

9

Norms of war in Shia Islam

Davood Feirahi

In Islam, as in many other civilizations, religious texts/principles define and set human behaviour. Religion and religious ideas have great importance in understanding the nature of war and military ethics in the Islamic world. If we define Islamic civilization through one of its major features, then we can say that it is a civilization based on religious jurisprudence (*fiqh*). As such, it is oriented around the Sharia, a comprehensive body of law that defines the values, rules and morality of Muslims in all areas of life (from birth to death), including war and military ethics.

Jurisprudence in Islamic society is the science that defines the historical life of Muslims in relation to the religious texts, in any time or place. Jurisprudence aims at creating harmony between religious commands and daily life within a given environment. In Islamic culture, religious text means the holy Qur'an and narrations from the Holy Prophet and the Infallible Imams in Shiism, all of which are closely interrelated. In Islamic terms, these are all referred to as *Sunna* (tradition). In other words, we may say that the Prophet's sayings (*Hadith*) and the narrations of the Infallible Imams of Shiism (*Akhbar*) are all interpretations of the holy Qur'an. The duty of jurisprudence is to interpret issues related to social life, such as war and peace, on the basis of the Qur'an and tradition, and to derive religious rules and laws from them, whose observance is obligatory for all members of the community. *Fiqh* (jurisprudence) also refers to two other sources, which are called "consensus" and "analogy" by followers of Sunnism, and "intellect" and "consensus" by the Shiites. Therefore, we may conclude that in Shiite Islam we have four sources of

interpretation: the Holy Qur'an, Tradition (*Sunna*), Intellect (*Aql*), and Unanimity (consensus).¹ These are the sources from which the rules for war and peace are derived; this is why we define religious jurisprudence as the deduction of religious rules from these four sources of interpretation.

In Islamic jurisprudence, war is equal to "jihad", which is one of the 10 secondary rules of Islam. However, it should be noted that one must necessarily distinguish between the Qur'anic and the jurisprudential usages of "jihad". In most cases in the Qur'an, jihad means "striving" in the way of God; in its jurisprudential usage, however, jihad refers to "war", which is a specific instance of striving in the way of God. Thus, in Islamic jurisprudence, jihad, whether offensive or defensive, is a term that always means "war". That is why one of the 10 chapters/topics of Islamic jurisprudence is entitled "The Book of Jihad" (*Kitab al-Jihad*).

This chapter aims to analyse the interpretation of jihad and military ethics in Shiite Islam, with reference to the Islamic texts that deal with jihad from the Shiite perspective.

The concept of jihad in traditional Shiite jurisprudence

Any proper study of the concept of jihad in Shiite Islam must be based on two principles:

1. differentiating the classical and the new interpretations of jihad in Islamic *fiqh*/jurisprudence;
2. understanding the basic difference between the Shiites and Sunnites in the concept of jihad.

Shia and Sunni are two major Islamic sects that in most theological and jurisprudential cases overlap. Their basic differences lie in the Caliphate and the imamate. In contrast to the Sunnites, the Shiites believe in the infallibility of the Twelve Imams. Since, in Shiite thought, offensive jihad is dependent on the Infallible Imam, the Shiite and Sunnite conceptions of offensive jihad are quite different.

Because the above principles are so essential, a thorough understanding of the issue of jihad is not possible without a proper understanding of the concept of jihad in Shiite Islam.

The classical Islamic jurisprudence, whether Shiite or Sunnite, classifies jihad on two levels: *offensive* and *defensive*. In this classical approach the main meaning of jihad is offensive jihad,² which is an obligatory act for any Muslim. Particularly among Sunnites, it is believed that the Qur'anic verses on jihad nullified (*nasikh*) the Qur'anic verses on peace,³ and so it is believed that jihad is a permanent obligation, never to be suspended, for all Muslims up to the end of time.

Shams al-Din Abu-Bakr Mohammad bin Abi-Sahl al-Sarakhsi (d.1089), one of the Hanafi Sunni jurists, has set the Qur'anic verses in such a way that the rules on relations between Muslims and non-Muslims start by abandoning any relation, then proceed to an invitation to convert to Islam through preaching, leading to defensive war in the event of any offence by the enemy, and ultimately to offensive attack on non-Muslims. The last step in this line of evolution is believed to be the final rule. He says:

The Holy prophet of Allah (God) was first instructed to leave any relation with non-believers. Then He was instructed to preach to them, encouraging them to convert to Islam. Then, He was delegated to defensive war, but only if He was attacked first. Afterwards He was instructed to conduct an offensive war. This is how Jihad with non-believers is set as a religious duty, with its validity acknowledged until the Day of Judgement.⁴

Imam Mohammad Shafei (d.819), the founder of the Shafei sect (one of the four main Sunni schools of law), believes that the Qur'anic verses that deal with peace, non-violence and the prohibition of war during *haram* (forbidden) months, have all been abrogated by the Holy verse "fight with them until there is no persecution and religion should be only for Allah, but if they desist, then there should be no hostility except against the oppressors" (Qur'an 2:193; Shakir translation).⁵

Abu-Muhammad al-Maqdisi (d.1223), an eminent jurist of the Hanbali Sunni school of law, believes that offensive jihad should be conducted at least once a year.⁶ Abu-Omar Yousef bin Abdollah al-Qortobi (d.1070), one of the founders of the Maleki Sunni school of law, is of the same opinion.⁷ Abu-Albarakat al-Maleki (d.1924) believes that Muslims are obligated to conduct jihad even under the rule of a tyrant or an illegitimate emir or governor.⁸

The idea of offensive jihad in the works of Hanafi is of the same nature as that in the other classical Sunni jurisprudence. The author of *Tabyin al-Hagha'igh* (Elucidation of the Truth) states that:

It is our obligation to commence a war on them (non-believers), though they may not intend to commence a war on us. Because Allah has made it an obligation on us to kill the unbelievers, so nobody (Lawful or Unlawful Governors) would be in a position to suspend this rule, so that all the people would say that there is no god but Allah.⁹

In thus defining the obligatory nature of jihad, he refers to the consensus of the Muslims as one of the jurisprudential bases of such a deduction.

As quoted by Great Ayatollah Sayyid Hussain Boroujerdi (1875–1961), classical Shiite jurisprudence, in terms of methodology and method of

reasoning, is somewhat like the Sunni version,¹⁰ despite asserting a belief in the Infallible Imams. This theological difference led to Shiite jurisprudence considering “the narrations from the Imams of Shiite” (*akhbar*) as important sources of interpretation of the Holy Qur’an and the Prophet’s narrations. Therefore, there is a significant difference in the definition of the concept of jurisprudence between the Sunnites and the Shiites, particularly concerning the nature of jihad.

The Shiite jurists, like their Sunni counterparts, believe that jihad is one of the major religious obligations. However, from the Shiite perspective we have another important condition: jihad may not be conducted in the absence of an instruction issued by a just Imam, which has been interpreted in Shiite traditional jurisprudence as meaning an Infallible [Twelfth] Imam. Sheikh Al-Taefa Abu-Ja’far Mohammad al-Tousi (995–1075), who was a great Shiite jurist, stated in his work *al-Nihayah* (The Ultimate):

Jihad is a religious duty essential to be performed either by the person himself or by someone on his behalf. So it is an obligation for any one (except for women, old or sick people, children & insane). But, one of the conditions of Jihad is the presence of a just Imam, since he is the one and only to issue such command, so Jihad is only possible if such Imam is present or when he has appointed someone on his own behalf to take care of Muslim affairs. Therefore, Jihad is not a religious obligation when an infallible Imam is not present. If someone goes to Jihad upon the instruction of an unjust imam or an ordinary ruler, then one deserves punishment since he has committed a sin. Even if such Jihad would be performed with success, there would be no reward to that achievement. If one gets hurt or defeated in such unjustified Jihad, he is a sinner any way.

But if Muslims are attacked by the enemy and the religion or lives of Muslims are in danger, in such a case Jihad and defence is a religious duty even under an unjust ruler, of course not as an offensive Jihad, but as one defending the lives of Islam and Muslims.¹¹

These statements show the Shiite view of the nature of jihad in Islam, which is not in line with the Sunni ideas of jihad. Shiite offensive jihad belongs to the Infallible Imam. This position remained unchanged from the time of Sheikh Abu Ja’far al-Tousi in the eleventh century,¹² until Sheikh Mohammad Hasan al-Najafi al-Javahiri (d.1849), another important Shiite jurist, compiled one of the most authoritative collections of Shiite jurisprudence, *Javahir al-Kalaam*.¹³

There are two main characteristics of Sheikh al-Tousi’s statements:

1. he divides jihad (like the Sunnites) into two categories: offensive and defensive;

2. offensive jihad is dependent on the presence of the Infallible Imam or his appointed representative, either of whom can call for jihad; therefore, jihad is not permitted alongside, and by the order of, any ruler. These two criteria are the determining conditions for jihad among Shiites. That is why jihad is the prerogative only of an Infallible Imam; i.e. the Twelfth Imam of Shiite, who is currently in a state of Greater Occultation (the period when there is no agent of the Hidden Imam on earth). In Shiite thinking, offensive jihad is not possible in his absence. Based on this fact, in classical Shiite jurisprudence, which it is also claimed has unanimous recognition by all Shiites (consensus), offensive jihad is suspended.

New trends

Contemporary critical interpretations of Islamic jurisprudence, both Shiite and Sunnite, have presented new approaches to understanding the Qur'anic verses on jihad. Among the Sunnite scholars we may refer to the ideas of Sheikh Mohammad Abdoh (1849–1905) in *Al-Minar*.¹⁴ Among the Shiite scholars we may refer to Morteza Motahari (1920–1980)¹⁵ and Salehi Najafabadi (1924–2006).¹⁶ In contrast to the classical jurists, who believed that the “absolute” (*mutlaq*) verses on jihad abrogated the “conditional” (*muqayad*) verses¹⁷ and emphasized the legitimacy of offensive jihad, these modern scholars believe that the conditional verses in fact elaborate and interpret the absolute verses on jihad. Consequently, the maintenance of peace and the defensive nature of jihad in Islam remain the main valid concepts. Based on these new ideas, the classical classification of jihad into offensive and defensive forms is no longer acknowledged as valid, and jihad in Islam becomes a totally defensive measure.

I believe in the importance of these points since they show that in Shiite belief, in the absence of the Imam, jihad may be used only as a defensive measure. In other words, although there may be other new ideas on the subject, in the Shiite view jihad is of a defensive nature. This issue will be elaborated on here, followed by an examination of military ethics in Shiite Islam.

The principles of jihad and defence in Shiite jurisprudence

As previously noted, the system of Shiite jurisprudence (*fiqh*) is an imamate-based branch of Islam, whose major difference from Sunni Islam concerns the issue of the imamate.¹⁸ The format and concepts of Shiite jurisprudence stand on the facts that the Prophet appointed 12 Infallible Imams by God's command, the last of whom is currently in Occultation.

Belief in the imamate also has a great impact on Shiites' conception of jihad.

As a criterion for reasoning, the "narrations" (*akhbar*) from the Infallible Imams are the main source for interpretation of the Qur'an and the *Sunna* (tradition) of the Prophet in Shiite jurisprudence.¹⁹ Shiites believe that, although the Qur'an is an absolute and perfect text from Allah, we may interpret issues discussed in the Sacred Book in light of the Hadith of the Prophet and the narrations of the Imams. That is why in Shiism the sayings of the Imams occupy such a central position for interpreting and understanding the Qur'an. Jihad is also interpreted and defined in the same manner by Shiites.

Peace as a principle

There has been much discussion about the priority of war or peace in Islam. In the minds of many non-Muslims, and even in the minds of some Muslims, there is a belief that Islam is a religion of war and the sword.

This understanding may have two explanations. One is that traditional interpretations of Islam by the Sunnites resulted from the historical expansion of Islam by Muslim caliphs and rulers through wars. The other explanation is that the understanding of Islam in certain religio-political circles in the West results from Western contact with Sunnite Muslims during the medieval period, and more recently in light of the contemporary radicalism that prevails among many Muslims in the Sunnite world. Consequently, two important matters are neglected:

- the new interpretation of Sunnite Islam, which believes in peace as a fundamental principle in Islam;
- the voice of Shiites who emphasize that, in the absence of the Infallible Imam, only defensive war is valid and justified; this idea covers a vast geographical area in the Middle East.

I shall refer first to certain Qur'anic verses that emphasize that peace is fundamental, and then I consider the narrative ideas of Shiism (*Ravayah*).

The Qur'an and peace

There are two types of Qur'anic verse on war and peace: in conditional (*muqayad/mashrout*) verses, war against non-Muslims is contingent upon the enemy attacking first; the absolute (*mutlaq*) verses recommend jihad, no matter what the conditions might be.

As previously stated, classical Shiite jurisprudence accepts and interprets the *absolute* Qur'anic verses on jihad in the same manner as the Sunnite Muslims do, but then suspends jihad because the Infallible Imam is not present. The new Shiite interpretations emphasize that, according

to legal/ jurisprudential rules, the *absolute* verses are interpreted by the *conditional* jihad verses, which make jihad subject to certain conditions. Salehi Najafabadi believes that this is a general rule, which must be observed in any sort of interpretation.²⁰ Morteza Motahari is of the same opinion: “The principle is that the *absolute* verses shall be interpreted by the *conditional* verses (*muqayad/mashrout*) and deduct that whatever is stated in *absolute* verses, meant the same as the concept presented in the *conditional* verses.”²¹

Morteza Motahari says: “Religion shall be in favour of peace.” The Qur’an also states that “Peace is better [than war]”. But religion should also favour war when the other side does not want to coexist harmoniously, or when a tyrant disregards human dignity. To submit to such a tyrant would involve a great loss of human dignity. In such cases war becomes a legitimate alternative. Islam emphasizes peace if the other side also favours peace. But if the other side wants war, Islam commands war.²² The old interpreters believed, in contrast, that the verses in which jihad is conditional are abrogated by the absolute verses, such as the chapter on *Toubah* (Repentance): “and fight the polytheists all together as they fight you all together; and know that Allah is with those who guard (against evil)” (Qur’an 9:36).²³

In any case, the verses favouring peace as a principle state that war (jihad) is recommended only if the unbelievers start an attack on Muslims first. These verses are the guiding principles for contemporary Sunnite and Shiite interpreters, and lead them to believe that in these verses jihad is of defensive nature.

Make prepare against them what force and horses tied at the frontier, to frighten thereby the enemy of Allah and your enemy and others besides them, whom you do not know. (but) Allah knows them; and whatever thing you will spend in Allah’s way, it will be paid back to you fully and you shall not be dealt with unjustly. (Qur’an 8:60)

This verse says that to be prepared to defend is an obligation and the offenders are referred to as enemies of Allah and the Islamic community (*umma*). Then in the next verse the priority of peace is emphasized: “And if they incline to peace, then incline to it and trust in Allah; surely He is the Hearing, the Knowing” (Qur’an 8:61).

Some past Shiite scholars, such as Sayyid Ali al-Tabataba’ie (d.1814), emphasized that this peace (*selm*) verse and the verse cited above are not among the abrogated verses. Rather, they merely emphasize the consistency of peace.²⁴ Also, Allameh Mohammad Baqer al-Majlesi (d.1692), commenting on the peace verse (Qur’an 8:61), asserts that the Qur’an

suggests that Muslims should accept peace if the enemy also desires it. Allah orders that Muslims trust Him, so the Islamic government need not worry about the enemy tricking them by accepting peace, because, if the enemy tricks Muslims and violates the peace, Allah is with them to bring them victory.²⁵

Sayyid Mostafa al-Khomeini (d.1976) believes that the peace verse is not only a peace-centred rule for Islamic society but also a religious reason for establishing political relations between Islamic governments and foreign, non-Muslim governments, so as to recognize and respect these governments.²⁶ It is also stated in the Qur'an that;

And fight [*waqatiloohum*] in the way of Allah with those who fight with you, and do not exceed the limits, surely Allah does not love those who exceed the limits. And kill them wherever you find them, and drive them out from whence they drove you out, and persecution is severer than slaughter, and do not fight with them at the Sacred Mosque [the Ka'ba in Mecca] until they fight with you in it, but if they do fight you, then slay them, such is the recompense of the unbelievers. But if they desist [fighting], then surely Allah is Forgiving, Merciful. (Qur'an 2:190–192)

In the same chapter, the Qur'an states that aggression is the same as endangering your own life, and recommends that you "spend in the way of Allah and cast not yourselves to perdition with your own hands" (Qur'an 2:195).

In a commentary on these verses from Chapter 2 of the Qur'an, Salehi Najafabadi draws our attention to an important point regarding the nature and limits of defensive war in Islam:

- "A war, though is an act of defense, but shall be for Allah's sake (in His way) with the intention to seek his satisfaction."
- "The condition to fight for Allah's sake is to make sure that the enemy has attacked first. So fight with the ones who have attacked you and are fighting with you."
- Since the war atmosphere is full of stress, the Qur'an strictly prohibits going beyond the limits of a just war (just to attack the militant enemy and not civilians). Furthermore, since going beyond the limits of a just war is known to all consciences and observable to all mankind, the Qur'an describes the word for aggression in very definite and absolute terms, and leaves the interpretation to the individual's conscience in any time or place. Islamic literature – as will also be discussed in this chapter – refers to these limits of legitimate defence, such as prohibiting violence against women, children, the elderly, clergy and scientists, who are neutral in war, in addition to refraining from burning crops, jungle, trees, rivers and houses.

- These verses emphasize that Allah does not accept aggression on the part of anybody or in any circumstances. Therefore, an attack by an enemy cannot be a reason for a full counterattack aimed at *teaching them a lesson* for their original aggression.²⁷

Finally, in reference to the philosophy of defence, the Qur'an presents a general summary of the concept of defensive jihad in the following terms:

Permission (to fight) is given to those upon whom war is made because they are oppressed, and most surely Allah is well able to assist them. (22:39)

Those who have been expelled from their homes without a just cause except that they say: Our Lord is Allah. And had there not been Allah's repelling some people by others, certainly there would have been pulled down cloisters and churches and synagogues and mosques in which Allah's Name is much remembered; and surely Allah will help him who helps His cause; most surely Allah is Strong, Mighty. (22:40)

Shiite narrations and peace

In Shiite narrations (*akhbar*), peace is clearly respected as a fundamental principle. Imam Ali (martyred in 661), the first Infallible Imam of Shiism, states that "Peace is closer to salvation and is more beneficial up to the moment that Islam is not in peril".²⁸ In an order to his governor (emir) in Egypt, Malik Ashtar (d.659), Imam Ali says:

Never turn your back on peace, to which Allah has called you and your enemy. Because in peace there are lots of benefits, such as protecting the safety of your armed forces, giving them peace of mind, and bringing security to your homeland. But, never forget your enemy after making peace with them, because sometimes the enemy gets closer to you to make an ambush. So be quite careful and, while staying committed to peace, never be simple minded.²⁹

Imam Ali further advises his governor that, "in order to keep the peace and peace of mind of people, listen to the advice of the scholars and wise men; because, peace would reveal the truth and the evil".³⁰

Prophet Mohammad stated that if a person brought peace among people, even between two persons, the angels would continuously praise him.³¹ Imam Ali also further emphasizes that "if someone calls for peace accept it and be patient because victory is the outcome of patience. Land belongs to Allah and He would grant it to the ones He wishes so and the future belongs to the believers."³² In the same sermon he recommends that "if you face the enemy, never start the war".³³

Imam Musa al-Kazim (743–798), the Seventh Shiite Imam, referred to the Bible when he addressed one of his close disciples, saying:

Happy would be the ones who give alms, because they are forgiven on the Day of Judgment. Happy would be the peace seekers who are making peace among people, because they will be close to Allah on the Day of Judgment.³⁴

The religious commands also emphasize the priority of peace and condemn corruption on Earth. In the story of Korah (Qarun) in the Qur'an, it is clearly stated that corruption is not acceptable and that Allah disapproves of those who engage in corruption: "seek by means of what Allah has given you the future abode, . . . and do not seek to make mischief in the land" (Qur'an 28:77).

We did not create the heaven and the earth and what is between them in vain; that is the opinion of those who disbelieve then woe to those who disbelieve on account of the fire. Shall We treat those who believe and do good like the mischief-makers in the earth? Or shall We make those who guard (against evil) like the wicked? (Qur'an 38:27–28)

The teachings of Islam provide further moral guidelines regarding corruption. As stated by Imam al-Sadeq (698–763), the Sixth Shiite Imam, outward corruption is an indication of inward corruption "in people's hearts".³⁵ The Qur'an says that Korah became corrupt because of his greed. Also, there are two concepts of corruption in Islamic jurisprudence literature: one refers to all unlawful acts, and the other parallels the Qur'anic words of *al-Fitnah* (sedition), oppression, pillage and prejudicial acts. Often the criteria of corruption are left undefined in the Qur'an. Thus, the exact features of corruption are left to be determined by social customs and rationality.

Jihad as defence, when the Imam is absent

As previously mentioned, jihad in traditional Shiite jurisprudence (like Sunnite) has two forms: offensive and defensive.³⁶ The guidelines established by the Shiite Imams and Shia jurisprudence set two main conditions for offensive jihad: (a) the presence of the Infallible Imam and (b) instruction by the Infallible Imam, alongside other objective conditions such as freedom, financial capabilities, being healthy enough to make such instruction, being a male Muslim, sane and mature or of adult age.³⁷

In the absence of the Imam (or of his directly appointed representative when the Imam is available), offensive jihad with non-Muslims is not permitted.³⁸ Therefore, although jurists are recognized as "representatives of the Imam in occultation", jihad remains the right solely of the Infallible Imam, not of his representatives in his Occultation. In this respect there seems to be a consensus amongst the Shiite jurists.³⁹

The Grand Ayatollah Imam Khomeini (d.1989), the religio-political leader of the Islamic Revolution of Iran (1979), in his book *Tahrir al-Wasilah*,⁴⁰ emphasizes that offensive jihad is the prerogative of the Infallible Imam only, and that jurists do not share in this privilege. In addition, the Grand Ayatollah Sayyid Mohammad reza al-Golpaigani (d.1993) – a contemporary supreme source of Emulation (*marja'-i taqlid*) in Qom – believes that offensive jihad is the prerogative of the Infallible Imam only, and that no one else shares this privilege.⁴¹ However, another authority, the Grand Ayatollah Sayyid abu-al-Qasim al-Kho'ei (d.1992) of Najaf, questions the validity of this statement.⁴² He also points to the credibility among Shiite jurists of permission given by the Immaculate Imam or his special deputy in jihad. He provides two sources for this traditional and well-known position: (1) the narrations (*akhbar*) of the imams, and (2) the consensus of the jurists. Kho'ei provides a critical analysis of these sources and maintains that, in spite of some narrations and the consensus among jurists on the prohibition of offensive jihad during times of occultation, jihad may nevertheless be conducted in the absence of the Infallible Imam.⁴³

Grand Ayatollah Mirza abu-al-Qasim al-Qomi (d.1814) claims that the consensus on the suspension of offensive jihad in occultation is valid. Consequently, he also accepts the suspension of receiving tribute from the believers of other religions in the Muslim community.⁴⁴

Some Shiite narrations emphasize the *theory of epochal dissimulation*; they consider the period of the absence of the Imam to be, in general, a period for dissimulation. On the basis of these narrations, most authorities focus only on the defensive aspects of jihad. Imam Sadeq states:

He, who is killed next to his property, is a martyr. And, no non-Muslim shall be killed in Dar al-Ta'qeya (the dissimulation world), except those who are corrupt or are murderers. This restriction holds until there is no threat on you or your family's life.⁴⁵

However, the prevailing consensus among Shiite jurists is that offensive jihad is permissible only when the Infallible Imam or his special representative (on jihad) is present.⁴⁶ Therefore, offensive jihad in the absence of the Imam (i.e. in our time) is not permitted, although some past and present Shiite jurists have expressed doubts over this position.⁴⁷

Therefore, in the absence of the Infallible Imam of the Shiites, most Shiite jurists believe in jihad as a defensive measure only, which does not require special permission or instruction from the Infallible Imam and is possible only if an enemy attacks Islamic lands first and

intends to occupy or destroy them.⁴⁸ Defensive jihad does not have any of the restrictions of offensive jihad. Therefore, it is a duty for everyone – male, female, old or young – to defend Muslim land.⁴⁹ Shahid Sani, Zayn al-Din Ali ibn Mushrif al-Amili (d.1540) believes that, although such defence is a duty for all Muslims, it is more of a duty for those who are closer to the enemy and for those who are under direct attack from the enemy.⁵⁰

In the absence of the Infallible Imam, Islamic society requires constant preparedness and protection of its borders as a primary defensive measure. As stated by Sheikh al-Tousi, unless war with an enemy is fought in defence of Islam and Muslims, it is not acceptable.⁵¹ Imam Ali too says that Muslims should protect their borders but should never start a war, except in defence of Muslims and Islam.⁵²

Prohibition on engaging in war

Shiite jurists believe that defending the lives of Muslims and the borders of Islam is a duty and that a Muslim is never expected to surrender to an aggressor. Addressing his disciples, Imam Ali instructed, “If they impose a war on you and start war against you . . . then go to war and accept death, since the real death is living in humiliation, oppression, and defeat, and eternal life is in going to war and dying or achieving victory.”⁵³

Imam Sadeq asserts that “To fight with the enemy is a duty for all the Islamic nations (*umma*), so obey it or you shall be punished”.⁵⁴ He also narrates from the Holy Prophet: “Leaving Jihad would result in losing dignity, poverty, and collapse of religion . . . and Allah would cover those who abandon the battlefield (Jihad) with the cloth of disgrace.”⁵⁵

Allameh Hasan bin Yousof al-Hilli (1250–1326) considers various stages of defence, from the most basic to the most advanced. The first stage seeks justice and demonstrates opposition towards war; the next stage requests assistance from others in order to deter the enemy; finally, if these measures prove unsuccessful, the next step would require arms – from the most rudimentary to the most sophisticated weaponry, in order to confront the enemy. These strategies should continue until the aggressive acts of the enemy have come to a halt. The defenders shall be considered martyrs if they are killed in this process.⁵⁶

All these rules are valid only if the aggressor is not fleeing or ceasing aggression. If the aggressor stops attacking, any harm to the enemy shall be compensated through *al-Qisas*, the law of retaliation (for instance, an eye for an eye . . .) or with the payment of blood money.⁵⁷ Even during such situations of war, the use of weapons other than those absolutely vital is not permissible. If heavy weaponry is used when there is no need, the user should receive punishment.⁵⁸

Allameh Hilli refers in another book to the necessity of monitoring borders and emphasizes that offensive war (starting a war) against unbelievers is not permitted as long as the enemy stays away from Islamic lands. Hence, Muslims should be kept informed about the enemy's intention and situation. Muslims should never start a pre-emptive war but should only defend against the enemy's attack. Even then, such a war should not aim for jihad, only for the defence of Islam and Muslims.⁵⁹ Allameh Hilli also states that defending Islam and people's lives is a duty, and that defending property is permissible.⁶⁰ Imam Shafei considers escaping the homeland and migrating as a way of reacting to an enemy's attack, but Allameh Hilli rejects this idea in most situations, endorsing it only to save people's lives.⁶¹

Sheikh Mohammad Ali al-Ansari, in summarizing Shiite ideas on levels of defence, says:

The first level of defense is requesting the assistance of others to stop an enemy. If the enemy (Muslim or non-Muslim) attacks a family, it is of course a duty to stop the aggressor and ask for help, and at the same time prepare to defend in any manner possible, even with bare hands. Other means of defense are not allowed unless when there is no help and lives of Muslims are threatened.

Shaykh Tusi says: "If some one is attacked and his life or property is in danger, then he has the right to shout for help. That would be the best measure. If there is no help, he should use hands or cane/walking stick to defend himself and his property. If that is not sufficient, he could then use weapon to defend his life and property."⁶²

These points are stated in other Shiite books, in more or less similar terms. Therefore, it becomes abundantly clear that, during the absence of the Imam, Shiite jurisprudence approves only of defensive – rather than offensive – jihad. It is clear that the strategy of defence also has its own rules and levels, from moderate measures to more extreme ones (from shouting for help, kicking, hurting and killing the aggressor).⁶³ In terms of defence, saving first of all life and then property are of great importance.⁶⁴ Towards that end, even cooperation with tyrannical rulers is permissible.⁶⁵ Shahid Avval, Mohammad bin Jamal al-Din Mecci (1336–1387) believes that, according to Shiite jurisprudence, if one is killed in defence of one's life and property, one is considered a martyr.⁶⁶

Efforts to establish peace

The conditions described above show the basic position of Shiite Islam on the nature of defensive jihad. Such defensive measures must come to an end in the shortest time possible. Both sides in a war are then

expected to return to the *status quo ante*. In other words, the necessities of defence shall not be a legitimate reason to prolong the war. Based on this reasoning, Shiite sources urge their followers to return to peace.

It has been said that Imam Ali called on his disciples to think and act in order to preserve peace. Instead of cursing the enemy, he asked them to recite the following prayer for their adversaries:

Oh God, Save our blood and their blood and make peace among us and save them from misunderstandings that led to this animosity, and guide them to the right path.⁶⁷

Attempting to bring peace is a religious duty in Islamic law, and deserves to be rewarded by God. That is the reason Shiite sources have discussed and emphasized the “objective outcomes” of peace. Islamic sources call for “seeking peace” (*istislah*) among adversaries engaged in war. Some Hadiths of the Holy Prophet show that there is a direct relation between ethics and peace. For instance, the Holy Prophet of Islam emphasized that “seeking peace and making efforts to bring it about is the sign of manliness and courage”.⁶⁸ Other Shiite narrations deal with efforts to establish peace between enemies. The following are a few examples:⁶⁹

- Imam Ali: “*seeking* peace with the enemy through friendly negotiation and proper actions is easier than meeting them on the Battlefield.”
- “He, who tries to establish peace with the enemy, would gain more friends.”
- “He who establishes peace between two enemies, certainly he will be granted what he wished for.”
- Imam Hasan Askari, the Eleventh Imam (846–875), said:

He who is pious in nature, observes ethics, and is virtuous in his character would be praised by his friends because through these measures he will be able to defeat the enemy.

All these sayings demonstrate the importance of seeking peace and making efforts towards the realization of peace. These sayings also show what types of behaviour and styles of negotiation lead to peace. Imam Ali says that “friendly negotiation” and “proper actions” are the prerequisites for reaching peace. Imam Hasan Askari also believes that “peace is not something optional, but is the outcome of observing the ethics of peace”. He believes that proper behaviour in dealing with others is the sign of a sound mind that would be welcomed by public opinion, and such gestures would ultimately make the enemy retreat.

Peace in Islamic jurisprudence is a form of religious contract, which is made in order to end conflict between the two sides. One category of

peace is peace between Muslims and non-believers. Allameh Hilli believes that such a peace contract is valid by itself without any other conditions, and is expected to be observed and enforced by both sides; it may not be cancelled except by mutual agreement.⁷⁰

Condemning treason and the breaching of promises

Shiite jurisprudence condemns and forbids any act of treason or the breaching of promises or treaties in the defensive strategies of Shiites.

In “Majma’al-Bahrayn”, the breaching of agreements or pacts is declared forbidden.⁷¹ Saheb Javaher, Sheikh Mohammad Hasan al-Najafi al-Javahiri (d.1849), believes that all Shiite sources agree on this issue.⁷² In all the sources we may find evidence to this effect. Treason or treachery is naturally abhorrent and may turn people against Islam. The Shiite jurists present the following sayings and verdicts to substantiate this statement:⁷³

- Imam Sadeq: “It is not proper that Muslims commit treason, order someone else to do so or even accommodate the ones who do not keep their promise.”
- Imam Ali, delivering a sermon to the people in Kufa (a city in Iraq): “O people! I could be the smartest of all, if treachery and breaking the promises were not forbidden. Beware that breaking the promise is a terrible act that would lead to blasphemy. The one who breaks the promise would be labeled on Judgment Day to be recognized by every one.”⁷⁴

This demonstrates how treachery and the breaking of promises in agreements or bilateral relations are forbidden; they are naturally abhorrent and would harm Islam and Islamic society. Therefore, although treachery may be considered an act of war that helps to defend Islam against aggressors, any act of defence must be within the framework of the religion. No treaty or pact between an Islamic society or government and aggressors, nor any international treaty, must ever be broken or nullified unilaterally by an Islamic government.

In this respect, the role of the laws of treaties in Shiism must be highlighted, in setting the defensive strategy of the Shiites. Firstly, Islamic law allows Muslims to enter into bilateral or multilateral pacts and treaties. Secondly, since Shiite jurisprudence forbids breaking treaties, any international treaty signed by Islamic countries/governments is valid and must be respected by all sides.⁷⁵

Military ethics in Shiite Islam

Military ethics covers all the values and norms that are expected to be observed under war conditions, and the sets of ethical values and rules to be implemented.

In Islam, the rules of ethics are obligatory. Therefore, observing them deserves reward and neglecting them requires punishment. There is a difference between laws and the rule of ethics, however. Islamic laws and legal injunctions must always be implemented, and there are means to ensure their implementation. Ethical rules, however, do not enjoy such measures and their implementation depends only on the conscience of the people. There are various rules of ethics for the military in Islam; a few examples will now be discussed.

Prohibition on cursing the enemy

Shiite sources categorically prohibit the cursing or scolding of the enemy. The Holy Qur'an instructs Muslims always to talk with "a recognised form of words" (2:235; Pickthall translation).⁷⁶ In Shiite jurisprudence, cursing is forbidden (*haram*).⁷⁷ In one of his prayers cited in *Sahifa Sajjadiyyah*, Imam Zayn al-'Abidin (the Fourth Shiite Imam, d.712) utters: "Praise belongs to God who gave me a chance not to scold, curse, make false testimony or backbite against any believer."⁷⁸ The Holy Prophet said, "Never curse the unbelievers."⁷⁹ On another occasion, Imam Sadeq said: "Abstaining from cursing one's opponents is a blessed act."⁸⁰ Imam Baqer (the Fifth Shiite Imam, d.732) said: "If you curse someone, you would make him your enemy. Therefore, never curse any one so that you would not make an enemy for yourself."⁸¹ In comprehensive advice, the Holy Prophet of Islam said: "Do not curse even a camel for in case of an accident you must pay blood money of human or even from the dowry of your wife."⁸² On another occasion the Holy Prophet said;

Do not get angry with people. Seek the satisfaction of the people as if you are looking for your own satisfaction. Love people so they would love you. Smile to your brother and do not annoy him, so you would never get hurt in this world and the next.⁸³

When Imam Ali heard his enemies were being cursed during the fight, he immediately ordered this practice to be stopped. Then his disciples asked him the reason. The Imam replied: "Being right does not mean that we have the right to curse. I do not like you cursing them. Just tell them of what they have done."⁸⁴

Prohibition of terror

Although defensive jihad permits any kind of action against aggressors, in Shiism acts of terrorism are forbidden. In Shiite terminology, terror (*fatk*) refers to an unexpected attack on a civilian in a non-war situation. There is no verse referring to the concept of terror in the Qur'an. But

other Shiite sources, for example narrations, denounce and condemn such acts. Therefore, from a Shiite perspective, terror or an unexpected attack as a defensive measure or for deterrence is forbidden.

Shiite scholars refer to the sayings of the Prophet as recorded by Imam Sadeq regarding the absolute prohibition on terror. These narrations refer to judging a person who cursed Imam Ali. Shiites believe that cursing Immaculate Imams is equivalent to cursing the Prophet. But Imam Sadeq prohibited terrorizing the accused person. In light of these sayings, Shiite jurists absolutely prohibit acts of terrorism, because those narrations absolutely ban such acts.

Ayatollah Montazeri refers to a statement on terror and says: "It is truly narrated that Abu-Sabah al-Kafani told Imam Sadeq that he had a neighbour who was cursing Imam Ali and asked Imam's permission to catch him off-guard, and attack and kill him by his sword. Imam Sadeq replied that 'this would be an act of *terror* and is prohibited by Prophet of Allah. Beware Abu-Sabah that Islam prohibits terror'."⁸⁵

Ayatollah Montazeri refers to another narration with the same concept. It is narrated by Muslim ibn-Aqil from the Holy Prophet who said:

After Muslim, the envoy of Imam Husayn (the Third Shiite Imam, d.681), prepared the city of Kufa for the arrival of the Imam (in 680), then Ibn Ziyad came to Kufa and captured the city by the force of his army. One day Ibn Ziyad went to meet Shoraik Bin-A'var, a wise man of Kufa. Bin-A'var was a Shiite and had hidden Muslim in his house. He told Muslim that when the time is right he will give Muslim a signal so that he can come out and kill Ibn Ziyad. In this way the condition would have changed in favor of the supporters of Imam Husayn. However, Muslim ibn-Aqil did not accept his suggestion. When Bin-A'var protested, Muslim cited a hadith of the Prophet who had said: "The faith forbids terror, a believer never terrorizes another."⁸⁶

Prohibition of deceit

Not only does Shiite jurisprudence condemn terror, it also prohibits any kind of trickery and deceit, including any unexpected attack on the armed forces of the enemy at night. Sheikh al-Tousi emphasized that night ambush is not acceptable and all attacks must be made in daylight.⁸⁷

Generally, anything related to deceit would not be approved by Shiite jurisprudence. Imam Sadeq said: "It is not proper for Muslims to do any deception or encourage deceit, or even fight along with cheaters."⁸⁸ Allameh Majlesi elaborated on the above narration in *Bihar al-Anwar*, which contains a vast number of Hadiths and sayings of the Imams. According to him: "It means that Muslims are not supposed to encourage the act of deception because deception is oppression and a hostile act.

They are both prohibited, even if the one who is deceived is an unbeliever.”⁸⁹

However, there is an exception in the general rule of prohibition of deceit, which in Shiite jurisprudence derives from the rule of *reciprocity*. It means that deceit is acceptable against those who are deceitful. In a statement attributed to Imam Ali, he says: “if we keep the promise with the ones who are deceiving us, then we are deceiving God and if we deceive them, it means that we kept our promise with God.”⁹⁰

Allameh Majlesi refers to various Qur’anic verses dealing with the question of reciprocity. In chapter 16:126 it is emphasized that: “And if you chastise, chastise even as you have been chastised and yet assuredly if you are patient, better it is for those who are patient.” Also, in chapter 42:40 it instructs: “And the recompense of evil is evil the like of it but who so pardons and puts things right, his wage falls upon God; surely He loves not the evildoers.” Imam Ali says: “Return the stone they have thrown. Fight fire with fire.”⁹¹

Therefore, one can conclude that, although deceiving the enemy is an acceptable exception when the enemy uses deception, the Qur’an generally advises forgiveness and amnesty. In fact, the Holy Qur’an teaches forgiveness and amnesty rather than retaliation. In chapter 42:43, God says: “And whoever is patient and forgiving, these most surely are actions due to courage.”

The reasoning behind this major exception is that an act of deceit is equivalent to a declaration of war; that is to say, by resorting to deceit, the enemy intends to fight. In such a war, deception is a means of war and therefore legitimate. The Prophet Mohammad said, “War is a kind of deceit”.⁹² Ali Bin al-Husayn Muhaqqiq al-Karaki (d.1533) refers to these religious arguments and concludes that:

Deception is permitted in war because war is a kind of deception. However any deception, even against the unbelievers, is not allowed in no-war situation. No one may take the unbelievers’ properties when there is no war.⁹³

Prohibition of weapons of mass destruction

The Holy Prophet of Islam prohibited the use of any kind of poison against unbelievers.⁹⁴ This could include pouring poison in the water that the enemy uses or spreading it in the air that they breathe. This might cause the death of civilians. Allameh Hilli regards this as a terrible and detestable act, but suggests that one may resort to such an act if necessary in military circumstances. He also approves the exploitation of any kind of weapon, if necessary.⁹⁵ Sayyid Ali al-Tabataba’ie (d.1814) also refers to the prohibition on poisoning in many sources dealing with jurisprudence.⁹⁶ Sheikh al-Tousi says: “In war with non-Muslims any weapon

is approved except poisons because if one uses poison one risks the death of women, children and the insane, whose killing is prohibited.”⁹⁷

Sheikh al-Tousi refers to a point that in jurisprudence is called *Manaat al-Ahkaam*, the foundation of the rules or religious command. The basis of the ruling is a general analogy; the religious prohibition on the use of poison is an instance of such an analogy. It means that it is not only the use of poison that is prohibited; the use of any weapons of mass destruction (WMD) would be prohibited because they endanger the lives of civilians. The following analogy explains this norm:

- (a) The killing of children, women, the insane or any other innocent person (i.e. civilian) is prohibited.
- (b) The use of any weapon that kills civilians is forbidden.
- (c) Spreading poison would cause civilian casualties.
- (d) Therefore, spreading poison in enemy lands is forbidden.

This is how religious reasoning on such issues (e.g. poisoning) is constructed. Based on a logical argument (the risk of civilian casualties) the use of WMD is prohibited.

Shiite jurisprudence also prohibits the disruption of the enemy’s water supplies, or even surrounding the enemy in such a way that they do not have access to water.

Prohibition on aggression against civilians

In jurisprudence concerning jihad there is the term “*tatarros*”, meaning to hide among civilians during war, so that civilians act as a human shield, protecting the armed forces. Shiite jurisprudence prohibits any aggression against civilians, except in cases of the enemy hiding behind civilians. The word “*tatarros*” in Arabic comes from the root “*tors*”, which is a small metal shield on the handle of a sword, designed to protect the hands.⁹⁸

Among civilians, children, women and elderly people are expected to be particularly protected. Ibn al-Baraj al-Tarablosi (d.1088) underlines that, if the aggressor hides behind children, shooting (releasing arrows) aimed at the enemy (not the children) is permitted. Once the war reverts to a conventional situation, children should once again be protected against any harm.⁹⁹

In cases such as this, Islamic jurisprudence even allows the killing of Muslims.¹⁰⁰ Allameh Hilli and other Shiite authorities have explained this rule, arguing that, if the enemy hides behind women or elderly people, the enemy may be attacked.¹⁰¹ However, Allameh Hilli adds that such an attack on an enemy who is hiding behind a civilian human shield is permitted only when there is a risk of defeat by this enemy.¹⁰²

Among civilians to be protected during the war, men of science and religion who stay neutral are given special consideration. Shiite jurists

believe that their lives should be protected. When the Holy Prophet of Islam was sending troops to the Mouta war (in 629),¹⁰³ he recommended that the army not assault any scientist or any neutral representatives of religions.¹⁰⁴ On the basis of the Prophet's action, Shiite and Sunnite jurists have upheld the same rule. Aggression against scholars, monks, specialists and masters of professions and industries is also forbidden, in their opinion.¹⁰⁵

Preservation of the environment

The preservation and protection of the environment and the heritage of human civilization are also part of military ethics. Shiite jurisprudence refers to three major points in this respect.

Prohibition on damage to trees and farms

In numerous sources, the cutting of trees – especially fruit trees – and the burning of farms is prohibited.¹⁰⁶ In *Bihar al-Anwar*, it is stated that trees that do not bear fruit may be cut during war, if necessary.¹⁰⁷ These traditions are guidelines for Shiite reasoning in military ethics and describe the responsibility concerning the preservation and protection of the environment. In the same book, warlords are advised to protect the environment.

Shahid Sani, Zayn al-Din Ali ibn Mushrif al-Amili (d.1540), says that, except in special circumstances, the cutting or burning of trees, especially fruit trees, is prohibited.¹⁰⁸ However, there is no mention of what these exceptional or special circumstances are. Other religious sources have repeated the same rule; Sayyid Ali al-Tabataba'ie clearly stated that fruit trees and farms should not be burned.¹⁰⁹ Ayatollah al-Kho'ei explains the reasons for this, and adds that “all the narrations rule that such action is strictly prohibited. At any rate, it is not possible to give a verdict to this effect that can be applied to all circumstances; as such a verdict may cause other problems in managing the war. Therefore, each situation must be dealt with as it arises.”¹¹⁰

Prohibition on the destruction of buildings and habitations

The Holy Prophet of Islam, in a command issued for troops, specifically ordered them “not to destroy buildings”.¹¹¹

Allameh Hilli believes that this command refers exclusively to civilian buildings. Military buildings or fortifications are subject to a different rule. They should not be destroyed if their destruction is not necessary for military considerations. However, if their destruction is important in military terms, they can be torn down even if there might be Muslim prisoners inside them.¹¹² Sheikh al-Tousi and some other jurists believe that there should be convincing reasons for destroying military buildings, since destruction is generally prohibited.¹¹³

Ibn Edris al-Hilli (d.1201) prohibits any military attack resulting in the destruction of buildings and substructures, in the same manner as for WMD. He says: “In war many means may be taken, except for destruction of people’s houses through flooding, burning or spreading poison.”¹¹⁴ Ibn Edris clearly prohibits the destruction of houses and other necessary substructures as well as the use of WMD.

Thus, it is clear that Islamic jurisprudence pays a great deal of attention to preserving the vital structures and facilities of society, especially water systems.

Although Shiite sources believe that when under siege by the enemy the destruction of buildings is allowed, they have qualms and special considerations regarding the water system – even if it belongs to the military. Although it is generally believed that restricting water is absolutely prohibited, some authorities believe that, as a last resort and under some conditions, it is permitted.¹¹⁵

It is also advised that Muslim warriors should not raid people’s private water sources and justify this by being at war. In a narration by Imam Ali, he states: “Troops must not invade private water sources. They should ask for permission of the owner and then drink from their water sources. The properties and animals of the people must not be confiscated and usurped either.”¹¹⁶

Prohibition on the harming of animals

The Holy Prophet of Islam prohibits the army from harming animals, and commands the army not to slaughter more *halal* animals than are necessary for the army’s needs.¹¹⁷ Imam al-Sadeq says:

The Holy Prophet commanded the slaughtering of a sufficient number of animals to meet the army’s needs. Like humans, animals must be respected and must not be killed randomly because of fighting with an enemy.¹¹⁸

Generally, in Islamic jurisprudence, several ethical points are expected to be observed by the military in times of war. For instance, there are prohibitions on burning farms, cutting fruit trees, killing animals, destroying houses and disrespecting the bodies of those who have been killed in battle.¹¹⁹ This shows that preserving the environment and protecting animal rights along with human rights are important principles even during war.¹²⁰

Summary and conclusion

In the Islamic world, the rules of war and military ethics are rooted in religious principles. This is why religious texts have defined the behaviour

of Muslims regarding war and military ethics, from the earliest times in Islamic history up to the present day. In the modern world, in contrast, these issues and concepts are examined and observed from a secular viewpoint.

Islamic jurisprudence – both Shiite and Sunnite – is a system based on revelation, reason and intellect, and therefore establishes a logical relationship between religious laws and historical realities. The duty of jurisprudence is to provide answers to the questions that face Muslim societies. This explains how a close relation exists between jurisprudence and war, as one of the important issues in Islamic society – a subject that has been called “jihad jurisprudence”.

Islamic jurisprudence pays special attention to the historical development and evolution of ideas regarding jihad. Notwithstanding Shiite and Sunnite differences in classification, this chapter has sought to show how traditional Islamic jurisprudence lends legitimacy to jihad. In particular, it has emphasized how the “absolute” (*mutlaq*) verses of the Qur’an on jihad abrogate the verses according to which jihad is dependent on certain conditions. That is the reason traditional jurisprudence considers those rules to be general rules that are everlasting and can never change or be abolished.

Conversely, the new jurisprudence gives priority to peace. In interpreting the jihad verses of the Holy Qur’an, it believes that the *muqayad* (dependent, conditional) verses elaborate on and interpret the *mutlaq* (absolute, definite) verses. In light of this approach, it becomes clear why jihad in Islam is defined as defensive war at all times. Moreover, modern jurisprudence rejects the classical Muslim idea of separating jihad into offensive and defensive forms.

It has also been mentioned that classical Shiite jurisprudence is related to Sunnite jurisprudence; hence both in principle accept the idea of offensive and defensive jihad. In Shiism, however, Infallible Imams and their sayings are the basis of action and interpretations, so Shiites come to a different definition of jihad. In the classical Shiite view, offensive jihad is permissible only when the Infallible Imam is present and orders Muslims to conduct jihad. Thus, since the Occultation of the Twelfth Imam began in 329/941, offensive jihad has not been permissible for Shiites and it would be illegitimate if it took place.

Regarding the nature of Shiite beliefs about the imamate and jihad, the classification of jihad as offensive or defensive is only a theory and is not of any practical use since the Imam is in occultation. Therefore, based on the same reasoning, both the old and the new Shiite jurisprudence emphasize that only defensive jihad is permissible when the Imam is not present.

This is the most important principle differentiating the Shiite from the Sunnite point of view on jihad and defence. Shiite jurisprudence asserts

that, in the absence of the Infallible Imam, society is not sufficiently mature to perform offensive jihad and hence it is not permitted. In such an important matter as jihad, one may not rely on the fallibility and imperfect logic of humans or rulers who are subject to errors or mistakes. The duty of the Shiite is to coexist in a spirit of goodwill, not in a constant state of jihad in the military sense of the word. The obligation of the Shiite is to preserve and defend peace, not to promote war or acts of aggression. This chapter has attempted to demonstrate these principles in light of the sayings and interpretations of the imams and Shiite jurists.

Notes

1. Sayyid abu-al-Qasim al-Kho'ei, *Mesbah al-Osoul*. Taghbir Mohammad Sarvar al-Vae'iz al-hoseini. Qom: Maktab al-Davari, 1996, vol. 2, p. 247.
2. Abu Abdellah Mohammad bin Abi-Alfath al-Hanbali al-Ba'li, *Al-Mat'la al-Abwab al-Fiqh: Al-Mat'la al-Abwab al-Almoqhn'a*, edited by Mohamab Bashir al-Adlabi. Beirut: Dar alnashr; al-Maktab al-Islami, 1981, p. 209.
3. Hebat Allah al-Moghri, *Al-Nasikh wa al-Mansoukh*, edited by Zahir al-Shawish and Mohammad Kan'an. Beirut: Dar al-Nashr; al-Maktab al-Islami, 1984, vol. 1, pp. 29–30. Ali bin Ahmad bin Hazm, *Al-Nasikh wa al-Mansoukh fi al-Qur'an al-Karim*, edited by Abd al-Ghafar Soleiman al-Bandari. Beirut: Dar al-Nashr; Dar al-Kotob al-Ilmeya, 1986, vol. 1, p. 27.
4. Shams al-Din Abu-Bakr Mohammad bin Abi-Sahl al-Sarakhsi, *Al-Mabsout*. Beirut: Dar al-Ma'rafa, 1986, vol. 2, p. 2.
5. Mohamad bin Edris al-Shafei, *Kitaab al-Omm*. Beirut: Dar Almarefa, 1973. vol. 4, p. 161. An electronic version of the translation of the Qur'an by M. H. Shakir is available at <http://www.usc.edu/dept/MSA/quran/> (accessed 21 October 2008).
6. Abdollah bin Qodama al-Maqdasi, *Al-Kafi fi Fiqh bin Hanbal*. Beirut: Dar al-Nashr; al-Maktab al-Islami, vol. 4, pp. 252–254.
7. Abu-Omar Yousef bin Abdollah al-Qortobi, *Al-Kafi li bin abi-al-Barakat*. Beirut: Dar Alkotob al-Elmeya, 1987, p. 205.
8. Sayyid Ahmad al-Dardir Abu-Albarakat, *Al-Sharh al-kabir*, edited by Mohammad Alish. Beirut: Dar al-Fikr, 1991, vol. 2, p. 172.
9. Fakhr al-din Osman bin Ali al-Hanafi al-Zilai, *Tabyin al-Hagha'igh*. Al-qahera: Dar al-Kotob al-Islami, 1894, vol. 3, p. 241.
10. For more information about Boroujerdi's method of *ijtihad* (the process of making a legal decision by independent interpretation), see <http://taghrib.ir/english/?pgid=43&scid=33&dcid=33092> (accessed 28 October 2008).
11. Sheikh Abu-Ja'far Mohammad al-Tousi, *Al-Nihaya fi Mojarad al-Fiqh va al-Fatawi*. Beirut: Dar al-Andolus, 1986, pp. 289–290.
12. Nematollah Salehi Najafabadi, *Jihad dar Islam*. Tehran: Nei Publishing Co., 2003, p. 46.
13. Sheikh Mohammad Hasan al-Najafi al-Javahiri, *Javahir al-Kalaam*. Tehran: Dar al-Kotob al-Islameyah, 1983, vol. 21, p. 3.
14. From Salehi Najafabadi, *Jihad dar Islam*, pp. 23, 32; Sheikh Mohammad Abdoh, *Tafsir al-Minar*, edited by Mohammad Rashid Riza. Cairo: Alminar Publication, 1947, vol. 2, pp. 210–215.
15. Morteza Motahari, *Jihad*. Qom: Sadra, 1994, p. 7.
16. Salehi Najafabadi, *Jihad dar Islam*.

17. In Islamic jurisprudence, the Qur'anic verses related to jihad are classified into two groups: the conditional and the absolute. The conditional verses, revealed first, condition the legitimacy of jihad on attack by an enemy; however, the absolute verses, revealed after the conditional ones, do not limit the legitimacy of jihad to any prior attack by an enemy. Thus, in Islamic jurisprudence the jihad referred to in the conditional verses has been termed *defensive jihad* and the jihad in the absolute verses *offensive jihad*.
18. The main Shiite sects, i.e. the Ismailis, the Zaidis and the Imamis (also known as Twelvers), have a quite different conception of the imamate compared with the Sunnite sects. The Twelvers are the largest sect of Shiism, and are considered in this chapter as the main source wherever I mention Shiite. The different Shiite sects have differing opinions on the issue of the imamate. The Twelver Shiites live in Iran, Iraq and Lebanon.
19. Sheikh Abdolhadi al-Fazli has discussed the difference between the Akhbari and Osouli Shiite schools of jurisprudence. Osouli, whose ideas seem predominant among Shiites today, drew directly on the Qur'an for jurisprudential rules (*ayaat al-Ahkam*). Osoulis refer to Qur'anic ideas to make judgements. This has led to a logical interpretation of Islamic texts. Akhbaris, in contrast, refer to narrations from the Imams to interpret Qur'anic ideas. Akhbaris believe that narrations and sayings from the Imams are the basis for any rule or idea. Most significantly, both points of views accept the importance of the presence of the Imam. See Al-Sheikh Hadi al-Fazli, *Dorous fi Osoul Fiqh al-Imamiah*. Qum: Om al-Qora, 1999, pp. 143–146.
20. Salehi Najafabadi, *Jihad dar Islam*, pp. 30–32.
21. Motahari, *Jihad*, p. 7.
22. *Ibid.*, p. 18.
23. Mohammad bin Jarir al-Tabari, *Tafsir al-Tabari*. Beirut: Dar al-fikr, 1984, vol. 10, p. 124.
24. Sayyid Ali al-Tabataba'ie, *Riaz al Masaa'el*. Qom: A'l al-beit Inst, 1991, vol. 1, pp. 487–495.
25. Mohammad Baqer al-Majlesi, *Bihar al-Anwar*. Beirut: Alvafa Inst, 1983, vol. 19, p. 137.
26. Sayyid Mostafa al-Khomeini, *Salaas Rasaael*. Qom: Imam Khomeini Pub. Co., 1997, p. 41.
27. Sahlehi Najafabadi, *Jihad dar Islam*, pp. 20–22.
28. Mohammad Mohammadi Reishahri, *Mizan al-hikmaht*. Qom: Daral-Hadis, 1996, vol. 2, p. 162.
29. *Ibid.*, vol. 2, p. 162; Al-Majlesi, *Bihar al-Anwar*, vol. 97, p. 47.
30. Imam Ali, *Nahj al-Balaghah*, edited by Mohamad Abdoh. Beirut: Dar al-Ma'refa, 1991, vol. 3, p. 89.
31. Ali Namazi Shahrودي, *Mostadrak Safinaht al-Behar*, edited by Hasan Namazi. Qom: Islamic Inst, 1997, vol. 6, p. 308.
32. Al-Majlesi, *Bihar al-Anwar*, vol. 56, p. 32.
33. *Ibid.*, pp. 32–33.
34. Namazi Shahrودي, *Mostadrak Safinaht al-Behar*, vol. 6, p. 309.
35. *Ibid.*, vol. 8, p. 19.
36. Allameh Hasan bin Yousof al-Hilli, *Tahrir al-Ahkam*. Qom: Imam al-Sadeq Inst, 1999, vol. 2, p. 142.
37. Shahid Avval, Mohammad bin Jamal al-Din Mecci, *Al-Lom'ah al-Demashqieh*, edited by Ali al-kourani. Qom: Dar al-Fikr, 1989, p. 72.
38. Mohammad Ibn Edris al-Hilli, *Al-Saraer*. Qom: Jamea Modaresin, 1988, vol. 2, p. 4.
39. Al-Javahiri, *Javahir al-Kalaam*, vol. 21, p. 13.

40. Rouh Allah Al-Khomeini, *Tahrir al-Wasilah*. Najaf: Matba'ah al-Adab, 1969, vol. 1, p. 482.
41. Sayyid Mohammad reza al-Golpaigani, *Alhedaya Ela man laho al-velayaht*. Qom: Darol Ghoran alkarim, 1963, p. 46.
42. Sayyid abu-al-Qasim al-Kho'ei, *Menhaj al-Salehin*. Qom: Madinah al-Elm, 1975, vol. 1, pp. 361–365.
43. Ibid., vol. 1, p. 364.
44. Mirza abu-al-Qasim al-Qomi, *Jame al-shataat*, edited by Morteza Razavi. Tehran: Keyhan, 1992, vol. 1, p. 402.
45. Al-Majlesi, *Bihar al-Anwar*, p. 23.
46. In the Shiite jurisprudence, special representative is contrasted with general representative; jurisprudents are the general representatives of the Immaculate Imam in Shiite literature.
47. Mohammad Baqir al-Sabzevari, *Kifayat al-Ahkam*. Isfahan: Sadr Mahdavi School, 1999, p. 74.
48. Shahid Sani, Zayn al-Din Ali ibn Musrif al-Amili, *Al-Masalik al-Afham*. Qom: Ma'aref Eslami Inst, 2000, vol. 3, p. 7.
49. Al-Hilli, *Tahrir al-Ahkam*, vol. 2, p. 142.
50. Zayn al-Din al-Amili, *Al-Masalik al-Afham*, vol. 3, p. 7.
51. Abu Ja'far Mohammad al-Tousi, *Al-Mabsout fi Fiqh al-Imamiah*, edited by Mohammad Taqi al-kashfi. Tehran: al-Maktab al-Mortazaviah, 1998, vol. 2, p. 8.
52. Al-Majlesi, *Bihar al-Anwar*, vol. 97, pp. 22–23.
53. Imam Ali, *Nahj al-Balaghah*, Sermon No. 51; Al-Majlesi, *Bihar al-Anwar*, pp. 441–442.
54. Al-Majlesi, *Bihar al-Anwar*, vol. 97, p. 23.
55. Ibid., vol. 97, pp. 7–9.
56. Allameh Hasan bin Yousof al-Hilli, *Qavaied al-Ahkam*. Qom: Al-Nashr al-Islami Inst., 1991, vol. 3, p. 571.
57. Ibid.
58. Ibid., p. 572.
59. Allameh Hasan bin Yousof al-Hilli, *Montaha al-Matlab*, edited by Hasan pishnamaz. Tabriz: Haj Ahmad, 1954, vol. 2, p. 903.
60. Allameh Hasan bin Yousof al-Hilli, *Tazkiraht al-Foqaha*. Maktab al-Razavieh, lithographic print, 1982, vol. 1, p. 457.
61. Ibid., vol. 9, p. 435.
62. Mohammad Ali al-Ansari, *Al-Movsou'ah al-Fiqheyah al-muyasarah*. Qom: Majma al-Fikr al-Islamiah, 1994, vol. 3, p. 22.
63. Al-Feiz al-Kashani, *Al-Tohfaht al-Saneyah*. Handwritten text, written by Abdollah Jazayeri, microfilm, Astan Ghods Library, Mashad, p. 202.
64. Mohammad bin Ali bin Ibrahim al-Ehsa'ie Ibn abi Jomhur, *Al-Aqtab al-Fiqheyah Ala' Mazhab al-Imamiah*, edited by Mohammad al-Hason, Qom: Ayatollah Marashi Najafi pub., 1989, p. 105.
65. Shahid Avval, Mohammad bin Jamal al-Din Mecci, *Al-Dorous al-Shar'eyah*. Qom: al-Nashr al-Islamiah Inst., 1991, vol. 2, p. 30.
66. Shahid Avval, Mohammad bin Jamal al-Din Mecci, *Al-Bayan*. Qom: Lithographic print, p. 28.
67. Al-Majlesi, *Bihar al-Anwar*, vol. 32, p. 399.
68. Mohammadi Reishahri, *Mizan al-hikmaht*, vol. 4, p. 2984.
69. Ibid., vol. 3, p. 1849.
70. Al-Hilli, *Tahrir al-Ahkam*, vol. 3, p. 5.
71. Al-Javahiri, *Javahir al-Kalaam*, vol. 21, p. 78.
72. Ibid.

73. Mohamad bin Hasan al-Horr al-Amili, *Vasa'el al-Shi'a ela' Tahsil Masa'el al-Shariah*. Qom: A'l alBait Inst., 1995, vol. 15, pp. 69–70.
74. Imam Ali, *Nahj al-Balagha*, edited by Sobhi Saleh. Qom: Hejrat, 1971, p. 318.
75. Daviad Aaron Showartz, “International and Islamic Law”, translation of Zahra Kasmati, in R. Tayeb (ed.) *Terrorism*. Tehran: Nei Pub., 2003, pp. 280–379.
76. An electronic version of the translation of the Qur'an by Marmaduke Mohammad Pickthall is available at <<http://www.usc.edu/dept/MSA/quran/>> (accessed 21 October 2008).
77. Al-Kho'ei, *Mesbah al-Osoul*, vol. 1, pp. 22, 353.
78. Imam Zayn al-'Abidin, *Al-Sahifa al-Sajjadiyyah*. Qom: Jame'a Modaresin Pub. Co., 1989, p. 106.
79. Sheikh Yousoef al-Bahrani, *Al-Hada'eq al-Nazerah*, edited by Mohamad Taqi al-Iravani. Qom: Jame'a Modaresin Pub. Co., 1985, vol. 18, p. 155.
80. Ibid.
81. Sayyid Mohammad Sadiq Al-Rohani, *Al-Fiqh alosadiq*. Qom: Dar al-Ketab, 1993, vol. 14, p. 293.
82. Al-Majlesi, *Bihar al-Anwar*, vol. 61, p. 110; Mirza Husayn Al-Nouri, *Mostadrak al-Vasa'el*. Beirut: A'l alBait Inst., 1987, vol. 8, p. 262.
83. Al-Majlesi, *Bihar al-Anwar*, vol. 74, p. 145.
84. Ibid., vol. 32, p. 399.
85. Ayatollah Husain Ali Montazeri, “Statement on Islam and Terrorism”, 2005, available at <http://www.bbc.co.uk/persian/iran/story/2005/07/050711_mj-montazeri-statement.shtml> (accessed 22 October 2008).
86. Ibid.
87. Al-Tousi, *Al-Nihaya*, p. 298.
88. Al-Majlesi, *Bihar al-Anwar*, vol. 72, p. 289.
89. Ibid., vol. 72, p. 289–290.
90. Ibid., vol. 72, p. 97.
91. Ibid., vol. 72, p. 212.
92. Al-Hilli, *Montaha al-Matlab*, vol. 2, p. 913.
93. Ali Bin al-Husayn Muhaqqiq al-Karaki, *Jame' alMaqasid*. Qom: Al' al-Bait Inst., 1987, vol. 3, p. 388.
94. Al-Majlesi, *Bihar al-Anwar*, vol. 19, pp. 177–178.
95. Al-Hilli, *Tahrir al-Ahkam*, vol. 1, p. 135.
96. Sayyid Ali al-Tabataba'ie, *Riaz al-Masa'el*. Qom: Nashr al-Islami Inst., 1989, vol. 7, p. 504.
97. Abu-Ja'far Mohammad al-Tousi, *Al-Iqtisad al-Hadi ela Tariq al-Rashad*. Qom: al-Maktab Jame'ah Chehelsotun, 1982, p. 313.
98. Sheikh Morteza Al-Ansari, *Al-Makasib*. Qom: Alhadi Inst., 1996, vol. 2, p. 167.
99. Abd al-Aziz bin al-Baraj al-Tarablosi, *Javahir al-Fiqh*, edited by Ibrahim Bahadori. Qom: Jame'a al-Modaresin, 1990, p. 50.
100. Sheikh Ja'far al-Hilli, *Sharaye' al-Islam*. Beirut: al-Vafa' Inst., 1983, vol. 4, p. 971.
101. Al-Hilli, *Montaha al-Matlab*, vol. 2, p. 910.
102. Al-Hilli, *Tazkiraht al-Foqaha*, vol. 1, p. 413.
103. Jarir al-Din Mohammad al-Tabari, *Al-Tarikh al-Tabari*. Beirut: al-A'lami Inst., 1984, vol. 2, p. 321.
104. Al-Majlesi, *Bihar al-Anwar*, vol. 21, p. 60.
105. Based on the old tradition there is much divergence of ideas. For example, Allameh Hilli believes that if professionals and masters of industries, taking part in war, are an exception, the philosophy of war and defence would be meaningless. However, it seems that Allameh Hilli's viewpoint is not correct because the Prophet in this tradi-

- tion refers to professionals not directly involved in war, not those directly taking part in war. Al-Hilli, *Tazkiraht al-Foqaha*, vol. 1, p. 412; Al-Javahiri, *Javahir al-Kalaam*, vol. 21, p. 76.
106. Al-Majlesi, *Bihar al-Anwar*, vol. 19, p. 179.
 107. *Ibid.*, vol. 97, p. 25.
 108. Shahid Sani, Zayn al-Din Ali ibn Mushrif al-Amili, *Masalik al-Afham*. Qom: Ma'aref Islami Inst., 1993, vol. 3, p. 25.
 109. Sayyid Ali al-Tabataba'ie, *Riaz al Masa'el*. Qom: Al-albait, 1984, vol. 1, p. 488.
 110. Sayyid abu-al-Qasim al-Kho'ei, *Ketab al-Hajj*. Qom: Lotfi Pub. Co., 1987, vol. 5, p. 514.
 111. Al-Majlesi, *Bihar al-Anwar*, vol. 21, p. 60.
 112. Allameh Hasan al-Hilli, *Tahrir al-Ahkam*. Qom: Maktabat E'temad, 2001, vol. 1, p. 135.
 113. Al-Tousi, *Al-Mabsout*, p. 11.
 114. Ibn Edris Al-Hilli, *Al-Sara'er*. Qom: Al-Nashr al-Islami Inst., 1990, vol. 2, pp. 7-8.
 115. Al-Tabataba'ie, *Riaz al Masa'el*, vol. 7, pp. 4-5.
 116. Al-Majlesi, *Bihar al-Anwar*, vol. 34, pp. 13, 16-25.
 117. *Ibid.*, vol. 19, p. 179.
 118. Al-Hilli, *Tazkiraht al-Foqaha*, vol. 1, p. 413.
 119. Abu-al-Salah Al-Halabi, *Al-kafi Fe al-Fiqh*, edited by Reza Ostadi. Isfahan: Maktab Amir al Mo'menin, 1982, p. 256.
 120. In this chapter, the issue of prisoners of war rights is not discussed, since it is a broad area that requires more focused research.