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# The Law of Naval Warfare: A Comparative Analysis in the Islamic Law of Armed Conflict and International Humanitarian Law

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## ABSTRACT

*Throughout the previous century, the world focused its armed conflicts mainly on land. As a result, the rules of naval warfare have not been subject to many discussions. However, even if the world did not witness naval battles in the previous years, it does not mean that the states and other entities failed to strengthen and develop their naval forces since the last naval battle. Considering how the majority of the land conflicts are taking place in Muslim territories in this day, it is impossible to ignore the possibility of a naval conflict in Muslim territory. Thus, the importance of understanding and modernizing rules on naval warfare both under Islamic and international humanitarian laws is crucial to make sure that future naval conflicts are just. This article will firstly study the rules on naval warfare in the Islamic law of armed conflict, and analyze its core principles and development. After that, the focus will be placed on the rules on naval warfare under the international humanitarian law. The article will be concluded with an analysis of the relationship between the two laws and how their future should be shaped.*

*Key Words: Islamic law of armed conflict, naval warfare, international humanitarian law, biological weapons, the conduct of hostilities*

## INTRODUCTION

The rules of naval warfare did not draw as much attention as the rules of armed conflict on land for the last 80 years due to the decrease in armed conflicts in the sea. However, the lack of practice and incidents to amend the new developments into the existing laws caused many of the rules in this field have become outdated and insufficient to answer the dilemmas arising from the possibility of modern naval conflicts. An interesting parallel of overlooking could also be observed in Islamic law. Yet, this time the problem would not be the rules on the naval warfare going out of date, but for them to never have the chance to develop fully.

The mentioned parallel and the rules of both International Humanitarian Law (IHL) and Islamic law in the field of naval warfare will be analyzed in the following sections. First, Islamic law of naval warfare rules will be examined thoroughly. Subsequently, the focus will shift to naval warfare under IHL. And finally, the similarities and differences between the two regimes in the field of naval warfare will be discussed.

## ISLAMIC LAW OF NAVAL WARFARE

### 1. Development of the Islamic Law of Naval Warfare

In the early years of Islam, the Muslim forces mainly focused their powers on in-land battles (Azeem, 2020). The lack of maritime conflicts directly resulted in the absence of naval warfare doctrine in traditional legal teachings of Islam. As a result, the majority of the Muslim jurists either did not study the subject of naval warfare in detail or limited their studies to the transportation function of the sea in times of both war and peace (Khadduri, 1962). Even though Muslims did not engage in naval battles in the early years, they used water bodies often for transportation purposes (Shah, 2011).

As mentioned previously, Prophet Mohammad and his early successors focused their battles on land. Therefore it is not possible to find detailed instructions and comments about the conduct of naval hostilities in the main part of the primary sources of Islamic law (Khadduri, 1962). Thus, when naval conflicts became a part of Islamic war tradition, the jurists relied on the principles set out in the general Islamic law of armed conflict and the practices of other states to formulate the rules concerning naval warfare (Azeem, 2020). Considering how the goals and principles would remain the same even when the scene of the battlefield changes, there is no reason for the rules of land warfare to be inapplicable to the conflicts at sea. As the primary sources of Islamic law do not prohibit engagement in maritime conflicts explicitly or implicitly, the development of rules in this field is also not prohibited (Shah, 2011).

Although Hadiths regulating the conduct of naval conflicts are scarce, it is known that Prophet Mohammad said that the ones who perish fighting at sea would be compensated twice compared to the ones who perish fighting on land[U1] (Khadduri, 1962). It is said that the Prophet continued as *follows ““The*

*martyr at sea is like two martyrs on land, and the one who suffers seasickness is like one who gets drenched in his own blood on land. The time spent between one wave and the next is like a lifetime spent in obedience to Allah. Allah has appointed the Angel of Death to seize souls, except for the martyr at sea, for Allah Himself seizes their souls. He forgives the martyrs on land for all sins except debt, but (He forgives) the martyr at sea all his sins and his debt."* (Ibn Majah, n.d.). *The* mentioned tradition can be interpreted as both the encouragement for sea jihad and the reflections of the hesitancy towards the sea, as the war traditions so far were developed with the in-land fighting.

A similar encouragement for sea jihad can be found in another Sunnah, *""A military expedition by sea is like ten expeditions by land. The one who suffers from seasickness is like one who gets drenched in his own blood in the cause of Allah"* (Ibn Majah, n.d.). This time the focus being shifted more on the nature of the battle ground and the military operation itself rather than the Muslim fighters.

The encouragement for sea jihad also continued among the jurists. Muhammad al-Shaybani, also known as the founder of Muslim international law, supports this tradition by highlighting the double compensation and adding that if a Muslim fighter chooses to pursue his jihad on the sea, his sins would be forgiven, and he would be pure as if he was born again (Bonifacius, 1871).

2. The Rules and Practices

The settled approach for the rules of naval warfare in Islamic law was to apply the general rules of war using the analogy (Khadduri, 1962). The ships were regarded as forts, and the rules that would be applied to enemy forts and the people in it on land were applied to the enemy ships and the enemy crew in it by analogy (Yamani, 1985).

In the war of land warfare, it is allowed to attack and besiege the enemy forts with hurling machines and to cut the forthcoming supply support from outside, thus by analogy, it is also should be allowed to attack and sink enemy vessels until the enemy surrenders, and the crew is captured (Khadduri, 1962). However, prior to resorting to the use of force at sea, Muslims were advised to verify the intentions of the other party and determine that they indeed are the enemy (Khalilieh, 2020). If it is not possible to decide on the purposes of the other party when an unknown vessel approaches the Muslim shores, Muslims were recommended to wait rather than directly attack to avoid unnecessary armed conflicts and avoidable harm (Khalilieh, 2020). On the other hand, during an active conflict, Muslim battleships were allowed to attack enemy battleships and also the ships carrying support to the enemy at high-seas without any additional permission needed (Khalilieh, 2020).

i. Property and People

It was preferred that the Muslims would seize the cargo and the vessels, when possible, rather than destroy or sink them (Khalilieh, 2020). It is agreed upon among the Muslim jurists that the rules on spoil on land are also applicable to the spoils obtained on the sea (Khadduri, 1962). However, if the spoils were too heavy for the ship and put the Muslim vessels at risk of sinking, it was allowed to throw the property into the sea to save the vessels (Khadduri, 1962). Muslim sailors were also allowed to throw the prisoners of war into the sea if the same risk of the sinking of the ship was present, including the women and children (Khadduri, 1962). This approach could be explained by the principle of necessity, as the primary goal of the armed conflict is to win against the enemy; allowing one's own ship to sink would not be compatible with this goal, thus doing the necessary thing to avoid this consequence would come into play.

Yet, if the women and children on board were Muslims and they would be in great danger of harm when thrown into the sea, doing so was not allowed because it could cause their deaths (Khadduri, 1962). This prohibition led some jurists to advise the sailors to not take any women or children on the board of battleships (Khadduri, 1962). Although it might seem like a solution to the dilemma between trying to save the vessel and not breaking the prohibition, this option also has the potential to bring problems of its own. For instance, in a situation of Muslim women and children being distressed at sea, a Muslim battleship that had extra weight not saving them would violate its moral and legal duty to aid these people. Moreover, considering the cases of captain and crew's penalization due to ignoring a distress call (Azeem, 2020), this advice creates more quandaries than solutions.

When it comes to the death at sea, independent from the context of an armed conflict, Muslim jurists focused on three scenarios when a person dies on board of a ship: (1) the body is able to wait without decomposing until the ship reaches the shore, (2) the body is not able to wait until the ship reaches the shore without decaying, and (3) the body is not able to wait until the ship reaches the shore, but there is a risk of enemy desecrating the body at the shore (Al-Dawoody, 2017). Although deaths during a naval battle could happen on the ship and outside of it, it is possible to apply the same scenarios for both the deaths on board and for the bodies rescued from shipwrecks and similar incidents.

In the first scenario, where the body is able to wait until the ship reaches the shore, it will be taken to the shore and buried similarly to a person dying on land (Al-Dawoody, 2017). In the second case, the body should be tied to pieces of wood and left to water for it to reach the shore (Al-Dawoody, 2017). The condition for the second scenario is that the body should be left in the sea if there are Muslims to complete the burying ritual according to Islam on the shore the body is predicted to reach (Al-Dawoody, 2017). Although the same principle would be applicable in the context of Muslim bodies in naval warfare, it is to be said that for non-Muslim bodies, it

should be considered that the people at the shore the body will reach will respect the body and won't mutilate it. Finally, in the third scenario, where there is a risk of the enemy getting ahold of the body and desecrating it when it reaches the shore, the body should be tied to a heavy object and be allowed to sink for a sea burial (Al-Dawoody, 2017).

ii. Aman

In view of the fact that Muslims are expected to abide by their promises, the protection granted to Muslim women and children is also applicable to dhimmis and non-Muslims under an aman on board (Khadduri, 1962).

If a crew of a not seaworthy enemy vessel without an aman were to be detected on the coasts of dar al-Islam, they would not automatically acquire the protection of aman, and it would be permissible for the Muslims to attack them (Khadduri, 1962). However, Awza'i argues that if the enemy combatants in this situation asked for an aman, they would be entitled to it (Khadduri, 1962). The same could be said for an enemy warship crew who have surrendered. Therefore, if they were to ask for aman, the Muslims were advised to grant them with the condition of this request being sincere and genuine (Khalilieh, 2020).

iii. Specific Means and Methods

The sea figthers choose their weapons with the goal of lowering the enemy's morale and motivation, creating panic amongst the crew of the enemy warship and directly assaulting the vessel itself (Khadduri, 1962). Stones and fire bundles were often chosen as weapons to attack the enemy; similarly, snakes, scorpions and harmful powders were also used to do so (Khadduri, 1962). Additional to the goal of injuring the enemy combatants, the aim was also to scare them and make them lose their mental composure during the battle.

The lawfulness of the usage of fire bundles under Islamic law is debated. The Muslim jurists gave different rulings on the topic differentiating between using fire against the enemy combatants and using fire against the enemy's fortifications. (Al-Dawoody, 2016) Even though there are various regulations and interpretations trying to answer this particular question, it is possible to say that it is not entirely prohibited under Islamic law. Even the jurists allowing the usage of fire against the enemy preferred it to fulfil several conditions before doing so (Al-Dawoody, 2016). To provide an example, jurists like al-Shaybani, Ibn Abidin and al-Awza'i permitted the usage of fire against the enemy fortifications only if it was the only method to win the battle. (Al-Dawoody, 2016) Al-Qarafi found the usage of fire against the enemy fortification permissible only if women and children were not present; therefore, they would not be affected by it (Al-Dawoody, 2016). Ibn Rushd found it permissible only within the limits of reciprocity and prohibited its usage under any other scenario (Al-Dawoody, 2016).

The usage of snakes, scorpions and harmful powders raise the question of possible biological weapons. Although the detailed explanation of the substance and the effects of the harmful powders were not available, from the way it is mentioned together with snakes and scorpions, they would be interpreted as being toxic or poisonous for the purpose of this analysis.

ICRC defines biological weapons as follows:

> "Weapons that use harmful insects or other living or dead organisms or their toxic products to inflict diseases and pathological changes on human beings and animals."(International Committee of the Red Cross [ICRC], n.d.)

According to this definition, venomous snakes and scorpions in the context of an armed conflict would constitute an early version of biological weapons. The same could be said about the harmful powders; however, without more detail on their chemistry and side effects, it is not possible to concretely categorize them as such.

Under the international law of armed conflict, biological weapons are categorized under the topic of weapons of mass destruction (WMD). Modern Muslim jurists are divided into three main opinions when it comes to the question of the usage of WMD in the context of armed conflicts: total prohibition, permission based on the principle of reciprocity and permission due to the stockpiling of such weapons by the other states (Al-Dawoody, 2016). As the permissions based on the principle of reciprocity and stockpiling focus more on the relationship and attitudes of the parties to the conflict and not the weapon itself and its effects, this paper will focus its analysis of the categorization of the mentioned weapons on the opinion defending the total prohibition of WMD.

The jurists supporting this opinion find the WMD prohibited due to the reason it causes deaths of non-combatants and inflicts unnecessary pain and destruction (Al-Dawoody, 2016). In the case of naval warfare, the deaths and injuries of non-combatants in a battle, even with the usage of mentioned weapons, is a weaker possibility compared to land warfare due to the exceptional circumstances and lower possibility of civilian presence in the battle scene. Nonetheless, venoms from snake bites and scorpion stings directly affect the human nervous system, both being neurotoxic and haemotoxic (Osterloff, n.d.). Both have the potential not only to kill a person but also to cause paralysis, cardiac issues, severe convulsions or breathing issues (Brown, n.d.). Although the bite or sting resulting in death could be seen as a part of the nature of an armed conflict, it is clear that the snakes and scorpions as weapons would cause unnecessary suffering to the people affected by them, which would categorize these means as WMD also under Islamic law. The prohibition of it, as mentioned above, would depend on the legal opinion accepted.

Overall, the law of naval warfare in Islamic legal tradition was not developed in the first decades of the Islamic polity. This postponed development caused the subject to be less developed and detailed compared

to the other matters under the Islamic law of armed conflict. The main rules were developed by analogy to the general rules of armed conflict, and mainly focused on the treatment of property, non-combatants and means of warfare.

## THE LAW OF NAVAL WARFARE UNDER IHL

The rules of naval warfare have had limited usage in the past century. The wars at sea were more frequent from the 16th century to the end of the Second World War. Although there have been some instances that could be classified as full or partial naval conflicts (Haines, 2016), there haven't been a lot of cases to urge the international community to update the rules in this field to match the technological and commercial developments.

### 1. Applicability

The law of naval warfare under the IHL applies not only to the naval vessels but also to the aircraft operating over the sea with minor differences due to the nature of these vessels (Sassoli, 2019). Furthermore, the rules of naval warfare prohibit the conduct of hostilities in neutral territorial water (Sassoli, 2019).

As mentioned above, the law of naval warfare is outdated when compared to the other topics of the law of armed conflict. This outdatedness does not only show itself in the issues of conformity between the current technological situation of naval means and methods, but it also shows in the primary focus on the international armed conflicts (IACs) and the absence of regulations concerning the non-international armed conflicts (NIACs). Although it is rare for a non-state armed group (NSAG) to deploy naval forces, due to the expensiveness and sophistication of the naval forces, it is not an unheard occurrence (Haines, 2016).

### 2. Sources

The majority of the international documents on naval warfare were adopted in the late 19th century or in the first half of the 20th century (Sassoli, 2019). The 1856 Paris Declaration, the 1907 Hague Conventions (particularly number VII, VIII, IX, XI and XIII), the 1936 London Protocol and the Second Geneva Convention could be named as the most crucial international legal documents governing the naval battles. The other documents worth mentioning in this topic would be the 1994 San Remo Manual on Armed Conflicts at Sea and the 1982 UN Convention on the Law of the Sea. Both documents contributed to making the rules more applicable to modern armed conflicts at sea.

### 3. The Rules and Practices

#### i. Shipwrecked

Shipwrecked is an additional category under the protection of the Second Geneva Convention, specific to naval conflicts. They are granted the same protection as the wounded and sick. However, the obligation to search the shipwrecked, wounded and sick at sea are not the same compared to the wounded and sick on land. All belligerents are under the duty to search for and collect the shipwrecked without any distinction or discrimination (Papanicolopulu, 2016). While the state parties are obliged to search for wounded and sick "at all times" on land, at sea, they are obliged to search for shipwrecked, wounded and sick "after each engagement" (Sassoli, 2019). Additionally, further military and security considerations were added when the search is done at sea (Sassoli, 2019).

There is also an obligation to also search for the dead even in situations where the bodies cannot be seen with the bare eye (Demeyere et al., 2016). In these instances, the instruments of modern technology can be used to locate and retrieve the bodies. However, warships and any other ship that sunk with their crews inside are to be accepted as war graves and are to be respected (Demeyere et al., 2016).
Search and rescue operations, either by naval vessels or aircraft, in the areas controlled by the enemy are only protected if the enemy has consented to such operation in this area (Sassoli, 2019).

#### ii. Hospital Ships

Hospital ships should be "built or equipped … specifically and solely with a view to assisting the wounded, sick and shipwrecked, to treating them and to transporting them" (Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea [Geneva Convention II], 1949). In order to be protected and respected as hospital ships, their names and descriptions should be shared with the parties to the conflict at least ten days before their employment (Geneva Convention II, 1949).

Although not mentioned in the Second Geneva Convention, the San Remo Manual makes a suggestion on the issue of the self-defence of the hospital ships by saying that they should be equipped with "purely deflective means of defence" (Roach, 2000).

Article 34(2) of the Second Convention prohibits hospital ships from using a secret code for their communication (Geneva Convention II, 1949). This provision is an example of the outdatedness of the rules governing naval warfare and the need for an update. As the modern technology of communication is based on forms of encryption, it is not possible to implement this article and to allow the hospital ships to communicate without violating the convention (Sassoli, 2019).

#### iii. Specific Means and Methods

The main document regulating this topic is the 1907 Hague Convention VIII, however similar to the other documents in this field, it also is outdated. It only covers the automatic submarine contact mines (Sassoli, 2019) , and considering the technological developments in the weapon industry, the update in the regulations is much needed. The general principle

of the Convention, which also reflects the customary international law, is that belligerents should have control of the mines, and torpedoes should become harmless if they miss the target (Sassoli, 2019).

The topic of submarines is covered under the 1936 London Protocol, and the main rule is that they respect the rules that the surface vessels are also expected to respect (Sassoli, 2019).

Using blockades as a method of warfare is permitted under the law of naval warfare. However, it should be officially declared, adversely notified and effective to be a valid one (Sassoli, 2019). Its lawfulness is argued today due to the concerns of excessiveness of it and its effects on the civilian population (Sassoli, 2019). In addition, humanitarian exceptions are accepted when blockades are used today (Sassoli, 2019).

On the contrary to the rules of land warfare, it is not unlawful for a battleship to fly a false flag before it attacks an enemy vessel if it reveals its won flag before it strikes (Sassoli, 2019).

iv. Property

Belligerents are allowed to capture enemy merchant vessels even without the interception, visits or searches (Doswald-Beck & International Institute of Humanitarian Law, 1995). Enemy goods can be confiscated, but the goods of the other neutrals should be returned to their owners, or the owner must be indemnified (Sassoli, 2019). In a situation where it is impossible to bring the ship to the belligerent state's ports or an ally's port, enemy merchant ships may be destroyed after both the crew and the passengers of the ship are brought to safety, and the papers of the ship are put under protection (Sassoli, 2019). If the crew of the enemy merchant ship does not benefit from a more beneficial treatment under international law, they earn the prisoner of war status (Geneva Convention III, 1949).

In a way, the law of naval warfare provides detailed yet outdated regulations for armed conflicts taking place in the sea. Even though multiple international documents govern different aspects and situations encountered during a naval armed conflict, almost all of the documents require amendments and updates to correspond to the realities and technologies of the 21st century.

## CONCLUSION

As mentioned in the introduction of this paper, the rules on naval warfare under Islamic law and IHL have noticeable parallels. Although they were developed in different centuries under different conditions, different traditions and technological developments, they share some similarities. Even though the development processes and interpretations vary in both laws, the founding principles and primary goals are shared by both. Both call for the protection of the victims of an armed conflict, respect and dignified humane treatment. In a way both laws can be described as parallel paths leading to the same goal.

The first similarity standing out in both legal regimes regarding naval warfare is that it is neglected compared to the other fields of the law of armed conflict. The two regimes need amendments, updates and further developments in the rules regulating this field. Even though under different conditions, both systems allow the capture of some of the property. And both oblige the parties to save shipwrecked. However, both regimes lighten this duty with various limitations and additional conditions. The Islamic and humanitarian principles require respect for the dead, and this requirement can be seen in the regimes' rules when it comes to the management of the deceased at sea. The question of means and methods were discussed in each regime; however, neither is up to date with current discussions or technologies. Yet the rulings on general means and methods of warfare, which are more uptodate, can be interpreted to modern naval warfare in both regimes.

The main difference would be the detail and the attention IHL gave to the law of warfare compared to the limited space it has in Islamic law. This difference in volume can be explained by the geographical regions both laws were developed and the times they developed in. Yet, the similarities in the constitutive principles allows for both to learn from each other and develop further. The collaboration of two has a significant importance today, as a considerable amount of armed conflicts happening today involve at least one Muslim party. Developing the laws of naval warfare both in the Islamic law of the armed conflict and the international law of armed conflict will only result in increasing the respect of the shared primary principles in a possible naval armed conflict today.

It is worth mentioning that a thorough comparison of the two wouldn't be realistically possible because neither answers fully to the 21st century's armed conflicts, and the content of the systems reflect the realities of different centuries from one another.

Keeping in mind the current global tensions between countries with strong navies, a naval armed conflict is not a distant possibility. Thus, both the Islamic law of naval warfare and the international law of naval warfare require updates and amendments to be wholly applicable to a modern naval conflict. Even though attempts to update the regimes were made on both sides, it doesn't seem possible for the issue of outdatedness to be solved without a systematic update.

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