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JIHAD BETWEEN ISLAMIC JURISPRUDENCE AND PRACTICE OF THE ISLAMIC STATE IN IRAQ AND SYRIA

Rebaz Khdir*

University of Minho

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ABSTRACT

Jihad is a broad concept that cannot be restricted to war. However, it entails war based on reason, purpose, permission of a legitimate ruler and respect to humanitarian rules. Classical Islamic scholars refer to combative *jihad* as defensive and offensive *jihad*. Accordingly, defensive *jihad* is the use of force to defend Muslims and Islamic Caliphate from aggression and offensive *jihad* is a global war to spread Islam. Most of the modern scholars interpret combative *jihad* as self-defense considering the political, and cultural realities of today's life. They require Muslims to recourse to civil means to deliver Islam to the world. However, there are some scholars and schools that believe in the same classical approach to combative *jihad*. ISIS launched intensive military attacks against the Islamic countries of Iraq and Syria between 2013 and 2014 and captured large areas after committing many atrocities and devastating the two countries. The group eventually announced an Islamic Caliphate and called on local and world Muslims to pledge allegiance to its Caliph and join the group. This article argues that the ISIS's war does not satisfy Islamic jurisprudential conditions and therefore does not qualify as *jihad*.

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INTRODUCTION

“By Allah, I have never witnessed the scholars who speak about matters of *Jihad* agree on criticizing and opposing a Muslim movement as they have agreed on condemning ISIS.”

Sheikh Abdullah al-Mahiseny¹

Jihad has been a complex concept since the early periods of Islam. The issue stems not from the lack of the Quranic verses and *Hadiths* (traditions of the prophet Muhammad) rather from the scholarship interpretation of the relevant texts and practices. While *jihad* is a misunderstood violent concept, what does actually *jihad* mean? What is the scope of *jihad*? Does *jihad* include combat? If yes, what is the nature of combative *jihad*? Is combative *jihad* a haphazard war or based on some preconditions?

Jihad might have been the most significant means to build the individualistic faith of Muslims and Islamic society. *Jihad* laid the foundations of the Islamic state and enabled Muslims to spread their religion and expand their Caliphate territories during the time of the prophet Muhammad and early Caliphs.²

The significance of *jihad* during the nation-state era is more confined to spiritual struggle and self-defense as there are many peaceful mechanisms available to convey the message of Islam to the world.

The Islamic State in Iraq and Syria (ISIS) is a radical Islamic group whose origins date back to the beginning of 2000s. The ideology of the group roots from *Wahhabism* which is the most violent view of the school of *Salafism*. The group initiated intensive military operations against Iraq and Syria between 2013 and 2014 and consolidated control over large parts of the two countries. It eventually declared an Islamic Caliphate and announced Abubakr al-Baghdadi as the Caliph. The group asked all Muslims to give *bay'ah* (religious loyalty) to the Caliph and join the group.

The international media and politics have considered the topics of the theory and practice of *jihad* as well as ISIS and its war seriously but there is still a lack of a legal comparative study between *Jihad* and the ISIS's war considering the Islamic jurisprudence. The analysis of the ISIS's war in light of the definition, scope and conditions of *jihad* leads to better

¹Abdullah Ladadwi, “Conclusive Scholarly Opinion on ISIS”, *Islam 21C.com*, July 10, 2014. <https://www.islam21c.com/politics/conclusive-scholarly-opinions-on-isis/>

² Mahmoud Shaltut, “The Qur'an and Combat”, In *War and Peace in Islam*, ed. Ibrahim Kalin and Muhammad Hashim Kamali, 1st (Jordan: The Royal Islamic Strategic Studies

Centre, 2013), 21-27; John L. Esposito, *Unholy War: Terror in the Name of Islam* (New York: Oxford University Press, 2002), 31-35.

*Corresponding author: Rebaz Khdir

University of Minho

understanding of Islam and the war of the terrorist groups operate worldwide under the name of Islam.

The article attempts to illustrate the nature of the ISIS's war through answering some questions. What is ISIS? What is the true reason of ISIS for attacking Iraq and Syria? What is the actual purpose of ISIS in its war? Is the ISIS's Caliph a legitimate Islamic ruler to permit *jihad*? Does ISIS respect the humanitarian rules applicable during battle?

The article first addresses Islam in brief and clarifies *jihad* considering the Islamic jurisprudence. It later introduces ISIS and examines the group's war in light of jurisprudential conditions.

A brief overview of Islam

Islam is a monotheistic religion that has 1.57 billion followers today.³ According to the historical traditions, the origins of Islam trace back to the first divine revelation sent down from God through the angel Gabriel to the Prophet Muhammad in 610 C.E., in Hara cave, Mecca where the prophet used to worship God alone during the months of Ramadan.⁴ The divine messages quickly became the faith and formed Islamic religion in the second decade of the seventh century.⁵ After the prophet migrated to Medina in 622, Islam shaped political, social, economic and cultural life through the foundation of the Islamic State.⁶ The Islamic State covered the whole Arabian Peninsula in the second half of the seventh century and extended to North Africa and Spin in the west and India in the east by eighth century.⁷

Islam theologically is defined as the total and sincere submission to Allah (God). In Islam, God is one and incomparable who neither begets nor is born.⁸ He is the creator of all creation.⁹ The sole purpose of the existence is to worship him.¹⁰ Islam, in other words, requires its adherents to surrender to God and profess to his oneness. Muslims must also believe in the angels, the prophet Muhammad and all the previous prophets and messengers brought revelations and messages from God to mankind, the Quran and all the previous holy books, the authority of God over the destiny of human and the life after death.¹¹ These are the elements that constitute Islamic creed. In addition, Islam requires its followers to perform some obligations including establishing five daily prayers, fasting during the whole month of Ramadan, paying *zakat* which is giving a certain amount from assets to needy people, pilgrimage to Mecca once in life. These obligations are known to be the pillar of Islam.¹²

Muslims believe that Islam is not a new message rather the same pure primordial divine message that God delivered to the other prophets and messengers to guide the peoples.¹³ However, it is the final, unaltered and universal version that is applicable to every single human on the whole earth.¹⁴ From the logic of Muslims, Islam is more than just a mere individualistic faith; it is a comprehensive system that regulates all life aspects from individual and family, issues to social, political and economic matters. In other words, Muslims believe that Islam is 'a complete way of life' and therefore spreading it is a duty upon every Muslim through either *Da'wah* (invitation) or *jihad* (war).

Islam nowadays consists of two main denominations which are *Sunni* and *Shi'a*. The *Sunnis* constitute majority of Muslims who are estimated to be between 85% to 90% and the *Shi'as* constitute the rest.¹⁵ Each sect entails various doctrines and schools which are all different jurisprudentially. Some schools believe in common modern democratic means and spread Islam only through peaceful invitation while some others are very extremist that subject anyone who rejects their view to violence.

Islam and War

Islamic scholars define Islam as the submission of human to God to live in peace while critics interpret Islam as the surrender of non-Muslims to Muslims to be safe. The absolute determination of the nature of Islam as a peaceful and violent religion is not logical as Islam entails the elements of peace and violence at the same time. Islam can be concurrently a peaceful and violent religion and can be neither a peaceful nor a violent religion like all the other divine and human ideologies claimed an ideal life to mankind but also practiced violence. War is not an element of the Islamic creed rather an ideological tool to reach a certain goal in a specific circumstance.

The Quran and traditions of the prophet Muhammad include many instances that encourage peace and reject violence among Muslims and Muslims and other people, such as:

"Whoever kills a human being unless it be (in retaliation) for murder or mischief on earth-it is as if he had killed the entire mankind. And whoever saves a life-it is as if he had saved the entire mankind".¹⁶

"Indeed, Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded."¹⁶

"The Muslim is the one from whose tongue and hand the people are safe, and the believer is the one people trust with their lives and wealth."¹⁷

likewise, Islam allows and encourages war in some specific times and circumstances. There are many terms in Islam that imply war including *Qital* (fighting), *Harb* (war), *Futuhat* (conquest), *Fitna* (religious division or civil war) and *Jihad*.

³ Pew Research Center, *Mapping the Global Muslim Population*, Washington, 2009, 1.

⁴ Akbar Shah Najeebabadi, *The History of Islam*, Vol.1 (Riyadh et al: Darussalam, 2000), 104-105; Karem Armstrong, *Islam* (New York: Modern Library chronicles Book, 2002), 3-4.

⁵ Hadrat Mirza Bashiruddin Mahmud Ahmad, *Life of Muhammad*, 6^{ed}(UK: Islam International Publication LTD, 2013), 11-18.

⁶ Muhammad Nazeer Kaka Khel, "Foundation of the Islamic State at Medina and its Constitution", *Islamic Research Institute (International Islamic University)*, 21(1982); Mohamed Berween, "Al-Wathiqah: The First Islamic State Constitution", *Journal of Muslim Minority Affairs*, 32 (2003); Muhammad Tahir-ul-Qadri, *The Constitution of Medina* (London: Minhaj-ul-Quran Publications, 2012).

⁷ Efraim Karsh, *Islamic Imperialism* (New Haven et al: Yale University Press, 2007), 23.

⁸ The Quran, *al-Ikhlās*, 112:1-4.

⁹ *Ibid*, *al-A'raf*, 7:54.

¹⁰ *Ibid*, *al-Dhriyat*, 51:56.

¹¹ Muhammad Ibn Salih al-Uthaymeen, *The explanation of the Fundamentals of Islam*, Translated by: Abu Salman Diya ud-Deen Eberle, 1^{ed} (Rabwah: The Islamic Propagation Office, 2007), 20-90.

¹² *Ibid*, pp. 15-19.

¹³ The Quran, *al-Shura*, 42:13, *al-Imran*, 3:84.

¹⁴ *Ibid*, *al-Ahzab*, 33:40, *al-Nisaa* 4:47, *al-Anbiyaa* 21:107, *al-Imran*, 3:19, 85.

¹⁵ Emad Khalili, "Sects in Islam: Sunnis and Shias", *International Academic Journal of Humanities*, 3 (2016), 41.

¹⁶ *Ibid*, *al-Nahl*, 16:90.

¹⁷ Hāfiz Abū Abdurrahmān Ahmad bin Shu'ayb bin 'Ali An-Nasā'i, *Sunan An-Nasā'i*, Translated by: Nāsiruddin al-Khattāb, Vol. 6 (Riyadh: Darussalam, 2007), *Hādith* No. 4998 (Sahih), 24.

Jihad is the most popular terminology in Quranic verses and the practices of the prophet Muhammad. The reason is that the term of *jihad* is linguistically extensive and entails all the other terms and theologically, it is a war for the cause of God to defend and spread Islam and not common human material motives. However, *jihad* is still broader than the use of force and it is war by all means.

Jihad

Jihad is perhaps the most misinterpreted Islamic term. It is still understood to be only the use of violence by Muslims against non-Muslims not only in the mind of non-Muslims but many Muslims as well. The concept of *jihad* is much comprehensive and multi-dimensional than being restricted to the use of force. Even through, *jihad* certainly includes war, war in Islam is based on reason, purpose, circumstance and official permission of a legitimate ruler.

Islamic scholars translate the Arabic word of *jihad* literally as 'struggle or strive'. Hence, *jihad* theologically is defined as exertion of efforts in the way of Allah.¹⁸ According to Quran and *Hadith*, striving in God's cause is not only carried out through war but also spiritual means.

"And those who strive in our (cause) we will certainly guide them to our Paths: for verily Allah is with those who do right."¹⁹

"And strive hard in Allah's cause with all the striving that is due to him..."²⁰

"Strive your utmost in the cause of Allah with your property and your persons"²¹

"A believer who strives his utmost in Allah's cause with his life and property" is the best one among the people²²

"The best *Jihad* for women is Hajj (pilgrimage to mecca)"²³

Since the early periods of the Islamic history, there have been wide-ranging scholarship debates over the interpretation of *jihad*. The Islamic scholars have divided *jihad* into various categories. The categories generally entail spiritual and combative *jihad*. spiritual *jihad* is inner strive against evil temptations, doing and promoting good and avoiding and forbidding wrong and developing all life aspects. Combative *jihad* is defined as taking part in battle in Allah's sake.²⁴ The combative *jihad* is regarded the most contentious category of *jihad* among scholars.

Classical Islamic Scholarship generally divides combative *jihad* into defensive and offensive *jihad*.²⁵ Scholars define

defensive *jihad* as war to protect Muslims and territory of Islam from aggressive acts. They refer to some Quranic verses to support their argument, such as:

"Permission [to fight back] is given to those against whom war has initially been waged..., those who have been driven out from their homes against all right..."²⁶

"And fight in the way of Allah those who fight you and do not transgress. Indeed, Allah does not like the transgressors."²⁷

"...expel them from wherever they have expelled you ..."²⁸

The second classical category of combative *jihad* is defined as global *jihad*. Scholars refer to offensive *jihad* as means to spread Islam and expand the territory of Caliphate. They believe that offensive *jihad* is neither aggression nor compulsory conversion rather it is a way to convey Islam as the final divine message to the whole world. The scholarship argument on the offensive *jihad* is also based on some verses of Quran, such as:

"O you who have believed, fight those adjacent to you of the disbelievers and let them find in your harshness. And know that Allah is with the righteous"²⁹

"And fight against the disbelievers collectively as they fight against you collectively. And know that Allah is with the righteous (who fear Him)"³⁰

Unlike the classical scholars, majority of modern scholars define combative *jihad* as the use of force in self-defense. However, they still believe in global *jihad* but not in a combative nature.³¹

The scholars argue that the prophet used to try all means of peaceful invitation to Islam through protesting peoples' false beliefs and propagating Islamic principles. The prophet arranged academic debates and delivered letters to the neighboring and world kings to inform them about his message. He never waged *jihad* unless people refused any solution rather than attacking him and his followers for insisting on the message. Based on the practice of the prophet, the scholars believe that the offensive *jihad* is not permissible as long as Muslims practice their religion and preach freely.³²

In contrast, there are some few and unpopular scholars that follow the classical categorization of *jihad*.³³ The scholars require Muslims not to neglect global *jihad* along with the defensive *jihad*. However, they think differently regarding the manner of waging and the purpose of their *jihad*.

(Princeton: Markus Wiener Publishers, 1996), 3-17; Ahmad Moussalli, *Wahhabism, Salafism and Islamism: Who is the Enemy?* (Beirut et al: Conflict Forum, 2009), 17-18.

²⁶The Quran, al-Haj, 22:39.

²⁷Ibid, al-Baqarah, 2:190.

²⁸Ibid, al-Baqarah, 2:191.

²⁹Ibid, al-Tawbah, 9:123.

³⁰Ibid, al Tawbah, 9:36.

³¹ Hassan al-Banna, *Five tracts of Hassan Al Banna (1906-1949): A selection from the Majmu'atRasa'il al-Imam al-Shahid*. Berkeley (CA: University of California Press, 1978), 150-151; RachedGhannouchi, "The conflict between the West and Islam: The Tunisian case "reality and prospect"", Lecture at the Royal Institute of International Affairs, London, May 9,1995; Muhammad Said R. al-Buti, *Jihad fil Islam*, (Beirut: Dar al-Fikr,1995), 44, 92.

³²Muhammad Said R. al-Buti, *Jihad fil Islam*, 44;Shaykh Muhammad Hisham Kabbani, "What is Jihad? A Scholar's Prospective", *History of Islam*. Accessed April 9, 2017. <https://historyofislam.com/contents/the-modern-age/what-is-jihad-a-scholars-perspectiv/>

³³SayyidQutb, *Milestones* (Indianapolis: American Trust Publication, 1990), 43, 50, 103, 104; Abdullah Azzam, *The Defense of the Muslim Lands*, translated by: Brothers in Ribbat. Accessed April 9, 2017. <https://islamfuture.files.wordpress.com/2009/11/defence-of-the-muslim-lands.pdf>.

¹⁸ Majid Khadduri, *War and Peace in the Law of Islam* (London: The Johns Hopkins Press, 1955), 55; AbulA'laMaududi, *Jihad in Islam* (Beirut, the Holy Koran Publishing House, 1980), 5; *Jihad and the Islamic Law of War*, (Jordan: The Royal AAl Al-Bayt institute for Islamic Thought, 2003), 1; Joel Hayward, "Warfare in the Qur'an", In *War and Peace in Islam*, ed. Ibrahim Kalin and Muhammad HashimKamali, 51-52.

¹⁹ The Quran, al-Ankabut, 29:69.

²⁰ Ibid, al-Haj, 22:78.

²¹ Ibid, al-Ssaf, 61:11.

²² 'Sahih al-Bukhari', Translated by: Muhammad Muhsin Khan, Vol. 4 (Riyadh, Darussalam, 1997), *Hadith* No. 2786, 46.

²³ Ibid, *Hadith* No. 2784, 45.

²⁴ Ibn Qaiyyim Al-Jawazyyah, *Provisions for the Hereafter (MukhtasarZad Al- Ma'ad)* (Riyadh: Darussalam, 2003), 249-250; Ibn Rushd, *Al- Muqaddimat Al Mumahhidat*, Vol. 1 (Cairo: A.H, 1325), 259; Ibn Hazm, *Al-Fasl fi al-Mitalwa al-Ahwawa al-Nihal*, Vol. IV (Cairo: A.H, 1321), 135.

²⁵ Mawardi, *Al-Ahkam al-Sultaniyya* (Bonn: Enger, 1853), 89; Majid Khadduri, *War and Peace in the Law of Islam*, 56-61; Rudolph Peters, *Jihad in Classical and Modern Islam*

Majority of classic and modern scholars believe that *jihad* must be directed under the leadership of a legitimate ruler within the boundaries of the Islamic humanitarian rules applicable during battle.³⁴

ISIS

ISIS is a radical Islamic group that has been designated as a terrorist organization. The group has long roots which specifically started from the foundation of *Jama'at al-Tawhid wa al-Jihad* (The Group of God's Unity and Jihad) by the Jordanian *jihadi* Abu Musab al-Zarqawi in the beginning of 2000s.³⁵ The goal of the group was initially establishing an Islamic state in Jourdan but it failed there and moved to Iraq in 2002.³⁶ The group later pledged allegiance to the al-Qaeda leader Osama Bin Laden and adopted the name of *Tanzim Qa'idat al-Jihad fi Bilad al-Rafidyān* (The Organization of Jihad's Base in Mesopotamia), commonly known as al-Qaida in Iraq, in October 2006.³⁷ On 12 October 2006, the group joined some other groups and tribes and formed *Mutayibeen* Coalition.³⁸ Some days later the coalition announced the establishment of the Islamic State in Iraq.³⁹

In April 2010, the group appointed Abu Bakr al-Baghdadi as its new leader after a joint US and Iraqi air raid killed its previous leader Abu Omar al-Baghdadi.⁴⁰ Following the start of the Syrian civil war in January 2012, some ISIS militants established an affiliated group named Jabhat al-Nusra (al-Nusra) in Syria.⁴¹ A year later on 9 April 2013, the ISIS leader Abu Bakr al-Baghdadi announced the merger of both ISI and al-Nusra groups and adopted the name of ISIS.⁴² Even though, al-Nusra rejected the merger and reaffirmed its allegiance to al-Qaeda leader Ayman al-Zawahiri,⁴³ ISIS moved to Syria in June 2014.⁴⁴ After entering into Syria, the group started fighting Syrian regime and all the rebel groups which refused to join it. By the end of June 2014, ISIS captured the southeastern province of Der al-Zawr, most of northern al-Raqqah, the countryside of Aleppo in north, majority of desert in south, Yarmouk refugee camp in southwestern Damascus, parts of the countryside of Homs in west and the southern Palmyra city in Syria⁴⁵ and most of Anbar in west, the entire northern Mosul in Neinawa and many cities in the northeastern Kirkuk, central Salahaddin and eastern Diyala governorates in Iraq.⁴⁶ On 29 June 2014, ISIS announced an Islamic Caliphate

on the occupied territories and declared Abu Bakr al-Baghdadi as its Caliph.⁴⁷

The war of ISIS

ISIS Ideologically belongs to the school of *jihadi-Salafism*.⁴⁸ *Jihadi-Salafism* requires Muslims to return to the pure traditions and practices of the prophet Muhammad and early Islamic generation and wage *jihad* against local secular rulers and aggressors. However, the school entails various views that some a bit moderate and some others quite extremist.

If we look at the ISIS's Practice closely, we will understand that the group is much violent than the rest of the *Jihadi-salafi* groups such as, al-Qaeda, Taliban, al-Shabaab and Hamas. Therefore, scholars often define ISIS as a *Wahhabi* group. The *Wahhabis* are also *salafis* but they believe to be the only righteous and true Muslims and declare all the other Muslims apostates or unbelievers. The pronouncement of a Muslim as an apostate or disbeliever is considered the most violent Islamic thought that is known as *takfirism*. ISIS, in other words, can be defined as a *takfiri* group.

ISIS started its military campaigns in the Shi'a predominant country of Iraq and against the Shi'a government of Syria while the two countries were already Muslim countries and considered Islam as the main state religion and the main source of legislation.⁴⁹ The two countries caused no threat to Islam, Muslims and no aggression to the territory of the other Islamic countries. If the group justifies its military attacks by the fact that the two countries have adopted a secular system to rule the countries, the rest of the Arabic and Islamic world is similarly not based on the traditional Islamic governance. In addition, the territory of Iraq and Syria for the group's Caliphate raises a doubt that the group is not actually conducting *jihad* rather implementing a political agenda.

ISIS operated and concentrated mainly in the Sunni predominant governorates in Iraq and Syria. The group eventually captured large swaths of territory and sought to establish a *de facto* state that comprised of the Sunni areas in Iraq and the Sunni areas in Syria "the *shūrā* (consultative) council of the Islamic State studied this matter after the Islamic State – by Allah's grace – gained the essentials necessary for *khilāfah* (Caliphate), which the Muslims are sinful for if they do not try to establish".⁵⁰ The Caliphate announcement was never the goal of the group rather just a plausible justification to convince the Islamic public opinion of the invasion, rejection of the sovereignty and territorial integrity of Iraq and Syria, breaking the recognized border lines, strengthen the group through drawing the attention of the other extremists to join the group's ranks and further expansion of the group's territory to undermine non-Sunni domination in the Middle East.

³⁴ Shaykh Muhammad Hisham Kabbani, "What is Jihad?"; Ahmad Moussalli, *Wahhabism, Salafism and Islamism*, 18.

³⁵ Aaron Y. Zelin, "The War between ISIS and al-Qaeda for Supremacy of the Global Jihadist Movement", The Washington Institute for Near East Policy, 2014, 1.

³⁶ Ahmed S. Hashim, "From Al-Qaeda Affiliate to the Rise of the Islamic Caliphate: The Evolution of the Islamic State of Iraq and Syria (ISIS)", S. Rajaratnam School of International Studies, Nanyang Technological University, 2014, 4.

³⁷ *Ibid*, 5

³⁸ "Jihad Groups in Iraq Take an Oath of Allegiance", *The Middle East Media Research Institute*, October 17, 2006. <http://www.memri.org/report/en/0/0/0/0/0/1910.htm>.

³⁹ Cole Bunzel, "From Paper State to Caliphate: The Ideology of the Islamic State", Center for Middle East Policy at BROOKINGS, 2015, 17.

⁴⁰ Ahmed S. Hashim, "From Al-Qaeda", 7.

⁴¹ *Ibid*, 11.

⁴² Cole Bunzel, "From Paper State to Caliphate", 25.

⁴³ *Ibid*; Ahmed S. Hashim, "From Al-Qaeda", 11.

⁴⁴ "Al Nusra pledges Allegiance to ISIL", *Gulf News Iraq*, June 25, 2014. <http://gulfnnews.com/news/mena/iraq/al-nusra-pledges-allegiance-to-isil-1.1352029>.

⁴⁵ Kareem Shaheen, "Half of Syria now under Islamic State's Control", *The Hindu*, May 22, 2015. <http://www.thehindu.com/todays-paper/tp-international/half-of-syria-now-under-islamic-states-control/article7233028.ece>.

⁴⁶ UN Assistance Mission for Iraq (UNAMI) and the Office of the High Commissioner for Human Rights (OHCHR), "Report on the Protection of Civilians in the Non International Armed Conflict in Iraq: 5 June – 5 July 2014", 2,3,4.

⁴⁷ Ahmed S. Hashim, "From Al-Qaeda", 14.

⁴⁸ The end of the previous century witnessed a series of radical Islamic movements which were practically inspired by the violent theological vision of the Muslim brotherhood ideologue Sayyid Qutb. The Sayyid Qutb's doctrine of the absolute division of societies into Islamic and *Jahiliyyah* (ignorant) societies was the first modern Islamic prospective that promoted religious violence. The extremists who held the opinion of Sayyid Qutb started establishing groups to overthrow secular regimes in Muslim countries and replace them with Islamic states. The foundation of the groups was accompanied with scholarly support and hand in hand established the school of *Jihadi-Salafism*.

⁴⁹ The Iraqi Constitution, entered into force on October 15, 2005, Art. 2; The Constitution of the Republic of Syria, entered into force on February 27, 2012, Art.3.

⁵⁰ "This is the Promise of Allah", In Sunni Rebels declare New 'Islamic Caliphate', *Aljazeera*, June 30, 2014. <http://www.aljazeera.com/news/middleeast/2014/06/isil-declares-new-islamic-caliphate-201462917326669749.html>.

With the Caliphate announcement, ISIS declared Abubakr al-Baghdadi as the Caliph of Muslims and asked local and world Muslims to give *bay'ha* to him and join the group "It is incumbent upon all Muslims to pledge allegiance to the *khalīfah* (Caliph) Ibrāhīm and support him...The legality of all emirates, groups, states, and organizations, becomes null by the expansion of the *khalīfah*'s authority and arrival of its troops to their areas...It is not permissible for a single person of you who believes in Allah to sleep without having *walā'* (loyalty) to the *khalīfah*".⁵¹ Although, Iraq and Syria are very diverse in terms of religion and ethnicity, majority of the two countries' population is Muslims. The number of people who gave *bay'ah* to Abubakr al-Baghdadi and joined the group was less than several thousands and most were Sunni people within the areas under the control of the group. The response of the world Muslims was similarly far less than the group's expectation and the *bay'ah* was only given by some radical groups and individuals who traveled to Iraq and Syria and joined the group. Thus, the ISIS Caliphate is not the representative of the Muslim community and Abubakr al-Baghdadi is not a legitimate ruler to permit *jihad*. In addition, ISIS long before the Caliphate announcement had initiated war against Iraq. If the group justifies its military attacks as *jihad* because the Caliph Abubakr permits it now, what about the war that the group had engaged since the beginning of 2000s and killed hundreds and thousands and devastated the country?

The ISIS's war is the most indiscriminate and horrific war since the beginning of this century. The group violated all humanitarian rules prescribed in the Quran, traditions of the prophet Muhammad and practices of the early Caliphs that almost all overlap the modern humanitarian rules applicable during armed conflict today. ISIS carried out many widespread and systematic attacks against the Iraqi and Syrian civilian populations and committed crimes against humanity including murder, extermination, enslavement, persecution of minorities and women on the grounds of religion and ethnicity and gender, enforced disappearance and other inhuman acts of similar character. The military operations of the group against the Iraqi and Syrian military forces were accompanied with large scale war crimes including willful killing, attacking protected people and objects, killing prisoners of war, using prohibited weapons, forcible displacement, rape, sexual slavery and forced pregnancy, shelling residential areas and child recruitment.⁵² ISIS attacked the Yazidi religious minority in the Iraqi northern Ninewa governorate with intent to destroy the group in whole or in part. Consequently, it killed large members of the group, caused serious bodily and mental harm to many others, inflicted conditions of life with intent to

destroy the group physically, imposed measures to prevent births within the group and forcibly transferred the Yazidi children to their territories.⁵³

Most of the contemporary Islamic scholars have expressed their opinion on ISIS. The Saudi *Salafi* scholar Abdul Aziz al-Fawzan defines ISIS as "a rogue, external criminal organization".⁵⁴ The Syrian *Sufi* scholar Muhammad al-Yacoubi describes the ISIS's members as deviators.⁵⁵ The Grand Imam of al-Azhar in Egypt Sheikh Ahmed al-Tayeb argues that it is painful to see that crimes are committed to restore the Islamic Caliphate.⁵⁶ The International Union of Muslim Scholars believes that the ISIS's Caliphate is 'null and void'.⁵⁷ The Egyptian Muslim brotherhood scholar Yusuf al-Qaradawi states that it is the whole Muslim community that gives the title of Caliph and not a group.⁵⁸ The Iraqi Shiite cleric Ayatullah Ali al-Sistani asks people to fight the group and defend their places.⁵⁹

Although, the Islamic affiliation of ISIS is not arguable, the group is much politically motivated. ISIS, in other words, is a part of the political and military conflict between Sunni and Shi'a. The war of the group is a proxy political war in the name of Islam that aimed at weakening the Shi'a and western domination and strengthen the Sunni hegemony in the region. The ISIS's war not only lacks the Islamic jurisprudential elements of reason, purpose, circumstance legitimacy of its Caliph and the adherence of the humanitarian rules to be defined as *jihad* but also such a war is prohibited in Islam.

CONCLUSION

Islam is a religion that claims to be the extension of the previous divine messages. Islam as all the other religions and ideologies promotes peace and allows war in specific circumstances. War in Islam is known as *jihad*; however, *jihad* is war by all spiritual and physical means in the way of Allah. The classic scholars categorize combative *jihad* into defensive and offensive *jihad*. Defensive *jihad* is defined as self-defense against aggression while offensive *jihad* is meant to be global war to deliver the message of Islam. The majority of modern scholars advocate the defensive nature of the combative *jihad* as Muslims can easily utilize civil means to convey their message to the world. However, there are also some unpopular scholars and small radical groups who support the idea of

⁵³ (UNAMI) and (OHCHR), "A call for Accountability and Protection: Yazidi Survivors of Atrocities committed by ISIL", August 2016; Amnesty International, "Ethnic cleansing on a Historic Scale: Islamic State's Systematic targeting of Minorities in Northern of Iraq", London, 2014; UN Human Rights Council, "'They Came to destroy': ISIS Crimes against the Yazidis", June 15, 2016; Human Rights Watch, "Women suffer under ISIS", April 5, 2016.

⁵⁴ Abdullah Ladadwi, "Conclusive Scholarly Opinion on ISIS".

⁵⁵ Muhamad Al-Yaqoubi, *Refuting ISIS* (Sacred Knowledge, 2015), xi.

⁵⁶ "Egypt's Al Azhar denounces IS 'Criminals'", *Al Monitor*, September 10, 2014. http://www.al-monitor.com/pulse/politics/2014/09/egypt-condemn-islamic-state-grand-imam-tayeb.html?utm_source=Al-Monitor+Newsletter+%5BEnglish%5D&utm_campaign=d4d870cbb5-September_11_2014&utm_medium=email&utm_term=0_28264b27a0-d4d870cbb5-93069773.

⁵⁷ "Prominent Scholars Declare ISIS Caliphate 'null and void'", *Middle East Monitor*, July 5, 2014. <<https://www.middleeastmonitor.com/20140705-prominent-scholars-declare-isis-caliphate-null-and-void/>>

⁵⁸ Patrick Goodenough, "Self-Appointed 'Caliph' Makes First Public Appearance", *CNS News.com*, July 6, 2014. <http://cnsnews.com/news/article/patrick-goodenough/self-appointed-caliph-makes-first-public-appearance>.

⁵⁹ Martin Chulov, "Iraqi's Highest Shia Cleric adds to pressure on Maliki over the ISIS insurgency", *The Guardian*, June 20, 2014. <https://www.theguardian.com/world/2014/jun/20/iraq-highest-shia-cleric-maliki-isis-insurgency-ayatollah-sistani>.

⁵¹ *Ibid*.

⁵² (UNAMI) and (OHCHR), "Report on the Protection of Civilians: 5 June-5 July", 9-14; (UNAMI) and (OHCHR) "Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July- 10 September 2014", 5-17; (UNAMI) and (OHCHR) "Report on the Protection of Civilians in Armed Conflict in Iraq: 11 December 2014- 30 April 2015", 10-23; (UNAMI) and (OHCHR) "Report on the Protection of Civilians in Armed Conflict in Iraq: 1 May- 31 October 2015", 8-19; (UNAMI) and (OHCHR) "Report on the Protection of Civilians in Armed Conflict in Iraq: 1 November 2015-30 September 2016", 4-15; UN Human Rights Council, "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (Report of the International Commission of Inquiry on Syria)", August 13, 2014, 4-22; "Rule of Terror: Living under ISIS in Syria", (Report of the International Commission of Inquiry on Syria), November 14, 2014, 4-13; UN Human Rights Council, "Report of the International Commission of Inquiry on Syria", February 5, 2015; UN Human Rights Council, "Report of the International Commission of Inquiry on Syria", February 11, 2016; UN Human Rights Council, "Report of the International Commission of Inquiry on Syria", August 11, 2016.

global combative *jihad*. In both cases, the majority of classic and modern scholars believe that *jihad* must be waged under the permission of a legitimate ruler and Muslim fighters must respect humanitarian rules. ISIS attacked the Shi'a Islamic countries of Iraq and Syria to separate the Sunni areas from the two countries and establish a *de facto* Sunni state. The announcement of the Caliphate was not for the cause of Allah rather to justify the legitimacy of its state and undermine the Shi'a hegemony in the area of Middle East. The group's leader was not given religious loyalty as the Caliph of Muslims except by its fighters, a small number of Muslims within the areas under its control and some international *jihadi* individuals and groups therefore he never could permit *jihad* on behalf of Muslims. Finally, ISIS violated all the Islamic human rights and humanitarian rules applicable during battle and committed all the grave crimes shock the conscience of mankind. Hence, the ISIS's war is a political war justified by Islam. Such a war is prohibited in Islam, let alone be defined as *jihad*.

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