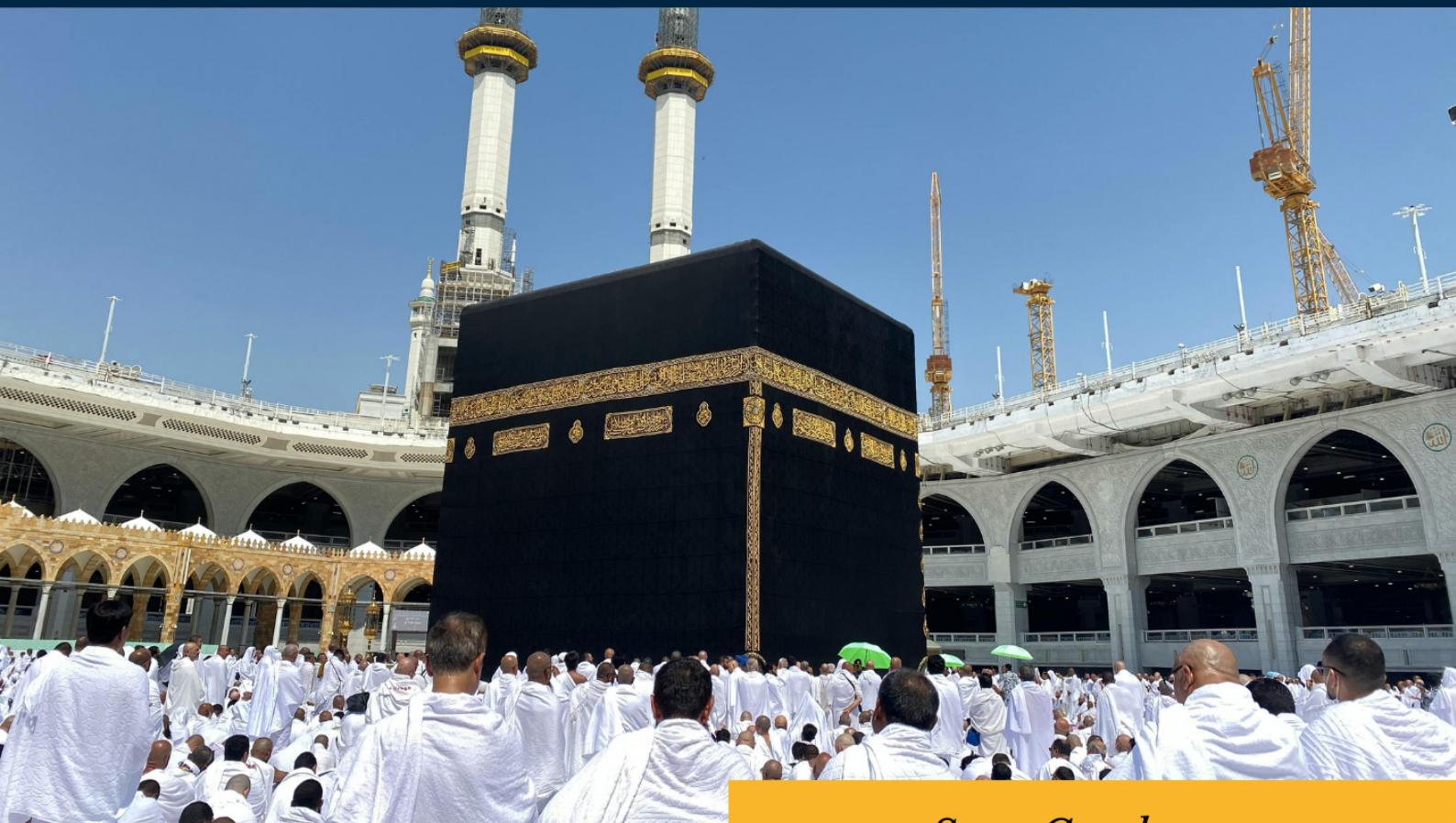




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*Sharia Law and the Legitimacy of War  
A Comparative Analysis of Islamic and  
International Legal Frameworks*



*Sara Cambarau*



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# **Sharia Law and the Legitimacy of War**

**A Comparative Analysis of Islamic and  
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## Abstract

Amid escalating conflicts in Muslim-majority regions, this paper examines a critical paradox: the marginalization of Sharia's humanitarian principles in global discourse, despite their alignment with IHL. Through comparative analysis of classical Islamic jurisprudence and modern legal frameworks, this study argues that integrating Sharia's ethical guidelines could address persistent gaps in contemporary warfare ethics. The perceived foreignness of international law often limits its local resonance, yet its acceptance can be strengthened by contextualizing its norms within existing cultural frameworks. The current academic discourse argues that Islamic Law, when aligned with International Humanitarian Law (IHL), can foster greater compliance among Muslim communities by rooting obligations in familiar ethical traditions. Anchoring IHL and war crimes prosecution in Islamic legal discourse not only enhances accessibility for Muslim societies seeking culturally relevant conflict-resolution mechanisms but also counters extremist groups' weaponization of religious doctrine to legitimize violence. By dissecting historical precedents and modern distortions, the paper highlights how Sharia's emphasis on divine accountability and individual dignity offers a complementary, human-centric approach to conflict regulation. It concludes by proposing actionable pathways for harmonizing Islamic ethics with IHL, such as hybrid legal frameworks and cross-cultural dialogues, to foster a more inclusive and effective global humanitarian order. Such engagement offers a dual benefit: bridging the gap between global legal standards and local values, while dismantling distortions of Islamic law used to justify political violence.

## Introduction

As of early 2025, our world finds itself ensnared in a web of 56 ongoing conflicts, the highest tally since World War II, that directly or indirectly involve at least 92 countries. These clashes have uprooted the lives of over 100 million people, forcing them to flee in search of safety both within their homeland and beyond its borders. In a stark illustration of an escalating crisis, the number of violent incidents has nearly doubled over the past five years, growing from more than 104,000 in 2020 to almost 200,000 in 2024. That year alone witnessed over 233,000 deaths, a grim figure that likely understates the true human cost.<sup>1</sup>

Rather, one of the most alarming trends driving this surge is not the emergence of new conflicts, but the deepening of long-standing ones. As peace agreements crumble and ceasefires become increasingly rare amid a faltering multilateral system, the world is witnessing a dangerous reawakening of hostilities. Violence shows no sign of abating; instead, forecasts for 2025 suggest that levels of conflict may soar by an additional 20% compared to recent years.<sup>2</sup> Furthermore, it's reported that 80% of the current humanitarian crises currently afflicting mankind are to be directly attributable

to armed conflicts.<sup>3</sup> In the framework of this paper's interest, it must be noted that a significant majority of these conflicts are unfolding in Muslim-majority countries or in regions where Sharia law plays a central role in governance.<sup>4</sup> Furthermore, in many of these conflicts, non-state armed groups often cloak their actions in the language of this legal tradition, justifying hostilities by invoking distorted rules of the Islamic law of war.

In these turbulent environments, complex socio-political and religious dynamics converge, challenging conventional legal and ethical frameworks and prompting profound questions about the efficacy of the current framework. Therefore, this paper embarks on an exploration of the intersections between Sharia law and international law in legitimizing the *jus in bellum*. It delves into how Sharia defines the legal parameters for armed engagement and examines how these standards interact with international frameworks such as the Geneva Conventions and the broader principles of International Humanitarian Law (IHL). Through a comparative analysis, this study aims to uncover the historical, legal, and ethical foundations underpinning the law of war under Sharia law.

<sup>1</sup> Armed Conflict Location & Event Data Project (ACLED), "Conflict Index," ACLED, 2024, <https://acleddata.com/conflict-index/>

<sup>2</sup> *ibidem*

<sup>3</sup> United Nations. "Secretary-General's Opening Remarks at World Humanitarian Summit." May 23, 2016. <http://www.un.org/sg/en/content/sg/statement/2016-05-23/secretary-general%20%99s-opening-remarks-world-humanitarian-summit>

<sup>4</sup> Geneva Academy. "Today's Armed Conflicts." <https://geneva-academy.ch/galleries/today-s-armed-conflicts>

## Defining Legitimacy in Sharia Law

European powers were reluctant to allow Islamic states to fully participate in the system of public international law on equal terms.<sup>5</sup> This acceptance only came at the decline of the Ottoman Empire, but essentially, Islamic states were not truly included as equals but were subjugated into the modern system, which was a form of Europeanization. This meant that Islamic states were forced to adapt to the European concept of the nation-state, breaking up the broader, pan-Islamic unity (umma) into individual nation-states.<sup>6</sup> The said development of the nation-state system had a profound impact on Islamic law, ultimately pushing it out of the realm of public law, which governs the relationships between states and international bodies, and relegating it to private law, a system that deals with individual rights and relations within a state.<sup>7</sup> This shift meant that Islamic law, especially in the context of international relations and humanitarian law, became less significant at the constitutional, administrative, and international levels. However, even in the realm where Sharia was presumed inviolable (personal status law), Islamic doctrines were retrofitted onto institutions originally built on Western legal models. By the 19th century, the institutional structures of the traditional Islamic legal system had been systematically dismantled and replaced. It

wasn't merely a case of substituting one legal code for another; the very fabric of legal culture was rewoven by the colonial powers, leaving behind a legacy that still challenges our understanding of authentic Islamic law today.<sup>8</sup> During the interwar period, Islamic states participated in the development of International Humanitarian Law (IHL), but their participation was framed not by Islamic principles but by the framework of public international law. This means that Islamic scholars did not emphasize Islamic views on humanitarian law during this time. The focus was rather on Western legal frameworks and not on integrating Islamic concepts.<sup>9</sup> For a long time, Islamic scholarship did not engage deeply with the relationship between classical Islamic law (such as the laws of warfare under Islamic jurisprudence) and modern humanitarian law. Instead, Islamic scholars worked within the established framework of IHL, largely adopting Western approaches without attempting to create a distinct Islamic perspective. Only recently, there has been an effort to rethink and develop an independent Islamic approach to limiting the conduct of armed conflict.<sup>10</sup> This suggests a renewed interest in integrating Islamic principles into modern discussions of humanitarian law, which is an area that has historically been dominated by European and Western le-

<sup>5</sup>Cockayne, James. "Islam and International Humanitarian Law: From a Clash to a Conversation Between Civilizations." *International Review of the Red Cross* 84, no. 847 (September 2002): 597–626

<sup>6</sup>Khadduri, Majid. "Islam and the Modern Law of Nations." *American Journal of International Law* 50, no. 2 (1956): 358–372.

<sup>7</sup>Bedjaoui, Mohammed. "The Gulf War of 1980–1988 and the Islamic Conception of International Law." In *The Gulf War of 1980–1988: The Iran-Iraq War in International Legal Perspective*, edited by Ige F. Dekker and Harry H.G. Post, 277–296. Leiden: Martinus Nijhoff Publishers, 1992

<sup>8</sup>Dupret, Baudouin. *What Is the Sharia?* Oxford: Oxford University Press, 2018

<sup>9</sup>Kelsay, John. "Islam and the Distinction Between Combatants and Noncombatants." In *Cross, Crescent, and Sword*, edited by James Turner Johnson and John Kelsay, 197–220. Westport, CT: Greenwood Press, 1990

<sup>10</sup>Cockayne, James. "Islam and International Humanitarian Law: From a Clash to a Conversation Between Civilizations." *International Review of the Red Cross* 84, no. 847 (September 2002): 597–626

gal frameworks.<sup>11</sup> A comprehensive understanding of the transformative potential of Islamic law in contemporary legal systems requires an initial exploration of the sources from which it draws its authority. The term *Shariah* comes from the root *shar*, meaning a way, method, or path. In the *Quran*, various forms of the word evoke images of guidance and nourishment.<sup>12</sup> For instance, *Quran* 5:48 speaks of shiratan wa-minhājan, a path and a way, that underscores the divine direction provided to humanity. Another key verse, *Quran* 45:18, uses *sharīatin min al-amr*, often rendered as “a sure path,” emphasizing that this legal and moral guide is meant to keep believers on track. Beyond its legal connotations, *Shariah* also suggests a flowing stream, a source of nourishment and life, mirroring the idea of *nomos* as a way of life.<sup>13</sup> Therefore, meaning that at its heart, classical Islamic jurisprudence asserts that *Shari'ah* is designed not for blind obedience but to promote human well-being (*tahqīq maṣālih al-ibād*). It transforms divine commands into a means for achieving both physical and spiritual flourishing, ensuring justice and balance in society. At the heart of its sources lies the *Quran*, the divine revelation of the literal word of God. It represents a universal guide that touches upon every aspect of human existence, from spiritual matters to civic duties. Unlike secular legal texts, the *Quran*’s profound moral and philosophical dimensions invite scholars to interpret its multifaceted messages, ensuring that its wisdom remains ever relevant.<sup>14</sup> Complementing the *Quran* is

the Sunnah: the conduct of the Prophet Muhammad. Through his actions, sayings, and silent approvals, the Prophet provided a living interpretation of divine commandments. The Hadith literature, which meticulously records the Sunnah, was compiled with rigorous care by scholars and essentially transforms abstract ideals into practical wisdom, illuminating the path for believers across centuries. When the main sources previously mentioned (*Quran*, Sunnah, Hadith) don’t provide direct answers to new or complex issues, Islamic scholars turn to the art of juristic reasoning, a process that not only respects tradition but also embraces innovation, rejecting anachronistic interpretations. This occurs through two practices, the first one, *Ijma* (or consensus among the learned), represents the mutual agreement on legal matters of the Islamic scholarly community. Drawing inspiration from a celebrated hadith in which the Prophet Muhammad champions the use of reasoned judgment, *ijma* stands as a symbol of unity and intellectual cooperation, reflecting the dynamic evolution of Islamic law.<sup>15</sup> The second instrument is the one of analogical reasoning, or *Qiyas*, is the intellectual bridge that connects established rulings with emerging issues. By drawing parallels between similar situations, jurists extend the timeless wisdom of the *Quran* and Sunnah to modern dilemmas. This method not only mirrors the adaptive nature of common law but also underscores the commitment to consistency and fairness in Islamic jurisprudence.<sup>16</sup>

<sup>11</sup>Ali, Shaheen Sardar. *Modern Challenges to Islamic Law*. Cambridge: Cambridge University Press, 2016

<sup>12</sup>Abou El Fadl, Khaled. “What Type of Law Is Islamic Law?” In *Routledge Handbook of Islamic Law*, 11–39. London: Routledge, 2019

<sup>13</sup>*ibidem*

<sup>14</sup>Farooq A. Hassan. “The Sources of Islamic Law.” *Proceedings of the American Society of International Law at Its Annual Meeting* (1921–1969)76 (1982): 65–74

<sup>15</sup>Mahmassani, Subhi. *Falsafat al-Tashri’ fi al-Islam: The Philosophy of Jurisprudence in Islam*. Translated by Farhat J. Ziadeh. Leiden: E.J. Brill, 1961

<sup>16</sup>Farooq A. Hassan. “The Sources of Islamic Law.” *Proceedings of the American Society of International Law at Its Annual Meeting* (1921–1969)76 (1982): 65–74

## Sharia Law and the legitimacy of the lesser Jihad

In Sharia law, the key criterion for any armed intervention to be deemed legitimate is its adherence to the principles of just war, or jihad. However, the concept of jihad has often been misinterpreted, particularly by certain scholars and movements that reduce it to a doctrine of war alone. For instance, prominent 20th-century Islamist thinkers such as Sayyid Qutb have framed jihad primarily as militant struggle.<sup>17</sup> Similarly, Emile Tyan, a French Orientalist, described jihad as an offensive obligation even absent external aggression.<sup>18</sup> Such misconceptions have stripped jihad of its broader spiritual and social dimensions, reducing a rich and multifaceted doctrine to a mere instrument of conflict. Such misconceptions have distorted its true meaning, reducing a rich and multifaceted doctrine to mere conflict (which constitutes just one of the multiple aspects). This paragraph seeks instead to clarify the real meaning and duty of Jihad, presenting its different forms and explaining how each should be carried out. The term Jihad is derived from the Arabic root *Jahd* or *Juhd*, meaning effort, exertion, or power. It refers to striving one's utmost, whether physically, mentally, or financially, in pursuit of a just cause. In its broadest sense, Jihad is not limited to warfare; rather, it encompasses self-discipline, personal growth, and advocacy for justice. The Qur'an and Hadith emphasize Jihad as a necessary effort for the defense of Islam. However, it is crucial to understand that Jihad is not about proselytism, despite what many media misrepresentations and sensation-

alistic narratives often suggest. Regarding this matter, the Quran also explicitly states that "*There is no compulsion in religion.*"<sup>19</sup> This verse, revealed after permission for self-defense was granted, affirms that Islam strictly opposes forced conversions and violence in the name of faith. Instead, its objective is to resist oppression and defend religious freedom. In some cases, Jihad does involve military action, but only under specific conditions outlined in Islamic teachings.<sup>20</sup>

The term Jihad appears in various Meccan and Medinan revelations, often emphasizing spiritual and moral struggle rather than war. For example, in Surah Al-Ankabut (29:6), the Quran states:

*"And whoever strives hard (Jahada) strives for himself, for Allah is self-sufficient above all need."*

Here, Jihad is described as a personal endeavor to attain righteousness and divine guidance, rather than an act of violence. The Hadith provides further clarity on the meaning of Jihad. The Prophet Muhammad described *Hajj* (pilgrimage) as the greatest Jihad for women, illustrating that Jihad is not limited to combat but also includes acts of devotion.<sup>21</sup> Furthermore, the actual Arabic words for war are *Al-Harb* and *Al-Qital*, not Jihad. As was mentioned earlier, the Quran permits fighting only under specific conditions: in self-defense and under unavoidable circumstances. In Surah Al-Baqarah (2:190), Allah commands:

*"Fight in the way of Allah against those who fight against you, but do not*

<sup>17</sup>Qutb, Sayyid. *Milestones*. Damascus: Dar al-Ilm, 1964.

<sup>18</sup>Tyan, Emile. "Djihad." In *Encyclopaedia of Islam*, 2nd ed., edited by P. Bearman et al. Leiden: Brill, 1960–2007

<sup>19</sup>Seriki, I. A. Alani. "The Interpretation of Jihad in Islam." *Journal of Philosophy and Culture* 2, no. 2 (2007): 110–117.

<sup>20</sup>Surah Al-Baqarah (2:256)

<sup>21</sup>I. A. Seriki, "The Interpretation of Jihad in Islam," *Journal of Philosophy and Culture* 2, no. 2 (2005): 110–117

transgress. Indeed, Allah does not love aggressors.”<sup>22</sup>

This principle ensures that Muslims only engage in battle when faced with oppression, aggression, or existential threats. It is also fundamental to specify that Jihad took on a military aspect when the early Muslim community in Medina faced persecution. Initially, Muslims in Mecca endured hardship without retaliation, adhering to patience and perseverance. However, after migrating to Medina, they were pursued and threatened by the Quraysh, leading to the first sanctioned battles in self-defense.<sup>23</sup> The Quran acknowledges this historical reality in Surah Al-Hajj (22:39-40):

*“Permission to fight is given to those who are oppressed, and surely Allah is able to help them.”<sup>24</sup>*

This verse highlights that armed struggle was a defensive necessity, not an act of religious expansionism or proselytism. Therefore, Islamic scholars categorize Jihad into three main types:

(a) Jihad against a visible enemy (Military Jihad or lesser Jihad)

This refers to fighting against those who attack or oppress Muslims. Even then, war is a last resort, only undertaken after all peaceful means have failed.<sup>25</sup> The Quran orders

Muslims to *seek peace whenever possible*: “And if they incline to peace, then incline to it and trust in Allah.”<sup>26</sup>

(b) Jihad against evil and corruption  
This involves resisting wrongdoing, whether by individuals, groups, or governments. It can be carried out through advocacy, education, and standing up against injustice. The Prophet emphasized this form of Jihad by saying: “*The best Jihad is a just word spoken to a tyrant.*”<sup>27</sup>

(c) Jihad against the self (nafs)  
This is considered the greatest Jihad: the struggle to overcome personal weaknesses, desires, and sins. It requires self-discipline, devotion, and moral integrity. The Prophet Muhammad described this as the “greater Jihad,” distinguishing it from the external, lesser Jihad of military struggle.

Therefore, Jihad is a multifaceted concept that extends far beyond the battlefield. It encompasses personal, social, and spiritual struggles aimed at self-improvement and the promotion of justice. Both the Quran and the Hadith consistently emphasize *peace, self-restraint, and ethical warfare*, strictly prohibiting aggression. Understanding Jihad in its true sense is crucial in dispelling misconceptions and preventing misuse of the term.

<sup>22</sup>Surah Al-Baqarah (2:190)

<sup>23</sup>Ali, Shaheen Sardar, and Javaid Rehman. “The Concept of Jihad in Islamic International Law.” *Journal of Conflict and Security Law* 10, no. 3 (2005): 321–343

<sup>24</sup>Surah Al-Hajj (22:39-40)

<sup>25</sup>I. A. Seriki, “The Interpretation of Jihad in Islam,” *Journal of Philosophy and Culture* 2, no. 2 (2005): 110–117

<sup>26</sup>Surah Al-Anfal (8:61)

<sup>27</sup>Sunan al-Nasa’i (Hadith 4209)

# Sharia Law and Humanitarian Protections for Armed Groups

Far from advocating unbridled aggression, the concept of Jihad in classical Islamic thought is fundamentally a defensive struggle, one that is bound by strict legal constraints. International law, particularly frameworks like the Geneva Conventions, does not recognize Sharia law as a binding source of regulation, yet the humanitarian principles espoused in Sharia share significant overlap with those of international humanitarian law. Both systems emphasize the protection of civilians, the prohibition of torture, and the humane treatment of prisoners.

## Protecting Civilians and Non-Combatants

As we said at the heart of Islamic war ethics is a deep commitment to protecting non-combatants. Rooted both in the Quran and Hadith, which unequivocally condemn the targeting of civilians: women, children, the elderly, and those who are not actively fighting.<sup>28</sup> This principle of prohibition of indiscriminate violence mirrors perfectly modern IHL, thus aligning with article 48 of Additional Protocol I (AP I), which states:

*"In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between*

*civilian objects and military objectives and accordingly shall direct their operations only against military objectives."<sup>29</sup>*

This principle (we already brought previously while mentioning jihad) is clearly set out in the verse that states: *"And fight in the way of God those who fight against you and do not transgress, indeed God does not like transgressors."*<sup>30</sup> In this moving parallel, ancient jurists clearly emphasized that the battlefield is not a license for wanton brutality. Instead, it is a place where even the conduct of war is infused with moral responsibility. The first caliph Abū Bakr (d. 634) instructed his army commander thusly: *"Do not kill a child or a woman; or an aged person; do not cut down fruit-bearing trees or destroy buildings; do not slaughter a sheep or a camel except for food; do not burn or drown palm trees; do not loot; and do not be cowardly."*

Respect for Islamic regulations on the use of force stems from the intrinsic commitment to divine obedience rather than external legal obligations like modern international conventions. This self-imposed adherence is rooted in the theological imperative to uphold taqwa (God-consciousness), irrespective of an adversary's conduct. Classical Islamic jurisprudence framed these rules as religious duties, with compliance motivated by spiritual rewards and divine accountability

<sup>28</sup>Emon, Anver M., Mark Ellis, and Benjamin Glahn, eds. *Islamic Law and International Human Rights Law*. Oxford: Oxford University Press, 2012

<sup>29</sup>International Committee of the Red Cross (ICRC). *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977

<sup>30</sup>Qur'an 2:190.

<sup>31</sup>Ahmed Al-Dawoody. "IHL and Islam: An Overview." *Humanitarian Law & Policy Blog, International Committee of the Red Cross*, March 14, 2017. <https://blogs.icrc.org/law-and-policy/2017/03/14/ihl-islam-overview/>

rather than secular enforcement.<sup>31</sup> This contrasts with contemporary IHL, which relies on state ratification and institution-alized mechanisms for enforcement.

Islamic jurisprudence has long emphasized strict distinctions between combatants and non-combatants, prohibiting attacks on civilians even when used as human shields by opposing forces, a principle rooted in Quranic injunctions (2:190) and Prophetic traditions.<sup>32</sup> This ethical framework extended to regulating night attacks due to risks of misidentification, reflecting principles remarkably similar to modern IHL's distinction and proportionality requirements.<sup>33</sup> However, contemporary challenges emerge when non-state actors exploit juristic ambiguities to justify civilian-endangering tactics, highlighting the need for renewed scholarly engagement.<sup>34</sup> Ultimately, Islamic military ethics, grounded in divine accountability rather than reciprocity, maintains its relevance by prioritizing civilian protection through both classical precedents and modern reinterpretations.

## Respecting Property and Human Dignity (prohibition of mutilation)

In the Islamic vision of war, destruction is not a goal but an unfortunate byproduct of necessary conflict. Classical jurists emphasized that military operations must avoid indiscriminate damage, as looting (ghulūl) and property destruction are condemned as moral corruption violating divine trust. This principle extends to the treatment of the dead: mutilation of enemy corpses is forbidden, reflecting a broader commitment to human dignity. The Prophet Muhammad's directive "*Do not loot, do not be treacherous, and do not mutilate*" encapsulates this ethic.<sup>35</sup> The term ghulūl refers to the theft of war spoils before their lawful distribution, an act equated with betrayal. Abu Bakr's famous injunction to Muslim armies mandated: "*Do not cut down fruitful trees nor destroy inhabited places*", a rule mirrored in modern IHL's prohibitions on scorched-earth tactics (Geneva Conventions, Art. 54).<sup>36</sup> The Quranic verse "Do not spread corruption on earth" (2:205) further grounds this principle, interpreted by scholars as a ban on environmental and infrastructural devastation.<sup>37</sup> The principle of human dignity previously mentioned requires respect for human bodies,

<sup>32</sup> Ahmed Al-Dawoody. "Islamic Law and International Humanitarian Law: An Introduction to the Main Principles." *International Review of the Red Cross* 99, no. 3 (2017): 995–1018. <https://international-review.icrc.org/articles/islamic-law-and-international-humanitarian-law-introduction-main-principles>

<sup>33</sup> *ibidem*

<sup>34</sup> Fajri Matahati Muhamadin. "Comparing International Humanitarian Law and Islamic Law on War Captives: Observing ISIS." *Dauliyah: Journal of Islamic and International Affairs* 1, no. 2 (2016): 123–145

<sup>35</sup> Dar al-Ifta al-Misriyya. *War in Islam: Ethics & Rules*. Cairo: Dar al-Ifta, 2015. <https://www.dar-alifta.org>

<sup>36</sup> International Committee of the Red Cross (ICRC). *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977. International Committee of the Red Cross (ICRC). *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977.

<sup>37</sup> Ahmed Al-Dawoody, and Sarah Gale. Protecting the Environment during Armed Conflict: IHL and Islamic Law. *Humanitarian Law & Policy Blog*, June 3, 2021. <https://blogs.icrc.org/law-and-policy/2021/06/03/protecting-environment-armed-conflict-ihl-islamic-law/>

<sup>38</sup> Ahmed Al-Dawoody. "Islamic Law and International Humanitarian Law: An Introduction to the Main Principles." *International Review of the Red Cross* 99, no. 3 (2017): 995–1018. <https://international-review.icrc.org/articles/islamic-law-and-international-humanitarian-law-introduction-main-principles>

not only during life but also after death, as said previously. For that reason, Islam forbids the mutilation of enemy corpses and instead requires them to be returned to the enemy people, or buried if this is not possible.<sup>38</sup> At the Battle of Badr in 624 AD, the first battle in Islamic history, the Muslims buried the corpses of all enemies killed. According to the narration of Yalā ibn Murrah:

*"I travelled with the Prophet (peace be upon him) on more than one occasion, and I did not see him leave a human corpse behind; whenever he came across one, he ordered its burial, without asking whether the person was a Muslim or an unbeliever."*<sup>39</sup>

Article 17 of Geneva Convention I (GC I) also stipulates that the parties to a conflict must first carry out a medical examination of corpses to verify the identity of the deceased, then bury the body according to the applicable religious rites if possible.<sup>40</sup> Historical accounts recount how, even after fierce battles, the Prophet Muhammad ensured that fallen foes were respectfully buried, a practice that underscores the timeless value of human life.

### ***Humane Treatment of Prisoners of War***

At the Battle of Badr in 624 AD, the nascent Muslim community captured seventy enemy combatants. Faced with the practical challenge of sheltering these prisoners, the Prophet Muhammad consulted his Companions and decided that

the captives be accommodated in the mosque and in the homes of the faithful. His clear instruction “*observe good treatment towards the prisoners*” set a precedent that underscored the importance of safeguarding human dignity, even in conflict.<sup>41</sup>

Islamic jurisprudence on prisoners draws from both the Qur'an and the Sunnah. A key verse instructs, “When you meet the disbelievers in battle, strike them in the neck, and once they are defeated, bind any captives firmly, later you can release them by grace or by ransom, until the toils of war have ended.” This directive, combined with the Prophet's exemplary conduct, established a moral and legal framework that emphasized care, protection, and even generosity toward captives. Historical accounts vividly illustrate this ethos as well. Captured soldiers were not left to languish in prisons or camps but were instead provided with the best available food, even prioritized over the captors' own needs. One narration recalls how a prisoner, Abū Aziz ibn Umayr, was offered not only nourishment but also the heartfelt generosity of his captors, who insisted he partake in their meals.<sup>42</sup> Similarly, when a prisoner named Al-Abbas was found without clothing on the day of Badr, the Prophet ensured that he was given a shirt from one of his Companions, preserving his dignity on the battlefield.

Beyond physical sustenance and clothing, Islamic law also mandates the preservation of familial bonds by prohibiting the separation of family members among

<sup>39</sup> Ahmad ibn Hanbal. *Musnad Ahmad ibn Hanbal*. Hadith no. 17559

<sup>40</sup> International Committee of the Red Cross (ICRC). *Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*. Geneva, 12 August 1949

<sup>41</sup> Ahmed Al-Dawoodiy. “Islamic Law and International Humanitarian Law: An Introduction to the Main Principles.” *International Review of the Red Cross* 99, no. 3 (2017): 995–1018. <https://international-review.icrc.org/articles/islamic-law-and-international-humanitarian-law-introduction-main-principles>

<sup>42</sup> al-abarānī, Abī al-Qāsim. *Al-Mujam al-aḡhīr*. Hadith no. 573

prisoners. Moreover, the idea of extracting military intelligence through torture was completely alien to early Islamic thought. Jurists like Imam Malik famously remarked that the very notion of torturing a prisoner for information was inconceivable, reflecting a deep-seated commitment to humane treatment that echoes in today's international law.<sup>43</sup>

## Conclusion

While Islamic law was formulated in historical contexts that differ markedly from today's mechanized warfare, its ethical foundations remain surprisingly relevant. The challenge today lies in interpreting these classical principles in a world where non-state actors, advanced weaponry, and asymmetric warfare prevail. Misinterpretations by extremist groups highlight the need for renewed scholarly engagement to ensure that the ideals of Islamic jurisprudence continue to serve as a guide for ethical conduct in war. As analyzed the heart of Islamic legal thought lies an unwavering commitment to the dignity and worth of the individual. Unlike traditional international law, which until recent decades largely prioritized the rights and interests of states, Islamic law elevates the individual as the fundamental unit of moral and legal concern. The Quran, with its verses extolling the honor and equality of all human beings, provides the basis for this individual-centric view. By positioning each person as a bearer of intrinsic rights and responsibilities, Islamic law challenges the state-centric paradigm, suggesting that the well-being of individ-

Like Article 17 of GC III stipulates:

*"No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind".<sup>44</sup>*

uals should be at the forefront of legal and political order. Moreover, the monistic approach of Islamic law contrasts with the ongoing debates in Western legal theory between monism and dualism. In Islamic jurisprudence, the source of all law, whether domestic or international, is unified in divine revelation. This monistic vision dissolves any apparent conflict between municipal law and international obligations, as both are seen as manifestations of a singular, transcendent legal order governed by God. In stark contrast, Western legal systems often grapple with reconciling international law with domestic statutes, a struggle emblematic of dualistic thinking that separates the two realms.

The future growth of international law could be profoundly enriched by embracing these Islamic legal insights. By integrating a human-centric approach that honors individual dignity and by adopting a unified, monistic framework, international law can transcend the limitations imposed by state-centrism and dualistic division. Such an evolution would not only enhance the ethical and moral un-

<sup>43</sup>Ahmed Al-Dawoody. "GCIII Commentary: An Islamic Perspective on the Treatment of Prisoners of War." *ICRC Humanitarian Law & Policy Blog*, January 26, 2021. <https://blogs.icrc.org/law-and-policy/2021/01/26/gciii-commentary-islamic/>

<sup>44</sup>Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III), Art. 17

derpinnings of international legal norms but also foster broader acceptance, especially in societies where Islamic jurisprudence continues to wield significant cultural and historical influence. This syn-

thesis could pave the way for a global legal system that truly serves humanity by recognizing the individual as its cornerstone and by uniting diverse legal doctrines under a common ethical vision.

## Bibliography

Abou El Fadl, Khaled. "What Type of Law Is Islamic Law?" In *Routledge Handbook of Islamic Law*, 11–39. London: Routledge, 2019.

Ahmed Al-Dawoodi. "GCIII Commentary: An Islamic Perspective on the Treatment of Prisoners of War." *ICRC Humanitarian Law & Policy Blog*, January 26, 2021.  
<https://blogs.icrc.org/law-and-policy/2021/01/26/gciii-commentary-islamic/>

Ahmed Al-Dawoodi. "IHL and Islam: An Overview." *Humanitarian Law & Policy Blog*, International Committee of the Red Cross, March 14, 2017.  
<https://blogs.icrc.org/law-and-policy/2017/03/14/ihl-islam-overview/>

Ahmed Al-Dawoodi. "Islamic Law and International Humanitarian Law: An Introduction to the Main Principles." *International Review of the Red Cross* 99, no. 3 (2017): 995–1018.  
<https://international-review.icrc.org/articles/islamic-law-and-international-humanitarian-law>

Ahmed Al-Dawoodi, and Sarah Gale. Protecting the Environment during Armed Conflict: IHL and Islamic Law. *Humanitarian Law & Policy Blog*, June 3, 2021.  
<https://blogs.icrc.org/law-and-policy/2021/06/03/protecting-environment-armed-conflict-ihl-islamic-law/>

Ali, Shaheen Sardar. *Modern Challenges to Islamic Law*. Cambridge: Cambridge University Press, 2016.

Ali, Shaheen Sardar, and Javaid Rehman. "The Concept of Jihad in Islamic International Law." *Journal of Conflict and Security Law* 10, no. 3 (2005): 321–343.

Armed Conflict Location & Event Data Project (ACLED). "Conflict Index." ACLED, 2024.  
<https://acleddata.com/conflict-index/>

Bedjaoui, Mohammed. "The Gulf War of 1980–1988 and the Islamic Conception of International Law." In *The Gulf War of 1980–1988: The Iran-Iraq War in International Legal Perspective*, edited by Ige F. Dekker and Harry H.G. Post, 277–296. Leiden: Martinus Nijhoff Publishers, 1992.

Cockayne, James. "Islam and International Humanitarian Law: From a Clash to a Conversation Between Civilizations." *International Review of the Red Cross* 84, no. 847 (September 2002): 597–626.

Dar al-Ifta al-Misriyya. *War in Islam: Ethics & Rules*. Cairo: Dar al-Ifta, 2015.  
<https://www.dar-alifta.org>

Dupret, Baudouin. *What Is the Sharia?* Oxford: Oxford University Press, 2018.

Emon, Anver M., Mark Ellis, and Benjamin Glahn, eds. *Islamic Law and International Human Rights Law*. Oxford: Oxford University Press, 2012.

Fajri Matahati Muhamadin. "Comparing International Humanitarian Law and Islamic Law on War Captives: Observing ISIS." *Dauliyah: Journal of Islamic and International Affairs* 1, no. 2 (2016): 123–145.

Farooq A. Hassan. "The Sources of Islamic Law." *Proceedings of the American Society of International Law at Its Annual Meeting* (1921–1969)76 (1982): 65–74.

Geneva Academy. "Today's Armed Conflicts."  
<https://geneva-academy.ch/galleries/today-s-armed-conflicts>.

International Committee of the Red Cross (ICRC). *Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*. Geneva, 12 August 1949.

International Committee of the Red Cross (ICRC). *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977.

International Committee of the Red Cross (ICRC). *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977.

Kelsay, John. "Islam and the Distinction Between Combatants and Noncombatants." In *Cross, Crescent, and Sword*, edited by James Turner Johnson and John Kelsay, 197–220. Westport, CT: Greenwood Press, 1990.

Khadduri, Majid. "Islam and the Modern Law of Nations." *American Journal of International Law* 50, no. 2 (1956): 358–372.

Mahmassani, Subhi. *Falsafat al-Tashri' fi al-Islam: The Philosophy of Jurisprudence in Islam*. Translated by Farhat J. Ziadeh. Leiden: E.J. Brill, 1961.

Qutb, Sayyid. *Milestones*. Damascus: Dar al-Ilm, 1964.

Seriki, I. A. Alani. "The Interpretation of Jihad in Islam." *Journal of Philosophy and Culture* 2, no. 2 (2007): 110–117.

Tyan, Emile. "Djihad." In *Encyclopaedia of Islam*, 2nd ed., edited by P. Bearman et al. Leiden: Brill, 1960–2007

United Nations. "Secretary-General's Opening Remarks at World Humanitarian Summit." May 23, 2016.

<http://www.un.org/sg/en/content/sg/statement/2016-05-23/secretary-general>

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