

COMPARATIVE STUDY OF ISLAMIC LAWS OF WAR AND IHL – POINTS OF CONVERGENCE FOR UNIVERSAL CONSENSUS ON LAWS OF WAR

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Abstract

In contemporary times, wars are not taking place in a legal vacuum. There are laws available on resorting to force and conduct of hostilities, including Islamic Laws of war and International Humanitarian Law (IHL). These legal regimes trace their origins in the teaching of elders that have further translated into rules and principles to limit the destructive nature of an armed conflict. Both systems are primarily concerned about regulating the behaviour of belligerents to avoid and at least minimize the sufferings of combatants and non-combatants in the theatre of war. This paper explores Islamic values and rules on the conduct of hostilities and compares them with similar provisions of IHL by using a comparative analysis approach. The objective of this study is not to judge Islamic Laws of war in contrast to IHL or vice versa but addresses the points of convergence. It analyses whether there is any significant difference between these two legal systems in observing principles and ethics of warfare, and provides a way out for humanization.

Keywords: Islamic Laws of War, IHL, Military Necessity, Proportionality, Warfare.

Introduction

The history of nations is replete with conflicts on different accounts. All major religions, cultures, and civilized societies of the world have reiterated restraint in using force. Side by side, no less emphasis has been on the need to humanize armed conflicts as history has witnessed the horrifying mass killing of those who were not part of hostilities or conflicts. During WW I, the total number of casualties was around 40 million, out of which 20 million died (10 million civilians) and 21 million wounded.¹ Similarly, when the US pushed the nuclear button against Japan in WW II, it turned thousands of innocent civilians into ashes and left numerous dwellings into rubbles, crippling posterities for long times to come. These casualties aggregated around 34 million because of the effects of the nuclear explosion by end of 1950.² These hair-raising events compelled modern humanity to frame rules of warfare to avoid such recurrences. Though medieval concepts of chivalry and Christianity greatly influenced the rules of war, the development of the modern laws of war attributed to the Middle Ages.

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Generally, the Islamic Laws of War (ILOW) are traced back to the 7th century; however, this legal regime finds its origin in the teachings of Prophet Abraham (PBUH) and earlier religions. The primary edification of all religions stresses their followers not to be the aggressor in war or at least not to be an initiator.³ Nevertheless, religions do not deprive the right of self-defence as a natural right in war.⁴ The Holy Prophet Muhammad (ﷺ) reemphasized the concept.⁵ On the other hand, modern laws of war known as International Humanitarian Law (IHL) can be traced back to the late 19th century. The objective of these rules is not to govern the war or regulate it but to alleviate the suffering and pains of people not involved in conflicts.

Similarly, the UN Charter forbids the use of force against another state(s),⁶ considering that war is not the solution to resolve an issue. Now a question arises, then what rules of war for when it is forbidden. The simple answer is that chances of conflict cannot be abandon by the comity of nations. Nations would probably keep on displaying their strength on different pretexts and reasoning. The UN Charter has prohibited war; however, it has not ruled it out. States keep the right to defend themselves either individually or collectively against any aggression. If a victim is not allowed to defence, it will frustrate the dream of maintaining international peace. Inevitably, general prudence demands some rules applicable on the battlefield to avoid or minimize the sufferings of those who are not combatants. It is not ignorable in the absence of these rules that atrocities could have bounds and limits.

Religions provide commandments on principles and rules of war by the conduct exhibited by Prophets through divine guidance. Islamic law in a strict sense furnishes laws of war in the *Quran* and *Sunnah* of the Holy Prophet (ﷺ) as the primary source.⁷ On the other hand, IHL comprises four Geneva Conventions of 1949, their two Additional Protocols (AP) of 1977, and customary law as a supplementary source of law. Scholars usually do not make a distinction between IHL and the laws of war. However, a fine distinction can be made between Geneva Conventions and Hague Conventions, the former deals with human rights, whereas the latter purely relate to rules of war. The discussion boils down to a ground reality that religious laws of war, as well as IHL, create a fine balance between military necessity for warfare and humanization aspects. People in any sphere of life are duty-bound legally and ethically to propagate, promote and inculcate safety and respect for human values during warfare.

This paper examines the existing literature on the subject from a convergence point of view while adopting a comparative analysis approach in a descriptive and exploratory manner. Primary and secondary sources of IHL and ILOW are referred to find commonalities to suggest Universal Humanitarian Law, a novel approach to restricting the destructive effects of an armed conflict. It is an endeavour to highlight humanitarian aspects of IHL and ILOW through cross-referencing. The aim is to develop consensus for a universal document for general acceptance by the states and societies alike.

Concept of Casus Belli

Most classical Muslim jurists viewed that the *casus belli*⁸ in Islamic law is aggression against Muslims and religious persecution;⁹ it is a defensive war revealed in the *Quran*.¹⁰ The *casus belli* in International law revolves around the right to self-defence, as signatories of the UN Charter are under an obligation to desist from engagement in war except for self-defence.¹¹ Likewise, the UN is responsible for taking necessary measures to prevent, remove, and suppress aggression.¹²

Sources of IHL

IHL comprises Four Geneva Conventions of 1949¹³ along with two Additional Protocols of 1977.¹⁴ The state parties accept these rules as binding on them and are obliged to apply them in situations of armed conflict. The primary object of IHL is to restrict the combatants in choice of warfare methods ensuring optimum safety of non-combatants. The practices of states in the form of customary rules supplement the codified law of war. Due to widespread practices of states following *opinio juris*,¹⁵ these rules are legally binding on them. The rules of warfare on land are largely codified in the treaties; however, many aspects of naval warfare are still driven by customary law under Martens Clause. This clause reiterates the basic principles of humanity and human conscience where the written law is not available.¹⁶ In 1970, the International Court of Justice (ICJ) emphasized obligations under the Law of Armed Conflict (LOAC) as *erga omnes*.¹⁷ In a case concerning Nuclear Weapons, ICJ declared Geneva Conventions provisions so fundamental not to be transgressed by any state, whether a party or otherwise, to these conventions.¹⁸ In another case, ICJ referred to Common Article 3 constituting a minimum yardstick in international armed conflicts; international military tribunals have also referred to a similar view.¹⁹

Principles of War under IHL

IHL is the handiest instrument available to the international community to preserve the safety of common people during armed conflicts. It ensures observing limits set by the law on the use of force. War has proved to be the worst choice taken by states to resolve their mutual differences because of its far-reaching impacts on humans. The international community joined their heads to negotiate principles concerning the conduct of war. The world leaders in 1949 at Geneva succeeded in formulating four Geneva Conventions and enacted various rules in this regard.²⁰

Prohibition against Destruction of Civilian Lives and Objects

Hague Convention (1907) was the first contract to restrict unnecessary destruction or seizure of property of belligerents unless required by necessities of war.²¹ This principle paved the way for the 1954-Convention on the Protection of Cultural Property that prohibits subjection of cultural properties to attack during hostilities except under extreme military necessity.²² The AP-II to 1949-Geneva

Conventions offer a balance between military necessity and humanitarian need.²³ It forbids attack that causes incidental loss of civilian life, injury to civilians, or damage to civilian objects, or is excessive to the anticipated concrete and direct military advantage.²⁴ It obligates military commanders to weigh out the consequences of an attack comparing military advantage.²⁵ The principle is deep-rooted in Hague Regulations and AP-I of 1977, restricting states' right in the choice of means and methods of warfare in armed conflict and development of weapons.²⁶ The limits imposed upon states, which are parties to an armed conflict, are Military Necessity,²⁷ Distinction,²⁸ and Proportionality.²⁹

Military Necessity

The general rules on armed conflict prohibit the vicious destruction of civil or public property unless considered an extreme necessity by belligerents.³⁰ Method of warfare is lawful and justified if it is physically necessary, indispensable, or unavoidable in attaining the goal of war. Thus, necessity is not unfettered and constrained by the LOAC as was expressed in a decision of the US Military Tribunal constituted after World War II and augmented by scholars.³¹ The onus to prove rests upon belligerents and not on victims, whether it was an extreme military necessity or not. In case of doubt, the latitude would go to one against whom unlawful force is used.

The paradigm has shifted with time and with the realization of civilized nations. The old rhetoric, such as the assertion of General Eisenhower that "nothing can stand against the argument of military necessity,"³² is no more tenable in the light of IHL. Several trials were held for brutal Vietnam killings at My Lai by US armed forces, and in one of the cases at US Supreme Court, it posited that "it is unlawful to kill prisoners of war on the grounds of self-preservation or because holding them would impede or endanger military operations."³³

Distinction

The distinction between combatants and civilians (as a principle) during armed conflicts was dealt with in St. Petersburg Declaration in 1868. It elaborated that the object of states could be to weaken the enemy's military forces.³⁴ In the same vein, Hague Regulations prohibited bombardments on undefended areas, villages, towns, buildings, or dwellings.³⁵ Targeting civilians as a direct attack has been outlawed by IHL.³⁶ The distinction principle enunciated in Article 48 of AP-I is declaratory of customary international law.³⁷ Rule 1 to Customary International Humanitarian Law (CIHL) calls upon parties to the conflict to distinguish between civilians and combatants at all times, and attack must distinguish between the two.³⁸ Likewise, Rule 7 of CIHL³⁹ protects civilian objects from attacks. AP-I of 1949-Geneva Conventions combines two distinctions and places the protection of civilian persons and objects under one basic rule.⁴⁰ To signify the importance of respect and dignity of life, the

phrase “in case of doubt whether a person is a civilian or combatant, that person shall be considered to be a civilian”⁴¹ has been added.

Proportionality

The concern on excessive use of force and collateral damage has historically been considered frightening. With the modernization of weapons where the accuracy of a target is no more farce, the damage that may occur is also unimaginable. 1907-Hague Convention on the conduct of warfare and 1949-Geneva Convention protecting civilians during hostilities were positive steps for legal recognition of the issue. A foolproof mechanism may be impossible to harness militaries either by IHL or by religious exhortations as ultimately, people on scene matter more than the rules. Though both conventions do not express the Proportionality principle unequivocally yet demand civilized behaviour of belligerents via Martens Clause⁴² and through religious ethics.

All three principles, Military Necessity, Distinction, and Proportionality are so interwoven that their interconnection is hard to identify during actual hostilities and may be argued by belligerents their way. Notwithstanding, the recognition of the matter, being serious, is an achievement as it is not open for belligerents to do their own will having total disregard to humanitarian concerns. The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts was a concrete leap forward. AP-I abstains from attacks expected to perpetrate civilian losses and excessive in nature vis-à-vis anticipated military advantage.⁴³ The indiscriminate attack is also forbidden by IHL⁴⁴ and emphasizing adaptation of precautionary approach in planning and execution of military operations.⁴⁵

Regulations of War under IHL

International law regulates relations between states, and its scope is beyond international trade, protection of human rights, and diplomatic relations. The conditions compelling states to resort to force are traditionally known as *Jus ad Bellum*, and their conduct during an armed conflict is called *Jus in Bello*.⁴⁶ These concepts may precisely be referred to as the LOAC or IHL, evolved and developed over time concurrently.

Jus ad Bellum has its roots in the 25th century B.C., where Egyptians and Sumerians defined rules for initiating a war.⁴⁷ In the 16th century B.C., Hittites used to exchange letters and demands before resorting to war.⁴⁸ Greeks posed several pre-conditions for waging war, and Romans had formalized procedures for a diplomatic resolution of disputes, and the war was the last resort.⁴⁹ Similarly, the historical development of *Jus in Bello* played a significant role in limiting methods to wage war, i.e., Ancient Babylon in the 7th century B.C. treated POWs with respect, and Sun Tzu

in the 4th century B.C. produced a body of rules in the name of the 'Art of War' regulated kind treatment of captives.⁵⁰

Sources of Islamic Laws of War (ILOW)

ILOW comprises two primary sources, the *Quran* and *Sunnah*, jointly called *Shariah* or Islamic law.⁵¹ The linguistic meaning of *Shariah* is the non-exhaustive source of water to satisfy the thirst of people, and the literal meaning is the straight path.⁵² The term *Shariah* includes both law and tenets of faith (*Aqaid*). *Fiqh* is the practical rules developed by jurists from specific sources. The literal meaning of *Fiqh* is the deep understanding and method used by jurists to derive these rules called *Usul-al-Fiqh*, meaning a legal theory.⁵³

The term 'Jurist' refers to those qualified to apply general legal principles to specific situations. Only jurists and *Mujtahids* are competent to exercise independent reasoning to derive rules of Islamic law. Their differences of opinion are a source of strength for the development of law. Jurists are usually associated with a specific school of thought whose methodology and principles they apply.⁵⁴ In the Islamic law-making process, jurists use two kinds of sources, primary and secondary. Primary sources are the main sources known as agreed-upon sources and the remaining are taken as supplementary sources.

Principles of ILOW

Long before the formulation of IHL and its wide acceptance by the international community, Islam already had detailed rules of warfare based upon the primary sources of Islam, i.e., the *Quran* and *Sunnah*. These rules are known as *Fiqh al-Siyar* (Islamic International Law)⁵⁵ and shaped up by the Holy Prophet (ﷺ) during wars. The terminologies used in Islamic literature for various perspectives and legitimacy are *Harb* (a general term used for war), *Qital* (fighting and killing), *Jihad* (struggle or strive not necessarily through a war), *Ghazwah* (the war led by the Holy Prophet (ﷺ) himself) and *Saraya* (the war approved by the Holy Prophet (ﷺ) but did not participate himself).⁵⁶

Prohibition against Aggression

The *Quran* contains several verses dealing with war, for instance:

*Fight in the cause of Allah only against those who wage war against you, but do not exceed the limits...*⁵⁷

Yet in another verse of the *Quran*, saving a life has been declared as saving humanity and killing a person unjustly as the killing of whole mankind, thus, snubbing excesses in the land.⁵⁸ Islam supports and preaches peace and kind behaviour, asking the Holy Prophet (ﷺ) to invite people to the right path in a most courteous way.⁵⁹ So much so not to kill the one who stretches his hand to kill you for having fear of

Allah,⁶⁰ showing kindness and mercy to the non-transgressor.⁶¹ Seeking the avenue of peace, the *Quran* reiterates:

*If the enemy is inclined towards peace, make peace with them. And put your trust in Allah. Indeed, HE alone is the All-Hearing, All-Knowing.*⁶²

Doctrine of Proportionality (Defensive War)

There are specific conditions in which Islam allows to resort to war, which have been amplified in several verses of the *Quran*.⁶³ The Holy Prophet (ﷺ) along with his companions was expelled from homeland Makkah due to their faith. Allah allowed them to recourse to defence (fight against aggressors) with the promise of victory for those aggressed to maintain peace, otherwise, it would destroy synagogues, churches, mosques, and monasteries where the name of Allah is recited.⁶⁴ In Islamic law, an event that justifies the occasion of war is a defence against aggression.⁶⁵ The majority of the wars fought by Muslims during the lifetime of the Holy Prophet (ﷺ) were defensive (justified) wars, such as the battle of *Khayber*, *Badr*, *Al-Taiif*, *Khandaq*, *Uhud*, and *Hunayn*. Analysis of these wars provides a candid conclusion that the wars fought by Muslims were not aggression rather putting an end to their victimization or for exercising their right to profess religion.

Regulations of War in Islamic Law

The Holy Prophet (ﷺ) prohibited to attack any person who is not taking part in hostilities (non-combatants), such as women, children, aged, hired men, clergy, blind, the sick, incapacitated and insane, or with those who have signed a peace treaty with Muslims.⁶⁶ The Holy Prophet (ﷺ) while on an expedition saw a dead body of a woman and after inquiring about the commander, he sent a man to him and said: "Tell Khalid, not to kill a woman or a hired servant."⁶⁷ The Holy Prophet (ﷺ) forbade to kill women and children.⁶⁸ On another occasion, the Holy Prophet (ﷺ) said: "Fight in the name of Allah..., and do not be treacherous (perfidious) and do not be dishonest about booty and do not kill a child."⁶⁹ Yet another saying, the Holy Prophet (ﷺ) said: "Do not kill a decrepit old man, or a young infant, or a child, or a woman; do not be dishonest about booty, but collect your spoils, do right and act well, for Allah loves those who do well."⁷⁰

Traditionally, in Islamic law, the conduct of war as defined by the Islamic scholars either comes under *Siyar* or *Jihad*. The literal meaning of *Siyar* is path and *Jihad* is a struggle. Muslim jurists commonly use *Siyar* to refer to the specific area of Islamic law, which regulates the conduct of Muslims with non-Muslims in peacetime and during the war. A detailed letter was written by Ali ibn Abu Talib (RA), the scrupulous companion of the Holy Prophet (ﷺ), to Malik Al Ashtar, commander of his armies, throwing ample light on various aspects of conduct with enemies including the execution of peace treaties. It stated that if the enemy invites towards peace, never reject this offer while being careful about post-treaty conduct of enemy.⁷¹ He emphasized on quality of treaty execution and steadfastness in adherence to the

covenants risking own life and forbade not violating treaty terms and retracting protection given.⁷² Talking about international aspects of the treaty, he posited that parties can have different religions, ideologies, and views yet everyone agrees that promises must be fulfilled.⁷³

Ali ibn Abu Talib (RA) reiterated the importance of the declaration of war. It is comparatively a modern concept and frequently violated.⁷⁴ He, the bravest Commander, called a war without ultimatum as a fraud and deception not only against an enemy but with Allah, while saying: “Never go back into the offensive without previously challenging and giving an ultimatum. Deception and fraud even against your enemy is a deception against Allah.”⁷⁵ He stresses the performance of a treaty as tinged in modern-day principles of *Pacta Sunt Servanda* and good faith.⁷⁶ He forbids fraud, deception, or use of abstract or vague terminology, mental reservation, underlying meanings during the drafting and execution of a treaty.⁷⁷

Points of Convergence between ILOW and IHL

The purpose of ILOW and IHL is to humanize armed conflicts. Both legal regimes provide rules and norms of warfare for the protection of the lives of non-combatants and at the same time respecting the dignity of enemy combatants. It is forbidden to inflict damage to the property of the enemy except when required by military necessity.⁷⁸ There are some core principles of war, almost common in ILOW and IHL, to regulate hostilities.

Declaration of War

The foremost thing before breaking hostilities is to declare war, which bears many legal ramifications in modern humanitarian law. It is only after the declaration of war that determines the status of belligerents and neutrals. IHL ordains declaration of war as a duty of belligerent.⁷⁹ It is particularly paramount in the case of maritime warfare as it is the only notification of war that allows neutrals to decide their role in the war and international shipping to take evasive actions. In ILOW, resort to war without giving an ultimatum is forbidden, and declares it as a deception to the enemy.⁸⁰ The Holy Prophet (ﷺ) did not allow surprise through night raids⁸¹ and undeclared war.⁸² Modern warfare allows deception (ruses of war) to be a lawful method while prohibiting perfidy.⁸³

Protection of Civilians and Non-Combatants

In ILOW, hostilities shall only be restricted on the battlefield. The civilians and non-combatants, such as women,⁸⁴ children,⁸⁵ elderly,⁸⁶ crippled and blind,⁸⁷ clergy,⁸⁸ and *Usafa*⁸⁹ (who renders services on the battlefield without taking part in hostile or aggressive actions) must not be deliberately attacked or harmed during the battle. This principle of protection of civilians during hostilities is in line with the IHL, which prohibits attacks against civilians and non-combatants, and civilian objects.⁹⁰

Civilians accompanying combatants during the war and who do not take part in actual hostilities cannot be harmed or targeted under IHL.⁹¹ The Holy Prophet (ﷺ) did not initiate an attack on an adversary at night time. He preferred to fight till dawn, avoiding any unnecessary hurt that may cause to civilians and non-combatants during a night raid.⁹² In terms of IHL rules, this category of civilians loses protection from attack when they take part in hostilities.⁹³

Prohibition against Use of Indiscriminate Weapons

In ILOW, it is prohibited to use such means and methods of warfare that cannot discriminate between combatants and protected categories of civilians. Only such means and methods of warfare are permissible that are not more than an anticipated military advantage. The Holy Prophet (ﷺ) forbade not to poison the land of the enemy.⁹⁴ This suggests banning modern-day land mines, anti-personal mines, cluster weapons, and booby traps. Indiscriminate use of weapons under ILOW is not a rule of generality rather an odd exception. The relationship between the existence of rules on war and their application is quite evident in the conduct of the Holy Prophet (ﷺ) during the wars. He (ﷺ) did not resort to using indiscriminate attacks. In IHL, similar protection is accorded to civilians by limiting means and methods of combat actions in modern warfare.⁹⁵

Prohibition against Indiscriminate Methods of Warfare

The preponderant view under ILOW connotes that when there is safe conduct and quarters, safe passage is ordained, and night attacks have been discouraged in the *Quran*⁹⁶ and *Sunnah*.⁹⁷ It is supportive of discarding the idea of using humans as a shield. ILOW allows fighting only those who fight, banishing the idea of indiscriminate killings.⁹⁸ Similarly, in IHL, to adopt such methods of attack that cannot distinguish at a specific military target is prohibited.⁹⁹ The use of human shields is prohibited under the rules of IHL.¹⁰⁰ The question of permissibility of an attack at night under IHL depends upon the circumstances and fulfilment of the attacker's obligation about principles of proportionality and distinction. The shelter of the doctrine of military necessity cannot absolve a belligerent from his obligations under IHL.

Prohibition against Destruction of Property

In ILOW, deliberate and unprovoked destruction of an enemy's property is strictly prohibited, and such a criminal act is described in the *Quran* as *fasad-fil-arz* (disorder on land). As a general rule under ILOW, attacks against both public and private property belonging to the enemy shall only be initiated either to force the enemy to surrender or to put an end to hostilities.¹⁰¹ These attacks are only permissible if required by military necessity,¹⁰² i.e., consumption of enemy's food supplies to feed one's own persons and animals is permissible in such quantities as required for military purposes.¹⁰³ To make realize the gravity while ordering not to kill women,

children, aged, and infirm, etc., and not cutting fruit trees, The Holy Prophet (ﷺ) forbade even the burning of bees.¹⁰⁴ Similarly, *Torah* does forbid the cutting of trees.¹⁰⁵

The use of the enemy property and neutral property is permissible by belligerents as a necessity during the war under the doctrine of *jus angariae* (right of angary).¹⁰⁶ In IHL, parties to a conflict are required not to direct their attacks against civilian objects.¹⁰⁷ Certain objects, such as medical facilities, natural environment, and objects, which are necessary for the survival of the civilian population and cultural property, are protected from attacks during the conduct of hostilities.¹⁰⁸

Prohibition against Mutilation of Dead Bodies

In ILOW, mutilation of dead bodies is strictly prohibited,¹⁰⁹ therefore, dead soldiers are either to be buried or their bodies be delivered to their home country soon after the termination of hostilities. Dead bodies shall not be burnt as directed by the Holy Prophet (ﷺ) to one of his commanders, Hamza al Aslami (RA) while saying that “If you find so-and-so (person), kill him, and do not burn him, for no one punishes with fire except the Lord of the fire (Allah).”¹¹⁰ Under IHL rules, parties to an armed conflict are required to take all possible measures to search for, collect, and evacuate the dead without adverse distinction.¹¹¹ Parties to an armed conflict are under an obligation not to mutilate dead bodies. They must take all possible measures to prevent the dead from being despoiled,¹¹² facilitate the return of the remains of the deceased or dispose them of in a respectful manner.¹¹³

Treatment of Prisoners of War (POW)

In ILOW, various protections have been granted to POWs, i.e., they must be treated with respect in a kind manner. They must be fed and given water to drink and are to be protected from heat, cold, and cruel treatment. The Holy Prophet (ﷺ) ordered his companions to treat POWs well and as a result, the companions provided POWs with better food than they consumed by themselves.¹¹⁴ The one who captures a prisoner is specifically bound to look after him.¹¹⁵ Allah Almighty praised this behaviour of companions in the *Quran*:

*They are those who fulfil their vows and fear a Day of sweeping horror and give food, despite their desire for it, to the poor, the orphan, and the captive.*¹¹⁶

In connection with the captivity of POWs, the *Quran* ordains that POWs be dealt with kindness and tactfully:

*Set them free either graciously or by ransom.*¹¹⁷

The Holy Prophet (ﷺ) after the *Battle of Hunayn* released many POWs belonging to the *Hawazin* tribe without ransom¹¹⁸ as a goodwill gesture. On another occasion, the Holy Prophet (ﷺ) put humane conditions for the release of POWs during

the battle of *Badr*. POWs could be released either on payment of ransom or by teaching (reading and writing) the children of Muslims.¹¹⁹ A companion of the Holy Prophet (ﷺ) killed some captives and when the Holy Prophet (ﷺ) came to know, disassociated himself from this heinous act.¹²⁰ After the conquest of Makkah, the Holy Prophet (ﷺ) declared a general amnesty except for a few, who were declared outlaws.¹²¹ In terms of IHL, POWs must be released and repatriated without delay after the cessation of active hostilities.¹²² IHL prohibits enslavement or execution of POWs.¹²³

Safe Conduct and Quarter

In ILOW, both terms safe conduct and quarter are incorporated in a single Arabic term, i.e., *Aman* (protection or safety). A similar term at the state level through a covenant is called *Dar ul Aman* (House of safety). *Dar al sulh* is a concept of an armistice in Islam. Historically and under the modern law of warfare, there are no inter-rights between belligerents. However, certain rights exist between belligerents and non-combatants. The *Quran* enjoins upon Muslims not to harm those who refrain from war and offer peace to provide them safe quarters.¹²⁴ Allah specifically directs the Holy Prophet (ﷺ) to accord asylum to polytheists when requested by them and escorting them to a safe place.¹²⁵ In the same vein, the Holy Prophet (ﷺ) directed to provide a safe place¹²⁶ and passage¹²⁷ and keep promise although immunity is granted by an army person lower in position.¹²⁸ Not to kill, who surrenders.¹²⁹

Aman signifies the grant of protection with specific rights to non-Muslims belonging to an adversary, who are temporarily in a Muslim state for peaceful purposes. Once it is admitted that the word Islam means peace, then it is easy to perceive the underlying principle of *Aman* to avoid unnecessary bloodshed. Ali ibn Abu Talib (RA) during the battle of *Jamal* (war of Camel) stringently directed not to slay wounded, no pursuit of fugitives, and no violation of house privacy.¹³⁰ After the termination of the battle of *Nahrwan*, he also protected 400 wounded combatants, who were seriously injured, and their tribesmen were allowed to take them back along with their belongings to provide medical treatment.¹³¹ This concept resembles the status of *hors de combat* contained in AP-I and under the rules of IHL, parties to an armed conflict are obligated to grant quarters if requested by an adversary during hostilities.¹³²

Protection of Children

In ILOW, separation among the captives, who have close relations and should be together, is prohibited.¹³³ The Holy Prophet (ﷺ) disallowed separating of mother and her child.¹³⁴ In the light of various *Hadiths*, the status of protected persons extends to children during an armed conflict.¹³⁵ The Cairo Declaration on Human Rights reaffirmed the protection of aged men, women, and children during an armed conflict.¹³⁶ IHL emphasizes that during an international armed conflict, state parties should ensure that children under the age of 15 years are not left without resources, such as maintenance, the exercise of religion, and their education.¹³⁷ Parties to a

conflict are under an obligation to take all necessary measures for the reunion of families.¹³⁸ It is a rule of CIHL that family life must be respected to the maximum extent.¹³⁹ CIHL also forbids the recruitment of children in armed forces,¹⁴⁰ direct participation in hostilities, and award of the death penalty.¹⁴¹ IHL reiterates special measures for children under 12 regarding their foodstuffs.¹⁴²

Human Dignity

Human dignity is a right bestowed upon by Allah and such right must be protected regardless of whether someone is dead or alive. The dignity of a human being covets a special place in ILOW. The Holy Prophet (ﷺ) discouraged slapping on the face of a person during the fight.¹⁴³ Similarly, the burning of dead bodies is strictly prohibited as it is only the right of Allah.¹⁴⁴ So much so, the Holy Prophet (ﷺ) cursed those who struck or branded on the face of animals.¹⁴⁵ In IHL, similar protection of human dignity is ensured by making it obligatory for state parties to dispose of dead bodies respectfully¹⁴⁶ without any adverse distinction.¹⁴⁷

Conclusion

The comparative examination of ILOW and IHL proves that both legal regimes mirror each other extendedly. Naturally, sameness cannot be found in the two systems, but certainly, similarities frequently exist. The religious scriptures acting as a shield between tyranny and military atrocities need to be viewed from a time and space perspective. The topmost authority for Muslims, the *Quran* (*Surah Ale Imran*, Verse 64), invites the peoples of the book (Jews and Christian) to agree on similar terms between them and Muslims for peace. The primary focus of IHL treaties is also to bring comity of nations on a common platform for humanity and peace.

The study concludes that there are multiple points of convergence in these two systems. The importance of the sanctity of humanity and protection of life and property remains the pivot of the whole framework in ILOW and IHL. The Islamic teachings repeatedly stress keeping promises and treaties religiously. The modern treaty law also emphasizes executing treaties in good faith following *Pacta Sunt Servanda*. It is a reality that neither IHL can afford a foolproof guarantee for humanization, nor can any religion harness the delinquents who disregard the religious instructions. History has witnessed blatant violations by the signatories of conventions, and at the same time, religious factions shattered the injunctions sometimes against their religious brothers. The distinctive character of ILOW is its twofold moorings; one in this world, another is the penalty in the world hereafter. These ethical shackles are more effective than the mundane punishments for wrongs. This environment needs little effort to bring to on table all the religious entities, Jew, Christian, and Muslim scholars, to harmonize at the primary stage. At the secondary stage, IHL and common religious rules may be clubbed together for a code of Universal Humanitarian Law.

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