

WAR AGAINST TERRORISM IN SWAT: A COMPARITIVE ANALYSIS OF THE HUMANITARIAN PRINCIPLES OF THE WARING PARTIES

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Abstract

Humanitarianism is war's philosophy to treat the enemy as a human after becoming dysfunction to fight further. So far, humanitarian law is clear- at least in codes- regarding international and traditional wars. After 9/11 the world experienced a total new war where, at least one party is non-state actor. How to deal the injured, captured and dead combatants and non-combatants during the war became unclear and debatable. The war was fought in the parts of Pakistan including Swat that witnessed a huge displacement and destruction. People suffered hugely at the hands of the combating parties. It made it debatable to study whether there is a set of humanitarian codes, owned and practiced by military and militants. An intellectual work therefore, is mandatory to know the roots, sources and codes of humanitarian principles of the war on terror and its relevance with the fighting in Swat.

Keywords: *Humanitarian, Militancy, War on Terror, Swat, Islam, International*

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Introduction

International Humanitarian Law

International humanitarian law is a major portion of public international law. It is made of the rules and principles which protect those people in time of armed conflict who do not fight or are no more capable to continue fighting. It also put limitations on the means and methods of warfare. International humanitarian law is composed of international treaties and customary rules the purpose of which is to resolve matters of humanitarian nature, during armed conflicts whether of non-international or international nature. It therefore, restricts the right of the war parties to use the means and methods of their own choice and to protect the lives and properties of the civilians. The four Geneva Conventions of 1949 and its two additional protocols of 1977 are the pillars of international humanitarian law which clearly explains the principles of humanitarianism.

Applicability of International Humanitarian Law to the War on Terror

It is very important question these days whether international humanitarian law apply to war on terror, and if applicable, to what extent. There are no such specific humanitarian principles which are meant only for war on terror. There is no proof of conventional or customary international law which covers the conditions of war on terror. Humanitarian law applies to war on terror in general, especially, when four Geneva Convention and their Additional protocols are analyzed. The analysis shows that the conventions and protocols have categorized military conflict into two: international armed conflict and non-international armed conflict.

War on terror, falls in the category of non-international conflict. Non-international conflict is commonly fought between state and non-state actors (International Committee of the Red Cross (ICRC), 2004 May 15, p.1). Humanitarian law defines conflict in simple way that conflict exists between two fighting “parties.” A non-international conflict may compose of a state part and non-state actors. The war on terror after the accidents of 9/11 is clearly fulfilling the criteria of non-international conflict. ICRC, who is officially responsible for guarding the Geneva Conventions, explains “the Geneva conventions of 1949 and the customary international law were in all respects applicable to this international armed conflict between, on the one hand, the coalition led by united states, and on the other, Afghanistan

(ICRC, 2004). The attacks of 9/11 were organized by al-Qaeda and therefore, qualify that organization in the category which has the capability to challenge a state. It is enough for the definition that the war on terror is between the two warring parties which makes the conflict as non-international conflict (Kirchner, 2003 July, p. 15).

To determine the nature of non-international armed conflict, the following criteria are applied:

1. Identification of parties
Parties to the conflict have importance in the sense that they carry rights and responsibilities (Draper, 1965, p.90). In other words there can be no humanitarian law if the parties to the conflict are not clearly visible.
2. Identification of territory
Though territorial control is not required for non-state actors, the conflict must occur in some specific territory. A group of analysts argue that the conflict must occur in the territory limited to the High contracting parties (Moir, 2002, p.31).
3. Relationship of events to an identified conflict
International humanitarian law applies to the acts which fall in the category of conflict. 9/11 acts and the attacks of USA on Afghanistan clearly fulfill the criteria that can be called a conflict (Moir, 2002).
4. Identification of beginning and end of conflict
There is different opinion about the duration of a conflict. International Criminal Tribunal for the former Yugoslavia is of the opinion that the hostile acts must be of "protracted" nature (The Prosecutor v Dusko Tadic, 1995, p. 37). While on the other side Inter-American Commission on Human Rights holds the opinion that intense violence is sufficient even for short time. Whatever the duration or intensity of the conflict, the beginning and end of the conflict must be identified. It will help to know when the humanitarian law is triggered and when it stops to apply.
5. Armed Conflict
It is the most important element in the application of Common Article 3 (CA3) in all four Geneva Conventions. But the problem is that the term "armed conflict" has never been defined in the Geneva Conventions or its Additional Protocols. It is easy to determine conflict situations between or amongst states but hard to define if non-state actors are at least one party to the conflict. To judge the humanitarian nature of non-international armed conflict one can refer to the disqualifying criteria of Additional Protocol II.

Coming to the conclusion of the discussion that international humanitarian law is applicable to war on terror. The four Geneva Conventions and its Additional Protocol helps us in that. Article three common to all Geneva Conventions can fully be applied to the ongoing war on terror. It has defined the proper limits for warring parties in any non-international conflict. It tells the fighting parties to act within humanitarian principles whether he is an injured soldier, a civilian or a prisoner of war. Additional protocol II to the Geneva conventions is helpful to remove any ambiguity in this regard.

Humanitarian Principles of Islamic Militants

Islamic humanitarian principles are complex and seems to be contradictory, therefore, extra care is needed while making its analysis. The two important sources of Islamic humanitarian law are, Quran and the Prophet (PBUH) traditions. Islamic writings on warfare focus on Just Warfare, treatment of the vanquished, types of conflict, and the observance of Islamic law. Umar ibn Ibrahim classic work, *The Dispelling of Fears in the Management of War* deals with important strategic tactics (Al-Awasi, 2000, pp.1-4).

Shaybani compiled *The Book of Law of Nations*. The book provides details on the typology, legality, and tactics of military engagement, treaties and truces and between enemy groups and Muslims in the earliest period of Muslim (Khadduri, 1955, p.55).

According to the concept of Islam, warfare can be categorized into two: first form is called *harb* and second one is called *jihad*. *Harb* means general warfare while *jihad* is something linked to Islamic cause. *Jihad* literally meaning is for struggle. The primary purpose of *jihad* was to fight against unbelievers. Conflict between Muslims was not named jihad.

In its early concept, jihad was meant to wage a war according to the principles of Islam-*bellum pium*(pious war) and as well as *bellum justum* (just war) (Khadduri, 1955). The importance of jihad can be judged by the fact that it is both collective as well as individual responsibility. If aggression is made against Muslim, *jihad* becomes incumbent upon Muslims. However *jihad* can be waged in several ways: i) with the heart, ii) with the tongue iii) with the hands and iv) with the sword. It means that jihad is wrongly taken in the meaning of force, blood and violence. Only a quarter of jihad is about military and its use against enemy while the remaining $\frac{3}{4}$ is non-military.

Methodology

Study is qualitative. Data is collected mainly from secondary sources e.g. books, journals, newspapers and reports. Data is analyzed through the tools of content analysis.

The war on terror has been very catastrophic. The damages caused by the war are experienced in every aspect of human life. The life time of the war is more than ten years and it may consume another few years to get the targets of the war. Therefore, the war has been inflicting heavy human and non-human losses. The ratio of such losses is different from area to area and time to time. According to the government of Pakistan, only in 2009, more than 10,000 civilians lost their lives (Campaign for Innocent Victims in Conflict (CIVIC) Report, 2010, p.13). Civilians' property, shops, crops, business, livelihood and others essentials of livelihood have been destroyed or damaged in the conflict. "Militant use of civilian homes as bases of attack or shelter, use of heavy weaponry such as aerial bombardment and artillery barrages by Pakistani forces, US drone strikes and houses demolition by both Pakistani forces and militants have all contributed to extensive civilian property destruction"(CIVIC Report, 2009, p. 33). Therefore it is mandatory to understand the humanitarian dimension of the war with focus on the principles claimed and observed by the parties in the war.

Analysis of the Verses of Quran about War

The verses of Quran relevant to the waging of war are called sword verses. But there are some other verses which preach fighting war in just manner, or making peace or extending forgiveness. Some radicals promoted the idea that sword verses, nullified the peace verses. The following verse is one of the verses which helps in clarifying the concept of war according to Quran.

(O Muhammad) invite (mankind) to the way of your Lord with wisdom, reason and clear intentions. Truly your Lord knows best who has gone astray from His Path, and He is the best aware who are guided.

(al-Nahl, Verse 125)

The verse teaches us exchange of ideas through peaceful means, freedom of worshipping and tells us to leave to God the judging of others. Authorities conclude that conversion to Islam by force is not a reasonable expectation, but the conversion should be made as a result of free choice (Peters, 1996, pp.69, 70, 79). There is another verse which supports the

logic, “*there is no compulsion in Islam...*” (al-Baqarah, verse 256). But it does not mean that the concept of *jihad* in Islam is impermissible.

To understand the philosophy of *jihad*, the prophethood period can be divided into two; Meccan and Medinan. In Meccan Period, the Muslims were taught peace, patience and restraint, while in Medinan years *Jihad* was ordained upon Muslims (Al-Issawi, 2000, p. 23). After Muhammad (PBUH) left Mecca, the situations became favorable to declare *Jihad*. The verse sanctioning *jihad*, revealed in Mecca, “and fight in the path of God with those who will fight you, but don’t transgress, because God does not like the transgressors.” (Al-Baqarah, verse 190) The Next two verses from the same chapter further explains the concept and makes fighting for defensive purposes.

Islamic Code of Conduct

Islam has a complete code of conduct of war. Prophet Muhammad came across corps of a woman while busy in a battle and he frowned with anger (Al-Issawi, 2000, pp. 151-209). After that a code of conduct was prompted for Islamic warrior. We discuss them here briefly.

- i) No killing of children, women and innocent. It may include, monks, hermits and other religious leaders, because they are non-combatants.
- ii) No killing of animals and livestock
- iii) No destruction or burning of orchards and trees, and;
- iv) No destruction of water reservoirs and wells.

The first caliph, Abu Bakr, after the death of Prophet (PBUH) formulated a set of detailed rules and principles for the conduct of war. The caliph gave the following instructions to the army which was bound for Syria, governed by Byzantine Empire those days.

Stop, O people, that I may give you ten rules for your guidance in the battlefield. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies. Neither kill a child, nor a woman, nor an aged man. Bring no harm to the trees, nor burn them with fire, especially those which are fruitful. Slay not any of the enemy’s flock, save for your food. You are likely to pass by people who have devoted their lives to monastic services; leave them alone (Al-Issawi, 2000).

Indiscriminate killing is strictly prohibited according to the principles of Islam. A *hadith* has been quoted on the authority of Abu Huraira that

Prophet (PBUH) said, “Do not desire an encounter with the enemy; but when you encounter, be firm” (Muslim Book 19, hadith No. 4313).

Prophet Muhammad has forbidden from killing the monks, aged people, women and children. The Messenger of God once saw the corps of a lady. He was astonished and said, “She was not fighting, how then she came to be killed.” The jurists have derived a conclusion from the statement that the killing of non-combatant is prohibited in Islamic humanitarian law (Mawdudi, 36).

Abu al-Ala Mawdudi has counted ten rights of non-combatants, they are: no torture with fire, protection of the wounded, the prisoner of war should not be slain, no one should be tied to kill, no looting and destruction in the enemy country, sanctity of property, sanctity of dead body, return of the corpses of enemy, prohibition of breach of treaties and declaration of war. Some of them need explanation here. About prisoner of war, for example, he has narrated a hadith that, “no prisoner of war should be put to sword” (Mawdudi, 37).

The Muslims have been advised not to destroy the property of enemy. Maulana Mawdudi has supported this with arguments from the teachings of Islam. Muhammad (PBUH) has prohibited the Muslims from loot and plunder. He said that, “the loot is no more lawfull than carrion” (Abu Dawud).

Similarities and Differences

Though Islamic humanitarian provisions predate modern international humanitarian law by several centuries, there is little difference between them. Islamic laws are coherent and inseparable from each other, unlike contemporary law. It means it is not divided into different branches, such as civil law, criminal law or other laws. *Siyar* is a special term used for the Islamic laws covering treaties and wars and humanitarian provisions (Engeland, 2008, p.82). It is an integral part of *shari'ah* (Islamic law) (Ali & Rehman, 2005, p.323). At certain point Islamic humanitarian law overlap modern humanitarian law.

To compare what is found in common Article 3 in the Geneva conventions with that of Islamic humanitarian principle, derived from the commandments of Muhammad (PBUH) and his companions, the latter seems more liberal and humanitarian when it comes to internal (non-international) conflicts. “The regulations of the Geneva Conventions pertaining to armed conflict of a non-international nature are less bold and their guarantees are much weaker than those contained in the provisions

pertaining to international armed conflict” (Yamani, 1985, p.195). But in internal armed conflict the law is different and looking otherwise but on the bases of faith only. Apostates and polytheist rights are not that much liberal as that for Muslims, taking part in the conflict. More specifically, if apostates are involved in internal conflict with Muslims, no compromise, truce or peace is permissible with them (Yamani, 1985).

Certain important Islamic humanitarian principles are visible points in modern humanitarian law. One gets surprised when he sees similarities between the two. For example, Marphy and Ziedy had negated any divergence between them. “Islamic principles enshrined in Islamic Law of War and those of the IHL should not be seen as mutually exclusive or as being in conflict with one another, indeed, the principles of Islamic law often coincide with those of international humanitarian law” (Marphy & Ziedy, 2009, p.25). As discussed above, Islam has provided a set of rules for combatant and non-combatant which is the essence of modern international humanitarian law.

But there is still an environment of misunderstanding especially, in the West, against the humanitarian principles of Islam. Some Western liberals and Orientalist think that there are no humanitarian rules in Islam at all. They derive their opinions from the writings of Muslim authors like Majid Khaduri that jihad is Holy War and essential for the propagation of Islam (Stephens, 1877, pp. 98–99). He sees jihad as tool for the expansion of Islam and therefore, advocate even the use of violence for achieving this goal (Khadduri, 1966, p.51). If his views are accepted, it would simply mean that humanitarian principles are permitted to violate for conversion to Islam. But this logic is clearly in conflict to the message of Quran, saying that conversion cannot be made by the use of force and violence. (Quran 2: 256) If jihad is interpreted in the manner, the humanitarian principles are to be lowered. Therefore according to Al-Shaybani captives can be killed (Troy, 2008 March) and Al-Mawardi allows the killing of old men (Al-Mawardi, 1996, p.192).

Some intellectuals have very tougher stance. Al-Mawardi is one out of them. He regards jihad at the center of all beliefs in Islam. And therefore, he holds the opinions that jihad is the only way of getting Islamic hegemony in the world (Mawdudi, 200, p.19). He proudly agrees upon the existence of humanitarian principles, laid down by Islam. But his interpretation of the principles is very narrow: respect the humanitarian principles as long as the enemy also respects them. (Mawdudi, 1995, p.39.) He regards Quran and *hadith* the only source of Islamic humanitarian principles and strictly rejects the use of reasoning in this regard. Syed Qutub follows the same line. He

regards jihad as the tool to universalize Islam (Qutb, 1981). Abdul Rehman opinion about jihad is that it is used for removing unjust rulers and foreign domination, but he accepts humanitarian principles (Abdul Rahman, 1990).

These opinions are important in today's world, as they have been adopted by terrorists. (Kepel, 2003, p.345) But it is important that they do not reject international humanitarian law. Even Al-Mawardi, who has hard opinion on Islamic humanitarian principles, is not rejecting International humanitarian standards. The analysis leads us that why organizations like al-Qaeda are extremists by allowing killing of civilians.

The Ongoing War on Terror: Swat Connection

Sufi Muhammad, once a blue eyed boy of CIA and ISI, returned to Pakistan in 1989. He fought against Communist Russia in Afghanistan. After returning, he created Tehreek-e-Nafaf-e-Shariat-e-Mohammadi (TNSM). Sufi Mohammad reputation, agenda, experience and resources enabled him to build a regional jihadi organization. The objective of the organization was to compel the government to impose Shari'a in Malakand division (Roznama Azadi, 2008 October 25). The movement was gradually transferred to Swat (Shah, 2008, pp. 24-27). Deep frustration and confusion caused by the complicated administrative and judicial system after merging of Swat with Pakistan alienated the people of the valley from the state of Pakistan. And therefore, they were easily attracted to the movement which claimed alternative system based in Shari'a (Shah, 2008). Therefore an uprising was seen in 1994.

At first Sufi Mohammad claimed that it will be a peaceful movement and therefore, advised the people to adopt peaceful means for attaining the goal of Shari'a (RoznamaShamal2008 June 1). But latter on he changed his stance in 1990s and advocated for use of force against Pakistan army and he asked the people to donate for buying weapons (Khurshid Khan, 2007 October 31). "*Ya Shariat Ya Shadat*" became the slogan of his organization. The situations changed after 9/11 when America attacked Afghanistan.

Fazluallah, the son-in-law of Sufi Mohammad, emerged a leader of TNSM of Swat chapter. He started his campaign through FM – that's why he became popular with Radio mullah. Soon he started work on a gigantic Madrassa in Mamdherai now called Imamdherai. After wielding tremendous power, he challenged government of Pakistan and thus pushed the valley of Swat into chaotic disturbance and war.

Ideology and Humanitarianism

To determine humanitarian aspect of a militant group, we have to study the background, origin and history of that organization. Therefore, we should study Tehreek-e-Taliban Swat chapter to understand the psychology of violence during their hold in Swat. As we studied in detail previously that religious figures of Swat had been in close connection with the people who have been the followers of wahabism. And the Swat chapter of Taliban has inherited wahabism from various sources. First and most important source is the Mullahs, Faqirs and Babas who had enjoyed immense influence in Swat since sixteenth century. Almost all of them were the followers of wahabism (as it has been analyzed in this study). Second source is linked with Afghan jihad. Sufi Mohammad was fighting alongside Arab mujahedeen in Afghanistan and therefore, came under their religious influence. We can say that Sufi Mohammad's TNSM has been the follower of wahabism (Raman, 2008, pp, 252). In that way wahabism became the ideology of Taliban fighting in Swat. Third source is Tehreek-e-Taliban Pakistan (TTP) and it has been under the influence of Afghanistan Taliban. Most of them have studied in Madrassas of Deobandi, established by two descendants of Syed Ahmad, who was the follower of wahabism. Al-Qaeda is another source of wahabism for Taliban, who provide financial and operational aid to them. Last one is the people of the valley themselves. A great number of people have been working in Arab countries and that's why easily fed with wahabism there.

Conclusion

We reached to the conclusion that Taliban of Swat has very strict interpretation of Islamic humanitarian codes as defined by wahabism. They are the followers of al-Mawardi, Qutub Ahmad and Osama bin Ladin in this regard. For them their objectives are sacred to achieve at any cost. Therefore, a huge level of violations can be seen in their militant struggle. This is the point where one can say that anarchy is created for the sake of fear. And fear is to create more anarchy. And such anarchy means to exploit the confusion and fear of the wandering mind in favor of someone partisan interests.

On the other side, Pakistan army is having its own set of humanitarian principles. Sources wise it can be categorized into two; international humanitarian law and the state of Pakistan officially proclaimed ideology. In the first category common Article 3 to the four Geneva Conventions and

additional protocol II apply, because state of Pakistan has been fighting a non-international warfare against non-state actors. Under the second category, Islamic humanitarian principles are observable for Pakistan army. State of Pakistan has balanced approach as compared to wahabism. Being a responsible member of international community, Pakistan has interpreted Islamic humanitarian rules in broader meanings, keeping in view the message of love, peace and humanity which is the essence of Islamic teachings.

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