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Maqasid, Contextualisation and Social Science Towards a Contemporary Methodology of Interpreting the Quran

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Abstract

Although the question of Palestine continues to be of deep concern to the Muslim world, a systematic and viable Islamic response has been lacking. The case is but one that highlights the shortcomings of the classical methodology of interpretation in terms of effectively responding to contemporary conditions and realities. Using the Israel-Palestine conflict as a case study, this article examines the interpretation and application of jihad in Islam. It proposes a contemporary methodology for Quranic interpretation and application based on the integration of the maqasid-oriented approach, contextualization, and the use of social science research. The article demonstrates that, based on an 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

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in the Quran. Moreover, 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.

Keywords

Contextualist Approach, Maqasid, Non-violence, Usul Methodology, Social Sciences

Introduction

Over the past several decades there has been growing discontent among scholars of Islamic studies with the shortcomings of the classical *usul* methodology to adequately respond to the challenges of modern realities and conditions. Although a comprehensive and systematic alternative is yet to be articulated and applied, developing trends in the field are towards a *maqasid* or objective-oriented approach and the use of contextualization.

Mohammad Hashim Kamali explains that while the *maqasid* are “rooted in the textual injunctions of the Quran and the Sunnah”, their main focus is “the general philosophy and objectives of these injunctions often beyond the particularities of the text”.¹ The focus is on the goals and purpose of the text rather than the specific words and verses. He contends that the *maqasid* make the *shariah* more accessible by avoiding the literalism, atomism, conditions, and requirement associated with the *usul* methodology.²

The work of Shafi’i (d.820) had a profound and enduring impact on Islamic jurisprudence. Most significant perhaps has been the confinement of *ijtihad* to the utilisation of words and sentences of the text and anything beyond that was restricted through *qiyas* or ‘analogical reasoning’, explains Kamali. In short, the dominant *usuli* approach to Islamic jurisprudence has been based on a text-bound literalism extending to cases outside of the text only in so far as an *illah* or ‘effective cause’ could be identified for the purpose of analogy.³

AbdulHamid AbuSulayman regards the historical *usul* methodology as no longer adequate to cope with the contemporary realities and conditions of the Muslim world. He explains that this methodology lacks an appreciation for the ‘time-space dimension’ and traps Muslim thought in *taqlid* (imitation) and *talfiq* (piecing-together). By this he means that contemporary Muslim thought is neither

¹ M.H Kamali, *An Introduction to Shariah*, Ilmiah Publishers, Kuala Lumpur, 2006, p.130.

² *Ibid*, p.130-131.

³ *Ibid*, p.74-80.

original nor systematic, but based on the rules and doctrines established in a previous historical context and superficially combined and transplanted into the contemporary Muslim context.⁴

The historical formulation of *usul al-fiqh* is regarded by some as too restrictive to allow the interpretations of the Quran that are necessary to cope with modern complexities, particularly in the case of the *nusus* or clear texts of the Quran or Prophetic Traditions. Like AbuSulayman, among others, Abdullah Saeed highlights the challenges faced by the contemporary Muslim world in the realms of social order, politics, and economics, arguing that both the classical methods of *tafsir* (interpretation) and *fiqh* (jurisprudence) are no longer adequate.⁵

These concerns echo those of Ibn Ashur (d.1973) who asserts that the science of *usul al-fiqh* is insufficient to produce rulings that fulfil the objectives of Islamic law. He asserts that the propositions of *usul al-fiqh* are highly contested among scholars, who differ over the basic principles and legal rulings. The deductive method employed by *usul al-fiqh* reinforces literalism and atomism, and presents an obstruction to a realisation of the higher objectives of the law and its universal wisdom. Ibn Ashur proposes the replacement of the traditional *usul* method with an approach he calls *ilm maqasid al-shariah* or the ‘science of the higher objectives of the *shariah*’.⁶

Others argue that “Muslims have the competence to reformulate *usul al-fiqh* and exercise *ijtihad* even in matters governed by clear and definite texts of the Quran and Sunnah as long as the outcome of such *ijtihad* is consistent with the essential message of Islam”.⁷ Presently, the main alternatives, *maqasid* and contextualisation, do not necessarily form an integrated or systematic approach in the thinking of most scholars and seem to remain disconnected from theory and research into empirical realities and conditions. Writings on *maqasid* and contextualisation still tend to be at theoretical level.

To ensure relevance to empirical realities, a contemporary methodology of interpreting the Quran must integrate three approaches: *maqasid*, contextualisation, and social science research. The *maqasid*-oriented approach provides a framework through which interpretation is based on the intent,

⁴ A AbuSulayman, *Towards an Islamic Theory of International Relations: New Directions for Methodology and Thought*, International Institute of Islamic Thought, Herndon, 1993, p.60-62.

⁵ A Saeed, *Interpreting the Quran: Towards a Contemporary Approach*, Routledge, London, 2006, p.149.

⁶ Ibn Ashur, *Treatise on Maqasid al-Shariah*, International Institute of Islamic Thought, London, 2006.

⁷ A.A An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, Syracuse University Press, New York, 1990, p.28-29.

objectived, and purpose of the text. Contextualisation offers insight as to the circumstances at the time a particular verse was revealed and is sensitive to contemporary circumstances, while social science research provides an understanding of the historical and contemporary conditions and realities that enables the interpretation and application of the text to be directed towards achieving the higher objectives. Using the Israel-Palestine conflict as a case study, this article examines the issue of jihad in Islam. It will begin with a discussion of *maqasid* and contextualisation, and then proceed to outline the issue of jihad in the context of Israel-Palestine based on social science research into the political, legal, and normative dynamics of the conflict.

Maqasid

The *shariah* laws are not imposed for their own sake but for the purpose of realising certain objectives and benefits and avoiding certain harms. Kamali writes that “when there is change of a kind whereby a particular law no longer secures its underlying purpose and rationale, it must be substituted with a suitable alternative. To do otherwise would mean neglecting the objective of the Lawgiver [God]”.⁸ Adherence to this maxim is fundamental to the efficacy of any contemporary methodology of interpretation.

Such an approach is the basis of the theory of *maqasid*. The word ‘*maqasid*’ is the plural of ‘*maqasid*’, meaning purpose or objective. The scholars of Islamic law have defined the term in reference to the purpose and objectives of the law and its sources, specifically the Quran and the Prophetic Traditions. The theory of *maqasid* holds that human interest or benefit and the objectives of the law are interlinked and that “any independent interpretation of the principles of jurisprudence must be based on what is termed *istislah* [interest-based reasoning], and that one’s understanding of the relevant texts and the conclusions one draws from them must be based on the principle that the objectives of such texts are to achieve benefit and prevent harm”.⁹

More concerned with the philosophy and purpose of the law, *maqasid* has historically received insufficient attention from Islamic jurists, who were preoccupied with the letter of the law and formulation of the text. Such has been the general neglect of *maqasid* that it does not even feature in many of the reputable textbooks of Islamic jurisprudence, nor even as part of the theory of *ijtihad*.¹⁰ Indeed, the term ‘*maqasid*’ was not used in the writings of jurists

⁸ Kamali, *op. cit.*, p.51-52.

⁹ A Raysuni, *Imam al-Shatibi’s Theory of the Higher Objectives and Intentions of Islamic Law*, Islamic Book Trust, Kuala Lumpur, 2006, p.46.

¹⁰ Kamali, *op. cit.*, p.116-117.

until 300 years after the death of the Prophet Muhammad, when Abu Abd Allah al-Tirmidhi al-Hakim (d.932) became the first scholar to use the term *maqasid* and to write specifically on the topic.¹¹

It was not until more than a century later that Abd Allah al-Juwayni (d.1085), who extensively used the term *maqasid* along with its derivatives in his book, *al-Burhan*, and classified the three categories of *maqasid*: *daruriyyat*, *hajiyyat*, and *tahsiniyyat* (essentials, needs, and enhancements). He is also credited as having been the first to define the major essentials as the protection of religion, human life, the faculty of reason, progeny, and wealth.¹²

His student, Abu Hamid al-Ghazali (d.1111), expanded and developed these ideas in his famous works, *Shifa al-Ghalil* and *al-Mustasfa*. Al-Ghazali defined the five objectives of *shariah* as the preservation of religion, life, faculty of reason, chastity/progeny, and material wealth in relation to their corresponding prescribed punishments or *hudud*. A sixth objective, preservation of honour, was subsequently added by Shihab al-Din al-Qarafi (d.1285).¹³ Al-Ghazali outlined the central objectives of Islamic law in terms of intents and interests, both ‘spiritual’ and ‘worldly’. His work is attributed with having set the parameters for the understanding and application of the *maqasid*.

Although these parameters were somewhat reshaped by Abu Ishaq al-Shatibi (d.1388), they have continued to influence and constrain the thinking of *maqasid* even until today. In the two centuries between al-Ghazali and al-Shatibi, the influence of al-Ghazali can clearly be seen in terms of the direction in which the theory of *maqasid* developed. As Ahmad Raysuni documents, the contributions of the scholars during this period basically served to elaborate the model developed by al-Ghazali.

Some scholars, however, did depart from the mould constructed by al-Ghazali, including Izz al-Din Abd al-Salam (d.1261), al-Qarafi, Ibn Taymiyyah (d.1328), Ibn al-Qayyim (d.1350), and al-Shatibi.¹⁴ Abd al-Salam’s work on the *qawa’id al-ahkam* or ‘legal maxims’ broadened the discussion of *maqasid* in terms of all that which promotes benefit and prevents harm. The concept of *maqasid* was expanded in the 14th century by Ibn Taymiyyah, who identified a more open-ended list of values that included fulfilment of contracts, preservation of kinship ties, honouring the rights of one’s neighbours, sincerity, trustworthiness, and moral purity. He raised objection to the *usuli* position that limited the essential objectives of Islamic law to the five expounded by

¹¹ Raysuni, *op. cit.*, p.5.

¹² *Ibid*, p.12-15.

¹³ Kamali, *op. cit.*, p.118.

¹⁴ Raysuni, *op. cit.*, p.16-37.

al-Ghazali, going so far as to state that these five or six do not represent the highest or most significant of objectives.¹⁵

The work of al-Shatibi, however, made a profound contribution to developing the theory of *maqasid* by focusing on the concept of *maslaha* or ‘public interest’ as an approach to overcoming the rigidity imposed by literalism and *qiyas*. The *maqasid* theory of Shatibi is based on an inductive reading of the Quran in order to identify the higher objectives, intent, and purpose of the divine laws, which are intended to preserve human interests in both this world and the next. Shatibi’s theory asserts that no commandment of God is intended to cause harm for its own sake, although some actions may require struggle and hardship. All legal rulings are intended to achieve ‘balance’ and ‘moderation’ by steering Muslims toward a middle course between various types of extremes. Shatibi also emphasises consideration for outcomes or consequences. He explains that part of the objective-oriented approach is considering the outcomes of actions, in accordance with the Sunnah of the Prophet who would consider outcomes and consequences before passing judgement or taking action.¹⁶

Shatibi’s theory of *maqasid* is founded on, and originates in, the Maliki school, which unlike the others possesses an inherent concern for the objectives of Islamic law. Raysuni refers to the Maliki school as “the school of human interest and *istislah*”; the school most concerned about warding off potential evil and harm.¹⁷ He provides extensive documentation of the development of the Maliki school and explains that its knowledge and methods originate with the second Caliph, Umar bin al-Khattab (d.644).

The rulings of Umar establish important precedents in the context of changing rulings according to changing circumstances and higher objectives. In matters pertaining to *zakat*, divorce, crime and punishment, and even the distribution of conquered lands, Umar made rulings that not only differed with the rules established by the Prophet Muhammad but with the letter of the Quran. Umar’s rulings were made according to the principles of the Quran and the Prophet’s teachings. However, this is not how his rulings were understood by the classical jurists who established the Islamic law and doctrines. For scholars such as Shafi’I, the changes were “incorporated in the developing body of law and legitimised as part of the Sunnah”¹⁸ thereby rejecting the incorporation of contextualisation or a *maqasid*-oriented approach into the theory of Islamic jurisprudence.

Shatibi’s theory of *maqasid* was a response to the challenges presented by social change and the needs of Muslim Spain at the time. The 13th century was

¹⁵ *Ibid*, p.33-37.

¹⁶ *Ibid*, p.317-323.

¹⁷ *Ibid*, p.296.

¹⁸ Saeed, *op. cit.*, p.87.

a period of turmoil for the Muslim world, particularly for those regions that suffered the invasion of the Mongols. By contrast the 14th century was a period of relative peace and political stability that allowed intellectual activity to resume. Much of this work sought to re-evaluate tradition in light of the social, political, financial, commercial, and religious changes that had occurred.¹⁹ Similarly, social, political, and economic change has been the catalyst for a renewed focus on the *maqasid* today.

In modern era, the most significant contribution to the *maqasid* was made by Ibn Ashur. First published in 1946 in Tunis, Ibn Ashur's *Maqasid al-Shariah al-Islamiyyah* is arguably the most important attempt of the 20th century to further develop the theory of *maqasid*. Expressing the need for an objective-based approach to Islamic law in light of modern realities, he introduces to the theory of *maqasid* the preservation of the family system, freedom of belief, orderliness, natural disposition, civility, human rights, freedom, and equality as objectives of Islamic law.

In contemporary times, Yusuf Qaradawi has further extended the *maqasid* list to include social welfare support, freedom, human dignity, and human fraternity, while Kamali has added to this list the protection of fundamental rights and liberties, economic development, along with research and development in science and technology.²⁰ Like their predecessors, both scholars based their additions on relevant supporting texts of the Quran and Prophetic Traditions. Kamali contends that the *maqasid* remains dynamic and open to expansion according to the priorities of every age.²¹ In isolation, however, the theory of *maqasid* remains deficient to the extent that it does not systematically address the issue of context.

Contextualisation

Contextualization is an approach to interpreting the Quran that requires consideration of the text as a whole, the position of verses within the text, the circumstances or conditions of the Prophet Muhammad and the early Muslim community at the time of the revelation, and the contemporary situation or issue for which the Quranic guidance is sought. The contextualist approach actually originates with the companions of the Prophet but has been marginalised and even condemned by proponents of the more dominant textualist approaches.²²

¹⁹ M.K Masud, *Shatibi's Philosophy of Islamic Law*, Islamic Book Trust, Kuala Lumpur, 1995, p. 26-60.

²⁰ Kamali, *op. cit.*, p.118-119

²¹ *Ibid.*

²² Saeed, *op. cit.*, p.8-10, 55-56, 124.

The ‘contextualists’ are those scholars who “emphasise the socio-historical context of the ethico-legal content of the Quran and of its subsequent interpretations” and support a reading of the Quran based on the “political, social, historical, cultural, and economic contexts in which the content was revealed, interpreted and applied”.²³ As opposed to ‘textualists’, who base their claim of an ‘objective’ understanding of the meaning of the Quran on “linguistic evidence and historical reports”, contextualists find meaning to be subjective and based on differing time, places, and circumstances.²⁴ Consequently, diversity in interpretation is to be expected with differing experiences, beliefs, prejudices, and values of different interpreters.

The late Fazlur Rahman (d.1988) explains that the failure to appreciate the unity of the Quranic verses resulted in the emergence of an alternative worldview from that intended by the Quran. Historically, Islamic law has suffered from “the lack of an adequate method for understanding the Quran”.²⁵ Central to this shortcoming was a failure to appreciate the “underlying unity of the Quran . . . coupled with a practical insistence upon fixing on words of various verses in isolation”, referred to as the ‘atomistic’ approach.²⁶ The overriding problem with this approach is that “laws were often derived from verses that were not at all legal in intent”.²⁷

There has been a realisation among some contemporary Muslim scholars that if the Quran is to remain relevant to Muslim societies and conditions, given the dramatic changes that have occurred since the 17th century, a contextualist approach is necessary. A large number of contemporary scholars including Abdullahi An-Na’im, Khaled Abou El Fadl, Louay Safi, and Sohail Hashmi have discussed the need to read and understand the Quran in light of historical and contemporary contexts. Among those who have developed methods of contextualisation are Fazlur Rahman, AbdulHamid AbuSulayman, and Abdullah Saeed.

Rahman advocates a contextualist process of interpreting and applying the Quran that he refers to as a ‘double-movement’. The process involves a movement from a contemporary issue to Quranic times (first movement) and then back to the present (second movement). The process must begin, he explains, with a general historical study of the “macrosituation in terms of society, religion, customs, and institutions, indeed of life as a whole in Arabia

²³ *Ibid*, p.3.

²⁴ *Ibid*, p.103.

²⁵ F Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition*, University of Chicago Press, Chicago, 1984, p.2.

²⁶ *Ibid*.

²⁷ *Ibid*, p.3.

on the eve of Islam and particularly in and around Mecca—not excluding the Perso-Byzantine Wars”.²⁸ The first movement requires one to first “understand the import or meaning of a given statement by studying the historical situation or problem to which it was the answer”.²⁹ This step, along with the general, preliminary, historical study, is necessary for an understanding of the “meaning of the Quran as a whole in terms of the specific tenets that constitute responses to specific situations”.³⁰

The second step is the generalisation of the specific answers and to enunciate them as “statements of general moral-social objectives that can be distilled from specific texts in light of the sociohistorical background and the often-stated *rationes legis*”.³¹ The importance of social science to the ‘double-movement’ process is obvious and indeed underpins the relationship between the two movements. As it involves the general Quranic view to be embodied in the contemporary context or issue, a detailed analysis of the contemporary circumstance or issue is required in order for the most appropriate application of the Quranic values.

Following this perspective and referring to what he calls the ‘time-space dimension’, AbuSulayman explains that the pervasive usage and acceptance of *qiyas* (analogical reasoning) particularly during the Abbasid period was due to the fact that the empire was globally dominant and, therefore, content with the status quo. It, therefore, sought a methodology that would maintain the model that developed in the last years of the Prophet’s life when conflict with the tribes of Arabia was particularly intense.³²

Due to their close proximity to the time and space of the Prophet, the classical jurists could, to a greater extent, engage in literalism and be somewhat confident in analogy as a reliable methodology. However, “when contemporary jurists function in the same manner and even repeat the old instructions word for word, there is obviously a lack of appreciation for the changes that have taken place”.³³ Aside from the “noble goals” it encourages, the Sunnah “should not be extended beyond their space-time limitations”, AbuSulayman argues.³⁴ Similarly, he encourages caution when attempting to generalise Quranic verses that involve space-time elements, especially those “in the field of external relationships”.³⁵

²⁸ Rahman, *op. cit.*, p.6.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² AbuSulayman, *op.cit.*, p.75-79, 91.

³³ *Ibid*, p.77.

³⁴ *Ibid*, p.79.

³⁵ *Ibid*, p.79, 85.

AbuSulayman identifies a lack of empiricism and systematisation as the basic shortcomings of the classical Islamic legal methodology. He notes that when the classical jurists looked at contrasting actions of the Prophet and Abu Bakr in their conduct of war, they tried to explain the differences in the context of abrogation or exception and failed to realise that the actions of each were both within the Islamic framework but in response to situations that warranted different tactics.³⁶

In this respect he also argues against reading historical events in legal terms. Rather, he advocates an analysis of the political and strategic significance of the events. AbuSulayman writes that it was the Prophet's realism, "with its wide margin of political maneuverability, rather than legalism and formalism that explains the Prophet's successful conduct of external affairs".³⁷ The Prophet's actions, peaceful and forceful, were guided by what was necessary in any given circumstance and the ultimate goal of ensuring the survival of the Muslims and the prosperity of Islam, all within Islam's moral and ethical framework, which later became legal.

A more recent contribution to the contextualist approach is that of Abdullah Saeed.³⁸ He presents a comprehensive argument for the replacement of the traditional 'legalistic-literalistic' approach to interpreting the Quran, particularly the ethico-legal verses, with an approach based contextualisation. Saeed has developed a three-fold framework for a contemporary approach to interpreting the Quran involving a new classification of Quranic verses,³⁹ a new hierarchy of Quranic values,⁴⁰ and a new model for interpretation. Saeed's four-stage model

³⁶ *Ibid*, p.87-91.

³⁷ *Ibid*, p.106.

³⁸ Saeed, *op. cit.*

³⁹ Saeed identifies four categories of Quranic verses according to their subject matter:

1. The Unseen (God, Angels, heaven, hell, etc.);
2. Historically oriented (past nations, previous prophets, etc.);
3. Parables (stories or accounts that provide certain lessons); and
4. Practice-oriented (beliefs, values, ethics, morals, law, rulings, instructions, commandments, and prohibitions).

⁴⁰ Saeed's hierarchy of values are based on the ethico-legal content of the Quran concern what he refers to as 'right action' and includes:

1. Obligatory values: beliefs (*iman*), worship (*ibadat*), and the clearly defined lawful (*halal*) and prohibited (*haram*);
2. Fundamental values: repeatedly emphasised teachings such as the protection of life, property, progeny, intellect, religion, dignity, and caring for the disadvantaged as well as a range of human rights including freedom of speech, equality before the law, freedom from torture and inhumane treatment, freedom from arbitrary arrest, presumption of innocence, and protection of the environment;

for interpretation begins with the text of the Quran in its context, followed by a linguistic and literary examination of the words of the text, then an examination of the original meaning of the text for its first recipients in their socio-historic context, and finally the meaning of the text in reference to contemporary circumstances.

Saeed acknowledges the traditional Muslim view of revelation as sacred, but he makes the distinction between the revealed book (the Quran) and the human understanding of that text, emphasising that “the understanding of revelation and the revelation itself are firmly grounded in the human experience, in the time, place and circumstances of the 7th-century Hijaz in Arabia”.⁴¹ He rightly explains the critical point that interpretation, unlike revelation, is not divine, but a “human endeavour”, and therefore there is nothing sacred about a personal interpretation, even that given by “a Companion of the Prophet, or by a Successor or by early imams” and that “their understandings, like ours, are limited by context and culture and may or may not be relevant outside *their* culture, *their* context”.⁴²

A thorough and effective process of contextualisation depends on the accuracy with which both the historical and contemporary contexts are understood. A dominant conception among Muslim scholars is that the traditional field of study known as ‘*asbab an-nuzul*’ or the ‘reasons for revelation’ provides an adequate basis for contextualisation. Rahman, however, explains that the literature on *asbab an-nuzul* is “highly contradictory and chaotic” and emerged due to the failure of Quranic commentators to realise the “full import” or real significance of the situational context of the revelations.⁴³ Similarly, Saeed asserts that much of the *asbab al-nuzul* literature is “contradictory and others are historically suspect”.⁴⁴ The more viable and reliable alternative according to Saeed is anthropological research on the communities of Hijaz and Arabia that deals with the period in question.

As for an accurate assessment of the contemporary, social science research is a resource that was unavailable to the classical scholars. Modern tools and

-
3. Protectional values: legislative support for the ‘fundamental values’ in the form of certain prohibitions;
 4. Implementational values: specific measures, penalties, or sanctions used to implement and uphold protectional values; and
 5. Instructional values: measures taken in relation to a problem specific to the circumstances at the time of the revelation.

⁴¹ Saeed, *op. cit.*, p.27-28.

⁴² *Ibid*, p.4.

⁴³ Rahman, *op. cit.*, p.17.

⁴⁴ Saeed, *op. cit.*, p.117.

methods of research in the various fields including, psychology, anthropology, sociology, political science, and international relations, allow for an in-depth understanding of human individuals, groupings, and relations. The case study below of the Israel-Palestine conflict demonstrates the critical role of theory and research from the social sciences in interpreting the contentious issue of jihad.

Israel-Palestine: empirical realities and conditions

The third dimension of the methodology proposed by the article is social science research. The Quran encourages looking outside of the book and studying the creations of God as a means of developing the knowledge and skills necessary for the betterment of society.⁴⁵ This approach legitimizes the use of physical and social sciences in order to understand and effectively respond to conditions, problems, and crises, including conflict. Moreover, consideration of external realities and conditions in the decision-making process was central to the Sunnah of the Prophet as well as the practice of his companions, as the rulings of Umar clearly demonstrate.

Given the enduring importance of Palestine to the Muslim world, the Israel-Palestine conflict is a salient case study for applying this methodology to the question of jihad. Israel-Palestine 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 world⁴⁶ as well as those in the West.⁴⁷ Palestine is for many Muslims an Islamic cause; conflict with Israel has been described as “the crucible of

⁴⁵ Quran, 2:269; 3:190-191; 6:97; 13:3; 21:30-33; 29:20; 30:9; 30:22.

⁴⁶ 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. See, A Kohut, ‘15-Nation Pew Global Attitudes Survey’, *The Pew Global Attitudes Project*, Pew Research Centre, Washington D.C., viewed on 12 September 2007 <<http://pewglobal.org/reports/pdf/252.pdf>>. Moreover, research into the causes and consequences of conflict in the Middle East since 1945 has concluded that a defusion of the conflict between ‘Islam’ and the ‘West’ depends on a just resolution of the Israeli-Palestinian conflict. See, B Milton-Edwards & P Hinchcliffe, *Conflicts in the Middle East since 1945* (2nd ed), Routledge, London, 2005.

⁴⁷ 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

the conflicts affecting the Muslim *ummah* [international Muslim community]”, which for decades has “acted as the epicenter of global *jihad*”.⁴⁸

Particularly since the advent of the 21st century, the conflict’s religious dimension has been mounting and perpetuating its intractability.⁴⁹ Palestine has been at the forefront of the Islamic resurgence in the Arab and Muslim world, which has continued to expand since the 1970s, and has reached the point where Palestine’s Islamic party, Hamas, achieved a ‘landslide’ parliamentary election victory in January 2006.⁵⁰ Islam has continued to be valued by Muslims, in general, as the source of solutions for the Muslim world’s social, economic, and political problems, including ‘the problem of Israel’.⁵¹

This, however, has not translated into a viable or systematic Islamic response to the question of Palestine. Rather, the dominant ‘Islamic’ response has been *jihad* in the form of armed struggle. This must be considered that increasingly since the events of 9/11 and the subsequent ‘war on terror’, the notion of an ‘Islamic threat’ has become more dominant in international relations, manifested in the isolation of the Palestinian people and international sanctions imposed on the democratically elected Hamas government. Such measures have had a crippling impact on the Palestinian economy, society, and prospects for a just resolution of the conflict.

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.

it should be a high priority. These percentages have remained fairly constant in Pew polls since 1993. See, J Allen & A Tyson, ‘The US public’s pro-Israel history’ viewed on 12 September 2007, <<http://pewresearch.org/pubs/39/the-u.s.-publics-pro-israel-history>>. 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. See, WorldPublicOpinion.org, ‘Israel and the Palestinians’, viewed on 15 September 2007, <http://americas-world.org/digest/regional_issues/IsraelPalestinians/IsrPalest.cfm>.

⁴⁸ R Bonney, *Jihad: From the Quran to bin Laden*, Palgrave, New York, 2004, p.269.

⁴⁹ See, for instance, S Cohen, ‘Intractability and the Israeli-Palestinian Conflict’ in C Crocker, F Hampson & P Aall (eds), *Grasping the Nettle: Analysing Cases of Intractable Conflict*, United States Institute of Peace, Washington D.C., 2005. See also, S Telhami, ‘Beyond Resolution? The Palestinian-Israeli Conflict’ in C Crocker, F Hampson & P Aall (eds), *Grasping the Nettle: Analysing Cases of Intractable Conflict*, United States Institute of Peace, Washington D.C., 2005.

⁵⁰ ‘Landslide’ is the term the 6 February 2006 issue of *Time* magazine used to describe the Hamas victory. Hamas won 76 seats of the 132-seat Palestinian parliament.

⁵¹ I.R Faruqi, *Islam and the Problem of Israel*, The Other Press, Kuala Lumpur, 1980.

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.⁵² The causes, sources, and solution of the conflict are increasingly viewed by Palestinians through a 'religious-Islamic lens' (Litvak 1998).⁵³ The classical understanding, interpretation, and application of jihad as armed conflict resonates within Palestinian society, particularly among the growing Islamically-oriented.⁵⁴

In the case of the first *intifada*, 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 non-violence, and the pride of place armed resistance held among influential Palestinian groups like Hamas, Islamic Jihad, and also Fatah, PFLP and DFLP, signalled the collapse of the first *intifada*. The Centre for the Study of Nonviolence in Palestine found the perception among Palestinians of nonviolence as 'strange to Islam' to be 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 of the use of violence for a non-violent *intifada* is seen as a surrender of that right.⁵⁵

Empirical evidence confirms that the armed struggle of the Palestinians has become a liability for the cause of self-determination, while analysis of the conflict from a constructivist perspective demonstrates that nonviolence has the potential to achieve this objective.⁵⁶ However, a response based on social science research has yet to be integrated into a system of interpreting and applying such Islamic concepts as jihad. The consequence has been that armed struggle remains an Islamically preferred response despite being counterproductive, while nonviolence has lacked legitimacy in spite of its potential effectiveness.

⁵² See, for instance, A Nusse, *Muslim Palestine: The Ideology of Hamas*, Harwood Academic Publishers, Amsterdam, 1998. See also, B Milton Edwards, *Islamic Politics in Palestine*, I.B. Tauris, London, 1996.

⁵³ M. Litvak, 'The Islamization of the Palestinian-Israeli Conflict: The case of Hamas', *Middle Eastern Studies*, vol. 34, no. 1, 1998, pp.148-164.

⁵⁴ L Bucaille, *Growing up Palestinian: Israeli Occupation and the Intifada Generation*, Princeton University Press, Princeton, 2004.

⁵⁵ M Abu-Nimer, *Nonviolence and Peace Building in Islam: Theory and Practice*, University Press of Florida, Gainesville, 2003. p.165-180.

⁵⁶ H Rane, *Reconstructing Jihad amid Competing International Norms: Implications for a Resolution of the Israel-Palestine Conflict*, PhD Thesis, Griffith University, 2008.

Armed resistance has continued to be the preferred definition of jihad in the context of Palestine. Even acts of terrorism have been incorporated into this definition since the mid-1990s. As a strategy for creating publicity for their cause and even in advancing recognition from the UN, Palestinian violence has historically achieved some successes, such as the recognition in the United Nations General Assembly (UNGA) of Palestinian political rights as well as UN-observer status. 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.

Any Palestinian measure of success must be based on the extent to which the strategy has furthered the cause of statehood, satisfied refugee claims, and improved the economic and personal security of Palestinian civilians. That the economic and personal security of Palestinians only worsened over the course of the second *intifada* is clear and well documented. According to a World Bank study conducted in 2004, the collapse of the Palestinian economy was attributable to Israeli 'security' measures, specifically checkpoints and closures.⁵⁷

Furthermore, in terms of loss of life alone Palestinian losses, over the course of the conflict, have been three to four times higher than those of Israelis,⁵⁸ while the rates of serious injuries inflicted on Palestinian civilians by the Israeli military are recorded in the tens of thousands.⁵⁹ Reinhart has given a detailed account of Israel's 'policy of injuries'; her work documents a pattern of Israeli provocations designed to encourage Palestinian resistance in order to justify massive 'retaliatory' actions, which result in heavy Palestinian casualties and extensive destruction of their homes and civil infrastructure.

Other scholars, such as Norman Finkelstein, have also documented Israel's use of Palestinian resistance as a pretext or justification for further repression.⁶⁰ Ilan Pappé documents that provocation in order to justify 'retaliatory' action has been a tactic used by Israeli forces since the ethnic cleansing of Palestine began in 1947.⁶¹ Additionally, Alvaro de Soto records that in 'response' to Qassam rocket fire from the Gaza Strip, Israeli forces killed an average of 40

⁵⁷ J. Miskel, 'The Palestinian Intifada: An Effective Strategy?' *World Policy Journal*, 2005, pp.48-56.

⁵⁸ N Finkelstein, *Beyond Chutzpah: On the Misuse of Anti-Semitism and the Abuse of History*, University of California Press, Berkeley, 2005, p.96-98.

⁵⁹ T Reinhart, *Israel/Palestine: How to End the War of 1948* (2nd ed), Seven Stories Press, New York, 2005, p.112-116.

⁶⁰ N Finkelstein, *Image and Reality of the Israel-Palestine Conflict* (2nd ed), Verso, London, 2003, p.xxii-xxvi.

⁶¹ I Pappé, *The Ethnic Cleansing of Palestine*, Oneworld, Oxford, 2007, p.xiii.

Palestinians per month during 2006 alone.⁶² B’Tselem (2007) reports that the killing of 1030 Palestinians by Israeli forces in 2006 and 2007 was justified on security grounds, even though almost 20 percent were minors and almost half were not engaged in hostilities.⁶³

The strongest argument in favour of the abandonment of violence and adoption of a strictly non-violent *intifada*, however, is that the use of violence, particularly terrorism, has not only failed but has become a liability for the Palestinian cause. Robert Pape asserts that the use of suicide terrorism is increasing due to a perception of its effectiveness. He explains, however, that suicide terrorism is “unlikely to cause targets to abandon goals central to their wealth or security, for example, by allowing a loss of territory that would weaken the economic prospects of the target state or strengthen the target state’s rivals”.⁶⁴ While a correlation can be observed between suicide bombings by Hamas and Israeli compliance with its obligations under the Oslo Accords to withdraw from Gaza and Jericho, it should be noted that the Oslo Accords were not inconsistent with Israel’s strategic interests.⁶⁵

Pape observes that “Israel’s withdrawals from [parts of] Gaza and the West Bank in 1994 and 1995 occurred at the same time that settlements [in the West Bank, including Jerusalem] increased and did little to hinder the IDF’s return, so these concessions were more modest than they appear”.⁶⁶ Similarly, Israel’s withdrawal of troops and settlers from Gaza in 2005 did not represent Sharon’s support for a Palestinian state, but on the contrary, “basically killed and put into ‘formaldehyde’ the Road Map. Sharon used the disengagement to gain vital concessions from the US, including assurances from Bush on retaining the settlement blocs and no return of the Palestinian refugees to Israel”.⁶⁷ The Palestinian armed struggle, including the use of suicide bombings, has had no observable positive impact on the issues most fundamental to resolving the conflict: sovereignty over territory, the status of Jerusalem, settlements, water resources, and the return of refugees. Rather, it has made these goals more difficult for Palestinians to attain.

⁶² A de Soto, ‘End of Mission Report’, 2007, viewed on 9 August 2007, <<http://image.guardian.co.uk/sys-files/Guardian/documents/2007/06/12/DeSotoReport.pdf>>.

⁶³ B’Tselem, ‘2007: 131 Palestinians who did not participate in the hostilities killed by Israel’, viewed on 4 January 2008, <http://www.btselem.org/english/Press_Releases/20071231.asp>.

⁶⁴ R Pape, *Dying to Win: The Strategic Logic of Suicide Terrorism*, Scribner, Melbourne, 2005, p.75.

⁶⁵ Finkelstein, *op. cit.*

⁶⁶ Pape, *op.cit.* p.75.

⁶⁷ De Soto, *op. cit.* p.8.

The Palestinian people and their cause have become increasingly isolated since the events of 11 September 2001. The global, negative perception of Islam that has intensified since 2001 has negatively impacted on the Palestinian, he contends, on account of the fact that over 90 percent of them are Muslims and has manifested itself in the form of isolation and diminishing sympathy for the Palestinian struggle.⁶⁸ The asymmetry of the conflict and the image of the conflicting parties underline the need for a multilateral approach if there is to be a just, and therefore, lasting peace.⁶⁹

The failure to resolve the conflict must be understood in terms of international norms and identity factors. From this 'constructivist' perspective, a resolution of the Israel-Palestine 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. 9/11, Western concerns over the increasing resurgence of political Islam, and the election of Hamas, have combined to embolden the norm of self-defence invoked by Israel, which has further marginalised the norm of self-determination invoked by the Palestinians. Israel's repressive policies and practices against the Palestinians have been presented as 'security' and 'counter-terrorism' measures consistent with the norm of self-defence. Israeli 'security concerns' have become an overriding factor in the peace process, as exemplified in the Roadmap, as well as the policies and actions of the Quartet.⁷⁰

Generally, the prominence of human rights regimes in international relations along with the increasing influence of transnational advocacy networks have resulted in a 'deepening' of human rights norms to the extent that fewer states now deny their validity. Even though many states may violate human rights in practice, there is consensus on their validity at the international level.⁷¹ In the case of Palestine, however, international organisations, transnational Palestine advocacy networks, the Israeli left, and world leaders sympathetic to the Palestine cause are seriously undermined by Palestinian use of violence, which validates Israel's self-defence argument. Palestinian use of violence also allows Israeli security to be the priority of the peace process rather than the restoration of Palestinian rights.

⁶⁸ J Allain, *Beyond the Armed Struggle: The Relationship of International Law and the International Organizations to the Palestinian Cause*, Birzeit University, Birzeit, 2005, p.8.

⁶⁹ Rane, *op. cit.*

⁷⁰ De Soto, *op. cit.*

⁷¹ T Risse, S Ropp & K Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change*, Cambridge University Press, Cambridge, 1999, p.264.

It is useful at this point to note that there exists an extensive network of Palestine advocacy groups globally. Among the most well established are the Palestine Solidarity Committee based in South Africa, which draws on the anti-apartheid movement of that country; Stop The Wall, which is active in Palestine and around the world; and the International Solidarity Movement (ISM), which has over 30 branches around the world, including in Australia, France, Germany, Greece, Czech Republic, Spain, Sweden, UK, US, and Canada.

Within Western nations there are also numerous other Palestine advocacy groups. In the UK, there are groups such as the Palestine Solidarity Campaign (PSC), which has around 40 branches across the UK, and others such as Friends of Al-Aqsa, which is a more Islamically-oriented organisation. In the US, among the most prominent groups are Al-Awda (The Palestine Right to Return Coalition), American Association for Palestinian Equal Rights, and If Americans Knew, in addition to dozens of active university-based Palestine advocacy groups. In Canada, there is the Canada Palestine Association and Palestine Solidarity Group among numerous others. In Australia there are multiple Palestine advocacy groups in each state, including Women for Palestine, Australians for Palestine, Australian Friends of Palestine Association, Fair Go for Palestine, Australians for Justice and Peace in Palestine, and the Coalition for Justice and Peace in Palestine. Many of these groups have hundreds of members and supporters, while others, such as ISM, Stop the Wall, and the Palestine Solidarity Committee boast many more.

In Israel itself there are also Palestine advocacy groups such as Gush Shalom and the Israeli Committee Against House Demolitions.⁷² There is also the Israeli human rights group, B'Tselem, as well as international human rights organisations such as Amnesty International and Human Rights Watch that advocate on behalf of the Palestinian people. Additionally, there are a range of Arab and Islamic organisations based in Western countries that support the Palestinian cause, including the Council on American-Islamic Relations (CAIR), Muslim Public Affairs Council, and the National Association of Arab Americans in the US; the European Muslim Network, European Council for Fatwa and Research, the Federation of Islamic Organisations in Europe; and the Australian Federation of Islamic Councils to name only a few. Importantly, these Muslim organisations are joined by some of their Christian counterparts in support of Palestine. The most prominent of which is the Uniting Church, which has supported a boycott of Israel.

⁷² An extensive list of Israelis who actively support Palestinian rights can be found in R Carey & J Shainin, *The Other Israel: Voices of Refusal and Dissent*, New York Free Press, New York, 2002.

Transnational advocacy networks play an important role in reminding Western governments of their own values and of their identity as liberal, democratic societies. Katherine Sikkink observes that the diffusion of human rights norms were championed by NGOs and later adopted by state institutions. She writes that continued support for human rights depends on “the active documentation and lobbying of nongovernmental actors”.⁷³ Similarly, Risse et al argue that the diffusion of human-rights norms internationally depends on the ability of domestic and transnational advocacy networks to inform public opinion and Western governments.

The authors identify three necessary conditions for domestic change in terms of human rights: (1) exposing norm-violating states so as to raise moral consciousness and to reinforce the identity of liberal states as human rights advocates; (2) empowering, legitimising, and mobilising domestic opposition, social movements, and NGOs in support of human rights and against violators; and (3) challenging norm-violating governments so as to increase pressure and narrow their options for continued repression.⁷⁴ The activities of the above-mentioned groups and organisations are geared towards these three areas and appear to have progressed since the turn of the century.

For theories to continue to be relevant they must remain consistent with existing realities and changing conditions; concepts must be modified or rejected and replaced in response to changing conditions.⁷⁵ Unlike the Muslims of the past—Ottomans, Abbasids, Umayyads, and the Prophet and his companions—or even contemporary Muslim states and groups, such as Iran and Hezbollah—the Palestinians do not have a military option, even in self-defence. They live in a context where their use of force not only undermines their political goals but also is contrary to the higher objectives of Islam, namely the promotion of benefit and prevention of harm.⁷⁶

The world is no longer divided into empires where the normal basis of relations is war but 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

⁷³ Sikkink, ‘The Power of Principled Ideas: Human Rights Policies in the United States and Western Europe’, in Goldstein and Keohane (eds), *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*, Cornell University Press, Ithaca, 1993, p.170.

⁷⁴ Risse, Ropp & Sikkink, *op. cit.*

⁷⁵ R Cox, ‘Social Forces, State and World Orders: Beyond International Relations Theory’, in R Keohane (ed), *Neorealism and its Critics*, Columbia University Press, New York, 1986, p.207.

⁷⁶ Rane, *op. cit.*

have the capacity to constitute the policies of even the most militarily powerful states.⁷⁷ In this context, the Palestinians' most potent weapon with which to confront Israel is not Qassam rockets, but moral power. The Palestinians have a number of tools with which to generate this moral power, including contemporary research that exposes the ethnic cleansing of Palestine by Zionist forces, the United Nations (UN) resolutions on the question of Palestine, increasing global support for the UN as the primary mechanism for conflict resolution, as well as the highly negative perceptions of Israel around the world.

Due largely to the work of Israeli historians, long-held beliefs concerning the establishment of the state of Israel are being rejected as false and inaccurate. The work of Pappé, in particular, has shifted the paradigm through which the creation of the state of Israel is understood from one of war to ethnic cleansing. Details of the executions and rapes, massacres, destruction of homes, villages, and towns, and displacement of over half the Palestinian population at the time by Israeli forces provide a new narrative that undermines Israeli territorial claims and supports the right of return of Palestinian refugees.⁷⁸ Such details of what actually occurred between 1947 and 1949 carry significant moral power and could be a potent weapon in the hands of transnational Palestine advocacy networks, given the indignation that cases of ethnic cleansing and crimes against humanity generally evoke among people around the world.

This research should be appreciated in a global context of increasing adversity towards Israel. 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.⁷⁹ Additionally, in a poll conducted

⁷⁷ Particularly instructive in this context is the work of Audie Klotz. She documents that in spite of economic and strategic interests, including Cold War concerns, transnational networks advocating under the banner of racial equality were able to pressure even Britain and the US to impose sanctions on South Africa, which resulted in the elimination of apartheid and the implementation of majority rule. Klotz explains that the "extraordinary success of transnational anti-apartheid activists in generating U.S. sanctions against South Africa offers evidence that norms, independent of strategic and economic considerations, are an important factor in determining great powers' policies" (p.94). See, A Klotz, *Norms in International Relations: The Struggle against Apartheid*, Cornell University Press, Ithaca, 1995, p.94.

⁷⁸ Pappé, *op. cit.*

⁷⁹ P Beaumont, 'Israel outraged as EU names it a threat to peace', in *The Guardian*, 2 November 2003, viewed on 15 November 2007 <www.guardian.co.uk/israel/Story/0,1076084,00.html>.

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.⁸⁰

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%).⁸¹

Another significant source of moral power can be found in the body of resolutions passed by the UNSC on the question of Palestine. A content analysis of the United Nations Security Council (UNSC) resolutions on the question of Palestine passed over the last 60 years shows that a normative framework for a just peace has been established. 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. The norms and obligations incumbent upon Israel, the Palestinians, and the international community are also defined.

Contrary to popular representation of the conflict, obstructions to its peaceful resolution are not erected by the Palestinians, but by Israel. The UNSC has repeatedly identified Israel’s occupation of the Palestinian and other Arab territories, including Jerusalem, specifically its policies and practices concerning alterations to Jerusalem, construction of settlements, and other violations of international humanitarian law such as killing and injuring civilians and population transfer as constituting serious obstructions to achieving a just and lasting peace in the Middle East. The UNSC has clearly identified Israel’s

⁸⁰ S Kull & D Miller, ‘Israel and Iran share most negative ratings in global poll’, viewed on 12 September 2007 <http://www.worldpublicopinion.org/pipa/pdf/mar07/BBC_ViewsCountries_Mar07_pr.pdf>.

⁸¹ *Ibid.*

occupation of Palestinian and other Arab territories as the central cause of the conflict; it has expressed an end of the occupation as an overriding necessity and has endorsed the creation of two states, Israel and Palestine.

Overwhelmingly, the UNSC has found Israel responsible for the initiation and escalation of violence and hostility. Contrary to expectations, the Palestinians are markedly absent from the resolutions as initiators or escalators of violence and hostility. The UNSC has expressed overwhelming concern for the safety and security of the Palestinian people. Far from Israel's security needs being the central factor to a peaceful resolution of the conflict, the UNSC's position is that the Palestinian population under Israeli occupation is in continuous need of security and protection. According to the UNSC, Israel's policies and practices in violation of international law and UN resolutions facilitate the conflict's continuation and thwart the attainment of a just and lasting peace.

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 recognize 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 analysed and are consistently regarded by the UNSC as constituting serious obstructions to achieving peace.

The UNSC resolutions have addressed all of the so-called 'final status' issues or those commonly regarded as the most complex in terms of resolving the conflict, including the status of Jerusalem, settlements, and the right of return of Palestinian refugees. The continuity of the conflict is not due to indecision on the part of the UN as to what constitutes a just peace, but rather, Israeli non-compliance with these terms. 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.

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. It has repeatedly called on Israel to rescind the alterations it has made to the cultural, physical, and demographic character of Jerusalem, and it regards these alterations made to the status of Jerusalem as 'null and void'. Again, 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.

In the war of 1948, over half the Palestinian population was 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.

Transnational advocacy groups play an essential role in the diffusion of international norms and pressuring world leaders to adhere to these norms. This analysis of the UNSC resolutions provides legal arguments in support of a just resolution of the Israel-Palestine conflict. The justification for a settlement of the Israel-Palestine conflict within a framework based on the UNSC resolutions is supported by the authority of the decisions of the Council. Steven Ratner acknowledges the potential power of UNSC resolutions and asserts that "they stand a greater chance of influencing state decision-making than do many other pronouncements of international law".⁸² While he also acknowledges that the Council's pronouncements have been frequently ignored, he observes:

A Council pronouncement on a legal issue signals that powerful states are endorsing the legal claims embodied in the resolution. When those states choose to take measures to make the resolution really stick, the Council's legal pronouncements are not merely law on the books but law on the ground.⁸³

Moreover, the UN is seen around the world as the central organisation for conflict resolution; its decisions are considered authoritative and worthy of adherence. 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,

⁸² S Ratner, 'The Security Council and International Law', in D Malone (ed), *The UN Security Council: From the Cold War to the 21st Century*, Lynne Rienner, Boulder, 2004, p.602.

⁸³ *Ibid.*

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 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%).⁸⁴

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.⁸⁵ Israelis are indeed sensitive to international opinion. Over 70 percent of those surveyed in a study by Kull said that ‘if the Palestinians increasingly emphasised non-violent forms of protest and significantly reduced the amount of violence, this would lead the international community to put more pressure on Israel to make compromises’.⁸⁶

Furthermore, 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.⁸⁷ In May 2002, when PIPA asked Americans who should take the lead in the Israel-Palestine peace process, only 13 percent favored the

⁸⁴ Chicago Council on Global Affairs & WorldPublicOpinion.org, ‘World public opinion 2007’, viewed on 12 September 2007 <http://www.thechicagocouncil.org/UserFiles/File/POS_Topline%20Reports/POS%202007_Global%20Issues/WPO_07%20full%20report.pdf>.

⁸⁵ *Ibid.*

⁸⁶ S Kull, ‘Potential for a non-violent intifada: A second study of Palestinian and Israeli Jewish public attitudes toward non-violence’, *Palestine-Israel Journal of Politics, Economics and Culture*, vol. 10, no. 1, pp.116-121

⁸⁷ WorldPublicOpinion.org, ‘Israel and the Palestinians’, viewed on 15 September 2007, <http://americas-world.org/digest/regional_issues/IsraelPalestinians/IsrPalest.cfm>.

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. Most Americans (56%) believe that the UN is most capable of being even-handed and dealing fairly with both parties, with the EU ranked as the next best option (44%). 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.⁸⁸

A lack of strong external pressure on Israel has been highlighted as central to the continuity of the conflict and must be generated if there is to be a just peace.⁸⁹ Palestinian nonviolence in the first *intifada* forced Israel to the negotiating table and reaffirmed the legitimacy of Palestinian self-determination, while the violence that characterised the second *intifada* depleted the remaining moral power of the Palestinians and marginalised them and their supporters in Israel and the West. Nonviolence is the only means by which the Palestinians can reclaim the “moral high ground” from Israel.⁹⁰

A number of scholars including Jean Allain and Johan Galtung⁹¹ advocate large-scale and largely symbolic civil disobedience, as “part of an overall attempt to reveal the brutality of the occupation and to shame your oppressor both in his eyes and those of the world”.⁹² Indeed, the ability of the dominated in an asymmetric conflict to convey to the dominant party the reality of their situation is an essential aspect of the resolution process.⁹³ Palestinians must begin to respond to the situation in such a manner so as to receive benefits for the costs in life and property that they pay, employing tactics that will “require the Israelis to use force against peaceful marchers, against demonstrators, and against women and children”, that “could not be discounted internationally and could not go unanswered by politicians in states that support Israel”.⁹⁴

These observations were reinforced during my field research in Palestine and Israel in early 2006. A senior Western diplomat, who shall remain unnamed, conveyed to me in an extensive interview that Western governments, including

⁸⁸ *Ibid.*

⁸⁹ O Ramsbotham, T Woodhouse, & H Miall, *Contemporary Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts* (2nd ed), Polity Press, Cambridge, 2005.

⁹⁰ Allain, *op. cit.*, p.33.

⁹¹ J Galtung, *Nonviolence and Israel/Palestine*, University of Hawaii, Honolulu, 1989.

⁹² Allain, *op. cit.* p.36.

⁹³ P Wallensteen, *Understanding Conflict Resolution: War, Peace and the Global System*, Sage Publications, London, 2002. p.44.

⁹⁴ Allain, *op. cit.* p.38.

Australia, those of the European Union, and even the US would be encouraged to support Palestinian self-determination if Palestinians adopted “mass non-violent demonstrations and protest marches with women and young children marching up to checkpoints in front of the international media”. He also stated that the “Palestinians do not help themselves enough through more organised PR [public relations] and media campaigns” and that Hamas needs to “express itself in terms that are better understood by the West, rather than in Islamic terms that are misunderstood in the West”.⁹⁵

A new methodology

Social science research into the case of Palestine exemplifies the necessity to reformulate the classical doctrine of jihad. The dominant conceptualization 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. Reform in the interpretation of the Quran and Prophetic traditions needs to be based on ‘contextualisation’ so as to make accessible the broadest possible range of strategies in response to conflict contained in these sources. The specific method through which this contextualisation should be guided is a *maqasid* or objective-oriented approach. This approach establishes two fundamental points: jihad is not an end in itself but a means of self-defence, overcoming oppression, and establishing a just peace; and jihad has no preordained form but is a concept that can refer to multiple strategies. In order to determine the most appropriate strategy, empirical analysis of the issue in question is required.

Abu Ishaq al-Shatibi, Ibn Ashur, and others contend that the most reliable method for understanding the Quran and identifying the intent, objectives, and purpose of its content is to undertake an inductive, thematic reading of the text or *‘istiqrā’*. The nature and structure of the Quran necessitates that verses in question are analysed collectively to enable the realisation of common themes, overriding objectives, and a more thorough understanding. 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.

This approach reveals that issues of war and peace in the Quran are principally addressed in the context of self-defence and faith in God. 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

⁹⁵ Interview conducted on 22 March 2006 at the interviewee’s office in Ramallah.

their enemies. Fighting was endorsed as a means of preserving the lives and religion of the Muslims. Moreover, central to the 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. 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,⁹⁶ oppression is considered by the Quran to be worse than killing.⁹⁷

However, even a comprehensive the Quranic verses on war and peace does not reveal strong support for nonviolence 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. This is not necessarily an issue from the *maqasid*-oriented view, however. Al-Shatibi, explains that while a *maqasid* 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.⁹⁸ Kamali elaborates:

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.⁹⁹

Raysuni 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”.¹⁰⁰

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 7th century Arabia. 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

⁹⁶ Quran, 5:32.

⁹⁷ Quran, 2:191.

⁹⁸ See Raysuni, *op. cit.* See also, Masud, *op. cit.*

⁹⁹ Kamali, *op. cit.* p.124.

¹⁰⁰ Raysuni, *op. cit.* p.323.

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.¹⁰¹ In fact, the perception of armed combat as the most effective means of defence, security, and liberation remained throughout human history and only since the mid-20th century—with the establishment of international law, the United Nations, peace as the normal basis of relations between nations, and the prominence of international human rights norms—is there even the possibility of an alternative to the use of armed force.

Ibn Ashur's explanation that 'means are not intended for their own sake, but for the realisation of certain ends' is particularly important in the context of jihad. The actual act of combat or the use of armed force is a means, a method of performing jihad and not an end in itself; combative jihad is not necessarily a legal requirement in all circumstances of conflict. In fact, the legal verses or '*ayat al-ahkam*' contained in the Quran number only about 350 out of a total of 6,235.¹⁰² Notably absent from inclusion in the *ayat al-ahkam* are verses pertaining to war and peace, including those concerning jihad and *qital* [armed combat]. It should, therefore, be clear that the strategy or method of jihad is not a matter of divine law.¹⁰³

Louay Safi draws a distinction between jihad as a "permanent obligation incumbent upon Muslims" and the most appropriate "method" of jihad to be used in prevailing circumstances. He states that "while the Muslim *Ummah* is obliged to uphold the principle of jihad and satisfy its requirements, the method of honouring this principle is a question of strategy".¹⁰⁴ For Safi (2001) the question of strategy remains open even in circumstances where the task demands eliminating oppression, protecting human life, defending Muslim sovereignty, or upholding Islamic law.¹⁰⁵

¹⁰¹ AbuSulayman, *op. cit.* p.91.

¹⁰² According to Kamali, *op. cit.*, p.17, 140 of these verses refer to devotional matters (prayer, fasting, charity, pilgrimage), 70 concern family matters (marriage, divorce, custody, maintenance, inheritance), 70 relate to commercial transactions (sale, loans, leases, mortgage), 30 are about crimes and penalties (murder, theft, robbery, adultery, slander), 30 address issues of socio-political order (justice, equality, evidence, consultation, rights and duties of citizens), and 10 are on economic matters (relations between rich and poor, workers' rights and conditions).

¹⁰³ It should be noted that in Shiite Islam *jihad* is the sixth pillar of religion and therefore *jihad* is even more central to Islam for Shiites than it is for Sunnis. However, as the Palestinians are almost exclusively Sunni Muslims, this article concentrates on the place of *jihad* within the Sunni context.

¹⁰⁴ L Safi, *Peace and the Limits of War: Transcending Classical Conceptions of Jihad*. International Institute of Islamic Thought, Herndon, 2001, p.41.

¹⁰⁵ *Ibid.*

AbuSulayman (1993) agrees, arguing that the maximum number of options should be available to Muslims: “Muslims should always be able to resort to persuasion, *sabr* (patience), as well as *qital* (fighting), psychological as well as physical etc., according to their immediate needs”.¹⁰⁶ The strategy or the method of jihad “is not an arbitrary decision, but one that takes into account the general conditions of both the Muslim community and its adversaries, including the military balance between the Muslims and their enemies and the morale of the Muslim army”.¹⁰⁷

A central argument of this article is that understanding, theory, and knowledge are the product of human experience,¹⁰⁸ derived from a particular social and political context. A central function of theory is to continue to recognise and respond to changing social and political realities by reforming or rejecting old concepts and developing new ones.¹⁰⁹ Just as a militant understanding, interpretation, and application of jihad became dominant in the Muslim world in response to particular historical and political realities and conditions, contemporary realities and conditions are such that the Palestinians do not have a military option in their conflict with Israel and that the attainment of their political aspirations are determined by the extent to which they can generate sufficient moral power with which to confront Israel.

A militant understanding, interpretation, and application of jihad has endured as the predominant norm among Muslims.¹¹⁰ 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.¹¹¹ However, non-violent resistance is yet to be recognised in the Islamic tradition as a legitimate and normative form of jihad.

¹⁰⁶ AbuSulayman, *op. cit.* p.118.

¹⁰⁷ Safi, *op. cit.*, p.43.

¹⁰⁸ J Habermas, *Knowledge and human interests* (2nd ed.), Heinemann, London, 1978.

¹⁰⁹ Cox, *op. cit.*

¹¹⁰ Rane, *op.cit.*

¹¹¹ Zaid Shakir, 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*. See Z Shakir, ‘Jihad as perpetual war’ in A.A Malik (ed), *The Empire and the Crescent: Global Implications for a New American Century*, Amal Press, Bristol, 2003.

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, coupled with a general failure to systematically incorporate the issues of context and higher objectives into a contemporary method of interpretation.

Engagement in armed combat is not divinely ordained *per se* but was endorsed by the Quran in the context of particular historical and political circumstances. It is imperative to examine the circumstances pertinent to differing contexts over time and place in order to maintain the intent, purpose, and objectives of ‘divine’ guidance. Contemporary realities and conditions of the Israel-Palestine conflict not only render the use of violence detrimental to the Palestinian cause of self-determination and further entrench the occupation and repression endured by the Palestinian people, but are contrary to the higher objectives of jihad as enshrined in the Quran.

Conclusion

The methodology of interpreting the Quran proposed by this article integrates three approaches: *maqasid*, contextualisation, and social science research. The *maqasid*-oriented approach promotes a focus on the higher objectives intent, and purpose of the text. Contextualisation offers insight as to the both the historical and contemporary circumstances relevant to the text, while social science research provides an understanding of the contemporary conditions and realities that enables the interpretation and application of the text to be directed towards achieving the higher objectives.

Analysis of the Israel-Palestine conflict confirms that Palestinian use of violence has not only become detrimental to achieving their national goals but also contrary to the higher objectives for which jihad was intended, namely, protection and preservation of fundamental human rights, freedom from oppression, and self-determination. Given the realities of the contemporary context—particularly international law supporting the restoration of Palestinian rights, global support for the United Nations as the principal organ for conflict resolution, the role of international norms and identity factors, and the potential of transnational advocacy networks to promote adherence to human rights norms—Palestinian nonviolence has a higher potential than the use of armed force to achieve these objectives.

On the basis of the proposed methodology of this article, establishing a just peace is the principal objective or *maqsad* of jihad. The use of armed force is permitted for the purposes of self-defence, overcoming oppression, and ultimately restoring peace and order. Both fighting for a just cause and making peace are highly regarded acts of faith in Islam. In the context of the verses analysed, there is insufficient support for non-violent resistance as

opposed to the use of force. This, however, is highly contextual. The use of armed force is a means and not an end in itself. The *maqasid*-oriented approach, contextualisation, and the theory, methods, and findings of social science must be used to determine the most appropriate means, within the framework of the Quran, in order to fulfill its objectives.