

Promotion of Learning Islamic Law and IHL in Bangladesh

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Abstract:

This paper explores Islamic values and rules on the conduct of hostilities and compares them with similar provisions of IHL. With armed conflicts taking place in so many parts of the Muslim world, the Islamic law of war is as indispensable as ever for the protection of civilians and other persons *hors de combat*. Over the centuries, classical Muslim jurists have provided impressive legal literature, which, just as international humanitarian law (IHL), brings humanity in war. Emphasizing the universality of IHL's principles, which transcend legal traditions, civilizations and cultures, is absolutely essential for improving respect and protection for victims of armed conflict in the Muslim world. The objective of this study is to present the scenario of teaching and research of International Humanitarian Law in the Islamic World, Islamic Law in the Universities and Madrasah Education in Bangladesh, the importance of Learning IHL and IL in Bangladesh, and the Obstacles of Promotion of Learning IL and IHL in Bangladesh. Finally, this paper proposes an integration of "Islamic Law & IHL" into Bangladesh Islami University's Curriculum with a specific focus on M.A. in Islamic Studies Program.

Keywords: Islamic Law, international humanitarian law, integration

Introduction:

It was the culture of Islam which was the first to innovate the rules that constitute humanitarian international law. Some of these rules were carried back by returning crusaders and some were studied in Italian and Spanish universities from which the fathers of modern international law emerged. Although modern humanitarian international law, the law that governs the rights of man during times of war, has been recorded in written documents, largely as a result of the efforts of the Swiss humanist Henri Dunant, its principles cannot be divorced from their customary origins. This fact was recorded in the preamble to the Second Protocol supplementing the Geneva Conventions. It expressly states that whatever is not governed by the written rules is indeed governed by the rules of international custom, and protected by the principles of humanity and the dictates of the common conscience. The role of Islamic Shari'a in establishing those customs is well known; its merits are without limits and its injunction to adhere to the directives of conscience is a principle without limitation.

Shari'ah in its general sense means the way, and thus the Islamic Shari'ah is the way revealed to Prophet Muhammad (PBUH). Allah Almighty says: "Then We put thee on the (right) Way [Shari'ah] of Religion: so follow thou that (Way)"[Q 45:18]. This revealed text has been understood and interpreted through the application of Prophet Muhammad (PBUH) as well as the Ijtihad of Muslims through centuries. Shari'ah in its more specific sense means legislation, Allah Almighty says: "To each among you have we prescribed a law [Shir'ah] and a method" [5:48]. The Islamic legislation constitutes meanings, laws, rules and principles

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concerning human actions. It particularly, it aims at identifying the legal rulings for the actions of the legally competent persons.

Muslim jurists—depending on the religious texts as well as the vast literature of Hadith, Exegesis as well as their deep understanding of the Arabic linguistics—provide fatwas, in responses to questions posed to them, and deduce legal rulings for each and every human action. They make their utmost effort to not only understand the texts but also to remain faithful to the Shari’ah’s spirit. For this reason, Muslim jurists and scholars of the science of Principles of Jurisprudence (Usul al-Fiqh) has developed a system of higher objectives that correspond to the purposes and aims Islam has come to convey upon humankind and preserve the Shari’ah’s spirit. This system of objectives is called “Maqasid.” A more general approach that pinpoints the objectives behind the corpus of rulings (al-ahkam at-tashri’iyyah) found in scriptural sources is what Muslim scholars believed is needed. Their goal was to extract and classify the “higher objectives of law” (maqasid ash-shariah) and thereby to constitute a general philosophy of Islamic law that can be integrated in the production of legal rulings, fatwas and good-manners.

Objectives of Islamic Law (II)

Imam Abu Hamid al-Ghazali has stated that “The Shari’ah’s purposes of the creation are five: to preserve their religion, their souls, their mind, their offsprings and their money. So, everything that includes preserving these five principles is considered a maslaha (interest). And everything that result in failure of these principles is a harm that should be fought and tuned to an interest. The prohibition of failing or restraining these five principles has always been included in all religions and Shari’ah, as Shariha comes for the interest of humankind.”

Therefore Muslims believe that the purpose of the provisions of the legislation is to keep these five essentials. These essentials are indispensable in the interests of the religion and the world, so if they are lost so are the interests of the world. The world would be of corruption and all human destiny in the afterlife to manifest loss. The reason why these five essentials are called objectives is that all of the Shari’ah legal rulings are emerged and based upon them as will be shown in the coming examples.

The first higher objective of Islam is the preservation of religion. Religion is the sum of beliefs, rituals and rules commanded by God Almighty to regulate people's relationship to their Lord and relationships with each other. God Most High has intended through those provisions to establishing religion and install it in the people’s souls as they follow it. The reservation of religion is legitimated in many Shari’ah texts that call to faith and encourage it and forbid infidelity. Some of these Quranic texts are:

“And whoever desires other than Islam as religion - never will it be accepted from him, and he, in the Hereafter, will be among the losers.” (3:85).

And:

“Surely the religion in the Providence of Allah is Islam. And in no way did the ones to whom the Book was brought differ (among themselves) except even after the knowledge came to them, being inequitable among themselves. And whoever disbelieves in the signs of Allah, then surely Allah is swift at the reckoning.” (3: 19).

The second higher objective of Islam is the preservation of the self/soul. Islam has devoted a significant amount of texts and teaching into establishing the preservation of one's soul as the most fundamental principle of all. It is through life that Mankind is able to maintain or preserve all of Almighty's provisions and principles. Therefore, Islam has not only protected the soul from being killed or wasted but also established a set of rules to ensure its welfare spiritually and humanly—that is to secure surviving needs such as food, marriage, shelter, drinks and clothing—as well as establishing rules that deny and forbid the all means of self's distractions.

Allah Most High says:

“And in no way is it for a believer to kill a believer, except it be by mistake; and whoever kills a believer by mistake must set free a believing slave, and present a blood money (diya) to [the deceased's] family, unless they [charitably] remit it. As if [the slain] was from a people hostile to you and he was a believer, then [the penance is] to set free a believing slave; and if [the slain] was from a people between whom and you there is a covenant, then a blood money (diya) is to be presented to his family and [also] a believing slave must be set free. And whoever does not find [the means to do so] must fast two months consecutively, a penance from Allah. And Allah has ever been Knowing, Wise. (Q 4:92)”

And says:

“O you who believe! Retaliation (qīṣāṣ) is prescribed on you for the ones murdered; the freeman for the freeman, the slave for the slave, and the female for the female. But whoever is forgiven somewhat by his [slain] brother (i.e., his family), then adhering to with fairness and payment (adā') [of blood money] to him in kindness (iḥsān). That is an alleviation and mercy from your Lord, but whoever transgresses [the limits of Allah] after that, he shall receive a painful torment. (Q 2:178)

Also:

“And do not kill the soul which Allah has forbade[to be killed] except by [legal] right. This has He instructed you that you may use reason.” (6:33)

The third higher objective of Islam is the preservation of the mind. Allah Most High has commanded us to preserve our minds and has forbid all the means to disable it through the toxicities, alcohols. That is Allah Almighty has granted and distinguished humans from all other creatures by the grace of the mind, which means the ability to distinguish and making choices, and solving the difficulties faced in life. Allah has made humans, therefore, His successor on earth, and so they need to maintain their mind, which is the basis of the discourse of the succession on earth. Numerous amount of Islamic teachings exhorts on the realization of the mind, its importance, and describes it as the altitude grace. Some of the Quranic texts that encourage humans to use their mind to contemplate upon the creation of Allah Almighty and to understand their succession on earth are:

“So have they not traveled through the earth and have hearts by which to reason and ears by which to hear? For indeed, it is not eyes that are blinded, but blinded are the hearts which are within the breasts.” (22: 46)

And:

“Who remember Allah while standing or sitting or [lying] on their sides and give thought to the creation of the heavens and the earth, [saying], "Our Lord, You did not create this aimlessly; exalted are You [above such a thing]; then protect us from the punishment of the Fire.” (3:191)

And regarding forbidding what affects the mind or disables it, the intoxicants, Allah Almighty says:

“O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.” (5:90)

The fourth higher objective of Islam is the preservation of lineage/offspring. For the sake of persevering human's offspring, Shari'ah has legitimized marriage and reproduction, and for the sake of protecting it, Shari'ah has forbade adultery and assigned a legal punishment (had) for whoever commits it. Moreover, Shari'ah also assigned a legal punishment for whoever lies about or render someone guilty unjustly of committing it (had al-Qazf). This proves that in maintaining the lineage a necessity for the purity of offspring from any potential distortion or corruption by mixing it so one does not even know who are their parents or who are their own children. In Quran we find the forbiddance of adultery is stated clearly and affirmly, Allah Most High says: “And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way. (17:32). And its punishment is stated in: “The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah , if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment.” (24:23)

The fifth higher objective of Islam is the preservation of wealth. Shari'ah has commanded for the purpose of preserving human's wealth the pursuit of earning a living and permitted transactions and exchanges and trade. Shari'ah also, for the sake of preserving wealth as well, forbid and placed punishments upon theft, deception, treason and consuming people's wealth unjustly, in addition to discouraging the squandering of money.

Money, as well as everything, belongs to God Almighty, who has granted humans the status of successors on earth, and so they are commanded to preserve such grace not to waste it. Allah Almighty says in Holy Qur'an:

“And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful].” (2:188)

“And give to the orphans their properties and do not substitute the defective [of your own] for the good [of theirs]. And do not consume their properties into your own. Indeed, that is ever a great sin.” (4:2)

“Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is

[just] like interest." But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah . But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein." (2:275)

“Allah expunges riba (Interest or other unlawful) and He augments donations, and Allah does not love every most disbelieving most-vicious person.”(2:276)

The Islamic Shari’ah has thus established and reserved these five higher necessities and embodied them in all of its rulings, teachings and good-manners. Besides, Shari’ah has built a system of rulings to construct these objectives so that all that lead to them is permissible and all that apposes them are forbidden. Thus we see that all rituals are legislated for the preservation of religion; all norms (such as food, cloth, shelter, and drink) are legislated for the preservation of the self; all transactions are legislated for the preservation of wealth and lineage; and all punishments are legislated to prevent all harms and ward off that may occur on the way of achieving or fulfilling these higher objectives.

Muslim scholars have classified the entire range of maqasid (principles) based on the human’s interest, into three descending categories of importance: (i) the essentials, (ii) the complementary, (iv) and the desirable or the embellishments. The essentials are these five objectives, that are conceived as absolute requirements to the survival and spiritual well-being of individuals, to the extent that their destruction or collapse would precipitate chaos and the demise of normal order in society. The Shari’ah, on the whole, seeks, primarily, to protect and promote these essential values, and validates all measures necessary for their preservation and advancement. There is also a general agreement that the preservation of these necessities is the ‘objective behind any revealed law, not just the Islamic law.

International Humanitarian Law (IHL): An Overview

International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict.

International humanitarian law is part of international law, which is the body of rules governing relations between States. International law is contained in agreements between States – treaties or conventions –, in customary rules, which consist of State practise considered by them as legally binding, and in general principles.

International humanitarian law applies to armed conflicts. It does not regulate whether a State may actually use force; this is governed by an important, but distinct, part of international law set out in the United Nations Charter. Where did international humanitarian law originate? International humanitarian law is rooted in the rules of ancient civilizations and religions – warfare has always been subject to certain principles and customs. Universal codification of international humanitarian law began in the nineteenth century.

Since then, States have agreed to a series of practical rules, based on the bitter experience of modern warfare. These rules strike a careful balance between humanitarian concerns and the military requirements of States. As the international community has grown, an increasing

number of States have contributed to the development of those rules. International humanitarian law forms today a universal body of law.

A major part of international humanitarian law is contained in the four Geneva Conventions of 1949. Nearly every State in the world has agreed to be bound by them. The Conventions have been developed and supplemented by two further agreements: the Additional Protocols of 1977 relating to the protection of victims of armed conflicts. Other agreements prohibit the use of certain weapons and military tactics and protect certain categories of people and goods. These agreements include: the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, plus its two protocols; the 1972 Biological Weapons Convention; the 1980 Conventional Weapons Convention and its five protocols; the 1993 Chemical Weapons Convention; the 1997 Ottawa Convention on anti-personnel mines; the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict².

Teaching and Research of International Humanitarian Law in the Islamic World

At the onset of the twenty-first century, this subject gradually became a full optional course in some of the universities in Asia. Most of the Asian law schools have introduced IHL as an optional paper at the undergraduate level or as a part of a specialized course on International Law at the postgraduate level. The basic syllabi and curriculum of this course mainly revolves around a detailed study of the four Geneva Conventions and the two Additional Protocols. Apart from all the general activities undertaken to increase knowledge of international law and IHL amongst the civilian population in this region, some countries have gained prominence compared to others owing to their readiness to travel the extra mile, inter alia to help increase the popularity of IHL as a separate area of law³.

Regional Delegation at Kuala Lumpur

Thirty academics and officials from 10 countries in the region enhanced their IHL expertise at the annual South-east and East Asian Teaching Session (SEATS), co-organized with the National University of Malaysia, which saw growing participation from the government and National Society representatives. Demonstrating a sustained interest, lecturers in the region continued to teach IHL, while teams from leading universities took part in national and regional IHL moot court competitions. Students from Indonesia, Malaysia and Singapore tested their IHL knowledge at a debating competition at Malaysia's Universiti Teknologi MARA. School children learnt about humanitarian principles through the Exploring Humanitarian Law programme⁴.

² Protocol Additional (I) to the Geneva Conventions of 12 August 1949, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), Art. 48, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=D9E6B6264D7723C3C12563CD002D6CE4>

³ Ahmed Al-Dawoody, "Islamic law and international humanitarian law: An introduction to the main principles". ISLAMIC LAW AND INTERNATIONAL HUMANITARIAN LAW. Sarajevo, 2020, p. 3.

⁴ *ibid*

Regional Delegation in Kuwait

A number of activities to advance the integration of IHL into university curricula were initiated and continued through network building in academic circles. These included pursuing discussions on this matter with the deans of universities in Bahrain, Kuwait, Oman and Qatar as well as encouraging the participation of students and scholars in regional courses in Beirut.⁵ Lecturers at the Kuwait International Law School attended a presentation on IHL and the ICRC, as did journalism students at Oman's Sultan Qaboos University. The Dubai Police Academy, which was planning to offer a graduate course in human rights and humanitarian law, came out with its own academic publications on IHL.

Contributions by the Delegations of Pakistan

Pakistan had been in the grasp of internal conflicts due to the influence of major terror groups such as the Taliban, Lashkar-e-Tayyaba and Al-Qaeda. In Pakistan, Islamic scholars exchanged views with the ICRC on neutral humanitarian action. Academic institutions, including the faculties of Islamic studies and Sharia law of nine universities, promoted IHL using materials such as ICRC-donated libraries and books in Urdu on IHL and its links with the Sharia. Two prominent public universities worked to incorporate studies on the links between Sharia Law and IHL into their curricula. Students and teachers deepened their understanding of IHL at presentations and training sessions, including abroad and at moot court competitions. Pakistan's prominent international law think tank, the Research Society of International Law, contributed to and published a collaborative study on explosive remnants of war. Three representatives of Islamic charities participated in international workshops on the Health Care in Danger Project with ICRC support⁶.

Delegations in Afghanistan and Iraq

Apart from Pakistan, Afghanistan and Iraq are two more countries located in the sub-continent and middle-east respectively that have been ravaged by war from time to time. The most noted conflicts have been the Gulf Conflict in the early part of 1990s involving Iraq and many other middle-eastern countries and the counterterrorist operations in Afghanistan by the USA. The ICRC as a neutral organization has taken steps to teach the common masses starting from the school level about the need to follow the basic rules of conduct of warfare. In Afghanistan, about 30 imams and religious leaders participated in round-table discussions in Herat, while over 20 eminent religious scholars attended seminars relating to IHL and Islam in Afghanistan and abroad. Law/Sharia law students enhanced their knowledge at an IHL workshop. Independent humanitarian action was the topic of the first ICRC round-table with youth associations. Students at the Faculty of Medicine, Kabul University used the delegation library to research issues covered by the Health Care in Danger project. National Society communication officers attended a workshop enabling them to support dissemination needs in the field.

⁵ For further information see, A. Al-Dawoody, above note 7, pp. 149–183; Ahmed Al-Dawoody, "Al-Sarakhsī's Contribution to the Islamic Law of War", *UCLA: Journal of Islamic and Near Eastern Law*, Vol. 14, nb. 1 (2015): p. 37–43.

⁶ Ahmed Al-Dawoody, "Islamic law and international humanitarian law: An introduction to the main principles". *ISLAMIC LAW AND INTERNATIONAL HUMANITARIAN LAW*. Sarajevo, 2020, p. 3.

The ICRC delegation in Iraq took special initiatives through regular meetings and workshops to help the religious and tribal leaders deepen their awareness of the ICRC's mandate and activities and of the links between IHL and Islam. Their acceptance helped expand the organization's access especially to conflict/violence-affected areas. Increased contacts and activities with universities, including meetings with the deans of law faculties in Baghdad, Diyala and Najaf, allowed for more intense promotion of IHL, with a view to seeing it integrated into academic curricula. Students, lecturers and university officials participated in IHL events, including a course in Beirut, Lebanon⁷.

Origins of the Islamic law of war

Over the course of history, most legal systems have devised rules to govern the use of armed force, stipulating both the legitimate reasons for war and the rules governing the conduct of hostilities. IHL does not specifically address the former of these two areas, regarding the justifications for resorting to armed force. This matter is covered by public international law under the Charter of the United Nations (UN), which prohibits the use of armed force except in self-defence or with authorization from the UN Security Council, as set out in Article 42 of the Charter. The function of IHL is to set rules and restrictions on the behaviour of combatants in both international and non-international armed conflicts, with a view to preventing or limiting the effects of armed conflict, minimizing the suffering of victims and protecting individuals who are either not taking part or have ceased their participation in the hostilities, as well as protecting movable and immovable property not being used in military operations. This branch of law is also known as the law of war or the law become more commonly known as international humanitarian law, emphasizing the humanitarian motives that underpin this newly developed branch of law⁸.

The sources of Islamic law are divided into two main groups: primary sources and secondary sources. Primary sources (also known as "agreed-upon" sources) include the Qur'an, the Sunnah (tradition) of the Prophet, *ijmā'* (legal literature representing consensus of opinion) and *qiyās* (rules of analogy developed via deductive reasoning). Secondary sources (also known as "disputed" sources) are a number of jurisprudential methods for developing Islamic laws which come in varying order of authority, including *istihsān* (juristic/public preference), *maslaḥ ah mursalah* (public interest), *'urf* (custom), *shar' man qablanā* (*sharī' ahs* of religions before Islam), *madhhab al-ṣaḥābī* (the opinions of the Companions of the Prophet), *sadd al-dharā'i'* ("blocking the means" – i.e., preventing the occurrence of something evil, though it also extends to include facilitating the occurrence of something good) and *istiṣḥāb* (the continuation of the applicability of a rule that was accepted in the past, unless new evidence supports a change in its applicability)⁹.

The defining factor that differentiates Islamic law from most other legal systems is the fact

⁷ Muḥ ammad ibn 'Umar al-Rāzī, *Tafsīr al-Fakhr al- Rāzī: Al-Mushtahar bi-al-Tafsīr al-Kabīr wa-Mafā tīh al-Ghayb*, Vol. 5 (Dār al-Fikr, 1981), 138.

⁸ Ahmed Al-Dawoody, "Islamic law and international humanitarian law: An introduction to the main principles". *ISLAMIC LAW AND INTERNATIONAL HUMANITARIAN LAW*. Sarajevo, 2020, p. 3.

⁹ Ahmed Al-Dawoody, "Islamic law and international humanitarian law: An introduction to the main principles". *ISLAMIC LAW AND INTERNATIONAL HUMANITARIAN LAW*. Sarajevo, 2020, p. 3.

that it includes rules on worship, beliefs and morality, as well as rules governing numerous other areas of life such as family law, financial transactions, criminal law, governance, and international relations in peacetime and wartime. Based on the religious aspects of Islamic law, some people mistakenly conclude that all provisions of Islamic law are unchangeable. In reality, however, while it is true that the rules on worship, creed and morality or unanimously agreed-upon rules are fixed and unchangeable, there are other provisions which may be changed, as long as this is done to achieve the objective of the legislator. As described by Ibn Qayyim al-Jawziyyah (d. 1350), serving the public interest is the objective of every single rule in Islam, because sharī‘ah is founded on the divine command and the public good of the people in this world and the next. It is all justice, all compassion, all public good, and all wisdom. If any ruling changes justice into injustice, or mercy into its opposite, or the public good into corruption, or wisdom into folly, then it cannot be part of the sharī‘ah, even if an interpretation of the sharī‘ah is invoked, for sharī‘ah is God’s justice among His worshippers, and His mercy amongst His creation, and His shadow on his earth.

Most Islamic law regulations on the use of force are derived from the Holy Qur’an and Sunnah, as well as the early historical precedents of the Islamic state since the seventh and eighth centuries, or what are known in the Ḥanafī school of law as the *siyar* (approach) – i.e., the ways and methods followed by the Islamic state in its dealings with non-Muslims in times of peace and war, specifically in the era of the Prophet Muhammad and the Rightly Guided Caliphs. The term *siyar* is also used by some Ḥanafī jurists to refer to the rules governing certain types of NIAC that occurred in the first half of the first Islamic century, such as what are known in Islamic jurisprudence as *qitāl al-bughāh* (fighting against rebels or secessionists) and *ḥ urūb al-riddah* (wars of apostasy). Muslim jurists established legal limits on the use of force using those sources and their own *ijtihād* (reasoning or judgment in making laws), based on both the sources themselves and the above- mentioned tools such as *qiyās*, *maslaḥ ah mursalah* and *madhhab al-ṣaḥabī*. We can therefore conclude that these regulations were developed under a different model of international relations and in a specific context during the lifetime of the Prophet between 624 and 634 AD, in which military engagements were less brutal and deadly than those seen today¹⁰.

Islamic Laws of War and International Humanitarian Law:

In a more contemporary context where both Islamic law and IHL have been developed in their respective ways, there has been much engagement between IHL and Islamic scholars. The ICRC, most noticeably, has been conducting dialogues with Islamic scholars worldwide, such as in Cairo, Aceh, and Geneva. All these events, particularly those that I have participated in, always end generally with a happy tone: to some extent, Islamic law and IHL seem to have similar principles to protect certain types of persons during warfare. In such a case, it is hoped that armed conflicts involving Muslims should have a more faithful application of the laws of war, considering how obeying Islamic law is an extension of worshipping Allah.

However, in wars involving Muslims today, many IHL violations have been attributed to groups claiming to follow Islamic law, such as ISIS and the Taliban, causing many victims among those who are supposed to be protected in war. Is this because Islamic law and IHL do

¹⁰ Ahmed Al-Dawoody, “Islamic law and international humanitarian law: An introduction to the main principles”. ISLAMIC LAW AND INTERNATIONAL HUMANITARIAN LAW. Sarajevo, 2020, p. 3.

not really share similar principles? Or, Islamic law and IHL do share similar principles, but the said Islamic groups are violating their own laws?

Despite the joy of having some principles shared between Islamic law and IHL, there are incompatibilities in various other detailed aspects that may create more victims. In some cases of incompatibility between Islam and international law, it can be a case of ‘conflict of worldviews’, such as much of the ‘Islam and human rights’ debate. However, in the case of Islam and modern IHL, many incompatibilities are due to Islamic law scholarship lagging in assessing and formulating new rulings to anticipate new problems in contemporary warfare that did not exist in classical works.

This results, in most cases, to a problem dreaded by both Islamic law and IHL: less protection afforded to those who deserve it. In my view, there are two main problems: lack of comprehensive works on the relationship between fiqh al-siyar and international law, and lack of comprehensive details in rulings for various aspects of modern warfare not found in classical scholarship.

The Connection between Fiqh al-Siyar and International Law

The laws regulating the conduct of armed conflict is a branch of international law, just like how the Islamic laws of war (fiqh al-jihad) is a branch of fiqh al-siyar. However, there is a lethargy in fiqh al-siyar scholarship explaining how it should relate to International law.

We have several problematic approaches, such as how some Islamic jurists seem too apologetic. Nesrine Badawi suggests that even renowned Islamic jurists like Shaykh Wahbah Al-Zuhayli and Shaykh Muhammad Abu Zahrah are too hastily compromising Islamic legal standards to prove that Islam conforms with international standards. Other scholars like Ebrahim Afsah even suggest forgetting Islamic law and surrendering to international law standards, an approach heavily criticized by other Muslim scholars such as Khaled Bashir.

Other problematic approaches are attributable to those labeled ‘extremists’ who detest international law altogether. For example, the prominent Al-Qaeda scholar Abu Muhammad Al-Maqdisi declared that Saudi Arabia is a Kafir (disbelieving) State because it subjects itself to non-Islamic international law and the United Nations. While many will gasp at this, Al-Maqdisi has a point. Believing other laws as superior to the laws of Allah is, according to scholarly consensus, a nullifier of faith. A Muslim believing so could be declared as an apostate, although such a process of takfir (i.e., declaring a Muslim as an apostate) must not be taken lightly and would require some procedure. After all, the real source of law in Islam is only Allah. As Imran Ahsan Nyazee Khan (2003) explains, every other source of law is derived from what He reveals.

However, the Islamic sciences of fiqh al-siyar undoubtedly intersect with international law. Muhammad Hamidullah (2011) explains that fiqh al-siyar has recognized treaties and customary international law (core sources of international law) since the classical Islamic period. Abiding by agreements (which do not contradict the Sharia) is a religious obligation and betraying them is a sign of hypocrisy. Meanwhile, following customs (which do not contradict the Sharia) is also among the secondary sources of law in Islam. In this vein, it may be essential to critically examine Al-Maqdisi’s critic rather than dismiss him altogether simply because he is an ‘extremist.’ A careful examination of each international treaty and

customary international law must be made to consider which can be accepted Islamically and which cannot, rather than a blanket acceptance or rejection.

But this is a merely traditional way of seeing international law. A more contemporary and constructivist approach is to recognize the international law-making trend. As Catherine Brölmann describes, such a trend of international law has “rules with a statutory function, above and beyond rules governing voluntary legal relations between equal subjects.” This is not yet considering *jus cogens* and *obligatio erga omnes*, considered as the highest norms of international law to which no derogations are permitted. Especially relating to the laws of armed conflict, much of IHL is considered *jus cogens* norms, and many of the conventions (the Geneva Conventions and others) are also law-making treaties.

There are scholars like Antony Anghie (2004) and many others who note how the developing world did and do not have fair chance to be involved in this process of law-making. The Muslim world is, sadly, included. However, Islamic scholars do not seem to be helping much in this regard either. It appears that all works of *fiqh al-siyar*, classic and contemporary, are written in a manner where the Islamic state is fully sovereign and only accepts what it consents to. Shaykh Wahbah Al-Zuhayli (2011) realizes how contemporary international law, to some extent, erodes sovereignty. However, like most (if not all) other works of *fiqh al-siyar*, he does not explain how to position the international law-making trend in a *fiqh al-siyar* framework, especially regarding rules which are binding despite the absence of direct consent (such as soft law). Hence, more research is needed in this regard.

There is a severe lack of detail in how contemporary Islamic jurists deal with questions arising from the developments in modern warfare. As reflected in most contemporary literature on IHL and Islam (such as those published by the ICRC, including Ammeur Zemmali’s edited book), many scholars seem content that Islam teaches humaneness because “The Prophet (peace be upon him) prohibits killing women, children, and the decrepit in war.” Such a notion is correct, but there are numerous details not addressed by the current Islamic legal scholarship.

For example, how similar is Islamic law to the IHL notion of “participation in hostilities”? It is hard to find any Islamic source discussing this. One specific question of medical personnel was discussed in the ICRC Islam and IHL expert workshop in Geneva 2018. However, more questions follow, such as the status of police officers in non-combat functions, reserve forces, and many others. As Al-Dawoody (2011) notes, there are categories of persons (such as those severely ill) which are not among the specifically protected persons mentioned in the Qur’an and Sunnah, but the classical jurists included them as protected persons anyways. Such an inclusion is due to a general prohibition to attack those who do not participate in the hostilities. This may indicate that a mere general principle is not enough, and a more detailed ruling is needed.

Further, contemporary Islamic scholars do not comprehensively respond to the question of modern weapons such as bombs and missiles. In his book *Fi al-Jihad: Adab wa Ahkam*, Shaykh Abdullah Azzam follows the Prophet Muhammad’s lead (peace be upon him) using *qiyas* (analogy) to deduce that bombs and missiles are permitted but goes no further. There is no discussion on how to avoid collateral damage, a core concern when using such weapons. Muhammad Thala’at Al-Ghunaymi (2012) adds that the Muslim army should try not to aim at civilians, which is a needed additional detail not present in other works, but it cannot be

that simple. Compare this to Articles 51, 57, and 58 of Additional Protocol I 1977 which provides a proportionality principle to minimize collateral damage.

On the other hand, there are other Islamic jurists like Shaykh Yusuf Al-Qaradhawy, who argue that such weapons may only be used in defensive warfare and not in offensive warfare. Indeed, advanced weaponry is not the sole determining factor in winning a war, but prohibiting such weapons is practically suicide when facing an enemy using them. This ruling is not realistic. Additionally, in defensive warfare, Al-Qaradhawy permits bombs and missiles without mentioning the need to avoid collateral damage.

Islamic law prohibits the deaths of non-combatants and tolerates it when it is inevitable, but this should not be taken lightly. An Islamic legal maxim states *al-darūratu tuqaddiru bi qadarihā* (necessity exceptions apply proportionally), and the Qur'an prohibits transgressing limits during the war. However, with such a lack of detailed rulings, these general principles in Islamic law cannot be performed well.

The above are mere examples indicating the necessity for Islamic law scholars to formulate more detailed rulings for numerous new problems emerging in contemporary warfare. Here, I find that it may be possible from an Islamic law perspective to adopt some provisions from modern IHL to help elaborate general rules in Islamic law while rejecting any that contradict Islamic law. This act is possible not just for minimizing collateral damage but in many other issues also such as determining combatant status, so more protection can be afforded to those who deserve it.

Importance of Learning IHL and IL in Bangladesh

- i. Bangladesh became independent through the war 1971
- ii. Bangladesh is affected by the arms conflict of neighbouring countries
- iii. Some armed groups are active in Bangladesh
- iv. There are many political conflict in Bangladesh rapidly increasing
- v. Bangladesh Army and Police Force work in the UN peacekeeping mission.
- vi. About 90% of the population of Bangladesh is Muslim

Therefore IHL and IL are important for Bangladesh, both as a means of understanding the consequences of conflict and as a basis for responding to its changing nature.

Islamic Law in the Universities and Madrasah Education in Bangladesh

In Madrasah Education both Alia and Qawmi from primary to higher level, various kind of Islamic Law are taught but IHL related Islamic Laws are missing, as a subject. Few kinds of war related Islamic law are taught at Fazil and Kamil level under Fiqh, Hadith and Tafseer. Some Privately run Islamic higher education and research institutions include Bangladesh Islami University, and International Islamic University Chittagong have human rights related Islamic Law, taught under Islamic Studies or Islamic theology department. At the public universities specially Islamic University, Kushtia, both Islamic Law and IHL are taught. There is no course or topic directly related to IHL in Madrasah syllabus both Alia or Qawmi but at the law department of all universities both public or private are taught IHL as a 3 credit hours course. Some universities have named it directly IHL and some universities have added another name along with it like IHL & Refugee Law.

Major Issues of Promoting of Learning IL and IHL in Bangladesh

IHL is still not viewed by law schools in Bangladesh as a full-fledged subject as in the Western countries. Most countries in this region are either ignorant about it or are busy in concentrating on the conventional subjects from the branches of civil and criminal law. The main reasons behind this ignorance can be found out from the way IHL is generally taught and researched in the region.

Even though it is true that all Western methods of education may not be applicable in Bangladesh, yet the IHL Clinics based on the US model can prove to be a major breakthrough in the efforts to enhance IHL education standards. Sadly, it has been noticed over the years that legal education in Bangladesh and especially in the Sub-continent has lacked proximity with a practical problem-solving approach and therefore students have had to depend on extracurricular activities like moot courts and debates for their share of practical exposure.

Bangladesh is lagging behind the UK, US and Europe in terms of having centres and institutes (both independent and those affiliated to universities) dedicated entirely to IHL research and education. This has meant that most of the Asians especially those in the legal fraternity are still unaware about the actual existence of IHL. The major reason for this could be that traditionalists in the legal fraternity still do not consider IHL as a course suitable to be studied separately and one that could be the subject of further research and discovery of facts.

Lunching MA in Islamic Studies Majoring in IHL

Bangladesh Islami University is one of the major private universities of Bangladesh. One of the most popular program offered by BIU is MA in Islamic Studies. The current curriculum of the program has Islamic law related subjects like “The objectives of the Shari'ah”, “Women & Human Rights in Islam”, “*Shariah* & codification of Islamic Law”, and “Islamic legal System”. It will be very fitting and viable if we integrate IL and IHL in the MA program in the following manner:

Proposed Curriculum: M.A. in Islamic Studies major in IHL

1. The objectives of the Shari'ah Law.
2. Human Rights in Islam
3. Islamic Law at Sea.
4. Principal of Islamic Jurisprudence
5. Ethics of War & It's implementations in Islamic History
7. IHL and International Armed conflict: theory & Practice.
8. IHL & Non-International Armed Conflict
9. IHL Protective Regime
10. IHL & Basic Rules of War in Islam
11. Comparative Law for the protection of Prisoners of war.
12. International Treaty Law of Islam & rules of Sulh (reconciliation)
13. Origin & Development of IHL throughout the world

Conclusion:

There are a few reasons why more detailed and comprehensive research into the Islamic laws of war is essential. From an international law perspective, a fair and comprehensive comparative analysis between legal traditions within international law is essential. It would improve the legitimacy of international law in its purported claim of universality, responding to critiques from TWAIL scholars. Additionally, when the relevant actors feel religiously bound by those laws, more legal protection could reduce the terrors brought by war. A religious bond towards laws similar to IHL is potentially more effective than relying on IHL. Note that IHL has a lack of compliance and even some debate as to whether and how it is even binding on non-state armed groups. Most importantly, from an Islamic law perspective, the need is more acute. The lethargy of legal scholarship may cause problems because some persons may not be afforded the protection they deserve. If the lack of protection is due to the lack of legal rulings, it is incumbent upon the Islamic jurists to resolve this problem as a collective obligation of the Muslim *'ummah*.

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