



Protection of Civilians and Treatment of Prisoners during War are at Stake: A Comparative Study

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"O humanity! Indeed, We created you from a male and a female, and made you into peoples and tribes so that you may 'get to' know one another". (Surah Al-Hujurat, verse 13)

ABSTRACT

The atrocities of Israel's aggression perpetrated from 07 October 2023 on the civilian population and the treatment of prisoners of war shocked the world. Western governments have encouraged Israel to continue its tyranny. Many other governments around the world preferred to remain silent despite the presence of International Humanitarian Law (IHL). This has led to a re-launch of the debate on the credibility of IHL and the positioning of International Islamic Humanitarian Law (IIHL) on the world stage. The aim of this study is therefore to compare IHL and IIHL, from a theoretical and practical point of view, in the field of the protection of civilians during war and the treatment of prisoners of war. To do this, we opted for a comparative approach between these two components, both conceptually and functionally. This approach focused, on the one hand, on the main sources of the Sharia, the Quran and the Sunnah, as well as on the opinions of Muslim scholars (*ulamas*), supported by concrete examples of the application of Islamic norms by the Prophet and the Rashidoun caliphs. On the other hand, it also examined all the conventions, treaties and other documents that constitute the sources of the IHL. From a theoretical point of view, the results showed that there are many similarities between the two laws. In practical terms, however, the IIHL stands out for its concrete form and effective application. These observations led us to recommend that the current world order be rethought in view of the juxtaposition of the IIHL and IHL rules.

Key words: Protection, Civilians, Prisoners, International Humanitarian Law, Islamic Law.

INTRODUCTION

The situation in Gaza since 07 October 2023 is tragic. After more than 4 months so far, the facts and figures are alarming: over 28,000 civilians have died, with 70% of the victims being women and children, and over 68,000 people have been injured. The war has resulted in at least over 8,000 missing people who are still buried under the rubble of homes demolished by the occupation army on top of their residents. The number of Palestinian arrested is approaching 20,000, and the Israeli army is sparing no effort to torture and humiliate them.

Around 1.9 million Palestinians who still lived in the Gaza Strip were forcibly deported to Rafah (South Gaza). The entire territory is under siege by Israel, leaving those who are still alive without access to food, drinking water, or medicine. The bombardments destroyed homes, schools, hospitals, mosques, churches and cemeteries. These assaults cause blackouts in water, electricity and internet. Attacks on medical and paramedical personnel, destruction of hospitals, bombing of international humanitarian organization centres, and obstruction of aid to besieged Palestinian citizens can lead to the spread of dangerous diseases, epidemics, and famine. Simultaneously, the Israeli occupying forces conducted additional military operations in the West Bank, resulting in multiple homicides, assaults, arrests, demolitions of buildings, and degradation of agricultural land.

While the whole world celebrates International Children's Day every year on 20 November, based on the United Nations General Assembly Resolution of 1954, Israel prefers to celebrate this event in its

own way, continuing to kill, injure, displace and abuse Palestinian children.

All of this is occurring in the presence of the global community, and no action is being taken. Western governments, led by the United States of America (USA), have supported Israel in its aggression towards Gaza through political, material, military, and diplomatic means. The USA even triggered the right of veto against a decision by the United Nations Security Council to stop the war. This statement once again highlights the inaccuracy of claims made by Western governments regarding human, women, child and prisoners' rights.

The US State Department issues country reports covering approximately 198 countries and regions worldwide (e.g. reports for 2022). These reports allegedly expose human rights violations and abuses in countries such as Ukraine, Iran, China, Afghanistan, South Sudan, Syria, Cuba, Belarus, Venezuela, Cambodia, and Israel. Despite the abuses described in the report, even if they are not exhaustive, the US continues to support the latter (US Department of State, 2023).

Christodoulakis (2016) study on civil wars between 1940 and 2000 found that they caused more casualties and non-combatant deaths. These facts raise more than one question and observation.

First, where is the credibility of the international charts, conventions and others, such as the Geneva Convention of 1949? A strange paradox is the alignment of the USA and the European Union (EU) on the one hand with the assaulted country Ukraine in its war against Russia, and on the other hand with the assailant country Israel in its aggression against Gaza. Is there a double standard at play?

Second, the West under the influence of the deceptive propaganda of its media and some Orientalists, has always regarded Islam as a religion of violence, killing and barbarism. The citizen of the Orient is always described as primitive, irrational, violent, despotic, fanatical and essentially inferior to the citizen of the West (Kanji, 2018).

Third, what is happening now in Gaza is not new to Palestine. Nijim (2023) wonders if we are facing genocide. But the answer will not be long in coming. South Africa has taken the Jewish state to the International Court of Justice in The Hague, believing that it is committing genocide in Gaza. The court ordered Israel on 26 January 2024 to prevent any act of genocide against the Palestinian people in Gaza. But in vain, Israel, which has never respected any resolution of the UN or its bodies, continues its terrible atrocities.

Fourth, the horrific scenes in Gaza have aroused great support for the Palestinian victims from people around the world. This has led many of them to review their accounts and try to explore the precepts of the Islamic religion, which have allowed these Palestinians to have great faith and remarkable patience.

Fifth, what is the position of Islamic law on this matter? During the Prophet's era, Qur'an and Sunnah teaching were incorporated into the rules of war, which were then expanded during the caliphates period. Early Islamic scholars were interested too in International Humanitarian Law (IHL) under the title *Siyar* (The body of laws that concerns the relations between Muslims and non-Muslims in times of peace and war. Not to be confused with *siyar*, meaning biographies.). Indeed, Imam Abu Hanifa (Nu'aman ibn Thabit ibn Zu'afa ibn Marzouban (699-767 CE / 80-150 AH), Sunni Muslim scholar, theologian, jurist, writer, and founder of the Hanafi school of Islamic jurisprudence) gave lectures entitled "The Muslim Laws of War and Peace". His disciple Al-Shaybani (Muhammad ibn Ahmad ibn Abi Sahl Abou Bakr (409-490 AH / 1009-1090 CE), jurist and an Islamic scholar of the Hanafi school of thought) assembled these lectures in the text entitled "Introduction to the Law of Nations". Majid Khadduri later translated this text into English and it is now the basis for the modern *Siyar* (Muhammadin, 2023). Also, according to Al-Dawoody (2015), in his book *Al-Mabsut*, Al-Sarakhsi (Muhammad ibn Ahmad ibn Abi Sahl Abou Bakr (409-490 AH / 1009-1090 CE), jurist and an Islamic scholar of the Hanafi school of thought) consistently contributed to the development of the concepts of Islamic International Humanitarian Law (IIHL). Munir (2014) added, for example, but not limited to, other early Muslim jurists who were experts in *Siyar*, such as Al-Sha'bi (Abu Amr Amir ibn Sharaḥil ibn Abd al-Kufi (21-100 AH / 641-723 CE), Arab historian and jurist. He has been considered among the first jurists of leading Islamic law), Al Awza'i (Abu Amr Abd al-Raḥman ibn Amr (88-157 AH / 707-774 CE) Islamic scholar, traditionalist and a head of the 'Awza'i school of Islamic jurisprudence), Abu Yusuf (Ya'qub ibn Ibrahim al-Ansari known as Abu Yusuf (113-182 AH / 731-798 CE) a student of jurist Abu Hanifa and Chief Justice. He helped spread the influence of the Hanafi school of Islamic law

through his writings), Sufyan Al-Thawri (Abu Abd Allah Sufyan ibn Said ibn Masruq (113-182 AH / 731-798 CE) (97-161 AH / 716–778 CE), Islamic scholar, jurist, and founder of the Thawri madhhab. He was also a great hadith compiler (muhaddith)) and Al-Fazari (Muhammad ibn Ibrahim ibn Habib ibn Sulayman ibn Samra ibn Jundab (113-182 AH / 731-798 CE), Arab philosopher, mathematician and astronomer).

Al Kafri (2022) argued that the West made a mistake when it attributed international law to Grotius (Hugo Grotius also known as Hugo de Groot (1583 – 1645 AD), Dutch humanist, diplomat, lawyer, theologian, jurist, statesman, poet and playwright. He has two books in the field of international law: (On the Law of War and Peace) and (The Free Seas)), who died in 1645 AD, and called him the father of international law. The real father of international law is Al-Shaybani who died in 805 AD. In recognition of his status, an International Law Association was founded in Göttingen, Germany, which included scholars of international law, to introduce him and his views, and to publish his writings in this field.

Questioning the probable influence of Islam on Western law, Tibi (2017) asserts that the first legal doctrine taught in Spain and Italy since the XIII century was Muslim law, long before those of Roman era and canon law. Apart from the philosophical, he noted that neither the Greeks nor the Romans had developed universal concepts of law.

According to Tibi (2017), whether it was Aquinas (Thomas Aquinas (1225 –1274 AD) was an Italian Dominican friar and priest, an influential philosopher and theologian, and a jurist in the tradition of scholasticism), de Vitoria (Francisco de Vitoria (1483 – 1546) was a Spanish Roman Catholic philosopher, theologian, and jurist of Renaissance Spain. He is the founder of the tradition in philosophy known as the School of Salamanca, noted especially for his concept of just war and international law), Las Casas (Bartolomé de las Casas (1484 – 1566) was a Spanish clergyman, writer, and activist best known for his work as a historian and social reformer), Suárez (Francisco Suárez (1548 – 1617 AD) was a Spanish Jesuit priest, philosopher and theologian, one of the leading figures of the School of Salamanca movement) or Grotius who worked on the concepts of international law, Muslims contributed to the development of the thoughtful of these thinkers. According to him, Islam makes the rules of war 'international' by applying them to non-Muslim communities and external civilisations. There is no equivalent concept in Greco-Roman legal literature.

We are therefore faced with two sets of international laws, one Islamic (IIHL) and the other Western (IHL). This raises the question of whether there are any fundamental differences between IIHL and IHL, and what the implications are on a practical level. So, this study aims to explore Islam's approach to protecting children, women, and the elderly, as well as the treatment of prisoners in war. It will be compared with the approach of IHL and their both practical cases.

This study takes a comparative approach, juxtaposing Islamic ethical values and rules of warfare with those of IHL. In order to do so, this study is based firstly on a review of existing international literature. Secondly, it examined several sources: For the first one, the principal source is the *Quran*, followed by the *Sunnah*, which is a collecting of the prophet's actions and sayings. The third source is *Ijmaá*, which is the agreement among all the *Ulama* (Muslim jurists) on particular legal subjects. The fourth source is *Ijtihad*, which refers to the *Ulama* personal thought. For the second it includes all relevant international conventions, treaties, and declarations in the field that have been adopted by the United Nations (UN) and international congresses. This study compares the actions of Muslim states and Western states, rather than those of armed groups. It focuses on the actions of Muslim states during the era of the Prophet (SAW) and his caliphs, rather than contemporary Muslim states who apply modern law in their international relations instead of *Sharia*. The International treaties and conventions were consulted on the website of the International Humanitarian Law Databases (IHL D) and the website of the UN. The English translation of Dr Mustafa Khattab's Quranic verses has been taken from the Quran.com website. Similarly, the English translation of the Hadiths of the Prophet (SAW) has been taken from the website Sunna.com. The study also opted for a qualitative analysis of the materials examined in both IIHL and IHL.

Literature Review

The protection of civilians in times of war has been discussed extensively by many authors around the world.

El Fadl (2017) attempted to outline the interpretation of Islamic ethics for war and peace based on the two main sources of Islamic law, while disregarding the jurisprudential differences that affect this topic.

Ramzan et al (2021) examined the treatment of prisoners of war (POWs) in early Islamic legal and historical precedents. The study focuses on historiography and legal reasoning as articulated in legal and historical texts, rather than normative war practices that may have influenced legal opinions.

Yousaf (2012) concluded that Islamic military jurisprudence is unstable. He added that the provisions of IHL are generally in harmony with, if not equivalent to, the principles of Shari'ah.

McDougal et al (2018) review and analysed the Islamic and International laws concerning civilian rights to life and human dignity. They concluded that both laws allow for the protection of civilian lives and human dignity during conflicts, as long as they do not participate in hostilities. However, the two legal regimes differ in their interpretation of what constitutes 'civilian participation' in hostilities.

In his 2015 study, Al-Dawoody (2015) examines the interpretation of the Islamic law of war by Al-Sarakhsī, one of the most prominent Islamic jurists. Al-Dawoody concludes that many Islamic rulings governing the behaviour of Muslims during war must be reinterpreted to align with current international norms.

Iwansyah (2019) compares the provisions of war in Islam with those contained in IHL and analyses the possibility of synthesising the two legal systems.

According to Ragonieri (2016) comparative analysis, the U.S. military and al-Qa'idah both deviate from orthodox international and Islamic law, respectively. They do so by expanding the category of combatants and eliding orthodox categories of civilians, rendering civilians as probable combatants. However, in my opinion, this comparison is illogical, given that the USA is a State, and that it has largely defended human rights in all areas.

Batool et al. (2021) discuss Islamic perceptions of war ethics and propose a set of dimensions based on Islamic fundamentals to fill a gap in the literature.

RESULT AND DISCUSSION

Protection of children, women and the elderly, and treatment of POWs in Islam

Protection of children, women and the elderly during war in Islam

Allah Almighty said: "That is why We ordained for the Children of Israel that whoever takes a life—unless as a punishment for murder or mischief in the land—it will be as if they killed all of humanity; and whoever saves a life, it will be as if they saved all of humanity.¹ 'Although' Our messengers already came to them with clear proofs, many of them still transgressed afterwards through the land". (Surah Al-Maidah, verse 32).

The above verse relates to the story of the sons of Adam, where one of them killed his brother out of transgression and aggression. This verse explains that killing a person without justification is a grave sin. The verse states that whoever kills a soul without a valid reason, such as in retaliation for murder or for causing mischief on earth, will be as if they have killed all of humanity (Ibn Kathir, 2000, p. 609).

It is clear from these verses that Islamic humanitarian law attaches great importance to the right to life of all human beings without distinction and urges Muslims to protect and preserve it. Furthermore, Sharia law recognises the right to life of all creatures on earth.

Also, Allah Almighty said: "Fight in the cause of Allah 'only' against those who wage war against you, but do not exceed the limits. Allah does not like transgressors" (Surah Al-Baqarah, verse 190).

Since this verse was revealed, the Prophet Muhammad (SAW) only engaged in combat with those who fought against him and avoided non-combatants. Al-Hasan Al-Basri argued that the act of aggression, as stated in verse 190 of Surat Al-Baqarah, includes various acts such as mutilating the dead, stealing money, killing women, children, the elderly, priests, and residents of places of worship, burning trees, and killing animals (Ibn Kathir, 2000, p. 248).

Moreover, Allah Almighty said: "And if anyone from the polytheists asks for your protection 'O Prophet', grant it to them so they may hear the Word of Allah, then escort them to a place of safety, for they are a people who have no knowledge". (Surah At-Tawbah, verse 6).

This verse means that individuals who come from a land at war with Muslims to the zone of Islam

for various reasons, such as providing a letter, piloting business relations, discussing a peace pact, giving the Jizyah, proposing an end to conflicts, etc., and demand safe way from Muslim leaders or their assistants, should be allowed harmless passage. This latter should be provided as long as they stay in Muslim spaces until they come back to their homes and clan (Ibn Kathir, 2000, p. 864).

Muslim recorded in his Sahih that Buraydah narrated that Allah's Messenger (peace be upon him) said:

“Fight for the sake of Allah and fight those who disbelieve in Allah. Fight, but do not steal (from the captured goods), commit treachery, mutilate (the dead), or kill a child, or those who reside in houses of worship” (Ibn Kathir, 2000, p. 248).

Furthermore, Anas ibn Malik narrated that the Prophet (SAW) said:

“Go in Allah's name, trusting in Allah, and adhering to the religion of Allah's Apostle. Do not kill a decrepit old man, or a young infant, or a child, or a woman; do not be dishonest about booty, but collect your spoils, do right and act well, for Allah loves those who do well” (Dāwud, 2009, p. 243).

Another hadith of the Prophet Muhammad (SAW) narrated by Ibn Umar and mentioned by Muslim (*Sahih*) and Al Bukhari (*Sahih*) confirms Islam's attitude towards non-combatants. He saw a woman killed in battle and expressed that it was a terrible thing to do to her (Ibn Kathir, 2000, p. 248).

According Al-Dawoody's (2015) researchs, Islamic jurists extend non-combatant immunity to include children, women, the elderly, and those living with physical or mental disabilities, as well as farmers, craftsmen, and traders, unless they engage in combat. He concludes that this means, according to the majority's position of Islamic jurists, fighting is permissible against enemy combatants only. Also, according to Abdullahi (2019) a modern Muslim writer, argues that non-combatants who assist an army, such as physicians, should not be killed.

Additionally, Allah Almighty said: “If you retaliate, then let it be equivalent to what you have suffered. But if you patiently endure, it is certainly best for those who are patient”. (Surah An-Nahl, verse 126).

According to Al-Tabari (1967), this verse was revealed after the battle of Uhud. In this latter, the combatants of Quraych mutilated the dead Muslims. The Prophet (SAW) and his companions vowed to mutilate them in a future battle beyond what they had done. But Allah commanded justice in punishment and equity in the case of rights and patience.

Furthermore, Allah Almighty said: “Allah does not forbid you from dealing kindly and fairly with those who have neither fought nor driven you out of your homes. Surely Allah loves those who are fair” (Surah Al-Mumtahanah, verse 8).

The above verse pertains to those who were not involved in the expulsion of Muslims. Allah does not prohibit Muslims from being kind to non-believers who do not fight them on account of religion, such as women and weak non-believers. Muslims should deal kindly with them and treat them fairly (Ibn Kathir, 2000, p. 1860).

In general, Muslim jurists agree that war should be conducted with minimal violence and property destruction necessary to achieve victory. Islamic law also prohibits the use of excessive violence, for example the mutilation of war victims (Evans, 2020).

Imam Al-Awza'I (Abu Amr Abd al-Rahman ibn Amr al-Awza' i (707-774 AH / 1328-1395 CE) was an Islamic scholar) prohibited deliberate attacks on civilian objects of the non-Muslim enemy during combat and considered sabotaging enemy property as mischief (Al-Dawoody & Vanessa, 2019). The legitimacy of protecting civil objects in Islamic law is derived from several Qur'anic verses that prohibit any kind of corruption on earth. These verses include 60, 204, and 205 of Surat Al-Baqarah, as well as verse 56 of Surat Al-Aaraf.

Likewise, Abu Huraira narrated that the Prophet (SAW) said to some of Muslim combatants "I have ordered you to burn so-and-so and so-and-so, and it is none but Allah Who punishes with fire, so, if you find them, kill them (i.e., don't burn them)" (Makmun, 2015, p. 1413).

When the Prophet (SAW) and his fighters entered Mecca to conquer it, He said: "*who enters the house of Abu Sufyan is safe; be who closes the door upon him is safe; and be who enters the mosque is safe*" (Dāwud, 2009, p. 369). The people dispersed to their homes and the mosque, and the conquest was peaceful.

On the same occasion, when the Messenger of Allah asked:

“O people of Quraysh, what do you think I am doing to you?” They said: “Good, a generous brother and a

generous nephew". He said: "Go, you are free" (Ibn Kathir, 2004, p. 657).

Whether during or after the war, the Prophet insisted on the principle of protecting foreign populations. An example of this is the Pact of Najran, which was concluded around 10 AH/631 CE to govern relations between the Muslim community of Medina and the Christian community of Najran in Yemen. The Prophet (SAW) declared that the Muslims would protect the Christians in any region, both in times of peace and in times of war. This protection included churches, chapels, oratories, the monasteries of their monks, and the residences of their anchorites (Bassiouni, 2003, p. 31).

Besides, in the year 15 AH/636 CE, when the second caliph of the Prophet (SAW), Umar Ibn Al-Khattab (The second Rashidun caliph), entered Jerusalem, he wrote a pact for its inhabitants (*Al-Uhda Al-Umariyya*). The pact guaranteed the security of the entire community, as well as their property, churches, and crosses (Bassiouni, 2003, p. 37).

Similarly, when Amr Ibn Al-As conquered Egypt in 20 AH/641 CE, he established a peace treaty with the people of the country. The treaty guaranteed the security of their persons, religion, churches, lands, and seas (Bassiouni, 2003, p. 38).

The caliph Abu Bakr (The first Rashidun caliph) As-Siddiq provided ten rules of advice to the leader of the Muslim soldiers, Osama ibn Zaid. These included: avoiding betrayal and hatred, refraining from mutilating corpses, not killing children, women, elderly or religious individuals, and avoiding destruction, cutting down, or burning of palm and fruit trees (Al-Tabari, 1967, p. 226). Umar Ibn Al-Khattab and Ali Ibn Abi Talib (The fourth Rashidun caliph and the cousin of the Prophet (SAW)) recommended the same thing to their army leaders during the battles they fought.

Abu Hurayrah said, "I entered on Uthman (Uthman ibn Affan, the third Rashidun caliph) when he was under siege in his house and said, I came to give you my support. Now, it is good to fight (defending you) O Leader of the Faithful! He said, O Abu Hurayrah! Does it please you that you kill all people, including me I said, No. He said, if you kill one man, it is as if you killed all people. So I went back and did not fight" (Al-Zuhri, 2001, p. 66).

Treatment of POWs in Islam

Allah Almighty said: "So when you meet the disbelievers 'in battle', strike 'their' necks until you have thoroughly subdued them, then bind them firmly. Later 'free them either as' an act of grace or by ransom until the war comes to an end. So will it be. Had Allah willed, He 'Himself' could have inflicted punishment on them. But He does 'this only to' test some of you by means of others. And those who are martyred in the cause of Allah, He will never render their deeds void". (Surah Muhammad, verse 4).

This verse was revealed after the battle of Badr and relates to the POWs who were captured. After the war ended, the Muslims had a choice: either to act graciously towards the captives by setting them free without charge, or to free them for a ransom that they required from them (Ibn Kathir, 2000, p. 1717).

According to the Quranic injunction in the aforementioned verse, some of the earliest Muslim jurists, such as Ibn Abbas (d. 68 AH/668 CE), Abd Allah ibn Umar (d. 73 AH/693 CE), al-Hasan Al-Baṣri (d. 110 AH/728 CE), and Said ibn Jubayr (d. 95 AH/714 CE), believed that POW should be released either freely or in exchange for ransom (Al-Dawoody, 2015).

According to Islamic scholars, this verse permitted binding the POWs during the transfer process and in the place of detention. They confirmed their opinions by examples from Sunnah such as the cases of Thumamah ibn Uthal (Leader of the Banu Hanifah (ancient Arab tribe inhabiting the area of al-Yamama, Al-Hijaz). Muslim patrol boats bound him to a pillar in the mosque for three days until the Prophet (SAW) arrived), Suhayl ibn Amr (Prominent leader among the Quraysh tribe of Mecca. was among those captured and taken prisoner at the battle of Badr) and Al Abbas ibn Abd Al-Muttaleb (Paternal uncle of the Prophet (SAW), was among those captured and taken prisoner at the battle of Badr) who were bounded during their captivity. The purpose of this process is to prevent them from evading or committing any acts of violence, but without injuring them. During the time of the Prophet (SAW) and his companions, POWs were detained in the Mosque or their homes. However, under the leadership of Umar ibn Al-Khattab and Uthman ibn Affan, POWs were detained in designated facilities (Muhlis, 2020).

In Islam, POWs may be employed under certain conditions in exchange for remuneration that could lead to their release. During the day of Badr, the Prophet (SAW) utilised educated POWs who lacked the means to ransom themselves as teachers. In return for their freedom, each prisoner was required to teach ten Muslim children how to read and write (Al-Zuhri, 2001, p. 20).

Also, Allah Almighty said: "It is not fit for a prophet that he should take captives until he has thoroughly subdued the land. You 'believers' settled with the fleeting gains of this world, while Allah's aim 'for you' is the Hereafter. Allah is Almighty, All-Wise". (Surah Al-Anfal, verse 67).

According to Imam Ibn Hanbal, Anas said, "The Prophet (SAW) asked the people what they thought about the POWs of the Badr War. In response, Umar ibn Al-Khattab suggested cutting off their necks, but the Prophet refused. As the Prophet (SAW) asked for their opinion again, Umar confirmed his initial proposition. Umar repeated his previous answer. The Prophet (SAW) ignored him again and asked for their opinion once more. Abu Bakr As-Siddiq recommended pardoning the POWs and releasing them in exchange for ransom. Due to this, the Prophet (SAW) pardoned them and accepted the ransom for their release (Ibn Kathir, 2000, p. 854).

Furthermore, Allah Almighty said: "...and give food - despite their desire for it - to the poor, the orphan, and the captive" (Surah Al-Insan, verse 8).

This verse refers to feeding the poor, orphans, and captives. According to Ibn Kathir, upon receiving the revelation, the Messenger of Allah (SAW) instructed his Companions to treat captives with respect on the day of Badr. He said: "Treat them well" (Ibn Kathir, 2004, p. 500). When eating, his Companions would give the captives preference over themselves.

Early Muslim jurists unanimously prohibited separating children from their parents, grandparents, or siblings if the family fell into captivity (Al-Dawoody & Vanessa, 2019; Nandy, 2023).

The companions of Allah's Messenger (SAW) took a person from Banu Uqail as a prisoner and tied him with ropes. When the Prophet (SAW) arrived, the prisoner requested food and drink, which the Prophet (SAW) provided (Muslim, 1991, p. 1262).

When the Prophet (SAW) saw the captive Jews of Banu Qurayza standing outside on a hot afternoon, he ordered their Muslim guards to treat them well. He instructed them to give the captives a nap and water until they cooled down. Additionally, he ordered the guards not to expose them to the heat of the sun and the heat of the weapons at the same time (Al-Waqidi, 1966, p. 514).

Following the Battle of Badr, prisoners were taken, including Abbas bin Abdul Muttalib, who was not wearing a shirt. The Prophet searched for a suitable shirt for him and found one belonging to Abdullah ibn Ubai that fit him. The Prophet then gave his own shirt to Abdullah ibn Ubai as a gesture of gratitude for his help (Al-Bukhari, 2016, p. 1410).

According to the narration of Salem and his father, the Prophet (SAW) sent Khalid ibn Al-Walid to Banu Jadhimah to invite them to Islam. After the battle, Khalid ibn Al-Walid ordered the killing of all POWs. When the Prophet (SAW) was informed of this, he disavowed Khalid's actions twice (An-Nasa'i, 2014, p. 1193).

Also Abu Musa Al-Ashâari narrated that the Prophet (SAW) said, "*Give food to the hungry, pay a visit to the sick and release the one in captivity*" (Al-Bukhari, 2016, p. 2444).

It has been also demonstrated that the Prophet (SAW) released all the Quraish prisoners from the Battle of Banu Salim in exchange for a ransom (Ibn Kathir, 2004, p. 517).

Ibn Shaddad (Bahaa al-Din Abu al-Maḥasin Yusuf ibn Rafii ibn Tamim known as Ibn Shaddad (539-632 AH / 1145-1234 AD). Muslim judge, scholar, and historian who lived during the time of Saladin and documented his era) reported in his book (*Al-Nawādir al-Sultaniyya wal-Maḥasin al-Yusufiyya*) (Sultan's Anecdotes and Joseph's Virtues) that King Saladin Al-Ayyubi released approximately four thousand POWs and provided them with travel expenses to return to their respective countries and people after the Battle of Hattin (Al Hisinyani, 2013, p. 277).

During the Umayyad's era, Muslim treatment of prisoners was notable for its fairness. Muawiya ibn Abi Sufyan (Abu Abd Ar-Raḥman Muawiya ibn Abi Sufyan was the founder and first caliph of the Umayyad Caliphate) negotiated peace with the Romans, agreeing to pay them money. As part of the agreement, some prisoners were placed in Baalbek (City located east of the Litani River in Lebanon's Beqaa Valley, about 67 km northeast of Beirut). as a mortgage by Muawiya. Despite the Romans betraying the agreement, Muawiya and the Muslims prevented the hostages from killing and released

them. Muslims adhered to the principle that 'loyalty with treachery is better than treachery with treachery' (Al Harithi, 2022).

Also, during the fifth and sixth centuries AH (the eleventh and twelfth centuries AD), Muslim prisoners captured in Andalusia by the Spanish or Portuguese were ransomed through exchange or payment. This practice occurred during the reign of both the Almoravid and Almohad states (Almozani & Hammed, 2016).

Kennedy (2017) stated that embassies were established and treaties were concluded between the Abbasid state and the Byzantine state to exchange prisoners of war or pay ransoms. Twelve ransom operations for Muslim prisoners were conducted, in which they were either redeemed with money or exchanged for Byzantine prisoners.

To conclude this section, it is clear that Islamic law has focused its attention and concern on the protection of civilians both in war and in peace. The latter included many categories of non-combatants such as women, children, the elderly, people with disabilities, priests and inhabitants of places of worship, farmers, craftsmen and traders, envoys and doctors. This protection also extends to civil objects such as dwellings, churches, chapels, oratories, monasteries, the residences of their anchorites, lands and seas. Islam also prohibits the destruction, felling or burning of palm and fruit trees.

Also, according to Islamic Law, prisoners of war are granted special protection. The aforementioned is demonstrated by ensuring the provision of their basic needs such as food, clothing, and medical care. Additionally, they are granted the freedom to worship and are protected from torture, revenge, mutilation, and humiliation. They are not to be stripped naked and are to be imprisoned in decent facilities. They may work in exchange for compensation and are not to be separated from their families. Tribal leaders are to be accorded respect and dignity. Finally, they may be released for ransom or by exchange.

The practical examples cited during the time of the Prophet (SAW) and his caliphs, the Rashidouns, prove the good faith of the Muslims and their good attitude towards non-combatants and the treatment of prisoners of war.

Protection of children, women and the elderly, and treatment of POWs in IHL

The contemporary texts that comprise IHL are relatively recent, having only been initiated from the middle of the 19th century. Some of these texts have been replaced, while others have been improved and supplemented. Among them, we find:

1. Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (1864);
2. Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (1906);
3. The Hague Convention Of (1899);
4. The Hague Conventions Of (1907);
5. The Geneva Convention On Pows (1929);
6. The Universal Declaration Of Human Rights (1948);
7. The Genocide Convention (1948);
8. The Four Geneva Conventions (1949);
9. The International Covenant On Civil And Political Rights (1966);
10. The International Convention On The Elimination Of All Forms Of Racial Discrimination (1965);
11. The International Convention On The Suppression And Punishment Of The Crime Of Apartheid (1973);
12. The United Nations Convention Against Torture (1984);
13. The United Nations Convention On The Rights Of The Child (1989);
14. The International Criminal Court (1998).

The Declaration of the International Conference on Human Rights of Tehran (1968), the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974), the Declaration of the International Conference on Human Rights of Vienna (1993) and the United Nations Millennium Declaration (2000) were also adopted.

Other texts related to European, American, African, and Arabic regions are also available in the

same field.

Protection of children, women and the elderly during war in IHL

The protection of children, women and the elderly has been ensured by several texts. This includes:

1. The 1899 Hague Convention prohibits the looting of a town or place, as well as the attack or bombardment of undefended towns or habitations, and collective punishment.
2. The 1948 Universal Declaration of Human Rights (UDHR) which assured the fundamental right to life. Indeed, the third article of this declaration states that "Everyone has the right to life, liberty and security of person". In the second article, it is mentioned that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind...".
3. The Geneva Convention (IV) of 1949 establishes regulations for the status and treatment of protected individuals during times of war. At first, it distinguishes between the situation of foreigners in the territory of one of the parties to the conflict and that of civilians in occupied territory. However, the Additional Protocol I (AP-1) to this convention, adopted in 1977, prohibits all intentional assaults on the civilian population and civilian objects.
4. The United Nations Convention on the Rights of the Child (1989) is considered the most widely ratified human rights treaty in history. It recognises that children have the inherent right to life, health care, nutrition, and protection from violence and exploitation. States Parties are obligated to ensure that these rights are upheld. Article 6 states that States Parties must ensure, to the greatest extent possible, the survival and development of the child.

The rules of IHL have been accepted by the vast majority of countries worldwide. Normally, these rules should be applied in all armed conflicts to limit violence and protect individuals who are not taking an active part in combat, as well as civilian objects.

But what about practice? The answer will not be long in coming, as examples abound. These include the famous statement made by Madeleine Albright when she was US Secretary of State, that the killing of half a million Iraqi children was an appropriate price for the American project behind the invasion of Iraq (Clair, 2023).

Also, some American authors have been more critical than others in analysing and exposing the misleading narrative used by the United States government and its media in foreign policy matters.

McDougal et al (2018) criticises American policy for the gap between its theory and practice in the field of human rights. He denounces the contradictions of American power and the paradox of the fact that the US government continues to violate the Universal Declaration of Human Rights while using it as a weapon against their enemies.

A. Jones (2016) have demonstrated the effectiveness of 'the politics of genocide' based on instances of genocides and massacres worldwide, including Indonesia, Bosnia-Herzegovina, Palestine, Afghanistan, and Iraq. It is argued that establishment bodies, such as the media, intellectuals, and activists, politically instrumentalize massacres, and that this practice is fully integrated into American power structures.

Berni (2023) discusses the culture of increased violence in Vietnam and cites the testimony of a GI from the 4th Infantry Division who states that the command of his unit never instructed them not to kill civilians. The American motto was 'kill everything that moves.'

Since the military tribunals in Nuremberg and Tokyo during World War II, no other military tribunal was formed until 1993. In that year, the Security Council decided to establish special international criminal tribunals for former Yugoslavia, Sierra Leone, East Timor, Kosovo, Cambodia, Rwanda, and Lebanon (O'keefe, 2015). However, an international criminal court has never been established for Palestine, despite the war crimes perpetrated by Israel against the Palestinian people since 1948. The establishment of the International Criminal Court, resulting from the Rome Convention of 1997, has not yet altered this situation.

Stephan & Mraffko (2023) state that Arab human rights defenders have lost funding due to their failure to align with the donor's political position on the Israeli-Palestinian conflict. They cite the Center for Egyptian Women's Legal Assistance (CEWLA) as an example. Germany withdrew funding for a project supporting women who are victims of human trafficking. This decision was made after the President of CEWLA signed a declaration condemning the genocide against the Palestinian population in the Gaza Strip and calling for sanctions against Israel.

Treatment of POWs in IHL

Historically, many conventions were adopted to protect prisoner's combatants and other similar individuals during times of war. This contains:

1. The 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field established the foundation for the rules of international law that protect victims of armed conflicts. It was revised in 1906, 1929, and 1949.
2. The 1906 Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. In fact, it enriched and complemented the 1864 convention.
3. The Hague Convention of 1899 incorporates the provisions of the Geneva Convention of 1864 for the treatment of the wounded. It also specifies the treatment of POWs. It prohibits the usage of poisons and the assassination of enemy combatants who have capitulated.
4. The 1907 Hague Convention regarding the Laws and Customs of War on Land confirms, with minor modifications, the provisions of the 1899 Convention.
5. The Geneva Convention (III) relating to the Treatment of POWs (1949) replaced the 1929 convention. The categories of persons eligible to prisoner of war status were extended in harmony with Conventions I and II mentioned below. The convention III defines the conditions and places of detention, the labor of POWs, their monetary incomes, the assistance they obtain, and the judicial measures introduced against them. The Convention states that POW must be released and repatriated promptly after the end of hostilities.
6. The Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949) provides protection for these two categories, as well as for medical and religious personnel, medical units, and medical transports.
7. The Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949) guarantees the protection of these categories, as well as hospital ships, coastal rescue craft, medical aircraft, and other medical transports at sea, and religious, medical, and hospital personnel performing their duties in a naval context.

The members of a state's armed forces who are in uniformed service are entitled to specific protections as POWs upon being captured by enemy forces. This protection has been extended to include other categories. Among these are organized resistance movements of a State party to a conflict, such as militias and volunteers corps, according to the 1907 Hague IV Convention and the 1949 Geneva III Convention (Yousaf, 2012).

In practice, however, these rules are not applied to the letter. Again, there are many examples. Berni (2023) cited two testimonies of two officers of the army of USA who participated in the war of Vietnam. These latter affirmed that the high commandment of the army didn't want to hear about any prisoners. He wanted a body count (p. 532). That means the US army killed all the Viet combatants even if they are no longer able to fight.

Vietnamese prisoners were transferred by the Americans to South Vietnam. Throughout the war, diplomats, journalists, NGOs, the ICRC, and Amnesty International reported acts of violence, including murder, torture, and abuse, against prisoners (2023).

Also, it has been reported that prisoners of war were mistreated by Americans during the wars in Afghanistan and Iraq. Tripathi (2023) documented instances of mistreatment of detainees at Guantanamo Bay, Bagram airbase in Afghanistan, and Abu Ghraib Prison in Iraq. Various methods were used, including starvation, forced nudity, body-cavity searches, sleep deprivation, exposure to loud noises, use of military working dogs, exposure to freezing temperatures, and shackling in inhumane, painful, and sexually explicit positions. Israel has used and continues to use the same methods in its treatment of Palestinian POWs.

In summary of this section, contemporary IHL stipulates that parties to a conflict must protect civilian populations and objects. Therefore, military operations should only be directed towards military objectives. Civilians are defined as individuals who are not members of the armed forces of the belligerents and are not participating in the conflict. This category includes civilian or military wounded, sick, castaways, and military or civilian medical and religious personnel, and the staff of humanitarian organizations. It also encompasses medical units, hospitals, civil protection units, and land, air, and naval

means of medical transport, whether civil or military.

IHL also guaranteed the rights of POWs to good treatment, such as ensuring a safe and suitable detention environment, separating male and female prisoners, keeping them out of harm's way, providing them with remunerated suitable work, providing adequate food, drink and clothing, allowing communication with the outside world, providing healthcare, and allowing the practice of their religion. However, none of these rules has been implemented in practice.

DISCUSSION

As demonstrated in the aforementioned sections, it is clear that Islamic Humanitarian Law does not provide detailed regulations in the *Quran* and *Sunnah*, unlike IHL. However, Islamic *Ulamas* have developed more detailed regulations. There are few differences between Islamic Humanitarian Law and IHL. Both laws prohibit aggression against civilians and civilian objects, as well as the maltreatment of prisoners during conflicts.

Although rules governing armed conflicts have been established throughout history, including those found in Biblical, Eastern, and Hindu teachings, the rules of Islamic Sharia are unique in that they are not dictated by humans but rather by the creator of the universe: Allah Almighty. It is Divine Law. Those who violate these Qur'anic injunctions are subject to punishment in this world and the hereafter. While, IHL is a human development that provides only earthly punishments.

It has been observed that Islam advocates for combat to be conducted in a humane manner, while still achieving its objectives. In Islamic texts, including the Quran, Sunnah, and the writings of Muslim scholars, various categories such as children, women, the elderly, and civilian objects such as fields, palm trees, and fruit trees are guaranteed protection during times of war. This also extends to everyday civilian infrastructure such as homes, schools, universities, hospitals, places of worship, and water sources. This description is more holistic than that of the 1949 Geneva Convention (Al-Buqami, 2020).

Yousaf (2012) notes that during the prophet's era, Islam was associated with international treaties. For instance, he cites the Medina Constitution, which established a pact of cohabitation between the Arab and Jewish tribes upon the Muslims' emigration to the city of Yathrib, as well as the Treaty of Hudaibiyyah, which was a ten-year peace agreement between the Muslims and the Quraysh.

“Islam detailed the provisions, controls and rules of the relationship of Muslims with others in peace, before and after war, which consisted, as Al-Aqqad states, of a solid International Law that governed the strong and the weak before the world knew anything about international law.” (El-Awaisi, 2021, p. 93).

Compared to the Geneva Convention of 1949, the rules of Islamic law for POWs are quite similar (possible work, good maintenance, humane treatment, respect for religious rites, execution of wills, prohibition of brutality, release and repatriation, etc.). The only difference is that the rules of the Geneva Convention are much more detailed given the various social contexts in which they were formulated.

And we come back to our question in the introduction: where is the credibility of the international charts, conventions and others, such as the Geneva Convention of 1949? Or is there a double standard at play? Historically what happened in Vietnam, Indochina, Korea, Palestine, Bosnia, Afghanistan, Iraq, Yemen, Somalia and Ukraine, and in all the countries occupied by the West well supports this later hypothesis.

After almost thirteen centuries, IHL has aligned itself with the Islamic conception of the rules that protect people and property affected by conflicts, as well as the kind treatment of prisoners of war.

CONCLUSION

This study has demonstrated that there is no difference between International Humanitarian Law (IHL) and Islamic Law (IL) in terms of regulating procedures and the ethics of war. Both laws aim to reduce the use of force during warfare and minimize the impact of violence on non-combatants. The two laws also include regulations to protect prisoners of war. The few differences between the two regulations are due to changes in the political, social, and economic circumstances in which they were introduced. The rules of IHL were not established until almost 13 centuries after the beginning of the IHL. In practical terms, the IHL was applied during the era of the Prophet and his Rashidun caliphs, as well as during the Umayyad, Abassid, and Andalusian eras. However, IHL has not been entirely successful in preventing massacres and violence during wars. It has therefore become obsolete.

Humanity has seen many cruel acts since Adam was born, such as Tartar raids, massacres of American Indians, two world wars, massacres in Vietnam, Korea, Palestine, Bosnia, Iraq, and so on. The mistreatment of non-combatants and POWs and their suffering must be eradicated and stopped once and for all. It is very remarkable that people all over the world have lost confidence in Western principles and their slogans about standards of freedom, democracy, international human law, human rights, and so on. All these peoples were in front of the fait accompli of the Western governments, which deliberately worked to weaken all the international organisations working in the humanitarian field (UN, WHO, UNESCO, UNICEF, UNRWA, Red Crescent, Red Cross, Doctors without Borders, etc.). The credibility of the Security Council and the International Court of Justice has been severely undermined. This state of affairs calls on the conscience of the living to rethink the current international system, which has been reduced to the square of 1946, when the League of Nations was dissolved to create the United Nations. I think we are living the same thing. At the time, the League of Nations was struggling to enforce its resolutions and apply its economic sanctions. These resolutions and sanctions could harm the major member states of the League, so they were reluctant to respect them. Finally, we believe that this revision must take into account the teachings of Islamic Law in matters of humanity and international relations, for only the fear of divine sanction is far more persuasive for the believers than any other form of justice. Islamic Humanitarian Law could serve as a foundation for ensuring the universalization and effectiveness of International Humanitarian Law.

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