

Protection Guarantees of War-prisoners' Rights and the Liability for the Violation thereof in Islamic Fiqh and International Law – A Comparative Study

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Abstract

The study acknowledges the guarantees for the protection of war-prisoners' rights and the liability for their violation in Islamic Fiqh and International Law, witnessing rising violent wars in which crimes are being committed against prisoners including execution, humiliation, bodily mutilation, torture, rape, sleep deprivation, starvation and other forms of oppression. The study is composed of four sections, followed by a conclusion. The first section highlights the definition of war-prisoners in Fiqh and international law, the second elaborates on their rights in Fiqh and international law while the third concerns the guarantees for the protection of war-prisoners' rights in Fiqh and international law whereas the fourth highlights liability for violations in Fiqh and international law. The researcher employs the descriptive, analytical method while benefiting from the inductive method, as well.

Keywords: Guarantees, Protection, War-Prisoners, Armed Conflicts, International Law, Liability

INTRODUCTION

The study addresses an important topic bearing the title: “Protection Guarantees of War-prisoners' Rights and the Liability for the Violation thereof in Fiqh and International Law”.

Humanity has known war and fighting since ancient times. Groups have invaded each other and, as a result, people have been killed, displaced, tortured and harmed, in the most horrific manner, using the deadliest of weapons, without regard for civilians, prisoners, patients or people of disability. War, therefore, became a terrifying specter for all nations, fearing its looming breakout.

Islam has had great merit in regards to controlling wars ascribing value to human life, establishing rules controlling combatants' behavior, which they must adhere to as sacred provisions, as their basis lies in the Quran and Sunnah. Implementing them is one of the things by which a Muslim draws closer to his Lord; therefore, he is forbidden from transgressing them. Following the atrocities of the two world wars, countries had called for the establishment of principles, laws and agreements, aiming to control combatants' behavior and protect civilians including prisoners.

The researcher acquaints researchers, students and others concerned with the guarantees for protecting war-prisoners' rights, and the responsibility resulting from their violation in Fiqh and international law, in confirmation, of the greatness of Islam and the sophistication of its legislations and its civilizational role in establishing controls that guarantee prisoners' rights, awakening international conscience along with its institutions, which are struggling to protect the rights of war-prisoners, encouraging countries to implement relevant international rules and agreements to the effect desired - given the current global reality, one in which heinous forms of oppression are being committed.

Study Problematic

The study's problematic concerns the urgent need to define the guarantees for the protection of war-prisoners' rights in Fiqh and international law and the responsibility incumbent on the violation thereof. Perhaps, therefore, the most prominent summative question is: What are the guarantees for protecting war-prisoners' rights and the responsibility for their violation? Other questions included in the study address the following:

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1. War-prisoners in Fiqh and international law.
2. Their rights in Fiqh and international law.
3. The guarantees for protecting them in Fiqh and international law.
4. The responsibility for violating such rights in both.

Study Objectives

The study introduces researchers, students and others concerned to the guarantees protecting war-prisoners' rights in Fiqh and international law and the liability resulting from their violation, addressing the following topics:

1. War-prisoners in Fiqh and international law.
2. War-prisoners' rights in both.
3. Guarantees for their protection in Fiqh and international law.
4. Liability for violating war-prisoners' rights in the two.

Study Significance

The study provides researchers, students and others concerned with a well-founded material on the guarantees for the protection of war-prisoners' rights and the responsibility incumbent upon their violation in Fiqh and international law, calling on those concerned to adhere to the teachings of Islam and international humanitarian law.

LITERATURE REVIEW

Related to the subject of the current study is a number of previous studies; herein, are the most relevant: "The Provisions of Prisoners of War in International Law and Islamic Law - A Comparative Study" by Hani Al-Tahrawi, "The Provisions of Prisoners of War: A Comparative Study: Positive Law and Islamic Law" by the same author, "The Treatment of War-Prisoners in Positive International Law and Islamic International Law" by Ahmed Salama, "The Protection of War-prisoners in International Humanitarian Law" by Lawrenqi Sharif, "The Provisions of the Treatment of Prisoners in Islamic Law: A Comparative Study" by Fathia Bougrine, "The Provisions of Prisoners in Islamic Jurisprudence" by Muhammad Shabir, "The Provisions of Prisoners in Islamic Jurisprudence and International Law" by Ali Jawad, and "The Protection of War-Prisoners in International Humanitarian Law", by Rahima Bouzian.

These studies varied in that some focused on the treatment of war-prisoners while others expanded on the provisions related to them. Still, some focused on the legal aspects concerning war-prisoners as others focused attention on the provisions of prisoners in general or on the treatment of prisoners in Sharia. Nevertheless, the present study is limited to the guarantees protecting the rights of war-prisoners while in captivity awaiting a decision to be made on their case, clarifying such rights, the guarantees for their protection and any liability incumbent upon their violation in Fiqh and international law.

METHODOLOGY

The researcher employs the descriptive analytical method while borrowing from the inductive method, deemed as appropriate methods for this type of studies in Islamic Sciences.

Limitations

The study's objective limit is confined to addressing the guarantees for the protection of war-prisoners and the responsibility pending their violation in Fiqh and international law, as they remain in captivity and a decision is yet to be made concerning them.

Study Plan

The study starts with an introduction and then lays out the following proceeding division into four sections and a subsequent conclusion:

1. War-prisoners in Fiqh and international law.
2. War-prisoners' rights in the two.
 - 2.1. War-prisoners' rights in Fiqh.
 - 2.2. War-prisoners' rights in international law.
3. Guarantees for protecting war-prisoners in Fiqh and international law.
 - 3.1. Guarantees for the protection of war-prisoners in Fiqh.
 - 3.2. Guarantees for the protection of war-prisoners in international law.
4. The responsibility arising from the violation of the rights of war-prisoners in Fiqh and international law.
 - 4.1. The responsibility for the violation of war-prisoners' rights in Fiqh.
 - 4.2. The responsibility for the violation of war-prisoners' rights in international law.
5. Conclusion.

War-prisoners in Fiqh and international Law

The researcher sees the necessity of defining prisoners and war each in an independent context as follows:

First: The terminological definition of prisoners

The term 'prisoner' in Fiqh is used in reference to: "free, rational, fighting men taken into captivity by force" (Ibn Jama'ah, 1988). The restriction of the prisoner in this definition to being 'a man' came in accordance with the custom of that time, when fighting in wars and armed conflicts was limited to men as then women were not allowed to fight. Contemporaries have considered the change that occurred in more recent times, regarding women's involvement in wars, and as such Dr. Muhammad Shabir approached the term 'prisoner' as referring to: "the combatant and those who possess such status, who have fallen into the hands of their enemies alive and, to whom, special rulings must apply" (n.d.). However, 'prisoner' in legal terminology, is a term applied to every combatant falling into the hands of the enemy and remaining under their authority rather than that of the capturing military unit (Al-Majdoub, 2009). Also, the term could refer to: any person who is temporarily arrested by an enemy in an armed conflict for military concerns (Al-Tahrawi, 2012).

Second: War in Fiqh concerns: fighting the enemy with weapons (Qalaji & Qunaibi, 1988) while in legal terminology, it refers to: "a conflict between the armed forces of each of the two conflicting parties, in which each of them aims to preserve its rights and interests in the face of the other" (Abu Haif, 1975). According to Charles Rousseau, the term denotes: "an armed conflict between two or more states with the aim of prevailing a political point of view" (1982). Nonetheless, the contemporary legal trend expands the meaning of war to include every case in which an international armed conflict takes place, even if the elements of the two previous definitions are not available, which means applying the rules of war even if fighting is taking place between groups that do not enjoy the status of a state (Abu Haif, 1975).

Third: In Fiqh, the term 'war-prisoners' is viewed as referring to: "the fighting men from among the infidels if the Muslims capture them alive" (Al-Mawardi, n.d.) and, in international law, a prisoner of war is: "any person who falls into the hands of an enemy for military reasons" (Jami', 1952) or, else, the term refers to: "any armed forces' member who lays down his arms and falls into the hands of the opposing enemy and is under their control" (Protocol I attached to the Geneva Conventions of 1977 Article 44 paragraph 1). The 1949 Geneva Convention refers to the group of individuals included in the above definition, even if they are not combat

soldiers (Al-Far, 1975); therefore, all persons who perform civilian work, such as contractors and many others who fall into this category like reporters, are also treated as war-prisoners. Persons of a non-combatant status, thus, are referred to as war-prisoners if they are captured on the battlefield or within its boundaries and fall into the hands of the opposing forces. Moreover, the above definition, also includes the inhabitants of non-occupied territories who carry weapons and rise up, of their own accord, to resist enemy forces (Salama, 1996).

1. War-prisoners' Rights in Fiqh and International Law

1.1. War-prisoners' Rights in Fiqh:

Islam recognized the complete rights of war-prisoners and sought for their protection (Jami', 1952) (Salama, 1996) It, additionally, sought to secure their essential needs until a final decision was made regarding them, preserving their dignity in a manner that contemporary positive systems and international agreements could not perform to this day (Othman, 1982). Hence, it could, in fact, be claimed that history has not witnessed the like of such treatment of war-prisoners, more refined, than through Islam (Abu Zahra, 1995). There are several rights that Islam has guaranteed to war-prisoners, (Shabir, n.d.) (Bin Aziz & Amelia, 2021), including:

1) Providing food and drink: prisoners are cut off from their means of sustenance so the Islamic state must, therefore, provide them with such means, in sufficient quantities, varieties and values. The Prophet's Companions were keen on providing sufficient food and drink to war-prisoners. Ali ibn Abi Talib, for instance, said concerning Ibn Muljam after his capture: "Feed him, give him drink and treat him well" (Al-Bayhaqi, 2003). Islam is so concerned with the issue of well-keeping prisoners to the extent that jurists considered that whoever imprisons an innocent man and cuts off his access to food leading to his death is considered a murderer and, therefore, retaliation is to be taken (Shabir, n.d.).

2) Providing clothing: clothing is an essential need, so it is the duty of the Islamic state to make sure that appropriate clothing is available to war-prisoners. Jabir ibn Abdullah, a Companion, stated that: "when the day of Badr came, prisoners were brought, among them al-Abbas, who did not have a garment covering him. The Prophet looked for one to cloth him with . . ." (Bukhari, 1422 AH, Hadith 3008). In another instance, the Chief Justice Abu Yusuf Yaqub ibn Ibrahim recommended the Caliph Harun Al-Rashid to designate special clothes for prisoners in the seasons of winter and summer (Abu Yusuf, n.d.).

3) Providing suitable housing: in the early days of Islam, prisoners were kept in the mosque, or distributed among Muslims, owing to the absence of special places for keeping prisoners at that time. The Prophet used to recommend good treatment of prisoners and, when prisons were established, scholars warned of the necessity for such places to be spacious and maintain healthy conditions; Al-Kattani stated, quoting Al-Mawardi: "legitimate imprisonment is not confinement in a narrow space" (Al-Kattani, n.d.: 1/246). They also stressed the necessity for places of detention to be far from battlefields, emphasizing that whoever confines a person to a hot or cold place, resulting in harm, must be subject to retaliation (Ibn Qudamah, n.d.). Scholars, also, required that detention centers must contain suitable beddings and, for each prisoner separately, in order to preserve their dignity and protect them from possible sexual harassment, citing as evidence here the hadith of the Prophet: "order your children to pray when they are seven years old . . . and keep them separate in their beds" (Abu Dawud, n.d.: 1/133, h. 495). If the matter of separation is, emphasized here, with regard to children, then it is even more appropriate with regard to adults. Moreover, a complete separation between male and female prisoners, in terms of housing, must be observed so as to prevent intermixing (Shabir, n.d.).

4) Not to burden them with what they cannot bear: the rights of war-prisoners in Islam require that they not be burdened with work that they cannot do: "Allah does not charge a soul except [with that which is within] its capacity" (The Quran, Surah 2:286), and the saying of the Prophet: "Be burdened with work that you can bear" (Al-Naysaburi, n.d.: 2/774, hadith 1103).

5) Not changing their beliefs by force: the Islamic state must preserve the rights of war-prisoners to practice their religious rituals, as prisoners may not be forced to abandon their religion and enter Islam: "there is no compulsion in [acceptance of] the religion" (The Quran, Surah 2:256).

6) Providing them with necessary health care: Fiqh requires the Islamic state to provide everything that would preserve their health; including all means of suitable treatment, which is concluded, generally speaking,

in hadith of the Prophet, addressing the captive Al-Uqayli: “This is your need” (Al-Naysaburi, n.d.: 3/1262, h. 1641), and his advice, regarding captives: “Treat the captives well” (Al-Tabarani, n.d.: 22/393, h. 977).

War-prisoners' rights in international law

Countries sought to establish agreements to protect war-prisoners from the atrocities that were inflicted upon them, such as the agreement between France and Britain in 1743, the Treaty of Friendship between Prussia and the United States in 1785, the Brussels Conference in 1874 and the Hague Conferences of 1899 and 1907, but the First World War 1914-1918 proved the futility of these agreements; as such, countries' representatives met in Geneva in 1929 and an integrated system was established to protect war-prisoners, hoping that it would be applied to all signatory and non-signatory countries, but the horrific crimes committed against prisoners in the Second World War 1939-1945, also, proved the inability of these agreements to protect war-prisoners, which necessitated amending the above with the Geneva Conventions in 1949, as the texts of these agreements laid down the duties of the captor state towards prisoners and the rights thereof, and the guarantees that can be put in place so as to protect these rights, with emphases on the fact that prisoners are not necessarily criminals who deserve punishment, but rather victims of wars who must be cared for (Al-Tahrawi, 2012). This was indicated by the Nuremberg Court: “Being a prisoner of war is not synonymous with revenge or punishment, but rather a mere precautionary detention, the sole purpose of which is to prevent the prisoner from returning to participate in the fighting, or contributing to it” (Sawadi, D. T: 80). Thus, the rights included in the Prisoners of War Agreement are considered important international achievements in the field of protecting war-prisoners and caring for their rights (Al-Tahrawi, 1984; Al-Tahrawi, 2012; Geneva Convention, 1949; Sharif, 2012), as follows:

First: General protection: war-prisoners are subject to the authority of the capturing state, which means that they must enjoy general protection and that the capturing state is responsible for whatever they are exposed to. Any unlawful action that causes the death of prisoners or endangers their lives is considered a serious breach of the relevant agreements. Violence may not be used against them to force them to provide information that the state has no right to access. Their places of detention must also be safe, far from combat areas and maintain healthy conditions. Attention must also be paid to treating and providing first aid to the sick and wounded among them.

Second: Providing food: the captive state must prepare appropriate food for war-prisoners and daily meals must be sufficient in terms of quantity and nutritional value, and must ensure the safety of prisoners and their continued good health. It is not permissible, under any circumstances, to cut off food as a collective disciplinary punishment for prisoners, nor is it permissible to deprive them of meals for the same purpose.

Third: Providing clothing: the captive state must provide sufficient and appropriate clothing and shoes for war-prisoners, in a way that suits the atmosphere in which they reside, with the necessity of repairing, renewing and cleaning these clothes constantly and replacing them whenever necessary.

Fourth: Providing cleaning tools: providing prisoners with tools for cleaning and maintaining hygiene is one of their essential rights, such as water, soap, various bathing tools and everything that would aid in preventing diseases and epidemics in the environment in which they are held captive.

Fifth: Providing appropriate medical centers: the capturing state must work to ensure that a medical center is available in every detention camp providing the necessary medical treatment for prisoners, conducting as well periodic medical examinations, to ensure their health conditions are well maintained, with the necessity of having places especially designated to isolate those suffering from infectious diseases or mental illnesses. Additionally, war-prisoners suffering from health conditions that require special treatment or surgery must be transferred to the nearest hospital for that purpose.

Sixth: Practicing religious rituals: the capturing state must, according to international law, allow war-prisoners to practice religious rituals.

Seventh: Engaging in appropriate work: work is an important human right; as such, the Geneva Convention of 1949 made it clear that the purpose of employing war-prisoners is to maintain their health and physical fitness, rather than for the purpose of exploiting them for the benefit of the capturing state.

Eighth: Practicing mental and physical activities: the detaining state must provide war-prisoners with everything needed to practice mental and physical activities, such as providing them with books, magazines, newspapers, devices, and tools they need to perform cultural activities.

Ninth: Correspondence and communications: the capturing state must clarify to war-prisoners the procedures for communications and correspondence, so that the prisoner is allowed, within a week of his arrival at a detention camp, to write directly to his family or to the main center for war-prisoners. They must also be allowed to send and receive letters and cards.

Tenth: Receiving parcels: the capturing state must allow war-prisoners to receive parcels containing food, clothing, medical supplies, religious or educational publications, recreational tools, or things, such as; books, materials that enable the continuation of studies, or cultural and sporting activities, etc., and these parcels shall be exempt from import and customs duties.

It appears to the researcher, thus, that there is a clear agreement between Fiqh and international law in terms of recognizing the rights of war-prisoners; however, countries do not abide by the rules of international law in wars and armed conflicts with regard to preserving such rights. Although the rights of war-prisoners were recognized after the horrific atrocities committed against them in wars and armed conflicts, especially in the two world wars, and in addition to international agreements having demanded the necessity of implementing them, countries, in contemporary wars, countries still tend to ignore these agreements. Examples of this include the Gaza War of 2023 which is still ongoing to this moment.

Guarantees for the Protection of War-prisoners in Fiqh and International Law

Guarantees in Fiqh:

Islam requires its followers to bear the burden of enacting and implementing its principles and laws. It obliges Muslims to comply with all rulings: “O you who have believed, obey Allah and obey the Messenger and those in authority among you” (The Quran, Surah 4:59). There is a number of important guarantees related to the protection of war-prisoners in Fiqh, which are obtained from the Quran and Sunnah, the ways of the Companions, various treaties, and the right to complain in Fiqh. All of which will be discussed as follows below (Al-Tahrawi, 1984; 2012):

First: the guarantees from the Quran and Sunnah: They are represented in the texts of the Quran and Sunnah. The Book of Allah and the Sunnah of His Messenger contain what are considered important guarantees for protecting war-prisoners including:

1) Surah Muhammad verse 4: “So when you meet those who disbelieve, in battle, strike their necks until, when you have inflicted slaughter upon them, then secure their bonds. Then either confer favor afterwards or ransom them until the war lays down its burdens” (The Quran, Surah 47:4). The verse indicates that fighting the enemy ends with victory and holding as captives those that remain, which requires taking the necessary measures as to prevent prisoners from escaping, then following that, the legal ruling is made clear; it is either to grant them favor by releasing them without compensation, or by ransom, and the verse orders the preservation of prisoners while, simultaneously, it does not permit exposing them to harm (Ibn al-Arabi, 2003). It, therefore, is considered the first guarantee confirming the necessity of providing protection for war-prisoners and preventing any assault on them, until their fate is decided by authorities (al-Tahrawi, 1984).

2) Surah At-Tawbah verse 6: “And if any of the polytheists seeks your protection, then grant him protection so that he may hear the words of Allah, and then deliver him to his place of safety” (The Quran, Surah 9:6). The verse indicates the obligation to respond to the request of the one seeking protection or safety; thus, it - as Fiqh jurists say - is evidence of the legitimacy of safety and, thus, in effect, violating prisoners’ blood and property becomes impermissible (Al-Zayla’i, 1313 AH; Ibn ‘Arafah, 2014). Hence, the obligation to respond to the request of the one (who is later treated as a war-prisoners) seeking protection is a clear indication of the

obligation to fully protect him from any aggression that may befall him until he reaches his place of safety, as a right for every Muslim, in confirmation of the Prophet's saying: "Muslims are equal in blood" (Abu Dawud, n.d.: 3/80, hadith 2751). The Muslims applied this in various wars. It was reported that Abu Ubaidah wrote to Umar ibn al-Khattab saying: a slave offered security to the people of a town in Iraq, asking Umar for his opinion, to which Umar responded: "God has gratified loyalty, so you won't be loyal until you have fulfilled your oaths . . . so fulfill your promise to them and then leave them" (al-Tabari, 1387 AH: 4/94; Ibn Abi Shaybah, 1409 AH: 6/510, hadith 33393).

3) Surah Al-Insan verse 8-9: "And they give food, in spite of love for it, to the needy, the orphan, and the captive, [saying], 'We feed you only for the face [i.e., approval] of Allah. We wish not from you reward, or gratitude' (The Quran, Surah 76:8-9). The verse refers to righteous believers, for what has made them deserving of this status, as evidenced by the verse above, is the fact that they feed the poor, the orphans, and those in captivity, as actions of devotion to Allah; therefore, it can be considered a clear guarantee for the protection of war-prisoners from aggression and harm. Ibn Kathir indicated that this verse was revealed regarding the prisoners of Badr (Ibn Kathir, 1419 AH).

4) The saying of the Prophet: "Treat the prisoners well" (Al-Tabarani, n.d: 22/393, hadith 977), which is one of the comprehensive hadiths of the Prophet, urging Muslims to protect war-prisoners and treat them well, as obedience to the Messenger is obligatory. Disobeying his commands necessitates severe punishment: "So let those beware who dissent from his [i.e., the Prophet's] order, lest fitnah [trials] strike them or a painful punishment" (The Quran, Surah 24:63).

5) On the authority of Abu Aziz bin Umair, the brother of Mus'ab bin Umair, who said: I was among the prisoners on the day of Badr. When the Messenger of Allah said: "Treat the prisoners well," I was with a group of the Ansar and when they served their lunch and dinner, they ate dates and fed me bread, as instructed by the Messenger of Allah.

6) On the authority of Sulayman ibn Buraydah, on the authority of his father, who said: Whenever the Messenger of Allah appointed a leader over an army or a raiding party, he would advise him in private to fear Allah and to treat those Muslims who were with him well, then he would say: "Fight in the name of Allah, for the sake of Allah, fight those who disbelieve in Allah, attack them, but do not commit treason nor commit treachery, do not mutilate nor kill a child" (Al-Naysaburi, n.d.: 3/1357, h. 1731).

7) On the authority of Safwan ibn Assal, who said: The Messenger of Allah sent us on a military mission and said: "March in the name of Allah and in the way of Allah, fight those who disbelieve in Him, and do not mutilate nor betray or steal, and do not kill a child" (Ibn Majah, n.d. 2/953, h. 2857). Al-Shawkani said in his commentary on this Hadith: "It contains evidence of the prohibition of mutilation" (Al-Shawkani, 1993).

8) When Omar bin Al-Khattab asked to remove Suhayl bin Omar's front tooth, so that he would not rise up against the Prophet, speaking in a harmful manner, he said: "I will not perform mutilation, lest Allah mutilates me" (Ibn Abi Shaybah, 1409 AH: 7/365, Hadith 36739). This is a clear indication of the extent of protection that prisoners should enjoy while remaining in captivity. Despite the great harm that was inflicted on the Prophet by Suhayl, he – that is, the Prophet, did not accept that Suhayl be harmed in any way.

Second: the actions and advice of the Companions: The Companions followed the approach that their Prophet Muhammad had outlined for them in this context. They, as such, did not betray or assault war-prisoners. Similarly, the caliphs advised the leaders of their armies to ensure protection of prisoners and civilians alike. When Abu Bakr al-Siddiq took over, he advised Yazid ibn Abi Sufyan upon sending him to the Levant, stating that: "If you rise victorious over your enemy, do not kill a child, an old man, a woman, or a baby. Do not shed the blood of an animal that is eaten. Do not betray when you make a covenant nor break it when at peace. You will pass by monks in monasteries, claiming that they have become so for the sake of Allah, so leave them alone and do not destroy their monasteries" (Al-Waqidi, 1997). Imam Malik, moreover, was asked about the issue of torturing prisoners in hopes that they would give up information on enemy plans or hideouts, but he responded that he: "had not heard of that" (Al-Hattab, 1994: 4/548), indicating the prohibition of torturing, beating, or

harming a prisoner for the purpose of obtaining information and military secrets or for any other purpose (Al-Tahrawī, 1984).

Third: treaties and the custom of publishing their texts: Peace treaties concluded by the Islamic state with other states are binding on the former, and it must, therefore, abide by their conditions and implement their provisions. If these agreements include issues related to prisoners and the conditions of their treatment and protection, the Islamic state must respect these treaties and implement them. Allah's words in the Quran confirmed the necessity of respecting treaties, making them sacred: "O you who have believed, fulfill [all] contracts" (The Quran, Surah 5:1), "And fulfill the covenant of Allah when you have taken it, and do not break oaths after their confirmation, while you have made Allah, over you, a security [i.e., witness]. Indeed, Allah knows what you do" (The Quran, Surah 16:91). Allah, also, denounces breaking covenants, and warns of serious consequences, and threatens those who break oaths, as deserving of His punishment: "But those who break the covenant of Allah after contracting it and sever that which Allah has ordered to be joined and spread corruption on earth - for them is the curse, and they will have the worst home" (The Quran, Surah 13:25). Therefore, it is the duty of the Islamic state to inform the leadership of the army and its serving members and all concerned Muslims of these treaties and the necessity of working to implement and abide by them. The Prophet concluded the Treaty of Hudaibiyyah with Quraysh and the Muslims witnessed firsthand the events of this treaty (Harun, 1396 AH). The Prophet and his successors advised the Muslim armies of what must be done and what must be left, especially with regard to fighting or the treatment of prisoners, which can all be considered important guarantees for protecting the rights of war-prisoners.

Fourth: the right to complain: Grievance is a right guaranteed to individuals or groups who have been wronged, which means their right to file a complaint with the responsible authorities to restore any rights taken away, including war-prisoners, as the justice of Islam does not differentiate between Muslims and non-Muslims, as all are equal before Islam, without preference or favoritism, but rather justice and fairness, in accordance with the words of Allah: "O you who have believed, be persistently standing firm for Allāh, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness" (The Quran, Surah 5:8). The Muslims' hostility and enmity toward a people should not prevent them from treating them with fairness. The Prophet personally inspected the affairs and conditions of prisoners, listening to their complaints. In Sahih Muslim, when the Muslims captured a man from Banu Amir ibn Sa'sa'ah, he filed a complaint to the Prophet, saying: "O Muhammad, why did you seize me?" The Prophet said: "Out of respect for that, I seized you for the crime of your allies, Thaqif, and then he was ransomed" (An-Naysaburi, n.d. 3/1262, h. 1641). It is well-known that the Caliph Umar ibn al-Khattab was fair to anyone who complained to him about an injustice, especially if he was a non-Muslim. For instance, upon learning that al-Walid ibn Uqbah, his governor over the Christians of Banu Taghlib, had threatened them, he immediately dismissed him and appointed others fearing that he might cause them harm (Al-Baladhuri, 1350 AH). In Futuh al-Buldan, it is mentioned that a delegation from the people of Samarkand came to the Caliph Omar bin Abdul Aziz with a complaint against Qutayba bin Muslim, the commander of the Muslim army, that he had entered their country by surprise, settling the Muslims therein. The Caliph wrote to his agent ordering him to appoint a judge to look into their complaint, so he appointed a judge who ruled to the effect of expelling the Muslim army (Al-Baladhuri, 1350 AH). The human record has not witnessed throughout history the positions that Muslims have adopted in this area.

Fifth: punishment: violating Islam's provisions, including the provisions concerning war-prisoners, is, from the perspective of Sharia, an aggression deserving prescribed punishment. Such punishments are considered effective and deterrent guarantees. A Muslim, thus, applies the provisions of Islam regarding war-prisoners, as sacred binding orders, whose violation exposes him to the wrath of Allah, the Almighty, in addition to worldly punishments exerted through the rulings of Sharia.

Guarantees in international law

To ensure that captor states implement the provisions related to war-prisoners, the 1949 Geneva Convention stipulated a set of measures, primarily aiming for the implementation of the provisions of this convention.

While some of these provisions fall on the captor state who is responsible for their implementation, implementing others hinges on the international community, as is demonstrated below:

First: Captor state duties: the captor state must implement all the provisions contained in the Geneva Convention with respect to war-prisoners and the following must be taken into account (Al-Tahrawi, 2012; Al-Tahrawi, 1984):

1) Publishing convention's text: by informing civilians and military personnel about the provisions of this convention through various media outlets and institutions.

2) Imposing penalties: the captor state must impose deterrent penalties on anyone who incites or commits any violations of the principles of this agreement.

3) The National Information Office: whose function is to collect data related to prisoners and their places of detention and to deliver such information to relevant countries and the main international center for prisoners and their families. Each of the warring parties must work to establish a national information office, equipped with all possible means that enable it to perform its role in the best possible way.

4) War-prisoners' complaints: the detaining state is obligated to allow war-prisoners to submit complaints to competent authorities, which, in return, must study these complaints and work immediately to deal with any proven violations.

5) War-prisoners' representatives: the capturing state must allow war-prisoners to exercise their right to representation through secret ballot. Their representatives must work to improve their physical, spiritual and mental conditions, and strive to care for their affairs, inspect their conditions, represent them before military authorities, and communicate with the delegates of the protecting state, the International Committee of the Red Cross, or any organization assisting prisoners. The capturing state must also grant prisoners' representatives all necessary facilities enabling them to carry out their duties towards the prisoners.

Second: Guarantees of the international community: The guarantees of the captor state may involve some ambiguity and bias with regard to the protection of war-prisoners. Hence, according to the Geneva Convention, there must be other guarantees represented by international supervision, carried out by neutral bodies and organizations (Al-Tahrawi, 1984), which are as follows (Al-Fatlawi, 1983; Al-Tahrawi, 1984; Al-Tahrawi, 2012; Rahima, 2016):

1) International protection: this refers to a neutral state looking after the interests of both parties to the conflict. This state appoints delegates, who go into detention camps and meet with war-prisoners, learn about their conditions, and inform the capturing state and the state to which the prisoners belong of any occurring violations. The protecting state monitors judicial procedures taken by the capturing state against accused prisoners and appoints lawyers for prisoners who could not otherwise have done so. The delegates of the protecting state attend trial sessions, monitor the implementation of relevant rulings and protest against infringements of any right that may have been inflicted on prisoners or any violations of trial procedures.

2) The International Committee of the Red Cross: an international institution whose activities cover the entire world. It is clearly active in times of war, unrest or internal tensions. It is one of the components of the Red Cross, and works to serve victims of armed conflicts. Its intervention is based on the Geneva Conventions. The countries that signed these conventions have granted the International Committee of the Red Cross full authority in practices that seek to protect, assist, and defend victims of wars and armed conflicts. Therefore, the countries that signed the Geneva Conventions are obligated to allow delegates of this committee to visit places of detention of war and civilian prisoners.

3) The Main War-prisoners Information Center: whose function is to collect information related to prisoners and communicate such information as quickly as possible to states to which prisoners belong. Parties to raging conflicts must provide this center with all the facilities that aid its mission. All correspondence of this center is exempt from postage fees, and it enjoys the exemptions stipulated in the Geneva Convention, and is exempt from telegraph fees, as well. This center was formed in accordance with the Geneva Convention and

is an important international guarantee for the implementation of the provisions of the Geneva Convention. It plays an informational role, by following up on prisoners of war, and ensuring how the detaining state treats them, and conveying this to the state to which these prisoners belong, which enables it to protest if any violations of prisoners' rights shall occur, and this is a type of international oversight as to ensure the commitment of the capturing state to implement the provisions of the relevant Geneva Convention. Moreover, the Central Research Agency, established by the International Committee of the Red Cross, assists this center in performing its tasks.

It becomes clear, as such, that Fiqh and international law, both, agree on the necessity of using all means ensuring ensure the protection of war-prisoners, but the texts of international law and its rules often remain ink on paper. Unlike Fiqh, where guarantees are primarily based on Sharia, giving it sanctity in practical reality, as an important guarantee for the protection of the rights of war-prisoners. However, countries do not comply with or apply international law, in this regard, to the same effect, as in Fiqh.

Responsibility for Violating War-prisoners' Rights in Fiqh and International Law

Responsibility in Fiqh

Responsibility for actions is one of the basic codes in Fiqh. Allah created man and gave him authority over his environment to achieve prosperity: "And [mention, O Muhammad], when your Lord said to the angels, 'Indeed, I will make upon the earth a successive authority.' They said, 'Will You place upon it one who causes corruption therein and sheds blood, while we exalt You with praise and declare Your perfection?' He [Allah] said, 'Indeed, I know that which you do not know'" (The Quran, Surah 2:30). Sharia stipulates the responsibility of man for every harmful act he commits, so he will be held accountable in this world for the violations he commits, and that does not replace the afterlife: "And [for] every person We have imposed his fate upon his neck, and We will produce for him on the Day of Resurrection a record which he will encounter spread open. [It will be said], 'Read your record. Sufficient is yourself against you this Day as accountant'" (The Quran, Surah 17:13-14), and: "So whoever does an atom's weight of good will see it, and whoever does an atom's weight of evil will see it" (The Quran, Surah 99:7-8; Al-Tahrawi, 2012), and the rights that a person can violate are of two types; one of them belongs to Allah; meaning, it is related to the public good, and this type cannot be waived, in order to preserve the public good and the interests of people, and to achieve justice. The Prophet did not accept the intercession of Usamah bin Zaid regarding the Makhzumi woman who had stolen, saying: "Do you intercede regarding one of the limits of Allah?" Then he stood up and gave a sermon, saying: "Those who came before you were destroyed because if a noble person among them stole, they would leave him alone, but if a weak person among them stole, they would carry out the punishment on him. By Allah, if Fatima, the daughter of Muhammad, had stolen "I would have cut off her hand" (Al-Bukhari, 1422 AH: 4/175, Hadith 3475).

Since Islamic law determines the rights of individuals in international affairs, liability is determined if the Muslim ruler or any of his subjects violates these rights, then the violator guarantees the result of his action and bears the consequences. What should be noted in this regard is that what is discussed in international jurisprudence concerning the necessity of attributing the action to one of the state's authorities does not exist in Fiqh, where liability is determined for whoever causes harm to others, so international liability in this case arises from the rules of Sharia, rather than from the rules of public international law (Al-Tahrawi, 2012). As such, the Islamic state punishes whoever commits any violation, being a violation of the provisions of Sharia, where that state's responsibility is to uphold these provisions, which means that it is not permissible to raise such issues in the relationship between the Islamic state and other countries, except in relation to arbitration issues between Muslims and others (Abdul Salam, 1981; Al-Tahrawi, 2012). Therefore, incidents of settling problems through legal means between the Islamic state and other countries were limited, even rare, as there were no international bodies that adjudicated disputes between countries so that it could be said that there was a system of responsibility in the sense known in the present era (Al-Tahrawi, 2012).

Since war-prisoners are under the protection of the Islamic state, the Imam alone has the responsibility to decide on their case. If any of them is harmed or mistreated, the perpetrator alone bears the responsibility for the resulting harm and is, thus, subject to punishment by the state. The punishment is determined based on the severity of the harm caused to the prisoner. If that harm or violation is harsh, then the punishment is

discretionary (Ta'zir) which is decided by the Muslim judge, according to Fiqh. However, if the violation is serious, such as exposing the prisoner to death, then the perpetrator of this serious crime is subject to the most severe types of punishments, in accordance with the Quran and Sunnah and the actions of the Companions. The Prophet states: "Do not commit fraud, do not commit treachery, do not mutilate, nor kill a child" (Al-Naysaburi, n.d. 3/1357, h. 1731). It is considered a treachery to kill prisoners after they have been disarmed and held in captivity. The Caliph Omar bin Al-Khattab threatened the killer, in such circumstances, with death, saying: "By the One in Whose Hand is Omar's soul, if one of you were to point to the sky with his finger, then to a polytheist, and descended on him [meaning with the intention to kill], then killed him, I would have killed him for it [in recompense]" (Al-Lalaka'i, 2003: 3/438, Hadith 658). Killing, in the context to which The Caliph referred, is only for the fighter and during the battle; however, if he throws down his weapon and surrenders, he becomes a prisoner, and is granted safety. Moreover, it is obligatory for Muslims to offer safety, on the battlefield, if the enemy shall so request. The Caliph Omar bin Al-Khattab warned against treachery after having offered safety, threatening: "It has reached me that some men among you seek after their enemy until they have sought refuge in a mountain and refrained from fighting you, saying: "Do not be afraid," and when you catch up with them, you kill them, and I swear by the One in Whose Hand is my soul, I do not know if anyone has done that, except that I will strike his neck" (Ibn Anas, 2004: 3/637, Hadith 1630).

Responsibility in international Law

If a state fails to fulfill its obligations under international law or the agreements to which it is bound, it is responsible for this failure and is not permitted to invoke the texts of its internal laws to escape responsibility. Thus, if the captor state commits an unlawful act, it bears ensuing consequences (Al-Tahrawi, 2012). This was confirmed by the International Court of Justice: "It is one of the principles of international law, and even one of the general provisions, that a state's failure to fulfill its obligations entails an obligation to adequately compensate for it" (Amer, 2007: 838). Scholars of international law and commentators have differed in regard to bearing responsibility. Some believe states are responsible, considering that international law addresses states. Others adopt the dual responsibility of the state and individuals. Still, some believe the natural person is the only subject of international criminal responsibility (Awad, 1965; Al-Ghazawi, 1970; Al-Tahrawi, 2012). Since the crime can only be committed by a natural person having the will, discernment, awareness and eligibility for penalties, he is the one bearing responsibility, which is what is applied to those committing international crimes; hence, the responsibility falling on the state is a civil, moral and political responsibility, such that it is obligated to compensate, prosecute criminals, or hand them over for trial, and it may be subject to economic, political or military measures, which are consistent with its nature as a legal person. Following is a brief statement of international penalties resulting from violating war-prisoners' rights (Al-Tahrawi, 1984; Al-Tahrawi, 2012; Sharif, 2012):

1) Financial compensation: the violating state is obligated to provide financial compensation, which must be equal to the violation committed. Obligating states to compensate for violations is an incentive for them not to deviate from relevant international rules and agreements while, simultaneously, it is a punishment at the same time for the violation itself.

2) Restoration: this is expressed by the in-kind repair of the damage caused as a result of the violation, as the original kind of compensation, unless that proves impossible, which is the principle on which international judiciary proceeds, so the violating state must restore the original situation; hence, if the captive state seizes something from prisoners' such as a property, it must return in full what it had seized; otherwise, the state is obligated to compensate in case restoration is impossible.

3) Moral appeasement: the capturing state must appease the affected state by taking particular measures - through an apology or other means of conciliation.

4) Criminal punishment: this punishment is directed at individuals, rather than states. The Prisoners of War Agreement adopted the principle of criminal responsibility for individuals, with regard to serious violations, considered war crimes according to international law. This responsibility falls on individuals regardless of their positions in or relations to the state.

5) Retaliation (reciprocity): a measure for measure where the purpose here is to pressure the state to implement due obligations. In the present study, this concerns treating prisoners in the same way that the other state treats the prisoners of the first. An old example of this is the principle of slavery, and a modern example is not allowing the International Red Cross to meet prisoners and check on their conditions by the captor state, as a reaction to similar measures by the other state.

6) Intervention for the good of humanity: actual pressure exerted on the captor state to oblige it to adopt accepted norms concerning war-prisoners, for the benefit of humanity. It could be political, such as severing diplomatic relations with the offending state, or economic, by halting transactions, or militarily, using force, provided that the purpose of this is to deter the aggressor state.

Notably, nonetheless, Sharia affirms responsibility for violating war-prisoners' rights, and decides on deterrent penalties and strict punishments for those assaulting war-prisoners, and transgressing the provisions of Islam. Muslims have adhered to these principles and set the most wonderful examples to be emulated (Al-Tahrawi, 2012), as violating such rights is a violation of the provisions and principles of Islam, which the state must protect, unlike international law, which has drowned itself in the task of determining who bears responsibility in similar cases. Moreover, as for international intervention, various obstacles are often faced given the right to veto, monopolized by a group of countries, hindering the implementation of many international resolutions.

CONCLUSION

Fiqh recognized war-prisoners' rights and preceded international law legislating and recognizing war-prisoners' rights while international law has recognized the rights of war-prisoners after numerous horrific atrocities. War-prisoners' rights in Fiqh are based on Sharia, giving them sacredness. Fiqh surrounded war-prisoners' rights with many guarantees ensuring their implementation; moreover, international law surrounded the rights of war-prisoners with guarantees that push toward their respect and implementation. Fiqh punishes any violations of the rights established for war-prisoners being a violation of the provisions of Sharia. Additionally, international law confirmed the responsibility for violating war-prisoners' rights. However, the principles of international law and its guarantees often failed to protect the rights of war-prisoners, owing to the dominance of major powers over international institutions which hinders fulfilling duties towards humanitarian issues.

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