

Principles of International Humanitarian Law: A Comparative Study of International Humanitarian Law and Islamic Law

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Abstract

This article discusses the principles of international humanitarian law mentioned in the four Geneva Conventions and their additional protocols. It explains how international humanitarian law regulates warfare between two or more states, setting controls to preserve human dignity and prevent the loss of innocent lives. The article also compares these principles with Islamic law, clarifying Islamic law's stance on these principles, and outlining the sources related to international humanitarian law.

Keywords

principles, sources, international, law, *sharīʿah*.

Introduction

In 1864, the Geneva Convention was adopted to ensure the rights of the wounded on the battlefield. This marked the true beginning of International Humanitarian Law (IHL) by establishing a fundamental principle for wartime: the engagement in warfare within certain limits that must be respected to preserve human life and dignity.¹ Following the destruction of World Wars I and II, there was a call for the preservation of human dignity and the protection of lives, especially those of innocents who have no part in a war. In subsequent conflicts, the international community, including organizations like the United Nations, has sought to establish specific principles related to IHL.

Article One of the United Nations Charter states that among the UN's principles and purposes is maintaining international peace and security. To that end, the organization takes continuous measures to prevent threats to peace, suppress acts of aggression, and employ non-violent means following the principles of justice and international law. It also works to achieve international cooperation, resolve disputes, and

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¹ ICRC, *International Humanitarian Law: Answers to Your Questions* (Geneva: International Committee of the Red Cross, 2014) 3, <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc-002-0703.pdf>.

promote respect for human rights and fundamental freedoms.² Of these fundamental freedoms, life is the most precious possession of any human being, and if one is not granted the right to life, all other rights lose their meaning.³ This fundamental principle led to the Universal Declaration of Human Rights in 1948, which stipulated fundamental human rights and the necessity of their global protection.⁴

Civilians, or persons who do not directly participate in hostilities, are protected under the first paragraph of Article Three of the Third Geneva Convention of 1949. This means that all individuals uninvolved in combat for any reason that prevents them from participating in military operations must enjoy protection and humane treatment without any adverse distinction. This paragraph stipulates that such individuals shall be treated humanely regardless of race, colour, religion, belief, gender, birth, or other similar criteria.⁵ Under international law, states are responsible for ensuring the availability of basic needs for civilians during wartime.⁶

This article discusses the principles of IHL and explains how IHL regulates warfare between two or more states, setting controls to preserve human dignity and prevent the loss of innocent lives. The article also compares these principles with Islamic law, clarifying Islamic law's stance on these principles, and outlining the sources related to IHL. This topic was chosen to elucidate the intended benefits of IHL, especially since few studies compare these principles with those of the *sharī'ah*.

Defining IHL

Some scholars have defined IHL as a law that “regulates relations between States, international organizations and other subjects of international law. It is a branch of public international law that consists of rules that, in times of armed conflict, seek—for humanitarian reasons—to protect persons who are not or are no longer directly participating in the

² See the United Nations Charter, <https://www.un.org/ar/about-us/un-charter/chapter-1>.

³ Jean S. Pictet, “al-Qānūn al-Duwalī al-Insānī: Taṭawwaruhu wa Mabda'uh,” in *al-Qānūn al-Duwalī al-Insānī fī 'l-Nizā'āt al-Musallahah al-Mu'āṣirah*, ed. 'Umar Makkī (Geneva: ICRC, 2017), 29.

⁴ <http://www.un.org/ar/universal-declaration-human-rights/index.html>.

⁵ See the Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949; Bin 'Īsā Zāyid, “Al-Tamyīz bayna 'l-Nizā'āt al-Musallahah al-Duwalīyah wa Ghayr al-Duwalīyah” (PhD Diss., Faculty of Law and Political Sciences, University of Mohamed Khider, 2016), 140.

⁶ Zāyid, “Al-Tamyīz,” 64; ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Building a Culture of Compliance for IHL to Protect Humanity in Today's and Future Conflicts* (Geneva: ICRC, 2024).

hostilities, and to restrict means and methods of warfare.”⁷ Some have defined it as a set of rules that aim to limit the effects of armed conflict on the population, including civilians and persons who no longer participate in the conflict, and even those who are still participating, such as combatants.⁸ The International Court of Justice (ICJ) defined this as “the rules relating to the conduct of hostilities as well as the rules that protect persons under the authority of the opposing party.”⁹

On a practical level, jurists have defined IHL based on the Geneva Conventions or the Hague Conventions, which are the foundation of and primary reference for the principles of IHL. Others believe that IHL is not limited to the rules stated in these conventions and their two Additional Protocols. It goes beyond them to include all humanitarian rules derived from other agreements or even the public conscience. This is because the legislators of the above conventions did not anticipate what might happen in the future and could not account for all possible developments. The world is constantly developing, and laws are generally unable to keep pace with these changes. Therefore, it is necessary to subject new events to general rules and agreed-upon customs so that the legal rule does not lose its value amid such changes.¹⁰

Sources of IHL

Before the First and Second World Wars, there were very few clear, written laws and principles meant to limit the effects and damages of warfare that affected both civilians and the soldiers fighting in the war. Instead, there were customs or codes for the same purpose.¹¹ In the late

⁷ ICRC, *Answers to Your Questions*, 4.

⁸ Ibid., 12; Amal Yāzījī, “al-Qānūn al-Duwalī al-Insānī wa Qānūn al-Nizā’āt al-Musallahāh bayna ’l-Naḡariyyah wa ’l-Wāqī’,” *Majallat Jāmi’at Damishq li ’l-’Ulūm al-Iqtisādiyyah wa ’l-Qānūniyyah* 20, no. 1 (2004): 103-167, at 109; Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction* (Geneva: ICRC, 2019), 17; Fulayj Ghazālān and Sāmīr Mūsā, *al-Wajīz fī ’l-Qānūn al-Duwalī al-Insānī* (n.p.: n.p., 2019).

⁹ Louise Doswald-Beck, “International Humanitarian Law and the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons,” *International Review of the Red Cross* 316 (1997): 35-55, at 36.

¹⁰ Rochou Khaled, “al-Ḍarūrah al-’Askariyyah fī Niṭāq al-Qānūn al-Duwalī al-Insānī,” (PhD diss., Faculty of Law and Political Sciences, University of Abou Bekr Belkaid, Tlemcen, 2012), 23; Khalīl Aḥmad al-’Abīdī, “Ḥimāyat al-Madaniyyīn fī ’l-Nizā’āt al-Musallahāh al-Duwalīyyah fī ’l-Qānūn al-Duwalī al-Insānī wa ’l-Sharī’ah al-Islāmiyyah,” (PhD diss., St. Clements University, 2008).

¹¹ Jean Pictet, the former Vice President of the ICRC, mentions that there are written and unwritten principles. Unwritten ones existed implicitly as expressions of international custom. Therefore, these principles existed before the law. Conventions also explicitly refer to unwritten principles, whether in the preamble or the text,

eighteenth and early nineteenth centuries, Henry Dunant (d. 1910) and Guillaume Henri Dufour (d. 1875) played an essential role in the emergence of IHL. Dunant, a Swiss diplomat, travelled to Italy and witnessed the devastating effects of the Battle of Solferino (1859), where he saw forty thousand men either killed or wounded in a single day. After returning to Geneva, he wrote *A Memory of Solferino* (1862), in which he called for establishing international treaties and agreements to protect the wounded and others on battlefields. Dufour quickly supported Dunant's ideas and helped preside over the diplomatic conference of sixteen countries held in 1864, during which the original Geneva Convention was adopted to protect the wounded on the battlefield.¹²

Following the Second World War and its impact on civilians, the United Nations was established in 1945. It called for the prohibition of war and preserving human dignity so that peace and security may prevail. Accordingly, in the preamble of the Charter of the United Nations, it is stated,

We the peoples of the United Nations are determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.¹³

Afterwards, the Geneva Convention further evolved when four additional conventions were adopted in 1949. The first protects the wounded and sick on the battlefield. The second protects the wounded and sick in the armed forces at sea, along with those who are shipwrecked. The third concerns the treatment and rights of prisoners of war. Finally, the fourth covers the protection of civilians and their rights during wartime. In 1977, two Additional Protocols were annexed to the four Geneva Conventions. These further enhanced the principle of protecting international and non-international armed conflict victims. Therefore, the

expressing them as "laws of humanity," "prevailing custom," or "dictates of public conscience." See Pictet, "al-Qānūn al-Duwalī al-Insānī," 25.

¹² ICRC, *Answers to Your Questions*, 11; Melzer, *International Humanitarian Law*, 128; Zāyid, "Al-Tamyīz," 99.

¹³ <http://www.un.org/ar/sections/un-charter/preamble/index.html>.

four Geneva Conventions and their Additional Protocols have become fundamental instruments and the primary reference for IHL.¹⁴

International treaties are binding upon their participants, subject to international sanctions if they violate those agreements. Meanwhile, unwritten international customs are accompanied by the shared moral and ethical belief among states that they are obliged to follow them. Therefore, the International Committee of the Red Cross (ICRC) considers that unwritten international customs also bind all states, except those that have objected to them.¹⁵ This is bolstered by the Statute of the ICJ, which stipulates that international custom is accepted as law through general practice. In the disputes that appear before it, the ICJ applies international conventions, international customs, and the general principles of law recognized by states.¹⁶ Moreover, if the ICJ is presented with a dispute for which there is no established solution in international conventions, international custom, or international principles, it resorts to principles of equity and good conscience so long as the parties agree.¹⁷ Therefore, for international custom to be a source of IHL, states' practices of certain acts must be sufficiently repeated and widespread.¹⁸

Following the four Geneva Conventions, several treaties related to IHL have emerged that are aimed at limiting the taking of lives and preventing aggression against life, whether from civilians or soldiers participating in a war. These include the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) Weapons in 1972, the Convention on the Prohibition or

¹⁴ ICRC, *Answers to Your Questions*, 14ff; Fathī Muḥammad Fathī al-Ḥayyānī, *al-Qānūn al-Duwalī al-Insānī wa Taṭbīqātuhu 'alā 'l-Nizā'āt al-Musallahah fi 'l-'Irāq* (Baghdad: Jam'iyyat al-Amal al-'Irāqiyyah, 2022), 31; Ghazālān and Mūsā, *al-Wajīz*, 31.

¹⁵ Ghazālān and Mūsā, *al-Wajīz*, 17; Jean-Marie Henckaerts, "Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict," *International Review of the Red Cross* 87, no. 857 (2005): 175–212, at 178–79. The International Military Tribunal, at Nuremberg, in the trials after World War II, decided that the Hague Rules of 1907 had acquired a customary nature and were binding on all states regardless of their ratification and reciprocity, and held individuals criminally responsible for violating these rules. See Melzer, *International Humanitarian Law*, 22; Muṣ'ab al-Tijānī, *al-Qānūn al-Duwalī al-Insānī wa Ḥimāyat al-Madaniyyīn khilāl al-Nizā'āt al-Musallahah: Namūdhaj al-Ḥāllah al-Sūriyyah* (Berlin: Markaz Dīmuqarāṭī al-'Arabī, 2019), 24; Būbakr Mukhtār, "Ḥimāyat al-Madaniyyīn fi 'l-Nizā'āt al-Duwalīyyah al-Musallahah (master's thesis, Mouloud Mammeri University of Tizi Ouzou, 2012), 104.

¹⁶ See Article 38 of the Statute of the International Court of Justice. Melzer comments, "International humanitarian law can be found in three distinct sources: treaties, custom, and general principles of law." Melzer, *International Humanitarian Law*, 21.

¹⁷ Article 38 of the Statute of the International Court of Justice; Melzer, *International Humanitarian Law*, 21.

¹⁸ Henckaerts, "Study on Customary International Humanitarian Law," 178–79.

Restriction of the Use of Certain Conventional Weapons in 1980, the Convention on the Rights of the Child in 1989, the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines in 1997, and the Rome Statute of the International Criminal Court (ICC) in 1998. Some specialists see the Rome Statute as giving teeth to IHL, making the ICJ capable of prosecuting war criminals or crimes against humanity. IHL thus derives its sources from treaties and customary international law. The most important of these treaties for the foundation of IHL were the Hague Convention concerning the Laws and Customs of War on Land, the four Geneva Conventions, and their two Additional Protocols.

Principles of IHL

There are several principles of IHL, the most important of which will be briefly discussed below.

The Principle of Distinction

The principle of distinction is considered the backbone of IHL.¹⁹ This principle means distinguishing between combatants and noncombatants, as well as between civilian objects and military objectives in war. The ICJ has stated that the principle of distinction is a fundamental principle of IHL,²⁰ and one of the objectives of IHL is thus requiring that parties in a conflict distinguish between civilians and combatants to avoid causing harm to civilians or their property. Consequently, launching attacks on military objectives should only be done to the extent that it enables the subduing of the enemy while avoiding the loss of life as much as possible.²¹ The distinction principle also requires armed conflict parties to distinguish between civilian objects and military objectives. Accordingly, a party in an armed conflict may launch attacks against military objectives, but it is prohibited to attack civilian objects unless those civilians participate directly in hostilities. Any attacks in such circumstances should be only for the duration of their participation in such hostilities.

The principle of distinction extends to prohibiting indiscriminate attacks, which are attacks that are not directed at a specific military objective and whose effects cannot be limited. These attacks expose civilians to harm and danger. Therefore, parties in a conflict must identify a military objective to restrict the enemy without involving civilians. Fyodor Martens said, "Civilians and combatants remain under the protection and authority of the principles of international law as

¹⁹ Doswald-Beck, "Advisory Opinion of the International Court of Justice," 37.

²⁰ Ibid.

²¹ ICRC, *Answers to Your Questions*, 6.

they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of public conscience.”²²

The Saint Petersburg Declaration of 1868 is the first international document referring to this principle. Likewise, the Hague Convention respecting the Laws and Customs of War on Land in 1899 and the subsequent convention in 1907 explicitly stipulated it, reinforcing the protection of civilian objects by prohibiting the attack or bombardment of towns, villages, dwellings, and buildings.²³ The Hague Regulations further indicated the necessity of taking all possible measures to avoid attacking civilian objects such as hospitals and buildings dedicated to worship, the arts, and the sciences.²⁴ Article 24 of the Hague Rules of Air Warfare of 1923 added that aerial bombardment is only lawful when directed against military objectives, works, establishments, depots, factories that constitute important centres for producing armaments or munitions, and similar objectives.²⁵

Article 48 of the First Additional Protocol to the Geneva Conventions stipulates:

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.²⁶

Article 52 defines civilian objects as all objects that are not military objectives.²⁷ Paragraph 2 of Article 51 of the same Protocol and Paragraph 2 of Article 13 of the Second Additional Protocol both further stipulate that acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited. They also reiterate that these civilians are protected and must be distinguished from combatants.

The principle of distinction also requires that individuals be treated without discrimination based on race, gender, nationality, language, ethnicity, or any other criteria. That said, some legal commentators differentiated this as a distinct principle of IHL, the “Principle of Non-Discrimination.” Unlike the principle of distinction, which applies to

²² Ibid., 6.

²³ Article 22 of the Hague Convention respecting the Laws and Customs of War on Land of 1899 and 1907; Zāyid, “Al-Tamyīz,” 104.

²⁴ Zāyid, “Al-Tamyīz,” 104; Article 27 of the Hague Regulations respecting the Laws and Customs of War on Land of 1907.

²⁵ Zāyid, “Al-Tamyīz,” 105.

²⁶ First Additional Protocol to the Geneva Conventions of 1977.

²⁷ Ibid.

war, it directs parties not to discriminate between individuals, whether in peace or war.²⁸

The Principle of Humanity

The principle of humanity requires that all actions must be for the benefit of humans.²⁹ This principle also applies to the treatment of enemies during wartime, including dealing with them humanely, including during captivity. If the enemy is dead, this even includes burial if the family or state cannot do so. The principle of humanity also applies to civilians who did not participate in the war by assisting them.

The First Geneva Convention embodies a humanitarian ideal that goes beyond the provisions related to the wounded. This ideal is that aiding the wounded is lawful in all circumstances and does not constitute a hostile act or a breach of neutrality.³⁰ The principle of humanity thus carries great significance: respecting human dignity and treating people with mercy and humanity.

A combatant may be attacked when armed, but if they are unable to fight (such as being in captivity), express an intention to surrender, or are wounded or sick and unable to defend themselves, then due care and protection must be shown because their status as a combatant or enemy has ceased. Whether a prisoner, sick, or wounded, the former combatant has the right to be treated humanely, with respect for their dignity and rights, and not to be subjected to torture, cruel or degrading treatment, or other acts that violate the principle of humanity.³¹

It is further prohibited to wound or kill an enemy after their surrender or after they have otherwise ceased to participate in combat. At that point, they have the right to have their lives and safety respected, protected, and treated humanely without discrimination.³² The principle of humanity calls for avoiding cruelty and brutality, especially if using these methods will not help achieve the goal of conflict, which is victory or weakening the enemy state. Killing the wounded and sick or assaulting women, children, and other civilians

²⁸ Pictet, "al-Qānūn al-Duwalī al-Insānī," 31; Article 10 of the First Additional Protocol and Article 2 of the Second Additional Protocol to the 1949 Geneva Conventions.

²⁹ Pictet, "al-Qānūn al-Duwalī al-Insānī," 25; al-'Abīdī, "Ḥimāyat al-Madaniyyīn," 58.

³⁰ Al-'Abīdī, "Ḥimāyat al-Madaniyyīn," 35; Article 27 of the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949.

³¹ ICRC, *Answers to Your Questions*, 28.

³² *Ibid.*, 6.

who did not participate in the conflict are all actions outside these objectives and are therefore considered inhumane acts.³³

During warfare, the principle of humanity dictates that combatants should not inflict disproportionate damage on their adversary. In achieving its goal of weakening an enemy, the state has three options: death, injury, or capture. Fully achieving the principle of humanity requires preferring capture to injury, preferring injury to killing, and ensuring that injuries are as minimal as possible so that the wounded can recover with the least possible pain and difficulty.³⁴

Notably, the principle of humanity prioritizes civilians who did not participate in a conflict, which includes former combatants whose status has changed from enemy to civilian. Civilians who do not participate in the conflict—such as women, children, elders, and others—must have their dignity protected and be treated humanely without aggression. Children enjoy special protection and care, and if they become orphans or are separated from their families, they must be supported and tended to in all circumstances. Women, especially pregnant women, must be treated humanely and given special care befitting their vulnerability; they must not be tortured or otherwise abused. They should be separated from men and placed under the immediate supervision of fellow women to preserve their dignity. Additionally, a former combatant must be treated humanely, with respect and without aggression, especially if they are sick or wounded. Their illnesses or wounds must be treated.³⁵

Article 75 of the First Additional Protocol stipulated a set of humanitarian treatments to which parties in a conflict must adhere. All persons who are under the power of a warring party must be treated humanely in all circumstances and enjoy protection without any adverse distinction based on race, colour, gender, language, religion, belief, or other criteria. It also prohibits acts of violence, murder, torture, mutilation, outrages against personal dignity, or humiliating treatment. Similarly, Article 4 of the Second Additional Protocol stipulates, like Article 75, that all persons who do not take a direct part in or who have ceased to take part in hostilities shall be treated humanely and have the right to respect for their person, honour, beliefs, and religious practices, and not to have their health and safety put at risk. They must not be

³³ Zāyid, “Al-Tamyīz,” 111; Ghazālān and Mūsā, *al-Wajīz*, 57.

³⁴ Pictet, “al-Qānūn al-Duwalī al-Insānī,” 28.

³⁵ ICRC, *Answers to Your Questions*, 29–30.

tortured, mutilated, killed, robbed, looted, threatened, or subject to any other acts that violate the principle of humanity.³⁶

Armed conflicts may sometimes lead to civilians being deprived of their basic needs, including food, water, or medicine. As noted previously, civilians may be forced to leave their homes and abandon their sources of income due to war. Basic facilities and the economy can be affected by damages that affect the stability of their countries for a considerable period. In such cases, states bear the responsibility to ensure the availability of basic needs for these civilians without discrimination. If states are unable or unwilling to fulfil these responsibilities, IHL stipulates that relief actions be undertaken by other entities such as humanitarian assistance organizations.³⁷

The Principle of Military Necessity

Military necessity means undertaking what is required to achieve the objectives of war by weakening the enemy, breaking their resistance, and achieving victory at the lowest cost to human life.³⁸ IHL is a compromise between two principles: humanity and military necessity. In other words, this principle allows a state to use a certain degree of force necessary to subdue the enemy (in whole or in part) while minimizing the loss of life. Therefore, using excessive force beyond what is needed to deter the enemy—and resulting in unnecessary harm, destruction, or other damages—is contrary to both the principle of humanity and the principle of military necessity.³⁹

Attacks should only target combatant soldiers or military objectives, as required by the necessities of war, to subdue the enemy state without

³⁶ See the First and Second Additional Protocols to the Geneva Conventions, 1977.

³⁷ ICRC, *Answers to Your Questions*, 64; Articles 69 and 70 of the First Additional Protocol to the Geneva Conventions, 1977.

³⁸ The Saint Petersburg Declaration of 1868 mandates that the only legitimate objective that states should pursue during war is to weaken the enemy's military forces. It also emphasized that the necessities of war must yield to humanitarian considerations and prohibits using certain shells during wartime. Also see Khaled, "al-Ḍarūrah al-'Askariyyah," 82; al-Tijānī, *al-Qānūn al-Duwalī al-Insānī wa Ḥimāyat al-Madaniyyīn*, 67-68; Bilāl 'Alī al-Nasūr and Riḍwān Maḥmūd al-Majāli, *al-Wajīz fī 'l-Qānūn al-Duwalī al-Insānī Mā bayna 'l-'I'tibārāt al-Qānūniyyah wa 'l-Siyāsiyyah: Jawānib Naẓariyyah wa Taṭbīqiyyah* (Amman: Al-Akādimiyyūn li 'l-Nashr wa 'l-Tawzī', 2012), 48.

³⁹ The Rome Statute of the ICC considers such acts committed during wars to be crimes warranting criminal accountability and punishment unless justified by military necessity. It states that the widespread destruction of property and its seizure are also considered violations unless there is a military necessity. See Article 8 of the Rome Statute of the ICC; ICRC, *Answers to Your Questions* 6; Zāyid, "Al-Tamyīz," 109; Melzer, *International Humanitarian Law*, 17; al-Tijānī, *al-Qānūn al-Duwalī al-Insānī wa Ḥimāyat al-Madaniyyīn*, 15.

harming civilians.⁴⁰ Likewise, any harm to combatants must be proportionate to the military necessity. It may happen that military objectives, which are legitimate targets, are shielded behind sick or wounded individuals or other groups that may not be lawfully attacked. In such situations, the rules of IHL demand adherence to the principles of proportionality and precaution and refraining from attacking such military targets when the presence of these individuals negates the military necessity of the attack.⁴¹ In such situations, it is not permissible to attack factories and facilities that contain dangerous forces or to carry out attacks near or adjacent to them, even if these facilities become military objectives. Such attacks could cause greater losses, with effects extending to civilians. Hence, they are not considered legitimate military targets or justified by military necessity because doing so may harm noncombatants.⁴² Therefore, Paragraph 3 of Article 24 of the 1923 Rules of Aerial Warfare explicitly prohibits the bombing of military objectives located near villages, towns, and civilian buildings, where it would be impossible to bomb them without harming the civilian population.⁴³

Several states also signed the 1868 St. Petersburg Declaration, which called for not using harmful weapons during war. The Declaration espoused several additional principles, including the statement, “The only legitimate object which states should endeavour to accomplish during war is to weaken the military forces of the enemy.”⁴⁴ Later, the General Commission of the 1932 Disarmament Conference adopted the resolution that “Any attack or bombardment against civilian populations is absolutely prohibited.” In 1938, the League of Nations affirmed the principle of military necessity, considering attacks against civilians as prohibited. Nonetheless, this did not prevent violations of this principle in the subsequent conflicts. These violations were met with condemnation and denunciation by other states, especially by the League of Nations, confirming the international community’s commitment to this principle.⁴⁵

⁴⁰ The Social Contract, Jean-Jacques Rousseau, p. 33; ICRC, *Answers to Your Questions*, 6; Article 8 of the Rome Statute of the ICC.

⁴¹ ICRC, *Answers to Your Questions*, 74.

⁴² Articles 51 and 56 of the Additional Protocol I to the Geneva Conventions, 1977.

⁴³ Zāyid, “Al-Tamyīz,” 105.

⁴⁴ The St. Petersburg Declaration of 1868 attempted to ban the use of certain projectiles in wartime. See *ibid.*, 106.

⁴⁵ *Ibid.*, 96-97. Some legal scholars have mentioned that, for military necessity to apply, the following conditions must be met: 1) An immediate and serious threat to the state exists, which cannot be repelled except by using military force, and 2) the response

In the above discussion, peace is treated as the norm and war as the exception, making military necessity an exception as well. Military necessity means targeting military objectives only, on the condition that this does not impact civilians or civilian objects. To identify military objectives, Article 52 of Additional Protocol I to the Geneva Conventions stipulates that the category of civilian objects includes anything that is not a military objective. Therefore, anything that is non-military must not be harmed under any circumstances.⁴⁶

The Principle of Proportionality

The principle of proportionality is a delicate and challenging issue during combat because the primary goal of all parties in a conflict is to achieve victory and weaken the enemy's forces. Thus, compliance with and application of this principle is an obligation that requires skilled leaders imbued with humanitarian values to apply them on the battlefield without inflicting unjustifiable harm on the enemy.⁴⁷ This was affirmed by the St. Petersburg Declaration of 1868, which banned the use of certain projectiles in time of war, stating, "The only legitimate object which states should endeavor to accomplish during war is to weaken the military forces of the enemy."

Proportionality is considered one of the more flexible principles of IHL. Its strength lies in avoiding the use of force if it entails further human losses; thus, proportionality is applicable even in cases of military necessity. Its weakness is that one party in a conflict may choose to apply the principle by refraining from using force, which the other side may exploit by resorting to force, causing harm to the side that adhered to the principle.⁴⁸ From the above, it is apparent that attacks against combatants or military objectives must comply with the proportionality rule. Hence, the rule further prohibits attacks likely to harm civilians or civilian objects. One may attack a military objective

must be proportionate to the threat and must not be excessive. See Khaled, "al-Ḍarūrah al-'Askariyyah," 89-90.

⁴⁶ The ICRC has stated that when civilian objects are used for military purposes, e.g., a civilian train being used to transport weapons and fighters, they can be considered military objectives and thus may be targeted. ICRC, *Answers to Your Questions*, 47. In my view, what the ICRC stated in this manner does not align with the principles mentioned earlier, especially the principle of humanity, because targeting civilian objects for military purposes may harm civilians if they are present. Civilian objects with civilians inside them must not be targeted under any circumstances.

⁴⁷ Ibid., 112; Melzer, *International Humanitarian Law*, 97-98; Ghazālān and Mūsā, *al-Wajīz*, 62.

⁴⁸ Zāyid, "Al-Tamyīz," 112; al-Ḥayyānī, *al-Qānūn al-Duwalī al-Insānī wa Taṭbīqātuḥu*, 65.

only after an assessment concludes that the expected collateral damage does not outweigh the military advantage gained.⁴⁹

Article 57 of Additional Protocol I to the Geneva Conventions stipulates that no attack should be undertaken if it is expected to cause incidental civilian casualties, injuries, or damage to civilian objects.⁵⁰ Similarly, Paragraph B-5 of Article 51 states that indiscriminate attacks are prohibited, including those expected to cause civilian casualties, injuries, or damage to civilian objects.⁵¹ Moreover, the Rome Statute of the ICC regards attacks launched with the knowledge that they will cause incidental loss of life, injury to civilians, damage to civilian objects or the environment, or attacks on towns, villages, dwellings, or buildings that are not military objectives, as war crimes.⁵²

The Principle of Good Faith

The principle of good faith entails that states must respect and apply the principles of IHL with integrity, fairness, and honesty. Paragraph 1 of Article 1 of the Additional Protocol I to the Geneva Conventions states that the contracting parties must respect and ensure respect for Protocol I in all circumstances.⁵³ “Respect” here means that parties to IHL treaties must implement these treaties in good faith. States (whether they are involved in the conflict or not) and the entire international community must take all possible steps to ensure fair and honest compliance with the rules and principles of IHL.⁵⁴ Similarly, Article 2 states, “In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity, and from the dictates of public conscience.”

Therefore, acting in bad faith during an armed conflict is not in line with IHL principles or international customs. In times of peace and war,

⁴⁹ “ICRC, *Answers to Your Questions*, 47.

⁵⁰ Additional Protocol I to the 1977 Geneva Conventions. A military objective must be predictable, tangible, and direct. The mere probability of its occurrence leads to disproportionality between civilian casualties and the military objective, constituting a grave violation of this principle. In case of doubt or hesitation about proportionality, combatants should prefer nonproportionality in favour of civilians. See Paragraph 2-b of Article 8 of the Rome Statute of the ICC; al-Tijānī, *al-Qānūn al-Duwalī al-Insānī wa Ḥimāyat al-Madaniyyīn*, 67-68.

⁵¹ Additional Protocol I to the 1977 Geneva Conventions.

⁵² Indiscriminate attacks that do not target military objectives may harm civilians and damage the environment in which people and animals live. See Ghazālān and Mūsā, *al-Wajīz*, 62.

⁵³ Additional Protocol I to the 1949 Geneva Conventions.

⁵⁴ ICRC, *Answers to Your Questions*, 34.

international dealings between states must be conducted with sincerity and according to the dictates of public conscience. Otherwise, other states will treat a state dealing in bad faith with caution and mistrust.

Above are the most prominent principles of IHL that international agreements, laws, and the international community have agreed upon to preserve human life and dignity. However, there are also further principles mentioned by other international laws and conventions, including the principle of the sanctity of persons (which concerns respecting human life and bodily integrity and prohibiting torture, humiliation, and inhumane treatment), the principle of collective security (which bans acts of reprisal and collective punishments and taking hostages), the principle of protection and normal living conditions, and the principle of limiting means and methods of warfare. All these principles revolve around those previously mentioned, most importantly the principle of humanity, and they all share a mutual foundation of the protection and dignity of human life.

The *Sharī'ah* and the Principles of IHL

The principles of IHL have been called for by the international community to preserve human life. Although the international community has shown great concern for these principles in recent centuries, Islamic law preceded them by advocating and imposing the very principles that the international community now endorses.⁵⁵

The Qur'ān presents the most profound principle of IHL by stating, "Fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not like transgressors."⁵⁶ Here, the Qur'ān calls for implementing the principles of distinction and humanity by ordering Muslims to fight only those who participate in a war, and not others, such as civilians (including men, women, children, and the elderly). Fakhr al-Dīn al-Rāzī (d. 606/1209) has stated that fighting should only be against those who can and are ready to fight, whereas an enemy who is prepared for war but has not engaged yet does not qualify as a

⁵⁵ The term "international humanitarian law" is modern and was not known to early Muslim jurists. However, Islamic law and the writings of Muslim scholars prove beyond doubt that the issues addressed by modern IHL were previously addressed by Muslim jurists to achieve the same objectives that the international community strives for today. See Aḥmad al-Dāwūdī, "al-Qānūn al-Duwalī al-Insānī bayna 'l-Nazariyyah wa 'l-Taṭbīq," in *al-Qānūn al-Duwalī al-Insānī fī 'l-Nizā'āt al-Musallaḥah al-Mu'āṣirah*, ed. 'Umar Makkī (Geneva: ICRC, n.d.), 213.

⁵⁶ Qur'ān 2:190.

combatant.⁵⁷ Even if an enemy is captured and they were previously a combatant, they may no longer be killed following capture. The Prophet (peace be on him) also said, “Be kind to captives.”⁵⁸ This shows that Islamic law sees the objective of warfare not as the shedding of blood but the repelling of an aggressor and the establishment of peace. The Prophet used to instruct his army commanders before battle, urging them to apply the same humanitarian principles that modern international law now calls for.

Ibn Kathīr (d. 774/1373) comments that in the above verse, “not transgressing” includes refraining from mutilation, robbing, killing women, children, and elderly people who do not participate in a conflict, and destroying trees or killing animals unnecessarily.⁵⁹ Sulaymān b. Buraydah (d. 105/723) reported that whenever the Messenger of Allah appointed a leader over an army or a detachment, he would advise him the following:

Go forth in the name of Allah, in the path of Allah, fight those who disbelieve in Allah, go forth and do not be treacherous, do not be excessive, do not mutilate, and do not kill a child. When you meet your enemies from among the polytheists, call them to three things. Whichever they respond to, accept it from them and desist from fighting them.⁶⁰

Likewise, the first Caliph Abū Bakr (r. 11/632-13/634) advised his army similarly,

Do not betray, do not steal from the spoils, do not be treacherous, do not mutilate, do not kill a young child, nor an elderly man, nor a woman, and do not cut down palm trees or burn them, do not cut down fruit-bearing trees, and do not slaughter sheep, cows, or camels except for food. You will come upon people who have devoted themselves to worship in monasteries, leave them and what they devote themselves to.⁶¹

From the above, it is evident that Islam advocates the principle of distinction by forbidding the killing of women, children, the elderly, and anyone who does not participate in war, such as those who have devoted their lives to worship. It also advocates the principle of humanity in warfare, forbidding assaults on civilians or their properties or unnecessary

⁵⁷ Fakhr al-Dīn al-Rāzī, *Mafātīḥ al-Ghayb*, 3rd ed. (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 1420 AH), 5:288.

⁵⁸ Ismā’īl b. ‘Umar b. Kathīr, *al-Bidāyah wa ‘l-Nihāyah* (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 1408 AH), 3:373.

⁵⁹ Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*, 2nd ed. (n.p.: Dār Ṭaybah, 1420 AH), 1:524; Muḥammad b. ‘Alī al-Shawkānī, *Fath al-Qadīr* (Beirut: Dār Ibn Kathīr, 1414 AH), 1:220.

⁶⁰ Muslim b. al-Ḥajjāj, *Ṣaḥīḥ*, ed. Muḥammad ‘Abd al-Bāqī (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, n.d.), 3:1357, ḥadīth no. 1731.

⁶¹ Muḥammad b. Jarīr al-Ṭabarī, *Ta’rīkh al-Rusul wa ‘l-Muluk*, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1407 AH).

harm to enemy combatants. The verse “Do not transgress” thus encompasses both the principle of distinction and humanity: do not target civilians who do not fight and do not commit atrocities against the enemy in combat. If a Muslim kills an enemy combatant, the killing must be humane and without mutilation, for the Prophet also forbade mutilation.⁶²

The Prophet further embodied the principle of humanity when he said, “Do not embezzle, do not be treacherous, and do not mutilate.” This principle forbids theft and duplicity, which are forms of inhumane treatment. Similarly, mutilation is forbidden because God says, “And We have certainly honoured the Children of Adam.”⁶³ Such acts are inconsistent with the principle of humanity championed by both Islamic law and today’s international law.

Islam prohibits mutilation even against animals, including rabid dogs, so it is even more forbidden to mutilate human beings, even if they are enemies.⁶⁴ Moreover, Islam, out of humanitarian considerations, orders the burial of deceased enemies out of respect for their humanity and to preserve their dignity so that their bodies do not rot and become food for scavengers, which would constitute a form of mutilation. After the Battle of Badr (2/624), for example, Muslims buried the enemies’ corpses.⁶⁵ Moreover, as the Companion Ya’lā b. Murrah narrated, “I travelled with the Prophet (peace be on him) on several occasions, and I never saw him pass by a human corpse without ordering it to be buried. He would not ask whether it was a Muslim’s or a non-Muslim’s.”⁶⁶

Therefore, while Article 48 of the Additional Protocol I to the Geneva Conventions calls for distinguishing between combatants and noncombatants and between civilian objects and military targets, Islam already advocated for these principles well before IHL was established.

The concept of military necessity also has a basis in Islamic law. The fundamental principle is that necessity can make otherwise prohibited things permissible. However, this principle is restricted by another maxim: “Necessities must be evaluated according to their extent” (i.e., the permissible is limited only to what is necessary and nothing more). This is because necessity is an exception to the rule, and exceptions

⁶² Al-Bukhārī, *Ṣaḥīḥ*, 5:129, no. 4192.

⁶³ Qur’ān 17:70.

⁶⁴ Abū Bakr Muḥammad al-Sarakhsī, *al-Mabsūṭ* (Beirut: Dār al-Fikr li ‘l-Ṭibā’ah wa ‘l-Nashr wa ‘l-Tawzī’, 1421 AH), 26:274.

⁶⁵ Al-Dāwūdī, “al-Qānūn al-Duwalī al-Insānī bayna ‘l-Nazariyyah wa ‘l-Taṭbīq,” 223.

⁶⁶ Aḥmad b. al-Ḥusayn al-Bayhaqī, *al-Sunan al-Kubrā* (Hyderabad: Majlis Dā’irat al-Ma’ārif, 1344 AH), 3:386

cannot be overextended. For example, a person forced to eat carrion due to starvation is allowed only what is needed to prevent death. The same principle applies to military necessity. In principle, killing combatants or targeting military objects is only permissible in cases of necessity. If a soldier is compelled to kill an enemy, they must apply the principle of proportionality by targeting only the military objects or enemy soldiers to the extent needed to weaken the enemy's force.⁶⁷

Similarly, Islam has established the principle of good faith. War in Islam is not waged for its own sake (i.e., to shed blood and cause destruction). Rather, its purpose is to eliminate persecution and establish a peaceful environment. The Qur'ān says, "Fight them until there is no [more] persecution and [until] religion is [acknowledged to be] for Allah. But if they cease, then there will be no aggression except against the oppressors."⁶⁸ This cannot be achieved without exercising good faith. Acting with ill intent is fundamentally incompatible with the Islamic teachings on warfare. Evidence for this is found in the famous story of Usāmah b. Zayd (d. 54/680), who said,

The Messenger of Allah (peace be on him) sent us on a detachment, and we raided the people of Ḥurqat from Juhaynah. I caught up with a man who said, "There is no God but Allah," but I stabbed him. This caused me unease, and I mentioned it to the Prophet (peace be on him). The Prophet (peace be on him) said, "He said, 'There is no God but Allah,' and then you killed him?" I said, "O Messenger of Allah, he only said it because he feared the weapon." The Prophet (peace be on him) said, "Did you open his heart to know whether he said it sincerely or not?" He kept repeating it until I wished I had only embraced Islam that day.⁶⁹

The Prophet was angry because Usāmah b. Zayd did not act in good faith by assuming the man he had pursued spoke only out of fear. The Messenger wanted to teach Usāmah—and by extension the entire Muslim community—to use good faith and to give others the benefit of

⁶⁷ Khaled, "al-Ḍarūrah al-'Askariyyah," 76. Due to the importance of the principle of military necessity, Muslim jurists have differed regarding the ruling on killing enemies who use civilians as human shields, launching night attacks on the enemy, and other issues where the military necessity has entailed possible harm to civilians. Some have allowed it, and others have prohibited it. The jurists' disagreement arises from the debate over whether it is permissible to target enemies despite harming civilians and civilian objects, paralleling what is known in international humanitarian law as the principle of "military necessity." The concept of military necessity in international law is analogous to the principle of *istiḥsān* (equitable preference) in Islamic law, as both allow something that is otherwise prohibited due to necessity. Thus, civilian objects cannot be targeted except in cases of military necessity and without harming civilians.

⁶⁸ Qur'ān 2:193.

⁶⁹ Muslim, *Ṣaḥīḥ*, 1:96.

the doubt, even enemies and disbelievers. The goal of Islam is to embrace humans, not kill them, and this can only be achieved by adopting good faith towards one's enemies. This is further affirmed when the Prophet called himself "the Prophet of Mercy and the Prophet of Battles."⁷⁰ Mercy and warfare are thus intertwined, for true mercy cannot exist without eliminating corruption, preventing evil, and reforming society.⁷¹

Out of mercy, humanity, and good faith, if an enemy stops fighting or enters Muslim lands seeking safety, it is, therefore, not permissible to fight or target them.⁷² Instead, one must grant them the protection they requested because Islam aspires to something greater: bringing them into Islam, which is the ultimate purpose behind refraining from aggression. However, employing this principle does not mean exhibiting weakness to the enemy. Islam is a religion of dignity and strength. This means that if the Muslim soldier does not know an enemy's intentions, they must act in good faith. However, if it becomes evident that the enemy is deceitful or treacherous, then one must deal with them firmly to deter them. For instance, the Prophet dealt with the Jewish people who broke their covenant by judging them according to the Companion Sa'd b. Mu'adh's (d. 5/627) verdict of executing their men, taking their women captive, and dividing their wealth. The Prophet said to Sa'd, "You have judged among them by the judgment of Allah and His Messenger." The Prophet knew their treachery and deceit and thus executed them without accepting their excuses.⁷³

In Islam, proper conduct in warfare aims to bring about the welfare of humanity. Therefore, A conflict must be noble in its beginnings, methods, and conduct. It must not seek material gain, territorial expansion, or hateful colonialism. International law similarly holds that if a state's motive for war is the desire for domination, conquest, or the imposition of its authority over other states, its action is unlawful and its war is considered unjust and an aggression.⁷⁴

⁷⁰ In his *Ṣaḥīḥ*, Muslim mentions that the Prophet said, "I am Muḥammad, Aḥmad, al-Muqaffī (the last of the Prophets), al-Ḥāshir (the one at whose feet people will be gathered), the Prophet of Repentance, and the Prophet of Mercy." See Muslim, *Ṣaḥīḥ*, 4:1828. Al-Ṭabarānī and Aḥmad b. Ḥanbal, as well as several other scholars, added the following title: "the Prophet of War" (Nabī 'l-Malḥamah). Sulaymān b. Aḥmad b. Ayyūb al-Ṭabarānī, *al-Mu'jam al-Awsaṭ* (Cairo: Dār al-Ḥaramayn, n.d.), 3:135; Aḥmad b. Ḥanbal, *Musnad* (Beirut: 'Ālam al-Kutub, 1419 AH), 4:395.

⁷¹ Wahbah al-Zuhaylī, *Āthār al-Ḥarb fī 'l-Fiqh al-Islāmī* (Beirut: Dār al-Fikr, 1998), 144.

⁷² Al-Dāwūdī, "al-Qānūn al-Duwalī al-Insānī bayna 'l-Nazariyyah wa 'l-Taṭbīq," 217.

⁷³ See Muslim, *Ṣaḥīḥ*, 3:1389; Ibn Kathīr, *al-Bidāyah wa 'l-Nihāyah*, 4:140.

⁷⁴ Al-Zuhaylī, *Āthār al-Ḥarb*, 138.

One aspect that distinguishes the rules of Islamic law is the element of obligation, which is not found in IHL. The rules of Islamic law are binding on Muslims because following them is an act of worship through which one draws closer to Allah. When a Muslim soldier adheres to Allah's commands during battle, they are aware of Allah's watchfulness and fear disobeying His order. This consciousness of a higher power's moral oversight does not exist in international law, international agreements, or, if it does, it tends to be a mere formality. The blatant violations of these treaties and agreements in our current era serve as proof of this.⁷⁵ Adhering to the principles of IHL laid down within Islamic law means that compliance with them in Islamic law is an act of worship voluntarily undertaken by the Muslim to please the Lord. Adherence to these principles is not due merely to international agreements or treaties, as is the case for many states today.⁷⁶

In light of the above, one can argue that the principles of Islamic law are universal and surpass all international laws. The *sharī'ah* introduced the principles of IHL long before the international community called for them. Moreover, the international community's call to implement these principles depends on human-made agreements and treaties between states. Meanwhile, the principles of the *sharī'ah* are from Allah Himself, Who knows His creation best, and from His Messenger, who did not speak from his desire. Whoever applies the principles of IHL set by the international community does so because of agreements between states. However, what occurs in practice is the weak application of these principles. In contrast, the principles of the *sharī'ah* are implemented by Muslims out of belief and devotion, since they come from Allah and His Messenger.

Conclusion

IHL is a set of rules that seeks to limit the effects of armed conflict for humanitarian reasons. However, IHL was not initially written down or clearly defined; no specific laws or agreements limited war damage. Instead, generally accepted customs aimed to mitigate the harms of wartime. This situation persisted until Dunant and Dufour called for specific, written international treaties and agreements to protect the wounded and others during armed conflicts. Today, IHL draws its sources from such treaties and agreements. The most important are the Hague Conventions, the four Geneva Conventions, and their two Additional Protocols.

Based on these documents, several principles of IHL have been established. The first is the principle of distinction, which is considered the backbone of current IHL, as it requires differentiating between

⁷⁵ Ghazālān and Mūsā, *al-Wajīz*, 16.

⁷⁶ Al-Dāwūdī, "al-Qānūn al-Duwalī al-Insānī bayna 'l-Nazāriyyah wa 'l-Taṭbīq," 214-15.

combatants and noncombatants and between civilian objects and military targets. The second principle is that of humanity, which calls for respecting human dignity and treating others with mercy and compassion, avoiding cruelty and brutality towards the enemy. The third is that of military necessity, which permits using only the necessary amount of force to subdue the enemy—fully or partially—and achieve victory with minimal loss of life. The fourth principle is the principle of proportionality, a middle ground between humanity and military necessity, intended to subdue the enemy and achieve victory without causing unjustifiable harm. Finally, the fifth principle is that of good faith, which requires states to respect and sincerely implement the IHL principles when dealing with one another in both peace and wartime.

It is undoubtedly clear that Islamic law introduced all these principles long before the international community did. These are reflected in Allah's verse: "Fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not like transgressors."⁷⁷ This verse combines several principles: distinction (only fighting those who fight), non-aggression (not harming civilians or civilian objects), and refraining from mutilating the enemy after killing them, which reflects the principle of humanity advocated by the *sharī'ah*. As for military necessity, Islamic law states that it is not permissible to attack combatants or military objectives except out of necessity. Some circumstances demand normally forbidden actions, but these must be limited to what is strictly necessary. If a fighter resorts to necessity, proportionality must, therefore, be involved. Similarly, multiple Islamic texts advocate for good faith in dealing with others, including enemies, so that mercy and justice prevail.

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⁷⁷ Qur'ān 2:190.