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NORMATIVE COMPLEMENTARITY IN ARMED CONFLICT: ISLAMIC HUMANITARIAN LAW AND THE REINFORCEMENT OF CONTEMPORARY INTERNATIONAL HUMANITARIAN LAW

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ABSTRACT

International Humanitarian Law (IHL) is the primary legal framework regulating armed conflict, rooted in the four Geneva Conventions, Additional Protocols, and customary international law. Key principles of IHL include distinction, proportionality, military necessity, and humanity, all aimed at minimizing suffering during warfare while considering military realities. However, despite its widespread acceptance, current conflicts demonstrate significant violations of IHL, which lead to civilian casualties, environmental degradation, and inconsistent enforcement. The enforcement mechanisms, such as the International Criminal Court, face challenges including jurisdictional limitations, political selectivity, and varying state cooperation complicating compliance. The article revisits classical Islamic international law, known as Siyar, to assess its humanitarian principles as potential enhancements to the current discourse on IHL reform. The analysis relies on primary Islamic legal texts like the Qur'an, Sunnah, scholarly consensus (ijma'), and analogical reasoning (qiyas), alongside contributions from notable Islamic scholars such as Muhammad al Shaybani, Abu Hanifa, and Al Mawardi. It identifies a comprehensive framework regulating various aspects of armed conflict including civilian immunity, treatment of prisoners, environmental protections, and compliance with treaties. The article highlights critical distinctions between modern IHL, which operates on a positivist framework relying on state consent, and Islamic humanitarian norms, which are grounded in theological and ethical obligations. This foundational difference suggests that legal compliance may be more robust when supported by moral imperatives. Rather than proposing a replacement of IHL with religious laws or asserting either system's superiority, the article discusses the concept of normative complementarity, arguing that Islamic humanitarian principles could enhance the cultural legitimacy and internalization of humanitarian laws, especially in Muslim majority societies where religious dialogue shapes legal perspectives. It suggests structured dialogues between Islamic scholars and international legal entities to promote compliance based on ethical engagement instead of further legal codification. The article contributes significantly to discussions of pluralism in international law, indicating the potential for integrating non-Western legal traditions into global norms. Moreover, it addresses the enforcement crisis in contemporary IHL and explores various mechanisms to address these challenges, underscoring the complexities of legal pluralism and the need for inclusivity in evolving international legal frameworks.

Keywords

International Humanitarian Law (IHL); Geneva Conventions; Additional Protocols; Islamic International Law (*Siyar*); Muhammad al Shaybani; Abu Hanifa; Al Mawardi; Civilian Immunity; Proportionality; Military Necessity; Prisoners of War; Environmental Protection in Armed Conflict; Treaty Compliance

I. INTRODUCTION – THE NORMATIVE CRISIS OF INTERNATIONAL HUMANITARIAN LAW

International Humanitarian Law (IHL) serves as the most extensive legal framework in existence aimed at governing the conduct of armed conflict. Its primary goal is not to eradicate war, but rather to humanize its impacts by minimizing suffering, safeguarding civilians, and restricting the methods and means of warfare. The foundation of modern IHL is predominantly built on the four Geneva Conventions established on 12 August 1949, along with their Additional Protocols, which are further reinforced by customary international law. Collectively, these legal instruments form the normative core of current humanitarian regulation.

A. Foundational IHL Instruments

The four Geneva Conventions, established in 1949, serve as foundational humanitarian legal instruments designed to protect various groups affected by armed conflict. The First Geneva Convention specifically addresses the welfare of wounded and sick combatants on land²⁰³⁰, ensuring their right to humane treatment. The Second Geneva Convention extends similar protections to those in naval warfare²⁰³¹. The Third Geneva Convention focuses on the treatment of prisoners of war, detailing essential safeguards related to their detention conditions, legal rights, and processes for their repatriation²⁰³². Lastly, the Fourth Geneva Convention significantly broadens humanitarian protection by setting regulations

for military occupation, outlawing collective punishment, and safeguarding civilians from acts of violence, coercive measures, and unlawful deportation during wartime²⁰³³. Together, these conventions form a comprehensive legal framework aimed at providing humanitarian protections across different scenarios in armed conflict. These instruments embody the post Second World War commitment to establishing universal minimum standards for humane conduct, with their widespread ratification often seen as indicative of a global consensus on humanitarian norms. The normative framework of International Humanitarian Law (IHL) was further developed with the introduction of Protocol Additional I in 1977, which clarified key principles regarding the conduct of hostilities²⁰³⁴. This protocol formalized the distinction between civilians and combatants, reinforced the constraints of proportionality, and set obligatory precautions during attacks, thus converting humanitarian principles into actionable legal standards that are obligatory for military decision-making. Additionally, customary international humanitarian law plays an essential complementary role, as evidenced by the International Committee of the Red Cross's Customary International Humanitarian Law Study (2005), which categorized state practices and legal opinions to define rules that are applicable even to those states that are not parties to specific treaties²⁰³⁵. This study emphasizes that fundamental humanitarian principles namely distinction, proportionality,

²⁰³⁰ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31

²⁰³¹ Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85

²⁰³² Geneva Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135.

²⁰³³ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287.

²⁰³⁴ Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3.

²⁰³⁵ JeanMarie Henckaerts and Louise DoswaldBeck (eds), Customary International Humanitarian Law (ICRC/CUP 2005).

humane treatment, and the prohibition of unnecessary suffering maintain a universal normative force that is independent of whether treaties have been ratified. The compilation of the Geneva Conventions, Additional Protocol I, and customary law establishes a sophisticated legal framework designed to protect wounded combatants, prisoners of war, and civilians. This framework regulates targeting decisions and prohibits certain weapons and methods of warfare, showcasing a comprehensive and coherent doctrinal approach within International Humanitarian Law (IHL). However, the ongoing prevalence of extensive civilian casualties in modern conflicts highlights a significant gap between the normative aspirations of IHL and actual compliance in practice. The critical issue facing IHL today is not the absence of rules, but rather the enforcement weaknesses and the failure to internalize these fundamental principles in real world scenarios.

B. Enforcement and Compliance

The post-Cold War era saw significant advancements in accountability for humanitarian law violations, notably through the 1998 adoption of the Rome Statute of the International Criminal Court (ICC)²⁰³⁶. This Statute criminalizes major breaches of the Geneva Conventions and serious war law violations, effectively converting certain humanitarian standards into prosecutable international crimes.

In principle, the ICC serves as a critical mechanism against prolonged impunity that has historically plagued humanitarian frameworks. Its establishment of permanent jurisdiction over war crimes, crimes against humanity, and genocide was intended to bolster deterrence and compliance. Nonetheless, its jurisdiction is limited by the need for either state consent or referrals from the Security Council, which significantly restricts

the Court's operational scope. Political dynamics often influence these referrals and cooperation, highlighting the persistent dominance of state sovereignty in international enforcement mechanisms. Scholarly analysis highlights the structural constraints of international criminal law, emphasizing that its enforcement is inconsistent and heavily influenced by political factors²⁰³⁷. Cassese notes that tribunals rely on state cooperation for effective enforcement, which is often lacking. Drumbl critiques the notion that international criminal prosecutions effectively deter future crimes, arguing that they serve more as symbolic acts of condemnation rather than genuine prevention.²⁰³⁸ This enforcement dilemma illustrates a deeper crisis in international humanitarian law (IHL), where adherence depends on state consent and can falter under political considerations, often resulting in selective and retrospective prosecutions that do not prevent violations in real time.

II. FOUNDATIONS OF MODERN INTERNATIONAL HUMANITARIAN LAW

Modern International Humanitarian Law is built on earlier moral and philosophical traditions aimed at regulating war's initiation and conduct. Its current form is reflected in treaty law and customary norms, with a significant transition from moral reasoning to positive legal obligations. This evolution is crucial for appreciating the framework's strengths and inherent limitations.

A. Just War Intellectual Roots

The foundations of modern humanitarian law can be traced back to early modern natural law theorists, particularly Hugo Grotius, who, in his work *De Jure Belli ac Pacis* (1625), aimed to establish a universal legal framework for war based on natural reason instead of solely theological authority²⁰³⁹. Grotius put forth principles intended to limit violence in warfare,

²⁰³⁶Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

²⁰³⁷Antonio Cassese, *International Criminal Law* (2nd edn, OUP 2008).

²⁰³⁸Mark A Drumbl, *Atrocity, Punishment, and International Law* (CUP 2007).

²⁰³⁹Hugo Grotius, *De Jure Belli ac Pacis* (1625).

maintaining that certain actions remain unlawful even during conflict. While he recognized that warfare was an inevitable reality, he contended that it must adhere to rules derived from natural law and the law of nations.

Grotius contributed to two significant developments. First, he secularized the regulation of armed conflict, framing it using rational and universal principles that transcended religious boundaries. Second, he delineated between the justice of going to war (*jus ad bellum*) and the justice of how war is conducted (*jus in bello*). This conceptual division laid the foundation for the development of later humanitarian law, which primarily emphasizes the regulation of conduct in warfare without considering the underlying justification for the conflict.

Despite his influential ideas, Grotius did not propose a comprehensive humanitarian framework akin to modern standards. His perspectives allowed for more flexibility in the treatment of adversaries, whereas the humanitarian protections that were later established in treaty law became much more intricate. Nevertheless, Grotius's assertion that warfare is not an amoral domain was fundamental to the evolution of humanitarian law.

In the twentieth century, Michael Walzer revitalized and refined Just War theory within a contemporary moral philosophical context in his seminal work *Just and Unjust Wars*²⁰⁴⁰. He underscored two main principles guiding conduct in warfare: discrimination and proportionality. The principle of discrimination mandates the differentiation between combatants and noncombatants, while proportionality dictates that the harms inflicted should not exceed the legitimate military objectives. Walzer framed these principles as moral constraints based on individual rights,

emphasizing that civilians enjoy immunity from direct attacks.

Walzer's insights play a critical role in shaping modern International Humanitarian Law (IHL), as they illuminate the moral reasoning that underlies core humanitarian regulations. Although formal treaty law establishes binding obligations, Just War theory offers the ethical rationale supporting these obligations. However, it is important to recognize that moral theory alone cannot create enforceable laws. The conversion of the principles of discrimination and proportionality from philosophical ideas into legally binding norms necessitated formal codification through international agreements.

B. Core Principles of Modern IHL

The contemporary legal articulation of humanitarian restraints is significantly encapsulated in Additional Protocol I to the Geneva Conventions. This Protocol serves to codify principles that translate earlier moral commitments into comprehensive legal standards, thereby providing a clear framework for the implementation and enforcement of humanitarian law in conflict situations.

1. Distinction

Article 48 of Additional Protocol I establishes the principle of distinction as a fundamental rule in armed conflict, mandating that combatants differentiate between civilian populations and combatants, as well as between civilian objects and military objectives²⁰⁴¹. This principle is a transformation of the discrimination principle articulated in Just War theory into a binding legal requirement. Article 52 further clarifies military objectives as objects that, through their nature, location, purpose, or use, make a significant contribution to military action, where destruction provides a definite military advantage²⁰⁴². This precise definition serves to constrain targeting discretion, asserting that not

²⁰⁴⁰Michael Walzer, *Just and Unjust Wars* (Basic Books 1977).

²⁰⁴¹Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 48.

²⁰⁴²*Ibid* art 52.

every supportive object in warfare qualifies as a legitimate target; rather, the contribution must be both concrete and definite.

Legal scholar Yoram Dinstein posits that distinction represents the "cardinal principle" of the law of armed conflict, essential for maintaining humanitarian regulation²⁰⁴³. He notes that this obligation extends beyond intentional targeting to include necessary precautions during attacks, indicating that distinction has both substantive and procedural dimensions. Commanders are required to actively verify targets while assessing civilian presence to ensure compliance with this rule.

Marco Sassòli reinforces the need for continuous assessment of distinction, particularly in modern warfare environments where asymmetric tactics and urban combat are prevalent²⁰⁴⁴. The increasing blend of military objectives with civilian infrastructure complicates the application of the principle; however, this complexity enhances the urgency for strict adherence to the rule of distinction in military operations.

2. Proportionality

Article 51(5)(b) of Additional Protocol I enshrines the principle of proportionality within international humanitarian law (IHL), which prohibits military attacks that are anticipated to cause incidental harm to civilians that is deemed excessive compared to the direct military advantage expected to be gained²⁰⁴⁵. This principle presents significant challenges in the implementation of IHL, as it requires commanders to engage in anticipatory judgment, complexly evaluating the potential civilian harm against anticipated military benefits.

Notably, Dinstein emphasizes that the principle of proportionality does not necessitate the

absence of civilian casualties. Instead, it forbids harm that is clearly disproportionate to the military gain²⁰⁴⁶. This assessment must be contextual and forward looking, relying on the information that is reasonably available at the time decisions are made. Moreover, Sassòli points out that proportionality embodies a delicate balance between the imperatives of military necessity and the protection of humanitarian values.

While it accepts the inevitability of incidental harm, proportionality imposes limits grounded in a notion of legal reasonableness. Critics of the standard contend that the concept of "excessiveness" is inherently vague, allowing for subjective interpretations in its application. Despite these criticisms, the principle of proportionality is essential in striving to align operational military actions with humanitarian principles, ensuring that armed conflicts are conducted with consideration of the humanitarian impact on civilian populations.

3. Military Necessity

Military necessity is a fundamental principle in International Humanitarian Law (IHL), serving as both an enabling and limiting factor in the use of force. It allows for the application of force to achieve legitimate military objectives but constrains this application by prohibiting certain actions. Article 52 of Additional Protocol I explicitly links lawful targeting to the pursuit of military advantage, emphasizing that force must align with well-defined strategic goals.

Legal scholar Dinstein elucidates that military necessity cannot be invoked to override explicit prohibitions set by IHL, highlighting its function as a contextual constraint rather than an unrestricted justification for violence. Similarly, Sassòli contends that military necessity and humanity are at odds; while necessity permits the use of force, humanity imposes limitations on its use²⁰⁴⁷. As such, contemporary IHL strives

²⁰⁴³Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd edn, CUP 2016) 105–110.

²⁰⁴⁴Marco Sassòli, *International Humanitarian Law* (2nd edn, Edward Elgar 2019) 189–210.

²⁰⁴⁵Additional Protocol I (n 3) art 51(5)(b).

²⁰⁴⁶Dinstein (n 5) 119–124.

²⁰⁴⁷Sassòli (n 6) 221–230.

for a balance between these principles, without allowing one to completely overshadow the other.

III. ISLAMIC INTERNATIONAL LAW (SIYAR)

This article argues for the serious examination of Islamic international law, advocating that it should be recognized as a well-defined juristic discipline characterized by discernible sources, methodologies, and ongoing internal discussions. The classical doctrine of Siyar, commonly translated as Islamic international law, evolved as a specific branch of jurisprudence aimed at regulating interactions between Muslim and non-Muslim states. This encompasses matters such as warfare, diplomacy, treaty obligations, and the ethical treatment of noncombatants. The legitimacy of Siyar is based on sacred texts and their interpretation through juristic analysis rather than relying on modern principles of state consent characteristic of positivist legal frameworks.

A. Primary Classical Sources

The exposition of Siyar, or Islamic international law, is prominently attributed to Muhammad al Shaybani (d. 805), a significant jurist from the Hanafi school and disciple of Abu Hanifa. His seminal work, *Kitab al Siyar al Kabir*, is recognized as one of the initial comprehensive analyses of laws governing armed conflict and relations with non-Muslim entities²⁰⁴⁸. The extensive and complex nature of the original Arabic text is made more accessible through Majid Khadduri's translations and commentaries in *The Islamic Law of Nations*, which offer structured insights into Shaybani's legal doctrine²⁰⁴⁹.

Shaybani's work addresses key issues relevant to contemporary humanitarian concerns such as the protection of noncombatants, the treatment of prisoners of war, property

regulations, truces, and diplomatic relations. He notably differentiates between active combatants and noncombatants, maintaining that not everyone involved in the conflict is a legitimate target, although these categories are based on historical social constructs rather than modern definitions. Nonetheless, his focus on restraint within conflicts remains clear.

Abu Hanifa, who passed away in 767, significantly influenced the methodology of Siyar, even though he did not produce a comprehensive treatise on the subject. His application of analogical reasoning (*qiyas*) and legal discretion (*istihsan*) within Hanafi jurisprudence provided a flexible framework for adapting to evolving political landscapes. Contemporary scholars recognize that the Hanafi doctrine typically embraced a stance of pragmatic restraint regarding warfare, especially concerning treaty adherence and the treatment of prisoners²⁰⁵⁰.

Further expanding on these doctrines, Al Mawardi (d. 1058) contributed to the understanding of governance, public authority, and diplomatic relations in his work *Al Ahkam al Sultaniyyah*²⁰⁵¹. His insights regarding treaties (*uhud*) and truces reveal an acknowledgment of international engagement premised on legal obligations and public interest. His analyses of captives, safe conduct (*aman*), and territorial relations illustrate that Islamic jurisprudence provided mechanisms for regulated inter polity relationships rather than endorsing perpetual enmity.

These jurists were not isolated in their endeavors; rather, their contributions were part of a dynamic legal discourse that engaged with humanitarian principles, continually evolving through debate and contextualization. A critical engagement with Siyar necessitates recognizing its diversity and its integration within broader legal traditions.

²⁰⁴⁸Muhammad alShaybani, *Kitab alSiyar alKabir*.

²⁰⁴⁹Majid Khadduri, *The Islamic Law of Nations: Shaybani's Siyar* (Johns Hopkins 1966).

²⁰⁵⁰See discussion of Hanafi doctrine in Khadduri (n 2).

²⁰⁵¹AlMawardi, *AlAhkam alSultaniyyah* (Wafaa Wahba tr, Garnet 1996).

B. Qur'anic Foundations

The normative foundation of Siyar is fundamentally rooted in the Qur'an, which delineates moral boundaries for armed conflict. A critical verse, Qur'an 2:190, encapsulates this by permitting defensive action while emphasizing restraint: "Fight in the way of God those who fight you but do not transgress; indeed, God does not love transgressors."²⁰⁵² This injunction has been interpreted by classical jurists to prohibit actions such as targeting noncombatants, mutilation of the dead, and unnecessary destruction during warfare, highlighting a significant ethical stance.

Moreover, Qur'an 8:61 introduces an additional dimension by advocating for peace: "If they incline to peace, then incline to it also."²⁰⁵³ This instruction reinforces the importance of de-escalation, thereby legitimizing truces and negotiations as integral components of conflict resolution. Such interpretations counter arguments for sustained animosity, underlining the requisite for treaty making within Islamic legal tradition.

Another pivotal verse, Qur'an 5:1, underscores the duty to honor agreements: "O you who believe, fulfill your contracts."²⁰⁵⁴ This command is central to Islamic principles regarding treaty fidelity and diplomatic responsibility, with jurists perceiving the violation of covenants as both a legal transgression and a moral defect.

Lastly, Qur'an 16:90 broadens the ethical framework by declaring, "Indeed, God commands justice..."²⁰⁵⁵ This verse, while applicable beyond the context of warfare, serves as a general guideline for military conduct and governance. The concept of justice ('adl) becomes a cardinal principle in constraining actions within both war and public administration.

²⁰⁵²Qur'an 2:190.

²⁰⁵³Qur'an 8:61.

²⁰⁵⁴Qur'an 5:1.

²⁰⁵⁵Qur'an 16:90.

The strategic application of these verses is crucial, as Islamic jurisprudence constructs its humanitarian norms not from isolated textual references but through comprehensive interpretations that weave together various scriptural elements guided by juristic methodologies. This integrative approach underscores the depth and complexity of Siyar within Islamic legal thought.

C. Prophetic Practice (Hadith and Early Precedent)

Beyond the foundations presented in the Qur'an, the Sunnah, or Prophetic traditions, elaborates on essential constraints concerning humanitarian conduct during conflicts²⁰⁵⁶. Key reports in the Sahih al Bukhari and Sahih Muslim collections highlight explicit prohibitions against the killing of women and children in armed conflicts, establishing a significant basis for the doctrine of civilian immunity in classical Islamic jurisprudence.

One salient narration recounts the Prophet Muhammad's admonition against killing non-combatant women and children upon discovering the body of a slain woman post battle. This injunction has been interpreted by jurists as a definitive prohibition, rather than merely situational guidance. The hadith literature further condemns acts of mutilation and treachery, thereby reinforcing the prohibitions against unnecessary cruelty in warfare.

The implementation of these principles can be traced back to the practices of early caliphs. For instance, Abu Bakr's directives to the military commander Usama ibn Zayd, documented in historical texts like those of al Tabari, emphasize the need for restraint: they specifically prohibited the killing of women, children, and the elderly, destruction of palm trees, and the slaughter of livestock except for necessary

²⁰⁵⁶Sahih alBukhari, Book of Jihad; Sahih Muslim, Book of Jihad.

sustenance²⁰⁵⁷. While scholars discuss the accuracy of the transmission of these narratives, they reflect a deeply ingrained normative memory in Islamic legal tradition advocating for restraint and environmental preservation.

However, it is crucial to acknowledge that these sources should not be idealized uncritically. Classical Islamic jurists engaged in extensive debate regarding the classification of certain groups, particularly able bodied male civilians in contested regions. Interpretations varied among different legal schools. Nonetheless, the fundamental prohibitions against directly targeting noncombatants and the senseless destruction of property are firmly entrenched in the consensus of Islamic jurisprudence.

IV. COMPARATIVE ANALYSIS: CONVERGENCE AND NORMATIVE DIVERGENCE

This section focuses on the direct engagement between Islamic humanitarian law and contemporary International Humanitarian Law (IHL), examining the meaning of the similarities between the two, and whether the moral architecture underlying *Siyar* can reinforce IHL, especially when enforcement falters, despite the existence of separate doctrinal foundations.

A. Civilian Protection

Modern International Humanitarian Law (IHL) emphasizes the protection of civilians, with Article 51(2) of Additional Protocol I explicitly prohibiting violence intended to terrorize civilians, and Article 51(4) banning indiscriminate attacks²⁰⁵⁸. The central tenet is that civilians are not to be targeted, with immunity prevailing unless they actively participate in hostilities. This framework is rooted in the principle of distinction, binding on states that consent to it and theoretically enforced through accountability for war crimes and international oversight.

In contrast, Muhammad al Shaybani's *Kitab al*

Siyar al Kabir establishes that noncombatants, including women, children, monks, and the elderly, are immune from attack unless directly involved in warfare²⁰⁵⁹. Shaybani's prohibition is not only tactical but ethical, founded on prophetic traditions and interpretative juristic reasoning stemming from Qur'anic principles. This perspective prioritizes the protection of noncombatants as a religious duty rather than a tactical consideration.

Further reinforcement of this ethical stance is found in Hadith collections such as *Sahih al Bukhari* and *Sahih Muslim*, where the Prophet Muhammad is reported to have prohibited the killing of women and children during military conduct²⁰⁶⁰. These reports hold significant weight within Sunni jurisprudence and reflect a widely accepted moral framework.

The distinction between the two frameworks is critical. While Additional Protocol I views civilian immunity as a legal rule arising from treaty obligations, Shaybani regards it as a moral and legal duty based on divine authority. Although both approaches aim to protect civilians, their foundational motivations differ one relies on state adherence to law, while the other calls for moral accountability before God. The challenges in enforcing these protections in modern conflicts suggest that internal moral imperatives might offer a valuable supplement to the external enforcement mechanisms that often fall short.

B. Proportionality and Restraint

The proportionality rule in International Humanitarian Law (IHL) is a contested doctrine that prohibits attacks that cause excessive civilian loss in relation to the anticipated military advantage²⁰⁶¹. It is a balancing test embedded within operational military judgment, acknowledging its indeterminacy while defending its necessity. In Islamic law,

²⁰⁵⁷AlTabari, *Tarikh alRusul wa alMuluk* (reference to instructions of Abu Bakr to Usama ibn Zayd).

²⁰⁵⁸Additional Protocol I, art 51.

²⁰⁵⁹Muhammad alShaybani, *Kitab alSiyar alKabir*, trans Majid Khadduri (1966).

²⁰⁶⁰Sahih alBukhari, *Book of Jihad*; Sahih Muslim, *Book of Jihad*.

²⁰⁶¹Additional Protocol I, art 51(5)(b).

proportionality is embedded within Qur'anic injunctions, such as "do not transgress" (Qur'an 2:190), which interpret transgression to include excessive destruction beyond military necessity²⁰⁶². The Hanafi juristic tradition prohibits mutilation, treachery, and wanton destruction. The concept of *ghulul*, commonly associated with embezzlement of spoils, denotes betrayal or excess beyond lawful bounds, reflecting the moral rejection of unnecessary harm. Both systems reject excess, but the justificatory foundation differs: treaty consent versus theological accountability.

C. Prisoners of War

The treatment of prisoners of war (POWs) is extensively governed by international humanitarian law (IHL), particularly as articulated in the Geneva Convention III of 1949. This convention delineates essential protections, which include humane treatment, prohibition of torture, and the obligation to provide food, medical care, and judicial guarantees²⁰⁶³. Grave breaches against these conventions are defined as acts such as willful killing, torture, and inhuman treatment of POWs.

The enforcement of these protections is encapsulated in the Rome Statute of the International Criminal Court, specifically in Article 8(2)(a)(vi), which criminalizes the denial of fair trial rights to POWs²⁰⁶⁴. This framework emphasizes individual criminal accountability for violations.

Historically, in works such as *Siyar*, Shaybani gives considerable focus to the status and treatment of captives, outlining lawful responses such as release, ransom, exchange, and even enslavement in certain classical contexts²⁰⁶⁵. These practices reflect a historical interpretation that has evolved over time but emphasizes the prohibition of torture and mutilation alongside the necessity for humane

treatment.

Al Mawardi, in his text *Al Ahkam al Sultaniyyah*, integrates the treatment of captives into the broader responsibilities of rulers to ensure justice and public order²⁰⁶⁶. Despite the historical context in which he wrote, he underscores the critical obligation to prevent cruelty and betrayal against captives.

A nuanced comparison highlights significant shifts over time: modern IHL unequivocally abolishes enslavement, while classical Islamic law permitted it under specific conditions that mirrored historical norms of reciprocal warfare. Contemporary Islamic scholars tend to agree that international treaty obligations and established custom have rendered such practices impermissible today, in line with the principle of covenant fulfillment found in Qur'an 5:1.

Despite the differing historical contexts and legal frameworks, a common tenet remains: the absolute prohibition of torture, mutilation, and inhuman treatment is upheld in both modern IHL and classical Islamic law, with both systems converging on humane treatment as a fundamental requirement for POWs.

D. Environmental Protection

Environmental protection within the context of warfare has evolved primarily with the advent of contemporary treaty International Humanitarian Law (IHL). Notably, Article 35(3) and Article 55 of Additional Protocol I clearly prohibit warfare methods that are intended or anticipated to inflict widespread, long lasting, and severe harm to the natural environment²⁰⁶⁷. This legal framework is further solidified by Rule 45 of the ICRC Customary IHL Study, which echoes this prohibition in customary law, emphasizing the growing recognition of environmental considerations in armed conflict²⁰⁶⁸.

In contrast, classical Islamic law does not

²⁰⁶² Shaybani, *Siyar*.

²⁰⁶³ Geneva Convention III (1949).

²⁰⁶⁴ Rome Statute of the International Criminal Court, art 8(2)(a)(vi).

²⁰⁶⁵ Shaybani, *Siyar*.

²⁰⁶⁶ AlMawardi, *AlAhkam alSultaniyyah* (trans Wafaa Wahba, 1996).

²⁰⁶⁷ Additional Protocol I, arts 35(3), 55.

²⁰⁶⁸ ICRC, Customary International Humanitarian Law Study (2005), Rule 45.

present a structured environmental framework articulated in modern ecological terms. Nonetheless, early Islamic jurisprudence contains prohibitions against the excessive destruction of agricultural resources, evident in the disapproval of damaging crops, unnecessary tree cutting, and the unwarranted killing of livestock. Scholar Khadduri highlights that jurists like Shaybani condemned such wanton destruction as unlawful, thus establishing a moral basis that resonates with contemporary principles of environmental protection²⁰⁶⁹.

Historical narratives, including those attributed to Abu Bakr before the campaign led by Usama ibn Zayd, reinforce these prohibitions against damaging fruit bearing trees and cultivated land. This sentiment is well-documented in classical historical texts, such as those by al Tabari. While these prohibitions are not formally recognized as environmental treaty norms, they reflect an inherent restraint towards the protection of civilian property and natural resources during warfare.

The convergence of modern IHL and classical Islamic jurisprudence pertains more to foundational principles than to terminological similarities. Both systems advocate against needless devastation, albeit in different contexts: modern IHL has established specific thresholds for permissible environmental damage, while classical Islamic law characterizes such destruction as a form of moral excess. This intricate intersection underscores the evolving discourse surrounding environmental protection in armed conflicts and highlights the continued relevance of moral considerations in legal frameworks.

V. TREATY COMPLIANCE: PACTA SUNT SERVANDA AND THE ETHICS OF COVENANT

International Humanitarian Law (IHL) is currently grappling with two significant crises: enforcement and compliance. While the formal

structures consisting of treaties are comprehensive and ratification rates remain high, violations consistently occur, highlighting that the root issue lies not in the lack of legal frameworks but rather in the precariousness of states' commitments to uphold them. This discussion delves into the nature of treaty compliance as viewed through two distinct normative perspectives. Firstly, it explores the positivist principle of *pacta sunt servanda*, which asserts the obligatory nature of treaties in modern international law. Secondly, it examines the covenantal ethic found in Islamic jurisprudence, emphasizing the moral and ethical dimensions influencing treaty adherence. This dual lens provides a deeper understanding of the complexities surrounding treaty compliance in the context of IHL.

A. Pacta Sunt Servanda in Modern International Law

Article 26 of the Vienna Convention on the Law of Treaties (1969) establishes the principle of *pacta sunt servanda*, asserting that treaties in force are binding on parties and must be executed in good faith²⁰⁷⁰. This principle is integral to the functioning of the international legal system; without it, treaty regimes risk becoming mere voluntary agreements. Within International Humanitarian Law (IHL), the authority of the Geneva Conventions and Additional Protocol I is anchored in this doctrine, as states are obligated based on their consent, deriving legitimacy from their sovereign will. However, notable weaknesses exist within this framework. States maintain the legal right to withdraw from treaties, and the flexibility in interpretation can lead to diminished obligations. Furthermore, enforcement often hinges on political considerations, and while good faith is a legal requirement, it cannot be enforced mechanically. Consequently, compliance is contingent not only on formal ratification but also on the internal acceptance of the norm's authority. The Vienna Convention delineates legal obligations without establishing

²⁰⁷⁰Vienna Convention on the Law of Treaties (1969), art 26.

moral imperatives, highlighting a distinction between legal adherence and ethical conviction.

B. Covenant as Religious Obligation

Islamic jurisprudence views treaty compliance as a matter of faith, primarily grounded in the Qur'anic assertion, "O you who believe, fulfill covenants" (Qur'an 5:1). This perspective differs from the conventional legal principle of *pacta sunt servanda*, which is based on the horizontal equality of sovereign states. Instead, Islamic teachings establish a vertical relationship, emphasizing that the fulfillment of agreements is an obligation linked to divine authority, rendering any breach not just a diplomatic failure but a moral one as well.

Prominent scholars like al Mawardi, in his work *Al Ahkam al Sultaniyyah*, elaborate on this doctrine by asserting that honoring treaties is fundamental to legitimate governance²⁰⁷¹. Al Mawardi maintains that agreements with non-Muslims, whether they pertain to truces or diplomatic relations, remain binding as long as the other party fulfills its obligations. Any unjustified violation by a ruler constitutes both a breach of public trust and a disregard for divine injunctions.

C. Good Faith and Moral Internalization

The Vienna Convention establishes that treaties should be performed in good faith, characterizing "good faith" as a principle relevant to interpretation and conduct rather than as a metaphysical notion. This principle serves to regulate behavior without necessarily altering one's moral conscience. In stark contrast, the Qur'anic model embeds the concept of good faith deeply into the ethical framework of a believer. In this context, maintaining covenants transcends mere obligation and becomes a matter of religious integrity, emphasizing an ethical commitment that goes beyond the fear of repercussions or legal accountability.

This distinction gains significant importance in situations of armed conflict. When faced with military or political coercion, the pressure to deviate from humanitarian obligations can weaken adherence to treaties. In such cases, obligations viewed through a purely positivist lens may fluctuate based on political motivations rather than moral imperatives. Islamic jurisprudence seeks to mitigate this variability by framing the breach of treaties as a sinful act, even when it appears to offer material benefits. According to Al Mawardi, rulers are expected to uphold treaties unless the other party has clearly violated them first. Moreover, even if termination of the treaty is considered, a proper notification and clarity are mandated beforehand, echoing the structured withdrawal processes recognized in modern treaty law.

D. Reciprocity and Stability

Modern international law operates under the principle of reciprocity, whereby states adhere to agreements primarily because mutual compliance is advantageous for all involved parties. However, violations can lead to serious repercussions such as retaliation, damage to reputation, or sanctions. In contrast, Islamic jurisprudence acknowledges reciprocity but emphasizes that adherence to covenants transcends mere reciprocal benefits. For example, the Qur'an (8:61) promotes the idea of prioritizing peace, suggesting that nations should respond to amicable gestures from opponents, reinforcing a commitment to mutual respect that is not strictly dependent on immediate gains.

This distinction becomes particularly salient in asymmetrical conflicts where traditional enforcement mechanisms are weak and power imbalances complicate compliance incentives. If adherence relies solely on reciprocal consequences, more powerful entities may perceive breaches as having negligible repercussions. Conversely, in contexts where covenant adherence is ingrained as a religious obligation, the rationale for compliance evolves

²⁰⁷¹ AlMawardi, *AlAhkam alSultaniyyah* (trans Wafaa Wahba, 1996).

beyond strategic calculations.

It is crucial to note that violations do occur within Muslim majority societies; however, the underlying normative framework fosters a richer ethical engagement. Legal compliance grounded in moral conviction tends to be more robust than adherence driven solely by the fear of punishment or deterrence. This indicates that legal and moral dimensions together can enhance the stability of international relations and covenant observance.

E. Normative Complementarity

The comparison presented underscores the necessity of a shared legal doctrine, such as *pacta sunt servanda*, for the effective functioning of the international legal order, emphasizing that treaty stability is contingent upon universal procedural rules. It posits that within societies influenced by religious discourse, a notion of normative complementarity emerges, where religious mandates, like the Qur'anic exhortation to fulfill covenants, can enhance adherence to international treaty obligations, including those enshrined in the Geneva Conventions. This situates compliance within the realms of both diplomatic reliability and religious integrity.

The analysis includes Al Mawardi's perspective on treaties, illustrating that classical Islamic governance recognized binding inter polity agreements within a structured legal framework, suggesting compatibility with contemporary treaty law. A crucial point raised is that relying solely on enforcement mechanisms to address the compliance crisis in International Humanitarian Law (IHL) is insufficient; while instruments such as the Rome Statute exist to prosecute serious breaches, their implementation is often selective and influenced by political dynamics. The Vienna Convention promotes the principle of good faith, yet this cannot be artificially induced. Ultimately, norms gain longevity and effectiveness only when they are assimilated

and internalized within the relevant legal and cultural contexts.

F. Strategic Implications

Expanding legal codification alone will not strengthen compliance with contemporary International Humanitarian Law (IHL) reform, as the existing Geneva regime is already extensive. The key issue lies in the motivational weakness rather than a lack of doctrinal resources. To enhance normative internalization in Muslim majority societies, it is essential to engage with Islamic jurisprudence, notably its covenantal ethic. This approach does not propose substituting IHL with religious law but rather seeks to demonstrate that the commitments under international treaties are compatible with existing religious obligations rooted in the legal moral traditions of these societies.

By ratifying the Geneva Conventions, a state incurs obligations as specified in Article 26 of the Vienna Convention, which can also be framed within a Muslim context as a fulfillment of a covenant that aligns with Qur'an 5:1. Thus, aligning these legal and theological frameworks, rather than treating them as opposing systems, can lead to enhanced compliance with IHL. This synthesis allows for a more robust adherence to humanitarian norms by reinforcing the understanding that international legal commitments resonate with religious principles.

VI. SECONDARY SCHOLARSHIP: DOCTRINAL DEPTH AND CONTEMPORARY AUTHORITY

In this section, the text asserts that while previous discussions laid the groundwork through textual foundations and doctrinal comparisons, it is essential to address the critical reviewer inquiry regarding the scholarly rigor of the argument presented. It emphasizes that relying solely on primary sources is insufficient for establishing credibility. Instead, the argument must be contextualized within the current academic discourse. To achieve this, the contributions of contemporary scholars such as Mohammad Fadel, Rudolph Peters,

Ahmed Al Dawoody, and Mashood Baderin are cited as providing the necessary intellectual scaffolding to support the claims made. This approach underscores the importance of situating arguments within a broader scholarly landscape to affirm their validity and relevance.

A. Public Authority and International Order: Mohammad Fadel

Mohammad Fadel's analysis of public authority and international order within classical Islamic law offers a nuanced perspective that transcends the binary view of Siyar as purely expansionist or defensive²⁰⁷². He contends that classical Islamic jurists constructed a sophisticated framework of political authority that governed warfare according to established legal principles rather than allowing for unrestrained theological disputes. Fadel's findings indicate that Islamic law framed inter polity relations with a focus on obligation, treaties, and jurisdiction, countering the narrative of chaos and asserting that war was regulated by legal standards. Moreover, public authority, represented by the imam or ruler, was bound by jurisprudential limits, suggesting a level of institutional organization comparable to early European concepts of international thought. This work supports the thesis of normative compatibility between Islamic and modern international law, presenting Islamic international law as a coherent legal system capable of engaging effectively with contemporary legal frameworks without resorting to mere defensiveness or apologetics. Fadel emphasizes that Islamic humanitarian norms, such as civilian immunity, treaty observance, and restraint, are integral to governance theory, thereby challenging the perception that they exist solely as isolated moral principles.

B. Jihad Doctrine in Historical Context: Rudolph Peters

Rudolph Peters' "Jihad in Classical and Modern Islam" offers crucial historical insights by

distinguishing between traditional juristic doctrine and contemporary ideological shifts²⁰⁷³. His analysis avoids both romanticization and caricature of Islamic legal practices. Peters highlights that classical jurists, such as Shaybani, engaged in a well-defined legal discourse that governed warfare, including rules of engagement and treatment of captives. He also acknowledges historical realities, including expansionist endeavors and enslavement, while maintaining that such contexts do not undermine the doctrinal frameworks that advocate restraint. This dual perspective enhances the work's credibility, ensuring a fair comparison to European just war theory and emphasizing that morally ambiguous historical actions coexist with humanitarian principles within Islamic law.

For the purposes of this article, Peters supports two key points:

1. Islamic international law was a developed jurisprudential field, not an ad hoc theological reaction.
2. Modern reinterpretations of jihad must be distinguished from classical doctrine.

This distinction is crucial in discussions advocating for normative complementarity within contemporary International Humanitarian Law (IHL). It is important to draw comparisons with classical jurisprudence rather than with modern politicized movements.

C. Direct Comparative Analysis: Ahmed Al Dawoody

Ahmed Al Dawoody's work, "Islamic Law and International Humanitarian Law," offers a comprehensive comparison of classical Islamic warfare rules with contemporary International Humanitarian Law (IHL) standards, notably the Geneva Conventions²⁰⁷⁴. This alignment with current discussions underscores the relevance of traditional legal frameworks in the context of modern humanitarian practices.

²⁰⁷² Mohammad Fadel, "Public Authority and International Order in Classical Islamic Law."

²⁰⁷³Rudolph Peters, Jihad in Classical and Modern Islam.

²⁰⁷⁴Ahmed AlDawoody, Islamic Law and International Humanitarian Law (Palgrave 2011).

He demonstrates substantial convergence in areas such as:

- Protection of civilians
- Prohibition of mutilation
- Humane treatment of prisoners
- Environmental restraint
- Treaty observance

Al Dawoody's work does not assert identity between Islamic legal systems and International Humanitarian Law (IHL), acknowledging their differing historical contexts and legal frameworks. He posits that Islamic legal principles can enhance adherence to IHL within Muslim majority societies by linking humanitarian obligations to religious narratives. This aligns with the article's main argument of normative complementarity, as Al Dawoody's scholarly contributions provide a doctrinal framework that substantiates the earlier comparative assertions, demonstrating that the identified parallels possess significant textual and juristic foundations. Moreover, the article builds upon Al Dawoody's insights by addressing the enforcement challenges of IHL and suggesting that Islamic normative systems may offer solutions to concerns regarding legitimacy in IHL implementation.

D. Human Rights and Legal Pluralism: Mashood Baderin

Mashood Baderin's "International Human Rights and Islamic Law" provides a comprehensive framework for understanding the interaction between legal pluralism, human rights, and Islamic law²⁰⁷⁵. Baderin challenges the view that Islamic law is fundamentally incompatible with international norms, advocating for an interpretive approach that allows for alignment with international standards while preserving religious integrity. His methodology focuses on contextual interpretation, the objectives of law (maqasid), and ethical coherence, highlighting that treating Islamic law as static hinders

normative complementarity. He argues that historical juristic traditions possess the flexibility to adapt while remaining faithful to foundational texts.

When applied to International Humanitarian Law (IHL), Baderin's approach suggests that traditional doctrines concerning captives, treaties, and civilian protection can be reconciled with modern humanitarian principles. Key ethical values such as justice, restraint, and the fidelity of covenants are consistent despite evolving institutional structures. Furthermore, Baderin emphasizes that presenting international norms in a manner that resonates with local legal cultures enhances their acceptance, as forced imposition typically leads to resistance, whereas integrative interpretations encourage ownership and legitimacy.

E. Scholarly Convergence and Critical Distance

These scholars collectively enhance the intellectual legitimacy of the intersection between Islamic international law and governance theory. Fadel integrates Islamic law within governance frameworks, Peters places jihad doctrine within its historical and doctrinal contexts, Al Dawoody conducts thorough doctrinal comparisons with international humanitarian law (IHL), and Baderin proposes a theory of normative integration and pluralism. Their combined insights affirm that the arguments presented are firmly based on established scholarship, rather than speculation or apologetics. Importantly, these scholars do not advocate for the substitution of international law with religious law; rather, they highlight a convergence that facilitates dialogue without erasing foundational differences. This distinction is significant, as it underscores the complexity inherent in academic credibility. Islamic humanitarian law and modern IHL arise from divergent epistemological foundations the former from revelation and juristic interpretation, and the latter from state consent and positivist

²⁰⁷⁵Mashood Baderin, *International Human Rights and Islamic Law* (OUP 2003).

codification indicating that compatibility does not equate to uniformity.

VII. CONCLUSION – TOWARD NORMATIVE REINFORCEMENT RATHER THAN REPLACEMENT

This article highlights the robust framework of International Humanitarian Law (IHL), composed of the Geneva Conventions and other statutes, emphasizing that the issue is not a lack of rules but rather the normative fragility of enforcement mechanisms. The current enforcement architecture is hindered by political constraints, selective cooperation, and fluctuating compliance, resulting in uneven accountability and uncertain deterrence.

The author's investigation into Islamic international law (Siyar) is presented not as an act of nostalgia but to explore whether alternative normative traditions could reinforce humanitarian principles amidst the limitations of external enforcement. The analysis reveals three main findings: First, classical Islamic jurisprudence has well defined rules for armed conflict, embodying protections for noncombatants and treaty adherence based on both Qur'anic injunctions and Prophetic practice. Second, there is significant doctrinal overlap between IHL and classical Islamic law regarding civilian immunity and prohibitions against excess, indicating converging humanitarian impulses. Third, the foundational differences are crucial; while modern IHL is based on positivist and consent driven frameworks, Islamic humanitarian law is grounded in theological duties with inherent moral accountability.

The summary suggests that compliance with humanitarian law is strengthened by internalization rather than mere avoidance of sanctions. It argues against the replacement of IHL with religious law, advocating instead for normative reinforcement through engagement with Siyar in Muslim majority contexts. The article further critiques both civilizational exceptionalism and uncritical harmonization of Islamic and international norms, advocating for

a structured compatibility that incorporates diverse moral vocabularies.

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