

## THE TREATMENT OF PRISONERS OF WAR BY ALGERIAN PRINCE ABDELKADER BETWEEN ISLAMIC LAW AND INTERNATIONAL HUMANITARIAN LAW

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### **Abstract:**

The study addresses the treatment of prisoners of war according to both Emir Abdelkader, international humanitarian law, and the teachings of Islam. The study covers several key aspects related to the treatment of prisoners, including the respect for religious freedom of prisoners, the right to release, the appropriate treatment of women prisoners, the prohibition of inhumane practices such as killing, mutilation, and physical abuse, and the responsibility of the detaining state for the lives of prisoners. The conclusion highlights the main findings of the study.

**Keywords:** Emir Abdelkader - International Humanitarian Law - Islamic law.

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### **Introduction:**

One of the most important effects of wars is the prisoners of war, including women and boys, and those who surrendered as soldiers and warriors. These prisoners were often treated with unjustified cruelty. History tells us that savage nations used to eat the flesh of their prisoners, slaughter them or offer them as sacrifices to the gods, and later they became an economic income and were taken as slaves for sale and purchase. This inhumane treatment has continued since the dawn of history among the Persians and Romans, and among the invaders in the modern era. This prompted some conscientious jurists in the world to adopt international conventions that regulate the relations of states in peace and war, and at the same time call for respect and charity for prisoners within the limits of human humanity and dignity, including the Hague Conventions on land warfare, the four Geneva Conventions, and the additional protocols that followed them.

Prince Abdelkader of Algeria led one of the fiercest wars against the French invaders of Algeria from 1832 to 1847. This study aims to uncover the motives for the humane treatment of prisoners of war who fell into his hands at a time when there were no legal precedents in the form of conventions and treaties that compel military commanders to respect human dignity and treat prisoners with compassion.

Emir Abdel Qader was not only a military commander, but also a prominent religious and political figure, characterized by sincere adherence to the teachings of the Islamic religion. Emir Abdel Qader often cited the Holy Qur'an when he wrote at the beginning of his diplomatic correspondence with his enemies: "O you who believe, fulfill contracts." What we saw from his noble treatment of prisoners is an application of the spirit of Sharia, and the implementation of its texts from the Book, the Sunnah, the Muhammadan biography and the sayings of jurists, and this is clearly evident through Emir Abdel Qader's correspondence with Moroccan scholar Abul Hasan al-Tasuli on some issues of jihad. <sup>(1)</sup>

### **I. Importance of the topic:**

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1. See: Abd al-Latif Ahmed al-Sheikh Saleh, Al-Tasuli's Answers to Amir Abd al-Qadir's Questions on Jihad, Dar al-Gharb al-Islami, first edition, Beirut, 1996, p. 6.

The importance of this topic can be seen in the following points:

- Algerian Emir Abdelkader did not write international laws, but his practices in warfare may make him an inspiring subject for studying the development of humanitarian and legal thought during the nineteenth century
- The importance of this topic also lies in the fact that it overlaps several disciplines, such as: History of Law, International Relations, Comparative Islamic Studies, and Military Ethics.
- This topic opens the way to study the extent to which positive laws are influenced by religious legislation if we consider that Prince Abdelkader is a spiritual leader who adheres to the teachings of Islam.

## **II: Methodology**

In this research, I followed the historical method, by relying on the historical events that took place during the time of Amir Abdelkader's wars with the French, and the inductive method, by tracing the hadiths and verses related to the proper treatment of prisoners of war in Islam, as well as the proper treatment of prisoners of war contained in the Geneva Conventions. Then the analytical approach to analyze the texts, and then compare the behavior of Prince Abdelkader with the teachings of Islam and the Geneva Convention.

## **III: Editorial method**

- Referring to the position of the verses in the Qur'an.
- Citing hadiths from the Sunnah books.
- Utilizing the books of the Prophet's biography and history books to describe historical events.
- Utilizing the Geneva Convention on Prisoners of War and its annexed protocols.

## **IV: Research Problem**

This topic raises questions about the source from which Algerian Emir Abdelkader derives his sophisticated war behavior with his enemies, and to what extent can we say that the laws that came after him, such as international humanitarian law, were influenced by his behavior?

To answer this question, the study is organized into five sections about the treatment of prisoners between Algerian Emir Abdelkader, international humanitarian law, and the teachings of the Islamic religion.

### **Section one: The right to release prisoners**

In this section, we will try to identify the right to release prisoners for Amir Abdul Qadir, and then the position of international humanitarian law and Islamic law on this right.

#### **I: Prince Abdul kader's right to release prisoners**

In his unique treatment of prisoners of war, Prince Abdelkader of Algeria surpassed all legal systems of legislation and all other customs of war prevailing in his time, as witnessed by Charles Henry Churchill: " ... The generous care and compassionate affection of Amir Abdelkader towards prisoners of war has no parallel in the history of warfare; Christian senior officers have to sit at his feet and wipe them, because of their inferiority in treatment ..." <sup>(1)</sup>

The Bishop of Algeria appealed to him to release one of the prisoners. He said: "My faith is based on serving God, and I love in Himself all people, His children and my brothers, .... I appeal to you to restore to my wretched brother who has fallen under your strong hands." Prince Abdelkader's

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1.Charles Henry Churchill, The Life of Emir Abdelkader, translated by Abulkasem Saadallah, Tunisian Publishing House, Tunis, 1974, p. 201.

response was impressive when he said: "I received your letter and understood its contents, it did not surprise me because I had heard about the spirit of goodness in you, but allow me to observe that the title you raise, the service of God and your fellow human beings, obliges you to ask me not only the freedom of one individual, but of all Christians who have been captured since the war resumed ... More than that, would you not be more worthy of the task you seek, the double task, if you were not content to obtain the blessing of liberty for 200 or 300 Christians only, but seek it also in an equal manner for those Muslims who are still suffering in your prisons." <sup>(1)</sup>

Prince Abdelkader of Algeria surpassed the French bishop in Algeria in terms of recognizing the right to release prisoners for all humanity. The bishop's view was very narrow, even for his own kind, as he requested the release of only one person, leaving hundreds of French prisoners of his kind in captivity, while Prince Abdelkader wanted this right to be for all Muslims and Christians without discrimination.

## **II: The right to release prisoners in international humanitarian law.**

The most important international instrument in international humanitarian law that deals with the right to release prisoners of war is the Third Geneva Convention (1949) relating to the Treatment of Prisoners of War. International humanitarian law considers that the prisoner is not a criminal; rather, he is being held for military reasons, and when these reasons end, the prisoner must be released immediately.

The Geneva Conventions emphasize that prisoners of war must be released and repatriated without delay or procrastination after the end of active hostilities, and belligerent parties are obliged to immediately release prisoners of war after the end of war or armed conflict.<sup>(2)</sup>

The Geneva Conventions allow for agreements between warring parties to release certain categories of prisoners (such as the sick or wounded) even during conflict, while at the same time prohibiting forcing a prisoner to remain in captivity if they have recovered from a serious injury or illness, unless they have been convicted of a crime.<sup>(3)</sup>

The 1977 Additional Protocol I to the Geneva Convention emphasizes that the rights of prisoners must be respected and that they must be released in accordance with the Third Geneva Convention, especially in cases of international conflicts.<sup>(4)</sup>

## **III: The right to release prisoners in Islam.**

Islamic teachings emphasize the necessity of releasing prisoners. It is authentically reported in the Hadith that the Messenger of Allah (peace be upon him) said: "Free the captives (i.e., the prisoners), feed the hungry, and visit the sick". <sup>(5)</sup> This Hadith contains a clear call to release prisoners.

One of the most frequent practices of the Prophet Muhammad (peace be upon him) regarding prisoners was granting them release, which is referred to in modern terminology as the "release of prisoners." The Prophet (peace be upon him) released a group of captives from the Battle of Badr, as well as the female prisoner Şafāna, the daughter of Ḥātim al-Ṭā'ī. He also released the prisoner Thumāma ibn Uthāl, the captives from the Jewish tribe of Banū Qaynuqā', and the captives from the Jews of Khaybar. Moreover, he returned the female captives from the tribe of Hawāzin to their families. On the day of the conquest of Mecca, he said to the people of Mecca who had been taken

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1. Charles Henry Churchill, Op. cit., p 200.

2. See: Paragraph (1) of Article 118 of the Third Geneva Convention of 1949.

3. See: Paragraphs (1) and (2) of Article 119 of the Third Geneva Convention of 1949.

4. See: Article 85 of the First Additional Protocol of 1977.

5. Narrated by al-Bukhari, Sahih al-Jami', Dar Ibn Kathir, Damascus, (n.d.), Book of Jihad and Expedition, Chapter: Ransom of Captives, Vol. 3, p. 1109.

as prisoners: "Go, for you are free." <sup>(1)</sup>

Some of the Companions understood from the saying of the Prophet (peace be upon him): "Treat the captives well" that it meant releasing them.

The Messenger of Allah (peace be upon him) gave a prisoner to "Abu al-Haytham ibn al-Tihyan" and instructed him to treat him kindly. "Abu al-Haytham" took him to his home and said: "The Messenger of Allah (peace be upon him) has advised me to treat you well. You are free for the sake of Allah." It is also reported that he said to him: "You are free for the sake of Allah, and you have a share in my wealth " <sup>(2)</sup>

The Messenger of Allah (peace be upon him) would not detain prisoners without purpose. Observing his actions reveals his desire to release captives promptly, either unconditionally or in exchange for a monetary ransom from those who were wealthy. This was evident in the case of the captives from the Battle of Badr, where some were released as soon as the army reached Madinah. Anyone from the enemy who came seeking a captive and was willing to pay a ransom was given the prisoner without delay and allowed to return home with him. <sup>(3)</sup>

## **Section Two: Respecting the Religious Freedoms of Prisoners of War**

Respect for the religious freedoms of prisoners is one of the most notable points of similarity between the conduct of Emir Abdelkader, the provisions of international humanitarian law conventions, and the principles of Islamic law.

### **I: Emir Abdelkader's Observance of Prisoners' Religious Freedoms**

In this regard, it is worth noting Emir Abdelkader's letter to the Bishop of Algiers, in which he stated:

" ...Send a priest to my camp; he will lack nothing and will be treated with respect and reverence. He will have a dual role: as a man of religion and as your representative. He will lead daily prayers for the prisoners, comfort them, and correspond with their families. In this way, he will serve as a liaison for obtaining money, clothing, and, in short, everything they might need or desire to ease the hardship of captivity ... <sup>(4)</sup> "

Churchill's statements are very clear in showing that the Emir had a sincere desire for these prisoners to practice their religious rituals freely.

### **II: Respect for the Religious Freedoms of Prisoners in International Humanitarian Law**

Conversely, international humanitarian law has been influenced by this principle, as some of its provisions grant prisoners of war full freedom to practice their religious rituals, including attending religious gatherings specific to their faith. Appropriate facilities must be provided for the performance of such rituals, all on the condition that the prisoners respect the specific rules and regulatory measures established by the military authorities. <sup>(5)</sup>

The State holding the prisoners must provide clergy if none are present within the camp,

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1. Reported by al-Bayhaqi in *Al-Sunan al-Kubra*, Dar al-Ma'rifah, (n.p.), (n.d.), *Book of Military Expeditions (Kitab al-Siyar)*, Chapter: Conquest of Makkah, vol. 9, p. 118; and by Ibn Hajar al-'Asqalani in *Fath al-Bari Sharh Sahih al-Bukhari*, Dar al-Rayan li al-Turath, (n.p.), 1986, Chapter: The Prophet's Entry from the Upper Part of Makkah, on the authority of Safiyyah bint Shaybah, vol. 7, p. 611.

2. Narrated by al-Bayhaqi in *Shu'ab al-Iman*, Chapter: On Enumerating the Blessings of Allah Almighty, Maktabat al-Rushd for Publishing and Distribution, edited by 'Abd al-'Ali Hamid, 1st edition, 2003, Riyadh, vol. 6, p. 334

3. See: 'Abd al-Malik ibn Hisham, *Al-Sīrah al-Nabawīyah*, ed. Muṣṭafā al-Saqqā et al., Mustafā al-Babī al-Halabī & Sons Publishing, 2nd ed., Egypt, 1955, vol. 1, pp. 659–660; and al-Wāqidī, Muḥammad ibn 'Umar, *Kitāb al-Maghāzī*, Dār al-'Alamī, ed. Marsden Jones, 3rd ed., 1989, vol. 1, p. 131

4. Charles Henry Churchill, *Op. cit.*, p. 202.

5. See: Article 34 of the Third Geneva Convention of 1949 .

ensuring they are from the prisoners' own denomination or a closely related one. If no such clergy are available, a layperson whose cultural background and knowledge permit them to conduct religious services may be appointed—if this is acceptable from a religious standpoint and upon the prisoners' request.<sup>(1)</sup>

### **III: Respect for the Religious Freedoms of Prisoners in Islam**

The respect for religious freedoms is mentioned in a verse from the Qur'an, where Allah says: "There is no compulsion in religion, for the right course has become clear from the wrong..."<sup>(2)</sup>.

This means: "Do not force anyone to enter into Islam, for its truth is clear and its signs and proofs are evident. There is no need to compel anyone to embrace it. Whoever is guided by Allah to Islam, whose heart is opened and whose insight is illuminated, will enter it with certainty. But for those whom Allah has blinded their hearts and sealed their ears and sight, forcing them to enter the religion will not benefit them."<sup>(3)</sup>

The foundation of recognizing religious freedoms and not coercing anyone to adopt a particular religion is rooted in the saying of Allah in the Qur'an: "And if your Lord had willed, whoever is on the earth would have believed, all of them. Then, will you compel people until they become believers?"<sup>(4)</sup>

The meaning of this verse addresses the speech of Allah, the Almighty, to the Prophet Muhammad (peace be upon him), the Messenger, when he sought to have all the people of Makkah embrace Islam. Allah informed him that no one has the right to force people to adopt a particular religion. Allah, in His wisdom, has created people with different levels of understanding and influenced by their surrounding circumstances and conditions. Therefore, no one, regardless of their status, even if they are a prophet sent by Allah, has the right to compel people to follow a specific religion.<sup>(5)</sup>

### **Section Three: Treating Women Prisoners in a Manner Appropriate to Their Gender**

Women require special treatment due to their circumstances, and when wars break out, they are among those who may be captured. Civilized nations have agreed on treating them in a manner appropriate to their gender. In this section, we will discuss the treatment of female prisoners of war according to Emir Abdelkader, international humanitarian law, and Islamic law.

#### **I: The Treatment of Female Prisoners of War in a Manner Appropriate to Their Gender According to Emir Abdelkader**

Among the notable examples is Emir Abdelkader's exceptional care for female prisoners. On one occasion, when there were women among the captives, the Emir's mother ordered that they be accommodated in tents next to her own. She assigned honorable and chaste men to guard them and instructed that they be well cared for — even ensuring they were not forgotten when it came to their morning coffee.<sup>(6)</sup>

This is further confirmed by what Churchill reported when he described the Sultan's mother as a refined and gentle woman, saying:

"...She protected all the imprisoned women as if it were her hereditary duty to do so. The care

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1. See: Article 37 of the Third Geneva Convention of 1949

2. Surah Al-Baqarah: 256

3. Ibn Kathir, *Ismā'īl ibn 'Umar, Tafsīr al-Qur'ān al-'Azīm, Dār Ṭayyibah li-l-Nashr*, (n.d.), vol. 1, p. 683.

4. Surah Yunus: 99

5. See: Muḥammad al-Ṭāhir ibn 'Āshūr, *Tafsīr al-Taḥrīr wa al-Tanwīr, Dār Saḥnūn*, Tunis, vol. 12, p. 293.

6. Ali Muhammad al-Sallabi, *The Biography of Emir Abdelkader, Dar Al-Maarefah*, (n.ed.), (n.d.), Beirut, Lebanon, p. 202.

and kindness she bestowed upon them were remarkable and truly exemplary. The women stayed in a tent near hers, guarded by two of her Black servants stationed at the entrance. No one was allowed to approach them without permission. Every morning, she personally handed them gifts of oil, butter, meat, and other food supplies. If any of them fell ill, she would bring them tea, sugar, coffee, and anything she thought might ease their pain and bring them comfort, with the tenderness of a mother."<sup>(1)</sup>

## **II: The Treatment of Female Prisoners of War in a Manner Appropriate to Their Gender in International Humanitarian Law**

The aforementioned Article (14) was dedicated to the treatment of women in accordance with the vulnerability associated with their gender.<sup>(2)</sup> and the characteristics that distinguish women from men, such as considerations of honor, modesty, the conditions of labor, pregnancy, and breastfeeding, as well as other such attributes.<sup>(3)</sup> Article (15) obligated the detaining state to fully provide for the needs required for the living conditions of prisoners, such as food and drink, with the necessity of offering the required medical care free of charge.<sup>(4)</sup>

## **III: Treating Female Captives in a Manner Appropriate to Their Gender in Islam**

As for the psychological and emotional needs of female captives in Islam, there are many examples. These include kind treatment, attentive listening, protection from psychological intimidation, emotional provocation, and avoiding anything that may harm their human dignity or feelings.

Among the examples of this is the story of the captivity of **Sufanah**, the daughter of **Hatim al-Ta'i**, when the Messenger of Allah (peace be upon him) passed by her. She stood up and addressed him. She was an eloquent and dignified woman, and she said:

“ O Messenger of Allah, my father has died and my guardian is absent, so bestow your favor upon me, as Allah has bestowed His favor upon you”.

He said:“ And who is your guardian”?

She replied“ :Adi ibn Hatim ”.

He said :“The one who fled from Allah and His Messenger”?

She said: Then the Messenger of Allah (peace be upon him) left me and passed on. The next day, he passed by me again while I had lost hope, and a man behind him gestured to me to stand and speak to him. So I stood and said :“O Messenger of Allah, my father has died and my guardian is absent, so bestow your favor upon me, as Allah has bestowed His favor upon you”.

He said :“I have done so. But do not rush to leave until you find someone from your people whom you trust, who can accompany you to your homeland. Then inform me”.

She said: So I came to the Messenger of Allah (peace be upon him) and said:

“O Messenger of Allah, a group from my people has arrived, and among them are those I trust and who can accompany me”.

She continued:“ So the Messenger of Allah (peace be upon him) clothed me, provided me with a mount, and gave me provisions. I then left with them until I reached al-Sham (the Levant)”.

This story reflects the Prophet’s (peace be upon him) high level of care and sensitivity to the

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1.Charles Henry Churchill, Op. cit., pp. 204–205.

2.See: Paragraph (2) of Article 14 of the Third Geneva Convention of 1949.

3. Picteet J, Commentary on III convention, international committee of the red cross, Geneva, 1960 , p 146-148

4. See: Article 15 of the Third Geneva Convention of 1949.

emotional and psychological needs of female captives, honoring their dignity and ensuring their safe return.<sup>(1)</sup>

When the Messenger of Allah (peace be upon him) conquered one of the fortresses of the Jews, Safiyyah bint Huyayy ibn Akhtab was brought to him, along with another woman. Bilal was the one who brought them, and he had led them past the corpses of the slain Jews. When the woman who was with Safiyyah saw the bodies, she screamed, struck her face, and threw dust on her head.

Upon witnessing this reaction from the Jewish woman, the Messenger of Allah (peace be upon him) said to Bilal: "Has mercy been removed from your heart, O Bilal, that you lead two women past the bodies of their dead!?"<sup>(2)</sup>

Here, the guidance and instruction of the Messenger of Allah (peace be upon him) to Bilal (may Allah be pleased with him) highlights the importance of considering the psychological state of captives, avoiding anything that may cause fear, spread terror, or harm delicate human emotions.

One of the most beautiful examples of compassion is the kindness and mercy shown by the Messenger of Allah (peace be upon him) toward a female captive. When Abu Usayd al-Ansari brought captives from Bahrain and they were lined up, the Messenger of Allah (peace be upon him) stood and looked at them. He saw a woman crying and said, "Why are you crying"?

She replied, "My son was sold to the tribe of Banu Abs".

So the Messenger of Allah (peace be upon him) said to Abu Usayd, "You must ride out and bring him back".

Abu Usayd mounted his ride and returned with the boy.<sup>(3)</sup>

This is the true meaning of respecting human emotions—when the great leader of the Ummah listens to the plea of a helpless slave woman, grants her justice, and

soothes the deep anguish she feels for her own child.

#### **Section Four: Prohibition of Atrocious Practices Against Prisoners, Such as Killing, Mutilation, and Physical Disfigurement.**

It is often difficult for warring parties to treat prisoners in accordance with the demands of humanity, due to the deep animosities left by war. As a result, prisoners often suffer the most from torture, mutilation, and mistreatment.

#### **I: The Prohibition of Atrocious Practices Against Prisoners—Such as Killing, Mutilation, and Physical Disfigurement—in the Approach of Emir Abdelkader**

Emir Abdelkader's commitment to upholding the principles of mercy and humanity led him to implement punitive measures to prevent the killing of prisoners and the mutilation of their bodies. History records his deep regret over the killing of several French prisoners—177 in total—who had been captured during the battles of Ghazaouet and Aïn Témouchent. These killings occurred in his

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1. Ibn Kathir, Isma'il ibn 'Umar, *Al-Bidayah wa al-Nihayah*, previously cited source, vol. 7, p. 291; Al-Tabari, Muhammad ibn Jarir, *Tarikh al-Rusul wa al-Muluk* (The History of Prophets and Kings), Dar al-Turath, 2nd edition, Beirut, 1387 AH, vol. 3, p. 114.

2. Ibn Kathir, Isma'il ibn 'Umar, *Al-Bidayah wa al-Nihayah*, previously cited source, vol. 6, p. 294; Al-Tabari, Muhammad ibn Jarir, *Tarikh al-Rusul wa al-Muluk*, previously cited source, vol. 3, p. 14; Ibn Hisham, *Al-Sirah al-Nabawiyah*, previously cited source, vol. 2, p. 336

3. Narrated by Al-Hakim in *\*Kitab Ma'rifat al-Sahabah\** (The Book of Knowing the Companions), under the entry of Abu Usayd al-Sa'idi (may Allah be pleased with him), vol. 4, p. 661. He said: "This hadith has a sound chain of narration and was not reported by the two (i.e., al-Bukhari and Muslim)" It was also narrated by Sa'id ibn Mansur in *\*Al-Sunan\**, Dar al-Kutub al-'Ilmiyyah, edited by Habib al-Rahman al-A'zami, Beirut, (n.d.), Book of Jihad, Chapter: On Separating Captives from Their Parents and Relatives, vol. 2, p. 246.

absence and without his consultation, carried out by one of his deputies, whom he later rebuked.

The Emir was widely known for his humane treatment of prisoners in accordance with the principles of Islamic law. He even ordered the release of ten French officers and sent them with a letter to the King of France, in which he stated:

“... It was rumored during my absence that the French were planning to liberate their prisoners by force from the hands of the Arabs. Then it spread among the people that the Sultan of Morocco intended to rescue them from the hands of our deputy against his will. This misconduct by your representatives was the reason for what happened to the prisoners, without our permission or knowledge. Now, we have released ten officers along with their leader, Courby de Cognac, who are fully aware of what we have done...”

He released them in October 1846, without demanding any financial or material compensation .  
(1)

As a result, he issued instructions not to harm the lives of the prisoners and decided to punish anyone who did so. After the decree of Prince Abdelkader was published, it became known that one of his regular soldiers had been caught holding the head of a French soldier. This caused Prince Abdelkader to become enraged, and he immediately wrote to his deputy in the region to bring the perpetrator for interrogation. After confirming his involvement in mutilating the body, he was punished with 250 lashes for disobeying the prince's orders.<sup>(2)</sup>

The prince did not content himself with a policy of intimidation and punishment, but resorted to another policy, that of encouragement and rewards. The text of the decision states the following: "It has been decided that any Arab who presents a French or Christian soldier, safe and unharmed, will receive a reward of (8) dollars for a male and (10) dollars for a female... In the event that a prisoner complains of any kind of mistreatment at the hands of his Arab captor, that Arab will lose his right to the reward." <sup>(3)</sup>

## **II: The prohibition of heinous practices against prisoners such as murder, mutilation and physical mutilation in international humanitarian law.**

The Geneva Conventions obligate the conflicting parties to treat prisoners of war from the opposing side with dignity at all times. They prohibit the detaining state from taking any actions, whether positive or negative, that could jeopardize the safety of the prisoner, such as physical mutilation or conducting scientific or medical experiments of any kind, unless they fall within the scope of medical treatment for the prisoner or are in their best interest. The Conventions also require the protection of prisoners at all times from any acts of violence or threats, as well as from insults, public curiosity, acts of revenge, retaliation, or vindictiveness. These actions are considered serious violations of the Convention and a breach of international humanitarian law.<sup>(4)</sup>

## **III: Prohibition of Heinous Practices Against Prisoners Such as Killing, Mutilation, and Physical Deformation in Islam.**

Islam prohibits all forms of psychological, moral, and physical harm to prisoners, forbidding torture and mutilation. There are numerous religious texts supporting this, including the saying of Allah Almighty:

" So when you meet those who disbelieve [in battle], strike [their] necks until, when you have inflicted slaughter upon them, then secure their bonds; and either [confer] favor afterwards or

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1. See: Ali Muhammad Al-Salabi, Op. cit., p. 256

2. See: Charles Henry Churchill, Op. cit., pp. 208–209.

3. See: Charles Henry Churchill, Op. cit., p. 208

4. See: Article (13) of Additional Protocol I to the Third Geneva Conventions (1977).

ransom [them] until the war lays down its burdens.<sup>(1)</sup>

In this Qur'anic verse, the only two options permitted after taking captives are either showing them mercy by releasing them or ransoming them.<sup>(2)</sup>

In this Qur'anic verse, there is a case of inversion, and the intended meaning is: "So strike [their] necks until the war lays down its burdens; then, when you have subdued them, secure their bonds." Here, "securing their bonds" refers to taking them as prisoners. After captivity, the commander is given the choice between granting them freedom as a gesture of mercy or ransoming them<sup>(3)</sup>

The hadiths that prohibit mutilation include: it was reported from the Messenger of Allah, peace be upon him, that whenever he appointed a leader over an army or a military detachment, he would advise him specifically to fear Allah and to treat the Muslims with kindness. Then he would say: "Fight in the name of Allah and for the sake of Allah. Fight those who disbelieve in Allah. Fight, but do not betray, do not act treacherously, do not mutilate, and do not kill any child".<sup>(4)</sup>

The prince al-San'ani, commenting on the hadith, said: "This indicates that when the leader sends someone to fight, he advises him to fear Allah and to treat the companions among the Mujahideen with kindness. Then, he informs him of the prohibition of betrayal from the spoils of war, the prohibition of treachery, the prohibition of mutilation, and the prohibition of killing the children of the polytheists. These are all unanimously prohibited <sup>(5)</sup> ."Al-Shawkani said: "And do not mutilate in it," which is evidence of the prohibition of mutilation.<sup>(6)</sup>

It was narrated that Amr ibn al-As and Shurahbil ibn Hasana sent 'Uqba ibn Abi Bakr with the head of a man from the people of Syria. When he arrived, Abu Bakr objected to this, and 'Uqba said: "O successor of the Messenger of Allah, they are doing this to us." Abu Bakr replied: "Is it in imitation of or following the practices of the Persians and Romans?! A head shall not be brought to me; the letter and the report are sufficient." <sup>(7)</sup>

### **Section Five: The Responsibility of the Capturing State for the Life of Prisoners of War.**

Captivity is not an act of vengeance or punishment; rather, it is a mere precautionary detention whose sole purpose is to prevent the prisoner from re-engaging in combat or contributing to it. Therefore, it is essential that these individuals receive appropriate humane treatment throughout their period of detention, as long as they have not committed a crime that threatens the existence of the capturing state. Under these circumstances, the capturing state remains responsible for the prisoners. Below, we will discuss how the concept of the state's responsibility for its prisoners appears according to Emir Abdelkader, international humanitarian law, and Islamic law.

#### **I: The responsibility of the detaining state for the lives of prisoners according to Emir Abdelkader.**

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1. Surah Muhammad: 04.

2 .Ibn Qudamah, Al-Mughni, Dar Alam Al-Kutub, 3rd edition, Riyadh, 1997, Vol. 13, p. 45.

3. See: Al-Shawkani, Muhammad ibn Ali, Fath al-Qadir al-Jami' bayna Fannay al-Riwayah wa al-Dirayah, Dar al-Ma'rifah, (n.d.), Vol. 1, p. 1372; and Al-Qurtubi, Muhammad ibn Ahmad, Al-Jami' li Ahkam al-Qur'an, Dar al-Fikr edition, previously cited reference, Vol. 19, pp. 248–249..

4. Reported by Muslim ibn al-Hajjaj, Al-Jāmi' al-Sahih\*, Dār Ihyā' al-Kutub al-'Arabiyyah, (n.ed.), (n.d.), Book of Jihad and Expeditions, Chapter: The Imam Appointing Commanders over Military Detachments, Vol. 3, p. 1357..

5 .Al-Amir al-San'ani, \*Subul al-Salam Sharh Bulugh al-Maram\*, Dar al-Hadith, (n.ed.), (n.d.), Vol. 2, p. 467.

6. Al-Shawkani, Muhammad ibn 'Ali, Nayl al-Awtar Sharh Muntaqa al-Akhbar, Dar al-Hadith, 1st edition, 1993, Vol. 7, p. 293.

7 .Reported by Al-Bayhaqi in \*Kitab al-Siyar\*, Chapter: What Has Been Reported Regarding the Carrying of Heads, Vol. 9, p. 132; and by Sa'id ibn Mansur in \*Kitab al-Jihad\*, Chapter: What Has Been Reported Regarding the Carrying of Heads, Vol. 2, p. 245. The wording is that of Al-Bayhaqi. Ibn Hajar said: its chain of narration is authentic. See: Ibn Hajar al-'Asqalani, \*Talkhis al-Habir\*, ed. 'Abd Allah Hashim, (n.ed.), Madinah, 1964, Vol. 4, p. 200.

Emir Abdelkader affirmed the principle of the state's responsibility for the lives of prisoners. This is supported by his decree stating: "Every Arab who has a Frenchman or a Christian in his custody is considered responsible for treating him well. He is henceforth ordered to lead his prisoner, without delay, either to the nearest Khalifa or to the Emir himself. If he fails to do so, he will face the harshest forms of punishment. But if he complies, he will receive the promised reward".<sup>(1)</sup>

## **II: The Detaining State's Responsibility for the Lives of Prisoners under International Humanitarian Law**

International humanitarian law has been influenced by this principle, which states that once a prisoner is captured, responsibility for him lies with the detaining state, not with the individuals or military units that captured him. The aim is to protect the prisoner from acts of revenge or retaliation related to his previous hostile activities. Therefore, the state—by virtue of its authority and means of enforcement—holds its military units accountable for ensuring the prisoner's safety and treating him appropriately. This gives rise to two types of responsibility for the prisoner's well-being: individual responsibility assigned to military units, and international responsibility.<sup>(2)</sup>

## **III: The Responsibility of the Capturing State for the Lives of Prisoners in Islam**

Islam has given great care and attention to prisoners of war. This is evident in the Qur'an, where Allah the Almighty says: "...and they give food, in spite of love for it, to the needy, the orphan, and the captive."<sup>(3)</sup>

This verse indicates that feeding prisoners is an act of devotion. It reflects Allah's praise of the righteous for feeding captives as a means of seeking His pleasure and out of mercy toward them. They earned this praise because they prioritized the prisoners over themselves, even while desiring and needing the food. The overall context of the verse affirms that feeding captives is among the righteous deeds, acts of worship, and charitable actions that merit reward. It stands as a timeless call to treat prisoners with kindness, particularly by providing them with food.

This is affirmed by the texts of the noble Sunnah. Ibn Abbas said regarding this: "Their prisoners at that time were polytheists. This is supported by the fact that the Messenger of Allah (peace be upon him) instructed his companions on the day of Badr to treat the captives kindly, so they would offer them food before themselves."<sup>(4)</sup>

"The right to medical and psychological care, as well as the full responsibility for the lives of prisoners, is encompassed in the Prophet Muhammad's (peace be upon him) instruction to his companions when he said: 'Treat the captives well'<sup>(5)</sup>

The Sunnah also affirms the state's responsibility for the lives of prisoners. It has been narrated that the Prophet Muhammad (peace be upon him) sent Khalid ibn al-Walid to the tribe of Banu Jadhimah, and he called them to Islam. However, they did not know how to properly say 'We have embraced Islam,' and instead kept saying, 'We have turned away, we have turned away (ṣaba'nā ṣaba'nā).' So Khalid began killing and capturing them. He assigned each of us a prisoner, and on the following day, Khalid ordered that each man kill his captive. I said, 'By Allah, I will not kill my

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1 .See: Charles Henry Churchill, op. cit., p. 208.

2. Paragraph (1) of Article 12 of Additional Protocol I to the Third Geneva Convention of 1977.

3.Surah Al-Insan: 8.

4. Ibn Kathir, Isma'il ibn 'Umar, Tafsir al-Qur'an al-Azim (Great Exegesis of the Quran), Dar Taybah, 2002, Vol. 8, p. 288

5 . Ali ibn Abi Bakr al-Haythami, \*Majma' al-Zawa'id wa Manba' al-Fawa'id\*, Book of Maghazi and Sira, Chapter on What Was Narrated About Prisoners, Vol. 6, p. 86, and its chain of narration is good. It was also narrated by al-Tabarani in \*Al-Mu'jam al-Saghir\*, Chapter of the Letter "H", Chapter on Those Whose Name is Al-Husayn, Vol. 1, p. 146.

prisoner, and none of my companions will kill theirs.' When we returned to the Prophet (peace be upon him) and informed him of what had happened, he raised his hands and said: 'O Allah, I disavow what Khalid has done' — and he repeated it twice." <sup>(1)</sup>

The meaning of the hadith is very clear in the Prophet Muhammad's (peace be upon him) rejection of committing crimes against prisoners of war. He distanced himself from the actions of his companions when they killed the prisoners, which indicates that the Islamic state bears full responsibility for the lives of its prisoners.

### **Conclusion:**

In conclusion of this study, we can clearly observe the alignment between the behavior of Emir Abdelkader of Algeria and the principles of international humanitarian law and the teachings of Islam regarding the treatment of prisoners of war. Based on this, we can record the following observations:

- Unlike the brutal practices that were prevalent at the time, Emir Abdelkader issued strict instructions not to torture or kill French prisoners, but to treat them according to the principles of Islam in mercy and justice.

- He released many prisoners either for ransom or without any payment, which impressed even the French officers themselves.

- Emir Abdelkader of Algeria, who lived between 1808 and 1883, was a military, religious, and political leader who led the resistance against the French occupation of Algeria (1832–1847). He is likely to have had a significant influence on the development of international humanitarian law. Some historians believe that the story of Emir Abdelkader's treatment of prisoners and the wounded inspired Henry Dunant, who founded the International Committee of the Red Cross (1863) and laid the foundation for the Geneva Conventions. This study strengthens this possibility.

- Historical studies indicate that international humanitarian law is often attributed to Europe (such as the Geneva Conventions of 1864 and beyond), but the practices of Emir Abdelkader in the 1830s and 1840s demonstrate that the principles of humanity in war existed outside the European context, thus expanding the academic understanding of the roots of international law.

- Emir Abdelkader relied on Islamic principles of mercy and justice (such as the ethics of war in Islamic jurisprudence) to formulate military codes of conduct, opening an academic avenue for studying the influence of Islam on the shaping of international law.

- The study affirms that Emir Abdelkader of Algeria was nothing but a tool for applying the teachings of Islam in warfare, which had existed fourteen (14) centuries earlier. His strong adherence to Islamic teachings played a key role in this, as some sources mention his great attention to the opinions of Islamic jurisprudence on matters of war. His correspondence with the scholar of his time, Imam Abu al-Hasan al-Tassouli, is clear evidence of this.

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