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RESEARCH ARTICLE

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

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**ABSTRACT**

Throughout the previous century, armed conflicts worldwide occurred mainly on land. Thus, the rules of naval warfare have not been the subject of much discussion. However, even if the world has not witnessed naval battles in the previous years, this does not mean that the states and other entities failed to strengthen and develop their naval forces. Considering how most land conflicts are taking place in Muslim territories recently, it is impossible to ignore the possibility of a naval conflict therein. Hence, the importance of understanding and modernizing the rules of naval warfare both under Islamic and international humanitarian laws is crucial to ensure that future naval conflicts abide by the laws of war. This article first examines the rules of naval warfare and rules concerning means and methods of warfare under the Islamic law of armed conflict and analyzes its core principles and development. After that, the article focuses on the rules of naval warfare under International Humanitarian Law and concludes with an analysis of the relationship between the two laws and how their future should be shaped. This article sheds light on an area of the law of armed conflict that has been neglected thus far, despite potentially being highly relevant in future armed conflicts at sea. Additionally, besides the practical importance of this topic, this article elaborates on a field that has been untouched for more than five decades and contributes to the discussions.

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The rules of naval warfare under the International Humanitarian Law (IHL) have not drawn as much attention as the rules of armed conflict on land over the last 80 years due to the lesser incidence of armed conflicts at sea. Hence, the lack of incidents and corresponding motivation to amend the existing laws have caused many of the rules of naval warfare to become outdated and insufficient to address the dilemmas that may emerge from future modern naval conflicts. Interesting parallels can be observed in Islamic law, where the problem would not be the rules of naval warfare going out of date but rather their never getting the chance to develop fully.

The mentioned parallels in the rules of naval warfare under IHL and Islamic law will be analyzed in the following sections, focusing first on Islamic law before shifting to IHL. Finally, the similarities and differences between the two regimes in the field of naval warfare will be discussed.

## Islamic Law of Naval Warfare

### Development of the Islamic Law of Naval Warfare

In the early years of Islam, the Muslim forces mainly focused their power on in-land battles (Azeem, 2020). The lack of maritime conflicts directly resulted in the absence of naval warfare doctrines in the traditional legal teachings of Islam. As a result, most 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). Although Muslims did not engage in naval battles in the early years, they often used bodies of water for transport (Shah, 2011).

The Prophet Muhammad and his early successors focused their battles on land. Thus, there are no detailed instructions and comments on the conduct of naval hos-

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tilities in the main part of the primary sources of Islamic law (Khadduri, 1962). 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 rules concerning naval warfare (Azeem, 2020). Considering how the goals and principles remain the same even when the scene of the battlefield changes, there is no reason for the rules of land warfare not to apply to conflicts at sea. As the primary sources of Islamic law do not prohibit, either explicitly or implicitly, engagement in maritime conflicts, the development of rules in this field is likewise not prohibited (Shah, 2011).

Although Hadiths regulating the conduct of naval conflicts are scarce, the Prophet Muhammad said that the ones who perish fighting at sea would be compensated twice, compared to those who perish fighting on land (Khadduri, 1962). The Prophet is said to have 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 of sea jihad and the reflections of the hesitancy toward the sea as the war traditions thus far were developed with in-land fighting.

A similar encouragement for sea jihad can be found in another Sunnah thus: "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 shifted more to the battleground and the military operation itself rather than the Muslim fighters.

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 at sea, his sins would be forgiven, and he would become pure as if he was born again (Bonifacius, 1871).

### The Rules and Practices

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

In the laws of land warfare, attack and siege of an enemy fort with hurling machines are allowed as well as cutting the forthcoming support coming from outside; by analogy, the attack and sinking of enemy vessels until the enemy surrenders and the crew is captured should also be allowed (Khadduri, 1962). However, when an unknown vessel approached Muslim shores, before resorting to the use of force at sea, the Muslims were advised to first verify the intentions of the other party and determine whether they indeed were the enemy (Khalilieh, 2020). If this was impossible, it was recommended that they wait rather than attack directly, to avoid unnecessary armed conflicts and avoidable harm (Khalilieh, 2020). However, during an active conflict, Muslim battleships were allowed to attack enemy battleships and ships on the high seas carrying support to the enemy without the need for any additional permission (Khalilieh, 2020).

**Property and people.** It was preferred that the Muslims seize the cargo and vessels when possible rather than destroy or sink them (Khalilieh, 2020). It was agreed upon by Muslim jurists that the rules on spoils of war on land apply also 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, they were 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 an armed conflict is to win against the enemy. Allowing one's ship to sink would not be compatible with this goal; thus, doing the necessary thing to avoid this consequence comes into play.

However, 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 not to take any women or children on board the 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

can bring problems of its own. For instance, in a situation where Muslim women and children were distressed at sea, a Muslim battleship that had extra weight and did not save them would violate its moral and legal duty to aid these people. Moreover, considering that the captain and crew could be penalized for ignoring a distress call (Azeem, 2020), this advice creates more quandaries than solutions.

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

In the first scenario where the body can wait until the ship reaches the shore, it will be taken to the shore and buried in a manner similar to a person dying on land (Al-Dawoody, 2017). In the second case, the body should be tied to pieces of wood and placed in the water for it to reach the shore (Al-Dawoody, 2017). A condition for this second scenario is that there must be Muslims who can complete the burial ritual according to Islam traditions on the shore where the body is predicted to reach (Al-Dawoody, 2017). Although the same principle would be applicable in the contexts of both Muslim and non-Muslim bodies, in the latter, it should be considered whether the people at the shore the body will reach will respect the body and will not mutilate it. Finally, in the third scenario where there is a risk of the enemy getting hold of the body and desecrating it when it reaches the shore, the body should be given a sea burial by tying it to a heavy object and allowing it to sink (Al-Dawoody, 2017).

**Aman.** Because Muslims are expected to abide by their promises, the protection granted to Muslim women and children applies also to *dhimmis* and non-Muslims on board, under an *aman* (Khadduri, 1962).

If the crew of an unseaworthy enemy vessel without an aman were to be detected on the coast of dar al-Islam, they would not automatically acquire the protection of an aman, and it would be permissible for the Muslims to attack them (Khadduri, 1962). However, Al-Awza'i, a renowned Islamic jurist, argues that if the enemy combatants in this situation ask for an aman, they would be entitled to it (Khadduri, 1962). The same could be said for the crew of an enemy warship that has surrendered. Hence, if they were to ask for an aman, the Muslims were advised to grant it provided the request was sincere and genuine (Khalilieh, 2020).

**Specific means and methods.** Sea fighters choose their weapons intending to lower the enemy's morale and motivation, creating panic among the crew of the enemy warship and directly assaulting the vessel (Khadduri, 1962). Stones and fire bundles were often chosen as weapons to attack the enemy; similarly, snakes, scorpions, and harmful powders were also used (Khadduri, 1962). In addition to injuring the enemy combatants, they aimed to scare and make the enemy forces 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 the enemy's fortifications (Al-Dawoody, 2016). Even though various regulations and interpretations are trying to answer this particular question, it is possible to say that it is not entirely prohibited under Islamic law. Even the jurists in favor of the use of fire against the enemy preferred that several conditions be complied with before doing so (Al-Dawoody, 2016). For example, jurists like al-Shaybani, Ibn Abidin, and al-Awza'i permitted the use of fire against enemy fortifications only if it was the only means 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 and would therefore not be affected (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 raises the question of possible biological weapons. Although a detailed explanation of the substance and effects of harmful powders is not available, from the way it is mentioned together with snakes and scorpions, they could be interpreted as being toxic or poisonous, for this analysis.

The International Committee of the Red Cross (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." (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, they cannot be concretely categorized as such.

Under the international law of armed conflict, biological weapons are categorized as weapons of mass destruction (WMDs). Modern Muslim jurists are divided among three main opinions regarding the use of WMDs 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 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 on the opinion defending the total prohibition of WMD.

The jurists supporting this opinion defend the total prohibition of WMDs because WMDs cause the deaths of non-combatants and inflict unnecessary pain and destruction (Al-Dawoody, 2016). In the case of naval warfare, there is less possibility of deaths and injuries of non-combatants, even with the usage of these weapons, compared to land warfare, due to the exceptional circumstances and less civilian presence at the scene of battle. Nonetheless, venoms from snakebites and scorpion stings directly affect the human nervous system, with both being neurotoxic and hemotoxic (Osterloff, n.d.). Both can cause paralysis, cardiac issues, severe convulsions, breathing issues, and even death (Brown, n.d.). Although bites or stings resulting in death could be seen as part of an armed conflict, snakes and scorpions as weapons would cause unnecessary suffering to the people affected, thus categorizing them as WMDs under Islamic law. Their prohibition, as already mentioned, 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 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. 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 have not been enough cases to urge the international community to update the rules in this field to match the technological and commercial developments.

### Applicability

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

As mentioned above, the law of naval warfare is outdated when compared with the other topics of the law of armed conflict. This outdatedness shows itself not only in the issues of conformity between the current technological situation of naval methods but also in the primary focus of international armed conflicts (IACs)and the absence of regulations concerning 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 unheard of (Haines, 2016).

### Sources

Most international documents on naval warfare were adopted in the late 19th century or 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 considered the most crucial international legal documents governing naval battles. The other documents on this topic worth mentioning are 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.

**The Rules and Practices**

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

There is also an obligation to 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 sank with their crew are considered 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 protected only if the enemy has consented to such operations in the area (Sassoli, 2019).

**Hospital ships.** Hospital ships should be "built or equipped … specifically and solely to assist 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). 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 they are employed (Geneva Convention II, 1949).

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

Article 34(2) of the Second Convention prohibits hospital ships from using a secret code in their communications (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 impossible to implement this article and for the hospital ships to communicate without violating the convention (Sassoli, 2019).

**Specific means and methods.** The main document regulating this topic is the 1907 Hague Convention VIII, which, similar to the other documents in this field, is likewise outdated. It only covers automatic submarine contact mines (Sassoli, 2019), and considering the technological developments in the weapons industry, an update in the regulations is much needed. The general principle of the Convention, which also reflects customary international law, is that belligerents should have control of the mines, and torpedoes should become harmless if they miss their target (Sassoli, 2019).

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

The use of 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 valid (Sassoli, 2019). Their lawfulness is under debate today due to concerns about their excessiveness and effects on the civilian population (Sassoli, 2019). Additionally, humanitarian exceptions are accepted when blockades are used today (Sassoli, 2019).

Contrary to the rules of land warfare, it is lawful for a battleship to fly a false flag before it attacks an enemy vessel if it reveals its flag before it strikes (Sassoli, 2019).

**Property.** Belligerents are allowed to capture enemy merchant vessels even without 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 owners 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 passengers are brought to safety, and the papers of the ship are placed 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 prisoner-of-war status (Geneva Convention III, 1949).

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

## Islamic Law of Naval Warfare And IHL

As mentioned in the introduction of this paper, the rules of naval warfare under Islamic law and IHL have noticeable parallels. Although they were developed in different centuries under different conditions, traditions, and technological developments, they share some similarities. Even though both laws vary in their development processes and interpretations, their founding principles and primary goals are in common. They both call for protecting the victims of an armed conflict, who shall be treated with respect and dignity. In a way, both laws can be described as parallel paths leading to the same goal.

The first similarity that stands 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 properties and oblige the parties to save the shipwrecked. However, both regimes lighten this duty with various limitations and additional conditions. Islamic and humanitarian principles require respect for the dead, and this requirement can be seen in the regimes' rules on the management of the deceased at sea. The issue of methods was discussed in each regime; however, neither is up-to-date with current discussions or technologies. Nevertheless, the rulings on the general methods of warfare, which are more up-to-date, can be interpreted for modern naval warfare in both regimes.

The main difference would be the detail and attention that 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 and times in which both laws were developed. However, the similarities in their constitutive principles allow both learning from each other and developing further. The collaboration of the two has significant importance today, as a considerable number of armed conflicts happening today involve at least one Muslim party. Developing the laws of naval warfare in both the Islamic and international laws of armed conflict will only result in increasing the respect for the shared primary principles in a possible naval armed conflict today.

Notably, a thorough comparison of the two would not be realistically possible because neither answers fully to the 21st century's armed conflicts, and the content of the systems reflects the realities of different centuries. Considering the rapid development in the methods of warfare in the past several decades and the overall change in the last couple of centuries, neither of the branches is updated enough to answer the questions arising from the current technologies, methods, and tactics used in armed conflicts.

## Conclusion

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 and international laws of naval warfare require updates and amendments to be entirely applicable to a modern naval conflict. Although attempts to update the regimes have been made on both sides, the issue of outdatedness cannot be solved without a systematic update. This update would have to consider both the current and further developing technologies and the changing military systems. Furthermore, it would have to encompass both the protection rules and rules on the conduct of hostilities to fully answer the needs of today's battlegrounds.

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