

International Humanitarian Law In Islam And Contemporary International Law

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Introduction

War is one of the most catastrophic phenomena human beings face. That is why it is emphasized that the requirements of war should give way to humanitarian imperatives. The most basic rights of human beings have been violated during wars. Therefore, the relationship between the laws of war and human rights should be taken into consideration.

It seems that the violation of human rights during wartime may be minimized if wars are somehow legally regulated. The existence of some internationally sanctioned legal principles can serve this cause.

Although humanitarian considerations have been included in many international legal instruments—dating back to the nineteenth century – no direct link between human rights and law of war was established until the late 1960's. Their first formally accepted conjunction could be traced back to the international human rights conference in Tehran (1968) where a resolution was adopted in this regard.

According to this resolution, the observance of human rights should be taken into consideration in various types of legal regulation including those governing “armed confrontations.” In the same year, the UN General Assembly confirmed the contents of this resolution.

Of course, armed confrontations are not limited to international relations, “Human rights imperatives” should be followed in civil way and other form of domestic armed confrontations. In other words, human rights should be observed in any kind of armed—and of course non-armed—conflicts.

It is worth mentioning that many centuries before the advent of modern international attempt to formulate the law was in accordance with the observance of minimum standards of human rights, in many divine

religions, especially in Islam. The observance of human rights during wartime was taken into consideration.

One of the important discussions in the Islamic law is the prohibition of brutal and inhumane behavior in armed confrontations. The following article analyses humanitarian law from an Islamic point of view. According to Islamic law, the dignity of human beings should not be denied and any arbitrary and immoral treatment of people should be avoided.

1. The evident fact is that the history of war dates as far back as the history of man. In the war among states, only force reigns and each one of the parties seeks to overcome the enemy through, all means and might. In this cause, religions, moral schools, philosophers and lawyers have endeavored throughout history to limit non-humanitarian acts in war by formulating the laws of war.

2. Some people believe that there is no need for formulating the laws of war as the Suppression of the Act of Aggression for limiting or forbidding the acts which are tinged with crime, believing that the setting of such rules implicitly lends legality to war. However, the fact is that the illegality of resorting to war does not at all obviate the need for the laws of war and humanitarian rules, for such laws aim to reduce the ill consequences of the inability of international community in forbidding war.

After fifty years, the United Nations has failed in the total elimination of this bitter truth despite the prohibition of resorting to force in international relations and has been incapable of determining the aggressor and has failed to do its duty in forbidding or stopping aggression although it has achieved great success in organizing the laws of war especially in approving the humanitarian acts. Besides, it played an important role in organizing the Geneva Conference, which led to the 1977 protocols known as the Four Geneva Conventions (1949).

In addition, the Convention of the United Nations in 1981, which banned the use of lethal weapons, was one of the innovative acts of the United Nations. Recently, the Commission on International Law studied the crimes against peace and security perpetrated in some areas such as the former Yugoslavia and had the court and the laws of court approved.

3. Basically, the laws of war seek to enact three limitations for armed operations as follows:

A) Limiting the war zone

B) Limiting the use of weapons

C) Limiting the operations to combatants and immunity of the civilians.

The laws of war seek to fulfill four aims:

- Humanitarian treatment

- Protection of non-military zones
- Protection of civilians
- Keeping the non-belligerent states aloof from the war

4. The study of the group of rules and rights of war from the Paris Declaration dated 16 April 1856 regarding the rules of Marine War to the last rules in this regard, that is the Four Geneva Conventions and the 1977 protocols amended to them and the 1981 United Nations Convention and comparing them to the rules and principles in Islamic rules regarding war and armed strifes well demonstrate that the origins of the rules of war in general and Humanitarian law and the protective rights can be completely found in Islamic teachings. In addition, the idea that such laws are derived from Islamic rights is not exaggerative. This fact shall be proved when the Islamic sources and the way the jurisprudents of early centuries classified international and non-international wars and their systems and the treatment of Muslim combatants towards the enemy are considered one by one.

Punishment for the violations of soldiers in Islamic law directs our attention to another fact and that is the aforementioned instructions are not merely moral recommendations but laws to be exercised. In addition, the violators are responsible for the punishment thus incurred.

5. Assuredly, the Muslims have performed such mighty system for instituting the war and peace rules since the seventh century that they have remained within international rights and relations even before the West gained such recognition about one thousand years ago.

Imam Muhammad Ibn Hasan Shaybani, the Hanafite jurisprudent, was the pioneer of this body of laws and principles. He founded this knowledge in the eighth century through his books *Al-Sayr al-Saghir* (The Small Conduct) and *Al-Sayr al-Kabir* (The Great Conduct). During the recent years, the *Shaybani* Society of International Rights was founded in Gottingen as a way of commemorating this great jurisprudent. In addition, the strivers for human rights from various countries joined it. The aim of this society was to introduce Shaybani and his works in this field.^{[1](#)}

The mindful orientalist and the researchers in this field well know that the West has been influenced by the Muslim products in this regard.^{[2](#)}

It is a fact that Grocius, the Dutch Statesman, the pioneer of international rights in the West who lived in the seventeenth century was in a state of exile^{[3](#)} in *Astanah* (a name given to Turkey or Constantinople). It is not farfetched that he might have had access to the Arab and Islamic world and a link between east and west. Apparently, he was the missing link between east and west in this regard. It is also certain that Grocius was inspired by the works of Fransco Swazbir^{[4](#)} who was definitely acquainted with the Arab and Islamic writings.

Chapter 1- Generalities

Definitions

The two expressions Human Rights and the Humanitarian Law have two distinct meanings in contemporary literature of international law. There has been a long controversy on the birth of the latter concept as distinctive from the former. In 1969, when the General Assembly of the United Nations inquired the Secretary General to give a report on the common human rights in armed strifes, many scholars discussed whether the term had been properly used.

At all events, there is no doubt in the minds of the scholars on this score.

The Humanitarian law include the set of laws and provisions which seek to determine human rights in the time of war or during armed operations whereas human rights include the rights which determine people's rights in time of peace. In other words, Humanitarian Law have two fundamental elements:

1. The Protection of the Wounded, the Afflicted, the Prisoners of War and the Civilians
2. The peak of armed strife

However, human rights pertain to everyone at all times.

From the perspective of a philosophical analysis, one can say that Human rights observe the humanitarian rules and humanitarian Rights are derived from benevolence towards man. The humanitarian rules refer to human nature without any distinction as to race, nationality or so on, or in other words, to human nature.

Probably, some scholars oppose the notion of international humanitarian law in Islam. In their eyes, how can one separate part of Islamic humanitarian law, labeling it as humanitarian whereas by consensus we believe that all Islamic laws are humanitarian and Islam means peace and amity.

At the outset, I had such a feeling but I realized that it was but a superficial feeling. Therefore, I overcame it. In fact, I propose to analyze the everyday use of the term, which is of special significance. It is a truth that peace is the spirit of Islam. However, peace is not the only dominant truth in human societies. Likewise, man's murder by man is an undeniable fact in human societies.

In order to understand the Islamic meaning of humanitarian law we should put it in its true context and analyze it in a historical vista because the Islamic manner which is universal and transcends time and place is not dependent on armed strifes but on the Muslim beliefs, the nature of Islamic rights system and its interpretation of the relation between the Muslim world and the external world. Hence, in order to clarify and make comprehensible the concept, we should study its varying elements and consider the necessary factors for any systematic and mature thoughts.

The Features Of The System Of Islamic Law

The system of Islamic law has two characteristic features, which are not identical to other contemporary systems of rights.

The First Feature: Divinity

The system of Islamic law is not substantially mundane but divine and holy, including the exercise of Islamic faith in a definite way as to human relations. Islam consists of a set of laws dominating the believers' conduct, which molds their relations within the matrix of society. In Islam, the religious faith and the legal discipline constitute an inseparable whole in which faith is the origin giving rise to legal discipline.

The Second Feature: Inseparability

Unlike most contemporary systems of law, the Islamic system of law, which includes private and public law, is not branched out. Its rules are derived from the Holy Qur'an, addressed to everyone everywhere at all times. They originate from a divine source and they are particular to individuals and groups from all occupations.

The Almighty God addresses man through his apostle and enacts certain laws for guiding him and checking his behavior. Hence, there is one God and one law in Islam. This law is addressed to everyone without any distinction or discrimination and includes rules dominating the entire human relations. Whatever the nature of the law is, the basis is the same.

It must be noted here that lawyers might try to scientifically classify the previously mentioned rules and introduce one law as national or international, private or public.⁵ This refers to the science of law and legal researches. What is impossible is that we try to include utterly alien concepts such as monotheism or dualism within Islamic rights or alter its sacred concepts such as oneness and the principle of equality.

The Historical Conditions For The Formulation Of The Islamic Law System

The other salient point is that we should take into account the concept of humanitarian law in Islam within a historical context and consider the two necessary aspects, environmental and temporal, in a fair comparison. Islam emerged in the seventh century whereas the international humanitarian law had not taken shape until the second half of the twentieth century. So there is a period of thirteen centuries between these two concepts.

If we study these thirteen centuries with our present knowledge and compare the then society to the present one, we shall inevitably come to the conclusion that the changes have been so diverse that they could have taken place as a true revolution. In the present study, we do not tend to give a dark picture of society in the seventh century and then compare it to the modern society. Our sole intention is to draw

the readers' attention to these factors, for we should avoid complicating the issues and the times and we should make our comparison within a proper framework.

Islam emerged in the seventh century when war, domination, slavery and ignorance reigned, force was dominant in all aspects of life. The societies did not have any economic or social structure or at least were very poorly structured. The concept of state, border, nationality, and organized relations did not exist or were unknown. Islam sought to fill this dark gap.

The basic mission of Islam was to bestow faith and civilization on man with a view to establishing a modern society, which was bound to be the master of its own destiny. To this modern society, Islam granted a religion based on monotheism and a system of rights derived from the Qur'an, the tradition and the Ijtehad (the use of reason to arrive at truth in Islam).

The Sources Of Islamic Law

The Qur'an is the Word of Allah, the Master of the worlds who sent it down to his chosen Apostle for the guidance of mankind. The Qur'an descended upon the holy Prophet at different stages in the span of 23 years. The Qur'an was sent for the guidance of mankind in the course of his worldly and spiritual life to all classes of people at all times at all places. The nuclear theme of the Qur'an is monotheism, the belief that there is only one God. At all events, it deals with all aspects of human life.

The Qur'an is divided into 114 Suras (chapters) covering a pervasive scope. The laws expressed in the Qur'an are imperative and thus should be applied to certain relations. It is noteworthy that the existential cause of the laws included in 200 verses refers to five fundamental principles, which are the fundamentals of the whole system of Islamic law. These principles include:

1. Justice
2. Equality
3. Counsel based on respect for people's opinions
4. Fulfillment of promises
5. Retaliation

In general, these five principles constitute the pivotal values of the system of Islamic law. With the death of the holy Prophet, the inspiration came to an end and nothing can be definitely added to the Holy Qur'an.

This is the point where the social role of Ijtehad emerges, namely that, all laws and new solutions for organizing the human behavior should be comprehended on the basis of the aforementioned general principles. It must be noted that any principle or solution, which does not accord with the previously

mentioned fundamental principles, cannot be viewed to be Islamic.

The prophet's tradition is the second source. The prophet's manners in fulfilling his mission and his conduct towards others are the source of the laws, which enjoy legal power in Islamic law. These laws complete the Qur'anic laws because they tend to approve the recent laws or determine how those laws should be put into effect.

The point is that the Qur'an and the Sunna had deep roots in the life of the holy Prophet and after him, no one was capable of enacting laws. Since life is constantly changing and Islam has a stable nature, there was a need for another living legislator, a source for creating new rules corresponding with new phenomena within dynamic societies.

The third source is the system of Islamic law, *Ijtihad* explicitly expressed in the Holy Qur'an. By virtue of *Ijtihad*, we can understand the necessary rules in the mutable life of societies. However, we should emphasize that this understanding can take place within the five main tenets of Islam.

What inspired consolidation in the spiritual and worldly aspects of Islam in the first three centuries was this third source. However, unfortunately at the time of the Abbassid dynasty the rulers who wished for boundless domination saw fit to stop *Ijtihad* and bar the inductive method. From then on, Islam and its system of rights remained static in a dynamic world.

The consequences of the decisions made by Abbassid dynasty marred Islam and its mission to spread civilization. Only over the recent decades, the new generation of the jurisprudents and Islamic lawyers had recourse back to *Ijtihad* due to their encounter with the problems of the world today. However, their attempts were mingled with doubts and fears, for the new state with the power of legislation limited their role.

Therefore, within this framework briefly elucidated, we should look at the Islamic concept of international humanitarian law. At first, this concept is dependent on those Qur'anic verses⁶ which are relevant to the practice of the prophet in time of enmities imposed on him and ultimately, on the rules perceived from the five fundamental principles of Islamic law derived from the prophet's commands given to the armies of Islam.

Chapter II–The General Concepts of International Humanitarian Law in Islam

A) Non–international Armed Strifes

B) International Armed Strifes

Now that we have covered the introduction and the general points, we had better follow the method of Pictet⁷, the Swiss lawyer. At first, we shall explicate the international humanitarian law together with the

current international humanitarian law influenced by positive law.

Armed strifes or war in the Muslim world and the august Muslim countries are divided into two categories: civil wars or as al-Mavardi states wars for welfare⁸ and the wars waged against the pagans and the infidels. The first category may be labeled as non-international and the second category as international.

Non-International Armed Strifes (Civil Wars Or Wars For Welfare)

To clarify the issue, we need to further explain the types of war for the general welfare.

War against Armed Thieves and the Bandits

The armed thieves and the bandits are corrupted people who take up arms and kill people, loot and plunder their wealth, and stop traffic on the way of the caravans. It is evident that we are talking of the war waged within the realm of human rights, namely the laws that organize human rights in time of peace, but not the international humanitarian law which determine human rights in time of war. Hence, the laws relevant to the first category may exercise punishment to those who violate the law, a severe punishment dictated by the Qur'an because of its blatant abomination that threatens the social security.

War against the Rebels and the Kharijites

The rebels and the Kharijites are the Muslims who rebel against the ruling *Imam*, fight the society and follow an odious school. In the history of Islam, we encounter *Kharijites* (Seceders) who opposed Imam Ali, rebelling against him when he was forced to agree to arbitration by umpires. They gathered in a village called *Harura* so they were called Harurians. Their leaders were 'Abdullah Ibn al-Kawwa al-Yashkari and Shabeth al-Tamimi. Some of them interrupted 'Ali while he was giving a sennon from an elevated place and protested: "Judgement belongs to God alone." And Imam 'Ali said: "This is a truth to cover up falsity." And he added: "I shall not prevent you from three acts: 1) I shall not prevent you from entering the Sacred Mosque 2) I shall not wage a war against you 3) as long as you are with us I shall not deprive you of the booty."⁹

If such rebels display their rebellious tendencies while they are with other believers it is incumbent on the ruling Imam to mention their corrupted stand, haply they may follow the Muslim community.

In addition, the Imam can consider punishments for those who are in a state of blatant corruption to serve an example for others and bar people from following them in order to preserve social integrity. However, such punishments should not include execution or *hadd* (fixed punishment) other severe ones as long as they have not committed abominable acts. (Hadd includes a punishment fixed by the Islamic Shari'ah for deadly sins).

The stand adopted towards the rebels .is identical to the one adopted towards the opposing parties. In

other words, as long as their acts are not accompanied with violence and force they have complete freedom of opinion. If they resort to any of these violent acts, the Imam has the right to get them punished. It is obvious that this has nothing to do with the international humanitarian law.

In fact, any rebellious act against the Imam is a kind of civil war, which necessitates war against the aggressors. In this regard, the Qur'an states:

“If two parties of the believers fight, put things right between them; then, if one of them is insolent against the other, fight the insolent one till it reverts to God's commandment. If it reverts set things right between them equitably and be just. Surely God loves the just.” (Surah al-Hujurat 49:9)

In this verse, tyranny and invasion mean war or the rejection of peace. The war against the rebels or the Kharijites is identical to the war mentioned in the third principle of all the Four Geneva Conventions.

As to the armed strifes, which are not labeled as international and waged within the zone of one of the Geneva Convention signers, each one of the belligerent parties, is obligated to observe the following rules:

1. All those who do not actively participate in war including the ones who have put down their guns, the sick, the wounded and the prisoners should be treated humanely without distinction of any kind due to race, sex, religion, poverty, wealth, etc.

To achieve the aforementioned goals, the following acts are severely prohibited under any circumstances:

A) Execution or physical injury, that is, murder of any kind, mutilation, savage treatment and torture

B) Hostage taking

C) Degrading, inhumane treatment

D) Execution without previous trial by a just tribunal in which all judicial procedures are accepted by civilized societies

2. The wounded should be gathered and taken care of [10](#)

Considerable attention is accorded to this kind of aggression in the second protocol of the two protocols approved by the General Assembly in 1976 with a view to developing humanitarian law.

At all events, the protocol meets innumerable impediments, and seems to lack real identity. As in the paragraph noted above, the protocol pertains to persons who do not have active participation in the war including the Sick, the Wounded and the Prisoners. To these people are allotted guarantees which are not beyond the instances cited in the previous paragraph.

On the laws of war, the protocol has determined rules, which forbid revenge and betrayal, also the prevention of others seeking asylum is not allowed. In addition, the protocol states rules on the protection of children and civilians. In fact, these protective rules constitute parts of the rules, which are exercised in relation to those who participate in an international armed strife. This we shall deal with later in this article.

At this point, it would be very interesting if we compared these rules with the ones declared by Imam Ali to soldiers and commanders in relation to the war against Mu'awiyah. This is the command:

To the army before encountering the enemy at Siffin:

If by the will of God, the enemy is defeated, then do not kill the escapee; do not strike a helpless person; do not finish the wounded; do not disclose any one's private parts; do not mutilate the dead; do not enter any house without the prior permission of the house master; do not loot their property save the ones which come to you from their army such as coast, animals, maids, slaves; the rest belongs to their heirs which according to Islamic law should be distributed among them. Do not inflict torture or pains on women although they may attack the things you hold sacred. [11](#)

The Geneva conventions rules of 1949 on the nature of non-international armed strifes is not inclusive and the guarantees cited therein are insufficient in comparison with what has been stated on international conflicts. The reason for the partition of the humanitarian law and rules in the form of two protocols (the first protocol concerns non-international conflicts and the second protocol concerns international conflicts) is that a large portion of those rules may not be extended to non-international conflict combatants.

However, an utterly different attitude is adopted towards it in Islamic system. It must be noted that in Islam a very mild attitude is recommended to the Kharijites, making them enjoy rules and laws which have been denied to the pagans and infidels entangled in the welter of international conflict.

International Armed Strifes

Now we shall be dealing with international armed strifes. At first, we shall investigate the international humanitarian laws and rules and discuss the important principles in this regard. Although it might seem verbose, I should admit that as in the context of proven rights, all these principles spring from the important concept of universality cited in the preamble to the St Petersburg Declaration 1868 which implies that the only legitimate goal of war is to weaken the power of the enemy. [12](#) Consequently, what lies in the way of this goal does not conflict the international humanitarian law whereas what is contrary to international custom, is in fact the violation of what is called the violation of human principles and the rules of the general conscience.

In this regard, the Holy Qur'an says,

“Whoso commits aggression against you, do not commit aggression against him like as he has

committed against you; and fear you God, and know that God is with the God-fearing. (Surah al-Baqarah, 2:90)

Hence, God has forbidden aggression from legitimate goals, declaring deviation from it as a sin, which is not pleasing to God. The glorious verse cited above, explicitly states that the goal of war is to eliminate aggression.

The holy Prophet says, “When a mighty government wages war against a weak one, God shall bring victory for the latter. However, if the triumphant party humiliates the vanquished one, and takes advantage of the victory thus earned, the wrath of God shall be on them until doomsday.”¹³ This suggests a fundamental principle for many laws in which the policy and freedom of states in war are limited to a certain extent. We shall investigate these laws as under:

1. Employment of arms
2. The way of treating enemy in time of fighting
3. The way of treating the prisoners of war

Employment of Arms

Humanitarian thought constantly seeks to mollify the extent of savagery in wars. Thus, it limits the right to the choice of weapons and prohibits the employment of arms, projectiles, or material calculated to cause unnecessary suffering. At all events, no inclusive law is established on this case and the general laws established to the fulfillment of these goals are insufficient and inapplicable.

The newest rule in this regard is article thirty-five of the first Geneva protocol annex 1977.¹⁴ This principle contains two rules relevant to our present discussion. The first rule states that in any armed strife, the right of belligerents to adopt means of injuring the enemy is not unlimited.¹⁵ It is obvious that the way it is expressed is important, for it can be justifiably said that the spirit of the statement more sounds like advice than a binding and legal commitment to be observed by the signers of the protocol.

The second article states that the use of missiles or other weapons, which cause incurable injuries or inconceivable pain, is forbidden.¹⁶ It is perfectly clear that this rule has been violated according to the will of people for the use of mass murder weapons is not severely and clearly forbidden but it is stated in way that it has opened the way for the States to resort to cruelty and violence.

It may be said that the Declaration of St Petersburg of 1868 enumerates more limitations for the States for according to it, the only legitimate object, which states should endeavor to accomplish during war is to weaken the military forces of the enemy.¹⁷ What encouraged the states in forging these limits in the context of Declaration of St Petersburg? And what caused them to forget such limits when formulating the articles of the declaration in the form of legal laws?

We may be accused of ignoring some of the international conventions including the 1925 Geneva Protocol¹⁸ by which the use of chemical, bacteriological, and toxical weapons was banned. However, these laws were established after such weapons or even more lethal ones had been repeatedly employed before. Are we not today witnesses to ceremonial and Byzantine type negotiations on the prohibition on nuclear weapons? It is no surprising matter that article 36 of the first protocol has left the states to decide on the use of such lethal weapons. It is obvious that it is extremely farfetched for the states to come to a constructive agreement on this case.

Assuredly, this issue was not of any importance in the eyes of the earlier Muslim jurists, for it was not then recognized. The weapons used in those days were not destructive arms to cause unnecessary suffering. In *Khalil al-Maliki's Book on Jihad* (holy war), it states that combatants are forbidden to employ weapons, which cause unnecessary injury on the enemy save the weapons they need during war. In addition, he gives an instance, which shows the prevalent idea in those days. The use of poisonous spears is forbidden, for such spears inflict unnecessary injuries on the enemy. As we see, any kind of cruelty is condemned. Even the law noted earlier specifies the weapon, which is forbidden.¹⁹

The views of this jurist accord with the Islamic laws by which increase in killing although justified, is forbidden.

In this regard the Holy Qur'an states,

“And slay not the soul God has forbidden except by right . Whosoever is slain unjustly, We have appointed to his next-of-kin authority; but let him not exceed in slaying; he shall be helped.”
(Surah al-Isra, 17:33)

An authoritative hadith by the holy Prophet states, “Pity is the attribute of the great ones; if you kill, kill justly.”²⁰ This is another clear indication of the point noted above. When 'Umar, Caliph II officially retired Khalid for he had killed the enemy whom he did not need to, he said, “Indeed. Khalid's sword is the touch of tyranny.”²¹

In a hadith related by Ibn Hatam, the Messenger of God said, “If any of you fights with his brother, he should avoid injuring his face, for God created man in his own image.”²² Hence, the injuring of face is prohibited except by right. So the employment of unnecessary weapons is prohibited.

As to protection of the enemy in not inflicting unnecessary suffering on him, Islam proposes rules from which the Western civilization is so distant.

Someone might rely on the forged account concerning Imam 'Ali that he burnt some of his own allies for saying that 'Ali was the personification of God with a view to leading the Muslims astray, and rejecting my words. There is no sign of this relation in any historical books. The burning of people by the nearest kin to the holy Prophet is not an account to be ignored by the historians. Or at least none of them condemned an event of such importance and barely touched upon it.

Murtaza al-‘Asgari, the contemporary historian, wrote a book entitled *‘Abdullah Ibn Saba and Other Myths* in 1994. In his opinion, all the relations attributed to ‘Abdullah Ibn Saba are prevaricated. One of these prevarications is that Imam ‘Ali burned his own disciples.

The writer scrutinizes all the hadiths in relation to this tale, proving that they are groundless. He says, “That Imam ‘Ali had executed a few of the apostates might be right but that he had burned them cannot be true, for regardless of religious reasons, these acts did not at all correspond with the situation of those days, especially that he had killed a man called *Fajiy Salmi* in time of Abubakr and that people protested against this act. When Abubakr saw the wrath of people, Imam ‘Ali publicly repented his act. It is impossible that Imam ‘Ali had done it again.”

The writer introduces the people and calls them prevaricators. At the end of his analysis, he concludes that this act, that is the burning of a large multitude of people has not been a subject to be ignored in history whereas it has not at all touched upon by other Muslim historians including the following ones;

Ibn Khayyat/ died 819

Ya’qubi/ died 897

Tabari/ died 922

Mas’udi/ died 950

Ibn Athir/ died 1232

Ibn Kathir/ died 1372

Ibn Khaldun/ died 1405²³

So, it can be claimed that the sublime kindness and mercy of Imam ‘Ali and the tendency of people to him has caused the enemies to forge these tales so they can make him look harsh. Of course, the writer of these lines recognizes the attempts of the Jews in making Islam look harsh as a certain act, which is beyond the scope of this present article and deserves note in due course. At all events, this may be one of these instances.

Distinction between Combatants and Non-combatants

Islamic teachings as to weapons, take into account another goal, that is, the employment of arms without goal is forbidden for combatants and noncombatants and the arms used without aim against military targets is forbidden. Hence, combatants are faced with two kinds of commitment, first, combatants should be distinguished from the non-combatants and only the former should be the target – and secondly, military zones should be distinguished from non-military zones. The commitment of each combatant is approved by a hadith from the holy Prophet.

At the end of one of his wars, the holy Prophet observed that some people had gathered; therefore, he sent someone to investigate the matter. The man returned and said, “A woman is killed.” The holy Prophet said, “She could not have been fighting.”[24](#)

In another case, some Muslims following their enemy killed some children. At this, the holy Prophet was greatly angered and said, “Why are some people so bellicose that they kill children?”[25](#)

These hadiths by the holy Prophet all indicate that combatants should be distinguished from non-combatants and the use of arms without goal is forbidden.

In Islam, a combatant is someone who is capable of fighting, whether he participates in war or not. Islam holds each Muslim combatant committed not to commit a sin by hurting the non-Muslim combatants who may be among the enemies. If the Muslim combatants have certain uniforms or carry certain banners, they can be easily distinguished from the non-Muslims. It is related that the holy Prophet wore a certain aba (loose sleeveless outer garment) during military actions.[26](#)

Of course there is no clear evidence that the Muslim combatants at the time of the holy Prophet wore uniforms, but there is evidence that in the Battle of Badr, the Muslims tied a piece of wool to themselves.[27](#) In addition, the probability of this affair caused Tabari to say in his interpretation that in that battle, they used wool as the symbol for the Muslim combatants. Moreover, what he meant was the Battle of Badr.[28](#)

In relation to the commitment of Muslim combatants in distinguishing between the military target from the urban centers Shafei states that slings can be used against the forts but not against houses.[29](#) The idea suggested by al-Shafi'i is that residential areas should not become the targets of military attacks, save the ones very near the forts of enemy.[30](#) In fact, it implies attack against military zones. After all, destruction as a means of threat is not allowed in Islam, especially when it is probable that the conquered area may fall into the hands of the Muslims.

The Muslim jurists make a distinction between the properties which fall into the hands of Muslims due to military domination, and the ones which come to them due to peace accords. In fact, unjustified attacks against the military targets are a kind of invasion, prohibited by the Almighty. Such an act is indeed a deviation from the divine command that says,

“I have been commanded to be just between you.” (Surah as-Shura, 42: 15)

God showed His interest in justice by saying,

“God loves those who are just.” (Surah al-Ma'idah, 5:42)

2. Treatment of Enemy in War

This includes the treatment of enemy at war and those who are in the enemy's territory. Now we shall

start our discussion on the enemy soldiers. The first international humanitarian law provides that combatants should avoid killing the wounded and the sick, torturing, and outraging the personal dignity of those who have surrendered .

This basic principle of the international humanitarian law was formulated in paragraph C article 234 of Hague Convention in 1907³¹ and ratified by article 37 of the first protocol and article 7 of the second protocol of Geneva Conventions.

In international humanitarian regulations of Islam, this principle is accorded special attention to in the form of verses from the Holy Qur'an.

“So long as they go straight with you, do you go straight with them: surely God loves the God-fearing.” (Surah at-Tawbah, 9:7)

God also bids people to peace,

“If they (enemies) tend to make peace, make peace and place your trust in God.”

In addition, the Almighty forbids the killing of enemy who has surrendered or put his arms down.

“If they withdraw from you, and do not fight you , and offer you peace, then God assigns not any way to you against them.” (Surah an-Nisa, 4:90)

Hisham Ibn Hakam states, “I myself heard from Prophet Muhammad say, “God shall torture those who torture people in the earth.”³² The holy Prophet has stated, “Gain people’s love; treat them well, invite them to Islam before you fight them; I would rather have nomads or citizens brought to me after they have embraced Islam than women after their husbands are killed.”³³

Hence, war in Islam is accompanied with kindness, for in Islam, love is preferred to killing and it does not allow killing without reasonable cause.

The second principle, which is as important as the principle mentioned above, is the prohibition of combatants from resorting to betrayal for killing, injuring or captivating the enemy. This regulation is mentioned in article 23 paragraph B and article 24 of the 1907 Hague Convention³⁴ and in article 37 of the first protocol.³⁵ In this regard, the international humanitarian regulations distinguish between the war strategy and betrayal. War strategy is allowed whereas betrayal is forbidden which is recalled in the first protocol as the violation of promise.

Islam also distinguishes between these two. The holy Prophet regards war as a kind of trick.³⁶ Hence, one can kill the enemy unawares. The prophet assigned some people to penetrate the enemy forces in order to spread fear and rumor among them, consequently weakening their morale.

During the War of Ditch (Khandaq), *Na'im Ibn Mas'ud* came to prophet, saying, “O prophet! I have

embraced Islam but the people do not know it. Order me and I shall obey.” The prophet answered, “If you stay with us, you are but one; then go back and spread fear and trembling among the enemies, for trick in war is of great value.”[37](#)

Ibn Shaddad in his *al-Navadir al-Sultaniyyah* points to an interesting instance of trick and that is, the combatants set pigs on the ships instead of soldiers to deceive the enemy.[38](#) Another narration is that Hajaaj Ibn ‘Alat al-Salmi, embraced Islam and fought in *Khaybar* together with the holy Prophet. When Khayhar was conquered, he said, “O Messenger of God, I have some property with my wife, *Umm Shaibah*. *Talhah’s* daughter and some money with some Meccan merchants. I beg you to let me go there.” The holy Prophet gave him permission. Al-Salmi said, “O Messenger of Allah, I must tell a lie there.” The holy Prophet said, “Tell whatever you deem right.” In other words, the holy Prophet’s permission means that Hijaz can resort to trick to take back his wealth and property. Hence, when he reached Mecca, people asked him about Khayhar and he answered, “The prophet met a colossal defeat and his followers were killed or captivated and the people of Khaybar avoided killing the prophet and will send him to Mecca so they may take revenge on him.” Upon hearing this, the Meccan people were filled with joy. Meanwhile, Hijaz seized the opportunity and asked the Meccans to help him take back his wealth and property so he may go back to Khaybar and buy the booty. Then, they gave him back his wealth without hesitation.[39](#)

According to *al-Nuvi*, there is a consensus among the schools of jurisprudence on the trick in war unless there is a treaty in this regard.[40](#) The Holy Qur’an states in this regard,

“And break not the oaths after they have been confirmed.” (Surah an-Nahl, 16:91)

Islam does not allow resorting to betrayal. The holy Prophet States, “Whoso betrays us is not one of us.” When Abu Jandal Ibn Suhail fled from among the pagans, he heard that the holy Prophet wished to send him back to Mecca because he had entered into a covenant with them. Upon hearing this, Abu Jandal rose up and said, “If you send me back to the Meccans, they will torture me so much so that I shall denounce Islam.” The holy Prophet said, “The violation of covenant is not to our benefit even for the protection of a Muslim.”[41](#)

It is also related that Umar Ibn al-Khattab heard a Muslim soldier tell an Iranian combatant, “Let no fear into your heart.” Then he had killed him. In this regard, ‘Umar thus wrote to the army commander, “By God, if I hear again that he has committed this act again I shall chop off his head.”[42](#) In this regard, Shafe’ie says, “Whatsoever is allowed with the Muslim community is allowed in the pagan land and also whatsoever is forbidden in Muslim land is forbidden in pagan land. Whoso commits an unlawful act, he shall incur divine chastisement. Hence, since the unlawful act is perpetrated in pagan land, the guilty party will be sinful.”[43](#)

Forbidden Treatments

Massacre and Lack of Right to Surrender is Forbidden

The Muslim combatant is forbidden to total destruction of enemy or banning the right to surrender. This principle is mentioned in article 40 of the first protocol⁴⁴ and paragraph 1 of article 4 of the second protocol⁴⁵ in approval of article 23 of the 1907 convention.⁴⁶ Hence, the Islamic decree in this regard has temporal priority over all the regulations noted above.

The Islamic regulations in this regard are expressed in the aforementioned verses according to which the Muslims are obliged to accept peace if the enemy desires it. Moreover, killing after abandoning war and giving in one's arms is prohibited.

Never has it been heard or seen that people or groups were killed after they surrendered themselves by the Muslims. The conduct of the holy Prophet with the Meccans in this regard is a very striking example. The Prophet freed them all, and called them *al-Talqa*, meaning those who remained pagan until the capture of Mecca and then were freed. The Arabic word *Taliq* and *Taliq* mean free and *al-Talqa* is the plural form for it.

At this point, one might recall the tale of Bani Quraizah tribe. However, the complete tale cancels all rumors.

We know that in the War of Ditch (Khandaq), the prophet had entrusted the protection of Islam to Bani Quraizah tribe. We also know that the situation of the army of Islam was so sensitive that the holy Prophet told Bani Quraizah tribe that he would give them one third of the dates harvest of Medina if they fought in the war. However, the Jews of Bani Quraizah tribe did not hesitate in seizing this opportunity to cooperate with the pagans and turning against their covenant and attacking the Muslims.

When the chaos in the army of Islam subsided, the holy Prophet summoned 'Ali, assigning him as the commander of the attack against the Bani Quraizah tribe. When 'Ali approached their forts, he heard them insult the holy Prophet. The next morning, the Aws tribe hurriedly went to the holy Prophet, saying, "O Messenger of God, they are our men, not from Khazraj Tribe. Yesterday, you treated our brothers from *Qainiqa* tribe with kindness (whom the holy Prophet had freed)." At the end of this conversation, the Jews agreed to accept the rulership of Sa'd Ibn Ma'adh, from the Aws Tribe. And according to their own book, he ordered that they be killed, their properties be distributed and their women and children be captivated."⁴⁷

It is evident that this event does not show massacre but it shows the decree issued based on their own book.⁴⁸ Moreover, this affair is in complete accordance with the rules set forth in the Geneva Convention relating to prisoners of war. The decree applied to Bani Quraizah was not in accordance with Islamic laws but the decrees mentioned in their book namely Torah.

This act attributed to Islam is in fact the result of accepting the laws of the enemy, the enemy who was extremely cruel and arrogant. How can one stop commending this Muslim act while the holy prophet said considering the heat of that summer day, "Do not mingle the heat of today with the heat of your sword; postpone their execution until the heat subsides."⁴⁹ Besides, they had not accepted the rulership of the

holy Prophet and we know that the rulership of the holy Prophet about their neighboring tribes *Bani al-Nazir* and *Bani Qainiqa* led to the confiscation of their property; however, their lives remained secure.[50](#)

Here, we deem it necessary to tell a tale related by *Abu Harirah* in the sources of Sunni traditions, which suggest the Islamic decree in this regard. *Abu Harirah* relates that he heard the holy Prophet say, “Some day, an ant bit a holy Prophet and that was why the prophet ordered that all the ants on that hill should be burnt. Then God said to the prophet, ‘If an ant bites you, is it advisable that you order the killing of all the ants which cry praise to the Almighty!’”[51](#)

[Revengeful Acts Are Forbidden](#) There are verses in the Qur’an relating to the prohibition of revengeful acts, which determine the principles of punishment.

“The recompense for any evil act is an act identical to it;” (Surah an-Najm, 53:31)

“whoever does an evil deed shall be recompensed only with the like of it:” (Surah Mu’minun, 23:40)

“and when insolence visits them do help themselves – and the recompense of evil is evil the like of it; but whoso pardons and puts things right, his wage falls on God.” (Surah ash-Shura 42:40–44)

“the holy month for the holy month; holy things demand retaliation . Whoso commits aggression against you, do you commit aggression against him like as he has committed against you; and fear you God and know that God is with the godfearing.” (Surah al-Baqarah 2: 194)

The clear meanings of these verses determine the rules of retaliation. From these verses, one might realize that in retaliatory actions the Muslims are allowed to retaliate the way the enemy has attacked them.

This realization is prone to criticism in two ways:

First, the retaliatory acts in the modern sense of the word according to the principles of international conventions on humanitarian law includes an illegal act tyrannically imposed by one state on another with the only purpose of forcing that state to accept the elimination of aggression on the part of the illegal act of the second party. Consequently, the retaliatory act is an illegal act done to retaliate another illegal act.

It goes without saying that the Muslim combatants who obey the laws of Islam shall never resort to any retaliatory act which is in fact the justification of an illegal act. Therefore, the aforementioned assumption is outside the Muslim laws.

Second, as to the exercise of retaliatory acts, there are limitations in Islam. No Muslim has the right to act like the enemy while in time of war when the swords shine that is when it is allowed to take

someone's life, observing virtue is a recommendable act, for wherever allowed, there should not be limitations on prohibitions.

However, we talk of a war, based on virtue vis-a-vis crime, sin and aggression, so it is natural that the war waged for the sake of virtue shall be illogical. What if in the field, the Muslims act in a way to violate the principle of virtue? Hence, the Muslim war based on virtue is always with problems and even if the enemy does not observe virtue, the Muslims will never go beyond it. If the enemy amputates the bodies of the dead Muslims, the Muslims will not follow suit for the holy Prophet says, "Never, never amputate the dead."⁵² When the pagans killed Hamza Abdolmotaieb in the Battle of Ohod and amputated his body, the prophet was severely outraged by this act,⁵³ for Hamza was his uncle and the holy Prophet loved him more than anyone else among his relatives.

At all events, he never even thought of giving the order of amputating the enemy in the coming wars. Even if the enemy keeps the prisoners of war hungry or lets them die of thirst, the army of virtue shall never act likewise, for Allah commands the Muslims to treat the enemy soldiers fairly and the holy Prophet forbade people not to keep anyone thirsty.⁵⁴

Outrages against the Dignity of the Wounded is prohibited

Based on the international humanitarian law, the wounded and the sick should be treated with respect. For this reason, the medical organizations are paid much attention to. That is why many of the principles of Geneva Convention 1949 and the two annexed protocols relating to the Wounded, Sick, Shipwrecked and medical organizations are instituted.⁵⁵

To show the vast consideration of Islam relating to the wounded and the sick, it is sufficient to relate the tale of *Salah al-Din Ayyubi* and Richard the Conqueror. *Salah al-Din* entered impromptu into his tent and although Richard was the bloodiest enemy in the crusade wars, *Salaf al-Din* took care of him until he completely recovered. This indicates that the Muslims not only look after the sick and the wounded no matter who they are but extend their kindness into the tents of the enemy. Regardless of his motivation, he would not do anything otherwise if it contradicted Islamic law.

Therefore, it is no exaggeration to say that any illegal act against the wounded and the sick is against Islam.

It is Forbidden to Deprive Others of Food and Drink Now we shall talk about depriving the citizens of food and drink (for survival) for the sole purpose of driving them from their houses. Islam even prohibits the killing of animals except when this helps satisfy man's hunger.⁵⁶ For preventing the waste of economic value of animals, Islam prohibits the killing of animals by burning them except for the time when they help enervate the military forces of enemy.⁵⁷ If the Muslims bound for the battlefield cannot obtain food even at paying the price and when people refrain from selling them food, they are allowed to obtain their food through resorting to force.

When Islam allows the Muslim combatants to stop the source of water by polluting it with poison and dirt,

the target of the combatants is the enemy, not the citizens. Resorting to such acts is very limited and allowed only in time of necessity.

When the Muslims leave a place, leaving some food, they are not allowed to burn them unless it would enervate the enemy forces. This implies that the Muslims are not allowed to destroy anything at all except for military reasons.

In the sixth year of Hegira, Thamamah, the leader of Yamamah Tribe, decided to prevent the coming of crops to Mecca where the people needed it most urgently in order that the Meccans might be forced to accept Islam. Consequently, when Mecca was encountered with the danger of famine, the inhabitants asked for the removal of the sanction. And the holy Prophet wrote to Thamamah to remove the sanction.[58](#)

When the aggression against the Meccans was at its highest point, the holy Prophet sent many dates to Mecca for which he had paid a lot of money.[59](#) We know that the Meccans were at war with the holy Prophet since the time he had immigrated to Medina. At all events, the order of the holy Prophet for not destroying Mecca which we shall deal with soon demonstrates the truth of the aforementioned points.

[It is Forbidden to Destroy the Buildings and the Trees](#)

Here, we shall deal with the commitment of the Muslims to the enemy's property. Briefly, the commitment in this regard is making a distinction between the military goals and the citizen's property which the latter should not be exposed to destruction. The order of Abubakr explicitly suggests the same thing. Surely, he who knows himself as the companion of the holy Prophet should obey the orders of the holy Prophet.

Some of the Twelver Shi'a jurists believe that the destruction of buildings and trees should be allowed. In this regard they quote the Holy Qur'an,

“Whatever trees you cut down or left standing upon their roots, that was by God's leave, and that he might degrade the ungodly.” (Surah al-Hashr, 59:5)

These jurists interpret the word trees as palm-trees. To stress this point they stated that the Muslims destroyed the houses of the Tribe of *Bani Nazir* at the order of the holy Prophet and that the holy Prophet had ordered that the castle of Malik Ibn 'Auf, the military leader of *Ta'if* should be set on fire and by cranes, their castles should be destroyed and their trees cut down.

At all events, what is understood from these quotations is that there is no absolute permission for destruction. On the other hand, the branches burdened with fruits do not mean palm-trees. The meaning of the Qur'anic verse. “Whatever trees you cut down, or left standing upon their roots, that was by God's leave...” cannot be interpreted as palm-trees but only the dates on top of the palm-trees. Hence, the picking of fruits does not mean the destruction of trees. Besides, about the destruction of the houses of *Bani Nazir* Tribe, Abu Zahrah says,

The reason for the destruction was this that they had used their houses as forts and a means for injuring the army of Islam: hence, it was necessary that the houses should be destroyed in order that the Muslims might be immune from torturing them. In fact, the disciples of the holy Prophet did whatever was deemed necessary, but when the Jews realized that they should deliver their houses to the Muslims, they destroyed the houses completely.⁶⁰

This event has been referred to in a glorious verse, which suggests that the Jews had destroyed their houses themselves. The Holy Qur'an states,

“They destroyed their own houses at the hands of the Muslims.” (Surah al-Hashr, 59: 12)

However, military attacks against the forts have been an allowed act and those places were the shelter for the aggressive people, so the destruction of the places was for weakening the morale of the enemy. It is true that the threat to the chopping of the fruit trees of the gardens in *Ta'if* took place, for the fruits were used for making wine. At all events, it must be noted that the holy Prophet did not put this order into practical shape in order to encourage the enemy to surrender. To what was previously mentioned it should be added that that when Alsoud delivered a slave belonging to a Jew to the holy Prophet during the battle of Khaybar, the holy Prophet told him, “Go somewhere else and drive the flocks to their masters.”⁶¹

Special Classes Under Protection

Women and Children

According to Muslim jurists, women and children are immune from aggression and killing them is prohibited.⁶² The reasons for this fatwa are the prophet's traditions and his actions. For instance the following examples are given:

The holy Prophet stated, “Do not kill women and children.” It is also related by *Ibn 'Umar* that: in one of the battles, a woman was seen among the dead. Hence, the holy Prophet prohibited the killing of women and children.⁶³

Another relation is that during the Battle of Hunain, the holy Prophet passed by the corpse of a woman and said, “Did I not prohibit you the killing of women and children?” A man answered, “That woman was following me, trying to kill me, so I killed her.” Then everyone fell silent.⁶⁴ Then he ordered the dead body to be buried.⁶⁵

It is related by Ibn Rabi' that in one of the battles, the holy Prophet told someone, “Go to Khalid and tell him not to kill women and children.”⁶⁶ It is also related that when the prophet wished to dispatch some people to the battlefield, he addressed them, “Go in the name of Allah and ask His help and take care that you do not kill their women or children.”⁶⁷

The leaders after the holy Prophet adopted a similar policy. “I command you to ten things: Never kill any

woman or child, or any old person; never cut any fruit tree; never destroy any house; never behead any sheep, or any camel, unless when you are hungry;...”⁶⁸ Similar commandments have been quoted from ‘Umar, ‘Uthman and ‘Umar ibn ‘Abd al-‘Aziz.⁶⁹

According to many commentators of the Holy Qur'an, the killing of women and children is a kind of aggression which, according to the verse

“And fight in the way of God with those who fight with you, but aggress not; God loves not aggressors,” (Surah al-Baqarah, 2: 190)

is prohibited.

Ibn ‘Abbas and *Mujahid* have stated that the rejection of aggression means the rejection of killing women and children.⁷⁰ *Ravandi* is of the same opinion.⁷¹ What was said is under the circumstances where the women and children are in normal conditions, namely that they do not attack the Muslims, or do not help the enemy. However, if they are of the enemies, killing them is allowed.

Nawawi said, “If women and children participate in war, killing them is allowed according to many Muslim jurists.”⁷² The reason is that their not killing was for their not participating in the war. Hence, if they participate in war they will be killed and so, in battle against Bani Quraizah, the holy Prophet ordered the killing of a woman who had thrown a spear at Mahmud Ibn Salmah.⁷³

Some of the jurists including *Abi al-Salah* in his book *Al-Kafi* agrees to these principles with those of other religious schools.⁷⁴ They regard the killing of women and children as allowed when they participate in war, but according to many Twelver Shi’ah jurists, the killing of women and children is absolutely prohibited, even if they participate in war. Muhaqqiq Hilli states, “The killing of women and children is absolutely prohibited even if they help in war.”⁷⁵

Shaykh Tusi stated, “The killing of women is not allowed, although they fight against the Muslims in cooperation with their spouses, except in emergency.”⁷⁶ Ibn Idris is of the same opinion with Shaykh Tusi.⁷⁷ By emergency, Shaykh Tusi means the cases in which someone is scapegoated.

Allamah Muhammad Hasan Najafi quotes the book *Muntahi al-Matlab* that there is a consensus on the prohibition of killing women and children among the jurists. And in case of women, killing them is not allowed even in time of necessity.⁷⁸ However we did not encounter this quotation in *Muntahi al-Matlab*.

Definition of Children: From the viewpoints of Muslim jurists, children are those who have not reached the age of maturity. In Islamic jurisprudence, the age of maturity is limited to natural growth (age 15).⁷⁹

Old People

Generally, old people belong to classes under protection. In the following, we shall mention the opinions

of some Muslim jurists.

‘Allamah Hilli, a Twelver Shi’ah jurist, divides the old people into four groups:

1. Those who are experts in war and actively participate in it
2. Those who are not experts in war but fight the Muslim army
3. Those who are experts on war but do not fight
4. Those who are not experts on war and do not participate in war

As to the aforementioned forms, the jurist states that it is allowed to kill the old people who fought against the Muslim army or have assisted the enemy by giving them ideas on war and the fourth form is not allowed. He derives this from the holy Prophet’s attitude in the Battle of Khaybar. In that battle, the Muslim soldiers killed an old man aged 150 who collaborated with the pagans, and gave them ideas on war and the holy Prophet did not scold them.

The jurist derives the source for his fourth form from the hadiths narrated in different forms that the holy Prophet recommended his army, “Do not kill the old people.”⁸⁰ Muhammad Hasan Najafi approving ‘Allamah Hilli, believes that the twelver Shi’ah jurists agree, by consensus on this score.⁸¹

Abu Hanifah, Malik, Thauri, Laith and Awza’i agree on the fourth form with the twelver Shi’ah jurists and among the jurists only Ahmad Ibn Hanbal and Abu Ishaq have given the fatwa (formal opinion) on killing in the fourth type.⁸² In addition to the previously mentioned hadiths, the old people in the fourth category cannot be killed according to the Qur’an.

“And fight in the cause of Allah with those who fight with you.” (Surah al-Baqarah, 2: 190)

The prohibition of killing the old people is one of the ten commands, which Abu Bakr gave when dispatching his army. “Do not kill old people.”⁸³ And other caliphs followed suit.

The Handicapped, the Mad, the Sick and the Likes This group enjoys protection, for firstly, due to physical incapability, they are not among the combatants and the military forces and killing do not involve those who do not actively participate in war. Secondly, special narrations are given regarding them including this statement: in a narration, *Abi ‘Abdullah Sadiq* included the physically handicapped and the blind in the category of women and children, adding that it was not incumbent upon them to pay poll-tax, for even if it was incumbent, and they refused to pay, killing them would not be allowed.⁸⁴

From this tradition, one can conclude that killing old people is not lawful. The Shafi’i and the twelver Shi’ah jurists have included the mad people in the category of children.⁸⁵

Non-military Passers-by *Muhaqqiq Hilli*, the twelver Shi’ah jurist, stated that the passing of

passers-by who pass in war zones can be prevented.^{[86](#)} He added that when the commander of the army together with the army under his supervision steps into the enemy zone, he can surround the enemy and prevent the comings and goings of the passers-by, for this is one of the necessary cases.^{[87](#)} Shaykh *Tusi* also stated the same thing.^{[88](#)}

From the narrations of the jurists, one can conclude that the prohibition on the comings and goings of the passersby should be necessary. In other words, the comings and goings of the passers-by might suggest espionage against the Muslims. Hence, otherwise, when there is no such probability, the passing of the passers-by shall not require legal permit. Secondly, except for preventing their passing, no other measures should be taken. Hence, based on the first principle, it can be said that the passers-by shall have immunity.

Exceptions:

Abusing the Immunity of the Non-military People One of the tricks that the enemy might resort to is abusing the immunity of the non-military people. The enemy might use the immune people as the means to protect itself from danger or defeat. Here, the question is: should we surrender to enemy for protecting these people who are immune in normal conditions? Or, is it necessary to aggress against the immune people?

By different explanations, the Muslim jurists have sought to answer these questions. Muhaqqiq Hilli states, “If the enemy uses women and children as the means to protect itself, aggressing against such people is not allowed, except when war is going on. In this case, this impediment can be removed. And if they use the Muslim prisoners of war as a means for their protection, this can be ignored (even if it leads to their death) if there are no other ways of fighting.”^{[89](#)} Allamah Hilli states, “If the enemy uses women and children as scapegoat, they can be shot if the war is in progress.”^{[90](#)}

Ibn Baraj says, “In case of scapegoat, if the war is in progress, it is allowed to shoot the enemy. Of course, the children used as scapegoat shall not be shot, for this act is done on necessity basis. It is evident that children cannot be shot if the war is not in progress.”^{[91](#)}

Ibn Idris states: “If the enemy uses children as scapegoat, if the war is in progress, the enemy cannot be shot; the children should not be shot but only the military people shall be shot. This is true for the Muslims and the women who are used as scapegoat.”^{[92](#)} Yahya Ibn Sa'id states, “If the children or the Muslim prisoners of war are used as scapegoat, only the enemy shall be shot.”^{[93](#)}

The writer of *Athar al-Harb fi Fiqh al-Islami*, criticizing those who have prohibited the shooting of women and the children used as scapegoat states, “This is true when enemy has used these people as a means of protection. However, if the enemy wishes to provide ammunition or strategies of war in their shelter, killing them is allowed, for the situation necessitates it.”^{[94](#)}

Some jurists on allowing the killing of the scapegoats derive from the holy Prophet's act in the

battle of *Ta'if*. The holy Prophet tied the people of *Ta'if* (including women and children) to cranes in the battle of Ta'if.[95](#)

It must be noted:

In the aforementioned war, the conduct of the holy Prophet must be treated as a single event in which the access to enemy was through the means stated above and the holy Prophet did it to follow them. Hence, the general document which prohibits the killing of women and children requires that we should resort to ways which do not endanger people.

Therefore, choosing the ways which lead to the death of no-military people is not allowed, for they might have been prohibited by the Holy Qur'an.[96](#)

[Scapegoating Enemy by the Muslims](#)

When the enemy uses the Muslim prisoners of war, citizens, merchants and the tourists as scapegoat, the Hanafi jurists believe that it is allowed to attack them, for suffering special loss is for eliminating common loss. Undoubtedly, the elimination of common loss namely the defending of the Islamic nation, has priority over suffering the special loss, the death of the Muslim prisoners of war.[97](#)

Also, if the Muslim prisoners of war and their children are in the enemy's fort, most jurists state that if the victory shall be actualized by killing the prisoners of war and the children, it is allowed to burn down and tie them to the cranes.[98](#) The point noted above is supported by juristic preference in Hanafi jurisprudence, the general welfare and the greater welfare[99](#) in *Maliki* jurisprudence, and extension in Twelvers.[100](#)

[Treatment of Prisoners of War](#)

The Islamic order in the ways of treatment of prisoners of war requires the principles which the international custom and rights can never approach. The first principle in determining the position of a prisoner of war is that the belligerent State is responsible for his health and protection and that he is not under the control of the combatant who has taken him prisoner. Islam refers to this in the Qur'an,

"When you have taken power over the pagans, tie hard the prisoners of war and free the women until war subsides." (Surah Muhammad, 47:4)

Another verse says,

"It is not fit for a prophet to take captives unless he has fought and triumphed in the land." (Surah al-Anfal 8:67)

It must be noted that both verses embrace the same idea and that before complete victory, the soldiers should not do anything. But after complete victory, captive taking starts and the verse should be put into practice.

Some commentators¹⁰¹ hold that there is difference between these two verse with the explanation that the second verse forbids the prophets to take captives and that they are obligated to destroy the enemy as long as the religion of God has not yet been spread in the earth. Under no circumstances, they are allowed to keep captives with them.

However, in our opinion the two verses embrace the same idea. And the solution to the problem lies in “*Yuhthan fi al-Arz.*” *Yuhthan* means victory in the field not the sovereignty of God’s religion in the world. What is according to the second verse forbidden is captive taking before victory.

The first verse obligates the Muslims to fight as long as the enemy is totally crushed. The captives may be fast tied and the war ends as soon as the enemy is crushed and taken captive, then, the two following ways are adopted; the captives are either freed unconditionally out of pity or some gift is paid for their freedom. Hence, the Islamic decree is that of the goals of war is captive taking and then everything depends on the order of the imam. In other words, the prisoner of war is kept by the imam so that he might protect him until his fate is determined by him. That was why the holy Prophet said, “Never kill the captives.”

It is related that ‘Abdullah Ibn Amir¹⁰² sent a captive to Ibn ‘Umar so that he might kill him. Ibn ‘Umar said, “I seek refuge in the Lord. I shall never kill a captive.” He meant that he did not have the right to kill a captive, and that the imam had to decide for him.¹⁰³

There is consensus among the jurisprudents that if the captive holder kills the captive, he is responsible.

At all events, the captive is no longer a combatant. In fact, the captive is a combatant who is not able to continue the war, for he has been held a captive in a land other than his. So, his captivation should end in some other way.

Many jurisprudents hold that the imam has four authorities to end the captivation:

1. The liberating of the captive out of mercy
2. Obtaining ransom
3. Immunity from abuse
4. Killing him

However, based on the verse noted above, the captive should be freed out of mercy or by ransom. Hence, as to the validity of the latter choices, there is doubt.

[Liberating out of Mercy](#)

In my opinion, the liberating of the captive out of mercy should be done by the imam before any other ways. And the imam is not allowed to adopt any other way, unless it is necessitated by the Muslims’

welfare, for based on the order of Qur'an, this has priority over the other. The Qur'an states,

“O prophet! Say to those of the captives who are in your hands: if Allah knows anything good in your hearts, He will give you better than which has been taken away from you and will forgive you and Allah is forgiving, merciful.” (Surah al-Anfal, 8:70)

The liberation out of human mercy can be conditional or unconditional. In the first way, the captive follows the fixed conditions. In battle of Badr, the Messenger of God freed a poet called Abu 'Izzah on the condition that he would join no group fighting with the prophet. However, Abu 'Izzah joined the pagans in the battle of Ohud and taken captive by the Muslims and asked the prophet for forgiveness. The prophet said, “I swear by the Almighty God that I shall never let you crane your head out before the Meccans and say ‘I have twice deceived the prophet.’ The true Muslim is never stung twice.”¹⁰⁴

Ransom

There are different types of ransom. Ransom may include money, property, weapons, or any other thing. For instance, during the Battle of Badr, the ransom for freedom was to educate ten children. It is also related that 'Umar Ibn 'Abd al- 'Aziz, liberated 100,000 captives on the condition of capturing Constantinople. If the ransom for the liberation of Muslim captives is determined, this is called an exchange of captives.

Based on Islamic laws, the number of the captives on both sides does not need to be equal, for the liberation of a Muslim captive may be determined as the ransom for the freedom of others. The holy Prophet freed Al- 'Aqili who had embraced Islam and set him as the ransom for two Muslim captives. Based on Muslim tradition, the visit of the enemy's representatives from the prisoners camp for determining the number of the captives is allowed. Likewise, it is necessary that the vehicles transferring captives from place to place should be examined carefully so that they become sure of their safety and health.¹⁰⁵

Execution of the Prisoners of War

There is not a consensus among the jurists on executing the prisoners of war despite the fact that some recognize it as lawful and others as unlawful. The first group using different sources has related that the holy Prophet had killed a captive. Al-Shafi'i and Abu Yusuf¹⁰⁶ hold that killing the prisoners of war is allowed if this act helps consolidate the religion of God and deteriorate the enemy forces and the case mentioned above is thus justified.

It seems that the narrations about the holy Prophet's act towards the prisoners of war is completely clear and far from ambiguity, for the times when the holy Prophet ordered the killing of a prisoner of war, are quite rare. If the present cases are studied carefully, it becomes evident that although the imam had complete authority as to what to do with the captives, the killing of the captives was not committed except for the crimes the captive had committed before his captivity such as crimes against the holy

Prophet and Islam. In fact, article 85 of the Geneva Convention provides that ‘The prisoners of war are tried according to the laws of the state of the captive holder. Even in case of sentence, they shall enjoy the advantages set herein.’

If the captive has done no crime before his captivity, the Imam does not have the right to have him executed. The Muslim welfare cannot justify the execution of the captives just as the freedom of a captive cannot inflict any damage on the Muslim community.

Slave-taking

In fact, the justification or acceptance of man’s slavery is difficult concerning the verse in the Qur’an that says all the angels bowed down before Adam. [107](#) Besides, according to a Muslim law men are free and equal. An Arab or a white person is not superior to a non-Arab or a non-white except for virtue. Another Muslim law says that there is no compulsion in religion, [108](#) sufficient evidence should be provided.

In fact, slavery was introduced into Islamic thought in the age of the deterioration of human civilizations. It must be noted that the holy Qur’an uses past tenses any time it talks about slavery. This forced smuggling of slavery shows the general morale of people in an era in history in which slavery was in use and the Muslims suffered innumerable sufferings. If the Muslims were captivated by the enemy, they were put on sale in the bazaar. In his Travelogue, Ibn Jabir writes that he had witnessed the great agonies of Muslim women and children in the slave markets in Italy. [109](#) Hence, the Muslims had no other alternative but to do the same.

Abuzar, the great disciple of the holy Prophet, relates, “They are your religious brothers whom the Almighty has placed under your supervision; hence, any one who places his brother under his own supervision, it is incumbent on him to give him from the food he eats and the clothes he wears; do not expect him to do what is beyond his power; if such a thing happens, he should help him in it.” [110](#)

Islam offered a very extensive plan for the freedom of slaves according to which they could gain freedom in a short time (without having unpleasant consequences.)

Islam has repeatedly recommended the freeing of slaves. In this regard, the holy Prophet said, “If anyone frees a Muslim slave, the Almighty shall free every limb of his body from the Fire of Gehenna.” This has been differently related. [111](#) As seen from the present documents, the holy Prophet regarded it a bad act to keep an upright man in slavery. When one of his slaves did something good, the holy Prophet said, “Go, you are free. I do not wish to have a man belonging to paradise as my slave.” [112](#)

In the book of *Wasa’i*, there is a chapter in which there is interesting information: an upright slave is freed after seven years either by his master or by the prevailing law.

Besides, the religious authorities have encouraged the people to free the slaves. In this regard, Imam ‘Ali is said to have freed a thousand slaves. [113](#)

Islam has promulgated certain rules suggesting that if someone is not willing to free his slave, he cannot be compelled to free him. For instance, the Islamic jurists regard two conditional kinds of freeing called *tadbir* and *mukatibah* each one of which has complete laws.

Tadbir includes the idea that the slave is freed in the wake of his master's death. And *mukatibah* includes the idea that the slave is freed if some ransom is paid for him. It is worth mentioning that if anyone fails to pay the price, the Muslim jurists should pay the price from the common wealth.

These laws all indicate the interest of Muslim legislators and jurists to free slaves. On the other hand, in books on Islamic jurisprudence, [114](#) there are abundant cases in which the slaves are freed by commitment or by persuasion by their masters.

First: Arbitrary Freedom

In the following cases, the slave is arbitrarily freed:

1. If someone frees a part of his slave's body, all other parts his body are freed. Thus, the slave is free. This implies that the freedom of slaves might take place under small pretexts.
2. If a man is the master of his father, mother, grandfathers, children, aunts, uncles, brothers and sisters, nephews and nieces, they are immediately freed.
3. If a slave goes blind or bedridden or is seized with leprosy, he is freed and his needs should be provided from the common wealth.
4. If any slave embraces Islam before his master, he is freed.
5. If the slave's ears or noses are cut off, he is freed.
6. If the master gets a child from his maid, he no longer has the right to sell her but he should keep her and give her a portion of his inheritance. It is obvious that this may provide the reasons for many people's freedoms.
7. If one of the parents is freed and the other one a slave, their children will definitely be free.

Second-Compulsory Freedom

In many cases, the Muslim is obligated to free a slave or slaves for reasons such as atonement for murder, and atonement for fast.

Considering the attention Islam has accorded to this issue, the gradual freedom of many slaves and their children becomes possible.

That some people say why Islam did not annul slavery altogether, is a very unsophisticated thought arising from inexpediences in social issues, for considering the slave trade in those days and that many had invested their money on this trade, the abolition of slavery was impossible. After all, after they

wished to abolish slave trade in the USA after centuries, four years of bloody battle broke out which claimed so many lives. So how can we expect such a thing to happen in a time when Islam emerged in a Dark Age?

In short, as keen observers, we can realize that the prospects Islam considers for the freedom of the slaves, is fair, deep and modest, exercisable in all places and immune from any kind of reactions.

At the end of the discussion, it is deemed proper to consider the comments Georgi Zeidan, the Christian historian has given at the end of the history of Muslim civilization:

Islam is extremely kind to the slaves; the holy Prophet has given recommendations about them: he states, "Do not give the slaves what they cannot do and give them whatever you eat from." Somewhere else he says, "Do not address your slaves as bondmen or bondwomen; do address them as my son or my daughter." In this regard the Holy Qur'an says, "Worship Allah; do you not hold any partner for Him; be kind to your parents, relatives, neighbors, the slaves and the orphans, for Allah detests the vain." [115](#)

It is evident that what should be said about the slaves cannot be stated in a few lines. Sadly, it is beyond the scope of this article. Here, I propose to demonstrate the fact that slavery is a borrowed thing and Islam accepted it in a humanitarian spirit. Even the term *riq* meaning slave most probably stems from *raqqat*, which means greatness, not from the Arabic word *Istirqaq* meaning enslaving. Hence, it is no surprise that even the holy Prophet stated at his deathbed, "Consider virtue in your conducts to the weak, women and slaves." [116](#)

As said earlier, slavery, is, in fact, a borrowed thing in Islam, which deteriorates with the deterioration of its causes. Today, the international community condemns slavery. So there is no doubt that slavery can depend on the authority of the imam. The Muslims are not allowed to use the prisoners of war as slaves. If they do, they have violated their own rules.

[The Rights of Prisoners of War](#)

Abu Yusuf states that it is necessary to conduct well towards the prisoners of war and give them food and clothing. The Holy Qur'an states,

"And they give food out of love for Him to the poor and the orphan and the captive." (Surah al-Insan, 76:8)

As to respect for the captives, the holy Prophet states, "Advise each other to treat well towards the captive."

In Battle of Badr, the Muslims treated so well towards the captives that they gave them dates and fresh bread. [117](#) Salah al-din Ayyubi, freed many of the captives for not having sufficient food although this great number of the captives could join the enemy. [118](#)

Today, the *Imam* cannot make decisions about the destiny of the prisoners of war. Therefore, some rights are given to the prisoners of war, which we shall discuss in the following.

[Respect and Prevention from Torturing the Captives](#) The first right is respect for the prisoners of war. Therefore, it is not allowed to expose them to torture under any circumstances. The holy Prophet stated, “The Almighty shall torment those who torture others in this world.” The prophet’s aversion for torture is obvious in the case of Suhail Ibn ‘Umar al- ‘Amiri who was a great talker and had directed the blade of his sarcasm to the holy Prophet. ‘Umar Ibn al-Khattab asked the holy Prophet to allow him to take out Suhail’s teeth in order that he might no longer be able to talk against the holy Prophet. The holy Prophet said, “I shall not make him so, for if I do this, Allah shall do the same to me who am a prophet.” ¹¹⁹

[Preserving the Family Ties of the Prisoners of War](#) It is necessary to preserve the family ties of the prisoners of war. Hence, there is a consensus among the Muslim jurists that it is not allowed to separate a seven-year-old child from his mother. However, some of the jurists hold that it is allowed to separate the spouses from each other in time of dividing the booty or in time of selling them.

[Granting the Right of Corresponding to Family](#)

The captives have the right to write letters to their families.

[Prohibiting discrimination](#) It is not allowed to discriminate between the captives. The stance of Islam towards this issue is completely clear, suggesting that we are the descendants of Adam and created from dust.

At all events, the equality of human nature does not mean the equality of social conditions. There are many verses in this regard:

“And do not covet that which Allah has made others excel others” (Surah an-Nisa, 4:32)

And

“We have made some of the apostles to excel others” (Surah al-Baqarah, 2:253)

“The Holy God grants grace to those whom He wills” (Surah al-Baqarah, 2:190)

“And We have made them excel by an appropriate excellence.” (Surah al-Isra, 17:70)

[The Exercise of Fair Treatment](#) Islamic realism does not allow equal treatment towards the prisoners of war without considering their social status although humanitarian considerations are observed. When the daughter of al-Maquqas was taken prisoner, Maqrizi states, “The daughters of the rulers deserve special attention. Be kind to those who were once great but now have lost their status.”

Ibn ‘Asakir narrates from the holy Prophet, “If some person of high standing is imprisoned by you, treat him well.” Islam regards kind treatment to others in proportion to the status of the captives as the

minimum human conduct. The prohibition of discrimination in the first stages of formulating the international humanitarian law was limited to the issue of discrimination on the nationality of people. However, the principles of prohibition of discrimination have assumed a broader scope, the principles 44 and 45 in the Geneva Convention of the prisoners of war¹²⁰ provided that the enemy officers should be treated fairly according to their rank.

Freedom of Captives It is necessary to mention that if a captive escapes and goes back to his country, he is free unless he has bound himself to a commitment. If any commitment is involved, he is obligated to return for Islam condemns treachery. The Holy Qur'an states,

“Indeed God does not love the traitors.” (Surah al-Anfal, 8:58)

Concluding Comments

After World War I which claimed so many casualties, in 1949 the representatives of States gathered in Geneva and formulated four compacts for preventing the unceasing massacre of men and from inhumane treatment towards the wounded and the sick and even towards the corpses known as the Four Conventions. Later, in 1977, two protocols were annexed in augmentation. The collection of these rules was called the International Humanitarian Law.

Jane Pictet, the Swiss lawyer who has immensely helped formulate the conventions and the protocols, says, “I wished to elucidate all the international humanitarian law in a beautiful comprehensive sentence. This is what I could present: ‘Do as you would be done by.’”¹²¹

Interestingly, this is also stated by the holy Prophet, “He who does not treat others as he expects them to treat him is not a believer.”¹²² The implication is that the observance of international humanitarian law is part of one's faith in religion and a fundamental pillar after the five fundamental pillars of Islam.

¹. The late Dr 'Abd al-Majid Badawi was the head of this institute and Salah al-din al-Munjad was the vice-president. See: 1389 A.H. , The introduction of al-Sayr al-Kabir, written by Dr. Badawi, p. 12. It is worth mentioning that University of Paris had a ceremony honoring the 1200th year of Shaybai's death (804 A. D.)

². Baron Michel De Tube, Lessons on the Historical Changes of International Law in Eastern Europe, Hague, 1926, Vol. 1 , pp. 341–554 especially puges 380–397.

³. Dr Kamil 'Ayad, Safahat Min Tarikh al-Istishraq, Damascus: Majma' al-'Aribiyah, 1986, p.574.

⁴. He was born in Gharnateh (Granada) in 1548 and died in Shinboneh in 1617.

⁵. The author has divided jurisprudential rules into civil, judicial and political rules. In each part he has presented some discussions which constitute four volumes: the two volumes concerning civil laws have been published and the other two parts on penal and judicial laws are under publication.

⁶. Sura al-Baqarah 2: 190–194: “And fight in the cause of Allah with those who fight with you, and do not exceed the limits, surely Allah does not love those who exceed the limits; And kill them wherever you find them, and drive them out from whence they drove you out, and persecution is severer than slaughter, and do not fight with them at the Sacred Mosque until they fight with you in it, but if they do fight with you, then slay them; such is the recompense of the unbelievers; But if they desist, then surely Allah is Forgiving, Merciful; And fight with them until there is no persecution and religion should be only for Allah, but if

They desist, then there should be no hostility except against the oppressors; The Sacred Month for the sacred month and all sacred things are under the law of retaliation; Whoso then acts aggressively against you, inflict injury on him according to the injury he has inflicted on you and be careful of your duty to Allah and know that Allah is with those who guard against Evil.” Surah Aale Imran 3: 102, 105, 107, 110 respectively: “ O believers! Be careful of your duty to Allah with the care which is due to Him, and do not die unless you are Muslims; And be not like those who became divided and disagreed after clear arguments had come to them, and these it is that shall have a grievous chastisement; And as to those whose faces turn white, they shall be in Allah’s mercy, in it they shall abide; You are the best of the nations raised up for the benefit of men, you enjoin what is right and forbid the evil and believe in Allah, and if the followers of the Book had believed it would have been better for them; of them some are believers and most of them are transgressors.”

[7.](#) Pictet, The Principles of Humanitarian International Law, 1966, Int. L. Rev. Red Cross, pp. 455, 462.

[8.](#) Al-Mavardi (died 405 h.q.) a distinguished Shafi’i jurist who taught in Baghdad and Basra. See: Al-Ahkam al-Sultaniyyah, Markuz ul-A’lam al-Islami, Qum, p. 56 onward.

[9.](#) Ibn Kathir, al-Bidayat wa al-Nihayat, vol.7, p.282

[10.](#) The Geneva Convention on the improvement of the wounded and the ill people of the armed forces in the battlefield (approved on 12 August 1949, article 3). Three other Geneva conventions (1949) concerns the improvement of the wounded and the ill and the shipwrecked of the armed forces in the sea (approved on 12 August, 1949, no. 3219) which is called the Second Convention and the Geneva convention concerning the treatment towards the prisoners of war (approved on 22 August 1949 no. 3317) which is called the Third Convention. And the convention concerning the civilians during armed war under the same number and date 1949.

[11.](#) For historical reference see Mas’udi, Vol. 4 p. 17–316; The Laws of War at the Time of Islam, Yusuf Ibn Muhammad Ibn Ibrahim al-Andulusi (died 653 A.H.), Cairo Library, the Department of History, manuscript no. 399; also see Nahj al-Balaghah (The Ways of Eloquence), letter no. 14 with a little difference.

[12.](#) 1868 St. Petersburg Declaration in which 58 States participated.

[13.](#) The Great History (Siyar al-Kabir) with Sarakhsi’s explanatory notes, Vol.2, p.85

[14.](#) First protocol concerns the protection of the victims of international belligerency, approved on 8 June 1977, article 35 UN Doc. A/32/144 Annex 1 (1911). From now on it will be called First Protocol.

[15.](#) Article 35, Par. 1.

[16.](#) Article 35, Par. 2.

[17.](#) See St. Petersburg 1868 Declaration

[18.](#) Geneva Protocol on Gas Warfare, approved on 17 June 1925

[19.](#) Mukhtasar Khalil, Chapter Four, cited in Nuslim Conduct of State, No. 214.

[20.](#) Muslim, Sahih, Istanbul, Vol. 6, p.72

[21.](#) Ibn Athir, Al-Kamil fi al-Tarikh, Vol. 2, p.358 (narrated by Malik ibn al-Nuvayrah)

[22.](#) Ahmad, Musnad, Vol.2, p.251

[23.](#) Murtaza Al-‘Asgari, Abdullah Ibn Saba and Other Myths, Beirut, Fourth Edition, Dar al Kutub, Vol. 2, pp. 117–149. For narrations as to burning, see al-Ghadir, Vol. 7, p. 155 onwards, Nos., 8, 9, 10. Also see al-Mu’jam al-Mufahris li’l-Alfaz al-Sunnat al-Nabawiyyah, Vol. 1, pp. 9–448, On the Case of Burning.

[24.](#) Athar al-Harb (Conduct of War), p.472, related by Qastalani, Vol. 5, p. 152

[25.](#) Ahmad Ibn Hanbal, Musnad Vol. 3, p.435.

[26.](#) Bukhari, pp.54, 90

[27.](#) Tabari, Tabari Interpretation, p.64 (Interpretation of verse 125, Surah Aale Imran)

[28.](#) Ibid.

[29.](#) Ibn Sa’ad, Tabaqat, Vol. 3, pp.4–11; Sarakhsi Vol.3, p.212

[30.](#) Shafi’i, al-Umm, Vol. 4, p.287

[31.](#) The Convention on the Protection of Laws and War Conduct in the Land, approved on 18 October 1907.

[32.](#) Ahmad, Musnad, Vol. 3, p.404

[33.](#) Kanz al-Ummal, On Jihad, Hadith 1130 and 11396

[34.](#) Hague Convention, see footnote no. 3, p.277

- [35.](#) First Protocol, see footnote no. 1, p.288
- [36.](#) "The war is a trick" is a well known proverb which in Islamic text is attributed to Holy Prophet, Hamidullah, No. 460 related by Sarakhsi, Ibid., Vol. 1, p.83
- [37.](#) Bukhari, 55; 157; p.143; Ibn Hisham, pp.683–684; Tabari, Tabari's History, Vol. 1, p.302; Ibn Hajar, Isabah, no. 3074
- [38.](#) Al-Navadir al-Sutaniyyah wa al-Mahasin al-Yusufiyah, p.178; Ibn Athir, Kamil, Vol. 7, p. 34
- [39.](#) Ibn Athir, al-Kamil, Vol. 2, p.223
- [40.](#) Al-Nuvi, Sharh-i Sahih Muslim, Vol. 7, p. 306
- [41.](#) Ibn Hisham, Sirah, Vol. 2, p.367, Published in Cairo, Egypt. Edited by Muhammad Muhy al-Din 'Abd al-Majid.
- [42.](#) Al-Shafi'i, Al-Umm, Bulaq, Vol. 7, p.224, Beirut, p.241
- [43.](#) Al-Shafi'i, Al-Umm, Bulaq, Vol. 7, p.322, Beirut, p.355
- [44.](#) See footnote no. 1, p.16
- [45.](#) Second protocol, 1977
- [46.](#) The Hague Convention
- [47.](#) Ibn Hisham, Sirah, pp.89–688; Abu Sayf, Ibid., p.124; Hamidullah, ibid., no. 289
- [48.](#) Old Testament, Book of Deuteronomy, Chapter 20, Parts 10 to 15.
- [49.](#) Al-Waqidi, Kitab al-Maghazi, research by Dr. Marson Johnson, p. 514; al-Sarakhsi, Sharh al-Sayr al-Kahbir, Cairo, vol 1, p. 367, vol. 2, p. 591, vol. 3, p. 1029.
- [50.](#) Of course the truth of this story has been doubted by Sayyid Ja'far Shahidi. See: Analytical History of Islam, University Press
- [51.](#) Ahmad, Musnad, Vol. 2, p. 403
- [52.](#) Al-Mu'jam al-Mufahras l'il Alfaz al-Ahadiith al-Nabavi, Vol.6, pp. 169–172; also al-Shafi'i, Ma'rifat al-Sunan wa al-Athar, Vol. 6, pp. 553–559
- [53.](#) Ibn Hisham, Al-Sirat al-Nabawiyyah, Vol. 3, pp. 95–97
- [54.](#) Zamakhshari, Mahmud Ibn 'Umar, Al-Kashshaf, Cairo: Halabi Publications, 1948, Vol. 3, p. 310; Sharh-i Sayr al-Kabir, Vol. 1, p. 78; Al-Mabsut, Vol. 10, p. 5. In Nahj al-Balaghah, Imam 'Ali states, "Do not expose women to torture even if they have offended you and your authorities. We were commanded to compose ourselves when we were encountered with the women pagans. Even in time of ignorance, if someone used weapons and stones against women, the future posterities would scold him due to this act. (Subhi Salig, Nahj al-Balaghah, p. 373)
- [55.](#) Geneva Convention, 1949; Second Protocol, 1977
- [56.](#) Al-Mughni, Vol. 8, p.541; Al-Muhalla, vol. 7, p.343; Wahbah al-Zahaili, al-Alaqa al-Duwaliyat fi al-Islam, p.69
- [57.](#) Ibid.
- [58.](#) Ibn al-Athir, al-Nihayat, Vol. 1, p.247
- [59.](#) Sarakhsi, al-Mabsut, vol. 1, p.69
- [60.](#) Yamani, Ibid.
- [61.](#) Ibid.
- [62.](#) Ibn Abidin, Vol. 3, p.310; Mukhtasar Ibn al-Hajib, p.46; Hilyat al-'Ulama, p.449; Al-Ihsan 'an Ma'ani al-Sihhah, p.377; Mavardi, Al-Ahkam al-Sultaniyyah, p.39; Ibn Abi Ya'li, Al-Ahkam al-Sultaniyyah, p.27; Rawzat al-Bahiyyah, Vol. 1, p.220; Al-Mukhtasar Al-Nafi', Hilli, p.112
- [63.](#) Al-Qastalani, Vol. 5, p. 142; Ibn Majah, Sunan, Vol. 2, p. 101.
- [64.](#) Majma al-Zawa'id, Vol. 5, p. 316, Beirut: Dar al-Kitab, vol. 5, p. 316.
- [65.](#) San'ayi, al-Musnaf, Majlis al-'Alami, vol. 5, p. 202.
- [66.](#) Anthology of Kanz al-'Ummal, Masnad Ahmad, vol. 2, p. 319; Nail al-Awtar, vol. 7, p.246.
- [67.](#) Abi Dawud, Sunan, Vol. 3, p. 52; al-Baghavi, Masahib al-Sunnat, Cairo: Vol. 2, p. 88; Shaykh Tusi, Tahdhib al-Ahkam, Vol. 6, p. 138, Beirut: Dar al-Ma'arif
- [68.](#) Al-Razqani's Commentary on Al-Muwatta', vol. 22, p. 295; Al-Muntaqi, Notes on Al Muwatta, vol. 3, p. 167; Al-Bayhaqi, Sunan, vol. 9, pp. 85 & 89; Nayl al-Awtarm vik, 7, p.249.
- [69.](#) 'Iqd al-Farid, vol. 1, pp. 151 onwards.
- [70.](#) Tabarsi, Majma' al-Bayan, Tehran, vol. 1, p.285

- [71.](#) Tabarsi, Fiqh al-Qur'an, p. 119
- [72.](#) Sharh-i Muslim, Vol. 12, p. 48
- [73.](#) Athar al-Harb, p. 473.
- [74.](#) Yanabi' al-Fiqhiyah, p. 37.
- [75.](#) Sharayi' al-Islam, Beirut, Vol. I, p. 312.
- [76.](#) 'Shaykh Tusi, Al-Mabsut, Tehran, Vol. 2, p. 13.
- [77.](#) Yanabi' al-Fiqhiyah, p. 167.
- [78.](#) Jawahir al-Kalam, Vol. 21, p. 71.
- [79.](#) Mahmasani, Al-Nazariyat al-'Ammah, Vol. 2, p. 346
- [80.](#) Abi Dawud, Sunan, vol. 3, p. 52; Wasa'il al-Shi'ah, Vol. 11, p. 43; Muntahi al-Matlab, Vol. 2, p. 911.
- [81.](#) Jawahir al-Kalam, Vol. 21, p. 75.
- [82.](#) Ibid.
- [83.](#) Baihaqi, Sunan, Vol. 9, p. 85.
- [84.](#) Wasa'il al-Shi'ah, Vol. 11, pp. 47-48.
- [85.](#) Al-Muhalla, vol. 7, p. 297; Al-Umm, vol. 4, pp. 157 and 197 onwards; Al-Rawzat, vol. 2, p. 115.
- [86.](#) Sharayi' al-Islam, Vol. 1, p. 311.
- [87.](#) Tadhkirat al-Fuqaha', Kitab-i Jihad.
- [88.](#) Mabsut, Vol. 2, p. 11.
- [89.](#) See Sharayi' al-Islam, Kitab al-Jihad, Vol. 2, p. 312.
- [90.](#) See Yanabi' al-Fiqhiyah, Al-Jihad, Qawa'id al-Ahkam, p. 247.
- [91.](#) See Yanabi' al-Fiqhiyah, On Jihad, p. 87.
- [92.](#) Ibid, Sara'ir, p. 168.
- [93.](#) Ibid, Al-Jami' li 'al-Sharayi', p. 235.
- [94.](#) Athar al-Harb fi al-Fiqh al-Islami, Wahbah Zahiyyi, Damascus: al-Maktabat al-Hadithah, p. 498.
- [95.](#) See Mahmasani, Jawahir al-Kalam, Vol. 21, p. 70; Ibid. p. 242.
- [96.](#) And fight in the cause of God with those who fight you, and do not exceed the limits. The Holy Qur'an, Surah al-Baqarah (2:190.)
- [97.](#) Mahamasani, Ibid., p. 242
- [98.](#) 3 Fath al-Qadir, Vol. 4, p. 287; Radd al-Mukhtar, Vol. 2, p. 308; Al-Muhadhdhab, Vol. 2, p. 250; Al-Mughni, Vol. 10, p. 504; Sharh al-Kharshi, Vol. 2, p. 412; al-Midnat al-Kubra, Vol. 3, pp. 24-25; Bidayat al-Mujtahid, Vol. 1, p. 307.
- [99.](#) For the difference between these two rules, see Mahmasani, Falsafat al-Tashri Fi al-Islam, p. 177
- [100.](#) Al-Jami' al-Saghir, Vol. 1, No. 1705; Al-Muhalla, Vol. 7, No. 937; Saduq, Muhammad Ibn 'Ali Ibn Babiwiyh, Khisal, Bab-i Tas'ah.
- [101.](#) Ibn Jarir Tabari, Jami' al-Bayan, Vol. 10, p. 42; Tusi, Al-Tabiyan, Vol. 5, p. 156; Zamakhshari, Al-Kashshaf. Vol. 1, p. 352; Khatib Sherbini, Al-Siraj al-Munir, Vol. 1, p. 32; Abu Hayyan Andulusi, Al-Bahr al-Muhir, Vol. 4, p. 519; Tantavi, Tafsir al-Jawahir, Vol. 5, p. 83; Jurjani, Tafsir Gazur, Vol. 18.
- [102.](#) He was the commander of the army and the ruler of Basra in time of Uthman.
- [103.](#) Yamani, Ibid.
- [104.](#) Ibn Hisham, Sirah, Vol. 2, p. 56
- [105.](#) Yamani, Ibid.
- [106.](#) A Hanafi jurist and the judge of judges in time of Al-Mahdi and Harun al-Rashid.
- [107.](#) Surah al-Baqarah, (2:254.)
- [108.](#) See Muhaqqiq Damad's article entitled Islamic Tolerance delivered at the Conference on Human Rights in Islam and Christianity, Tehran 1990
- [109.](#) Ibn Jabir, Rihlah, Beirut, 1964, p. 280.
- [110.](#) Tabaqat-i Ibn Sa'd, under Abudhar, Bihar al-Anwar, Vol. 15, p. 14.
- [111.](#) Wasa'il al-Shi'ah, Kitab-i 'Itq, First Chapter.
- [112.](#) Ibid., chapter 28

- [113.](#) Kulaini, Kafi; Tusi, Tahdhib; Saduq, Thawab al-A'mal, Ibid.
- [114.](#) See Muhammad Hasan Najafi, Jawahir al-Kalam, Kitab al-'Itq.
- [115.](#) Jurji Zaydan, The History of Civilization, Vol. 4, p.54
- [116.](#) Ibn Hisham, Sirah, Vol. 1, p.318
- [117.](#) Sarakhsi, Ibid. ,p.211
- [118.](#) Yamani, Ibid.
- [119.](#) Ibn Kathir, Al-Bidayat Wa Al-Nihayat, Vol. 3, p. 103 (the captives of Badr).
- [120.](#) Third Convention, 1949, Geneva. See footnote no. 2, p. 286, articles 44 and 45.
- [121.](#) Pictet, The principles of International Humanitarian Law, 1966, INT, L. Rev., Red Cross, pp. 455-462.
- [122.](#) Sarakhsi, Sharh-i Siyar al Kabir, p.44

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