

Understanding Shari'ah's Role in the War

I. The Intent of this Section

- a. The intent of this section of the publication is to define the enemy in the terms the enemy uses, and explain what these terms mean from the enemy's perspective. This will give the warfighter a clear understanding of the enemy's intentions, perspective, and the doctrinal support for these views, in order to give U.S. forces the best possible opportunity to defeat the enemy.

II. Our Doctrine

- a. U.S. Military Doctrine, specifically the Intelligence Preparation of the Battlefield Manual (IPB) states the war planners must begin with who the enemy says he is and why he is fighting us. That becomes the basis for determining the enemy threat doctrine.

III. The Enemy's Stated Threat Doctrine

- a. The overwhelming majority of individuals with whom the United States military is engaged states they are fighting "Jihad" in the "Cause of Allah" in order to establish an Islamic State (Caliphate) under Islamic Law - known as Shari'ah. In order to accurately understand what this means, our professional duty is to know how jihad is understood by the enemy when mapped against "Jihad" as defined in Islamic Doctrine, and to understand what Islamic Law is and what its role is in Islam. Without this knowledge, we cannot accurately identify, target and defeat this enemy.

IV. Framework for Shari'ah (Islamic Law)

- a. Islam defines itself as a complete way of life – social, cultural, religious, military, and political - governed by Islamic Law (Shari'ah). Islamic Law is real law which governs all affairs of Muslims. The Shari'ah, as it is called, is primarily derived from the Qur'an and the Sunnah (the collection of the Hadith and the Sira).
- b. For Muslims, the Qur'an is considered the "uncreated word of Allah." This means that Muslims believe that everything in the Qur'an was directly revealed to the Prophet Muhammad by Allah (the god in Islam) and cannot be altered or amended. The 114 Suras (Chapters) in the Qur'an are arranged by size from largest to smallest (not chronologically), with the exception of the first Sura. Sura 2 is the largest and Sura 114 is the smallest.
- c. In Islam, the Prophet Muhammad is the most perfect example of a human being. All that he did and said is to be modeled by Muslims. The Hadith is the collection of all of the practices, sayings, and traditions of the Prophet Muhammad.

- d. The Sira are the authorized sacred biographies of Muhammad.
- e. Hadith: There are hundreds of thousands of Hadith, which have been evaluated by Islamic Legal Scholars (Jurists) as to their validity based on their chain of transmission from the Prophet to the reporting author. The Hadith are categorized as mawdu (false), munkar (ignored), da'if (weak), hasan (good), sahih (sound), and mutawatir (strongest, most rigorously authenticated).
- f. There are six primary Hadith scholars and they are, in rank order, Bukhari, Muslim, Abu Dawud, al-Sugra, Tirmidhi, and Ibn Majah. Bukhari and Muslim are considered the most reliable. In Islamic Law, Mutawatir Hadith from Bukhari rises to the level of being second only to the Qur'an.

V. Dar al Harb / Dar al Islam

- a. In Islamic Law, the entire world is divided into the Dar al Harb, "the house or abode of war," and the Dar al Islam, "the house or abode of peace." All lands which are not under Muslim control and ruled by Shari'ah, are considered Dar al Harb – enemy lands. "Harbi" means enemy personnel, or inhabitants of the Dar al Harb. All non-Muslims, not submitted to Islamic Law in Muslim lands are considered "enemy persons, persons from the territory of war." The term "non-combatants" does not exist in Islamic Law. All lands occupied by Muslim forces at any time in history are considered "Muslim Lands."

VI. Ijma (Scholarly Consensus)

- a. Ijma is one of two critical legal concepts in Islamic Law, especially Sunni Islamic law, which is key to understanding the law. Ijma, or "scholarly consensus" means that when the Mujtahids (senior Islamic Legal Jurists) of a particular time period, gather together, rule on points of Islamic Law, and unanimously agree on these points of law, the ruling becomes a permanent part of Islamic Law for all time and can never be changed. The core issues within Islam have been ruled upon by scholarly consensus in Islamic Law – specifically the issues of Jihad, relations between Muslims and non-Muslims, and the requirement for the establishment of the Caliphate.
- b. "When the four necessary integrals of consensus exist, the ruling agreed upon is an authoritative part of Sacred Law that is obligatory to obey and not lawful to disobey." (Umdat al Salik, The Classic Manual of Islamic Sacred Law, al-Misri, b7.2)
- c. A way to recognize when this "absolute" standard is being applied is when writings state "this is a matter over which all the scholars agree," "there is no disagreement among the scholars," or similar language.

VII. Abrogation

- a. Abrogation is a second legal concept in Islamic Law critical to understanding the underpinnings of the threat doctrine. Simply put, abrogation means that anything revealed to Muhammad chronologically later in the Qur'an, abrogates or overrules anything which came earlier. Abrogation comes from three verses in the Qur'an meaning, from the perspective of Islam, it came from God and, therefore, can never be changed. The last chronological Sura in the Qur'an to discuss relations with non-Muslims is Sura 5.
 - i. *"It is a Qur'an which We have divided into parts from time to time, in order that though mightest recite it to men at intervals: We have revealed it by stages."* (Qur'an 17:106)
 - ii. *"When We substitute one revelation for another - and Allah knows best what He reveals in stages - They say, "Thou art but a forger": But most of them understand not."* (Qur'an 16:101)
 - iii. *"None of Our revelations do we abrogate or cause to be forgotten, but we substitute something better or similar; knowest thou not that Allah hath power over all things?"* (Qur'an 2:106)

VIII. Relations with non-Muslims [Sura 5: Last to discuss relations with non-Muslims]

- a. It is a permanent command in Islam for Muslims to hate and despise Jews and Christians and not take them as friends. This comes from both the Qur'an as well as from the sacred hadith scholars Bukhari and Muslim.
- b. *"Oh ye who believe! Take not the Jews and the Christians for your friends and protectors; they are but friends and protectors to each other. And he amongst you that turns to them for friendship is of them. Verily Allah guideth not the unjust."* (Qur'an 5:51)
- c. *The Prophet said, "The hour [of judgment] will not come until the Muslims fight the Jews and kill them. It will not come until the Jew hides behind rocks and trees. It will not come until the rocks or the trees say, 'O Muslim! O servant of God! There is a Jew behind me. Come and kill him. Except for the gharqad, which is a tree of the Jews.'" [Sacred Hadith, Bukhari, 103/6, number 2926]*
- d. *Allah's Apostle said, "By Him in Whose Hands my soul is, surely (Jesus,) the son of Mary will soon descend amongst you and will judge mankind justly (as a Just Ruler); he will break the Cross and kill the pigs and there will be no Jizya (i.e. taxation taken from non Muslims)."[Sacred Hadith, Bukhari, vol 4, book 55, number 657] Note: this Hadith states that the Muslim prophet Jesus will return to earth with Muhammad and will cast all Christians to hell and, kill all Jews in order that Muslims may go to 'Paradise.'*

IX. Jihad [Sura 9: The last to discuss Jihad]

- a. Jihad is a permanent obligation on the Muslim community until the entire world made the Dar al Islam.
- b. Jihad is sixth Right of Pure Worship between god and man – the first five being the “pillars” of Islam.
- c. The Quranic Basis for Jihad
 - i. Islamic Law provides three options for ‘People of the Book’ (those who had a holy book prior to Muhammad): (1) They may convert to Islam; (2) they may be killed; or (3) they may pay the jizya (non-Muslim tax) and be subjugated to Islamic Law having little rights as non-Muslims under the law. Pagans and others who had no holy book prior to Muhammad must either convert to Islam or be killed.
 - ii. *“Fight and slay the unbelievers wherever ye find them, and lie in wait for them in every stratagem of war. But if they repent, and establish regular prayers and practice regular charity, then open the way for them; for Allah is Oft-forgiving, Most Merciful.” (Qur’an 9:5, the Sura of the Sword)*
 - iii. *“Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Apostle, nor acknowledge the religion of truth, even if they are of the people of the Book, until they pay the jizya with willing submission, and feel themselves subdued.” (Qur’an 9:29)*
- d. Jihad has only ever been defined in Islamic Law as ‘warfare against non-Muslims’:
 - i. "to war against non-Muslims...signifying warfare to establish Islam" and is "obligatory for every Muslim" [Umdat al Salik, Classic Manual of Islamic Law (Shafi), Ahmad ibn Naqib al-Misri, d. 1368.]
 - ii. "war...is obligatory on men who are free, have attained puberty, who find the means for going to war, are of sound health, and are neither ill nor suffer from a chronic disease...the jurists agreed, with respect to the people who are to be fought, that they are all of the polytheists, because of the words of the Exalted, 'And fight them until persecution is no more, and religion is all for Allah.'" [The Distinguished Jurist's Primer (Maliki), Ibn Rushd, d. 1198]
 - iii. " 'Fight the unbeliever wherever you find them and lie and wait for them in every strategem of war...' 'I have been commended to fight the people until they testify that there is no deity worthy of worship except Allah and that Muhammad is the Messenger of Allah...' This honorable Ayah (verse) 9:5 (Qur'an) was called the Ayah of the Sword, about which Ad-Kahhak bin Muzahim said, "It abrogated every agreement of peace between the Prophet and any idolator, every treaty, and every term.' " [Tafsir of ibn Kathir, d. 1373]

- iv. "Jihad is a communal obligation...Jihad is determined till the Day of Judgment..."Then shall ye fight, or they shall submit (Qur'an 48:16)' When the Muslims commence battle, and they have surrounded a city or a fort, they are to invite the inhabitants to accept Islam...If they respond positively, they are to refrain from fighting them, due to the attainment of the purpose. If they refuse, they are to invite them to the payment of jizyah, and this is what the Prophet ordered the commanders of the armies to do for it is one of the consequences upon the conclusion of battle...if they reject the invitation, they are to seek the help of Allah and engage them in combat." [Al-Hidayah, A Classic Manual of Hanafi Law, Primary Hanafi Text since 767 AD]
- v. "Fight in the name of God and in the 'path of God.' Combat only those who disbelieve in God...Whenever you meet your polytheist enemies, invite them to adopt Islam. If they do so, accept it and let them alone...if they refuse then call upon them to pay the jizya. If they do, accept it and leave them alone..." [The Islamic Law of Nations (first book of Islamic Law), Shaybani's Siyar, 700's AD]
- vi. "The jurists have distinguished four different ways in which the believer may fulfill his jihad obligation: by his heart; his tongue; his hands; and by the sword...the believers are under the obligation of sacrificing their 'wealth and lives' in the prosecution of war." [War and Peace in the Law of Islam, Majid Khadduri, 1955]
- vii. "The word jihad is most often associated with the act of physically confronting evil and wrong-doing...if anyone dies in a Jihad they automatically go to Paradise. A Shaheed or Martyr, is described this way by Allah, 'Don't think that those who were killed in Allah's Cause are dead. No they are alive, finding their bounty in the presence of their Lord...the Law of the Land is the Shari'ah of Allah...the duty of the Muslim citizen is to be loyal to the Islamic State." ["What Islam is All About" (most popular Islamic junior high school text in the U.S. - printed in English), 1997]
- viii. "The Holy Qur'an spelt out the object of the divine war against Paganism soon after it commanded the Muslims to take recourse to fighting. 'And fight them on until there is no more tumult or oppression...'The Holy Qur'an wishes to see the Muslim armies always in an uppermost, dominating and commanding position over those of their adversaries....Terror struck into the hearts of the enemies is not only a means, it is the end in itself. Once a condition of terror into the opponent's heart is obtained, hardly anything is left to be achieved. It is the point where the means and the end meet and merge...Psychological dislocation is temporary; spiritual dislocation is permanent...To instill terror into the hearts of the enemy, it is essential, in the ultimate analysis, to dislocate his Faith. An invincible Faith is immune to terror...This rule is fully applicable to nuclear as well as conventional wars." [The Quranic Concept of War, Brigadier General SK Malik, Pakistani Army; Forward by Chief of Staff Pakistani Army Zia ul Haq (who became President of Pakistan), and Preface by Advocate General of Pakistan Brohy who calls this a "Restatement" of the Islamic Law of War. This was written in English in 1979 and is DOCTRINE in Pakistan]

- e. Jihad as warfare must be fought when the Muslim community has the ability to do so. Even when this is not possible, a standing requirement exists to wage Jihad via the pen or with words. At a minimum, however, all Muslims are under permanent obligation to hate and despise the non-Muslim rule (Jihad of the Heart).

X. Truces

- a. In Islamic Law, Muslim fighting forces may only call for a truce when they are in a position of weakness and require time to resupply and rebuild forces. It is a grave concern because it entails nonperformance of jihad.
- b. “Truces are permissible, not obligatory. The only one who may effect a truce is the Muslim ruler of a region (or his representative)...There must be some interest served in making a truce other than mere preservation of the status quo. Allah Most High says, ‘So do not be fainthearted and call for peace, when it is you who are the uppermost.’ (Qur’an 47:35) Interests that justify making a truce are such things as Muslim weakness because of lack of numbers or materiel, or hope of an enemy becoming Muslim.” [Umdat al Salik, Book O: Jihad, o9.16]

XI. Lying

- a. Islamic Law specifically allows, and in some cases obliges, Muslims to lie to non-Muslims if doing so furthers the cause of Islam.
- b. “The Prophet said, ‘He who settles disagreements between people to bring about good or says something commendable is not a liar.’” [Sacred Hadith, Bukhari & Muslim]
- c. “I did not hear him (the Prophet Muhammad) permit untruth in anything people say except for three things: war, settling disagreements, and a man talking with his wife or she with him.” [Sacred Hadith, Muslim]
- d. “Speaking is a means to achieve objectives...it is permissible to lie if attaining the goal is permissible...and obligatory to lie if the goal is obligatory.” [Imam Abu Hamid Ghazali, Renowned Islamic Jurist, quoted in Umdat al Salik, Sacred Islamic Law, Book R: Holding One’s Tongue, r8.2]

XII. Slander

- a. Slander in Islamic Law means “to mention anything concerning a person that he would dislike.” [Umdat al Salik, r2.2]
- b. “As for talebearing, it consists of quoting someone’s words to another in a way that worsens relations between them.” [Umdat al Salik, r2.3]
- c. “The above define slander and talebearing. As for the ruling on them, it is that they are unlawful, by the **consensus of Muslims**.” [Umdat al Salik, r2.4]
- d. Summary – in Islamic Law, anyone who criticizes a Muslim, Islam, or the Prophet is guilty of “Slander.” The punishment for slander in Islamic Law is death.

XIII. Apostasy

- a. Apostasy is when a Muslim leaves Islam. This is a capital crime and is punishable by death. There is a requirement for the Muslim to be advised of his error before he is killed.
- b. “Leaving Islam is the ugliest form of unbelief and the worst.” [Umdat al Salik, o8.0]
- c. “When a person who has reached puberty and is sane voluntarily apostatizes from Islam, he deserves to be killed. In such a case, it is obligatory for the caliph (or his representative) to ask him to repent and return to Islam. If he does, it is accepted from him, but if he refuses, he is immediately killed...There is no indemnity for killing an apostate since it is killing someone who deserves to die.” [Umdat al Salik, o8.1-o8.4]