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Bader Nasser Aldosari
Department of Law, College of
Science and Humanities,
Prince Sattam Bin Abdulaziz
University, Saudi Arabia

International humanitarian law in light of Islamic religion

Bader Nasser Aldosari

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Abstract

This study offers a legal discussion of the international humanitarian law (IHL) in light of Islamic scriptures. More specifically, it discusses the various principles governing and related to the IHL in light of the Qur'an and the Prophetic tradition (Hadith). The paper is descriptive and analytical in nature in the sense that it attempts to highlight the significance of Islamic scriptures in contributing to the principles of the IHL. One overarching research question is addressed in this study: to what extent are the doctrines and rules of the IHL and the Islamic law similar and/or different? Findings reveal that Islamic scriptures are mainly concerned with the various doctrines and rules of the IHL, which is manifested in many aspects, including human rights, war prisoners, and humanitarian aids. Also, findings show that despite coming from distinct places and histories, the Islamic laws of war and the IHL are complementary in nature and, for the most part, acknowledge similar protections for civilians during armed conflicts.

Keywords: International humanitarian law, Islam, Qur'an, Sunnah, legislation, war prisoners, civilians' rights

Introduction

In recent years and because of the rise of so many clashes and wars in the world, many violations to the main doctrines of the international humanitarian law (IHL) have been violated by countries throughout the world. When wars are launched, offensive countries blind their eyes to the international principles governing the various aspects revolving around such wars. In other words, many violations are committed against civilians, children, women, old people, buildings, infrastructure, hospitals, schools, mosques, etc. All these violations go against the IHL. From this context, it is important to discuss such issue by highlighting the extent to which Islam and Islamic scriptures have always been sources advocating the principles of what is worldly known as. Thus, this paper attempts to offer a legal discussion of the IHL in light of Islamic scriptures by discussing the various principles governing and related to the IHL in light of the Qur'an and the Prophetic tradition (Hadith). This study is significant since it presents a discussion of the IHL in light of Islamic scriptures (i.e., the Quran and the Sunnah).

Armed conflicts and wars in general constantly cause suffering to people, not only for the fighters who must fulfill their obligations to defend and fight for their nations but also for the men and women who do not engage in battle but are ignorant of war's customs and laws. In addition to destroying public infrastructure and amenities that the government provides for its citizens, wars invariably result in casualties and property loss. When all other options for peaceful dispute settlement have been explored, governments or a group of troops will often choose to go to war, which is one of the worst options (Ahmat, 2011) ^[1].

The spread of wars around the world, particularly in the Arab region and the Middle East, has left numerous devastating effects on the people living in these areas. These wars have negatively influenced all peoples, including men, women, children, old people, without any distinction whether or not these civilians are actively involved in these wars or not (Al-Dawoody, 2017) ^[3]. These violations often cause harm to properties, either individual properties or public ones (Mahmood & Sohail, 2020) ^[26]. Without considering the various rules and principles of the IHL, these wars make no differences between civilians or militants. Here lies the significance of this study in exploring the various ways through which the IHL and the Islamic law deal and advocate the rights of these parts and the way to defend and face the various violations committed against civilians (Al-Dawoody, 2021) ^[5].

Correspondence Author:
Bader Nasser Aldosari
Department of Law, College of
Science and Humanities,
Prince Sattam Bin Abdulaziz
University, Saudi Arabia

The study, therefore, seeks to demonstrate the way through which both the IHL and Islam advocate the different principles that guarantee the preservation of civilian's lives and properties.

The paper, thus, highlights the connection between Islamic legislation sources and the IHL, by demonstrating the extent to which Islamic legislation sources have always been a source for the main principles and rules of such a type of law. Islam has addressed these principles and rules 14 centuries ago in many positions in the Quranic and Sunnah texts. This is conducted by trying to answer one overarching research questions:

RQ1. To what extent are the doctrines, ethics, and rules of the IHL and the Islamic law similar and/or different?

The research overarching hypothesis is as follows: The majority of doctrines, ethics, and rules of both the IHL and the Islamic law that govern the relationships and treatment among combatants during wars are similar and complementary in nature. The current study, therefore, seeks to achieve three objectives. First, to explore the way through which the doctrines and rules of the IHL are presented in the texts of Islamic scriptures. Second, to shed light on the way both the IHL and the Islamic law deal with issues related to wars between combatants. Third, to demonstrate the similarities and differences between the Islamic law and the IHL in terms of the rules and principles that demarcate the relationship between combatants in time of war and military conflicts.

The study uses a descriptive method approach to discuss the complementary connection between the Islamic law and the IHL. This encompasses the extent to which Islamic scriptures can be perceived as sources of the IHL, as well as the way various rules, ethics, items, and doctrines of the IHL are addressed by the Quran and the Prophetic sayings (Sunnah).

The remainder of this study is structured as follows: section 2 offers a brief account on the international humanitarian law and the Islamic Law. Section 3 presents a discussion on origins and sources of legislation of IHL and the Islamic law. Section 4 demonstrates the principles of the IHL and the Islamic law. Section 5 clarifies the position of the IHL in light of Islam. Section 6 discusses civilians' Rights during military conflicts in light of the Islamic Law and the IHL. Section 7 sheds light on the rights of the prisoners of war in from the perspectives of both the IHL and the Islamic Law. Section 8 concludes the current study and offers some recommendations for future research.

2. The International Humanitarian Law and the Islamic Law: A Brief Account

The International Humanitarian Law (formerly known as War Law) refers to the collection of rules that serves to minimize and/or stop the consequences of war for humanitarian purposes. (Schindler, 2004) ^[34]. In addition to placing limitations on the tools and techniques of combat, this legislation safeguards those who choose not to engage in hostilities directly or who have stopped doing so (Roberts, 1989) ^[32]. A subset of public international law, known as IHL, is made up mostly of treaties, customary international law, and basic legal concepts (Smith, 2008) ^[36]. It is important to distinguish between general international law, which is enshrined in the United Nations Charter and governs the legitimacy of a state using armed force against

another state, and IHL, which regulates and normalizes the demeanor of parties involved in armed conflicts. The United Nations Security Council may permit the use of military forces, although the Charter forbids its use save in two circumstances: in self-defense against an armed assault. The IHL aims to control the conduct of parties to a war as soon as it breaks out, rather than investigating whether or not there were justifiable causes for the conflict's start (e.g., Bothe, 2007; Sanaoba, 2004) ^[10, 33].

There are limitations to even warfare. They are outlined in IHL, which requires the fortification of all civilians and non-combatants and restricts the weapons and tactics of battle (Grant, 2017) ^[18]. According to Ali *et al.* (2011) ^[6], there is little questioning that the laws and regulations of war have more ancient origins. They stem from fundamental human ideals that are present in all world faiths and ideologies. They maintain that under Islamic law, victims of armed war are entitled to safety, dignity, and compassionate treatment. It also demands that civilian property and infrastructure be safeguarded. Islamic law restricts the utilization of power to what is essential for military purposes (Al-Dawoody, 2018) ^[4]. Everything here complies fully with the Geneva Conventions and the rules of IHL. Therefore, Al-Dawoody (2011) ^[2] argues, the parallels between Islamic law and IHL are not accidental; rather, they serve as proof that universal ideals underpin most religions and other worldviews.

Prior to delving more into this discussion, it is crucial to examine the origins and features pertaining to the Islamic law of war before investigating the fundamental guidelines governing the application of force in accordance with Islamic law.

3. International Humanitarian Law and Islamic law: Origins and Legislation Sources

Numerous studies (e.g., Doswald-Beck & Henckaerts, 2005; Lieber, 2004; Melzer, 2008; Parks, 2010; Solf & Cummings, 1977; Richard, 1951, among others) ^[15, 37, 24, 27, 28] have argued that the majority of legal systems have settled guidelines for the manipulation and practice of force throughout history, including both the acceptable justifications for going to war and the procedures for carrying out hostilities. IHL doesn't handle the former in particular of these two domains, with respect to the grounds for using force. This subject is protected by public international law under the United Nations Charter, which forbids the utilization of force unless necessary for self-defense or in conjunction with permission from the UN Security Council in accordance with Article 42 of the Charter.

According to its definition, 'Shari'ah' literally refers to the settled way to something. It is the path that takes one to the origin, or more precisely, to God. Shari'ah, from Islamic perspective, can be perceived to be the guidance framework that covers all aspects of the Islamic religion. Thus, Ash-Shari'ah is the divinely-based law, a perfect guide for a person's life, and the law that unites Muslims into a single community (Rawandi, 1985) ^[31]. Consequently, the documents themselves include clear directives and instructions. However, as will be covered in more detail below, the Law also permits academics and legal experts to extrapolate laws from the texts in cases when they do not specifically address a given problem or circumstance. The legal principles extracted from Islamic texts, or fiqh, are an

attempt at jurisprudence to comprehend and determine the law (Zemmali, 2010)^[40].

For Bassiouni and Badr (2002)^[8], the governing laws of Islamic law are derived from the writings themselves, or they might be developed through the application of complex legal theories that extrapolate, interpret, and create relevant legal norms. Primary and additional sources make up this collection of sources. The main sources are the Qur'an and the Sunnah, where the former is the divine book revealed to the Prophet Muhammad (peace be upon him) to the whole humanity, and the latter constitutes the Prophet's regularly conducted behaviors, sayings, and/or actions. The supplementary sources are a variety of interpretive strategies such as IJMA (Scholarly consensus), qiyas (analogical reasoning), maslaha (Consideration of the public welfare), urf (Custom), itihad (unprecedented judicial doctrinal development), and treaties. The Qur'an is the main source of Shari'ah.²⁶ According to Islamic belief, the Prophet Muhammad received the Qur'an over the course of more than two decades (610–632 C.E.). Muslims consider the Qur'an to be infallible because it is the actual Word of God. The other main source of Islamic law, the Sunnah of the Prophet Muhammad (peace be upon him 'pbuh'), which comprises of his normative practices inspired by God and expressed in his deeds, oral pronouncements, and agreement with others' deeds, supports the Qur'an. The Sunnah's legal authority is really established by the Qur'an: "Anyone who engages in extensive praise of Allah and places their hope in Allah and the Last Day has in the Messenger of Allah a beautiful pattern (of conduct)." The Sunnah contains the collected customs and sayings of the Prophet (pbuh), which are referred to as hadith (plural of hadith). Although the Qur'an is the main source utilized to determine legal decisions, the Sunnah (and subsequently the hadith) are employed to either infer legal judgments and recommendations that are not present in the Qur'an or to verify specific Qur'anic injunctions.

The main characteristic that sets Islamic law apart from the majority of other legal systems is that it contains regulations pertaining to morality, worship, and family law in addition to regulations controlling many other facets of daily life, such banking transactions, international relations, criminal law, and government in both peace and conflict. Some individuals draw incorrect conclusions about Islamic law based on its religious components. That is, there are no modifications to any part of Islamic law. Regardless of the fact that the laws pertaining to belief, worship, faith, morality, ethics, doctrines, and the mutually agreed upon regulations are permanently fixed and cannot be altered, other aspects are negotiable provided the legislator's goal is served. According to Ibn Qayyim al-Jawziyyah (d. 1350), every Islamic regulation serves the public interest since Shari'ah is based on the heavenly mandate and the welfare of mankind both here on Earth and in the hereafter. It is all knowledge, all public good, all compassion, and all justice. Should a decision transform charity into its antithesis, justice into injustice, or the public good into corruption, even if an interpretation is made, it cannot be included in the Shari'ah if it turns knowledge into foolishness is called upon, for the Shari'ah represents God's justice among His devotees, and His grace across creation and His presence on earth

The IHL serves to legalize the conduct of opponents involved in armed conflicts, either internationally or within

countries' own borders. Its goals are to prevent or lessen the different consequences and effects of armed conflicts, lessen victim suffering, protect those who are either not participating in the hostilities or have ceased to do so, and safeguard both portable and immobile property that is not being used in armed processes. The name "international humanitarian law" has grown more popular, highlighting the humanitarian principles that guide this recently established area of law. It was formerly known as the "law of war." Has this relatively new area of law been absorbed into the Islamic legal system, one wonders? It is likely that neither this phrase nor any other contemporary language connected to international humanitarian law was used by classical Muslim jurists to describe circumstances involving armed combat. However, the requirements of Islamic law, as they have been settled and recorded by Muslim jurists since at least the second Islamic century (the eighth century AD), clearly demonstrate that miscellaneous topics and issues discussed and presented by IHL were previously tackled and spotlighted by Muslim jurists with the intention to realize various goals as those of IHL, including protecting specific individuals and objects and lessening the suffering of armed conflict victims (Krafess, 2005)^[23].

There have always been standards and guidelines that apply to war. Consequently, it is possible to argue that the foundations of IHL are found in laws that have their roots in prehistoric societies and faiths. The 19th century saw the start of the formulation of IHL. When outlining the fundamental ideas of IHL, the Martens Clause is one of the texts that is most commonly mentioned. This was initially mentioned in the Second Hague Convention Preamble in 1899, and it has subsequently grown to be recognized as customary international law. The Martens Clause stipulates that both combatants and civilians enjoy a slightest level of fortification even in circumstances not specifically covered by codified IHL instruments (Chelimo, 2011)^[12]. Specifically, all hostilities must be governed by the doctrines of the law of nations when they emerge from the application of international law, laws pertaining to humanity, and laws pertaining to the demands of communal ethics. This is in line with the main objective of IHL, which is to set minimum, inviolable rules of restraint that are applicable in all armed conflict scenarios.

Furthermore, modern IHL consists of two main divisions. First, the 1907 Hague Convention No. IV established the laws governing the means and techniques of warfare; these regulations are commonly referred to as the Hague Law. Second, the 1949 Geneva Conventions include measures that provide protection to injured, ill, shipwrecked, prisoners of war, and civilians. These regulations govern the treatment of victims of armed conflict. The 1977 Protocols to the Geneva Conventions combined the prohibition of hostilities with the safeguarding of war victims into a unified set of treaty responsibilities. Certain articles of treaties are binding on all parties, whether or not they have ratified the agreement, even though treaties are only binding on ratifying parties. This is because certain of these clauses are considered customary law and are not pertinent to the Geneva Conventions and the accompanying Protocols to certain provisions of IHL (Cohen, 2013)^[13].

4. Principles of the International Humanitarian Law and the Islamic law

One of the fundamental tenets of IHL is the peculiarity

between warriors and civilians. This is manifested in a number of rules, ethics, and doctrines, including (i) the prohibition of using force against individuals who are not actively involved in conflicts; (ii) the prohibition of inflicting needless suffering; (iii) the necessity principle; and (iv) the proportionality principle.

Four principles can be used to encapsulate these rules: treat people under your command with dignity, avoid attacking non-combatants, attack combatants only through legal methods, and protect victims (Grover, 2010). However, because the military confrontations law is restricted to particular situations and does not apply in others, it is also complicated. It is usually simple to describe in precise words, and depending on the circumstances, the act itself may be neither legal nor illegal, unlawful while also constituting a crime, or neither legal nor illegal. Consequently, the means and techniques of warfare are governed by IHL. The legal framework endeavors to slowdown a compromise between justifiable martial action and the humanitarian objective of mitigating human suffering, particularly that of civilians. IHL accords become universally enforceable only once they are legally ratified or acceded to by every state (Lieber & Sheppard, 2011) ^[25].

The Islamic law of war, on the other hand, is characterized by the following attributes due to the distinctiveness of its sources and contexts: its religious component, Muslims' innate desire to obey God when adhering to it, the absence of a steady categorization, and the particularity of the surrounding circumstances where it is used and apply, as well as the sources it is based on and derived from (Charpentier, 2021) ^[11]. The Islamic law of war has a religious component in that adhering to its laws about the employment of power is an action of worship that makes a Muslim soldier who conducts this act closer to God. The goal of humanizing armed conflicts through classical law resulted in conflicting decisions because individual jurists gave different weight to humanitarian concerns and the military need to win the war, even at the expense of humanitarian principles, when making their decisions. Respect for the laws governing the consumption of potency in Islam was an act that Muslims automatically adhered themselves to in order to achieve a high degree obedience for God, without any consideration or deliberation to whether or not opponents tracked and employed the same rules. This was not the case in the modern era, when respect for international conventions resulted from a duty to abide by them. This feature provides substantial support for the claim that Islamic law has significant influence over how Muslim parties to ongoing conflicts conduct themselves, particularly when it comes to opponents who cite Islamic principles of military confrontations as their model and established doctrine. The majority of Muslim jurists' focus was on making a distinction between acts that Muslims could engage in during a war and those that they could not. Obviously, Muslim jurists meticulously developed the body of precedent governing a Muslim soldier's required behavior, accounting for the need to win the war as well as the aforementioned sources.

5. The International Humanitarian Law in Islam

Islamic Shari'ah has always been one of the essential frameworks that governed many facets of human existence. Perhaps one of those facets is the demeanor and behavior of opponents involved in war or any other military

confrontations; even in these circumstances, when force is used to resolve the dispute, the parties' conduct is still governed by Islamic Shari'ah and is evident. As a result, many general rules and provisions found in Islamic law are also found in IHL. This is especially true given that both legal systems aim to achieve the same ends, upholding the values of justice and tolerance both before and after war, particularly when it comes to treating prisoners, civilians, and property (Yousaf, 2012) ^[39].

It is worth mentioning that the foundational principles of the IHL are found in the Noble Qur'an and the Sunnah of the Noble Prophet. The Noble Messenger and the Muslim leaders who followed him upheld these principles throughout their battles and wars, only occasionally departing from them. Respect for all the general principles governing war and its operations, as well as the requirement to treat people with dignity, preserve their lives, and protect their property, are perhaps the most significant of these rules. Similarly, when it comes to treating prisoners, the necessity of preserving their lives and refraining from killing or torturing them is paramount, treating the wounded among them, and other matters (Al-Dawoody, 2018) ^[4].

When it came to the general principles outlined in the rules of IHL, Islam was many decades ahead of the law. Muslims had been applying these principles ever since the Islamic State was established in Medina, particularly following the Great Battle of Badr and the treatment of captives taken from the polytheists ((Haruna & Abbo Jimeta, 2015) ^[20]. The Caliphs and other later rulers also followed suit on this issue. The following were arguably some of the most well-known general rules that Islam or Islamic law created in order to control the state of war and its aftermath:

1. Islam prohibits betrayal in times of war; hence it is imperative to invite the other side to battle, a move that is today known as an announcement of war or a warning of war.
2. Safeguarding non-combatants or armed forces members who are in areas undergoing hostilities or warfare. It is required to defend all enemy property, both immovable and mobile, and harm is only allowed to be done so far as it prevents the enemy from moving.
3. Having pity and compassion for those who can justify their actions, honoring and respecting the deceased by burial them in a dignified way, and forbidding or preventing the mutilation of bodies.
4. The requirement to exclusively use weapons on battlefields or during times of conflict, without causing unwarranted or catastrophic harm to other people (Haruna & Abbo Jimeta, 2015) ^[20].

Furthermore, the Qur'an abounds in verses that show the way international relations among nations and/or parties should be governed. Crucially, Islamic religion has established the rules that guarantee mutual respect among people irrespective of their doctrines or faith. The basic principle of Islamic religion in this regard is to establish the religion on its complete form and foundations, which is clearly communicated in Surat Al-Haj: "Who, if we establish them in the land, will observe the Prayer, and pay the *Zakdt*, urge to what is reputable and restrain from what is disreputable-to Allah belongs the issue of affairs." [22(41)]. Also, a close observation to the Islamic rules concerning war, one can recognize the fact that Islam has two main goals beyond launching wars: the first is to protect

the territories of the Islamic Caliphate; and, the second is to consolidate the Islamic religion lest it should be wiped out. These overarching goals are clearly communicated in the main Islamic scriptures, as is the case with the Qur'anic verse: "Fight them until there is no dissension and the religion is entirely Allah's." [2(193)].

6. Civilians' Rights during Military Conflicts in light of Islamic Law and IHL

According to Whyte (2014) ^[35], a close investigative reading to both the IHL and the Islamic Law shows that both laws are mainly concerned with the rights of civilians during wars and military conflicts. Concerning the IHL, affiliates of systematized military sets affiliated with one of the parties to the conflict, or any recognized member of a state's military forces, are entitled to specific safeguards contained in the combatant's privilege (Vanhullebusch, 2007) ^[38]. All members of the military forces serving in uniform are eligible for this privilege, with the exception of chaplains and medical staff. As stated in Article 57 of the Lieber Code, an opponent's invulnerability for acts like killing, wounding, or other pugnacious acts committed in the course of their job is a key component of that privilege (Solf & Cummings, 1977) ^[37]. Because such performances do not infringe the rules of war, opponents are, accordingly, exempt from prosecution for their belligerent actions, even if such pugnacious performances would be illegal under municipal law. Furthermore, for Aly (2014b), if captured by enemy troops, an advantaged warrior is also eligible to special protections as a prisoner of war. Contradictorily, unprivileged combatants are not granted the privileges of a combatant or POW status. Spies, mercenaries, and citizens of the detaining power are a few instances of underprivileged combatants. It is necessary to acknowledge unprivileged soldiers in order to differentiate them from privileged warriors (Lieber, 2004) ^[24].

According to Doswald-Beck & Henckaerts (2005) ^[15], IHL has given the parties to the conflict the freedom to select their own tactics and means of battle, but it also imposes restrictions on what constitutes acceptable tactics and means. IHL, for example, forbids the employment of any weapon or strategy in combat that can result in gratuitous suffering or unneeded wound. Additionally, it forbids the following: claiming that no quarter will be granted; pillaging; starving civilians; and using perfidy. Pillage is forbidden by Rules 52 and 122 of the ICRC's Customary International Law Study, which provide that the personal and real property of rightful owners cannot be seized without permission. All fighters have the option to surrender as the Hague Convention of 1907 forbids the statement that "no quarter shall be given." The main goals of banning certain kinds of warfare are to prevent needless suffering during conflicts and to protect the regime's overall integrity. According to Aly (2014a), a few limitations on what can and cannot be done during a battle have also been imposed by Islamic law. During the Quranic expansion of Surah 2:190, for example, the Prophet stated that there are five types of people who are shielded from fighting against transgressors. These people are primarily civilians who are not involved in warfare. Furthermore, according to classical jurists, "Amān shares some similarities with the hors de combat status: this is ḥaḡn al-damm (prevention of bloodshed, protection of life)". Islam has always been advocating the idea of preserving civilians' blood.

In light of the Islamic law, on the other hand, there is no evidence that soldiers, as defined by Islamic jurisprudence, were held accountable for their lawful aggressive conduct carried out in the course of their duties, despite the fact that a large portion of the Islamic jus in bello evolved inside the pre-modern "state of war" that predates the establishment of present-day IHL. They thus most likely relished a benefit akin to that of the fighter. Nonetheless, several regulations exist that precede comparable IHL restrictions. For instance, it was widely acknowledged that combatants ought to have achieved puberty or adulthood, which essentially forbade minors from engaging in combat. Significantly, despite the general perception of battle as a male activity—exemplified by the ongoing American debate about women serving in the military and taking up combat roles—Islamic history does have accounts of female fighters. Two ladies who took part in the Battle of Uhud (3 A.H./625 C.E.) were mentioned:

Two women in particular stood out among those warriors for their strength and vigor: Um Sulaym and Nusaybah bint Kab, an Ansar woman who had initially arrived to deliver water and assist the injured but later entered the fray, seized a sword, and engaged in combat with the Quraysh. The Prophet had never meant for or encouraged women to engage in combat, but upon witnessing Nusaybah's passion and vigor during the conflict, he commended her actions and asked God to keep her safe and provide her success. (Ramadan, 2007) ^[30]

An observation about the aforementioned quote is that the Prophet (pbuh) acknowledged these women's equal humanity by commending their bravery in battle and outlawing the killing of non-combatant women, as was previously said. Because of this, modern IHL requirements on combatant status offer Muslim jurists a valuable framework to examine, but the extensive history of comparable Islamic regulations implies that jurists can also draw on their own customs to create a modern framework of advantaged combatants. Furthermore, Islam expressly demands that people who are taken prisoner during armed conflict be treated well: "And they feed, for the sake of Allah, the indigent, the orphan, and the captive,-(Saying), 'We feed you for the sake of Allah alone: neither return do we desire from you, nor thanks.'" The Qur'anic statement, "The Prophet (peace be upon him) says: 'I command you to treat captives well,'" is supported by six prophetic traditions. The Prophet (pbuh) frequently released detainees on the spot, as evidenced by an examination of the Sunnah.

The first significant conflict of the recently formed Muslim kingdom in Medina, the Battle of Badr (2 A.H./624 C.E.), provides an example. In this battle, a squad of about three hundred Muslim soldiers engaged in combat with about a thousand Qurayshi warriors. Following an astounding Muslim triumph, in which roughly seventy POWs were taken prisoner, only two were put to death and the remaining POWs were released in exchange for a ransom. The Prophet (pbuh) gave clear instructions on the inmates' well-being: "They used to place their prisoners before themselves when it came to food, following the Messenger of Allah's admonition to treat them well on the day of Badr... According to Mujaahid, this alludes to the person who is jailed; in other words, they would feed these inmates despite their own need and passion for food."

On the contrary, it's crucial to remember that there was a great deal of uncertainty at the time because handling POWs

was a novel situation for the nascent Muslim community. According to theories of total war, the dominant practice most likely promoted executing the inmates. However, after considering the options of execution and ransom, the Prophet (pbuh) decided to go with the former. According to Islamic belief, the Qur'anic phrase "It is not fitting for a prophet that he should have prisoners of war until he hath thoroughly subdued the land" was revealed in reference to this episode. While you seek the material goods of this world, Allah looks to the Hereafter. Allah is a wise and powerful being.

In terms of prisoners of war from the Islamic law perspective, ransom was frequently used to free captives, and occasionally prisoners would be paid for serving the Muslim society by teaching others to read and write. The Prophet (pbuh) also frequently released prisoners of war at no cost; one instance of this is when he utilized public monies to reimburse Muslim soldiers who refused to give up their slave haul following the Muslim victory over the Hawazin in Hunayn. Therefore, the requirements for the humane treatment of prisoners of war (POWs) include the right to food, shelter, and protection of life, and these requirements are included in both contemporary IHL and Shari'ah. Indeed, conventional Islamic discourse even maintains that prisoners of war who also happen to be relatives, such parents and kids, shouldn't be kept apart from one another.

Furthermore, given the current context of hostage-taking and the habit of associating captives to prisoners of wars, prisoners of war status in Islam has taken on additional significance. In the past, hostages were traded with other nations in order to guarantee that their treaties would be upheld. The hostages were then given back when their commitments under the agreements were met. On the other hand, even in cases where Muslim hostages held in the enemy state were slain, the Shari'ah upheld the rights of the hostages and forbade killing them. However, if the treaty was broken, hostages were handled like prisoners.

7. Prisoners of War in Light of both IHL and Islamic Law

According to Zeidy and Murphy (2004) ^[16], the regulations governing fighters detained in custody, or prisoners of war (PoWs), represent a significant area of overlap between IHL and the Islamic laws of war. According to the Islamic Laws of War, any physically fit man who enlists in the military or engages in combat is deemed a combatant and becomes a Prisoner of War (PoW) if they are taken into custody. Since the Qur'an commands us to "[k]ill the unbelievers whenever you find them and seize and confine them..." taking prisoners is permissible. Therefore, when you engage in combat with unbelievers, smite their necks. After you have defeated them, take them prisoner.

Islam requires that people who are taken prisoner during a conflict be provided proper care, fed, and water—not tortured or disfigured. The Qur'an says "and they feed, for the love of Allah, the indigent, the orphan, and the captive". According to the Sunnah, the Prophet (pbuh) has also instructed that prisoners be kept out of the hot sun while they are in custody, as well as saying, I give you orders to treat inmates humanely and to follow the advice to treat them equally. Also, his saying: And they feed the poor, the orphan, and the imprisoned from the food they adore most mandated that prisoners of war also be nourished.

According to a statement made by Omar Ibn Hossayn, "[T]he enemy captured two of the Prophet's companions, and other companions of the Prophet captured one of the enemy soldiers." The prisoner once confessed to the Prophet, saying, "O! Mohammad, I'm thirsty and hungry." "These are your needs," the prophet retorted. It has been suggested that the words "needs" relate to food and water. Furthermore, Islamic laws of war established combatant immunity, according to Muslim scholars, who maintain that detainees should not be held responsible for harm done to Muslim lives or property during fight unless there were flagrant violations.

According to the Islamic Laws of War, "when you have overcome them, take them as POWs, until the war lays down its burdens, then you may set them free, either by grace or by ransom," prisoners should be released following the end of hostilities. For example, following the Battle of Badr, about seventy prisoners of war were taken prisoner; only two were executed, and the remaining hostages were released upon payment of a ransom.³⁶ Islamic leaders could choose to have POWs "(1) beheaded [executed], (2) enslaved, (3) released by ransom; (4) exchanged for Muslim prisoners; or (5) simply released," according to custom. When someone put the state's security at jeopardy, they were beheaded. As required by IHL, any POWs who passed away while being held in custody were to be buried with honor.

To recap, there are a lot of parallels between the two legal systems, even though the scope of applicability and threshold for both IHL and the Islamic laws of war may differ. Key protections for humans and civilian objects are included in both of them, which are variations on the concepts of distinction and proportionality. Additionally, they make provisions to lessen the suffering of prisoners of war who are being held in custody. Islamic law is remarkably progressive for its period, requiring those who damage people to make amends and forbidding the use of human shields while maintaining the right to defend civilians from attack. Furthermore, it is obviously noticed that both IHL and Islamic law address the same issues and target the same goals. Both of them constitute a set of ethics, doctrines, and rules that entirely function to protect civilian people as well as properties in times of military conflicts. Both laws also attempt to decrease the possibilities of launching wars and to prevent their bloody effects before they start. The Islamic law and the IHL, thus, share the same humanitarian motives that ultimately serve to protect human beings and their properties during wars.

Despite the fact that the IHL reconciles with the Islamic law in many respects, there are some differences between them. These differences manifest themselves in the fact that the sources from which the IHL are derived are human-made ones, whereas the Islamic law is a God-made law. This primary difference abounds in other discrepancies between the two types of laws, including the concept of obligation in the application of the doctrines of the Islamic law as it is more obligatory than the IHL. This, certainly, is due to the heavenly source from which the Islamic law emerges. Also, the violation sanctions pertaining to the IHL is executed during life, whereas those pertaining to the Islamic law continue to the hereafter. Crucially, both the IHL and the Islamic law have much in common, yet, from this paper's perspective, the Islamic law is more comprehensive than the

IHL, which makes the latter always open for multiplicity of criticisms.

8. Conclusion

In conclusion, there are a lot of parallels between the two legal systems, even though the scope of applicability and threshold for both IHL and the Islamic rules of war may differ. Key safeguards for humans and civilian objects are included in each of them, which are variants on the concepts of distinction and proportionality. Additionally, they make provisions to lessen the suffering of prisoners of war who are being held in custody. Islamic law is very progressive for its period, requiring those who damage people to make amends and forbidding the use of human shields while maintaining the right to defend civilians from attack. Furthermore, it would be beneficial to investigate a number of other aspects of Islamic law, particularly those that deal with cultural heritage and military tactics. This is especially true for the latter, where non-state actors frequently demolish cultural assets under the guise of Islam. In an effort to promote adherence to legal regimes, this month's topic and articles seek to throw some light on them and their confluence. Despite coming from distinct places and histories, the Islamic laws of war and IHL complement one another and, for the most part, acknowledge similar protections for civilians during an armed conflict. Given that civilians are guaranteed common rights by both Islamic law and IHL, these legal frameworks can be employed in tandem to maximize civilian protection and lessen suffering during hostilities.

This study also offers a legal discussion of the IHL in light of Islamic scriptures. More specifically, it discusses the various principles governing and related to the IHL in light of the Qur'an and the Prophetic tradition (Hadith). It reveals that Islamic scriptures are mainly concerned with the various doctrines, ethics, and rules of the IHL, which is manifested in many aspects, including human rights, war prisoners, and humanitarian aids. This study is further considered to be an interdisciplinary one that contributes to the fields of Islamic studies and Law studies, as it sheds light on the connection between the IHL in light of the Quran and the Sunnah and highlights the relevance of the Islamic legislation sources as sources of various international laws.

For further research, it would be beneficial to investigate a number of other aspects of Islamic law, particularly those that deal with cultural heritage and military tactics. This is especially true for the latter, where non-state actors frequently demolish cultural assets under the guise of Islam.

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