

The Islamic Humanitarian General Principles that Govern Armed Conflicts^(*)

Dr. Waleed Mahameed^(**)
Ajman University of Science
and Technology

Abstract:

This study aims at clarifying the Islamic attitude towards human rights, especially those rights prescribed to humans during an armed conflict, as is revealed in the Holy Qur'a'n and the Prophetic Sunnah. Analysis will be directed by taking into account the general current international standards of human rights as stated in the four Geneva Conventions of 1949, and deciphering the extent of compatibility of those principles with Islamic rules and vice versa. However, this study will not address the degree of difference between the two categories of rights that both systems lay down, but only the principles prescribed in the positive humanitarian international law, by extracting Qur'anic verses and prophetic Ahadeeth which reveal these principles. These principles would be the ones that Islam imposes, and requires maintaining them for the benefit of the international relationships and their stability, and that regulates the co-existence of nations without aggression.

Introduction:

Naturally, mankind endeavors are confined mostly to fulfilling his interests, and even perhaps if only achieved by imposing them on others. This egoism may make him keen to confirm his identity and impose his will leading to a selfish conflict, as a permanent confrontation with other

(*) Accepted 8/12/2010.

(**) Waleedmahameed@hotmail.com

people interests and freedoms. This exposes social relationships to weakness and collapse. For this reason, amongst others, the divine religions were revealed to organize human society, to mend its affairs, and establish its relationships on the basis of co-operation. These divine religions were revealed by the spirit of Allah, in order to reform the human being through self-reform and to set up, accordingly, natural relationships among the individuals of human societies.

Historians and law scholars, amongst others, have realized the extent of effect that divine religions has had on all elements of the social customs. This made the prescribed positive laws (including those of the international humanitarian law) being derived from those values and customs. In this respect, the sound positive laws, directed to the improvement of societies' conditions and devoted to human rights, are not so different from the divine religions, except that they are driven from their conception, which states that groups' legislations should govern and organize what fit those groups, whereas divine laws are subjected to their source of existence, i.e., God's revelation.

The religious legislations appeared in the religion of Prophet Musa (Moses), and all prophets to the Jewish people. Positive laws, mixed with the religious spirit, appeared in Hammurabi Law (1723- 1686 B.C.). Positive Laws appeared in Greek Athens democracy, too. Christianity was revealed in order to standardize and generalize respect for all humans and especially their freedom of thought and worship. It was a spiritual religion calling for love, tolerance, helping the weak, and calls for justice and equality and to achieve the superior human ideals. It announced that human-being has eternal natural rights that should not be violated. Therefore it formulated social laws according to divine orders which forbid enslaving human individual or controlling his personality, or even his spirit. These principles, were a basic tributary for the human rights movement, and formed the highest type that could be available therein for human treatment and communication.

Islam, in turn, was revealed as a complete and comprehensive system in order to govern all sorts of human conduct, either individual or

collective, and to govern Muslims' relationships with others in war and peace. Islam approved the principle of equity, tolerance, and brotherhood among all people of different races, and considered the right to life as an essential common right amongst all people, without distinction between Muslims and non-Muslims.

This study aims at clarifying the Islamic attitude towards human rights, especially those rights prescribed to humans during armed conflict, as is revealed in the Holy Qur'an and the Prophetical Sunnah. Analysis will be directed by taking into account the general current international standards of human rights as stated in the four Geneva Conventions of 1949, and deciphering the extent of compatibility of those principles with Islamic rules and vice versa. However, this study will not address the degree of difference between the two categories of rights that both systems lay down, but only the principles prescribed in the positive humanitarian international law, by extracting Qur'anic verses and prophetical Ahadeeths which reveal these principles. These principles would be the ones that Islam imposes, and requires maintaining them for the benefit of the international relationships and their stability, and that regulates the co-existence of nations without aggression.

Yet, determining the reasons for the use of force in Islam is inevitable, and this requires inquiring into the norms set by Islam for that end. It is argued that these norms are imposed as restrictions and are, in themselves, the human Islamic principles to be respected in any armed conflict. So, violation, in itself, is illegal by which responsibility is realized.

Part 1

The Basic Concepts of Islamic Humanitarianism in Armed Conflicts

The term "Islamic Public International Law" or "Islamic Humanitarian International Law" is not mentioned in the Holy Qur'an or Al-Sunnah References as such, but can be deduced from the books on Islamic Legacy in general, such as Al Fiqh (Jurisprudence), Al Seyar (biographies), Al Maghazi (The Prophet Battles), or in the Qur'anic interpretation and the Islamic History. The call to maintain the human rights in war and treat the captives in a human manner exist from the actual practices of Muslim leaders during battles, but the term "Human International Law", as a term, cannot be found in the major books of Islam simply because the Islamic Shari'a is characterized by the generality of its norms, i.e. its rules contain the religions and worldly life verdicts addressing all humankind.

As regard the worldly life verdicts, it contains the rules organizing foreign relationships, i.e. the Islamic international relations with other nations, and with peoples, in peace or war circumstances⁽¹⁾. The Islamic brotherhood set by the Islamic Law imposes that Muslims, during armed conflict, shouldn't overpass the military necessity. In fact they must treat their enemies in a human manner, regardless of their religion and race and provide the required protection for them, because humanism raises the value of the human being, and prevents any action which leads to offending, or even minimizing his freedom, dishonoring him or his belief.

(1) Al-Zaid, Zaid Bin Abdel Kareem (2004), Introduction in the Humanity International Law in Islam, Kuwait: Red Cross International Commission delegation pp 25-26, Mahmoud - Armed Conflicts victims protection,p7. See generally: Jaafar Abdul Salam, International Humanitarian Law in Islam, Arabic published article in "International Humanitarian Law - Manual for Application, ICCR, Cairo, 2003", and Wahba Alzumailee, The Outcomes of Wars in Islamic Jurisprudence, Dar Alfiker, Beirut, 1965; and Subhi Al Mahmasani, Law and International Relations in Islam, Dar Alilm Lil MAlayeen, Beirut, 1972; and Ihsan Hindi, Islam and International Law, 2nd ed., Dar Tlas Gil Dirasat, Damascus, 1994.

The Islamic International Humanitarian Law, may be defined as a group of verdicts derived from Al Qur'an and Al-Sunnah, or from the religious scholar sayings, aiming at maintaining human dignity during international or domestic armed conflicts, and sustaining, for humanitarian reasons, the disputing parties' right in using war techniques and methods they find proper, or protect the properties and persons who were harmed, or might be harmed, due to the armed conflicts.

So, the objective of Humanitarian International Law is to secure the protection of persons who are not involved directly in the aggressive actions, or those affected them, i.e. the wounded, drowned, captives and civilians, in addition to protecting civilian properties with no direct relation with military operations.

The question that rises in this regard is the following: will the world of the Twenty First Century witness the opportunity of respecting the International Human Legal and Lawful principles during and after every new-armed conflict?

By taking all the above mentioned facts into consideration, there is an apparent need for an analysis in this subject matter in the basic rules of public International Human Legal principles⁽²⁾ that govern armed conflicts, and then striking a comparison with Islamic Law (Shari'a), and that should stand as a main objective for the researcher in order to come to subjective conclusions. This is true because of the simple fact that law - at present - handles in general the rights proclaimed in the general principles of humanitarian international law in the positive law context, yet, without addressing the Islamic Fiqh and its role in rooting these rights.

1.1 General Principles Organizing Armed Conflicts in the Islamic Law (Shari'a)

This will be examined through the following points:

(2) We mean by basic principles the following principles: Humanitarian principle and proportion principle

1.1.1 The Military Necessity in Islamic Law

The attempt here is to clarify the circumstances that make a war legal in Islam, and clarifying the limitations of the necessity rules at wartime through the following twofold points:

First: The Military Necessity and the War Legitimacy in Islam:

He who pursues Qur'an verses and Al-Sunnah verdicts regarding wars finds out that the motive of fighting is not to impose Islam faith as a religion on the dissidents, nor it is to impose a social system, but only to withstand aggression, spread Islamic principles, and remove the oppression that may fall on the oppressed. As such, the Islamic Fiqh approved the rule: "*Necessities may permit some forbidden actions*", but it limited it by another rule "*Necessity is to be evaluated as circumstances deserve*". The two rules should be applied to war verdicts.⁽³⁾

Without doubt, if we trace the conduct of Profit Mohammad (peace be upon him), especially the messenger's military life, we find out that he didn't raise a sword on a dissenter in the beginnings of Islam. He, and his companions, stayed in Mecca for thirteen years sustaining the crudest torture with their religious freedom confiscated until they were obliged to depart their homes and their country home. When the chapter of fighting descended in the second year of Al-Hijrah, and the Islamic state was founded in Almadinah Al-Munawarrah, he and his companions went on calling for Allah kindly and gently although Allah has permitted them to fight their enemies.⁽⁴⁾ On each time the profit dispatched a company, he said: "Get familiar with people, be patient with them and don't attack them before calling them to Islam. To bring them to me - from urban places or hair dwells- as Muslims, is more pleasant to me than bringing their sons and wives and kill their men"⁽⁵⁾.

(3) Abu Zahra, Mohammad (2004-1425), Islam's Point of View of War, Qahera: Dar Alfekr Al-Arabi, P.12 and after it. -Atlam, Hazem Mohammad (1423-2002), International Armed Disputes Law" Introduction- Time Range, Cairo, Dar Al-Nahda Alarabiyah p55.

(4) Afeefy, Mohammad Al-Sadiq(1997), Islamic Community and International Relationships.

(5) Shih Al Bukhari, Al- I'tesam Book in Alketab and Assunah, Part - What the Prophet Mentioned and Urging on the Agreement of Scholars, Hadeeth No. (5412).

It becomes apparent that, from an Islamic point of view war was, and is, an exception from the basis of Islamic ideology, and since the exception cannot be taken at all as a general standard, and surely not be extended in its interpretation, there is no justification for war in Islam except in two cases:

The First case: The legal defense of honor, property or home country.

The Second Case: Fighting for the sake of Allah and for the victory of Islam provided that fighting should be against those who start the aggression, and until aggression is halted. As for those who don't start aggression, killing them is not permissible as a rule. Allah Almighty said: *"And fight in the way of Allah the ones who fight you, but do not transgress; surely Allah does not love the transgressors"*.⁽⁶⁾

The Islamic jurisprudence agrees unanimously on that the objectives and motives that allow Muslims to carry weapons and fight lie in three main objectives for war, as follows:

- Protecting the religious freedom and securing the freedom of spreading the call (to Islam), and to guarantee the freedom of belief.
- Defense against aggression and protecting the Islamic entity from assaulting directed Muslims' honor and sacred places.
- Preventing oppression to people.⁽⁷⁾

In addition, Islam had honored the human being in life and death. Honoring the dead is represented in avoiding the distortion of the killed bodies. The Messenger prohibited mutilation.

Bureidah, may God be pleased with him, narrated that the Messenger of Allah (peace be upon him), used to order the assigned prince on an army or company and other Muslim attendants to fear Allah and used to say *"Invade in the name of Allah, for Allah sake, fight*

(6) Surat Al-Baqara: 251

(7) Look in details: Abu Zahrah. *ibid*, War Theory, p.20 and after. -Abdul Assalam, War and Neutralism Rules, p.59 and after -Miqa, *ibid*, p.85-87.

the infidels, invade, do not misappropriate, do not mutilate, and do not kill an infant".⁽⁸⁾

Anas Bin Malik narrated that: "The Messenger of Allah did not deliver a speech without ordering to give alms to the poor and forbidding mutilation."⁽⁹⁾

Moreover, the Islamic Belief has well known the principle of distinction among the fighters and the peaceful citizens, and between the military and civil foundations before fourteen centuries as an application of the war necessity principle. Islam differentiated, through its legal texts and practical applications, between the two categories, and determined the need for protecting the peaceful civilians from aggression or harm. Allah Almighty said: "*And fight in the way of Allah the ones who fight you, but do not transgress; surely Allah does not love the transgressors*".⁽¹⁰⁾

1.1.2 The Military Necessity Determinants in Islam at Wartime

In this section, the Islamic humanitarian law at wartime, and the extent of Muslims' compliance to its rules in light of the general principle of military necessity, will be deciphered in two stages:

First: Military Determinants before the Battle Starts:

Here, the Islamic System imposes that one shouldn't rush towards killing as he desires in the absence of a clear object. Muslims must direct a call to the enemies allowing them to choose one of three alternatives: adhering to Islam, taxation, or waging a war. In applying the Islamic rules, peace should be thought of as the origin of any inter-relation between the Islamic State and other states, and fighting, as an Islamic concept, is only applied in order to boost the word of Allah and to raise high the flag of monotheism.⁽¹¹⁾

(8) Great Sunnan Al Baihaiqi Asiyar book, Part: Killing Unbelievers after Caption, Hadeeth (18554)

(9) Sahih Al Bukhari, Al I'tesam In alketab An dAISunah, Part Part What the Prophet Mentioned and Urging on the Agreement of Scholars, Hadeeth No. (6894).

(10) Surat Al-Baqarah, verse No. 190, p.

(11) Othman, Mohammad Ra'fat (1982), Rights and responsibilities and The international Relationships In Islam, Beirut: Dar Iqra'.p.191-192.

The advantage of this call is that it may spread the message that Muslims do not fight for the sake of fight, but for a magnificent goal, and that in turn should reflect on the enemy's sociological reasons to fight by doubting their own reasons for the fight. This may this motivate those who fight unjustly to prefer peace in response to piety and guidance calls, by either announcing their Islam, or by accepting the head tax and reconciliation. In each case blood and souls will be maintained.⁽¹²⁾

Second: Military Determinants during the Battle:

If clash became inevitable by ignoring the Islamic peaceful spirit prior to the battle, Muslim wars are to be governed by a number of rules, which pour at the end in favor to the virtue of human spirit and respect for human rights. These rules include:

- 1 - Minimizing the range of war: In order to achieve its purpose at a minimum grade of losses, Islam, through keeping the civilians away from the war catastrophes, had forbidden killing those who are not involved directly or indirectly in the battle, such as women, children, old people, monks devoted for worshipping, and peasants.
- 2 - Abiding by the virtue and the respect of the human dignity: In sake of achieving this, Islam prohibited the torturing, represented by prohibiting the mutilation of the killed. The profit (PEACE BE UPON HIM) said: "*March in the name of Allah, for the sake of Allah and fight the enemies of Allah. Don't misappropriate, don't betray, don't alienate, don't mutilate and don't kill an infant*".⁽¹³⁾

Omar Bin Al Khattab, the second khalifa of Islam, adhered to the same path when he was instructing a leader of an army to fear Allah and said: "*In the name of Allah, and by Allah's help, march equipped with Allah's victory and support, and abide by what is right and by patience, fight in the sake of Allah those who disbelieved in him, and don't transgress, since Allah doesn't like transgressors, don't be cowards on clash, don't mutilate upon ability, don't exaggerate upon victory, don't kill an aged*

(12) Al-Zaid, *ibid*, p.19-Miqa, p. 119-120- Abu Zahrah, *War Theory in Islam*, p.78-79.

(13) Abu, Shabanah, Yaser (1998-1418), *The New System between the current situation and the future prospective*, Cairo: Dar Alsalam for Printing, Publishing and distribution pp 661-662.

man, a woman or an infant, avoid killing them when the two armies meet, and in launching raids, don't misappropriate in booties, and keep Aljihad (Fighting enemies) away from worldly goods, and be optimistic in the sale profit which you had contracted for. That is the great victory".⁽¹⁴⁾

Therefore, it becomes apparent that Islamic humanitarian treatment requires that Muslims should not go beyond the military need during the armed conflict. Muslims should treat their opponents kindly as human beings by securing the required protection for them, because humanity is derived from man's value which protects him from anything that leads to his humility, fear or undermining his freedom or breaching his honor or creed.

In his speech, Abu Bakr Al Siddiq,⁽¹⁵⁾ frankly forbade sabotage, cutting and burning trees. Nevertheless, Fiqh scholars had different points of view in this respect (cutting and burning trees). The scholar, Al Awza'ee stated that cutting trees, destroying crops and sabotage are forbidden depending on Abu Bakr Al Siddiq clear text, simply because that was not a necessary military action. However, if there were a military action necessity, for instance if the enemy fighters were fortified in a castle and there were no other way for gaining victory except by destroying the castle, or if trees were forming a very a thick jungle that allowed enemies hide behind. In such cases, it is allowed to cut them down to be able to see the enemy line clearly, and to avoid the enemy sudden attacks⁽¹⁶⁾. This was Alawza'ee and a lot of non- sectarian Fiqh scholars point of view.

Others said "Cutting trees and destruction of buildings are allowed and they presented evidences as follows:

- 1 - Allah Almighty said regarding the Prophet (peace be upon him) fight: "*Whatever tender (crops) you have cut (down) or left upright*

(14) Shukri, Human International Law History, ibid, p. 14.

(15) Abu ZAHRAH, War Theory, ibid, p35

(16) Al Zihaili, Wahba Mustafa, (1405-1985) Legitimate Necessity Theory compared with the positive law. Beirut, Al Rissalah Institution page 52..... ZAHRAH, War Theory, ibid, pp 39-41.

on their roots, then that was by the permission of Allah, and that He may disgrace the immoral ones".⁽¹⁷⁾

- 2 - Muslims, under the order of the prophet (peace be upon him) destroyed Bani Al-Nadeer houses.

However, at first glance, it may look true that sabotaging public property is allowed during battles in Islam, but it also shows that these evidences do not allow destruction absolutely, and do not allow cutting trees and crops for the mere sake of annoying the enemy. And as for the second evidence, i.e. Bani Al Nadeer houses destruction by the Prophet (peace be upon him), history tells us that this occurred not for the sake of mere destruction, but because Bani Al-Nadeer used their houses as castles and attacked Muslims there from. So, the Prophet's (peace be upon him) companions did what they had to do, in obedience of the prophet's orders, as much as necessity has required them to react.⁽¹⁸⁾

In conclusion, we can say that it is a basic rule in Islam that cutting trees and plants during battles is forbidden as long as that does not minimize the fighting objectives, but also to a very restricted limit that does not bypass the principle of not harming people, and the duty to avoid inflicting any unnecessary harm. If it was found out that cutting trees and destroying buildings is an inevitable military necessity, like when enemy use the surrounding nature as a concealing shield and using it as a mean to harm the Muslim army, then cutting or destruction becomes inevitable as a fighting necessity, as the Prophet (peace be upon him) did to Thaqeef Castle.

This general principle has no justification if military necessity is not clearly apparent. Fighting in Islam is not imposed for destroying existing (buildings) and killing man, for the target and objective of Islam is to avoid evil and remove oppression from the souls of the enemies of Islam.⁽¹⁹⁾

(17) Surat Al-Hashr:5,

(18) Abu Zahra, War Theory, ibid, p.41

(19) Al Jubouri, Mizban Khalil (1990), Arab War Principles, unpublished M.A thesis, Mustansiriyah University, Iraq, Baghdad, p.127.

It is worthy to mention that the regulations that guarantees to war victims protection in the international law had his first appearance in the middle of the 19th century, and didn't settle until 1949, just after the ratification of Geneva Conventions regarding the protection war victims, while regulation directed to the protection of war victims in the Islamic Law, in an obligatory manner, was settled more than 1400 years ago, where Islamic legislations enforced the idea of respect to human during armed conflicts in both internal and international armed conflicts, victims respect and protection was enforced at the same level.

As such, wars entered by Muslim armies were humanitarian in nature, and were declared as a necessity for humankind reform. Their regulations do not contradict with the general framework, and they abide strongly to the military necessity general, through the following:

- It is forbidden to kill non-fighters and those who do not share in war actions. War should be confined into the battlefield.
- It is forbidden to kill religious scholars who devote their time to adoration in their worshipping places and the people working in media (information) field.
- It is forbidden to fight children, women, old people and laborers, provided that they do not participate in war or plan for it.
- Sabotage is not permitted if there was no war necessity, but if there was a war necessity, such as when the enemy utilizes the buildings as fortresses to hide in, their destruction becomes a necessity to avoid harm to Muslim army.
- Torturing or killing the wounded is not permitted if they were unable to defend themselves, and they must be treated medically until their wounds are cured, and only then to be taken as prisoners.
- It is not allowed to fight the one who casts his weapon or escapes from the battle.
- Mutilation is not allowed.
- Respecting the dead bodies and burying them in due time is considered as a respect for humanity, whether alive or dead.

- Feeding the captives and treating the wounded by providing them with the best food and medicine in accordance with the human tolerance principle in Islam.

1.2 Humanitarian Aspects in Islamic Law

This will be studied through these two following points:

1.2.1 The Limits of Humanitarian Aspects in Islamic Law

Geneva Conventions and Protocols set a specific legal system for each class covered by protection; these international conventions are similar in their objectives since they are all based on the axis of best human treatment. In Islam, as well, one can realize that throughout the Islamic history of armed conflicts, Islamic armies included first-aid personnel, Imams (Prayers Leaders) and judges, all of which were given specific rights and duties in the battle field, and armies were careful in enabling them the power to perform their duties.

Since the earlier Islamic battles, women used to relieve the wounded of their pains and to take care of war patients. The Messenger of Allah (peace be upon him) prescribed the rules that aim at prohibiting mutilation in bodies, and revenge from captives was made illegal, and instead, taking care of them and feeding them was prescribed. This was clearly revealed in the Holy Qur'an: "*And they give food for the love of Him, to the indigent, (and) the orphan, and the captive*",⁽²⁰⁾ and in Al Hadeeth: "Treat captives well". The human nature of Islamic wars has several aspects and include the following:

- Humanity in treating the disabled, women, children and non-fighters called "civilians" in contemporary international law.
- Human treatment towards the wounded and captives. Those were denied human treatment for so long before the appearance of modern international law. Islam, from the time of its inception, prohibited war except for necessity and abided by humanity. Therefore, it prohibited killing non-fighters.⁽²¹⁾

(20) Surat Al-Insan, verse No. 8.

(21) Abul Wafa, Ahmad(1998-1418) International Law Fundamentals and the International Relations for Al -Imamm Al- Sheibani,Cairo, Dar Al-Nahdah Alarabiyah p 176. Aljuburi,ibid pp 155-156

It is strange that humanity was made honored in wars in theories and in international declarations, though Islam has called for the absolute commitment to respect human dignity, and that the basic rules should be directed to honoring all human beings according to Allah's saying: *"And indeed We have already honored the seeds of Adam and carried them on land and sea, and provided them of the good (things), and graced them over many of whom we created with marked graciousness"*,⁽²²⁾ and He says: *"Say, come (so that) I may recite what your lord has prohibited you: that you do not associate anything with Him, and to show fairest (companionship) to (your) parents; and do not kill your children (out) of want. We provide for you and for them too. And do not draw near obscenities whatever (of these) is out ward and whatever in ward; and do not kill the self that Allah has prohibited, except with the truth. That He has enjoined you with, that possibly you would consider."*⁽²³⁾

The Messenger of Allah (peace be upon him) summarized the conformity between the state of war and the commitment to these two rules through his saying in Al-Hadeeth: *"I am the Prophet of mercy and the prophet of epic"*.⁽²⁴⁾ He entered all his battles with mercy, and preceded mercy on any battle that made the Muslim fighters feel they were the hand of justice not the sword of villainy.⁽²⁵⁾

The Messenger of Allah (peace be upon him), had forbidden beating the faces and distorting them as being a bad fighting manner, just as it is forbidden to ill-treat captives. It is not allowed to kill the wounded, and the unable to resist and then to be taken as a prisoner or ransomed, or even to be set free if they were able to teach ten illiterate Muslims. This sets an example of pure respect to humanity, and that fighting is only intended to defeat the capable enemy and to prevent him from further

(22) Surat Al-Isra', verse No. 70,

(23) Surat Al An'am, verse no. 101, p. 148

(24) Ahmad Musnad - the saying of Hulheifa Bin Al Yaman repeated from the Prophet God's blessing and peace be upon him - Hadeeth No. (22933)

(25) Al Khatib, *ibid*, p. 32 - Abu Zahrah, the war theory, *ibid* p. 49.

aggression.⁽²⁶⁾ And, as it was mentioned above, the Prophet (PEACE BE UPON HIM), in deploying his armies, addressed them by saying “*March in the name of Allah Almighty, fight for the sake of Allah the disbelievers in Allah, don’t betray, don’t misappropriate, don’t mutilate, don’t kill the parents and don’t kill the hermitages adorers*”⁽²⁷⁾, and his saying when he once found a woman killed in the battlefield: “*This must not have been killed*”, and then directed one of the nearby fighters: “*Go to Khaled (the army leader) and tell to him not to kill the offsprings and hirelings*”.⁽²⁸⁾

By this, Islam had set the life holiness and prohibited its deprivation except for just reasons.

1.2.2 Points of Reach in Humanitarian Aspects between Islamic and International Regulations

If we look into both international law humanitarian rules and that of Islamic principles, we find the following:

- 1 - The regulatory role of international humanitarian law directed to the protection of the victims whether wounded, patients, captives, women, elderly or children during armed conflicts, has been set only a time considered recent compared to the age of this protection included in Islamic religious principles. Islam, from the time of its inception some 14 centuries ago, provided a full protection for all these categories and prevented that they become victims of wars. Islam indicated that killing or torturing anyone of them or breaching their humanity is considered transgression to the necessity case, and accordingly, is counted as corruption in land that is in any way forbidden by Islam.⁽²⁹⁾
- 2 - The medical care rendered for the wounded, the sick and the afflicted: The Islamic Law is not different from what the positive

(26) Abdul Qader, Bin Baker (1992) Peace and War in Islam -un published Master Thesis- Al Geria University-Al Geria p.223 and after -Al Hasan Moh’d Ali (1973), the Inter Relationships in the Holy Qur’an - Doctorate thesis (unpublished) - Al Azhar University-Cairo-Egypt. P.178.

(27) Musnad Abi Ya’li Al Mousely - Musnad Abu Abbas-Hadeeth No. (1650)

(28) Al Bayhaqi Big Sunan, A-Seyar Book, chapter of abandoning Killing of those who haven’t the fighting capability: monks, old and others-Hadeeth No. (18664).

(29) Mahmood, Protection of the Victims of Armed Conflicts, ibid, p.54-55-Othman, ibid, p. 194.

humanitarian law has determined regarding the medical care for those. The messenger of Allah (peace be upon him) urged his companions to honor their captives, since the medical care for them is a must and the protection of the medical bodies and the concerned properties, to achieve this objective, is a religious duty.

- 3 - Moreover, protecting the religious scholars attending the armed forces was also respected in Islamic doctrine.
- 4 - Protecting the bodies of the dead was also made an indication of the degree of Islamic humanity just as much it is for the living souls. Islam maintains the holiness of the dead. The Messenger of Allah (PEACE BE UPON HIM) forbade mutilation. Although he said when he saw Hamzah's dead body: *"I swear by Allah that if He granted me triumph on them, I shall mutilate into 70 bodies of theirs in return of yours"*, Allah Almighty revealed to him: *"And in case you punish, then punish with the like of that wherewith you were punished; indeed in case you endure patiently, indeed it is more charitable of the patient. And (endure) patiently, and in no way is your patience with the help of anyone except with Allah. And do not grieve for them, nor be straitened for whatever they scheme. Surely, Allah is with the ones who have been pious and the ones who are fairedoers"*.⁽³⁰⁾ The Messenger of Allah accordingly said: *"Let us be patient"* and retreated and expiated his oath.⁽³¹⁾

Therefore, Islam prohibition of the breaching of the enemies corpses and respecting their holiness and dignity, is apparent in its prohibition of mutilation. This complies with the international positive humanitarian law which prohibits breaching the corps of persons. In fact, the burial of corps and conveying them to their country home, and facilitating their arrival to the later, that are stipulated in the positive laws of international humanitarian law do not contradict with Islam as long as committed to by all conflicting parties.

- The respect of the non-fighters and their affiliates:

(30) Surat An-Nahl, verse No.126-128, p.281.

(31) Sunan Sa'eed Bin Mansour,Part:The Captive called to Islam..., Hadeeth (2662)

In Islam, it is not permissible to direct the military operations except to persons who are able to fight and who are devoted for fighting. i.e., civilian inhabitants who are unprepared for fighting, and those who are not involved in planning and organizing for it, are not considered as fighters. Consequently, it is not permitted to fight them. If those who can fight are not killed unless they fight or perform any aggressive action against Muslims, It is a priority not to kill the patient who is crippled by a chronic disease such as paralysis or leprosy, or the insane and the mad man, who have no ability to fight.⁽³²⁾

- Reunification of captives with their families:

Islam pays attention to the families' reunification. Religious scholars have agreed on forbidding separation between a mother and her son, or the son from his father, the son and his grandfather or grandmother, brothers and sisters, and between the next of kin like the aunt and her nephew.⁽³³⁾

- The special protection made to some categories of persons:

Islam prohibits killing women, children, the aged, the religious scholars, laborers and others who don't participate in the military operations, and takes care of civil patients and wounded. These are almost the same rights declared in positive humanitarian law, and no differences can be recorded between them in this respect.

- The protection accorded to economic resources:

Destruction of the agrarian lands, crops, livestock, foodstuff and others essential for the civil inhabitants' life, is illegitimate unless the military necessity requires that, since this is considered a kind of absurdity and corruption on earth⁽³⁴⁾.

(32) Al-Fatlawi, Suhail Hussien(2001),Human Rights in Islam “ a comparative study on the occasion of the International Human Rights Declaration, “,Beirut: Dar Alfikr Alrabi.p.32- Abdul Al Salam Arab Verdicts and Neutrality,ibid,p.175-176.

(33) Al Shaibani, Abu Abdullah Mohammad Bin Alhasn (1993), Explanation of the Great Aseyar book, investigation of Al-shafi'ai, Abi Abdullah Mohaammad Hasan, Alsarkhasi, Mohammad Bin Ahmad, Beirut: Dar the Scientific Books, volume p.212-213.

(34) Al -zhihaili, War Traces, ibid,p.148-149-Mahmood,Protecting the Armed conflicts Victims,i-bid,p.52.

- The protection accorded to civil properties:

Both positive international humanitarian law and the Islamic Law are in agreement in respect of protecting civil properties during armed conflicts. They both deem it necessary that civilian's protection should be accorded. In addition, the protection of civil properties is deemed as a protection of the nation's interests, wealth, its human legacy, and its spiritual and religious traditions. Destroying these values is considered a kind of corruption on earth that is forbidden by Islam, of which by violating one is violating the sound logic humanity rules are based upon. Consequently, we do not find a difference between positive rules of international humanitarian law and Islamic principles, in any of the high ideals and values.

As such, if Muslims found out that civilians, wounded and others will not perform any aggressive activity against them during the course of the battle, Muslims should do more than refraining from directing their fight to them, but also to protect them and treat them in a human manner for the following reasons:

- War is a necessity, and the necessity is evaluated, as it deserves. Therefore, if their danger is removed and they become unable to attack Muslims by standing against the spread of Islamic call, then necessity disappears.
- Their protection compiles with the Islamic principles set by Islam represented in the human goodwill and dignity, holiness, virtue, tolerance and justice.

Part II

Principle of Proportionality under Islamic Humanitarian Law

The law of the armed conflict fluctuates between two major principles: the military necessity principle in an inevitable military clash, and the humanity principle which must be kept in the minds of warriors. Accordingly, international law seeks to set up a balance between these contradicting values. The first value is represented in what the considerations of military necessity dictate, whereas the second interest is represented in what the humanitarian requirements dictate. Based on the former, the conflicting parties have to use the necessary force to achieve the fighting objectives represented by the need to paralyze the enemy's force and achieving military privileges. On the other hand, the humanitarian principle imposes upon the conflicting parties an obligation to refrain from any actions that are not included within the strict military necessity, or otherwise, their actions will be considered prohibited. Necessity can not justify killing the disabled or those who have not already shared in combat, or using weapons randomly, or practicing revenge actions or assaulting disarmed locations.

In Islamic Fiqh (jurisprudence) we find the rule of "Necessities May Permit Some Forbidden Actions" and the rule of "Necessity Is Evaluated as only is deserved". These rules may be applied to both peace and war conditions. These rules mean that, if the military actions have more harms than benefits then they become impermissible, as necessity is evaluated as only is deserved. If there were no necessity to assault the enemy, Muslims should halt the attack.⁽³⁵⁾

In contrast, there is Martin's principle composed by Frederic De Martin for the conditions uncovered by international humanitarian law. Martin's principle says that: "Combatants remain governed by the

(35) Al Shaibani, Explanation of Assiyar Book, part 3, *ibid*, p.233-234-Alzuhaihili, Necessity Theory, *ibid*, p.245.

protection and rule of the United Nations' principles as they spring up from the customs known by the civilized nations, and from humanitarian principles and the general conscience' dictations"⁽³⁶⁾. This principle states that the conflicting parties have no right to afflict their enemies with any action unsuitable for war objective.

2.1. Proportionality Principle in Islamic Law

2.1.1 Values for Applying Proportionality Principle in Islam:

The prophet (peace be upon him), in this respect, asked Allah before the start of a combat by saying: "*O my Rabb! I am your slave. They are your slaves. Our faith and theirs are in your hand. O my Rabb! Defeat them and grant us victory on them*"⁽³⁷⁾. The Prophet (peace be upon him) used to order his armies not to fight until they call for Islam or hold an agreement with the enemies, and never to start the fight before the enemies do so. When the prophet sent Mo'ath Bin Jabal and Ali Bin Abi Taleb for fighting, heading a group of believers, he made two recommendations. His recommendation to Mo'ath was: "*Don't fight them until you call them for (Islam). If they refuse, don't fight them until they start fighting. If they do so, don't fight them until they kill one of yours. Then, show them that killed man and say to them: Isn't there a better way than this? If Allah guides one man upon your hands to the right path that will be better for you than the ownership of the whole world*"⁽³⁸⁾.

The prophet (peace be upon him) recommendation to Ali Bin Abi Taleb was: "*If you land in their area, don't fight them until they fight you. If they fight you, don't fight them until they kill one of yours. If they do so, don't fight them until you show them that killed man and say: Would you mind saying there is no Ilah but Allah... If Allah guides one man upon your*

(36) Sa'dallah, Omar (2002), *Humanity International Law* Documents and Opinions", Amman: Dar Almajdalawi for Publishing.p.226-Demascus University, College of Law, International Red Cross Committee"(2001), *Humanity International Law Seminar " Realism and Ambition"* held in Damascus -4-5 of Nov./2000, Damascus..

(37) Mussanf Abdul -Razaq, *Aljehad Book, Part How to deal with misappropriator*, Hadeeth No. (9513).

(38) Abi Ya'ali Almosali, in *Prophet's wife, Maimonah*, Hadeeth No. (7537)

hands to the right path that will be better for you than having all the world property".⁽³⁹⁾

A careful read of these recommendations reveal that, in Islam, fighting objective circulates around avoiding aggression, and is driven by the attempt to make a compromise between the military necessity and the humanitarian aspects for the benefit of the latter, and from the very early stages of a war. The call for Islam or treaty is an evidence of preferring peace to combat, and to drive away the idea of revenge caused by former aggressions.

To apply the original Islamic rule which considers peace as the natural base for any international relation between the Islamic state and other states, and the idea that one of the Islamic objectives is to elevate the word of Allah and the flag of monotheism, the Islamic system orders not to rush towards fighting, and that a call must be directed to opponents asking them to select one of a three choices: becoming Muslims, paying head tax (Jizyah) or entering war. This call objective may raise in the opponents' souls the idea that Muslims don't fight for the sake of mere fight but for a sublime purpose and a glorious aim. This may stimulate opponents of Islam to prefer peace by accepting the right path either by declaring their Islam or accepting the head tax (Jizyah) and reconciliation. This safeguards both Muslims and non-Muslim blood and souls.⁽⁴⁰⁾ This may verify to the proportionality principle between the military necessity and the humanitarian one by preferring the humanitarian approach to the necessity one.

In order to minimize the effects of war and, and to achieve the proportionality equation therein, by avoiding civilians and non-fighters the woes of war, Islam stated that it is forbidden to kill those who have no direct relation with war operations such as women, children, old people, nuns secluded for adoration, peasants...etc.

- As to forbidding killing women, Rabah Bin Al Rabee' said: We were with the Prophet, God's blessing and peace be upon him, in a

(39) This recommendation was included in: Abu Shabanah, *ibid*, p.661.

(40) Al Shaibani, *Explanation of the Big Biographies Book*, part 3, *ibid* p.p. 237-238

military campaign (Ghazwah). The Prophet, God's blessing and peace be upon him, saw people crowded around something, addressed a man, and asked: Look! Why are these people crowded? The man came and said: A killed woman. The Prophet, God's blessing and peace be upon him, said: this woman should not have been part of a combat.⁽⁴¹⁾

- As to forbidding children fighting: Al Aswad Bin Siryi', may God be pleased with him, narrated that "The Prophet, God's blessing and peace be upon him, sent a company (Sariyah) at the battle of Hunain. This company fought and killed the offsprings. When they came back, the prophet, God's blessing and peace be upon him, said: "What makes you kill the offsprings? They said: "O Messenger of Allah, they were the sons of polytheists. He said: "You haven't chosen but the polytheist's son? By Him in Whose hand Mohammad's life is, every newborn human is born on instinct until its tongue reveals its feeling ".⁽⁴²⁾
- As for forbidding the killing of peasants, workers and other civilians, who are not involved in fighting, Prophet, God's blessing and peace be upon him, said: "Tell Khalid not to kill a woman or a hireling".⁽⁴³⁾

These verdicts, amongst others, set a constant fact that Islam does not allow shedding blood (killing) except in a battlefield and does not allow confiscating of money except in the battle field, because the objective of killing is to end aggression and it must not be allowed to go beyond that, using aggression outside the location of the battlefield area. Sanctities should be respectable and maintained, where no derogation of rights is permissible and no money is to be wasted or looted. The national security must be achieved but not against those who do not take part in the fight, and they must not be disturbed in their property.

(41) Sunan Al Baihaqi Al Kubra, Biographies Book, Part: The Woman Fights and be Killed.

(42) Al-Bayhaqi Sunan, Biographies Book, Part: The Child follows his father Until his Tongue expresses his Feelings Hadeeth No. (18843).

(43) Sunan Abi Dawud, the First Book of Jihad, Part in Killing Woman.Hadeeth No. (2669).

Therefore, we can deduce from the Islamic Legislation (Shari'a) what obviously mean that there should be proportionality between the military necessity and humanity principles, as follows:

- 1 - Fighting is restricted to enemy fighters only: This is clear in the saying of Allah Almighty: *“And fight in the way of Allah the ones who fight you, but do not transgress; surely Allah does not love the transgressors”*.⁽⁴⁴⁾ That is, do not go beyond that by fighting others who didn't participate in fighting you, such as women, children and the like, and know that Allah Almighty do not like those who transgress on others.⁽⁴⁵⁾
- 2 - All religious scholars of Islam have agreed that it is not permissible, by any means, to assault peaceful people holding treaties with Muslims and take them by surprise by occupying their land and homes. That represents the worst betrayal, the ugliest treason, and the worst treaty breach.⁽⁴⁶⁾ That is clear in the words of Allah: *“And definitely in case you ever fear treachery from any people, then renounce (the covenant) with them equally; surely Allah does not love the treacherous”*.⁽⁴⁷⁾
- 3 - The third principle in Islam is forbidding destruction and demolition: no trees are to be cut, no buildings are to be destroyed, and no fires are to be set to buildings unless Islam and Muslims interest requires that it is necessary to adopt this method. The leader can do so by force or make enemies submit to peace in humility. The Prophet, God's blessing and peace be upon him, ordered to cut Bani Al Nadeer palm trees crops. They were so angry that they said: You, Abul Qasim don't like destruction, why are palm trees cut?⁽⁴⁸⁾, for that purpose Allah Almighty revealed the verse (Ayah): *“whatever tender (crops) you have cut (down) or left upright on their roots, then that was by the permission of Allah, and that He may disgrace the immoral ones”*.⁽⁴⁹⁾

(44) Surat Al Baqrah, verse no. 190, p. 29

(45) Al Shaibani, Explanation of the Big Biographies Book, part 3, ibid p.233.

(46) Al S'arkhasi, ibid, p.93-Abu Ghuddah, ibid, p. 136.

(47) Surat Al Anfal, verse 58,

(48) Alzaid,ibid,p.52.

(49) Surat Al Hashr, verse no. 5,

- 4 - If international law forbids breaching international contracts, to kill illegally, hurt or capture, this, too, is the Islamic point of view. There are a lot of texts indicating to that e.g. Allah Almighty said: *“O you who have believed, when you strike in the way of Allah, then be discerning, and do not say to him who offers you the salutation, you are not a believer, inequitably seeking the advantage of the present life; then in the providence of Allah is plenteous booty. Thus you were earlier, then Allah has been bounteous to you, so be discerning. Surely Allah has been ever-cognizant of whatever you do”*.⁽⁵⁰⁾ Also, in what Ahmad, Muslim, Ibn Maja and Tirmithi, corrected from Suleiman Bin Baridah from his father said :Prophet God’s blessing and peace be upon him, said: *”Invade, don’t exaggerate, don’t betray, don’t distort corps and don’t kill a child”*.⁽⁵¹⁾

Therefore, we may come to the conclusion that, in Islam, if fighting purpose leave the ambit of the aforementioned images, and become instead for wordly, personal or beneficiary objective, Islam doesn’t allow but condemns that fight. By viewing the sum of fighting verses in the Holy Quran, we find that Islam connects between the correct objectives and the correct path of Allah and guidance. Thus, one of the proportionality principle applications in Islam is that war must not occur except for withstanding the aggression on homeland, property, soul, honor, avoiding oppression and aggression. If these risks are removed, fighting will have no justification. Wars are a necessity for avoiding enemy attacks and necessity is evaluated as is deserved.

2.1.2 Waging a 'Just war' in Islam - Who has the Right to Do So?

Waging a war in Islam is the responsibility of the ruler (leader) of Muslims, the armed forces head commander, and only as it in the best interest of the nation decided by the most wise and experienced citizens, taking into account the verses of the Holy Qur’an guidance, and the

(50) Surat Al -Nissa’, verse no. 94,

(51) Sunan Al Baihaqi Al Kubra, biographies Book, Part:: Killing Polytheists after Capture by

Prophet's Sunnah directives. In Islam war is waged in one of the three following cases:

- Entering warfare directly if eminent attack is due, or when there is a truce breach by the enemies.
- Fighting if an enemy residing at Muslims' lands according to an agreement and the enemy breached that agreement without spying actions or fighting or corruption.
- Combating attempts for spreading Islam, i.e. spreading the Islamic call and giving the enemy an opportunity to choose Islam or treaty or to fight.⁽⁵²⁾

It is true that some leaders of Islamic armies did not follow the guidance of Islam in their wars, i.e., letting the enemy choose one of the above-mentioned choices and conquered others land by force and mischief, such as Qutaibah Bin Muslim Al Bahili who conquered the land beyond the river. During the course of Qutaibah's invasion of Samarkand, he entered Safad District without giving the people their right to adopt any of three choices. Its people complained to Omar Bin Abdul Aziz and said: Qutaibah oppressed, betrayed us and occupied our lands. They asked to be allowed to meet Omar Bin Al Khattab and to demonstrate their case to him. They were allowed to do so. When he (Omar Ibn AL-Khattab) knew their complaint, he sent the following letter: "Samarkand people complained that they were exposed to oppression and prejudice from Qutaibah. As soon as my letter arrives to you, let the judge consider their case. If the judge verdict was to their side, drive out Arabs back to their camps before Qutaibah appears." The ruler arranged a meeting with the judge who issued a verdict that Arabs must go back to their camps and start making negotiations equally to hold a new peace treaty or to occupy the land by force. The people of Safad /Samarkand felt they should accept the status quo and were happy to surrender.⁽⁵³⁾

(52) beheading them without mutilation, Hadeeth No. (18554).

(53) Abu Zahrah "War Theory" ibid, p. 30-31-Abu Shabanah, ibid pp 6962-663.

2.2 The Rule “Necessity is Evaluated as Circumstances Dictate” in Islam

Islamic Jurisprudence approved the rule which declares that “necessities may permit some forbidden things” but restricted it by another rule about necessity: “necessity is evaluated as the situation deserves”. The two rules apply to the war verdicts.

The Islamic jurisprudence pays a great attention to the military domain but does not allow the corruption on earth, and devotes the principle of reciprocity in military actions but only as long as it bides by the limits of Islamic regulations, for example, the mutilation is forbidden in principle even if committed by the enemies of Islam, and the non-betrayal in promises (keeping ones’ promise) delivered by Muslims reaches the limit of holiness stage, and is always preferred in all cases.⁽⁵⁴⁾

We find in Islamic jurisprudence that the rule of “necessities may permit some forbidden things” applies in the general jurisprudential rules whether in war or peace conditions. One example that affected the Muslim scholars and was debatable is the case where an enemy of Islam takes Muslim non-fighters, like women and children, as barricades or taking some of Muslims as a human shield. To actually apply the necessity rules, religious scholars of Islam permitted fighting the barricaded enemy irrespective of the human-shield, and despite the fact that this human-shield was not targeted by the war operations in the initial stages of war. Al Qurtobi, Al-Ghazali and Ibn Taymiah said: “The Islamic scholars agreed that if the enemy takes Muslims’ captives as shields, and there was a fear that the Muslim captives will be harmed then a necessity justifies an overwhelming attack”. Muslim scholars relied, in respect of the aforesaid, on rationality. Some scholars demonstrated it under the rule "avoiding the cause of corruption and harm", while others had demonstrated it under “getting the benefit and interest”. keeping in mind that the two aspects are conducted and overlapped and represent

(54) Revise the details of this Hadeeth, Al Shaibani, The Big Biograpy Book Explanation, Part: 3, ibid, p. 238.

the same idea, i.e., “the idea of necessity”.⁽⁵⁵⁾ The first relies on avoiding the cause of corruption, and some Muslim scholars say in this respect that shooting Muslims, used as shelters, is not intended for itself but it is a necessity of the war. This in conformity with other rule agreed upon by Islamic scholars, which is “the necessities may permit some forbidden acts.”

The second idea comes under the verdict of “getting benefit and interest”. This is justified, because in killing Muslims -who are taken as shields - during fighting the enemy, there is an interest and certain advantages for all Muslims in performing their duty of Jihad for without doing so, the enemy will occupy the entire nation and kill the Muslims used as shields. Here the legitimacy of the attack lies in the fact that there will be a common interest even for those who were taken in the enemy’s barricades.⁽⁵⁶⁾

Even in the cases that require punishing the enemy in the same way as he punished Muslims themselves, we find Qur’an calls these to the reason and patience in His saying Allah Almighty said: “And in case you punish, then punish with the like of that wherewith you were punished; and indeed in case you endure patiently, indeed it is more charitable of the patient”⁽⁵⁷⁾.

(55) Alzihaii, Mahmood Mohammad (1993), Necessity in Islamic Sharei'a and the Positive Law" Comparative Study" -Alexandria: Academic Culture Institution. P.39-40-Alzihaili, Necessity Theory, *ibid*, p.67-68-Alhasan, *ibid*, p.263-264.

(56) Abu Ghuda, *ibid*,p.136-Alzihaili, War Traces, *ibid*, p.147, Aljuburi, *ibid*, p.129.

(57) Abu Ghuda, *ibid*,p.136- 137. Alzihaili, War Traces, *ibid*, p.147

Part III

General Principles Pertaining to the Victims of Armed Conflicts

3.1 Justice and protection principles in Islamic Jurisprudence

There is a number of detailed principles springing out of the general justice and protection principles on which Islam had established its human relationships, especially at wartime. The most important of these are: the "principle of virtue" and the "reciprocity principle".

As for the virtue principle, Islam imposed abiding by virtue in dealing with friends as well as enemies, and in war or peace, without discriminating between all types of people, and whatever time of their race is.⁽⁵⁸⁾ This is one of the distinguished principles in Islam, and is to be applied for every human in his capacity as being a human-being. It is one golden rule that Islam recognized in its relationships with non-Muslims, and warned its proponents from breaching it, and urged on abiding to the virtues and recommended to adhere to it in combat attitudes, and constantly forbade soldiers violating it.⁽⁵⁹⁾ For example, when Allah commanded believers to fight disbelievers and to adopt Jihad for His sake, He also forbade them from transgression and surpassing the limit. Allah Almighty said: *“And fight in the way of Allah the ones who fight you, but do not transgress; surely Allah does not love the transgressors”*.⁽⁶⁰⁾

(58) Surat An-Nahl, verse no. 126

(59) Abu Zahrah, Moh'd (1964), the International Relationships in Islam, Cairo, Al Dar Al Qawamiyah:p.33-34-Abu Zaid, Moh'd Al Hamid (2001). Peace and War in Islam, Beirut, Modern Books Shop, p.381-Al Marzouqi, Ibrahim Abdullah (1977),Human Rights in Islam,Abu Dhabi., the Cultural Compound,p.172.

(60) Abu Zahra, the International Relationships, ibid, p. 34-35, Al Marzoqi, ibid, p.174. Surhat Al Baqarah, verse No. 190,p.

Even after victory, Islam ordered the believers to ask Allah forgiveness and to stop the transgression. Allah Almighty said: *“When comes the victory of Allah, and the Conquest, and you see mankind entering the Religion of Allah in troops. So extol with the praise of your Lord, and ask Him forgiveness; surely He has (always) been Superbly Relenting.”*⁽⁶¹⁾

As to the reciprocity principle, Allah ordered Muslims to treat the aggressor in the same way and without transgression, and to observe the fear of Allah by clinging to the virtues He ordered. Allah Almighty said: *“The inviolable month (is) for the inviolable month; and the Inviolable things (demand) retaliation. So whoever transgresses against you, then transgress against him in like (manner) as he transgressed against you; and be pious to Allah, and know that Allah is with the pious.”*⁽⁶²⁾ Hence, we find that although Islam stated the reciprocity principle, it restricted it to the virtues. That means: Muslims are not allowed to cope with enemies in their actions (vices) against virtue and humanity, in general. So, in case the enemy violated a Muslim women honor, Muslim are not allowed to do the same for non-Muslim women, and if Muslim women, children and aged people, who aren't involved in fighting, are killed or if mutilation of Muslims' bodies occur, Muslims are still forbidden from taking a similar course of actions. Each human relationship in Islam is based on Justice, and Justice is a right for the enemy as it is a right for proponents, since the Qur'an verses in this respect are too many and are clear about them. Allah's as well says: *"O you who have believed, be constantly upright for Allah, witnesses with equity, and let not antagonism of people provoke you to not do justice. Do justice; that is nearer to piety. And be pious to Allah, surely Allah is ever - Cognizant of whatever you do"*.⁽⁶³⁾ And Him saying: *"Today the good things are made lawful for you, and the food of the ones to whom the Book was brought is lawful to them. And (so) are believing women in wedlock, and in wedlock women of (the ones) to whom the Book was brought even before you have brought them their rewards in wedlock,*

(61) Surat An-Nasr, verse No. 1-3,

(62) Surahat Al Baqarah, verse No. 194,

(63) Surat Al-Mai'dah, verse no. 8, p. 108

other than in fornication, neither taking them to yourselves as mates. And whoever disbelievers in belief, then his deed has been frustrated and in the Hereafter he is among the losers".⁽⁶⁴⁾ Accordingly, Allah Almighty indicated that Justice is the law on which the message of Mohammad, God's blessing and peace be upon him, and the previous prophecies and all the revealed books are based on.

These are the foundations on which Islam built its human and International relationships upon. Islam has set these rules and adopted them in its relationships with others since the Gregorian seventh century in both war and peace situations. Islam had set these foundations in order to practice them and to bear them as its constitutional approach for the whole Islamic community, and to advance international relationship upon them. By doing so, Islam carries out the message of justice for the whole mankind even if non-Muslims do not treat Muslims accordingly. Islam imposes that the relationships of the Islamic State should be subjected to this accurate order.

Islam paid a special attention to captives in a way that they maintain their dignity and forbid transgression on them as follows:

- 1 - Allah Almighty in Suraht Al-Anfal says: *"O you Prophet, say to the captives who are in your hands, " in case Allah knows of any charity in your hearts, He will bring you a more charitable (benefit) than what has been taken from you, and He will forgive you ; and Allah is ever -Forgiving, Ever -Merciful".*⁽⁶⁵⁾
- 2 - Islam approved the necessity of treating the captive kindly and prohibited insulting or degrading him in a way that touches his human dignity. Tabarani narrated on (Abi Aziz), that the Messenger of Allah, God's blessing and peace be upon him, said: *"Treat captives well".*⁽⁶⁶⁾ Islam also imposed the necessity of taking care of captives by Muslims through feeding him in response to

(64) Surat Al-Mai'dah, verse no. 5

(65) Surat Al-Anfal, verse no. 70

(66) The small Lexicon - "H" Branch -the Branch of whose name is Al Hussein, Hadeeh No. (410).

Allah's command: *"And they give food for the love of Him to the indigent, (and) the orphan, and the captive "*.⁽⁶⁷⁾

- 3 - One required treatment of a captive is to provide him with proper clothing sufficient to prevent the heat summer and the winter chill.⁽⁶⁸⁾ Jabir narrated that The Messenger of Allah, God's blessing and peace be upon him, said: "At Bader battle, captives (including Al-Abbas who was without a thobe) were taken to The Messenger of Allah, God's blessing and peace be upon him, who found that the shirt of Abdallah Bin Obbay suit him and he dressed Al- Abbas with".⁽⁶⁸⁾
- 4 - Furthermore, Islam was merciful in treating captives, since, freeing the captive was one of the milestones of Islamic tolerance; the more famous Qur'an verses in this respect is: *"So when you meet the ones who have disbelieved, then it is striking of the necks until, when you have subjugated them, then uphold the bonds ; then (it is) either being bounteous hereafter (to them), or (exactng) ransom, until the war lays down its encumbrances. So it shall be; and if Allah had (so) decided, He would have vindicated Himself upon them; but that He may try some of you by means of others. And the ones who have been killed in the way of Allah, then He will never send their deeds into error"*.⁽⁶⁹⁾

3.2 The Security and Neutralism Principle in Islamic Law

The concept of security (Safety) principle in Islamic law at wartime, means granting security to fighters in the battlefield. If any enemy warrior asked for his personal safety from any Muslim and that Muslim granted him that, then his blood will be saved, and no other soldier has the right to end his life. In this respect, the Prophet (peace be upon him) said: "Muslims are equal in blood and that the least of them must seek safeguard his promise"⁽⁷⁰⁾.

(67) Surat Al- Insan, verse No 8,

(68) Sahih Al-Bukhari- Al Jihad and Seyar Book, the chapter of "Dress of Captives"- Hadeeth No. (2846)

(69) Surat Muhammad, verse no. 4.

(70) Sahih Al-Bukhari clinging to - I'tisam with ' Qur'an and Sunnah book - "The chapter of the love of the Prophet, God's blessing and peace be upon him Hadeeth No. (1582).

Admitting this safety in the battlefield was partially to prevent the war continuation. Islam also seeks total prevention of harm in such circumstances. This security may be granted to individuals and to groups even if they were in a fortress if they did not commit hostile action against Muslims, and violate their pledges and lose their right in the safety given to them. This indicates-undoubtedly- to the Islamic desire in preventing war as much as it is possible, for Islam doesn't fight except those who carry the sword as fighters or attackers. This comes in conformity with the necessity in fighting rule as it is described above, but only as far as a soldier lays down his sword and asks for safety, he should then be given his rights > This means to the following:

- He will not be considered a captive, but a *Themi* (a non-Muslim living in an Islamic State).
- In case he continues living in the Islamic Country, he will obtain the Muslims security by having their exact their rights and duties.
- Giving safety promise according to Islamic Shari'a means it has direct effect even if given by a mere sign, or by the word "don't fear" (as an indication for giving safety).
- Expanding the security circle has an indication of Islam desire for limiting the fight circle.

Muslims expanded in the security circle in many aspects such as the following:

- They did not put the safeguard matter under the command of the army leader only, or an army company leader or any regiment leader, for this matter was delegated to any Muslim. If a Muslim gives a safeguard promise to a fighter, the fighter becomes within the Muslims safeguard and no one has the right to breach that safeguard promise unless that Muslim breaks his promise. This is confirmed by the Messenger of Allah (PEACE BE UPON HIM) in saying: "Muslims are equal in blood..."⁽⁷¹⁾ This means that Muslims are equal and any of them can compile a safeguard contract.

(71) (Sahih Al-Bukhari clinging to - I'tisam with ' Qur'an and Sunnah book - "The chapter of the love of the Prophet, God's blessing and peace be upon him, Hadeeth No. (1582).

- Safeguard circle expansion reached an extent that even a slave of a Muslim has the right to give a safeguard to soldier of an enemy army, and the soldiers of that army will not be captives any more, after this safeguard.

It happened that a Muslim slave had given a safety promise to some people inside a castle for protection. That made the army leader sent to Omar asking for his verdict. Omar response was: "The safeguard of the Muslim slave is the safeguard of all Muslims".⁽⁷²⁾

- Muslims expanded the safeguard expressions to the extent that even an indicating signal may be considered, such as referring to the sky, as agreeing to giving safeguard for those who feels afraid. Omar Bin Al Khattab says: "Any man called a disbeliever and referred to the sky means that the Muslim has safeguarded him and that man became under the safeguard and protection of Allah".⁽⁷³⁾

This, without doubt, indicates, in its objective and sense, the fact that fighting in Islam is legislated in order to end aggression and that only necessity may impose on Muslims the right to kill in the battle field; and that this necessity should be at the minimum level, and it opens the gate for protecting souls as much as possible. Islam has emphasized the importance and holiness of maintaining the human souls from cessation, and its right in life, freedom and safety. Since the right to life and freedom is granted by Allah, none has the right to confiscate them. Humans are just creatures that Allah prohibited to kill unjustly or by aggression, or by exposing the body safety to the danger, or for any reason leading to that without a right justification.

Allah says: "*On that account We prescribed for the seeds of Israel that whoever kills a self-other than for (killing another) self or for corruption in the earth -then it will be as if he had killed mankind altogether; and whoever gives life to it, then it will be as if he had given life to mankind altogether. And indeed Our Messengers have already come to them with supreme*

(72) Al Shaibani, Explanation of Big Seyar, part 3, ibid, p.284-Abu -Zaid, ibid, p.232.

(73) See (in detail): Al-Eesawi, Abdul Fattah Moh'd and Al Darrazi, Moh'd Saleh (2003),

evidences; thereafter surely many of them after that are indeed extravagant in the earth".⁽⁷⁴⁾

At last, it is worth mentioning that safeguard pledges in Islam are given in three situations:

First, it is granted to those covered by the safeguard right in the battlefield for they have wanted to save their blood by laying down their arms, and declared surrender, after they have stopped their fight of Muslims. Those have the right to co-exit safely away from the battlefield, and are then transported to their country home, and have the right of entering the Islamic countries in compliance to Allah's saying: *"So, when the prohibiting months are drawn away, then kill the associators wherever you find them, and take them, and detain them, and sit (in wait) for them at every place of observation. But, in case they repent, and keep up the prayer, and bring the Zakat, then let them go their wait; surely Allah is Ever - Forgiving, Ever- Merciful".*⁽⁷⁵⁾

Secondly, are those coming from the land of war for a certain period less than one lunar year according to a safeguard promise or a peace treaty, in order to conduct learning, trade, or tourism. If they surpassed one year, they will be considered as Thimma people (non-Muslims under the Muslims rule), i.e., they will have to pay head taxes as Thimma people do, and accordingly have the same rights and duties of all Muslims.

Thirdly, are Al Harbiyyoun (the citizens of non-Islamic States which have no peace or good neighborliness treaty with the state of Islam). Those are in need to conclude a treaty with the Islamic state.⁽⁷⁶⁾

(74) Islam philosophy in Peace and War from the Social Perspective, Alexandria: Dar Al Wafaa' for printing and publishing. P.78 - Yassin, ibid, p. 22.

(75) Surat Al-Mai'dah, verse no. 32, p. 113

(76) Surat Al-Tawbah, verse no. 5, p. 187.