched, because they have been wronged" (22:39),*
- ii. *"Fight in the way of Allah against those who fight you, and do not transgress. Verily, Allah does not like the transgressors" (2:190).*

There is scholarly consensus on this point as well. The claim is that during the eight years of the Medinan period, the *jihād* in self-defence rule was in effect. During this time, the Muslim community came together, and in the year 9 AH, two distinct instructions regarding polytheists and People of the Book were revealed (Jews, Christians, and

³⁷ Afsaruddin, *War and Violence*, in O. Leaman (ed.), *The Quran: An Encyclopaedia* (2008), 687; M. Bin Ismail Al-Bukhari, *Kashful Bari: Kitab Al-Maghazi (Book of Ghazqat)* (trans. S. Khan, 2008), 17.

³⁸ Shah (n 25).

³⁹ Ibid.

Sabians). It is argued that the *Qur'an* commands Muslims to fight and kill polytheists but to spare them if they convert to Islam. The following verse is used to bolster the claim:⁴⁰

“So, when the sacred months expire, kill the [polytheists] wherever you find them, and catch them and besiege them and sit in ambush for them everywhere. Then, if they repent and establish [prayer] and pay [poor due], leave their way. Surely, Allah is most Forgiving, Very-Merciful.”

The People of the Book were to be fought and killed, but they could be spared if they agreed to pay *jizya* (protection tax) after being subdued. Verse 9:29 is cited to support this argument:⁴¹

“Fight those People of the Book who do not believe in Allah, nor in the Last Day, and do not take as unlawful what Allah and His Messenger have declared as unlawful, and do not profess the Faith of Truth; [fight them] until they pay the jizya with their own hands while they are subdued.”

The progression argument's proponents contend that verses 9:5 and 9:29 nullified passages 22:39 and 2:190, allowing for the use of force in self-defence. The norms of *jihad* evolved from a condition of patience to the use of force in self-defence followed by an obligatory *jihad* against polytheists and People of the Book, offensive *jihad* thus being a duty for every Muslim. If this interpretation is accepted, verse 9:5 would simply require Muslims to kill polytheists or convert them to Islam forcibly, which would amount to a law for genocide. Moreover, it would imply that Muslims are required by verse 9:29 to enslave the People of the Book.⁴²

Yet, the progression argument seems to be weak in light of the analysis of verses 9:5 and 9:29 in their historical and *Qur'anic* contexts. Verse 9:5 and verse 9:29, we contend, do not negate verses 22:39 and 2:190. Verses 9:5 and 9:29 need to be looked at in their *Qur'anic* and historical settings in order to prove such claim. It is also needed to be determined whether other verses and situations in the *Qur'an* also contained the phrase “kill them [polytheists].” In order to understand how the People of the Book and polytheists were treated after verses 9:5 and 9:29 were revealed, the actions of the Prophet Muhammad p.b.u.h and his immediate successors must also be observed.⁴³

1 *Qur'anic Verses 9:5 and 9:29*

Qur'anic Verses 9:1–9:29 were shown to address specific categories of individuals and their interactions with Muslims at that time, according to a detailed contextual examination. These passages do not have the subject matter or the desire to replace earlier verses with new regulations for the use of force,⁴⁴ but whether or not to terminate treaties with

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ N.A. Shah, *Self-defence in Islamic and International Law: Assessing Al-Qaeda and the Invasion of Iraq* (2008).

specific tribes. A treaty connection is ended, and a non-treaty relationship is established when a treaty is dissolved. It does not imply that existing laws prohibiting the use of force are changed or that they are repealed. Elahi contends that verse 2:29 does not refer to eradicating the People of the Book if they do not accept Islam and promote Islam by mandatory *jihad*. *Jizya*, a representation of political hegemony and sovereignty, is the subject. The Muslims of the Arab society in the seventh century are mentioned in verse 2:29. It is not directed at the Muslims of the twenty-first century, which are not instructed to approach the People of the Book brandishing the *Qur'an* in one hand and a sword in the other, and threatening to kill them if they do not accept the *Qur'an* (i.e., adopt Islam) or pay *jizya*.⁴⁵ Verse 9:5 is about fighting those polytheists – Quraysh – who broke their covenants with the Muslims. It is not directly addressed to Muslims today.

2 The “Kill Them” Language

In addition to a context study, linguistic research shows that the words “kill them” were not used for the first time in verses 9:5 and 9:29 of the *Qur'an*. Verse translations before verses 9:5 and 9:29 have the same terminology.⁴⁶

- i. “Kill them wherever you find them, and drive them out from where they drove you out, as *Fitnah* (to create disorder) is more severe than killing” (2:191).
- ii. “They wish that you should disbelieve, as they have disbelieved, and thus you become all alike. So, do not take friends from among them unless they migrate in the way of Allah. Then, if they turn away, seize them, and kill them wherever you find them, and do not take from among them a friend or helper” (4:89).
- iii. “You will find others who want to be secure from you, and secure from their own people. (But) whenever they are called back to the mischief, they are plunged into it. So, if they do not stay away from you, and do not offer peace to you, and do not restrain their hands, then seize them, and kill them wherever you find them, and, we have given you an open authority against them” (4:91) [emphasis added].

Every time the *Qur'an* calls for the death of non-Muslims, it depends on their doing or not doing something. Verse 2:191, for instance, talks about driving out non-Muslims from places where they have driven out Muslims. The killing depends on “if they turn away” in verse 4:89, but also depends on “if they do not keep away from you” in verse 4:91. On various occasions, the phrase “kill them” has been used in reference to specific groups of individuals. The same can be said for verses 9:5 and 9:29. They do not nullify or make any attempt to nullify texts referring to *jihad* for self-defence. The only normative meaning of verses 9:5 and 9:29 is that Muslims may take the way recommended by these verses under circumstances and settings identical to their own. Non-Muslims are not the only ones that are subject to the law against murdering for certain motives. According to Islamic law, Muslims may be killed in specific circumstances, such as during a rebellion.

⁴⁵ Elahi, (n 35), 576.

⁴⁶ Shah (n 25).

According to the results of contextual and linguistic research, killing polytheists is prohibited in the Qur'an.⁴⁷

The *Qur'an* generally forbids the crime of genocide. Numerous *Qur'anic* scriptures and Prophet Muhammad's p.b.u.h deeds can be used to prove this claim, but verse 5:32 is the most pertinent:

“Whoever kills a person not in retaliation for a person killed, nor (as a punishment) for spreading disorder on the earth, is as if he has killed the whole of humankind, and whoever saves the life of a person is as if he has saved the life of the whole of humankind.”

The murdering of innocent people and saving lives are the two main divisions of the verse. The verse's killing portion can be used to stop or punish genocide, and the verse's rescuing portion can be used to support humanitarian action. The word “person” is used to imply that no one, regardless of religion, race, or skin colour, can be slain without the justifications outlined in verse 5:32. It also implies that everyone from any background can be rescued from oblivion and death. Nations and ethnicities of any sort can be included within the umbrella of the humanitarian intervention principle. It is significant to remember that the *Qur'an* explicitly mentions humanitarian engagement to shield Muslims from persecution in 4:75. It serves as another evidence that the *Qur'an's* main objective is to stop the killing of all innocent people.⁴⁸

3 *The Practices of the Prophet and Caliph Abu Bakr*

Verse 9:1–9:29 was revealed before the Tabuk expedition in 9 AH, as was previously mentioned. In actuality, the Tabuk expedition started after verse 9:29 gave authority to attack the People of the Book⁴⁹; as a result, verse 9:29 is viewed as a prologue to the battle of Tabuk. The ruler of Aylah, Rubah, signed a peace agreement with Prophet Muhammad p.b.u.h when he arrived in Tabuk by promising to give him *jizya*. Prophet Muhammad p.b.u.h drafted agreements for the inhabitants of Jarba and Adhruh, who likewise consented to pay *jizya* to him.⁴⁹ All of them did not practice Islam. Most of the previous polytheist tribes that had converted to Islam during the lifetime of Prophet Muhammad p.b.u.h (632 AD) rejected Islam and made attempts to break away from the Muslim state after the Prophet's death. Some even attempted an invasion of Medina,⁵⁰ the capital of the Islamic state.

The first Caliph, Abu Bakr, dispatched troops to reestablish Islamic rule by crushing the rebel tribes. Before sending him as a reinforcement to the expedition of Kindah, he gave commander Muhajir the following instructions: “[i]f this letter of mine reaches you before you have achieved victory, then - if you conquer the enemy - kill the fighting men and take the offspring captive if you took them by force.”⁵¹ Abu Bakr would have

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ A.J. Ibn Jarir Tabari, *History of Al-Tabari (Tarikh al-Rusul wa'l muluk)* (trans. M. Ibrahim, 2003), 58.

⁵⁰ Ibid, 476.

⁵¹ Ibid, 185.

given a different order if verse 9:5 meant to slay all polytheists: kill them all when you capture them. According to Caliph Abu Bakr and Prophet Muhammad's p.b.u.h deeds, verses 9:5 and 9:29 did not override verses 22:39 and 2:190 or permit the genocidal annihilation of polytheists.

The progression argument is neither supported by Muslim history or the existing customs of Muslim governments. People of the Book and other non-Muslims have resided in Muslim governments throughout the course of Islam. The Jews in Spain saw their golden age during the time of Muslim control. The Mughal rulers ruled the Indian subcontinent for centuries, and millions of Hindus and Sikhs, including the liberal Baber the Lion and the conservative Aurangzeb Alamgir, lived there.⁵² In addition, all the existing Muslim governments are UN members, and the UN Charter from 1945 forbids the threat or use of force outside of self-defence. That is now considered to be customary law. If Islamic law had mandated that Muslim states engage in aggressive *jihad*, they would not have consented to this norm.

The second justification for the use of force is that Islam is universal, meaning that Muslims have a responsibility to spread its teachings to the rest of humanity. If their means of spread are hindered, such obstacles are to be removed, if possible and necessary, amicably or with a sword. As a result, it is known as the offensive *jihad* theory.⁵³

There is no question that Islam is proclaimed by the *Qur'an* to be a religion for all people. There is no question that the *Qur'an* commands its followers to convey Islam's message to the rest of the world. Yet, for the following three reasons, the doctrine of offensive *jihad* cannot be supported by the *Qur'an*. First, a contextual interpretation of the texts they cite gives them a different interpretation. The passages do not back up the violent *jihad* notion. Second, the *Qur'an* lays out detailed guidelines that forbid the use of force in the spread of Islam. Lastly, their view violates the neutrality-based *Qur'anic* code of conduct for armed warfare.⁵⁴

Nonetheless, the aggressive notion of *jihad* appears to be at odds with the three major tenets of the *Qur'an*: (a) justice for all of God's creations; (b) peace; and (c) freedom of religion. These *Qur'anic* themes are supported by the contextual interpretation of the verses quoted in favour of the offensive theory rather than the offensive theory of *jihad*.⁵⁵

From this, it becomes evident that Islamic law permits using force in self-defence to protect people who are being oppressed and are unable to defend themselves. It also permits a Muslim king to put down rebels with physical force. The foundational texts of Islamic law do not support the offensive *jihad* notion and as a result, it has no basis in the primary sources of Islamic law.⁵⁶

⁵² I. Prasad, *A Short of History of Muslim Rule in India* (1930).

⁵³ Shah (n 25).

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

V THE CONCEPT OF *JUS AD BELLUM* OF MODERN INTERNATIONAL LAW

Two fundamental ideas, namely discrimination, and proportionality form the basis of the laws of just behaviour in war. While the proportionality principle addresses how much force is ethically acceptable, the discriminating principle addresses lawful wartime targets. The traditional two principles can be supplemented with a third one, the principle of responsibility, which calls for an analysis of who is ultimately responsible for the war.

The *jus bellum justum* (just war theory), which is based on the idea of humanity, should direct how people behave in times of war.⁵⁷ Military commanders, theologians, and policymakers are said to adhere to the doctrine as a tradition of military ethics.⁵⁸ The goal of this theory is to guarantee that wars are conducted in a way that is morally justifiable, where all requirements must be satisfied for a war to be deemed just. These components can be categorized into two groups: 1) the authority to declare war (*jus ad bellum*); and 2) proper behaviour in times of war (*jus in bello*). Although being vital to the justice of the conflict itself, little has been spoken about what happens after a war. The third component, referred to as *jus post bellum* and dealing with the morality of post-war settlement and reconstruction, was established by modern scholars in response to this weakness. From the earliest Islamic and Christian eras up to the more secular present, the idea of *jus post bellum* has been a humanitarian attitude.⁵⁹ However, for the purpose of this article, the element of *jus ad bellum* would only be expounded upon.

Regarding *jus ad bellum*, it is a set of standards that should be used to decide if starting a war is acceptable, or whether it is a just war, before starting one. Islam holds that going to war should only be done as a last resort.⁶⁰ In light of this, every effort should be made to prevent conflict before a war is decided upon. A *Dar al-Islam* must present the adversary with three options, as was previously stated. Signing a pact to bring about peace is the most important one.⁶¹ The observance of such a pact is required of all Muslims.⁶² War must also be fought for a justifiable reason. This is comparable to what the *Quran* says:

“Do not take the life God has made sacred, except by right. This is what He commands you to do: perhaps you will use your reason.” (*Quran*, Surah al-Anaam 6:151)

⁵⁷ Erich Freiberger, ‘Just War Theory and the Ethics of Drone Warfare’, *E-International Relations* (Article, 18 July 2013) <<https://www.e-ir.info/2013/07/18/just-war-theory-and-the-ethics-of-drone-warfare/>>.

⁵⁸ Jonathan Ramachandran, *Savior of the World* (2014) Five Loaves Two Fish Publications 183.

⁵⁹ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (Basic Book Inc 1977) 132.

⁶⁰ Huma Ahmad, ‘Top Ten Misconceptions about Islam’, *Universiti Kebangsaan Malaysia* (Article) <<http://ukm.my/kamal3/iae/Misconceptions%20About%20Islam.pdf>>.

⁶¹ Abdul Karim Bangura, ‘Islam and Just War Theory’, *Research Gate* (Article, 2004) <https://www.researchgate.net/publication/242227121_Islam_and_Just_War_Theory>.

⁶² Jaber Seyvanizad, ‘Islamic International Law Concerning Law of Treaties’ *SSRN* (Article, 21 August 2017) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3020173>.

This indicates that unless there is a legitimate reason, war is not permitted. This is also consistent with the *jus ad bellum* doctrine of modern warfare. Most fundamentally, Islamic law forbids war unless absolutely necessary.⁶³ One such circumstance is for instance, for the act of self-defence.

In terms of self-defence, self-defence falls firmly within the purview of justice because it is an abrogation of one's rights to be attacked by another.⁶⁴ Islam permits war in self-defence as stated in the *Quran*:

"To those against whom war is made, permission is given to fight, because they are wronged; and verily Allah is most powerful for their aid. They are those who have been expelled from their homes in defiance of right – (for no cause) except that they did say 'Our Lord is Allah'. Did not Allah check one set of people by means of another, there would surely have been pulled down monasteries, churches, synagogues and mosques, in which the name of Allah is commemorated in abundant measure. Allah will certainly aid those who aid His (cause) for verily Allah is full of strength, exalted in might." (*Quran, Surah al-Hajj 22:39-40*)

Hence, by the *Quranic* verses above; Islam allows for war to be committed for self-defence to defend Islam.

VI THE CLASSIC CONCEPT OF SELF-DEFENCE IN INTERNATIONAL LAW

Aggressive war is considered to be the "supreme international crime," according to the International Military Tribunal at Nuremberg. That was reaffirmed by the United Nations (UN) and supported by numerous court rulings. Nazi commanders claimed that their main motivation was self-defence against a fictitious Soviet Union onslaught. After a fair trial, their explanation for mass murder was rejected, and the responsible leaders were hanged.⁶⁵

According to Article 2(4) of the UN Charter, "All members should refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." In contrast to the Briand-Kellogg accord, the Charter forbids all forms of force, not just the use of force in war.⁶⁶ The rule received universal acknowledgment and quickly became part of customary international law, as pointed out by ICJ in the case of *Nicaragua v. USA*.⁶⁷

An exception to this rule is provided by Article 51, which reads as follows: "If a Member of the United Nations is subjected to an armed attack, nothing in the current

⁶³ Ali (n 13).

⁶⁴ Bangura (n 61).

⁶⁵ Benjamin B. Ferencz, 'Benjamin B. Ferencz response to Amnesty International question on fair standards to prosecute terrorism', *Ben Ferencz* (Web page, 2006) <www.benferencz.org/arts/88.html>.

⁶⁶ Douglas P. Lackey, *Moral Principles and Nuclear Weapons* (Lanham: Rowman & Littlefield, 1984), 23.

⁶⁷ Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (New York: Routledge, 7th ed, 1997), 309.

Charter shall limit their inherent right to individual or collective self-defence until the Security Council has taken the necessary action to maintain global peace and security. The Security Council must be immediately informed of any actions taken by Members in the exercise of this right to self-defence, but this does not in any way affect the Security Council's power and obligation under the current Charter to take whatever action it deems necessary at any time to maintain or restore international peace and security." Consequently, using force in any situation other than an armed attack is still prohibited, despite the fact that the definition of a "armed attack" has expanded and that certain people may have the right to self-defence even in situations where there has not been any prior use of force.⁶⁸

In the *Caroline* case, the usual interpretation of the right to self-defence under customary international law was used. This argument was sparked by an incident in 1837 in which British citizens took control of and destroyed a ship in an American port. This happened as a result of the *Caroline* aiding American nationalist forces who were conducting raids into Canadian territory. Following the incident, the American Secretary of State outlined the fundamentals of self-defence in letters with the British authorities. There has to be "an immediate overwhelming need for self-defence, leaving no choice of means, and no time for thought." This principle was accepted by the British government at that time and later it became accepted as part of the customary international law.⁶⁹

The principle of *jus ad bellum* proportionality (as opposed to the principle of proportionality in humanitarian law), which developed alongside necessity and the requirement of "no choice of means," has also become a necessary prerequisite for self-defence. However, because this principle is debatable, it must now be interpreted through the lens of State practice and opinion of jurists, with the assistance of the International Court of Justice's precedent and the opinions of commentators.⁷⁰ Today, the standards used to assess the right to self-defence are the "three whales" of necessity, proportionality, and lack of alternatives.

VII COMPARISON BETWEEN SELF-DEFENCE IN ISLAM AND MODERN INTERNATIONAL LAW

Jus ad bellum is regarded as the law intended to deter war in modern international law.⁷¹ It refers to the circumstances under which states may employ force militarily, whether at war or otherwise.⁷² It suggests a "just" cause to defend human rights and innocent life, to stop a despotic government from persecuting its own citizens

⁶⁸ Ingrid Detter, *The Law of War* (Cambridge University Press, 2nd ed, 2000), 85.

⁶⁹ Malcolm N. Shaw, *International Law* (Cambridge University Press, 4th ed, 1997), 787.

⁷⁰ Judith Gardam, *Necessity, Proportionality and the Use of Force by States* (Cambridge University Press, 2004), 155.

⁷¹ 'IHL and other Legal Regimes – Jus ad Bellum and Jus in Bello', *International Committee of the Red Cross (ICRC)* (Article, 29 October 2010) <<https://www.icrc.org/en/doc/war-and-law/ihl-other-legal-regimes/jus-in-bello-jus-ad-bellum/overview-jus-ad-bellum-jus-in-bello.htm>>.

⁷² 'What are Jus ad Bellum and Jus in Bello?', *International Committee of the Red Cross (ICRC)* (Article, 22 January 2015) <<https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0>>.

and others, and to stop a politician from starting a war for his own political gain.⁷³ According to the current international law, Article 2(4) of the United Nations Charter forbids all member states from threatening or using force in their international relations against the territorial integrity or political independence of any state, or in any other way that is contrary to the goals of the United Nations.⁷⁴ The Charter only allows for two exceptions to the ban against war.⁷⁵ Firstly, in self-defence against an armed attack, as stated in Article 51 of the Charter as follows:

*“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”*⁷⁶

Secondly, when the Security Council permits the use of force under certain circumstances, as stated in Article 39 of the Charter as follows:

*“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”*⁷⁷

Force may be used in self-defence in one of two situations. First of all, resorting to military force should only be done in extreme cases.⁷⁸ In order to effectively counter a specific danger, governments must evaluate all available options, select the ones they think most effective, and give non-military options a priority. This means that it is necessary for war to be the least favoured alternative.⁷⁹ Secondly, the use of force must be reasonable to the threat faced, restricted to what is required to confront that threat, and equal to that threat.⁸⁰ In actuality, this means that when a state uses self-defence, it must immediately inform the Security Council of the actions it took. Up until the Security Council has taken the required action to ensure international peace and security, the right to use force in self-defence is still in effect.⁸¹ This is stated in Article 39 of the Charter.

⁷³ Bertrand Lemennicier, ‘Classical Just War Theory: A Critical View’, *Research Gate* (Article, 22-23 March 2003) <https://www.researchgate.net/publication/233996462_Classical_Just_War_Theory_a_Critical_View>.

⁷⁴ Dapo Akande, ‘Is Israel Use of Force in Gaza Covered by Jus ad Bellum?’, *EJIL Talk*, (Article, 22 August 2014) <<https://www.ejiltalk.org/is-israels-use-of-force-in-gaza-covered-by-the-jus-ad-bellum/>>.

⁷⁵ Michael Wood, ‘International Law and the Use of Force: What Happens in Practice?’ (2013) 53 *Indian Journal of International Law* 345.

⁷⁶ Article 51, *Charter of the United Nations* (1945) 1 UNTS XVI.

⁷⁷ Article 39, *Charter of the United Nations* (1945) 1 UNTS XVI.

⁷⁸ Daniel Bethlehem, ‘Principles Relevant to the Scope of a State’s Right of Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors’ (2012) *The American Journal of International Law* 1.

⁷⁹ John F. Coverdale, ‘An Introduction to the Just War Tradition’ (2004) 16(2) *Pace International Law Review* 221.

⁸⁰ Bethlehem (n 78).

⁸¹ *Ibid.*

Comparing Islamic international law to current international law, Islamic law establishes tougher and more definite justifications for war. The justifications stipulated under the current international law are ambiguous and up to the Security Council's discretion.

VIII CONCLUSION

To conclude, this article has demonstrated that Islamic law permits *jihad* in Islam can be done for self-defence. It is important to clarify that the term "*jihad*" under Islamic law does not equate to a holy war that is to be waged against non-Muslims. This view is a widespread misconception. Instead, *jihad* in the context of the use of force is defensive in nature. It is to be done only in self-defence and not as means of aggression.

Furthermore, in the comparison of Islamic law to international law, it may be said that Islamic law establishes tougher and more definite justifications for war. The justifications stipulated under the current international law are ambiguous and up to the Security Council's discretion. However, it is to be observed that *jihad* as a cause for self-defence is in accordance with Article 51 of the UN Charter, where it can be enacted for self-defence.

In summary, it is to be emphasized that *jihad* does not refer to Islamic extremism or terrorism. It should be informed that Islam promotes peace and not aggression. Using *jihad* as a cause for self-defence is a means of last resort. Additionally, an act of self-defence is in accordance with contemporary international law. Hence, *jihad* is in adherence with modern international law.