This innovative and important book applies classical Sunni Muslim legal and religious
document to contemporary issues surrounding armed conflict. In doing so it shows that
the *sharī'a* and Islamic law are not only compatible with contemporary international
human rights law and international humanitarian law norms, but are appropriate for use
in Muslim societies. By grounding contemporary post-conflict processes and procedures
in classical Muslim legal and religious doctrine, it becomes more accessible to Muslim
societies that are looking for appropriate legal mechanisms to deal with the aftermath of
armed conflict. This book uniquely presents a critique of the violent practices of contem-
porary Muslims and Muslim clerics who support these practices. It rebuts Islamophobes
in the West that discredit Islam on the basis of the abhorrent practices of some Muslims,
and hopes to reduce tensions between Western and Islamic civilizations by enhancing
common understanding of the issues.

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Rwanda, the United States Supreme Court, and other supreme courts.
The *Sharīa* and Islamic Public Law in Time of War and Peace

M. CHERIF BASSIOUNI

DePaul University School of Law
In the name of God, most Gracious, most Compassionate

Oh Mankind! We have created you men and women, peoples and tribes, [in order that you may] know one another. Verily, the best among you is the most pious [the best in conduct].

Indeed, [Lo] We have honored [conferred dignity] on the descendants [progeny] of Adam, and we have carried [borne] them over land and sea, and provided for them sustenance out of the good things of life, and favored them far above most of Our creation.
This work benefited from a number of meetings of experts on the Sharī'a and Islamic law in Siracusa, Italy, and Washington, DC, USA. A series of articles have emerged from those meetings that will be published in a forthcoming volume. These meetings were supported by a grant from the United States Institute of Peace to the International Institute of Higher Studies in Criminal Sciences, and I would like to thank both institutions for the privilege of having directed these activities. In connection with the preparation of this manuscript, I am grateful to Kelly McCracken-Pembleton and Douglass Hansen for their research and editorial assistance, as well as to Brian Wright for his assistance with transliterations and in ensuring their uniformity throughout the text. The assistance of Kelly, Douglass, and Brian was invaluable.

M. Cherif Bassiouni
Chicago, February 14, 2013
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Glossary of Terms

Abu ¯u ʿAbdullah Muhammad ibn Idr¯ıs al-Sh¯afic¯ı (150–204 AH / 767–820 CE): The founder of the Sh¯afic¯ı madhhab school of thought.

Abu Bakr al-Sidd¯ıq: The first khal¯ıfa to rule after the death of the Prophet and the first of the four al-Khulaf¯a al-R¯ashid¯un to rule after the death of the Prophet. Abu Bakr ruled between 10 and 12 AH / 632–634 CE. Under Abu Bakr, Im¯am Abu Abdallah Malik Ibn Anas Ibn Hareth began collecting the first laws of Islam. Abu Bakr led a number of campaigns against tribes that refused to pay zak ¯at, and which he claimed to be ridda (apostasy). He also developed the doctrine of fut ¯uh. ¯at, or conquests that led to the military expansion of the ummah. In the context of post-conflict justice and ICL, Abu Bakr’s most important contribution was his directive on the proper conduct of Muslim soldiers, including: “Never kill a woman, nor a child, nor an elderly person; never cut a fruit-bearing tree; never destroy an inhabited place, never slaughter a sheep nor a camel except only for food; never burn nor inundate a palm-tree; and neither be revengeful nor cowardly.”


cAdil: Literally “just.” The term applies as an adjective to any person who is just, but it also denotes the just nature of a ruler.

cAf ¯u: Forgiveness.

Ahl al-Kit¯ab: The “People of the Book.” This refers to Jews, Christians, and Zoroastrians. It also includes all peoples who have received a messenger from God or who believe in one God.

Ahl al-Ra’y: The “People of Opinion.” This refers to scholars who are opinion makers. They are equivalent in contemporary terms to “the most distinguished jurists” whose views are recognized by others. These are the jurists who also interpret both the Qur¯an and the Hadith on the basis of its intent and spirit, as opposed to limiting it only to a literal interpretation.

Akh¯ān ´amma: One of the four categories of verses in the Qur¯an. It pertains to general principles of faith that serve as a guide for Muslims regarding their general life practices, and their human and social relations. These principles
relate to justice, freedom, consultations in matters of government, preservation of the public interest, and equality.

Ahkām al-Bughāt: The judgment applicable to those who commit baghi.

Ahkām al-Mufassal: One of four categories of verses in the Qur’ān. It pertains to verses with specific injunctions that, because of their specificity, are to be interpreted literally.

Ahkām al-Mujmal: One of four categories of verses in the Qur’ān. It pertains to specific injunctions or commandments concerning prayer, fasting, zakāt, pilgrimage, and matters dealing with religious observance and practices.

Ahkām al-mujmal wal-mufassal: One of four categories of verses in the Qur’ān. It pertains to detailed injunctions concerning issues of war and peace, jihād, treatment of prisoners, taking of booty, and relations with non-Muslims.


al-Akhira: Literally “the end.” It is used both to connote the end of this world and to refer to the hereafter.

Ahmad bin Abī-Tālib: The successor to Uthman and the last of the al-Khilafā’ al-Rashidūn. Ahmad was also the cousin and son-in-law of the Prophet. Ahmad was known as a gentle and wise ruler who was eventually deposed by Mu’āwiya after trickery. After his fall from power, his followers formed the Shī‘at Ahmad, which evolved into the Shī‘a religious movement. Ahmad’s deposing also led to the birth of the Khawārij movement.

Amān: Safe conduct.

Aqīda: Belief. It is similar to imān (faith).

Asābiyya: The word ḍa asah, which is the root of ḍasabīyya, means “nerve” in the physiological sense, but it is used to refer to a tribal connection.

Asbāb al-Nuzūl: The reasons for the revelation of a given verse or verses of the Qur’ān.

Asl, Uṣūl (plural): The origin or source.

As-sās: Depending upon how it is used, the word means either advance or retreat.

al-Asāsī: The foundation. It refers to the foundational basis of theological and legal doctrines, but it is used for all foundational concepts, doctrines, and arguments.

Aya, Ayāt (plural): A verse or verses of the Qur’ān.

Ayn: Literally means “the eye,” but also means something of value. It also means the same, probably coming from an “eye for an eye.”

Baghī: The hadd crime of engaging in armed rebellion against a legitimate ruler.

Bashar: A human being. Al-Bashar refers to humankind.

Bāṭil: Invalid.

al-Bātin: The hidden. It refers to the hidden meaning of Qur’ānic verses.

Battle of Badr: A battle in 22 AH / 624 CE between Muslim forces in Madinah and Makkani forces. Muslim forces had provoked the battle by attacking Makkani caravans. The battle resulted in a decisive victory for the Madinah forces despite the significant numerical advantage of the Makkans. After the battle the Prophet referred to war as the smaller jihād.
Battle of the Camel / Battle of the Jamal: A battle in 36 AH / 656 CE between forces loyal to ʿAli ibn Abī-Talib, the fourth khalīfa, and forces loyal to ʿAisha, the wife of the Prophet. It is regarded as the first armed conflict between Muslims. After the assassination of ʿUthman, the third khalīfa, ʿAli assumed power, but ʿAisha and others were upset that he did not pursue ʿUthman’s killers zealously enough, although this was likely political intrigue as ʿAisha supported neither ʿAli nor ʿUthman, and sought to promote one of her own allies to the position of khalīfa. ʿAli’s forces were victorious and afterward he attempted to reconcile with her and those who had fought against him. It is also known as the Battle of the Camel because ʿAisha rode a red camel in battle, from which she directed her forces.

Battle of Karbala: A battle in 61 AH / 680 CE between forces loyal to Hussein ibn Ali, the son of ʿAli and grandson of the Prophet, and forces from the Umayyad caliphate. Hussein was killed during the battle, which led eventually to the rise of the Abbasi caliphate.

Battle of Siffin: A battle in 36 AH / 657 CE between the forces of ʿAli and Muʿāwiya, the governor of Syria and relative of the assassinated khalīfa ʿUthman. Muʿāwiya rebelled after ʿAli’s victory at the Battle of the Camel, and the two forces met at the Plain of Siffin in present-day Syria. When ʿAli’s forces were near victory, Muʿāwiya had his soldiers tie copies of the Qurʾān to their weapons so as to end the battle and sue for peace. ʿAli accepted the proposal to settle the leadership dispute through arbitration, which resulted in the underhanded deposing of ʿAli.

Battle of the Trench / Battle of the Khandaq: A battle in 5 AH / 627 CE between Muslim forces from Madinah and a collection of opponents, including the Quraysh from Makkah and various Jewish and pagan tribes, who were known as the Confederates. The battle is known as the Battle of the Trench because the Muslim forces dug trenches around Madinah so as to keep out their more numerous and mounted antagonists. During the eventual siege the Muslim forces were able to win numerous smaller battles, eventually breaking the blockade. During the siege the Banu Qurayza of Madinah, one of the two Jewish tribes of Madinah, entered into negotiations with the Confederates. This caused the Madinah forces to turn on them for committing treason, resulting in the killing of all Banu Qurayza men and the enslaving of all women and children. It should be noted, however, that this was not a religious issue but was about treason, as the other Jewish tribe of Madinah was not harmed in any way.

Battle of Uhud: A battle in 3 AH / 625 CE between Muslim forces in Madinah against an attack by Makkan forces who sought revenge for their losses at the Battle of Badr. Despite initial success by Madinah forces, the battle resulted in a stalemate.

Bayyina: Evidence.

Bidaʾa, Bidaʾ (plural): Distortions, inventions, or pernicious fabrications.

Bismillah al-Rahmān al-Rahīm: “In the name of God, the most merciful, the most compassionate.” It is found at the beginning of most chapters of the Qurʾān.

Bughāṭ: Those who commit baghi.
Där al-Ḥarb: Land of war.
Där al-Selm: Land of peace.
Darūra: Necessity.
al-Dhāhir: The apparent. It refers to the obvious or plain language and meaning of the Qur’ān.
Dhimma: The term is used to indicate the extension of protection to certain persons, usually those who have a treaty with the Muslims, or those who have been given safe conduct. (See dhimmi.)
Dhimmi: A non-Muslim who is a protected person because he/she belongs to the Ahl al-Kitāb, or who is covered by dhimma.
Dīn: Religion.
al-Dīn al-Ḥanīf: The original or true religion.
Diyā: The giving of compensation by someone who committed a wrong resulting in an injury to a person, particularly one who is a victim of qisāṣ. It applies in lieu of punishment. Only the victim can decide whether to accept the compensation.
Dunyā: Life. It refers to life on earth.
Fairūṣ (plural): Branch or derivative.
Fāriq, furūq (plural): Difference.
Fatwa: An individualized or particularized expert opinion on a theological or legal question.
Fidā: Ransom.
Fiqh: Theological science; also refers to exegesis and hermeneutics.
Fiṭnah: Dissension or creating dissension. The term is used in reference to Muṭawiyya’s underhanded methods of obtaining power by delegitimizing ‘Ali, the fourth khalīfa, through deceit and war. Muṭawiyya succeeded and the Umayyad dynasty was established.
Futūḥat: The legitimate conquest or “opening” of new territories for purposes of proselytization.
Ḥad, Ḥudūd (plural): A category of crimes proscribed in the Qur’ān.
Ḥadīth, Ahādīth (plural): The sayings of the Prophet Muhammad that relate to Islam.
Ḥajj: A Muslim’s pilgrimage to Makkah. This is one of the five basic requirements of Islam that is required of all Muslims once in their lifetime, if they have the ability to do so.
al-Ḥamd: Praise. It usually refers to “praise to God” as al-Hamdulillah (thanks to God).
Ḥanafī: A Sunni school of thought named after its founder.
Ḥanbalī: A Sunni school of thought named after its founder.
Ḥawwa: Eve.
Hijrah: The migration of the Prophet from Makkah to Madinah in 622 CE. It is also the beginning of the Islamic calendar, whose years are referred to as AH. 622 CE is equivalent to 1 AH.
Hikmat al-Ma‘qāl: The wisdom of what is reasonable; an approach to exegesis.
Hirābah: The ḥadd crime of highway brigandage.
Glossary of Terms

**Hirz:** Possession.

**Hudna:** Truce.

*I'dda:* The period of time following a woman’s divorce during which she cannot remarry so as to avoid confusion over the paternity of her children.

*Iḥsān:* The doing of good.

*Ijāz al-Qur‘ān:* The miracle of the Qur‘ān, a reference to its literary uniqueness. It is traditionally translated as the Immutability of the Qur‘ān, or the inability of anyone to imitate it.

*Ijmā‘:* Consensus.

*Ijtihād:* The product of an effort, usually intellectual. It refers to a process of legal interpretation based on the progressive development of law where analogy can never be used in order to address an issue not previously addressed. It is the legal technique used to update theological and legal developments. This technique was formally “closed” by Muslim scholars in the 12th century to the great detriment of the development of Islamic law, but nothing prevents its reopening, as has been the *de facto* case in many Muslim countries since the late 19th century.

*Ikhtilāf:* Divergence of opinion or disagreement, limited by reasonableness and logic.

*Ikrāh:* Compulsion.

al-*cIllā fī al-Qiyās:* The evidentiary basis of analogy.

*Ilm Usūl al-Fiqh:* The science or methodology that is pursued to develop *fiqh*. It refers to a scientific approach or legal method of interpretation of the primary sources of the *sharī‘a* (the Qur‘ān, *hadith*, and *sunna*) and the development of Islamic law.

*Ilmānī:* A secular scientific approach to interpreting and applying the *sharī‘a*. The approach is rejected by fundamentalists.

*Ilim:* Derived from *‘ilm*, meaning science. It is used to describe a secular or scientific approach to an understanding of Islam, including interpreting and applying the *sharī‘a*. It does not have the pejorative connotation of *Ilmānī*.

*Imāmīya / al-Madhhab al-Ja‘fari:* The official school of the Iranian state since 907 AH / 1502 CE, when the Safavid dynasty started.

*Imān:* Faith. Similar to *‘Aqīda* (belief).

*Imān Muḥāsasal:* Detailed rules of faith.

*Imān Muṭlaq:* Absolute rules of faith.

*Ismā‘īlī:* A Shi‘a sect.

*Isnād:* The use of other sources in the corroborating of the authenticity of a *hadith*.

*Istiḥlās:* A rule of equity, or providing an equitable outcome. It is one of the legal techniques of *‘ilm usūl al-fiqh* (see supra).

*Istiḥsān / Iṣtiṣlāḥ:* Two rules of interpretation that seek to accomplish equity. Istiḥsān is similar to Iṣtiṣlāḥ, but it adds to equity that which would make things better for parties to a legal dispute.

*Ithna‘Ashriyya:* The Twelver Shi‘a sect. It is based on the ideas of Ja‘far ibn Muḥammad al-Sādiq.
Glossary of Terms


Ja’fari: An adherent of the Ithna ‘Ashriyya Shi’a sect.

Jāhiliyya: The pre-Islamic period in the Arabian Peninsula.

Jihād: The act of striving, endeavoring, or struggling in pursuit of an Islamic praiseworthy goal, including war in self-defense. It is more frequently used to describe war-like and violent activities that are deemed to be justifiable rather than a reflection of the struggle for a Muslim’s internal betterment.

Jihād al-nafs: Also known as the greater jihād. It refers to the struggle against oneself for goodness and piety, as opposed to the smaller jihād, which refers to war.

Jizya: Tribute, and payment thereof.

Jumūd: Rigidity.

Ka‘ba: The holiest place of Islam, located in Makkah. It is where Abraham built the first house of worship of the One and Only God, and the location at which Abraham prepared to sacrifice his son, Ishmael, who God redeemed with a ram. It is also believed that the Ka‘ba was first built by Adam or that Adam built on that location the first altar of worship to Allah.

Kāfir, Kuffār: Nonbelievers.

Kalām: Literally means “spoken words.” A pejorative term used by fundamentalists to refer to the efforts by progressive thinkers in the Abbasid period to incorporate non-Muslim philosophies and their methods as part of Islamic exegetic methods. It applied particularly to Aristotelian and Pythagorean logic, Platonic and Neo-Platonism, and Peripatetic and Stoic philosophy.

Khalīfa: Literally “the successor.” It refers to the head of state of a Muslim ummah who claims to be a successor to the Prophet.

Khawārij: Those who “walked out” or those who left, the secessionists. A Sunni sect that renounced its support for ‘Ali, the Fourth Caliph, after he agreed to submit his caliphate to arbitration, which they rejected.

al-Khulafā’ al-Rāshidūn: The “wise Caliphs.” It refers to the first four Caliphs who succeeded the Prophet after his death.

Khuraj: Armed rebellion.

Kufr: Disbelief. It also refers to non-believers, heretics, and apostates.

Layḥa: Regulation.

Mašfīm: A protected person.

Madhhab, Madhāhib: Islamic Schools of Thought.

al-Madinah al-Munawwara: The “enlightened city.” This refers to the City of al-Madinah to which the Prophet migrated in 622 CE, and from which Islam was propagated.

Madrassa: Literally a school. In modern use, mostly in Pakistan, it is that of a religious school.
al-Mahdi: The Guided. The title given to Muhammad ibn al-Ḥassan al-ʿAskarī, the twelfth imām of the Shīʿa.

Mahdī: Depending upon how it is used, the word means menstruation or vagina.

Majalla: Journal. It refers to the compendium of laws and legal practices.

Majalla al-ʿAḥkām al-ʿAdliyya: The Journal, compendium, of Judicial Rulings of the Turkish Ottoman Empire.

Majalla al-ʿAḥkām al-ʿUthmāniyya: The compendium of laws and legal decisions of the Turkish Ottoman Empire.

Majmūʿ al-ʿFatwāʾ: Compendium of fatwa(s).

Makrūḥ: That which is disfavored.


Mālikī: A Sunni school of thought.

Manṭa: Power and force.

Manḥaj: A term that usually refers to the divine scheme that guides everything.

Maqāsid al-Sharīʿa: The goals and purposes of the sharīʿa.

Maslahat: Public interest or the common good.

Mushaf, Mushrik (plural): A written compilation of the Qurʾān.

Mushrikūn (plural): Idolaters or those who do not adhere to the belief of the singularity and centrality of God.

Mustaʿman: Those who have received amān (safety, protected).

al-Muwatṭa: The first written compendium of laws produced in Islam, based on the Prophet’s sunna in Madinah, collected by Imām Abu Abdallah Mālik Ibn Anas.
Ibn Hareth. He was the founder of one of the four Sunni madhhab, the Maliki School.

Naskh: Repudiation.

al-Qadā’ wal-Qadar: Preordainment and predestination.

Qadhā: The hadd crime of defaming a woman.

Qādi: A judge.

Qā’ida Usulīyya: Basic rule.

Qarāna, Qarā’īn (plural): Proof, similar to Bayyina (evidence).

Qasāma: Oath taking.

Qisas: A category of crimes dealing with attacks on the life and the physical integrity of a person.

Qitāl: Fighting against unbelievers in the context of lesser jihād (war).

Qiyās: Analogy.

Qudṣi: Refers to certain sayings of the Prophet (ahādīth) that are believed to be divinely inspired even though they are not part of the Qurʾān. These ahādīth are deemed binding.

Qurʾān: The “Word of God,” revealed by God to the Prophet Muhammad between 610 and 632 CE.

Rakṣa: The prostration that is part of every prayer.

Ramadān: The ninth month of the Islamic calendar during which Muslims fast from sunrise until sunset. This is one of the five basic requirements of Islam.

Riba: Usury, which is prohibited.

Ridda: The hadd crime of Apostasy.

al-Rubʿ al-Khalt: Literally “the empty quarter,” the desert area between the Arabian Peninsula and Mesopotamia (current-day Iraq).

al-Sabaʿa al-Mathamānī: Refers to seven verses of the Qurʾān which are sometimes referred to as the seven unparalleled verses of the Qurʾān.

Ṣaḥāba: The companions of the Prophet.


Ṣaḥīḥ: True or valid. It refers to ahādīth deemed valid as distinguished from those deemed invalid.

Ṣaḥīḥ al-Manqūl: Validly transposed.

Ṣajj: Cadence.

Ṣalām: Peace.

Ṣalāt: The five daily prayers. This is one of the five basic requirements of Islam.

Sariqa: A hadd crime of theft.

Shaṣrī: A Sunni school of thought.

Shahāda: The testimony. It refers to the testimony of all Muslims: “There is no other God but God, and Muhammad is the Prophet.” It also applies to that which a
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witness states in court or elsewhere. This is one of the five basic requirements of Islam.

*Sharif* [According to the sharfa.]

*Sharif*: Literally noble. The term is used to describe the descendants of Prophet Muḥammad.

*Shawkah*: The public support for a rebellion. One criteria for assessing whether or not a rebellion is justified. If it is not justified, its actors are deemed *bughāt*, and that is a punishable crime.

*al-Shī’a al-Imāmiyya*: Followers of the twelfth imām of the Shī’a Muḥammad ibn al-Hasan al-Mahdī.

*Shīʿa* [According to the sharia.]

*Shīʿa*: Literally noble. The term is used to describe the descendants of Prophet Muḥammad.

*Shawkah*: The public support for a rebellion. One criteria for assessing whether or not a rebellion is justified. If it is not justified, its actors are deemed *bughāt*, and that is a punishable crime.

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Glossary of Terms

‘Umar issued a declaration preserving the religious independence of Christians and Jews, and readmitted Jews to Jerusalem after their exile by the Romans.

Umm al-Kitāb: The mother of the Book. This refers to the first chapter of the Qur’ān (al-Fatiha).

Ummah: The Muslim nation.

Urf: Custom.

Usāl: The source or origin.

Usāl al-Fiqh: The source of Fiqh, which is the method of exegesis. See also ʿilm usāl al-fiqh (supra).

Usāli, Usāliyyūn (plural): Literally “fundamentalists.” Those who follow a fundamentalist approach as defined in usāliyya.

Usāliyya: Literally “fundamentalism.” A movement by conservative theologians who rejected reason as a basis of interpretation and called for a return to the early practices of Islam as a way of preserving the purity and unity of Islam. It essentially denotes anthropomorphism.

‘Uthman ibn ʿAffan: The successor to ʿUmar and the third of the al-Khulafā’ al-Rāshidūn to rule after the death of the Prophet. ʿUthman ruled between 23 and 35 AH / 644–656 CE. ʿUthman is most notable for his codification of the Qur’ān. As khalīfa, ʿUthman was known for his pragmatism and his consolidation of the ummah. His assassination in 35 AH / 656 CE resulted in the ascension of ʿAli and the subsequent rebellion by Muʿāwiyya, who was from the same tribe.

Wahy: Inspiration. Referred to in the Qur’ān as the Divine inspiration that communicated the “word of God” to the Prophet Muhammad.

al-Yusr fil Islām: A liberal method of interpreting the mandates of Islam to minimize hardship on the believers; that which makes things easier.

Zakāt: The annual payment of a percentage of a Muslim’s assets at the end of the month of Ramadan, during which Muslims fast. This is one of the five basic requirements of Islam. The other requirements include the shahāda (or statement of belief), making salāt (five daily prayers), the ḥajj (pilgrimage to Makkah once in a lifetime), and ṣiyām (fasting during Ramadan).


Zina: The hadd crime of Adultery.
Table of Abbreviations

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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>IACtHR</td>
<td>Inter-American Court of Human Rights</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>IHRL</td>
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<td>LOAS</td>
<td>League of Arab States</td>
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<td>OIC</td>
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