

War Ethics in Armed Conflicts under International Humanitarian Law and Islamic Perspective

Muhammad Syahlan Shafie¹, Mohd Izzat Amsyar Mohd Arif^{*2},
Faezy Adenan², Ikmal Hafiz Jamal²

¹Royal Malaysian Air Force, Legal Branch d/a Pangkalan Udara Sendayan,
71950 Bandar Sri Sendayan, Negeri Sembilan, Malaysia

²Academy of Contemporary Islamic Studies, Universiti Teknologi MARA,
40450 Shah Alam, Selangor, Malaysia

*Corresponding Authors
izzatamsyar@uitm.edu.my

Received: 14 January 2021
Accepted: 7 February 2021
Online First: 10 March 2021

ABSTRACT

This study aims to examine the war ethics in armed conflicts under international humanitarian law and Islamic perspective. To achieve the objective of the study, semi-structured interviews were carried out with two legal officers in the Royal Malaysian Air Force (RMAF). The legal qualitative research was conducted by adopting a document analysis method to strengthen the findings. The study shows that there are similarities in war ethics between International Humanitarian Law (IHL) and the teachings of Islam. Both bring a war ethic that is not aimed for devastation and victory, but rather to protect oneself and the nation against the threat of the enemy. However, if human beings or the military do not follow and obey what has been outlined in the IHL and the guidance of war in Islam, this ethics will not be useful. If these war ethics are adequately practiced, then the world will not suffer destruction and prolonged war. Therefore, this study is very significant to bring a message of peace and harmony to the world,



especially to appreciate the ethics of war in IHL and Islam to live in peace and tranquility in the future.

Keywords: *war; ethics, international humanitarian law; Islamic law*

INTRODUCTION

War is a torturous business. In any given battle, killing, capturing, and destroying the enemy is normal procedure. Murder and neutralizing rivals appeared in the shadows of the law, separated only by a thin line (Brown, 2006). As a result, various rules and customs have been established in order to govern the conduct of war and to relieve the suffering of the covered persons. The just war tradition is an intellectual attempt to balance the horrors of war against the world's weak arrangement, which leaves organized inter-group conflict as the only way of redressing major injustices (Froe, 2015).

Belligerents and warring parties are obliged by the international humanitarian law to obey certain rules of combat defined in various treaties and customary international law. This is in accordance with Islamic fighting laws and practice, which are based on divine sources such as the Holy Quran and the practices of the Prophet Muhammad PBUH and his companions.

The laws of war in contemporary culture are codified in international humanitarian law. It's a set of international laws that determine what can and cannot be done during a war (Article 1, Geneva Convention 1949). This law's main aim is to hold some dignity in armed conflicts while also saving lives and reducing misery. War is regulated by fundamental laws. All 196 states have ratified the Geneva Conventions, which are the foundation of International Humanitarian Law. This level of protection is found in just a few foreign treaties (ICRC, 2016). When war laws are violated, there are ramifications. States and international courts or tribunals register and prosecute war crimes. War crimes can be tried against those criminals.

From Islamic perspective, there are similar concept and objective when it comes the two rules of warfare. Even though there have been multiple wars in Islamic history since its beginning, this does not mean that Islam

is an unjust religion, as claimed by certain party. The definition of war can be thoroughly understood by exploring the nature of the event, such as a detailed study of the current situation and the backstory that accompanies every war that has arisen. It is backed up by the fact that the first verses sanctioning Islamic warfare were revealed in Surah al-Baqarah verse 190, “*And fight in the way of God those who will fight you, but transgress not, for God does not like the transgressors*”. This verse’s sound is that of self-defense and self-preservation.

METHODOLOGY OF RESEARCH

This legal qualitative research is conducted to examine the war ethics in armed conflicts under international humanitarian law and Islamic perspective. To achieve the research objectives, the study adopted descriptive analysis which involves a library-based method. The method chosen is one of the well-known approaches to get the literature material such as books, articles, and journals including the international laws legal documents. As a comparative study, the primary source of Islamic law; al-Quran and the narrated hadith, as well as the words of the companion of the Prophet is referred to and analyzed. These texts are scrutinized to develop the concept and scope of analysis. To ascertain the facts and real practices, semi-structured interviews been conducted with two legal officers in the Royal Malaysian Air Force (RMAF). The respondents were coded as R1 and R2. The findings arranged in the form of descriptive accounts, explaining the data, themes, or categories cut across data in order to answer the questions of the research (Merriam & Tisdell, 2015).

RESULT AND DISCUSSION

1. War Ethics: An Overview

There are occasions when war is morally acceptable, if not necessary. The most well-known method of evaluating war’s ethical consequences is to use “Just War Theory,” a practice that dates back to St. Augustine in the fifth century and St. Thomas in the thirteenth century (Widdows, n.d). Several historical studies have enriched discussions of war ethics

over the last three decades (Kelsay, 2010). The study of the moral boundaries and possibilities of conflict is known as war ethics. The statement is based on a just war viewpoint, which weighs laws or values against belligerents' moral capacities and dispositions, as well as the circumstances under which they act (Coates, 2016). The aim of war ethics is to help all parties concerned determine what is right or wrong (BBC, 2014), which leads to the States. As a consequence, due to conflicting interpretations of formal codes of war, the drafting and enforcement of rules of engagement for troops, and the prosecution of soldiers and others for war crimes, it is wide open for discussions and debates.

The reciprocal understanding in the conventions between the involving parties is the source of war ethics in international law. The ethics are derived from the al-Quran and the narrated hadith in Islamic law and instruction, and the practises of the ethics can be found traditionally in the acts of the Prophet's companions. Allah states in the Quran:

“Indeed, [O Muhammad], you do not guide whom you like, but Allah guides whom He wills. And He is most knowing of the [rightly] guided.” (Al-Qasas: 56)

As a result, Islamic ethics have a very clear and holistic structure that cannot easily be modified or interpreted to meet one's needs.

2. War Ethics under the International Humanitarian Law

International humanitarian law (IHL) is a collection of standards aimed at reducing the negative impacts of war and armed conflict (Article 1, Geneva Convention 1949). The law of armed conflict, or the law of war, is another name for it (*jus in bello* or *jus ad bellum*). It literally refers to the circumstances under which a state can go to war or use military force in general. The main goal is to protect civilians who are or have been engaged in wars by defining a minimum level of decency that belligerents of war must adhere to, as well as limiting the means and methods of warfare open to conflict parties (ICRC, 2014). While IHL dates back to at least the nineteenth century, the values and practises that it is built on are much older (Haider, 2013).

Throughout history, laws have been developed to regulate the conduct of war, explicitly specifying what action is prohibited. The following are the selected rules, as listed in Schedule 1:

Schedule 1: Rules to govern the conduct of war

Year	Rules to govern the conduct of war	Description
1863	The Lieber Code	During the Civil War, President Abraham Lincoln instituted an early American code of conduct for armies. It was the first codification of the rules and customs of war into a single code in modern times.
1864	First Geneva Convention	It safeguards the sick and injured by providing security to medical facilities, their employees, and any civilians who assist the injured. The Red Cross was also listed as a neutral medical organisation by the convention. Initially, ten countries signed the Convention (the UK signed in 1865, and the USA in 1882).
1874	The Brussels Protocol	Laid down that war should not 'inflict unnecessary suffering' upon an enemy.
1899-1907	The Hague Conferences	Create 'The Convention on Laws and Customs of War'
1906	Second Geneva Convention	To give protection to wounded combatants at sea, and victims of the shipwreck.
1919	The 'Commission on the Responsibility of the Authors of the War and the Enforcement of Penalties'	It lays down a clear doctrine of criminal responsibility for war crimes.
1925	Geneva Gas Protocol	It bans the use of poison gas and biological warfare.
1929	Third Geneva Convention	It lays down rules to protect prisoners of war.

1948	The Convention on the Prevention and Punishment of the Crime of Genocide.	The United Nations General Assembly adopts this convention to be implemented on its members.
1949	Fourth Geneva Convention	It incorporates the first three Geneva Conventions and introduces laws to protect civilians during wartime.
1998	Rome Statute of the International Criminal Court	Adopted at an international conference as a first step toward the development of an International Criminal Court.

Source: Modification from BBC (2014)

The Hague Convention of 1907, which sets out limitations on the means and methods of fighting, and the four Geneva Conventions of 1949 are the two major treaty sources of IHL. In any armed conflict, Stephens (2014) concluded that compliance with IHL was best done by a combination of approaches; (1) ensuring that the role of law was emphasized over attempts to proselytize the law’s fundamental values; (2) ensuring that “bearers of arms” were adequately educated in IHL and that enforcement was underpinned by a strict regime of instructions, with a correlative disciplinary sanction; and (3) ensuring that the International Committee of the Red Cross (ICRC) was consistent in its goals in undoing the Geneva Conventions.

IHL is unique in that it only applies during times of war or military conflict, internationally and non-internationally. For example, even though one of the High Contracting Parties does not accept the state of war, the Geneva Conventions extend to all cases of declared war or any other military conflict that might occur between two or more of the High Contracting Parties (Geneva Convention, 1949). International armed conflict, according to Article 3 of the Geneva Convention of 1949, involves both war between states and the occupation of one state by another. The International Criminal Tribunal for the former Yugoslavia (ICTY) ruled in the case of *Prosecutor v Dusko Tadic* (Tadic’s Case) that a single shot between states would constitute an international armed conflict. Meanwhile, non-international armed conflict is considered to be caused when a state battles a non-state armed group (NSAG), as in the case of The Philippines Armed Forces

and the Moro Islamic Liberation Front (MILF) in Mindanao, as well as the Sri Lanka Armed Forces and the Liberation Tigers of Tamil Eelam in Sri Lanka (LTTE).

IHL has a variety of values or tenets that help to achieve the desired results, such as belligerent equality and non-reciprocity, balancing military necessity and morality, distinction, and proportionality. Parties or belligerents in a war are all subject to the IHL, regardless of their motives or the existence and origin of the conflict. A defender state is not given any advantages over an aggressor state, and vice versa (Thies, 2004).

(a) Right to self-defence

Article 51 of the United Nations Charter provides that rights of self-defence are inherent rights of a state. A provision in Article 51 UN Charter:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

However, as an aggressor State or a non-State armed group that has used force in violation of foreign or national law, a state exercising its right to self-defence or rightfully seeking to restore law and order within its territory must be as vigilant as possible to ensure compliance with IHL (equality of belligerents). Furthermore, even if IHL is violated by their adversary (non-reciprocity of humanitarian obligations), belligerents must uphold it (Common Article 1, Geneva Convention, 1949).

Only under extremely strict conditions belligerent reprisals are allowed, and they can never be used against people or items who are entitled to humanitarian protection.

In the case *Islamic Republic of Iran v. United States of America* (2003) [42 ILM 1334], the principle of right to self-defense was created. The International Court of Justice (ICJ) declared that the burden of proof of the reality of proving the presence of such an attack lay with the State that justified its own use of force as self-defense. As a consequence, it is clear that the use of force is legal when it is used in response to an armed assault that has occurred.

(b) Military necessity and humanity

A balance between military necessity and morality is another central concept of IHL. Although it is important for a military commander and soldiers on the battlefield to achieve their war goals, the human aspect must be carefully observed. The term “military necessity” has been described as the concept that a belligerent has the right to use any measures necessary to bring a military operation to a successful conclusion that are not prohibited by the laws of war (The United Kingdom Military Manual, 2004). According to R1:

“Military necessity justifies attack against enemy personnel and objectives to weaken the enemy but such an attack must not cause harm to civilians and civilian objects that is excessive in relation to the concrete and direct military advantage anticipated”.

As a consequence, in any situation, devastation must be compelled by the necessity of war, not necessarily the result of a spirit of plunder or revenge. IHL agrees that killing, harming, and damaging civilians is a military necessity, but it also makes clear that this does not grant belligerents *carte blanche* to wage unlimited war.

A state engaged in an armed conflict may invoke a certain degree and kind of force in order to achieve the aim of its military operation, namely the complete or partial submission of the enemy at the earliest possible moment with the minimum expenditure of life and resources as long as it is not prohibited by the law of armed conflict. The principle of military necessity contains four (4) basic elements (R2, 2020):

- (1) The force used can be and is being controlled.
- (2) Since military necessity permits the use of force only if it is ‘not otherwise prohibited by the law of armed conflict’, necessity cannot excuse a departure from that law.
- (3) The use of force in ways that are not otherwise prohibited is legitimate if it is necessary to achieve, as quickly as possible, the complete or partial submission of the enemy.
- (4) Conversely, the use of force that is not necessary is unlawful, since it involves wanton killing or destruction.

“Prohibited attacks” are those conducted intentionally against civilians or civilian items in the course of an armed conflict that are not justified by military necessity, according to the Trial Chamber in the Kordic and Cerkez (2001) case. They may have resulted in civilian deaths and/or severe bodily injury, as well as significant damage to civilian property.” The theory of military necessity does not grant the armed forces full sovereignty in their operations. As a consequence, it is obvious that military commanders cannot do anything they want during a war. It forbids the use of needless destruction or destructive actions to achieve a military advantage, and stresses the importance of military operations restraint in balancing the conflicting demands of military efficiency and humanity (R1, 2020). Any action taken must be justified by military necessity, that is, the military necessity to carry out the action in question. Last but not least, the concept of military necessity is not absolute. While a state at war tries its utmost to win, this does not excuse the use of inhumane warfare tactics.

(c) Distinction

The belligerents of war are expected to differentiate at all times between civilians and combatants, as well as between civilian objects and military objectives, and to direct their operations only against military personnel and objectives, according to the principle of distinction (Additional Protocol I, Art. 57(1)). A belligerent to war's armed forces must be composed of coordinated armed forces, organisations, and units that are under the command of a command that is responsible for the actions of its subordinates (Additional Protocol I, Art. 43(1)). This large and practical definition of armed forces has developed since the adoption of the Hague Regulations, which acknowledged that the "laws, privileges, and duties of war" applied not only to regular armed forces but also to irregular militia and volunteer corps, provided they met four conditions that assimilated them to regular armed forces: (1) they were commanded by a person responsible for them; (2) they were commanded by a person responsible for them; and (3) they were commanded by a person resp (Hague Regulations, Art. 1).

Any overt hostilities as well as collateral harm to civilians and protected objects such as hospitals, schools, and places of worship must be avoided. Military objects and representatives of the armed forces are the only valid targets of combat, with the exception of medical and religious staff operating purely in a humanitarian capacity.

The warring parties are prohibited from engaging direct attack against civilian and conduct any act of terror which could spread fear or anxiety among the civilian population (R1, 2020).

IHL bans indiscriminate attacks in addition to overt attacks on civilians. There are attacks that are intended to reach both military and civilian targets without prejudice, either because they are not or can't be aimed at a particular military target or because their impact can't be restricted as needed by IHL (Additional Protocol I Art. 51(4)). The so-called "carpet bombing" campaigns

of World War II, in which entire areas comprising both military targets and civilians and civilian items were viewed as a single military target and targeted without distinction, are especially destructive examples of indiscriminate attacks.

Indirect civilian or civilian object damage is anticipated as a consequence of indiscriminate assault, which would be disproportionate in contrast to the concrete and direct military benefit expected. Another well-known example of indiscriminate attack occurred during the Halabja Chemical Attack on March 16, 1988, at the end of the Iraq-Iran War (1980-1988). The Iraqi Army's indiscriminate use of mustard gas and nerve agents killed nearly 5000 people and wounded 7000 more, the majority of whom were civilians. Furthermore, it is stipulated under the Statute of the International Criminal Court that "intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities" constitutes a war crime in international armed conflicts (Article 8(2)(b)(i) ICC Statute).

(d) Proportionality

The proportionality theory applies to the scale and effects of the attack launched. In a nutshell, a military commander or operations manager must weigh the amount of force to be used, the attack's implications, including the need to protect people and property, and the military advantage to be gained from the attack. Infliction on civilians or civilian objects must be prevented at all costs, according to this theory. In the event that people will be wounded as a result of the attack, the belligerents will call off the strike. Accordingly, those who plan or decide on an attack must refrain from launching or must suspend, any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated (Additional Protocol I, Arts 51(5) (b) and 57(2)(a)(iii) and (b)).

There is no sacred or statistical method for deciding whether the destruction of a specific military goal excuses the fairly foreseen death or other harm to civilians and/or civilian artefacts of a specific sort (R2, 2020). The rule necessitates a contrast of unlike phenomena, namely military advantage on the one hand and civilian injury and harm on the other. The term “concrete and direct military advantage” represents the concept of military necessity. The rule recognizes that a significant military advantage expected from a specific attack could outweigh significant civilian damage or injury. It is the judgment of the reasonable military commander that is required here. A commander is expected to judiciously weigh the military advantage anticipated from the success of the military operation against the expected harmful effects to the protected persons and objects. The connotation of military advantage means by virtue of Article 8(2)(b)(iv) of the 1998 ICC Statute:

“The advantage anticipated from the attack as a whole and not only from isolated or particular parts of the attack.”

Commanders would be required to make decisions based on their interpretation of facts from all sources that are fairly accessible to them at the time. Overall, the law allows commanders and soldiers to make a good-faith judgement based on all reasonably available information to evaluate if a proposed attack crosses the threshold of expected unreasonable incidental damage. Otherwise, the attack will be aborted or redirected to ensure that no protected individuals or objects are harmed.

Determining expected incidental civilian loss for the purpose of weighing proportionality, including the quantity of civilians subjected to immediate death or injury, quantity of damage to civilian objects and infrastructure, quality of civilian objects and infrastructure of essential value, e.g. crops, a cultural object, bridge to hospital, hospital, and quantity of civilians subjected to death or injury in the medium to long term, e.g. through loss of infrastructure, and release of dangerous forces. If an attack directed at a military objective may be expected also to cause

injury to civilians or damage to civilian objects, the prohibition of indiscriminate attacks must be considered (Dinstein, 2012). In this respect, military commanders, as well as operators on warzone, are expected to exercise their operations in adherence to the rule of proportionality and military necessity, as those rules are closely related and interchangeable.

When it comes to launching an attack onto a certain target, it is vital to observe and comply with the targeting law. The differentiation principle must be followed, indiscriminate attacks are forbidden, and the proportionality rule must be enforced in targeting law (Gardam, 1993). Targeting law contains all of those essential provisions, but it also includes a discrete set of measures that perpetrators must take in order to ensure that attacks comply with the principle of differentiation and the proportionality rule, as well as a discrete set of precautions against the effects of attacks.

3. War Ethics under the Islamic Perspective

Most of the fundamental categories of security provided by the Geneva Conventions could be found, in a basic form if not codified, in Islamic teachings more than a millennium before they were codified. Restraint is stressed in Islamic norms, as is the importance of not causing more damage than is required to achieve the task at hand. Even war has been stripped of all its violence and horrors by Islam, which has transformed it into a “reformatory method” for coping with evil. Apart from that, Islamic law contains a rich but complex set of rules on the protection of civilians. In Allah says:

“And fight in the way of Allah against those who fight against you and transgress not the limits. Verily Allah loves not the transgressors” (Al-Nisa’: 76)

A Muslim bears the duty of defending himself and all those who seek his protection. He cannot afford to abandon the defenceless, including the elderly, women, and children, to poverty, misery, and moral peril. Any act and armed activity, however, is subject to the following laws,

principles, regulations, and prohibitions provided by the Prophet Muhammad SAW.

(a) Self-defence vs offensive approach

According to the Quran, fighting in self-defence is not only legitimate but also mandatory for Muslims. War is restricted to resist aggression and persecution and should the enemy's hostile behaviour cease, the reason for engaging the enemy must also lapse. Allah said in the Quran:

“Permission (to fight) has been given to those who are being fought, because they were wronged. And indeed, Allah is competent to give them victory”. (Al-Hajj: 39)

This verse is written in the passive tense, ‘against whom fighting is launched’, suggests that permission is granted when Muslims are ‘wronged or assaulted’ (Shah, 2013). According to this perspective, Islam only permits defensive conflict for valid reasons such as protecting freedom of religion, honour, lives, and property. Mushtaq (2010) considers the work of three eminent Muslim scholars of the twentieth century to explore the scope of self-defense in Islamic law in greater depth; namely, Sayyid Abu Ala Mawdudi, Muhammad Hamidullah, and Wahbah al-Zuhayli. It concludes that the scope of self-defense in Islamic law is broader than that of self-defense in international law, since in Islamic law, this term covers not only the defence of the state's territory, but also the defence of the global Muslim community and the Islamic value system.

All of the Prophet's (PBUH) wars were defensive wars in nature. For example, the first Muslim-Quraisy conflict occurred when ‘Abdullah ibn Jahsh's raiding party came up against the Quraisy caravans led by Abu Sufyan as they arrived from Sham. This was a retort to the polytheists' ten-year campaign of abuse against the Prophet (PBUH) and his companions. They had destroyed some of them, exiled others to Abyssinia and Madinah, imprisoned others, and ruined the reputation of others. In Makkah, they seized their property and confiscated

their homes. They made matters worse by approaching the other Arabian tribes that surrounded Madinah and bribing them not to allow the Prophet's caravans to pass through their territory. The Muslims were threatened with famine as a result of this. The protective economic blockade is one legitimate tactic used in wars, and what the Muslims wanted from this raiding party and what came after it (like the battle of Badar) was to enforce an economic blockade on the residence of Makkah who were at war with the Prophet, just as they had put one on him (Sayyid Muhammad, 2013).

Some of the Islamic modern scholars strongly object to the idea of an offensive approach (Shah, 2013). It has been argued, by virtue of Surah al-Hajj verse 39 as abovementioned before, there is no concept in Islam obligating Muslims to wage war for the propagation or implementation of Islam. Their claim is largely based on the verse's historical revelation basis. Some claim, however, that Muslims are meant to serve all of humanity, and that the best way to do so is to inspire people to follow goodness while preventing them from doing bad: good and evil are based on his interpretation of true Islamic teachings. Mawdudi (1996) believes in defensive jihad to defend Muslims and their influence from being eradicated. He does argue, however, that once Muslims have gained sufficient strength, they should work to rid the world of evil and impose the rule of God. This may be done peacefully or by the sword if necessary: hence his justification for offensive jihad. In his view, the Quran allows Muslims to use the sword for two purposes: (a) to preserve Muslims and their power from being eliminated, and (b) to use their accumulated power to remove mischief from the entire world, establishing the rule of Allah. In short, the main value of war ethics as provided in the Quran is to protect the Muslim community or States from any harm by way of self-defence. Nevertheless, the offensive approach is the last option to be opted when all other means of ending oppression have failed (Ghamidi, 2001).

(b) Those Eligible to Fight

The Holy Prophet SAW has given clear instructions about the behaviour of the Muslim army. He observed:

“Set out for Jihad in the name of Allah and for the sake of Allah. Do not lay hands on the old verging on death, on women, children, and babies. Do not steal anything from the booty and collect together all that falls to your lot in the battlefield and do good, for Allah loves the virtuous and the pious.”

According to Hussein (1979), those who are eligible to become Islamic warriors must meet seven criteria; (1) Muslim (2) adulthood¹ (3) be of sound mind (4) possess a free will to choose to participate in warfare (5) male (6) have their parents' permission (7) be debt-free. In addition to those excluded above, Youssef et. al. (2004) added criteria; (1) not slaves² and (2) not the ill and handicapped.

The advantage of defining eligibility requirements for anyone who can enter and fight in a war is that it guarantees that each group member's health and endurance are at their best. Since it will include physical interaction, decision-making, mental readiness, and a focused spirit, engaging in war involves a commitment from each community member. If those things are not delivered, the whole team would be burdened. As a result, having an eligible team member means that the requisite contribution will be met fully. As a result, the possibility of a group member being a liability to the group would be minimised, potentially placing the group at a disadvantage. By understanding this concept, it will justify the need of having those criteria in selecting the best warrior for representing the Muslim group.

¹ Most scholars agree that legal capacity is reached at age 15

² Those who did not have the means, equipment, or a mount for an expedition (because they were not economically independent)

It is evident from studying the series of wars that have arisen in Islamic history that the ethic of choosing the best people for battle has been applied. This explicitly refers to the Prophet Muhammad PBUH's preference for men over women in terms of participation in most wars. It is due to a number of causes, one of which is that men have a physical advantage over women, in addition to other factors such as health and specialised skills that men generally possess. However, this does not rule out the possibility of women fighting in a war; in Islamic history, women have participated in battles as well (Ahmed, 1992). Their contribution, however, focuses on a specific task that is suitable with their context such as to offer a remedy to the injured army and serve their husband during the war period. As recorded in history, Aishah RA, Fatimah RA are among the women that had taken part in a war of Uhud (Al-Mubarakfuri, 1995). Again, the selection of either men or women to take in any war is bounded to the eligibility of the individual for that war.

Aside from that, defining unique eligibility requirements would help in the Muslim side's strategy growth. An effective Islamic warfare leader is always prepared with a plan, particularly before going to battle, to ensure victory (Shuhairi et al., 2019). It is confirmed by various instances in which the prophet strategized a particular strategy for each battle, such as assessing the enemy's power, preparing the necessary action to be used, and predicting risk. In that sense, eligibility requirements play a significant role in deciding who is ideally qualified to carry out a particular mission that is part of the warfare strategy. For example, the prophet has appointed al-Zubair bin al-Awwam, al-Miqdad bin Amr and Qais bin Abi Sa'sa'ah to lead the different wing of the Muslim army in the war of Badar (Al-Mubarakfuri, 1995). The selection of these individuals was because of the qualification of these individuals who were known as among the best war leader in the Muslim camp.

(b) Conduct of war

In the Islamic viewpoint, the belligerents of war must always differentiate between the civilian population and soldiers, as well as between civilian objects and military objects, based on the concept of distinction. As a consequence, all armed operations must be aimed solely at military personnel and targets. Historically, this practice can be found in the commandment of Caliph Abu Bakr to his armies before departing for the conquest of the Levant (Heba Ali, 2014):

“When you meet your enemies in the fight, behave yourself as befits good Muslims.... If Allah gives you victory, do not abuse your advantages and beware not to stain your swords with the blood of one who yields, neither you touch the children, the women, nor the infirm, also men, whom you may find among your enemies.”

So, it is clear that those who choose random targets purposely causing or innocent casualties, be they Muslims or non-Muslims, is not in line with Islamic principles. Additionally, enemy combatants must not be subjected to torture, burning alive, maiming and mutilation, nor should fighters deploy weapons that cause unnecessary injury and destruction. It is worth mentioning, the words of Caliph Abu Bakr (Aboul-Enein et al., n.d):

O, people! I charge you with ten rules; learn them well! Stop, O people, that I may give you ten rules for your guidance in the battlefield. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies. Neither kills a child, nor a woman, nor an aged man. Bring no harm to the trees, nor burn them with fire, especially those that are fruitful. Slay not any of the enemy’s flock, save for your food. You are likely to pass by people who have devoted their lives to monastic services; leave them alone.

As a consequence, Islam not only distinguishes between combatants and non-combatants, but also strictly forbids any sort of ungodly treatment of the enemy. In terms of civilians, harming populated areas and pillaging residential areas, as well as the destruction of trees, crops, animals, and farmlands, are prohibited (Salifu, 2017).

(d) Negotiations

Islamic commentators of the Quran agree that Muslims should always be willing and ready to negotiate peace with the other party without any hesitation. According to Mawdudi (1996), Islam does not permit Muslims to reject peace and continue bloodshed. Allah says in the Holy Quran,

“And if they incline toward peace, then you too incline toward it, and put your trust in Allah. Indeed, He is the All-hearing, the All-knowing.” (Al-Anfal: 61)

While it is permissible in Islam to wage war, the general rule mentioned in this verse is that bloodshed conflicts should be avoided at all costs in the beginning. Third-party interventions are also allowed under Islamic jurisprudence as a way of resolving disputes. The aim of such interventions is to provide mediation between the two parties in order to find a reasonable settlement of the dispute.

The application of this ethic can be referred to several occasions in Islamic history. For example, the prophet Muhammad PBUH has opened and accepted a negotiation from the enemy in the war of Khaibar even though the Muslim's strength is overpowered their enemy. As recorded in Islamic history, the Muslim army was having full power over the Jews in the Khaibar area. The Muslim group has encircled them and their movement were controlled to show the advantage on the Muslim group over them. However, in the middle of the war, the Prophet Muhammad PBUH has agreed to lose the Muslim control on the Jews with a specific condition that was agreed by both parties (Al-Mubarakfuri, 1995). This

situation clearly indicates that the concept of warfare in Islam is rooted in preserving the humanitarian spirit over bloodshed.

Many incidents in Islamic history have been documented in which negotiation has been the cause of the outbreak of war that can be stopped before it starts. It is, in fact, the preferred situation from an Islamic standpoint, and it is also suggested as the first choice for overcoming the adversaries (Okon, 2013). The famous Agreement of Hudaibiyah can be considered as one of the examples of the success of negotiation in avoiding any war from happening. As recorded in history, the Prophet Muhammad PBUH and his people were planned to perform their umrah in the 6th year of Hijrah. The Muslim group however received a cold welcome from the Musyrikin of Makkah which they were insisted to stop the prophet group from entering Makkah to perform their umrah. Responded to the threat, the prophet had announced his readiness to fight back against those who stop their way. However, by the guidance of Allah SWT, series of negotiations have been undertaken and the prophet has accepted the negotiation with the Musyrikin group by the fact the Muslim group had to postpone their Umrah. However, by the spirit of humanitarians, the prophet has agreed with the decision made in the negotiation and has successfully avoided a war from happening (Al-Mubarakfuri, 1995). Thus, it indicates the application of the prophet in applying negotiation ethics in warfare.

CONCLUSION

According to the International Humanitarian Law and Islam, war is permitted to protect and defend against an enemy. Furthermore, IHL forbids the use of needless destruction or destructive actions to achieve a military advantage, and stresses the value of restraint in military operations, balancing the conflicting demands of military efficiency and morality. Any action taken must be justified by military necessity, that is, the military necessity to carry out the action in question.

The belligerents of war must always differentiate between civilians and combatants, as well as between civilian and military objectives, and must therefore direct their operations solely against military personnel and objectives (Additional Protocol I, Art. 57(1)). From an Islamic viewpoint, the belligerents of war must always differentiate between civilians and soldiers, as well as between civilian objects and military objects, according to Caliph Abu Bakr's terms. As a consequence, all armed operations must be aimed solely at military personnel and targets. Therefore, any armed operations shall only be made directly against military personnel and objectives. Enemy combatants must not be subjected to torture, burning alive, maiming and mutilation, nor should fighters deploy weapons that cause unnecessary injury and destruction.

Those who prepare or settle on an attack must refrain from initiating or suspending any attack that could be likely to result in accidental civilian casualties, injuries, or harm to civilian objects, or a combination of these, which would be disproportionate in relation to the concrete and direct military advantage anticipated (Additional Protocol I, Arts 51(5)(b) and 57(2)(a)(iii) and (b)). Islam abhors fighting and seeks to stop it as far as possible. However, if this occurs, Islam will certainly take measures to avoid the war and minimise its consequences in every way possible (Al-Qaradawi, 2009).

Islam does not make it an obligation to go to war for the pleasure of it or for without real reason. Islam is a religion that does not condone war for the sake of conquest and mastery. Instead, a war in Islam began as self-defence, Allah had said in the Quran:

“The prohibited month for the prohibited month, and so for all things prohibited, there is the law of equality. If then anyone transgresses the prohibition against you, Transgress ye likewise against him. But fear Allah, and know that Allah is with those who restrain themselves”. (Al-Baqarah: 194)

Islam makes it a duty for all believers and Muslim nations to preserve peace, independence, and unity as stated in the Quran:

“The believers are but a single brotherhood: So make peace and reconciliation between your two (contending) brothers, and fear Allah, that ye may receive mercy”. (Al-Hujurat: 10)

Thus, the study shows that there are similarities between war ethics in IHL and Islam. Both carry a war ethic that is not intended for destruction and victory but rather to defend oneself and the country from the enemy’s threat. However, this ethic will not be useful if human beings or the military do not practice and follow what has been outlined in the IHL and the guidance of war in Islam. If these war ethics are adequately practiced, then the world will not suffer destruction and prolonged war. War destroys the country from all physical and innocent civil society angles as what is happening today in Palestine and Iraq. Therefore, this study is very significant to bring a message of peace and harmony to the world, especially to appreciate the ethics of war in IHL and Islam to live in peace and tranquility in the future.

ACKNOWLEDGEMENT

Sincere appreciation is extended to the Legal Directorate of Royal Malaysian Air Force (RMAF) and Academy of Contemporary Islamic Studies, Universiti Teknologi MARA (UiTM) for the cooperation and guidance. The authors also gratefully thank the Journal of Contemporary Islamic Studies (JCIS) editor and reviewers for their suggestions to improve the paperwork.

REFERENCES

- A. J. Coates. (2016). *The Ethics of War: Second edition*. Manchester: University Press.
- Aboul-Enein, H. Yousuf and Zuhur, Sherifa (n.d). *Islamic Rulings on Warfare*, Strategic Studies Institute: US Army War College.

- Abu Lababah Hussein. (1979) *al-Islam wa al-harb (Islam and Warfare)*. Riyadh: Dar al-Liwa Publishers.
- Ahmed, Leila. (1992). *Women and Gender in Islam: Historical Root of a Modern Debate*. Yale: University Press.
- Al-Mubarakfuri, Safiyyur Rahman. (1995). *Al-Rahiq Al-Makhtum: Bahth fi Al-Sirah Al-Nabawiyah 'ala Sahibiha Afdal Al-Aalah wa Al-Aalam*. Beirut: Sharkah Dar al-Arqam Abi Al-Arqam.
- BBC. (2014). *Ethics of war – introduction*. <http://www.bbc.co.uk/ethics/war/overview/introduction.shtml> [Accessed on 21st October 2020].
- BBC. (2014). *Rules and conventions*. <http://www.bbc.co.uk/ethics/war/overview/rules.shtml> [Accessed on 21st October 2020].
- Bonura, M. (2011). *Saturation (carpet) bombing in The Encyclopedia of War*. <https://onlinelibrary.wiley.com/doi/abs/10.1002/9781444338232.wbeow549>. [Accessed on 16th August 2020].
- Brown, D. (2006). A Proposal for an International Convention to Regulate the Use of Information Systems in Armed Conflict. *Harv. Int'l LJ*, 47, 179.
- Dale Stephens. (2014). Behaviour in war: The place of law, moral inquiry and selfidentity. *International Review of the Red Cross* 96(895): 751–773.
- Dinstein, Y. (2012). The principle of distinction and cyber war in International Armed Conflicts. *Journal of Conflict and Security Law*, 17(2): 261-277.
- Gardam, J. G. (1993). Proportionality and force in international law. *The American Journal of International Law*, 87(3): 391-413.
- Heather Widdows. (n.d.) *The ethics of warfare: Is it ever morally right to kill on a massive scale*. birmingham.ac.uk/research/perspective/ethics-of-warfare-heather-widdows.aspx. [Accessed on 6th October 2020].

Heba Ali. (2014). *Islamic law and the rules of war*. <https://www.thenewhumanitarian.org/analysis/2014/04/24/islamic-law-and-rules-war>. [Accessed on 6th October 2020].

Helen Frowe. (2015) *The ethics of war and peace: an introduction*. Routledge. <http://www.bbc.co.uk/ethics/war/overview/rules.shtml>. [Accessed on 6th October 2020].

Huma Haider. (2013). *International legal frameworks for humanitarian action*. <https://gsdrc.org/topic-guides/international-legal-frameworks-for-humanitarian-action/concepts/overview-of-international-humanitarian-law/>. [Accessed on 16th September 2020].

International Committee of the Red Cross (ICRC). (2014). *International Humanitarian Law: Answers to Your Questions*. Geneva: Focus Publication.

Javed Ahmad Ghamidi, Mizan. (2001). *Faith and Beliefs*. Translated by Shezad Saleem. Lahore: Dar-ul-Ishraq.

Kelsay, John. (2010). Just War, Jihad, and the Study of Comparative Ethics. *Ethics & International Affairs*, 24(3): 227-238.

Muhammad Mushtaq Ahmad. (2010). The Scope of Self-defence: A Comparative Study of Islamic and Modern International Law, *Islamic Studies*, 49(2): 155-194.

Niaz A. Shah. (2013). The Use of Force under Islamic Law. *European Journal of International Law*, 24(1): 343–365.

Okon, Etim E. (2013). Jihad: Warfare and Territorial Expansion in Islam. *Asian Social Science* 9(5): 171-175.

S.A. A'la Mawdudi. (1996) *Al-Jihad Fil-Islam (Jihad in Islam)*. Beirut: Muassasat Al Risalaat.

Sayyid Muhammad Sadiq Shirazi. (2013). *The Prophet's wars were fought in self defence*. https://www.rafed.net/en/index.php?option=com_co

ntent&view=article&id=11565:the-prophets-wars-were-fought-in-self-defence-v15-11565&catid=78&Itemid=1032. [Accessed on 31st January 2021].

Shamsudeen Salifu. (2017). *Warfare and War Ethics: An Islamic Perspective*. <https://thestrategybridge.org/the-bridge/2017/6/23/warfare-and-war-ethics-an-islamic-perspective>. [Accessed on 16th August 2020]

Shuhairi, M. H., Ali, M. S., Zain, A. D. M., Al-Shafi'I, M. M. O., Zin, S. A. M., & Omar. (2019). The Ethical Character Of Sultan Muhammad Al-Fatih In Leadership. *Journal of Legal, Ethical and Regulatory Issues* 22 (Special Issue): 1-6.

Thies, C. G. (2003). Sense and Sensibility in the Study of State Socialisation: A Reply to Kai Alderson. *Review of International Studies*, 29(4): 543-550.

Youssef H. Aboul-Enein Sherifa Zuhur. (2004). *Islamic Rulings on Warfare*. <https://fas.org/man/eprint/islamic.pdf> [Accessed on 16th August 2020]

Yusuf al-Qaradawi. (2009) *Fiqh al-Jihad*. Cairo: Maktabah Wahbah.

Holy Quran

Geneva Convention 1949

Hague Conventions (Regulations Respecting the Laws and Customs of War on Land) 1907

St. Petersburg Declaration 1868

