



A Comparative Analysis of Islamic Laws of War and Contemporary International Humanitarian Law

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Abstract

This paper critically reviews those principles of Islamic jurisprudence that govern armed conflict and then compares them with the norms of Contemporary International Humanitarian Law, in particular as expressed in the Geneva Conventions. The laws of war in Islam first appeared during the 7th century AD and were based upon moral restraint, protection of non-combatants, humane treatment of prisoners of war, and preservation of the environment. On the other hand, Modern IHL was developed through treaty law and custom with the express purpose of limiting suffering during an armed conflict by means of principles such as distinction, proportionality, and military necessity. By examining the primary Islamic sources, namely the Qur'an, Hadith, and classical juristic writings, along with international legal frameworks, the paper identifies key areas of agreement, such as civilian protection, prohibition of torture, and honorable conduct during hostilities, along with exploring how concepts such as jihad, categories of combatant, and legitimate authority to engage in war are variously treated. The comparative analysis identifies that Islamic teachings provide a sound ethical framework parallel to IHL and can meaningfully contribute to contemporary humanitarian discourse.

Keywords: Islamic Laws of War, International Humanitarian Law, Jihad, Geneva Conventions, Rules of Engagement, Non-Combatant Immunity, Proportionality



Introduction

Armed conflict has always called for ethical and legal restraint with a view to limiting suffering and safeguarding human dignity. Indeed, in this respect, both the Islamic tradition and Contemporary International Humanitarian Law put forward systematic schemes governing the conduct of war, ensuring at the same time that this conduct remains within defined moral and legal limits. Islamic laws of war first emerged in the 7th century through Qur'anic revelation, Prophetic practice, and juristic interpretation. These provided principles guiding the initiation of war, conduct during hostilities, and responsibilities after the conflict. This paper highlights the emphasis on justice, mercy, proportionality, and protection of non-combatants.

On the contrary, IHL has the objective of lessening the impact of armed conflict by detailing humanitarian protections of civilians, prisoners of war, the wounded, and medical personnel through the Geneva Conventions, Additional Protocols, and customary international law. These thus operate on universal principles that include distinction, proportionality, military necessity, and humane treatment.

Despite their roots in different historical and intellectual backgrounds, Islamic jurisprudence and IHL reveal a large number of areas of convergence. In both traditions, unnecessary violence is forbidden, belligerents are forbidden to harm non-combatants, legitimate targets are spelled out, and prisoners should be treated humanely. Yet, marked divergences exist in the conceptualization of legitimate authority, definitions of combatants, and the theological underpinnings that shape the objectives of war.

This paper, therefore, undertakes a deep exploration of the similarities and differences in a bid for an understanding of how Islamic ethics of war can complement and enrich contemporary humanitarian legal discourse. The study,

while locating both systems in their respective contexts, underlines the shared commitment of the two to reduce the brutality of war and preserve human dignity.

Islamic Laws of War: Foundations and Principles

Islamic laws of war derive from the Qur'an, the Sunnah of the Prophet Muhammad ﷺ, and the interpretive labors of classical jurists through numerous schools of Islamic jurisprudence. Altogether, these sources establish a comprehensive ethical and legal framework regulating when war can be initiated, how it must be conducted, and what obligations govern post-conflict relations.

Foundational Sources

Islamic teachings about warfare are based principally on:

- The Quran has laid down the conditions of defensive war, prohibitions against transgression, and rules regarding prisoners and treaties.
- Hadith literature has explicit instructions from the Prophet on not harming civilians, crops, religious clergy, and animals during war.
- These legal doctrines have elaborated on the principles of classical jurisprudence espoused by scholars such as Al-Shaybani, Al-Mawardi, and Ibn Taymiyyah, among others.

Principle of Just Cause

Islam permits war only under rightful and morally justifiable conditions: self-defense, for the protection of religious freedom, and against oppression. The Qur'an says:

"Fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not love the transgressors." (2:190)

This verse establishes the necessity of defensive engagement, yet prohibits excessive or aggressive warfare.

Legitimate Authority

War can only be declared by an established Islamic authority to avoid chaos and ensure ethical accountability. The classical scholars insisted that no individuals or unauthorized groups declare an armed struggle independently.

Protection of Non-Combatants

Islamic law strictly forbids targeting:

- women
- children
- The elderly
- Monks, Religious Clergy
- Farmers not involved in the fight
- Traders and non-militant civilians

Prophetic traditions strictly prohibited the killing of non-combatants and destruction of civilian property, thus setting an early humanitarian ethos.

Proportionality and Non-Transgression

There are tenets in Islam that call for proportionality during war, with no excess use of force or unjustified destruction. Even when a battle might be considered legitimate, Muslims should not commit mutilation, cut down trees except in the case of necessity, poison wells, or practice torture.

Humane Treatment of Prisoners

The Qur'an encourages kindness to captives by saying:

And they give food, in spite of love for it to the needy, the orphan, and the captive. (76:8)

Ransom, exchange, and charitable release-man are the means by which prisoners could be freed, showing a strong commitment to human dignity.

Commitment to Peace

Islam commands peace wherever possible. If the enemy inclines towards reconciliation, Muslims are bound to reciprocate. Treaties, covenants, and truces must be honored faithfully.

Put together, these diverse principles amount to one coherent legal-ethical scheme, emphasizing justice, restraint, and humanitarian conduct in war—several centuries ahead of similar codification in present international law.

Contemporary International Humanitarian Law: Framework and Principles

International humanitarian law, alias the law of armed conflict, is a set of international rules specifically aiming at limiting the effects of armed conflict and protecting persons who do not, or no longer, participate in hostilities. The roots of IHL are found in humanitarian considerations aimed at alleviating suffering, maintaining human dignity, and legally constraining belligerents in their conduct of war.

Foundational Sources

IHL emanates from two important components:

- Treaty Law, especially the Geneva Conventions of 1949 and their Additional Protocols of 1977 protect the wounded, prisoners of war, and civilians.
- **Customary International Law:** This is developed through state practice and legal precedent, extending the IHL obligations to areas where treaties are not ratified.

It is here that the International Committee of the Red Cross plays a leading role in interpreting, monitoring, and promoting compliance with these standards.

Principle of Distinction

A fundamental principle of IHL is distinction between:

- combatants, who may be legitimately targeted, and
- Non-combatants who must never be the object of attack.
- Explicit protection is accorded to civilians, medical personnel, humanitarian workers, and religious figures.

Principle of Proportionality

IHL prohibits attacks that would cause incidental civilian harm which would be excessive in relation to the anticipated military advantage. In this way, even otherwise lawful military operations are measured and morally justified.

Principle of Military Necessity

Military actions must be designed to achieve legitimate objectives-that is, to weaken the enemy's military capacity-within humanitarian constraints. It is forbidden to engage in destruction for its own sake or in acts that would lead to unnecessary suffering.

Prohibition against Unnecessary Suffering

Weapons and tactics that cause superfluous injury are prohibited, including chemical weapons, biological agents, booby-trapped civilian objects, and indiscriminate weapons, such as anti-personnel landmines.

Protection of Prisoners of War (POWs)

The Third Geneva Convention enumerates a number of detailed rights for the prisoners, including:

- Humane treatment
- adequate food and medical care
- Protection from violence, torture, and intimidation
- communication with families

Protection of Civilians and Occupied Populations

The Fourth Geneva Convention lays down measures for the protection of civilians in time of war and occupation that include:

- prohibition against collective punishment
- protection of property
- Access to humanitarian assistance
- Restrictions on forced displacement

Obligations Regarding Peace and Humanitarian Access

IHL requires the parties to the conflict to:

- Respect truces.
- allow humanitarian aid
- negotiate safe corridors
- Medical neutrality has to be ensured.

Overall, IHL establishes a universal legal regime that is designed to humanize war and protect life, with close reflections of the moral values inculcated in many religious and ethical traditions.

Comparative Analysis: Convergences and Divergences

A comparative study of Islamic laws of war and IHL indicates strong parallels grounded in the shared ethical goals of both, but also some important structural and conceptual differences because of their respective origins.

Points of Divergence

1. Protection of Non-Combatants

Both traditions emphasize the strict protection of civilians.

It is against Islamic law to target women, children, monks, elderly, farmers, and traders who are not participating in fighting.

- IHL requires the distinction between combatants and civilians, forbidding any unnecessary or intentional ill-treatment of the latter.

This shared principle reflects a mutual commitment to minimizing suffering.

2. Principle of Proportionality in the Use of Force

It bans transgression and excessive violence. It even orders restraint in legitimate war.

- IHL also requires that military operations shall not lead to damage which is excessive in relation to the anticipated military advantage.

Both systems try to avoid unnecessary damage and sufferings.

3. Humane Treatment of Prisoners

Islamic guidance urges benevolent treatment towards the captives: feeding, not torturing them, and allowing ransom or release possibilities.

- IHL, particularly the Third Geneva Convention, protects prisoners' rights to humane treatment and forbids their torture or degradation.

This parallel gives strong alignment to human dignity.

4. Environmental Protection

The prophetic instructions prohibited the cutting of trees, the poisoning of wells, or the destruction of crops without any need.

- IHL restricts environmental damage, and prohibits methods of combat that would cause widespread, long-term, or severe damage to the natural environment.

Both frameworks recognize ecological preservation as a moral duty.

5. Commitment to Peace and Treaties

It is obligatory upon Muslims, in Islam, to respect the treaties and work for peace when the enemy is inclined towards reconciliation.

- IHL supports armistices, ceasefires, and negotiated arrangements and views these as binding commitments.

Both systems favor peaceful solutions whenever possible.

Points of Divergence

1. Concept of Legitimate Authority

- War in Islam should be sanctioned by a legitimate Islamic authority: the Caliph, the ruler, or the state.
- IHL does not make any judgments on who is "legitimate"; it applies to all parties in an armed conflict irrespective of political or religious authority.

This results in a difference in outlook regarding non-state actors.

2. Theological vs. Secular Foundations

- Islamic laws of war are rooted in divine revelation and religious ethics.
- IHL is secular, developed through international consensus and humanitarian considerations.

Whereas the goals align, the foundational reasoning differs.

3. Classes of Combatants

- It views certain groups, such as hostile armed civilians aiding enemy forces, as combatants under some specific juristic understandings of Islam.

- IHL itself has clearly set forth categories: lawful combatants, unlawful combatants, civilians, and protected persons.

This can create interpretive differences in practice.

4. Objectives of War

- Among the legitimate objectives of Islamic warfare are the protection of religious freedom and the resistance to oppression.
- IHL is neutral in relation to motives for war; it restricts behavior only after war has taken place.

Therefore, the morality of the initiation of war may fall under Islamic law, whereas IHL is directed at conduct.

5. Scope beyond Conflict Ethics

- Islamic teachings range from pre-war ethics to conduct during war, and into post-war reconciliation that includes reparations and rebuilding the community.
- IHL does not extend deeply into the moral obligations of pre- or post-conflict situations; it is limited to armed conflict.

Islam yields a broad ethical continuum.

Overall Assessment

Both frameworks share a deep commitment to humanizing war, protecting civilians, and limiting destruction. Differences largely follow from their respective contexts-Islam as a religious legal system and IHL as a modern secular system-but such differences do not preclude significant harmonization.

Principles of Warfare in Islamic Jurisprudence

Islamic jurisprudence concerning jihad is a codified, humane, and people-oriented set of regulations that resonates with the conduct of war. These principles are derived principally from the Qur'an, the Sunnah of the Prophet Muhammad, and the classical juristic interpretations. A general strand that cuts across all Islamic teachings is that war is never an aggressive tool but a controlled last resort to

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restore justice, eliminate persecution, and safeguard human dignity. Beyond that point, the conduct of people in war is severely restricted. The Islamic code of law advances the proposition that in a state of war, only the combatants, who actually participate in the fighting, may be targeted, thereby distinguishing fighters from non-fighters—a principle parallel to and centuries ahead of modern humanitarian law.

Besides, Islamic precepts of proportionality prohibit the use of excessive force, mutilation, torture, and destruction of crops and livestock, or civilian settlements. Ethical prescriptions extend even to the treatment of war prisoners, in that they are to be treated humanely; they should be given adequate food and clothes, and torture and coercion should not be used against them. The guidelines of the Prophet Muhammad (ﷺ) to military commanders, such as not killing women, children, monks, and elderly people, remain the bedrock of Islamic military ethics. All these together demonstrate that Islamic jurisprudence weaves spiritual accountability with legal restraint into a comprehensive ethical code for warfare.

Fundamental Principles of Contemporary International Humanitarian Law

The core of contemporary international humanitarian law, essentially codified in the four Geneva Conventions of 1949 and their Additional Protocols, lies in a set of key principles aimed at constraining the impact of armed conflict and safeguarding those not directly involved in hostilities. At the center of IHL is the principle of distinction, which imposes on the parties to a conflict the duty to distinguish between combatants and civilians, so as to ensure that civilian populations and structures are spared as far as possible. The principle of proportionality is complementary, in that attacks are prohibited where the expected civilian harm would be greater than the anticipated military advantage.

Another basic principle of IHL is that of necessity, which restricts parties to the amount of force necessary to attain legitimate military objectives. The principle of



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humanity prohibits torture, cruel treatment, and weapons causing superfluous injury, in that it requires that unnecessary suffering be avoided. Furthermore, there are rules in IHL on prisoners of war, medical personnel, humanitarian aid workers, and the wounded and sick, guaranteeing protection and humane treatment for them. All in all, modern IHL sets the standard for international law with long-standing ethical traditions for making sure restraint, protection of civilians, and accountability are accorded to modern combatants.

Comparative Ethical Foundations

Despite their origin in different historical and cultural contexts, Islamic Laws of War and International Humanitarian Law share a number of common ethical bases. The root of both systems rests on the protection of human dignity and minimizing harm from armed conflict. In summary, what Islamic teachings call for is that war be strictly conducted within moral bounds-only for just causes and with mercy, answerable before God. Similarly, IHL emanates from universal humanitarian values underlining the protection of civilians and restraint in violence, no matter which party is involved.

Both protect non-combatant immunity, banning harm to those who do not participate in hostilities. They also come together on the principles of proportionality and necessity, which demand that force should be as calculated and oriented as possible toward only legitimate military targets. In addition, they both prohibit acts of brutality, torture, and wanton destruction. Drawing out the ethical comparisons between them shows that, whereas Islamic rules have their basis in divine guidance and moral responsibility, IHL finds its legitimate basis in international consensus and a rule of law. This difference in their roots does nothing to diminish the fact that the concurrence of their essential values represents a common human interest in justice and in the ethical constraint of war.



Areas of Convergence

Islamic law of war and International Humanitarian Law converge considerably in many crucial areas, which implies shared moral and ethical objectives of making armed conflict as humane as possible.

1. **Protection of Civilians:** Attacks against non-combatants are banned under both frameworks. Under Islamic law, protection from attack extends to women, children, the elderly, and religious persons, while under IHL, civilian immunity is codified within the Geneva Conventions.
2. **The prohibition against excessive force:** Islamic principles of proportionality forbid transgression, mutilation, and unnecessary destruction, and correspond to the prohibition under IHL of attacks causing damage to civilians that would be excessive in relation to the military advantage anticipated.
3. **Human treatment of prisoners:** Islam has imposed humane handling of prisoners of war by feeding and providing shelter with the option of being freed. Similarly, IHL requires humane treatment and medical access, protection from torture or degrading treatment for prisoners of war.
4. **Protection of the Environment:** Islamic prohibitions against destroying crops, trees, and wells accord with the relevant IHL provisions that limit environmental destruction and restrict methods of warfare resulting in widespread ecological damage.
5. **Respect for Treaties and Peace Efforts:** In both systems, respect is given towards treaties and the pursuit of peace whenever possible to reinforce the ethical and legal obligations concerning the lessening of conflict and the encouragement of reconciliation.

These areas of convergence indeed signal that both Islamic and modern legal frameworks are committed to mitigating human suffering, protecting life, and ensuring ethical conduct even in the context of war.

Areas of Divergence

While much of the underlying ethical considerations embedded in Islamic Laws of War and International Humanitarian Law overlap, there exist divergences based on different origins, scope, and conceptual frameworks.

1. Authority to Declare War:

- ❖ Under Islamic law, the declaration of war must be done by a legitimate Islamic authority to prevent unauthorized aggressions, meaning there should be a recognized ruler or state.
- ❖ IHL is applied universally to all parties involved in an armed conflict, regardless of the legitimacy of the authority initiating war.

2. Theological vs. Secular Foundations:

- ❖ Islamic laws of war are based upon divine guidance, moral accountability, and religious ethics.
- ❖ IHL is secular, based on international consensus, treaties, and customary law; it is concerned with practical humanitarian outcomes rather than spiritual imperatives.

3. Categorization of Combatants:

- ❖ Islamic jurisprudence sometimes adopts a differentiation on combatants depending on juristic interpretation, including categories like hostile armed civilians.
- ❖ IHL provides distinct categorizations-lawful combatants, unlawful combatants, and protected persons-which universally apply to all conflicts.

4. Objectives of War:

- ❖ Under Islamic law, war is permitted for just causes: the defense of religious freedom, resisting oppression, and restoring justice.
- ❖ IHL does not judge the reasons for war; it regulates the conduct of hostilities once conflict has commenced.

5. Extent of Ethical Delimitation beyond Conflict:

- ❖ Islamic law extends ethical obligations to pre-war conduct, during war, and post-war reconciliation, including reparations and rebuilding.
- ❖ IHL is mainly concerned with wartime behavior and has little to say about moral responsibilities either before or after conflict.

These divergences point to the fact that, while convergent in practical humanitarian concerns, the two systems do differ at the level of philosophical foundations, authority structures, and broader ethical scope.

Conclusion

Islamic Laws of War and modern IHL are deeply committed to the reduction of human suffering, the protection of civilians, and the control of behavior during

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armed conflict. Indeed, in both, great attention is paid to non-combatant immunity, proportionality, humane treatment of prisoners, and protection of the environment, which establishes considerable concurrence in ethical priorities. Islamic law, as it is based on divine guidance and moral accountability, goes further in including pre- and post-conflict moral imperatives, the legitimacy of authority, and just causes for war within a wider moral and spiritual context. Comparative research shows that, though their origin, scope, and authority differ, Islamic principles are able to complement and enrich modern IHL by imbuing it with ethical guidance based on centuries of jurisprudence. The integration of such perspectives would significantly contribute to the improvement of moral and legal regulation of warfare, enhancement of humanitarian values, and facilitation of reconciliation between traditional ethical teaching and modern international law. Both systems finally serve the universal goal of humanizing warfare with a view towards safeguarding human dignity.

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