

The Manifestations of Benevolence in the Distinction Between Civilians and Combatants in Islamic Law and International Humanitarian Law

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Abstract:

This paper focuses on some of the noble ethics and morals that characterize Islamic law during wars and conflicts, particularly regarding the need to distinguish between combatants and civilians. I aim to detail this distinction and its manifestations, comparing it with what is established by international laws and conventions, thereby highlighting the benevolence, justice and moderation of divine Islamic law in relation to human customs and statutory laws, and showing that this is an essential characteristic in all its circumstances.

Keywords: Tolerance, Civilians, International Law, Combatants, Sharia.

Introduction:

Praise be to Allah, the Lord of the worlds, and blessings and peace be upon our master Muhammad and his family and companions until the Day of Judgment.

Afterwards; the struggle between truth and falsehood is an enduring wisdom, a running tradition, in which the people of truth are sometimes tested with weakness and frailty, causing the voice of truth to diminish and its influence to weaken. At other times, the People of Truth gain strength, leading to their victory and the establishment of their followers, in a continuous and unending struggle until the Day of Resurrection.

Just as Allah has ordained the refutation of falsehood and aggression through speech and utterance in order to establish justice and balance, He has also ordained struggle to remove oppression from the oppressed and to thwart the conspiracies of the aggressors.

In the face of these inevitable fates, Islamic law remains moderate in its rulings and just in its actions, giving punishment and retribution to those who deserve it, while lifting oppression and injustice from those who have no hand in it.

This is how the idea of this paper was born, in which I seek to uncover the manifestations of the distinction between combatants and civilians, emphasizing what distinguishes

Islamic law in this regard from other customs and international laws. And Allah is the bestower of success, and there is no god but He.

Importance of the Research:

The importance of this paper lies in demonstrating the extent to which Islamic law adheres to the principle of distinction between civilians and combatants, as recognized in international humanitarian law and acknowledged by international communities, and how it aligns with the spirit of Islamic law and its fundamental principles.

Research Problem:

This paper aims to address the following questions:

1. Does Islamic law distinguish between civilians and combatants in warfare?
2. What is the basis upon which this distinction is made?
3. What are the points of agreement and disagreement between Islamic law and international humanitarian law regarding this principle?

Objectives of the Research:

This paper aims to illustrate the mercy and justice that underpin the rulings of Islamic law, and that this foundation is universal across all its legislations, remaining consistent in all instances. The distinction between civilians and combatants is based on this consideration, as the ruling on the legitimacy of fighting is to eliminate oppression and establish justice, and this legitimacy should not exceed its intended scope and limits. Furthermore, these positive laws cannot, in any case, independently embody aspects of mercy, compassion, and justice.

Research Methodology:

In preparing this research paper, the following methodology was followed:

1. I gathered material for this paper from various sources, including the works of ancient jurists and research by contemporary specialists, professors, and legal experts.
2. I followed an inductive approach to collect texts from the two revelations that indicate and testify to the manifestations of this mercy, as well as from the texts of jurists and scholars.

3. I used analytical and comparative methods to study these statements, identifying the most accurate ones and criticizing the weaker ones.
4. I made a comparison between the general legal provisions of Islamic law and those of international humanitarian law.
5. I documented and referenced the legal rulings to their sources in the books of the recognized schools of jurisprudence, and for legal texts, I relied on published research and articles by scholars in the field.
6. I have defined some terms that are central to the research.
7. I extracted the hadiths cited in the research from their original sources.
8. I concluded this paper with some findings and recommendations that emerged from this research.
9. I followed the paper with a bibliography of the sources and references I used in preparing this research paper.

Previous studies:

The issue of distinguishing between civilians and combatants has received considerable attention from researchers. Several studies have addressed specific aspects of this issue, including:

1. "Rules for the Protection of Civilian Populations during Armed Conflicts in Islamic Jurisprudence and International Humanitarian Law," by Lakhzari Abdelhak, published in the Journal of Social and Human Sciences, Issue 16, December 2018.
2. "The Protection of Combatants and Noncombatants in Islamic Law: A Study of International Humanitarian Law from an Islamic Perspective," by Abdelkader Houba, published in the Journal of Research and Studies, Issue 19, December 2015.
3. "The Protection of Civilians in Armed Conflicts: Between International Humanitarian Law and Islamic Jurisprudence," by Cherit Walid, published in the Heritage Journal, Issue 9, 2013.
4. "The Legal Framework of the Principle of Distinction between Combatants and Non-Combatants: Reality and Challenge," by Dr. Jal Rouab, published in the Voice of Law Journal, Issue 3, April 2015.

5. “Protection of Civilians in International Humanitarian Law and Islamic Law,” by Soumya Qazmli, Master’s thesis in International Law, 2012, Faculty of Law, Yahya Fares University, Médéa.

I benefited from the first three studies only in the legal aspect of this paper, referencing them as needed, while the jurisprudential and legal analysis was drawn from the works of previous jurists with some additional specific analyses and comparisons.

Research Plan:

The content of this paper required a structure consisting of an introduction and three sections:

- **Section One:** The Legal Basis for Distinguishing Between Combatants and Civilians.
- **Section Two:** Aspects of Distinction Between Civilians and Combatants in Islamic Law
- **Section Three:** A Comparison between Islamic Law and International Humanitarian Law in the Aspects of Distinguishing between Combatants and Civilians.

The paper concludes with a summary of findings and recommendations.

Firstly: The Concept of Civilians:

Concept of Civilians Linguistically:

Civilians is the plural of “مدني”, referring to someone who resides in a city. To “مَدَن” “بالمكان” means to reside in a place¹

Concept of civilians terminologically:

This term was not used by our classical scholars; rather, it is a contemporary term created by legal experts. In our legal heritage it corresponds to “those whose killing is forbidden”. The details will follow, along with the basis on which the distinction between them and combatants in Sharia is based.

¹- See: The Collection of Language, by Ibn Durayd (2/683), and The Authentic, by al-Jawhari (6/2201).
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Civilians, according to legal scholars, are defined in Article 150 of the First Protocol to IHL as persons who do not belong to the armed forces, do not bear arms against the enemy, and do not take part in hostilities¹.

In addition, they are defined in Article 4 of the Geneva Convention on the Status of Civilians during War as: “Persons who are in a situation of conflict or occupation under the authority of a party to the conflict and who are not nationals of that party or of an occupying State of which they are not nationals”. The exceptions include:

1. Citizens of a state that is not a party to the Convention, because the Convention does not protect them.
2. Nationals of neutral States who find themselves in the territory of a belligerent State, and nationals of a State collaborating with a belligerent State, are not considered as persons protected by the Convention as long as the State of which they are nationals has political representation in the States in whose hands they find themselves.
3. Persons protected by the three Geneva Conventions of August 12, 1949, viz:
 - The Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
 - The Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces².

According to Article 50 of Protocol II of 1977, a civilian is defined as a person who does not belong to any of the categories specified in paragraph 4 of the Second Convention relating to the Protection of Prisoners of War, and Article 43 of the First Protocol of 1977 defines them as:³

1. Members of the armed forces and of voluntary militias considered as part of those forces.
2. Members of other militias and voluntary units, including members of resistance movements, belonging to one of the parties to the conflict and operating inside or outside their territory, even if that territory is occupied, provided that the following

¹- See: Rules for Protecting Civilian Populations During Conflicts, by Khudhari Abdul Haq, published in Journal of Social and Human Sciences, No. 16, December 2018 CE (p. 344).

²- See: Rules for Protecting Civilian Populations During Conflicts, by Khudhari Abdul Haq, published in Journal of Social and Human Sciences, No. 16, December 2018 CE (p. 344).

³- See: Protection of Civilian Populations in Armed Conflicts: Between the Provisions of International Humanitarian Law and the Teachings of Islamic Jurisprudence, by Walid Sharif, published in Al-Turath Journal, No. 9, 2013 CE (p. 92).

conditions are met: they are commanded by a person responsible for his subordinates, they carry a distinctive sign, they carry arms openly and they observe the laws and customs of war.

3. Members of regular armed forces who declare their allegiance to a government or authority not recognized by the occupying State.

4. Civilians who spontaneously take up arms when the enemy approaches to resist the invading forces.

Second, the concept of international humanitarian law.

Some define it as: “a branch of international law whose customary and written rules aim to protect persons affected in the event of armed conflict, as well as to protect property (assets) not directly related to military operations”¹.

However, this definition and others that expand its concept create confusion between IHL and human rights, leading to a conflation of the two.

Consequently, others have sought to refine and narrow this definition, defining it as “a set of international rules, derived from treaties or custom, specifically designed to deal with humanitarian problems arising directly out of international and non-international armed conflicts and which, on humanitarian grounds, limit the rights of the parties to the conflict to use the methods and means of warfare they deem appropriate or to protect the property and persons injured as a result of armed conflict”².

It is noteworthy that legal scholars and interpreters of international law differ in determining the nature of the relationship between human rights and international humanitarian law.

Some distinguish between them, seeing each as independent of the other, with humanitarian law regulating relations between warring states, while human rights law regulates relations between the peoples of a state and their governments.

¹- See: International Humanitarian Law: A Study in Concept and Development, by Bakrawi Muhammad al-Mahdi and Said Fikra, published in Al-Wahat Journal for Research and Studies. Vol. 8, No. 1, 2015 CE (p. 204).

²- See: international Humanitarian Law: A Study in Concept and Development, by Bakrawi Muhammad al-Mahdi and Said Fikra, published in Al-Wahat Journal for Research and Studies, Vol. 8, No. 1, 2015 CE (p. 206).

Another group sees a complete union between the two, asserting that human rights law is the foundation of international humanitarian law¹.

This law has undergone two fundamental phases, which are:²

The first stage: Before the Geneva Conventions of 1949 Legal scholars trace the beginnings of international humanitarian law back to the 16th century, specifically between the years 1581 and 1869, during which some 291 treaties were concluded, all of which concerned the rules established by warring armies. These treaties were based on the customary rules of warfare, whereby commanders ordered soldiers to treat prisoners well and not to harm civilians. Subsequently, countries began to formalize bilateral and multilateral treaties that were binding only on the signatory parties, excluding other nations.

The first international conference was held in Geneva, Switzerland, in 1864 to address the fate of wounded soldiers in war. This was followed by a second conference in 1868 in St. Petersburg, Russia, to ban explosive bullets.

In 1906, several countries signed a treaty to improve the conditions of the wounded and sick in wars, which served as an amendment to the 1864 agreement by including the sick among those affected by conflict.

In 1907, the Hague Convention was introduced, a new development that expanded the scope of armed conflicts to include maritime issues.

In 1929, another diplomatic conference was held in Geneva, resulting in two treaties:

1. The first treaty aimed at improving the conditions of the wounded and sick in armed conflicts and also amended the 1906 agreement.

2. The second treaty focused on the treatment of prisoners of war, marking the first international regulation of prisoners.

It is noteworthy that over the years, there was no consensus on the content of these agreements; rather, each treaty or convention was amended and developed.

¹- See: International Humanitarian Law: A Study in Concept and Development, by Bakrawi Muhammad al-Mahdi and Said Fikra, published in Al-Wahat Journal for Research and Studies, Vol. 8, No. 1, 2015 CE (p. 206).

²- See: International Humanitarian Law: A Study in Concept and Development, by Bakrawi Muhammad al-Mahdi and Said Fikra, published in Al-Wahat Journal for Research and Studies, Vol. 8, No. 1, 2015 CE (p. 207).

Furthermore, these treaties specifically addressed military personnel - wounded, sick, and prisoners - while neglecting the rights and protections of civilians.

Second Stage: Post-1949 Geneva Conventions

In this year, specifically, four treaties were established:

1. **First Geneva Convention:** Focused on improving the conditions of wounded and sick military personnel in the field of war.
2. **Second Geneva Convention:** Concerned with the conditions of wounded and sick military personnel at sea.
3. **Third Geneva Convention:** The first treaty dealing with the protection of civilians.
4. **Fourth Geneva Convention:** Established in 1949.

This convention is considered the direct source of the protection of civilians during armed conflicts. It was drafted and adopted by the Diplomatic Conference for the Establishment of International Treaties for War Victims on August 12, 1949, and entered into force on October 23, 1950. It was signed by 196 countries and consists of 159 articles divided into four sections, as follows:

- Section One: General Provisions, Articles 1 to 12; - Section Two: General Protection of Populations against Certain Consequences of War, Articles 13 to 26; - Section Three: Status and treatment of protected persons, articles 27 to 141.

- Section Four: Implementation of the Convention, Articles 142 to 159.

Additional Protocols:

Two Additional Protocols were added in 1977: 1. **First Additional Protocol:** Dated June 8, 1977, it concerns the protection of victims of international conflicts, including wars waged by states seeking liberation from colonial domination. It explicitly states the protection of civilians and distinguishes them from military personnel, whether individuals or groups.

2. Second Additional Protocol: Also dated June 8, 1977, it relates to the protection of victims of internal conflicts within states, commonly referred to as civil wars.

Chapter One: The Legal Basis for Distinguishing Between Combatants and Civilians

The foundation for this distinction is that only those engaged in fighting are to be killed. While international humanitarian law—crafted by humans—has recognized the principle of distinction between combatants and non-combatants, Islamic law was a pioneer in this regard, placing significant emphasis on this differentiation. Various texts from the Quran and the Sunnah affirm this separation.

Among the foundational texts supporting this meaning in the Holy Quran is Allah’s saying:

“And fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not like transgressors.” (Al-Baqarah: 190)

The permitted fighting, which is in the way of Allah to uplift His word, must be against those who are capable of fighting. To exceed the bounds of this combat by killing those who do not possess this characteristic is, in itself, an act of aggression. This is emphasized by two factors: the prohibition against such acts and the description of them as detestable and displeasing to Allah.

Combat (*muqatala*) implies mutual engagement, similar to trading or quarreling, and cannot occur without two parties, each acting against the other. This indicates that those who do not fight should not be fought. Thus, it is incorrect to say “fight the children,” as they are not described as combatants. If the verse includes the obligation to fight those who fight, then individuals like monks or elderly men typically do not engage in battle¹.

Additionally, Allah says: “And if anyone transgresses against you, let him transgress against you in a similar manner to that which he was harmed. And fear Allah and know that Allah is with the righteous.” (Al-Baqarah: 194)

This verse ties the legitimacy of aggression against others to the need to respond to aggression.

Not only that, but in the Book of Allah there is also a relief of the burden of kindness and good treatment towards them. Allah says: “Allah does not forbid you from those who do not fight you on the grounds of religion and do not drive you out of your homes, to be fair to them and to deal with them justly. For Allah loves those who do right. (Al-Mumtahanah: 8) This meaning is further confirmed with exclusivity, as He states:

“Allah only forbids you to make allies of those who fight you on the grounds of religion, drive you out of your homes, and assist in your expulsion. And those who ally themselves with them are the unjust.” (Al-Mumtahanah: 9) Some early scholars

¹- See: *The Eye of Evidence*, by Ibn al-Qassar (5/68).

believed that this was superseded by the command to fight them, but there is no evidence for this. Al-Tabari, in his reply, stated: “The most correct opinion in this regard is that which holds: Allah does not forbid you, as regards those who have not fought you in religion, from any category of faith and religion, to be righteous towards them, to maintain relations with them, and to act justly towards them. Indeed, Allah includes in His words all those who fit this description, without specifying some above others. There is no sense in the claim of those who say that it is abrogated, because being good to a believer from the enemy’s side, whether he has a family relationship or not, is neither prohibited nor forbidden, as long as it does not indicate to them any weakness of the Muslims or strengthen them with arms or weapons¹.

In the purified Sunnah, there are many texts that emphasize and reinforce this principle. Among them is what was narrated by Ibn Umar (may Allah be pleased with him), who said A woman was found killed in one of the battles of the Messenger of Allah (peace be upon him), and the Messenger of Allah (peace be upon him) forbade the killing of women and children².

He forbade the killing of women and children because they do not typically engage in combat and are not part of its ranks. This is confirmed by what Abu Dawood reported in his Sunan from Rabah bin Rabi’, who said We were with the Messenger of Allah (peace be upon him) when he saw people gathered around something. He sent a man and said to him: “Go and see what these people are gathered around.” He came back and said: “A woman has been killed. He said: “She would not have fought!” Then he sent a message to Khalid bin Al-Walid, saying: “Tell Khalid: Do not kill a woman or a hired worker.³”

This indicates that the reason for prohibiting their killing is their lack of participation in combat⁴. In addition, what Ibn Umar (may Allah be pleased with him) reported: The Messenger of Allah (peace be upon him) would say when he sent out a military detachment: “Go out in the name of Allah and fight those who disbelieve in Allah. Do not commit treason, do not betray, do not mutilate, and do not kill a child or an old man. This is the covenant of your Lord with you and the Sunnah of your Prophet (peace be upon him)⁵.

Another narration from Rashid bin Sa’d states that the Messenger of Allah (peace be upon him) prohibited killing women, children, and the elderly who cannot move⁶. He

¹- See: Tafsir al-Tabari (22/574).

²- Narrated by al-Bukhari in his Sahih, No. (3014), and by Muslim in his Sahih, No. (1744).

³- Narrated by Abu Dawood in his Sunan, No. (2669).

⁴- See: The Eye of Evidence, by Ibn al-Qassar (5/69).

⁵- Narrated by al-Bayhaqi in Al-Sunan al-Kubra (7/253).

⁶- Narrated by Ibn Abi Shaybah in his Musannaf, No. (35374).

prohibited killing the elderly because they are not different from women in their usual abstention from combat; indeed, the reasoning is clearer in their case.

Furthermore, Ibn Abbas (may Allah be pleased with him) reported that when the Messenger of Allah (peace be upon him) sent out his armies, he would say: “Go forth in the name of Allah, fighting for the sake of Allah against those who disbelieve in Allah. Do not betray, do not commit treachery, do not mutilate, and do not kill children or the inhabitants of monasteries.¹”

The prohibition against killing the inhabitants of monasteries and hermits is because they do not normally mix with people, do not usually fight, and do not encourage fighting, thus they are like women and children in this regard².

From Ayyub Al-Sakhtiyani, he said I heard a man in Mina narrating from his father that the Messenger of Allah (peace be upon him) sent a detachment, in which I was present, and he prohibited us from killing hired workers³. This, despite the weakness of its chain of narration - due to the ambiguity of its narrator - confirms what was mentioned earlier in the narration of Rabah bin Rabi’, where the Prophet (peace be upon him) sent a man who said: “Tell Khalid bin Al-Walid: Do not kill a woman or a hired worker.⁴”

The reason for this is that they are not among those who typically engage in combat and have not positioned themselves for it⁵.

This was also the practice of the rightly guided caliphs and the righteous leaders among the companions and successors who followed them.

Abu Bakr al-Siddiq (may Allah be pleased with him) sent an army to Syria and appointed Yazid bin Abu Sufyan as its commander. Then he said to him: “You will find people who claim to be devoted to Allah. Leave them and what they say they have submitted to⁶. Then he said: “I enjoin thee in ten things: Do not kill a woman, a child, or an old person⁷. It is obvious that Al-Siddiq did not say this except by divine command⁸.

¹- Narrated by Ahmad in his Musnad (4/461).

²- See: The Comprehensive, by al-Sarakhsi (10/137), and The Eye of Evidence, by Ibn al-Qassar (5/69).

³- Narrated by al-Bayhaqi in Al-Khilafat, No. (5240).

⁴- Narrated by Abu Dawood in his Sunan, No. (2669).

⁵- See: Nihayat al-Matlub, by al-Juwayni (71/464), and Bidayat al-Mujtahid (2/148).

⁶- Referring to monks.

⁷- Narrated by Malik in Al-Muwatta, No. (1627).

⁸- See: Al-Injad in the Chapters of Jihad (p. 229).

From Thabit bin Al-Hajjaj Al-Kilabi, he said Abu Bakr stood in front of the people, praised Allah, and then said: “Do not kill the monk who is in the monastery¹.”

Yahya ibn Yahya al-Ghassani said: I wrote to Umar ibn Abdul Aziz asking him about the verse: “And fight in the way of Allah those who fight you, but do not transgress. Indeed, Allah does not like the transgressors” (Quran 2:190). He wrote back to me that this applies to women, children, and those who do not engage in war among them².

Zaid ibn Wahb said: A letter from Umar came to us: “Do not betray, do not deceive, and do not kill a child, and fear Allah regarding the farmers.³”

There is no opposing view among the companions regarding these rulings⁴, and this has been treated as a consensus. If this consensus is accepted and is not based on opinion, it is taken from the Messenger of Allah (peace be upon him). At the very least, it should be established that it was derived from them regarding the prohibition of killing women and children, which is supported by clear and authentic texts. There is no doubt that the jurisprudence passed down from the righteous companions and the rightly-guided caliphs is more deserving of precedence.

What is notable in these various and corroborated texts, accompanied by practice, is their agreement on one meaning and their confirmation of a common rationale, which is the conditionality of the ruling on killing based on who fights and not on others. This confirms what distinguishes Islamic law in its leniency and establishment of justice in warfare and fighting.

Section Two: Aspects of Distinction Between Civilians and Combatants in Islamic Law

It has been established that the principle underlying this distinction is the separation between those who are typically engaged in combat and those who are not. The jurists have explained in detail who these people are.

Among them are children and women, and the jurists agree that it is not permissible to kill them, with no disagreement among them, as stated by Ibn Rushd the Younger, Ibn al-Munasib, and others⁵.

¹- Narrated by Ibn Abi Shaybah in his Musannaf, No. (35339).

²- Narrated by Ibn Abi Shaybah in his Musannaf, No. (35338).

³- Narrated by Ibn Abi Shaybah in his Musannaf, No. (35332).

⁴- See: *The Eye of Evidence*, by Ibn al-Qassar (5/69).

⁵- See: *Bidayat al-Mujtahid* (2/146), and *Al-Injad in the Chapters of Jihad* (p. 225).

The reason for this is found in the verse: “And fight in the way of Allah those who fight you, but do not transgress” (Quran 2:190), since these individuals do not fight, so it is required to refrain from harming them, and killing them would be a transgression¹.

It has already been mentioned that the Prophet (peace be upon him) forbade the killing of women and children².

The majority of jurists have made an exception for situations in which one is compelled to kill them accidentally rather than intentionally, as stated by the Hanafi³, Shafi'i⁴, and Hanbali schools⁵, specifically when combatants use them as shields and there is no way to target them without risking harm. What is not permissible when done independently may be permissible as a result.

Other jurists have leaned toward prohibition, adhering to the principle derived from the texts that prohibit killing them unless there is a fear of harm from them⁶.

Some jurists have gone so far as to insist on the generality of these texts and their unrestricted nature, even prohibiting killing them if they are engaged in combat⁷.

There is no doubt about the weakness of this view, since those who engage in combat, whether from these categories or others, if left unchecked, would result in increased harm to Muslims and their killing, which is invalid and cannot be permitted by consensus⁸.

In addition, the elderly, the infirm, the handicapped, and those unable to fight are also included. The majority of jurists from the Hanafi⁹, Maliki¹⁰, Hanbali¹¹, and Ibadi¹² schools have ruled against killing them. This is based on what has been narrated from the Prophet (peace be upon him) as previously mentioned, including what has been narrated from Ibn Umar (may Allah be pleased with him) that when he sent out a military detachment, he said “Go in the name of Allah and fight those who disbelieve in Allah. Do not betray, do not deceive, do not maim, and do not kill a child or an old

¹- See: *Al-Injad in the Chapters of Jihad* (p. 225).

²- Narrated by al-Bukhari in his *Sahih*, No. (3014), and by Muslim in his *Sahih*, No. (1744).

³- See: *Al-Tajrid*, by al-Quduri (12/6149).

⁴- See: *Al-Hawi*, by al-Mawardi (14/187).

⁵- See: *The Enrichment in the Jurisprudence of Imam Ahmad ibn Hanbal* (13/141).

⁶- See: *The Contract of Precious Jewels*, by Ibn Shas (1/318).

⁷- See: *The Treasure*, by al-Qarafi (3/399).

⁸- See: *Al-Injad in the Chapters of Jihad* (p. 234).

⁹- See: *The Assistance*, by al-Qadi Abdul Wahab (1/624).

¹⁰- See: *Commentary on the Nile and the Cure for the Ailing*, by Atufish (28/428).

¹¹- See: *Commentary on the Concise Text of al-Khiraqi*, by al-Zarkashi (6/549).

¹²- See: *Commentary on the Nile and the Cure for the Ailing*, by Atufish (28/428).

man. This is the covenant of your Lord with you and the Sunnah of your Prophet (peace be upon him)¹.

The Shafi'i is permitted killing them, citing the narration from Samurah bin Jundub, may Allah be pleased with him, that the Prophet Muhammad (peace be upon him) said: "Kill the elderly among the polytheists, and spare their youth."² The reasoning is that the command to kill them in this hadith is general, with no exceptions mentioned. If it were permissible to exempt a category of them, it would have been specified, just as the exemption for the youth was clarified³.

However, the position of the majority is more valid, correct, and reasonable, based on the obvious meaning of Allah's statement: "And fight those who fight you in the way of Allah, but do not transgress. For Allah hates those who transgress" [Quran 2:190]. Those who are unable to fight, such as the weak and the elderly, are not to be included among those who fight. Allah's command not to transgress means not to kill those who are unable to fight, and they are similar to women because of their inability to fight⁴.

Ibn al-Qattan al-Fasi said: "They have unanimously agreed that it is not permissible to kill an old person, a woman, a lame person, a madman, or a blind person if they do not fight, do not expose the faults of the Muslims, and do not guide the unbelievers in what they need to wage war against the Muslims, except for the Shafi'i who said in one of his narrations that it is not wrong to kill them all⁵.

This also applies to hired workers and servants, as the Prophet's instruction to his messenger when he sent him shows: "Tell Khalid: Do not kill a woman or a hired servant. This narration serves as a principle for exempting hired servants, which includes all others who are unable or incapacitated to fight⁶.

It also applies to those who are devoted to worship, such as monks and those in monasteries and places of worship⁷. The Prophet Muhammad (pbuh) said when he sent out his armies: "Go out in the name of Allah and fight in the way of Allah against those who disbelieve in Allah. Do not betray, do not steal, do not maim, and do not kill children or the inhabitants of monasteries⁸.

¹- Narrated by al-Bayhaqi in *Al-Sunan al-Kubra* (7/253).

²- Narrated by al-Tirmidhi in his *Jami* No. (1583), stating: A good, authentic, strange hadith.

³- See: *Al-Injad in the Chapters of Jihad* (p. 227).

⁴- See: *al-Injad in the Chapters of Jihad* (p. 228).

⁵- *Al-Iqna'a in Matters of Consensus*, by Ibn al-Qattan (1/336).

⁶- Narrated by Abu Dawood in his *Sunan*, No. (2669).

⁷- See: *Al-Injad in the Chapters of Jihad* (p. 229).

⁸- Narrated by Ahmad in his *Musnad* (4/461).

Malik and Al-Layth ibn Sa'd stated that what is necessary for their livelihood should be left for them, and their property should not be taken to the point that they die of hunger¹.

To sum up what has been said, there are certain categories that are absolutely forbidden to be killed according to all scholars, namely women and children who did not participate in the killing and did not take part in planning or assisting it. The majority allow them to be killed if they are directly involved in fighting, so the basis for the ruling among them is fighting: those who fight are considered worthy of being killed, while those who do not fight are not.

One of the principles that the Shari'ah has emphasized to ensure the protection and care of civilians is the preservation of their livelihood and property, ensuring that they are not subjected to destruction or devastation.

Ali ibn Abi Talib, may Allah be pleased with him, reported that the Prophet Muhammad (peace be upon him) said: When the Messenger of Allah sent an army of Muslims to the polytheists, he said: "Go out in the name of Allah." The hadith continues: "Do not kill an infant, a woman, or an old man; do not mutilate; do not cut down a fruitful tree unless it prevents you from fighting or separates you from the polytheists; do not mutilate a human being or an animal; do not betray; and do not steal."² Al-Bayhaqi stated that this narration has a weak chain, but it is supported by its other narrations and proofs.

Abu Bakr, may Allah be pleased with him, sent Yazid ibn Abi Sufyan to the Levant and accompanied him on his farewell journey. Yazid bin Abi Sufyan said: "I do not like that you walk while I ride." He replied: "You have set out as a warrior in the way of Allah, and I hope to be rewarded for walking with you. Then he advised him, saying "Do not kill a child, a woman, an old man, a sick man, or a monk; do not cut down fruitful trees; do not destroy inhabited places; do not slaughter a camel or a cow except for food; do not drown date palms and do not burn them"³.

Abu Thawr said that none of their livestock should be killed, their date palms should not be burned, their animals should not be harmed, and no animal should be killed by strangling, because the Prophet Muhammad (peace be upon him) had forbidden the killing of any animal by strangling⁴.

¹- See: Al-Ishraf on the Opinions of Scholars by Ibn al-Mundhir (4/23).

²- Narrated by al-Bayhaqi in Al-Sunan al-Kubra (18155).

³- Narrated by al-Bayhaqi in Al-Sunan al-Kubra (18152).

⁴- See: Al-Ishraf on the Opinions of Scholars, by Ibn al-Mundhir (4/30).

Section Three: Comparison between Islamic Sharia and International Humanitarian Law in the Aspects of Distinction between Combatants and Civilians

As we have already discussed in relation to the concept of international humanitarian law and its stages, at first it did not pay any attention to the civilian population; all the treaties and conventions dealt specifically only with military combatants. The Third Geneva Convention was the first of these treaties to show concern for the civilian side, as it established certain obligations and duties to safeguard their interests and protect them from the ravages of war.

The fourth Geneva Convention provided more detailed and definitive procedures, including:¹

1. The establishment of safe zones and special rehabilitation areas.
2. Establishment of neutral zones in regions where fighting is taking place.
3. Require warring parties to register searches for the sick and wounded.
4. Protect civilian hospitals when used for humanitarian purposes and prohibit attacks on means of transport used to evacuate sick and wounded civilians.
5. Protect women and children by establishing recreation areas or organized zones that allow for the protection of the injured, sick and elderly, as well as protecting them from attacks on their honor, ensuring shelter and medical care.
6. To ensure that children are not neglected and are not involved in armed conflict before the age of 15. If they are recruited before that age, they shall be legally protected.
7. Special protection for medical personnel, whether fully dedicated to searching for the injured and drowned, or managing medical units and facilities, including voluntary relief organizations such as the Red Crescent and the Red Cross.
8. Protection of civilian journalists, since every journalist is considered a civilian by virtue of the nature of his work, which is to report the truth and disseminate news rapidly with honesty and integrity. They are allowed to carry a permanent identity card issued by the state of which they are nationals or by the broadcaster for which they work.

¹- See: Protection of Civilian Populations in Armed Conflicts: Between the Provisions of International Humanitarian Law and the Teachings of Islamic Jurisprudence, by Walid Sharif, published in Al-Turath Journal, No. 9, 2013 CE (p. 94).

In addition, the First Additional Protocol of 1977 strengthened the protection in Articles 48, 51(2) and 52(2), establishing a set of rules for the protection of civilians, which can be summarized as follows:¹

1. The general rule in the protection of civilian populations states that civilians enjoy general protection against dangers arising from military operations, whether these operations are defensive or offensive against the adversary.
2. The prohibition of spreading terror among civilians, and the prohibition of any indiscriminate attacks that may affect military and civilian targets without distinction.
3. The prohibition of targeting cultural property, places of worship, and artistic or historical works that constitute the cultural or spiritual heritage of peoples.
4. The prohibition of assaulting resources and objects essential for the survival of civilian populations, such as food supplies, agricultural areas, crops, livestock, and water facilities.
5. The prohibition of assaulting engineering structures or facilities containing hazardous forces, such as bridges, dams, and nuclear power plants.

It is noticeable that these articles and provisions from these treaties and agreements reinforce one another, providing further detail on aspects that do not contradict the fundamental principle of protecting civilians, which Islamic Sharia also emphasizes, as previously detailed and affirmed.

The Islamic Shari'a specifies certain individuals whose killing is forbidden, emphasizes the reasons for the prohibition, and allows scholars and jurists to extend it to others in similar situations. The specification of these individuals was not intended to limit the ruling to them alone, but rather to serve as an example.

The details contained in IHL do not contradict the provisions of the Shari'a, as they are either consistent with what is explicitly stated or supplement the original principle on which the distinction is based. This is in accordance with the principle that what is necessary to fulfill an obligation is itself obligatory, as is known from the rules and general principles of the Shari'a. The rule of protecting women and children from being killed in our law extends to all measures that ensure their provision with adequate shelter, food and medical care.

¹- See: Protection of Combatants and Non-Combatants in Islamic Sharia, by Abd al-Qadir Habba, published in Research and Studies Journal, No. 19, December 2015 CE (p. 237).

Although these details are explicitly stated in international law, they are subject to change depending on the customs and conditions that nations and societies experience. They are therefore valid only as long as the conditions on which they are based remain stable; they remain fixed as long as those conditions remain fixed, and they change as those conditions change.

Research Results and Recommendations:

First: Results

This work has yielded several findings, which I outline as follows:

1. The Islamic Sharia gives great importance to civilians (those whose killing is forbidden according to the jurists), specifying some while remaining silent about others who are similar, allowing scholars to extend the ruling to the unmentioned.
2. The principle by which the Shari'a distinguishes between combatants and civilians is based on the distinction of those who do not typically engage in combat; therefore, those in this situation should not be killed, and any transgression against them is considered an injustice and aggression.
3. The Sharia's identification of certain civilians who cannot be killed also implies the obligation to provide everything necessary to ensure this right, including shelter, food, clothing, and care.
4. International humanitarian law did not pay attention to civilians until the Third Geneva Convention of 1949, and before that it focused more on combatants.
5. The details and specifics outlined in international law do not fundamentally contradict the principle of distinguishing between civilians and combatants in Shari'ah warfare, because Shari'ah considers the basic principles and leaves the details to the community and jurists, as these details are subject to change and instability.

Second: Recommendations

The researcher also makes some recommendations, which can be summarized as follows:

1. The researcher recommends organizing international conferences and establishing research centers and scientific laboratories that focus on comparative studies between what International Humanitarian Law advocates and what the objectives of Islamic Sharia entail.

2. The researcher recommends the necessity of teaching international humanitarian law alongside the rulings of the Sharia in the schools of the armed forces in particular and in educational institutions in general, including universities and religious institutes.

This concludes the compilation and preparation of this work, and may Allah grant success, for there is no Lord but Him.

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