

Islamic Laws of War and Modern Laws of War: A Question of Compatibility?

Tahsin Khan *

Abstract

There is a popular belief that Islamic laws of war is incompatible with Modern laws of war and is liable for most of the ongoing terrorist acts in the contemporary world. Therefore, this paper intends to examine the degree of compatibility between Islamic laws of war and Modern laws of war and hypothesizes that they are generally compatible with one another and any incompatibility between the two is reconcilable. In order to verify the hypothesis, relevant treaty-based laws and customary international laws, as sources of Modern laws of war and the Quran, Sunnah or Hadiths, Ijma (consensus) and Qiyas (analogy), as sources of Islamic laws of war, are being examined. Considering the vastness of the contents of both sets of laws of war, the comparative analysis is confined only to the discussion on the treatment of prisoners of war, methods of warfare and means of warfare. Besides while referring to the term Islamic laws of war, the study is restricted to the literature of the Sunni community and the literature of the Shia community is omitted altogether. On the other hand, the study of Modern laws of war concentrates predominantly on the development of the subject-matter in the post-world war two era. After a meticulous comparative analysis, this paper finds that Islamic laws of war and Modern laws of war are mostly compatible with some minor points of divergences. However, the author contends that such minor points of divergences are the outcome of some of the Islamic rulings that were made purely based on the socio-political demand of the time. Therefore, if such rulings are revisited in accordance with the present socio-political demands, Islamic laws of war will become compatible with Modern laws of war on all points.

Keywords: Prisoners of War, methods of warfare and means of warfare.

Introduction

The outlook of the Modern world has long been wary towards religio-political ideologies and in particular towards Islam. In fact, Reuven Firestone (Al-Dawoody, 2009) points out that this prejudice towards Islam has been as old as Islam itself. Especially, the viewpoint towards

* Assistant Professor, Department of Law, Notre Dame University Bangladesh

Islamic laws of war is full of circumspection (Al-Dawoody, 2009). To be honest, the stereotypes in the Muslim society are largely responsible for this. A series of happenings such as the Iranian revolution, the persistent resistance put up by the Afghans against the Soviet invasion, the assassination of the Egyptian President Anwar Sadat in the hands of Islamic terrorists, the atrocity of the 9/11 terror attack, the London and Madrid bombings and many other ongoing violence in various countries of the world have prompted the Modern world to possess such suspicious outlook (Bakircioglu, 2014). Therefore, it is probably no surprise that Islamic laws of war is often been characterised as a means to vindicate terrorist activities. Consequently, the interaction between Islamic laws of war and Modern laws of war has been seen as a dubious topic over an extended period of time. Unfortunately, the quantity of scholarly work on this issue is insufficient to reach a conclusive conclusion. Although, some scholars have strived to dwell on this topic, it appears that the majority of them have conducted their work with a premeditated mind and shown the propensity to come up with an oversimplified conclusion (Bakircioglu, 2014). That is to say that one group has focused only on such aspects of Islamic laws of war which are blatantly in conformity with Modern laws of war, while the other has restricted their focus to more nebulous aspects condoning the similarities between the two. This can be attributed chiefly to the fact that scholars are naturally influenced by their respective religions, historical, cultural and personal experiences while judging others (Buaben, 1996). W. Montgomery Watt (1997) aptly says: 'Normally a person can only reach important levels of religious experience through participating in the life of the community in which he has been brought up and basing his activity on its ideas'. In light of the above, it is undeniable that a neutral comparative study of the norms of Islamic laws of war and Modern laws of war is an opportune issue.

The paper examines the hypothesis that Islamic laws of war and Modern laws of war are generally compatible with one another and any discrepancy between the two fields is reconcilable.

This is a study which is based on desk research method and it involves a comparative analysis of Islamic laws of war and Modern laws of war. As regards Modern laws of war, the study depends profoundly on the examination of relevant treaty laws and customary international law. The explanation of these treaty laws and customary international law is drawn from various kinds of secondary legal sources, such as commentaries to treaties, reviews and reports by international organisations, books, journal articles and online materials. On the other hand, with regard to Islamic laws of war, the study relies on the examination of those aspects of Sharia law which set the norms to be followed during the conduct of armed hostilities and the materials consulted for this purpose are predominantly books, journal articles and online materials.

Prisoners of War in Islamic laws of war and Modern laws of war

Acts of killing and Release of Prisoners of War

Combatants are legally permitted to take part in armed conflicts and they cannot be punished for merely participating in hostilities, as long as they do not violate the limits demarcated by the laws of armed conflict (Crawford, 2010). Article 43 (2) of Additional Protocol I has explicitly extended such immunity to combatants. The third Geneva Convention also permits the prosecution of the prisoners in Article 85 for acts committed before their capture.

There are prima facie conflicting opinions in Islamic laws of war as to the permissibility of killing prisoners of war. Let us examine the different views from different sources in this regard in order of priority.

The most straightforward Quranic revelation on this issue seems to be found in Sura Muhammad: ‘...when you have overcome them, take them as prisoners of war, until the war lays down its burdens, then you may set them free, either by grace or by ransom’(Quran, 47:4). Apparently this Quranic command has made the killing of prisoners of war impermissible and it obliges to release them either freely or for ransom. Many Islamic scholars are of view that release for ransom in fact indicates the release in exchange for Muslim prisoners (Al-Dawoody, 2011).

If one observes the practices of the prophet in treating the prisoners of war, one would see that he adopted four different courses of actions: (i) the execution of three prisoners, (ii) releasing prisoners freely, (iii) releasing prisoners in exchange for Muslim prisoners or for ransom and (iv) the enslavement of prisoners (Al-Dawoody, 2011). Many of the companions of the prophet has formed an ijma that with the revelation of the verses of the Quran (47:4), the options of executing and enslaving prisoners stood void (Al-Dawoody, 2011).

It is worth having an insight into the incidents of the execution of three prisoners for the purpose of more clarification on this issue. Out of these three prisoners Al-Nadir ibn al-Harith and Uqbah ibn Mu’ayt were taken captive at the battle of Badr while Ibn Gharra was captured at the battle of Uhud (Al-Dawoody, 2011). The two prisoners taken at the battle of Badr were in fact tried and convicted for war crimes and subsequently executed (Al-Dawoody, 2011). On the other hand the one captured at the battle of Uhud was released gratuitously on parole which is very much in consonance with the provisions of Article 21 of the Third Geneva Convention (El Zeidy and Murphy, 2004). However he broke the conditions of his parole and he was killed upon his recapture (El Zeidy & Murphy, 2004).

As far as Modern laws of war are concerned parole has been commonly practised for centuries and scholars argue that it is consistent with international law (Brown, 1998). Parole was extensively addressed for the first time in the Lieber's Code and later on made its way into the Hague Conventions and the third Geneva Convention (Brown, 1998). Although opinion is divided on this issue, it is argued by many that death penalty is one of the possible punishments for infringing the conditions of parole (Brown, 1998). Certainly Lieber's Code prescribed death penalty for those who broke his parole and was recaptured (Brown, 1998).

Let us now analyse another Quranic revelation from Sura Taubah (Quran, 8:67): '...kill the polytheists wherever you find them...' which is used as a justification for killing of prisoners of war by ultra conservative jurists. As Lesley Hazleton demonstrates, the verse must be understood in the specific context in which it was revealed. The prophet along with his companions were returning to Mecca to perform the holy pilgrimage at the Ka'aba where fighting was forbidden (Velez, 2011). Anticipating an attack from the polytheists of Mecca who drove the Muslims away from their homes in Mecca, the Muslims sought direction as to whether they would be allowed to defend themselves in the holy premises of the Ka'aba if they were attacked first (Velez, 2011). In response to this, the above-mentioned verse was revealed and certainly it does not legalise the killing of prisoners of war in any manner whatsoever.

There is one more Quranic verse that some jurists refer to vindicate the killing of prisoners of war and it is from Sura Anfal (Quran, 8:67): 'It behoves not a prophet to take captives until he has sufficiently subjugated the enemies in the land....' Again one has to look at the specific context in which the verse was revealed. As we have seen above the Muslims were already allowed to take prisoners by Sura Muhammad 47:4 but some of the members of the Muslim force preferred to collect war booty and take captives over fighting the adverse force during the battle of Badr ("Towards Understanding the Quran," N.D). As an expression of disapproving such approach of the Muslim force, the verse in contention was revealed. Once again it does not appear to be authorising the killing of prisoners in anyway.

Let us now evaluate some of the precedents set by the prophet and the rightly guided caliphs relating to the treatment of prisoners of war. It is noteworthy that when the Muslim commander Khalid bin Al-walid ordered his soldiers to kill all the captives in their possession, one of them refused to comply with the order and the matter was taken to the prophet ("Are Muslims Exempt from Punishment for Killing of Non-Muslims," N.D.). On hearing the matter the prophet said twice: 'O Allah! I am not responsible for what Khalid has done' ("Are Muslims Exempt from Punishment for Killing of Non-Muslims," N.D.). Also when eighty

infidel soldiers were captured while attempting an attack on the prophet from the Eltan'aim Mountains, the prophet let them go unconditionally (El Zeidy & Murphy, 2004). Again the prophet addressed his prisoners of war after conquering Mecca: 'Go! You are free!' (El Zeidy & Murphy, 2004). Apart from that the fourth rightly guided caliph Ali has been reported as saying in advance of the battle of the Camel: 'When you defeat them...do not behead the prisoners....' (Bakircioglu, 2014). There is also another incident where the son of the second rightly guided caliph Umar's son commented that the killing of prisoners would be contrary to divine texts which require them to be released either for ransom or gratuitously (El Zeidy & Murphy, 2004).

Some also refer to the killing of the Qurayza, a Jewish tribe, to propagate permissibility of the killing of prisoners of war. However a close analysis of the facts would reveal that there was an agreement between the Muslims and the people of Qurayza to the effect that each community would be subject to their own respective laws (Le Gassick, 2005). When the people of Qurayza committed treachery, the matter was referred to a judge from the people of Aws who were close allies with the Qurayza and he pronounced death penalty in accordance with the Jewish law (Le Gassick, 2005).

In light of the above discussion it appears that the position of Islamic laws of war as regards acts of killing of prisoners of war is rather complicated. Although a proper analysis of the Quranic verses and the practices of the prophet indicate that it is impermissible to kill prisoners, some jurists nevertheless contend that prisoners might be killed. However, it is evident that the position of Islamic laws of war in relation to the release of prisoners of war is compatible with Article 118 of the third Geneva Convention which requires prisoners to be released immediately after the cessation of actual warfare.

Acts of Reprisals against Prisoners of War

Modern laws of war contain an absolute prohibition on acts of reprisals against prisoners of war in Article 13 of the third Geneva Convention without any exception whatsoever. Islamic *laws of war* have also developed similar prohibition on acts of reprisal against prisoners of war. Jurists agree that Sura Anam (Quran, 6:164) contains an injunction to that effect by stating: 'No sinful person shall be liable for the sin committed by another.' Muslims adhered to this principle by refusing to kill the Roman hostages in possession in retaliation to the act of killing of Muslim hostages by the Roman emperor (Al-Dawoody, 2011).

Medical Treatment of Prisoners of War

Modern laws of war entitle the prisoners of war to receive such medical treatment as their conditions will require (Convention Relative to the

Treatment of Prisoners of War (Third Geneva Convention, 1977, Art.30). Muslims have also historically extended necessary medical treatment to their captives considering it to be a divine obligation. Among many such instances one is the occasion on which Salah Al-Din Al-Ayubi ensured that the wounded captive Crusaders received necessary medical attention from the medics of St. John of Jerusalem after the conquer of Jerusalem (Boisard, 1980).

Escape of Prisoners of War

Both Islamic laws of war and Modern laws of war seem to converge on the issue of escape of prisoners of war. In accordance with the provisions of Articles 91 and 92 of the third Geneva Convention if prisoners make good their escape, they cannot be punished after any subsequent capture but if they are captured while escaping, they shall be liable to disciplinary measures. Similarly, according to Islamic laws of war if a prisoner is caught while attempting to escape, he may be punished but once he reaches safety and is recaptured, he cannot be punished for such escape (Boisard, 1980).

Methods of Warfare in Islamic laws of war and Modern laws of war

Perfidy

Many consider perfidy to be the most gross of all the forbidden methods of warfare under Modern laws of war (Gasser, 1993). Perfidy includes all ‘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 (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Art. 37).’ The key to the commission of an act of perfidy is that there will be intent to instill confidence with the *mala fide* intention to betray (Oeter, 2013). In other words acts that mislead the adverse party to believe that the prevailing circumstances demand protection under the international law fall within the ambit of perfidy (Oeter, 2013). State practice establishes that the prohibition of perfidy has now become a well-established norm of customary international law (IHL Database Customary IHL, Rule 65).

Islamic laws of war, just like its counterpart Modern laws of war, strictly prohibit perfidy. There are numerous verses in the Quran that constitute the basis for the prohibition of perfidy under all circumstances. One such Quranic verse is contained in Sura Nahl (Quran, 16:91) which states: ‘...And fulfil the covenant of Allah when you have taken it, [O believers], and do not break oaths after their confirmation while you have made Allah, over you, a witness. Indeed, Allah knows what you do’. In addition to that Sura Maidah also stipulates: ‘O you who have believed,

fulfil all contracts....’ Based on these verses, perfidy is considered a serious infringement of the obligations under Islamic laws of war.

It is recorded that the prophet used to instruct his soldiers before every conflict not to commit treachery against the enemy (Bakircioglu, 2014). The ten famous commandments propounded by Abu Bakr, the first rightly guided caliph, included an instruction not to commit perfidy (Bakircioglu, 2014). It is also documented that the second rightly guided caliph Umar severely punished one of his soldiers as he had assured a Persian soldier hiding in the mountain that he would not be killed if he came out but killed him afterwards (Maged, 2015).

Thus acts amounting to perfidy are strictly prohibited under both Islamic as well as Modern laws of war.

Ruses of War

Ruses of war have been defined in Art. 37 of Additional Protocol –I as ‘acts 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....’ The purpose of ruses of war is to confuse and deceive the adversary. It is an act of clever tactic or deception on the battlefield which has been practised since time immemorial (Oneill, 2013). Modern laws of war have always permitted ruses of war and it is now treated as a norm of customary international law (IHL Database Customary IHL, Rule 57). Although perfidy and ruses of war may apparently appear to be similar in nature, they differ from one another in that the former purports to implant confidence in the mind of the adversary with the ultimate objective to betray and therefore is prohibited whereas the latter merely intends to deceive the adversary without violating the laws of war and is lawful (Oeter, 2013).

Ruses of war, as a method of warfare, have never been explored in depth by the scholars of Islamic laws of war. However the essence of ruses of war seems to be reflected in the Sharia law doctrine of Taqiyya. The doctrine of Taqiyya permits deception in certain circumstances and may be deemed to be equivalent to ruses of war in the context of armed conflicts (Ibrahim, 2010). The prophet approved deception in three specific circumstances and the third one out of these three is during armed hostilities which is relevant in the present context (Ibrahim, 2010). Some scholars (2010) opine that the following Quranic verse of Sura Imran : ‘Let not the believers take disbelievers as friends or patrons or helpers instead of believers’ implicitly sanctions deception in situations of war wherein the Muslims are allowed to pretend to be acting friendly with the adverse party. Although scholars have failed to reach a consensus as to the proper interpretation of this verse, there is one explicit

practice of the prophet which seems to encourage ruses of war as a method of warfare. During the battle of the Trench the Muslims conveyed misleading messages to the enemy to misguide them (Ibrahim, 2010). Such an act is clearly an evidence of the validation of ruses of war as a method of combat.

In view of the above discussion it is sufficiently clear that ruses of war are recognised as a lawful method of warfare under Islamic as well as Modern laws of war.

Siege

Siege refers to a method of warfare wherein the invading force subjects the city or fortification of the adversary to military blockade to subdue them. It is a cruel tactic, which includes cutting off the vital supplies of the besieged city so that the population, civilian and military, starve without any distinction and the defending force is forced to surrender (Gjeltén, 2011). Historically the tactic of siege has been employed for centuries and it was not prohibited per se by Modern laws of war (Gjeltén, 2011). Even the fourth Geneva Convention approved the traditional view that the besieged city might be deprived of the basic supplies under the rationale of military necessity (Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Art. 23). However, the adoption of the protocols additional to the Geneva Conventions, render siege illegal. Although the word ‘siege’ has not been used anywhere in the additional protocols, the restrictions imposed on warfare by them effectively outlaws siege (Gjeltén, 2011). Additional Protocol –I contains an absolute prohibition on the starvation of civilians and prohibits the destruction of foodstuffs, crops, livestock and drinking water supplies that the civilians depend on for their survival (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, Art. 54). Similar provisions are existent in Additional Protocol –II as well (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, Art. 14). Such prohibition has by now attained the status of customary international law as well (IHL Database Customary IHL, Rules 53 & 54).

The prophet used to warn his troops not to deploy poison in the lands and to cut off water supply while setting off for a war (Bakircioglu,2014) . This seems to be an amplification of the principle of distinction which has been stated vividly in numerous hadiths. If siege, as a method of warfare is adopted, it would result in non-compliance with the principle of distinction which is one of the most fundamental principles of Islamic

laws of war. It is, nevertheless, interesting to note that despite such express prophetic injunction against conducting a siege, Al-Shaybani concluded that water supplies may be cut off and made undrinkable (Evans, 2005).

Although the prophet injunction against siege is very much in consonance with the provisions of Modern laws of war, the contradictory stance taken by one particular scholar makes the actual position of Islamic laws of war nebulous on this issue.

It is fair to say on the basis of the discussion contained in this chapter that there is ample evidence to corroborate that both Islamic laws of war and Modern laws of war possess equally enriched sets of rules controlling the methods of warfare.

Means of Warfare in Islamic laws of war and Modern laws of war

Conventional Weapons

There are certain types of weapons which have been either prohibited or restrained. Additional Protocol –I in its Article 51 prohibits attacks with weapons that fail to distinguish between military objectives and civilian population or civilian objects. In other words it can be said that use of weapons that cannot be directed against a specific military objective are prohibited. Article 35 of Additional Protocol –I also prohibits the employment of weapons which would ultimately lead to superfluous injury or unnecessary suffering. In other words when military objectives could be attained through less atrocious means and the injury to be caused would be clearly excessive, such weapons should be shelved (Gasser, 1993). Apart from that, prohibition on the use of poison or poisoned weapons has become a principle of customary international law and practices such as smearing of bullets is not allowed (IHL Database Customary IHL, Rule 72).

Article 36 of Additional Protocol –I is also of particular importance in this context as it stipulates that states parties must make sure that any new weapons developed by them are not in violation of the obligations under Modern laws of war.

As regards Islamic laws of war, it is recorded that the prophet himself called on his troops to refrain from using poisoned weapons against the enemy (Bakircioglu, 2014). It was believed that the use of poisoned weapons were opposed to the moral aspects of human dignity and therefore, opposed to the divine law (Badar, 2013). Islamic scholar Khalil Al-Maliki explains that it is forbidden to employ poisoned weapons because it is likely that such weapons would cause unnecessary suffering to the victim (Ramadan, 2006). It is, however, interesting to note that some scholars merely dislike the idea of using such weapons on the ground that it might instigate the enemy to employ poisoned weapons

against the Muslims and do not prohibit using them altogether (Al-Dawoody, 2011). To the contrary, Al-Shaybani argues that poison-tipped weapons may be used in case of military necessity although there is no such precedent in the history of Islamic warfare (Al-Dawoody, 2011).

Also the prophet is recorded to have prohibited burning humans with fire (Al-Dawoody, 2011). There is one instance where he initially ordered his companions to burn two persons alive (Ramadan, 2006). However, the prophet had changed his mind before the companions left and commanded: 'I told you to burn those two, but God alone punishes with fire. So do not punish the creatures of God with the punishment of God' (Ramadan, 2006). Again the change of mind seems to have been influenced by the principle that victims of warfare must not suffer unnecessary suffering. Apart from that the study relating to the means of warfare by the earlier Islamic scholars extensively expressed concern for the possibility of indiscriminate and unnecessary suffering of non-combatants by the use of mangonels and other hurling machines in the battlefield (Kelsay, 2007). John Kelsay (2007) went to comment that 'Muslim discussion of weaponry is analogous to the laws of war criterion of proportionality.'

In light of the above discussion, it is obvious that the views on the permissibility of using conventional weapon leading to unnecessary suffering is to some extent contradictory in Islamic laws of war itself. However, if one puts the opinion of Al-Shaybani aside, Islamic laws of war is compatible with Modern laws of war on the issue of prohibiting the employment of certain conventional weapons.

Weapons of Mass Destruction

Weapons of Mass Destruction (WMD) include nuclear, chemical and biological weapons (Oeter, 2013). Although production and possession of WMD is primarily a subject-matter of arms control, their prospective use in the future makes it an integral part of Modern laws of war.

Let us at first discuss the position of Modern laws of war on nuclear weapons. It cannot be denied that there is currently neither any treaty law nor principle of customary international law which would render the use of nuclear weapon unlawful. The International Court of Justice has corroborated this view in its Advisory Opinion on Nuclear Weapons by asserting that it is not enabled 'to conclude with certainty that the use of nuclear weapons would necessarily be at variance with principles and rules of law applicable in armed conflict in any circumstance' (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports, 1996). There was significant controversy during the Diplomatic Conference for the adoption of Additional Protocol –I as to whether it should apply to WMD as well (Oeter, 2013). The stance taken by the

ICRC as well as some of the most prominent military powers made sure that WMD would not fall within the purview of Additional Protocol –I (Oeter, 2013). In particular, the constant reluctance on the part of the United States, Great Britain, France and most of the NATO allies whittled out any possibility of Additional Protocol –I applying to WMD (Oeter, 2013). However, the general principles of Modern laws of war which apply to the employment of conventional weapons apply equally to WMD as well. Therefore, any WMD that fails to adhere to the requirements of the principles of distinction and proportionality will also be prohibited under Modern laws of war.

The use of chemical weapons is prohibited by treaty law as well as by customary international law. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993 prohibits the use of chemical weapons altogether (The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Art. I). The ICRC also includes the prohibition on the use of chemical weapons in its database of customary law on international humanitarian law (IHL Database Customary IHL, Rule 74).

The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1972 forbids the use of biological weapons (The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Art. I). Besides, the prohibition is also considered to be an established norm of customary international law (IHL Database Customary IHL, Rule 73).

Islamic laws of war have not succeeded to establish a comprehensive set of principles on the permissibility of employment of WMD. It is generally believed that there are two reasons which are liable for this. They are: first of all, the Muslim community has not experienced the sort of WMD disaster which the western world and a certain part of Asia have suffered and secondly, owing to the significant westernisation of the legal systems, barring the ambit of family law, scholars have largely alienated themselves from the development of Islamic law (Al-Dawoody, 2011). Some of the Islamic scholars have strived to develop Islamic *laws of war* on this issue but they have failed to reach a consensus. The positions adopted by the scholars can generally be divided into three groups (Al-Dawoody, 2011). One group imposes absolute prohibition on the possession and use of WMD on the ground that it carries the risk of causing casualty to non-combatants and it may lead to disproportionate destruction (Al-Dawoody, 2011). Some express the view that only the

'first use' of WMD is prohibited on the aforementioned ground and the Muslims are allowed to possess them and even to use them as a principle of reciprocity (Al-Dawoody, 2011). They draw this conclusion by referring to certain Quranic verses. For example, Sura Baqarah (Quran, 2: 194) stipulates: '...So whoever has assaulted you, then assault him in the same way that he has assaulted you....' There is also one verse in Sura Nahl (Quran, 16: 126) which lays down: 'And if you punish [an enemy, O believers], punish with an equivalent of that with which you were harmed.' Reference is also drawn to the verse number one hundred and ninety five of Sura Baqarah which states: '...Do not throw yourselves with your own hands into destruction' (Al-Dawoody, 2011). It is argued that if the Muslims do not reciprocate to an attack with WMD by the adverse party, it would be equal in effect to self-destruction (Al-Dawoody, 2011). Also some scholars tend to rely on the following advice of the first rightly guided caliph Abu Bakr to his commander to advance this proposition wherein he stated: 'If you encounter your enemy, fight them with the same weapon they fight you with' (Al-Dawoody, 2011). The third group generally acknowledges the prohibition on the use of WMD but authorises the first use of WMD on the ground of military necessity if the opposing force possesses WMD (Al-Dawoody, 2011).

Conclusion

It is important to realise that there is an erroneous belief that Islamic laws of war is divine and therefore, is not malleable. One must understand that no law is created in a vacuum and all laws originate taking into consideration the socio-political context of the time so that their specific objectives can be attained (Al-Dawoody, 2011). A proper understanding of Islamic laws of war will show that it is no exception either. It is only the Quran, which generally merely lays down the principles, is divine and the other sources of Islamic laws of war, namely: Sunnah, ijma and qiyas implement these principles considering the socio-political surroundings of the concerned society (Al-Dawoody, 2011). Moreover, a significant portion of Islamic laws of war comprises of rules framed by way of ijma and qiyas. As they are made by individual scholars by applying their own personal intellects responding to the new demands of the society, sometimes they end up contradicting one another as we have seen above. However, if laws contradict one another, they fail to attain their objectives and consequently these laws cease to be valid (Al-Dawoody, 2011). Therefore, any sort of contradiction should be eradicated to achieve the ultimate goal of the law and consequently it becomes evident that Islamic laws of war are also malleable. Thus Islamic laws of war and Modern laws of war become compatible with one another.

References

- Al-Dawoody, A. M. (2009). War in Islamic Law: Justifications and Regulations (PhD thesis). University of Birmingham, England.*
- Al-Dawoody, A. (2011). The Islamic Law of War: Justifications and Regulations. Palgrave MacMillan.*
- Bakircioglu, O. (2014). Islam and Warfare: Context and Compatibility with International Law. Routledge.*
- Buaben, J. M. (1996). Image of the Prophet Muhammad in the West: A Study of Muir, Margoliouth and Watt .The Leicester Islamic Foundation.*
- Crawford, E. (2010). The Treatment of Combatants and Insurgents under the Law of Armed Conflict. Oxford University Press.*
- Gasser, H. (1993). International Humanitarian Law: An Introduction. Henry Dunant Institute.*
- Watt W. M, (1997). Bell's Introduction to the Qur'an. Edinburgh University Press.*
- Kelsay, J. (2007). Arguments Concerning Resistance in Contemporary Islam', in R. Sorabji and D. Rodin (eds.), The Ethics of War: Shared Problems in Different Traditions (p. 65). Ashgate Publishing .*
- Badar, M. E. (2013). Ius in Bello under Islamic International Law. International Criminal Law Review, 593, 610.*
- Boisard, M. A. (1980). On the Probable Influence of Islam on Western Public and International Law. International Journal of Middle East Studies , 11, 429- 444.*
- Brown, M. G.D. (June 1998). Prisoner of War Parole: Ancient Concept, Modern Utility. Military Law Review, 156, 200- 208.*
- El Zeidy, M. M. & Murphy, R. (2004). Islamic Law of Prisoners of War and Its Relationship With International Humanitarian Law. Italian Yearbook of International Law, 14, 53- 58.*
- Evans, C. (2005). The Double-edged Sword: Religious Influences on International Humanitarian Law. Melbourne Journal of International Law , 6, 1- 20.*
- Ibrahim, R. (2010). 'How Taqiyya Alters Islam's Rules of War' (2010) 17 (1) The Middle East Quarterly 3.*
- Gjelten, T. (2011). Crimes of War: Siege. Retrieved from <<http://www.crimesofwar.org/a-z-guide/siege/>>.*
- O'Neill, T. (2013). Ruse of War: 6 Sneaky But Brilliant Strategies. Retrieved from <<http://mentalfloss.com/article/50799/ruse-war-6-sneaky-brilliant-strategies>>.*
- Rules 53 & 54. (N.D.). Retrieved from <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul>.*

Islamic Laws of War and Modern Laws of War

Rule 57. (N.D.). Retrieved from <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule57>.

Rule 65. (N.D.). Retrieved from <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule65>.

Rule 72. (N.D.). Retrieved from <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul>.

Rule 73. (N.D.). Retrieved from <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul>.

Rule 74. (N.D.). retrieved from <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul>.

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287 Art 23.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3 Art 37.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3 Art 54.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609 Art 14.

The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (entered into force 29 April 1997) 1974 UNTS 469 Art I.

The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (entered into force 26 March 1975) Art I.