

Comparative Study of Categories Protected During Armed Conflict in Islamic Law and International Humanitarian Law

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Abstract

Islam has emerged in the Arabian Peninsula as a universal human religion that advocates virtue, humanity, and compassion. Islam has established detailed rules for protecting civilians and civilian targets during armed conflicts. The Islamic Shari'a rules recommended compassion for enemies, not over-killing them, and refraining from any act contrary to the provisions of the Islamic Shari'a. Islamic Shari'a, through its sources, such as the Holy Quran and the Prophet's Sunna, has established rules protecting the victims of war to decide on humanitarian provisions that are already considered for all humanitarian principles relating to the protection of victims of armed conflict and civilians who are not involved in such conflicts, i.e., non-combatants in general. Since the end of the nineteenth century and during the twentieth century, after World and regional wars have caused terrible humanitarian disasters from killing, displacement, torture, and other inhumane treatment, the world's peoples and States have been alerted to the need to establish rules protecting specific groups during armed conflicts, culminating in the international conventions, most notably the Hague Conventions 1899-1907, the four Geneva Conventions of 1949 and the two Protocols 1977 annexed to it. This paper addresses "the categories Protected during armed conflicts in the Islamic Shari'a and those protected in international humanitarian law by reviewing what has been recognized in the Islamic Shari'a for the protection of specific categories during armed conflict and what has been dealt with in the international conventions.

Keywords: International Law in Islam, International Humanitarian Law, Protection of Civilians, Protection of Prisoners, Protection of Property, Armed Conflict

INTRODUCTION

The Islamic religion emerged in the sixth century AD when Allah Almighty sent the Prophet Muhammad (PBOH) a conclusion to the Prophets and missionaries to be the message of Islam to all people. The Islamic Shari'a included all matters relating to preserving human dignity and the right to live in dignity, being the creature of God. This tolerant Shari'a encompassed the full protection of human beings in all situations and set limits that should not be exceeded during armed conflict.

Islam has promoted the principles of equality, friendship, and peace as a basis in international relations, and war is a mere exception that Islam has only made for jihad, for God's sake. War may take place between Muslims and others, but it is an emergency in the life of relations between peoples. God has made peace the basis of international relations, peace the cessation of war, the answer to peace if the enemy demands it, and the preference for compliance between states.

Although war is a natural phenomenon, it is resorted to only when necessary, and there is a need to declare war and not to take people by surprise. If the war takes place, neither the elders nor the children nor the women nor the warrior can be killed if he is defeated, nor the killing of prisoners, but Islam permits redemption release them and the permissibility of the exchange of prisoners and Islam forbidden "representation of dead bodies" (Mansoor, 1971).

It should be noted that there are three rules govern the Law of War in Islam:

The first is the distinction between legitimate war and illegal war, which establishes a specific objective of war: to report the Dawa to the people whose rulers withhold it. If war is for any other purpose, it is illegal except for self-defense (Mansoor, 1970).

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The second rule is that a declaration of war must immediately precede war operations. Of course, this Declaration does not take the forms prescribed at this time. It takes the form of calling for Islam and choosing the other party between Islam or giving Jizi'a or hostilities. The hostilities start only after the first two options have been rejected.

The third rule does not give combatants the absolute right to choose means and methods of hostilities, and not all funds and all people of the enemy are permitted. Islam prevents the killing of civilians, children, and women, obliges the humane treatment of prisoners of war, the wounded, the sick, and the monks, and sets times for the cessation and termination of hostilities.

Dr. Ali Dawi states, " It must be noted that these fundamental principles of Islam are now a principle of the international organization of war and have been decided by Islam to renew its systems of international relations. (Dawi, 2000)

International humanitarian law (IHL) is a set of international legal norms that protect persons and objects during armed conflict. From this definition, IHL aims to protect specific categories harmed during an international or non-international armed conflict and to restrict the rights of parties to a conflict to use the means and methods of hostilities they choose.

Despite international conventions on international humanitarian law, States continued to hesitate to accede to them, and even the States to which they had regulated had not hesitated to violate the rules of international humanitarian law. The world has witnessed devastating regional wars because of the absence of an effective deterrent to States' obligation to apply humanitarian norms. The rules of international humanitarian law included specific rules for protecting cities, civilians, and civilian objectives and establishing special and international courts to prosecute war criminals. (Alfatlawi, 2014)

The four Geneva Conventions 1949 are the most important international humanitarian codification of the twentieth century. They were adopted in response to the illegal violations of combatants that accompanied the Second World War (Almajdhoob, 2021). These conventions contained a new method, namely a mandatory system to deter serious breaches specified in the conventions. All parties in this system must refer offenders, regardless of nationality, to their country's courts and punish them or hand them over to another party in case of conviction.

Our research of the categories protected during armed conflict compares Islamic law and contemporary international humanitarian law. It compares the difference between an integral heavenly law and a positive human-made law that embodies its whims and whims. Still, it is necessary to adhere to the scientific curriculum to clarify the significant difference between Islamic law and the international humanitarian norms currently in force.

The objectives of this research are as follows:

To explore the supremacy and precedence of Islamic law in establishing rules for protected groups during international armed conflicts.

To determine the importance of identifying protected groups in Islamic law and international humanitarian law to identify those who deserve protection during international armed conflicts.

To identify categories of international protection during non-international armed conflicts.

In this study, I will follow the analytical and comparative curriculum through the rules of Islamic Shari'a and international conventions on international humanitarian law. Accordingly, we will first examine the protected categories in Islamic Shari'a and the protected categories in international treaties and then explain our findings in this research.

CATEGORIES PROTECTED DURING ARMED CONFLICT IN ISLAMIC

Islam has promoted the principles of equality, friendship, and peace as a basis in international relations, and war is a mere exception that Islam has only made for jihad for God's sake (Hamdi, 2002). War may occur

between Muslims and others, but it is an emergency in the life of relations between peoples. Islam has made peace the basis of international relations, peace the cessation of war, the answer to peace if the enemy demands, and the preference for inter-state treaty (Gamak, 1997). If the war for some reason occurs, the objectives of this war in Islam are limited to the propulsion of aggression (right of self-defense), the helping of the vulnerable, and the protection of the Islamic Da 'wah (Yousef, 2021).

Although war is a natural phenomenon, it is resorted to only when necessary, and there is a need to declare war and not to take people by surprise. If the war takes place, neither the elders nor the children nor the women nor the warrior can be killed if he is defeated and masterminded, nor the killing of prisoners, but Islam permits redemption and release of prisoners, and the permissibility of the exchange of prisoners and the sanctuary of Islam similar "represents the bodies of the dead (Mansoor, 1971).

General Rules for Categories Protected in Islamic Law

The rules to which the Muslim warriors were bound in their wars were not merely general moral principles or commandments they received about them. They were legitimate duties often stipulated in the Quran and Sunnah, and their violators were punished not only by their superiors but also by other punishments in the afterlife because they violated the legitimate provisions of the legitimator (Bubosh, 2009)

The most important legal rules governing the conduct of Muslim veterans during armed conflicts are:

1- Distinction between combatants and non-combatants

Pre-Islamic warfare systems did not differentiate between enemy combatants and non-combatants. This perception persisted among most people, and we still see images of it today. The Islamic Shari'a differentiated between the two categories according to the principle "Only those who fight shall be killed." In application of this, the killing of elders shall be prohibited only if they participate in the fighting, women unless they are combatants, and Prevention killing of children, clergy, workers, and any civilian in general. Islam takes all necessary measures to safeguard people's lives by adopting attitudes and norms that are less theoretical. These rules and behaviors did not leave their discretion to the warrior. Still, they came in the form of disciplinary directives issued by the President of the Islamic State to its army commanders to create a comprehensive system for them in the war (Aliya, 2022).

It has been reported that when the Messenger of Allah (Mohammad PBOH) appointed anyone as leader of an army or detachment he would especially exhort him to fear Allah and to be good to the Muslims who were with him. He would say:

"Fight in the name of Allah and in the way of Allah. Fight against those who disbelieve in Allah. Make a holy war, do not embezzle the spoils; do not break your pledge; and do not mutilate (the dead) bodies; do not kill the children. When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these, you also accept it and withhold yourself from doing them any harm. Invite them to (accept) Islam; if they respond to you, accept it from them and desist from fighting against them. Then invite them to migrate from their lands to the land of the Muhajireen and inform them that, if they do so, they shall have all the privileges and obligations of the Muhajireen. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims and will be subjected to the Commands of Allah like other Muslims, but they will not get any share from the spoils of war or Fai' except when they actually fight with the Muslims (against the disbelievers). If they refuse to accept Islam, demand from them the Jizya. (Sabih Muslim, 1731)

2- Principle of the existence of protected persons who are nationals of States

Islam recognized protection for messengers, negotiators, and warriors who demand safety; therefore, the protection of certain enemy nationals, whatever it may be for a general objective reason, such as non-participation in hostilities because of inability, or for a particular reason, such as the existence of an explicit or implicit agreement whereby persons are protected such as messengers and *Musta'aman*. (Dawi, 2000)

Islam prohibits harm to monks residing in silos, churches, monasteries, and other clergy, and provision must also be made to civilians and clergy, even from the *Bait al-Mal*. Some scholars added that civilians who may not

be exposed are traders and farmers, and Caliph *Omar Ben Alkhatib* wrote the speech in one of his messages: "Do not boil, do not treachery, do not kill a child, and fair Allah in peasants (Aliya, 2022)

3- Prevention of Destruction

Contemporary international humanitarian law prohibits the so-called "systematic destruction". Islam preceded to prevent such destruction as well, so in Islam, it prohibits the cutting of fruitful trees, the burning of palms, and the slaughter of the enemy's water, cow, and barley unless it is in consideration of the necessity of a war to weaken the enemy and extract victory from it, and This is the opinion of Imam Al-Uza 'I (Babush, 2009)

"Abu Bakr al-Sadiq", when sent Yazeed bin Abu Sufian a commander of the Muslim army to Al-Sham, said to him that "I recommend to you ten and save them: You will meet forces who claimed that they emptied themselves to God in silos, leave them and what they emptied themselves for. You don't kill a baby, a woman or a prominent elder, you don't cut a, you don't burn a palm, you don't cut grapes, and you don't slaughter a cow or a sheep or anything but livestock except to eat(Aliya, 2022).

The wisdom that Muslims are not exposed to the objects of enemies in *Dar es Islam* despite their war with enemies is due to the need for Muslims to deal with the owners of these objects. The fact that their objects remain in *Dar es Islam* without prejudice to it is beneficial to Muslims. Some scholars argued that enemy objects should be preserved in the Islamic State and not be harmed by commercial objects belonging to them, arguing that they were safely safeguarded, not taken by need, and that enemy objects must be maintained and organized even they became with the enemy's army (Alfatlawi, 2014)

4- Weapons And Means of Combat

The issue of proscribed weapons and permitted weapons has not been raised in the past as it is today, but Islamic law has established the principles governing the use of weapons and means of combat and its methods as follows:

- a. Prohibition of acts that increase the enemy's pain without benefiting combatants: Islam scholars have authorized fighting the enemy if he is a fighter, but this must be done away from acts of cruelty and brutality such as mutilation, representation of corpses, and burning of living people. These methods are forbidden and legitimately terminated. The Prophet Muhammad (PBUH) forbade bodies to be despoiled. He says, "Don't be treacherous and don't despoil." Islamic Sari'a is denied the burning of living enemies when able to.(Aliya, 2022).
- b. Proportionality in means and methods of warfare: The Prophet Muhammad (PBUH) expressed in his recommendation to Asim Ben Thabet: "Whoever fights, let him fight as he fights." Caliph Abu Bakr Sadiq also referred to this in his recommendation to Khalid bin al Walid when fighting the enemy, says "... Then if you meet the people, you fight them with the weapon with which they fight you the arrow of the arrow, the spear of the spear and the sword of the sword". Proportionality does not necessarily require symmetry. It is intended that the instrument or method of combat should be sufficient to prevail over the enemy to inflict excessive damage or pain.
- c. Prohibition of treachery: Muslims clearly distinguish between tricks and forbidden treachery. Tricks in the war are permissible, while treachery is forbidden. Treachery, an explicit or implicit denial of the Covenant and the arousal of the opponent's trust with the deliberate betrayal of this trust, is forbidden. (Dawi, 2000).
- d. Genocide punishments: Islam has forbidden the collective punishments imposed by some invading States on the whole town in retaliation for acts of warriors, which is now known as the "crime of genocide"⁽²⁾. God Almighty Says, "Say, "Is it other than Allah I should desire as a lord while He is the Lord of all things? And every soul earns not [blame] except against itself, and no bearer of burdens will bear the burden of another. Then to your Lord is your return, and He will inform you concerning that over which you used to differ." (in *Surrat al Anaam* 164)

Protection Of Prisoners in Islamic Law

The Islamic Shari'a established a system of war based on morality, virtue, and humanity, including provisions and controls on fighting, treatment of prisoners, wounded and sick, and avoiding cruelty and brutality. Islam is based on the preservation of human dignity in both war and peace and works on mercy for the vulnerable, prisoners, and others. Many verses of the Quran regulate the situation of prisoners, including the words of the almighty Allah: *"It is not for a prophet to have captives [of war] until he inflicts a massacre [upon Allah's enemies] in the land. Some Muslims desire the commodities of this world, but Allah desires [for you] the Hereafter. And Allah is Exalted in Might and Wise"* (Anfal 67)

The Prophet Muhammad (PBUH) treated prisoners with humane treatment. When one of the disbelievers fell captive in the hands of Muslims, they brought him to the Prophet Muhammad (PBUH). He said, "Be kind to him", and the Prophet said, "Gather your food and send it to him." (Alfatlawi, 2014).

The Islamic Shari'a regards the prisoner as a human being whose humanity has been neutralized from fighting, thereby deserving of such treatment as feeding, cloaking, housing, not entrusting him with an intolerable task, and not physically distorting or representing the prisoners. The prisoner in Islamic law has provisions concerning his life, slavery, and humane treatment. The prisoner may be released and may be redeemed by paying money or having his guardian pay instead of him (Gamak, 1997)

Islamic law did not leave the order of prisoners of war to the Head of State or the commanders of the army to tyrannize them according to their purposes. Still, it regulated their treatment to preserve the prisoner's dignity in a manner not reached by contemporary statutes. Since the advent of Islam and its teachings, there has been clear compassion for prisoners, and the most crucial distinction of the relationship between the Muslim army and the prisoner of war is that the force and the mystery with which the warrior was treated on the battlefield became inadmissible after his capture. After he lays down his weapon and surrenders his order to Muslims optionally or compulsorily, he must be treated with mercy and compassion because he is a helpless man, and he does not lift his weapon in the face of Muslims. The Prophet Muhammad (PBUH) was keen to be accompanied by the prisoners and recommended his companions, saying, "Do the best for the prisoners." (Bin Katheer, 1996).

The manifestations of compassion and mercy in Islam regarding prisoners are manifested in:

The inadmissibility of the Muslim fighter killing his captive in battle. He must be handed over to the competent authority for the decision imposed by the Supreme Islamic Interest.

The indivisibility of the mother's child in the family and not between the father and his little boy who does not have a mother, but also among The scholars said the hatred of differentiating between brother and brother, taking into account the human aspects of Islam,

Medical care must be given to prisoners, and all necessary food and medicine must be provided. Although Islam Considered Feeding Prisoners In Proximity To God (Aliya, 2022), Almighty Allah says, *"And they give food in spite of love for it to the needy, the orphan, and the captive"* (Alinssan 8). Islam has stopped harming prisoners of war and treating them well, which history has never seen.

It is clear to us that the Islamic Shari'a has established a system based on morality, virtue, and humanity that includes all provisions and regulations relating to combat and the treatment of prisoners and wounded by war, civilians, civilian objects, and religious installations. The Islamic Shari'a established these controls and provisions when no officer was limiting the behavior of the warriors. Therefore, it is a distinctive and innovative humanitarian system (Shihab, 2000).

CATEGORIES PROTECTED DURING ARMED CONFLICT IN INTERNATIONAL HUMANITARIAN LAW

International humanitarian law (IHL) is a set of international legal norms that protect civilians and civilian objects during armed conflicts. IHL protects specific categories harmed during an international or non-

international armed conflict. In this chapter, we clarify the categories that protect international humanitarian law and the so-called personal scope of application of international humanitarian law.

IHL is concerned with protecting civilians and those not taking part in conflict from the effects of armed conflict. In addition, it aims to humanize warfare by setting out rules for combatants. Two large codifications of IHL took place during the twentieth century, namely, the 1907 Hague Conventions and the 1949 Geneva Conventions. Subsequent codifications include, among others, the two 1977 additional Protocols to the Geneva Conventions (the first dealing with international armed conflicts, the second concerning non-international armed conflicts). (Bantekas & Papastavidis, 2021).

Victims of Armed Conflict

Armed conflicts leave victims of all parties, and States have therefore worked to develop humanitarian norms that protect victims of armed conflicts. Victims of armed conflict are already combatants who, by the established laws and customs of war, maybe the target of combat while carrying weapons unless they cease to participate in hostilities. and voluntarily surrendered or refrained from fighting because of captivity, injury, illness, or drowning. They are unable to continue fighting. They become victims who cannot be fought. Those who fall into their hands are responsible for committing themselves to their protection and humane treatment by international humanitarian law (Alanbaki, 2020).

1- Wounded And Sick on The Battlefield

Article VIII of Protocol I of the Geneva Conventions defines wounded and *sick* as “persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility”.

IHL prohibits any harmful discrimination among them for non-medical reasons. If the individual concerned belongs to the hostile party, in this case, priority must be given to his situation as a wounded or sick person, not as a combatant, for the period during which his wound or illness prevents him from participating in hostilities or requiring medical attention. Thus, a fighter who is just as healing while in the opposing party's grip becomes a prisoner of war and is covered by the laws granting protection to such persons (The Practical Guide to Humanitarian Law, ICRC)

International humanitarian law urges the need to search for and protect the injured after the end of hostilities. Armed attacks on medical units and facilities are prohibited, and the personnel who search for and provide appropriate treatment to infected persons must be protected; the protection of medical means of transport, and the parties must search for persons who informed the opponent upon their loss immediately after the end of combat operations, The civilian population must respect the wounded and sick even if they fall into the hands of the enemy (Almajdhob & Almajdhob, 2021)

Humanitarian protection also includes a wide range of individuals and groups, including those wounded and sick, during non-international armed conflicts. The 1949 Second Geneva Convention establishes rules protecting the wounded and ill during international and non-international armed conflicts.

Article III of the Convention mentioned above affirms that " *In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria*".

The preceding paragraph of Article III prohibits acts at all times and in places, the most important of which are attacks on life and physical integrity, in particular murder of all kinds, maiming, cruel treatment and torture, hostage-taking, attacks on personal dignity, in particular, professional and degrading treatment, sentencing and execution of sentences without prior trial by a legally constituted court, and guarantees all the necessary judicial

safeguards in the eyes of civilized peoples. Article III, paragraph 2, emphasizes that "The wounded, sick and shipwrecked shall be collected and cared for".

2- Wounded, Sick, And Drowned at Sea

The drowning and stricken at sea during armed conflict are considered one of the most vulnerable categories, exposed to tricky situations and life-threatening emergencies, whether military or civilian; international humanitarian law provides them with special protection given their situation of relief and rescue.

Article 8, paragraph 2, of Additional Protocol I of 1977 defines those affected at sea as *"persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility"*

Article 12 of the Second Convention of 1949 stipulates that the wounded, sick, and drowned who *"Members of the armed forces and other persons mentioned in the following Article, who are at sea and who are wounded, sick or shipwrecked, shall be respected and protected in all circumstances, it being understood that the term "shipwreck" means shipwreck from any cause and includes forced landings at sea by or from aircraft"*. The same article states that the parties to the conflict must treat the wounded, sick and drowned at sea *"humanely and cared for by the Parties to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created."*

It should be noted that the protection of drowners and those stricken at sea during armed conflicts is a humanitarian, moral, and legal duty, and all parties concerned must do their utmost to ensure the application of such protection and provide the necessary assistance to the drowning.

3- Prisoners of War

A prisoner is a combatant arrested by the forces of the other party, every member of the armed forces of one of the parties to the armed conflict, or the personnel accompanying those forces who fall into the other party's grip. The prisoner was defined as "any combatant in the hands of the enemy or the hands of the adversary, bearing in mind that the prisoners of war are under the authority of the enemy State and not under the authority of the individuals or military contingent that captured them (Aziz, 2017).

States have endeavored to conclude conventions on prisoners of war, culminating in the Third Geneva Convention on the Treatment of Prisoners of War of 1949, which contains 143 articles and five supplements to the Convention, all relating to prisoners of war.

According to Article 4 of the Third Geneva Convention of 1949 and the Hague Land Warfare Regulation, prisoners of war are:

- a. Members of the combat forces,
- b. persons attached to the service of these forces without taking part in combat, such as supply officers, telegraph, and other personnel involved in the army's administrative and financial work;
- c. Members of the volunteer forces,
- e. Members of the people who are resistant to aggression,
- f. Persons who follow the fighting forces in a business related to them or on a special mission without being considered part of it, in the condition that they have special authorization from the military authority of the forces they follow, such as Food vendors, military encroachers, newspaper correspondents,
- g. President of the enemy State and its ministers and staff who carry out key functions concerning the war activity, if found on the battlefield or its department. (Aziz, 2017).

In international humanitarian law, prisoners enjoy the following rights:

1. Inadmissibility of the killing of prisoners: International humanitarian law requires that prisoners be treated humanely in all circumstances and that appropriate measures be taken to protect them. Article 3 of the Third Geneva Convention of 1949 affirms that prisoners must not be killed, or their dignity assaulted and treated free from cruelty, nor shall reprisals be directed against them in any way.
2. The custodial State must move prisoners at full speed away from combat zones so that they are not exposed to the effects of military operations and provide them with adequate food and water
3. Prisoners may not be tortured: prisoners get arrested for escaping their danger and not retaliating against them. They cannot be held accountable for their actions in military operations. He must be treated humanely, and his dignity and personality must be preserved (Hershey, 1930)
4. Release and repatriation of sick and wounded persons to their States or accommodation in a neutral country: article 110 of the Convention III sets out the meaning of wounded persons and serious illnesses. It indicates which prisoners must be repatriated for health reasons if there is no agreement between the parties to the conflict to determine this situation. To ensure the implementation of repatriation or shelter provisions in a neutral country due to health conditions, the Convention emphasized the appointment of mixed medical committees "*annexed to the present Convention*". (Swadi, 2017).
5. Release of prisoners provided that the undertaking is given. Article 21 of the Convention states “ *Prisoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise*”

It is noted that Islam preceded international humanitarian law by taking the pledge when the Prophet Muhammad PBOH, released the prisoner of those involved in the Battle of Badr, *Amr bin Abdullah Al-Jamhi*, after he took a pledge to never return to fighting Muslims again (Bin Husham, 1955).

6. Prisoners of War Exchange: The Geneva Convention III did not include prisoner exchanges, leaving this to the warring States as agreed. The Convention refers to a limited situation in Article 109 “ *Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article . - Prisoners' repatriation after hostilities cease: Article (118) of Convention III affirms that "prisoners of war shall be released and repatriated without delay after the end of effective hostilities."*
7. Prisoners' repatriation after hostilities cease: Article 118 of Convention III affirms that “*Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities."*

Protection and Treatment of Civilian

Protecting civilians during armed conflict is one of the most essential principles of IHL. During armed conflicts, civilians are exposed to severe threats to their lives and livelihoods, and IHL has, therefore, provided them with special protection.

Because protecting civilians during armed conflict is essential, states agreed on the Fourth Special Convention on the Protection of Civilian Persons in Time of War 1949, which has been devoted to (159) articles and one annex.

IHL defines civilians as all persons who are not directly involved in hostilities, including women and children, who are the most vulnerable and at risk; elders and patients who suffer from illnesses or disabilities; humanitarian workers such as doctors, nurses, and personnel of humanitarian organizations.

Article 50, paragraph 1, of Protocol I to the Geneva Conventions of 1977 defines civilians as “*A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt, whether a person is a civilian, that person shall be a civilian*”. This definition distinguishes between combatants and non-combatants, i.e. the civilian population, so they do not carry

weapons against the enemy or contribute to hostilities. Protection means "those agreed principles, behavioral norms and humanitarian norms under ILH, whereby the obligation of States that engage in armed conflict with others to respect and abide by them to protect civilian that does not participate in hostilities from the negative effects of armed conflicts is binding on all States (Lakhdari, 2018)

ILH requires that civilians be protected from the effects of war, and some categories get specific protection, in particular, because of their vulnerable and compassionate situation and care, free from war disasters and severe damage to civilians. Civilians are generally protected from using excessively harmful or indiscriminate weapons.

Several principles must be considered for protecting civilians during armed conflict. Most importantly, a distinction must be made between civilians and combatants, civilians must not be directly targeted, all possible precautions must be taken to protect civilians and civilian objects from the effects of military operations, and any harm to civilians must be commensurate with expected military advantage and attend the direction of attacks that do not target a specific military objective (Alzaidi, 2018).

Article 4 of Convention IV affirms that "*Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals*". This article then sets out the categories under its protection that are not covered, as they will protect foreign civilians who are nationals of a party to the armed conflict and have found themselves in the State's territory where they are at war with their country (Aaminah, 2019).

During armed conflicts, ILH guarantees to all protected persons, wherever they may be found, in the territory of the parties to the conflict or under occupation, and protect their human rights always. Article 27 of the Convention IV constitutes the right to respect their person, honor, family rights, customs, cultural and social traditions, and religious beliefs. To ensure that protected persons are treated with humanity in all circumstances, to protect them from violence, threats, or contempt, and against robbery and public curiosity. The principle of protection and respect guarantees special protection for women against abuse of their honour, rape, forced prostitution, and any act that violates their inviolability (Alanbaki, 2020)

Customary ILH has affirmed that children affected by armed conflict have the right to special respect and protection during international and non-international armed conflicts. This obligation is reflected in many other obligations in the detailed rules of the Geneva Conventions and Additional Protocols to develop specific measures for treating children. This respect and protection include protection from all forms of sexual violence and separation from adults other than their families, access to education and appropriate foodstuffs, health care, evacuation from combat zones for safety reasons, and children's reunion with their families. The rationale for this protection considers the fact that the effects of armed conflict cause special harm to children. During the drafting of the resolution, ICRC noted the additional protocols that often leave them "War trauma requires indelible impressions", so it requires privileges of treatment compared to the rest of the civilian population. The need for special respect and protection reflects the fact that children may not have the same ability to understand the risk and risks inherent in some cases so they must be prevented proactively from participating in such situations. Regarding the recruitment of children into the armed forces, ICRC commented during the drafting of the Additional Protocols that "children taking such actions face the same risks as adult combatants, unlike adults, have not always understood very clearly what awaits them from participating directly or indirectly in hostilities" (Al-Dawoodi & Murphy, 2019).

Geneva Convention IV and the Hague Regulation on the Laws and Customs of Land 1907, contain special rules relating to the protection of civilians under the occupying military, which are required by the circumstances of the relationship arising from the status of occupation and which place them in constant contact with an enemy with whom they live in their country without Their Desire. The occupying Power's obligations were to ensure that the ordinary course of life continued as much as possible. The occupying authorities must consider the continued application of domestic laws and judicial legislation and, must achieve and ensure security and order, respect of laws, and the exercise of their judicial functions by local courts. The occupying authority may destroy private property only for military necessity, confiscate it only by domestic legislation, and must respect private property, family honor, and rights.

Article 49 of Geneva Convention IV affirms that protected persons may leave the country during the occupation. The occupying authority shall have the right to prevent them only for security reasons. It shall bring to the attention of the occupying authority that the forced transfer or exile of protected persons from the territory of the occupied State to the territory of the occupying authority or the territory of any other State are prohibited (Alanbaki, 2020)

Another group of civilians was added to the categories of civilians protected by the Geneva Protocol I of 1977. Article 73 of the 1977 Geneva Protocol I stated that “Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction.”

Protection Of Civilian Objects and Cultural Properties

Protecting civilians and civilian property, including cultural property, is one of the most essential principles of ILH and customary international law. These principles aim to reduce human suffering and protect lives and property during armed conflicts. Mankind pays great attention to protecting cultural and cultural heritage, especially in times of armed conflict, when these objects and property are at risk of destruction and looting. ILH, therefore, provides rules and provisions to protect such wealth from the scourge of war.

Protection of Civilian Objects

ICRC defines Civilian Objects as “Any object which is not a military objective. A civilian object must not be attacked unless it is used in a way that renders it a military objective. It may not be the target of reprisals. In case of doubt whether an object which is normally a civilian object (e.g., a place of worship, a house or other dwellings, a school) is a military objective, it must be considered as a civilian object.

ILH completes the protection of civilians if it coincides with protecting the objects that harbor them and providing them with the necessary needs. Therefore, these objects must be identified and distinguished from military objectives.

Civilian objects include all objects not used for military purposes, such as homes and residential buildings, hospitals and schools, places of worship, museums and libraries, commercial centres, and civilian infrastructure: electricity, water and communications systems.

Rule 7 of the customary IHL study provides that the parties to the conflict must always distinguish between civilian objects (protected objects) and military objectives. It also recalls that attacks may only be directed against military objectives and that they must not be directed against civilian objects. This rule of customary law is applicable in international and non-international armed conflicts (

Article 52, paragraph 1, of Additional Protocol I of 1977 affirmed that “*Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.*”

It is clear from the above text that all objects that do not contribute effectively to the military, whether by their nature, location, or their use, which do not achieve total or partial destruction, capture, or disruption in the circumstances prevailing in the time of war a specific military advantage should not be the object of attack or deterrence attacks. In this context, Geneva Conventions IV and Additional Protocol I obliged the contracting States to protect civilian objects, schools, universities, housing, hospitals, transportation and civil communications, farms, shops, mosques, and other places of worship and historical monuments and water for the watering of plants, human drinking, animals and the natural environment (Bilqasim, 2016).

The general protection of civilian objects in armed conflict includes the following rules:

Civilian objects are not the object of attack or deterrence attacks, and civilian objects are all objects that are not military targets.

All objects that do not effectively contribute to military action and whose total or partial destruction, disruption, or seizure does not achieve a definite military advantage shall not be the object of attack or deterrence attacks.

If suspicion arises that the objects are a civilian or military target, such as a place of worship, a house or other dwelling, or a school, they must not be used for military purposes.

So, an attack on civilian objects means a direct attack on the civilian population. Because those who work or serve in these objects are civilians, they are therefore vulnerable to attack. These civilians may not be isolated from the objects they operate, in addition to the material and moral damage caused by the attack on these objects to the civilian population of the destruction of human rights, because the damage to these civilian targets is an attack on the infrastructure needed for life in general. (Alshalalah, 2011).

Article 147 of Geneva Convention IV identifies grave violations of the Convention. It includes the destruction and rape of property that is not justified by military imperatives in grave violation of the Convention's provisions. Article 146 obliges the High Contracting Parties to take any necessary legislative action to impose effective penal sanctions on persons who commit or order the commission of a serious breach of this Convention and to prosecute and bring them before the Court.

Article 54 of Additional Protocol I and Article 14 of Additional Protocol II prohibit the starvation of civilians as a method of warfare. As a public asset underpinning the protective provisions of these provisions, this principle aims to ensure the civilian population's survival and avoid displacement, migration, or asylum. The Protocol grants special protection to this type of object and material, not only prohibiting their "attack" or "destruction" but also prohibiting their "transport or disruption". The wisdom of this addition is clear: any transfer or disruption of objects and objects indispensable to the civilian population's survival will have the same effect of attacking or destroying them. This effect deprives the civilian population of vital means to ensure its survival, whatever the reason, whether to starve them or drive them into displacement or any other motive (Alanbaki, 2020).

Article 49(3) of Protocol I clarifies that the provisions of that treaty on the protection of the civilian population and civilian objects against the effects of hostilities "apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air." While other aspects of this provision have given rise to controversies²⁰ it is uncontroversial that the said part of Protocol I applies to aerial and missile bombardments directed at targets on land (Sassòli, Marco & Cameron, Lindsey, 2006).

Protection Of Cultural Objects and Places Of Worship

The term "protected cultural objects" includes a range of sites and properties of cultural, historical, and religious interest which is accorded special protection by ILH, including archaeological and historical sites such as temples, archaeological sites, and ancient monuments, Religious places such as mosques, churches, temples, museums and libraries where artworks, manuscripts, and rare books are preserved, educational and scientific institutions such as universities, schools, laboratories, hospitals and medical facilities that provide health care to civilians.

The rules of ILH have paid particular attention to these objects, which are of great importance to people's lives, and both the Hague Regulations of 1899 and 1907 have referred to this through the need to protect cultural property. This was recognized in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. This protection was strengthened by Article 53 of Additional Protocol I of 1977, which stipulates that cultural objects and places of worship should be protected, and Article 16 of Additional Protocol II, which provides for the attendance of hostilities against objects and prohibits their use in support of the war effort (Bilqasim, 2016).

The Hague Convention 1954 contained three regulations for the protection of cultural property,

The first is the general protection system, as affirmed in Article 4 of the Convention, which refers to Parties' undertaking in times of armed conflict to respect cultural property by refraining from using such property or the means intended to protect it or the places directly adjacent to it for purposes that may expose it to destruction or damage and refraining from hostile action against it. Paragraph 2 of Article 4 prohibits the abandonment of obligations imposed on the Contracting Parties to protect cultural property "except in cases necessitated by compelling military imperatives".

The researcher on the topic "Protection of cultural property", Hayek Speker, responds to the exception in the preceding second paragraph that the abandonment of this obligation in the absence of a definition of "the concept of compulsive warfare imperatives" and thus of the concept of a fundamental exception to respect for cultural property, represents a serious weakness in this clause, and indeed in the Convention in general (Speker, 2000)

The second, the special protection system, relates to a limited number of cultural objects, such as caches dedicated to the protection of movable cultural property, memorial buildings centers, and other immovable cultural property, provided that the location of such caches, centers or other immovable cultural property is within a sufficient distance of any sizeable industrial center or important military goal that is a vital point. Any cache of cultural property may also be placed under the special protection system, regardless of location. If it is built in a protected manner, it is unlikely to be affected by military attacks (Alanbaki, 2020).

It must be emphasized that the protection afforded to private cultural objects also includes immunity against seizure, and booty, and includes the transfer of cultural property (transferred) either within the territory or to another territory at the request of the Contracting Party concerned, and the parties to the dispute undertake to refrain from directing any hostile action against any transfer of cultural property under the special protection regime (Article 14 of The Hague Convention 1954)

The third system is enhanced protection; Additional Protocol II to the Hague Convention of 1999 created the enhanced protection regime to address the Convention's shortcomings and strengthen its protection against important cultural property.

By Article 10 of Protocol II, cultural property may be placed under enhanced protection under three conditions:

Property is a cultural heritage of great importance to mankind.

They should be protected nationally by appropriate legal and administrative measures, recognizing their exceptional cultural and historical value and ensuring the highest protection standards.

Not to be used for military purposes or as a shield to cover or protect military sites; the party protecting them should make such a declaration.

If the property meets the preceding requirements, it may be placed under these Regulations after the procedures set out in Article 11 of Additional Protocol II, And include a request for enhanced protection containing all information permitted for inclusion on the international list by those standards; approval of this request by a Contracting Party from the Committee competent to list cultural property by the procedures set out in Article 11 of the Convention.

The enhanced protection system guarantees immunity to the cultural property covered by this system. The parties of conflict must refrain from targeting them and using cultural property or places directly adjacent to them to support military actions (Alanbaki, 2020).

CONCLUSIONS

Muslims have put in place a tight system of war, peace, and the protection of combatants that the West has not been able to absorb and inspire. Muslim scholars left considerable scientific wealth in the field of rules governing armed conflicts.

ILH in Islam differs from contemporary ILH. Islam makes no distinction between what is humanitarian and inhumane. All its rules have come for the sake of humanity. These rules protect it from injustice and want to protect its property and person and the inadmissibility of their lives.

ILH in Islam is based on amnesty, forgiveness, compassion, disregard for wrongdoing, and forgetfulness. Fighters carry these qualities when fighting against enemies. This law calls for human unity, cooperation for good, tolerance, freedom of belief, and justice.

Islam renounces all kinds of armed violence directed against human beings, even forbidding the killing of a non-eating animal, and Islam prohibition using armed violence against human beings and property except within certain controlled and precise limits

Islamic law and ILH have established a set of norms that contribute to ensuring adequate protection for civilian populations, who are found not to be involved in hostilities. These norms are common humanitarian principles that require the treatment of the civilian population on a humanitarian and moral basis.

Both laws have developed a set of rules that are ethical in armed conflicts, where they are characterized by an obligation of disputing States to respect and observe them so that they do not entail international responsibility to the global community because of their imbalance

Despite the evolution of the rules of ILH regarding the protection of civilian objects, arguably, there is still a lack of a comprehensive definition of those objects and not just a distinction between them and military objectives.

Legal and official efforts must continue to address developments and challenges posed by armed conflicts that have begun to take on previously unknown forms. This requires reviewing, explaining, and interpreting existing international humanitarian law and adding new rules that address its shortcomings to avoid exploiting gaps in international humanitarian law to infringe on human rights during armed conflicts.

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