The Prophet (Peace be Upon Him)'s Merciful Reforms in the Conduct of War: The Prohibited Acts

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The Prophet (peace be on him)’s Merciful Reforms in the Conduct of War

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A B S T R A C T

This paper argues that Islam introduced far reaching reforms to warfare; that the conduct of the Prophet (peace be upon him) and his successors does not to allow the burning and drowning of enemy to death. Destroying buildings, cutting down trees, committing perfidy, breaching the trust of the enemy, the killing of women, children, servants, old, infirm, sick, wounded, priests, peasants, prisoners of war and envoys is strictly against the teachings of the Prophet (peace be upon him) or his successors. The destruction of harvest, livestock and forests, looting, plundering and corruption from the war booty and indiscipline are prohibited as well. Mutilation of bodies, Genocide and war crimes are is strictly condemned by the Prophet (peace be upon him) and his successors. Thus, the Prophet (peace be upon him) and his successors brought humanity and Merciful Reforms to the conduct of war.

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Introduction

War in Islam is allowed to protect faith from external attacks. During the war none of those non-Muslims shall be killed who do not participate in war.\(^1\) If combatants are taken captives, they shall be released but may also be exchanged.\(^2\) This work does not focus on the causes of war, non-combatant immunity as well as the treatment of prisoners of war. Instead it focuses on all other acts, except these two [non-combatants and prisoners of war], that are prohibited in war. Most of the authors give very little space to acts prohibited in war and mention them only in passing. Due to the importance of this area an attempt is made to present acts prohibited in war in Islamic *jus in bello* together.

The questions that are detailed below include: whether enemy can be attacked without prior warning of the same? Whether an enemy can be killed by burning or drowning? Whether someone from the enemy side can be executed hand-tied? What is the fate of prisoners of war? Can they be executed? Are plundering and looting in war legal in Islam? Can harvest, livestock, plantation, forests and other objects be destroyed? Do envoys have immunity, especially during war? Are ruse, treachery and perfidy allowed during warfare in Islam? Are treaties binding on Muslims during wars? Can treaties be signed during war, especially for the conduct of war? How should the Muslim army behave during war? Are there historical instances in which war crimes and genocide were committed by Muslim soldiers? Moreover, what is the attitude of Islamic law towards war crimes and genocide? This work attempts to answer the above questions from an Islamic perspective. It uses the traditions of the Prophet (peace be upon him) and the instructions of Caliphs to

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military commanders available in Siyar\(^3\) to analyse the above issues. Despite the fact that the main focus of this work is the various acts prohibited in war, there are certain issues that cannot be understood without explaining acts that are allowed in war, therefore, it is necessary to explain certain acts that are permissible. An obvious example is perfidy and ruse. Both seems inseparable and must be explained together. Other necessary issues are mentioned along the way.

**Barbarity in Warfare before Islam**

To understand the importance of the questions posed above one should know the barbarity that the Arabs of Pre-Islamic era (jahilliyyah) used to carry out during war. War among them was a routine matter, a pre-occupation if not a profession. War booty was considered the most important of the objectives of such wars. There used to be rivalries among different tribes that would continue for generations. Here only some of the bad practices of their barbarity are highlighted.

The Arabs of jahilliyyah period used to kill prisoners of war as well as their women and children. The later used to be burnt in fire.\(^4\) According to Shibl Nu’mān (d. 1914) and Syyid Sulayman Nadawi (d. 1952), such attacks used to be by surprise. The victim tribe would never be given any prior warning of any attack. The killing used to be indiscriminate and this was a common practice. The Arabic terms ‘fatik’ [literally, assassin, murderer] or ‘fitak’ were used for those who had attained the status of heroes in such attacks.\(^5\) It is

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reported that when Sa’d b. Ḥind – brother of ‘Amr b. Hind (d. 45 B.H./578) – an Arab king, was killed by Banū Tamīm, he swore that he would kill 100 in revenge. When Banū Tamīm was attacked, they took to flight leaving behind an old woman whose name was al-Ḥamra bt. Ḥamra b. Ḥabīb. She was arrested and thrown in an inferno. Coincidently, another man from Banū Tamīm, whose name was ‘Ammar al-Dārimi al-Tamīmī, came over. He explained that he had come over because he was very hungry and had no food for several days and when he saw the smoke he thought that he would have something to eat. ‘Amr ordered that he be also put in the same fire.6

As stated above children had no immunity and no mercy. It is reported that they would be used for target practice with arrows.7 In some instances feet, hands and other parts of enemy’s soldiers would be cut off and they would be left to die. It is reported that Ḥakam b. al-Ṭufayl (d. 03/624) committed suicide in the battle of Ghaṭfān and ‘Aa‘mir because of this fear.8 Even when the enemy soldiers would be dead their bodies would be mutilated and their body parts would be cut off in revenge. After the battle of Uhud – the second battle between the Muslims and the pagans of Makkah, Hind bt. ‘Utba (d. 14/635) mutilated the dead body of Hamzah b. ‘Abdul Muṭṭalib (d. 03/624) – Prophet’s uncle, as well as other Muslim martyrs and made a necklace of their body parts that she wore.9 She also cut off Hamzah’s liver and tried to eat it up. Arabs in jāhiliyyah used to swear that should they overwhelm the enemy they would use their skulls for drinking wine. Sulāfah – a pagan woman from Makkah,


7. Nu‘mān & Nadawi mention the story of the children of Qays who lift their children to Banū Dhabyān and all of them were killed by the later in target practice in front of a large number of people. See, Nu‘mān & Nadawi, Sirat, 1:353.

8. Ibid.

9. Ibid.
whose two sons\textsuperscript{10} were killed by ‘Aşim b. Thābit (d. 63/682) in the battle of Uhud – had sworn that she would use ‘Aşim’s skull for drinking wine.\textsuperscript{11} They used to tear apart the fetus of pregnant women and used to be proud of it.\textsuperscript{12}

These were some of the heinous acts that were routinely committed during wars in jāhiliyyah (pre-Islamic period). Such acts were also committed by the Makkah pagans in their wars with the Muslims. After this short presentation we now turn to the reforms introduced by Islam to warfare.

\textbf{Introducing Humanity: Islamic Reforms in Warfare}

\textbf{Prohibition of Attack without Prior Warning}

As mentioned above, the Arabs of jāhiliyyah used to attack each other without any prior warning. The preferred time of attack was late in the night when everybody would be asleep and the enemy would be taken by surprise. The Prophet (p.u.b.h.) prohibited this and laid down the rule that there should be no attack before morning. Anas b. Mālik (d. 90, 92, 93/708, 710, 711) reports about the battle of Khaybar that when the Prophet and his army would reach the enemy at night they would not attack till morning.\textsuperscript{13}

\textbf{Prohibition of Burning to Kill the Enemy}

The Arabs of pre-Islamic era used to exceed all limits in revenge. They used to burn to death the enemies. The Prophet prohibited this barbaric act by saying that “Only the Sustainer of fire punishes with fire.”\textsuperscript{14} Abū Hurayrah ‘Abd al-Rahmān b. Ṣākhār (d. 57/676) explains


\textsuperscript{11} Ibid. See also: Zarkalī, Al-Āʾāz, 3:248.

\textsuperscript{12} Nu’mān & Nadawi, Sirat, 353-354.

\textsuperscript{13} Muhammad b. ‘Esa al-.Termidhī, Sunan, Kitāb al-Siyar, Mawsu‘a al-Ḥadith al-Sharif, Dār al-Salām, KSA, hadith no. 1550, p. 1811.

the context in which the burning by fire was prohibited by the Prophet. He says that once the Prophet dispatched us on a campaign, he said to the group, “If you come across so and so and so and so and so, burn them both.” But when we were preparing to leave, the Prophet said, “I ordered you to burn those two, but God alone punishes with fire. So if you find them, kill them.”

Muhammad b. al-Hasan al-Shaybānī (d. 189/804) also reports in his *magnum opus* study of *Siyar* that when the Prophet appointed Mu‘ād b. Jabl (d. 18/639) as a judge in Yemen, he told him to burn to death someone if he be apprehended. However, later on he ordered him not to burn him to death but to execute him instead. This change of mind on the part of the Prophet from burning to killing constitutes a tradition of proscribing injuring the enemy with a weapon that causes unjustified pain. However, the Hanafites allow it as a last resort, when all other means of defeating the enemy are exhausted. But they argue that it is to force the enemy to surrender and not to kill them. Similarly, they also allow forcing the enemy to surrender by using smoke as a weapon.

Torture constitutes another cruel method and is strictly prohibited in Islam. The Prophet is reported to have said, “God will torture those who torture people on this earth.”

**Prohibition of Execution of Hand-tied Persons**

The Prophet strictly prohibited the killing of enemy soldiers by torturing. He prohibited the execution of a person who is hand-tied.

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16. Shaybānī, ibid., 223. Another interesting instance is when the angry Muslim commander of a battalion ordered his subordinates to enter into fire and they refused. Later, when the Prophet was informed, he said: “Had they entered it, they would never have come out of it. Obedience is obligatory only to the lawful commands.” Shaybānī, *Sharḥ al-Siyar al-Kabīr*, 1: 117.

17. Ibid., 276.

18. Ibid., 225.

It is reported that once ‘Abd al-Raḥmān b. Khālid (d. 46/666) — who was commanding an expedition — was brought in four persons who were hand-tied. He ordered their execution but when this was reported to Abū Ayūb al-Ansārī (d. 52/672), he condemned it and said: “I have heard the Prophet condemning it. And if it would be me, I would not execute even a hen in this way.”20 When this was reported to ‘Abd al-Raḥmān b. ‘Awf (d. 33/653), he set free the four slaves as expiation.21

**Prohibition of Plunder, Looting and Corruption**

Islam has prohibited plundering and looting in war. It is reported that when truce was concluded between the Muslims and the Jews of Khaybar, some Muslim soldiers started looting and plundering. The Jewish leader came to the Prophet and complained: “O Muhammad! How could your people kill our donkeys; eat our fruit and beat up our women?” The Prophet commanded ‘Abd al-Raḥmān to order all the soldiers to assemble for prayers. When all of them got together, the Prophet addressed them and said:

> Have some of you become arrogant and think that God has not forbidden anything except those mentioned in the Qur’ān! I swear on God that whatever I advise you and whatever I order you, do or prohibit you to abstain from, are just like the Qur’ān if not more. You are not permitted to enter the houses of the People of the Book [Jews in this case]; beat up their women; eat up their fruit when they have kept up their terms.22

It is not allowed for the Muslim army to take anything from people whom they come across while on their way to a jihād. It is reported that in one expedition the Muslim soldiers looted some goats and when the Prophet was informed he told them to destroy the meat

and said that plundered things are worse than dead animals. He would not even allow the milking of cows, sheeps, goats or camels without the permission of their owners. Shaybânî argues that if a Muslim soldier had taken something from the booty and it was recovered from his luggage, he should be punished but his luggage should not be burnt.

Prohibition of Destruction

Islamic law prohibits unnecessary destruction of an enemy’s real or personal property; devastation of harvest and cutting fruitful trees; and demolition of religious institutions. It is not allowed to destroy crops and plantation or damage agricultural land and similar objects. Islam considers this as a kind of farsâd and, thereby, such activities are strictly forbidden. The instructions of Abû Bakr given to the army of Usâmah b. Zayd (d. 54/674) while leaving for Syria prohibited inter alia, that villages and towns should not be ruined and crops should not be destroyed. However, trees may be cut down, if necessary, as a military tactic only. The cutting down of the palm trees of Banû Naḏîr has been exaggerated by some authors. The specific palm trees of Banû Naḏîr that were cut down were called ‘Linah’ in the Qur’ân. “Whatever [of their] palm trees you may have cut down, [O believers,] or left standing on their roots, was [done] by God’s leave, and in order that He might confound the iniquitous.”

According to


27. Qur’ân 59: 5. According to Qatâda b. Da‘âma b. Qatâda al-Sadûsi (d. 117/735) and Dhahhâk b. Muzâhîm al-Hîlî (d. 102/720) only six palm trees and according to another report only two trees were cut down and burnt. See, Muhammad b. Ahmad al-Qurtubî, Aḥkâm al-Qur’ân, 18: 6. See also, Muhammad Tâhir b. ‘A’shûr, Taftîr al-Taḥrîr wa al-Tânwîr, (Tunis: Dâr al-Sâ‘îmûn, n.d.), 11: 75.
many great commentators of the Holy Qur’an trees had to be cut down in this particular incident to facilitate the military operations against the strongholds of Banū Nadir. However, apart from such stringent military exigencies, all destruction of enemy property — and, in particular, of trees and crops — had been and continued to be prohibited by the Prophet.²⁸

There are two possible interpretations of this particular episode. According to Shahāb al-Dīn b. Ḥajr al-‘Aṣqalānī (d. 852/1448) only the cutting down of ‘Līnah’, a particular type of palm tree, was allowed because its dates were not consumed by Banū Nadir. They consumed other types of dates, in particular, ‘Ajwāh and Burnī.³⁹ It is also reported that when the companions cut down some trees they did not know whether it was allowed or not, and the above verse was revealed. ‘Abdullah b. ‘Abbās (d. 67/687) reports that Muslims cut down or destroyed some trees as a military necessity when they realized that the legal rule is not known. They asked the Prophet whether they are rewarded for their acts or whether they are blameworthy for not cutting down the rest of the trees. It is in this backdrop that the verse was revealed. There is a similar report from Jābir b. ‘Abdullāh b. ‘Amr (d. 78/697) as well. According to Mūjāhid b. Jabr (d. 104/722), some Muhājirūn started cutting down the trees as a military necessity while others considered it ‘jaṣād’ (sinful act) and left them. God told them that it depended on the intention of the mūjāḥidīn and that both were right. What is clear is that the Prophet did not order his army to cut down trees and what happened was based on the ijtiḥād of the companions of the Prophet.

However, this assertion that only a particular type of date — ‘Līnah’ was cut down and others were spared may be interpreted in two ways: firstly, the particular area in which this happened had only these kind of trees, and this is why only they were cut down; or secondly, if the trees were mixed up, then it seems very difficult for

²⁸ Shaybānī discusses the possibility of sending an expedition for cutting down trees to be used in building boats or mangonels [catapults]. Shaybānī, Kitāb al-Siyār al-Kabīr, 4: 86.
soldiers to differentiate between different types of palm trees. In the above case, it seems that a certain group in a certain place had cut them down where the trees in question happened to be ‘Linah’.

The second interpretation is given by Imām Abū Zahra. His interpretation of the verse [59: 5] is that the verse does not say that the trees were cut down as such. Instead, it mentions that these were standing on their roots, which means that they were not cut down, and only their fruit were plucked. He argues that plucking the fruit from the tree cannot be considered destruction. 30 This would mean that some companions removed the fruit while others did not remove them. Whatever the case, trees can be cut down if required by military necessity only. In other words, the general rule is that trees cannot be cut down, but the exception is that these may be cut down only if it was a military necessity.

Similarly, buildings and houses cannot be destroyed. This is very clear from the instructions of Abū Bakr al-Ṣiddiq (d. 13/634) when he addressed the dispatching army towards Syria that was commanded by Yazīd b. Abī Sufyān (d. 18/639), he said:

I enjoin upon you ten instructions. Remember them: do not embezzle. Do not cheat. Do not breach trust. Do not mutilate the dead, nor to slay the elderly, women, and children. Do not inundate a date-palm nor burn it. Do not cut down a fruit tree, nor to kill cattle unless they were needed for food. Don’t destroy any building. May be, you will pass by people who have secluded themselves in convents; leave them and do not interfere in what they do. 31

The ten rules included ‘do not destroy any building [Arabic ‘Aamir]’, which is common and means ‘any building’ and not a particular building. Religious symbols must be respected. Livestock, harvests


and forests must not be destroyed. This also applies to houses, cities and belongings. There is, nevertheless, the Qur’anic verse, which says, “[and thus] they destroyed their homes by their own hands as well as the hands of the believers.” This was in the aftermath of their breaching their treaty with the Prophet, which resulted in their banishment from Madinah. The episode has been debated between those who see the cutting down of enemy’s trees, allowed, and those who consider it as prohibited. Even the traditionists, such as Imām Muhammad b. Ismā‘īl al-Bukhārī (d. 256/870) and Muslim b. al-Ḥajjāj al-Qushayrī (d. 261/874), sided with the former view, where as Imām ‘Abd al-Raḥmān al-Awzā‘ī (d. 157/774), Al-Layth b. S‘ad (d. 175/791), Abū Thawr (d. 246/860) and Muḥammad b. Jarīr al-Ṭabarī (d. 310/922) have preferred the latter view.

According to Abū Zahrah, the destruction of the houses of Banū Nadir by themselves as well as the Muslims was for other reasons. He says,

This was done because they had used them as forts in which they took shelter and caused injury to the Muslims, so it was imperative to destroy those houses or to try to do so to protect the Muslims against injury. The companions of the Prophet did only what was necessary, but when the Jews realized that they would hand over their houses to the Muslims and leave, they destroyed them completely. This is clear from the Qur’anic verse, which says, “[and thus] they destroyed their homes by their own hands as well as the hands of the believers.” To make things clear, it is better to describe the episode. Shortly after his and his followers’ hijra from Makkah to Madinah, the Prophet concluded a treaty with the Banū Nadir, according to which they pledged themselves to neutrality in the hostilities

32. 59: 2.
33. See, Bukhārī, Ṣaḥīḥ, hadith no. 3021; Imām Muslim, Ṣaḥīḥ, 3: 1325, hadith no. 1746; Also see, Ibn Ḥajr al-’Asqalānī, Fath al-Bārī, 6:154. There is a similar report Abū Dawūd, in his Sunan, 3: 53, hadith no. 2616.
35. 59: 2.
between the Muslims and the pagan Quraysh. In addition, they agreed to join hands with Muslims in defending the city-state of Madinah against any invading army. When Muslims became victorious over the Quraysh in the battle of Badr, in the year 2 A.H., the leaders of Banû Nadîr declared that Muḥammad was indeed the prophet whose coming has been predicted in the Torah; but after the passage of one year, after the near-defeat of the Muslims at Uhud, the Banû Nadîr perfidiously breached their treaty with the Prophet and entered into an alliance with his rivals – the Makkan Quraysh with a view to destroying the Muslim community once and for all. Thereupon the Prophet placed before them an alternative: either war or departure from Madinah with all their possessions. In case of accepting the latter proposition, they were allowed to return every year to gather the produce of their date groves, which would thus remain their property. They agreed to the second alternative, and asked for – and were granted – ten days of respite. In the meantime they secretly conspired with the hypocrites among the Arabs of Madinah, led by ‘Abdullah b. Ubayy (d. 09/630), who promised them two thousands armed warriors in case they decided to remain in their fortified settlements on the outskirts of the town: “Hence, do not leave your homes; if the Muslims fight against you, we shall fight side by side with you; and if they should succeed in driving you away, we shall leave Madinah together with you.” The Banû Nadîr followed this advice, defied the Prophet and took up arms. 36 This was a second treachery by them. In the ensuing conflict, their forts were besieged by the Muslims – though without actual fighting – for twenty one days; but when the promised help of ‘Abdullah b. Ubayy’s followers did not materialize, the Banû Nadîr surrendered in the month of Rabi’ al-Awwal, 4 A.H., and sued for peace. This they were granted on condition that they would leave Madinah, taking with them all their movable properties, except their arms. Most of them immigrated to Syria in a caravan of about six hundred camels; only two families chose to settle in the oasis of Khaybar,

while a few individuals went as far as al-Ḥirah in lower Mesopotamia. The Qurʾān mentions in verse 7-8 of al-Ḥashr [59: 7-8] that their fields and plantations were forfeited by the Muslims.

Secondly, argues Abū Zahra, Banū Naḍīr used their fortified houses for military purposes and as such these became military targets for Muslims. Thirdly, when they knew that they had to quit Madinah, taking away only their possessions, leaving behind their houses, they themselves started destroying their houses. The Muslims only helped them what the Banū Naḍīr wanted to do. Otherwise, why would the Muslims destroy the booty that they were surely going to forfeit?37

The crux of the matter is that whether a particular type of palm trees was cut down or their fruits were taken down, this is allowed only as a military necessity not as a general rule.

The list of prohibited acts is very long and detailed, and include, inter alia, that non-combatants shall not be killed. Non-combatants are women and children who are not fighters, slaves, servants, the blind and incapacitated, the elderly, crippled people, tourists who do not mix up with people, peasants, priests and so on.38 Prisoners of war must be respected, facilitated and treated very well. They have to be released but may also be exchanged.39 Hostages cannot be executed. The wounded and sick must be helped. Massacre is forbidden and there can be no acts of revenge or poisoning. There can be no expulsion from homelands. Rape is prohibited. Drowning to kill the enemy is prohibited. The Prophet’s instructions to the Muslim army despatched against the advancing Byzantine army are given below:

In avenging the injuries inflicted upon us molest not the harmless inmates of domestic seclusion; spare the weakness of the female sex; injure not the infants at the breast or those who are ill in bed. Refrain from demolishing the houses the

38. For details see, this author’s “The Protection of Civilians: Non-combatant Immunity in Islamic Law”, forthcoming.
39. For details see, this author’s, “The Protection of Prisoners of War in Islamic Law”, forthcoming.
unresisting inhabitants; destroy not the means of their subsistence, nor their fruit-trees and touch not the palm.\(^{40}\)

On numerous occasions the Prophet emphasized the prohibition of mutilation of bodies and the prohibition of the killing of children.\(^{41}\) However, according to Hanafites burning or drowning the enemy and forcing them to surrender may be used as a last resort when all other means have failed to bring the same result.\(^{42}\) They also allow the throwing of fire on the enemy boats.\(^{43}\) In short, all cruel and ruthless activities were prohibited in war by the Prophet and his successors.

**Prohibition of Perfidy and Treachery**

Almost every author of Islamic *jus in bello* discipline has discussed the prohibition of treachery and perfidy. However, necessary distinction must be made between ruse [*Khud’ah* in Arabic] and perfidy or treachery [*Ghadr*]. The former is allowed, whereas the latter is strictly prohibited. Both are explained below:

(a) Ruse

It is reported that the Prophet has described war as a ruse.\(^{44}\) And that ruse is invaluable in war. But what is ruse and why is it allowed? According to the Muslim military history ruse has been successfully used in many campaigns. It may include, *inter alia*: misguiding the enemy about the timings of attacks, camouflaging, giving the enemy an indication that the preparation of war is not meant to attack it for

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43. Fire was thrown at enemy’s boats by the Muslim navy at the time of Mu‘āwiyah. Ibid., 222. Shaybānī also discusses the options available to Muslim sailors when their boat is destroyed by enemy’s fires. See, ibid., 248. What is clear from this is that throwing fire at each others boat was done by both Muslim and non-Muslim navies at that time.

now. The Prophet used to send his agents to infiltrate the ranks of the enemy and to spread defeatism and rumors among the enemy in order to undermine their morale. On many occasions, the Prophet or his commanders and even soldiers used language that was capable of two or more things or was of doubtful meaning. This is called ‘tawriyah’ [in Arabic] equivocation, and is allowed in other situations as well. It has also been reported that in certain cases Muslim soldiers were allowed to tell lies to accomplish their tasks. But Shaybānī argues that telling a lie is not allowed even in duress and necessity. He says that what was allowed was tawriyah, not kidhb.45 However, this is an exception only in wars and is never a general rule.

As an example of misguiding the enemy with the movements of the troops is the report in which the Prophet, while embarking on, to attack Bani Lahyān – who lived southward from Madinah – the Prophet went in the opposite direction from Madinah so that the enemy thought that they would planning an attack. However, they turned southward towards the enemy.46 It is reported that the Prophet would never disclose his destination.47

Another example of this is what Khālid b. al-Walid (d. 21/642) – the great Muslim commander did when he took over the command of the army after the initial defeat of the Muslims against the Romans. Khālid used a special strategy to misguide the enemy. He relocated the soldiers and used the right wing to go to the left wing; the front wing to go to the back and vice versa. The Romans thought that fresh Muslim troops have arrived on the battle field and they took to flight.48

47. There are, perhaps, some exceptions to this general rule. For instance, at the time of the Khaybar expedition the troops were informed about the destination well before they were dispatched. Similarly, at the time of the Tabuk expedition, the Prophet had announced beforehand that Muslims were to go to Tabuk to fight with the Byzantines. The purpose was, of course, to make a clear distinction between a believer and a hypocrite. But generally, the Prophet won’t disclose the exact purpose of an incursion.
In another example it is reported that Ḥajjāj b. ʿAlaṭ al-Salmī (died in the era of ʿUmar b. al-Khaṭṭab) embraced Islam and fought with the Prophet at Khaybar. When Khaybar was conquered, he said, “O Messenger of God, I have property in Makkah with my wife Umm Shaybah daughter of Abū ʿAlī al-Taḥlīḥ, as well as assets with many traders of Makkah, allow me O Messenger of God to go there.” The Prophet gave him permission to go, whereupon he said, “O Messenger of God, I shall perforce have to lie there.” The Prophet told him to say what had to be said. In other words, the Prophet’s permission was sought by Ḥajjāj so that he might resort to ruse with the inhabitants of Makkah in order to recover his property and assets. So, when he reached Makkah, his people asked him about news from Khaybar. He told them that Muhammad had suffered an unprecedented defeat and that his followers had either been killed or taken captive and that the people of Khaybar refrained from killing Muhammad but would send him to Makkah to be executed there in retaliation, whereupon the Makkans rejoiced. Ḥajjāj took this opportunity to recover his property and assets so that he could return to Khaybar to buy some of the booty before other merchants arrived. They instantly returned his property.⁴⁹

There are many instances of using equivocal language or ‘tawriyah’ [equivocation]. It is reported that when the Prophet would intend to go on an expedition, he would try to hide his plans.⁵⁰ Similarly, if he would intend to go in one direction, he would ask people about another direction.⁵¹ It is reported that when ʿAlī b. Abī Tālib (d. 40/661) dueled with ʿAmr b. ʿAbd ʿAbd Wūd (d. 05/626) in the battle of Khandaq [trench], ʿAlī looked over ʿAmr’s shoulder and said: “ʿAmr, I only came out to fight out you, not with more. So, who are those persons whom you have invited?” ʿAmr looked back, to see who ʿAlī was talking about and ʿAlī took advantage of that, struck him and cut

⁵⁰. Bukhārī, Sahīh, hadith no. 2948; Muslim, Sahīh, hadith no. 2769; Ibn Hajr, Fath, 6:113.
his leg. ‘Amr said: “You have deceived me!” ‘Ali said: “War is all about ruse.”

In the fifth of hijrī, the Makkans and a coalition of other Arab enemies of the Prophet, in order to attack Madīnah, besieged the city. The Prophet had a treaty with the Jewish tribe of Banū Qurayzah, who betrayed the Prophet and allied with the Makkans. During that time Nuʿaym b. Masʿūd (d. 36/656), a prominent member of the coalition, came to the Messenger of Allah to announce his Islam. He told the Prophet that Banū Qurayzah had betrayed the Muslims and have allied with infidels. The Prophet asserted, “May be we have told them to do so.” The Prophet used these words to give infidels the message that his alliance with Banū Qurayzah is still alive and to create mistrust between the infidels and Qurayzah.

In other reports it is said that the Messenger of Allah told him to keep his Islam secret and to go back among the enemy and fight them from within. He told him: “If you remain with us you are only one man. But go back to them and weaken them from within as much as you can because war is ruse.” Nuʿaym implemented this advice very well. He went back to the leaders of the Jewish tribe of Banū Qurayzah (who were part of the attacking coalition) and told them that they made a mistake in breaking their peace agreement with the Muslims. He told them that the coalition army would eventually leave and go back to their lands and leave you here in Madīnah to face the wrath of the Muslims. He said therefore I suggest that you refuse to fight on the coalition side until they hand over to you some of their prominent men as hostages to insure their good faith.

52. Shaybānī, Kitāb al-Siyar al-Kabīr, 1: 86. In another report it is said that the Prophet did not condemn lies in three situations: firstly, during war; for reconciliation between people; and when a husband talks to his wife or a wife talks to her husband. However, according to the majority of scholars, what is allowed in these situations is ‘tawriyah’ and what is considered to be the best interest of the community (in case of war), or in the best interest of two persons who have animosity towards each other, or whatever equivocation is possible. Telling blatant lies to wife is never allowed. See, Muslim, Ṣaḥīḥ, 4: 2011, hadith no. 2605; Ibn Ḥajr, Ṣaḥīḥ, vol. 5, p. 300; Shoukānī, Nail al-Awār, 7:272; Sanʿānī, Subul al-Salām, 4: 202; Ibn Abī Shayba, Muṣannaf, 14: 417-418, hadith no. 18657.

Nuʿaym left the Jews and went to Abū Sufyān b. Ḥarb (d. 32/652) and the Arab leaders and told them that he came to give them advice. He said that the Jews have regretted their betrayal of Muḥammad and they instead conspired with him to hand over some of your prominent men in order to have them killed as a retribution for their betrayal of their peace agreement with him. He said if the Jews come to you asking for hostages do not give them any.

On Friday night Abū Sufyān sent to the Jews asking them to attack from their positions on Saturday and they, the Arabs, will attack on Sunday. They sent back saying that we fear you would forsake us and leave us alone to deal with the Muslims so we demand you to send over to us some of your noble men to stay with us as a pledge to insure your involvement in the war until the end. When Abū Sufyān heard that he said this is what Nuʿaym warned us: The Jews have conspired with Muḥammad against us. When he refused, the Jews said this is what Nuʿaym warned us: The Arabs are going to withdraw and leave us alone to fight with the Muslims. A dispute broke between the Jews and Arabs and they ended up cursing each other and the coalition broke.

According to Imām Yahya b. Sharaf al-Nawawī (d. 676/1300), there is consensus among scholars that ruse is allowed in war as long as it does not lead to breaching treaty or pledge. 54 “[A]nd do not break [your] oaths after having [freely] confirmed them.”55 According to Shaybānī, all the above tactics are lawful in war. 56 Ruse is also allowed in international humanitarian law. It gives “the use of camouflage, decoys, mock operations and misinformation”, as the

54. Imām Nawawi, Sharḥ al-Muslim, 7: 320; Ibn Qudāma, Al-Mughni, 10:396-397;
55. Qurʾān 16: 91.
56. Shaybānī, Kitāb al-Siyar al-Kabir, 1: 88. He gives another example of equivocation in ordinary life and reports that the Prophet said that old people will not enter paradise. An old woman cried on hearing this, to whom the Prophet described that old people will have to enter paradise as young. Ibid., 86-87.
Muhammad Munir

typical examples of ruses. Yet, some of these are the examples available in Muslim military history.

(b) Perfidy or Treachery

Perfidy or treachery is strictly prohibited in warfare by the Prophet and his successors without any exception.

The Prophet (peace be on him) is reported to have reiterated this ban on numerous occasions. In the eighth year after his migration to Madinah, he issued commands to his departing army and said, “Fight with the name of God and in the path of God. Combat those who disbelieve in God. Fight yet do not cheat, do not break trust, do not mutilate, do not kill minors.”

On another occasion, while instructing the army led by ‘Abd al-Rahmān b. ‘Afw, he said,

O son of ‘Afw! Take it [the banner]. Fight you all in the path of God and combat those who do not believe in the path of God. Yet never commit breach of trust, nor treachery, nor mutilate anybody nor kill any minor or woman. This is the demand of God and the conduct of His Messenger for your guidance.

When Abū Jandal b. Suhayl (d. 18/639) fled to Madinah from the polytheists of Makkah, he heard that the Prophet intended to return him to his people in execution of the Prophet’s covenant with the

57. Article 37(2) of Protocol I of 1977. Article 37(2) states, “Ruse of war is not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable to armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. The following are examples of ruses: the use of camouflage, decoys, mock operations and misinformation.” This seems a re-writing of Islamic law.

58. For details see, my, “Suicide Attacks and Islamic Law,” International Review of the Red Cross 90:1 (2008), 82-84.


latter. Abū Jandal stood up among the Muslims and asked them if they would return him to the polytheists who would torture him to renounce Islam. The Prophet answered, “Treachery is not good for us, even to save a Muslim from the law of polytheists.” The instructions of 'Ali b. Abī Tālib to his soldiers during his war with Amir Mu‘āwiyyah b. Abī Sufyān (d. 60/680) are very relevant here. He said,

“If you defeat them, do not kill a man in flight, do not finish off a wounded man, do not uncover a pudendum, or mutilate the dead, do not rip open a curtain or enter a house without permission, do not take any of their property, and do not torture or harm their women even though they may insult your leaders.”

Muslim commanders as well as individual soldiers can give pledge to an enemy soldier that he will be given quarter. Should this be given, then that pledge is binding on all Muslims and no derogation is possible. The Prophet (peace be on him) has declared any violator of such a pledge to be a hypocrite.

At the time of 'Umar, the Second Caliph, during a war, a Persian soldier took shelter at the top of a tree. A Muslim soldier told him in Persian cum Arabic “Matrasi” (don’t be afraid). His adversary thought that he was given a pledge and protection and came down. Sadly, he was killed by the Muslim soldier. The matter was reported to the Caliph, who warned the commander, saying “[A]s God is my witness, if I hear anyone has done this I shall cut his neck.”

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64. He also said that “on the day of resurrection anyone who has breached his pledge will be exposed by the hoisting of a flag and that the size of the flag will be according to his treachery. And remember that the biggest treachery is the one carried out by the leader of the nation.” Muslim, šahih, Kitāb al-Jihād wa al-Siyār, Bāb Tahrim al-Ghadr.
Once there is a treaty between the Muslims and their opponents, then Muslims must strictly observe the terms of the treaty and never violate it. It is reported that the Ummayad Caliph Amir Muʿāwiyyah was once preparing his army to attack the neighbouring Roman Empire, although the peace treaty between the two was still in force, for he wanted to attack as soon as it had expired. A companion of the Prophet (peace be on him), ‘Amr b. ‘Anbasah, considered it treachery to prepare for an attack without prior information to the Romans. He therefore hastened to the Caliph shouting, “God is great, God is great, we should fulfil the pledge, we should not contravene it.” The Caliph questioned him, whereupon he replied that he had heard the Prophet peace by upon him saying,

If someone has an agreement with another community then there should be no [unilateral] alteration or change in it till its time is over. And if there is risk of a breach by the other side then give them notice of termination of the agreement on reciprocal basis.66

The Qur’anic verse says, “Or, if thou hast reason to fear treachery from people [with whom] thou hast made a covenant, cast it back at them in an equitable manner: for, verily, God does not love the treacherous.”67

Shaybānī considers it perfidy if a group of Muslims entered the enemy’s country feigning to be the representatives of the Caliph by showing forged documents or without showing them, then they are not allowed to kill anyone or take away any property as long as they are in the enemy’s state. Thus, if they were given protection, then shall fulfil their obligations under that protection. Similarly, if Muslims pretended to be businessmen but they were planning to

to any enemy soldier by using, inter alia, the Persian words ‘matrasi, then these words are binding. See, Shaybānī, Kitāb al-Siyar al-Kabir, 1: 199.

66. Shaybānī, Kitāb al-Siyar al-Kabir, 1: 185. According to Sarkhāṣī, it means that any act that resembles treachery in letter or spirit must be avoided. See also, Imām Termidhi, Sunnan, (Istanbul: Gagr Yayinlar, n.d.), 4:143, hadith no. 1580.

murder [someone], they shall not kill because they have been granted quarter by the enemy. 68

A good example of perfidy or treachery in present times is when a suicide bomber feigns to be a civilian and when he is spared by the enemy’s soldiers because he is taken to be a non-combatant, he blows himself, kills the soldiers. This is what happens in many conflicts around the world, but this is treachery or perfidy and is strictly prohibited in Islam. 69

International humanitarian law also strictly prohibits perfidy. 70 Feigning to surrender, feigning of sickness, feigning to be civilian are the typical examples of perfidy in IHL.

To sum up this discussion ruse is allowed in war but treachery or perfidy is strictly prohibited.

**Prohibition of mutilating bodies**

Mutilation of bodies is strictly prohibited in Islamic *jus in bello*. Mutilation includes the cutting of body parts such as fingers, ears, nose, private parts, cutting the body itself as well as cutting the head and carrying them on the points of lances. As mentioned above it was a *jähiliyyah* practice. After the battle of Uhud was over, the Holy Prophet went out seeking his uncle Hamzah and found his slain body without ears and nose, his stomach ripped opened and the liver missing. The Prophet was very furious over the cruelty against his uncle. 71 In the heat of passion and grief, the Prophet expressed

69. For details see, my, “Suicide Attacks and Islamic Law”, 90:869 (March 2008), 82. Also available at <http://www.cicr.org/web/eng/siteeng0.nsf/html/review-869-p71>; <http://journals.cambridge.org/action/displayAbstract;jsessionid=6E0C9617FA129A40373044288ED286C0.tomcat1?fromPage=online&aid=1889164> (last accessed 27/04/2010). The perpetrators of 9/11 in the United States not only committed mass murders but when they disguised themselves as lawful visitors, they are guilty of perfidy in Islamic law.
70. See, Article 37(1) of Protocol I of 1977.
71. Hind bt. Abū Jahl (d. 14/635) – the wife of Abū Sufyān – and other infidel women mutilated the dead bodies of Muslim martyrs; made a necklace and presented it to Waḥši – the killer of Hamzah – Prophet’s uncle, as a reward for killing him (Hamzah). She even took out Hamza’s liver and tried to chew it up but vomited. Ibn Hajr, *Fath*, 7: 352.
feelings of revenge, stating: “If God gives me victory over them [Quraysh], I will mutilate thirty of their men.” Responding to the Prophet’s grief and anger, other Muslims expressed similar sentiments for vengeful mutilation. It is also reported that Muslims had sworn to avenge the mutilation by many folds should they overwhelm the infidels. However, when cooler moments were restored, no decree for mutilation was issued. God revealed to the Prophet:

Hence, if you have to respond to an attack, respond only to the extent of the attack leveled against you; but to bear yourselves with patience is indeed far better for [you, since God is with] those who are patient in adversity. Endure, then with patience – always remembering that it is none but God who gives thee the strength to endure adversity.73

The Prophet pardoned all those infidels who were involved in this heinous crime when the Muslims conquered Makkah and said that we shall endure. Moreover, he strictly prohibited mutilation in many of his reported instructions to the commanders and individual Muslims.74 Muslim jurists argue that there is unanimity on this issue.75 The Prophet used to condemn mutilation to the extent that he is reported to have said: “Never should you carry out mutilation of body, even of a rabid dog.”76

‘Umar b. al-Khaṭṭāb (d. 24/644), the second Caliph, warned the commanders of the Muslim army saying: “Do not mutilate when you

73. Qur’an 16: 126-127.
The Prophet (peace be on him)'s Merciful Reforms in the Conduct of War: The Prohibited Acts

have power to do so. Do not commit excess when you triumph. Do not kill an old man or a woman or a minor, but try to avoid them at the time of the encounter of the two armies, and the time of the heat of victory, and at the time of expected attacks.977

According to Shaybānī, Abū Bakr, the first Caliph, condemned ‘Uqbah b. ‘Āmir al-Juhānī (d. 58/677), when he presented him with the head of an enemy leader and when ‘Uqbah said this is what the Persians and Romans do to us, he said, “But do you follow the tradition of the Persians and the Romans?”978 He prohibited this practice because he regarded it as a practice of jāhiliyyah. He therefore issued instructions that he should not be brought in heads; he should only be informed [of victory].79 According to the Hanafites and Maliki jurists enemy’s dead bodies should be buried.80 Similarly, delivering coup de grâce to the wounded is also prohibited in Islamic law.81

Before concluding this discussion, we raise another very important question. If mutilation of dead bodies is prohibited, then what about killing someone by disfiguring him or cutting him into pieces? This is what happens in suicide attacks when most of the victims are not only killed but also disfigured. By using analogy we can assert that this comes under mutilation and is strictly prohibited.82 Moreover,
the Prophet’s saying that “fairness is mandatory. If you kill, do kill in the best of the manners,” is a direct provision in this matter. 83 To conclude, mutilation of dead bodies as well as killing by mutilation is strictly prohibited in Islamic law.

Prohibition of Rumpus

Rumpus, looting and disturbing people on the way to the destination, making noises and occupying the whole passage etc were practiced in *jahiliyyah*. The Prophet prohibited all such practices. It is reported that on one occasion complaint was made to the Prophet about rumpus of some soldiers. He announced that if anyone occupied the whole passage [with the exclusion of passers by] or looted people, then he will not be rewarded of any jihād.84 On another occasion he described the spreading of soldiers in valleys a satanic act.85

Raising voices and making loud noises was a *jahiliyyah* practice. It is reported by Abū Musā al-Ashʿarī (d. 41/662) that once rose slogans of *Allah-o Akbar* (God is great) loudly during an expedition. When we would reach a valley we used to raise slogans of ‘God is great’ loudly. On this the Prophet said, “O people! Go decently, [do not raise your voices], the One you calling is not deaf nor dumb. He is with you. He is lessoning everything and He is very near.”86

Prohibition of killing PoWs and Non-combatants

We have explained the protection of PoWs somewhere else where it was concluded that the general rules are that they shall not be...
executed and shall be set free. They may also be exchanged. Moreover, the execution of three or four PoWs through out the campaigns of the Prophet was because of the heinous crimes they had committed against the Islamic state before their captivity.\footnote{87} Here details of how PoWs are treated and how is their captivity ceased cannot be mentioned and only a passing remark would suffice. The Prophet instructed his army while conquering Makkah and said, “Slay no wounded person, pursue no mudbir (who turns his back from the battle and flees), execute no prisoner; and whosoever closes his door is safe.”\footnote{88}

Non-combatants – women, children, servants, sick, infirm, elderly, farmers, priests, tourists (who do not mix up with people) and people in similar situations shall not be killed.\footnote{89} It must be noted that wars at that time were different from wars today. In the beginning of Islamic history all able bodied men would participate in war from both sides. ʿUmar organised regular armies and all the people would not participate in war. Today, all those persons who are not in the army, that is, regular members or reservists, who do not fight along side the army shall be considered as civilians and shall have non-combatant immunity. When the Prophet saw a slain woman in one of his battles he said: “she certainly could not have been fighting.”\footnote{90}

What is important to note is the cause [‘illah] of killing someone in war – fighting. Thus, all those who do not fight, shall not be killed.

**Prohibition of Genocide in International and Islamic Law**

An important issue that needs attention in this work is what Islam says about genocide and war crimes. This section explores what is known, in the laws of armed conflict, as genocide and war crimes.

\footnote{87} See, my, “The Protection of Prisoners of War in Islamic Law”, forthcoming.


\footnote{89} I have explained this in my, “The Protection of Civilians: Non-combatant Immunity in Islamic Law”, forthcoming.

Whether collective punishment of people is allowed in Islam? Whether war crimes or genocide were ever committed in Islamic military history?

Genocide under International Law

The term genocide was coined by a Polish scholar Raphael Lemkin, who served in the U. S. War Department. The term ‘genocide’ is derived from the word genos, meaning ‘race in Greek, and the Latin word for ‘killing’, cide. Its legal definition was given in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which entered into force in 1951 and is today part of customary international law. However, the 1948 definition of genocide is reproduced in verbatim in the Statutes of International Criminal Courts. For the crime of genocide to be committed it is not essential that an armed conflict must exist.

The definition of genocide includes a list of acts, i.e. “killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.” The definition of genocide has both a physical element – comprising certain enumerated acts, such as killing members of a racial group – and a mental element – those acts must

93. See, UN, Statute of the ICTY; UN, Statute of the ICTR; The International Criminal Court or The ICC.
94. The 1948 Convention also makes other acts punishable. These are: conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide. The definition does not include political or economic groups. Such groups are considered ‘unstable or fluctuating’. Moreover, it also excludes cultural genocide-destroying a group through forcible assimilation into the dominant culture.
have been committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious, group as such.\(^{95}\) Thus, it is not the nature of the act itself but the intention behind the act (mens rea). That intention cannot be easily identified and this is the reason for too few convictions.

The systematic extermination of Armenians by the Young Turks in 1915, the Turkish massacre of Kurds in the district of Dersim in 1937-1938, the wholesale massacre of Hutus by Tutsis in Burundi in 1972, the Khmer Rouge campaign of extermination in the 1970s and the 1988 Anfâl campaign against Iraqi Kurds, are considered by scholars to qualify as genocide.\(^ {96}\) The ethnic cleansing of Muslims by the Serbs in Bosnia and Herzegovina in 1991-1992,\(^ {97}\) the Holocaust and the 1994 Rwandan genocide, are examples that more clearly qualify the definition of genocide.\(^ {98}\)

95. The specific nature of the crime of genocide lies in the specific intention behind its perpetration. The acts committed may, in fact, be ‘straightforward’ killings, acts of torture, rape or crimes against humanity, but their distinctive feature is that the specific intention of the perpetrators of these acts is not to kill or ill-treat one or more individuals but to annihilate the group to which those individuals belong. Therefore, it is intention which distinguishes genocide from murder or crimes against humanity. See, Marco Sassoli & Antoine A. Bouvier, How Does Law Protect in War?, (Geneva: ICRC, 2006), 1: 310.

96. See, Orentlicher, 156-157.

97. Authors in general have focused on the genocide committed by the Nazis against the Jews. Genocide committed against the Bosnian Muslims has been largely unnoticed. It is estimated that some 100,000 Muslims were killed by the Fascist and others collaborating with Nazi Germany. See, Fikret Karcic, “Muslim Legal Religious Institutions in Yugoslavia”, IIU Law Journal, 2:1 (1992), 32. The Bosnian Muslims were the victims of genocide once again in 1991-92. The ICJ asserted this on 13 September 1993 that genocide is committed by the Serbs against the Muslims. See, M. Shokri El-Daqâq, “Genocide from the Perspective of International and Islamic Law”, in Criminal Justice in Islam: Judicial Procedure in the Shar’ia, ed., M. A. Haleem, A. O. Sherif & Kate Daniels, (New York & London: I. B. Tauris, 2003), 136.

98. Orentlicher argues that despite the obligation of states to take action against genocide, to the contrary, when those same crimes were being committed and portrayed in the media – legal experts in the U.S. administration were asked, in the words of a former State Department lawyer, “to perform legal gymnastics to avoid calling this genocide.” And when Rwandan Hutus carried out the wholesale massacre of Tutsis, the Clinton administration instructed its spokespeople not to describe what was happening as genocide lest this “inflame public calls for action,” according to the New York Times. See, Orentlicher, 153.
Genocide and Islamic Law

Acts of genocide are strictly condemned in Islam, and are regarded as heinous crimes deserving severe punishment both in this world and the Hereafter. The Qur’ân indirectly refers to the genocidal act of mass killing when it discusses Pharaoh of Egypt’s massacre of the children of Israel, saying, “And [remember the time] when We saved you from Pharaoh’s people, who afflicted you with cruel suffering, slaughtering your sons and sparing [only] your women.”100 That “no burden bearer bears the burden of another,”101 and that “God lays not upon anyone more than he has capacity for; what he has gained stands to his credit and what he has piled up stands against him.”102 In addition, the Qur’ân warns, “But whenever he prevails, he goes about the earth spreading corruption and destroying [man’s] tilth and progeny and God does not love corruption.”103

As discussed above, according to the Genocide Convention, the crime of genocide is committed intentionally to destroy an ethnic group, either by killing the members of the group or causing serious harm thereto or persecuting them through other acts. Islamic law strictly prohibits persecution makes criminal any genocidal acts committed against ethnic groups who are covered by the protection of the Islamic state. As such, if a Muslim citizen kills a member of an ethnic group, Islamic law imposes death penalty on the murderer.104 The Holy Qur’ân only allows lawful execution of a person and strictly prohibits other acts of homicide. The Qur’ân says:

[i]f anyone slays a human being unless it be [in punishment] for murder or for spreading corruption on earth – it shall be as

100. 2: 49.
101. 53: 38.
102.
103. 2: 205.
104. This is according to the Hanafi school of thought.
though he had slain all mankind; whereas, if anyone saves a life, it shall be as though he had saved the lives of all mankind.\textsuperscript{105}

According to Jaṣṣāṣ, the expression “[I]t shall be as though he had slain all mankind” has several interpretations. Firstly, it tells about the gravity of the crime; secondly, since the murderer has laid down a very bad tradition that other people will follow, he is like an accomplice to all such murders; thirdly, the entire community has the responsibility to help the victim’s family.\textsuperscript{106} In this sense, the murderer has committed a crime against the society, which is represented by the state. Thus, it is the state’s duty to prosecute him and give him due punishment. If the killer intended to kill an entire group but was able to kill only one member of the same, he would be guilty of genocide. This qualifies the element of intent present in the crime of genocide. Accordingly, acts of genocide are strictly condemned in Islam, and are regarded as grave crimes for which there is severe punishment in this world and the Hereafter.\textsuperscript{107}

The Qur’an is categorical against any artificial superiority of a human being over another based on race, language, colour, status, age or gender. The Qur’an says,

“O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him. Behold, God is all-knowing, all-aware.”\textsuperscript{108}

The Last Sermon of the Prophet included this clarion call to humanity:

\textsuperscript{105} 5: 32. Muḥammad Asad comments on this verse and opines that the expression “We have ordained unto the children of Israel” does not, of course, detract from the universal validity of this moral: it refers merely to its earliest enunciation. See, Asad, \textit{The Message of the Qur’an}, 147, n. 40.


\textsuperscript{107} ?????????  

\textsuperscript{108} 49. 13.
“O people remember that your Lord is One. An Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a black has no superiority over white, nor does a white have any superiority over a black, except by piety and good actions. Indeed the best among you is the one with the best character.”

The Qur’an also enjoins:

“O You who have attained to faith! Be ever steadfast in your devotion to God, bearing witness to the truth in all equity; and never let hatred of anyone lead you into the sin of deviating from justice. Be just: this is closest to being God-conscious. And remain conscious of God: verily, God is aware of all that you do.”

Genocide is so strictly prohibited in Islam that the Prophet did not approve it even of dogs: “[I]f dogs would not constitute a community, I would order them to be slain.” If genocide of dogs is not allowed in Islam, then how could one think of Islam to approve of it with a human being, who is described by God as follows:

Now, indeed, We have conferred dignity on the children of Adam, and borne them over land and sea, and provided for them sustenance out of the good things of life, and favoured them far above most of Our creation.

A Muslim combatant is also prohibited to annihilate the enemy, threaten them with annihilation, or deny them the right to surrender. It has never been reported that any people were killed as a group after the defeat of the enemy. Abū Hurayrah reports that the Prophet said, “An ant bit a Prophet whereupon he ordered the ant hole to be burnt. Then God said to him, ‘if an ant bites you, would

109. 5: 8.
112. 17:70. Rather, a human being is made superior to angels.

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you burn a whole community of ants who sing the praise of God?"113 Muslims are commanded to incline to peace if the enemy inclines to it and are prohibited from killing an enemy who withdraws from battle, surrenders his weapon and person.

Starvation of enemy population is also not allowed in Islam. In the sixth year of the Hijrah, Thumamah b. Uthāl (d. 11 or 12/632, 633), head of Yamamah, decided to withhold supplies from Makkah, whose inhabitants depended on his tribe’s grain, in order to force its inhabitants to embrace Islam or until the Prophet ordered Thumamah otherwise. When Makkah was threatened with famine, its inhabitants asked that the embargo be lifted, and the Prophet wrote to Thumamah to lift it. The Prophet even sent ripe dates to Makkah when hostilities between the two communities were at their peak, and gave a big amount of money.

Moreover, since genocide is the denial of the right to existence of an entire human group, on the basis of its particular ethnic identity, it would be interesting to see how Islam deals with ethnic groups. Islamic law contains explicit rules which declare that the principle of equality is mandatory in Islam. The Holy Qur’an says,

O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him. Behold, God is all-knowing, all-aware.114

The Prophet emphasized this principle, in his famous sermon on mount ‘Arafa, when he said, “O, men, verily your God is one, and your father is one. No Arab is superior to a non-Arab except in righteousness, nor black to red or red to black except in righteousness.”115 What is crystal clear from the above is that God

114. 49:13. It means that this equality of biological origin is reflected in the equality of the human dignity common to all.
and his Messenger have condemned all aspects of discrimination on
the grounds of race or colour.

Throughout Islamic history, non-Muslims enjoyed absolute
protection and their lives and properties were deemed to be as
sacred as those of Muslims. It was the duty of the Islamic state to
protect them from possible attacks and molestation. The Prophet
and his successors had issued several charters to the dhimmis [non-
Muslim citizens of Muslim state] of Jarash, Khaybar, Najran and
other places in which they secured the protection of their lives,
property and beliefs.\textsuperscript{116} The Muslims rulers of India treated their
non-Muslim subjects likewise in India for centuries. It is undeniable
to say that the Muslim world has historically showed far greater
tolerance and humanity in its treatment of religious minorities than
has the Christian West.\textsuperscript{117} The treatment of the Jewish minority in
Muslim societies stands out as fair and enlightened, especially when
compared to the dismal record of Christian Europe’s persecution of
Jews over the centuries.\textsuperscript{118}

To conclude this section, one final question needs to be answered.
Where should we place the crime of genocide in the scheme of
Islamic criminal system? It may be placed under hirābah [being
spreading corruption on the earth], the punishment for which is
mentioned in the Qur’an [5:33]. But this would make it a hadd
offence. It may be called fasad fi’l-ard and brought in under the
doctrine of syasah.\textsuperscript{119}

\textbf{Are War Crimes Committed in Early Islamic Military
History?}

It is extremely difficult if not impossible to find campaigns of the
Prophet or his successors in which, what is known as war crimes in

\textsuperscript{116} For details of the charter granted to the people of Najran, see, Abu al-Abas Ahmad b. Jabir al-

\textsuperscript{117} Dakkāk, 138.

\textsuperscript{118} Ibid., see also, Bernard Lewis, \textit{The Jews of Islam}, Princeton, 1984, p. 83.

\textsuperscript{119} Combating fasad fi’l-ard is one of the cherished objectives of Jihad. Qur’an 2:251 and 22:40.
IHL parlance, are committed. There are rare incidents in which Muslim soldiers seem to have committed certain mistakes because of some misunderstanding of the language or miscommunication or some mistaken interpretation of the situation.

It is reported that a certain soldier from the tribe of Banu Khuzā‘ah, during the attack on Makkah, killed a man on which the Prophet warned them, and said, “O the group of Khuzā‘ah! Stop the killing; you have killed a person and I will soon pay his blood money ....” He is reported to have condemned in the strongest Arabic words the killing of women and servants when he saw a slain woman in the battlefield. It is reported that after the surrender of Makkah, the Prophet dispatched Khālid b. al-Walīd to Banū Jadhimah in the south of Makkah to invite them to Islam. They told Khalid that they were Muslims. He asked them to hand over their weaponry but they refused. He overpowered them and collected the weapons from them. Since it was very cold, he announced in the morning to his soldiers (consisting of Muhājir, Anṣār, Banū Salim and other tribes) to keep their captives ‘warm’ [Arabic: id fa'u sahibakum]. The word mean ‘keep your captive warm’ in the dialect of Quryash but it meant to kill in the dialect of Banū Salim. They started to kill their captives. On hearing the incident of Jadhimah, the Prophet said: ‘O Lord I register to you my displeasure at what Khālid has done.’

The Prophet sent ‘Ali b. Abī Tālib to go there and pay the blood money of all the victims.

The paying of the blood money means that Islamic law regards such killing as killings by mistake. It is also reported that in one of the campaigns before the fall of Makkah, Usāmah b. Zayd (d. 54/673) killed a person who said there is no God but Allah. The Prophet

120. See, Mustafa al-Siba’i, Min Rawa’i Hadharatina, (Beirut: al-Maktab al-Islami, 1985), 96.
122. In another version of the same episode it is said that when Khālid asked them about their faith, they replied, “We have converted to a new faith.” Khālid ordered his men to kill them but when it was reported to the Prophet, he strongly condemned it. For details see, my, Aḥkām al-Madaniyyin, 123.
strongly disapproved of this act on which Usāmah said, “He was telling lie.” The Prophet replied, “Did you open his heart to know whether he was telling the truth or lie?”\textsuperscript{123}

To sum up, war crimes are unknown in the early Islamic military history. There have been very few incidents as a result of misunderstanding, miscommunication or wrong interpretation.

**Conclusion**

To conclude this work the main points are given below:

Islam introduced far reaching reforms to the barbaric and inhuman practices that existed in Arabian warfare before Islam. Islam prohibited attacks without warning to the enemy. Burning and drowning the enemy to death was prohibited. Destroying buildings, cutting down trees, committing perfidy, breaching the trust of the enemy, the killing of women, children, servants, old, infirm, sick, wounded, priests, peasants, POWs and envoys was strictly prohibited. Execution of hand-tied persons was banned. Islam prohibited the destruction of harvest, livestock and forests. Looting, plundering and corruption from the war booty are strictly prohibited. Prohibited activities also include indiscipline, making loud noises, and occupying the whole passage while passing through and thereby excluding other peoples. Mutilation of dead or alive bodies is strictly condemned. Suicide attacks in which the bomber feigns to be civilians are perfidious acts and are strictly prohibited. Genocide and war crimes are unknown practices that never happened in early Islamic military history. Moreover, both are strictly prohibited in Islamic law. Finally, Islam shall not be blamed for some of the deeds of Muslims if these were carried out in the name of Islam although these were against Islam.

\[ x \times x \]

\textsuperscript{123. Imām Ahmad, Musnad, 5: 27.}