THE ISSUE OF CHILD SOLDIERS IN ISLAMIC PERSPECTIVES

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Abstrak: Permasalahan Tentara Anak dalam Perspektif Islam. Konflik bersenjata di berbagai belahan dunia telah mengakibatkan sejumlah anak di bawah umur terlibat sebagai tentara. Sebagian mereka direkrut secara sukarela, sebagian lain secara paksa oleh kelompok-kelompok bersenjata. Keadaan ini memaksa anak-anak tersebut melakukan berbagai aktivitas yang bukan saja sangat berbahaya, tetapi juga bertentangan dengan sifat dasar mereka sebagai anak-anak yang sedang berkembang. Tulisan ini menganalisis persoalan tersebut dari perspektif Islam, khususnya dalam kaitannya dengan bagaimana konsep jihad dimaknai dan dipraktikkan.

Kata Kunci: jihad, perang, tentara anak

Introduction

As armed conflict proliferates around the world, increasing numbers of children are exposed to the brutalities of war. In numerous countries, boys and girls are recruited as child soldiers by armed forces and groups, either forcibly or voluntarily. Children are susceptible to recruitment by manipulation or may be driven to join armed forces and groups because of poverty or discrimination. Often they are abducted at school, on the streets or at home. Once recruited or forced into service, they are used for a variety of purposes.

Muslim countries are no exception to this phenomenon. This is supposedly based and encouraged by the teachings of Islam. In this instance, the concept of '*jihâd*' (usually translated as 'holy war') comes into forefront. It is compounded with the doctrine of '*syahid*' (martyrdom) which has said to have engrained in some Muslim cultures.[1] This paper is a humble endeavor to understand these issues. It is not intended to give an authoritative

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[1] For further information, see, for example, Nahed Habiballah, "Interviews with Mothers of Martyrs of the Aqsa Intifada," *Arab Studies Quarterly* (Winter 2004).

answer to the above questions, but it is more of probing into the variety of Muslims' responses towards them. Instead of providing general conclusion, the paper incites more awareness of the complexity of the problem.

It may be worthwhile to mention a reminder before venturing further into the discussion. In many studies on the relation between religion and society, an option to be made between normative analysis and factual description, between Das-Sein and Das-Sollen, between textual analysis and factual data. The first is the realm of the desirable, the second is the domain of actualities and consequently it may either desirable or undesirable. This paper does not limit itself to either, but tries to see both aspects not 'objectively' as claimed by 'positivistic' sciences, but more as a concerned and engaged student-scholar.

Islam: Unity in Diversity

In understanding other cultures, many seem to fall into the danger of broad generalization. The concept of 'clash of civilizations', for example, encourages the illusion that the Muslim or Western worlds are monolithic and unchanging. As we are all aware, such a view of Christianity is far from the truth. It is also untrue of Islam. To view Islam as uniform and all of a piece invites confusion and miscomprehension. The majority of Muslims resent the way their faith has been used, or more appropriately misused, to justify terrorism. However, it also missed the truth if one entirely overlook the reality that in some aspects, all adherents of Islamic religion are united.[2]

The unity of Islam is shown, among others, in the acceptance of the pillars of belief (*arkân al-îmân*)- namely, belief in God, Angels, revealed scriptures, prophets, the day of judgment, and human destiny and the pillars of *Islam,* viz., confession, prayer, fasting, alms-giving and pilgrimage. This unity is based on common faith among all Muslims who believe in the authenticity of the Qur'an and the sanctity of Muhammad prophethood.

The people who worship in Islamic traditions are as varied as the nations where they live. The nation with the largest Muslim population is Indonesia, which has more than 100 million followers of Islam. But, Islam has a big presence in other nations around the world. The Islamic religion is the second largest faith in the planet next to Christianity, and the tradition shares some of the same core beliefs to which Jews and Christians subscribe. Islam is a religion in the line of Judaism and Christianity. It believes in the same God. Islam recognizes Jesus as a prophet, but credits the prophet Muhammad, born in 571 AD, as the seal of prophets (*khâtam al-nabiyyin*).

'*Islâm*', which literally means peace, safe, and submission, total surrender to the

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[2] There are many publications that deals with this subject. See, for example, Nissim Rejwan, *The Many Faces Islam: Perspectives of a Resurgent Civilization* (2000).

will of God, conveys a meaning of accepting God (known as '*Allah*' among Muslims) as the source of authority and the sole sovereign and lawgiver (*shar'i*), while man, his trustee or vicegerent on earth, may be the law-finder or secondary lawmaker, or just a law-finder. *The command is for none but God. He hath commanded that ye obey none but Him; that is the right path* (Q.S. Yusûf/12:40). Islam is a religion based on the supremacy of law, something closer to the Judaism, rather than to Christianity.

The sovereignty of God as the source of law and legality leaves to man the prerogative of earthly application, development and exercise of His commands, mandates, and the fulfillment of mankind's purposeful creation. The trusteeship or vicegerency of man is stated in these terms: *Allah has promised such of you as have become believers and done good deeds that he will most surely make them his vicegerents on the earth* (Q.S. al-Nûr/ 24:55). Thus, a divine, rather than only a social, contract is offered by the Creator-sovereign to man, its beneficiary, for the enjoyment and use of all other creations in consideration of man's submission to God.

God is the lawgiver, his trustees or vicegerents compose the *ummah* and are empowered to make organic complementary laws, but their validity will depend upon their compliance with the *shari'ah*. The *ummah* enjoys a derivative rule-making power and not an absolute law-creating prerogative.

Law in Islam is that which answers the following query. What should be the conduct of man be in his individual and collective life, in his relationship with God, to others and to himself in a universal community of mankind for the fulfillment of man's dual purpose: happiness on earth and in the hereafter (*hasanah fî al-dunyâ wa hasanah fî al-âkhirah*). Law may be said to be the expression of controlled limitations over liberty of creatures endowed with the characteristics of absolutism. Regulated by divine and human prescriptions, the knowledge of ultimate accountability to the Lord subordinates all man-made laws to the revered laws of God in letter and spirit. To balance the interrelationship of individual accountability and the limitation of freedom of conduct by law necessitates the following presuppositions.

Freedom of will and conduct is susceptible of absolutism but is so intended because absolute freedom negates social responsibility and results in self-destruction. Limitations on such freedom are not, per se, arbitrary though the word *limitation* may imply it, because they are dictated by a rule of law conforming to 'morality'. Morality in this respect is meant in the sense of the entire divine purpose and human objectives, having divine judgment as its finality. Therefore, this morality is the foundation of social and religious order, which are then laws which emanate from the 'knowledge' in the broadest sense, which when combined with the revealed source of law, destroys the dichotomy of man-made and divine-origin laws.

Morality and religion are thus closely interrelated. The Prophet declared in a hadith that 'I have not been sent but to accomplish moral virtues.' The moral overtones of the

shari'ah are clearly seen in its propensity toward duty (*taklîf*), so much that some commentators have characterized *shari'ah* as 'a system of duties' as compared to statutory law, which often speaks of rights. The *shari'ah* clearly recognizes both duty and right, but it is nevertheless indicative of the moral underpinnings of the *shari'ah* that it speaks mainly of duty rather than right. The distinction between the *shari'ah*'s moral and legal precepts is also reflected in its scale of five categories of human conduct-obligatory (*wâjib*), desirable (*mandûb*), neutral (*mubâh*), reprehensible (*makrûh*), and forbidden (*harâm*).

Man is simultaneously ruler and ruled. The prophet stated: 'Every one of you is a ruler and every one of you is answerable to his subjects.' Von Grunebaum (1962) likens this to the Roman theory of *'jurisprudentia'* or *'rerum divinarum atque humanarum notitia,'* or the knowledge of truth divine and human. This knowledge is intended to cover all civil and religious functions of man to man, man to state, man to God, and vice versa.

According to the Qur'an, dignity of the children of Adam is a divine bestowal which is to be secured by all means, including the law and the state authorities, and is to be defended by all forces:

We have conferred dignity on the children of Adam, and borne them over land and sea, and provided for them sustenance out of the good things in life, and favored them far above most of our Creation. (Q.S. Al-Isrâ'/17: 70)

Islamic law is said to be moral and ethical in spirit, and the expression of this conclusion is found in the Qur'anic principles of '*hudul Allah',* the divine limits. Those limits constitute the check and balances placed upon man in his human endeavors to afford maximum personal freedom and to tolerate only those limited restrictions which distinguish anarchism from organized society. *uduHHudud Allah* are the limitations place on freedom to secure 'a scheme of ordered liberty' and to prevent arbitrary and despotic limitations on human freedom.

Unlike other sources of law, the Qur'an emphasizes duties rather than rights. It insists upon fulfillment of individual obligations before the individual can claim his privileges. The individual is neither a part nor separate from society, and his rights are neither different from nor conflicting with those of the community. He is part and parcel of society, and the fulfillment of his obligations and those of the other members of the society constitute the reservoir of social rights which are then shared by all. The individual enjoys as many privileges as society can afford, and society affords just as much as it receives from the individual.

In a system where the basis of accountability is strictly personal and primarily subjective, is it conceivable to believe that there is a conflict between that which is the discretionary power of the ruler and the individual rights of the ruled. While, as Gibb (1955) says: 'The law precedes the state, both logically and in terms of time, and the state exists for the sole purpose of maintaining and enforcing the law.' Coulson (1957) believes

that individual rights and freedom and the power of the leader and discretion are mutually exclusive. He characterizes what is known as *siyasah al-shar'iyyah* as in fact the power of the leader in matters of law to determine whether or not there is a policy of the *shari'ah,* so that the *policy-making is a process of the leader who more or less defines it*.

Despite the presence of violence in many regions of the world ranging from Ireland to the Middle East to the Pacific Basin and involving many religions from Judaism, Christianity to Hinduism, the world seems to associate Islam more than any other religions with war and violence. The history of Muslim civilizations does not have record of more violence than one finds in other civilizations, particularly those of the West with its long and bloody 'religious' wars. This is an interesting subject, however, our focus more related to the reality that Muslim civilizations have developed a legal system, in which law of war-now increasingly more popularly called 'humanitarian law'-is an integral part.

Islamic Law of War[3]

To begin our discussion on this topic, it is worthwhile to start directly with the doctrine of *'jihâd'*. Carrying the basic connotation of a serious endeavor toward a praiseworthy aim, the word *'jihâd'* bears many shades of meaning in the Islamic context. It may express a struggle against one's evil inclinations or an exertion for the sake of Islam and the *ummah* (community of believers), for example, working for the moral betterment of Islamic society.

The Prophet Muhammad taught that there are two kinds of *jihâd.* The 'greater *jihâd*' (*jihâd al-akbar*) involves the individual's constant and eternal struggle with the evil and immoral aspects of the self. This was said by the Prophet to be much more important than the 'lesser *jihâd*' (*jihâd al-ashghar*) which includes, *inter alia,* the military struggle by Muslims collectively seeking to defend the religion or the community. It is the notion of the 'greater jihad' with its emphasis on justice, rectitude, fidelity, integrity, and truth that gives the concept of *jihâd* its profound meaning in Islamic theology and law. This attitude pervades the entire theory of Islamic law toward all lesser jihadist behavior, including the military *jihâd,* and the level of intention and purpose required of the believer in discharging his/her *jihâd* obligations.

Ibn Khaldûn, in his *Muqaddimah*, divides *'jihâd'* into four kinds: *'jihâd'* by the heart, *'jihâd'* by the tongue, *'jihâd'* by the hand, and *'jihâd'* by the sword. He defines *'jihâd'* by the tongue as 'to commend good conduct and forbid the wrong, like the type of *'jihâd'* Allah orders us to fulfill against the hypocrites: *O Prophet! Strive hard against the unbelievers by*

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[3] One of the good reference materials on this topic is Madjid Khadduri. *War & Peace in the Law of Islam* (Baltimore: John Hopkins University Press, 1995). This book has been translated into many other Muslim languages, including Indonesian by Kuswanto, *Perang dan Damai dalam Hukum Islam* (Yogya: Tarawang Press, 2002).

sword and against the hypocrites by tongue (Q.S. al-Tawbah/9: 73). Said Ramadan Buti, a contemporary orthodox scholar from Syria states, in his seminal work on the subject of 'jihad' in Islam: 'even before he conducted jihad by sword against the unbelievers, there is no doubt the Prophet invited these unbelievers peacefully, lodged protest against their beliefs and strove to remove their misgivings about Islam. When they refused any other solution, but rather declared a war against him and his message and initiated a fight, there was no alternative except to fight back.

The sources for the Islamic law of war are well defined. These sources coalesced much earlier than religious sources for the law of war in the Western legal traditions, even though the Islamic religion is much younger that Christianity and Judaism. Like other aspects of Islamic law, the sources for the Islamic law of war are the injunctions, prohibitions, and guidance announced in the Qur'an and in the Sunnah laid down by the Prophet Muhammad in his conduct of war and statecraft during his lifetime. These two sources are primarily and universally applied in all cases by all Muslim jurists, Sunni and Shi'i, when discussing issues surrounding the legal norms governing the conduct of a war.

The Qur'an authorizes defensive war when Muslims are expelled from their homes 'in defiance of right' and because they utter the Islamic monotheistic creed.[4] This verse was the first of several general pronouncements on fighting and war to be revealed to the Prophet Muhammad after his emigration to Madina. It gave permission to him and his followers to fight a defensive war against the Meccans who pursued them because, in spite of the Prophet's efforts to establish a peaceful new state in Madina, his enemies persistently sought to destroy it. Additional Qur'anic verses were revealed as this military situation unfolded. The main verses revealed during this period in the Prophet's life provided that Muslims must fight those who fight them but that the military response should be only that necessary to repel the invader.[5]

The *imâm* (leader of Muslim community) is answerable to the people and their legal apparatus, the most important representative of whom are the scholars. The position of law is that only at such a time when it can be reasonably proven that: (1) there are aggressive designs against Islam, (2) there are concerted efforts to eject Muslims from their legally acquired property; and (3) that military campaigns are being launched to eradicate them. At such a time the ruler can declare and execute the provisions of 'jihad'. It is a condition that there be a leader of the Muslims, an Imam, to declaring jihad is the

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[4] Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an*, (10th ed. 2001 [1934]) and accompanying text (discussing Qur'an surah al-Hâjj/22:39).

[5] See Ali at 76 (translating Qur'an, surah al-baqarah/2:190, as 'Fight in the cause of Allah those who fight you. But do not transgress limits; for Allah loveth not transgressors').

responsibility of the leader/ruler[6] and it is his independent legal judgment, advisibly after deliberation (*shûra*) with the leaders of the communities (*ahl al-ḥall wa al-'aqd*).

The predominant view that the military jihad is defensive represents one classical view of warfare in Islam. There are Qur'anic provisions that support a more expansive interpretation. Jurists interpreting the classical texts often describe the Qur'anic and Prophetic evolution of the law of military jihad as occurring in four historical stages.

The first stage involved peaceful propagation of the faith and emigration to Madina by the Prophet Muḥammad and his followers to avoid persecution in Mecca. After the Meccan enemy continued to persecute the Muslims, a second defensive stage emerged, involving military actions by the Muslims to defend their newly established state in Madina. The third stage involved a limited aggressive war constrained by the ancient prohibitions on fighting in the Sacred Months of the year, pursuant to the pre-Islamic tribal practice.[7] The fourth state occurred after the rapid victory of the Islamic forces on the Arabian Peninsula and the emergence of an expansionist polity, seeking to advance the Islamic cause throughout the rest of the then-known world. The Qur'anic expression of the military aspects of this last stage is best represented by verse 9:5 which exhorts Muslims to:

fight and slay the Pagans wherever ye find them, seize them, beleaguer them, and lie in wait for them in every stratagem (of war); but if they repent, and establish regular prayers and practice regular charity, then open the way for them: For Allah is Oft-Forgiving, Most Merciful.[8] (Q.S. al-Tawbah/9: 5).

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[6] It should be noted here that in Islamic history, various terms are used to refer to the leader/ruler of the government, the most important of which are *khalîfah, sulthân, mâlik, amîr.* In addition to those terms, the Qur'an also uses the words *uli al-amr* (one who is in charge in settling affairs) and *imâm.* This last term has different usage in Sunni and Shi'i circles. The Sunni understands it as those who lead the public prayers, while the Shi'i assigns it only to specially designated and religiously sanctioned line of leadership.

[7] Reuven Firestone, *Jihad: The Origin of Holy War in Islam* (1999): 56-60. The prohibition on aggressive warfare in the four 'Sacred Months' are found in the Qur'an, verses 2:217; 9:2; 9:5 and the last sentence of 2:191. see Ali, *The Meaning of the Holy Qur'an* : 86, 437-38, and 77, respectively.

[8] See Ali at 438 (translating Qur'an, verse 9:5). Jurists have argued that this verse abrogates at least 124 other verses that permit a less aggressive attitude toward non-believers. Firestone, supra note 45, at 63 (citing Ibn Jawzî, *Nawâsikh al-Qur'ân*, 173); see also E. Tyan, "*Djihad,*" in *Encyclopedia of Islam,* 2nd ed., supra note 6, at 538 (confirming the view that the concept of *jihâd* is subject to a classification scheme that contemplates four 'successive categories' that correspond to historical stages we have described, and asserting that the last category requires the conclusion that *jihâd* is obligatory even if the unbelievers do not start the war). This view is disputed, see e.g., Louay M. Safi, *Peace and the Limits of War: Transcending Classical Conception of Jihâd,* 8-15 (2001) (citing the medieval jurist al-Qurthubî, as well as Umar ibn 'Abd al-'Azîz, Ibn 'Abbâs, and Thabarî, and arguing that the *jihâd* was only obligatory with respect to the problem of the obstinacy of the pagan Arabs since, otherwise, verse 9:5 contradicts other verses of the Qur'an requiring a regime of epace with 'the people of the book').

It is also important to understand that Islam is not just a religion and a system of theological thought. It is also a system of jurisprudence, one that finds its primary sources in religious texts and uses those texts to create legal norms, obligations, prescriptions, and prohibitions for its adherents to live and govern themselves by. All forms of '*jihad'*, including the 'military jihad' are, therefore, complex of clusters of such norms, obligations, prescriptions, and prohibitions. The 'military jihad' is expressly authorized by the Qur'an:

To those against whom war is made, permission is given to (fight) because they are wronged- and verily, Allah is Most Powerful for their aid. (They are) those who have been expelled from their homes in defiance of right-(for no cause) except that they say, 'Our Lord is Allah. (Q.S. al-Hajj/22: 39-40).[9]

The verses that give the Muslim believers permission to fight their enemies were revealed to the Prophet Muhammad after he and his followers, seeking to live in peace, emigrated from Mecca to Madina and the Meccans continued to persecute and make war on them. The above verse is the genesis of the concept of the military jihad. It clearly offers normative justification to Muslims for waging war in the exercise of the collective right of self-defense, and it brings the Islamic conception of defensive war into close alignment with traditional Western 'Just War' doctrine. This verse and a number of other revelations that followed it, together with the normative example of the Prophet Muhammad's behavior in war, are the bases for the development of an extensive body of Islamic law authorizing and regulating military jihad in a variety of circumstances.

Contemporary thinking about *jihâd*, however, offers a wider spectrum of views. Apart from the conservatives, who adhere to the interpretation given in the classical books on Islamic law, there are the ideologues of the radical Islamic opposition, who call for *jihâd* as a means to spread their brand of Islam. Some of these radical groups call for the use of violence in order to defeat the established governments. They are faced, however, with a serious doctrinal problem as they preach an armed revolution against Muslim rulers; Islamic law allows revolt only in very rare circumstances. One of these is when a ruler abandons his belief; fighting against him is allowed. Throughout Islamic history, governments and opposition movements have declared their Muslim adversaries to be heretics or unbelievers (*takfîr,* declaring someone to be a *kâfir,* unbeliever) in order to justify their struggle against them. it is this line of reasoning that is used by contemporary radical Islamic groups to give legitimacy to their use of arms against rulers who are to all appearances Muslims. In modern times therse views were first propagated by 'fundamentalists' like Sayyid Quthb (d. 1966) and Abû al-A'la Mawdûdî (1903-1979).

The most eloquent and elaborate statement of this view can be found in a pamphlet published by the ideologue of the '*Jihad* Organization', whose members assassinated

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[9] Ali, *The Meaning of the Holy Qur'an*, p. 832.

President Anwar Sadat of Egypt in 1981. The phamplet is called *al-Farîdah al-Ghâibah* (the Absent Duty), referring to the duty to wage *jihâd*, hich according to the author, 'Abd al-Salâm Farâj, is not fulfilled anymore. The author borrows his arguments from *fatwa* (legal opinion) issued by the well-known author Ibn Taymiyah (1263-1328), when his opinion was sought regarding the legitimacy to wage *jihâd* against Mongol rule in the Middle East. This line of reasoning and the same reference is also used by the Bali bombing perpetrator Imam Samudra.[10]

Organizations that use the label 'jihâd' or its branches, or adopts jihadist reasoning has been increasing in the Arab world, and indeed in much of the Islamic world. This fact does not say as much about Islam, as is often assumed in the West, as it says about desperate attempts to exploit Islam politically. In the turbulent politics of the changing world, the radical opposition groups are now fighting their own governments with the same weapons that have been used against them. Just as many 'Islamic' governments have exploited Islam for purely vested interests, radical opposition groups that espouse Islam as an ideology then use the term to attribute their 'revolutionary' deeds to Islamic requirements.[11]

Children in Islamic Countries

The Qur'an, the first source of Islamic religion, and the Sunnah, the prophetic traditions considered by Muslims as the second source, use several terms and phrases to refer to the children in the society. These primary sources refer to children as *amânah* (trust), *matâ'* (gift/wealth), *fitnah* (test), *qurrat al-'ayn* (comforting for your eye). Muslims are frequently tested by Allah. Children are a test or trial for each and every Muslim. Their actions or lack of actions will be judged by God. 'Your wealth and your children are more of a trial, whereas Allah! With Him is a great reward.' (Q.S. al-Taghâbun/64: 15).

And those who pray, 'Our Lord! Grant unto us spouses and offspring who will be the comfort of our eyes, and give us (the grace) to lead the righteous. (Q.S. al-Furqân/25: 74).

A. Yusuf Ali gives a note on this verse with the following statement. 'We must also pray for the maintenance of God's law after us, through our wives and descendants: in our eyes they should not be mere accidents or playthings, but a real comfort and fulfillment

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[10] It is ironic that the new era of 'reformasi' in Indonesia, which brings in liberty and freedom, is also used by exponents of militant Muslims to spread their ideas. The perpetrator of first Bali Bombing, Imam Samudra, has written a book ironically entitled '*Aku Melawan Teroris*' [I Fight Terrorism] (Solo: Jazera, 2004). The book surprisingly becomes best-seller, the publisher has to re-print three times during 2004 (September, October and November) due to the high demand of the society.

[11] See As'ad Abu Khalil. 'Jihad Organizations' in John L. Esposito (ed). *The Oxford Encyclopedia of the Modern Islamic World*, vol. II (Oxford: Oxford University Press, 1995), p. 373-376.

of our spiritual longings. Perhaps, through them, as well as through ourselves, we may, by God's grace, be able to give a lead for truth and righteousness.[12]

More than one quarter of the world's two billion children live in Muslim countries-members of the Organization of the Islamic Conference-where they represent more than 40 per cent of the Muslim population.[13] Addressing their needs and guaranteeing their rights will in large part determine the success and failure of efforts by the world community during the next decade to combat poverty, accelerate human development and ensure peace and security for all.[14]

In response to globalization, the Islamic community, or *ummah,* needs to carefully balance an openness to other cultures while protecting the right of its children to learn and grow according to the values of Islam. All children-girls and boys, in all situations, always and everywhere-have the right to live and thrive, to reach their full potential. This key principle as described in *shari'a*, the right path ordained by God, guides the implementation of provisions for children that have been established by Islam, including provisions for the family environment, health education, cultural activities, special protection, civil rights and freedoms.

It is therefore not surprising that the Convention on the Rights of the Child has been embraced by all Muslim countries. Ratification of the landmark human rights instrument commits countries to a code of obligation for children. It puts the rights of children at the forefront of global struggle for human rights, to be ensured by adult society as a matter of legal obligation, moral imperative and development priority.

As does the Convention, Islam establishes the best interests of the child as primary consideration in actions and decisions concerning children; and the principles of *shari'ah* place corresponding obligations on the family, on society and on the state. These standards are used to guide laws, practices, budgets and policies. Governments, in particular, are encouraged to create an environment and provide the resources that ensure children receive the full benefits of these rights.

Members of the Organization of the Islamic Conference have affirmed their commitment to children by adopting the Millennium Declaration, the Millennium Development Goals and the goals of 'A World Fit for Children', the outcome document of the United Nations General Assembly's Special Session on Children in 2002. A resolution on Child Care and Protection in the Islamic World was issued by the Cultural Affairs Committee of the Organization of the Islamic Conference and adopted by the member states at the Islamic Summit Conference in Malaysia, October 2003.

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[12] Ali. *The Holy Qur'an*, p. 943.

[13] The 57 members of OIC are usually grouped into three subregions: African, Arab and Asian/other . Statistical data are mainly derived from *The State of the World's Children 2005,* with additional calculations by UNICEF for the OIC region and sub-regions.

[14] *Investing in the Children of the Islamic World.* UNICEF, OIC & ISESCO.

Islam and ' A World Fit for Children' share the same vision: a world in which all children get the best possible start in life; in which all children have access to free, high-quality, basic education, in which all children are protected against measles, malaria and malnutrition, are free from the terrors of war and have ample opportunity to their full human potential.

Some advances have been made in some Muslim countries, however, in general the progress is generally lacking behind compared to other countries. The present condition of Muslim children is still far from satisfactory. In OIC countries, about 4,3 million children under five die each year from preventable diseases and malnutrition-over 60 per cent of them before reaching their first birthday. About 6 million children under five suffer from malnutrition in the form of stunting, with low height for their age. About 23 per cent of the total population have no access to safe drinking water, and 45 per cent lack adequate sanitation. Children in sub-Saharan Africa, in particular, are facing a life-threatening crisis as a consequence of armed conflict, HIV/AIDS and poverty.

Globalization, poverty and inequity have aggravated these problems and created new ones. Rural o urban migration has caused a growth of slums and shantytowns, and the breakdown of families has forced increasing numbers of children to fend for themselves. Ongoing conflicts in some countries have destroyed social structures that may have already been weak. These phenomena have placed tremendous strain on the abilities of states to provide basic social services for all and to protect vulnerable children.

Education is a precondition for economic development and the fight against poverty, and the Qur'an sets the education of girls and boys as a high priority. Yet despite certain progress, primary school participation remains below 60 per cent in 20 OIC countries. Gender disparity persists, and as a result, only 26 out 57 OIC members are on course to achieve the MDG target of gender parity in primary education in 2005.[15]

The protection of children against abuse, violence and exploitation is an essential element of Islam. In many countries, the long silence on many protection issues is being broken, especially by the media – a sure sign of progress. But millions of children are still victimized by exploitation, and countless others are affected by violence at home, in schools, on the streets, in institutions are through the juvenile justice system. The lack of empirical data or clear evidence combined with the stigma that surrounds some of these issues makes it difficult to know the true extent of these problems and can hinder protection efforts.

In the face of these and other obstacles, OIC countries are building upon the strength of Islamic traditions-self-help, solidarity and protection of the vulnerable-to reaffirm their commitments to their children. The Convention on the Rights of the Child and other

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[15] United Nations Children's Fund, *Progress for Children: A Report Card on Gender Parity and Primary Education* (no. 2 UNICEF) New York, April 2005.

international human rights instruments have been ratified; now the challenge is to implement them. Active partnerships among OIC governments, as well as with regional and international financial institutions and the private sector, will be essential to provide the necessary funding and technical expertise.

One of the important sources of cultural strengths in Islam is the family. Since independence from colonial rule (in the 1950s and 1960s), the family unit has been subject to a variety of economic and political pressures. High rates of unemployment have prompted millions of men and also women to search for work outside their original countries as far as Europe. Inflation has also meant that large numbers of women, for the first time, have taken jobs outside their homes. Conflict in Lebanon, Afghanistan, and Iran, in other parts of the Muslim world, has led to family disruption through violent deaths and forced migration. The movement in almost all Islamic countries from rural to urban predominance has further challenged the customary ties of family life.

It is worth to mention that Islamic family law (*al-aḥwâl al-syakhshiyyah*), one of the most important branches of Islamic law, is the axis upon which Muslim families are founded. It governs the relationship of family members, which play a vital role as a basis for the Islamic social order and is a real cohesive force, which makes civilization possible. As a matter of fact, within the family system the basic Islamic values and its teachings are transmitted. Therefore, understandably, family is a positive permanent value of Islam, as well as, a necessary institution in the *Shari'ah*. Besides, enjoying a common life, as well as, raising children as the new generation, the institution of family is an important place of security, protection and nurturing of love. This is greatly contributes toward societal stability through the preservation of moral values on one hand and on the other toward individual preservation of physical health.

Thus the current debate throughout the Islamic world on the place and function of the family is a crucial deliberation, for it involves not only the suggestion that family responsibilities shall be passed from the family unit to the state, but the definition of the basic individual rights; those of women, men, and children. The status of women is not an isolated issue but at the core of the whole debate, for the woman has always been seen as the center of the family unit, the hub around which all its economic, personal, and political activities revolved.

Discussion of *shari'ah* family law reflect these concerns, as Qur'anic family law defines relations between men and women through legislation of marriage, divorce, child custody, inheritance, and polygyny (the Qur'an allows a man to take up to four wives if he can treat them justly and equally).[16] Therefore, family law is central to the *shari'ah*, if not to Islamic religion itself.

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[16] At present, these verses have been understood and interpreted in various ways in Muslim countries. The present legislation in Indonesia, for example, permits polygyny marriage

Child Soldier

In every fiqh (Islamic law) books which is still authoritative reference for Muslim scholars to derive a legal rule, there is always a chapter on 'jihâd'. As a case of example let me quote from *Hâsyiyah al-Bajuri 'ala Ibn al-Qasim al-Ghazi*. This is one of the obligatory text-books for high school levels in *madrasah-pesantren* (Islamic educational institutions).

وكان الأمر به فى عهد رسول الله صلى الله عليه وسلم بعد الهجرة فكفاية ... وشرائط حوب الجهاد سبع خصال: الإسلام والبلوغ والعقل والحرية والذكورية والصحة والطاقة على القتال. 17

The order to implement it (*jihâd*) was during the lifetime of the Prophet after his emigrating to Madinah and it is a collective obligation, Furthermore, those who have fulfilled certain seven requirements are obliged to participate in military jihad, namely: Muslim, adult, sane, free (not a slave), male, healthy, and capable. It is clear from this quotation that children are not included among those who are obliged to participate in any military activities.

Who is a child in Islamic law? The question may be put in a different way: When is someone considered an adult? In Islam there are two qualifications someone is considered to reach a majority age, namely, *'âqil* and *bâligh*. The former means 'in the full possession of one's mental abilities, while the latter means 'physically grown up, bodily of age'. Such a person is capable of acting with a purpose in view and deliberately. That is why the Muslim jurisconsults briefly describe the *'âqil-bâligh'* as mukallaf, i.e., 'one who is obliged to fulfill the precepts of the law', to whom the commandments and prohibitions of the laws refer in general. So, how old is someone to be considered an adult? In Islamic law, it is so relative and flexible. In Indonesia, for example, for marriage, the minimum age for girl is sixteen years old and for boy is nineteen, providing their parents gave their agreement. The Marital Law in Indonesia sets the age of 21 (twenty one) years old as a real adult age, after which one is allowed to conclude a marriage without parental or guardian consents.[18]

only with strict prerequisites, including the permission from existing wife(ves) and it should be decided by the religious court. See Indonesian Matrimonial Act No. 1/1974, and Book I of the KHI (Islamic Law Compilation).

[17] Al-Bajurî. *Hasyiyah al-Bayjûrî 'alâ Ibn al-Qâsim al-Ghâzî* (reprint Karya Insan Indonesia, nd.).

[18] Just for comparison, according to Article 1 of the Convention on the Rights of the Child, persons under 18 years old are to be regarded as children. [A child is every human being below the age of 18 years unless the applicable law of a Contracting State, the child has attained the age of majority]. This age limit is maintained throughout the Convention with the exception of Article 38, which stipulates that a child is a person under 15 years of age. It is quite pitiful that the age limits had to yield to subjective military needs when by all standard age should have been covered by humanitarian concern.

Children are exempted from military jihad obligation, unless it is a real dire emergency situation (*al-dharûrah*). However, every Muslim child, male and female alike, is obliged to attend schools and seek knowledge. The Prophet strongly states: *Seeking for knowledge is obligatory on each and every Muslim, male and female* (al-hadis). He is also quoted to say: *Seek knowledge and get education from the cradle to the grave* (*al-ḥadîs*).

Islam teaches its followers to protect, respect and educate their children who God has bestowed to them as means to comfort their heart, as process to create next good generation and as medium to test Muslims' faith and actions.

In many Muslim countries, education is legally mandatory not only in the sense of religious obligation, but also in national legislation, however, the governments are still unable to implement it. The World Bank estimates that only 40 per cent of Pakistanis, for example, are literate, and many rural areas lack public schools. In Madura island of Indonesia, for example, literacy in national language is much lower than literacy in Arabic characters. Meanwhile, Islamic religious schools-*madrasah*, *pondok, pesantren, meunasah* and the like, on the other hand, are relatively found all over the country and provide cheap, if not free, education. Most of these schools are funded religious alms *(zakât)* and pious foundations (*waqf*) as well as donations from well-to-do Muslim merchants and institutions. There have been several studies suggest that some of these traditional schools provide some kind of 'military training' and 'militant indoctrination', in some cases even combat-weapon training. However, further research should be carried out.

It is reported in the compilations of prophetic traditions that a man from Yemen migrated to Madinah to be with the Prophet. The Prophet asked him: Do you have any relatives in Yemen?' He answered, 'My parents.' 'Did you ask their permission?' the Prophet asked. On his replying that he did not, the Prophet told him, 'Go back to them and ask their permission. If they agree to it, go on to join war'. Otherwise stay and serve them. Another tradition tells about a young man who wants to participate in military expedition, but the Prophet did not allow him. The Prophet asked him instead to help his parents, and that is his '*jihâd*'.

Concluding Remarks

There is a unity and diversity in Islam, let alone in Muslim communities. The unity is more at the level of *dîn* (religious essential) and the primary sources of *shari'ah* (the right path), namely the Qur'an and the prophetic traditions. However, Muslim civilizations have developed a theology of pluralism and a culture of *ikhtilâf* (differences of opinions). It is not fair consequently to blanket all the Muslims under the voice of radical Muslims, few in number but vocal in voicing their ideas. There is a tendency lately that Islam has been 'hijacked' by this militant Muslims.

Realizing that there are great variety among the Muslims both in their understanding of their faith and in their day-to-day behavior, there is a great opportunity to work together to find solutions to our common problems. It is ironic to find out that some Western governments does not work enough to understand the realities of Islamic religion and Muslim communities, and keep on supporting authoritarian Muslim regimes and keep on suspecting Muslims.

It should be realized that there are certain elements of the interpretation (*tafsîr*) and formulations of Islamic law (*fiqh*) which in need of re-understanding and re-interpretation. However, the poor performance of human rights, especially concerning women and children, are also caused by many other conditions, among others economic, socio-cultural, and educational aspects. One cannot deny the role played by historical background of each community, especially the legacy of colonialism. Besides, the growing wave of globalization has benefited more the developed nation-states, and made the developing countries more as objects and victims.

My scanty experiences and my former research visits to several conflict areas in Southeast Asia encourage me to conclude that most of the populations in those areas are religious and pious. Their religiosity has been integrated and blended with their local culture. Religious approach should be highly considered to solve the conflict in a humane and just terms for any party involved.

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