The interpretation of *Jihad* in relation to peaceful coexistence

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Ladies and Gentlemen,

Let me start by saying that it is a great honour and privilege to have been invited before this noble Institute to talk about the principle of Peaceful Coexistence in relation to the notion of *jihad*. This expression is commonly heard these days of tension and military attacks. I will extend a thank to my old colleague in the Royal Swedish Airforce, Mr Stellan Lind, to have made this trip to Jordan, and this lecture, possible. We both started as cadets in the Swedish Air Force in 1962.

Let me also say a few words to introduce myself. Besides being an air force officer I am a Swedish diplomat, although now retired. I have been serving in the ordinary Swedish diplomatic carrier and I have also been the Chief Legal Adviser of the Ministry for Foreign Affairs of Sweden. I have also held the position as professor of international at the University of Stockholm. I am especially mentioning this background because of the following.

The Middle East is not new to me. The first time I was in the area was in 1967. On Thursday 5 October 1967, during the 1967 War, I passed Amman by car on my way from Beiruth to Baghdad, where I had been appointed to serve my first post as a Swedish diplomat. Those times were wartimes, just like now, and I had rapidly to learn my lessons about the Middle East policies and the Islamic way of life. During my service in Baghdad I became very interested in Islam, the Islamic law, the sharialaw, and the Islamic culture. This was the first input in my school of diplomacy and the very foundation to become a scholar in international law. All the teachings from the Middle East I brought with me when I later came to serve in New York and Moscow, and also in the Swedish Foreign Ministry. From 1976 I served as the Ministry's Chief Legal Adviser in international law.

In this capacity I made studies on the Palestine issue and the factors of international law behind the crises that have been perpetuated ever since the United Nations General Assembly on 28 November 1947 adopted its resolution no 181 on the partition of Palestine. Even if the Arabs and the Arab states regarded the Partition Plan of 1947 as illegal, and voted against it, it nevertheless constitutes the first basis of international law for the recognition of a Palestine state, as it also constitutes the basis for the establishment of the Jewish state of Israel. In its declaration of independence on 14 May 1948 Israel explicitly refers to the General Assembly's resolution no 181 as the legal basis for the

creation of the Jewish state of Israel. The Arab state of Palestine could have done the same thing, basing itself upon exactly the same legal foundation as the Jewish state of Israel, namely the General Assembly's decision to divide the British Mandate of Palestine into one Jewish and one Arab state. In my opinion the decision of the General Assembly of 1947 still holds legal and moral force. Therefore the Palestinians have, no doubt, a good foundation for proclaiming the Arab State of Palestine. At least the same foundation as Israel had when it proclaimed its independence in 1948. The coming into being of a Palestine state would merely fulfill the original Partition Plan Resolution no 181 from 1947.

The responsibility actually rests with the Security Council and the General Assembly to continue the work to create an independent Palestine state, which work unfortunately collapsed after the adoption of the Partition Plan in 1947. It is to my mind mainly a responsibility of the bodies of the United Nations, the Security Council and the General Assembly, and the permanent members of the Security Council, to resume those discussions on the creation of a Palestine state that failed in 1947 – 1948. It never was the intention of the Society of States, as represented by the General Assembly, only to create a Jewish state, without the parallel creation of a Palestine state. It is the parallelism of the creation of the two states that is the paramount principle. The matter of the creation of a Palestine state should not have been allowed to fail. Above all, the failure of the United Nations should not have been perpetuated for 55 years, which is the unfortunate state of affairs today.[9]

The notion of *jihad* has interested me quite a lot. Especially the question how to combine the notion of *jihad* with the principle of peaceful coexistence, the paramount principle of the Charter of the United Nations, adopted in 1945. In 1975 and 1986 I wrote books dealing with the Islamic interpretation of the rules of international law and the *jihad* doctrine. Today there is so much discussion about *jihad* that I thought it wise to take the opportunity to come to Jordan to lecture on this topic. It is, however, in all humility that I am appearing here in Amman to give a lecture on the notion of *jihad* before these noble experts on Islamic law. One could really ask how I dare to take up such a central notion of the Islamic law in these days before such an impressive audience of experts. But I am a scholar and I am interested in the topic for scientific reasons. But also for reasons of peace of security. Because I believe that if experts in international law could meet together and discuss outstanding topics of international law, also controversial ones, the areas of confrontation will diminish.

After the shocking events in New York on 11 September the notion of terror is coupled to the notion of *jihad*, and the notion of *jihad* is coupled to the Islamic law and the Islamic countries. But all is mostly, in my opinion, due to a general misunderstanding, or rather a lack of knowledge, how to interpret the notion of *jihad* in more exact terms. My general line of reasoning is that the notion of *jihad* partly has been misunderstood in the Western World, so to say, as also the notion of *jihad* has been misused and manipulated by an extremist branch of the Islamic world. My thesis is that a rightful interpretation of the notion of *jihad* goes well together with the principle of peaceful coexistence as contained in the Charter of the United Nations and in the Declaration of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, adopted in 1970 by the General Assembly in its resolution 2625 (XXV). This is the message that I have been spreading around in the recent Swedish debate on this topic. I hope that I am correct when I underline the basic peaceful character of *jihad*.[10]

Others hold, however, the opinion that *jihad* also comprises the right to spread the Islamic faith over the dar al-harb (the world where the Islamic law does not apply) by the sword. According to ancient traditions in Islamic law there existed early in the history of Islam, after the death of the Prophet, in the theoretical buildings of the sharialaw, at one side the dar-al Islam, the holy Islamic world, and at the other side the dar-al harb, the world where the Islamic law was not applicable. Sometimes the expression dar-al harb is, uncorrectly, translated as the ‘hostile world’ or the ‘world of the infidels’. There was a clear division line drawn up between the Good and the Evil. In accordance with the missionary commandments of the Prophet the Islamic believers were under a permanent *jihad* obligation to spread the Islamic faith to the world outside the faithful believers. The central question is, taking departure in the principle of peaceful coexistence, whether the Islamic faith should be spread over the dar-al harb only by peaceful means (the great *jihad*), or by the sword (the small *jihad*). The answer to this question is of crucial importance also to present day international law.

When I, in the late 70’s and early 80’s, came to start some studies on *jihad*, in relation to the principle of peaceful coexistence, I was eager to hear the views of the learned ulama, the learned doctors of law, i e the interpreters of the sacred sharialaw. What would they say about *jihad*? It is to my mind of utmost importance what the ulama give as interpretation when they, through a legal fatwa, pronounce themselves on the true nature of specific notions of the sharialaw, among those the notion of

jihad. The interpreters of the sharialaw have an enormous power over the faithful believers, and over the education of the faithful. Therefore, what the interpreters pronounce is of importance to the shaping and the future of international law. Either it is confirmed that *jihad* is an aggressive warlike notion or it is confirmed that the *jihad* notion mainly should be apprehended as a peaceful notion. The teachings of Islam should only be spread by “les envoyées islamiques”, the peaceful missionaries, as one ulama put it to me when I already in 1980 visited the Al Azhar University in Cairo for discussions on this topic and for the purpose of establishing a dialogue between a Western scholar and interpreters of the sharialaw (click Legal Traditions of the World). I believe in academic dialogues between the different schools of law of the world, not least between the learned scholars of the sharialaw and scholars rooted in the Western or Christian law schools.

When I in 1976 became the Chief Legal Adviser of the Foreign Ministry in Stockholm I had behind me diplomatic services in Baghdad, New York and Moscow. I had been given the privilege to penetrate first into the Islamic law system, secondly into the United Nations-system and, thirdly, into the Socialist School of International Law, as it then was called. Here I am referring myself to the school of law that developed around the Marxist-Leninist dogmas. This school influenced heavily the interpretation of the rules of international law ever since the Marxist revolution in Russia in 1917 and all the way up to the colapse of the Marxist state, the Soviet Union, at the beginning of the 1990’s. Hopefully this school of law is gone for ever. It was dangerous for the individual human being, because it never had any intention to defend the rules of human rights and the rights of the individual person.

When I acceded to the post in the Ministry I started studies on the issues on the creation of and changes in the norms of international law. What are the real sources behind the present day international law and which factors are influencing the creation and changes of the international law? If we are going to maintain some kind of generally applicable international law, i e the rules guiding the behaviour of the sovereign states, and thereby also the daily lifes of all human beings, we must make it clear to ourselves how the laws are being created and how they are functioning. International law is sometimes called the Law of Nations or *Jus Gentium.*

The traditional sources of the present day international law can be classified into some few categories, namely:

1) Agreements or treaties.

2) The customary law or the state-practice.

3) The doctrine.

4) Judgements by the International Court in the Hague and other tribunals.

The contents of agreements and treaties have legal force by the very signature of the parties. One of the foremost Treaties of the world of today is the Charter of the United Nations. The Charter has legal force by the will and the signatures of allmost all existing sovereign states. The Charter does not stand above the nations but bind the nations together in a certain pattern of actions.

The customary law is equivalent to a de facto state practice among the states and the conviction of the states that they are acting as they are because they regard their actions as in conformity with the rules of international law (their co called opinio juris). This is an extremely important source of international law, not least in these days when the rules of international law develop with extreme speed. For instance, the right of self defence in accordance with article 51 of the United Nations Charter has, in my opinion, been quickly redefined owing to the joint position taken by almost all nations and the Security Council in its 15-0 resolutions, in accordance with Chapter VII of the Charter (the Enforcement Chapter). The interpretation of the right of self defence is further supported by unanimity among the states belonging to the European Union and NATO. Also many Islamic countries have subscribed to the present interpretation.

The doctrine of international law, as a source of law, is considered to consist of writings and interpretations by the “learned professors of international law”. How they, orally or in writing, define the rules of international law.

As is clear from this classification of the sources of international law, it is the customary law, the de facto actions by states, that play an extremely important role in the creation and changes of the rules of international law. If many states take a certain view on a certain interpretation this is laying the ground for the creation of a new rule, or a new interpretation, in a very short time. It is thus the states that by their day to day behaviour can give quick inputs into the materia of international law. But

when such a quick change is coming about in the corpus of international law, does this correspond to the wishes and needs of all those states that are members of the present day Society of States?

At the bottom line of all this stands the basic question – is the present day international law accepted and recognised by all the sovereign nations of the world? Do all the sovereign nations feel that they have had a say in the creation of the rules of international law? Do all nations feel that the different rules of international law protect their particular interests? Do all sovereign nations feel that they are equal in the decision making when it comes to the implementation of the rules of international law? Or is there still a feeling of inequality among nations – in many senses: politically, ecomically, socially and culturally. And is this inequality so strong that it, in itself, is provoking acts like those in New York on 11 September this year. Because if there are such high tensions in the corpus of international law, this means that we have an international law system that is not working.

Even if the persons having committed the horrendous acts in New York are pronounced terrorists, without any support among people and states, the events indicate that there exist fractions in the world hailing dogmas and principles in total opposition to the United Nations Charter and the Declaration of International Law concerning Friendly Relations and Cooperation among States. Terrorists are classified as *violator juris gentium*, i e as enemies of the Law of Nations and are equated with pirates. According to all rules of international law enemies of the Law of Nations, like pirates and terrorists, could be hunted everywhere by everybody. They were ‘Outlaws’, having put themselves outside the Law of Nations.

It is in this connection that the notion of *jihad* is brought into the picture. This notion is said to be the bearer of the hostile message. The notion of *jihad* – the ‘Holy War ‘ as it is also called – seems to be in total contradiction to the generally hailed principles of peaceful coexistence. Is then the peaceful coexistence broken? Is the principle of universality contained in the ancient Islamic teachings again overriding the principle of peaceful coexistence? Like it was during the early Caliphs of Islam, the successful conquerors of at least some part of the Western world.

If the world is on its way to create new different law-schools, different interpretations of the rules of international law, it means that the very foundation of international law is in jeopardy. If some, albeit extremist fractions, hold the view that they will keep to ancient religious

commandments of the Quran, or, for that matter, to the Commandments of the Old Testament of the Bible, in total disregard of the United Nations Charter, what happens then to the Society of States? Are we on the brink of abandoning the kind of international law that has its base in the Charter of the United Nations, adopted some 50 years ago. The overriding message of the Charter is peace and peaceful coexistence among states. All nations having acceded to the Charter have, by their signatures, obliged themselves to be faithful to the Charter, that is to say to the principle of peace and peaceful coexistence. This is a legal obligation. And all nations are responsible for all illegal acts peformed by their inhabitants (or guests) with the intention of damaging another nation. This goes under the legal heading of the State Responsibility.

But as said, we witness today tendencies which are very worrying. Such tendencies, appearing in the world of today, are perhaps easier to understand when we look upon them from the proper historical perspectives. Because the dogmas popping up today really are ancient religious dogmas in revival.

Interests and needs of states are always formed out of a complex past. When Europe dominated the world by virtue of its colonial strength, the then existing European states played their roles by observing their common European background. There were no clashes between different systems, quite simply because the “European Concert” established its own rules. The states decided how to behave towards one another. It is here we witness the foundation of the modern international law, during the 17th century, with names like Hugo Grotius and Samuel Pufendorf. The modern international law was created within its European framework. It surely from the very beginning became a Euro-centric international law system. It is mainly this law system that we still apply in present day world politics.

But our days have to take a more complicated picture into consideration than existed some hundred years ago, when the foundation was laid to the so called modern international law. The Society of States, some 180 states, is now, at long last, universal. Different system have to coexist. Different historical, religious and cultural systems must interweave with one another. To do this, all different regions and systems must penetrate deeper into one another’s thinking and traditions. A better understanding of the specific systems would help us to preserve good order and peace. It goes without saying that the Occident must try to learn more about the ancient law systems of other regions, like the sharialaw of Islam. As it also goes without saying that the interpreters of the sharialaw must

understand the worry they are creating by abandoning the high principles of peace in the Charter of the United Nations. This is the reason why I always have been speaking in favour of a dialogue between international lawyers with a purpose to detect common denominators in international law. Each nation, each region, must be able to detect at least some factors from its own cultural and legal system in the present day corpus of international law. Only so can the rules of international law gain universal applicability and strength to withstand different kinds of attacks. If all states feel familiar with the legal order, and recognise it, it will be strong enough to guide the world community through crises of different kinds.

Also Islamic countries must feel familiar with the existing rules of international law. Islamic countries have their roots in the sharialaw, that is to say the Quran and the *Sunna*, which together constitute the foundation of the sharialaw. Western countries have their religious and legal roots in the Old and the New Testament of the Bible. The peaceful messages of Jesus Christ have substituted the “tooth for tooth and eye for eye”-principle of the Old Testament. The peaceful messages of the New Testament were transformed into the Canon Law system of the Catholic Church. The Canon Law system was very much influenced by the Roman Law System, the legal system prevailing in the Roman Empire. Middle East was once part of the Roman Empire and the Roman Law system. Through the Canon Law the Roman Law reached, during the 12th and 13th centuries, the law system of almost all European nations. So, seen from this perspective, the ancient law system of Middle East had common grounds with the ancient European law system, based on the Roman Law. It is an interesting question how many legal traditions actually were taken over by the Islamic Law Schools during the 7th and 8th centuries from the Roman Law system, when these schools were formulating the interpretation of the Islamic divine law? They were surrounded by Roman Law as well as by subsequent laws with their roots in the Roman Law. It is really also a very interesting question to penetrate into the Jewish legal influence on the formation of the Islamic sharialaw. Judaism has its legal roots in the Old Testament.

By reasoning in this way you are able to find what I call ‘the recoupling mechanism of international law”. You are able to couple together the present day rules of international law with those law systems that form the base for the law systems of the countries that because of colonial factors during the 15th and 16th centuries became prohibited to take part in the development of the so called modern international law during the

17th century, which was a pure European matter, only for the “Concert of Europe”.

The God commanded people to obey the divine laws. This goes for Judaism, Christianity and Islam. Be it commandments by the Egyptian God Ra, the Babylonean Shamash, the Israelian El Aeljon or Jahve, the divine Emperors of China or Japan, the Allah of Islam, the Greek and Roman Gods. For natural reasons the divine law was also stearing the ancient rules of inter-tribal or inter-state relations, that is to say the very ancient “international law”. International law, or norms for the behaviour between different socities, is certainly not an invention by Europe.

Already around 2 400 BCE there is proof of an interstate treaty in this region of the world, namely a treaty of peace and friendship between the kingdoms of Ebla and Hamazi (present day Syria). This is probably the eldest treaty that is known in the history of international law. A clay tablet with an interesting inscription was found in the royal library of Ebla and is now conserved at the Archaeological Museum of Damascus. The treaty was written in cuneiform Eblaitic, a language belonging to the Paleo-Semitic family from which Arabic and Hebrew have derived. It begins with these words: “You (are my) brother and I (am your) brother; this way (speaks) Ibusu,superintendent of the Royal Household, to the messenger”. It ends with the following wording: “Irkab-Damu, King of Ebla, (is the) brother of Zizi, king of Hamazi, Zizi, king of Hamazi, (is the) brother of Irkab-Damu, king of Ebla”. The rulers of neighbouring countries around Damascus concluded a peace treaty and, as a sign thereof, called themsleves brothers.

We also know that a treaty existed between Pharaoh Ramses II and the King of the Hethites Hattusili III, pertaining to the frontiers of the Province of Canaan, done in the year 1284 BCE. There are early Egyptian rules of warfare, prohibiting the poisoning of wells and governing the treatment of prisonerns of war, dating back to 1400 BCE. The Persian king Cyrus forbade his soldiers to loot Babylon when he conquered the site in the year 538 BCE. The same rules are know from Alexander the Great’s conquest of Western Asia. Such early rules of warfare are also found in the notion of the Islamic *jihad*, which, originally was an instrument to regulate the undiscriminated warfare that existed during that time. So the Islamic sharialaw bears resemblances to many of the ancient Middle Eastern law systems, actually long before the existence of a powerful Europe.

At about the same time as the legal heritage from the Antique and Roman epochs is taken over by the Catholic Church for further development into its Canon Law system, the Islamic religion is born during the 7th century. The Canon Law system lies at the bottom of the legislation of the Church as at the bottom of the legislation of the European Christian states. Both the Christian dogmas and the Islamic dogmas have the principles of universality built-in into the system. “Go and teach all nations …”. They have, thus, unfortunately, come to stand against each other and fought one another. Just as the notion of *jihad*, which in principle should be interpreted as a striving to spread the Islamic faith peacefully (the great *jihad*), was transformed into a more violant aggressive alternative (the small *jihad*) also the peaceful messages of Christ “Go and teach all nations” became politically distorted and misinterpreted and ended up in the Crusades that started at the 11th century in the Holy Land. By the expression the Holy Land I mean that this land was and still is sacred for the three monotheistic religions, i e Judaism, Christianity and Islam, all believers in the same God.

How come that the believers in one and the same God, all the children of Abraham, have come to disturb their relations by so much entanglement of war and terror. The differences between the religions are not so great that it would cause these outburst of wars, killings and terrors. Before I left Stockholm, on the day of the United Nations on the 24 October, I participated in a celebration of peace in one of the Catholic churches in Stockholm, where, appeared the Catholic bishop of Stockholm, a priest from the Swedish Protestant church, a Jewish rabbi and an Islamic imam. All read messages of peace from their holy scriptures and at the end all could join in the Aronitic version of the Blessing of God. There are differences in the preachings and the teachings, but the root is common.

Since the dogmas of religion, as I have said, strongly influence the norms of international law, it is of paramount importance that Church leaders and interpreters of the holy commandments, including the Commandments of the sharialaw, take their responsibility and guide their respective believers. Either through messages or through those fatwas that are used in the sharialaw to determine the correct interpretation of the rules of the sharialaw. The basis of all messages must be that peace is maintained between all nations and peoples and that the principle of peaceful coexistence must prevail. What is the alternative? Shall the Earth go back to the religious wars of *jihad* and the crusades? Of course, this is impossible. There exists no alternative but striving for peace and the peaceful coexisxtence. The head of Catholic

Church, the pope John Paul II, has clearly demonstrated the paramount importance for religious leaders to come together and lead their believers in the right direction. Recently he has brought forward the historic excuses of the Church to Judaism for all evil deeds that befell on the Jewish people. He has also, during his recent visit to Syria and Jordan expressed the same excuses for all the suffering that was brought upon the Islamic believers by the Christian crusades. For the first time in history one could witness a Pope visiting an Islamic mosque, truly a historic and religious milestone guiding the future relations between the three monotheistic religions.

Coexistence and cooperation have actually been the leading stars for a long time. Societies exist side by side. Believers can even pray side by side. Sweden has some 200 000 Islamic believers, and Europe as such has some 20 millions Islamic believers. Some 500 meters from the Catholic Cathedral in Stockholm stands the newly constructed mosque in Stockholm, to which all Islamic believers go in peace and quiet. Nobody even thinks in terms of a violent *jihad*. The development of Islam and the sharialaws have made the vigorous form of *jihad* more and more distant and more and more unrealistic for modern Islamic believers.

They have since long ago chosen the way of friendly relations and peaceful coexistence. They do not even recognise the ancient notion of *jihad*, but in its peaceful form. There exists for them no other alternative interpretation. One conclusion of this state of affairs is that modern Islam, as it has developed in Europe and other places, under the guidance of a modern process of interpretation, already has proclaimed that it is the principle of friendly relations and peaceful coexistence that is the de facto prevailing interpretation of the Islamic sharialaw. This is the correct and rightful interpretation of *jihad*! The ancient division line between the dar-al Islam and dar-al harb does not exist any longer. Consequently there exists no obligation under *jihad* to conquer the other world. The neighbouring states, or neighbouring people, are not evil in the ancient sense. Thus, modern Islam has done away with the more aggressive version of the notion of *jihad*?

The doctrine of the aggressive version of *jihad* does not promote Islam’s interests at all. Quite to the contrary! When the Ottoman Sultan-Caliph Mehmed V in Constantinople at the opening of the First World War in 1914 sided with the Central powers Germany and Austria-Hungary and proclaimed jihad against the Tripple Entente, i. e. Great Britain, France and Russia and other countries, it entailed catastrophic consequences for the Ottoman Empire and the Caliphate, as well as for the entire

Islamic world. It led to the extinction of the Ottoman Empire and the demise of the Caliphate (in 1924). The central figure of Islam, the Caliphe, vanished.

Since the late 18th century the Ottoman Sultans-Caliphs in Constantinople, as keepers of the insignia of the Prophet, inluding the Prophet's mantle and cloak, and as guardians of the two holy places of Medina and Mecca, had reemphasised their role as leaders of the Sunni Muslims. After the fall of the Caliphate it was Great Britain and France that took over the Ottoman Empire territories in the Middle East, including Palestine. In November 1914 Great Britain had definitely abandoned its traditional foreign policy to maintain the integrity of the Ottoman Empire into quite the opposite, namely the dismemberment of the Ottoman Empire. Great Britain would instead herself hold or control the territories adjacent to the Red Sea and the British Suez Canal, the artificially constructed life-line between England and colonial British India that stood ready for use in 1869.

This colonial strategy came to decide the fate of the Arabian peninsula as well as the fate of the Arabs in Palestine. At about the same time as the Hashemite Emir of Mecca Hussein ibn Ali is recognised as king of Hijaz (1916 – 1924), Palestine is being transformed into the British Mandate of Palestine. A first decision to that effect was taken at the San Remo Peace Conference on 25 April 1920. However the British Mandate over Palestine was not formally ratified by the Leage of Nations until July 1922 and came into force as late as in September 1923. So between 1920 – 1923 Great Britain exercised its power over Palestine without formal legal grounds.

On 10 August 1920 the Treaty of Sèvres, the never ratified peace treaty between the Ottoman Turkey and the Entente powers, laid down the legal basis for the Mandatory system, which was also confirmed by article 22 in the Covenant of the League of Nations, which stipulated that the mandatory system would be applied to territories detached from Germany and the Ottoman Turkey. The Covenant of the League of Nations entered into force at the same time as the Peace Treaty of Versailles was ratified, namely on 10 January 1920. By the never ratified Treaty of Sèvres the Ottoman Empire was dissolved, obliging Ottoman Turkey to renounce all her remaining rights over Arab Asia and North Africa. Through Kemal Atatürk the Treaty of Sèvres was renegotiated and the final peace treaty between Turkey and the Entente was concluded in Lausannes on 24 July 1924. Also here legal ambiguities are quite visible.

Thus the Caliph's call for jihad in 1914 led to disaster. Indeed, the failure of 1914 was so complete that it even devalued the notion of jihad, showing that such a religious symbol no longer inspired the Muslim masses to take up arms collectively against an enemy. Few muslims listened to the appeal of the Caliph. The events 1914 – 1920 constitute the roots of the everlasting conflict between the Jewish Israel and the Arab Palestine. It was through the British so called Balfour Declaration, issued by Arthur James Balfour on 2 November 1917, Foreign Secretary under Prime Minister Lloyd George, that the jews were promised "a national home" in Palestine.

The British Mandate 1920 – 1947 led all the way up to the General Assembly Partition Resolution no 181, by which the legal foundation was laid for the creation of one Jewish state and one Arab state within the boundaries of the former British Mandate of Palestine. In the same way as the call for jihad in 1914 led to disaster, it could be maintained that present-day calls for jihad will entail the same severe consequences for Islam and the Arab people, not least for the Islamic people of Afghanistan. One conclusion that could be drawn from this, is that an aggressive interpretation of the notion of jihad is grossly detrimental to the Islamic cause and to the Arab people. Such an aggressive interpretation has already, or even long ago, lost all realistic bearings.

Modern Islamic people of today does not want it and does not abide by it. It only exists in the minds of some extreme fractions? Is it so? I might be correct in my analysis and I might be wrong. Perhaps the more aggressive version of *jihad* is more widely accepted and abided by than we, the Westerners, have reason to believe. Perhaps it is whishful thinking from our side? Perhaps is it so that many fractions of the Islamic world really do regard the extreme part of the Western world as an evil world, with an unacceptable economic and cultural system? And absolutely not in accordance with the Holy Commandments of God and his Prophet! And for that reason would do away with it – because it really corresponds to some of the Suras of the Koran describing the infidels, living in the world of dar-al harb. The people who must be done away with by the holy Islamic world, the dar-al Islam.

In this ancient interpretation dating back to the Islamic Law Schools of the 7th and 8th centuries there appears, as said, a clear line of division between the Faithful (dar-al Islam) and the Unfaithful (dar-al harb). Is it this interpretation that is under revival, after centuries of dormance? Many dormant dogmas can pop up when the world least expect it. And if

so, if it is a revival, has it any support in the hadith from the days of the Prophet and among the later existing Islamic Law Schools, or rather, as one could put it, the Schools of Interpretation of the holy law? Because only by such support can such an extreme interpretation gain strength and survive. It is important to find out what the ancient Law Schools say about this.

It is the *Quran* and the *Sunna* of the Prophet, transmitted onwards by *hadith* (i e the hadith-texts) that constitute the basis of the Islamic law, the sharialaw. When the Prophet dies in 632 CE the bonds are broken between God and his Prophet. Never more will heavenly revelations be given to the people through his Prophet. It is now, during the 7th and 8th centuries, that there appears a development of the madhhab, the Law Schools, or the schools of interpretation of the Quran and the *Sunna*. The learned doctors of law (mujtahid and ulama) take over the building up of a sophisticated process of interpretation of the divine law. The law schools are named after their respective founder (mudjtahid), namely, for the Sunni rite, Abu Hanafa (the Hanafi-school), Malik ibn Anas (the Maliki-school), Muhammad ibn al-Shafii (the Shafii-school) and Ahmed ibn Hanbal (the Hanbali-school). This epoch is said to be one of the most brilliant and sophisticated time of the Islamic jurisprudence. By ways of intelligent interpretations the interpreters were able to create almost something of a legislative process, leading up to to a kind of law-giving. The divine law could not, of course, be substituted by a new law-giving process, because the divine law, sent to the human beings by God through his Prophet, was sacred and untouchable. But a living society demands laws being in accordance with the need of the actual society. The law must be able to solve day to day problems.

By introducing brilliant methods of interpretation like ijma, ijtihad, ray and kiyas (to mention some of the mechanisms) the learned doctors of law were able to take into consideration the ‘the consensus of the society’ as well as the ‘consensus among the learned doctors themselves’ into the process of interpretation. Clearly, by bringing in the voice of the society and the consensus of the learned ulama into the process of interpretation a living link was established between the rules of the Quran and the *Sunna* and the “living vox populi”, the demands of the actual living society. The law had to grow at the same rate as the society itself, and the law had to provide the living and the developing society with the laws and the rules that the society was demanding. As stated above, this was a most brilliant epoch, that however towards the 10th century more and more came to an end. One of the most creative and brilliant epochs of all intellectual history came to a sudden end, says Fazlur Rahman, a

Pakistan expert in the Islamic law. This indicates the magnificence of the Islamic law system, that even during the 7th century contained these magnitudes. This is just after the Roman law system has lost its position as the normative system of the European-Mediterranean world. A loss to the barbarian nothern tribes, like the Vandales, the Langobards and the Goths.

Several modern muslim interpreters of the sharialaw propose that the methods of ijma and ijtihad still hold a position in the sharialaw. Even if many scholars maintain the view that interpretation methods like ijma and ijtihad have been closed for many centuries, other scholars are of the opinion that these pragmatic methods of interpretation of the divine law still are open for a full utilisation. In other words modern muslim interpreters could apply the brilliant methods of interpretation that existed some 1000-years ago. Since the methods of ijma and ijtihad played such an important role in the establishment of legal rules for the ancient muslim society it could even today play the same role in present day muslim interpretations of the sharialaw. The door between the law and the needs of the society would still be open. This possibility of open up that door would also give the result that some dogmas of the Islamic materia on international relations could be redefined, i a the notion of *jihad*. It is not necessarily so, some scholars say, that the notion of *jihad* must illustrate the division line between dar-al harb and the dar-al Islam, between the hostile world and the muslim word.

A modern interpretation gives room for an interpretation that totally abolish the contradiction between the dar-al harb and dar-al Islam. The World of the Infidels does not exist any longer. The dar-al Islam is, on basis of these interpretations, not any longer under a permanent *jihad* obligation to conquer the other world, because that world does not even exist in the phraseology. Instead it is the principle of Peaceful Coexistence that introduces itself even in the corpus of the Islamic law. Such an interpretation of the notion of *jihad* can be called a ‘modernistic interpretation’. But this is not entirely true. Even if such an interpretation goes well with the present day Charter of the United Nations it has legal roots all the way back to the ancient Law Schools of the 7th and 8th centuries. Its legal foundation is a solid one. Here another notion is introduced, the dar-al ahd, the ‘World of the Pact”, or ‘the World of the Covenant’.

With these Pact-countries dar-al Islam could live in Peceful Coexistence without doctrinal difficulties. There exists thus the Pact of the Peaceful Coexistence. Consequently no need of conquest, no principle of

universality to fulfill. To my mind it is this ancient notion of “Pact” that probably has influenced modern moslems living in a de facto peaceful coexistence since long ago. They have never thought of anything else. For them *jihad* is the peaceful version, the strivings within Man himself, to conquer himself and his Conscience.

Another issue that could be taken up when analysing the noton of *jihad* is the following: who has, according to the sharialaw, the right to proclaim *jihad*. In ancient times it was only the higest interpreters of the sacred law that had the right to proclaim *jihad*. When the Sultan-Caliph in 1914 proclaimed *jihad* it was greeted by cheering crouds, bands, drums and speeches in Constantinople. The call for *jihad* by the Caliph was quickly reinforced by a similar declaration by the highest Muslim authority in the capital, the Sheikh al-Islam. No less than five fatwas were read out in every mosque and printed in every newspaper throughout the Ottoman Empire.

When talking about the proclamation of *jihad* perhaps a distinction should be made between the right to proclaim *jihad* as a defensive war, which is uncontroversal, and the right to proclaim *jihad* as an aggressive war. I am quite sure that there exists a difference between a defensive war and an aggressive war. The question could also be put whether at all the right to proclaim *jihad* still exists in the sharialaw? Or can it even be argued that the right in some way, during the development of the law, has become obsolete? The answer to this question is very interesting. Perhaps I may have an answer during my stay in Jordan.

I have come to an end of my survey of the notion of *jihad*. I have tried to put it into its historic perspectives. We have found out that there once existed both a peaceful kind of *jihad* and an aggressive kind of *jihad*. It has been argued that it is the peaceful kind of *jihad* that has a solid foundation in the sharialaw. Even if the aggressive kind of *jihad* once had a solid foundation in the sharialaw the development may have caused this type of *jihad* to dissappear. It has been substituted by the principle of peaceful coexistence. I hope I am right in my analysis. If I am wrong, I would be very sorry for the future of the world. Of course, it is worrying that fractions again utilise the ancient aggressive kind of *jihad*. This may cause damages to the corpus of international law. It may destroy the kind of international law that the Society of States has based itself upon ever since the adoption of the United Nations Charter in 1945.

If Islamic interpreters of the sharialaw in their fatwas would lay emphasis on the peaceful interpretation of *jihad*, this would help quite a lot to

strengthen existing international law. This would also guide the Islamic believers in what way they shall apprehend the notion of *jihad*. Therefore the interpreters have a great responsibility for the future development of the notion of *jihad*. If no corrective measures are taken to stop the more aggressive kind of interpretation this may soon influence state practice to a larger extent, and thereby also the norms of international law. As I stated above the religious leaders of the three monotheistic religions, Judaism, Christianity and Islam, have all an enormous responsibility to foster their believers in the right direction. There is no alternative but to try to uphold the principle of Peaceful Coexistence between States and Religions.

These ancient pillars at the Afrodite Temple in Jerash in present day Jordan may demonstrate “the recoupling mechanism” in the law materia, which is mentioned in the lecture above. As is seen at the map above present day Jerash is identical with the city of Gerasa in the Decapolis Province of the Roman Empire, being governed by the Roman Law from the days of the Roman General Pompey, when he in the year 63 BCE conquered the site. The same year he entered the Temple of Jerusalem. To the south of Gerasa is Philadelphia, i e present day Amman. Muslim forces conquered the area in 636 CE. The cradle of Islamic law was thus surrounded and influenced by Roman Law. The same Roman Law laid the foundation for the European law systems. Photo: the Author.