Islam and the Provisions of War

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Abstract: Islam and the Provisions of War. This article compares the provisions of war in Islam with the provisions contained in International Humanitarian Law (The four Geneva Conventions of 1949 and their Additional Protocols). The aim is not to judge Islamic according to or vice versa, but rather, to discover similarities and differences between the two regulations in governing the conduct of war. The study uses a comparative approach, exploring the Islamic values of ethics and rules of conduct of war and then comparing them with similar provisions of international humanitarian law. This article also analyzes the possibility of synthesizing the two legal system. Having reviewed the topic thoroughly, this study concludes that, in principle, there is no difference between Islamic law and international humanitarian law in regulating procedures and ethics of warfare. Both of the legal system are equally concern to regulate the behaviour of warriors by limiting the use of force and minimizing the impact of the battles to civilians.

Keywords: Islamic law, war, international humanitarian law, ethics of warfare


Kata Kunci: hukum Islam, perang, hukum humaniter internasional, etika peperangan
Introduction

War always causes suffering to mankind: not only to the soldiers who are forced to fight for state duties but also to civilians who, in fact, do not know anything. The loss of life and property, including the destruction of public facilities, is a common occurrence in the phenomenon of war. War is the worst choice commonly taken by a group or a country when all attempts of peaceful conflict resolution proved unsuccessful and deadlock.

Realizing how powerful the impact of war is for life and human civilization, the international community, represented by a number of world leaders, attempt to set the rules and to make concessions governing the conduct of the war.

At a meeting in Geneva in 1949, delegates succeeded in preparing four conventions and their additional protocols which were followed by subsequent agreements. Among the later-coming conventions are: The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, plus its two protocols; The 1972 Biological Weapons Convention; the Protocols of 1977 relating to the Protection of Victims of armed conflicts; the 1980 Conventional Weapons Convention and its five protocols; The 1993 Chemical Weapons Convention, prohibiting the use of certain weapons and military tactics and protect certain categories of people and goods; The 1997 Ottawa Convention on anti-personnel mines; The 2000 Convention on the Rights of the Child on the involvement of children in armed conflict, etc.

These rules, later known as International Humanitarian Law (IHL),
are almost universally accepted by all countries in the world and apply in situations of armed conflict, national or international, conventional or non-conventional. The main objective of IHL is to limit the violence of armed conflicts by protecting those taking no active part in hostilities and non-military objectives property, and by restricting the combatants’ right in choosing methods of warfare.

Long before the International Humanitarian Law was compiled and widely accepted by the international community, the Muslim world had already had the rule of war based on the Qur’an and the Sunnah of the Prophet. Such a rule, commonly known as Fiqh al-Siyar (plural form of the word “Sira”), was shaped by the Prophet along with the wars he had waged, and then was expanded in the Post-Prophet period until recent times. The problem is, does the Islamic humanitarian law differ in principle with the International Humanitarian Law?

The following description compares the rules/the principles existing in the Fiqh Siyar and in IHL, to identify similarities and differences between the two legal systems, which can be used as a material for constructing a new war regulation which is more comprehensive and upholding human dignity.

The Terms of War in Islam

There are several terms known in sharia law concerning “war”. Such as: Ghazwah, Harb, Jihâd and Qitâl. Claude Bernard Lewis defines the term “ghazu” as “a hostile incursion, foray or raid, for purpose of conquest, plunder, the capture of slaves, etc. as practiced by the Mohammedan peoples in Africa.” Such a definition, in step with al-

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Dawoody, is really deceptive. The word ghazwah was not related to any trip or expedition the Prophet created and did not essentially mean a “raid” or “fighting”. Concerning some accounts, al-Dawoody points out that Muslim biographers usually check with the incidents of fighting between Muslims and their enemies throughout the Prophet’s life as al-ghazawât or al-sarâyâ. Ghazawât (sing. ghazwah), refers to any of the missionary and military campaigns, or different journeys, within which the Prophet took half.6 Sarâyâ (sing. sariyah) refers to expeditions allegedly sent by the Prophet however within which, not like the ghazawât, he failed to participate. Abû Zahrah conjointly affirms that ghazawât or kind doesn’t mean war, however, preaching the faith of Islam”.7

Similarly, the words harb, qitâl and jihâd also are employed in the Qur’an with varied meanings. The word harb, as al-Dawoody mentions, happens sixfold, in Medinan texts, meanings: (1) War with non-Muslims plundering as war against society, (2) Figurative penalization by God within the Hereafter or by the Prophet during this world for dealing by usury, and (3) War in an exceedingly pre-monotheism context. The word qitâl happens 100 and seventy times within the Qur’an—ninety-five times in Medinan texts addressing the context of the connection between Muslims and non-Muslims, and lxxv times within the contexts of accounts concerning nations before Islam, or revenge for the murder, or the pre-Islamic custom of feminine infanticide. Whereas the word jihâd happens altogether 41 times with the subsequent meanings: (1) attempt as a result of theological virtue, (2) war-ridden non-Muslim folks exerting pressure to create their youngsters abandon Islam, (3) solemn oaths and (4) physical strength.8

The Qur’an has created a transparent distinction between Qitâl and Jihâd. The word “Jihâd”, followed by the modifying phrase fî sabîl Allah, means that to exert oneself in pursuit of the God’s order, either

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by doing one thing smart or by abstaining from doing one thing evil. wherever because the word “Qitâl” may be a term for warrings generally. War brought up as Qitâl (combat or fighting) is contained within the sacred writing.

Within the context of war, jihâd means that comprehensive struggles within the path of Allah, to defend oneself from attack or to liberate the burdened. The Sunni Jurists-the Hanafîtes, the Mâlikîs, the Shâfi’îs and therefore the Hanbalîs-outline jihâd as means that exerting one’s utmost effort infighting within the path of God either by collaborating in an exceedingly battle or by supporting the military financially or by the tongue, or fighting against a non-Muslim enemy with whom Muslims don’t have any peace agreement so as to convey the message of Islam.

Jihâd isn’t associate in nursing act of aggression for the sake of fabric interests or for unjust personal (for fame, glory, and arrogance) and national objectives (for imperial, colonial hegemony); It may be a sacred duty assigned to each Muslim within the interests of humanity in order that there ought to be peace and justice within the world. 9

Al-Farabi (d. 950), a great Muslim thinker, considers the legitimacy of war supported a spread of things. Wars area unit illegitimate if they serve a ruler’s slender, egotistic functions or if they’re devoted entirely to conquest and bloodshed, simply wars could, of course, be defensive: however, they will conjointly, below some circumstances, be offensive: what makes them simply is their role in achieving the well being of the “virtuous town,” that association that we have a tendency to all would like so as to realize happiness. Thus, parallel with the Western idea of simply war, jihâd is each holy and simply.10

The jurist-Ibn Khaldun in his Muqaddima distinguishes war into four categories: 2 area unit illegitimate (those arising from want for plunder and people that consisted of petty squabbles between rival peoples) and therefore the different 2 area unit legitimate-Jihâd and Harb. Harb may

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\section*{Sources of the Islamic Law of War}

The first source of the Islamic law of war is al-Quran. The scripture contains a number of verses dealing with war, for instance the Quran Surah [2]: 190:

\textit{Fight in God’s cause against those who fight you, but do not overstep the limits: God does not love those who overstep the limits.}\footnote{13}{MA Abdel Haleem, \textit{The Qur’an} (OUP Oxford, 2005), p. 21.}

In another verse Allah says:

\textit{On account of [his deed], We decreed to the Children of Israel that if anyone kills a person-unless in retribution formurder or spreading corruption in the land-it is as if he kills all mankind, while if any saves a life it is as if he saves the lives of all mankind. Our messengers}
came to them with clear signs, but many of them continued to commit excesses in the land. “(Q.s. al-Maidah [5]: 32).

The second source of the law is the Sunna or the Hadith, a compilation of the prophet actions and sayings. Among the Sunna containing humanitarian principle is ‘do not kill elderly people, children, woman: do not underhand on the spoils, do well: God likes thosewho act right.’ Another hadith reports that the prophet said: ‘prisoners are your brothers and companions. It is because of God’s compassion that they are in your hands. They are at your mercy, therefore treat them well as if you were treating yourself”.

The third source is the ijma’, the agreement of Muslim Jurists (the ulama) in deciding particular legal issues. The ulama have reached a consensus (ijma’) that it is forbidden to disturb women and children if they do not take up arms in war. But if they participate in war, then the majority of the ulama are of the opinion that they are to be considered as combatants”.

The fourth is so-named *ijtihâd* (human reasonings). The *ijtihâd* is a method used to interpret legal corpus known as shari’a. Individuals who interpret the Qur’an and the Sunna is called mujtahids. It is the mujtahid who interpret the Qur’an and the Sunna to find a legal determination of any particular issue and the give his legal opinion (fatwa). Whenever a number of mujtahed reach a consensus or have similar views on a certain legal issue, their decission is called ijma’.

Apart from the mentioned-above four sources of Islamic law, there is another source namely customs. This source of law, however, is still debatable among the Islamic Jurists and rarely used in the process of law findings.

War in the Islamic Perspective

The following discusses the Qur’ânic texts addressing the issue of war. The aim is to discover the ways in which the Qur’ân justifies warfare. But before discussing the Qur’anic perspectives, it is worth to mention that, basically, Islam is a religion of peace. Islam does not support any warfare, rather it supports peace. This principle can be found in a number of Qur’anic texts, as follows:

Surah 16 al-Nahl [16]: 125:

[Prophet], call [people] to the way of your Lord with wisdom and good teaching. Argue with them in the most courteous way, for your Lord knows best who has strayed from His way and who is rightly guided.\(^{17}\)

Surah al-Mâidah [5]: 28:

“If you raise your hand to kill me, I will not raise mine to kill you. I fear God, the Lord of all worlds.”\(^{18}\)

Surah al-Mumtahanah [60]: 8:

“God does not forbid you to deal kindly and justly with anyone who has not fought you for your faith or driven you out of your homes: God loves the just.”\(^{19}\)


\(^{18}\) Anowar Zahid and Rohimi Shapiee, ‘Customs as a Source of Siyar and International Law: A Comparison of the Qualifying Criteria’, p. 70.

However, as war is a reality in the human realm and because violence is inherent to human nature, the Qur’an, under certain conditions, permits the Muslim to recourse war as it mentioned in a number of verses, such as: Surah al-Hajj [22]: 39–40; Surah al-Nisa’ [4]: 75–76; Surah al-Baqarah [2]: 190–194, and 216–217; Surah al-Anfal [8]: 38–39, and 61; Surah al-Taubah [9]: 5 and 29; Surah al-Mumtahanah [60]: 8–9.

The first Qur’ânic revelation permitting recourse to war in Islam, according to the majority of Classical Muslims exegators, is Surah al-Hajj [22]: 39–40 which reads:

> "But if they incline towards peace, you [Prophet] must also incline towards it, and put your trust in God: He is the All Hearing, the All Knowing."

> Those who have been attacked are permitted to take up arms because they have been wronged-God has the power to help them-40 those who have been driven unjustly from their homes only for saying, ‘Our Lord is God.’ If God did not repel some people by means of others, many monasteries, churches, synagogues, and mosques, where God’s name is much invoked, would have been destroyed. God is sure to help those who help His cause-God is strong and mighty.


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In another verse, Allah says:

"Why should you not fight in God's cause and for those oppressed men, women, and children who cry out, 'Lord, rescue us from this town whose people are oppressors! By Your grace, give us a protector and give us a helper?' The believers fight for God's cause, while those who reject faith fight for an unjust cause. Fight the allies of Satan: Satan's strategies are truly weak". 

Also in Surah al-Baqarah [2]: 190 the Quran reads: “Fight in God's cause against those who fight you, but do not overstep the limits: God does not love those who overstep the limits...”.

The aforementioned Qur’anic texts clearly show that the Islamic casus belli is defense against aggression. Indeed, most of the wars in which the Muslims’ engaged during the Prophet’s lifetime, such as the battle of Badr, Khaybar, al-Tâ’if, the Ditch, Uhud, and Hunayn, were defensive and just wars. Rashid Ridâ and al-Marâghî pointed out that war in early Islam was permitted to stop the Muslim persecution and to protect Muslims hurriyyah al-dîn (freedom of religion). In the light

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of this text, al-Qaradâwî adds that the Islamic state should also go to war to rescue non-Muslim minorities if they require its help and if it is able to rescue them.27

The conduct of hostilities is strictly regulated by the Holy Qur’an, the words of the Prophet (peace be upon him) and the Rightly Guided Caliphs commands28 under the following principles:

1. Fight only against the combatants

The jurists developed lengthy discussions on who is and who is not a permissible target in war. They Developed a distinction between two categories of the enemy: al-muqâtîlah/ahl al-qîtâl/al-muhâribah (combatants, fighters/warriors) and ghâyr al-muqâtîlah/ghâyr al-muhâribah (non-combatants, non-fighters/non-warriors).29

The phrase “Those who fight against you.” (Qur’ân [2]: 190) indicates (1) Permission to fight against those who initiate aggression against Muslims; (2) Prohibition of targeting non-combatants-those who not taking part in warfare, either by action, opinion, planning or supplies, such as women, children, the aged, the clergy, or those with whom Muslims have a peace, etc. Several hadîths attributed to the Prophet prohibit targeting five specific categories of enemy non-combatants, namely, women, children, the aged, the clergy, and al-‘Asîf (any hired man).30 Also the blind, the sick,31 the incapacitated and the insane.32

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A hadith reported by Abû Bakr says: ‘Remember that you are always under the looks of God and on the verge of death. Listen to me so that I can give you 10 orders that you have to respect scrupulously. When you fight for the glory of God, behave like men, never turn your back. But do not shed women, children and old people’s blood. Do never act with perfidy. Do not leave the right path. Do not mutilate. Do not destroy trees, do not burn houses, do not tear down fruit trees and do not kill the cattle unless you have to feed yourselves when you meet monasteries and religious people leave them alone.’ Al-Shaybânî (d. 189/804–5), quoting the Qur’ân [2]: 190 “and fighting the way of God those who fight against you”, pointed out that Islam justifies fighting only against enemy combatants.

2. Prohibition of transgression

Among humanitarian standards that exist in Islamic law, one finds: prohibition of torture, killings and unnecessary sufferings; prohibition of excess and wickedness; The Qur’an strongly prohibits the initiation of aggression and transgression. This concept is reinforced in Surah al-Baqarah [2]: 194:

\[ فَمِنْ أَنْفَدَّ أَعْلَمَكُمْ فَأَعْنَبْوَأَ عَلَيْهِ بَيْنَ يَدَيْ مَا أَعْنَبْدُ أَعْلَمَكُمْ وَأَنَّى لَهُ أَحْيَانَ أَعْلَمَكُمْ \]

“So If anyone commits aggression against you, attack him as he attack you, but be mindful of God, and know that He is with those who are mindful of Him”.

The Qur’an Interpreters also explain that it amounts to the prohibition of mutilation, unnecessary burning and destruction, cutting down trees, killing animals except for food, surprising the enemy with an

act of war without a declaration of war, and fight for personal gain or glory.\textsuperscript{36}

3. Cessation of fighting is obligatory if the enemy desist. (Refer to Surah al-Anfāl [8]: 61 above mentioned).\textsuperscript{37}

4. Prohibition of fighting at the sacred mosque and in the sacred months

Muslims are prohibited to initiate war in the surround of Sacred Mosque (Masjid al-Haram in Mecca), unless they are attacked therein. This prohibition is clearly stated in the Qur’an Surah al-Baqarah [2]: 217:

They ask you about fighting in the Sacred Month: say fighting therein is [a] grave [sin], and but debarring from God’s way and unbelief in Him and the Sacred Mosque and expelling its people from it are/is graver [sin] in the sight of God.\textsuperscript{38}

5. Prohibition of property destruction

Islam prohibits the Muslim army to inflict destruction on enemy property (Qur’an Surah al-Hasyar [59]: 5:

Whatever you [believers] may have done to [their] palm trees—cutting them down or leaving them standing on their roots—was done by God’s leave, so that He might disgrace those who defied Him.


\textsuperscript{38} Russell Buchan, ‘The Rule of Surrender in International Humanitarian Law’, p. 21.
Prohibition also applies for destruction of herds; trees and harvests, houses, cities and belongings, including destruction of religious symbols. An exception applies when it is a military necessity to do so, for example, if it prevents the army from conducting military operations, such as barricades, castle, and fortifications.39

6. Prisoners of war

Islam strongly emphasizes to treat the captives or enemy prisoners with compassion and respects. Islam prohibits massacre, torture, and other ill-treatments as it is contrary to the principle of human dignity. God the Almighty says: “and they feed, for the love of God, the indigent, the orphan and the captive.” The Prophet said: ‘Prisoners are your brothers and companions. It is because of God’s compassion that they are in your hands. They are at your mercy, so treat them well as if you were treating yourself, with food, clothes and housing.”40 The Caliph Abû Bakr told his officials “that no prisoners should be tied in chains, handcuffed and they shall be provided with food,41 clothes and adequate housing.42 A ruler of Islamic state should not execute enemy hostages under his control, even if the enemy slaughtered the Muslim hostages they held, This prohibition is based on the Qur’ânic injunction: “No Sinful person shall be liable for the sin committed by another.”43

With regard to the fate of the captives, the Qur’ânic revelation directly addresses the rulings on the prisoners of war to: “set them free either graciously or by ransom [47]:4.” The majority of the Muslim jurists, however, including the Shâfi’îs, the Mâlikîs, the Hanbalîs, al

43 MA Abdel Haleem, The Qur’an, p. 348.
-Awzâ’î, Abû Thawr, and al-Thawrî, broaden the alternatives into four option depending on what best serve the interest of the Muslims. The rulings is entitled either to execute some or all of the prisoners, to enslave them, to set them free, or to exchange them for Muslim prisoners or formoney.  

Furthermore, the Islamic law of war principles also provide a comprehensive framework for the protection of the captives. Among them is a provision that during the prisoners’ captivity or enslavement, members of the same family should not be separated: children should not be separated from their parents or grandparents or siblings. Thus, similar to the provision of Article 82 of the Geneva Convention (IV). Another provision also emphasizes that after the cessation of hostilities, the bodies of the enemy warriors should be handed over to the enemy if they require it, otherwise Muslims are to bury them. The Prophet always ensured the burial of the dead, irrespective of whether the bodies belonged to the Muslims or their enemy. This is in agreement with Article 17 of the first Geneva Convention (1949).


The issue concerning the use of Massive Destructive Weapon (WMD) causing the massive scale of human catastrophe has not been adequately studied by classical Muslim scholars. The reason for the inadequacy of such studies is that the war in the earlier era used only primitive weapons such as swords, arrows, and lances.

However, as al-Dawoody explains, contemporary Islamic positions on WMD can be divided generally into three main attitudes. First, there are those who totally prohibit the acquisition and use of WMD because such weapons lead to the killing of noncombatants and inflict unnecessary destruction. Second, relying on the principle of reciprocity, there are those who affirm the Islamic prohibition of WMD, on the aforementioned grounds, but argue that Muslims

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may possess/use any weapon, including nuclear weapons, only if their enemies possess/use them.\textsuperscript{45}

Their arguments are based on some Qur’ânic pronouncements like “whoso commits aggression against you, then respond within the same degree of aggression waged against you” and “if you punish, then punish with a similar penalisation had been inflicted upon you.” Mohamed Mokbel Mahmud Elbakry and Ibrâhîm ʿAbd al-Hamîd argue here that if Muslims abstain from using a weapon that is used by their enemies, it would be “tantamount to committing suicide,” which is prohibited according to the Qur’ân: “do not throw yourselves into destruction.” Moreover, the following advice of Abû Bakr to Khâlid ibn al-Walîd is quoted in support of this attitude: “If you encounter your enemy, then fight them with the same weapon they fight you with.”

Third, there are those who also acknowledge the Islamic prohibition of the use of WMD, but argue that Muslims can use these weapons even before their enemies use them.\textsuperscript{46}

8. Quarter and safe conduct

A quarter can be defined as a contract of protection, granted during the actual acts of war, to cover the person and property of an enemy belligerent, all of a regiment, everybody within a fortification, as well as the whole enemy army or town. This quarter is granted during war operations on the battlefield. It lasts until the enemy belligerents are escorted to their place of safety, or until the expiration of its fixed duration.\textsuperscript{47}

Safe conduct is a contract of protection granted to any non-Muslim citizen of a country that is technically in a state of war with the Islamic state, though not necessarily in the process of undertaking hostile action. This form of protection is given to any individual who

desires to enter the Islamic state for business, education, tourism, or any other purpose, other than conducting military acts inside the Islamic state or spying.\footnote{48}

This form of resembles the \textit{hors de combat} status, defined in Article 41 of the Additional Protocol I, June 8, 1977, of the Geneva Conventions.

\textbf{Conclusion}

Islamic humanitarian law does not differ much from international humanitarian law: both the legal systems regulate warfare methods—including the protection of civilians, conduct of hostilities, and restrictions on weapons. Islam, indeed, does not provide a detailed regulation as in the Geneva Conventions and the Additional Protocols but the possibility to explore them in more detailed from Islamic sacred legal sources, is always possible.

Therefore, in drafting the future law on war, world leaders need to consider Islamic values and if necessary set the rules of war in Islam as one of the main sources in drafting humanitarian law.

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