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## Islamic Jurisprudence and Geneva Convention: Searching Compatibility for Women Worriers' Rights

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### ABSTRACT

This research paper evaluates the Islamic values vis-a-vis Geneva Convention concerning the rights of women warriors as prisoners of war by the victorious country. The discussion is to discover the similarities and differences between the two areas on the subject. This study focuses the probability of combining these two separate areas but common in objectivity. The Islamic law protects the women from the scourges of war in a number of ways. Similarly, the Geneva Convention also tries to protect the women as prisoners of war. This study concerns the main research question as to whether there may be the compatibility between Islamic and Geneva Convention law for developing a common code on the issue of rights of women worriers. The objective of the study undertaken is to develop a common code through reconciliation between these two separate regulations for conducting war, and ensuring the upholding of human dignity of female worriers. This will complement the existing knowledge on the issue as a guideline for all concerned in the context of International Humanitarian Law.

**Keywords:** Islam, Geneva Convention, Women Worriers Prisoners, Warfare Ethics.

### Introduction

Man is always considered as the fighting being, and this trend has been somewhat similar throughout the human race. For this very reason, the conflict of interest has appeared as the inherent feature of the society since primitive ages till today. For resolving such conflicts, human ingenuity, have succeeded to establish certain measure for peaceful settlement in different terms. However, sometimes coercive measures become unavoidable for resolving the disputes, and among those the war is the worst and the last option. War brings devastation for the socio-economic and human resources. Though the War causes distress to the whole mankind, it affects particularly the soldiers who are obligated to fight for their homeland. They suffer both situations of during and post war conflicts. Such sufferings severely affect female soldiers which is the new class of combatants in the history of the armed forces. While the entire community endures the consequences of war, females are particularly affected because of their peculiar societal and physical features. According to Anuradha K. Rajivan and Ruwanthi Senarathne "*Though women are fundamental to the functioning of the war apparatus and accept the same danger and insecurity as men, they face specific vulnerabilities.*"<sup>1</sup> A variety of violence including sexual aggression, murder, slavery, forced pregnancy and forced sterilization are the most common episodes appearing both during and post war periods. Certainly, the contemporary international community has always been mindful of such agonized impact of war on human civilization including human life, and has endeavoured to set the rules and to make conscience regulating the manners of the war. History witnesses these attempts in term of International Humanitarian Law (IHL) which includes a number

of conventions, agreements and protocols.<sup>2</sup> These rules have the worldwide recognition, and are applied in all types of armed conflicts. The main intent behind the IHL is to control the violence resulting from armed conflicts, and restricting the combatants' discretion in opting warfare modes. Prior to the contemporary compilation of war rules in term of IHL, and its widely acceptance by the international community, the Muslim society had already developed their rules of war in the light of the Qur'an and the Sunnah, commonly known as *Fiqh al-Siyar*.<sup>3</sup> These rules as framed by the Prophet (PBUH) have been further developed by Islamic jurists subsequently till the contemporary ages of international relations. Having two separates, though of common intent, to regulate the warfare for the common interest of the humanity, create inconvenience for war affectees. Because of such duplication, the rights of women worriers may be affected. So, through this study, such issues are needed to be identified, appraised and resolved.

### **Emerging Trend of Feminine Militancy: An Overview**

Traditionally women have not been active in armed forces. Some countries still do not recruit women as army personnel. However the contemporary prevailing view goes in favor of the women in the sense that women can play an important role in conflict resolution, and they possess the specific skills and abilities being helpful in decision-making process including joining military. The Platform for Action, adopted by the Fourth World Conference on Women held in Beijing in 1995, resolute to promote the equal participation of women in conflict resolution at decision-making levels. Since this Beijing Conference, there have been important developments at the international level regarding women participation in armed conflicts. The United Nations Commission on the Status of Women, 1998 discussed the issue of women and armed conflict and proposed further action to be taken by member states and the international community to accelerate the implementation of the Platform's strategic objectives in this area, including the participation of women in peacekeeping, peace-building, pre- and post-conflict decision-making and conflict prevention. Furthermore, the adoption of United Nations Security Council Resolution 1325 in October 2000, demanding the equal participation of men and women in peace building, has inspired for the joining of armed forces.<sup>4</sup>

As a response different country<sup>5</sup> have taken certain actions which are worth mentioning. Now as per view of Anuradha "*Female participation in war and war-like circumstances is far more common than is generally recognized – which often surprises people.*"<sup>6</sup> The joining of female, the armed forces are many as Anuradha says, "*Their reasons for joining are many—forced recruitment, fleeing oppression or abuse at home, a desire to feel valued.*"<sup>7</sup> They have allowed the females to become the member of armed forces in recognition of the right of women to participate in their nation's military forces. Moreover, the changing role of the military both at local and international level has become very effective for preventing conflicts and securing peace. This new role of the military has also widened the scope for women's participation in armed forces. The countries like Algeria, El Salvador, Eritrea, Ethiopia, Indonesia (Aceh), Mozambique, Namibia, Nepal, Nicaragua, South Africa, Sri Lanka, Timor-Leste, Viet Nam and Zimbaba

are admitting females in their armies.<sup>8</sup> According to McKay “*Between 1990 and 2003, girls were part of fighting forces in 55 countries; in countries 38 of these girls were involved in armed conflicts.*”<sup>9</sup> In Denmark, women have reached high levels in the military where most of the women are promoted through the ranks and are recruited under the same conditions as men. Israel has reviewed its selection procedures for the Air Force just to permit women for pilot training. Norway has set specific targets for the conscription of women into the armed forces.<sup>10</sup> Australia has second time undertaken reviews of the socio-cultural restrictions on women recruitment in armed forces.

The changing trend of women participation in army has also influenced the figure of biggest armies in the world.<sup>11</sup> The National Council for the Social Studies reported in 1994 that women make up 4.5% of the People’s Liberation Army (PLA) of China.<sup>12</sup> According to the Economic Times India’s Army totals 1.2 million active personnel has 3% women make up of the total army.<sup>13</sup> The North Korean People’s Ground Force has 950,000 active army personnel where women could make up around 40% of the army, amounting to an estimated 380,000.<sup>14</sup> According to the International Institute for Strategic Studies, Pakistan Army has 560,000 troops wherein 4,000 women are reported to be the member of armed forces in 2013.<sup>15</sup> According to United Press International (UPI), 6,915 women serve in the Republic of Korea Army, which has a total of 560,000 troops. According to UPI, the government of Korea plans to increase the proportion of women serving in senior positions to 7% by 2020. The US has an active-duty army of 476,000. According to Global Security.org, CNN the number of women serving in US army is 74,000 which equates to around 16%.<sup>16</sup> According to the Defense Intelligence Agency the Ground Force of the Russian Federation is of 350,000 soldiers, and women comprise 10% (around 35,000 women) of such Russian Armed Forces. Even the women from several member states and from the United Nations system are participating actively in UN peacekeeping missions as well.

The growing trend in women of joining the armies of their countries has become prevalent in the contemporary enlightened social setup round the world. The reasons for joining armies are multiple.<sup>17</sup> These reasons include socio-economic, political and promoting the sense of equality towards national affairs.<sup>18</sup> The above all, is evident that the number of women in armed forces is increasing eventually in national armies as against the past practices and experiences of the countries. This phenomenon of feminist militancy needs special attention for addressing the rights of the female soldiers. For this the Geneva law requires to be updated for meeting this peculiar feature of law of war.

### **Rights of Women Warriors**

The increasing trend of women participation in armed forces has become the universal phenomenon. Such participation is needed to ensure their active role particularly for their homeland armed forces, and generally for resolving the armed conflicts issues as well. This changing nature of armed forces composition demands the development of the comprehensive rules concerning the protection of women worries during and post war phases. In this context, comparative study of the existing Geneva Convention rules

and Islamic values is presented under these lines.

### **Geneva Convention Law**

The law which deals with the warfare matters is termed as International Humanitarian Law (IHL). It has been defined as a set of rules that seek out to restrict the effects of armed conflict on humanitarian rationale. The existing setup of such rules started from the efforts of Henri Dunant's observance of the war of Solferino between French and Austrian Armies in 1859. He became concern by the distress of the number of soldiers wounded during this battle. He attempted to procure the sufferings of the war victims through the assistance of indigenous people. Subsequently, his efforts resulted the establishing of the Red Cross and developing the first Geneva Convention in 1864. The most recent versions of Geneva Law are the four Geneva Conventions 1949<sup>19</sup> including the two Additional Protocols, 1977.<sup>20</sup> These laws are universally recognized, and have been ratified and signed by most of the nations. However, some states have not signed it, like the United States and some South East Asian states. The United Kingdom only ratified them in 1998.<sup>21</sup> The first Geneva Convention was inspired by the miseries of wounded soldiers in Solferino battle. However, the subsequent Conventions also focused to protect the people other than combatants. Eventually the scope of Geneva law<sup>22</sup> has been widened, and it sought to protect the soldiers, prisoners and civilians' suffering the miseries of war. Such protection includes the protection of their property as well.

### **Women's Protection under Geneva Laws**

Geneva laws focus women's protection from two different perspectives, namely protection for civilian women,<sup>23</sup> and prisoners of war. As our study is confined only to the rights of the prisoner's worrier women, so this law is analyzed form this view point under the following lines.

### **Protection of Women Worrier Prisoners of War**

As result of war, among other distresses, the incarceration of the soldiers of the defeated army is one of the main miseries. While the soldiers are in the custody of conqueror combatant as prisoners, they indeed, are deprived of their freedom. The in-depth study of Geneva Law explains a number of rights concerning different aspects of Women Prisoners, and these rights are analyzed as under:

#### **1. Accommodation, Food and Water**

In war internment camps where prisoners of war are detained for disciplinary punishment, women must be placed in separate quarters from men. Their immediate supervisor must be a woman as well.<sup>24</sup> The same principle will be applicable in non-international armed conflicts. However, a separate placement is not mandatory when both male and female prisoners belong to the same family and are accommodated together.<sup>25</sup> They must not be located in the areas which may be exposed to the dangers of war, and the areas where they are placed must not be used to render certain points or areas immune from military operations.<sup>26</sup> These prisoners must be provided food which is sufficient in quantity, quality and variety viewpoint meeting the criteria of good health. The nature of food consideration must be of the customary diet.<sup>27</sup> These prisoners of

non-international armed conflicts must also be provided the above facilities equally.<sup>28</sup>

## **2. Treatment and Safety**

Women prisoners of war must be treated with due regard of their femininity. They must be given a favorable benefit as that is granted to male prisoners.<sup>29</sup> They may not be punished and treated more severely than the members of the Detaining Power's forces for a similar offence.<sup>30</sup> These prisoners must be under the immediate supervision of females both in relation to international or non-international armed conflicts.<sup>31</sup> Disciplinary penalties may not be inhuman, brutal or dangerous to the health of the prisoners and in this context their age, sex and health condition must be kept in account.<sup>32</sup>

## **3. Hygiene and Sanitation**

Sanitary measures must be taken to ensure the cleanliness. Environment must be healthy of and preventing the pandemics. Women's camps must have separate facilities.<sup>33</sup> If women internees, who are not members of a family, are accommodated in men's internment, they must be provided separate sleeping quarters and sanitary services.<sup>34</sup>

## **4. Educational, Recreational and Work Programs**

The prisoners, who are physically fit, may be utilized for Labour; however, their age, sex, rank and physical aptitude should be considered. Their working conditions must be suitable and appropriate. They may not be employed to perform labour of dangerous and unhealthy nature until they voluntarily accept it.<sup>35</sup>

## **5. Judicial Guarantees**

Women prisoners must not be punished and treated more severely than a male or female member of the armed forces of the Detaining Power for a similar offence. The same principle will be followed in case of same offence.<sup>36</sup> The cases of the pregnant women and mothers having dependent infants shall be considered on priority.<sup>37</sup> To the maximum extent, if possible, death penalty on such women will neither be pronounced nor executed.<sup>38</sup> All these safeguards will also be applied in the prosecution and punishment in criminal offences concerning to a non-international armed conflict.<sup>39</sup>

Geneva law appears to be atypical. Though the states have voluntarily acquiesced to protect the victims of the war, however, this commitment could not have brought out the significant results. The Geneva law, indeed, desires to be amended by passage of time, as some states have exposed that they could discount the provisions of this law. In this regard, reference may be made to behavior of certain states concerning First and Second World Wars, 9/11 conflicts and other international and non-international armed conflicts. There is the majority of States of international community that are arguably conscientious, and would have behaved in an enlightened manner anyway. In this context, a question arises that 50 years after the last major revision, and 22 years after the update of the Additional Protocol, how suitable is Geneva law-fare? This deficiency may be suggested to be made up after having the study of the Islamic values of war which may incline the world for a number of reasons, as discussed in the next section.

## **Islamic Teachings: Protecting the Women Warriors**

Men, women, and children may all be taken as prisoners of war under traditional legal

system of Islamic Law. In general, they can be treated in four ways, freed, ransomed, exchanged for Muslim prisoners, or kept in bondage. In any of the above cases, Islamic teachings affirmed that prisoners must be treated in good manner.

Allah almighty says in Holy Qur'an: Prophet <sup>40</sup> وَيُطْعَمُونَ عَلَىٰ حَبِّهِمْ مَسْكِينًا وَيَتِيمًا وَأَسِيرًا

Muhammad (PBUP) said, *استَوْصُوا بِالْأَسَارِ بَخَيْرًا* *Treat the prisoner as well.*<sup>41</sup> Prophet Muhammad (PBUP) did not take women as prisoners of war in his all battles. In Battle of Baddar, there were number of women who came along warrior troops but after Muslim victory no single evidence were found to imprison those women. Instead of that Prophet (PBUP) advised not to chase woman and wounded troop in Warfield.

Imam Muslim reported with the authority of 'Iyas bin Salmah from his father that an Islamic troop returned from battle with prisoners of war. Among them there were some women from the tribe of Bani Fazarah. The Prophet Muhammad (PBUP) sent her to the people of Mecca, and surrendered her as ransom for a number of Muslims who had been kept as prisoners at Mecca.<sup>42</sup> With the authority of Anas bin Malik, Prophet Muhammad (PBUP) said to a warrior group at departure, "Go in the name of Allah and nation of messenger of Allah, don't fight or kill old people, kids or women. Behave well with enemies Allah loves good doer."<sup>43</sup> So it is clear that Prophetic teachings discourage taking women as prisoners of war. The only situation when women were captivated after war in the time of Prophet Muhammad (PBUP) was with Banu Qurezah. It was an extraordinary situation because in that case Banu Quraizah itself did appoint and accepted Sa'ad bin Ma'az for arbitration. Captivating the women was his ruling according to Judaism teachings in case of betrayal, rebellion and revolt. Even that among the prisoners, Safya bint Haye was daughter of tribe chief. Prophet Muhammad (PBUP) married to that woman. As a result, all the captives' women were treated nicely. Likewise, when Prophet Muhammad (PBUP) conquered Makkah (630 C.E), his army didn't captivated women as prisoners of war.

#### **Practice of Rightly Guided Caliphs about Prisoners of War:**

First rightly guided Caliph Abu Bakkar (R.A) in his famous decree to his war commander Osama bin Zayd, on his departure for battlefield. "Stop, O people, that I may give you ten rules for guidance on the battlefield. Do not commit treachery or deviate from the right path; you must not mutilate dead bodies; do not kill a woman, a child, or an aged man; do not cut down fruit trees; do not destroy inhabited areas; do not slaughter any of the enemies' sheep, cow or camel except for food; do not burn date palms, nor inundate them; do not embezzle (e.g. no misappropriation of booty or spoils of war) nor be guilty of cowardliness...You are likely to pass by people who have devoted their lives to monastic services; leave them alone." Second rightly guided Caliph Umar bin khattab (R.A) asked to one of his war Commanders, "Do not kill those who seek protection, women and kids in war?"

#### **Islamic Legal Tradition about Prisoners of War:**

Islamic legal tradition treats prisoners of war in four ways according to situation such

as to kill; to enslave; to free; and to ransom. Whereas women and kids are concerned, they cannot be killed as prisoners of war, irrespective of being from people of book or from any other religions. If women and kids participated in battle then during war, they can be killed but after war if women and kids are captivated, according to jurist Abu Hanifa, they cannot be killed. In battlefield, killing the women and kids are allowed only and if they are participating as active warriors and can cause great damage to Islamic troops. After being prisoners of war, the women and kids are no more in that position.

### **Enslaving the prisoners of war:**

According to Malki school of thought, enslaving women prisoners of war is on disposal of Muslim Ruler. The ruler can take any appropriate measure according to situation either enslave the woman or free them with or without ransom. Whereas Imam Abu Hanifa gives his juristic opinion about the issue by saying “Muslim ruler can enslave the women because Prophet Muhammad (PBUH) enslaved the women from tribe of Hawazan and companion of Prophet Muhammad (PBUH) did so in later time.

### **Conclusion**

The IHL have been enacted to restrict the combatants’ discretion to opt for warfare modes, so that the violence resulting from the armed conflicts can be avoided. However, the Islam had already developed the rules of war called the Fiqh al Siyar. Both the Islamic law and IHL regulate the warfare. However, the women participation in the warfare opened a new area of discussion. The same necessitated the discussion over the rights of women warriors. The Geneva Law provides multiple rights of women prisoners such as accommodation, food, water, medical treatment, safety, hygiene, sanitation, education, recreation etc. However, the Islamic Law also provides a number of rights concerning the female captives of war. The humane treatment of female prisoners of war is not only traced out in the period of the Holy Prophet (PBUH), but also during the period of rightly guided Caliphs.

### **References:**

<sup>1</sup> Anuradha K. Rajivan and Ruwanthi Senarathne “Women in armed conflicts: Inclusion and exclusion Asia-Pacific Human Development Report Background Papers Series 2010/11, UNDP, p-2 Accessed on 12-7-20, [www.undp.org/docs/RBAP-APHDR-TBP\\_2010\\_11](http://www.undp.org/docs/RBAP-APHDR-TBP_2010_11)

<sup>2</sup>The delegates of Geneva Convention as held in 1949, successfully prepared four Conventions and their Additional Protocols which were followed by subsequent agreements. The subsequent are: The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, along with its two protocols; The 1972 Biological Weapons Convention; The Protocols of 1977 relating to the Protection of Victims of armed conflicts; The 1980 Conventional Weapons Convention and its five protocols; The 1993 Chemical Weapons Convention, prohibiting the use of certain weapons and military tactics and protect certain categories of people and goods; The 1997 Ottawa Convention on anti-personnel mines; The 2000 Convention on the Rights of the Child on the involvement of children in armed conflict, etc. For studying further, the Geneva Convention, See Jean S. Pictet, and Jean De Preux. “Geneva Convention Relative to the Treatment of Prisoners of War.” (1960); John Hogg, Doug Lea, Alan Wills, Dennis deChampeaux, and Richard Holt. “The Geneva Convention on the Treatment of Object Aliasing.” *ACM SIGPLAN OOPS Messenger* 3, no. 2 (1992); Jean S. Pictet, ed. *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*. International Committee of the Red Cross, 1958; Jean Pictet, “Commentary Geneva Convention I.” *International Committee of the Red Cross, Geneva Google Scholar* (1952); J. A. C. Gutteridge, “The



1958 Geneva Convention on the Continental Shelf.” *Brit. Yb Int’l L.* 35 (1959); Richard Young, “The Geneva Convention on the Continental Shelf: A First Impression.” *American Journal of International Law* 52, no. 4 (1958).  
<sup>3</sup> Haniff Ahamat and Mohd Hisham Mohd Kamal, ‘Modern Application of Siyar (Islamic Law of Nations): Some Preliminary Observations’, *Arab Law Quarterly*, 25 (2011), 423, p. 423.

<sup>4</sup> See, CHAPTER FOUR THE FEMALE SOLDIER IN THE ARMED FORCES, Pilar Gallardo Rodríguez

<sup>5</sup> The Netherlands has introduced a programme entitled "Engendering the Peace Process", which encourages Israel and Palestine to appoint more women to negotiating teams and political decision-making posts in the on-going Middle East peace process. The African region developed a "First Ladies for Peace Initiative" in early 1997, which has included conferences on peace and humanitarian issues, the resolutions of which have been presented to African heads of states and government. In addition, the Organization of African Unity and the Economic Commission for Africa launched the Women's Committee on Peace and Development in 1999. Belgium has initiated a joint project with the United Nations Children's Fund (UNICEF) through which a women's non-governmental organization identifies detained children and negotiates their release from rebel soldiers. Belgium has also supported the use of women mediators in conflict situations and has developed an initiative for peace-building between the women of two parties in conflict. Georgia has adopted a Plan of Action for Improving Women's Conditions, which includes the development of a mechanism to ensure the active involvement of women in decision-making in armed conflicts and peace-building. The United Kingdom has taken steps to ensure that women are included in the peace process in Northern Ireland. In several states, including the United Kingdom and the United States, women occupy high-level decision-making posts, including as secretary of state and departmental heads, posts which have important implications for conflict prevention and peace processes.

<sup>6</sup> *Supra*, 3

<sup>7</sup> Anuradha K. Rajivan • Ruwanthi Senarathne “Women in armed conflicts: Inclusion and exclusion Asia-Pacific Human Development Report Background Papers Series 2010/11, UNDP, p-2 Accessed on 12-7-20, [www.undp.org/docs/RBAP-APHDR-TBP\\_2010\\_11](http://www.undp.org/docs/RBAP-APHDR-TBP_2010_11)

<sup>8</sup> Anuradha K. Rajivan • Ruwanthi Senarathne “Women in armed conflicts: Inclusion and exclusion Asia-Pacific Human Development Report Background Papers Series 2010/11, UNDP, p-4 Accessed on 12-7-20, [www.undp.org/docs/RBAP-APHDR-TBP\\_2010\\_11](http://www.undp.org/docs/RBAP-APHDR-TBP_2010_11)

<sup>9</sup> (*McKay and Mazurana 2004: 21*).

<sup>10</sup> For instance, by the year 2005, seven per cent of officers and enlisted personnel should be female.

<sup>11</sup> See, <https://www.army-technology.com/uncategorised/women-in-the-army/>

<sup>12</sup> This was confirmed by China Military Online, which gave a 2015 estimate of “approximately 5% or less”, suggesting just 53,000 women serve in China’s Army

<sup>13</sup> However, women only serve in non-combat, support roles, such as medical and logistical positions. According to the *Hindustan Times*, women began joining the Indian Army through the Indian Military Nursing Service, formed during the British Raj in 1888. From 1914 to 1945, Indian Army nurses served in the First World War and Second World War, where 350 nurses died, taken prisoner or declared missing in action. Women were first taken into the army in non-medical roles in 1992, according to the Indian Government’s army recruitment service. The first all-female peacekeeping force for the United Nations was made up of 105 Indian women, deployed to Liberia in 2007.

<sup>14</sup> North Korea has universal conscription for men and selective conscription for women. Women serve for a maximum of six years and men for ten,

<sup>15</sup> The *Express Tribune* dated 16.03.2019. Recruits were reportedly mostly consigned to medical work and desk jobs, as women are banned from ground combat in the country.

<sup>16</sup> Women have served in the US Army since the American Revolutionary War from 1775 to 1783, including serving as spies. Task and Purpose also said that 400,000 women served in non-combat roles during the Second World War, with hundreds serving as field intelligence agents. Of these, 88 were taken as prisoners and 16 killed in action. Approximately 11,000 women were deployed to Vietnam from 1962 to 1972 and 41,000 sent to Iraq in 1991. The American Civil Liberties Union overturned a ban against women serving on ships in the 1970s. In 2013, the union reported that the ban on women in ground combat had also been lifted. In 2016, all combat positions were made available to women. Fox News reported US Defence Secretary Leon Panetta as saying: “It’s clear to all of us that women are contributing in unprecedented ways to the military’s mission of defending the nation.”

<sup>17</sup> *Keairns 2002: 3; Sørensen 1998; Brett 2002.*

<sup>18</sup> Anuradha K. Rajivan • Ruwanthi Senarathne “Women in armed conflicts: Inclusion and exclusion Asia-Pacific Human Development Report Background Papers Series 2010/11, UNDP, p-5 Accessed on 12-7-20, [www.undp.org/docs/RBAP-APHDR-TBP\\_2010\\_11](http://www.undp.org/docs/RBAP-APHDR-TBP_2010_11)

<sup>19</sup> The four current Conventions are: *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field (Convention I of 12 August 1949)*, International Committee of the Red Cross, Geneva, Reprint July 1970; *Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked of Armed Forces in the Field (Convention II of 12 August 1949)*, International Committee of the Red Cross, Geneva, Reprint July 1970; *Geneva Convention relative to the Treatment of Prisoners of War (Convention III of 12 August 1949)*, International Committee of the Red Cross, Geneva, Reprint July 1970; *Geneva Convention relative to the Protection of Civilian Persons in time of War (Convention IV of 12 August 1949)*, International Committee of the Red Cross, Geneva, Reprint July 1970.

<sup>20</sup> These Protocols are: *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977*, International Committee of the Red Cross, Geneva, Revised edition 1996; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977*, International Committee of the Red Cross, Geneva, Revised edition 1996.

<sup>21</sup> Database on ICRC web site, <http://www.icrc.org/>.

<sup>22</sup> See, Jean Pictet (*the Principles of International Humanitarian Law*, ICRC, Geneva, 1991) divides “Humanitarian Law” into the “Laws of War” and “Human Rights”. The Laws of War are in turn divided in “The Law of Hague” (Belligerents do not have unlimited choice in the means of inflicting damage) and “The Law of Geneva” (Persons placed *hors de combat* and those not directly participating in hostilities shall be respected, protected and treated humanely). This traditional division is not very exact and the reference to Hague and Geneva is potentially confusing. While most of the significant laws of armed conflict were negotiated at Hague and Geneva, there are plenty of exceptions and some cases where the treaties fall into the opposite categories to that dictated by convention. For example, the *1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare* is properly part of Hague law.

<sup>23</sup> These women have been given the protection as to Personal Safety (See, Geneva Convention-I, Articles, 12, 12(4), 15(1); Geneva Convention-II, Articles, 12,12(4),18(1); Geneva Convention-IV, Articles, 14,15,27; Additional Protocol- I, Articles 75, 76; Additional Protocol- II, Article. 4(2); Sexual Violence (See, Geneva Convention-IV, Article, 27; Additional Protocol-I, Articles, 75 (2)(a), (b), 76; Additional Protocol-II, Articles. 4 (2)(a), (e); Geneva Conventions, Common Art. 3; Displacement, (See, Geneva Convention-IV, Articles, 45, 45(4), 49, 49(1), (2), 49(3), 147; Add: Protocol-I, Article, 85 (4) (a); Additional Protocol-II, Article, 17; Shelter (See, Geneva Convention- IV, Art. 23), and Health (See, Geneva Convention -IV, Articles, 16, 17, 18; Additional Protocol –I Articles 8(a), 70(1).

<sup>24</sup> Geneva Convention- III, Articles. 25; 97; Geneva Convention-IV, Articles, 76; 85; 124; Add: Protocol-I, Article 75(5)

<sup>25</sup> Additional Protocol-II, Article, 5(2)(a)

<sup>26</sup> Geneva Convention- III, Article, 23; Geneva Convention- IV, Article, 83

<sup>27</sup> Geneva Convention- III, Article, 26; Geneva Convention- IV Article, 89.

<sup>28</sup> Additional Protocol- II, Article, 5(2) (b).

<sup>29</sup> Geneva Convention- III, Article, 14.

<sup>30</sup> Geneva Convention- III, Art. 88.

<sup>31</sup> Geneva Convention- III, Article, 97; Geneva Convention- IV, Articles, 76; 124; Additional Protocol- I, Art. 75(5); Additional Protocol- II, Article, 5(2) (a).

<sup>32</sup> Geneva Convention- IV, Article, 117.

<sup>33</sup> Geneva Convention- III, Article, 29.

<sup>34</sup> Geneva Convention- IV, Article, 85(4).

<sup>35</sup> Geneva Convention- III, Articles 49, 51, 52.

<sup>36</sup> Geneva Convention- III, Article 88.

<sup>37</sup> Additional Protocol I, Article, 76(2).

<sup>38</sup> Additional Protocol-I, Article, 76(3).

<sup>39</sup> Additional Protocol-II, Article, 6.

<sup>40</sup> Qur’an Surat Dahar 76:8

<sup>41</sup> Tibrani, al Mu’jam al-Sagir, Hadith no. 409 ( Beirut : al-maktab al-islami ,1985) v. 1, p.250

<sup>42</sup> Imam Muslim, Sahih Muslim, (The book of jihad and expeditions) chapter 14: Additional award to the fighters and repatriation of the enemy prisoners as a ransom for the Muslims book 19, Hadith No. 4345

<sup>43</sup> Imam Malik, Mu’ta Imam Malik, chapter, Prophet ruling about battles, Hadith no. 917 (Damascus: Moassaah al-Risalah, 1991) v.1 p. 356