

A COMPARATIVE ANALYSIS OF INTERNATIONAL HUMANITARIAN LAW AND ISLAMIC LAW ON TARGETING PLACES OF WORSHIP

Ilyas Khan

Assistant Professor, Department of Law, Abdul Wali Khan University Mardan, Pakistan,
drilyas@awkum.edu.pk

Sobia Bashir

Assistant Professor, Law College, University of Peshawar, Pakistan,
sobiabashir@uop.edu.pk

ABSTRACT

This study focuses on comparative analysis of International Humanitarian Law (IHL) and Islamic Law (IL) on targeting places of worship with special emphasis on response of IHL and Islamic Law, that humanity is killed in wars that are waged without regard for rules and ethics. It is a legal issue in the world. Finding of the study are to define and explain the concept of Law of War and Islamic Law. This paper examines the above issue to understand the IHL and Islamic Law on targeting the places of worship through qualitative and analytical approach. It is of notable significance to implement rules and regulations of IHL and Islamic Law to overwhelm this issue.

Keywords: IHL, Islamic Law, Targeted Places, Worship, Warfare

INTRODUCTION

The need to press the importance of the International Humanitarian Law (IHL) in the present decade is crucial to our globalized world because armed conflicts are not only taking place in every nook and corner of the world but also, a significant proportion (almost 80%) of the reported humanitarian crises currently affecting humans are the direct and indirect result of armed conflicts. Ironically, most the armed conflict is taking place in the Muslim World. For examples, only the Yemeni, Syrian and Afghan conflicts have resulted in at least 10,000 direct violent deaths per year due to the conflict between known armed groups. These wars upshot, among others, to humanitarian crisis, disrespect for human rights and lack of governance. It is therefore critical to emphasize on the Islamic Law of Warfare particularly in Muslim world which might provide shield for the protection of those not or no longer participating in armed conflict. Islamic law provides a complete code of life to its followers and is one of the three major legal systems today. It has not only provided mankind with the basic tenets to ensure humanity even in the worst form of human contact (the war) but is in vogue for more than 1400 years and have in fact provided the contemporary IHL. Still, just like any other religious fundamentals, this law has been extremely exploited by many militant groups in the past; and even today because of the different interpretations of the same principles by different sects and Islamic scholars. However, the basic principles of Islamic law and IHL are largely same and therefore, Islamic law is instrumental in ensuring long lasting peace and compliance to IHL.

Furthermore, the need to bring in coherence the two systems of law is essential because most of the extremists' groups and non-state actors justify their brutality and disregard for Laws of war by referring only to a certain rule either developed by the certain jurists for certain time and certain opinions of Quranic exegetes and Hadith scholars.

In the current paper, we will specifically compare IHL an Islamic Law of warfare on targeting places of worship. For this, we first need to get an insight into Islamic law of armed conflict and IHL and then investigates the extent to which Muslim law of war is in coherence with the rules of IHL (the Geneva Conventions of 1949 along with the additional protocols, Hague regulations and Hague Convection on Cultural property and the CIHL) with regard to targeting places of worship.

International Humanitarian Law (IHL)

International humanitarian law (abbreviated as IHL), known also as the law of war, *Jus in Bello* or law of armed conflict, has been defined as legal regime regulating the conduct of warfare. It is the set of fundamental rules and principle to guard those who are not party to war (civilians) or no longer

participating (*hors de combat*) in war. The guiding principles of this law seeks to limit, for humanitarian reasons, the means and methods of war thereby limiting the effect of war.

IHL is a sub branch of the Public International Law; the law primarily concerned with the relation between the states. IHL comes into force during armed conflicts/war between states and is not effective during peacetime. Also, it does not concern itself with the use of force (resort to war) which is dealt by the UN Charter and is called *Jus ad Bello*.

Islamic Law on Warfare

Islamic Law, which could be literally called as the Sharia, is a body of complex and contradictory rules. Before beginning to discuss the Islamic Law of armed conflict one must understand that Islamic law generally refers to the body of principles embodied in the divine Law-*Sharia*, found in the Quran and Sunni the primary sources of Islamic Law, and manifestations of *fiqh* (Islamic Jurisprudence) contained in secondary sources of Muslim law the Ijma, Qiyas, Ijtihad and Istehsan for instance having been developed by Muslim Jurists. It is because of these practical rules developed by the humanly interpretation of jurists from specific sources or proofs that we term Islamic Law as contradictory and complex. Furthermore, there exist two major sects in Islam – the Sunni and Shia. Now, the Hanfi sect has further four schools of thoughts and the Shia three, each with different dogmas.

Also, Islamic law of war is discussed not separately as the contemporary International Humanitarian law. It is deduced from Sunnah of Holy Prophet (SAW) and the companions in the 27 battles fought during the lifetime of Prophet (SAW). Furthermore, narrations of Hazrat Abu Bakar (RA) and Hazrat Umar (RA), the first and second caliph of Islam is also part of the modern revisions of Islamic law on rules of warfare. This law, in legal literature, has extensively been discussed under various headings as jihad, siyar, maghazi, akhlaq-al-ḥarb (the ethics of war) and al-qanun al-dawli al-insani fi al-Islam (international humanitarian law in Islam).

Comparative Analysis of IHL and Islamic Law on Targeting Places of Worship

Having had an insight to the basic concepts on rules and laws of Armed Conflict in Islamic Law and International humanitarian Law in this paper we will now focus on drawing a comparison between the provisions of contemporary International Humanitarian Law and the religious law-Islamic Humanitarian Law, to investigate the points of intersection and conflict. However, so far having studied the basic concept of Islamic law of war and the International Humanitarian law one can assure that the objective of both the laws is to limit effects of war and protect those who are not part of the hostilities.

Speaking of “places of worship” which is the religious right of each and every individual, being a fundamental and basic Human Right, the right to practice one’s own religion and to own, establish, maintain and manage its religious institutions (property) is given to each sect and every religion. This right is universally protected in peace time by the various Human Rights Conventions and Charters and in armed conflicts by International Humanitarian Law.

This right to places of worship is also provided by Islamic Law. Allah says in the Holy Quran: “And fight in the way of God those who fight against you and do not transgress, indeed God does not like transgressors” (2:190). It is clearly seen that doing anything beyond what is necessary to attain military objective is transgression. In addition, could be said of targeting places of worship of any religion.

Islam being a religion of peace; believes that the world and all its belongings are the property of Allah and belongs to Man as His sacred trust. Allah says in the Holy Quran, verse 72:19, “And *all* places of worship belong to Allah; so, call not on any one beside Allah. “Muslims being the vice-regents of Allah are bound by the duty to protect the property of Allah and the human civilization. As per enumerated in the verse above the wanton destruction of the any property is not permitted. Just like International humanitarian law, doing so constitutes ‘War Crime’ which is termed as *Fasad-fil-Ard* in the Holy Quran. Nevertheless, like any law there is also exception to this rule under which the general rule could be held in abeyance and enemy property (or the places of worship) could be targeted, that is, to enforce surrender of the enemy and to put an end to the hostilities. However, they are forbidden from deliberately destroying the enemy property. Classical Islamic legal literature describes both public and private property of the adversary as sacred property and one should take care of it. Furthermore, protection from attack or harm is granted not only to places of worship but also to the clergymen as The Prophet Muhammad (SAW) is reported to have specified five categories of person granted non-combatant immunity-children, women, infirm, clergy and the *usafa* (slaves). However, later on when the Islamic empire extends beyond the boundaries of Arabian Peninsula, a certain number of Muslim

Ulema argued that immunity from harm is only applicable to children, women and clergy but not those who don't convert to Islam or pay jizyah and they can be legitimate targets in the war.

Having referred to Hadiths of the Prophet Muhammad (SAW) modern Islamic militant zealots have contained a code of conduct for warfare in their writing. Al Mawdudi in his book 'Human Rights in Islam' states that Islam clearly describe that difference between the noncombatants and combatants of the adversary. About the noncombatant enemy population such as children, women, infirm and the old etc., Prophet (SAW) clearly instructed as: "Do not kill any old person, any child, or any woman." (Abu Dawud) "Do not kill the monks in monasteries," or "Do not kill the people who are sitting in places of worship" (Musnad of Ibn Hanbal).

It is pertinent to also explicate the Islamic Law of Warfare here by mentioning of the ten commandments of Hazrat Abu Bakr, the first Caliph of Islam. He even instructed his fellow companions (Sahaba Karam) that when you are marching through the enemy territory, you are not allowed/forbidden to cut down fruit-bearing trees; destroy buildings; slaughter a sheep or a camel except for food; burn or drown palm tree, destroy any products that the earth produces, ravage no fields and burn no houses. The message was clear "No destruction without necessity." He even went further and instructed against taking food from the civilians only necessitated by military necessity not more than one meal could be taken in case of shortage.

Imam Abu Hanifa, has concluded over time with the shift of interpretations with the changing circumstances that what can't be conquered by the fighters should be destroyed such as livestock, trees homes and churches .The ideologues , classic jurists of the firsts school of have justified the killing of the women , children and disbelievers who neither convert nor pay Jaziyah by referring to the verse of Quran: "When the sacred months have ended, kill the idolaters wherever you find them" (9:5). A hadith is also narrated in this regard that Prophet (SAW) said that he had been commanded to fight the mankind until they all say "There is no god but Allah".

These are some of the strict rules of Islamic Law (sword Verse) that certain segments of radical thoughts refer to attain their ulterior motive without regarding the Peace Verses that states that "Muslims are not forbidden to show kindness to disbelievers who don't fight them for their faith/belief or force them from their houses" (60:8-9). Yet an overwhelming majority of the scholars strongly advocated against destruction of property, including places of worship.

The rules of IHL regarding the protection of Places of worship are discreet. Places of worship is given protection from attack generally under Civilian Property which can't be directed to attack generally (AP I, Art. 52; CIHL, Rule 7). Rule 7 of the CIHL require those participating in war to differentiate always and never to target civilian objects.

Notwithstanding, cultural property with the specific mention of Places of worship is afforded Special Protection under IHL (API Art. 53, APII Art. 16, and Rules 38-41).

The Hague Regulations (1899 and 1907) under Article 27 makes mention of religious building that are required to be spared from attacks and bestow duty on the besieged to highlight such through visible signs. The Hague convention (IX) and the Hague Convention for protection of cultural protect also afford protection to Religious building and entails criminal liability for its violation.

Just like the places of worship, religious personnel are protected under CIHL, Rule 27 unless and until they do an act out of their humanitarian function that is detrimental to the enemy.

Targeting places of worship, unless and until they are not used as military objectives, is not allowed under IHL and doing so constitute War crime and invoke individual criminal liability.

CONCLUSION

In a nutshell, both the legal systems-IHL and the Islamic law of warfare contain extensive and complex rules to mitigate the effect of war and to regulate the ugliest form of human of human contact (the war). Targeting places of worship is not permissible by neither of these legal systems as is evident from the various verses, hadiths and the conventions, treaties and rules.

REFERENCES

- Advisory Opinion of International Court of Justice on Legality of the Threat or Use of Nuclear Weapons
- Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954
- Hague Regulations, 1899

Hague Regulations, 1907
Hague Convention, 1907
Hague Convention, 1954
First Geneva Convention of 1949
Second Geneva Convention of 1949
Third Geneva Convention of 1949
Fourth Geneva Convention of 1949
Additional Protocol-I, Geneva Convention, 1949
Additional Protocol-II, Geneva Convention, 1949
The Rome Statute 1998