

Abstract

The purpose behind this theses is to introduce the doctrine of jihad as a legal concept established in Muslim jurisprudence [fiqh] through the analysis of Arabic primary medieval legal sources and the writings of contemporary Islamic intellectuals. Firstly, its author will focus on the notion of jihad in classical Muslim jurisprudence and then proceed to examine the modern reinterpretations of jihad.

The introduction provides and insight into the basic features of the religious law of Islam and its system. The second chapter is concerned with the definition of jihad and siyar in the books of fiqh as a regulatory basis governing the conduct of military expeditions.

Then, it reviews the interpretative issues faced by Muslim exegets of the Quran and hadith posed by the application of abrogation mechanism [nasch] and analyses the early writings on jihad with respect to their structure, areas of regulation covered and the use of legal arguments and sources by their authors. The analyzed works include hadith collections of Al-Bukhari, Abu Dawud and Ibn Majja and the books of Malik and Al-Shaybani considered as the first codifications of Islamic laws of war. The third chapter presents the substantive rules of jihad as discussed by ibn Rushd in his legal handbook Bidayat al mujtahid which entails limits on conduct of warriors during hostilities, treatment of enemy persons and captives, damage caused to the enemy, division of property acquired as booty, armistice, legal aims of war and rules for administration of subjugated lands and taxation. The fourth chapter deals with modern reinterpretations of jihad. It critically examines the military doctrine of sheikh Yusuf Al-Qaradawi especially his concept of self-defence and preemptive jihad and assesses the degree of its alledged compatibility with applicable standards of resort to force in international law. Additionally, it looks at recent academic theories that seek to present jihad as international law.

Keywords

Islamic law, fiqh, jihad, siyar, Islamic theories of international relations