

Protection of Civilians during Armed Conflict in Islamic Law

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Abstract

As nations strive to ensure precautionary measures against terrorist activities, some Muslim clerics have come out to defend indiscriminate attacks as a legitimate means against forces that are at war with Muslim states. This has led to a misconception of the Islamic standpoint on protection of civilians during an armed conflict.

Peaceful co-existence is the ideal situation under Islamic domestic and international relations. War in Islam is described as a burden whose legality is only as a last resort undertaken as a necessity, and whose pursuance must incorporate mandatory measures, before, during and after armed conflict to protect non-combatants from the ruins of war.

This article presents the concept of Islamic humanitarian rules with their related provisions of the International Humanitarian Law. It explains the protection of civilians under Islamic law, and refutes the justifications for indiscriminate

attack by suicide attacks. It finally ends with recommendations towards a more practical than theoretical emphasis on protection of civilians during armed conflict as understood under Islam.



Introduction

Armed conflicts have been a major source of injury and loss of lives through history. Despite numerous efforts to scale down the rate of such affliction, the human race has continued to suffer the consequences of armed conflicts, a situation that has been aggravated by the invention and application of weapons of mass destruction, as well as the use of indiscriminate methods of attack.

Both International Humanitarian Law and the Islamic Law provisions aim at protecting and safeguarding human interests, and to limit as much as possible the effects of armed conflict on people who are not or are no longer taking part in the hostilities, such the civilians, civilian objects, the wounded and the sick, among others.

The Four Geneva Conventions of 12th August 1949, their two Additional Protocols of 8 June 1977 contain provisions to achieve this objective, the violation of which amounts to war crimes as defined under the Rome Statute of the International Criminal Court of 1st July 2002.

Protection of civilians from the effects of armed conflict is at the heart of the Islamic international law, whose principles were laid down in *Shari'ah* sources including the holy Qur'an, *Sunnah* (traditions of the prophet), *Ijma* (consensus of Muslim scholars), *Qiyas* (analogy), and practices of holy companions; among others. This branch of law covers a wide range of issues but this treatise addresses the Islamic attitude towards an armed conflict, the Islamic humanitarian rules and protection of civilians during an armed conflict.

Islamic Attitude towards armed conflict

Both International Humanitarian Law and Islamic Law hold the same attitude towards armed conflict. *Jus ad bellum* addresses the rules that determine when war is permissible or obligatory and it requires that the cause of war must be just, war must be declared by a lawful authority, war must be a last resort, there must be a reasonable chance of success, and its political objectives must be proportionate to the human costs of war, and finally a state must have a right

intention.¹ This is different from rules of the *jus in bello* whose overall principle is that destruction of life and property is inherently bad and therefore military forces should cause no more destruction than strictly necessary to achieve their objectives.²

Under the UN Charter, States must refrain from the threat or use of force against the territorial integrity or political independence of another state³; except in case of self-defence or following a decision adopted by the UN Security Council under chapter VII of the UN Charter or under humanitarian intervention under which the threat or use of force may be sanctioned across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens without the permission of the state within whose territory force is applied.⁴ Similarly, Islamic law looks at armed conflict with abhorrence. It advocates for upholding peace as much as possible and regards war as a necessary last resort pursued only with a justifiable objective of fending off aggression,⁵ self-defense,⁶ resisting oppression, quelling down affliction,⁷ and liberating the lives of the vulnerable groups including women, children, the elderly, the sick, weak, or rescuing them from the vehemence of dictatorship and oppression.⁸

1 See The Challenge of Peace: God's Promise and our Response, a Pastoral Letter on War and Peace by the National Council of Catholic Bishops, May 3, 1983, retrieved from <http://old.usccb.org/sdwp/international/TheChallengeofPeace.pdf>, last visited on July 5, 2013.

2 J.G Fleury, *Jus in bello and Military Necessity*, Advanced Military Studies Course/1, Canadian Forces College, 1988, retrieved from <http://www.cfc.forces.gc.ca/259/260/261/fleury2.pdf>, last visited on May 10, 2013. Elsewhere,

3 See Article 2 para. 4

4 See J. L. Holzgrefe and Keohane Robert, *Humanitarian Intervention, Ethical, Legal and Political Dilemmas*, Cambridge University Press, 2003, P. 18, retrieved from <http://catdir.loc.gov/catdir/samples/cam034/2003269355.pdf>, last visited on July 5, 2013.

5 Qur'an 2:190 provides that "And fight in the way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not transgressors".

6 Qur'an 22:39 provides that "To those against whom war is made, permission is given (to fight) because they are wronged and verily, Allah is the most powerful for their aid. Those who have been expelled from their homes in defiance of right, for no cause except that they say "Our Lord is Allah"

7 Qur'an 2:193 provides that "And fight them until there is no more affliction (*Fitnah*).

8 Qur'an 2:246 provides that "hast you not turned your vision to the chiefs of the children of Israel after the time of Moses. They said to the prophet that was among them: appoint for us a king that we may fight in the cause of Allah. He said "Is it not possible, if you were commanded to fight that you might not fight. They said "how could we refuse to fight in the cause of Allah, seeing that we were turned out of our homes and our families."

Before resorting to war, Islamic law requires exhaustion of all possible measures of peaceful conflict resolution between rival parties. Qur'an 4:90 provides "Therefore, if they withdraw from you but fight you not, and instead send you guarantees of peace, then Allah has opened no way for you to war against them." Elsewhere, Qur'an 8:61 states "But if they incline to peace, you also incline to it."

Once the Muslim army agrees with a hostile party to resolve the conflict peacefully by signing an agreement, it must respect the agreement until the enemy violates the terms of the agreement. Qur'an 17:36 provides that "And fulfill (every) covenant, verily the covenant will be questioned about."

This principle was practically demonstrated in the treaty of *Hudaibiyah* 628 A.D in which the Prophet's forces agreed with the Pagan Meccan forces, among other terms to suspend hostilities (war) between the two sides for a period of 10 years. It was also agreed upon that both sides were free to ally with any Arab tribes which shall also be bound by the terms of the treaty. Meccans were quick to enter into alliance with *Banu Bakr* while Muslims allied with *Banu Khuza*. Just two years later, the Meccan pagans violated the terms of the treaty when they supported their allies to attack *Banu Khuza* and killed a number of people.

Even after violation of the terms of this treaty, the prophet did not take up a military option but instead gave the Meccans the freedom to choose one of the three options, viz: (i) to identify the victims of *Banu Khuza* tribe and compensate their blood money, or (ii) to withdraw their (Pagan's) alliance from *Banu Bakr*, or (iii) to declare the *Hudaibiyah* treaty null and void. Meccans chose the last option which led to a peaceful conquest of Mecca by the Prophet and his followers.

In cases where waging of war becomes necessary, its course and proceedings must adhere to such principles that ensure minimization of war burdens. This is in line with certain general and also specific IHL principles which will be highlighted in the ensuing comparative discussion. Some of them are discussed below:

- i. Respect to human life. Taking care of human lives has to be foremost for terminating one life equivalent to killing all mankind.⁹ In addition to that call for goodness cuts across all human acts to the extent that it is even extended to (slaughtering animals). *Shaddād bin Aus* reported: Two are the things which I remember Allah's Messenger (P.B.U.H) having said: verily Allah has enjoined goodness to everything; so when you kill, kill in a

9 Qur'an, Surat Al-maidah (5:32)

On conscripting or enlisting under-aged children into armed forces or using them to participate actively in hostilities, *Ibn 'Umar* narrated that, the messenger of Allah inspected me on the battlefield on the day of *Uhud*, and I was fourteen years old. He did not allow me (to take part in the fight). He inspected me on the day of *Khandaq*—and I was fifteen years old, and he permitted me (to fight).²⁸ In the same regard, Articles 77 (2) of Additional Protocol I and Article 4 (1c) of Additional Protocol II prohibits recruiting children below the age of fifteen years in the armed forces or groups or to take part in hostilities.

Inviolability of envoys

Communities in many historical ages have practiced the inviolability of envoys. With this confidence, the prophet after migration to Medina started sending envoys to various empires and kingdoms. However, one of the regrettable events was the killing of the prophet's envoy known as *Haarith bin Umayr* who was sent to *Basra*, an area that was controlled by the Roman Empire. The prophet dispatched a detachment to *Mu'ah* to avenge this violation.

Islamic law forbids killing of envoys from a rebel or hostile group. This is evidenced in an event in which the Prophet received two envoys from the hostile and rebel group led by *Musaylamah*, who wrongly claimed prophet hood. They carried and passed to him insulting remarks which angered the prophet. After reading this insulting message, the Prophet asked them "what is your position on this? They replied "we consent to it and we agree with him." The Prophet said "I swear by Allah, if it wasn't that envoys are not killed, I would have slain both of you."²⁹ This pronouncement revealed the Islamic culture of respecting envoys from hostile parties even when they confess their belief and alliance with his adversaries.

Under IHL, envoys are categorized under civilians by virtue of not falling under any of the categories of combatants provided for under Articles 4 A 1, 2), 3) and 6) of the Third Convention and in Article 43 of Additional Protocol I, it therefore goes without saying that envoys shall enjoy general protection against dangers arising from military operations.³⁰

The rationale for sparing envoys is that they are mere representatives carrying a message from their mother groups. Killing them would be a betrayal and a

big sacrifice to diplomacy³¹ and a closure to outlets of peaceful mediation and conflict resolution, and on top of that killing them will constitute perfidy.

The above categories are considered to be civilians and attacking them is prohibited as long as they are not participating in the battle. The right to spare them cease to exist if any of them engages in any of the following war practices:

- i. Direct or indirect participation in fighting³². This is evidenced in Qur'an 2:190 which allowed Muslim to fight back against those who fight them. It therefore goes without saying that once civilians take part in fighting, they lose their immunity from attack. This was practically demonstrated by the Prophet in a conflict in which a woman from the Jewish tribe of *Qurayzah* smashed the head of a Muslim fighter known as *Khallaad bin Suweid*. The prophet ordered for execution.³³ Similarly, the IHL rule stipulate that civilians shall enjoy protection unless and for such time as they take direct part in the hostilities.³⁴ Besides, taking direct or indirect participation in armed conflict categorize such participants under members of Armed forces of a party to the conflict and thus lose their immunity from attack.³⁵
- ii. Participating in preparation or planning for war. In the battle of *Hunain*, the Prophet's companions killed an old man aged 150 years known as *Duraidhin Sammat*. The Prophet did not blame them on this killing because the victim was a great planner in this battle.³⁶

The above citations indicate prohibition of targeting women, children, elderly and any other category that falls under the vulnerable as long as they are not actively participating in the war.

28 Ibid, Vol. 3, pp. 137, Hadith No. 2957.

29 Ibid, Vol. 3, p. 83, Hadith No: 2761.

30 Sec. Art. 50 and 51, AP I.

31 Sec. Articles. 4 B 2, and 11 of GC III .

32 Sec. Art. 54, AP I.

33 Al-Bayhaqi, As-Sunan Al-Kubra, Vol. 9, p. 141, Hadith No. 18109, Dar-ul- Kutub Al-'ilmiyyah, Beirut, 2003.

34 Sec. Art. 51 (3) AP I.

35 Sec Art. 4 A.2 of the GC3.

36 SahechBukhari, Vol. 5, p. 155, Hadith No. 4323, Sahih Muslim, Vol. 4, p. 1943, Hadith No. 2498.

Civilians' Welfare

One of the fundamental principles of Islamic law is that one should not be compelled to shoulder the burden of the other. It can thus be drawn from this principle that civilians should not be subjected to suffering because of the ideology of an individual or a party affiliated to them. Instead, Islamic law declares the welfare of civilians and prohibits any kind of deprivation to them.

In one incident *Thumāma bin Uthāl*, the chief of *Banūlanīfa* was captured, set free by the Prophet, and later embraced Islam, he told the Prophet: "Your horsemen captured me when I intended going for *'Umra*. Now what is your opinion (in the matter)? The Messenger of Allah announced good tidings to him and told him to go on *'Umra*. When he reached Mecca, somebody said to him: Have you changed your religion? He said: No! I have rather embraced Islam with the Messenger of Allah. By Allah, you (nonbelievers) will not get a single grain of wheat from *Yamāma* until it is permitted by the messenger of Allah. Meccans suffered until they fed on animal skins. Later, *Abu Sufyān* went to the prophet and said: You claim that you were sent with mercy, yet you killed our elders with swords (in battles) and (now) our children with hunger. The Prophet was not aware of this food embargo. When it came to his knowledge, he sent to *Thumāma* to lift this embargo.³⁷

Similarly, IHL rules provide for allowing free passage of all consignments of foodstuffs, medical supplies and clothing in the occupied territory. The occupying power has the duty to let protected persons in occupied territories to receive the individual relief consignments sent to them.³⁸

Pre- Islamic customs and traditions only recognized two options for captives and prisoners of war; terminate their lives or subject them to slavery. Islamic law provided for the third alternative, to treat them kindly and set them free even without ransom. Shari'ah declared the following treatment to captives:

i. **Freedom of worship.** Before the conversion of *Thumāma bin Uthāl* to Islam, the Prophet came out to (see) him (in detention). He said: O *Thumāma*, what do you think? He replied: Muhammad, I have good opinion of you. If you kill me, you kill a person who has spilt blood. If you do me a favour, you will do a favour to a grateful person... when *Thumāma* repeated the same statements on the third day, the Prophet ordered for his release without ransom. He was neither subjected to any torture nor forced to embrace Islam. It was his free

choice, that after release, he went to (garden of) date-palms near the mosque, took a bath and entered the mosque again and said, "None has the right to be worshipped but Allah and Muhammad is His Apostle (i.e. he embraced Islam). In the same way, IHL rules provides for the right of prisoners of war to enjoy complete latitude in the exercise of their religious duties, including attendance to service of their faith.³⁹

- ii. **Sympathy and compassion.** On distributing the captives of the battle of *Badr* among companions, the Prophet said "Take good care of them". On another occasion, he strongly condemned *Bilal* when he rolled up Jewish female captives over the bodies of their deceased husbands. He said "has your mercy been extracted away oh *Bilal* to the extent that you roll two women over their dead husbands?!⁴⁰ *Abū 'Ās bin Rabi'*, narrates: I was captured with a group of *Ansār*. Whenever we had lunch or supper (with them), they used to favor us with bread, yet it was scarce with them. A similar provision of IHL provides for taking care and offering good treatment and maintenance to captives.⁴¹
- iii. **Access to basic food.** Islamic Shari'ah provided for the captives' right to access basic necessities. It provided for their right to be fed. Qur'an 76:8 provides that "And they give food, in spite of their love for it, to the poor, the orphan and the captive. (saying) "We feed you seeking Allah's countenance only. We wish for no reward, nor thanks from you."⁴²
- iv. **Access to Shelter.** Islam provided for the captives' right to shelter. For instance, when the Prophet saw the captives of *Banū Qurayzah* assembled under hot sun, He ordered his companions to sprinkle water on them so that they don't suffer the heat of summer and the heat of the sword.⁴³
- v. **Access to Medical Treatment.** Islam provided for the captives' right to Medical treatment. It was reported that *'Ali* (R.A) ordered for medical treatment of 40 men who were wounded in the battle of *Nahrawān* in *Kūfah*. He then later set them free to go wherever they wanted.⁴⁴ Similar rights are accorded to prisoners of war under IHL.⁴⁵

37 Sahih Bukhari, 4:1589, Hadith No: 4114; Sahih Muslim, 5:158, Hadith No: 4688.

38 See. Articles 23, 55, 59, 60, and 62 of the GC IV and Article 68 of AP I and Art 18 of AP II.

39 See. Art. 34 of GC III and Art.93 of the GC IV.

40 IbnIsham, AssiyratAnnabawiyah, Vol. 2, P. 336, Maktaba Mustafā Al-haajī Al-halabi, Egypt, 1955.

41 See. Art. 14 and 15 of the GC III, and Art.93 of the GC IV.

42 See. Related IHL provisions in Articles 23, 55, 59, 60, and 62 of the GC IV and Article 68 of AP I and Art 18 of AP II.

43 Athar-ul- Harb, page 405.

44 Ibid.

45 See Art.15 and 30 of GC. 3.

- vi. **Emancipation.** The third alternative provided by Islamic law is setting the captives free. This is supported by the following proof:
- Abū Musa Al-Ash'arī* reported that the Prophet said "Feed the hungry, visit the sick, and set the captives free."⁴⁶ This injunction was actualized when the Prophet conquered Mecca. He told all the captives: "Go you are free."
 - After the battle with *Banū-l-Mustalaq*, Muslims captured many people from that tribe. The prophet married *Juwairiyah* to save her from the torments of captivity. When he did this, the companions released all other captives without ransom.
 - The prophet offered amnesty and set free over 70 captives who had intended to descend on(kill) him and his companions from the hills of *Tan'im*. It is this event that led to the revelation of Qur'an 48:24.
 - The fair pens of history recorded that when Palestine fell in the hands of crusaders on 15th July 1099, they committed several kinds of atrocities against civilians. Over 70,000 lives of Muslims were terminated in just 3 days characterized by smashing heads of children on walls, throwing suckling children from above fences, grilling men on fire, slitting pregnancies open to "confirm that they were not swallowing gold", among other atrocities. But when *Salahu-d-dīn Al-Ayyūbī* liberated it from these tyrants after 90 years of occupation, he didn't subject any of them to similar treatment. Instead, he offered peace to all of them and gave more than 100,000 people an ample time to leave in peace without revenge.

In a similar way, IHL rules provide for release and repatriation of prisoners of war without delay after the cessation of active hostilities. The provisions also grant them the right to take with them their personal effects and any correspondence and parcels which have arrived with them. Exception is made to such prisoners of war against whom criminal proceedings for an indictable offence are pending. Such shall be detained until the end of such proceedings and if necessary until the completion of the punishment.⁴⁷

⁴⁶ Sahih Bukhari, Vol. 4, pp. 68, Hadith No: 3046.

⁴⁷ Sec. Art. 118 and 119 of GC III.

Justification and confutations for indiscriminate attack

The phenomenon of suicide attacks is one of the most contemporary developments in modern warfare and a point of controversy in both Islamic Law and IHL. Suicide attacks have been highly utilized in armed conflicts around the world, and have become a prominent feature in Iraq, occupied Palestinian territories, Pakistan, Iran, Afghanistan, Syria, among others.⁴⁸

The legitimacy of such operations of indiscriminate attack on civilians has been a point of controversy in the Islamic law annals between those who legally justify them and those who criticize them.

Justifications for Suicide Attacks

Some Muslim clerics have put forward the following justifications legitimizing suicide attacks:

Answer of the weak and oppressed to the powerful aggressors.

Syed Muhammad Hussayn Fadhlallah, one of the leading figures in the Lebanese Shiite Community argued that the absence of any other alternative, unconventional methods become admissible, and perhaps even necessary if an oppressed people does not have the means to confront the United States and Israel with the weapons in which they are superior, then they possess unfamiliar weapons. They must thus fight with special means of their own. He thus concludes that such operations are viewed to be religiously lawful warfare against the world's imperialist and domineering powers.⁴⁹

The same view is held by *Ramadhan Shellah*, a leader of Islamic Jihad in the Occupied Territories, who acknowledged that the tactic had been taken over

⁴⁸ Muhammad Mumir, *Suicide Attacks and Islamic Law*, International Review of the Red Cross, page 72, referring to the *he Boston Globe* of 10 June 2005 and A. B. Atwan, *The Secret History of Al-Qa'ida*, Saqi Books, London, 2006, p. 100; Christoph Reuter, *My Life is a Weapon: A Modern History of Suicide Bombing*, trans. from German by Helena Ragg-Kirkby, Princeton University Press, Princeton N.J. and Oxford, 2004, repr. Manas Publications, Delhi, 2005, p. 79-114.

⁴⁹ Judith Palmer Hank, *Hezbollah: The Changing Force of Terrorism*, I. B. Tauris, London and New York, 2004, p. 65, 70.

from the Lebanese Hezbollah. In an interview given to Al-Hayat newspaper on 7 January 2003 he confirmed the legitimacy of suicide attack with an observation that "We confirm the legitimacy of these operations, we regard them among the most prominent evidence of jihad in Allah's way, and we consider any criticism, whether intentional or not, against this type of operation represents an offence against the confrontation movement led by the Palestinian people, including all parties, against the Israeli occupation."⁵⁰

Likewise the leaders of the Muslim Brotherhood justified such attacks and called them "martyrdom operations."⁵¹ They asserted that "These operations are the supreme form of jihad for the sake of Allah, and a type of terrorism that is allowed by Shari'ah... the term "suicide operations" is an incorrect and misleading term, because these are heroic operations of martyrdom, and have nothing to do with suicide ... while someone who commits suicide has lost hope for himself and with the spirit of Allah, the *Mujahids* full of hope with regard to Allah's spirit and mercy. He fights his enemy and the enemy of Allah with this new weapon, which destiny has put in the hands of the weak, so that they would fight against the evil of the strong and arrogant."⁵²

Professor *Yusuf Al-Qaradawi*, one of the contemporary Muslim Jurists also justified such operations when the targets were civilians, reasoning that "The Israeli society is militaristic in nature. Both men and women serve in the army and can be drafted at any moment. On the other hand, if a child or an elderly person is killed in such an operation, he is not killed on purpose, but by mistake, and as a result of military necessity. Necessity justifies the forbidden." He declared that "if everyone who defends his land, and dies defending his sacred symbols is considered a terrorist, then I wish to be at the forefront of terrorists."⁵³

However, *Al-Qaradawi* held a different position on the September 11, 2001 attacks against the United States. He distinguished between the suicide operations in Israeli-occupied territory and the September 11 attacks by stating that in the former the bomber is defending his land, which is a legitimate purpose, whereas in the latter the suicide bombers "travelled from their home countries to attack a place with whom they had no problem."⁵⁴

50 See <http://english.bayyinat.org.lb/islamicinsights/index.htm> (last visited on 5th July 2013).

51 See Yusuf al-Qaradawi, "Shari'ya al-'Amaliyat al-Istishhadiya fi Filastin al-Muhtalla" [The legality of martyrdom operations in the Occupied Palestine], *al-Islah*, Vol. 375 (15-18 August 1997), http://www.qaradawi.net/qaradawi/index.php?option=com_content&view=article&id=700&catid=4&Itemid=58 (last visited 5th July 2013).

52 Ibid.

53 Al-Qaradawi Supra.

54 Ibid.

The proof for this contention is traced from an incident in which some of Prophet Muhammad's companions carried out heroic practices that can be equated to suicide attacks in battle fields. For instance, in a battle against an army led by *Musaylimah*, during the "apostasy" wars after the death of the Prophet (PBUH), *Bar'a ibn Malik*, the companion of the Prophet (PBUH) was garrisoned in a fort. The enemy was putting up fierce resistance and the Muslims were suffering heavy losses in vain attempts to gain entry. *Bar'a*, who had always desired to die as a martyr, volunteered to be catapulted over a parapet by the Muslim soldiers so as to open the gates to the fort and let them in. The plan succeeded miraculously; *Bar'a* was not martyred and managed to open the gates. He received numerous injuries but recovered from them.⁵⁵

Views against Suicide Attacks

The late Sheikh *Abdallah bin Abdul Aziiz ibn Baaz*, the former Chief Mufti of Saudi Arabia, condemned suicide attacks and argued that they might be regarded as self-murder and therefore be unlawful. He asserted that "such attacks are not part of the jihad, and I fear that they are just suicides plain and simple. Although the Qur'an allows, indeed demands, that the enemy be killed, this has to happen in such a way that it does not run contrary to the religious laws."⁵⁶

The same position was held by Mufti *Muneeb-ur-Rahman*, a leading *Barelvi* scholar and chairman of the Central Moon Sighting Committee, who wrote a *fatwa* regarding the strict prohibition of suicide attacks. His verdict was endorsed by fifty-eight other scholars of different backgrounds⁵⁷.

However, this verdict was issued specifically to the Pakistani context, mentioning that the situation in occupied territories, such as Kashmir and Palestine, is different. It therefore seemed though implicitly to allow suicide attacks in Kashmir and Palestine.

Further still, a convention in Peshawar Pakistan on 17 April 2007 attended by more than 2,000 *Ulama* issued a ruling regarding suicide attacks. They regarded such attacks as strictly illegal. Unfortunately, these scholars did not provide any details for illegalizing such attacks.

55 Al-Taharaani, *Al-Mu'jam Al-Kabir*, Vol. 2, P. 27, Maktabat Ibn Taymiyah, Cairo, 1994

56 Ash-Sharq Al-Awsat, London, 21 April 2001; Shaul Mishal and Avraham Sela, *The Palestinian Hamas: Vision, Violence and Coexistence*, Columbia University Press, New York, 2000, p. 109.

57 See Mufti Muneeb-ur-Rahman, *Qatl-i-Na Haqkahukm* [Rule for unjustified homicide], n.d. Although the fatwa itself is undated, some of the muftis who signed it have put dates as well, ranging from December 2004 to March 2005. It was circulated in the press on 18 May 2005.

Evaluation of the two views

There is no doubt that Islamic law texts allow those who are oppressed to defend themselves with any weapons at their disposal (Qur'an 8:60). For this reason Islam not only encourages the oppressed to defend themselves but also allows them to do it with any weapon at disposal. However, suicide attack involves the loss of the suicide bomber's life, whose justification is a point of controversy. Islamic law texts generally prohibit suicide in a number of legal texts, which include the following:

- i. Qur'an 4:29 provides that "and kill not yourselves, verily Allah is most grateful to you". The verse clearly prohibits committing suicide.
- ii. The Prophet said "None amongst you should make a request for death, and do not call for it before it comes, for when any of you dies, he ceases [to do good] deeds and the life of the believer is not prolonged but for goodness."⁵⁸
- iii. In a sacred Hadith (*Hadith qudsi*), i.e. a statement of the Prophet (PBUH) ascribed to God himself, Allah says "My servant anticipated my action by taking his soul (life) in his own hand; therefore, he will not be admitted to paradise."⁵⁹
- iv. In another saying of the Prophet (PBUH), he has given a stern warning to a person committing suicide, stating that the wrongdoer would be repeating the suicidal act endlessly in hell and would reside in hell for ever.⁶⁰

It can thus be concluded from the preceding legal texts that suicide is strictly illegal in Islam and regarded as intentional self-murder. Allah is the life giver, man is just entrusted with life and he cannot destroy it for personal possession.

As regards committing suicide as a form of warfare, *Imam Muhammad ibn al-Hasan al-Shaybani*, a famous student of *Imam Abu Hanifa* and the father of Islamic international law observed "It is permissible for a person to plunge into a group of enemy forces, or to attack them in cases where he hopes that he will be saved in the end, or – if there is no such hope – in cases where he will inflict damage on the enemy, and demoralize them, or will encourage his own combatants, or due to an extraordinary power he might feel."⁶¹

58 Saheeh Muslim, Vol. 4, p. 2065, Hadith No. 2682.

59 Sahih Bukhari, Vol. 3, p. 32.

60 Ibid., Vol. 3, p. 212.

61 Muhammad Ibn Al-Hasan Al-Shaybani, *Syar Al-Kabir*, quoted in a commentary by Sarakhasi, *Dar al-kutubElmiya*, Beirut, 1997, Vol. 4, p. 250. Shaybani's original book is not available; the text is found only with Sarakhasi's commentary.

Similarly, *Sheikh ibn Taymiyyah* has stated that according to the four leading jurists of the Sunni schools of *Fiqh*, it is allowed for a Muslim soldier to penetrate the enemy's lines even if he knows he will definitely be killed, provided that would be advantageous for the Muslim army.⁶²

It can be inferred from the above text that the legitimacy of suicide attacks as a warfare is sanctioned by the following conditions:

- i. There must be an ongoing active war between Muslims and their adversaries.⁶³
- ii. The attacker might not die in the attack; and
- iii. If he dies, his death must be caused by the enemy.

A similar position is held by Maliki jurists like *Al-Qasim ibn Muhammad*, *ibn al-Majshoon* and *Ibn Khuwaiz*, who allowed such attacks.⁶⁴

However, much as the incidents of *Baraa bin Malik* and *Hisham bin Aamir* were great acts of battlefield heroism that gave the Muslims decisive victories, they cannot be called suicide attacks. Even if they did qualify as suicide attacks, they would be allowed, because the persons who carried out those acts were soldiers (and did not pretend to be civilians).

Justification for suicide attacks on ground that the Israelis have occupied the land of the Muslims in Palestine and the Palestinians are militarily weaker, or that since the Israeli society is militaristic in nature, cannot be admitted. For this would lead to selective application of the Islamic war rules in a way that it is applicable if Muslims are victorious, but not applicable if they lose the war. Besides, the following rules governing armed conflict prohibit suicide attacks that often have and are often intended to have indiscriminate effects on civilians:

The prohibition of treachery and perfidy

If a suicide bomber pretends to be a civilian or if a soldier feigns to surrender by waving a white flag, he will not be targeted by the armed forces he is approaching because he has non-combatant immunity. However, if that person then blows himself up to kill members of the enemy's armed forces, he commits treachery or perfidy – an act which is strictly prohibited in Islamic law and in international

62 *Ibn Taymiyyah*, *Majmu'a Fatawa Sheikh al-Islam*, Dar Aalam Al-Kutub, Riyadh, Vol. 25, p. 540.

63 The meaning of adversaries here is strictly limited to those who are participating in hostilities and not the civilian population of the hostile group, for their right to protection is inviolable in both Islamic law and IHL.

64 See *Muhammad Tahir ibn 'Ashoor*, *Al-Tahreer wa al-Tanweer*, Dar Sahnun, Tunisia, Vol. 1, p. 215.

humanitarian law. He has violated the trust of the enemy, who in future may not trust genuine civilians or surrendering soldiers.

Suicide attacks on civilians are likewise strictly prohibited, because of the protection to which civilians are entitled under both bodies of law. However, if such attacks are carried out by soldiers against enemy soldiers without feigning civilian status, they are deemed to be a legitimate battle tactic.

The Prophet (PBUH) and his rightly guided successors have strictly prohibited treachery and perfidy. The Prophet (PBUH) is reported to have reiterated this ban on numerous occasions.

On another occasion, while instructing the army led by 'Abdar-Rahmanibn 'Awf, he said, O son of 'Awf! Take it [the banner]. Fight you all in the path of God and combat those who do not believe in the path of God. Yet never commit breach of trust, nor treachery, nor mutilate anybody nor kill any minor or woman. The Prophet (PBUH) strongly condemned anyone who broke his pledge and declared such a person to be a hypocrite. He also said that "on the day of resurrection anyone who has breached his pledge will be exposed by the hoisting of a flag and that the size of the flag will be according to his treachery. And remember that the biggest treachery is the one carried out by the leader of the nation."⁶⁵

At the time of 'Umar I, the Second Caliph, during a war between the Islamic state and the Persian empire, a Persian soldier took shelter at the top of a tree. A Muslim soldier told him in Persian "*ma tars*" (don't be afraid). His adversary thought that he was given a pledge and protection and came down. Sadly, he was killed by the Muslim soldier. The matter was reported to the Caliph, who issued a policy statement in which he used the same Persian words, declaring that anybody saying that to an enemy soldier and then killing him would be prosecuted for murder and sentenced to death.⁶⁶

It can thus be concluded that suicide bombing techniques are based on treachery and as such go against the teachings of the Holy Qur'an and the *Sunnah*, two of the fundamental sources of Islamic law (the third being *Ijma*).

Additionally, the killing of non-combatant civilians is strictly prohibited under Islamic law in all circumstances. *Sheikh Qardawi's* argument claiming that the militaristic nature of Israeli society justifies suicide attacks on Israeli women also is therefore unacceptable.

65 Sahih Bukhari, Vol. 4, P 104, Hadith No. 3186.

66 Badruddin 'Ayni, Umdah Al-QariSharhSaheeh al-Bukhari, Idarat Al-Taba at Al-Munceriya, Cairo, n.d., Vol. XV, p. 94.

However, heroism by individual combatants in warfare is allowed under certain conditions. Under Islamic law "martyrdom" attacks are allowed only if the following conditions are met:⁶⁷

- i. They may only take place during a war.
- ii. They must be carried out by soldiers.
- iii. The soldiers must not pretend to be non-combatants
- iv. The attacks must not harm civilians or civilian property.

Short of the above conditions, a suicide bomber who targets civilians, might be committing at least five crimes according to Islamic law, namely killing civilians, mutilating them by blowing them up, violating the trust of the enemy's soldiers and civilians, committing suicide and, finally, destroying civilian objects or property.

A collection of these crimes is a grave violation of the Islamic war rules laid down in Qur'an and *Sunnah* and above all he contributes to mockery of God's law.

Conclusion

Provisions of Islamic humanitarian law put the protection of civilians and their objects at the centre of humanitarian rules governing armed conflict. Adherence to these rules can go a long way to end civilian suffering in armed conflicts that have become part of the modern political system.

67 See, M.Munir, Suicide Attacks and Islamic Law, P. 80.

Recommendations

- i. Humanitarian law has to be reinforced with more moral than legal provisions to ensure adherence and application.
- ii. Comparative studies between Islam and IHL should be promoted to illuminate the divine consistence or inconsistencies if any with manmade laws

Bibliography

- Al-Bayhaqi, As-Sunan Al-Kubra, Dar-ul- Kutub Al-'ilmiyyah, Beirut, 2003.
- Al-Qurtubi, Al-Jami' li Ahkaami-l-Qur'an, Dar-ul-Kutub Al-Islaamiyyah, Cairo, 1968.
- Al-Tabaraani, Al-Mu'jam Al-Kabir, Vol. 2. Pp. 27, Maktabat IbnTaymiyah, Cairo, 1994.
- Ash-Sharq Al-Awsat, London, 21 April 2001; ShaulMishal and AvrahamSela, The Palestinian Hamas: Vision, Violence and Coexistence, Columbia University Press, New York, 2000.
- Badruddin 'Ayni, Umdah Al-QariSharhSaheeh al-Bukhari, Idarat Al-Taba at Al-Munceeriya, Cairo, n.d.
- IbnHisham, AssiyratAnnabawiyah, Maktaba Mustafa Al-haaji Al-halabi, Egypt, 1955.
- Ibn Taymiyah, Majmu'aFatawa Sheikh al-Islam, Dar Aalam Al-Kutub, Riyadh.
- Ismacel Al-Bukhari, SaheehBukhari, Dar Sahnun, Istanbul, 1992.
- J.G Fleury, Jus in bello and Military Necessity, Advanced Military Studies Course/1, Canadian Forces College, 1988.
- Judith Palmer Harik, Hezbollah: The Changing Force of Terrorism, I. B. Tauris, London and New York, 2004.
- Malik binAnas, Al-Muwatta, Muassasat Al-risaala, 1412 A.H.
- Mufti Munceb-ur-Rahman, Qatl-i-Na Haqkahukm [Rule for unjustified homicide] May 2005.
- Muhammad Bin Issa Al-Tirmidhi, SunanTirmidhi, Dar-ul-Gharb Al-Islami, Beirut, 1998.
- Muhammad Munir, Suicide Attacks and Islamic Law, International Review of

the Red Cross.

Muhammad Tahiribn 'Ashoor, Al-Tahreerwa al-Tanwcer, Dar Sahnun, Tunisia, nd.

MuhammadIbn Al-Hasan Al-Shaybani, Syar Al-Kabir, Dar al-kutubElmiya, Beirut, 1997.

MuslimIbn Al-Hajjaj, SaheehMuslim, Dar Ehya Al-Turath Al- Arabi, nd.

Protocols Additional to the Geneva Conventions of 12 August 1949.

SunanAbi Daud, Al-Maktaba Al-'Asriyyah, n.d Beirut.

The Geneva Conventions of 12 August 1949, International Committee of the Red Cross, Geneva, Switzerland.

The Noble Qur'an, English Translation of the meanings and commentary, King Fahad Complex for the Printing of the Holly Qur'an, Madina, Kingdom of Saudi Arabia, 1419.

The Secret History of Al-Qa'ida, Saqi Books, London, 2006, p. 100; Christoph Reuter.

Yusuf al-Qardawi, "Shari'ya al-'Amaliyat al-Istishhadiya fi Filastin al-Muhtalla" [The legality of martyrdomoperationsintheOccupiedPalestine], al-Islah, Vol.375(15-18August1997), available at: <http://www.memri.org/bin/articles.cgi?Page5archives&Area5ia&ID51A5301>.