

Islamic Law and the Conduct of Hostilities

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Abstract

Like all other aspects of life Islamic law has given a comprehensive guide, basic principles & general rules about war in order to keep war inside the circles of humanity. The *fuqahā* have derived a detailed version of *jus in Bello* (conduct of hostilities) from the teachings of the Prophet (peace be on him) and his rightly guided Caliphs. This code of conduct is obligatory upon Muslims no matter the other party is obeying this conduct or not. In this article, the author will briefly explain some fundamental general principles of Islamic *Jus in Bello*. The conduct of war, commonly known as International Humanitarian Law (IHL), is only binding on those states or parties who have signed the treatise.

Key Words: Islamic Law of war, mutilation, individual responsibility, Abu Bakr's ten commandments

Islamic law has permitted war as the last and final resort to solve a problem. If there is a peaceful way out, Islamic law stresses upon following it. That is why majority of the *fuqahā* are of the view that the cause for war against non-Muslims is not the fact that they are non-Muslims, but the fact that they fight against Muslims. In technical terms, it is said that cause of war is not *kufṛ* but *muhāraba*.¹ It is on this basis that Islamic law makes it obligatory upon Muslims to invite non-Muslims to embrace Islam before waging war against them, if they have not been invited before.

Once the Prophet (peace be on him) said to Mu'adh (Allah be pleased with him):

“Do not fight with them unless you invite them. If they are not ready to accept your invitation, even then do not fight them. Then if they start war against you, do not fight them till they kill someone amongst you. Then, show them the dead body and ask them: is there any good way out of this? Thus, if Allah shows the right way to people because of you that is better from the entire universe.”²

Islamic law has also recognized the principle of military necessity. In some special cases it has given the permission to attack the enemy even if there is a chance that civilians or non-combatants may also be targeted in such attacks.³ For example if a Muslim is being kept as a prisoner in a forte and to capture that forte is very much necessary for Muslims then in such case Muslims can attack that forte even though there is a chance that the Muslim prisoner may also be targeted in such attack.⁴ During such attacks, Muslims are bound to follow the following conditions.

- Intentionally targeting those who are illegitimate target is prohibited in such attacks, such as non-combatants or Muslim prisoners.
- All possible precautions must be taken to spare them.⁵

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Hence, it is obvious now that Islamic law has recognized the principles of military necessity, collateral damage and proportionality.⁶

Upholding the Principles of Humanity

Islamic law has made it obligatory that during attack the principles of humanity must be followed in all circumstances.

Qur'anic Verses

When Muslims were granted permission of resisting violence against them, they were being told at that very time that they should not exceed the limits at any cost.

"And those who, when an oppressive wrong is inflicted upon them, (are not cowed) help and defend themselves. The recompense for an injury is an injury equal thereto (in degree): but if a person forgives and makes reconciliation, his reward is due from Allah. For (Allah) loveth not those who do wrong."⁷

In another place, the Almighty Allah tells us that,

"And if ye do catch them out, catch them out no worse than they catch you out: But if ye show patience, which is indeed the best (course) for those who are patient."⁸

Similarly, when they were allowed to fight against the oppressors they were directed not to exceed the limits.

"Fight in the cause of Allah who fights you, but do not transgress limits; for Allah loveth not transgressors."⁹

'Abdullah b. 'Abbas (Allah be pleased with him), the famous companion of the Prophet (peace be on him), says that all the acts prohibited during war by the Prophet, such as killing women and children, mutilation, are considered as excess from the prescribed limits. The same has been the opinion of his disciple Mujahid as well as of Umar b. Abd al-'Aziz and Ibn Jarir al-Tabari also prefers this view.¹⁰

The Prophetic Traditions

Different narrators have narrated the instructions issued by the Prophet of Islam on occasions of sending troops to different areas. One of the basic narrations in this regard is that with which Imam Muhammad b. al-Hasan al-Shaybani starts the *Shorter Book on Muslim International Law* as well as the chapter on *Siyar* in his book *al-Aṣl*. In this tradition, the Prophet (peace be on him) is reported to have said:

"Fight those who do not believe in Allah; do not misappropriate; do not commit perfidy; do not mutilate; and do not kill children."¹¹

The first sentence apparently suggests that war is waged against every non-Muslim. This, however, is not correct and it was specific to the occasion on which non-Muslims were the enemy and who came to fight Muslims because they were Muslims. Thus, Sarakhsi says:

"This is apparently general but in fact, it has been specified by other texts. Hence, the meaning of this part is: fight those non-Muslims who are combatants and who are fighting you. Do you not see that when the Prophet saw the dead body of a woman

during the conquest of Makkah, he became angry and exclaimed: ‘She was not fighting!’ An argument for this interpretation in this narration is that the Prophet prohibited the killing of children.”¹²

The prohibition of misappropriation specifically refers to war booty, while perfidy means breach of promise.

It was a general practice during the time of Arab ignorance that they were mutilating the dead bodies, they used to cut organs from those dead bodies and similarly they were showing their anger to the opponent party. The Prophet (peace be on him) has prohibited the Muslims from doing these kinds of acts. Similarly, he has prohibited the Muslims to kill children on so many occasions.

On the eve of Makkah’s conquer the Prophet (peace be on him) said:

“Do not kill the one who leaves the battlefield, run away, and do not attack any wounded person.”¹³

According to some narrations, he also prohibited killing the prisoners of war on this occasion.¹⁴

Accordingly, the Prophet (peace be on him) educated Muslims that killing non-Muslims is allowed to the extent of war necessity. Muslims are bound to kill non-Muslims in a better way. They are supposed not to torture and kill non-Muslims in a harsh and bad ways, as per Islamic rules even animals are to be slaughtered in a better way.

“Allah has ordered the entire creature to deal others in a better way. So, when you are killing someone, kill in a good way, if you are slaughtering animal, slaughter in a better way.”¹⁵ In another tradition, he is reported to have said: “Believers are best of the people in the manner of killing.”¹⁶

On one occasion of sending troops for a battlefield, the Prophet (peace be on him) ordered them to burn some people. Then he called them back and told them not to burn them, but to kill them in ordinary way. “Punishing with fire is right of the Creator of fire.”¹⁷

Similarly the Prophet (peace be on him) prohibited the Muslims form robbery and loot. On the eve of conquest of Khaybar, some people badly treated the conquered people. The Prophet (peace be on him), was very angry on such behavior and said:

“Allah Almighty has not given you the permission of entering the homes of the People of the Book without their permission, or to beat their women or eat their fruits.”¹⁸

Once the Prophet (peace be on him), was informed that Muslims are cooking some meat which was looted from non-Muslims, he destroyed that meat and said:

“Looted property is not better than carrion.”¹⁹

A common Arab practice was that whenever their troops were going to some places, they would disturb common people and passersby. The Prophet (peace be on him) said:

“Whoever makes the way congested or whoever disturbs people their struggle is not in the way of Allah”.²⁰ On another occasion, He has reported to have said:

“When you are dispersed in different valleys, it is an evil act.”²¹

In the pre-Islamic Arab society, war was known as *waghā*, which means to make big noise and panic. The Prophet (peace be on him) prohibited such things and made war a sacred act of worship. He liked *tabbīr* & *tahlīl* during war and even then asked people not to raise their voices:

“O People! Walk with dignity. The One Whom you are calling is neither deaf nor far away. He is with you; He hears; He is near.”²²

So, it is famous about the Companions that they dislike speaking loudly especially on three occasions namely, during funeral prayer, during war and during recitation of the Holy Qur'an.²³ Imam Shaybani says that this loudness was not prohibited because it was wrong in the religion but it was a war tactic as because of this loudness the enemy would have got information about the actual position of the army. However, on some occasions it deems necessary to loud your voice. Imam Sarakhsi would explain this:

It means that because of this loudness of voices the *Mujāhidūn* get refresh and energetic and sometimes it causes pressure to the enemy. A companion of the Prophet (peace be on him) namely Abū Dujāna was having a very loud voice about which the Prophet (peace be on him) commented that the voice of Abu Dajana works like a troop.²⁴

Similarly, the Prophet (peace be on him) ordered to obey the commander of the troops and he also ordered to fight the war in a systematic and organized way to avoid any kind of disturbance on earth. Wars are of two types: anyone who fights in the way of Allah to make Him happy, obeys the commander of the troops, spends his best wealth and stops himself from disturbing the earth, all of his deeds will certainly be awarded. And whoever fought to become famous disobeyed his commander and disturbed the normal system of the earth, he will never be awarded and he cannot be escaped.²⁵

On another occasion, the Prophet (peace be on him) said:

“Whoever obeyed me, indeed, he obeyed Allah, and whoever obeyed the commander, indeed, he obeyed me, and who disobeyed the commander, he indeed disobeyed me. The commander is like a shield behind which war is fought and to save you. If he insists on *taqwā* and he do justice to you so he will be rewarded and if he orders something else he has to face the consequences.”²⁶

Similarly, the behavior of the Prophet (peace be on him) towards the prisoners of war and the subdued people was exemplary. He did not breach any single treaty in His life. He prohibited breach of treaty and perfidy. Nevertheless, allowed ruses of war through his action and saying. He is reported to have said on one occasion:

“War is the name of ruses”.²⁷

Prohibition of Mutilation

One of the acts specifically and emphatically prohibited by the Prophet (peace be on him) is that of mutilation. He not only prohibited mutilation of humans but also of

animals. ‘Ali (Allah be pleased with him) advised his son Hasan (Allah be pleased with him) about the one who had wounded him:

If I remained alive, I would myself decide his fate. But if I die of this injury, injure him just once; do not mutilate his body as I heard the Prophet (peace be on him) prohibiting mutilation even of a mad dog.²⁸

The Prophet (peace be on him) gave exemplary punishment to the people of the tribe of ‘Urayna. Their hands and legs were cut, hot pieces of steel were entered into their eyes and then they were left alone to die in such condition. They demanded for water but they were not given water, nor were they given medical treatment until they died. Some people quote this incident in favor of mutilation but it is not the case because this was an exceptional case and it was an incident of a specific punishment. It was neither the case of *ḥirāba*, nor *apostasy* nor *qiṣās*, but that of *siyāsa*.²⁹ After this incident, the Prophet (peace be on him) would specifically stress upon the prohibition of mutilation, which simply means that this was just a one-time exception for specific reasons and that this practice was abrogated.

‘Imrān b. Ḥuṣayn (Allah be pleased with him) reports:

“After the incident of mutilation of the tribe of ‘Uraynah, whenever the Prophet (peace be on him) would give us lecture, he would insist on spending in the way of Allah and that we should prohibit ourselves from mutilation.”³⁰

Moreover, the *fuqahā* are of the opinion that this prohibition includes killing a person after tying him with a rope or anything else. Abū Ayyūb Anṣārī (Allah be pleased with him) narrates:

“I have heard the Prophet (peace be on him) prohibiting killing a person following tying. So I swear by God that I will never slaughter any hen or chicken while tying it.”³¹

Similarly, to cut the head of a person and then to show it to the public is also forbidden and the jurists consider it as the case of mutilation. That is why the first rightly-guided Caliph Abu Bakr al-Ṣiddīq (Allah be pleased with him) disliked the act of Muslims when they brought before him the head of a Christian commander. When they said that the people of Rome and Iran do the same, he replied:

“We are neither Iranians nor Romans; the Book of Allah and the teachings of the Prophet (peace be on him) are enough for us.”³²

Imam Sarakhsi would give two more reasons for prohibition of mutilation, firstly that mutilation of even a mad dog is prohibited so that of a human will remain prohibited with priority; and secondly the rightly-guided caliph ‘Ali (Allah be pleased with him) did not mutilate the bodies of the rebels and his conduct is the basic source for the rules about rebels.³³

Hence, in case of rebellion or using the terminology of IHL, non-international armed conflict, Muslims have to follow the conduct of ‘Ali (Allah be pleased with him) and avoid these inhuman practices.

Individual Criminal Responsibility

Islam recognizes war as unavoidable evil but it does not allow anything wrong to be done during war. Islam focuses on the basic principles of humanity and prohibits acts like mutilation.

Islamic Law is also recognizing the concept of individual criminal responsibility. This principle of Islamic Law is very clear; whatever is declared forbidden by Islamic Law remains forbidden in each and every situation. Therefore, nobody can take the plea that an act was forbidden by the rules of Islamic Law but the ruler compelled me or the commander compelled me to do that forbidden act and to obey the ruler or commander is obligatory. The Prophet (peace be on him) has explicitly mentioned that no one is allowed to obey the creature against the orders of the Creator.

He is reported to have said:

“It is forbidden to obey the creature when it amounts to disobedience of the Creator.”³⁴

Once the Commander of the troops of the Companions of the Prophet (peace be on him) got angry and he ordered his troops to enter into the fire, and said to obey your commander is obligatory and hence you have to get into the fire. The troops refused to obey his orders and said we embraced Islam in order to save ourselves from the fire of hell. This incident was reported to the Prophet (peace be on him) and he said:

“Had they entered the fire, they would have to remain in it forever; obedience is allowed in permitted acts, not in the prohibited acts.”³⁵

Similarly, the Islamic Law also recognizes the principle of command responsibility and the commander is held responsible for the acts of his troops. When Khalid b. al-Walid (Allah be pleased with him) mistakenly killed the people of *Banū Jadhīma*, the Prophet (peace be on him) gave compensation to the heirs of the dead and also compensated the financial loss caused to the people, although the Prophet (peace be on him) had not asked him to do so. However, being the ruler and the commander-in-chief of the Islamic State, the Prophet (peace be on him) deemed himself responsible for the acts of the troops sent by him.³⁶

Instructions of Abu Bakr (Allah be pleased with him)

We may also refer to the famous ten commandments of the first rightly-guided caliph Abu Bakr (Allah be pleased with him) to the commanders of his troops at the time of dispatching the troops.³⁷ These are as follows:

- Do not embezzle
- Do not cheat
- Do not break trust
- Do not mutilate
- Do not kill a minor child or an old man of advanced age or a woman
- Do not hew down a date palm nor burn it
- Do not cut down a fruit tree

- Do not slaughter a goat, cow, or camel except for food. Maybe you will pass near people who have secluded themselves in convents; leave them and their seclusion. Moreover, it may be that you pass near people who will bring to you dishes of different foods, if you eat, utter the name of God over them.

These commandments are the guiding principles for any military mission against the enemies of Islam. These golden rules were followed by all the Rightly-Guided Caliphs (Allah be pleased with them) and other companions of the Prophet (peace be on him). The Muslim conquerors never kept aside these rules, rather they acted upon them as their legal obligation, and this can be seen from the history of the Muslim rulers and conquerors.

Endnotes

¹See for details: Muhammad Mushtaq Ahmad, *Jihād, Muzāḥamat aur Baghāwat*, (Gujranwala: Al-Sharī'ah Academy) 2008

²Abu Bakr Muhammad b. Sahal al-Sarakhsi, *al-Mabsūt*, vol. 10 (Beirut:Dar al-Fikar, 2000), 36

³See for details: Mushtaq, *Jihad, Muzāḥmat aur Baghāwat*

⁴Al-Sarakhsi, *al-Mabsūt*

⁵*Ibid*

⁶Mushtaq, *Jihad, Muzāḥamat aur Baghāwat*

⁷Qur'an, al-Shūrā, 42:39-40

⁸*Ibid*, al-Naḥl, 16:126

⁹*Ibid*. al-Baqara, 2:190

¹⁰Abū Ja'far Muḥammad b. Jarīr al-Ṭabari, *Jāmi' al-Bayān*, vol. 2 (Cairo: Maṭba'a Muṣṭafā al-Bābi, 1954), 189-90

¹¹Ṣaḥīḥ Muslim, *Kitāb al-Jihād wa 'l-Siyar, bāb ta'mīr al-Imām al-Umarā 'alā al-Bu'ūth wa 'l-waṣīyyatu Ilayihim*, Ḥadīth No. 3261

¹²Al-Sarakhsi, *al-Mabsūt*, vol. 10, 7

¹³Mushtaq Ahmad, *Jihād, Muzāḥmat aor Baghāwat*, 326

¹⁴*Ibid*

¹⁵*Sunan Tirmidhi, Kitāb al-Diyāt*, Ḥadīth No. 1329; Ṣaḥīḥ Muslim, *Kitāb al-ṣayd wal dhabā'ih*, Ḥadīth No. 3615

¹⁶*Sunan Abī-Dāwūd, Kitāb al-Jihād*, Ḥadīth No. 2292

¹⁷*Ibid*, Ḥadīth No. 2299

¹⁸*Ibid*, *Kitāb al-Khirāj wal-Amāra wal-Fay'*, Ḥadīth No. 2652

¹⁹*Ibid*, Ḥadīth No. 2330

²⁰*Sunan Abī-Dāwūd, Kitāb al-Jihād*, Ḥadīth No. 2330

²¹*Ibid*, Ḥadīth No. 2259

²²Ṣaḥīḥ al-Bukhārī, *Kitāb al-Jihād wal-Siyar*, Ḥadīth No. 2770

²³Abu Bakr Muhammad b. Sahal al-Sarakhsi, *Sharḥ al-Siyar al-Kabīr*, vol.1 (Beirut: Dar al-Fikar, 2000), 22

²⁴*Ibid*

²⁵*Sunan al-Nisā'i, Kitāb al-Bi'ah*, Hadith No. 4124, *Sunan Abī Dāwūd, Kitāb al-Jihād*, Ḥadīth No. 2154

²⁶*Ṣaḥīḥ al-Bukhāri, Kitāb al-Jihād wal-Siyar*, Ḥadīth No. 2737, *Ṣaḥīḥ Muslim, Kitāb al-Amarah*, Hadith No. 3418

²⁷*Ṣaḥīḥ al-Bukhāri, Kitāb al-Jihād wal-Siyar*, Ḥadīth No. 2803, *Ṣaḥīḥ Muslim, Kitāb al-Jihad wal-Siyar*, Ḥadīth No. 3273, *Ṣaḥīḥ Tirmizi, Kitāb al-Jihad*, Ḥadīth No. 1598

²⁸ al-Ṭabarāni, *al-Mu'jam al-Kabīr*, vol. 1 (Beirut: Daral Kutub al-'Arabiyya 1977) 97

²⁹Mushtaq, *Jihad, Muzahimat aor Baghawat*

³⁰al-Sarakhsi, *al-Mabsūt*, vol. 10, 7

³¹*Sunan Abī Dāwūd, Kitāb al-Jihād*, Ḥadīth No. 2312

³²al-Sarakhsi, *al-Mabsūt*, vol. 10, 139

³³*Ibid*

³⁴*Musnad Ahmad, Musnad 'Ali b. Abī Ṭālib*, Ḥadīth No. 1041

³⁵al-Sarakhsi, *Sharḥ Kitāb al-Siyar al-Kabīr*, vol. 1, 117

³⁶*Ṣaḥīḥ al-Bukhāri, Kitāb al-Maghāzi*, Ḥadīth No. 3994 and Shibli Nomani, *Sīrt al-Nabi*, vol. 1, 344.

³⁷Muhammad Hamidullah, *The Muslim Conduct of State*, (Lahore: Shaikh Muhammad Ashraf Publishers, Booksellers & Exporters, 1996) 301