

## Ethics of War: A comparative study of International Humanitarian Law



\*Dr.Hamidullah

### Abstract

Muslim International Law(MIL) emphasizes on the point of settling conflicts and issues with non-Muslims peacefully. In case of attack by non-Muslims, Muslim state is bound to repel the aggression accordance with ethics and manners of war. It also allows and sometime bounds Muslims to wage war against aggressors in case of justified cause of war. Ethics of war (Jus in bello) is also recognized by International Humanitarian Law(IHL). The notion of some orientalist regarding MIL that it does not fulfil the need of 21th century is a misunderstood concept. According to CIL, there are two important aspects of war: The first one "Jus ad bellum", that discusses the validity and causes of war. The second one is "Jus in bello" which explains the modes and ethics of war. This article covers an analysis of the modes and ethics of war (Jus in bello) in MIL and IHL.

This article instigates the view point of Muslim jurists regarding the ethics and manners of war. The preferred view point of Muslim jurists irrespective of their school of thought is considered as a general rule of MIL. The preferred view point of Muslim jurist is studied comparatively with the provision of IHL.

This article sums up that MIL bounds Muslims state to invite non-Muslim belligerents to accept Islam. The cause of war is to be lawful and justice is to maintained during war at any cost. MIL also differentiate between the combatants and non-combatants. Non-combatants will not be killed while combatants will neither be burnt nor mutilated. Destruction of the combatants' property is strictly prohibited. MIL does not allow looting during war and this is the unique manner of MIL. Killing of prisoners and ambassadors is also prohibited. All kinds of perfidy are prohibited during war. Mismanagement and nosing is not allowed. Conversely, IHL also endorses all the above mentioned ethics and manners of war prescribed by MIL.

**Keywords:** MIL, IHL, Combatants, Mutilation, Perfidy, Prisoners, Ambassadors

### Introduction

Muslim International Law is based on divine sources; Holly Quran and Sunnah and it covers all aspects of human being. Islamic law deals all affairs of inhabitants of Muslim state. MIL deals the relationship between Muslim state and non-Muslim states. It also deals the relationship between Muslim state and group of individuals having power to challenge the writ of Muslim state.<sup>1</sup> MIL considers that the relationship between Muslim and non-Muslims is peaceful while hostility is exception.<sup>2</sup> According to MIL, the cause of war between Muslims and non-Muslims is aggression. Muslims are bound to repeal the aggression by force. This article examines that Muslims are assured to fight against the belligerents according to the ethics and manner of war. MIL for the first time in the

---

\* Lecturer, Faculty of *Shari'ah* & Law, International Islamic University Islamabad (IIUI). Email. Hamidullah.rizwan@iiu.edu.Pk

history of humanity, denies the concept of free hand or everything is allowed during war. It emphasized that the reward from almighty Allah is subjected to the code and conduct of war.<sup>3</sup> In a situation of aggression by non-Muslims, they will be invited to Islam before starting war against them. *Kāṣṣānī* is of the view that Muslims are bound to invite non-Muslims to the way of Allah even in the battle of war. Without inviting non-Muslims to Islam, participating in war for Muslims becomes not obligatory.<sup>4</sup> While *Shaybānī* is the view that it's a matter of fairness for Muslims to invite non-Muslims to Islam before waging war against them. Furthermore, if non-Muslims are already invited to Islam, in such situation it will also be a matter of justice to offer them a choice of paying poll tax before starting war against them.<sup>5</sup> This kind of manners of war are discussed in this article. On the other side, International Humanitarian Law also recognizes some manners of war in the form of Geneva conventions. The rules of the conventions are studied comparatively in this article to make it clear that the notion of some non-Muslim thinkers regarding MIL is based on misconception and misunderstanding.

General principles of International Humanitarian Law

IHL not only provides the guidelines for war but also enunciates the notion of taking every legal and illegal step as a warfare for defeating enemy.<sup>6</sup> Some of the important principles of war are under:

Observing humanity.

IHL recognizes war as a fact based on unavailability provided that the basic human rights and ethics must not be violated. According to the rules of IHL, killing of combatant during war would not be unlawful but in case of surrender, wounded combatants become disable to fight or "hors de combat" their killing will be illegal like people not participating in war.<sup>7</sup>

Prisoners of war should not be killed

According to the general rules of IHL, the wounded combatants "*hors de combat*" will not be killed. Although there is an exception to this rule of law if prisoners of war have committed a crime before or after of their arrest which amounts to killing. Geneva Convention 3 article 85 states, "Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention"<sup>8</sup>. In such situations, the judicial process must be fulfilled, and they will be given the opportunity for legal defense. Similarly, they will not be pressurized for any confession. According to article 99 of the Geneva Convention 3, "No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused. No prisoner of war may be convicted without having had an opportunity to present his defense and the assistance of a qualified advocate or counsel"<sup>9</sup>.

Moreover, the prisoners of war may be given the penalty of death if they have committed crime which amounts to death punishment. Article 100 of the Geneva Convention 3 says in this regard;

"Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power. Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power upon which the prisoners of war depend".<sup>10</sup>

Prisoners of war must be treated humanely

As earlier discussed that according to the rules of IHL, prisoners of war (POW) must not be killed. Likewise, POW must be treated based on humanity. During war combatants before their detention may be killed but after their arrest they must not be harmed and will be protected at every cost. Detaining state must treat POW humanly and must not act which causes harm to them.<sup>11</sup> POW must be given due respect and honor with danger discrimination by the authority concerned.<sup>12</sup> POW are also entitled to free medical treatment and maintenance.<sup>13</sup>

#### Distinction between civilians and belligerents

According to IHL rules, aliens and their territory must not be targeted during war. They must be attacked with reference to the army objectives. Military action should not disturb civilians, hospitals, schools, universities Markets, community centers and worship places. Attacking on places where the possibility of civilians exist will be considered unlawful<sup>14</sup>. Although, if a military action is become necessary against a such place where non-combatants exists, in such situations army will try their best to avoid civilians and to minimize their loss. The loss in such attacks is called collateral damages.<sup>15</sup> If the military action is necessary against a place where noncombatants exist in such cases the Principles of Proportionality will be observed.<sup>16</sup> Such places can only be attacked in situations of self-defense.<sup>17</sup> According to the 'Distinctive Rules', the use of weapons which have mass destructive effects or which basis unnecessary damage or needless pain even against military is unlawful.<sup>18</sup>

International Court of Justice (ICJ) expressed its observations regarding the legality and illegality of nuclear weapons and considered that the use of nuclear weapons violates the rules and regulations of IHL. According ICJ, the important general prohibitions must be avoided during war are:

Destruction of civilians' dwellings

Indiscriminative attacks

Unnecessary harm to aliens

Harm to neutral state/s

Spreading pollution

Use of nuclear weapons

No application of the "Rules of Proportionality" during war.<sup>19</sup>

IHL does not allow any kind of revenge if a state aggresses against another state unless in self-defense to repeal the aggression. That is why the "Rule of Reciprocity" cannot be claimed on any ground in a situation war violating IHL rules by anyone of the nation states. Under the Rule of Reciprocity (ROR) all affairs of the nation states are governed. According to this rule of law all affairs of states are administered based on mutual obligations.<sup>20</sup> Under IHL a state cannot attack on another state being pretending the rule of reciprocity like if one state attacks on civilians or on protected places like, Schools, Hospitals, universities then other state cannot justify its attack on civilians and the protected places of the aggressor state.<sup>21</sup> The effected state is not allowed to take revenge from the aggressor state. Every individual involved in such war crimes will be held accountable under the rule of Individual Criminal Liability.

#### **Individual Criminal Liability**

As discussed in the preceding lines that principle of reciprocity is not applicable due to "individual criminal liability" of IHL that holds individuals accountable to their war crimes. IHL also accounts individuals liable to the fulfillment of ethical and legal

responsibilities during war. According to this rule of IHL individuals along with their states are held responsible for war crimes done during hostility. During war, the concerned military commander is responsible to implement the rules and regulations of IHL and to make ensure the prevention of breaching of Geneva Conventions. During war, if a military commander fails to perform in accordance with the rules and principles of IHL will be held answerable to the area under controlled.<sup>22</sup> This rule of law is also applicable on all those subordinates who carry on the orders of a commander.<sup>23</sup> The said rule of IHL instructs army soldiers who are participating in war to look into the legality of their commanders' orders issued to them, if any order abridges a rule of IHL then such order will not be obeyed otherwise the individuals involved will be punished for the crimes committed.<sup>24</sup> In case if disobeying for subordinates during war becomes not possible due to a just reason/s of an order which breaches a rule of IHL, the "benefit of justifying position" will be awarded to such subordinates.<sup>25</sup> The notion of "universal jurisdiction" means the culprits of crucial breaches of IHL may be punished by any nation states including non-party states to a conflict.<sup>26</sup> It can be concluded that International Law is applicable only to nation states while IHL is applicable to nation states as well as individual combatants and non- combatants.

### **Discrimination of Combatants from non-combatants**

International Humanitarian Law discusses war and its subsequent conditions and provides the complete guidelines of war. IHL does not only discriminate between the combatants and non-combatants but determines the limits of using weapons of war to make the non-combatants safe from the damages of war.

According to the general rules of IHL, all civilians are protected they cannot be attacked in any situation.<sup>27</sup> Article 13 of the additional protocol states in this regard:

"The civilian population and individual civilians shall enjoy general protection against the dangerous arising from military portion. To give effect to this protection, the following rules shall be observed in all circumstances.

The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

Civilian shall enjoy the protection afforded by this part, unless and for such time they take a direct part in hostilities".<sup>28</sup>

The above article does not only give complete protection to civilians from military attacks but protects them from any terror.

IHL rules and regulations not only protect the life of civilians but also protect the goods and services which are indispensable for the survival of civilians. Like keep civilians starving with food or water is a war crime about which article 14 of the additional protocol 1 states:

"Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose objects indispensable to the survival of the civilian population, such as foodstuff, agriculture area for the production of foodstuff, crops, livestock, drinking water installations and supplies and irrigation works."<sup>29</sup>

### **Exceptions to this rule of IHL**

According to the general rule of IHL, civilians will not be attacked. There are two situations in which civilians may also be attacked:

1-When they take part practically in war and get the status of combatants<sup>30</sup>.

This situation is clear and according to the general rule of IHL under which civilians are considered non-combatants unless they take part in war conversely all military men are considered combatants unless they leave the battle field ("*hors de combat*"). According to IHL, there is not discrimination of gender and religion for a combatant.<sup>31</sup>

2-If a military action becomes necessary on a place where non-combatants exhibits, in such situations army will not attack intentionally and directly on civilians but will try to avoid civilians' harm and will be tried to give them least loss. The loss in such attack are called collateral damages.<sup>32</sup> If the military action becomes necessary on places where noncombatants exhibit in such cases the "Principles of Proportionality" will be applicable.<sup>33</sup>

Hague Law plays a vital role in IHL because in the history of the West, for the first time in 1899, it was recognized that there should be some manners and ethics of war. Some rules were set to regularize the conduct of war.<sup>34</sup> It could be said that the current Geneva Conventions regarding ethics and manners of war are the revised shape of The Hague Convention with a little bit amendments and addition.<sup>35</sup>

### **Combatants according to Hague Law 1907.**

Hague Law is one of the sources of IHL. According to this law everyone will be considered combatant who fulfills the following conditions:

Army soldiers under one command and control,

Army soldiers in one uniform,

Showing war weapons openly; and

Performing their military operation under the laws and customs of war.<sup>36</sup>

These four conditions are also repeated in Geneva Convention 3 article 4 that differentiate combatants from non-combatants. Such person shall be given all the rights and privileges of the combatants if they are detained in any military operation and will be considered war prisoners under the IHL. There is exception to this law. This exception also includes those civilians who are attacked and detained during self-defense.

Exception to this rule of Hague Law 1907

The rule of "*levee en masse*" is an exception to this rule of law which means taking up weapons by civilians to fight for making themselves and their children safe from the aggressors.<sup>37</sup> According to this exception such civilians do not fight under a proper command and distinctive uniform or emblem will be considered combatants. They will avail all the rights of combatants.<sup>38</sup> This article of The Hague Law is repeated by the Geneva convention 3.<sup>39</sup> Both the laws focus on the civilians who take up guns suddenly and have no enough time to regulate themselves under a proper command and control. Such civilians must carry guns openly to avoid perfidy. Carrying arms openly does not mean carrying with in hands but it means they should not show themselves being non-combatants otherwise it will amount to perfidy which is prohibited under International Humanitarian Law.<sup>40</sup> On the other side MIL also recognizes some ethics and manners of war to be observed during war.

Ethics of War in Muslim International Law

The following ethics must be observed during war against aggressors.

Objective of War

Islamic Law of War and Peace has changed the notion of people about war from getting property, obtaining the titles of bravery, securing national or tribal interests to the sole objective of establishing the writ of Allah on the earth. It recognizes war against the belligerents a matter of eternal reward.<sup>41</sup>

### **Obliterating injustice**

Justice is the distinctive feature of Islamic Law which must be maintained at any cost. The conduct of Muslims in war with non-Muslims is monitored either by the Qur'ān and Sunnah which are the primary sources of Islamic Law. Even Allah orders Muslims categorically to avoid injustice with non-Muslim<sup>42</sup>. Under Islamic code of conduct the divine requirements are to be fulfilled even in war against non-Muslims. In both cases of aggression and defense, Muslims are supposed to observe the divine limits prescribed by the Qur'ān and Sunnah not minor act should not cause any oppression against non-Muslims<sup>43</sup>. Similarly, Allah mentions Muslims with respect to a quality of maintaining justice and do not commit any act of injustice in taking their revenge from belligerents.<sup>44</sup> Moreover, Allah orders Muslims to fight against those people who fight with you but don't be cruel because He does not like cruelty<sup>45</sup>. It becomes clear from the teachings of the Qur'ān that Muslims must maintained justice not only among themselves and with their friends but even with belligerents in war. The Prophet (peace be up him) fought against belligerents in the light of injunction of the verses of Qur'ān. The war methodology of the Prophet (peace be up him) during fighting with enemies of Islam was justified in accordance with the Qur'ān.<sup>46</sup>

Discriminating combatants from noncombatants

Muslim International Law makes a distinction between those who practically participate in war against Muslim State and those who practically not.<sup>47</sup> Non-combatant is a person who is not participating in war in person, nor facilitating it logistically by making arrangements for war with necessary materials and weapons, will be considered immune from being attacked by Muslim state. This rule of non-combatants is based on the Sunnah of the Prophet (peace be up him) about ensuring the safety of non-combatants like children, women, aged persons, the sick, the injured, the insane, the incapables and religious leaders. The Prophet (peace be upon him) has strictly forbidden killing of non-combatant women in war.<sup>48</sup> Similarly, the Prophet (peace be up him) sent a message to the commander in chief Khalid RA about not of killing children and shepherds in war.<sup>49</sup> Shaybānī 's book "*al-Siyar al-Saghīr*" starts from the Hadith of the Prophet (peace be up him) that differentiates combatants from non-combatants. The Prophet (peace be up him) was used to remind Muslim Army-in-Chief about God consciousness and to be polite with Muslim soldiers, he would say: "Fight in the name of Allah and in the way of Allah; Fight only those who disbelieve in Allah (belligerents); do not misappropriate belligerents with cruelty and injustice<sup>50</sup>; don't commit treachery<sup>51</sup>; don't mutilate [the dead bodies of enemies]; and don't kill a child"<sup>52</sup>. The Hadith explains the ethical aspects of war that must be kept up right in every situation. The first command of the Prophet (peace be up him) in the said Hadith changes the objectives of fighting. Before Islam, Arabs were fighting for gaining wealth, fame, and tribal empowerment<sup>53</sup>. The Prophet (peace be up him) refined Muslims soldiers to fight for the sack of Allah and in the way of Allah<sup>54</sup>. The wording of the Hadith "fight those who disbelieve in Allah" prima facie means killing of every disbeliever but the underpinning context of the Hadith only allow killing of the disbelievers who are aggressors and belligerents only not disbelievers by virtue of their

infidelity. The logic upon which this rule of law is based; that if the first portion of the Hadith of the Prophet (peace be upon him) is considered a general rule of law about the killing of infidels then the next portion of the Hadith restricts it to the killing of non-Muslim belligerents only.<sup>55</sup>

### **The rights of Combatants in Islam**

Islam is a religion that gives the rights to both combatants and noncombatants. Islam allows fight against non-Muslims belligerents with their rights during war which are to be observed in all situations.<sup>56</sup>

#### **No Blistering of Belligerents**

Muslim International Law does not allow belligerents to be burnt. Burning criminals and sinners is a punishment the only mandate of almighty Allah.<sup>57</sup> Once Hazrat Ali RA punished criminals with fire. Hazrat Abbas RA said to him that this kind of punishment is forbidden by the Prophet (peace be upon him).<sup>58</sup> Once the Prophet (peace be upon him) ordered the companions when he was sending them for fighting against some belligerents. He specified two men of the belligerents and advised for their burning as punishment but revelation came to him about the prohibition of human burning as a punishment. The Prophet (peace be upon him) re-ordered his companions and forbade them from the burning of the criminals.<sup>59</sup> From the above instructions of the Prophet (peace be upon him) to his companions it becomes clear that the last order of the Prophet (peace be upon him) was killing the belligerent not burning them. As a rule of law, none of the criminals will be punished with fire as a death penalty.<sup>60</sup>

### **Looting is prohibited**

Generally, war was considered a game free of rules and ethics but Muslim International Law has restricted it to well defined principles and ethics. Now everything is not lawful in war but there are strict rules and regulations which are to be followed by Muslim army in all situations. Islamic law prohibits Muslims from any kind of looting in the Domain War.<sup>61</sup> When peace treaty was signed with the people of Khaybar, there were some new Muslims in Muslim army started looting the People of Khaybar. There was a Jew came to the Prophet (peace be upon him) and said "O Muhammad! Is it (permissible) for you to slaughter our donkeys, eat our fruits and disrespect our women? The Prophet (peace be upon him) annoyed and ordered Ibne 'Awuf RA to announce, "paradise is only for believers and come to prayer". Then the Prophet (peace be upon him) said that Allah has forbidden beating the women of the People of the Book and entering their houses and eating the fruit of the People of the Book without their permission.<sup>62</sup> Similarly, the Prophet (peace be upon him) ordered for the disposing of the cooked meat of goats when he knew that goats were snatched by the companion during war from the belligerents. He said looting and snatching is worse than un-slaughtered animal.<sup>63</sup> Violating these rules and regulations set by Muslim International Law of war is punishable and are considered as war crimes.

### **Destruction of the property is also prohibited**

The sole purpose of waging war under Muslim International Law is culminating persecution and restoring peace.<sup>64</sup> War is not waged for destroying agriculture, green pastures, community centers, villages and cities of belligerents during war as was accustomed before Islam. Islam prohibits every kind of unnecessary encroachment of the property of belligerents. Muslim International Law discourages all kinds of mischief in the earth and promotes fairness<sup>65</sup>. In case of dire need, Muslim Army can infringe the property of belligerents as was ordered by the Prophet (peace be upon him) to cut off the

palm trees of Banū Nazīr to block the passage of belligerents which Allah has rectified<sup>66</sup>. It can be concluded that any act which is necessary to be done as a war strategy will not be considered destruction or persecution.<sup>67</sup> As a rule of law, destroying agriculture, trees and villages is strictly prohibited but Muslim army can infringe any property of belligerents as a war strategy or for their running usages.

### **Mutilation is prohibited**

Muslim International Law also prohibits mutilation of the dead bodies of belligerents. When the Prophet (peace be up him) was used to send Muslim army, usually he was giving instruction to the commander-in-chief regarding not to mutilate belligerents' dead bodies.<sup>68</sup> The Prophet (peace be up him) did not only prohibit the mutilation of human being but also prohibit the mutilation of animals.<sup>69</sup> While the incident the tribe of 'Ūraynāh whom the Prophet (peace be up him) has punished exemplary.<sup>70</sup> Imam Muslim has mentioned the Ḥadith related to 'Ūraynāh tribe in the book of retaliation (*Qisās*) and aggressors (*Muḥāribīn*). It seems that he considers the said punishment as either retaliation, aggression or apostasy. According to Sharbīnī, the punishment given by the Prophet (peace be up him) tribe of 'Ūraynāh was the punishment of apostasy and they were not required to accept Islam because they did aggress against Muslim state. According to him if apostates do aggression they will not be given any time-period of three days for re-accepting Islam but will be executed at once.<sup>71</sup> Actually the Prophet (peace be up him) neither punished anyone before the incident nor after the incident with such severe punishment. The said punishment was not the punishment of retaliation, aggression or apostasy but it was exceptional and an exemplary punishment given by the Prophet (peace be up him).<sup>72</sup> According to Taḥāwi the punishment given by the Prophet (peace be up him) to the tribe of 'Ūraynāh was before the revelation of the punishment of Muḥāribīn.<sup>73</sup> The verse which specifies the punishment of Muḥāribīn repealed the punishment given the Prophet (peace be up him).<sup>74</sup> According to Imam Sarakhsī such severe punishment is repealed by the Prophet (peace be up him) by himself<sup>75</sup>. From the above explanation it becomes clear that the said punishment was given once and last by the Prophet (peace be up him) and it is repealed either by the punishment of Muḥāribīn or by the Prophet (peace be up him) or by both. The prohibition of mutilation is cleared under Muslim International Law. Under this rule of law every act against belligerents which accounts to disrespect to their dead bodies is considered unethical and disliked. According to Shaybānī the heads of dead bodies if are to be cut off and be taken away is to be considered a kind of mutilation.<sup>76</sup> Once the head of christen leader cut off during war and presented to Ḥazrat abū Bakar RA. He disapproved the act and said: we are neither from Persians nor from Romans who mutilate and disrespect dead bodies, and we are the followers of the Qur'ān and Sunnah which prohibits it.<sup>77</sup> Islam commands of holding respect of belligerents' dead bodies. Islam also orders if someone is liable to be killed will be punished with death penalty of not a disrespectful manner and avoiding all means of torturing in killing a belligerent.<sup>78</sup>

### **Killing of war prisoners**

According to general rule of Muslim International Law, killing of war prisoners is prohibited. They will be freed with or without consideration of ransom.<sup>79</sup> The Prophet (peace be up him) has prohibited the killing of war prisoners chained in fitters.<sup>80</sup> According to Mawdūdī, there is an exception to this rule of law that is if a Muslim state thinks fit the killing a war prisoner even without any legal proceeding who is remained



involved in severe crime against Muslim state and if it is proved that if he is set free, he will be engaged in such crimes. He is of the view that the law is based on the precedent of the Prophet (peace be up him) about killing of 'Uqbah bin abi Mu'eī th one of prisoners of *Bādār*.<sup>81</sup> According to Ḥassan RA and Ḥammad bin abi Sulaiman, Muslim state has only one option regarding war prisoners that is to take any consideration as ransom and make them free. They are of the view that war prisoners will not be killed because the cause of war which was the aggression by the belligerents remains ineffective after the conclusion of war.<sup>82</sup> This rule of law is based on the verse no 4 of *Sūrah Muhammad* which orders Muslims to fight non-Muslims till war comes to an end.<sup>83</sup> It means when the cause of war is concluded the killing of belligerents becomes illegal. According to Shaybānī, Muslim state has two options regarding male war prisoners, either to kill them or release them in lieu of Ransom<sup>84</sup>. Sarakhsī supports the validity of killing of male prisoners as the Prophet (peace be up him) did kill men capable of war of Banū Quraydhah. He is also of the view that the Prophet (peace be up him) had killed 'Uqbah bin abi Mu'eit the prisoner of Badr due to his involvement in war crimes against Muslim state. He is of the view that under Muslim International Law the blood of humans is either protected by *Eiman* or *Amān* awarded by Muslim state. In case of war prisoners, they are neither Muslims nor guaranteed aliens but are aggressors and their aggression does not come to end by their capturing. On their capture as prisoners they lose their capability of fighting against Muslim state if they were not captured by Muslim state they would continue their fight against Muslim state.<sup>85</sup> According to him, the verse number four of *Sūrah Muhammad* that gives two options regarding war prisoners is repealed by the verse no five of *Sūrah al- Tawbah*<sup>86</sup> that orders the killing of belligerents.<sup>87</sup> The view point of Ḥassan RA and Ḥammad bin abi Sulaiman is stronger than Sarakhsī they are of the view that if the verse no 4 of *Sūrah Muhammad* is repealed by the verse no 5 of *Sūrah al- Tawbah* presents no solid reason for the abrogation of the said verse because accepting the view point of Sarakhsī would bound Muslim state for killing all war prisoners. On the other hand, Sarakhsī and Shaybānī both are of the view that Muslim state (Imam) has the authority to decide the killing or setting war prisoners free against their ransom, negates their first view about the abrogation of verse number four of *Sūrah Muhammad* by verse number five of *Sūrah al- Tawbah*.<sup>88</sup> The third reason to this logic is that the verse number five of *Sūrah al- Tawbah* is revealed specially in case of the Pagans of Arab not common pagans because they had abridged the peace treat of Ḥudaybiyyah.

### **Killing of Ambassadors**

Under the Muslim International Law, it is not valid to kill ambassador. This law is based on the Sunnah of the Prophet (peace be up him) that he did not give order for the killing of the ambassadors of Musaylmah Kadhāb instead of their misbehavior with the Prophet. The Prophet (peace be up him) told them if ambassadors were to be killed I would surely kill both of you.<sup>89</sup> From the above precedent of the Prophet (peace be up him), it can be concluded that ambassadors are completely protected under Muslim International Law until the contrary is proved against an ambassador. According to Sarakhsī, protection can be availed either by faith (*Eīmān*) or by guarantee (*Amān*).<sup>90</sup> It means that Muslims are protected by virtue of their faith and ambassadors or others by *Amān*. According to Zaydān a contemporary scholar, ambassadors and traders are protected by custom and tradition of the nation states even they do not get proper *Amān* from Muslim state but they will be considered as protected. According to him, such people will be required to

furnish sufficient proof for their recognition as ambassadors or traders like letter of friendly state for an ambassador and goods or inventory for a trader.<sup>91</sup> On the basis of the aforementioned precedent regarding the safety of ambassadors, Sarakhsī also assumes them protected under Muslim International Law. He is of the view that anyone who claims being an ambassador will be protected by Muslim state unless the contrary is proved. Moreover, he is of the view that if an alien is found being claiming as ambassador in Muslim state, will be assumed as an ambassador on the condition of furnishing an appointment letter. Showing any fake document being an ambassador will declare him as captive of Muslim state.<sup>92</sup> According to him, ambassadors' protection is important for maintaining peaceful or hostile relations among the nations states.<sup>93</sup> According to Qaḍī Abū Yūsuf only sufficient proofs like an official appointment letter or gift from the friendly state will prove him as ambassador.<sup>94</sup> Ambassadors avail complete immunity in Muslim stat. If an ambassador violates any rule of Islamic Law, his immunity and protection will not be terminated.<sup>95</sup> Shaybānī differentiates between the rights of Allah (*Ḥaqqūllah*) and the rights of humans (*Ḥaqqūl'ābd*). If an ambassador violates a right of Allah in Muslim state, court of Muslim state will have the jurisdiction of hearing the case but *Ḥād* Punishment will not be given to him if he is found guilty of violating *Ḥudūd* Laws except defamation (Qadhf) and Retaliation (Qisās). He may only be required to pay damages or compensations because he is living temporary in Muslim state and one who is not the citizen of Muslim state is not bound to follow the domestic Law of Muslim state.<sup>96</sup> In case of violation of private rights, ambassadors will be held accountable by the court of Muslim state and will have dealt them in due course of law.<sup>97</sup>

### **Treachery is Forbidden**

Muslim International Law is divinely supposed to observes fulfilling all the agreements, fledges and contracts done with aliens and non-aliens.<sup>98</sup> Allah dislikes a conflict between the actions and fledges of believers and warns of grievous consequences in eternal life.<sup>99</sup> Allah emphasizes on the fulfillment of all agreements and contracts either they are between Allah and believers or among believers or between believers and non-believers. The Prophet (peace be up him) has also emphasized on the fulfillment of the agreement and ordered Muslims to refrain themselves from disloyalty with guaranteed persons. The Prophet (peace be up him) said anyone who shows disloyalty to a non-Muslim citizen and kills him, the killer will be deprived of Paradise<sup>100</sup>. This Hadith is not only for Muslim individuals but also applicable on Muslim state. Muslim state is supposed to avoid all kinds of perfidy with non-Muslim individuals and states.<sup>101</sup> All Muslim jurists are unanimously agreed on a point that Muslim state must fulfill its pledges, agreements or contracts in all situations of war and peace at every cost. According to Shaybānī, if Muslim state feels any threat or danger to national security from the state with which Muslim state has signed an agreement of peace in such situation, Muslim state is still bound to fulfill its pledges and agreements and should avoid attack on the state. In such situation of danger before attacking on the conflicting state, Muslim state is required to communicate the formal dismissal of all agreements and treaties to the opponent state.<sup>102</sup> Shaybānī 's this rule of law draws its authority from Surah al- Anfal verse number fifty-eight of the Qur'ān<sup>103</sup>. This verse of the Qur'ān indicates that if Muslim state fears of the treachery of alien state and the disloyalty to the agreement or contract of alien state endangers the national security Muslim state then Muslim state will announce the revoking of such peace treaty. The power of dismissal of treaty is given to Muslim state. The dismissal of the treaty will

be announced formally and publicly. Moreover, sufficient time will be given to the alien state for taking the precautionary measurements for safeguarding the public. Attacking on alien state without announcing the dismissal of the treaty or not giving them enough time for ensuring the public security will be considered perfidy in accordance to the Qur'ān.<sup>104</sup> Sarakhsī has referred to a precedent of Hazrat Mu'āwiyah RA regarding the fulfillment of peace treaty with alien state<sup>105</sup>. From this precedent, Sarakhsī concludes, that Muslims state must not violate its covenants with other states and must avoid explicit perfidy and should not involve in suspicious activities against the conflicting state which lead to perfidy.<sup>106</sup>

### **Mismanagement and Noising during War**

In pre-Islamic society, when Arabs were leaving for war, they used to block roads and terrify the travelers. Similarly, in pre-Islamic society, people were noising when they were fighting each other. Once the Prophet (peace be up him) was on the way to Jihād, someone complained about mismanagement and blockage of the roads by Muslim army<sup>107</sup>. The Prophet (peace be up him) took notice of the complaint and said, "Anyone who blocks the roads and loot people will lose the reward of Jihād."<sup>108</sup> The Prophet (peace be up him) advised Muslim army not to be dispersed on different trails during war because Satan does so.<sup>109</sup> The Prophet (peace be up him) has trained Muslim army how to leave the habits of (Ignorance) Jahiliyyah for not disturbing the wayfarers. Under Muslim International Law when Muslims were allowed to fight against belligerents it was ordered to show firmness in war and be God conscious all the time.<sup>110</sup> After the revelation of the command, once the companions of the Prophet (peace be up him) were remembering Allah with loud sound during war, the Prophet (peace be up him) ordered them to observe submission to Allah and do not make noise.<sup>111</sup> This shows that Muslim International Law discourages noise during war.<sup>112</sup> The Prophet (peace be up him) disapproved the uplifting sound in the three occasions, while reciting the Qur'ān, offering funeral prayer and fighting war against belligerents.<sup>113</sup> According to Shaybānī, uplifting sounds by Muslim army during war is not absolutely disliked by the Prophet (peace be up him) but has left on the discretion of commander of Muslim army, If he thinks fit to raise sounds then it will be allowed otherwise raising sounds by the soldiers while passing through passages without the permission of the commander is disapproved. Reason to leaving it on the discretion of the commander of Muslim army is that sometimes uplifting sound may be dangerous which amounts indicating positioning and numbering of the army that may cause to defeat. Contrary to this logic, sometimes uplifting sound may be used as a rouse and need of the army, in such cases raising sounds and pronouncing war slogans are liked under the Muslim International Law.<sup>114</sup> The discussion may be concluded that Muslim International Law has changed the war habit of Arabs of making noise. They were considering that making noise is a necessary part of war and that was easing their success against enemy. Muslim International Law not only banned making noise but also disapproved disturbing the non-combatants during war. The logic behind this rule of law is that Islam considers Jihād (fighting against belligerents) a kind of worshipping Allah like offering five-time prayers that demand a complete God consciousness and total submission while following the commander of Muslim army.

### **Obeying the Commander of Muslim Army**

To administer war with all its parameter excellently, Islam has made it compulsory that it should be fought under the command of an expert and God conscious and pious

commander that is to avoid mismanagement and tyranny during war.<sup>115</sup> Muslim International Law confines every action of Muslim army to the permission and discretion of its commander.<sup>116</sup> It considers the obedience of the Muslim commander as the obedience of the messenger of Allah and disobeying the commander amounts to the disobedience of the messenger of Allah. The Prophet (peace be upon him) considers commander as a custodian of Muslims.<sup>117</sup> War conducted under full obedience of the commander of Muslim army with an attitude of God consciousness yields to eternal reward. Conversely any war in which Muslim commander is not followed will give no benefit in the eternal life although it is fought with all ethics and observing piety.<sup>118</sup> In case of the disobedience to the Muslim commander during war, any public loss will be compensated by the Muslim state as Sarakhsī has mentioned some precedents in which the effectees were compensated.<sup>119</sup> Muslim commander is been equipped with multiple discretions in fighting war *Jus in bello* against belligerents, like awarding guaranty of peace and rectifying any act of individual soldiers.<sup>120</sup>

## CONCLUSION

This article may be concluded as that Muslim International Law (MIL) emphasizes on the point of settling conflicts and issues with non-Muslims peacefully. In case of attack by non-Muslims, Muslim state is bound to repel the aggression accordance with ethics and manners of war. Ethics of war (*Jus in bello*) is also recognized by International Humanitarian Law (IHL). The notion of some orientalist regarding MIL that it does not fulfil the need of 21st century is a misunderstood concept. MIL bounds Muslims state to invite non-Muslim belligerents to accept Islam. The cause of war is to be lawful and justice is to be maintained during war at any cost. MIL also differentiate between the combatants and non-combatants. Non-combatants will not be killed while combatants will neither be burnt nor mutilated. Destruction of the combatants' property is strictly prohibited. MIL does not allow looting during war and this is the unique manner of MIL. Killing of prisoners and ambassadors is also prohibited. All kinds of perfidy are prohibited during war. Mismanagement and nosing is not allowed. Conversely, IHL also endorses all the above mentioned ethics and manners of war prescribed by MIL.

## Endnotes

<sup>1</sup>Mehmood Ahmad Ghazi, *Khutbat e Bahawalpoor Islam ka Qanoon bain al-Mamalik*(Islamabad: Shari'ah Academy, 2007),78.

<sup>2</sup> Muhammad. Mushtaq Ahmad, "The notion of *Dār- Islam and Dār –Harb* in Islamic Jurisprudence with special reference to the Hanafi School", *Islamic studies*1 (2008): 5-37.

<sup>3</sup> Sayed abū al- 'Ālā al-Mawdūdī , *Al-Jihad fil Islam* (Lahore: Idara tarjūman al-Qūrān,2011),218.

<sup>4</sup> 'Alā al-ddin, Abū bakar bin Māsūd bin Ahmad al-Kāsānī , *Bādāi al-Sānāi* vol.7 (Bairut: Dār-kutub al- 'Imiyyah, 1986),100.

<sup>5</sup> Muhammad bin Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, Vol.1 (Al-Qāhirāh: al-Shārikāh al-Shāriqiyya lil ilanāt, 1971), 76.

<sup>6</sup> Hans peter Gasser, *International Humanitarian Law* (Haupt: Henry Dunant Institute,1993),74.

<sup>7</sup> *Ibid.*, 15.

<sup>8</sup> Geneva Convention 3

<sup>9</sup> Geneva Convention 3.

<sup>10</sup>Ibid.

<sup>11</sup>“Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest. Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited” article 13 of the convention 3.

<sup>12</sup>“Prisoners of war are entitled in all circumstances to respect for their persons and their honor. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favorable as that granted to men. Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires” Article 14 of the Geneva Convention 3

<sup>13</sup> “The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health” Article 14 of the Geneva Convention 3

<sup>14</sup> Hans peter Gasser, International Humanitarian Law (Haupt: Henry Dunant Institute, 1993), 16.

<sup>15</sup> Ibid

<sup>16</sup> Ibid, 63.

<sup>17</sup>Muhammad Mushtaq ahmed, *Jihad, Mūzahamāt ao Baghāwāt islami shariat aor bain al aqwami qanoon ki roshni main*, (Gujran wala: Al Shari'ah Acaadmey, 2012), 212.

<sup>18</sup> Hans peter Gasser, International Humanitarian Law (Haupt: Henry Dunant Institute, 1993), 58.

<sup>19</sup> Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons. Available on [www.icj-cij.org](http://www.icj-cij.org).

<sup>20</sup> Hans peter Gasser, International Humanitarian Law (Haupt: Henry Dunant Institute, 1993), 80.

<sup>21</sup> Ibid.

<sup>22</sup> Hans peter Gasser, International Humanitarian Law (Haupt: Henry Dunant Institute, 1993), 85.

<sup>23</sup> Ibid. additional Protocol 1, articles 86, 87.

<sup>24</sup> Hans peter Gasser, International Humanitarian Law (Haupt: Henry Dunant Institute, 1993), 86.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup>Ibid, 48. Additional Protocol 1, Article 50, 51.

<sup>28</sup> Additional Protocol 1, Article 13.

<sup>29</sup> Ibid, Article 14.

<sup>30</sup>Additional Protocol 1, Article 13, (3).

<sup>31</sup>Jihad, Mūzāḥmāt, 322.

<sup>32</sup>Hans peter Gasser, International Humanitarian Law (Haupt: Henry Dunant Institute, 1993),16

<sup>33</sup>Ibid,63.

<sup>34</sup>Peter Malanczuk, Akehurst's Modern Introduction to International Law, (New York: Routledge, 1997),50,51.

<sup>35</sup>Ibid.

<sup>36</sup>Hague law, article, Geneva convention 3, article 4.

<sup>37</sup>Hans peter Gasser, International Humanitarian Law (Haupt: Henry Dunant Institute, 1993),36.

<sup>38</sup>"The inhabitants of a territory which has not be occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with article 1, shall be regarded as belligerents if they carry arms openly and if they respect the law and custom of war Hague law, article, 2.

<sup>39</sup>"Inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war Geneva convention 3" Article 4, sub article 6.

<sup>40</sup>Jihad, Mūzāḥmāt,323.

<sup>41</sup>Sayed abū al- 'Ālā al-Mawdūdī , *Al-Jihad fil Islam* (Lahore: Idara tarjūman al-Qūrān,2011),218.

<sup>42</sup>"O ye who believe! Stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: That is next to Piety: And fear Allah. For Allah is well acquainted with all that ye do" *Al-Qur'ān*: 5,8.

<sup>43</sup>"And if ye do catch them out, catch them out no worse than they catch you out: But if ye show patience, that is indeed the best [course] for those who are patient". *Al-Qur'ān*: 16,126.

<sup>44</sup>"And those who, when an oppressive wrong is inflicted on them, [are not cowed but] 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" *Al-Qur'ān*: 42,39,40.

<sup>45</sup>"Fight in the cause of Allah those who fight you, but do not transgress limits; for Allah loveth not transgressors" *Al-Qur'ān*: 2,190.

<sup>46</sup>Sayed abū al- 'Ālā al-Mawdūdī , *Al-Jihad fil Islam* (Lahore: Idara tarjūman al-Qūrān,2011),222.

<sup>47</sup>Ibid.

<sup>48</sup>Muhammad bin Yazeed Abū Abdullah al-Qāzweeni, Sunan-e-ib-e-Majā, vol. 2(Bairūt: Dār-Fikar,D,N),948.

<sup>49</sup>Muhammad bin Yazeed Abū Abdullah al-Qāzweeni, Sunan-e-ib-e-Majā, vol. 2(Bairūt: Dār-Fikar,D,N),948.

<sup>50</sup>"Narrated 'Abdullāh bin 'Amr There was a man who looked after the family and the belongings of the Prophet (peace be up him) and he was called *Kirkira*. The man died and Allah's Messenger said, "He is in the (Hell) Fire." The people then went to look at him and found in his place, a cloak he had stolen from the war booty" Muhammad bin Ismail Abu Abdullah al-Bukhari, *Sahih al-Bukhari*, vol. 4 (Riyadh: Dar-al-Salam 1997),192.

“Narrated Abū Huraira RA, The Prophet (peace be up him).got up amongst us and mentioned Al-Ghulūl, emphasized its magnitude and declared that it was a great sin saying, "Don't commit Ghulz2l, for I should not like to see anyone amongst you on the Day of Resurrection, carrying over his neck a sheep that will be bleating, or carrying over his neck a horse that will be neighing. Such a man will be saying: 'O Allah's Messenger! Intercede with Allah for me,' and I will reply, 'I can't help you, for I have conveyed Allah's Message to you.' Nor should I like to see a man carrying over his neck, a camel that will be grunting. Such a man will say, 'O Allah's Messenger! Intercede with Allah for me, and I will say, 'I can't help you for I have conveyed Allah's Message to you, or one carrying over his neck gold and silver and saying, 'O Allah's Messenger! Intercede with Allah for me' and I will say, 'I can't help you for I have conveyed Allah's Message to you', or one carrying clothes that will be fluttering, and the man will say, 'O Allah's Messenger! Intercede with Allah for me.' And I will say, 'I can't help you, for I have conveyed Allah's Message to you.” Muhammad bin Ismail Abu Abdullah al-Bukhari, *Sahih al-Bukhari*, vol.4 (Riyadh: Dar-al-Salam 1997),191.

<sup>51</sup> “Narrated 'Abdullāh and Anas RA: "The Prophet said, "Every betrayer (treacherous and perfidious person) will have a flag on the Day of Resurrection" (One of the two sub narrators said) that the flag would be fixed, and the other said that it would be shown on the Day of Resurrection, so that the betrayer (treacherous and perfidious person) might be recognized by it”. Muhammad bin Ismail Abu Abdullah al-Bukhari, *Sahih al-Bukhari*, vol.4 (Riyadh: Dar-al-Salam 1997),261.

<sup>52</sup>Muhammad din al-Hassan al-Shāyibāni, Al-Sī yār al-Sāghī r (edited and translated by Mehmood Ahmad ghazi)(Islamabad: IRI,1998)43.

“Buraidah narrated from his father who said: "Whenever the Messenger of Allah dispatched a commander of an army he would exhort him personally; that he should have *Tāqwa* of Allah, and regarding those of the Muslims who are with him; that he should be good to them. He would say: 'Fight in the Name of Allah and in Allah's cause. Fight those who disbelieve in Allah, and fight, do not be treacherous, nor mutilate, nor kill a child." [Imām Hāfiz Abū 'Elsa Mohammad Ibn 'Elsa At-Tirmidhi,Jami al-Trmidhi Vol 3( Riyadh: Darussalam,2007),193.

“Narrated 'Abdullāh bin 'Umar RA: During some of the Ghazawāt' of the Prophet (peace be up him). a woman was found killed. Allah's Messenger, disapproved the killing of women and children” Muhammad bin Ismail Abu Abdullah al-Bukhari, *Sahih al-Bukhari*, vol. Muhammad bin Ismail Abu Abdullah al-Bukhari, *Sahih al-Bukhari*, vol.4 (Riyadh: Dar-al-Salam 1997),158.

<sup>53</sup> Sayed abū al-‘Ālā al-Mawdūdī , *Al-Jihad fil Islam* (Lahore: Idara tarjūman al-Qūrān,2011),222

<sup>54</sup> “Narrated Abū Mūsa AU :A man came to the Prophet (peace be up him) and asked, "A man fights for war booty; another fights for fame and a third fights for showing off; which of them fights is in Allah's Cause? The Prophet (peace be up him) said, "He who fights that Allah's Word (i.e. Allah's Religion of Islamic Monotheism) be superior, fights s in Allah's Cause”. Muhammad bin Ismail Abu Abdullah al-Bukhari, *Sahih al-Bukhari*, vol.4 (Riyadh: Dar-al-Salam 1997)59.

<sup>55</sup> Muhammad bin Abi Sahl al-Sarakhsī , Al-Mābsūt vol.10 (Bairūt: Dār-Marifā,1993),7.

<sup>56</sup> Sayed abū al-‘Ālā al-Mawdūdī , *Al-Jihad fil Islam* (Lahore: Idara tarjūman al-Qūrān,2011),224.

<sup>57</sup> Abū Dawood Sulaiman bin al-Ashās al-Sajstānī , Sūnān-e-Abi Dawood vol.3 (Bairūt: Dār-Kitab,n.d),8.

<sup>58</sup> “Narrated 'Ibn Abbas RA , that Ali RA burnt some people and this news reached to him, he said, "Had I been in his place I would not have burnt them, as the Prophet (peace be up him) said,

'Don't punish (anybody) with Allah's Punishment.' No doubt, I would have killed them, for the Prophet said, 'If somebody (a Muslim) discards his religion, kill him'. Muhammad bin Ismail Abu Abdullah al-Bukhari, *Sahih al-Bukhari*, vol. vol.4 (Riyadh: Dar-al-Salam 1997),159.

<sup>59</sup> "Narrated Abū Hūrairah RA Allah's Messenger sent us on a military expedition telling us, "If you find such and such persons (he named two men from Quraish), burn them with fire." Then we came to bid him farewell, when we wanted to set out, he said, "Previously I ordered you to burn so-and-so and so-and-so with fire, but as punishment with fire is done by none except Allah, if you capture them, kill them, (instead)" Muhammad bin Ismail Abu Abdullah al-Bukhari, *Sahih al-Bukhari*, vol. vol.4 (Riyadh: Dar-al-Salam 1997),129.

<sup>60</sup> Muhammad bin Salih al-osaimeen, *Sharh Riyadh al-Sāliḥeen* vol.6 (Riadh: Dār-watān,1426 hijri),301.

<sup>61</sup> Sayed abū al- 'Ālā al-Mawdūdī , *Al-Jihad fil Islam* (Lahore: Idara tarjūman al-Qūrān,2011),227.

<sup>62</sup> Abu Dawood Sulaiman bin al-ashās al-Shabistāni, *Sunan-e-Abi Dawood* vol.3( Bairūt: Dār-Kitab al-Arabi n.d),135.

<sup>63</sup> *إِنَّ النَّهْيَةَ لَيْسَتْ بِأَحَلَّ مِنَ الْمَيْتَةِ*

<sup>64</sup> Sayed abū al- 'Ālā al-Mawdūdī , *Al-Jihad fil Islam* (Lahore: Idara tarjūman al-Qūrān,2011),227.

<sup>65</sup> "When he turns his back, His aim everywhere is to spread mischief through the earth and destroy crops and cattle. But Allah loveth not mischief". Al-Qur'ān: 2,205.

<sup>66</sup> " Whether ye cut down [O ye Muslim!] The tender palm-trees, or ye left them standing on their roots, it was by leave of Allah, and in order that He might cover with shame the rebellious transgresses" Al-Qur'ān: 59,5.

"It was narrated from 'Abdullāh that the Messenger of Allah burned the palm trees of Banū An-Nadir and cut them down, at AlBuwairah. Qutaibah and Ibn Rumh added in their Hadīth: And Allah revealed the words: "What you (O Muslims) cut down of the palm trees (of the enemy), or you left them standing on their stems, it was by leave of Allah, and in order that He might disgrace the Fāsiqeen (the rebellious, the disobedient to Allah)" [A1-Hashr]" Muslim bin Al Hajjaj Abul Hassan, *al- Jami al- Sahih Muslim* vol.5 ( Riadh: Dar-al-Salam 2007)28.

<sup>67</sup> Sayed abū al- 'Ālā al-Mawdūdī , *Al-Jihad fil Islam* (Lahore: Idara tarjūman al-Qūrān,2011),229.

<sup>68</sup> "Buraidah narrated from his father who said: "Whenever the Messenger of Allah dispatched a commander of an army he would exhort him personally; that he should have *Tāqwa* of Allah, and regarding those of the Muslims who are with him; that he should be good to them. He would say: 'Fight in the Name of Allah and in Allah's cause. Fight those who disbelieve in Allah, and fight, do not be treacherous, nor mutilate, nor kill a child.'" [Imām Hāfiz Abū 'Elsa Mohammad Ibn 'Elsa At-Tirmidhi,Jami al-Trmidhi Vol 3( Riadh: Darussalam,2007),193.

<sup>69</sup> Ali RA advises to his son Ḥassan while he is injured if I remained alive I will decide if I dead of this injury then kill the man who made me injured don't mutilate him because I heard from the Prophet (peace be up him) saying mutilation of a biting dog is also prohibited. Sulaim bin aḥmed bin ayub abu al-Qasim al-Tābrani, *Al-Mūjām al-Kabī r* vol.1 (Al-Mūsāl: Maktāba tu olūm wa al-ḥikam,1983),97.

<sup>70</sup> "it was narrated from Anas bin Mālik that some people from 'Uraynah came to the Messenger of Allah in Al-Madinah, but they found that the climate did not suit them (and they fell sick). The Messenger of Allah said to them: "If you wish, you may go out to the camels from *Sadaqah* and



drink their milk and urine." So they did that and got better. Then they went to the herdsmen and killed them, and apostatized from Islam, and drove off the camels of the Messenger of Allah. News of that reached the Prophet (peace be up him) and he sent men after them. They were brought, and he had their hands and feet cut off, and their eyes poked out, and he left them in Al-Harrah until they died". [ Muslim bin Al Hajjaj Abul Hassan, *al- Jami al- Sahih Muslim* vol.5 ( Riadh: Dar-al-Salam 2007)432.

<sup>71</sup>Shams al-ddin Muhmmad bin Aḥmed al-Sharbī nī al-Shāfī , Mughni al-Muḥṭaj vol.5 (Bairūt: Dār-Kūtūb al- ‘Imiyah,1994),436.

<sup>72</sup>Muhammad Mushtaq Ahmad, *Jihād, Muzāḥamat aor Baghāwat* (Gujanwala: Al-Shariāh acadāmī ,2012),348.

<sup>73</sup> "The punishment of those who wage war against Allah and His Apostle, and strive with might and main for mischief through the land is: Execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: That is their disgrace in this world, and a heavy punishment is theirs in the Hereafter"<sup>74</sup> Al-Qur’ān: 5, 36.

<sup>74</sup> Abū Jafar aḥmed bin Muhmmad bin Salamah al-Marūf bi al-Taḥāwī , Sharḥ Mushkil al-āsār.vol.12 (Egypt: Mūāssisāh al-Risālāh,1994),68.

<sup>75</sup> Muhammad bin Abi Sahl al-Sarakhsī , *al-Mabsūt*, Vol. 1 (Bairūt: Dār- Ma’rifah, 1993), 486.

<sup>76</sup>Muhammad din al-Ḥassan al-Shāybāni, Al-Sī yār al-Sāghī r (edited and translated by Mehmood Ahmad ghazi)(Islamabad: IRI,1998),53.

<sup>77</sup> Muhammad bin Abi Sahl al-Sarakhsī , *al-Mabsūt*, Vol.10 (Bairūt: Dār- Ma’rifah, 1993),131.

<sup>78</sup>"It was narrated that Shaddād bin Aws said: "There are two things that I memorized from the Messenger of Allah. He (peace be up him) said: 'Allah has prescribed proficiency in all things, so if you kill, kill well, and if you slaughter, slaughter well. Let one of you sharpen his blade and spare suffering to the animal he slaughters.'" [ Muslim bin Al Hajjaj Abul Hassan, *al- Jami al- Sahih Muslim* vol.5 ( Riadh: Dar-al-Salam 2007),293.

<sup>79</sup> "Therefore, when ye meet the Unbelievers [in fight], smite at their necks; At length, when ye have thoroughly subdued them, bind a bond firmly [on them]: thereafter [is the time for] either generosity or ransom: Until the war lays down its burdens. Thus [are ye commanded]: but if it had been Allah's Will, He could certainly have exacted retribution from them [Himself]; but [He lets you fight] in order to test you, some with others. But those who are slain in the Way of Allah, -He will never let their deeds be lost" Al-Qur’ān: 47,4.

<sup>80</sup>"it was narrated that when Abu Ayub al-Ansari RA was informed that Abdurrehman the son of khalid bin Waleed RA has killed four prisoners of war while they were chained he said: I have heard from the prophet (peace be up him) that he made the killing of fasten man prohibited and said: I swear in the name of whom in whose hand my soul is, if it was chained chicken I would not kill it. When abdurrehman was informed by the saying of Abu Ayub he made four captives free". Abu Dawūd Sulaiman bin al-ashās al-Shabistāni, Sunan-e-Abi Dawūd vol.3(Riyadh: Dar-al-Salam 2008),308.

<sup>81</sup> Sayed abū al- ‘Ālā al-Mawdūdī , *Al-Jihad fil Islam* (Lahore: Idara tarjūman al-Qūrān,2011),231.

<sup>82</sup> Muhammad bin Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971),1024.

<sup>83</sup> Therefore, when ye meet the Unbelievers (in fight), smite at their necks; At length, when ye have thoroughly subdued them, bind a bond firmly (on them): thereafter (is the time for) either generosity or ransom: Until the war lays down its burdens. Thus (are ye commanded): but if it had been Allah's Will, He could certainly have exacted retribution from them (Himself); but (He lets you fight) in order to test you, some with others. But those who are slain in the Way of Allah,- He will never let their deeds be lost. *Al- Qur'ān*: 47,04

<sup>84</sup> Muhammad bin Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971),1028.

<sup>85</sup> Ibid,1025.

<sup>86</sup>“But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, an seize them, beleaguer them, and lie in wait for them in every stratagem [of war]; but if they repent, and establish regular prayers and practise regular charity, then open the way for them: for Allah is Of forgiving, Most Merciful”*Al-Qūran*: 9,5.

<sup>87</sup> Muhammad bin Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971),1026.

<sup>88</sup> Muhammad bin Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971),1026.

<sup>89</sup> “It was reported from Salamah, meaning Ibn A1-Fal, from Muhammad bin Isaq, who said: "Musailimah wrote to Allah's Messenger ç." He said: "And Muhammad bin Isiaq narrated to me, from a Shaikh, from Aja' named Sa'd bin Tariq, from Salamah bin Nu'aim bin Mas'Ud Al-Asjja'I, from his father, Nu'aim, who said: 'I heard the Messenger of Allah say to the two of them (the messengers) after he was read the letter from Musailimah: "What do you to believe (in)?" They said: "We believe as he believes." He said: "By Allah! If it wasn't that the messengers are not to be killed, I would have cut off their heads." Abu Dawūd Sulaiman bin al-ashās al-Shabistāni, *Sunan-e-Abi Dawūd* vol.3 (Riyadh: Dar-al-Salam 2008),354.

<sup>90</sup> Muhammad bin Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971),1026.

<sup>91</sup> Abdul Kareem Zaydan, *Aḥkam al-dhimyiyawa al-Mustā' miī nī na fi Dār-Islam*, (Baghdad: Makābah al-Qūds,1982),53.

<sup>92</sup> Muhammad bin Abi Sahl al-Sarakhsī , *al-Mabsūt*, Vol.10 (Bairūt: Dār- Ma'rifah, 1993), 92.

<sup>93</sup> Muhammad bin Abi Sahl al-Sarakhsī , *al-Mabsūt*, Vol.10 (Bairūt: Dār- Ma'rifah, 1993), 92.

<sup>94</sup> Abū yousuf Yaqoob bin Ibrahim, *Al- Khārāj*, ( Qāhirah: Māktābāh al-Azhāriyya Litūrāth,n.d),206.

<sup>95</sup> Muhammad bin Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, Vol.1 (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971), 326.

<sup>96</sup> Muhammad bin Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, Vol.1 (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971), 326.

<sup>97</sup> Muhammad bin Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, Vol.1 (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971), 326.

<sup>98</sup> “O ye who believe! Fulfill (all) obligations.” *Al-Qūran*: 5,1.

<sup>99</sup>“O ye who believe! Why say ye that which ye do not? Grievously odious is it in the sight of Allah that ye say that which ye do not.” *Al-Qūran*: 61,2,3.

<sup>100</sup>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 vol.3(Riyadh: Dar-al-Salam 2008),354.

<sup>101</sup> "It was narrated that Ibn 'Umar said: The Messenger of Allah jo, said: "When Allah gathers together the first and the last (of men) on the Day of Resurrection, a banner will be raised for every betrayer and it will be said: This is the betrayal of so-and-so the son of so-and-so." [ Muslim bin Al Hajjaj Abul Hassan, *al- Jami al- Sahih Muslim* vol.5 ( Riyadh: Dar-al-Salam 2007)20.

<sup>102</sup>Muhammad bin Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, Vol.1 (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971), 264.

<sup>103</sup> "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.

<sup>104</sup>*Al-Qūr'ān*,8,58.

<sup>105</sup> "Reported by *Sūlaim bin āmir*, he says: There was a peace treaty between *Moāwiya* RA and Roman Empire. When the time period of the peace treaty came to expire, *Moāwiya* 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 treaty is binding on you and you have to avoid perfidy". *Moāwiya* 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. *Moāwiya* RA ordered the people to go back from the border". Abu 'Isa Muhammad ibn 'Isa al-Tī rmidhī , Sunan al-Tī rmidhī , Vol.3(Riyadh: Dar-al-Salam 2007)350.

<sup>106</sup>Muhammad bin Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, Vol.1 (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971), 265.

<sup>107</sup> Sayed abū al- 'Ālā al-Mawdūdī , *Al-Jihad fil Islam* (Lahore: Idara tarjūman al-Qūrān,2011),234.

<sup>108</sup> "It was reported from Sahl bin Mu'ādh bin Anas Al-Juhani, from his father, who said: "I fought in such and such battle with Allah's Prophet. The camp was overcrowded and the people started to block the road. The Prophet sent a caller to announce among the people: 'Whoever crowds the camp or blocks the road, then there is no Jihad for him.'" Abu Dawūd Sulaiman bin al-ashās al-Shabistāni, Sunan-e-Abi Dawūd vol.3 (Riyadh: Dar-al-Salam 2008),271.

<sup>109</sup> "Tha'labah Al-Khushani, who said: "When the people dismounted to camp" - 'Amr (one of the narrators) said: "When the Messenger of Allah dismounted to camp, the people" - "used to break up in mountain paths and valleys. So the Messenger of Allah said: 'Your scattering in these mountain passes and valleys is only from Shaitān.' So after that, they would not halt to camp, except that they were so close together that it would be said: 'If a piece of cloth was spread over them, it would cover them all". Abu Dawūd Sulaiman bin al-ashās al-Shabistāni, Sunan-e-Abi Dawūd vol.3(Riyadh: Dar-al-Salam 2008),271.

<sup>110</sup>"O ye who believe! When ye meet a force, be firm, and call Allah in remembrance much [and often]; that ye may prosper:" *Al-Qūran*: 8,45.

<sup>111</sup> "Narrated AbU MUsa Al-Ash'āri RA: We were in the company of Allah's Messenger. Whenever we went up a high place we used to say: "La ilaha illallah and Allahu Akbar (none has the right to be worshipped but Allah, and Allah is the Most Great)," and our voices used to raise. So the Prophet; said, "O people! Be merciful to yourselves (i.e., don't raise your voice), for you

are not calling a deaf or an absent one, but One Who is with you, no doubt He is All-Hearer, Ever Near (to all things)". Muhammad bin Ismail Abu Abdullah al-Bukhari, *Sahih al-Bukhari*, vol.4 (Riyadh: Dar-al-Salam 1997),148.

<sup>112</sup> Sayed abū al-‘Ālā al-Mawdūdī , *Al-Jihad fil Islam* (Lahore: Idara tarjūman al-Qūrān,2011),234.

<sup>113</sup> Muhammad bn Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, Vol.1 (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971), 89.

<sup>114</sup> *Sārākhshi* considers the voice of *abu Dūjana* RA during war is the source of provocation of Muslims and the source of terroir for non-Muslims. He stated when the Prophet (peace be up him) listened the voice of *Abū Dūjana* consisting on provocation and terroir said: "The voice of *Abū Dūjana* during war as a force". Muhammad bn Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, Vol.1 (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971),89.

<sup>115</sup> "Umm Al-Husain Al- Ahmasiyyah said: "I heard the Messenger of Allah delivering a Khutbah during the Farewell Hajj and he was wearing a Burd which he had had wrapped from under his armpit." She said: "I was looking at the muscle of his upper arm 'quivering and I heard him saying: 'O you people! Have Taqwa of Allah. If a mutilated Ethiopian ) slave is put in command over you, then listen to him and obey him, as long as he upholds the Book of Allah among you." [Imām Hāfiz Abū 'Elsa Mohammad Ibn 'Elsa At-Tirmidhi, Jami al-Trmidhi Vol.3( Riadh: Darussalam,2007),415.

<sup>116</sup> Sayed abū al-‘Ālā al-Mawdūdī , *Al-Jihad fil Islam* (Lahore: Idara tarjūman al-Qūrān,2011),234.

<sup>117</sup> "The Prophet (peace be up him) added, "He who obeys me, obeys Allah, and he who disobeys me, disobeys Allah. He who obeys the Muslim chief, obeys me; and he who disobeys the Muslim chief, disobeys me. The Imam (Muslim ruler) is like a shelter for whose safety the Muslims should fight and they should seek protection with him. If the Imam (Muslim ruler) orders people to be dutiful to Allah and fear Him and rules justly, then he will be rewarded for that; and if he does the opposite, he will be responsible for that". Muhammad bin Ismail Abu Abdullah al-Bukhari, *Sahih al-Bukhari*, vol.4 (Riyadh: Dar-al-Salam 1997),131.

<sup>118</sup> "It was reported from Mu'adh bin Jabal that the Messenger of Allah said: "Military campaigns are of two types: As for the one who fights (in the cause of Allah) seeking His Countenance, obeys the Imām, spends what is precious, deals with ease with his associates, and avoids mischief, whether he is asleep or awake, he is earning reward. But as for the one who fights out of pride, and in order to show off and gain a reputation, and disobeys the Imam, and spreads mischief in the land, he comes back empty-handed." Abu Dawūd Sulaiman bin al-ashās al-Shabistāni, Sunane-Abi Dawud vol.3(Riyadh: Dar-al-Salam 2008),213.

<sup>119</sup> "According to the *Ḥadith* 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. *Sārākhshi* has also quoted another *Ḥadith* in which the prophet (peace be up him) not only paid the compensation to the legal heirs of *Bānī Jādhī ma* 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 Jādhī ma*(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 Umā'r* 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" 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 Jādhī ma* who were killed". Muhammad bn Abi Sahl al-Sarakhsī , *Sharḥ al-Siyar al-Kabī r*, Vol.1 (Al-Qāhirāh: al-Shārikāh al-Shārqiyya lil ilanāt, 1971), 261.

<sup>120</sup> Al-Qur'ān: 9,6.