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The Prophet and International Humanitarian Law

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Abstract

International Humanitarian Law is a body of laws and regulations regarding the rights of people – including soldiery and civilian – in wartime. This body of laws, applicable to international armed conflicts, was enacted in the four conventions of Geneva in 1949 and the two annexed protocols in 1977.

Although these laws and regulations have been formulated in the modern era, they are available in the divine religions, particularly Islam. More than 14 centuries earlier, Prophet Muhammad verbally and indirectly forbade the following actions during war: killing civilians, mutilation, killing the enemy's emissary, using mass destruction weapons, betrayal and perfidy, and torturing and killing the captives. Adducing the Prophet's way of life and other evidence, jurists deem these actions illegal.

Introduction

War is a phenomenon that has more or less always existed. Most wars have an aggressive nature; there are few instances of just wars. Aggressive wars were waged to spread hegemony, conquer lands, gain material benefits, and kill the innocent. Just wars were waged to counter hegemony and defend one's honour, life, properties, reputation, and land. Those initiating aggressive wars often pursue brutality and ferocity, and commit nonhuman acts to achieve illegal goals.

Many efforts have been made throughout history to end anti-human wars. These efforts have had two orientations: firstly, to bring wars under norms and laws, converting them to just and legitimate wars; secondly, to wipe out any nonhuman methods such as using mass destruction weapons, invading inhabited areas and killing civilians, and torturing and killing captives. These efforts have resulted in enactment of international laws and regulations about wars, called 'The Law of International Armed

Conflicts' or 'The Law of War'. Some are about rights of human beings in wars, known as 'International Humanitarian Law' or 'Law In War'.

However, the bitter fact is that despite these laws and regulations, and sometimes through wrong and selfish interpretations of these very laws and regulations, aggressive wars continue to ensue, killing masses of innocent people. The world still witnesses unlimited cases of trampling over human rights in wars.

International humanitarian law – as a part of international public law pertaining to using armed forces, treating people during armed conflicts, and aiming at reducing people's hardship – goes back to the second half of the nineteenth century.

Since then, efforts have been continuously made until a century later when in 1949, four conventions were enacted on the following matters: casualties and patients of war; casualties, patients, and afflicted in the sea; war captives; and supporting civilians. In 1977, two protocols completed the four protocols mentioned above: one on the international armed conflict, and the other on the civil armed conflict.[2]

The Geneva Protocol of 1925 had already forbidden the act of choking and using poisonous gases, liquids, bacteriologic (biologic) methods, and other tools of similar effects in wars. According to the 1972 convention, poisonous and bacteriologic weapons are the only weapons whose production, possession, and use is illegal in the international law. The last item annexed to the list of forbidden weapons, based on the 1980 convention[3] was related to the prohibitions and limitations of using some normal weapons, such as the extensive use of land mines, explosive traps and time bombs, as well as using incendiary weapons against civilians.[4]

Despite the formulation of International Humanitarian Law in the last 150 years, centuries ago, Islam laid down laws and regulations to forbid aggressive war aiming at hegemony and gaining power, conquering lands, gaining material benefits and booties, and imposing one's beliefs. It is true that Islam legitimizes jihad as a holy and just war with a defensive nature, aiming at eradicating the polytheists' rule, wiping out obstacles in the way of propagation, eradicating oppression, saving the oppressed, and defending Muslims' lives, properties and reputations; nevertheless, it stresses observing human rights in jihad.

In the verse 2:190, Allah wants believers to fight against those who wage wars against them, but avoid aggression and oppression; in other words, they must avoid fighting against those who do not intend to fight them or are not among the enemy's military forces. In another verse, He warns the believers that enmity with a group must not lead them to oppression and injustice.[5]

Furthermore, in the Prophet's way of life and that of the Impeccable Imams, we see great emphasis on humanitarian law. The present paper is seeking to provide answer to the following question: 'What are examples of humanitarian law in the Prophet's teaching and practical way of life?'

The Quran enumerates some of the Prophet's characteristics that display his concern for the guidance of

humankind. According to the Quran, the Prophet possesses a noble character;[6] he is a mercy for the people of the world,[7] it grieves him that men should perish; he is ardently anxious to guide people; he is full of pity and mercy for the believers.[8] He may die out of grief when he sees that the polytheists do not become believers.[9] It is due to mercy of Allah that he deals with people gently, and had he been rough and hard-hearted, they would certainly have dispersed from around him.[10]

Naturally, a person with the abovementioned qualities would not only care for human rights in wars, but he would care more than anyone. It has been narrated that whenever the Prophet was to send an army to the battlefield, he would talk to the commanders and forces regarding actions that were prohibited.[11] Since these instructions revolved around humanitarian law, they can be considered as the basis of the Islamic Charter of Humanitarian Law. Below are some instances of humanitarian law in the Prophet's way of life:

1. Prohibition of killing civilians

The Prophet expressly prohibited killing women, children, the elderly, monks, and convents:

1. Do not kill the elderly, the children, and the women.[12]

2. Do not kill children and those inhabiting on high mountains (convents).[13]

3. Fight against the enemies of God and yours in Syria. There, you will see men retiring in convents. Do not attack them... Do not kill women, children, and the elderly.[14]

4. Fight the polytheist enemies and let their elderly and children live.[15]

Whenever the Prophet saw a woman killed in the battlefield, he would ask the reason as to why she was killed. On one occasion, he passed a slain woman and asked, 'Who has killed this woman?' A man replied, “Oh, Prophet! I've killed her.” The Prophet asked the reason, and the man replied, “She grappled me to take my sword.” The Prophet kept silent.[16] Similarly, the Prophet stood beside a woman's corpse in the war with Banu Qurayza and asked, “Why has this woman been killed while she hasn't fought?”[17]

Adducing the aforesaid traditions, the jurists regard killing women and children illicit. According to most of them, even women and children who join the military must not be killed.[18] They also deem killing the blind and the like illicit, just like killing the elderly.[19] Jurists have legitimized killing of only those women who have taken up arms to fight Muslims.[20]

2. Prohibition of mutilation

While sending armies to the battlefield, the Prophet warned against mutilating the enemy.[21]

Similarly, Imam Ali related that the Prophet said, “Avoid mutilating, even if it is for a biting dog.”22

All jurists unanimously consider mutilating enemies illegal while in war.23 Here, they present the aforementioned traditions. In his *Jawahir al-Kalam*, Ayatollah Sheikh Mohammad Hasan Najafi uses these traditions and most of the jurists' legal verdicts to conclude that mutilation, whether in war or elsewhere, and before death or after it, is illegal. He also maintains that it makes no difference whether the enemy has mutilated the Muslims or not.24

3. Prohibition of killing enemy emissaries

Ibn Masoud relates that two emissaries from the false prophet, Musaylima Kadhdhab, went to the Prophet. When the Prophet said to them, “Bear witness that I am the Messenger of God,” they said, “We bear witness that Musailama is the Prophet.” The Prophet said, “If I were to kill any emissary, I would behead you.”25 Similarly, Imam Sadiq related that the Prophet said, “The emissaries who are enemies are not killed.”26

Jurists use these traditions to conclude that killing the emissaries who are enemies is unlawful.27

4. Prohibition of mass killing weapons

Imam Sadiq quotes Imam Ali as saying, “The Prophet has prohibited spreading poisons in the towns of the polytheists.”28

Many jurists adduce this tradition to proclaim the illicit use of poisons in wars.29 Others regard the use of poisons in wars as religiously prohibited, arguing that the authority chain of this tradition is faulty, unable to convey the illicitness of the act.30 Those jurists claiming the illicitness of the act have replied that the transmitter of this tradition, Sukouni, is approved of as to transmitting, and there is consensus as to acting according to traditions he has transmitted.31

Some say that Sukouni's tradition on the prohibition of using poisons holds true for the polytheists' towns, because it often results in killing children, women, the elderly, and Muslim inhabitants in which killing them is forbidden. But it does not mean that using poisons for killing those unbelievers who may be killed in any way (military forces and combatants) is not allowed.32 After relating this, the author of *Jawahir al-Kalam* – seeking to prove the legitimacy of using poisons in battlefield against combatants, and the illegitimacy of using them in the towns of unbelievers – reinforces the idea that using poisons in the inhabited areas of the unbelievers, even if the victory is dependent on it, is illicit. This is because in Sukouni's tradition there is no condition.

We conclude with the following three propositions:

1. It is forbidden to use poisonous weapons in inhabited areas, as it results in killing civilians, and killing civilians is illegal. Sukouni's tradition on illegal use of using poisons in the inhabited areas of polytheists

(*bilad al-mushrekin*) is apparent, and according to the author of *Jawahir al-Kalam*, this unlawfulness is absolute and unconditional even if it results in victory.

2. Acknowledging Sukouni's tradition for the illegal use of poisons in inhabited areas, it is not used to justify the illicit use of poisons in the battlefields against military forces. As it is permitted to kill unbeliever combatants (*kafir harbi*) if we doubt whether it is permitted to kill them with poisons or not, it is assumed to be permitted, especially if they themselves use such weapons. Of course, as some jurists assert, using poisons in the battlefield is not allowed if it leads to killing civilians. Moreover, if the Muslims accept an international treaty on the prohibition of mass killing weapons, such weapons must not be used for the sake of being committed to the treaty.

3. Given that the author of *Jawahir al-Kalam* strictly opposes the use of poisons and deems it illegal, even if victory is dependent on it, it is not to be used in retaliation either.

It should be noted at the end that if we take the reason for prohibition of poison – or today any kind of chemical weapons – their being mass killing weapon, we may extend this verdict to other mass killing weapons, such as nuclear and microbiologic weapons. Today, mass killing weapons kills numerous civilians due to its destructive power and its lasting dangerous effect on the environment and due to the extension of the battlefield to the garrisons or deserts around the cities, and perhaps eventually to inhabited areas themselves. Thus, the use of using mass killing weapons is absolutely illegal, both in cities and in battlefields.

5. The prohibition of betrayal

The Prophet would tell the delegations sent out to the battlefields to never betray.[33] Etymologically, the root *ghadr* means betrayal. According to some jurists, *ghadr* is to grant a respite to the enemy and then kill him by surprise.[34] Apart from this sense – seemingly being one instance of ghadr – all jurists adduce to the aforementioned tradition to proclaim ghadr forbidden.[35]

Betrayal is different from deception. Deception, verbally through spreading rumours or practically through actions, is a tactic to mislead the enemy regarding the insider's intentions. All jurists allow deception in war, adducing the well-known Prophetic tradition: “War is deception.”[36]

Similarly, in the law of international armed conflicts, betrayal is forbidden, although deception is legitimate.[37]

6. Prohibition of torturing or killing war captives

After the victory of the Muslims in Battle of Badr and their capturing 70 Qurayshi polytheists, the Prophet dispersed the captives among his companions and said, “Treat the captives kindly.”[38] The companions obeyed this, and even gave them priority to themselves in eating food.

Abu Aziz bin Umayr, Mus'ab bin Umayr's brother and one of the captives in the Battle of Badr said, “I was among a clan of Ansaar. When they brought lunch or dinner, they gave me their bread and contented themselves with dates. Even if I returned the bread out of shyness, they would return it back to me.”[39] Abul–As b. Rabi', another captive in Badr, says, “I was with a group of the Ansaar. God may bless them. When eating during the day or night, they would eat dates and give me bread, and they ate little bread with the dates being their only provision.”[40] Another captive says, “...they would go on foot and would take us mounted.”[41]

The Prophet's recommendation was towards those very people who had harassed him in Mecca and expelled him from his hometown. In the Battle of Badr, replying to Umar who wanted the Prophet to pull out the front teeth of one of the captives to prevent him from speaking against him, the Prophet said, “I won't mutilate him; otherwise God would mutilate me, even though I'm a prophet.”[42]

After Banu Qurayza's betrayal in instigating the Qurayshi polytheists to initiate the Battle of Ahzab, the Prophet set out to fight against them immediately after the Battle. After a few days’ siege, the Jews finally surrendered, ready to follow the verdict issued by Sa'd b. Mu'az who, based on Torah, ordered their men to be killed due to their betrayal. While executing this verdict on a hot summer day at noon, the Prophet said, “Treat the captives kindly. Let them rest and drink water... do not make them suffer from both the heat of the sun and the weapons.”[43]

After the polytheists were captured in the Battle of Hunain, the Prophet ordered the Muslims not to kill any of the Hawazin's captives. When he was informed that one of the captives, Ibn Akwa, sent by the Huzail tribe to bring news from the Prophet during the conquest of Mecca, had been killed by an Ansari at the behest of Umar, the Prophet said, “Did I not order you not to kill any captive?”[44] After this, another captive named Jamil b. Ma'mar was killed by the Ansaar. The Prophet was angered and sent a message to the Ansaar, saying, “Why did you kill him while my emissary brought you my message ordering you not to kill any captive?” They replied, “We killed him at the behest of Umar.” The Prophet turned angrily.[45]

It was in the same battle that the Prophet released the Hawazin's captives without taking any ransom.[46] He also ordered Muslims to dress all the captives.[47] According to a famous account, it is not permissible to kill the captives taken after the battle.[48] And according to the Quran,[49] these captives are released either with indebtedness or through getting ransom. It is also obligatory to feed the captives even if they are to be executed due to their betrayal.[50]

Conclusion

The Prophet’s guidelines on human rights during war fourteen centuries ago are the bases for laws and regulations, today termed International Humanitarian Law. The followings are conclusions derived from the Prophet’s sayings and conduct: The necessity of distinguishing the military forces from civilians and avoiding any attack on civilians such as massacring them; avoiding torture and debasement of the

enemy, the most striking example of which is mutilation; granting security to the enemy's emissary; not using weapons lavishly; prohibition of using mass killing weapons; avoiding betrayal or breaking a promise; and prohibition of torturing or killing war captives.

The Islamic precepts on human rights in wars – most of which are founded on the Prophet's way of life – are dynamic until today, and is used by the jurists to compensate for the drawback of humanitarian law.

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