



A Comparative Study Of Islamic And International Humanitarian Law

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Abstrak. *Human communities have always been marked by conflicts, which came to be controlled by ethical and legal standards that developed along with human civilization. These widely accepted standards were eventually established as contemporary International Humanitarian Law (IHL). Additionally, it is commonly believed that this legislation has developed largely as a result of modern European activities, diminishing any potential contributions from other cultures and ethical traditions to its development and codification. However, it is noteworthy that the principles of jus ad bellum (law governing the use of force) and jus in Bello (content of the law of war) were evident in Islamic literature centuries before modern IHL was codified, with little attention paid to them. Jihad, or Islamic conflict, has been the subject of some existing literature, but the notion of Islamic humanitarian law within the context of IHL has not been thoroughly explored. Therefore, this study aims to fill a gap in the existing literature by reviewing Islamic humanitarian law within the ambit of IHL. This essay argues that Islamic humanitarian law, which regulates the treatment of prisoners of war, is extensive and comparable to the 1949 Geneva Convention's provisions. Additionally, the concepts of Siyar Islamic literature are strikingly similar to those of the Geneva Convention. This research adds to international relations by examining the degree of conformity between the requirements of Islamic Humanitarian Law and Modern IHL with regard to a matter of immediate practical relevance in an era when some regions of the world are suffering armed conflict.*

Keywords: International Humanitarian Law; Islamic Humanitarian Law; Geneva Convention.

A. Introduction

International humanitarian law, earlier known as the law of warfare, is applied in armed conflict to protect those who don't take part in the hostilities or are no longer taking part in the hostilities (Fleck, 2021). Even in the absence of any international document, the earliest societies or communities would have followed some rules of combat during conflict, either as per the instructions of the community leader or as per customs or religions. In other words, the construction of an international normative system focused on the development of international humanitarian law can be verified throughout several moments in the history of humanity. Further, it is hardly possible to find documentary evidence of when and where the first legal rules of a humanitarian nature emerged, and it would be even more difficult to name the 'creator of international humanitarian law (Solis, 2021). Wherever the clash between tribes, clans, and the followers of a leader or other forerunners of the states did not result in a fight to the finish, rules arose for the purpose of limiting the effect of the violence. And such rules, the precursors of present-day international Humanitarian law, are to be found in all cultures (Tamanaha, 2021). Humanitarian law applicable in war must be as old as

armed war itself. However, Contemporary International Humanitarian law has evolved primarily as a result of modern European initiatives.

Despite the scourge of the Second World War and the prohibition of the use or threat of force in the Charter of the United Nations, armed conflict continues to exist (Schabas, 2007). In our age, armed combat has increased in many parts of the world, especially in Syria, Iraq and more recently Ukraine. These confrontations have resulted, inter alia, in the deaths of many prisoners of war. Consequently, the issue of prisoners of war has raised many controversial concerns, especially about their treatment. While the question of prisoners of war in general and their treatment in particular has been the subject of international concern and was codified in the Geneva Convention of 1949, a number of studies have been conducted on the treatment of prisoners of war under international law (Rubin, 1972). But a little attention has been paid to their treatment under Islamic Law. Some studies have examined war in Islam (Jihad) and its aspects, but the issue of prisoners of war under Islamic Law has not been fully investigated. Therefore, this study aims to fill a gap in the existing literature by addressing in detail a hitherto neglected topic (Aboul-Enein, 2004). Further the research will also contribute to international relations by clarifying the degree of consistency between the provisions of Islamic Humanitarian Law and Modern International Humanitarian law, in regard to an issue which is of direct practical concern in an age when some parts of the world are experiencing armed conflict.

International Humanitarian laws, from the very beginning, have shown a great interest in safeguarding the rights of Prisoners of War (Provost, 2002). In the last decade, we have witnessed barbaric and inhumane treatment of prisoners of war, whether by the US army in Guantanamo Bay or ISIS forces in Iraq and Syria. For instance, it was reported sometimes ago that ISIS paraded around 250 captured soldiers through the desert and shot them dead (Nance, 2016). The noteworthy thing about all these acts of these militant groups is that they commit such heinous crimes in the name of Islam, the religion that is claimed to be a religion of peace. Both the Holy Quran and the traditions of Prophet Mohammed (SAW) contain a plethora of verses and sayings denouncing such acts and providing safeguards to prisoners of war (Maher, 2016). Therefore, these acts of violation of principles of international humanitarian Law and Islamic law of armed conflict make this study significant and relevant. In short, this study is also relevant and significant in the sense that it has made a comprehensive study of the rights of prisoners of war in contemporary International Humanitarian Law and in Islamic Humanitarian law.

B. Concept Of International Humanitarian Law

Contemporary International Humanitarian Law can be defined as a special organ of International Law. This law is derived from a number of International Conventions. The said law is also known as the “Law of Armed Conflict” which was formerly known as the “Law of War” (Draper, 1971). The main purpose of Contemporary International Humanitarian Law is to limit the suffering of war. In ancient times, it was admitted in all cultures and civilizations that there should be some limitations during war, and International Humanitarian Law is a mere legal expression of this idea. The purpose of this law is neither to end armed combat completely nor to inquire into its legality, but to regulate the armed conflict. Also, the concept of International Humanitarian Law has assumed greater significance in today’s world scenario as it has a direct and distinctive bearing on mankind and the survival of civilization on this planet. The basic human instinct to protect human rights and dignity and to provide succour to suffering fellow humans is the basis and spirit of “International Humanitarian Law” (Pictet, 1966). Actually, it is a kind of extension of the concept of human rights in times of turmoil on account of armed conflicts. In common phraseology, these are the ‘laws of war,

which consist of limits set by international law within which the force required to overpower the enemy may be used and the principles thereunder governing the treatment of individuals in the course of war and armed conflict. These laws and rules were made to keep a check on the brutality and barbarism of armed combat. And these laws and customs have arisen from the long-standing practise of belligerents. Moreover, International humanitarian law seeks to regulate and mitigate the conduct of armed conflicts.

The aim of this law is to protect the victims of armed conflicts from the effects of hostilities to the greatest possible extent. Further, for this purpose, the victims are essentially all those who are or have been rendered hors de combat in relation to the conflict in question, that is, the sick, wounded, and/or shipwrecked, prisoners of war, and civilians, who themselves are not offering hostile action. In simple words, International humanitarian law, also known as the law of war, is the legal corpus that consists of the Geneva conventions and the Hague conventions, as well as subsequent treaties, case law, and Customary international law' (Meron, 2000). International humanitarian law defines the conduct and responsibilities of belligerent nations, neutral nations, and individuals engaged in armed combat in relation to each other and to protected persons, usually meaning civilian populations.

Moreover, The Geneva Conventions of 1949 were a great achievement for Contemporary International Humanitarian Law. Rules formulated under these conventions seek all kinds of limitations on the effects of warfare and armed conflicts. International Humanitarian Law, as the law of war and regulations applicable to all kinds of armed conflicts, is very keen to save as many people as it can in any given situation. Apart from civilians, wounded and sick people, and all children and women, International Humanitarian Law extends its hands to specific people who are no longer ready to fight. In other words, if some combatants are no longer willing to participate in armed conflict or otherwise direct hostilities, the International Humanitarian Law is interested in allowing them to be away from war or in helping them to be safe from the attack of the enemy. In short, Contemporary International humanitarian law seeks to mitigate the effects of warfare, first in that it limits the choice of means and methods of conducting military operations, and secondly in that it obliges the belligerents to spare persons who do not or no longer participate in active hostilities.

C. Humanitarian Rules In The Earliest Societies

The world as we know it was and is repeatedly confronted with the cruelties of armed combat. Groups, collectivities, tribes, states, et al. have fought in human evolution over land, resources, religion, and political systems. War is perhaps the most ancient form of intergroup relationship. Human beings interact and enter into relations, ranging from hostile in nature to cooperative. And all relations require a minimum of regulation before mankind slips into anarchy; hence, one may say: "ubi societas, ibi regula"; where there is society, there must be rules; without rules, there is no social compact of any kind. As far as the regulation of war is concerned, the law of war does in fact have a long history, and attempts to regulate war are as old as war itself (Hoof, 1983). The truth of the matter is that the law of war or law of armed conflict has been with men from almost the beginning, and belligerents throughout history have created and recognised war codes. Although the law of war was not codified in one collection of volumes until the mid-eighteen hundreds, it was nonetheless an essential part of the evolution of man and his evolution of warfare. Christopher Greenwood (1983) notes, however, that the law of war has a long history, although it has been suggested that military practise in early times fell far short of existing theory and that such rules of armed combat as can be identified in early times have little similarity to modern international humanitarian law.

In other words, humanitarian law applicable in armed conflict must be as old as armed conflict itself. Also, resorting to arms is, by and large, a demonstration of that barbaric aspect of human nature that led political philosophers like Thomas Hobbes to assume that human life in "the state of nature" is "solitary, selfish, nasty, brutish, and short", and argue in favour of a Leviathan, an all-powerful sovereign State (Mani, 2001). The irony of it is, however, that the State, which has over the years come to establish a civilised internal system for the maintenance of law and order and strives for the welfare of the community, behaves on the international plane downright "selfish, nasty, and

brutish” in its dealings with other state entities, often throwing to the winds the high ideals, the moral precepts, and the principles of humanity that it swears by and seeks to uphold within its national society (Ackerman, 2002).

As a matter of fact, the seminal problem of all law, and hence of modern international humanitarian law, is the yawning gap between precepts and practice (Moghalu, 2005). And that the precepts are ingrained in the accumulated wisdom of all human civilizations is beyond dispute. All civilizations have converged in their acceptance of precepts. Therefore, it is pertinent to search for and identify the roots of the principles of international humanitarian law in all the great civilizations of the world. The earliest societies, Such as the Papua, the Sumerians, Babylon, the Persians, the Greeks, and the Romans, all had some rules of fighting, and these rules were strictly followed by people (Moghalu, 2005). If we talk of the earliest societies, the victory was followed by massive massacres or unspeakable atrocities where the code of honour completely prohibited surrendering and the warriors had to win or die. Even in that period, the wounded soldiers were collected and cared for.

Furthermore, the study of savage tribes existing in our own time gives some insight into the nature of primitive people at the dawn of society. In Papua society, such tribes would have maintained some rules such as warning the enemies in advance, not engaging in combat until both parties are ready, and suspending fighting for 15 days in case of death or serious injury to any soldier (Islam, 2018). In the second millennium BC, the armed combat between Egypt and Sumeria was governed by a complex set of rules obligating belligerents to distinguish combatants from civilians and providing procedures for declaring war, conducting arbitration, and concluding peace treaties.

The Code of Hammurabi, written by Hammurabi, king of Babylon, who lived between 1728 and 1686 BC, ensured the protection of the weak from the oppressive hands of the rich and strong and made provision for the release of hostages by ransom. The armed combat between Egypt and the Hittites in 1269 BC was ended by a peace treaty in accordance with the law of the Hittites (Islam, 2018). In other words, the law of the Hittites envisioned reverence towards the inhabitants of an enemy city that capitulated; in its concrete application, the fighting between Egypt and the Hittites in the year 1269 BC, for example, was brought to an end by a peace treaty. In the 7th century BC, the King of the Persians, Cyrus I, ordered that the wounded soldiers of the enemy would be treated and cared for like his own wounded soldiers (Boas, 2012). The killing of a surrendered adversary was absolutely prohibited under the Indian epic Mahabharata (400 BC) and Manavadharmasastra, or the Laws of Manu, as they were unable to fight. It also prohibited using certain weapons, such as poisoned or burning arrows, and ensured the protection of enemy property and the status of prisoners of war (Balkaran & Dorn, 2022). The Greeks considered each one to have equal rights in the combats between the Greek city-states and in the war led by Alexander the Great, who led the war against the Persians, and they considered it a prime principle (Strauss, 2003). Further, the Greeks considered the temples, embassies, priests, and envoys of the opposite side inviolable, and truces were observed. Mercy was shown to helpless captives, and POWs were ransomed and exchanged. Also, it was considered wrong to cut off or poison the enemy’s water supply or to make use of poisoned weapons. Treacherous weapons of every description were condemned as being contrary to civilised combat.

Moreover, the Romans also accorded the right to life to their prisoners of war. However, their (the Romans) approach to warfare varied according to whether their wars were commenced to exact vengeance for gross violations of International law or for deliberate acts of treachery. Roman warlike usage varied depending on whether their adversaries were regular enemies, uncivilised barbarians, or bands of pirates and marauders (Gillespie, 2011). In China, a number of prominent writers detailed some of the most fundamental tenets of the Law of War and wrote that in antiquity they did not pursue a fleeing enemy more than one hundred paces or follow a retreating enemy more than three days, thereby making clear their observance of the forms of proper conduct (Noone, 2000). They did not exhaust the incapable and had sympathy for the sick and wounded, thereby making evident their benevolence. They (the Chinese) awaited the completion of the enemy’s formation and then drummed the attack, thereby making clear their good faith. They contended for uprightness, not profit, thereby

manifesting their righteousness (Allen, 2015). In addition, they were able to pardon those who submitted, thereby making evident their courage. In short, the existence of the law of war can be found in the ancient period; for example, the Papuan tribal groups, the Persians, the Sumerians, the Greeks, the Romans, the Chinese, and so on, have their own customs of conducting war, not like modern international humanitarian law.

D. The Concept Of *Siyar In Islam*

The principles of the *jus ad bellum* (law governing the resort to armed combat) and the *jus in Bello* (content of the law of war) were formulated by Muslims at a time when their contemporaries paid no heed to these rules. Islamic law, therefore, is the first to have formally established a comprehensive rule regarding hostile and peaceful relations between the Muslim and non-Muslim communities. *Siyar* (Islamic International Law) has been recognised as an essential part of Islamic law and Islamic jurisprudence (Munir, 2003). Like other branches of Islamic law, its rules have been developed in accordance with the conduct or model example set by Prophet Muhammad (SAW) in his dealings with non-Muslims. The term *Siyar* (plural of *Sirah*, which literally means conduct or behaviour) itself indicates that the conduct of Prophet Muhammad (SAW) in his international dealings constitutes the basis on which the detailed rules of this law were developed (Ahmad, et al., 2020).

Prophet Muhammad (SAW) fought battles with his enemies; sent legate and emissaries and wrote letters to his contemporary rulers; received delegation; led his followers, and himself participated in negotiating various treaties and agreements of International import, and dealt with the questions of booty, prisoners of war, and acquisition of enemy property etc. This entire conduct, coupled with the general principles laid down in the holy Qur'an, provided the foundation for the branch of knowledge called as-*Siyar* (Islamic International Law). The term *Siyar*, etymologically, is the Plural of the Arabic *Sirah*, 'which literally means a "path" or "way of walking."' Labeed Ahmed Bsoul explains its historical evolution as follows:

Essentially, the concept of the As-*Siyar* evolved from its lexicographical meaning—in particular, from its connotation of behaviour or conduct. *Siyar* is *Sira* in the singular and came to be used by chroniclers in their narrative accounts to mean life or biography, i.e., the conduct of an individual (Bsoul, 2008, p. 74).

The *Siyar* (in its indefinite form) is the term Islamic scholars or Jurists use to indicate the rules and regulations' concerning topics related to what is today called international law or the law of nations (Rehman, 2022).

It was named as-*Siyar* because it contained the conduct and dealings of the Prophet Muhammad (SAW), his successors, and other people, leaving precedence in different situations. However, this term was used for international law at least after the first century of Al-Hijra. Then almost all of the schools of Islamic Jurisprudence chose this term for this peculiar area of study and titled their works on international law as *Siyar*. Only the Khawarij sect titled their book on international law "Book of Blood", because it deals exclusively with armed combat. For broad understanding of term *Siyar* it is necessary to know its broader meaning. Literally, *Siyar* is the plural of *sira*, which means conduct, practise, comportment, behaviour, way of life, attitude, or accepted behaviour, and an alternative meaning in its plural form is campaigns (Munir, 2012).

The words *sair*, *sairura*, *maser*, *masira*, *masaran*, and *tasyar* are used to mean moving on, setting out, striking out, starting, marching, departing, or leaving. The phrase *Sara*, *siratan hasanatan*, which means to behave well, According to Alama Jarrallah Zimahshari, *Sira* is from *Siyar* (*Sara fulanan siratan hasanatan*), which means someone who behaves well. Afterwards, it was extended and modified to mean conduct and practise. It is said, *Siyar al-awwaleen*—the conduct or behaviour of the people in the past. In Shariah, *Siyar* refers to issues regarding the laws of armed combat. This is why some authors used the title of *Kitab al-Jihad* rather than *Kitab al-Siyar* to describe the laws of combat (Baig, M. (2015). The compilers of hadith of the Prophet Muhammad (SAW) have the titles *Kitab al-Siyar*, *Kitab al-Jihad*, and *Kitab al-Maghazi* to describe rules governing the conduct of war

(Rubin, 2022). the protection of civilians, the protection of prisoners of war, cessation of hostility, signing and breach of peace treaties, territorial jurisdiction, and even the various rules for conducting business between Muslim and the non-Muslim states, and so on.

Today these are always the core topics of a standard book on contemporary international law although Muslim jurists never used the expression Islamic international law to describe Siyar. Moreover, historians used the term Sira to describe the conduct of the Prophet Muhammad (SAW) or his successors in their dealings in the above matters. Such books were written very early in the religion of Islam such as *Al-Sira al-Nabawiya* of famous Muslim historian Ibn Hisham. This may well be called as the biography of the Prophet Muhammad (SAW) because it describes every event from his childhood till his death in minute detail, the life of his companions, their achievements, migration to city of Madinah, dealings with envoys, revelation, the spreading of message of Islam, as well as all the wars of the Prophet Muhammad (SAW) and his successors.

In addition, the term sira was used by Muslim jurists to designate the conduct of the Prophet Muhammad (SAW) relating to the laws of armed conflict, dealing with rebels, apostates, and non-Muslim citizens of the Islamic state. The meaning of the conduct and behaviour of the Prophet Muhammad (SAW) is evident from his sayings. Muslim Historian Abu Muhammad Ibn Hisham reports that “Then the Prophet Muhammad (SAW) ordered Bilal to hand over the banner to him (Abdur Rahman Ibn Awf). Bilal did so. Then the Prophet Muhammad (SAW) eulogised Allah Almighty and asked for His mercy upon himself, and then he said:

O son of ‘Awf! Take it [the banner]. Fight you all in the path of Allah Almighty and combat those who do not believe in the path of God. Yet never commit a breach of trust, treachery, mutilation, or killing of any minor or woman. This is the demand of Almighty Allah and the conduct of His Messenger for your guidance (Hamidullah, 2011, p. 321).

This above-mentioned command shows that the conduct of the Prophet Muhammad (SAW) in times of war, especially what relates to the intentions of combatants, the objectives of going to war, and the various acts prohibited in armed combat, was referred to as his Sira. However, there are other citations in which the term sira is used to mean the conduct of the Prophet Muhammad (SAW) and his successors during peacetime or their conduct in governance or in general. Hazrat Ibn Saad in his *Tabaqat* quotes a letter sent in by the Prophet Muhammad (SAW) to Akbar Ibn Abdul Qays in which he stated, *inter alia*, that “the Muslim garrison shall concede to them a share in the booty, skilfulness in government, and moderation in behaviour.” This is a decision that neither of the contracting parties may change” (Saeed, 1965, p. 196).

Also, Ibn Jarir al-Tabari reports a letter sent by Hazrat Umar ibn Khatab, the second Caliph, who wrote to one of his commanders and said, “Thereafter Allah Almighty has prescribed excuses in everything in some circumstances except in two things: fairness in conduct... Hence the term sira was used for the conduct of a Muslim ruler both during times of war and peace. Now let us see how the term as-Siyar is defined by Muslim fuqaha (Jurists) in their treatises on Islamic law. Imam Sarakhsi of the Hanafi School of thought, the renowned Jurist of Islamic international law, who dictated a detailed commentary on Muhammad Hasan AlShabani’s “*al-Siyar al-Kabir*” (Abdelkader, 2013, p. 75), says in his *al-Mabsoot* that this part of the law is called As-Siyar because it explains the behaviour of Muslims in dealings with non-Muslims from among the belligerents and those who have a pact with Muslims, among them the *Musta’min*’s and the *Dhimmi*’s; it also deals with the apostates and the rebels.

In addition, some important areas that are also discussed in Siyar by Muslim jurists, including Imam Sarkhasi, but are not mentioned in this poetic definition are peaceful relations with non-Muslim state(s), the law of treaties (especially peace treaties between Muslim and non-Muslim states, although he mentions treaties with non-Muslim states), Muslim aliens and citizens, territorial jurisdiction, protection of envoys, and rules of business dealings between the former and the latter(s).

Imam Sarkhasi himself discusses all the above issues as well as those he has described in his definition in his books, *Kitab al-Mabsut* and *Sharh Kitab al-Siyar al-Kabir*. Hedaya, the *Magnum Opus* of Hanafi Jurisprudence, says about As-Siyar that it is specified for the conduct of the Prophet

Muhammad in his wars (Manshood, 2021). Imam Kasani (d. 587/1191) explains in his book *Badai al-Sanai* the reason for naming the chapter on Siyar and says that “because it describes the different ways in which aggressors should behave during armed combat and the different situations that they could face or abide by” (Manshood, 2021). According to Imam Nawawi, “As-Siyar is the plural of Sira, which means conduct, and most authors use the title *Kitab al-Siyar* because its rules are derived from the conduct of the Prophet Muhammad (SAW) in his expeditions.

As Philip Jessup (1897–1986) has remarked, for the reason that they lived in such a time, the relationship between Muslims and non-Muslims was one of armed combat, which does not necessarily mean that theoretically Dar al-Islam is in perpetual war with Dar al-Kufr perpetually (Jalaly, 2018). Further, Badruddin Al-Aini has used the extended meaning of As-Siyar when he explains the term. “And As-Siyar is the name given to the conduct of the Prophet Muhammad (SAW) during armed combat and the conduct of his companions and whatever is reported from them in this regard,” says “And As-Siyar is the name given to the conduct of the Prophet Muhammad (SAW) during armed combat and the conduct of his companions and whatever is reported from them in this regard,” says Al-Ai’ni. “And As-Siyar is the name given to the conduct of the Prophet Muhammad (SAW) during armed combat, the conduct of his companions, and whatever is reported from them in this regard.” In his commentary on the famous Hanafi book *Al-Hidayah*, he further extends the meaning of the term while analysing the title *kitab al-Siyar*, “Because it describes the conduct of the Prophet Muhammad (SAW), his companions, and the Muslims. And it may be given the meaning: their conduct in social life or business.” It is this meaning attached to As-Siyar by Badruddin Al-Aini that is reflected in some later works (Jalaly, 2018). The first thing to mention is that As-Siyar, as discussed above, is translated as Islamic international law.

However, there are also some Modern definitions of As-Siyar. Nagib Arminazi was probably the first to attempt a good definition of the As-Siyar, and he defined it as “the set of rules that are binding on Muslims in their relations with non-Muslims, whether they fight the Muslim state or have peaceful relations with them, whether they are individuals or states, and whether they are inside Muslim territory or outside of it. And the set of these rules also includes the situation of apostates, rebels, and robbers.” Dr. Muhammad Hamidullah, the eminent modern scholar of Islamic international law, to whom is given the title of “Shaybani of the twentieth century” by Professor Ghazi (1950–2010), defines “Muslim International Law” in his great work “Muslim Conduct of State” as: “That part of the law and custom of the land and treaty obligations which a Muslim de facto or de jure state observes in its dealings with other de facto or de jure states.” This definition by Dr. Muhammad Hamidullah seems to be comprehensive. Abu Zahrah explains the Siyar in a detailed way (Jalaly, 2018). According to him, it is:

The rules of jihad and armed combat, what is allowed in it and what is not, the rules of permanent peace treaties and temporary truce, the rules of who should be granted alien status and who should not, the rules of war booty, ransom, and enslavement, as well as other problems that arise during wars and their aftermath In short, As-Siyar designates the rules of international relations between Muslims and other communities during peace and war, although most of the discussion is about the war (Ahmad, et al. 2020, p. 74).

In addition, the definition given by Usman Jumah covers relations with non-Muslim individuals within and outside the Muslim state rather than with non-Muslim states only. According to Majid Khudduri, Islamic international law is an extension of Islamic law “designed to govern relations among Muslims, whether inside or outside the world of Islam” (Ghazi, 2008) According to Abdul Karim Zaydan, “This law is that set of norms and rules of Islamic law that are binding for the Muslim state in its relations with other state entities.” This definition by Zaydan seems to be much better than the rest of the definitions, as it seems to be in accord with the present-day scenario (Ab Rahman, et al., 2014). Those rules and principles of Islamic law that regulate relations between the Muslim state and other state entities are designated as Islamic International law or the Law of International Relations in Islam.

The science of siyar, developed by Muslim jurists in the second century and expanded by subsequent scholars, also raised some issues that may not appear to be very pertinent now, wrote Muhammad Ahmed Ghazi. He further says that, however, they were very relevant in those days. But this happens to every living and vibrant law (Ab Rahman, et al., 2014). In every legal tradition, it is observed that, with the passage of time, some of its contents have become either out-dated or irrelevant to changing requirements. As the needs of the times change, an internal mechanism of the legal system works to exclude invalid issues from the law's mainstream. This happened in respect of some issues in the early International law of Muslims. It is a fact that some issues are found in earlier works that do not have relevance today. However, a time might come when they become relevant again. Finally, the canon of Islamic jurisprudence is such that it has enormous room for further development and adaptation to new circumstances. However, the definition of as-Siyar (the International Law of Islam) should not lose sight of the historical framework of Islam.

E. International Humanitarian Law In Islam

The religion of Islam played an important part in the development of International Humanitarian law. In the Holy Quran and Hadith of the Prophet, many provisions of modern International Humanitarian Law have been elaborately discussed, and these rules were practised by the Muslims in wars. For the protection of the noncombatant, Allah Almighty (Quran 2: 190) declares, "Fight in the name of Allah those who fight you and do not transgress limits. Indeed, Allah Almighty does not love transgressors." This verse of the holy Qur'an highlighted two important aspects of the law of fighting: firstly, fighting must be only against those who fight against Muslims, and Muslims should not initiate hostilities. Secondly, those who are not participating in the war are protected. This provision is equal to the principle of distinction, which is one of the basic principles of International Humanitarian Law.

In modern International Humanitarian law, the parties to an armed conflict are required to maintain some principles, which are the principle of distinction, the principle of precaution, the principle of proportionality, and the principle of limitation (Cohen & Zlotogorski, 2021). The existence of these principles can be found in Islamic law, especially in the speech of Prophet Muhammad (SAW), who states that one should never kill a woman or a servant. The Prophet Muhammad (SAW) also prohibited the killing of any old and weak person, any child, or any woman. After conquering Makka, the Prophet Muhammad (SAW) did not do any damage to any person or property and announced that all captured, wounded, and home-sheltered people were protected. The first Caliph, Hazrat Abu Bakar, instructed his army as follows when he sent them to Syria headed by Yazid b. Abu Sufyan: (1) do not embezzle; (2) do not cheat; (3) do not breach trust; (4) do not mutilate the dead; (5) do not slay the elderly, women, and children; (6) do not inundate a date palm nor burn it; (7) do not cut down a fruit tree; (8) do not kill cattle unless they were needed for food; (9) don't destroy any building; (10) May be you will pass by people who have secluded themselves in convents; leave them and do not interfere in what they do" (Syed & Dear, 2017). Almost every important aspect of modern International Humanitarian law, namely the protection of civilians, their property, and prisoners of war, was dealt with by Islamic law more than 14 hundred years ago and was absolutely practised by the Prophet Muhammad and his companions.

F. The Middle Ages

As far as the Middle Ages are concerned, they produced their share of brutal engagements, but the Christian writings of St. Augustine and St. Thomas Aquinas and the rules of chivalry that prohibited attacks on the sick and wounded or on women or children offered some guidance in this period (Steel, 2011). The enforcement of respect for holy places (the Truth of God) created a right of refuge or asylum in churches, whose observance is carefully supervised by the Church. Further, an unwritten code of Chivalry developed among knights and was adjudicated by tribunals consisting of knights. Though the rules applied only to the knights and not to ordinary people. The enemy was frequently regarded as an equal combatant who had to be defeated in honourable combat.

In fact, the purpose of some of the rules was not so much humanitarian as an attempt to prevent the development of weapons and methods of warfare that would threaten their position. Therefore, the attempt by the Lateran Council in 1137 to ban the crossbow was motivated as much by a desire to get rid of a weapon that allowed a foot soldier to threaten an armoured knight as by humanitarian concern at the injuries that a crossbow bolt could cause (Ellis-Gorman, 2022). Another view on the code of chivalry is that it created a guild of warriors with legal authority to pillage.

In Japan, the 'Bushi-Do' (the mediaeval code of honour of the warrior caste of Japan) exhorted the exercise of humanity in combat and towards Prisoners of war, regardless of whether or not the prisoner of war surrendered peacefully or fought to his 'last arrow' (Noone, 2022). Finally, as the Middle Ages drew to a close, the chivalric orders declined, the firearm was invented, and the creation of armies consisted of hiring armed forces. And considerations of chivalry were unknown to these armies. Equally, they made no distinction between combatants and non-combatants (the civilian population). Mercenaries regarded armed combat as a trade, which they followed for the purpose of private gain.

G. The Beginning of Modern Times

The Thirty Years War (1618–1648) left much of Europe in shambles; it is estimated that over half the German-speaking population was wiped out, and famine and plague were widespread (Asch, 1997). Military lessons were learned, and it became generally understood that 'soldiers who were regularly fed and paid and who did not have to quest for food and shelter could be disciplined and trained. Consequently, 'soldiering became a profession, and the distinction between soldier and civilian was stabilised. And thus were born the customs and rules governing the conduct of occupying troops, requiring respect for the lives and livelihood of the civilian inhabitants, as long as they remained non-combatants.' Also in his work 'De jure belli ac pacis', published in 1625, Hugo Grotius signalled the existing bounds to the conduct of war. In this comprehensive codification of International law, Hugo Grotius 'insisted the war should be governed by a strict set of laws (Grotius, 1751). He was dismayed by the behavior of warring combatants and wrote in his text:

Grotius wrote that throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight cause, or no reason at all, and that when arms have once been taken up there is no longer respect for the law, divine or humane; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.

The 17th century introduced to the world the era of enlightenment that produced such noted philosophers and thinkers as Jeremy Bentham in England, Voltaire in France, and in particular Jean-Jacques Rousseau. Bentham is generally credited with coining the phrase 'international law' in his introduction to the *Principles of Morals and Legislation* (1789). Further, Rousseau espoused war, which is not a relation of man to man, but of State to State, In which individuals are enemies accidentally, not as men, nor even as citizens, but as soldiers; not as members of their country, but as its defenders. And his clarity on this issue opened the way for subsequent leaders, statesmen, and authors to make clear the duties and privileges owed to the soldier (Brown & Ainley, 2009).

According to the maxim that armed combat is not a relation between one man and another, but between state and state, in which private persons are only accidental enemies, not as men, nor even as members or subjects of the state, but simply as its defenders, the law of nations does not permit that the rights of war and of conquest thence derived should be applied to peaceable, unarmed citizens, to private properties and dwellings, to the merchandise of commerce, to the magazines that contain it, to the vehicles that transport it, to unarmed ships that carry it on streams and seas, in one word, to the person and goods of private individuals. The law of warfare, born of civilization, has favoured its progress. And it is to this that Europe must attribute the maintenance and increase of her prosperity in the midst of the frequent wars that have divided her. During these same years, customs and rules for the taking and protection of POWs were also developing. Lastly, the evolution of the

law of war to this date remained unwritten, and it was often left to the opposing commanders prior to battle to establish guidelines for the treatment of the sick and wounded.

H. Some Points Of Comparison Between Geneva Convention And Siyar (Islamic International Law)

While the rules of the Geneva Convention are significantly more detailed, the principles on which they are based are quite similar to those of *siyar* (Islamic international law). Both Islamic Humanitarian law and Modern international Humanitarian law give humanitarian consideration to the dignity of prisoners of war and to their physical and psychological well-being. The principles of Islamic law of war often coincide with those of International Humanitarian law. However, infrequently, the Islamic law of war and International Humanitarian law diverge on specific points. For example, the provisions of the Third Geneva Convention relating to the definition and identification of protected persons appear complex because they create several categories, which can result in diverging interpretations (El Zeidy & Murphy, 2009). In contrast, the Islamic Law of War is more flexible and avoids such complexity. The approach followed by the Islamic conception avoids complication by applying the humanitarian rules as soon as weapons are used and armed forces are deployed.

As the Islamic concept of humanitarian law does not categorise or define the type of war or conflict referred to, its rules extend through time and space to all armed conflicts. In short, this broad categorization facilitates the effective protection of prisoners of war. In addition, in some respects, *Siyar* actually overtakes the Geneva Convention of 1949. For example, the Convention recommends facilities for prisoners of war that are equivalent to those of the detaining state (Thomas, 2002). Prophet Mohammad (SAW) established such a tradition when he directed Muslim soldiers to be content with dates while the prisoners received bread. In the history of armed combat, these standards have rarely been met. Further, Islamic Humanitarian law also forbids forced labour for all prisoners of war, not just for detaining officers. This law does not even require that the cost of maintenance be repatriated. There are very kind provisions in Islamic Law regarding the treatment of prisoners of war.

By comparison, it can be said that the rules of the Geneva Convention are significantly more detailed; however, the principles on which they are based are quite similar to those of *siyar* (Islamic International law). One might also add to this argument that the signatories to the Geneva Convention expect similar treatment from their enemies. But certainly, the entire treaty is based on reciprocity. Islamic Humanitarian law, in contrast, obligates Muslim states to adhere unilaterally to the principles of treaties, including articles found specifically in *siyar*, regardless of the enemy state's action (Thomas, 2002). In short, it argues that the laws governing the treatment of prisoners of war in Islam are as benevolent as the Geneva Convention. In other words, not only that, but Islam also sets rules concerning those taken as prisoners of war and how they should be treated and dealt with. It was long before the Magna Carta and Geneva Conventions came into being that Islam established human rights in its teachings.

Unmindful that God's word will reach every place in the world, the media and false thinkers always try to blur these ever-shining facts of Islam with the aim of estranging people. Long ago, the world suffered from violating 'human rights', a newly coined expression, and still does. The United Nations Organisation, dubbed as the divided nations by the wronged everywhere, decreed a group of articles that have never been fully put into action (Williams, 2010). Nothing to help the wounded, nothing to help widows, nothing to help fatherless children (orphans), nothing to bring a piece of bread to the hungry, but strangled by a veto resolution. When these rights were exposed in the Qur'an and detailed in the Prophet Muhammad's sayings, they were put into action. This is the difference between Allah's laws and man-made laws that can be violated, changed, tailored, etc. The first and leading basic rights in Islam are the 'right to live' and the 'respect of human life'.

In the religion of Islam, taking one's life is equal to taking the life of the whole of mankind. Allah Almighty says in the holy Qur'an, "If any one slew a person, unless it be for murder or for

spreading mischief in the land, it would be as if he slew the whole people; and if any one saved a life, it would be as if he saved the life of the whole people (Qur'an, 5:32). Therefore, Islamic Humanitarian law contains very humanistic provisions about the treatment of Prisoners of war. We can also safely conclude that there is a general compatibility between contemporary International Humanitarian Law and Islamic Humanitarian law in the treatment of Prisoners of war. Examples of these would be the prohibition of executing Prisoners of war except for special crimes, the general prohibition of torture, proper detention living conditions, and release upon cessation of hostilities.

In addition, the methodology adopted by Islam is founded on intellectual effort (ijtihad). Accordingly, it is the duty of contemporary Muslim eminent jurists to adapt classical solutions and interpretations to avoid any critical divergence. Thus, the two branches can work alongside each other. However, this does not mean that their general principles are inconsistent, since their norms and concepts often overlap, although some provisions and Holy Qur'anic texts in the Islamic Humanitarian Law of War require clarification to respond to contemporary challenges. The only condition is that the results should not run counter to the letter and spirit of the holy Qur'an or the Sunnah; "Ijtihad is only allowed in matters where no reference is made in the texts or when the texts are not definite or have no definite meaning." Thus, if there is an explicit ruling on the legal problem in either the holy Qur'an or the Sunnah of the Prophet, it should be applied. However, if such a clear ruling is lacking, the problem may be solved by way of an intellectual effort known as (ijtihad).

Also, since the main principles and norms of both International Humanitarian Law and the Islamic Law of War are not contradictory, the latter can offer solutions to the problems in recent conflicts. Further, despite the broad scope and extent of International Humanitarian Law, which consists of more than six hundred rules, the reality is that these treaties could well remain dead letters unless domestic legal and practical measures are taken by states to guarantee their application. The mechanisms for the implementation of Modern International Humanitarian Law are comprehensive and varied. But in practise, they are often not applied. So this reflects a lack of commitment on the part of states to "respect and ensure respect" for relevant treaties in all circumstances. The brief overview of the principles of Islamic Humanitarian Law and Contemporary International Humanitarian Law also demonstrates that the origins of such principles are universal. The real challenges for both regimes are the same: how can states prevent violations and ensure effective enforcement mechanisms for the future? Whether the rules applicable to a given situation are based on Islamic law or Contemporary International Humanitarian Law, the challenges remain the same for both.

The record to date, especially during the Iran-Iraq conflict and the recent conflicts in Iraq and Afghanistan involving United States-led coalitions, and the more recent conflicts in Iraq and Syria, do not bode well for the future. Further, the Problem is not the Islamic law of war or International Humanitarian law, but the failure to respect and apply these laws. It can also be said that Islamic principles enshrined in the Islamic law of armed combat and those of the International Humanitarian Law should not be seen as mutually exclusive or as being in conflict with one another. Actually, the principles of Islamic Humanitarian law often concur with those of Contemporary International Humanitarian law. However, occasionally, they diverge on specific points. Additionally, one needs to take into consideration the historical context in which contemporary Islam emerged; it was in the 7th century. And one should have in mind the period of wars between tribes and states, between different religious and ethnic groups, in the Roman Empire as well as other empires. It was a period in which no well-developed set of rules existed, and therefore wars were fought brutally and unconstrained.

In such a dark period, which is known in Islamic literature by the name of Jahiliyah (the period of Ignorance before the advent of Islam), Islam emerged as light in such circumstances, which introduced various reforms in warfare. Islam rose to denounce inhuman practises, declared human life sacred, and issued strict commands for its respect, preservation, and protection. Soon, based on the Quran, Prophetic traditions, and other permissible methods, the Muslim Jurists accumulated a wealth of precedent to regulate warfare at a time when their contemporaries paid no heed to these

rules (Spencer, 2015). But unfortunately, in the twenty-first century, we found contradictions between precepts (Detailed provisions in Modern International humanitarian law) and practises (Examples: Barbaric treatment of war prisoners at Abu Graib, Guantanamo Bay prison centres, etc.), which one cannot find in 7th-century Islam. It is also an undeniable fact that some contemporary so-called Islamic organisations (Like ISIS) misinterpret Islamic Principles to fulfil their evil designs (Spencer, 2015).

To sum up, having in mind the existing principles under both Islamic humanitarian law and international humanitarian law, there are no major differences or contradictions, and the aim of both legal systems is not far from each other. Therefore, it has been approved that both legal systems are generally compatible and that most of the provisions of contemporary International humanitarian law are in line with the rules of Islamic humanitarian law.

Last but not least, unfortunately, the world has been bleeding for centuries, and in the contemporary era, it is bleeding in front of everyone's eyes with the help of the latest destructive technology (Example: the end of two cities in Japan, namely Hiroshima and Nagasaki, in a single moment by the dropping of the atomic bomb by the United States in 1945). Imagine now that we are in the twenty-first century, surrounded by more devastating nuclear weapons in huge quantities. Now, war means the end of Civilization and humanity. Albert Einstein said once: "I know not with what weapons World War 3 will be fought, but World War 4 will be fought with sticks and stones" (Crane, 2004, p. 98). I know that neither genius minds like Einstein's nor mine can prevent the wars because their causes are rooted in vengeful human imperatives. The only possibility is to keep this vengeful imperative in check by perpetually fighting against our own egos.

I. Conclusion

Despite the rich contribution of Islamic international law to the regulation of international relations on sound moral foundations and despite the substantial literature produced by Muslim scholars on this subject from the second century onwards, it is painful to notice that many, if not all, leading and renowned Western scholars absolutely fail to recognise the legacy. As the foregoing discussion has shown, the contribution of Muslim jurists to international law was not only highly developed and sophisticated for its own age, but it remains relevant both as a source and as a base for further development today. Indeed, in many of its key principles, the law of International relations developed by Muslims more than a millennium ago is closer to and more practically geared towards achieving the present age's stated ideals of a tolerant and just international society.

Finally, Islam and the contribution of Muslim jurists provide that missing link of a thousand years that has been ignored by Western scholars, either because of the unavailability of material or due to some other considerations. Now, however, the material has become available through translations of important works in leading Western languages. Thus, no justification remains for the world's scholars to ignore the contributions of hundreds, if not thousands, of the best legal minds in human history.

As far as International Humanitarian Law is concerned, it is a Law in the area of legal regulation that intends to deal with human rights and humanitarian situations during armed combats, all consequences of armed combats, and their predictable and unpredictable fall-outs, which directly affect the lives, liberty, and dignity of people of all walks of life in any society directly or indirectly caught by the consequences of armed conflicts. The seminal problem of all law, and hence of international humanitarian law, is the yawning gap between precepts and practise. And that the precepts are ingrained in the accumulated wisdom of all human civilizations is beyond dispute. All civilizations have converged in their acceptance of precepts. Therefore, it is pertinent to search for and identify the roots of the principles of international humanitarian law in all the great civilizations of the world. This is what this work has done. This work shows that Islamic law is in harmony with international humanitarian law.

This work argues that the Islamic law governing armed conflict lays down detailed rules regarding the treatment of prisoners of war. In the religion of Islam, there are wide-ranging opinions

on the rules governing their treatment. However, there is a general scholarly consensus that Islamic teachings resolved the problem of how prisoners of war were to be treated in a most enlightened fashion in an era when prisoners could be executed at will. In this work, it is illustrated that Islamic Humanitarian law gives humanitarian consideration to the dignity of Prisoners of war and to their physical and psychological well-being.

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