

Amān and International Humanitarian Law concerning Quarter, Perfidy and Ruses of War: A Comparative Study

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Abstract

There are two aspects of Contemporary International Law (CIL). They are "Jus ad bellum" and "Jus in bello". Jus ad bellum investigates whether a war among nation-states is lawful or unlawful. This aspect of CIL is dealt with by the UN Charter under the title of "Use of Force". The other aspect of CIL is "Jus in bello" which discusses ethics and conduct of war under the name of International Humanitarian Law (IHL). The aforementioned aspects of CIL also exist in Islamic International Law (IIL). The former one is known as Illāt al-Qitāl and the latter as Aāb al-Qitāl. This article investigates a comparative study of IHL with special reference to Quarter, perfidy and ruses of war in the context of Amān. IHL does not focus on the validity or legality of war; it ensures human rights during the war among the Nation States and sets laws to minimize human losses during the war. IHL negates the notion of free-hand in war among the Nation States. It declares all deceiving movement or deceiving measures unlawful such as perfidy. However, it allows ruses during the war. It also awards quarter to belligerents. Likewise, IIL also recognizes protection of belligerents under the name of Amān. Amān is to be awarded by Muslim combatants to alien combatants on or without demand during war. It may be in explicit or implied words. Any indication/gesture that shows protection of the combatants will also be considered Amān. Once Amān is awarded it cannot be terminated to avoid perfidy. IIL prohibits perfidy and allows ruses of war. Therefore, the notion of non-Muslims scholars regarding IIL that it is not compatible with ICL is clearly misinterpretation of IIL.

Keywords: *Amān, Humanitarian Law, Perfidy, Ruse, Contemporary and Islamic International Law*

Introduction

A detailed study of the main features of Islamic International Law (IIL) reveals that they are concurrent with Contemporary International Law (CIL). The concept that IIL is essentially different from the standards of CIL is a misinterpretation. The main objective of this article is to clarify such misinterpretation of IIL. There has been an intense debate between Muslims and non-Muslim intellectuals on the relationship between IIL and CIL for a long time. However, the 9/11 and repeatedly Islamophobia incidents that took place in Europe made it very fierce. In Europe, Islam has been blamed for spreading terrorism and extremism against non-Muslims. Non-Muslims are of the view that Islam does not accept the co-existence of other religions. Therefore, there is a pressing need to make them clear that IIL does not only recognize the peaceful co-existence of other Nation States but also emphasizes maintaining peaceful relations with non-Muslims if there is no aggression from their side. If aggression is there against Muslims, then the ethics and conduct of war must be observed at any cost as observed by IHL. IIL also focuses that anyone from combatant seeks guarantee (Amān) during the war, the guarantee must be given to him/her as awarded by IHL in the name of Quarter. IIL authorizes every Muslim member of the Army to award guarantees even without the demand of the combatants. Once the guarantee is awarded

Amān and International Humanitarian Law concerning Quarter, Perfidy and Ruses of War: A Comparative Study

it may not be terminated to avoid perfidy as prohibited by IHL. IHL allows Ruses during the war as IHL allows it. It is also claimed that CIL is the only solution to the current emerging political needs of Nation States at the international level. It is said that a secular international law like CIL is more acceptable to all the nation-states because a particular religious international law can only meet the political needs of that nation, not all the nation-states. Therefore, it becomes important to address these core issues related to both the laws concerning Quarter, perfidy and Ruses of war.

Literature Review

The term Amān is opposite to terror.[1] Legally, it is a kind of guarantee awarded by either Muslim individuals or Muslim states to non-Muslims residing beyond the territorial jurisdiction of the Muslim state. Amān may also be awarded by the non-Muslim or alien state to Muslims. Amān is a contract between two parties; Giver of Amān (*Mu'āmān*) and Seeker of Amān (*Mustā'min*). Amān giver (*Mu'āmān*) may be a state or any Muslim citizen of a Muslim state. According to the majority of Muslim jurists, a Muslim citizen slave of a Muslim state can also award Amān. According to Imam Abū Ḥanīfah only a Muslim slave fighter can award Amān.[2] Amān may be awarded by using any word or gesture explicitly or implicitly indicating Amān.[3] It needs not any intentions of awarding Amān.[4] Moreover if an alien or any non-Muslim enters to the domain of Muslim state without seeking formal guarantee being claiming a diplomat will be considered protected subject to providing sufficient proofs.[5]

Amān plays a vital role in the international relations of a Muslim state with other alien states. The importance and legality of Amān can be understood from the verse of Qur'ān, Allah said, "If someone amongst the Pagans asks Amān, grant it to him, so that he may hear the word of Allah; and then escort him to where he can be secure. That is because they are men without knowledge." [6] Ibn Qudāmah is of the view that if non-Muslims demand the guarantee from Muslim state to know about the qualities of Islam, they must be awarded guarantee.[7]

On the other hand, Contemporary International Law (CIL) recognizes the legal status of "Quarter". It is a unilateral contract of protection provided to combatants under the rules of International Humanitarian Law (IHL).[8] Quarter under IHL is very limited and narrow as compared to Amān. In addition, "Quarter" is restricted to war only. Amān is the general conduct of the Muslim state and Muslim individuals under (MIL) that deals in both situations of war and peace. It is partially a bilateral contract which sometimes needs no legal proceedings like proper demand on the behalf of non-Muslims or aliens because a Muslim state may award on its own discretion.[9] In contrast, Quarter is a unilateral contract of protection provided under the rules of International Humanitarian Law (IHL) during the war only. In Amān, the concerned persons are not required to be belligerents they may be laymen. But under IHL, Quarter will be given to those fighters who meet the criteria of belligerents. Belligerents must carry a unique symbol like proper uniform and flag or carry weapons openly, fight under the supervision of a commander and observe the rules and regulations of IHL. Awarding Quarter is the sole right of the imprisoning state. Individuals have no capability of awarding Quarter.[10] According to IHL, individuals will only be capable of award quarter by the appointment of the state in case of using the delegated authority. Under Muslim International Law, *Mustā'min* (guaranteed person) has more rights as compared to a person to whom the Quarter has been given. Under the IHL, a person to whom the Quarter has been given entitled the fundamental human rights like food, shelter, clothes, freedom of thought and expression and medical facilities like a hygienic environment.[11] They are considered prisoners of war, they cannot move beyond the territory specified. According to the entitlements, guaranteed persons under Amān are dealt equally regardless of the fact if they are Muslims or non-Muslim.

Perfidy and Ruses of war go side by side with *Amān* and Quarter in both the Laws IHL and IIL.

Intentional Humanitarian Law

The Hague Law plays a vital role in the formation of International Humanitarian Law (IHL). For the first time in the history of the West, it was recognized that there should be some manners and ethics of war. Some rules were set to regularize the conduct of war and it was called Hague Conventions 1899 and 1907.[12] For importance of The Hague Conventions it could be said that the current Geneva Conventions are the revised shape of The Hague Convention with a little bit amendments and addition.[13] Customs of the west and treaties among the western countries are the main sources of IHL. The IHL expert, C.G. Weeramantry[14] is of the view that the sources of Customary International Law and International Treaties of IHL are equally important and no preference can be given to one over the other. Regarding differentiation between International Treaty and Customary International Law (CuIL), he states that the general view of IHL experts of preferring treaty over CIL is due to its binding on the countries concerned. According to him, CIL may be given preference over treaty because the Law of Treaty is based on CIL. He also considers CIL a combination of traditions, wisdom, moral and religious principles of a community. Further, he elaborates that the Law of Treaty is a narrow down and limited phenomenon as compared to CIL. It compels every state to follow the general principles of Customary Law while the Law of Treaty bounds only the states signatories to a treaty.[15]

International Humanitarian Law is the part of International Law that governs the strengths of fortified war. It is also known as “The Law of Armed Conflict” before this it was known as “The Law of War”. [16] IHL does not stress the validity or legality of war but to ensure human rights during war.[17] It also focuses on how to minimize human loss during war. IHL negates the notion of free-hand-war.[18] IHL is derived from International Conventions and Customary International Law.[19]

IHL is the combination of International Conventions and Customary International Legal Maxims.[20] Before the nineteenth century, International Law was based on the custom of the West. In the nineteenth century, the struggle for the codification of western custom started and later on, in the twentieth century, it became fruitful in the form of a precise and self-explanatory international convention of CIL.[21] There are many conventions and customary principles regarding IHL but the Four Geneva Conventions are very important in this regard. The first convention is the “Geneva Convention for the Improvement of the Condition of the Wounded and Sick in Armed Forces in the Field”. While the second is the “Geneva Convention for the Improvement of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea”. The third one is the “Geneva Convention Relative to the Treatment of Prisoners of War.” The fourth one is the “Geneva Convention Relative to the Protection of Civilian Persons in Time of War”. These Conventions came into being on 12 august 1949. These conventions are enacted in a situation of armed conflict between the two nation-states. According to article 2 of the first Convention,

“In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance”.[22]

It is known from the above article that the rights of those people are protected by the said conventions who are a part of an international armed conflict. Although there is article 3 which is combined in the four Geneva conventions which applies to civil wars (non-international Armed conflict), Civil war may be taking place between the government and rebels of the government. Article 3 of the Geneva conventions states in this regard:

Amān and International Humanitarian Law concerning Quarter, Perfidy and Ruses of War: A Comparative Study

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

a) Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;

b) Taking of hostages;

c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavor to bring into force, using special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict”[23].

Likewise, the additional protocol 2 to the Geneva conventions also gives protections to the basic rights of the civilians in non-international conflict based on humanity.

Protocol 2 bans:

“Violence to the life, health, and physical or mental wellbeing of people. In particular, it prohibits acts of murder and cruel treatment, terrorism, hostage-taking, slavery, outrages on personal dignity, collective punishment, and pillage. These protections are considered fundamental guarantees for all persons. Children are to be evacuated to safe areas when possible and reunited with their families. Persons interned or detained during internal conflicts are assured of the same humane treatment as specified by the Geneva Conventions. It strengthens the protection of the wounded, sick, and shipwrecked as well as medical and religious personnel. Attacks are forbidden on civilians and on “objects indispensable to civilian survival” such as crops, irrigation systems or drinking water sources, cultural objects, and places of worship. Impartial humanitarian relief organizations—such as the ICRC—are to be permitted to continue their humanitarian services”[24].

It is known that according to Geneva Conventions and additional protocol rules the victims of the non-international conflict, like non-combatants, children, wounded, disabled and war prisoners will be given protection and will be treated based on humanity. If there is a conflict between the conventions and international law of IHL, then the conventions shall prevail.

Perfidy under IHL

All means which lead to perfidy are prohibited under International Humanitarian Law. It considers all kinds of perfidy as war crimes. Perfidy is defined as "Acts inviting the confidence of an adversary to lead him to believe that he is entitled to or is obliged to accord, protection under the rules of International Law applicable in armed conflict, with intent to betray that confidence.”[25] According to this definition, if a belligerent during the war shows himself incapable of fighting to be helped by the opposing party or shows a sign of peace like a white flag or keeps down the weapons or surrenders, in all such situations, when the adverse party comes near to him, he suddenly attacks the opponent party. Such attack will be considered perfidy because under IHL the person is considered protected in such circumstances.[26] Similarly, misuse of the symbol or the

use of the protecting marks intending to hurt the trust of the opposition party during the war is also prohibited under the rule of IHL. For example, using of ambulance or the marked of an ambulance on the military vehicles in such a manner that the opponent party let the vehicles cross an area. Likewise, using the symbols of the red cross or red crescent to deceive the enemy is considered prohibited.[27] Article 37 of the additional Protocol 1 states some examples of perfidy:

- a) "The feigning of an intent to negotiate under a flag of truce or of a surrender;
- b) The feigning of an incapacitation by wounds or sickness;
- c) The feigning of civilian, non-combatant status; and
- d) The feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other states not parties to the conflict.”[28] Although perfidy is strictly disallowed under the IHL, it allows ruses of war. It allows any army to adopt a measure to give maxim harm to the enemy.

Ruses of war in IHL

Under IHL, ruses of war do not mean to deceive the enemy with defrauding measures during war.[29] Ruses of war are performing acts being misinforming the opponent party to encourage him to show irresponsibility or keeping the enemy in doubt about the position and strength of the army soldiers.[30] Additional protocol 1 article 37 states in this regard:

“Ruses of war are not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of International Law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law”[31].

The above-mentioned protocol allows such ruses of war that are not inconsistent to the rules of IHL. Following are the examples of ruses of war given by the article of the same protocol: “camouflage” is the concealment of army position and its number from the opposite side during the war. “Mock operation” is the surprise attack on the opponent side.[32] “Decoys” are military tricks that are used during the war, for example, the army wants to attack from the west side but they pretend to the opposite side that they are going to attack from east side engage the enemy focusing on the east and to ignore the safety of west side for a sudden attack from west.[33] Similarly, giving of misinformation to the opponent side about army position or its number is also the example of ruses. One thing that must be kept in mind about the ruses is that one must not use any method or manner during the war that leads to perfidy or harms the confidence of the enemy.[34] Simply, in ruses of war, the enemy expects an attack being not knowing its pros and cons. Such ruses do not amount to treachery or perfidy.[35] Although the IHL allows giving maximum harm to an enemy but also restricts the army to give quarter (protection) if it is requested by the belligerent army. Awarding quarter is not only mandatory on the request of belligerents but also sometimes becomes compulsory to be given to the belligerents even if it is not demanded or requested formally.

Quarter in IHL

As discussed earlier, IHL considers war as a fact based on necessity. It emphasizes humanity and recognizes ethics and manners which must be fulfilled during the war. One of the important manners of IHL is giving Quarter to the belligerent during the war. “Quarter is a contract of protection provided during war-time to protect the person and the property of an enemy or belligerent, or a regiment, or everyone inside a fortification or the entire enemy army or city.”[36] Article 40 of the additional protocol 1 is about Quarter. It states “It is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis.”[37] Article 41 of the said protocol states that who will be considered safe during the war? it says “ A person who is recognized or who, in the circumstances, should be recognized to be hors de combat shall not be made the subject of attack”.

Amān and International Humanitarian Law concerning Quarter, Perfidy and Ruses of War: A Comparative Study

Amān, Perfidy and Ruses of war in Islamic International Law

Under Islamic International Law Muslim state is bound to observe with letter and spirit all the agreements and peace contracts upon which it is agreed bilaterally in both situations of war and peace.[38] Similarly, Islamic International Law disapproves of any inconsistency between the actions and pledges of Muslim individuals and State.[39] It also strictly disapproves any kind of disloyalty to the pledges to which it has bound itself explicitly or implicitly.¹ It bounds Muslim state to observe all the agreements or contracts between Muslim state and non-Muslim individuals or non-Muslim state at all possible efforts. According to Shaybānī, if Muslim state feels any threat or dangers to its national security from the state with which Muslim state has signed an agreement in such situation, Muslim state can formally and bilaterally terminate such contracts.[40] This rule of law of Shaybānī is based on Qur'ānic injunction which bounds Muslim state to such formality.[41] On the other hand, Islamic International Law allows to adopt ruses of war according to the need of time.²[42] Islamic International Law allows only those ruses of war which are in accordance to the spirit of Islam and all the approved rituals of worshipping Allah. No ruse of war is allowed which comes with conflict to the spirit of Islamic approved worshipping Allah. These ethical Ruses of war are discussed in the following section. According to Shaybānī, a Ruse during a war is giving an expression to the belligerents other than the actual logistic position of the Muslim army in such a way that combatants consider it as actual situation while the expresser does not highlight intentionally the real situation.[43] Sarakhsī explains it as ruses of war is telling lie nor deceiving combatants during the war because both are prohibited Muslim International Law. According to him, a ruse of war means using words during the war by the Muslim army which has multiple meanings. According to him, this rule of law is based on the precedents of Hazrat Ibrahim AS who had used words that carried various meanings. He further elaborates the word Ruse of war by giving an example of the commander of the Muslim army when he shares his views with soldiers in a manner that the Muslim army will be succeeded in the ongoing war while the actual situation does not support what is claimed on condition that commander should avoid himself from telling lie in his all expressions giving to Muslim army or belligerents. According to Sarakhsī this rule of law is based on an incident with an aged woman when she came to the Prophet (peace be upon him) and asked him whether aged women will enter Paradise or not. The Prophet (peace be upon him) replied with no and she started weeping then Prophet (peace be upon him) asked her, had she not recited in the Qur'ān that all Muslims will enter heaven in young-age. Then she stopped her weeping and consoled. Sarakhsī has suggested for the Muslim army to use in its communication the words 'may be' or 'hoped' to avoid lying and apply the principle of *Tawriyyah* (Using manifold words). He says the Prophet (peace be upon him) used the term of 'may be in the battle of Aḥzāb..[44]

The term '*Tawriyyah*' (Using manifold words) means giving an expression of someone according to the actual situation while the listener understands something else.[45] The

¹ It was reported from AN Bakrah who said: "The Messenger of Allah said: 'Anyone who kills a person to whom a covenant was granted prior to its expiration, Allah will forbid him from entering Paradise.'" Abu Dawūd Sulaiman bin al-ashās al-Shabistāni, Sunan-e-Abi Dawūd, Dar-al-Salam, Riyadh, 2008, vol.3, P:354.

² "It was reported from Ma'mar, from Az-Zuhri, from 'Abdur-Rahmān bin Ka'b bin Malik, from his father that whenever the Prophet (peace be up him) wanted to go on a military expedition, he made it appear as if he was headed somewhere else, and he used to say: 'War is deception.'" Abū Dāwud said: No one came with this (narration) except for Ma'mar, meaning his saying: "War is deception" with this chain of narrators. It was only related from the Ijadith of 'Amr bin Dinar, from JABir, and from the Ijadith of Ma'mar, from Hammām bin Munabbih, from Abu Huraira. Abu Dawūd Sulaiman bin al-ashās al-Shabistāni, Sunan-e-Abi Dawūd, Dar-al-Salam, Riyadh, 2008 vol.3, P:275.

Prophet (peace be upon him) used this term when he was going out of Madīnah for any military action against the combatants. The companions of the Prophet (peace be upon him) were not aware of the direction of the Prophet (peace be upon him). Likewise, adopting ruses during war accustomed in the practice of the Prophet (peace be upon him) at the time of migration from Makkah to Madīnah direction of movement of the Prophet (peace be upon him) was not towards Madīnah but he had stayed in the cave of *Thawr* for a few days which is situated the opposite direction of Madīnah. Later, he moved to Madīnah. From the explanation, it is clear that ruses are permissive and treachery is prohibited under Islamic International Law. Treachery and deceiving belligerents by telling them to lie is prohibited under Islamic International Law but it has made ruses of war permissible. The consequences of the two war phenomena have the opposite impact on the opposition party that is why these opposite phenomena cannot be summed off and sandwiched. Any treachery in the name of war ruses will be considered perfidy. The rule of law is that guarantee of any Muslim individual results in the protection of the life and property of guaranteed aliens. If the Muslim army gives a signal of guarantee for the protection of belligerents and under lips pronounces their killing. This behavior of the Muslim army will amount to deception which results from perfidy on the behalf of the Muslim army because the given signal of guarantee has made the belligerents protected with all respects.[46] According to Sarakhsī, a green signal of guarantee by the Muslim army to belligerents during war accounts to the protection of life and properties of belligerents not making their lives and properties to be demolished. According to him a guarantee can only be terminated or revoked explicitly and formally and not by deceptive measures. In the above example, the belligerents to whom a guarantee was awarded by using gestures of guarantee considered as an explicit guarantee. The rule of law in case of availing guarantee during war depends on the understanding of the gestures of guarantee by the opponent party (belligerents) to the contract of guarantee not the understanding of the Muslim army. Ambassadors are given protection in Islamic as well as Contemporary International law. Islamic International Law does not allow misuse of diplomatic immunity for ruses of war. According to Shaybānī and Sarakhsī, if some of the Muslim soldiers show themselves as ambassadors for facilitating the Muslim army and the alien or belligerent army trust in them as ambassadors this kind of war ruse will be counted as treachery and invalid under Islamic International Law. This rule of law is also applicable for the real ambassadors who surreptitiously facilitate the Muslim army in their movement around belligerents. According to Shaybānī this rule of law is also applicable to individual ambassadors and a group of ambassadors. According to him, under Islamic International Law such diplomats whether real or fake are strictly not allowed to facilitate the Muslim army in its mission nor do they by themselves harm any belligerents otherwise it will be considered treachery.[47] Reason for this rule of law is that if guarantee to such diplomats is awarded on their demand then under the spirit of demand such diplomats are not allowed to harm directly or indirectly the state which has awarded guarantee. Such diplomats' properties and other belongings are protected from both sides that are from the guest and host states. According to Sarakhsī, a guarantee is awarded to ambassadors or traders to facilitate nation-states among themselves and this facilitation will be made easy on both sides so any chance of facilitating the nations states will not let be spoiled and will be availed for establishing friendly relations that is why fake ambassadors and traders are awarded guarantees on their face.[48]

Under Islamic International Law traders are protected by the custom and traditions of the nation-states even they do not obtain formal *Amān* from the Muslim state. Possessing trading goods is sufficient proof to have presumed them as traders.[49] The protection of traders is not a unilateral issue but are bilaterally protected. The above rule of law does not allow Muslim traders to facilitate the Muslim army in the name of ruses of war. If Muslim traders commit any action contrary to their guarantee will be

Amān and International Humanitarian Law concerning Quarter, Perfidy and Ruses of War: A Comparative Study

considered treachery. Shaybānī is of the view that if Muslims show themselves as traders while they are not actual traders, they cannot deceive aliens like the actual traders otherwise it will be considered treachery.[50] According to general rules of Islamic International Law regarding Muslim prisoners in an alien's state, a Muslim prisoner can take any action either legal or illegal against aliens for making himself free. Likewise, he also can take any measures to get possession of his property back from aliens. Shaybānī stated in this regards a Muslim prisoner in an alien state can use all kinds of methods for freeing himself and his slaves from the occupation of aliens. In such a situation he is also allowed take possession of his slave girl by force, any other illegal means or stealing her. He is also allowed to kill any one of the aliens and steal their properties as well.[51] Another general rule of Islamic International regarding Muslim prisoners is that a Muslim prisoner even after freedom from the prison of aliens can do any act cases harm for aliens. Shaybānī, states in this regard, if there are some Muslims in alien's state freed by aliens from their prison, there is no harm for them if they could kill anyone of aliens or snatch their property and flee from their territory.[52] Sarakhsī elaborates the rule of law and says that the detention of Muslims does not change their status. They could fight non-Muslims before their imprisonment same is the case after the freedom. Muslims neither demand any guarantee to be given by the aliens nor aliens make them free by awarding guarantee rather than considered them weak and ignored. The third rule of Islamic International Law regarding the Muslim prisoners is that the status of Muslim prisoners will remain the same unless and mutually (Muslim prisoners and aliens) changed to guaranteed persons. Shaybānī states in this regard if aliens say to Muslim prisoners go you are given a guarantee and Muslim prisoners remain quiet. After getting freedom in such situations, Muslims can fight them because Muslim prisoners neither demand guarantee nor they compel anything on them in response to their offer. If Muslim prisoners demand a guarantee from aliens or they do not demand a guarantee explicitly but commit any action or any saying which resembles the demand of guarantee in such situations, Muslim prisoners cannot deceive aliens because their status changes from Muslim prisoners Muslim guaranteed. Under Islamic International Law, guaranteed Muslims cannot deceive non-Muslim guarantors in any way; otherwise, it will be considered treachery. According to Shaybānī, if belligerents ask Muslims who are detained in alien's state about their identity? Muslims tell them that they are traders or envoys of the Muslim state, in this situation the detained Muslims are not allowed to kill the belligerents or give them any harm. It is clear from the above explanation that treachery is different from ruses of war. Ruses of war are permissible while treachery is prohibited under Islamic International Law. According to them, the issue of *Amān* demands due care and should not be denied without any solid grounds by the Muslim state because it is related to the safety of human life which Islam promotes and ensure at every cost. International Humanitarian Law also considers the matter of *Amān* like Islamic International Law. Shaybānī does not consider the providers of medical treatment or any other services like cooking food and providing water to a wounded soldier as combatants. They are usually protected during the war from every kind of attack and harm.[53] This protection provided by Islamic International Law to the medical care unit may not be used as ruses of war. such kind of any act will amount to perfidy.

General rules of Islamic International Law and Perfidy.

During the war, the Muslim army can fix any terms and conditions with alien forces for their safe passage through alien territories in the wide interest of Muslims and the Muslim state. As a general rule of Islamic International Law if Muslims pledge to avoid any least harm to the properties of aliens then the Muslim army must observe it on large scale otherwise it will be considered perfidy. Conversely, if the Muslim army has pledged any large scale harm to the properties of aliens then it is not necessary to observe it on least account.[54] All the terms and conditions will strictly be observed

by the Muslim army to avoid perfidy but those terms and conditions which's violation do not harm directly or indirectly the alien's interests may be violated and it will not be considered perfidy only in cases of using water from the wells and canals of aliens. Muslim army can also eat from the fruit and vegetable gardens of aliens without conveying them in case if it is agreed that the Muslim army will not destroy aliens fruit and vegetable or crops because eating does not include destruction.

Logistic routing for the passage of the Muslim army must be observed. In the case of logistic routing, if the Muslim army has agreed that it will follow a particular passage of the aliens for their safe journey then the agreed terms should be observed mindfully with letter and spirit otherwise it will amount to perfidy.

Using the green pastures of aliens. In case if Muslim army has agreed that it will not harm any green pastures and fruit of aliens or will not graze their cattle on their green pastures then the Muslim army is bound to observe what has been pledged bilaterally. In the aforementioned cases if the Muslim army thinks it necessary to revoke any agreement partially, then it must convey to aliens that the peace agreement is being revoked and ineffective between aliens and the Muslim army. Without conveying Muslim army cannot violate any agreed terms and conditions otherwise it will amount to war perfidy.[55] According to Shaybānī, if aliens offer some incentives in lieu of conditional guarantee for their families and belongings then the Muslim army may give them a guarantee. If aliens perform the duty or duties for which they had held pledged themselves like if they're given a guarantee, then they will open the doors of the fort of an alien army to conquer by Muslim army and if they do open the doors then Muslim army is bound to give them conditional guarantee otherwise it will amount perfidy. The provided guarantee to aliens will be inclusive to their family members like their wives, children and captives and belongings except for gold, silver, ornament and cash.[56] The captives of the facilitators will be returned to them if they're not distributed or sold in the market. In case they're sold or distributed among Muslim soldiers then such slaves will only be recovered by the aliens if they produce Muslim witnesses to prove their ownership of such slaves. The other belongings including their family members and captives will be recognized to them after the due clarification with proper witnessing. Those who are failed to be ratified in due course of clarification will be declared war spoils. If they claim that we have taken the guarantee for these specific belongings which are not in the hands of Muslims their statement would be accepted and the belongings would be given back to them. The belongings of aliens, in this case, will be decided based on prima facie possession. Goods that are in their possession of aliens will not be made subject for any more inquiry but goods in the possession of the Muslim army if are claimed by aliens will be decided by the procedure of proper witnessing to be produced by aliens on basis of Muslim witnesses. If aliens fail to prove the ownership of such goods then it will be declared as spoils of war[57]. Under Muslim International Law, the Muslim state is only allowed reciprocally to behave with aliens' war prisoners, captives and other properties which is ethical and just in the eye of Muslim International Law.[58]

Violation of *Amān* by Muslims will yield perfidy

Violation of (*Amān*) results in two forms. The individual who has violated the guarantee awarded by the Muslim state will be made subject to either punishment, compensation or the cancellation of the guarantee availed. In the case of the state, if the treaty of peace is violated then the aggressor state will be dealt with as we find in the precedents of Banū Quraydah and Ḥudaybiyyah. According to Shaybānī, a guarantee awarded by Muslim individuals or Muslim states is binding on all Muslim individuals and Muslim states. If Muslim individuals or Muslim state attacks the guaranteed aliens and kills them, destroy their properties or disgraces them being knowing their guaranteed status or not, in every situation the attackers are bound to pay the blood money for all the murders and have to redress the properties destroyed and pay the damages for any loss done by them. If they do not know about the guarantee, then the

Amān and International Humanitarian Law concerning Quarter, Perfidy and Ruses of War: A Comparative Study

killing will be considered unintentionally and obviously, there is blood money in the unintentional killing. If they know about the guarantee, then blood money will also be given because the suspicion of *Mūḥārābāh* (wagering war against Islam or Muslims) is attached to all aliens. This argument of Shaybānī draws its authenticity from the verse of the Qur'ān.³ According to Shaybānī, the captured women and children of guaranteed aliens should not be made captives and will be handed over to them because they are protected with respect to their properties and families by the contract of guarantee between Muslims and the aliens. Dowry will be given to the women who are sexually used. Although sexual intercourse is illegal with such women are protected through a contract of guarantee by any Muslim individual or state but due to the suspicion of *Muharabah* attached to them, no penalty will be inflicted on those who have done sexual intercourse with such women. As compensation dowry will be given to these women[59]. If these women gave birth to children, these children will be considered free Muslims because their fathers are Muslims. This argument is based on a juristic maxim that children are associated to the best parent in the context of religion.[60] Sarakhsī has referred to several Aḥādith of the Prophet (peace be upon him) and precedents of the Companions in support of this argument.⁴ Termination of (*Amān*) is the willful act of the contractual parties to dismiss any peace contract. Although Muslim International Law emphasizes on the fulfilment of all the bilateral agreements and contracts in case of unavoidable circumstances it allows Muslim states to terminate a contract which may result from dire consequences for Muslim individuals or Muslim states if not terminated formally. According to Shaybānī, a guarantee of aliens is directly related to the security and benefit of Muslims. Any guarantee that endangers the security or interest of Muslims can be dismissed by the Muslim state being communicating it to the guaranteed aliens.[61] Shaybānī has made the base of this rule of law on the verse of the Qur'ān.⁵ This verse of the Qur'ān indicates that if Muslim state fears treachery of aliens then may announce the treaty is being revoked. This verse gives the Muslim state the power of dismissal of the peace treaty. Public and formal dismissal is required for any treaty or guarantees to be announced as null and void by the contracting parties. Moreover, enough time will be given to aliens to protect themselves and their properties otherwise it will be considered perfidy in accordance with the Qur'ān.[62] Sarakhsī has referred to a precedent of

³The compensation should be given to the killed person's family "If he (killed person) belonged to a people with whom you have a peace treaty, then compensation should be handed over to his family, and a believing slave should be set free" Al-Qūr'ān,4,92.

⁴According to the *Hadith* of *Mūhallāb bin abi Sūfrah* "when the city of *al-āhwāz* was conquered by Muslim army in the era of Hazrat *Umār* RA. The inhabitants were already protected through a peace treaty under the sign of Hazrat *Umār* RA. After the settlement of war the women were made captives and were sexually abused by the Muslims. When *Umār* RA came to know, he ordered to return the captive women and to own the children by the Muslims who were born due the sexual intercourse by them. *Sārākhsī* has also quoted another *Hadith* in which the prophet (peace be up him) not only paid the compensation to the legal heirs of *Bānī Jādhīma* who were killed by Muslim Army General Hazrat *Khālid bin Waleed* RA but also announced that he is not responsible for the act of *Khālid* RA. {*Ibn Umār* RA says, that the prophet (peace be up him) sent *Khālid* RA to *Bānī Jādhīma*(name of the tribe in order to embrace Islam) the people of that tribe used the word *Sābā'nā* which did not give the clear message to *Khālid* RA. *Khalid* RA started killing and making them slave and ordered every of Muslim to kill what he captured among them. *Ibn Umār* RA says I declined to kill my slave and also announced that my friends will also not kill their slaves. Then we informed the prophet (peace be up him) and he said two times: "oh Allah I am not liable for what *Khalid* did". Muhammad bin Ismail Abū Abdullah al-Bukharī, *Sāḥīḥ al-Būkhārī*. The Prophet (peace be up him) paid the blood money of the deceased persons from the public treasury of Muslims and ordered Hazrat *Ali* RA to pay the compensation to the heirs of of *Bānī Jādhīma* who were killed". Al-Sarakhsī, Muhammad bin Abi Sahl al-Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, al-Shārikāh al-Shārqīyya lil ilanāt, Al-Qāhirāh, 1971, Vol.1, P:261. 5 "If you fear treachery from any group, throw back (their covenant) to them, (so as to be) on equal terms: Allah does not love the treacherous". Al-Qūr'ān,8,58.

Hazrat Mu‘āwiyah RA regarding the fulfilment of peace treaty with aliens.⁶ From this precedent, Sarakhsī concludes, that Muslims must fulfill their covenants with others and have not only to avoid explicit perfidy but also not indulge suspicious activities that lead to perfidy.[63] According to Shaybānī, if an army chief dismisses the guarantee of aliens during the war, in such situation they should be given sufficient time and opportunity to save themselves as well as their properties. This can be possible by announcing a time in which they can easily vacate their dwellings and letting them access to their properties to save them accordingly. Those who are not leaving the area will be treated as non-Muslim citizens of the Muslim state. Poll tax will be imposed on such guaranteed aliens and they lose the opportunity to avail it for a second time.[64] When full-fledged war is waged against the belligerents then the Muslim state is allowed under Islamic International Law to adopt ethical rouses of war.

It can be concluded that the notion of *Amān* is a broader phenomenon with respect to legal process of completion, impact on both the parties, consequences, revocation or termination and the rights of guaranteed persons (*Mustā‘minīn*) under the IIL as compared to the phenomena of Quarter. The notion of *Amān* which IIL represents is not only more applicable as compared to the rest of the international phenomena of awarding protection under CIL in the 21st century but it is a good alternative for resolving any issue of nations state related to their internal or external affairs with reference to awarding protection during war or beyond the parameters of war whether the seekers are stateless or state's men.

Conclusion

This article may be concluded that IIL recognizes ethics of war as recognized by IHL. Ethics of war are those manners that must be followed during a lawful war. The objective of war should be lawful according to IIL otherwise such war will be considered unlawful. Justice will be maintained during the war as it is maintained during peace. IIL recognize the equal authority of all Muslims to award *Amān* to those belligerents who demand it and it can be awarded without any demand of belligerents. Once *Amān* is awarded by Muslim individuals it will be binding on all Muslims. The authority of the Muslim army of awarding guarantees will not be expelled by the commander of a Muslim army. If such authority is even banned by the commander, will have no legal impact. IIL also prohibits all kinds of perfidy although ruses of war are permitted. On the other hand, CIL also recognizes the ethics of war under the rule of IHL. IHL also recognizes the ethics of war. it also differentiates between combatants and noncombatants. Noncombatants are completely protected during war subject to discrimination between them. The rights of war prisoners and combatants are also recognized by IHL. Ruses of war is permitted while all kind of perfidy is prohibited. Quarter may also be given during the war. Ethics of war recognized by IIL is more comprehensive than IHL. IIL recognizes no strict restrictions for combatants while IHL recognizes such strict conditions which must be there otherwise such person will not be having such rights. IIL considers the authority of every Muslim individual of awarding *Amān* while IHL considers it for state or its representative only to give quarter to combatants. The notion that IIL is inherently inconsistent with CIL is a misunderstood concept.



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6 Reported by *Sūlaym bin āmir*, he says: “There was a peace treaty between *Moāwīya* RA and Roman Empire. When the time period of the peace treaty came to expire, *Moāwīya* RA intended to attack on Romans before the time peace treaty had to expire. *Amr bin āmbāsā* RA came and said to him “*Allah* is greatest, fulfillment of the treat is binding on you and you have to avoid perfidy”. *Moāwīya* RA asked him to explain his statement. He replied that I have heard the Prophet (peace be up him) saying: when there is a peace treaty between Muslim and others, the peace treaty will be remained effective unless the treaty expires or dismisses it by any party. *Moāwīya* RA ordered the people to go back from the border”. Abu ‘Isa Muhammad ibn ‘Isa al-Tirmidhī, *Sunan al-Tirmidhī*, Dar-al-Salam, Riyadh, 2008, Vol.6, P:99.

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