

# 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

**Abstrak:** *Islam dan Aturan tentang Perang.* Artikel ini membandingkan ketentuan tentang hukum perang dalam Islam dengan ketentuan yang terdapat dalam hukum humaniter internasional. Tujuannya bukan untuk menghakimi hukum internasional Islam berdasarkan Konvensi Jenewa atau sebaliknya, melainkan untuk memulai upaya lebih lanjut menguniversalkan aturan yang mengatur tentang perang. Studi ini menggunakan pendekatan perbandingan hukum, yakni dengan menggali nilai-nilai etik dan aturan perilaku perang yang termaktub dalam Alquran dan al-Hadith, dan membandingkannya dengan ketentuan-ketentuan yang sama terdapat dalam hukum humaniter internasional. Artikel ini juga menganalisis kemungkinan mensintesis kedua sistem hukum tersebut. Hasil penelaahan yang dilakukan dengan seksama, diperoleh kesimpulan bahwa tidak terdapat perbedaan prinsipil antara hukum Islam dan hukum humaniter internasional dalam menetapkan aturan tentang tata cara dan etika peperangan. Kedua sistem hukum sama-sama berkeinginan untuk mengatur perilaku pihak-pihak yang terlibat dalam peperangan, membatasi penggunaan kekerasan sekaligus meminimalisir dampak peperangan bagi masyarakat sipil.

**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.<sup>1</sup> 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.<sup>2</sup>

These rules, later known as International Humanitarian Law (IHL),

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<sup>1</sup> About Geneva Convention, see Jean S. Pictet, and Jean De Preux. "Geneva Convention Relative to the Treatment of Prisoners of War." (1960). John Hogg, Doug Lea, Alan Wills, Dennis deChampeaux, and Richard Holt. "The Geneva Convention on the Treatment of Object Aliasing." *ACM SIGPLAN OOPS Messenger* 3, no. 2 (1992): p. 11-16. Jean S. Pictet, ed. *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*. International Committee of the Red Cross, 1958. Jean Pictet, "Commentary Geneva Convention I." *International Committee of the Red Cross, Geneva Google Scholar* (1952). J. A. C. Gutteridge, "The 1958 Geneva Convention on the Continental Shelf." *Brit. Yb Int'l L.* 35 (1959): p. 102. Richard Young, "The Geneva Convention on the Continental Shelf: A First Impression." *American Journal of International Law* 52, no. 4 (1958): p. 733-738.

<sup>2</sup> Adam Roberts, 'Documents on the Laws of War', *International Review of Red Cross*, 82 (2000), 1095.

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"),<sup>3</sup> 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,<sup>4</sup> 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*, *Jihād* and *Qitāl*. Claude Bernard Lewis defines the term "*ghazw*" 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."<sup>5</sup> Such a definition, in step with al-

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<sup>3</sup> Haniff Ahamat and Mohd Hisham Mohd Kamal, 'Modern Application of Siyar (Islamic Law of Nations): Some Preliminary Observations', *Arab Law Quarterly*, 25 (2011), 423 (p. 423).

<sup>4</sup> Anisseh Van Engeland, 'The Differences and Similarities between International Humanitarian Law and Islamic Humanitarian Law: Is There Ground for Reconciliation?', *Journal of Islamic Law and Culture*, 10.1 (2008), 81–99 <<https://doi.org/10.1080/15288170701878300>>; Marcel A. Boisard, 'On the Probable Influence of Islam on Western Public and International Law', *International Journal of Middle East Studies*, 11.4 (1980), 429–50 <<https://doi.org/10.1017/S0020743800054805>>.

<sup>5</sup> Bernard Lewis, *The Political Language of Islam* (University of Chicago Press, 2018), p. 74.

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-sarâÿâ*. *Ghazawât* (sing. *ghazwah*), refers to any of the missionary and military campaigns, or different journeys, within which the Prophet took half.<sup>6</sup> *Sarâÿâ* (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”.<sup>7</sup>

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’ân—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.<sup>8</sup>

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

<sup>6</sup> John Renard, ‘Ahmed al-Dawoody, The Islamic Law of War: Justifications and Regulations’, *Political Theology*, 12, no. 6 (2011), p. 930–932. <<https://doi.org/10.1558/poth.v12i6.930>>.

<sup>7</sup> Muḥammad Abû Zahrah, *al-Jarîmah Wâ al-‘Uqûbah Fî al-Fiqh al-Islâmî: al-‘Uqûbah* (Ttp.: Dâr al-Fikr al-‘Arabî, 1966), p. 807.

<sup>8</sup> John Renard, ‘Ahmed al-Dawoody, The Islamic Law of War: Justifications and Regulations’, p. 56–57.

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.<sup>9</sup>

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.<sup>10</sup>

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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<sup>9</sup> Muhammad Khayr Haykal, ‘al-Jihad Wa al-Qital Fi al-Siyasa al-Shara ‘Iyya’, *English: Jihad and Fighting According to the Shar ‘Ia Policy*, Bayrût: Dar al-Barayiq, 2 (1993), p. 995–997.

<sup>10</sup> Abu Nasr al-Farabi, *Kitab Fi Tashil al-Sâadah (On the Achievement of Happiness)* (Research by Jafar al-Yassin, Bayrut: Dâr al-Andolus, 1982), p. 78.

be wars waged for functions apart from the unfold of Islam.<sup>11</sup>

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### 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:

وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ  
الْمُعْتَدِينَ

*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.*<sup>13</sup>

In another verse Allah says:

مَنْ أَجَلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ  
فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا  
أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ  
بَعَدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ

*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*

<sup>11</sup> Mahmood Ahmad Ghazi, 'The Law of War and Concept of Jihad in Islam', *Policy Perspectives*, 5, no.1 (2008), p. 69–86; Etim E. Okon, 'Islam, War and International Humanitarian Law', *European Scientific Journal, ESJ*, 10, no. 14 (2014). <<https://doi.org/10.19044/esj.2014.v10n14p%0>>.

<sup>12</sup> Muhammad Khayr Haykal, 'al-Jihad Wa al-Qital Fi al-Siyasa al-Shara 'Iyya', p. 44.

<sup>13</sup> MA Abdel Haleem, *The Qur'an* (OUP Oxford, 2005), p. 21.

*came to them with clear signs, but many of them continued to commit excesses in the land.*“ (Q.s. al-Maidah [5]: 32).<sup>14</sup>

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 those who 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”.<sup>15</sup>

The fourth is so-named *ijtihad* (human reasonings). The *ijtihad* 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 mujtahid reach a consensus or have similar views on a certain legal issue, their decision is called *ijma’*.

Apart from the mentioned-above four sources of Islamic law, there is another source namely customs.<sup>16</sup> This source of law, however, is still debatable among the Islamic Jurists and rarely used in the process of law findings.

<sup>14</sup> MA Abdel Haleem, *The Qur’an*, p. 71.

<sup>15</sup> Shâfi’î Abû Zakaria al-Nawawî and Yahya bin Sharaf bin Marî, *Sharh al-Nawawî Ala Muslim*, (Kairo: al-Matba’ah al-Mishriyah, 1929).

<sup>16</sup> Anowar Zahid and Rohimi Shapiee, ‘Customs as a Source of Siyar and International Law: A Comparison of the Qualifying Criteria’, *Int’l J. Civ. Soc’y L.*, 8 (2010), p. 36.

## War in the Islamic Perspective

The following discusses the Qur'anic texts addressing the issue of war. The aim is to discover the ways in which the Qur'an 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:

أَدْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَدِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِمَنْ ضَلَّ عَنْ سَبِيلِهِ وَهُوَ أَعْلَمُ بِالْمُهْتَدِينَ

*[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.*<sup>17</sup>

Surah al-Mā'idah [5]: 28:

لَئِنْ بَسَطْتَ إِلَيَّ يَدَكَ لِتَقْتُلَنِي مَا أَنَا بِبَاسِطٍ يَدِيَ إِلَيْكَ لِأَقْتُلَكَ إِنِّي أَخَافُ اللَّهَ رَبَّ الْعَالَمِينَ

*"If you raise your hand to kill me, I will not raise mine to kill you. I fear God, the Lord of all worlds".*<sup>18</sup>

Surah al-Mumtahanah [60]: 8:

لَا يَنْهَى كُمْ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

*"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".*<sup>19</sup>

<sup>17</sup> Anowar Zahid and Rohimi Shapiee, 'Customs as a Source of Siyar and International Law: A Comparison of the Qualifying Criteria', p. 173.

<sup>18</sup> Anowar Zahid and Rohimi Shapiee, 'Customs as a Source of Siyar and International Law: A Comparison of the Qualifying Criteria', p. 70.

<sup>19</sup> Anowar Zahid and Rohimi Shapiee, 'Customs as a Source of Siyar and International Law: A Comparison of the Qualifying Criteria', p. 369.



Surah al-Anfâl [8]: 61:

وَإِنْ جَنَحُوا لِلسَّلَامِ فَاجْنَحْ لَهَا وَتَوَكَّلْ عَلَى اللَّهِ إِنَّهُ هُوَ السَّمِيعُ الْعَلِيمُ

*“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.”*<sup>20</sup>

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

أُذِنَ لِلَّذِينَ يُقَاتَلُونَ بِأَنَّهُمْ ظَلِمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ ﴿٣٩﴾ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ بِغَيْرِ حَقٍّ إِلَّا أَنْ يَقُولُوا رَبُّنَا اللَّهُ وَلَوْلَا دَفْعُ اللَّهِ النَّاسَ بَعْضَهُمْ بِبَعْضٍ لَفَدَّمَتْ صَوَامِعُ وَبِيَعٌ وَصَلَوَاتٌ وَمَسَاجِدٌ يُذَكَّرُ فِيهَا اسْمُ اللَّهِ كَثِيرًا وَلَيَنْصُرَنَّ اللَّهُ مَنْ يَنْصُرُهُ إِنَّ اللَّهَ لَقَوِيٌّ عَزِيزٌ ﴿٤٠﴾

*“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.”*<sup>21</sup>

<sup>20</sup> Anowar Zahid and Rohimi Shapiee, ‘Customs as a Source of Siyar and International Law: A Comparison of the Qualifying Criteria’, p. 114.

<sup>21</sup> Anowar Zahid and Rohimi Shapiee, ‘Customs as a Source of Siyar and International Law: A Comparison of the Qualifying Criteria’, p. 212.

In another verse, Allah says:

وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ  
الَّذِينَ يَقُولُونَ رَبَّنَا أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمِ أَهْلُهَا وَاجْعَل لَنَا مِنْ لَدُنْكَ  
وَلِيًّا وَاجْعَل لَنَا مِنْ لَدُنْكَ نَصِيرًا ﴿٧٥﴾ الَّذِينَ ءَامَنُوا يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالَّذِينَ  
كَفَرُوا يُقَاتِلُونَ فِي سَبِيلِ الطَّاغُوتِ فَقَاتِلُوا أَوْلِيَاءَ الشَّيْطَانِ إِنَّ كَيْدَ الشَّيْطَانِ كَانَ  
ضَعِيفًا ﴿٧٦﴾

*“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.”*<sup>22</sup>

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....”*<sup>23</sup>

The aforementioned Qur’anic texts clearly show that the Islamic *casus belli* is defense against aggression.<sup>24</sup> 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.<sup>25</sup> 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).<sup>26</sup> In the light

<sup>22</sup> Anowar Zahid and Rohimi Shapiee, ‘Customs as a Source of Siyar and International Law: A Comparison of the Qualifying Criteria’, p. 157.

<sup>23</sup> Anowar Zahid and Rohimi Shapiee, ‘Customs as a Source of Siyar and International Law: A Comparison of the Qualifying Criteria’, p. 21.

<sup>24</sup> John Renard, ‘Ahmed al-Dawoody, The Islamic Law of War: Justifications and Regulations’, p. 58.

<sup>25</sup> John Renard, ‘Ahmed al-Dawoody, The Islamic Law of War: Justifications and Regulations’, p. 45.

<sup>26</sup> Abdul Rashid Khairuddin, Kobayashi Kiyoshi, and Hasan Sharina Farihah, *Concept and Application of Shariah for the Construction Industry: Shariah Compliance in Construction Contracts, Project Finance and Risk Management* (World Scientific, 2018), p. 260. Syeikh Ahmad Mustafa Maraghi, *Tafsir al-Maraghi* (Ttp.: Dâr al-Fikr, 2001).

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.<sup>27</sup>

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 commands<sup>28</sup> under the following principles:

1. Fight only against the combatans

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-muqâtilah/ahl al-qitâl/al-muhâribah* (combatants, fighters/warriors) and *ghayr al-muqâtilah/ghayr al-muhâribah* (non-combatants, non-fighters/non-warriors).<sup>29</sup>

The phrase “*Those who fight against you.*” (Qur'an [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).<sup>30</sup> Also the blind, the sick,<sup>31</sup> the incapacitated and the insane.<sup>32</sup>

<sup>27</sup> Yusuf al-Qaradhâwî, *Fiqh al-Jihâd: Dirâsah Muqâranah Li- Abkâmih Wa Falsafatih Fî al-Qur'an Wa al-Sunnah* (Cairo: Maktabah Wahbah), 1.

<sup>28</sup> Muhammad Qasim Zaman, 'The Caliphs, the 'Ulamâ', and the Law: Defining the Role and Function of the Caliph in the Early 'Abbâsîd Period', *Islamic Law and Society*, 4, no. 1 (1997), p. 1–36 <<https://doi.org/10.1163/1568519972599860>>. Abderrahmane El Moudden, 'The Idea of the Caliphate between Moroccans and Ottomans: Political and Symbolic Stakes in the 16th and 17th Century-Maghrib', *Studia Islamica*, (1995), p. 103–12 <<https://doi.org/10.2307/1595583>>.

<sup>29</sup> Yusuf al-Qaradhâwî, *Fiqh al-Jihâd: Dirâsah Muqâranah Li- Abkâmih Wa Falsafatih Fî al-Qur'an Wa al-Sunnah*, 1, p. 111.

<sup>30</sup> A. al-Bayhaqî, *Sunan al-Bayhaqî al-Kubrâ* (Makkah: Maktabat Dâr al-Bâz, 1994).

<sup>31</sup> A. al-Bayhaqî, *Sunan al-Bayhaqî al-Kubrâ*, p. 90.

<sup>32</sup> Muwaffaq al-Dîn 'Abd Allah ibn Ahmad Ibn Qudâmah, 'Umdah al-Fiqh, Ed. 'Abd Allah Safar al-'Abdalî and Muhammad Dughaylib al-'Utaybî (Taif: Maktabah al-Tarafayn, n.d), p. 153;

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.'*<sup>33</sup> Al-Shaybânî (d. 189/804–5), quoting the Qur'an [2]: 190 *"and fighting the way of God those who fight against you"*, pointed out that Islam justifies fighting only against enemy combatants.<sup>34</sup>

## 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:

فَمَنْ أَعْتَدَىٰ عَلَيْكُمْ فَأَعْتَدُوا عَلَيْهِ بِمِثْلِ مَا أَعْتَدَىٰ عَلَيْكُمْ ۗ وَاتَّقُوا اللَّهَ وَاعْلَمُوا  
أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ

*"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"*.<sup>35</sup>

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

<sup>33</sup> Hamed Sultan, 'La Conception Islamique', *Les Dimensions Internationales Du Droit Humanitaire*, 1986, p. 58.

<sup>34</sup> Abi Bakr al-Sarakhsi, 'Sharh al-Siyar al-Kabir', Edited by S. al-Munajjid, Multivolume, (Cairo: Ma'had al-Makhtutat, 1971), p. 1415. Michael Scheuer, 'Coalition Warfare: How al-Qaeda Uses the World Islamic Front Against Crusaders and Jews, Part I', *Terrorism Focus*, 2, no. 7 (2005), p. 31. Quintan Wiktorowicz and John Kaltner, 'Killing in the Name of Islam: al-Qaeda's Justification for September 11', *Middle East Policy*, 10, no. 2 (2003), p. 76–92.

<sup>35</sup> MA Abdel Haleem, *The Qur'an*, p. 22.

act of war without a declaration of war, and fight for personal gain or glory.<sup>36</sup>

3. Cessation of fighting is obligatory if the enemy desist. (Refer to Surah al-Anfâl [8]: 61 above mentioned).<sup>37</sup>
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:

يَسْأَلُونَكَ عَنِ الشَّهْرِ الْحَرَامِ قِتَالٍ فِيهِ قُلْ قِتَالٌ فِيهِ كَبِيرٌ وَصَدٌّ عَن سَبِيلِ  
اللَّهِ وَكُفْرٌ بِهِ وَالْمَسْجِدِ الْحَرَامِ وَإِخْرَاجُ أَهْلِهِ مِنْهُ أَكْبَرُ عِندَ اللَّهِ

*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.*<sup>38</sup>

5. Prohibition of property destruction

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

مَا قَطَعْتُمْ مِّن لِّيْنَةٍ أَوْ تَرَكْتُمُوهَا قَائِمَةً عَلَىٰ أُصُولِهَا فَبِإِذْنِ اللَّهِ وَلِيُخْرِزِيَ  
الْفَاسِقِينَ

*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.*

<sup>36</sup> Gloria Gaggioli, 'International Humanitarian Law: The Legal Framework for Humanitarian Forensic Action', *Forensic Science International*, 282 (2018), p. 184–194. Karima Bennoune, 'al-Salamu Alaykum-Humanitarian Law in Islamic Jurisprudence', *Mich. J. Int'l L.*, 15 (1993), p. 605.

<sup>37</sup> Russell Buchan, 'The Rule of Surrender in International Humanitarian Law', *Israel Law Review*, 51, no. 1 (2018), p. 3–27.

<sup>38</sup> 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.<sup>39</sup>

## 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.’<sup>40</sup> The Caliph Abû Bakr told his officials “that no prisoners should be tied in chains, handcuffed and they shall be provided with food,<sup>41</sup> clothes and adequate housing.<sup>42</sup> 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.”<sup>43</sup>

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

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<sup>39</sup> Ibn Qudamah, *al-Mughni Fi Fiqh al-Imam Ahmad Ibn Hanbal al-Shaybani* (Bayrut: Dar al-Fikr), p. 233.

<sup>40</sup> M. Kheir Ereksoussi, *Le Coran et Les Conventions Humanitaires* (Comité international de la Croix-Rouge, 1960), p. 650.

<sup>41</sup> M. Shokry El-Dakkak, *State’s Crimes against Humanity: Genocide, Deportation, and Torture from the Perspectives of International and Islamic Laws* (AS Noordeen, 2000), p. 93.

<sup>42</sup> Esmail Salami, *Islamic Views on Human Rights: Viewpoints of Iranian Scholars* (Alhoda UK, 2003), p. 253–93.

<sup>43</sup> MA Abdel Haleem, *The Qur’an*, p. 348.

-Awzâ'î, Abû Thawr, and al- Thawrî, broden 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.<sup>44</sup>

Futhermore, 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).

#### 7. Prohibition of the use of the Massive Destructive Weapon.

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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<sup>44</sup> Ibn Qudamah, *al-Mughni Fi Fiqh al-Imam Ahmad Ibn Hanbal al-Shaybani*.

may possess/use any weapon, including nuclear weapons, only if their enemies possess/use them.<sup>45</sup>

Their arguments are based on some Qur'anic 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 'Abd 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'an: "do not throw yourselves into destruction." Moreover, the following advice of Abû Bakr to Khâlîd 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.<sup>46</sup>

#### 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.<sup>47</sup>

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

<sup>45</sup> Robert Collier, 'Nuclear Weapons Unholy, Iran Says', *San Francisco Chronicle*, 2003.

<sup>46</sup> John Renard, 'Ahmed al-Dawoody, The Islamic Law of War: Justifications and Regulations', p. 122-126.

<sup>47</sup> John Renard, 'Ahmed al-Dawoody, The Islamic Law of War: Justifications and Regulations', p. 136.



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.<sup>48</sup>

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

## 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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<sup>48</sup> John Renard, 'Ahmed al-Dawoody, The Islamic Law of War: Justifications and Regulations', p. 136.

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