

11 RELIGIOUS FOUNDATIONS OF THE NOTION OF *BELLUM IUSTUM*

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There was a time when many leading analysts maintained that the conduct of hostilities was not subject to any legal constraints, or as the saying would have it, that “all is fair in love and war”. In practice, the brutality of those who manipulated the power of the militant sword knew almost no bounds. The famous Roman jurist, Marcus Tullius Cicero (106–43 BCE), perhaps with this in mind, proclaimed: *silent enim leges inter arma* (“in times of war, the law falls silent”).² However, if ever this might have been true, it is clearly in our day and age no longer the case. During World War II, Lord Atkin had this to say in the British House of Lords: “In England amidst the clash of arms the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which ... we are now fighting, that the judges ... stand between the subject and any attempted encroachment on his liberty by the executive, alert to see that any coercive action is justified in law.”³ Regrettably, international humanitarian law does not altogether prohibit armed interventions as a means of resolving international disputes or internal political rivalries. As stated by one analyst, “The law acknowledges the historical reality: War is inevitable and legal.”⁴ The question of whether armed conflicts can be justified on religious ground has a history of its own.

CHRISTIAN PERSPECTIVE ON JUST WAR

There was a time when prominent proponents of Christian thought advocated the salience of *bellum iustum*, a just war, “in which God’s own will was manifest and in which God himself called his people to battle”.⁵ One of the original postulates of *bellum iustum* in Western philosophy is commonly attributed to Marcus Tullius Cicero (106–43 BCE),⁶ who proclaimed that “the rights of war must be strictly observed” and went on to explain:

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- 2 *M. Tulli Ciceronis Pro T. Annio Milone Oratio*, para IV.1 (52 BCE).
- 3 *Liversidge v Anderson & another*, [1941] 3 All. E.R. 338, at 361; and see also the Israeli case, *Ajuri et al. v Commander of the West Bank*, H.C. 7015/02, 56(6) Piskei Din 352, summarised in 2003.33 *Israeli Yearbook of Human Rights*. 249-262, at 261-262.
- 4 Eric L Chase. “To Punish and Deter Grievous Misconduct in War”, *Washington Post*, 3 September 1995, C7.
- 5 Johnson JT. 1981. *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry*. Princeton University Press, xxix.
- 6 Courtney DM. 2002. *A Just War Response to 11 September 2001 Terrorist Attack*, MA Thesis, Reformed Theological Seminary, Moscow, Idaho, 55.

For since there are two ways of settling a dispute: first, by discussion; second, by physical force; and since the former is characteristic of man, the latter of the brute, we must resort to force only in case we may not avail ourselves of discussion. The only excuse, therefore, for going to war is that we may live in peace unharmed; and when victory is won, we should spare those who have not been blood-thirsty and barbarous in their warfare.⁷

It is worth noting that Cicero, in principle, opposed the use of force and could only justify it if “discussion” was no longer an option.

In the fifth century CE, St. Augustine transformed “Roman and Hebraic ideas on war into a Christian mold while erecting a systematic moral justification for Christian participation in violence.”⁸ In *De Civitate Dei* (City of God) he proclaimed that the earthly city “desires peace for the sake of enjoying earthly goods” and that this drives it to go to war in order to attain peace.”⁹ He went on to say: “It is therefore with the desire for peace that wars are waged, even by those who take pleasure in exercising their warlike nature in command and battle. And hence it is obvious that peace is the end sought by war. For every man seeks peace by waging war, but no man seeks war by making peace.”¹⁰

As much as there might be life without pain but no pain without life, he went on to explain, “there may be peace without war, but there cannot be war without peace.”¹¹ The just war theory of St. Augustine gained great notoriety in the Middle Ages, largely through the work of Franciscus Gratianus, a canon lawyer from Bologna, who in the mid-twelfth century came to be known as the father of canon law and who in one of his many outstanding publications, *Concordia Discordantium Canonum*, included a compilation of quotations from the Church Fathers in which St. Augustine was cited no less than 64 times.¹²

In the thirteenth century, St. Thomas Aquinas proclaimed three requirements of a just war, relying on texts such as Romans 13:4: “He [the prince] bareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil.” The requirements included: (1) “the authority of the sovereign by whose command the war is to be waged”, (2) “a just cause ... namely that those

7 *Nam cum sint duo genera decertandi, unum per disceptationem, alterum per vim, cumque illud proprium sit hominis, hoc beluarum, confugiendum est ad posterius, si uti non licet superiore. Quere suscipienda quidem bella sunt ob eam causam, ut sine iniuria in pace vivatur, parva autem victoria conservandi i, qui non crudeles in bello, non inmanes fuerunt.* Cicero MT. 1913. *De Officiis* bk I XI. (English translation by Walter Miller W.) Cambridge: Harvard University Press, 34-35. Online at: http://www.constitution.org/rom/de_officiis.htm

8 Johnson, *Just War Tradition and the Restraint of War*, xxiv.

9 Schaff P (ed). 1890. *St. Augustine's City of God and Christian Doctrine*. New York: The Christian Literature Publishing. Company, bk XV ch 4.

10 Schaff P (ed). 1890. *St. Augustine's City of God and Christian Doctrine*. New York: The Christian Literature Publishing Company, bk XIX ch 12.

11 Schaff, *St. Augustine's City of God and Christian Doctrine*, bk XIX, ch 13.

12 Courtney, *A Just War Response to 11 September 2001 Terrorist Attack*, 64.

who are attacked, should be attacked because they deserve it on account of some fault" and (3) "a rightful intention, so that they intend the advancement of good, or the avoidance of evil".¹³

A just cause (*causa iusta*) thus requires "that those who are attacked, should be attacked because they deserve it on account of some fault".¹⁴ In support of this proposition, St. Thomas Aquinas referred to a statement made by St. Augustine proclaiming that "A just war is wont to be described as one that avenges wrongs, when a nation or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly".¹⁵ A just war thus came to be focused in Christian philosophy on "the avenging of wrongs".¹⁶

Hugo de Groot (Grotius), who was primarily responsible for setting international law on a new course in the early seventeenth century, was perhaps most influential in redefining *ius ad bellum* in more objective, religiously neutral, terms. Grotius indeed acknowledged that "the right to war was not completely annulled by the law of Christ",¹⁷ but based his own analysis of the right to take up arms on more neutral grounds, relying in essence on the law of nature and the law of nations. It should be noted in passing that Grotius did not concede the supposition of exponents of classical Roman law such as Gaius who identified *ius gentium* (law of nations) with *ius naturale* (natural law) but sided with Ulpianus who distinguished these two branches of the law. Grotius thus proclaimed that "not all wars are at variance with the law of nature; and this may also be said to be true of the law of nations."¹⁸

Grotius distinguished between a public war "which is carried on by the person holding the sovereign power", a private war "which is carried on by private persons without the authority of the state" and a mixed war, "which is carried on,

13 Aquinas T, *Summa Theologiae* II-II, q 40, a 1; and see Courtney, *A Just War Response to 11 September 2001 Terrorist Attack*, 69-72; Johnson JT. 2013. "The Right to Use Armed Force: Sovereignty, Responsibility, and the Common Good", in Lang AF (Jr), O'Driscall C and Williams J (eds). *Just War: Authority, Tradition, and Practice* 19. Georgetown University Press. 24-25; Boyle JM (Jr). 1985. "War: The Normative Alternatives" in Jones JD and Mark FG (eds). *Just War: Theory in the Nuclear Age*. Lanham: University Press of America, 12-13.

14 Aquinas, *Summa Theologiae* II-II, q 40 a 1 ("ut scilicet illi qui impugnantur propter aliquam culpam impugnationem mereantur"); and see Reichberg GM. 2013. "Culpability and Punishment in Classical Theories of War", in Lang, O'Driscall and Williams J. *Just War: Authority, Tradition, and Practice*, 162.

15 Aquinas, *Summa Theologiae* II-II, q 40 a 1 (with reference to St. Augustinus, *Questionum Heptateuchum*, qu. X, super Jos.: "iusta bella solent definiri quae ulciscuntur iniurias, si gens vel civitas plectenda est quae vel vindicare neglexerit quod a suis improbe factum est, vel reddere quod per iniuriam ablatum est").

16 Reichberg, "Culpability and Punishment in Classical Theories of War", 175.

17 Grotius H. 1625. *De Jure Belli ac Pacis Libri Tres* [The Law of War and Peace in Three Books]. Kelsey FW (transl., 1995). Getzville, NY: William S Hein and Company, bk 1 ch 2, para V11.1.

18 Grotius, *De Jure Belli ac Pacis*, bk 1 ch 2 para IV.1. See also bk 1 ch 2 para II.1 (noting that the fact that "not all war is in conflict with the law of nature" may be "more fully proved from sacred history").

on the one side by public authority, and on the other by private persons”.¹⁹ A public war was therefore the exclusive prerogative of the sovereign power on each side,²⁰ and was to be publicly declared²¹ after a demand for satisfaction or for a settlement was made.²² The “power of the law” is aimed at preventing intended injuries and providing actions for wrongful acts actually committed, since “where the power of the law ceases, there war begins”.²³ The “justifiable causes” generally assigned for war are threefold: defence, indemnity, and punishment,²⁴ to which Grotius added an additional cause, namely “when our lives are threatened with immediate danger”,²⁵ while emphasising that “[t]he danger must be immediate”.²⁶

There also have been isolated voices in the distant past that have called for the abolition of warfare. In the early sixteenth century, the famous Dutch Renaissance humanist and Catholic priest, Desiderius Erasmus, proclaimed: “War is a pleasant thing only for those who have never had any experience of it.”²⁷ The title of Erasmus’s meditation on war said it all: *Dulce bellum inexpertis* (War is sweet to those who have never experienced it).

In the early 1930s, Sigmund Freud, an Austrian neurologist and commonly praised as the father of psychoanalysis, and Albert Einstein, the German-born theoretical physicist, exchanged notes on “Why War?” Freud posed the question: “Why do we ... protest so vehemently against war, instead of accepting it as another of life’s odious importunities?”²⁸ He tendered the following answer to his question:

Because every man has a right over his own life and war destroys lives that were full of promise; it forces the individual into situations that shame his manhood, obliging him to murder fellow men, against his will; it ravages material amenities, the fruits of human toil, and much besides. Moreover, wars, as now conducted, afford no scope for acts of heroism according to the old ideals and, given the high perfection of modern arms, war today would mean the sheer extermination of one of the combatants, if not of

19 Grotius, *De Jure Belli ac Pacis*, bk 1 ch 3 para I.

20 Grotius, *De Jure Belli ac Pacis*, bk 1 ch 3 para IV.

21 Grotius, *De Jure Belli ac Pacis*, bk 1 ch 3 para V.

22 Grotius, *De Jure Belli ac Pacis*, bk 1 ch 3 para VI.2. See also Biederman DJ. 1986. “Reception of the Classical Tradition in International Law: Grotius”, *European International Law Review* 10:16-17.

23 Grotius, *De Jure Belli ac Pacis*, bk 2 ch 1 para II.

24 Grotius, *De Jure Belli ac Pacis*, bk 2 ch 1 para II.

25 Grotius, *De Jure Belli ac Pacis*, bk 2 ch 1 para III.

26 Grotius, *De Jure Belli ac Pacis*, bk 2 ch 1 para V. See also Gratianus F. *Concordia Discordantium Canonum*, causa XXIII, q II can II (proclaiming in the twelfth Century that “[a] just war is waged by an authoritative edict to avenge injuries”).

27 See Van Vollenhoven C. 1936. *The Law of Peace*. London: Macmillan & Company, 59; Wright Q. 1965. *A Study of War*. Second Edition. Chicago and London: University of Chicago Press, 289.

28 *The Einstein–Freud Correspondence (1931–1932)*. 1933. Paris: International Institute of Intellectual Cooperation, cor 9.

both. This is so true, so obvious, that we can but wonder why the conduct of war is not banned by general consent.²⁹

Freud concluded that the basis of their common hatred of war speaks for itself, "We cannot do otherwise than hate it. Pacifists we are, since our organic nature wills us thus to be. Hence it comes easy to us to find arguments that justify our standpoint."³⁰

Such appeals to bring warfare to an end remained voices calling in the wilderness. One is reminded of a time when it was considered legitimate to take up arms for all kinds of reasons, including for example in response to non-compliance by a State with its treaty obligations. Mr Justice Miller of the United States Supreme Court, delivering the opinion of the Court in the *Head Money Cases* of 1884, thus proclaimed:

A treaty is primarily a compact between independent nations. It depends for the enforcement of its provisions on the interest and honor of the governments which are parties to it. If these fail, its infraction becomes the subject of international negotiations and reclamations, so far as the injured party seeks redress, *which may in the end be enforced by actual war*. It is obvious that with all this the judicial courts have nothing to do and can give no redress.³¹

Justice Miller emphasised that "negotiations and reclamations" must precede that taking up of arms to enforce compliance by a state with its treaty obligations.

ISLAMIC LAW AND THE RIGHT TO ARMED JIHAD

The religiously-based advocacy of a just war was not confined to scholastic philosophy but also featured, and still features, prominently in Islamic teachings.³² "*Jihad*" is commonly invoked to denote the right to take up arms, but its meaning is not confined to "exerting efforts in war".³³ *Jihad* can also denote a personal struggle in devotion to Islam, or a crusade for upholding a principle on behalf of Islam. It is important to note at the outset, though, that *jihad* authorising the taking up of arms must not be taken to mean a holy war. As noted by one analyst, "The Arabic word *jihad* does not mean "holy war" as erroneously understood in contemporary Western scholarship. The two words "holy war" is neither found in the Quran nor in the Sunna. Islam does not describe any war as holy."³⁴ The Quran indeed authorises

29 *The Einstein–Freud Correspondence* (1931–1932), cor 9.

30 *The Einstein–Freud Correspondence* (1931–1932), cor 9.

31 *Head Money Cases*, 112 U.S. 580, 598 (1884) (emphasis added).

32 See An-Na'im AA. 2011. *Muslims in Global Justice*. Philadelphia: University of Pennsylvania Press, 51-58.

33 An-Na'im, *Muslims in Global Justice*, 51.

34 Okon EE. 2014. "Islam, War and International Humanitarian Law", *European Scientific Journal* 10:100, 110.

the right to engage in armed conflict in limited circumstances, but differences of opinion prevail as to what those circumstances entail; whether it confines *ius ad bellum* to instances of self-defense only, or also extends the right to go to war to other circumstances, such as the propagation and furtherance of the Islamic religion.³⁵

Islamic law emphasised above all peaceful means of settling disputes.³⁶ It has thus been said that “Islam as a religion of peace discourages aggression and made war a phenomenon only when it becomes necessary.”³⁷ Going to as a matter of self-defense is evidently based on necessity.³⁸ As stated in the Quran: “Fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not like transgressors. Kill them wherever you find them, and drive them out from where they have drove you out, as *Fitnah* is more severe than killing.”³⁹

The Quran also extends defensive armed interventions for the protection and saving the life of others who are being oppressed. The Quran therefore reprimanded Muslims who do not use military force in defense of the oppressed: “And what is wrong with you that you fight not in the Cause of Allah, and for those weak, ill-treated and oppressed among men, women, and children, whose cry is: Our Lord! Rescue us from this town whose people are oppressors; and raise for us from You one who will protect, and raise for us from You one who will help.”⁴⁰ The saving the life of one human being is equated in the Quran to saving of the entire humanity: “Whoever saves the life of a person is as if he has saved the whole humankind.”⁴¹

Islamic law does not confine self-defensive action to armed attacks against non-Muslim aggressors, but also supports the defensive use of armed force “against Muslims whose conduct is deemed to be subversive of the Muslim community or detrimental to the interests of Islam”.⁴² Islamic law thus sanctions the use of armed force by Muslims (Group A) against Muslims (Group B) if Group B has already embarked on hostilities against Group A, in which event Group A can take up arms to defend itself. As stated in the Quran: “And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance

35 See Shah NA. 2013. “The Use of Force under Islamic Law”, *European Journal of International Law* 24:343.

36 Haruna AL et al. 2014 “War and Islamic Humanitarian Law: Appraising Warfare and Distinction as a Principle in Hostilities”, *International Journal of Humanitarian Social Science* 4:225.

37 Haruna et al., “War and Islamic Humanitarian Law: Appraising Warfare and Distinction as a Principle in Hostilities”, 226.

38 Haruna et al., “War and Islamic Humanitarian Law”, 226.

39 Holy Quran, 2:191. “*Fitnah*” means to create disorder.

40 Holy Quran, 4:75.

41 Holy Quran, 2:213.

42 An-Na’im, *Muslims in Global Justice*, 56.

of Allah. And if it returns, then make settlement between them in justice and act justly. Indeed, Allah loves those who act justly.⁴³

It appears from this and other passages in the Quran that Islamic law authorises defensive armed interventions within the confines of interruptive self-defense only (an attack is already in progress), and does not extend defensive action – as in contemporary international humanitarian law – to pre-emptive self-defense (where a pending armed attack has not yet commenced but is imminent). The Quran thus proclaims: “Permission [to take up arms] has been given to those who are being fought, because they were wronged. And indeed, Allah is to give them victory.”⁴⁴

Islamic humanitarian law also sanctions “offensive *jihad*” – a term used to denote the taking up of arms to promote the Islamic religion. There are, indeed, texts in the Quran where the Prophet and Muslims are instructed to resort to *jihad* against unbelievers.⁴⁵ Reference is also often made to *intifadah*, which denotes a legitimate popular resistance to oppression, such as that allegedly suffered by Palestinians in consequence of the occupation of their homeland by Israeli forces. An analysis of the original sources of Islamic law led Abdullahi An-Na’im to conclude “that Shari’a sanctioned and regulated the use of force by Muslims against non-Muslims not only in self-defense but also as a means of propagating Islam.”⁴⁶

The Quran was composed over a period of 23 years and was not recorded chronologically. One must nevertheless identify and distinguish between the so-called Meccan and Medinan verses.⁴⁷ The Meccan verses were revealed before the Prophet Muhammad travelled to Medina and do not contain any authorisation to engage in armed force.⁴⁸ After the Prophet migrated from Mecca to Medina to escape the tyrannical oppression of the tribe of Quraysh,⁴⁹ verses in the Quran authorising the use of force were inserted and eventually authorisation to engage in hostilities was “converted into a divine command making war a religious obligation for the Faithful”.⁵⁰ In this time frame, *jihad* was confined to self-defensive action only: “Permission [to engage in armed conflict] has been given to those who are being fought, because they were wronged. And indeed, Allah is to give them victory.”⁵¹ In the final stage of *jihad*, the Muslim nation had become exceptionally strong, and Quranic verses now included instructions to take up arms against those who did not believe in the Islamic religion: “Fight those who do not believe

43 Holy Quran, 49:9.

44 Holy Quran, 22:39.

45 Holy Quran, 9:25-52.

46 An-Na’im, *Muslims in Global Justice*, 54.

47 See Spencer R. 2005. *The Politically Incorrect Guide to Islam (and the Crusades)*. Regnery Publishing, 24.

48 An-Na’im, *Muslims and Global Justice*, 55.

49 Malik SK. 1992. *The Quranic Concept of War*. Indian Reprint Edition. Delhi: Adam Publishers & Distributors, 11.

50 Malik, *The Quranic Concept of War*, 11.

51 Holy Quran, 22:39.

in Allah or in the Last Day and who do not consider unlawful what Allah and His Messenger have made unlawful and who do not adopt the religion of truth from those who were given the Scripture – until they give the *jizyah* willingly while they are humbled.⁵²

Applying the above directives, it is quite evident that the invasion of Kuwait by Iraq in August 1990 – one Muslim State against another – cannot with any stretch of the imagination be justified on basis of the Islamic doctrine of *bellum iustum*, and that Muslim nations, such as Egypt and Saudi Arabia, joining forces with the United States to counteract the breach of the peace by Iraq, was in full compliance with Islamic law. The question whether the contemporary militant action to establish a Muslim State in Syria and Iraq can be justified on basis of Islamic law will next be considered as a centrepiece of this chapter.

THE ISIS CRISIS

The international community was shocked in the extreme in recent years by acts of profound barbarism committed by a militant Muslim group, initially called Islamic State of Iraq and the Levant (ISIL), but which changed its name in June 2014 to Islamic State in Iraq and Syria (ISIS).⁵³ The organisation is committed to the dictates of a certain brand of the Sunni faction and strives toward bringing most traditionally Muslim inhabited states – besides Iraq and Syria – under its political control, including Jordan, Israel, Palestine, Lebanon, Cyprus and Southern Turkey. It acquired considerable financial resources by gaining control of oil fields in the eastern province of Deir-al-Zour in Iraq, taking control of bank institutions and allocating to itself large sums of money, and receiving generous funding from wealthy donors in predominantly Sunni countries of the Persian Gulf. It lured into its ranks thousands of foreign volunteers, including from around the world some from the United States and the United Kingdom. In order to achieve its political objectives, it embarked on horrific acts of terror violence.

The Sunni insurgent group that would give rise to ISIL/ISIS originated in 1999 under the name of *Jama'at al-Tawhid wal-Jihad* as the forerunner of *Tanzim Qaidat al-Jahid fi Bilad al-Rafidayn* commonly known as Al-Qaeda in Iraq. In 2006, it joined other Sunni insurgent groups to form the Mujahideen Shura Council, which consolidated into the Islamic State of Iraq and Syria, with a significant presence in Al Anbar, Nineveh and Kirkut. In 2013, the group changed its name to Islamic State of Iraq and the Levant (ISIL). It grew significantly under the leadership of Abu Bakr al-Baghdadi, due to what was perceived as discrimination against the Sunni faction of Islam in the region. Until February 2014, ISIL had close ties with Al-Qaeda, but following a

52 Holy Quran, 9:29.

53 As to the history, goals, and evil deeds of ISIL/ISIS, see “Islamic State of Iraq and the Levant”. Wikipedia. Online at: http://en.wikipedia.org/wiki/Islamic_State_of_Iraq_and_the_Levant#Designation_as_a_terrorist_organisation

power struggle, Al-Qaeda cut all ties with the group. On 29 June 2014, the group was renamed to become Islamic State of Iraq and Syria (ISIS).

ISIL/ISIS strictly imposes Islamic punishments, such as amputations, beheadings and crucifixions, and it has become notorious for its innumerable acts of extreme terror violence. The beheadings of American journalist James Foley, American/Israeli journalist Steven Sotloff, British humanitarian aid worker David Haines, American humanitarian aid worker Peter Kassig, British taxi driver and humanitarian aid worker Alan Henning, and Japanese journalist Kenji Goto, and the burning to death of a Jordanian pilot Moath al-Kasasbeh, were videotaped and displayed on the Internet for the world to see. On 15 February 2015, ISIS publicly displayed the beheading in Libya of 21 Egyptian Coptic Christian fishermen. On 29 March 2015, a video was released showing the beheading of eight men said to be Shiite Muslims. ISIS was also responsible for the destruction of valuable religious shrines and works of art that were of special significance to rival Islamic factions.

ISIS also took responsibility for causing the crash of a Russian passenger Airbus A321 in the Sinai Peninsula of Egypt on 31 August 2015, using explosives that were concealed in a soda can and killed all 224 passengers and crew members. It also claimed responsibility for armed attacks in Paris, France, executed on 13 November 2015, which targeted several public places in the city, including the Stade de France sport stadium, the Bataclan art centre, and a number of restaurants, and which caused the death of 129 persons and wounding 352. Following these attacks, President Hollande of France proclaimed: "We are at war." In a police raid on an apartment complex in the Paris suburb of Saint-Denis, seven terrorists responsible for the November attacks were arrested, one was killed by the police and one (a female terrorist) committed suicide.

On 22 March 2016, ISIS launched attacks, using home-made explosives, on the Zaventem airport in Brussels, Belgium, killing 11 people and injuring around 100, and also targeted the Maelbeek metro station in the city, killing 20 people and injuring up to 130 others. Two of the three terrorists, the brothers Khalid and Brahim El Bakraouri, who both had substantial criminal records, were suicide bombers and therefore among the dead, while a third suspect seen on a video is still on the run. Most recently, ISIS claimed responsibility for the 9 April 2017 Palm Sunday bombing of two Coptic churches in Egypt: the first in Tanta, a town in the Nile Delta about 100 km north of Cairo, which killed 27 people and injured 78, and the second targeting the St. Mark's Cathedral in Alexandria which killed 17 people and injured 48.

The above is but a drop in the ocean of ongoing atrocities for which ISIS has taken "credit". It is estimated that ISIS has been responsible for approximately 1 000 civilian deaths outside Iraq and Syria. The question that inevitably crosses one's mind is whether these acts of terror violence can be justified, as a matter of *bellum iustum*, on religious grounds.

The acts of terror violence attributed to ISIS have been condemned by international organisations and by a cross-section of the international community of states. The Security Council of the United Nations, acting under Chapter VII of the UN Charter, in August 2014 deplored and condemned “in the strongest terms the terrorist acts of ISIL and its violent extremist ideology, and its continuous gross, systematic and widespread abuses of human rights and violations of international humanitarian law.”⁵⁴ In September 2014, the European Parliament, in a similar vein, condemned “the atrocities threatened or committed by ISIS against various groups not sharing their convictions, above all religious and ethnic minorities such as Christians, Yezidi, Shabak and Turkmen, but also Shiites and Sunnis”, and denounced “the odious assassination by ISIS of two American journalists and a British aid worker.”⁵⁵

ISIL/ISIS was proclaimed a terrorists organisation by the United States (on 17 December 2004), Australia (on 2 March 2006), Canada (on 20 August 2012), Turkey (on 30 October 2013), Saudi Arabia (on 7 March 2014), the United Kingdom (on 20 June 2014), Indonesia (on 1 August 2014), the United Arab Emirates (on 20 August 2014), Israel (on 3 September 2014), Malaysia (on 24 September 2014), Egypt (on 30 November 2014), India (on 16 December 2014), the Russian Federation (on 29 December 2014), Kyrgyzstan (on 25 March 2015), and Pakistan (on 29 August 2015).⁵⁶ ISIS is furthermore banned in Germany (since September 2014) and Switzerland (since October 2014).⁵⁷ The banning includes the prohibition of propaganda in favour of, and financial support for, ISIS. The terrorist acts of ISIS in Iraq were also condemned by Syria,⁵⁸ while Jordan in February 2015 made its condemnation of the organisation known by launched airstrikes against ISIS targets.⁵⁹

It appears from this list that ISIS has been condemned by a number of states with a predominant Muslim population and, indeed, with a special commitment to Islam, such as Turkey, Saudi Arabia, Indonesia, the United Arab Emirates, Malaysia, Egypt, Pakistan, and Jordan. This in itself bears evidence of the fact that ISIS cannot justify its aggressive policies under *sharia*. It furthermore did not execute its commitments within the confines of an armed conflict and therefore within the confines of Islamic humanitarian law, but instead resorted to terrorism to achieve its political objectives. Its objectives are not focused on a desire to promote the Islamic faith, but instead on a lust for political power.

54 SC Res 2170 (2014) of 15 August 2014, U.N. Doc. S/RES/2170 (2014).

55 European Parliament Resolution on the Situation in Iraq and Syria and the ISIS Offensive, Doc. 2014/2843 (RSP), para 1.

56 “Islamic State of Iraq and the Levant”, Wikipedia.

57 “Islamic State of Iraq and the Levant”, Wikipedia.

58 Zain H and Ismail M. 2014. “Syria Condemns Terrorist Acts in Iraq, Expresses Solidarity with Iraqi Government, Army and People”, *Syrian Arab News Agency*, 11 June.

59 Associated Press. 2015. “Jordan Launches Airstrikes Against ISIS”, *News Corp Australia Network*, 6 February.

CONCLUSION

"The history of humankind has been the history of wars." This assessment of human history by Benjamin Ferencz,⁶⁰ Chief Prosecutor in the *Einsatzgruppen Case* at Nuremberg in which 22 high-ranking Nazi officials were prosecuted and convicted for the slaughtering of more than a million innocent men, women and children,⁶¹ can unfortunately not be faulted. As noted by Theodor Meron in his analysis of the (futile) attempts to apply human rights principles in situations of armed conflict: "To genuinely humanize humanitarian law, it would be necessary to put an end to all kinds of armed conflicts. But wars have been a part of the human condition since the struggle between Cain and Abel, and regrettably they are likely to remain so."⁶² It is also true that most armed conflicts in the history of humankind were sparked by religious incentives, and many of those under the pretenses of a Christian religion. One is reminded in this regard of violent acts committed by Christian crusades of the eleventh to the thirteenth centuries, and militant strategies embarked upon during the Middle Ages for establishing and maintaining the Holy Roman Empire. The Thirty Years' War of 1618 to 1648, comprising a series of armed conflicts in central Europe between Catholics and Protestants, was indeed one of the most destructive conflicts in European history and perhaps the deadliest religious conflict resulting in eight million casualties.

Contemporary international law proclaims the right to self-determination of ethnical, religious, and linguistic communities. The right to self-determination of such "peoples" has been defined in compelling terms in the International Covenant on Civil and Political Rights (ICCPR): "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."⁶³

60 Ferencz BJ. 2015. "Illegal Armed Force as a Crime against Humanity", *Journal on the Use of Force and International Law* 2(2):187. Online at: <https://www.tandfonline.com/doi/full/10.1080/20531702.2015.1092705>

61 *The United States of America v Otto Ohlendorf & Others*, Trials of the War Criminals before the Nuernberg Military Tribunal under Control Council Law No. 10, Nürnberg, October 1946–April 1949, vol. IV, 1-596.

62 Meron T. 2000. "The Humanization of Humanitarian Law", *American Journal of International Law* 94:240. Professor Meron (N.Y.U.) was President of the International Criminal Tribunal for the Former Yugoslavia (ICTY), and as part of the "completion strategy" (the closing down) of the ICTY, he was appointed by the Security Council of the United Nations as President of the International Residual Mechanism for Criminal Trials (IRMCT) that will prosecute the nine principal perpetrators of the atrocities committed in the former Yugoslavia in the nearly 1990s who are still on the run if any of them were to be arrested. The Security Council established the IRMCT through S.C. Res. 1014 (2010) of 22 December 2010; and as to the appointment of President Meron, see United Nations. 2012. "Secretary-General Appoints President, Welcomes Security Council's Appointment of Prosecutor of International Residual Mechanism for Criminal Tribunals", *United Nations Press Release*, 29 February.

63 International Covenant on Civil and Political Rights, GA Res 2200 (XXI) of 16 Dec 1966, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316, 999 UNTS 171, entered into force

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities similarly speaks of “the right [of national or ethnic, religious and linguistic minorities] to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”⁶⁴ The right to self-determination vesting in ethnic, religious or linguistic communities does not include a right to secession or political independence – even in cases where a government, in breach of international law, does not uphold the right to self-determination of sections of its subordinates. International law is quite explicit in proclaiming that self-determination of ethnic, religious and linguistic communities must coexist with “the territorial integrity of States” – a phrase denoting the sanctity of existing national borders. The right to self-determination, furthermore, vests in a people while a new state created through secession is essentially territorially defined as seceding from an existing State and not a people.

If Sunni peoples in Middle Eastern countries were to find that their right to self-determination is being violated by the powers that be, their remedy would be to invoke international procedures to remedy the situation in accordance with the dictates of international law. Violation of the territorial integrity of existing states is not the answer, and attempting to do so through acts of terror violence cannot be justified in any circumstances on basis of the dictates of the Islamic faith or of any other established religion.

Mar. 23, 1976, art 27. See also, in general, Ermacora F. 1984. *The Protection of Minorities Before the United Nations*. Leiden: Martinus Nijhoff, 246.

⁶⁴ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, GA Res 47/136 of 18 Dec 1992, 47 U.N. GAOR Supp. (No. 49), at 210, U.N. Doc. A/Res/47/135 (1992), art 2.