

THE HUMANITARIAN TREATMENT FROM AL-SIER AND JIHAD TO INTERNATIONAL HUMANITARIAN LAW - THE RÉSISTANCE OF EMIR ABDELKADER AND THE WAR ON TERROR AS A MODEL

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Abstract:

Through its various sources, Islam was able to theoretically and practically establish humanitarian principles that governed the conduct of the combat operations fought by the Islamic armies. It was the inspiration for the international conventions that formed what became known as the norms of international humanitarian law and the lofty principles it contained, while grave violations of the norms of international humanitarian law are increasing day by day in different regions of our contemporary world.

Perhaps the secret of this difference in adherence to human principles that the two laws share is the human spirit inherent in Islamic law and what it determines from the worldly and otherworldly punishment for every action performed by humans. This is clearly shown by the seerah and jihad of Emir Abdulkader, while the war on terror embodies an example of the obvious inability to comply with the rules of international humanitarian law.

Keywords: *Principles of international humanitarian law, war on terror, Emir Abdulkader, the Islamic law, seerah and jihad.*

INTRODUCTION:

The Islamic jurists dealt with the provisions of war and fighting in the field of Al-Sier and jihad based on the Qur'an and the Sunnah of the Prophet, that is, since the early times of Islam. The main task of these provisions was to transfer the phenomenon of armed conflicts associated with the essence of human behavior from the framework of instinct to the level of organized behavior regulated by rules governing the behavior of a Muslim fighter.

International humanitarian law treaties have established principles relating to the protection of persons who do not participate or have ceased to participate in hostilities, the protection of civilian objects, and the restriction of means and methods of combat.

The behavior of the leaders of the Islamic armies was a translation of these judgments, while our modern world is witnessing unspeakable humanitarian tragedies of cruelty and breadth, despite the arsenal of protection mechanisms provided by international humanitarian law and the supremacy of its principles.

Thus, what is the extent of the theoretical and practical compatibility and discrepancy between what Islamic jurisprudence has stated in the chapter of seerah and jihad and the principles of international humanitarian law?

To answer this problem, we have adopted descriptive and analytical methods by studying two models of humanitarian treatment during armed conflicts, and trying to analyze the extent of discrepancy and compatibility between Islamic law and international humanitarian law through texts and practical practice.

We divided the study into three main sections:

Section I: The Theoretical Framework of the Behavior of the Islamic Armies' Leaders.

Section II: The Seerah and Jihad of Emir Abdulkader as a Model of the Behavior of the Islamic Armies' Leaders during Armed Conflicts

Section III: War on Terror as a Model of Dealing with the Principles of the International Humanitarian Law

Section I: The Theoretical Framework of the Behavior of the Islamic Armies' Leaders.

Since the seventh century AD, Islamic law has prescribed basic rules, established a set of general principles that regulated the actions of a Muslim fighter, and formed the theoretical framework for the behavior of commanders of Islamic armies.

These principles represent the basis of the Islamic legal system in this field. What agreed with them was Islamic behavior, and what disagreed with them went beyond its limits (Al-Daqqaq, 1990). At the same time, they largely comply with the principles of customary international humanitarian law (Ben Achour, 1980) (Stavraki, 1991). They were even the inspiration for many international conventions, although the terminology differed due to the different time to which each legislation was associated.

The most important of these principles are:

A. The Principle of Humanity

This principle is intended to protect human dignity in all circumstances, including in times of war. War is a real human-made situation, and if we cannot prevent it, then its effects can be minimized, and we can work to ensure that the inherent humanity of all people is not violated. This is clearly confirmed by the norms of international humanitarian law, whether customary or written, as they stipulate that victims must be treated humanely by respecting their honor, blood, and money, as well as the preservation of human self and dignity even in the cruelest circumstances (Pictet, 1998). Islam enjoined humane treatment and considered that the life of an individual in its value is almost equal to the survival of the human species and its continuation in accordance with the Almighty: *"From term that, We wrote over sons of Israel, "Surely it, one who kills a soul other than herself or war in the Earth, but like surely what kills the Mankind altogether, and one who gives her life, but like surely what gives life the Mankind altogether"* (Surah Al-Ma'idah, Ayaah 32.).

Humane treatment must be observed in all cases, even in the treatment of enemies and prisoners of war. It is not permissible to abuse and humiliate children and women, even if they are accompanied by combatants during the war. As war is not a way to allow this sanctity unconditionally, but rather there must be an existing reason for violating the sanctity of human beings (Abu Al-Wafa, 2001).

This principle was practically embodied in the commandment of the Prophet (peace and blessings of Allah be upon him) to his armies: "Go out in the name of Allah, fight for the sake of Allah from those who disbelieve in Allah, do not be treacherous, do not overdo it, do not act, do not kill the children and the owners of the silos" (Musnad Al-Imam Ahmad Ibn Hanbal, Hadith 2592.). He forbade the dead bodies of the polytheists to be left for lions and the birds of prey in the invasion of Badr, but he ordered the dead to be thrown into Al Qulayyib, and they were thrown into it except Umayyah Ibn Khalaf, for he swelled up in his armor, and he filled it, and they went to drag him, and he was removed, and they picked him up and threw at him what he lacked of dirt and stones (Al-Andalusi, 1970).

Islam regarded the prisoner of war as a defenseless civilian, and therefore Allah commanded us to have mercy on him and not to harm or starve him, and Allah praised whoever fed the prisoner, even if he was a polytheist, where he said: "And they feed the food over His love, poor and orphans and refugees" (Surah Al-Insan, Ayah 8). And the humane treatment of the prisoners was not limited to just feeding them, but it went beyond that to provide all the necessary needs of the prisoner and preserve his dignity and safety, so when the prisoners of Badr came, the Prophet (peace and blessings of Allah be upon him) separated them among his companions and said: "Take good care of the prisoners of war" (Al-Tabari directed it in (Al-Kabir [977]), and in (Al-Saghir [409]), and Al-haythami said in (the compound: Its chain of transmission is good from the Hadith of Abu Aziz ibn Umayr [10007])).

B. The Principle of Proportionality

This principle is intended to take into account the proportionality between the damage inflicted on the opponent and the military advantages that can be achieved as a result of the use of force during the course of military operations, so the parties to the conflict should not inflict harm on the opponent that is not commensurate with the purpose of the war (Saadallah, International Humanitarian Law and Protected Property, 2008), which is a weakening of the opponent's military

power. That is to say, the principle of proportionality aims at establishing a balance between two opposing interests, namely humanity and the necessity of war, so that the results are achieved with less pain, to the extent required by military necessity.

Fighting in Islam uses force as much as necessary against the enemies who attacked Islam and its people in its place and time (Al-Qaradawi, 2005). This is what the Prophet (peace and blessings of Allah be upon him) was doing, where he was using from his army the number that achieves the goal he seeks, so he was sending secrecy to fight a small group. As for the war, because the goal behind it was greater, the number of soldiers in it was greater. For example, in the conquest of Haneen, when Hawazen saw what the Prophet (peace and blessings of Allah be upon him) had achieved in victory in Mecca, all Thaqif and other tribes gathered. When he knew of this, he prepared a large army of twelve thousand of the people of Mecca and those who went out with him from his companions when he conquered Mecca (Haroun, No Date).

As for weapons and aggression, many verses refer to similarity in meeting the aggressor, including the Almighty's saying: "But one who transgresses over you, but transgress over him with example of what transgresses over you" (Surah Al-Baqarah, Ayah 194), and the Almighty's saying: "And repaying of evil, evil example of her" (Surah Ash-Shuraa, Ayah 40), as well as the Almighty's saying: "And if you followed up, but follow up with example of what you followed up with it" (Surah An-Nahl, Ayah 126).

Islam has forbidden treachery because it contradicts a basic principle in Islamic law, which is the principle of fulfilling the covenant, and if Islam allows tricks in war, it does not allow treachery (Al-Obeidi, 2008). The Prophet (peace and blessings of Allah be upon him) said: "For every treacherous on doomsday brigade, he says this is the treachery of so-and-so" (Narrated by al-Bukhari in Al-Hayl, No. 6966, Muslim in Jihad and Seerah, No. 9, and Ahmad in Musnad, No. 1/417). The Prophet (peace and blessings of Allah be upon him) said in the commandment of the fighters: "walk in the name of Allah and for the sake of Allah, fight and do not be treacherous" (al-Tabari, 1995).

C. The Principle of Distinguishing between Combatants and Non-combatants

This principle ensures the protection of the civilian population and civilian objects, the attack should be limited to military objectives, which include fighters, installations and equipment that fall within the scope of military objective. This principle is confirmed by Article 48 of the First Additional Protocol of 1977 to the four Geneva Conventions of 1949, as follows: "The parties to the conflict shall work to distinguish between the civilian population and combatants and between civilian objects and military objectives, and then direct their operations against military targets exclusively in order to respect and protect the civilian population and civilian objects".

In the Holy Qur'an, there are many verses that show that fighting is against the fighter, otherwise it is considered an assault, such as the saying: "And fight in path of the God those, they fight you, and don't you transgress. Surely the God, not He loves the transgressors" (Surah Al-Baqarah, Ayah 190), which is what is agreed on in the general principle or Islamic condition (Maribout, 1988). The Prophet (peace and blessings of Allah be upon him) commanded on the day of the opening of Makkah to be called in the people: "That they do not finish off the wounded, that they do not follow the fleeing, that they do not kill a captive, and whoever closes his door is safe" (Noureddine Ali, 1995). Thus, the Holy Prophet (peace and blessings of Allah be upon him) emphasized the principle that those who have become out of combat should not be subjected to it. It includes three categories: wounded, prisoners, and those who laid down arms or withdrew from the battlefield.

The Prophet (peace and blessings of Allah be upon him) forbade the killing of elders, children and women, as he was very angry when he passed by after the battle to inspect the dead and saw a woman killed, and he blamed the army commander Khalid Ibn Al-Walid: "Huh, she wouldn't have been fought" (al-Nisaburi, No Date). And in his will to an army sent by him, he said: "Do Not Kill a mortal Elder, nor a child, nor a small one, nor a woman (Abi Dawood, 2000)".

The Islamic law also provides close protection for the clergy in all the wars fought by Muslims. So the Prophet (peace and blessings of Allah be upon him), if he sent his armies, commanded them: "And do not kill the children or the owners of the silos" (bin Hanbal, 2001). In this Hadeeth, he forbade the killing of the monks because they locked themselves in their silos and did not participate in the

fighting. Abu Bakr Al-Siddiq, may God be pleased with him, followed this path. When he was at the head of the Muslim army, he commanded Yazid Ibn Abi Sufyan in his way to Damascus, saying: “You will find people who claim that they have locked themselves in soils, so leave them and what they claim” (Malik Bin Anas, 1977).

The Prophet (peace and blessings of Allah be upon him) forbade killing non-combatants of enemy personnel and people, recommending Khalid Ibn Al-Walid as he was going at the head of an army to fight: “You shall not kill any offspring or a slave” (al-Nisaburi, No Date), and the slave is the worker who goes to agriculture, industry or other work, in order to preserve urbanization and to respect the inviolability and immunity of peaceful civilians (Abu Al-Khair, 1999).

Islam did not legislate the destruction of non-war property, but rather the protection of civilian objects and in this Imam Bukhari says: “He did not set fire to the buggy, burned buildings and trees, killed women and boys. So that the infidels may know that the Muslims' act of fighting them is not to spoil their bodies and money, but their intention is to reform the infidels and push their evil away from the sanctuary of Islam.” (Abu Al-Wafa, 2001) Believing what was stated in the commandment of the Messenger (peace and blessings of Allah be upon him) in what was narrated by Ali Ibn Abi Talib (may Allah be pleased with him) that if he sent an army of Muslims to the polytheists, he said: “...And you will not have a tree except a tree that will prevent you from fighting or that will be blocked between you and the polytheists...” (Al-Khurasani, 1944), That is, the targeting includes only objects that have a military advantage.

Section II: The Seerah and Jihad of Emir Abdulkader as a Model of the Behavior of the Islamic Armies' Leaders during Armed Conflicts

Emir Abdulkader fought against the French occupation of Algeria, this was since the end of May 1832, led by his father, Muhyiddin Bin Mustafa Al-Hassani, that is, two years after the French occupation of Algeria, and then the leader of the Algerian resistance against the French occupation after his allegiance as Emir in February 1833 until December 1847.

He was an example for the Muslim world to strive for the ascetic path of Allah among people, desiring what Allah has, following the example of the seerah of the messenger of Allah (peace and blessings of Allah be upon him) and his companions and the righteous ancestor of this nation. Many historians have described him as: he was extremely religious and was an ideal ascetic, he also loved books and was interested in collecting manuscripts, he encouraged poets and writers, he had a taste for poetry and had a poetic Queen, he commanded his soldiers to pray daily, he meditated and pondered the meanings of the Holy Quran, besides, the prince was distinguished at an early age by intelligence, intellectual talents, intuitive speed, courage and skill in the arts of horsemanship (Al-Sallabi, 2015). This inimitable personality made him famous in the Islamic and European worlds and made his name associated with lofty human meanings. He showed the world that he was fighting an enemy who invaded and persecuted his country, and he was not fighting fanaticism or aggression, through his treatment of enemy prisoners during the resistance and in his correspondence, in his positions, and in his statements.

For this reason, many specialists and those interested in the field of international humanitarian law have recognized his contribution to the emergence of the first anchors of this law through their recognition of the humanity inherent in his personality and through their recognition that his practices and positions were one of the first pillars on which the rules of international humanitarian law were based.

A. The Source of Humanity in the Personality of Emir Abdulkader

Emir Abdulkader was able to reach in his mind and soul all the peoples of the Earth and break down the barriers that dismantled the human family, which was and still is the cause of many human tragedies and sorrows that cannot be described—in the words of the preamble of the United Nations—that was from Emir Abdulkader, despite the cruelty of the long war he fought against the French colonizer, and then the French colonizer betrayed him by imprisoning him in Amboise Castle instead of the country specified by the agreement between him and the French authorities, namely acre or Alexandria (Al-Sallabi, 2015).

Despite all this, Emir Abdulkader continued to believe to the end of his life that: “Our God, the God of Christians, Jews, Sabeans and the God of all errant sects, is one God, but he manifests himself to us in a different way from his manifestation to Christians, Jews and other sects” (Churchill, 2009).

And that: “humans are the family of Allah, and the Almighty attracts those who contribute to doing good deeds for his family members, and Allah loves the human race and is his creator, and all creatures from the highest to the most humble are dedicated to the goodness and service of the sentence of Creation, which is called the human race” (Emir, 1982)

There is no doubt that the person familiar with the Emir’s biography has an unbridled desire to find out the source of that strength that was not shaken by the engagement, so the answer was from the Emir himself.

In his response to the letter of the vicar general of the Archdiocese of Algiers, Emir Abdulkader expressed the source of that humanity that dazzled the world’s public opinion, after the role he played in saving the lives of tens of thousands of Syrian Christians, and from the staff of foreign consulates in Damascus, he said: “What we did with Christians was our duty, in compliance with Islamic law, and in order to respect human rights, because all creatures form the family of God, and those whom God loves most are the most useful to his family. All the heavenly messages are based on two principles: Glorifying the Almighty Allah, the mercy of his creatures, and the law of Muhammad (peace and blessings of Allah be upon him), which is among all the dogmas and shows a stronger connection and gives greater importance to respect for compassion and for everything that emphasizes social cohesion and saves us from discord” (Hani, 2004).

He has controlled his behavior since the first moment he was sworn in as an Emir, based on those humane rules that the Prophet (peace and blessings of Allah be upon him) used to apply and recommend to his soldiers in every war that the Muslims were fighting, as well as to his Rightly Guided Caliphs, who followed what he ordered. Thus, He made a pact with those who had pledged their allegiance in the pledge ceremony, saying:

“I will not work by a law other than the law of the Qur’an, and my guide will not be other than the teachings of the Qur’an and the Qur’an alone. If my full brother had permitted his blood by violating the Qur’an, I would have implemented the ruling against him... In order to accept this responsibility, we have stipulated to all those who have given us higher powers that they always have the duty to submit in all their actions to the texts and teachings of the book of Allah and to judge justly in their various regions, according to the Sunnah of the Prophet” (Bouamrane, 2001).

B. Emir Abdulkader’s Positions and Practices That Formed the First Foundations of International Humanitarian Law

Numerous writings have shown that Prince Abdulkader applied the principles of international humanitarian law to the victims of the war, guaranteeing them the rights established by this law before international conventions appeared in the humanitarian field (Churchill, 2009), as evidenced by countless practices and attitudes, including some examples:

British Colonel Charles Henry Churchill relates that Emir Abdulkader released seventy-four prisoners without ransom or payment, simply because he was unable to feed them and even ordered to accompany them to the outposts, where they handed over to their comrades and were amazed at this generous act (Saadallah, 2007).

One day, two French prisoners came before the prince and told him that we wanted to become Muslims, to which he replied: If you do it willingly, you are welcome, but if you do it out of a sense of danger, you are wrong, if you remain Christians, no inconvenience will happen to you, not a hair of your head will be touched (Saadallah, 2008).

In doing so, Emir Abdulkader preempted the third Geneva Convention of 1949 on the treatment of prisoners of war, in the need to provide adequate and healthy food for prisoners according to the provisions of Articles 25 and 26, in guaranteeing religious freedom and the practice of religious rites provided for in Chapter III of the said convention, and in authorizing prisoners to send and receive letters under Article 71 of the same convention. Rather, the prince committed himself to more than what is contained in Article 36 of the third Geneva Convention, when he wrote to the bishop of Algiers, saying: ““Send a priest to my camp, he will not need anything, and I will work to be respected

and revered, because he will have a double function, which is that he is a clergyman and a representative of you, he will pray daily with Christians, console them and correspond with their families, and all that we ask of him, and I promise And I promise that he will not be exposed in his letter about my camps” (Churchill, 2009).

Emir Abdulkader provided special protection to some categories of civilians, especially women, as “Abdulkader was very distraught from seeing women prisoners, as the thought of women becoming victims of war was in itself a source of constant concern for him” (Churchill, 2009).

Prince Abdulkader has adhered to a basic principle of international humanitarian law, which is the principle of distinguishing between combatants and non-combatants, in his own way, and as usual, he went from the rank of duty to the rank of charity. Colonel Henry Churchill, one of his contemporaries who knew him closely and wrote about his life, says: “Some French technicians had signed contracts to do some work, but the war resumed before their contracts expired, and even half of the work was still unfinished, so they asked permission to return, so he gave them a promise of safety and protection of their escort. Abdulkader, with his humanity, has done more than just inaugurate a new era in the treatment of prisoners, thanks to him, soldiers ' lives are saved in the field, and they are captured instead of being killed” (Churchill, 2009).

Section III: The War on Terror As a Model for Dealing with the Principles of International Humanitarian Law

In this section, we will confine ourselves to analyzing the treatment of prisoners of war in the war on terrorism as a prominent example of what Western civilization has reached in dealing with the human values common to all human beings and with international humanitarian law attributed to it.

A. Secret Prisons to House Prisoners of the War on Terror

After the events of September 11, 2001, the United States of America established the so-called black sites, which are secret prisons outside the American territory, to which the accused were transferred and subjected to illegal interrogation methods that violate their rights and freedoms, primarily the right to physical integrity and judicial rights in order to force them to confess and extract information from them (Najib Hamad, 2017).

These prisons were established in countries famous for their inhumane interrogation methods, and the goal was expressed by the director of the US intelligence agency, George Tenet, before Congress by saying: “Sometimes it is better to keep defendants in the hands of foreign authorities who may use more violent interrogation methods with them”. (Najib Hamad, 2017). These centers were established in eight countries, including Afghanistan and Indonesia, as well as in economically vulnerable regions that are at the stage of political transition in Europe, supervised by the CIA (GHANEM-LARSON, 2011).

According to the American press, “the location of these prisons is known only by a handful of officials in the United States of America, the head of state, and some intelligence officials in the countries concerned (GHANEM-LARSON, 2011), and the authorities are keen not to disclose information about the identity of the detainees, the conditions of their interrogation, or the duration of their detention, and according to the Washington Post, citing officials in the intelligence and the US administration, these prisons were established abroad due to their illegality in the United States (GHANEM-LARSON, 2011), and the question that remains open: according to which law was authorized to establish these prisons in other places?”

The Military Commissions Act of 2006, signed and promulgated by George W. Bush on October 17, 2006, gives the president of the United States of America the authority to call American citizens, or any of the Nationals of another country with which the United States of America is not at war, “enemies”, and allows the use of harsh methods to interrogate people suspected of terrorist activities, to establish secret detention centers abroad, and to try Guantanamo detainees before a military court, in order to give support and legal protection to the investigation program supervised by the CIA.

B. Prisoner of War Status in the U.S. War on Terror

The Military Commissions Act of 2006 established a previously unknown legal status of an “illegal combatant”, according to which a person is deprived of the right to protection provided by the Geneva

Conventions and the right to a regular trial related to public rights. This law has an international scope to which no country has objected; on the contrary, the legal systems of other nations have adapted to meet possible American requests based on this law (Jean-Claude , 2008).

The anti-terrorism laws imposed by the United States of America have helped to lay the foundations for a new legal system applied in all European countries, which allows any European citizen to be monitored in his country by external security interests or to be designated as an enemy combatant, extradited to the executioners of the CIA, and tried before the military commissions of the United States of America (Cattori & Jean-Claude , 2007).

The US Supreme Court has considered that the extraordinary courts established after September 11, 2001, without direct approval from Congress violate US laws and the four Geneva Conventions (Fisher & Mourtada, 2007); however, these courts continued their work in the trial of Guantanamo Bay detainees even after Barack Obama took office as president of the United States.

Although international humanitarian law is clear in this area, persons who fall into the hands of the enemy during an international armed conflict are either combatants, in which case they become prisoners of war protected by the Third Geneva Convention, even if their identification as prisoners of war as defined in Article 4 of this convention is in doubt until their status is determined by a competent court (the third Geneva Convention of 1949, Article 5) or civilians protected by the Fourth Geneva Convention, and there can be no middle ground.

However, the Bush administration described Guantanamo detainees as illegal combatants in order to avoid two basic consequences that arise from the legal regime of prisoners of war: their release as soon as hostilities end, their right to refuse to answer questions during interrogations, and their right to a fair trial. It should be noted in this regard that neither the Geneva Conventions nor the Hague Conventions included the status of an illegal combatant (M.D & Watts, 2007).

Conclusion:

Through the models we have studied, it turns out that:

1. There is a wonderful harmony between the principles and rules that Islam came up with in the field of humanizing armed conflicts and what international humanitarian law came up with later, because Islam came to fulfill the virtues of morality inherent in man as a human being.
2. The fundamental difference that Islam is unique as a religion and as a civilization; at the same time, it is a place of helplessness that Western civilization has not been able to overcome, despite the constant attempts of the pioneers of international humanitarian law to develop mechanisms for the implementation of international humanitarian law and ensure respect for it; lies in the most important characteristics of Islamic law, which is the human spirit inherent in it, and the worldly and otherworldly punishment for every action performed by Man, which imposes self-censorship on the one hand, and during armed conflicts by Emir Abdulkader, in contrast to the humanitarian tragedies that occur in various regions of the world, despite the arsenal of international agreements in this field, perhaps the devastation left by the United States when it withdrew on August 31, 2021, from Afghanistan after twenty years of occupation is a good example.
3. The examples we have touched upon during our study of this topic make us decide with confidence that limiting international humanitarian law as a foundation and obligation to Western civilization is an injustice to humanity, as it deprives it of enjoying what Islamic civilization has done.


Based on all this, we make the following practical suggestions:

1. To form an International Committee of the Red Crescent, similar to the International Committee of the Red Cross, with the support of all Islamic countries, to work on the codification of International Islamic Humanitarian Law, to disseminate and ensure its implementation, and to contribute to the media and academic field in this field.
2. The Algerian state, the Algerian Red Crescent, and the National Commission for International Humanitarian Law should strive to highlight the personality of Emir Abdulkader as one of the most prominent pioneers of international humanitarian law, as the first to practice its principles in the field in the modern era, and as one of the authors of its principles and rules through its various effects.

3. Opening University specializations specializing in comparative studies in the field of international humanitarian law.
4. Intensifying media propaganda on the widest scale and in all living languages to publicize the practices that have distinguished war leaders in Islam throughout the ages and to highlight the eminence and mercy of Islam even during armed conflicts.
5. Intensifying academic studies and research in the field of international humanitarian law in Islam in living languages so that it can be a reference for any humanitarian action.

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