Trading Rockets for Resolutions: Restructuring Palestinian Resistance in the Context of International Legal and Political Dynamics

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Abstract:

US policy on the Israel-Palestine conflict continues to negatively impact on relations between the Muslim world and the West. Improvement of relations depends on a profound shift in policy. This paper argues that norms and identity factors have the potential to reshape the interests and policies of even the world's most powerful states. It is concerned with contemporary legal and political dynamics and how Muslims must respond if this change is to develop among Western powers. A restructuring of Palestinian resistance is critical in order to harness international support for the Palestinian cause, utilise the weight of international law, and generate external pressure on Israel to comply with the terms of a just peace.

A central factor in the failure to resolve the Israel-Palestine conflict is the direct competition that exists between two fundamental international norms: 'self-determination', the central claim of the Palestinians, and 'self-defence', the overriding concern of Israelis. Palestinian violence against Israel is currently a liability for the Palestinian cause; it validates Israel's self-defence arguments and ensures that the norm of self-defence continues to trump the norm of self-determination. This paper provides a comprehensive analysis of all of the United Nations Security Council resolutions on the Israel-Palestine conflict and shows that they provide a normative framework for a just peace. The use of violence, however, has isolated the Palestinians from the legal authority available to them. Moreover, drawing on international polling data, this paper documents the extensive global support for the Palestinian cause. It explains how on this front, too, Palestinian violence has offset the potential gains from this support.

Although nonviolence has the capacity to undermine Israel's self-defence arguments and generate external pressure on Israel to adhere to the terms of a just peace, it has been under-appreciated by Islamist Palestinian groups. Nonviolence is far from having a normative status in the Muslim world as an Islamically legitimate response to occupation, and it is yet to be conceptualised as an effective form of resistance. The Muslim

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conception of jihad needs to be reformulated in accordance with the realities and opportunities confronting the Palestinians while upholding Islamic principles. This paper analyses the Quranic verses on war and peace using the increasingly prominent methods of contextualisation and a maqasid or objective-oriented approach. It demonstrates the Islamic legitimacy of non-violent resistance, its implications for achieving a just peace, and in turn, the prospect of more harmonious relations between Islam and the West.

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Introduction

The Israel-Palestine conflict is arguably still *the* central conflict in the world today, particularly in terms of relations between 'Islam' and the 'West'. It is a conflict that is of deep concern to people and governments across the Arab and Muslim world[1] as well as those in the West.[2] Palestine is for many Muslims an Islamic cause (Kashan 2000); conflict with Israel has been described as "the crucible of the conflicts affecting the Muslim *ummah*", which for decades has "acted as the epicentre of global *jihad*" (Bonney 2004, p.269). In his remarks to the Senate Foreign Relations Committee Hearing in July 2006, Andrew Kohut (2006b) reported a substantial rise in anti-Americanism in countries that are important allies of the United States (US), including Turkey, Pakistan, and Jordan. He attributed this rise to US policy in the Middle East, namely "the war in Iraq, the war on terrorism, and United States support for Israel" (p.1).

Efforts to resolve the Israel-Palestine conflict have been unsuccessful to date. Indeed, most commentators assert that the conflict has become more intractable. In large part, the failure to achieve a resolution stems from a general neglect of the religious dimensions of the conflict. Stephen Cohen (2005), for instance, highlights that "most attempts at conflict resolution and even conflict management in the region have tried to avoid completely the religious dimension" (p.348). Andreas Hasenclever and Volker Rittberger (2003) assert that "without doubt" religion can "influence the course of a conflict" (p.137). They highlight the escalating and de-escalating potential of religion in this context. The authors argue that while religious factors often play "a subordinate role as sources of conflict", they play a central role in "conflict processes" (p.137). Yehiel Grenimann (2005) contends that the role of religion in the Israel-Palestine conflict has been a predominantly negative one and advocates a "reinterpretation" of the respective religious traditions "in such a way that they might become a contributing factor in a positive direction" as a fundamental mean of resolving the conflict (p.170). It is with this context in mind that this paper examines the role of violent Palestinian resistance and reconceptualises *jihad.*

Central to this perspective is the concept of a just peace. I use the terms 'just peace' and 'just resolution' in reference to a settlement of the conflict on the basis of international law – specifically the resolutions of the United Nations (UN) – rather than power. Conflict resolution literature increasingly endorses this perspective

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[1] In a poll conducted between March and May 2006 by the Pew Research Centre nearly all Egyptians and Jordanians (97%) said that they sympathise with the Palestinians. Almost three-quarters of Indonesians (72%) expressed the same sentiment, while 63 percent of Turks and 59 percent of Pakistanis also support the Palestinian cause (Kohut 2006a). Moreover, research into the causes and consequences of conflict in the Middle East since 1945 has concluded that a diffusion of the conflict between 'Islam' and the 'West' depends on a just resolution of the Israeli-Palestinian conflict (Milton-Edwards & Hinchcliffe 2005).

[2] Over 85 percent of Americans consider that a resolution of the conflict should be an important US foreign policy goal. In a January 2005 Pew poll, just over one-third of Americans stated that a permanent settlement of the Israel-Palestine conflict should be the top US foreign policy priority, while another 42 percent said it should be a high priority. These percentages have remained fairly constant in Pew polls since 1993 (Allen & Tyson, 2006). The majority of Americans also believe that there cannot be peace in the Middle East without a resolution of the Israel-Palestine conflict and that a resolution of this conflict is important for winning the 'war on terror' and would reduce the likelihood of terrorism (WorldPublicOpinion.org, 2006).

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(Kriesberg 2005; Rubenberg 2003; Kegley & Raymond 2002; Rigby 2001). Cheryl Rubenberg (2003), for instance, observes that the "most important defect" of the peace process is that it is "not based on any aspect of international law or UN resolutions relating to the Israeli-Palestinian conflict" (p.87). It cannot lead to peace, she explains, because it is "not based on law, rights, or precedent but on a political agreement between two parties that are *depicted* as symmetrical" (p.87).

These observations are reaffirmed in Alvaro de Soto's 'End of Mission' report[3] to the UN in which he expresses major objections to the fact that the positions taken by the Quartet were not likely to be supported by a majority in UN bodies, and are "at odds with UN Security Council resolutions and/or international law" (de Soto 2007, p.26-27). De Soto reports that due to US pressure, the Quartet not only failed to hold Israel to its responsibilities under the Fourth Geneva Convention or enforce the advisory opinion of the International Court of Justice concerning the separation barrier, but even accepted Israel's non-compliance with its Roadmap obligations,[4] and its AMA obligations.[5]

For a number of observers, the assertion that the relevant UN resolutions must form the framework of a peace initiative if it is to be successful has been a long-standing one. Francis Boyle (2003), states that "there is no way anyone can even begin to comprehend the Israeli-Palestinian conflict and how to resolve it without developing a basic working knowledge of the principles of international law and human rights related thereto" (p.23). Others, such as William Mallison and Sally Mallison (1974), assert that a just peace "will have to employ the principled criteria of international law" while a "practical settlement based upon naked power bargaining and calculation will, at best, provide a short interlude between intense hostilities" (p.79). Indeed, over thirty years later, the authors' predictions have continued to be proven correct. John Quigley (2005) remarks that "most writers on the Israeli-Palestinian conflict find an emphasis on legal entitlement to be unrealistic, even counterproductive …and say that if settlement proposals are confined to propositions based on international law, no agreement will be reached" (p.xii). Encapsulating the sentiments of this paper, he acknowledges the difficulty, but remains convinced that "a peace not based on justice may turn out to be no peace at all" (p.xii).

This paper presents an analysis of the UNSC resolutions on the question of Palestine and contends that they provide a viable alternative to a negotiated

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[3] Alvaro de Soto was the United Nations Under-Secretary General, United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary General to the Palestinian Liberation Organisation and the Palestinian Authority, and Envoy to the Quartet from 1 June 2005 to 7 May 2007.

[4] Israel's Roadmap obligations include: freezing settlement construction, dismantling unauthorised settlement outposts, opening Palestinian institutions in East Jerusalem, and facilitating the movement of PA representatives.

[5] According to the Agreement on Movement and Access (AMA) signed on 15 November 2005, Israel's obligations include: easing West Bank checkpoints, reaching targets for movement through crossing points in and out of Gaza, and facilitating a seaport and airport in Gaza.

settlement within the framework of a 'just peace'. This approach must be considered, however, within the context of current political dynamics and that of competing international norms, namely self-determination versus self-defence. On the one hand, there is significant support around the world for a just resolution of the Israel-Palestine conflict and for the UN to play the lead role in this process. On the other hand, there remains a reluctance on the part of the leaders of certain Western nations to adhere to such a resolution. The post-9/11 era has placed security and self-defence issues over and above self-determination and even human rights, and political leaders have become constrained in terms of action or policies that may be construed as adversely affecting security or the right to self-defence of friends and allies. Additionally, within the Muslim world and among Palestinians there is a lack of confidence in the United Nations and non-violent means of conflict resolution. The liberation of Palestine is largely seen as possible only through reliance on the use of armed force. A key dimension to an effective response given these dynamics is an approach that possesses Islamic legitimacy and authenticity.

This paper proposes a contemporary methodology for Quranic interpretation and application based on the integration of the objective or *maqasid*-oriented approach, contextualisation, and the use of social science research. The paper demonstrates that, based on a thematic inductive analysis of the Quranic verses concerning war and peace, non-violence is a legitimate form of *jihad* that is consistent with the higher objectives outlined in the Quran. Based on empirical research into the global political and legal context, Palestinian non-violence, rather than the use of armed force, is more conducive to achieving their political aspirations as well as fulfilling the objective or *maqsad* of *jihad,* the attainment of a just peace.

UNSC resolutions on Israel-Palestine:
A normative framework for a just peace

The United Nations Security Council (UNSC) is the international organ with primary responsibility for international peace and security, whose pronouncements both reflect and constitute international law. The decisions of the UNSC, and also those of the United Nations General Assembly (UNGA), do not merely reflect the political interests of certain member-states. Contained within the body of resolutions on the question of Palestine are established facts of the conflict and the norms and obligations of Israel, the Palestinians, and the international community. Additionally, these resolutions document the findings of investigations commissioned by the UN pertaining to the most critical issues of the Israel-Palestine conflict.

To identify the UN resolutions concerned with the Israel-Palestine conflict, I have utilised the website of the UN (www.un.org), which has a dedicated section to *The Question of Palestine*.[6] Linked to this webpage, among other resources, is a complete list of all UN resolutions, including the UNSC resolutions, concerning the

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[6] The Question of Palestine. Retrieved 10 January 2007, from http://www.un.org/Depts/dpa/qpal/index.html.

Israel-Palestine conflict and the broader Arab-Israeli conflict.[7] As of the end of 2006 there were 276 UNSC resolutions listed, which were passed between 1946 and 2006. Sixty of these resolutions relate directly to the conflict between Israel and Palestine and are the specific focus of this paper. The UNSC resolutions have addressed all of the so-called 'final status' issues – those commonly regarded as the most complex in terms of resolving the conflict, including the acquisition of territory, status of Jerusalem, Israeli settlements, water and other natural resources, and the right of return of Palestinian refugees.

Acquisition of territory

The UNSC unambiguously asserts that Israel's acquisition of the Palestinian and other Arab territories, including Jerusalem in 1967 is inadmissible. This principle has been repeated in numerous resolutions, particularly those concerned with the status of Jerusalem as well as Resolution 242. Furthermore, the UNSC repeatedly refers to Israel as the 'occupier' or 'occupying power' in respect to its presence on Palestinian and other Arab territories, including Jerusalem, which it specifically refers to as 'occupied' territory.

In not a single resolution does the UNSC recognise the annexation of any of the territory, including Jerusalem, which Israel has occupied since 1967; nor is Israel's presence in these territories ever referred to as administrative. To this end, the UNSC is also unambiguously clear that the Fourth Geneva Convention is applicable to, and must be implemented by Israel in the Palestinian and other Arab territories it occupies, including Jerusalem. In spite of this demand, violations of international humanitarian law by Israel against the Palestinian people are extensively documented in the resolutions and are consistently regarded by the UNSC as constituting serious obstructions to achieving peace. The unwillingness of states to recognise the acquisition of territory by force, sometimes referred to as the 'Stimson Doctrine', is of central importance to the question of Palestine as the entire territory that the Palestinians are claiming for their state (22 percent of historical Palestine - Gaza Strip and West Bank, including East Jerusalem) is land occupied by Israel since 1967.

The UNSC has upheld this principle of international law in its resolutions on the question of Palestine. Not less than eight UNSC resolutions reaffirm this point. The first to be passed was Resolution 242 (22 November 1967), "*emphasising* the inadmissibility of the acquisition of territory by war" and the "need to work for a just and lasting peace in which every State in the area can live in security". A subsequent six resolutions confirming the principle were passed between 1968 and 1980 (252, 267, 271, 298, 476, and 478). All were passed in relation to 'legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem' which the UNSC adds 'are invalid and cannot change that status'.

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[7] UNSC resolutions on the Arab-Israeli conflict. Retrieved 10 January 2007, from http://domino.un.org/UNISPAL.NSF/vCouncilRes.

The eighth resolution to be passed stating the principle of the inadmissibility of acquisition of territory by force was Resolution 681 (20 December 1990), in which the UNSC was "*gravely concerned* at the dangerous deterioration of the situation in all the Palestinian territories occupied by Israel since 1967, including Jerusalem, and at the violence and rising tension in Israel". The Council was also "alarmed by the decision of the Government of Israel to deport four Palestinians from the occupied territories in contravention of its obligations under the Fourth Geneva Convention, of 1949" (Resolution 681, 20 December 1990).

The UNSC's support for the principle of the inadmissibility of the acquisition of territory by force is critical to the question of a Palestinian state. Although implicitly confined to the territory Israel acquired by force in 1967 and not the 23 percent of historical Palestine it acquired in the war of 1948 (beyond the 55 percent accorded to it in the 1947 UN partition plan – UNGA resolution 181), the principle certainly gives credence to Palestinian claims to territory beyond the 1967 borders. The only question remaining is whether the UNSC has recognised the political rights of the Palestinians.

Resolution 242, the most frequently recalled UNSC resolution on the question of Palestine, did not mention the political rights or aspirations of the Palestinians. However, Resolutions 1397 (12 March 2002) and 1515 (19 November 2003) both affirm "a vision of a region where two States, Israel and Palestine, live side by side within secure and recognised borders". Additionally, Resolution 672 (12 October 1990) reaffirms that "a just and lasting solution to the Arab-Israeli conflict must be based on its resolutions 242 (1967) and 338 (1973) through an active negotiating process which takes into account the right to security for all States in the region, including Israel, as well as the *legitimate political rights of the Palestinian people*" [emphasis added]. Resolution 672 not only affirms the political rights of the Palestinians as legitimate, but by basing this affirmation on Resolution 242, it is invoking the principle of inadmissibility of acquisition of territory by force and the requirement for Israel to withdraw from territories it has occupied since 1967.

It should be recalled that the territory Israel has occupied since 1967 (Gaza Strip and West Bank, including Jerusalem) is only part of the territory that Israel illegally occupies according to the principle of 'the inadmissibility of the acquisition of territory by force'. Numerous historians, including Ilan Pappe (2007), have provided detailed documentation that Israel acquired the 23 percent of historical Palestine it currently controls (beyond the 55 percent it was allotted under UNGA Resolution 181 in 1947) by way of armed force. While this illegal acquisition of territory is not specifically addressed by the UNSC, the principle of 'the inadmissibility of the acquisition of territory by force' has been repeatedly invoked by the UNSC in reference to Israel and could be utilised at some future point by Palestinian and transnational advocacy groups seeking restitution for the ethnic cleansing of 1947-1949.

Jerusalem

Israel's occupation of Jerusalem has been addressed by the UNSC in the same terms in no less than ten resolutions. The UNSC has maintained that the acquisition of territory by force is inadmissible. All ten resolutions concerning Jerusalem state that the actions and activities of Israel to change the physical, demographic, and cultural character of Jerusalem have 'no validity' or are otherwise 'null and void'. The UNSC has required Israel to rescind or desist from its activities in Jerusalem in nine resolutions. In seven of its resolutions, the Council has stated that Israel's policies and practices in Jerusalem constitute an obstruction to peace.

The Council has requested the international community to not recognise Israel's alterations to the status and character of Jerusalem, specifically the establishment of its capital there. No UNSC resolution has made any provision for Israeli control over Jerusalem or supported its capital to be moved there. In fact, the UNSC has not altered the position taken by the General Assembly in 1947 (Resolution 181), which confirms Jerusalem's status as *corpus separartum.* UNSC Resolution 452 (20 July 1979), which was passed on the basis of the findings of a UN Commission established 'to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem', emphasises "the *specific status of Jerusalem"*, and reconfirms the relevant UNSC resolutions concerning Jerusalem and in particular "the need to protect and preserve the unique spiritual and religious dimension of the Holy Places in that city [emphasis added].

There are six UNSC resolutions that specifically address the status of Jerusalem, which contain the 'Stimson Doctrine' or the principle of international law which asserts that the acquisition of territory by force or war is inadmissible. The first UNSC resolution to address the status of Jerusalem (252, 21 May 1968), states "the need to work for a just and lasting peace" and then emphasises that "acquisition of territory by military conquest is inadmissible". Resolution 252 requires Israel to comply with General Assembly Resolutions 2253 (ES-V) of 4 July 1967 and 2254 (ES-V) of 14 July 1967 and asserts that "all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status". It also "*urgently calls* upon Israel to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem" (Resolution 252, 21 May 1968).

The follow-up resolution on the matter a year later (Resolution 267, 3 July 1969), noted that "since the adoption of the above-mentioned resolutions [252, 2253 (ES-V) and 2254 (ES-V)] Israel has taken further measures tending to change the status of the City of Jerusalem". Resolution 267 confirms that "all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem, including expropriation of land and properties thereon, are invalid and cannot change that status" and "*urgently calls* once more upon Israel to rescind forthwith all measures taken by it which may tend to change the status of the City of Jerusalem, and in future to refrain from all actions likely to have such an

effect". It also contains a request to Israel "to inform the Security Council without any further delay of its intentions with regard to the implementation of the provisions of the present resolution".

An arson attack on the Al-Aqsa Mosque on 21 August 1969 led to the subsequent resolution, 271 (15 September 1969), which "*condemns* the failure of Israel to comply with the aforementioned resolutions [252 and 267]" and "*reiterates* the determination in paragraph 7 of Resolution 267 (1969) that, in the event of a negative response or no response, the Security Council shall convene without delay to consider what further action should be taken in this matter". Despite this provision, the fact that the subsequent resolution (298, 25 September 1971) notes 'with concern' that "since the adoption of the above-mentioned resolutions Israel has taken further measures designed to change the status and character of the occupied section of Jerusalem", the UNSC failed to include any statement about 'further action' to be taken on the matter. Resolution 298 'confirms', however, "in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and *legislation aimed at the incorporation of the occupied section*, are *totally invalid* and cannot change that status [emphasis added]. The inclusion of the statement about 'incorporation' of the 'occupied section' being 'totally invalid' and not being able to change the 'status' of Jerusalem, clearly demonstrates the unwillingness of the UNSC to recognise an Israeli annexation of Jerusalem, a point reinforced by Resolution 478, discussed above. In sum, the position of the UNSC is that Israel illegally occupies the city of Jerusalem.

Israeli settlements

The UNSC has determined, by way of resolutions 446, 452, 465, and 471, that the Israeli settlements on the Palestinian territories occupied since 1967 are 'illegal', 'null and void', and should be 'dismantled' as they constitute a "violation of the Fourth Geneva Convention" and "a serious obstruction to achieving a comprehensive, just and lasting peace". Moreover, the Council has called on the international community not to support Israel in the pursuit of its settlement policy.

The four UNSC resolutions specifically address the issue of the Israeli settlements on Occupied Palestinian and other Arab Territories. Each of the four resolutions state that the settlements are an 'obstruction to peace' and have 'no legal validity'. Three resolutions state that the settlements have 'no validity' or are otherwise 'null and void'. Three resolutions also have required Israel to rescind or desist from construction of the settlements.

By way of Resolution 446 (22 March 1979), the first resolution to specifically address the matter, the UNSC determined that "the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have *no legal validity* and constitute a *serious obstruction to achieving a comprehensive, just and lasting peace* in the Middle East [emphasis added]. This resolution, also identifying that the practice of population transfer involved in the settlement process constitutes a violation of the Fourth Geneva Convention:

> *Calls once more upon* Israel, as the occupying Power, to abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories (Resolution 446, 22 March 1979).

Moreover, Resolution 446 also established a commission consisting of three members of the UNSC "to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem".

The recommendations of the report prepared by this commission (contained in document S/13450) were accepted by the Council in the following resolution (452, 20 July 1979). Resolution 452 begins by strongly deploring "the lack of co-operation of Israel with the Commission" and reaffirms the point that "the policy of Israel in establishing settlements in the occupied Arab territories has no legal validity and constitutes a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949". It also draws attention to the "*grave consequences* which the settlements policy is bound to have *on any attempt to reach a peaceful solution* in the Middle East" [emphasis added] and "*calls upon* the Government and people of Israel to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem". It is noteworthy that the UNSC requested the commission, "in view of the *magnitude of the problem of settlements*, to keep under close survey the implementation of the present resolution and to report back to the Security Council" [emphasis added].

The subsequent resolution on the matter (465, 1 March 1980) accepts the conclusions and recommendations of the second report prepared by the Commission (contained in document S/13679). The resolution begins by *"strongly deploring* the refusal by Israel to co-operate with the Commission and regretting its formal rejection of resolutions 446 (1979) and 452 (1979)". It restates the fundamental determination of the UNSC with respect to the settlements that:

> all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have *no legal validity* and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant *violation of the Fourth Geneva Convention* relative to the Protection of Civilian Persons in Time of War and also constitute a *serious obstruction to achieving a comprehensive, just and lasting peace* in the Middle East [emphasis added] (Resolution 465, 1 March 1980).

Resolution 465 goes further than its predecessors to call for the 'dismantling of existing settlements' and for "all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories".

The matter of the settlements was again specifically addressed by the UNSC in Resolution 471 (5 June 1980) when assassination attempts were made against the Mayors of Nablus, Ramallah, and Al Bireh. The UNSC was "*deeply concerned* that the Jewish settlers in the occupied Arab territories are allowed to carry arms, thus enabling them to perpetrate crimes against the civilian Arab population" and expressed "*deep concern* that Israel, as the occupying Power, has failed to provide adequate protection to the civilian population in the occupied territories in conformity with the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War" (Resolution 471, 5 June 1980). Quite significantly, the UNSC again called upon "all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories" and reaffirmed "the *overriding necessity* to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem" [emphasis added].

The contradiction between the presence of the settlements on Palestinian land and the UNSC's vision for two states, Israel and Palestine, side-by-side in peace and security, has been highlighted by the findings of a report, 'Ruling Palestine: A history of the legally sanctioned Jewish-Israeli seizure of land and housing in Palestine', conducted by the Geneva-based Centre on Housing Rights and Evictions (COHRE) and BADIL Resource Centre for Palestinian Residency and Refugee Rights (Dajani 2005). One of the main conclusions of the research is that a two-state solution has been made practically impossible due to Israel's continued expropriation of Palestinian property and its denial of Palestinian refugees their right to recover their original homes and lands. A combination of confiscated land for settlements and what Israel refers to as its 'security barrier' is estimated to result in the reduction of Palestinian land within the occupied West Bank and Gaza to less than eight percent of the territory comprising Mandate Palestine. The report warns that even in the event of a negotiated settlement, a viable Palestinian state would not be feasible due to the shortage of available land and infrastructure and lack of territorial contiguity, all a result of, and compounded by, the extent and positioning of the settlements on the West Bank.

It is also noteworthy that survey research has found that a majority of Americans are opposed to the construction of Israeli settlements on Palestinian land. Interestingly, prior to 2002, no data was published regarding American views of Israeli settlements. In May 2002, however, when a PIPA poll asked Americans whether they think it is right or not for Israel to build settlements in the West Bank and Gaza, 52 percent said they should not, while 35 percent said it was all right (12% were unsure). Moreover, research has found that opposition to the settlements increases when the question is framed in the context of international law (WorldPublicOpinion.org 2006).

Palestinian refugees

In the war of 1948, over half the Palestinian population were made refugees. Under the Universal Declaration of Human Rights, the Palestinians have a right to return to their homes and land. This right has been repeatedly reaffirmed by the UN General Assembly since Resolution 194 was passed in 1948. It is also reaffirmed in UNSC resolutions 89, 93, 237 and 242.

To return to one's homeland is a right of refugees established in international law.
To
support this point one may cite Article 13 of the Universal Declaration of Human Rights (1948), Article 12 of the International Covenant on Civil and Political Rights (1996), and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1966). The right of return enshrined in these documents applies to the Palestinians as it does all human beings.

Most frequently cited in the literature on the issue of the right of return specifically of the Palestinian refugees is the General Assembly Resolution 194 (11 December 1948). It provides for 'the right of return for those wishing to do so and the right to be compensated for those not wishing to exercise this right'.

In terms of status in international law, General Assembly resolutions are not normally considered to have the authority of those passed by the UNSC. However, this particular resolution has been reaffirmed by the United Nations on over 100 occasions. Mazzawi (1997) asserts that the almost annual reaffirmation of Resolution 194 by the UN (and sometimes more than once annually) strongly demonstrates the international regard for the resolution and gives it a status beyond what may normally be attributed to a General Assembly resolution.

With respect to the UNSC resolutions concerned with the issue of Palestinian refugees we first find Resolution 89 (17 November 1950), which "*requests* the Egyptian-Israel Mixed Armistice Commission to give urgent attention to the Egyptian complaint of expulsion of thousands of Palestine Arabs". It calls upon both Egypt and Israel "to give effect to any finding of the Egyptian-Israel Mixed Armistice Commission regarding the repatriation of any such Arabs who in the Commission's opinion are entitled to return." What is apparent from this resolution is support for the return of those made refugees in the 1948 war.

Similarly, in Resolution 93 (18 May 1951), which was passed the following year in response to the Syrian complaint about the evacuation of Arab residents from the demilitarised zone, the UNSC decided "that Arab civilians who have been removed from the demilitarised zone by the Government of Israel should be permitted to return forthwith to their homes and that the Mixed Armistice Commission should supervise their return and rehabilitation in a manner to be determined by the Commission".

It is Resolution 242 (22 November 1967), however, that is frequently quoted as representing the UNSC's position concerning the issue of Palestinian refugees.

While this resolution 'affirms' the 'necessity' for "achieving a just settlement of the refugee problem", it certainly does not use the clear and unambiguous language of General Assembly Resolution 194 and other UN resolutions.

It would appear though, that the resolution preceding 242 has been overlooked. Resolution 237 (14 June 1967) begins by affirming that "essential and inalienable human rights should be respected even during the vicissitudes of war". Recall that return to their homelands is an inalienable right of refugees enshrined in the Universal Declaration of Human Rights (Article 13). Resolution 237 clearly supports the right of return of the Palestinian refugees as it calls upon "the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to *facilitate the return* of those inhabitants who have fled the areas since the outbreak of hostilities" [emphasis added].

UNSC Resolution 242 affirmed the necessity for "achieving a just settlement of the refugee problem". It is noteworthy that this affirmation was made in the context of the resolution's requirement for "establishing a just and lasting peace in the Middle East"; however, the "just settlement of the refugee problem" it required was not met. Seven years later, to the date, by way of UNGA Resolution 3236 (22 November 1974), the UN reaffirmed its position on a "just settlement" of the problem. The resolution clearly established the "return" of the Palestinian refugees "to their homes and property from which they have been displaced and uprooted" as an "inalienable right". It also reaffirmed the Palestinians' right to "self-determination without external interference" and "national independence and sovereignty", as "indispensable for the solution of the question of Palestine" and "the establishment of a just and lasting peace in the Middle East" (Resolution 3236, 22 November 1974).

The UN has been engaged in the Israel-Palestine conflict almost since its inception, but its decisions have not been the basis on which peace has been pursued. An emphasis on negotiations between two highly asymmetric parties coupled with an almost complete absence of reference to international law has been to the detriment of achieving a just and lasting peace between Israel and Palestine. The UNSC defines the resolution of the Israel-Palestine conflict in terms of a 'just peace'. The position of the Council is that justice is a fundamental condition of peace, which is intended to be both comprehensive and lasting. The conditions for a just peace determined by the Council are based on the norm of the restoration of rights.

This comprehensive content analysis of the UNSC resolutions concerning the Israel-Palestine conflict has identified certain basic facts of the conflict that are pertinent to the achievement of a just and lasting peace as determined by the Council. The norms and obligations incumbent upon Israel, the Palestinians, and the international community have also been identified. Based on these resolutions, Israel must end its illegal occupation of Palestinian and other Arab territory, including Jerusalem. The settlements it has constructed on these lands are illegal

and must be dismantled. The Palestinian refugees driven from their homes and lands, not only in 1967 but also between 1947 and 1949, have the right to return.

Support for a just peace

Americans are calling for their government to be even-handed in dealing with Israel-Palestine. Research by Stephen Kull (2005) finds that about 70 percent of Americans say that the US should be even-handed and not take sides in the conflict. However, 57 percent state that this is not happening and that the US favours Israel. In a poll conducted in July 2004, the Pew Research Centre found that 40 percent of respondents said they sympathise with Israelis, 13 percent with Palestinians, but most interestingly, 47 percent refused to answer the question, suggesting a desire for even-handedness according to the report's author (Kull 2005). In more direct terms, a strong majority of Americans recognise that the US is not a fair broker in the Israel-Palestine peace process. In January 2006, a Public Agenda poll asked if the criticism that 'US policies are too pro-Israel for the US to be able to broker peace between Israel and the Palestinians' was justified or not. Sixty-two percent said that it was justified, while only 25 percent said it was not justified at all (WorldPublicOpinion.org 2006).

In May 2002, when PIPA asked Americans who should take the lead in the Israel-Palestine peace process, only 13 percent favored the US taking the lead. A very strong majority of 68 percent favored a multilateral approach, with the largest proportion (41%) favoring the UN taking the lead and 27 percent favoring 'a group of leading nations, including the US'. Moreover, most Americans (56%) believe that the UN is most capable of being even-handed and dealing fairly with both parties. Perhaps most compelling, though, is that the same poll also reported that two-thirds of Americans support a resolution of the Israel-Palestine conflict to be decided by the UNSC (WorldPublicOpinion.org 2006). Poll data suggests that this is an internationally-shared view.

In the immediate aftermath of 9/11, sentiments among Western publics were favourable to unilateralism in response to conflict or, more specifically, terrorism. However, largely on account of the perceived failure of the 'war on terror', support for multilateralism has been re-established. Principally, there has been renewed support around the world for the UN to play the leading role in conflict resolution. Recent poll data suggests that there exists strong international will to resolve the Israel-Palestine conflict within the framework provided by the UN and its resolutions.

Research published by the Chicago Council on Global Affairs and WorldPublicOpinion.org in 2007 found considerable support for the UN, which is seen around the world as the key organisation for conflict resolution according to the report. Across all 12 countries surveyed, majorities in eight (US, Armenia, Poland, France, Palestine, Israel, China, and India) and pluralities in four (Argentina, Russia, Ukraine, and Thailand), support the UNSC authorising the use of military force to protect people from severe human rights violations, such as

genocide, even if the government in question is opposed. It is noteworthy that the highest levels of support were found in China (76%), US (74%), Palestine (69%) and Israel (64%). Additionally, an average of 74 percent of respondents in the countries surveyed said that the UNSC has the right to defend a country that has been attacked, an average of 69 percent support the UN stopping a country from supporting terrorist groups, and an average of 48 percent support the UN restoring by force a democratic government that has been overthrown.

Most relevant to this paper, however, is that across the countries surveyed, most respondents said they were willing to accept UN decisions even if those decisions went against the preference of their own country. Ten countries (four majorities and six pluralities) out of 16 surveyed agreed to accept such UN decisions. Those with the highest proportions of respondents willing to accept UN decisions were China (78%), France (68%), US (60%), and Israel (54%). The fact that 54 percent of Israelis agreed (although 38 percent disagreed) that "when dealing with international problems, Israel should be more willing to make decisions within the United Nations even if that means Israel will sometimes have to go along with a policy that is not its first choice" is highly significant in terms of the viability of a UN-defined resolution of the conflict (Chicago Council on Global Affairs and WorldPublicOpinion.org 2007).

The legacy of the holocaust would certainly prevent any coercive measures being taken by the West against Israel. However, as in the case of apartheid in South Africa, there is significant potential for transnational advocacy networks to raise awareness as to the plight of the Palestinians and to construct an argument that would make supporting the status quo increasingly uncomfortable for Western governments. As the work of Risse, Ropp, and Sikkink (1999) demonstrates, international norms have the capacity to constitute national interests of even the most powerful states and become established not necessarily because of 'great powers', but the campaigning of transnational advocacy networks on the basis of international law. Indeed, the repressive policies and practices of Israel against the Palestinians that have resulted in a rise of negativity towards Israel globally may signal a turning of the tide in favour of a just peace.

A poll conducted by the European Commission in October 2003 with a sample of 7,500 Europeans (500 from each of the then 14 EU member-nations) found that 59 percent placed Israel at the top of the list of nations that threaten world peace (Beaumont 2003). Additionally, in a poll conducted across 27 countries for the BBC World Service by PIPA and GlobeScan in late 2006 and early 2007, respondents were asked to rate 12 countries – Britain, Canada, China, France, India, Iran, Israel, Japan, North Korea, Russia, USA, Venezuela, and the European Union, as having a positive or negative influence. A majority of respondents stated that Israel and Iran have a mainly negative influence in the world (Kull and Miller 2007).

An average of 56 percent across the 27 countries have a mainly negative view of Israel, with only 17 percent having a positive view, which was the least positive rating for any country evaluated. In 23 countries the most common view was

negative, with only two leaning towards a positive view (Nigeria and the US) and two divided (Kenya and India). The most negative views of Israel were found in the predominantly Muslim countries surveyed, including Lebanon (85%), Egypt (78%), Turkey (76%), UAE (73%) and Indonesia (71%). However, negative views of Israel were also expressed by large majorities in Europe, including Germany (77%), Greece (68%), France (66%), and Britain (65%) as well as in other countries, including Brazil (72%), Australia (68%), South Korea (62%), and China (57%) (Kull and Miller 2007).

Given these statistics, it would seem that the recent gestures made by the Chancellor of Germany, Angela Merkel, and the Prime Minister of Australia, Kevin Rudd, are at odds with the opinions of their people. On 12 March 2008, Rudd moved a motion in the Australian parliament to celebrate 60 years of Israel's independence, while on 18 March, Merkel addressed the Israeli Knesset, expressing 'shame' over the holocaust and affirming Germany's special responsibility toward Israel on its account. In Australia, not only did many members of Rudd's own party refuse to attend the session of parliament but others walked out during his address. Furthermore, numerous individuals, groups, organisations, and unions publically voiced their objections to the motion through letters, protests, and a large advertisement on page seven of the nation's national daily, *The Australian*, which carried the headline 'Improper motion needs proper action' and the subheading 'Not in our name'. The advertisement tied the creation of Israel in 1948 to the ethnic cleansing of half the indigenous Palestinian population at the time. In Germany, polls following the Chancellor's visit showed that a majority of Germans rejected her statements, specifically the notion that Germany still has a 'special responsibility' to Israel because of the holocaust (Weinthal 2008). These developments should suggest to Western leaders that today they have significantly more support within their constituencies for pressuring Israel to support the terms of a just peace than what may have been conceivable a few decades ago.

Palestinian resistance in context

In spite of encouraging signs in the form of global support for the UN and a just resolution of the Israel-Palestine conflict, deep concerns over terrorism and terrorist organisations remain high on the political agenda globally. The failure to resolve the Israel-Palestine conflict must be understood in terms of international norms and identity factors. From this 'constructivist' perspective, a resolution of the conflict is obstructed by the direct competition that exists between its two most central international norms, namely: 'self-determination', the fundamental claim of the Palestinians, and 'self-defence', the overriding concern of Israelis. Unlike the case of South Africa, for instance, where the single international norm of 'racial equality' was invoked by transnational advocacy groups to support the elimination of apartheid (Klotz 1995), the norm of self-determination is offset by the equally well-established norm of self-defence in the case of Israel-Palestine (Rane 2009).

As a strategy for creating publicity for their cause and even in advancing recognition from the UN, Palestinian violence has historically achieved some

successes, particularly in regard to resolutions that were passed in the 1960s and 70s recognising the political and human rights of the Palestinian people as well as the granting of 'special-observer status' to the PLO in 1974. However, beyond generating publicity, which over time has increasingly become a liability, Palestinian use of violence has not been successful to the extent of achieving any of the Palestinian national goals (Rane 2009; Miskel 2005; Pape, 2005). Since the events of 9/11 and the commencement of the 'war on terror' – coupled with Western concerns over the increasing resurgence of political Islam, specifically the election of Hamas in the case of Palestine – the norm of self-defence invoked by Israel has further marginalised the norm of self-determination. Israel's invocation of the norm of self-defence has been accorded increasing precedence, providing justification for 'security' and 'counter-terrorism' measures that Palestinians, the UN, and numerous human rights groups have described as 'repression' and violations of human rights and international humanitarian law. Moreover, the impact of the 9/11 era has more solidly established Israeli 'security concerns' as an overriding factor in the peace process, as exemplified in the Roadmap, as well as the policies and actions of the Quartet (de Soto 2007).

From a constructivist perspective of international relations, should the Palestinians shift their resistance from violence to nonviolence they will be better able to transcend the impasse of conflicting norms (self-determination versus self-defence). Nonviolence has the potential to undermine and discredit Israeli claims of self-defence and expose them as repressive policies and practices unbecoming of a Western, liberal democracy. Moreover, it would allow transnational Palestine advocacy networks the unimpeded opportunity to utilise available historical, moral, and legal resources; promote the norm of self-determination; and pressure global powers to support a just resolution of the conflict based on the UN resolutions, which favour the restoration of Palestinian rights as a requisite for achieving a just and lasting peace. Additionally, Palestinian non-violence would provide a platform from which Western politicians could support a just peace without concern for charges of rewarding terrorism, undermining security, or imposing on a nation's right to defend itself. It would place pressure on politicians who currently oppose a just peace on the grounds of security by foreclosing the self-defence argument.

It must be stated that not all Palestinians advocate violence and even among those who do, the exclusive motivation is not necessarily religion, specifically Islam. However, in the resurgence of Islam since the 1970s, the issue of Palestine has continued to be a central factor, while Palestinian society and Palestinian resistance has become increasingly 'Islamised' over the decades of occupation (Bucaille 2004; Nusse 1998; Litvak 1998; Milton-Edwards 1996). The causes, sources, and solution of the conflict are increasingly viewed by Palestinians through a 'religious-Islamic lens' (Litvak 1998). The classical understanding, interpretation, and application of *jihad* resonates within Palestinian society, particularly among the growing Islamically-oriented. Bucaille (2004), for instance, writes that in the post 9/11-era:

> Fatah activists have begun imitating Islamist methods. But these particularly murderous tactics have had the effect of radicalising Israeli society, shoring

up the Israeli administration's security policy and steadily stripping away Palestinian legitimacy on the international scene. Meanwhile the brutal repression carried out by the Israeli state has the reverse effect of recruiting ever more Palestinian extremists to the cause (p.xvii-xviii).

In the case of the first *intifada* (1987-1993), which is widely regarded as the most significant attempt of the Palestinians to wage a non-violent struggle for liberation, nonviolence easily gave way to violence. After a relatively short time, Palestinian ambivalence to the concept of nonviolence and the pride of place armed resistance held among influential Palestinian groups like Hamas, Islamic Jihad, and also Fatah. Amid the collapse of the first *intifada,* The Centre for the Study of Nonviolence in Palestine concluded that the perception among Palestinians of nonviolence as 'strange to Islam' was widespread and difficult to combat. While such non-violent concepts as 'civil disobedience' resonate with Palestinians, the notion of nonviolence fails to attain widespread respectability. Moreover, armed resistance is upheld by many Palestinians as a right and, therefore, foregoing the use of violence for a non-violent *intifada* is seen as a surrender of that right (Abu-Nimer 2003).

An objective-oriented approach

At the core of the classical Islamic doctrines of war and peace, or the *'siyar',* is *jihad* (Khadurri 1940). The dominant conceptualisation and application of *jihad* has been in militaristic terms, rendering armed struggle the most authoritative or 'Islamically' legitimate response to conflict and relations with non-Muslim enemies. The Hamas Charter exemplifies this position. It is worth recalling that understanding, theory, and knowledge do not emerge in a vacuum; rather, they are the product of human experience (Habermas 1978). Theory, explains Cox (1986), "is always *for* someone and *for* some purpose" and is derived from a particular position in time and space, "specifically social and political time and space" (p.207). In the case of *jihad*, historical experiences of the Muslims can be traced back at least to the Abbasid era when conflict with both external powers and internal forces were primary motivating factors in their understanding, interpretation, and application of *jihad* in militaristic terms.

Fighting was the prescribed means at the time as it was the most effective, and arguably the only means of defence, security, and liberation given the socio-historical context of the pre-modern world. Moreover, the context in which the Abbasid empire reigned (750-1258) was marked by war and conflict, which encouraged the jurists of the time to more closely identify with the later, more militant verses of the Quran concerning issues of war and peace than with earlier, more conciliatory verses. Indeed, the later, more militant conduct of the Prophet in response to the aggression of his enemies resonated with the Abbasid jurists more so than the restraint and non-violent approach he displayed during the earlier years of his prophethood (AbuSulayman 1993). These, it must be noted, were the formative years of Islamic law; rulings from this era continue to be regarded by many contemporary Muslim scholars as still having authoritative legal status.

Due primarily to such factors as reverence for these classical jurists and the adoption of *taqlid* or the unquestioning adherence to the views of these jurists (Kamali 2006), a militant understanding, interpretation, and application of *jihad* has remained dominant over the course of Muslim history. Moreover, this approach has been reinforced by numerous historical experiences including the Crusades, Mongol invasion, hostile relations between the Ottoman empire and various European powers, European colonial rule in most Muslim lands, the enduring Israel-Palestine conflict, and the current 'war on terror', which is viewed by many Muslims around the world as a 'war on Islam'. This is not to suggest that alternative, more conciliatory, views on *jihad*, war and peace, and relations with non-Muslims have not also been expressed by various Muslim scholars throughout Islamic history.[8]

A militant understanding, interpretation, and application of *jihad* has endured as the predominant norm among Muslims (Khadduri 1940; AbuSulayman 1993; Kepel 2003; Bonney 2004; Al-Buti 2006), while non-violent resistance is yet to be recognised in the Islamic tradition as a legitimate and normative form of *jihad*. Essentially, there has been a lack of appreciation for context, a general neglect on the part of Muslims to examine social, political, economic, and other conditions in their understanding, interpretation, and application of Islamic laws (Kamali 1996), coupled with a general failure to systematically incorporate the issue of context into a contemporary method of interpretation (Rane 2009).

A *maqasid*-oriented approach highlights, however, that *jihad* need not necessarily be conducted through the use of armed force, but in accordance with the most appropriate strategy for self-defence, protection of lives and property, elimination of oppression, and establishment of a just peace (Rane 2009). Palestinian violence and terrorism can achieve none of these objectives but, rather, places them in further jeopardy. On the other hand, nonviolence has the potential to fulfil these objectives. By way of the *maqasid*-oriented approach, the use of nonviolence gains Islamic legitimacy and authenticity.

When the Quranic verses on war and peace are analysed as a whole using the method of 'thematic induction' for the purpose of identifying the objectives, what is known as the '*maqasid*-oriented approach', the purposes of *jihad* becomes clear: self-defence, opposing aggression, and overcoming oppression and injustice (Rane 2009). Strong support for nonviolence cannot be found in any particular verse. In fact, the opposite is true; specific verses of the Quran appear to endorse the use of armed force, albeit with conditions. Fighting in the path of God is highly praised and is regarded by the Quran as a mark of faith worthy of the highest rewards from God.

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[8] Shakir (2003), for instance, refutes the notion of *jihad* as perpetual war and documents that even in the classical period there were scholars, including al-Qurtubi (d.1293), Ibn al-Arabi (d.1165), and Imam at-Tabari (d.932), who opposed the dominant understanding, interpretation, and application of offensive *jihad* and interpreted such verses as the 'sword verse' (Quran 9:5) in defensive terms. Neither Shakir nor the classical jurists he quotes, however, have moved beyond the dominant perception of *jihad* as involving the use of armed force and conceived of non-violent resistance as a legitimate form of *jihad* but have confined themselves to the debate over offensive versus defensive *jihad*.

However, as Abu Ishaq al-Shatibi (d.1388) explains, while a *maqsad* may not be identifiable from a single verse of the Quran, the reading of multiple verses on a certain issue will reveal an associated purpose, intent, or objective (Raysuni, 2006). Affirming this point, Mohammad Hashim Kamali (2006) writes that:

> There may be various textual references to a subject, none of which may be in the nature of a decisive injunction. Yet their collective weight is such that it leaves little doubt as to the meaning that is obtained from them. A decisive conclusion may, in other words, be arrived at from a plurality of speculative expressions (p.124).

Ahmad Raysuni (2006) concurs, contending that "every principle which is in keeping with the actions of the Lawgiver [God] and whose meaning is derived from sufficiently numerous and varied pieces of evidence that it may be affirmed with definitive certainty may be built upon and treated as authoritative even if it is not attested to by any specific text" (p.323). However, it will be the responsibility of Islamic militant groups, such as Hamas, to adopt such an approach in order for it to gain a normative status in Islamic practice. It is noteworthy that, as Kamali (2006) writes, "no one in 14 centuries of Islam has included it [suicide bombing] in the meaning of martyrdom or jihad" (p.214), yet it has become a normative tactic among the contemporary Islamic militant groups. This shift in what is considered to be acceptable tactics demonstrates that dramatic shifts in norms are still possible even among literalist Muslims.

Approximately 150 Quranic verses can be identified that directly relate to the issue of war and peace in Islam. In particular, there are nine chapters of the Quran (2, 3, 4, 8, 9, 22, 47, 48, and 60) in which matters concerning war and peace are specifically addressed. Additionally, there are other verses outside of these chapters that are also relevant. A thematic, inductive reading of the Quran reveals that issues of war and peace are principally addressed in the context of self-defence, faith in God and establishing a just peace. The verses specifically commanding or encouraging Muslims to engage in the use of armed force were all revealed when Muslims were already in a state of war with their enemies. Fighting was endorsed as a means of preserving the lives and religion of the Muslims. Permission was not granted to Muslims to engage in the use of armed force, however, until after the *hijra* when Chapter 22, verse 39 was revealed, stating that God gives permission to fight *"to those against whom war is wrongfully waged… those who have been driven from their homelands against all right for no other reason than saying, 'our lord is God'"* (Quran, 22:39-40). Verse 40 of this chapter further explains the reason for the permission as a means of enabling people to defend themselves and practise their religion freely: *"if God had not enabled people to defend themselves against one another, monasteries, churches, synagogues, and mosques – all in which the name of God is abundantly extolled – would surely have been destroyed"* (Quran, 22:40).

Moreover, central to this matter is the issue of justice. Because of the oppression they had suffered, particularly the dispossession of their homes and land, the Muslims were permitted to fight. Putting the issue into context, *Surah al-Baqara* warns not to *"act wickedly on earth by spreading corruption"* (Quran, 2:60) and reminds of the pledge to God to *"not shed one another's blood and not drive one another from your homelands"* (Quran, 2:84-85). Herein the Quran establishes the magnitude of taking another's life and dispossessing them of their homeland. Further on in the chapter we read the verses on 'just retribution' for killing (Quran, 2:178) and condemnation for 'wrongfully taking another's possessions' (Quran, 2:188). Subsequent to these are the verses permitting fighting. Verse 190 reads:

> *Fight in God's cause those who wage war against you, but do not commit aggression for God does not love aggressors…slay them wherever you may come upon them and drive them away from where they drove you away for oppression is worse than killing…*(Quran, 2:190-191).

The next verses state that the fighting should continue until the oppression has been overcome and if the enemy desists then hostilities should cease except against those who continue to oppress. While the Quran is unambiguous that killing is a grave sin, even to the extent that killing one person is likened to killing the whole of humanity (Quran, 5:32), oppression is considered by the Quran to be 'worse than killing' as stated in such verses as 2:217. The Quran acknowledges a universal law that *"if God had not enabled people to defend themselves against one another, corruption would surely overwhelm the earth"* (Quran, 2:251). This perspective is clearly reaffirmed in such verses as 4:75:

> *And why should you not fight in the cause of Allah and of those who, being weak and ill-treated – men, women and children – whose cry is- 'Our Lord! Rescue us from this town, whose people are oppressors. And raise for us from Thee one who will protect. And raise for us from Thee one who will help'"* (Quran, 4:75).

I have presented a comprehensive analysis of the Quranic verses on war and peace elsewhere (Rane 2009) but in sum, the *maqasid* of the Quranic verses on war and peace are the upholding of justice, self-defence, and self-determination, including freedom of religion and freedom from oppression. This is not to suggest, however, that war is endorsed as the normal basis of relations between Muslims and non-Muslims. On the contrary, the Quran clearly states that *"if they let you be, and do not make war on you, and offer you peace, God does not allow you to harm them"* (Quran, 4:90), and also that *"if they [the enemy] incline toward peace, you should incline toward peace also and trust in God. Verily He also is all-seeing, all-knowing. Should they seek to deceive you with their show of peace, God is sufficient for you"* (Quran, 8:61). Even the so-called 'sword verse' (Quran, 9:5) is balanced with such provisions enabling peaceful relations with those not engaged in hostilities or aggression. Following a reminder to the Muslims to fulfil their treaties, verse 5 of *Surah Tawbah* instructs the Muslims to:

> *Slay those who ascribe divinity to aught beside God wherever you may come upon them, and take them captive, and besiege them, and lie in wait for them at every conceivable place. Yet if they repent, and take to prayer, and render the purifying dues, let them go their way for God is much-forgiving, a dispenser of grace* (Quran, 9:5).

This verse (along with Quran, 9:29) has been quoted throughout Muslim history to justify aggression and aggressive wars against non-Muslims because of their 'unbelief'. Muhammad Asad (1980), however, explains that this verse should be read in conjunction with those that precede it and also verses 2:190-194. Of central importance is that these verses were revealed in the context of "warfare already in progress with people who [had] become guilty of a breach of treaty obligations and of aggression" (p.256). That non-Muslims are to be fought because of the their unbelief rather than their acts of aggression and oppression is doubtful given that verse 9:6 commands the Muslims 'to give protection and security to those among the enemy who seek it'. If their unbelief was the basis of fighting against them, this provision would be nonsensical.

The critical point of this discussion is the necessity to interpret in accordance with context. An extensive body of literature now exists that endorses a contextualist reading of the Quran and rejects literalism and atomism. It thereby rejects the classical view of *jihad,* advocated by such scholars as Shamseddin al-Sarakhsi (d. 1090), as a progression toward increasingly aggressive use of fighting: evolving from peaceful *da'wah*, to defensive warfare, to limited aggressive warfare, and finally to aggressive fighting against all unbelievers in absolute terms. The work of Muhammad Asad (1980), Fazlur Rahman (1984), AbdulHamid AbuSulayman (1993), Louay Safi (2001), Israr Ahmad Khan (2006) and others has effectively refuted the arguments in support of the classical doctrine of abrogation or *naskh* on which this conception of *jihad* is based.

The obvious retort to this argument is that the Palestinian people are enduring continued aggression and oppression from Israel and, therefore, their resistance through armed *jihad* is completely consistent with the Quranic provisions on war and peace and the use of armed force. Indeed, there is no question as to the Palestinians' legitimate right to engage in armed resistance, provided this does not involve attacks against unarmed civilians. However, even in such cases where permission is given, the right to fight does not mean it is an obligation, or that fighting is an end in itself. To take the example of the Prophet Muhammad, by 622 he had been granted permission to fight his enemies and by 628 he had already engaged them in three major battles. At Hudaybiyyah, this permission was still standing and the Prophet had the support of his companions to fight the Quraysh. The Prophet, however, opted for another strategy – signing a peace treaty (albeit with seemingly unfair and objectionable terms) – which turned out to be 'a manifest victory' according to the Quran (chapter 48, verse 1). Again, the prevailing circumstances of the time in accordance with the higher objectives determined the Prophet's chosen course of action.

Conclusion

A just resolution of the Israel-Palestine conflict is central to improving relations with the Muslim world. A critical dimension of this conflict is the role of religion, particularly in terms of both fuelling hostilities and perusing peace. The world is no longer divided into empires between which the normal basis of relations is war; it is divided into nation-states, almost all of which belong to an international organisation whose charter declares peace as the normal basis of relations. This is an era in which international norms and identity factors have the capacity to constitute the policies of even the most militarily powerful states. In this context, the Palestinians' most potent weapons with which to confront Israel are not explosive devices or qassam rockets, but moral power. The Palestinians have a number of tools with which to generate this moral power, including global public opinion, international calls for the UN to play the leading role in conflict resolution and the body of UN resolutions on the question of Palestine which support their human rights. Palestinian non-violent resistance would become a potent weapon in the hands of transnational Palestine advocacy networks with which to confront the major challenge to resolving the conflict: generating sufficient international pressure to compel Israel to adhere to the terms of a just peace based on international law, human rights, equality, and universal human dignity.

A peace process based on negotiations between two highly asymmetrical parties has not led to peace. The process is in need of a framework, guidelines, and basic standards. The UNSC resolutions on the Israel-Palestine conflict address all of the complex issues associated with the perpetuation of the conflict and provide a normative framework for a just peace. There is considerable support around the world for such an approach. However, political will among certain Western leaders seems to remain resistant to a just peace ostensibly on the basis of Israeli security concerns. Non-violent Palestinian resistance has the potential to annul such arguments but is yet to achieve normative status among key Palestinian groups such as Hamas. Islamic legitimacy and authenticity is important in order for new thinking and shifts in ideas to develop among Islamist groups. The contextualist and *maqasid*-oriented methodology establishes non-violence as a preferable option to violence both in terms of the higher objectives of *jihad*, enshrined in the Quran, as well as of the attainment of Palestinian self-determination. The prospects of this methodology are potentially far-reaching, with positive implications beyond Israel-Palestine to broader issues of reconciliation between the Western and Muslim worlds.

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