

## Comparative Study of Islamic and International Humanitarian Law

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**ABSTRACT:** *The human community has always been characterized by conflict, governed by ethical and legal standards that have evolved with human civilization. This widely accepted standard was eventually defined as contemporary International Humanitarian Law (IHL). This study aims to analyze from two legal perspectives: Islamic and international humanitarian law. The method used in this research is comparative, including qualitative analysis. The results of this study suggest that regulation has developed mainly due to modern European activities, diminishing the potential contributions of other cultural and ethical traditions to its development and codification. However, it should be noted that the principles jus ad bellum (laws governing the use of force) and jus in Bello (the content of the laws of war) are evident in Islamic literature centuries before modern international law was codified, with little attention paid to them. This paper argues that Islamic humanitarian law, which regulates the treatment of prisoners of war, is comprehensive and comparable to the provisions of the 1949 Geneva Convention. In addition, the concept of Siyar's Islamic literature is very similar to the Geneva Conventions. This research augments international relations by examining the degree of concordance between the requirements of Islamic Humanitarian Law and Modern IHL concerning issues of immediate practical relevance in an era when several regions of the world are experiencing armed conflict.*

Komunitas manusia selalu ditandai oleh konflik, yang kemudian dikendalikan oleh standar etika dan hukum yang berkembang seiring dengan peradaban manusia. Standar yang diterima secara luas ini akhirnya ditetapkan sebagai International Humanitarian Law (IHL) kontemporer. Penelitian ini bertujuan menganalisis dalam dua perspektif hukum yakni hukum humaniter Islam dan Internasional. Metode yang digunakan dalam penelitian ini adalah komparatif, termasuk penelitian kualitatif. Hasil kajian ini menyatakan bahwa undang-undang telah berkembang sebagian besar sebagai hasil dari aktivitas Eropa modern, mengurangi kontribusi potensial dari budaya dan tradisi etika lain untuk pengembangan dan kodifikasinya.

Namun, patut dicatat bahwa prinsip *jus ad bellum* (hukum yang mengatur penggunaan kekuatan) dan *jus in Bello* (isi hukum perang) terbukti dalam literatur Islam berabad-abad sebelum IHL modern dikodifikasi, dengan sedikit perhatian diberikan kepada mereka. Tulisan ini berpendapat bahwa hukum humaniter Islam, yang mengatur perlakuan terhadap tawanan perang, sangat luas dan sebanding dengan ketentuan Konvensi Jenewa 1949. Selain itu, konsep literatur Islam Siyar sangat mirip dengan Konvensi Jenewa. Penelitian ini menambah hubungan internasional dengan memeriksa tingkat kesesuaian antara persyaratan Hukum Humaniter Islam dan HHI Modern sehubungan dengan masalah relevansi praktis langsung di era ketika beberapa wilayah di dunia mengalami konflik bersenjata.

**Keywords:** *International Humanitarian Law, Islamic Humanitarian Law, Geneva Convention.*

## I. INTRODUCTION

International humanitarian law, formerly the law of warfare, is employed in armed conflicts to protect those who do not or no longer participate in hostilities (Fleck, 2021). Even in the absence of an international document, the earliest societies and communities would have adhered to certain combat norms during armed conflict, either based on the directives of the community's leader or their customs and religions. In other words, the development of an international normative system centred on the evolution of international humanitarian law can be traced back to various points in human history. In addition, it is nearly impossible to discover documentary evidence of when and where the first legal rules of a humanitarian nature arose, and it would be even more challenging to identify the "creator of international humanitarian law" (Solis, 2021). Wherever the conflict between tribes, clans, and the adherents of a leader or other forerunners of states did not result in an all-out battle, rules arose to limit the impact of the violence. And such principles, the ancestors of contemporary international humanitarian law, are extant in all cultures (Tamanaha 2021). Humanitarian law applicable during armed conflict must predate armed conflict itself. However, current international humanitarian law has primarily evolved due to European initiatives in the twenty-first century.

Armed conflict persists despite the devastation of the Second World War and the prohibition on the use or threat of force in the United Nations Charter (Schabas, 2007). Armed conflict has increased in many regions of the globe in our time, particularly in Syria, Iraq, and, most recently, Ukraine. These conflicts have resulted in, among other things, the fatalities of numerous war captives. As a result, war prisoners have generated numerous contentious concerns, particularly regarding their treatment. Several studies on the treatment of captives of war under international law have been conducted since the Geneva Convention of 1949 codified the issue of prisoners of war and their treatment (Rubin, 1972). However, little consideration has been given to their treatment under Islamic law. War in Islam (Jihad) and its aspects have been the subject of several studies, but the issue of prisoners of war under Islamic direction has not been exhaustively researched. This study seeks to cover a gap in the extant literature by focusing on a

previously neglected topic in depth (Aboul-Enein, 2004). In addition, the research will contribute to international relations by elucidating the degree of unity between the provisions of Islamic Humanitarian Law and Modern International Humanitarian Law about an issue of direct practical relevance in an era in which some regions of the world are experiencing armed conflict.

Since their inception, international humanitarian law has shown a keen interest in protecting the rights of prisoners of war (Provost, 2002). Over the past decade, we have witnessed brutal and inhumane treatment of war captives, whether by the US military at Guantanamo Bay or by ISIS forces in Iraq and Syria. Previously, ISIS allegedly marched approximately 250 captured soldiers through the desert and executed them (Nance, 2016). The noteworthy thing about these militant groups' acts is that they commit such heinous crimes in the name of Islam, which is claimed to be a religion of peace. The Holy Quran and the traditions of Prophet Mohammed (Saw) contain many verses and sayings denouncing such acts and providing safeguards to prisoners of war (Maher, 2016). Therefore, these acts of violation of principles of international humanitarian Law and Islamic law of armed conflict make this study significant and relevant. In short, this study is also appropriate and effective because it has comprehensively studied the rights of prisoners of war in contemporary International Humanitarian Law and Islamic Humanitarian law.

## II. METHOD

This type of comparative research aims to compare aspects of Islamic humanitarian law and international humanitarian law. The appropriate approach is a qualitative one. This research analyzes and reaches aspects of humanitarian law from a theoretical and practical perspective, gaining a deeper understanding of the differences and similarities between the two legal frameworks. The data to be used are Islamic and international humanitarian law documents, such as legal texts, agreements, convention documents, practice guidelines, and related scientific literature. Data sources can be found in academic journals, books, official websites of international organizations, and other sources of legal literature.

Data collection through literature search and analysis. Uses academic databases, libraries and online resources to collect legal documents and related literature. A suitable analysis technique is qualitative content analysis. Analysis of the contents of legal documents and related literature to identify similarities, differences, concepts, principles and norms in Islamic humanitarian law and international humanitarian law. Detail the findings and compare them in the context of different legal frameworks.

## III. RESULT AND DISCUSSION

### Concept of International Humanitarian Law

Contemporary International Humanitarian Law can be defined as a particular organ of International Law. This law is derived from several International Conventions. The said

law is also known as the “Law of Armed Conflict”, which was formerly known as the “Law of War” (Draper, 1971). The primary purpose of Contemporary International Humanitarian Law is to limit the suffering of war. In ancient times, it was admitted in all cultures and civilizations that there should be some limitations during the war. International Humanitarian Law is a mere legal expression of this idea.

This law's purpose is not to ultimately end armed combat or inquire into its legality but to regulate armed conflict. Also, the concept of International Humanitarian Law has assumed greater significance in today's world scenario as it has a direct and distinctive bearing on humankind and the survival of civilization on this planet. The basic human instinct to protect human rights and dignity and to provide succour to suffering fellow humans is the basis and spirit of “International Humanitarian Law” (Pictet, 1966). It is a kind of extension of the concept of human rights in times of turmoil on account of armed conflicts. In standard phraseology, these are the ‘laws of war, which consist of limits set by international law within which the force required to overpower the enemy may be used and the principles thereunder governing the treatment of individuals in the course of war and armed conflict. These laws and rules were made to check the brutality and barbarism of armed combat. And these laws and customs have arisen from the long-standing practice of belligerents. Moreover, International humanitarian law seeks to regulate and mitigate the conduct of armed conflicts.

This law is intended to protect victims of armed conflicts as much as possible from the effects of hostilities. Moreover, for this purpose, the victims are essentially all those who have been rendered hors de combat about the conflict, i.e., the ill, wounded, and shipwrecked captives of war and noncombatant civilians. International humanitarian law, also known as the law of war, comprises the Geneva and Hague Conventions and subsequent treaties, case law, and customary international law (Meron, 2000). International humanitarian law defines the conduct and responsibilities of belligerent nations, neutral nations, and individuals engaged in armed combat against each other and protected persons, typically civilian populations.

In addition, the 1949 Geneva Convention is a significant achievement for contemporary international humanitarian law. Under these conventions, various limitations on the effects of war and armed conflict are formulated. As a law of war and regulations applicable to all types of armed conflict, International Humanitarian Law is eager to save as many people as possible under any circumstances. Apart from civilians, wounded and sick individuals, and all children and women, International Humanitarian Law protects specific individuals who can no longer fight. In other words, if some combatants are no longer willing to engage in armed conflict or direct hostilities, International Humanitarian Law is concerned with letting them leave the battlefield or protecting them from enemy attack. Contemporary international humanitarian law seeks to reduce the impact of war in two ways: first, by limiting the choice of means and methods for carrying out military operations, and second, by obliging belligerents to rescue persons who are not or are no longer participating in active hostilities.

### Humanitarian Rules in the Earliest Societies

The world as we know it has repeatedly encountered the brutality of armed conflict. Throughout human evolution, groups, collectivities, tribes, and states have contended over land, resources, religion, and political systems. Conflict is the oldest form of intergroup relationship. Interactions and relationships between humans range from hostile to cooperative. And all relationships require a minimum of regulation before humanity's descent into anarchy; hence, one may say: "*ubi societas, ibi regula*"; where there is society, there must be rules; without rules, there is no social compact. The law of war has a lengthy history, and attempts to regulate war are as ancient as war itself (Hoof, 1983). The law of war or armed conflict has existed almost since the beginning, and belligerents have created and recognised war codes throughout history. Although the law of war was codified in a single collection of volumes in the middle of the eighteenth century, it was an integral part of the evolution of man and warfare. However, Christopher Greenwood (1983) notes that the law of war has a lengthy history, although it has been suggested that early military practice fell far short of existing theory and that early rules of armed combat bear little resemblance to contemporary international humanitarian law.

In other words, the applicable humanitarian law in armed conflicts must be as old as the armed conflict itself. Also, resorting to arms is, generally speaking, a manifestation of the barbaric aspect of human nature that led political philosophers such as Thomas Hobbes to conclude that human life in "the state of nature" is "solitary, selfish, nasty, brutish, and short" and to argue in favour of a Leviathan, an all-powerful sovereign state (Mani, 2001). The irony is, however, that the State, which has over time established a civilised internal system for the maintenance of law and order and strives for the welfare of the community, behaves on the international plane as "selfish, nasty, and brutish" in its dealings with other state entities, often discarding the high ideals, the moral precepts, and the principles of humanity that it swears by and strives to uphold within its national society.

The fundamental problem of all law, and thus of contemporary international humanitarian law, is the gaping chasm between theory and practice (Moghalu, 2005). It is beyond dispute that the precepts are embedded in the accumulated knowledge of all human civilizations. In terms of perceptual acceptability, all cultures have converged. Consequently, it is essential to seek out and identify the origins of the principles of international humanitarian law in the world's major civilizations. The earliest societies, including the Papua, the Sumerians, Babylon, the Persians, the Greeks, and the Romans, all had fighting laws that were rigorously adhered to (Moghalu, 2005). In the earliest societies, victory was followed by massive massacres or abominable atrocities, as the code of honour strictly forbade surrender, and the anxious were forced to win or perish. Even during that time, wounded soldiers were gathered and treated.

Moreover, the study of modern barbaric tribes provides insight into the essence of primitive people at the advent of civilization. In Papua society, these communities would have adhered to rules such as forewarning the enemy, not engaging in combat until both sides are prepared, and suspending fighting for 15 days in case of a soldier's death or severe injury (Islam, 2018). The armed conflict between Egypt and Sumeria in the second millennium BCE was governed by a complex set of rules requiring belligerents to

distinguish combatants from civilians and outlining procedures for declaring war, conducting arbitration, and concluding peace treaties.

The Code of Hammurabi, composed by Hammurabi, king of Babylon, who reigned between 1728 and 1686 B.C., protected the vulnerable from the oppression of the wealthy and powerful and provided for the ransom release of hostages. In 1269 B.C., a peace treaty by Hittite law ended the armed conflict between Egypt and the Hittites (Islam, 2018). In other words, Hittite law envisioned respect for the inhabitants of an enemy city that capitulated; in its concrete application, Egypt and the Hittites signed a peace treaty in 1269 B.C. In the seventh century BCE, Cyrus I, king of the Persians, ordered that wounded enemy soldiers be treated and cared for similarly to his disabled soldiers (Boas, 2012).

As they could not battle, the Indian epic *Mahabharata* (400 BC) and *Manavadharmasastra*, or the Laws of Manu, strictly forbade the murdering of a surrendered opponent. In addition, it prohibited using poisoned or flaming arrows and protected hostile property and the status of war captives (Balkaran & Dorn, 202). In combats between Greek city-states and in the war led by Alexander the Great, who led the fight against the Persians, the Greeks regarded equality of rights as a fundamental principle (Strauss, 2003). In addition, the Greeks considered as inviolable the temples, embassies, priests, and envoys of the opposing side, and truces were observed. Helpless captives were shown compassion, and POWs were ransomed and exchanged. In addition, it was deemed improper to cut off or poison the enemy's water supply or employ poisoned weapons. Treacherous weaponry of every kind was considered incompatible with civilised combat.

Moreover, the Romans granted their captives of war the right to live. Nevertheless, their (the Romans') approach to warfare differed depending on whether their conflicts were initiated to exact retribution for egregious violations of international law or acts of deliberate treason. Roman military tactics varied based on whether their adversaries were conventional foes, uncivilised barbarians, or pirate and marauder parties (Gillespie, 2011). In China, several prominent writers detailed some of the most fundamental tenets of the Law of War. They wrote that in antiquity, and they did not pursue a fleeing enemy for more than one hundred paces or pursue a retreating enemy for more than three days, thus demonstrating their adherence to proper conduct (Noone, 2000). They did not exhaust the incapable and had compassion for the ill and injured, showing their generosity. They (the Chinese) waited for the completion of the adversary formation before drumming the attack, thus proving their good faith. They fought for integrity rather than profit, demonstrating righteousness (Allen, 2015). In addition, they could grant amnesty to those who submitted, showing their grit. Briefly, the existence of the law of war can be traced back to antiquity; for instance, the Papuan tribal groups, the Persians, the Sumerians, the Greeks, the Romans, the Chinese, and so on, all had their customs for conducting war, distinct from contemporary international humanitarian law.

### The Concept of Siyar in Islam

Muslims formulated the *jus ad bellum* (law regulating the resort to armed combat) and *jus in Bello* (content of the law of war) at a time when their contemporaries paid no



attention to these rules. Therefore, Islamic law is the first to have formally established a comprehensive norm regarding peaceful and hostile relations between Muslim and non-Muslim communities. Siyar (Islamic International Law) is an integral element of Islamic law and Islamic jurisprudence, according to Munir (2003). As with other branches of Islamic law, its principles are based on the behaviour or example established by the Prophet Muhammad (SAW) in his interactions with non-Muslims. The term Siyar (plural of Sirah, which literally means conduct or behaviour) indicates that the detailed rules of this law were devised based on the behaviour of Prophet Muhammad (SAW) in his international transactions (Ahmad, et al., 2020).

Prophet Muhammad (SAW) fought battles with his enemies; sent legate and emissaries and wrote letters to his contemporary rulers; received delegations; led his followers, and participated in the negotiation of various treaties and agreements of international significance; and dealt with the issues of booty, prisoners of war, and acquisition of enemy property, etc. This entire conduct and the general principles outlined in the sacred Qur'an provided the basis for the field of study known as-Siyar (Islamic International Law). Siyar is the plural of the Arabic word Sirah, which means "path" or "way of walking." Labeeb Ahmed Bsoul describes its historical development in the following manner:

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

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

It was given the name as-Siyar because it documented the actions and interactions of the Prophet Muhammad (SAW), his successors, and other individuals, establishing precedents for various situations. Nonetheless, this term was applied to international law after the first century of Al-Hijra. Then, nearly all Islamic Jurisprudence institutions adopted this term for this peculiar field of study and titled their works on international law Siyar. Only the Khawarij sect titled their international law book "Book of Blood" because it focuses solely on armed conflict. Its broader meaning must be known for a comprehensive understanding of the term Siyar. Siyar is the plural of sira, which means conduct, discipline, comportment, behaviour, manner of life, attitude, or accepted behaviour; however, in its plural form, Siyar can also refer to campaigns (Munir, 2012).

The words *sair*, *sairura*, *maser*, *masira*, *masaran*, and *tasyar* mean proceeding, commencing, marching, departing, or departing. The phrase *Sara*, *siratan hasanatan*, which means to conduct correctly, comes from the Sanskrit According to Alama Jarrallah Zimahshari, Sira's origin is Siyar (*Sara fulanan siratan hasanatan*), which implies well-mannered person. Subsequently, it was expanded and altered to signify conduct and practise. It is stated that *Siyar al-awwaleen* is the behaviour or behaviour of the people in the past. Siyar refers to issues concerning the laws of armed combat in Shariah. This is

why some authors referred to the laws of war as Kitab al-Jihad rather than Kitab al-Siyar (Baig, M., 2015). Kitab al-Siyar, Kitab al-Jihad, and Kitab al-Maghazi are the titles used by the compilers of the hadith of the Prophet Muhammad (Saw) to define rules regulating the conduct of war (Rubin 2022). the protection of civilians, war captives, the cessation of hostilities, the signature and breaching of peace treaties, territorial jurisdiction, and even the different rules for conducting business between Muslim and non-Muslim states etc.

Even though Muslim jurists have never used the term Islamic international law to characterise Siyar, these are always the central topics of a standard book on contemporary international law. In addition, historians used the term Sira to designate the Prophet Muhammad's (Saw) or his successors' conduct in the matters above. Such works, such as Al-Sira al-Nabawiya by the renowned Muslim historian Ibn Hisham, were written very early in Islam's history. This could be considered the biography of the Prophet Muhammad (Saw) because it describes every event from his childhood to his death in minute detail, as well as the lives of his companions, their accomplishments, migration to the city of Madinah, dealings with envoys, revelation, the propagation of the message of Islam, and all the wars fought by the Prophet Muhammad (Saw) and his successors.

In addition, Muslim jurists used the term sira to refer to the Prophet Muhammad's (Saw) adherence to the laws of armed conflict in his dealings with dissidents, apostates, and non-Muslim citizens of the Islamic state. The significance of the Prophet Muhammad's (Saw) conduct and demeanour is evident from his words. According to Muslim historian Abu Muhammad Ibn Hisham, the Prophet Muhammad (Saw) then commanded Bilal to give the banner to Abdur Rahman Ibn Awf. Bilal completed the task. Then the Prophet Muhammad (Saw) praised Allah Almighty and beseeched His mercy for himself, and he declared:

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

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

Also, Ibn Jarir al-Tabari relates a letter by Hazrat Umar ibn Khatab, the second Caliph, to one of his commanders. In the letter, Hazrat Umar ibn Khatab wrote, "Therefore, Allah



Almighty has prescribed excuses for everything in certain circumstances, except for equity in conduct... Therefore, the term *sira* was applied to the conduct of a Muslim ruler in both conflict and peace. In their works on Islamic law, Let us examine how Muslim jurists (*fuqaha*) define the term *as-Siyar*. Imam Sarakhsi of the Hanafi School of thought, the renowned Jurist of Islamic international law, who dictated a detailed commentary on Muhammad Hasan AlShabani's "*al-Siyar al-Kabir*" (Abdelkader, 2013, p. 75), explains in his *al-Mabsut* that this part of the law is called *As-Siyar* because it presents the behaviour of Muslims in dealings with non-Muslims from.

In addition, Muslim jurists, including Imam Sarkhasi, discuss other essential topics in *Siyar* that are not mentioned in this poetic definition, such as peaceful relations with the non-Muslim state(s), the law of treaties (especially peace treaties between Muslim and non-Muslim states, although he mentions treaties with non-Muslim states), Muslim aliens and citizens, territorial jurisdiction, protection of envoys, and rules governing business transactions between the former and the latter.

Imam Sarkhasi discusses all the above issues and those he has described in his definition in his books *Kitab al-Mabsut* and *Sharh Kitab al-Siyar al-Kabir*. Hedaya, the Magnum Opus of Hanafi Jurisprudence, says about *As-Siyar* that it is specified for the conduct of the Prophet Muhammad in his wars (Manshood, 2021). Imam Kasani (d. 587/1191) explains in his book *Badai al-Sanai* the reason for naming the chapter on *Siyar*. He says, "because it describes the different ways in which aggressors should behave during armed combat and the different situations that they could face or abide by" (Manshood, 2021). According to Imam Nawawi, "*As-Siyar* is the plural of *Sira*, which means conduct, and most authors use the title *Kitab al-Siyar* because its rules are derived from the behaviour of the Prophet Muhammad (Saw) in his expeditions.

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

However, there are also some Modern definitions of As-Siyar. Nagib Arminazi was probably the first to attempt a good definition of the As-Siyar, and he defined it as “the set of rules that are binding on Muslims in their relations with non-Muslims, whether they fight the Muslim state or have peaceful relations with them, whether they are individuals or states, and whether they are inside Muslim territory or outside of it. Moreover, these rules also include the situation of apostates, rebels, and robbers.” Dr Muhammad Hamidullah, the eminent modern scholar of Islamic international law, who is given the title of “Shaybani of the twentieth century” by Professor Ghazi (1950–2010), defines “Muslim International Law” in his great work “Muslim Conduct of State” as: “That part of the law and custom of the land and treaty obligations which a Muslim de facto or de jure state observes in its dealings with other de facto or de jure states.” This definition by Dr Muhammad Hamidullah seems to be comprehensive. Abu Zahrah explains the Siyar in detail (Jalaly, 2018). According to him, the rules of jihad and armed combat, what is allowed in it and what is not, the rules of permanent peace treaties and temporary truce, the rules of who should be granted alien status and who should not, the rules of war booty, ransom, and enslavement, as well as other problems that arise during wars and their aftermath In short, As-Siyar designates the rules of international relations between Muslims and other communities during peace and war, although most of the discussion is about the war (Ahmad, et al. 2020, p. 74).

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

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

## International Humanitarian Law in Islam

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

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

### ***The Middle Ages***

The Middle Ages produced their fair share of brutal battles. However, the Christian writings of St. Augustine and St. Aquinas and the rules of chivalry that forbade attacks on the sick, wounded, or women and children provided some guidance (Steel, 2011). The enforcement of reverence for sacred places (God's Truth) gave rise to a right of refuge or asylum in churches, whose observance is strictly monitored by the Church. In addition, a code of unwritten chivalry developed among knights and was enforced by tribunals composed of knights. Although the laws only applied to the knights and not to commoners. Frequently, the adversary was viewed as an equal opponent who had to be defeated in honourable combat.

In reality, some of the laws were intended to prevent the development of weapons and methods of warfare that would threaten their position. Therefore, the attempt by the Lateran Council in 1137 to forbid the crossbow was motivated by a desire to eliminate a

weapon that allowed a foot soldier to menace an armoured knight as well as by humanitarian concern over the injuries that a crossbow bolt could cause (Ellis-Gorman, 202). Another interpretation of the code of chivalry is that it established a guild of combatants with the legal right to plunder.

In Japan, the 'Bushi-Do' (the mediaeval code of honour of the warrior caste of Japan) encouraged the exercise of humanity in combat and towards Prisoners of war, regardless of whether the prisoner surrendered peacefully or fought to his 'last arrow' (Noone, 2022). As the Middle Ages drew to a close, the decline of chivalric orders, the invention of firearms, and the employment of armed forces constituted the formation of armies. Moreover, chivalric considerations were unknown to these armies. Likewise, they did not differentiate between combatants and civilians (the civilian population). Mercenaries viewed armed conflict as a profession which they pursued for private advantage.

### ***The Beginning of Modern Times***

It is estimated that more than half of the German-speaking population perished during the Thirty Years War (1618–1648), and famine and pestilence were pervasive (Asch, 1997). Soldiers who were routinely fed, compensated, and did not have to search for food and shelter could be disciplined and trained, and it became generally understood. As a result, soldiering became a profession, and the distinction between soldier and civilian became more distinct. Thus, the customs and rules regulating the conduct of occupying troops were established, mandating respect for the lives and livelihoods of the civilian inhabitants so long as they remained noncombatants. Hugo Grotius, in his 1625 publication 'De jure belli ac pacis', outlined the extant limitations on the conduct of war. In his 1751 exhaustive codification of international law, Hugo Grotius insisted that a strict set of laws govern war. He was appalled by the conduct of combatants and expressed his dismay in a text.

Grotius wrote that throughout the Christian world, he observed a lack of restraint regarding the war that would make barbarians blush; he observed that men rush to arms for slight cause or no reason at all and that once arms have been taken up, there is no respect for the law, divine or humane; it is as if, by a general decree, the frenzy had been openly unleashed for the commission of all crimes.

The 17th century ushered in the Age of Enlightenment, which produced notable philosophers and intellectuals such as Jeremy Bentham in England, Voltaire in France, and Jean-Jacques Rousseau in particular. In his introduction to the Principles of Morals and Legislation (1789), Bentham is generally attributed with coining the term "international law." Moreover, Rousseau advocated war, which is not a relationship of man to man but of state to state, in which individuals are accidental adversaries not as men, nor even as citizens, but as combatants; not as citizens of their country, but as its defenders. Moreover, his clarity on this issue paved the way for future leaders, politicians, and writers to clarify the responsibilities and privileges owed to the combatant (Brown & Ainley, 2009).

According to the maxim that armed combat is not a relationship between two individuals but between two states, in which private persons are only accidental enemies, not as

men, nor even as members or subjects of the state, but merely as its defenders, the law of nations prohibits the application of war and conquest rights to peaceable, unarmed citizens, to private properties and dwellings, to the merchandise of commerce, or the matrimonial rights of women. The law of warfare, a product of civilization, has contributed to its advancement. Moreover, it is due to this that Europe has maintained and enhanced its prosperity despite the numerous conflicts that have ravaged the continent. During the same period, customs and regulations for capturing and protecting POWs were evolving. To date, the evolution of the law of war has been unwritten, and it was often up to opposing commanders to establish guidelines for treating the ill and wounded prior to battle.

### **Some Points of Comparison Between Geneva Convention and Siyar (Islamic International Law)**

While the Geneva Convention's rules are substantially more detailed, their underlying principles are similar to those of siyar (Islamic international law). Both Islamic Humanitarian law and contemporary international Humanitarian law give humanitarian consideration to the dignity and physical and mental health of captives of war. The principles of Islamic law of war and international humanitarian law frequently coincide. Infrequently, Islamic law of war and International Humanitarian law diverge on particular issues. For instance, the provisions of the Third Geneva Convention about the definition and identification of protected persons need to be clarified because they establish multiple categories, which can lead to divergent interpretations (El Zeidy & Murphy, 2009). In contrast, the Islamic Law of War is more adaptable and avoids such complexity. The Islamic conception avoids complications by implementing humanitarian rules as soon as armaments and armed forces are employed.

Because the Islamic concept of humanitarian law does not classify or define the type of war or conflict alluded to, its principles apply to all armed conflicts across time and space. This broad classification facilitates the adequate protection of combat captives. In addition, Siyar surpasses the Geneva Convention of 1949 in certain respects. For instance, the Convention recommends that detention facilities for prisoners of war match those of the detaining state (Thomas, 2002). Prophet Mohammad (SAW) established this custom when he instructed Muslim soldiers to be satisfied with dates while giving bread to captives. Rarely in the history of armed conflict have these standards been fulfilled. In addition, Islamic Humanitarian law prohibits the use of compelled labour for all captives of war, not just officers. This law does not even require the repatriation of maintenance costs. Regarding the treatment of war captives, Islamic law contains very humane provisions.

In comparison, the rules of the Geneva Convention are considerably more detailed; however, their underlying principles are similar to those of siyar (Islamic International law). Signatories of the Geneva Conventions anticipate comparable treatment from their adversaries to this argument. The entire treaty is predicated on reciprocity, however. In contrast, Islamic Humanitarian law requires Muslim states to adhere unilaterally to the principles of treaties, including specific articles found in siyar, regardless of the actions of the enemy state (Thomas 2002). In brief, it asserts that the Islamic laws regulating the

treatment of captives of war are as benevolent as the Geneva Convention. In other words, Islam also establishes guidelines for treating and managing captured combatants. Islam instituted human rights in its teachings long before the Magna Carta and Geneva Conventions were ratified.

Unmindful that God's word will reach every corner of the globe, the media and false philosophers attempt to obscure these ever-shining facts of Islam to alienate people. The world has suffered from violations of 'human rights', a recently coined expression, for a long time and still does. The United Nations Organisation, nicknamed the divided nations by those wronged everywhere, enacted a collection of never-wholly implemented articles (Williams, 2010). Nothing to help the wounded, nothing to help widows, nothing to help fatherless children (orphans), and nothing to feed the famished, but a veto resolution suffocated the efforts. When these rights were revealed in the Qur'an and detailed in the sayings of the Prophet Muhammad, they were implemented. This is the distinction between Allah's and artificial laws, which can be broken, modified, etc. In Islam, the 'right to survive' and the respect for human life are the first and foremost fundamental liberties.

In Islam, removing a life is equivalent to taking the life of the entire human race. In the divine Qur'an, Allah Almighty states, "If anyone slew a person unless it was for murder or sowing discord in the land, it would be as if he slew the entire people, and if anyone saved a life, it would be as if he saved the life of the entire people" (Qur'an, 5:32). Therefore, Islamic humanitarian law contains extremely humane provisions regarding the treatment of war prisoners. Regarding treating prisoners of war, we can also reasonably conclude that contemporary International Humanitarian Law and Islamic Humanitarian law are generally compatible. Examples include the prohibition on executing prisoners of war except for specific offences, the general prohibition on torture, the provision of suitable living conditions for detainees, and their release upon cessation of hostilities.

In addition, the Islamic methodology is based on intellectual endeavour (ijtihad). Therefore, contemporary eminent Muslim jurists are responsible for adapting classical solutions and interpretations to prevent any critical divergence. Consequently, the two branches can collaborate. However, this does not imply that their general principles are incongruous, as their norms and concepts frequently overlap, despite the need to clarify specific provisions and Holy Qur'anic texts in the Islamic Humanitarian Law of War in response to modern challenges. The only stipulation is that the results should not contradict the letter and spirit of the sacred Qur'an or Sunnah; "Ijtihad is only permitted when there is no explicit reference in the texts or when the texts are ambiguous or have no clear meaning." Thus, it must be applied if the sacred Qur'an or the Sunnah of the Prophet contains an explicit ruling on the legal issue. Without such an unambiguous ruling, the issue may be resolved through an intellectual endeavour known as (ijtihad).

Also, because the fundamental principles and norms of International Humanitarian Law and Islamic Law of War do not contradict one another, the Islamic Law of War can solve the problems in recent conflicts. Moreover, despite the breadth and depth of International Humanitarian Law, which consists of over six hundred rules, the reality is that states need to adopt domestic legal and practical measures to ensure their



application to ensure these treaties may be valid. The implementation mechanisms of contemporary international humanitarian law are extensive and diverse. In praxis, however, they are frequently disregarded. Consequently, this demonstrates a dearth of commitment by states to "respect and ensure respect" for all applicable treaties. A concise comparison of the principles of Islamic Humanitarian Law and Contemporary International Humanitarian Law reveals that the origins of these principles are universal. The actual challenges for both regimes are identical: How can states prevent violations and ensure the future effectiveness of enforcement mechanisms? The challenges remain the same whether the applicable standards are based on Islamic law or Contemporary International Humanitarian Law.

The record to date, especially during the Iran-Iraq conflict, the recent conflicts in Iraq and Afghanistan involving United States-led coalitions, and the more recent conflicts in Iraq and Syria, do not bode well for the future. Further, the problem is not the Islamic law of war or International Humanitarian law but the failure to respect and apply these laws. Islamic principles enshrined in the Islamic law of armed combat and those of the International Humanitarian Law should not be seen as mutually exclusive or conflicting. The principles of Islamic Humanitarian law often concur with those of Contemporary International Humanitarian law. However, occasionally, they diverge on specific points.

Additionally, one needs to consider the historical context in which contemporary Islam emerged in the 7th century. Moreover, one should have in mind the period of wars between tribes and states, between different religious and ethnic groups, in the Roman Empire as well as other empires. It was a period in which no well-developed rules existed, so wars were fought brutally and unconstrained.

In such a dark period, known in Islamic literature as Jahiliyah (the period of Ignorance before the advent of Islam), Islam emerged as light in such circumstances, which introduced various reforms in warfare. Islam rose to denounce inhuman practices, declared human life sacred, and issued strict commands for its respect, preservation, and protection. Soon, based on the Quran, Prophetic traditions, and other permissible methods, the Muslim Jurists accumulated a wealth of precedent to regulate warfare at a time when their contemporaries paid no heed to these rules (Spencer, 2015). However, unfortunately, in the twenty-first century, we found contradictions between precepts (Detailed provisions in Modern International humanitarian law) and practises (Examples: Barbaric treatment of war prisoners at Abu Graib, Guantanamo Bay prison centres, etc.), which one cannot find in 7th-century Islam. It is also undeniable that some contemporary so-called Islamic organisations (Like ISIS) misinterpret Islamic Principles to fulfil their evil designs (Spencer, 2015).

To sum up, considering the existing principles under both Islamic humanitarian law and international humanitarian law, there are no significant differences or contradictions, and the aim of both legal systems is close. Therefore, it has been approved that both legal systems are generally compatible and that most of the provisions of contemporary International humanitarian law align with the rules of Islamic humanitarian law.

Last but not least, unfortunately, the world has been bleeding for centuries. In the contemporary era, it is bleeding in front of everyone's eyes with the help of the latest

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

#### IV. CONCLUSION

Despite the rich contribution of Islamic international law to the regulation of international relations on sound moral foundations and the substantial literature produced by Muslim scholars on this subject from the second century onwards, it is painful to observe that many, if not all, of the most prominent and eminent Western scholars, refuse to acknowledge the legacy. As the preceding discussion has demonstrated, the contribution of Muslim jurists to international law was not only highly developed and sophisticated for its time, but it also remains pertinent as both a source and a foundation for future development. The law of international relations devised by Muslims more than a millennium ago is closer to and more practically oriented towards achieving the contemporary ideals of a tolerant and just international society in many fundamental principles.

Islam and the contribution of Muslim jurists provide the missing link of a millennium, which Western scholars have neglected due to a lack of material or other factors. However, the information is accessible through translations of significant works into prominent Western languages. Therefore, there is no longer any justification for the world's academicians to disregard the contributions of hundreds, if not thousands, of the most significant legal minds in human history.

As far as International Humanitarian Law is concerned, it is a law in the field of legal regulation that aims to address human rights and humanitarian situations during armed conflicts, all consequences of armed conflicts, and their predictable and unpredictable fallouts, which directly impact the lives, freedom, and dignity of people from all walks of life in any society directly or indirectly affected by the consequences of armed conflicts. The yawning chasm between precepts and practise is the defining problem of all law, including international humanitarian law. It is beyond dispute that the precepts are embedded in the accumulated knowledge of all human civilizations. In terms of perceptual acceptability, all civilizations have converged. Consequently, it is essential to seek out and identify the origins of the principles of international humanitarian law in the world's major civilizations. This is the effect of this endeavour. This work demonstrates that Islamic law and international humanitarian law are compatible.

This work contends that the Islamic law governing armed conflict specifies the treatment of captives of war in great detail. Regarding the laws regulating their treatment, there are

a variety of Islamic perspectives. In an era when prisoners could be executed at will, Islamic teachings resolved the issue of how to treat prisoners of war in the most enlightened manner, according to the majority of scholars. This work demonstrates that Islamic Humanitarian law considers the physical and psychological well-being of prisoners of war in addition to their dignity.

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