



Al-wasiya

الوصية

Alwasiya Journal For International
Humanitarian Law and Islamic Sharia Studies
Islamic Forum of the International
Humanitarian Law (IFHL)

Volume (sixth) The fourth Year Jan 2011.A.D.

Research:

- *Protection of children in armed conflicts between International humanitarian law and Islamic Shariah*
- *The absolute nature of the obligations relating to protection of civilians in asymmetric warfare*
- *Means and methods of warfare in Islamic shariah and international humanitarian law*
- *Protection of civilians in the islamic shariah and international law*
- *Environmental protection in armed conflicts in Islamic Shariah*
- *The climate change impact on humanitarian crises "Darfur model"*
- *French nuclear testing in Algerian Sahara In view of international humanitarian law*
- *Vacuum in the area of international humanitarian law and its impact on development*
- *National Committee for International Humanitarian Law in Algeria between the text and the application*
- *PROTECTION OF CIVILIAN GROUPS UNDER INTERNATIONAL HUMANITARIAN LAW AND ISLAMIC SHARIA*

Al-Wasiya (The Will)

Alwasiya (The Will) of Abu Baker (Allah hath pleasure in him) was directed to the army of Osama that was marching to fight the Roman in 634 A.D. Alwasiya (The Will) Included:

“Oh people! Let me willed you with ten wills so remember: Do not betray, do not exaggerate, do not be in breach of faith, do not distort a dead body, do not kill a child, an old man or a woman, do not cut down or burn a palm tree or a fruitful tree and do not slaughter a sheep, a cow or a camel only if it is to be eaten. Moreover, you will pass by people adhere to their hermitages so leave them to what they are busy with, and you will come to people who will set before you the most delectable dishes of food so if eat and eat then say " In the name of Allah the most Merciful and the most Gracious ".

(Ibn Jareer Altabari, The History of Messengers and Kings 3/ 277).



A Periodical for the Studies of International Humanitarian Law and the Islamic Shari'a

***- Issued by the Islamic Forum of the International Humanitarian Law
Subsidiary organ of the Islamic Committee of International Crescent***

General Director

Mr. Ali Mahmoud Buhedma

Editor in chief

Dr. Fawzi Oussedik

Executive Editor

Dr. Mohamed H. Elsbali

The journal of Al-Wasiya "The Will" welcomingly receives articles, studies and documented researches that have close relation to its field of specialization and all that to be published will be subjected to scientific arbitration.

I.S.B.N:922\2007

National Library - Benghazi, Libya

Addresses

Islamic forum of the International Humanitarian Law (IFIHL), Subsidiary Organ of the Islamic Committee of International Crescent (ICIC), Located at the Headquarter of Qatar Red Crescent Society,

Tel. +974 44 35111, Ext.249, +9744356977
Fax, +974 4439950,
P.o. Box 5449, Doha – Qatar,
Editor in Chief, e-mail: editor@icic-oic.org

the Islamic Committee of International Crescent (ICIC),
OIC Specialized Institutions,

Tel. +218 61 9095824
+218 61 9080949
Fax. +218 61 9095823.
P.o. Box 17434 Benghazi-Libya.
Executive editor, e-mail: director@icic-oic.org

Proof reading

Abdulaali Alokali

Designed by

Atef Elatrash

- *The published material does not necessarily express the journal point of view and whether they are published or not they will not be returned back to their writers.*
- *The journal of Alwasia " The Will " welcomes the contributions of researchers, students and academics in the fields of the Islamic, Legal and Humanitarian Studies , provided that they should be prepared according to the following publication needs:
The material should be devoted to the journal of Alwasia " The Will " and it was not published before.
The material should be in a printed form and it is preferable to be sent on a cd rom in addition to the written text.
The material should be accompanied by a brief curriculum vitae about the writer, his address, his mobile number and his E-mail.*



Editorial

The Seminar on "International Humanitarian Law ... Islamic vision" has deep connotations, so that many persons outside Muslim world does not know the great contribution of our Islamic nation to establish principles and rules of international humanitarian law, from the words of Allah Almighty, in His Book, "but ye one another unto righteousness and pious duty, Help not one another unto sin and transgression", our goal was from this seminar and following similar activities to intensify efforts for the dissemination of these contributions and visibility for those who are unaware or ignore it, to face the hate campaigns against Islam and Muslims seeking to market a certain stereotype portrayed as the advocates of violence and cruelty.

This seminar contribute to highlight the true image of Islam which is a good initiative comes in the framework of memorandum of understanding signed between the Islamic Committee of International Crescent (ICIC), the Iranian Red Crescent Society and the Islamic Forum of international humanitarian law (IFIHL) to gathering such a large number of experts from our Islamic nation to enrich the subject by value research and working papers dealing with aspects topics of international humanitarian law and Islamic shariah, which would be useful to be translated and published for the dissemination, and I take this opportunity to greet and invite them to continue their efforts in this important area.

The ICIC since its established as OIC specialized institution, gives great attention to the importance issue of dissemination and promotion of the international humanitarian law from an Islamic perspective, therefore we have established the IFIHL in collaboration with the Qatar Red Crescent Society,



based in Doha, which carry's out implementation activities , awareness programs training, publishing and documentation on various aspects of this subject. we started issuance Al-wasiya journal specializing in this area as according to the recommendations of the Holy Prophet Mohammed (peace be upon him) and his successor, Abu Bakr to the leaders and Muslim soldiers before heading to the compacts to urge them to abide by Islamic humanitarian rules which call to respect human dignity , environment preservation and avoid aggression.

Our action is a complement to the sincere efforts of the other organizations aimed efforts, in order to respect international conventions and rules of international humanitarian law and in particular to ensure respect for the four Geneva Conventions and protocols, in this regard, we shall cooperate with National Red Crescent and Red Cross Societies , the scientific , cultural institutions and other organizations in the establishment of workshops, seminars, to highlight the humanitarian principles, rules and customs of our Islamic nation throughout the ages.





Editor Note

We are pleased to present the sixth issue of the Al-wasiya Journal, which contains the first part of the researches and working papers delivered at the International Seminar (International Humanitarian Law ... Islamic vision), organized by the Islamic Forum of International Humanitarian Law (IFIHL) in cooperation with the Iranian Red Crescent Society, in Tehran - Islamic Republic of Iran on May 1 - 3, 2010, in the presence of some experts and specialists in the International Humanitarian Law and Islamic Shariah Issue, media and the press in Iran and some OIC Member States, in frame of the IFIHL attention of the Scientific effort of these experts and specialists, to present their research in this regard as well as other cultures.

The research and working papers included topics of International Humanitarian Law in view of an Islamic-rich applications to ensure enrich the content of this law and call for holding such seminars, both on strengthening respect rules and the basics protection of victims of international non-international armed conflicts, contained in the provisions of the conventions component of this law, or to enrich these provisions when developing its rules.

The seminar addressed the following themes:

Axis I - International Humanitarian Law and Islamic Shariah.

Axis II - The challenges reality in developments the International Humanitarian Law and the Islamic world.

The sixth issue of this journal published general report, which contains a list of research and working papers, presented at the seminar and Tehran Declaration by the humanitarian principles of Islam, which emphasized the role of Islamic Shariah in the codification of human values in times of peace and armed conflicts, the important recommendations emphasize to respect the International Humanitarian Law, calling for teaching the legal rules of Islam, encourage studies, research and attention to the efforts of Islamic



Dr. Mohamed Hamad Elasbali
Reporter of IFIHL
Executive Editor
director@icic-oic.org



jurisprudence relevant to this law, and recommended , the IFIHL to conduct communication and cooperation with the centers of jurisprudence in the Muslim world, in order to convene an International Islamic Conference to discuss issues related to bridging the gap in international humanitarian law. On the sidelines of the seminar, was held the first meeting of the Islamic universities program to promote and strengthen International Humanitarian Law and Islamic relevant principles in the presence of a number of presidents , deans and professors of Islamic universities members in this program, the meeting reviewed follow-up activities reports to disseminate and promoting international humanitarian law in some faculties and Islamic universities, then issuance a number of important recommendations, regarding the need to include teaching of international humanitarian law and Islamic relevant principles in their programs of study in bachelor's , master's and doctoral degrees, and invite universities , faculties of law and Islamic studies to join the Islamic Universities program, to emphasis on the importance of sharing experiences and participating in scientific activities relating to international humanitarian law , Islamic relevant principles programs and visiting professors among them, the IFIHL is ready to cooperate with any university or college in this regard and the Iranian Red Crescent Society is ready to cooperate in implementing the recommendations of this meeting.





Contents

- **Editorial,**

- **Editor Note,**

Research:

Presentation of the seminar

*Protection of children in armed conflicts between
International humanitarian law and Islamic Shariah*

*The absolute nature of the obligations relating
to protection of civilians in asymmetric warfare*

Means and methods of warfare

in Islamic shariah and international humanitarian law

Protection of civilians

in the islamic shariah and international law

*Environmental protection in armed conflicts
in Islamic Shariah*

*The climate change impact on humanitarian crises
"Darfur model"*

French nuclear testing in Algerian Sahara

In view of international humanitarian law

*Vacuum in the area of international
humanitarian law and its impact on development*

*National Committee for International Humanitarian Law
in Algeria between the text and the application*

**PROTECTION OF CIVILIAN GROUPS
UNDER INTERNATIONAL HUMANITARIAN
LAW AND ISLAMIC SHARIA**



Presentation of the seminar



Dr. Fawzi Oussedik

*Chairman of the Islamic Forum
of international humanitarian law*

Editor in chief

Editor@icic-oic.org

The issue of international humanitarian law and human dignity in armed conflict are the most important issues of concern to individuals, for the negative effects that suffering from frequent attacks and injustice wars.

The international humanitarian law over a arduous long stage, started in the first Geneva Convention of 1864, in more than one hundred thirty years have come into being many conventions, leading to founding the International Criminal Court. But, what happened in (Hiroshima and Nagasaki), Japan, (Sabra and Shatila) Lebanon, Bosnia and Herzegovina, (Gaza) Palestinian, and many others, makes us stand confused, wondering where are the human rights and international humanitarian law?!

In its shadow .

- Makes a man forget his humanity, his principles and morals .
- Makes a man who practices a minimum waste the individuals rights and

communities.

- Makes the human being has no value, Is this the incomputable brutality of all humanity, not relevant to the legitimacy texts, and have no controls?!

Legally observed in this area, that the term "international humanitarian law", is a modern term, but legally known its theme and scope of application since the Islam sun sight . In Islamic studies - for example - scholars called by name (Sir and Maghazi) the reason to call to walk and clarified, "Fern" in his book Mabsoot (1) when he said that the traffic collection biography, and its called this book because it shows the life of Muslims in treatment with the infidels from the people of the war and with the people of the covenant of whom are custodians and people of the Book, that he said and called Palmghaza because the rules derived from the invasions of the Prophet (peace be upon him), and had A to this



address (Sir), Imam Muhammad bin Hassan Shaibani explained Fern took a book in five parts, the theme is what is now known as (international humanitarian law in Islam). Ladies ... Islamic law, rich, rich, diverse issues, the glorification of "human dignity" through texts and practice, through various successive Alhakabat, and from the door of the male, there are perspectives to be reflected as assets are legitimate, and are:

First - that the basic principle in relation to the Islamic nation other nations peaceful interpretation of the meaning (O you who believe, enter into peace all) (2), and so a war on Islam does not fall only respond to an attack launched by the enemy, or to defend the inalienable right under the reign of veto discount, or for securing the freedom of religion. Second - The most important bases of public international law in Islam and international humanitarian law, based on the following basis:

- Human unity (O people, I have created you from male and female and made you into nations and tribes so, the sight of God) (3) - Cooperation: cooperation for the good of the verse: (virtue, righteousness and piety, and help one another in sin and aggression) (1) - Tolerance: called for Sharia to be tolerant of everyone, without exception, the Almighty said:

(and overlook Vaafoa) (2) - Freedom of religion, the law on freedom of religion, and prevented coercion in religion, the Almighty said: (There is no compulsion in religion) (3) - Justice, called for the adoption of Islamic sharia law justice, and ordered his followers (O you who believe! Be witnesses to God, and if against yourselves) (4) - Reciprocity, with the approved set to be moral, says: (O you who believe, fulfill your contracts) (5) and other verses and hadiths can not call the scope and nature of the speech. The basis for the Muslims to obey laws is the fear of punishment Aldnyaoa and escha-tological, not to respect its rules, Vallowazaa religious and self-censorship is a strong and better than the rest of the other controls. Third - Baknaotai reached through personal experience modest in international humanitarian law in Islam and are the two things: - That the war must be limited to the necessary, - And that is where you should be humane, or respectful of human edges. And other wars are illegal; though Noamesha has determined many of the legal and ethical controls. To question these assumptions progress pro before I wonder, how is the adaptation of the wishes of Altaquemmen, litigants, politicians, warring with its provisions, and not vice versa?! So

what we will try to treat at the center of a second, equally important, by highlighting the realities and challenges .. In the course of the development and promotion of international humanitarian law from Tangier to Jakarta, from the Atlantic to the Pacific in the Muslim world analysis and discussion, the quiet, meaningful to the effects of international armed conflicts and non-international in undermining international peace and security, and the impact of climate change in humanitarian crises, Marja on Darfur or some nuclear testing in Algerian Sahara.

And French colonies overseas in light of international humanitarian law. Also, an asset that does not exist in a healthy environment for the deployment, or upgrading and strengthening of international humanitarian law, actively serve as a person who pours water in the desert or sand, not the feasibility or maker of it ... Therefore, the problem of the role of institutions, and improve its performance, a very important find and diagnose disease and drug alternatives. It is also of this work may be in the rule of the hidden or invisible, if not followed by serious and responsible work of an impartial and professional manner through the media's role in the detection of

serious violations of international humanitarian law. So we tried to involve professionals in the profession of trouble this seminar, through the programming of two bands visible on the cover of one of the fiercest wars in violation of international humanitarian law, whether in Lebanon or Gaza, where used excessive force, and prohibited weapons testing (phosphorus ...), and unbalance criterion ratio and proportionality ... And by the way our salute the victims of a lack of respect for international humanitarian law, prisoner number 563, the journalist Sami al-Haj. Finally, I apologize for the lengthy, and I ask you patience and patience he during the two days: the language of the law not as a Mutanabi in terms of beauty and tenderness, but usually described as the language of wood, and Vasberoa Sabero ... Since the beginning of the Symposium salute translators, and organizers and attendees, and God the Source of strength.





PROTECTION OF CIVILIAN GROUPS UNDER INTERNATIONAL HUMANITARIAN LAW AND ISLAMIC SHARIA

حماية الجماعات المدنية بموجب القانون الدولي الإنساني
والشريعة الإسلامية



*By Dr. Mayanja Sowed
Acting Dean, Faculty of Law
Islamic University in Uganda
e-mail: abuhuda@yahoo.com*

إعداد الدكتور صويد مايانجا
عميد كلية الحقوق
الجامعة الإسلامية في أوغندا

بموجب القانون الدولي الإنساني والشريعة الإسلامية في زمن الحرب، وتسلب الضوء على مساهمة الشريعة الإسلامية في هذا الشأن غير المعروفة للغالبية العظمى من الناس، مسلمين وغير مسلمين.

وهي مقسمة إلى العناوين الفرعية التالية:

- 1- تعريف القانون الدولي الإنساني، هدفه، المنشأ، المصادر
- 2- تعريف الشريعة، هدفها، المنشأ، المصادر.
- 3- تعريف الجماعات المدنية والمدنيين.
- 4- كيف يمكن حماية الجماعات المدنية بموجب القانون الدولي الإنساني؟
- 5- كيف يمكن حماية الجماعات المدنية بموجب الشريعة؟

مقدمة:

إن الشريعة الإسلامية هي النظام القانوني الأكثر تعرضاً لسوء الفهم الخاطئ في العالم اليوم، لأن التشويه والتضليل والتباري وإقلاع الأتباع عن الدين أحدثت الحواجز في فهم ذلك الانطباع من العلماء غير المسلمين كثيرة ومعلومات مغلوطة عن بعض المسلمين في العالم، عززت من قبل المبشرين المسيحيين السابقين الأوروبيين خلال الحقبة الاستعمارية، كما يقول Ajjola (2002) هو أن الشريعة الإسلامية ليس لديها ما تسهم به في المجالات العلمية الحديثة، لأنها تعتبر مجرد قانون ديني بدون فائدة علمية. هذه الورقة تحاول أن تبين كيف يتم حماية الجماعات المدنية والمدنيين على حد سواء



INTRODUCTION

Sharia is the most misunderstood and misconceived legal system in the World today, because distortion, misinformation and religious scramble for followers have created barriers in understanding it.

The impression of many non-Muslim scholars and some misinformed Muslims in the world, fostered by former European Christian Missionaries during colonial era, as Ajjola (2002) puts it, is that Sharia has nothing to contribute to the modern scientific world, because it is regarded as a mere religious law, speculative rather than of practical interest.

It is regarded as law applicable to Middle Ages and outdated. It is a religious law, according to many, which should have no place in a secular world of today.

This paper tries to show how civilian and civilian groups are protected under both International Humanitarian Law and Islamic Sharia during the time of war and brings to light the contribution of Sharia in that regard which is unknown to majority of people; Muslims and non Muslims.

It is divided into the following subheadings:

- 1- Definition of IHL, its objective, origin and sources
- 2- Definition of SHARIA, its objective, origin and sources.
- 3- Definition of civilian and civilian groups.
- 4- How does IHL protect civilian groups?
- 5- How does SHARIA protect civilian groups?

DEFINITION OF INTERNATIONAL HUMANITARIAN LAW (IHL)

IHL is a branch of Public International law, applicable in times of armed conflict, that protects persons and property, that limits means and methods of warfare.

International humanitarian law is also called the law of armed conflict and was previously known as the law of war.

PUBLIC INTERNATIONAL LAW THE LAW OF PEACE THE LAW OF WAR (IHL)

OBJECTIVE OF IHL

IHL seeks to mitigate the effects of war, by limiting the choice of means and methods of conducting military operations and obliges the belligerents to spare persons who do not or no longer participate in hostile actions.



ORIGIN OF IHL

There is no society of any sort that does not have its own set of rules, so there has never been a war that did not have some vague or precise rules governing the outbreak and end hostilities as well as how they are conducted.

There were ancient laws like the Hummurabi Laws, which were established by Hammurabi, King of Babylon, who said after establishing them: "I establish these laws to prevent the strong from oppressing the weak."

There was also the Lieber Code promulgated by President Lincoln which came into force in 1863, which marked the first attempt to codify the existing laws and customs of war. However, the code did not have the status of a treaty as it was intended solely for union soldiers fighting in the American Civil war.

Today's universal and for most part written International Humanitarian law can be traced directly back to two persons both of whom were marked by a traumatic experience of war; Henry Dunant and Francis Lieber. Both men made essential contributions to the concept and contents of contemporary IHL.

Dunant and Lieber both built on an idea put forward by Jean-Jacques Rousseau in "The social contract", which appeared in 1762.

"War is no way a relationship of man with man, but a relationship between states, in which individuals are only enemies by accident, not as men but as soldiers. Once they lay down their weapons, they again become mere men and therefore their lives must be spared."

In his book, "A memory of solferino", Henry Dunant did not dwell so much on the fact that wounded soldiers were mistreated or defenseless people killed. He was deeply shocked by the absence of any form of help for the wounded and dying. He therefore, proposed two practical measures calling for direct action:

1. An international agreement on the neutralization of medical personnel in the field and;
2. The creation of a permanent organisation for practical assistance to the war wounded.

The first led to the adoption in 1864 of the initial Geneva Convention, and the second saw the funding of the Red Cross.

SOURCES OF IHL

The present IHL is base on the 1949



four Geneva Conventions and the two additional protocols to the four Geneva conventions of 1977.

The 1st Geneva Convention is about the protection of the wounded and the sick in the armed force in the field.

The 2nd Geneva Convention is about the protection of the wounded, the sick and the ship wrecked members of Armed forces at sea.

The 3rd Geneva Convention is about the treatment of prisoners of war.

The 4th Geneva Convention is about the protection of Civilian persons in the time of war.

Protocols addition to the Geneva Conventions of 1977.

Protocol I relates to the protection of victims of International Armed conflict.

Protocol II relates to the protection of victims of Non-International Armed conflict.

DEFINITION OF "SHARIA"

Sharia is from the root "Shara'a" which literally means to introduce, to enact or to prescribe . It can also literally mean the way to a watering place or the path to be followed .

Technically however, it refers to the total sum of laws revealed by Allah (God) to Prophet Muhammad (S.A.W) as guidance to mankind.

These laws are contained in the QUR'AN, which is the primary source of Sharia.

These laws were explained and expounded by the Prophet (S.A.W) through his words, deeds and approvals, the three of which are called SUNNAH .

Thus Sharia is the total sum of laws contained in the Qur'an, which is the Book of Allah, and the SUNNAH of the Prophet (S.A.W) which are his words deed and approvals which are a practical explain of the applicability of the Qur'an.

OBJECTIVES OF SHARIA.

Sharia has got two types of objectives namely; General objective and specific objective.

a) General objective:

Like any other legal system, the general objective of Sharia is to safeguard the welfare and well-being of human beings and to cater for their wellbeing.

Thus Sharia laws were not revealed to benefit The Creator Allah, but to benefit human beings.

b) Specific objective.

The specific objective of Sharia is to safeguard the five essentials of human existence, namely; Religion, Life, Progeny (Off spring), Intellect



and Property.

The following is one of the verses which confirm the safeguard of the five essentials by Sharia:

(Say o Muhammad: come I will recite what your Lord has prohibited you from; Join not anything in worship with Him, be good and dutiful to your parents, kill not your children because of poverty, for we provide sustenance for you and for them, come not near illegal sexual intercourse whether openly or secretly, kill not any one whom Allah has forbidden except for a just cause. This He has commanded you that you may understand. And come not near to the orphan's property, except to improve it until he/she attains the age of full strength, and give full measure and full weight with justice. We burden not any person but that which he can bear, and whenever you judge between men or give evidence say the truth even if a near relative is concerned, and fulfill the covenant of Allah, This He commands you that you may remember).

SOURCES OF SHARIA

As mentioned earlier. Sharia has got two sources:

1. The QUR'AN

The QUR'AN is words and Laws of

Allah revealed to prophet Muhammad (S.A.W) for the guidance of mankind.

Allah says: (This is the Book [The Qur'an] whereof there is no doubt, a guidance to those who are God fearing).

He further says: (Verily this Qur'an guides towards that which is most just and right).

2. The SUNNAH

SUNNAH are words, deeds and approvals of the prophet (S.A.W) which explain the Allah's intent in the Qur'an.

In other words Sunnah is a practical demonstration of the applicability of the law contained in the Qur'an.

Allah says: (We have revealed the Qur'an to you in order that you explain to mankind what was revealed to them).

There are other secondary sources like Ijmaa (consensus of Muslim scholars) and Ijtihad (reasoned opinion) but all these sources pick their legitimacy from the Qur'an and Sunnah, and are therefore covered by both the Qur'an and Sunnah.

DEFINATION OF CIVILIANS AND CIVILIAN GROUPS

Article 50 (1) of Protocol I defines a Civilian as "Any person who does not



belong to one of the categories of persons referred to in Article 4(a) (1), (2) (3) and (6) of the 3rd Geneva convention and in Article 43 of this protocol.

In case of doubt, whether a person is a Civilian, that person should be considered to be a Civilian".

The categories mentioned in Article 4(a) (1), (2) (3) and (6) are;

1) Members of armed forces of a party to conflict as well as members of militias or volunteers corps forming part of such armed forces.

2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a party to the conflict and operating in or outside their own country.

3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the detaining power.

4) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

Article 43 of protocol I states that;

1) The armed forces of a party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates, even if that party is represented by a government or an authority not recognized by an adverse party.

2) Members of the armed forces of party to a conflict (other than medical personnel and chaplains) are combatants, that is to say they have the right to participate directly in hostilities.

In summary therefore, a Civilian is any person who is not a member of armed forces or militia or volunteer corps or organized resistance movements or inhabitants who, on approach of the enemy spontaneously take up arms to resist the invading groups.

In other words, a Civilian is any person who is not a combatant and does not take part in the conflict.

Civilian groups therefore, include a number of people who do not take part in the conflict, like children, women, people of old age, medical personnel and chaplains.

HOW DOES IHL PROTECT CIVILIAN GROUPS?



IHL has set up a number of prohibitions intended to protect Civilian groups some of which are:

1) Attacks against Civilians:

Article 51 of protocol I states that;

i) The Civilian population and individual civilians shall enjoy general protection against dangers arising from military operations.

ii) The Civilian population as such, as well as individual civilians shall not be the object of attack.

iii) Civilians shall enjoy the protection afforded by this section unless and for such a time as they take part in hostilities.

This prohibition is also emphasized in Article 13 of Protocol II.

2) Using Civilians as human shields
Article 28 and 49 of Geneva Convention 4, and Article 51 (7) of Protocol I prohibit using Civilians as human shields.

3) Subjecting women to indecency, forced prostitute, or rape Article 27 of the 4th Geneva Convention states that: "Women shall be protected especially against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

This protection is stressed also by Article 76 of protocol I.

4) Attacks on children

Article 77 of protocol I prohibits attacks on children or subjecting them to any form of indecent assault.

It also prohibits death penalties on persons who had not attained the age of 18 years at the time the offence was committed.

5) Indiscriminate attacks

Article 51 (4) of Protocol I states that: "Indiscriminate attacks are prohibited." It goes on to define indiscriminate attacks as;

a) Those which are not directed at a specific military objective.

b) Those which employ a method or means of combat the effects of which cannot be directed at a special military objective.

c) Those which employ a method or means of combat the effects of which cannot be limited as required by this protocol, and consequently, in each such cases are of a nature to strike military objectives and Civilians or Civilian objects without distinction.

HOW DOES ISLAMIC SHARIA PROTECT CIVILIAN GRO-UPS?

It is well known, as Al-zuhaili, w. puts it , that Islamic teaching, including Islamic values and ethics, law and doctrine, has a universal tendency, for it aspires to see welfare prevail and



Muslim principles spread throughout the entire world. It does so not for economic material, racial, imperialist or nationalistic interest, but in order to achieve salvation, happiness, welfare, justice and prosperity for humanity as a whole, both in this life and the hereafter.

As such, Sharia calls for justice at all times even during the times of war with the enemy. It has set up a number of injunctions intended to protect civilian groups who are not part of the conflict, because justice calls for their protection since they are innocent. Some of these injunctions are;

1) Allah says: (because of that, we ordained for the children of Israel that if any one killed a person not in relation of murder or to spread mischief in the land, it would be as if he killed all mankind, and if anyone saved a life it would be as if he saved the life of all mankind).

Since a civilian is not involved in murder or spread of mischief in the land, saving him/her is as if one has saved the life of all mankind and killing him/her is as if one has killed all mankind.

2) Allah say: (And fight in the cause of Allah those who fight you but

transgress not the limits for truly Allah likes not the transgressors) i.e. by killing innocent people and civilians.

3) Ibn Umar narrated that "a woman was found killed in one of the battles of the Prophet (S.A.W), there upon the Prophet forbade the killing of women and children"

4) The Prophet (S.A.W) instructed his army while dispatching it "not to kill any old person or woman or children or destroy buildings or trees."

5) In one of the well known Hadith, the Prophet said: "Move forward in the name of God, by God and in the religion of God's prophet. Do not kill an elderly, or a child, or a woman. Do not misappropriate booty, do good for God loves good doers."

6) Abubakr the first caliph after the death of the Prophet said this to his commander Yazid bin Abi Sufyan: "I prescribe ten commandments to you: do not kill a woman, a child or an old man, do not cut down fruitful trees, do not destroy inhabited areas, do not slaughter any sheep, cow or camel except for food, do not burn date palms, do not embezzle, nor be guilty of cowardliness."

All these injunctions refer to groups of people who are civilians. However



if they cease to be civilians and become combatants, then they cease to be protected by Sharia.

CONCLUSION

In my conclusion, I would like to make the following remarks:

1) This paper has shown those who are ignorant about Sharia and those who have a biased attitude towards it that Sharia took a lead in the protection of civilians and civilian groups about 1340 years before the 4 Geneva conventions of 1949 which are the basis of modern IHL, since the prophet (S.A.W) received revelation in 610 A.D.

2) Both IHL and Sharia have put up laws regulating the conduct of hostilities and the protection of civilians. However, today civilians are the most affected people in hostilities since there is no respect for those laws, either because those who are involved in hostilities are ignorant about them, or because some powerful countries see themselves above the law and cannot be prosecuted, Bosnia, Palestine, Lebanon and Iraq war atrocities are enough evidence.

RECOMMENDATIONS

The following are my recommendations:

- a. Muslims should learn more about their religion and should not be discouraged by the propagandas of their enemies. Islam contains all what humanity needs for its prosperity and welfare. However Muslims should not be static in thinking and planning, but should be practical and dynamic.
- b. All countries should teach and sensitize their armed forces about International Humanitarian Law and how to implement it.
- c. Strong mechanisms should be put in place in order to prosecute those who break IHL without discrimination of race or religion because justice is a right for all mankind.

