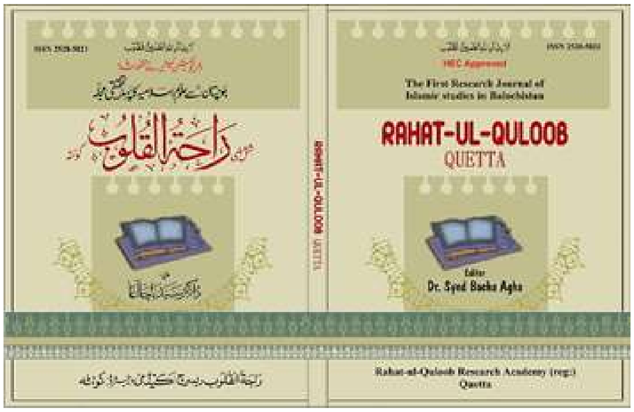

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TOPIC:

Combatant Status in Cyber Warfare: An Appraisal of the Relevant Rules under International Humanitarian Law and Islamic Law

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Combatant Status in Cyber Warfare: An Appraisal of the Relevant Rules under International Humanitarian Law and Islamic Law

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Abstract:
The advent of cyber warfare has fundamentally challenged the traditional legal framework governing the distinction between combatants and non-combatants under International Humanitarian Law (IHL). This article examines as to how combatant status can be determined in cyber warfare, addressing critical questions of attribution, direct participation in hostilities, and the classification of cyber operators, proxy actors, and autonomous systems. It further explores these issues from the perspective of Islamic law, analysing classical juristic principles of direct action (*mubāsharah*), causation (*tasabbub*), and the functional criteria for combatant status. The article concludes that both IHL and Islamic law prioritize actual participation in hostilities over formal status or demographic characteristics. In cyber warfare, individuals whose actions directly and decisively affect military operations, such as cyber attackers, strategic advisors, and system designers engaged in active hostilities, may be classified as combatants or lawful targets, while those providing indirect support retain protected status. The findings underscore the need for revised legal frameworks that address the unique challenges of cyber operations while remaining grounded in established humanitarian and ethical principles.

Keywords: Cyber Warfare, Combatant Status, Direct Participation in Hostilities, Islamic Law, State Responsibility

1. Introduction

Almost all contemporary laws and treaties formulated to regulate warfare and limit its effects as much as possible primarily relate to kinetic warfare. When these laws were being developed, the lawmakers mainly had traditional warfare in mind, in which wars were fought through physical force such as weapons, military operations, and direct armed confrontation. Modern technology, however, has introduced a new form of warfare known as cyber warfare. Modern technology has fundamentally transformed the methods of armed conflict and the nature of the battlefield, resulting in several new complexities regarding the application of IHL and the determination of combatant status. Cyber-attacks, autonomous weapons, artificial intelligence–based technologies, and dual-use facilities have made it increasingly difficult to determine which parties are entitled to legal protection, upon whom responsibility is imposed, and whose rights remain protected or restricted. For example, a cyber-attack on a country's electricity or water network affects not only the military sphere but also civilian infrastructure and public welfare, thereby making it difficult to maintain the legal distinction between civilians and military objectives. Furthermore, practical issues such as the collection of forensic evidence, attribution of responsibility for attacks, and the admissibility of evidence before courts have also become more complicated, because digital systems and networks can be targeted, while information may be altered or deleted.

The development of autonomous and artificial intelligence–based weapons has further intensified this complexity, as the selection of targets and execution of attacks by machines may occur beyond direct human judgment or control. Consequently, significant legal and ethical questions arise, such as those relating to proportionality, precautionary measures, and the necessity of meaningful human control. At the same time, dual-use technologies—such as drones, cloud services, and advanced communication systems—create a legal grey area in which it becomes difficult to determine which technologies or facilities may lawfully be targeted and under what circumstances an attack may be considered permissible. Moreover, cyber-attacks are often borderless and invisible in nature, making it difficult to enforce international principles governing the limits of armed operations, state responsibility, and legal accountability. Furthermore, information warfare, propaganda, disinformation, forgery, and tools such as deepfakes have expanded the effects of warfare beyond the military sphere to political, social, and economic dimensions. This situation presents new challenges to the traditional scope and ethical standards of International Humanitarian Law, as civilians may be adversely affected and the scale of harm becomes difficult to assess. All these issues have reopened debates concerning legal responsibility, proportionality of actions, and the principle of human control, while also making it evident that traditional laws and policies alone may be insufficient to address the realities of modern technological warfare.

After understanding the legal significance of the distinction between combatants and non-combatants, the important question that this article seeks to examine is how this distinction can be maintained in cyber warfare. How are combatants and non-combatants to be defined in such a context? This question becomes particularly significant because states sometimes employ civilians, either instead of or alongside their armed forces, to carry out cyber-attacks. Would IHL also apply to such situations? And is it equally necessary here to maintain the distinction between combatants and non-combatants? Another fundamental issue is that, within cyberspace—where cyber warfare is conducted—an individual can easily conceal their identity, and attributing a particular act or attack to a specific person becomes extremely difficult. Clearly, in order to classify a person as a combatant, it is necessary to attribute the armed operation to that individual. If it is not possible to attribute a hostile act to a person with reasonable certainty, then such a person cannot be regarded as a combatant or as a lawful military target. The second, and primary, objective of this article is to examine how these questions may be answered in the light of Islamic law.

In the following pages, we shall first present the definition of a combatant. Thereafter, in light of this definition, we shall examine who may be regarded as a combatant in cyber warfare. An important aspect of this discussion will be the determination of what constitutes an "attack" in cyber warfare, so that such an act may be attributed to a particular individual and, consequently, that person may be classified either as a combatant or a non-combatant. Subsequently, the definition of a combatant under Islamic law will be examined, along with the principles and rules governing the attribution of acts and their legal consequences to an actor. This analysis aims to determine, from the perspective of Islamic law, who may be considered a combatant—and therefore a lawful target—or a non-combatant, and thus a protected person, in the context of cyber warfare.

Given such complexities, a new body of literature concerning the laws of war is emerging, encompassing various themes such as the human, legal, and ethical implications of modern military technologies, as well as practical and technical measures for ensuring the protection of human life and civilian infrastructure. Just as, over the past several decades, the principles of the laws of war have been compared with Islamic law, and the protection of persons, places, and objects during armed conflict has been examined from both legal and religious perspectives, there is now a similar need to comparatively study these new dimensions of warfare in the light of Islamic law. The present study is an effort directed toward fulfilling this need. Although this article cannot comprehensively address all of these dimensions, it focuses on one important and fundamental issue: the status of the combatant. The article has been divided into five sections: Introduction to the subject and its nature; the Status of the Combatant and the Importance of this Discussion; the Status of the Combatant: International Humanitarian Law and Islamic Law; the Application of the Principles of Islamic Law Relating to Cyber Warfare and the Status of the Combatant; and the conclusion and Findings.

2. The Combatant Status and its Significance under IHL

IHL maintains a fundamental distinction between combatants and non-combatants, and this distinction determines the application of various legal rules and regulations. For example, only combatants are legally entitled to participate directly in armed conflict, whereas non-combatants do not possess such a legal right and are instead regarded as protected persons. Similarly, while a combatant has the right to engage in armed operations against the enemy, he also becomes a lawful target for the opposing party. In contrast, non-combatants may not be directly targeted except when they take direct part in hostilities. For as long as they directly participate in armed operations against the enemy, they themselves remain lawful targets.[1] The moment they cease such direct participation in hostilities, they regain their status as civilians and protected persons.[2] If a combatant falls into the hands of the enemy, he acquires the status of a prisoner of war, and the Third Geneva Convention becomes applicable to him. At the end of the conflict, such persons must be released and repatriated.[3] By contrast, if civilians are detained, the Fourth Geneva Convention applies to them, under which they may only be interned for imperative security reasons and for a limited period; once those reasons cease to exist, they must be released immediately.[4]

A combatant possesses the lawful authority to use force against the enemy, and as long as he acts within the limits prescribed by IHL, he enjoys combatant immunity for such acts. This means that he cannot be punished merely for lawful acts of war after being captured. On the other hand, if an ordinary civilian unlawfully takes up arms or participates in hostilities, he may be treated as a criminal under domestic law and subjected to legal proceedings. Furthermore, if a combatant commits war crimes, he may be held accountable under international law, whereas non-combatants who unlawfully participate in hostilities may be prosecuted at the domestic level. An important point to note is that IHL recognizes the distinction between combatants and non-combatants primarily in the context of international armed conflicts, and even then, mainly with respect to the armed forces of states.

2.1: Definition of a Combatant in IHL

The Third Geneva Convention concerns the protection, rights, and privileges of prisoners of war. The question, therefore, arises: who qualifies as a "prisoner of war"? According to the First Additional Protocol, persons who are entitled to prisoner-of-war status are regarded as "combatants." This leads to another question: who is entitled to prisoner-of-war status? The Third Geneva Convention provides a list of persons who are entitled to the rights of prisoners of war. These include the following:

1. *Members of the Armed Forces of a Party*: That is, all persons who are members of the regular armed forces of a party to the conflict.
2. *Members of Militias or Volunteer Corps*: Militias or volunteer groups that form part of the armed forces.
3. *Levee en masse (Mass Civil Resistance)*: Where the inhabitants of a territory spontaneously take up arms to resist an invading force without having had time to organize themselves formally, provided that they fulfil the following conditions:
    1. They are under responsible command;
    2. They possess a fixed distinctive sign recognizable at a distance;
    3. They carry arms openly; and
    4. They conduct their operations in accordance with the laws and customs of war.
4. Members of the Armed Forces of a Government-in-Exile or an Unrecognized Authority:

    If a government has gone into exile, or if a parallel authority exists within a territory that is not fully recognized internationally, members of its armed forces are nevertheless regarded as prisoners of war.

5. War Correspondents, Contractors, and Auxiliary or Technical Personnel: Civilians accompanying the armed forces—such as war correspondents, contractors, suppliers, or communication specialists—who possess authorization from the military authorities (for example, an authorization card), are to be treated as prisoners of war if captured by the enemy.
6. Crews of Merchant Marine Vessels and Civil Aircraft: Members of the crews of merchant ships or civilian aircraft belonging to a party to the conflict are also regarded as prisoners of war if captured by the enemy.
7. Members of Resistance Movements or National Liberation Struggles: Individuals participating in resistance movements or wars of national liberation are likewise entitled to prisoner-of-war status, provided that they fulfill the aforementioned conditions.[5]

In addition to these categories, there are other persons whom IHL recognizes as prisoners of war, or as entitled to treatment equivalent to prisoners of war, when they fall into the hands of the enemy. For example, religious personnel who perform spiritual or moral guidance duties within the armed forces—such as military imams, priests, or chaplains—if captured, are not formally classified as "prisoners of war," yet they are entitled to treatment equivalent to that accorded to prisoners of war. Similarly, medical personnel—such as doctors, nurses, and other medical staff accompanying the armed forces solely for the treatment of the wounded and sick—are also entitled to protections equivalent to those granted to prisoners of war if captured by the enemy, and in some cases, they may be accorded a special status as "retained personnel."[6]

This discussion makes it clear that two distinct yet closely related concepts are under consideration here: "combatant" and "prisoner of war." The relationship between the two is one of generality and specificity. The term "prisoner of war" is comparatively broader, encompassing all persons who, under the Geneva Conventions, are entitled either to prisoner-of-war status or to treatment equivalent thereto, even if they are not directly engaged in hostilities. By contrast, the term "combatant" is more specific and refers only to those individuals who are legally entitled to participate in warfare. Accordingly, all combatants who fall into enemy hands become prisoners of war, but not every prisoner of war is necessarily a combatant. This discussion also makes clear that IHL, particularly the Third Geneva Convention and the First Additional Protocol, recognizes two principal categories of persons involved in armed conflict: first, "combatants," who possess the legal right to attack the enemy and participate in hostilities,[7] and who, if captured, are entitled to prisoner-of-war status;[8] and second, "non-combatants," who are not permitted to participate in hostilities, against whom attacks are prohibited, and who enjoy special protection during armed conflict. The determination of whether a person is to be regarded as a combatant or a non-combatant depends upon his status of participation in the conflict. In this regard, the Geneva Conventions provide:

"Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria."[9]

Similarly, the First Additional Protocol limits the protection available to civilians in the following terms: "Civilians shall enjoy protection against the dangers arising from military operations unless and for such time as they take a direct part in hostilities."[10]

2.2: The Concept of "Direct Participation in Hostilities (DPH)"

From the above provisions, it becomes clear that "direct participation in hostilities" is the foundational criterion on which the classification of an individual as a combatant and/or non-combatant depends. It is also the basis for determining whether a person constitutes a lawful target for the opposing party in the first case, or a protected person in the second. However, the treaties do not provide a precise definition of what constitutes "direct participation." Moreover, with the passage of time, evolving methods of warfare have created practical difficulties in applying this concept. For instance, individuals who, in the terminology of some experts, are described as "farmers by day and fighters by night," or the increasing prevalence of urban warfare, have complicated its application. Cyber warfare has further intensified these complexities, making it increasingly difficult to determine what counts as direct participation in hostilities, who is directly involved in an armed operation, and who is only indirectly contributing.

In this regard, after considerable effort, the ICRC developed an important interpretive document: *"Interpretive Guidance on the Notion of Direct Participation in Hostilities under IHL."*[11] Below, a brief analysis of some of its principles relevant to our subject is presented.

Armed conflict is generally categorized into two types: international armed conflict and non-international armed conflict. This distinction has profound implications for the applicable legal framework. The definition of civilians also varies, in certain respects, depending on the type of conflict. In the context of international armed conflict, all persons who are not members of the armed forces of a party to the conflict, nor participants in a *levée en masse* (spontaneous popular resistance), are considered civilians. Accordingly, they are entitled to protection against direct attack, except in circumstances where and for such time as they take a direct part in hostilities, during which such protection is temporarily suspended.[12] In contrast, in non-international armed conflict, all persons who are not part of the State's regular armed forces and are not members of organized armed groups are regarded as civilians. Such individuals likewise enjoy protection against direct attack, except when and for such time as they actively participate in hostilities. However, not every member of such armed groups qualifies as a combatant. Only those individuals whose continuous and primary function is to carry out combat activities against the opposing party are regarded as combatants. In IHL, this standard is referred to as the “continuous combat function” (CCF), meaning a role characterized by ongoing responsibility for engaging in hostilities rather than occasional or incidental participation.[13]

Private military companies and mercenaries are, under IHL, generally not recognized as combatants and are not automatically entitled to prisoner-of-war status. Their legal classification depends on factors such as their relationship to state authority, command structure, and the nature of their direct involvement in hostilities. In principle, their legal status is assessed according to the same criteria applicable to civilians. Although such individuals may operate in close proximity to armed forces or within active conflict zones, their mere presence in a military environment does not alter their legal status. Civilian contractor or private security personnel remains a civilian and is therefore protected against direct attack unless, at a specific time, he or she directly participates in hostilities. Importantly, temporary engagement in direct hostilities may render such individuals’ lawful targets only for the duration of their participation. However, mere association with armed forces or presence in a combat environment does not confer combatant status. The decisive factor remains whether the individual is directly participating in hostilities at a given moment. It is also important to note that, irrespective of this classification under IHL, domestic legal systems may regulate the status of private contractors and other personnel through administrative, criminal, or contractual frameworks. Nevertheless, such domestic categorizations do not alter the fundamental principles of IHL governing the protection of civilians and non-combatants in armed conflict.

Private military companies and mercenaries are, under IHL, generally not recognized as combatants and are not entitled to prisoner-of-war status as a matter of course. Their legal classification is determined by factors such as their connection to state authority, command structure, and the nature and extent of their direct participation in hostilities. In principle, their legal status is assessed according to the same criteria that apply to civilians. Although such individuals often operate in close proximity to armed forces or within or near active conflict zones due to geographical proximity or organizational affiliation, their legal status does not automatically change as a result. A careful assessment is always required in determining their status, since mere presence in a war environment does not render them combatants.

Private contractors or civilian personnel who qualify as civilians remain protected under the rules governing civilians, including protection against direct attack. However, if at a specific moment a civilian, including a private contractor, directly participates in hostilities, they may be considered a lawful target for the duration of such participation. Nevertheless, their presence in a combat environment or their work alongside military forces does not alter this principle, nor does it confer upon them general combatant status. The decisive criterion remains whether the individual is directly participating in hostilities at a given time. It is also important to note that, independent of this classification under IHL, domestic legal systems may regulate the status of private contractors and related personnel through administrative, criminal, or contractual frameworks. However, such domestic classifications do not alter the fundamental principles of IHL governing the protection of civilians and non-combatants in armed conflict.[14]

Following the definition of civilian status, we now turn to the concept of "direct participation in hostilities." International legal instruments use the terms "direct" and "active," which at first glance indicate that not every form of involvement in war that might affect civilian status is intended, but rather specific acts which, when performed by an individual, render that person a lawful target.[15] In order for an act to qualify as "direct participation in hostilities," three cumulative conditions must be satisfied. Unless all three conditions are met together, an act cannot be classified as direct participation in hostilities.

1. *Threshold of Harm:* First, it must be assessed whether the act in question is likely to adversely affect the military operations or military capacity of a party to the conflict. Alternatively, it must involve a potential for harm to persons, objects, or property that are protected from direct attack under the law of armed conflict. This requirement is intended to exclude minor, incidental, or indirect actions and to include only those acts that cause actual and significant harm in a military context.
2. *Direct Causation:* The second requirement is that there must be a direct and clear causal link between the act and the anticipated harm. In other words, the harm must either result directly from the act itself or form an integral part of a coordinated military operation in which the act is performed. General support activities, political statements, distant encouragement, or indirect involvement in military industries do not meet this criterion, as they lack an immediate and direct causal connection to the resulting harm.
3. *Belligerent Nexus:* The third and most important requirement is that the act must be specifically intended to support one party to the conflict at the expense of another. Thus, acts motivated by personal interest, coercion, or non-combat-related purposes, even if they produce indirect effects, do not fall within the scope of direct participation in hostilities.[16]

Furthermore, the ICRC emphasizes that, in determining civilian status, the presumption of civilian protection must be strictly observed. Accordingly, in cases of doubt, individuals must be considered civilians and must not be targeted. Likewise, persons who become hors de combat during participation in hostilities, such as those who are wounded or captured, must not be subjected to further attack.

3. Determination of Combatant Status in the Context of Cyber Warfare

In the preceding sections, the principles of IHL governing the determination of combatant status have been examined in a concise manner. The next step is to consider how these principles are applied in the context of cyber warfare. The first question that arises is that existing legal frameworks were developed prior to the emergence of cyber warfare. Accordingly, how can these rules be applied to a form of warfare whose methods and modalities appear to fall outside the traditional scope of these instruments? The second question concerns the notion of "harm," which is central to the identification of direct participation in hostilities. In cyber warfare, what constitutes such harm, and which categories of persons, objects, or infrastructure are protected against it under international law? Furthermore, in situations where states or other parties conduct cyber operations not directly themselves but through proxy groups, hacker networks, private companies, or other non-state actors, an important legal question arises regarding the status of such actors under IHL. Are such individuals or groups to be classified as combatants? Can their conduct be considered "direct participation in hostilities"? And to what extent does their involvement in cyber operations affect their legal status and liability under the law of armed conflict?

3.1: Application of IHL to Cyber Warfare

The application of existing IHL to cyber warfare has emerged as a significant and increasingly discussed issue. Although the general applicability of international law has been consistently acknowledged by the international community since 2013, the detailed application of IHL to cyber operations has remained both complex and, in several respects, underdeveloped. A notable milestone was reached in 2021, when the report of the United Nations Group of Governmental Experts (UN GGE) explicitly referenced the applicability of IHL in the cyber context. This constituted, in itself, a significant and historic development in the evolving discourse on cyber warfare.[17] Prior to this, the International Court of Justice, in its Advisory Opinion on nuclear weapons, had already affirmed a broader principle of international law, namely that the fundamental rules and principles of international law apply to all forms of warfare and all types of weapons, including those that may be developed in the future.[18]

Cyber-attacks have two principal dimensions. The first involves cyber operations conducted within the context of an ongoing conventional armed conflict, where there is broad consensus regarding the applicability of the established principles of IHL. This consensus is grounded in the fact that, under Common Article 2 of the four Geneva Conventions, IHL applies whenever a state of armed conflict arises between two or more states, regardless of whether the actual use of force has formally commenced. This threshold is equally relevant in the context of cyber warfare and may similarly trigger the application of IHL. However, the precise boundaries of this applicability remain uncertain, particularly with regard to cyber operations that do not cause physical damage but instead result in the disabling or disruption of systems. Whether such operations can be equated with the use of force under IHL remains a subject of ongoing legal debate.[19]

The second dimension pertains to independent cyberattacks, wherein cyber operations are conducted by one party against another in the absence of an ongoing traditional armed conflict. In such cases, it remains contested whether IHL applies at all, and there is still a need for further clarification through state practice and *opiniojuris* at the international level.[20] It is also necessary to determine which legal framework governs cyber operations: whether the rules applicable to international armed conflicts or those governing non-international armed conflicts should be applied. Fundamentally, in the absence of an armed conflict, the legality of cyber operations is assessed under the jus ad bellum framework governing the use of force in international law, as codified in the Charter of the United Nations.[21] To sum, while there are strong legal arguments and increasing international engagement supporting the applicability of IHL to cyber warfare, there is still no complete international consensus on this issue.

3.2: "Attack" in Cyber Warfare and the Application of IHL

Since the determination of combatant status depends upon the threshold of harm, it becomes essential to clarify what constitutes an "attack" in the context of cyber warfare in order to reach a definitive assessment of harm. For the application of IHL in the context of armed conflict, the mere occurrence of an operation is not sufficient. Rather, the operation must be of such a nature that it results in violence or damage, particularly affecting military or civilian objects or individuals. This definition is necessary because most protections under IHL are triggered only in situations involving armed conflict and attacks. If an action does not involve violence or resulting harm, it generally falls outside the scope of IHL. The requirement of violence ensures that the law applies only in situations where real danger or damage is present. If every minor or non-harmful act were classified as an attack, the application of the law would become overly broad and impractical. For this reason, the existence of an attack and the presence of violence are essential conditions for triggering the application of IHL. In the context of cyber operations, it is crucial to determine whether such actions qualify as "attacks," since the applicability of IHL depends upon this classification. The Martens Clause[22] is particularly relevant in this regard, as it reflects the humanitarian and ethical foundations of IHL and provides a basis for its application to emerging forms of warfare, including cyber operations, even where they are not explicitly addressed in the Geneva Conventions.

In contemporary discourse, the concept of "violence" required for the application of IHL is increasingly interpreted in a broader sense, as cyber operations may produce significant effects without causing physical destruction. Where such effects harm individuals or property, they may be considered within the scope of an "attack" under IHL. According to some scholars, an operation should not be excluded from the category of attack merely because it does not involve direct kinetic violence; rather, if it results in injury, suffering, or destruction of property, it may still qualify as an attack.[23] Some experts further argue that operations which merely disable systems or infrastructure without causing physical damage should also be regarded as attacks under IHL, in order to avoid legal gaps. In this context, it becomes necessary to conduct a prior assessment of the potential effects of such operations. Moreover, cyber operations may also be viewed as violations of state sovereignty, and where they result in the impairment of system functionality, they may be classified as attacks. However, the "loss of functionality" standard has not yet been fully accepted at the international level, and further clarification is required in the legal definition of cyber operations under IHL.[24]

3.3: Attribution of Armed Operations in Cyber Warfare and Determination of Combatant Status

Once an operation is classified as an "attack" and as involving violence, the next question concerns attribution—namely, to whom the conduct is legally attributable so that, if unlawful, responsibility may be established, or, in the context of this study, the individual may be characterized as a combatant. In the context of cyber warfare, proxy actors, hackers, and other non-state or unidentified entities are frequently employed. Under IHL, it is therefore essential to clarify the legal status of such proxy actors, as this determination directly affects whether a situation qualifies as an international armed conflict or a non-international armed conflict, and consequently, which provisions of IHL become applicable.

Where private individuals or companies provide assistance to a state in a conflict situation against another state, such persons may lose the civilian protections ordinarily afforded to them under IHL. In other words, if their activities amount to direct participation in hostilities, they no longer enjoy protection from attack. A key point is that, according to the ICRC Interpretive Guidance, "direct participation" is not limited to general support or indirect services (such as general infrastructure management). Rather, it encompasses specific operational acts that are directly and immediately linked to hostile actions or military harm. Accordingly, the nature of proxy involvement is decisive in determining their legal status. Activities such as writing offensive code or disabling enemy control systems may amount to direct participation in hostilities, thereby affecting the legal protection otherwise afforded to such actors.[25]

Under international law, a State is responsible for all acts that are attributable to it, regardless of whether those acts are carried out through traditional means or cyber means. Such attribution may arise in the following situations:

1. A State bears full responsibility for any act committed by its official organs and armed forces under its command that constitutes a violation of international law.
2. Responsibility also arises for violations committed by individuals or private entities that have been authorized by the State to exercise elements of governmental authority, as their conduct is legally regarded as an exercise of State authority.
3. A State is further responsible for acts committed by individuals or groups who, in fact, act on the instructions of, or under the direction or effective control of, the State.
4. Finally, responsibility extends to acts carried out by private individuals or groups that are subsequently acknowledged and adopted by the State as its own, whether through political, legal, or practical endorsement.

These principles of State responsibility apply equally where the wrongful conduct is carried out through cyber operations. In other words, the mere fact that an act is conducted in cyberspace does not exclude it from the framework of State responsibility, and the traditional rules of international law governing attribution remain fully applicable.[26]The status of proxy actors in cyber operations is not determined through a combination of three core factors: first, the degree of control and connection between such actors and a State or an organized armed group;[27] second, the nature, purpose, and effect of their specific cyber operations; and third, whether such operations meet the three cumulative criteria of "direct participation in hostilities." This demonstrates that the legal status of cyber proxy actors under IHL is not static or uniform, but instead depends on the factual circumstances and the specific characteristics of their conduct.

In most cases, cyber proxies are not regarded as combatants, as they typically do not form part of a structured military unit, do not exhibit military uniformity, are not physically present on a traditional battlefield, and are not generally bound by or integrated into the customary rules governing armed forces. Accordingly, they usually fail to meet the criteria required for combatant status and are therefore classified as civilians. However, even in such cases, if they directly participate in hostilities, they may be regarded as lawful targets for the duration of such participation. Within scholarly discourse, it has been debated whether civilian scientists or weapons experts can continue to be treated merely as indirect participants even in exceptional circumstances, particularly where the expertise of a single individual may have an extraordinary and decisive impact on the outcome of a conflict. Historical examples, such as the role of weapons scientists during the Second World War, are often cited in this regard.[28] To sum, civilian scientists are generally considered protected civilians; however, if their specialized expertise is directly and operationally integrated into the conduct of hostilities in a manner that significantly affects military operations, their status may change within the framework of direct participation in hostilities (DPH).[29]

3.4: The Use of Artificial Intelligence and Robots in Cyber Warfare and the Determination of Combatant Status

Under International Law, particularly IHL (IHL) and the established rules of State responsibility, the conduct of a robot or automated system—whether an autonomous weapon system or an artificial intelligence–based cyber tool—is never attributed to the robot itself. According to international law, non-human and non-sentient systems cannot bear legal responsibility, as only States or human individuals are recognized as capable legal subjects.[30] For this reason, any act carried out through robotic or artificial intelligence systems is attributed to the human or State actors who design, operate, activate, deploy, or define the objectives and operational parameters of such systems. This principle is derived from the fundamental rules of attribution contained in the International Law Commission's Articles on State Responsibility.[31] In practice, responsibility ultimately rests with the human or State entities that are directly or indirectly involved in the operation of the system. Where a State employs autonomous weapons through its military or governmental organs, the resulting conduct is attributable to the State as an act of its organs.[32] Similarly, where a private company operates autonomous systems under delegated governmental authority, such conduct is also attributable to the State.[33] Furthermore, if a group such as a militia or hacker network conducts robotic or cyber operations under the instructions or effective control of a State, such conduct is likewise attributable to that State.[34] Even where a State subsequently acknowledges or adopts the conduct of a private actor as its own, international law treats such conduct as attributable to the State.[35]

This principle remains unchanged even when robots possess partial or full autonomy. Autonomous weapons systems that are capable of selecting targets and executing attacks independently still generate legal responsibility for the human or State actors who designed them, programmed their algorithms, established operational parameters, or deployed them in the battlefield. This approach is also supported by the ICRC's interpretive guidance and other international policy documents, which emphasize that "meaningful human control" is a fundamental requirement for maintaining human responsibility in the conduct of hostilities.[36]

4: Combatant Status in Islamic Law: Principles and Application to Cyber Warfare

Following the discussion on the status of combatants in IHL, this section examines the concept of the combatant within Islamic law. After outlining the relevant juristic principles and rules, their application in the context of cyber warfare will be analysed.

4.1: The Combatant in Islamic Law: Definition and Explanation

A cursory review of the classical juristic tradition may initially create the impression that Islamic law treats every non-Muslim male as a combatant and every non-Muslim female as a non-combatant. However, a deeper and more contextual analysis of the relevant texts and evidences reveals that this distinction is not based on gender as such, but rather on the principle of participation in warfare. This same foundational principle is also operative in IHL, where the distinction between combatants and non-combatants is determined by direct participation in hostilities. Islamic law likewise adopts this underlying criterion, and it is direct or indirect participation in hostilities that serves as the decisive standard for determining an individual's legal status in the context of armed conflict.[37] In this regard, Muḥammad ibn al-Ḥasan al-Shaybānī, a renowned Hanafi jurist, states concerning the status of children and women:

"If it is known that he has not reached puberty and is less than fifteen years of age, then he is considered among the dependents (*al-dhurriyya*) and not among the combatants (*al-muqatila*), whether he fights or does not fight. Likewise, women are not considered among the combatants, because combatants are those who possess a physical capacity suitable for fighting when they intend it. Women and minors do not possess such capacity; therefore, they are not regarded as combatants, even if they participate in fighting, contrary to the usual norm. Do you not see that an adult male who does not engage in fighting is still considered among the combatants by virtue of his capacity and suitability for combat, even if he does not directly participate due to some circumstance?"[38]

This passage illustrates that the defining criterion for combatant status in Islamic jurisprudence is not merely actual participation in fighting, but rather the underlying capacity and relevance to combat. This may be illustrated by two examples:

(a) Participation of Women:

Although a number of juristic opinions generally classify women as non-combatants, and consequently hold that women on the opposing side are not to be targeted, classical jurists have explicitly prohibited the killing of women during warfare. Ibn Ḥazm, for instance, states that it is not lawful to kill women.[39] Similarly, al-Marghīnānī also records that killing enemy women during armed conflict is impermissible.[40] At the same time, jihad is classified as a collective obligation (*farḍkifāyah*), and women are generally not expected to undertake this obligation. Only in exceptional circumstances, where jihad becomes an individual obligation (*farḍʿayn*), may such participation theoretically arise; otherwise, Muslim women do not ordinarily engage in military combat. Al-Marghīnānī further states that when a large Muslim army is proceeding for military engagement, the presence of women may not be objected; however, if a small military detachment is undertaking a specific operation, it is not permissible to include women, as in this case they become vulnerable.[41] In a similar vein, Imam al-Shaybānī is reported to have stated that he does not endorse the participation of women in military campaigns.[42]

These juristic positions collectively indicate that, in principle, Muslim women are not regarded as combatants. Their involvement in military contexts is not intended to constitute direct participation in fighting. This understanding is further supported by the rules governing the distribution of war booty (*ghanīmah*). Entitlement to such distribution is primarily based on direct participation in combat, and jurists generally do not assign a fixed share (*sahm*) to women, since the share is reserved for combatants (*mujāhidīn*). However, women who provide services such as treating the wounded are regarded as engaging in indirect support of military operations. As recognition of this contribution, they may be granted a discretionary allocation (*raḍkh*) from the spoils of war. Importantly, this allocation is less than the fixed share assigned to combatants. Even in cases where women accompany the army or participate in auxiliary roles, they do not receive the combatant's share but only a reduced discretionary amount.[43] This demonstrates that the operative principle is not gender-based classification, but rather the criterion of direct participation in hostilities.

(b) Traders (Male Merchants) Present in the Enemy Territory

Jurists have also established the principle that if a person enters enemy territory for the purpose of trade, he is not entitled to a share in war booty, even if he is a male.

However, a person who enters enemy territory with the intention of engaging in combat or who actively participates in fighting is entitled to a share (*sahm*). Al-Sarakhsī explains this principle by stating: "For they were traders before this, not warriors (*ghuzāt*)."[44] This illustrates that although such individuals are adult males and, in a purely physical sense, might ordinarily be presumed capable of combat, they are not treated as combatants solely on the basis of gender or physical capacity. Since their purpose of entry was commercial rather than military, they are not classified as combatants, and consequently they are not entitled to a combatant's share in the spoils of war, as the only combatants are entitled to it after directly participating in hostile activities.

4.2: The Concept of "Direct Participation in Hostilities" in Juristic and Usul al-Fiqh Discourse

From the preceding discussion, it becomes clear that, in the view of jurists, although all adult males possess the physical capacity for combat, the application of legal rulings related to fighting depends upon their actual and operative participation in hostilities. Similarly, although women are generally considered non-combatants due to their physical characteristics, the legal treatment of their conduct during warfare is still assessed on the basis of their actual involvement in hostilities rather than merely their biological or social classification. The key question, therefore, is what jurists mean by "participation in warfare," how its different levels are determined, and on what basis corresponding legal rulings are applied. Before engaging in a detailed juristic and methodological discussion, it is necessary to present certain illustrative incidents from the Prophetic era. These examples will facilitate a clearer understanding of the underlying principles and rules in the subsequent analytical framework. During the Prophetic era, women also participated in military contexts in various capacities. For example, during the Battle of the Trench (Ghazwat al-Khandaq), while Muslim men were stationed at the defensive trenches for the protection of Madinah, women and children were placed in a secure fort known as "Fariʿ." During this period, a Jewish spy from BanūQurayẓah approached the fort to assess the situation and determine whether any Muslim men were present inside. Lady ṢafiyyahbintʿAbd al-Muṭṭalib (the Prophet's aunt) observed him. Since no men were present in the fort, she took defensive action herself and quietly attacked and killed him, thereby ensuring the protection of the women and children inside the fort.[45] Similarly, al-Shaybānī reports, regarding Umm Ṣafiyyah, that she participated in seven military expeditions alongside the Messenger of Allah (peace be upon him).[46]

Another important aspect of the law of war in Islamic jurisprudence is the concept of *amān* (Peace treaty). *Amān* refers to a temporary suspension of hostilities in which Muslims grant security or protection to enemy individuals. Jurists have elaborated detailed rules concerning this institution. One particularly significant issue is that, according to the jurists, women—or even a slave participating in jihad with the permission of his master—may validly grant *amān* to the enemies of Muslims, and such a grant becomes binding upon all Muslims. For example, the Prophet's daughter, Lady Zaynab (may Allah be pleased with her), granted protection to her husband Abū al-ʿĀṣ ibn al-Rabīʿ, and the Prophet (peace be upon him) accepted and recognized the validity of her grant of protection.[47] Likewise, Umm Hānī reports that on the day of the Conquest of Makkah she granted *amān* to two of her in-laws. When ʿAlī (may Allah be pleased with him) entered the house intending to kill them, she objected and stated that he would have to kill her first before reaching them. She then secured them inside the house and later presented the matter before the Prophet (peace be upon him). The Prophet responded by affirming the validity of her grant of protection, declaring that those whom Umm Hānī had granted protection would likewise be protected by the Muslim community.[48] This raises an important juristic question: if jurists generally discourage women from direct participation in warfare, on what basis do they nevertheless recognize the validity of a woman's grant of *amān* to enemy individuals?

A related point is that numerous texts from the Qurʾān and Sunnah concerning jihad and fighting the enemy are phrased in general terms and do not explicitly distinguish women from men in their wording.[49] All of these precedents and textual evidences were before the jurists, who reconciled them with other legal texts and overarching principles in order to formulate the doctrine of "direct participation in hostilities" along with its subsidiary legal rules. The following discussion submits an explanation of this principle of "direct participation in hostilities" in Islamic legal thought.Those scriptural texts which apparently employ general language and command the targeting of all enemies without explicitly excluding women are described by the theorists (*uṣūliyyūn*) as "general texts specified by exclusion" (*makhṣūṣminhu al-baʿḍ*). For instance, the Qur'ānic verse, "slay those who associate others with Allah in His Divinity wherever you find them,"[50] was qualified by the very next verse, which states: "And if any of those who associate others with Allah in His Divinity seeks asylum, grant him asylum that he may hear the Word of Allah, and then escort him to safety."[51] The term "polytheists" (*al-mushrikīn*) in the first verse is general in scope, while the subsequent verse restricts that generality by clarifying that not all polytheists constitute lawful targets. Rather, those who have entered into a pact of protection (*amān*) with Muslims may not be targeted.

Once such specification has been established, further qualifications may also be introduced through solitary reports (*akhbār al-āḥād*) and analogical reasoning (*qiyās*). Accordingly, numerous prophetic reports expanded the category of protected persons who may not ordinarily be targeted during warfare, including children, the elderly, peasants, disabled persons, and others. In examining the legal status of these protected categories within the law of armed conflict, the jurists concluded that individuals who are ordinarily immune from attack may nevertheless lose such protection if they participate in the war effort, even indirectly, in a manner that causes harm to Muslims. Thus, after discussing the prohibition on killing women, children, the elderly, the disabled, and the sick during warfare, al-Marghīnānī writes: "Except where one among them possesses strategic judgment in warfare, or where a woman is a queen, because in such cases their harm extends to the people. Likewise, any of these individuals who engage in fighting may be killed in order to repel their aggression."[52]

Similarly, although the general rule in Islamic law is that elderly persons may not be targeted during warfare, an exception was made in the case of Durayd ibn al-Ṣimmah at the Battle of Ḥunayn. Durayd ibn al-Ṣimmah was regarded as one of the most experienced military strategists of pre-Islamic Arabia. Although he had become extremely old—his age reportedly exceeded one hundred years—and no longer possessed the physical ability to fight, tribes continued to value him for his military expertise and strategic counsel. When the tribes of Hawāzin and Thaqīf mobilized against the Muslims, they brought Durayd with them solely for purposes of military consultation. He was carried on a camel and placed inside a tent due to his old age and physical weakness. During the Battle of Ḥunayn, however, he continued to provide strategic advice and military opinions that could materially affect the outcome of the battle. Thus, although he was not personally engaged in combat, his contribution to the enemy war effort was considered sufficiently significant for him to be lawfully targeted and killed.[53] Conversely, there may be individuals who are not ordinarily protected from attack under the general rules of warfare, yet they may not be targeted if they remain detached from hostilities and provide no assistance to the enemy's military operations. Imām al-Ṭaḥāwī articulated this principle as follows:

"The prohibition issued by the Prophet Muhammad (PBUH) related to targeting the elderly persons in enemy territory applies to those elderly individuals who provide no assistance whatsoever in matters of war, neither through fighting nor through strategic counsel. The report concerning Durayd [ibn al-Ṣimmah], however, relates to elderly persons who do provide assistance in warfare, as Durayd did. There is therefore no objection to killing them even if they are not physically fighting, because the assistance they provide may be more significant than much actual fighting, and military combat may not even be properly organized without it. If that is the case, then they may be killed. Evidence for this is the statement of the Prophet Muhammad (PBUH) regarding the slain woman mentioned in the report of Rabāḥ, the brother of Ḥanẓalah: 'She was not one who fought,' meaning that she was not to be killed because she did not fight. Thus, if she were to fight, she could be killed, and the legal cause preventing her killing would cease to exist. Likewise, the Companions' killing of Durayd ibn al-Ṣimmah for the reason we have mentioned demonstrates that there is no objection to killing a woman as well if she possesses military planning and strategic influence in warfare comparable to that of an elderly military adviser."[54]

4.2: The Principles of "*Mubāsharah al-ʿAmal*" and "*Tasabbub al-Fiʿl*" under Islamic Law and Their Application to Determining Combatant Status in Cyber Warfare

From the preceding discussion, it becomes clear that Islamic law grants protection to certain categories of individuals; however, such protection may be lost as a consequence of their own actions. Conversely, Islamic law initially considers certain persons to be lawful targets on the basis of their specific activities, yet their status reverts to that of protected persons once they cease such activities. Thus, the commission of an act is the fundamental criterion upon which legal status is determined. Since an act may be carried out through different modes and mechanisms, the question arises as to whether variation in the mode of execution affects the legal ruling. This complexity becomes even more pronounced in the context of cyber warfare. To clarify this issue, the following discussion examines key juristic principles. Jurists employ two technical terms in this regard: "*mubāsharat al-ʿamal,* which may be translated as 'commission of an act directly' and "*tasabbub al-fiʿl*" which serves as causation between the act and ensuing result. Each is associated with distinct legal rules and implications. "Direct action" (*mubāsharah*) has been defined in various ways by jurists. One such definition states:

"A direct agent is one whose act results in the damage itself, without the intervention of any other actor between his act and the occurrence of the damage."[55]

In other words, a direct actor is the one whose conduct produces the harm immediately and without the mediation of another independent human act. Numerous definitions have also been given by other jurists.[56] A survey of the various juristic formulations of this doctrine indicates that, for legal responsibility to be attributed to an agent, it is essential that harm (*ḍarar*) actually materialises as a consequence of his conduct, and that no intervening act or independent agent stands between the conduct and the resultant harm. Where an act is characterised as direct causation (*mubāsharah*), the direct actor bears full liability for all legal consequences arising therefrom in matters relating to the rights of individuals (*ḥuqūq al-ʿibād*). In instances of direct harm, liability is established in all circumstances, since the occurrence or aggravation of harm is causally and immediately attributable to the actor's conduct, rendering it the most proximate and effective cause.

In juristic analysis, harm constitutes the foundational basis of liability (*ḍamān*), and accordingly, classical jurists did not generally impose intention or wilful transgression as a precondition for liability in cases of direct causation. Liability may therefore arise irrespective of whether the act is intentional (*ʿamd*) or erroneous (*khaṭaʾ*), although the legal consequences may vary depending on the mental element involved.[57] A number of jurists, however, have required the presence of transgression (taʿaddī) as a condition of liability, understanding it to denote an unlawful encroachment upon the rights of others or a deviation beyond legally permissible limits. Other jurists, by contrast, interpret transgression within the framework of lawful conduct sanctioned by the Sharīʿah and therefore do not treat it as a necessary precondition. Consequently, if transgression is adopted as a substantive requirement in this sense, it may have implications for the attribution of liability in cases of direct causation.

The doctrine of '*tasabbub*' (causation) on the other hand, refers to a situation in which an agent does not directly carry out an act but instead functions as an intermediary cause. Al-Qarāfī defines it as follows:

"'*tasabbub*' (causation) is that in which harm occurs due to an intervening cause, provided that the original cause is the operative factor that necessitates the occurrence of the act through that secondary cause."[58]

In other words, causation refers to situations in which harm or destruction occurs indirectly through a secondary mechanism, where the initial act constitutes the underlying cause that makes the harmful outcome possible through a further intervening factor. According to the majority of jurists, transgression (*taʿaddī*) is a central condition for establishing liability in cases of indirect causation. That is, where a person performs an act at the level of causation that subsequently leads to harm, but the actual harm is produced through the intervention of another act or agent, liability (*ḍamān*) is only imposed if the original causal act involved a breach of lawful limits as recognisedby the Sharīʿah and custom (*ʿurf*). In such cases, jurists generally require only that the causal agent exceeded his lawful bounds at the time of initiating the cause. By contrast, the requirement of deliberate intent (*taʿammud*) is not regarded as essential, since transgression is a broader concept that may include intentional conduct as well. In juristic reasoning, an intention to cause harm (*qaṣd al-ḍarar*) is often treated as an indicator of the presence of transgression. Where neither transgression nor an intent to harm is present, liability is generally not imposed upon the causal agent.

Mālikī jurists, however, consider deliberate intent (*taʿammud*) to be an essential condition for establishing liability in cases of indirect causation. According to them, if a person intends to cause damage to a specific object, he is held legally responsible even if the harm ultimately occurs to that object or to another entity. Indeed, even if the resulting damage occurs to his own property, the mere presence of an intent to inflict harm is sufficient to bring the act within the category of transgression (*taʿaddī*). On this basis, if the intended object of harm is destroyed, full liability (*qiṣāṣ*) is imposed, whereas if a different, unintended object is damaged, compensation in the form of blood money (*diyah*) becomes obligatory.[59]

The third condition, according to jurists, is that for liability to be established in cases of harm or destruction, it is necessary that no intervening act or factor should enter between the cause and the harm in a manner that could independently attribute responsibility for the resulting damage. Contemporary jurists describe this relationship as a "causal link" (*rābiṭat al-sababiyyah*), the purpose of which is to ensure that the act must has led directly to the resultant harm. Under Sharīʿah principles, an offender is held responsible only for the consequences that are directly connected to his act, meaning that a strong and demonstrable causal nexus must exist between the cause and its effect.[60] If this causal connection is weak, or if the harm is not typically or ordinarily produced by such an act, then liability does not arise. For example, if a person inflicts a minor injury on another, and the victim subsequently dies as a result of an unrelated intervening act or external cause, full liability is not imposed on the original assailant. Rather, responsibility is determined in accordance with the direct and proximate cause of death.[61] This principle demonstrates that only those acts give rise to legal liability which are directly linked to the harm, without the intervention of unrelated factors. Accordingly, where an independent and voluntary intervening act occurs between the cause and the result, it breaks the chain of attribution, and liability is imposed only upon the party whose act constitutes the direct cause of harm.[62]

4.3: Determining Combatant Status in Cyber Warfare: In the Light of Islamic Law

The foregoing discussion demonstrates that, in Islamic law, the concept of a combatant is fundamentally functional in nature: the legal status of an individual is determined by his or her role in warfare rather than by inherent or biological characteristics. According to the jurists, the governing principle is that any person who plays a direct or indirect yet effective role in hostilities may become subject to the legal rulings applicable to combatants, regardless of whether that person is a woman, an elderly individual, a slave, or a merchant. The juristic tradition contains numerous examples illustrating that individual whose participation could substantially influence the outcome of war were treated as possessing combatant status, even if they did not personally engage in physical fighting. Thus, persons who strengthened the enemy through military strategy, guidance, intelligence, or operational support could fall within the category of combatants. Similarly, non-combatants—such as women, children, monks, the elderly, and merchants—are, under ordinary circumstances, protected from attack and killing. However, the jurists explicitly maintained that if any of these protected persons were to engage in military planning, strategic guidance, espionage, or other forms of decisive assistance to the enemy, they would lose their protected status and become subject to the legal rulings governing combatants.

These very principles provide Islamic law with a framework for application to modern forms of warfare, particularly electronic and cyber warfare. The true force of cyber warfare does not primarily lie in physical confrontation; rather, it consists of remote technological operations aimed at disabling the enemy's military capacity, infiltrating its systems, destroying its communication networks, paralyzing critical military infrastructure, or undermining its strategic decision-making processes. Since, in Islamic law, participation in warfare is not confined merely to physical fighting but extends to any conduct that substantially influences the outcome of hostilities, those enemy experts who adversely affect or impair the military capabilities of Muslim forces during cyber warfare may, under certain circumstances, fall within the legal category of combatants and thereby become lawful targets. For example, this may include individuals who design programs intended to disable Muslim defense systems, developers who write code capable of destroying military servers, scientists who create malware designed to paralyze sensitive infrastructure, or strategic analysts who provide operational guidance for military decision-making. According to the juristic principles discussed above, such individuals may not automatically be treated as combatants merely because they develop technological tools or weapons. So long as these programs, codes, or malware remain at the stage of preparation and are not actually employed against Muslim forces, their status resembles that of weapons manufacturers. In Islamic legal reasoning, the basis for lawful targeting is not the mere production of weapons, but their active use in hostilities.

However, if such activities are undertaken during an ongoing armed conflict and directly and decisively influence the outcome of war, then those engaged in them may become lawful targets. This parallels the classical juristic treatment of individuals who did not personally wield swords in battle, yet whose strategic planning, counsel, or operational support materially altered the balance of war and, for that reason, were accorded combatant status. Conversely, individuals who merely provide technical support on the cyber front—such as ordinary IT personnel, network maintenance staff, basic cybersecurity specialists, or researchers and engineers whose work is not directly connected to military or combat operations—would continue to retain their status as non-combatants under Islamic law. Their activities do not substantially influence the outcome of hostilities, and it is precisely this principle that excludes them from the category of lawful military targets. This situation closely resembles the classical juristic treatment of ordinary merchants or non-combatant men who happened to be present in enemy territory solely for commercial purposes. Despite their presence within the enemy domain, the jurists did not regard them as combatants because their activities bore no direct relationship to the conduct or outcome of warfare.

4.4: Autonomous Weapons and the Principle of Responsibility in Islamic Law

In the modern era, the development of autonomous weapons and robotic systems has introduced a new legal challenge in the context of warfare. The following discussion examines upon whom responsibility for harm caused by autonomous weapons rests, and the extent to which such responsibility is recognized under Islamic law. According to the principles of Islamic law, liability for any harm or killing is borne by the party that constitutes the effective cause of the act. If an autonomous weapon causes harm to civilians or civilian property, responsibility is generally distributed among the following parties.

A: State Responsibility—.

The Ḥanafī jurists discussed four possible scenarios concerning whether the actions of individuals from an Islamic state who enter enemy territory can be attributed to the state itself. From these scenarios and their respective legal rulings, it can readily be inferred that, in the contemporary context, cyber operations may likewise fall into four possible categories. In some of these situations, responsibility may be attributed to the state, while in others it may not. In the latter cases, the conduct would remain the private act of certain individuals and would not justify the use of force against the state, particularly where no other legal basis exists.In the context of cross-border armed operations, Imam Shaybani articulated a systematic doctrine of attribution. According to him, the legal status of armed groups or individuals, as well as the responsibility of the state, depends upon two fundamental elements: first, "*manʿa*," meaning organized military power or an effective war-making capacity; and second, explicit or implied authorization from the ruler, imam, or government. On the basis of these two elements, four distinct legal scenarios emerge.

1. When *both manaʿa and authorization are present*, the actors are treated as fully integrated extensions of the state's military structure. In classical terms, they are like separate battalions operating under state recognition; in modern paraphrase, they are clearly attributable to the state.
2. When *manaʿa is absent but authorization is present*, the actors resemble spies or small tactical units operating under a special mission. Despite their limited capacity, the decisive factor is that they act under state permission. The responsibility still lies with the state, because authorization transforms even small-scale actors into agents of the sovereign's military objectives.
3. When *manaʿa is present but explicit authorization is absent*, the responsibility is still attributed to the state, but on a theory of implied authorization. The reasoning is that organized armed groups with significant capacity do not operate independently in practice; their existence and movement are presumed to occur within the knowledge or tolerance of the state. Thus, the absence of express permission is treated as formal rather than substantive, and state responsibility remains intact.
4. When both *manaʿa and authorization are absent*, the actors are treated as rogue or clandestine individuals (e.g., acting by stealth). In this case, state responsibility is excluded, because there is neither organizational military capacity nor sovereign authorization linking the conduct to the state. This is the only category in which actions are fully detached from the state and remain individual responsibility.[63]

Shaybani articulates a consistent doctrine of attribution: combatant-like status and state responsibility depend on formal permission with the functional reality of military capacity (*manaʿa*) combined with actual or presumed state control. Authorization without capacity, or capacity without authorization, can still generate responsibility; only the complete absence of both breaks the legal and operational link between actors and the state. In light of the Islamic juristic principles, it may be concluded that, in the context of cyber warfare, the primary responsibility for the use of autonomous weapons rests with the state, as it is the entity that authorizes military operations and deploys such systems in the battlefield. From a juristic perspective, the principle that "the one who issues the command is responsible for its consequences" constitutes a synthesis of several legal maxims. First, under the principle of causation, the state's authorization and operational directives regarding autonomous weapons are considered the effective cause of the resulting harm; therefore, responsibility is attributed to the state as the originating legal agent. Second, jurists have articulated the maxim: "*al-amr bi al-shay' amr bi lawāzimih*"[64] (the command to do something is a command to its necessary implications). On this basis, the issuing authority cannot be absolved of liability for the consequences that naturally follow from its directive. This principle is also consistent with the framework of IHL, which holds states accountable for the actions of their armed forces and proxy actors.[65]

B: Responsibility of the Military Personnel or Operator:

If the weapon remains under human control and the operator acts negligently or issues incorrect instructions, the operator may also bear partial responsibility. In Islamic law, the significance of intention becomes evident in such cases: where the harm is unintentional, the operator may not be deemed directly blameworthy, although the state continues to bear primary responsibility. According to the jurists, even in the absence of hostile intent (*qaṣd al-ḍarar*), an act causing harm is not legally excused, and the affected individuals or their heirs remain entitled to compensation.

5. Concluding Remarks

This article has examined the complex and increasingly urgent question of how combatant status may be determined in the context of cyber warfare, first under IHL and subsequently under Islamic law. The analysis reveals that while IHL provides a robust framework centred on the concept of "direct participation in hostilities," its application to cyber operations remains contested and underdeveloped. Key challenges include defining what constitutes an "attack" in cyberspace, attributing cyber operations to specific individuals or states, and determining the legal status of proxy actors, hackers, and autonomous systems. The ICRC's Interpretive Guidance offers valuable criteria—threshold of harm, direct causation, and belligerent nexus—yet these require further refinement to address the unique characteristics of cyber warfare, particularly where operations cause system disablement rather than physical damage.The examination of Islamic law demonstrates a remarkably congruent approach. Classical jurists, despite operating in a pre-modern context, developed a functional doctrine of combatant status based not on inherent characteristics such as gender or age, but on actual and effective participation in hostilities. The principles of *mubāsharah* (direct action) and *tasabbub* (causation) provide a sophisticated framework for attributing legal responsibility, while juristic precedents, such as the treatment of Durayd ibn al-Ṣimmah for strategic counsel or the recognition that protected persons may lose immunity when they contribute decisively to the enemy war effort, establish that profound influence on military objective, not physical combat alone, also plays a significant role in determining combatant status. Applying these principles to cyber warfare, the article concludes that individuals who design, deploy, or operate cyber capabilities that directly and significantly impair an adversary's military functions may become lawful targets, whereas those providing general technical support or engaged in preparatory activities retain protected status. Autonomous weapons, under both legal systems, do not bear responsibility themselves; rather, liability attaches to states and human operators who authorize, deploy, or maintain meaningful control over such systems. This study therefore affirms that both IHL and Islamic law possess sufficient doctrinal flexibility to address cyber warfare, though further international consensus and state practice are needed to resolve remaining ambiguities.

Refrences

[1] First Additional Protocol: Article 51(3).
[2] First Additional Protocol: Articles 48–51.
[3] Third Geneva Convention: Article 118.
[4] Fourth Geneva Convention: Article 132.
[5] See: Third Geneva Convention: Article 4(A)(1)–(6).
[6] Third Geneva Convention: Article 33; and First Geneva Convention: Articles 24–26.
[7] First Additional Protocol: Article 43(2).
[8] First Additional Protocol: Article 44(1).
[9] Common Article 3(1) of the Four Geneva Conventions.
[10] First Additional Protocol: Article 51(3).
[11] The preparation of this document extended over several years, during which time experts from the International Committee of the Red Cross (ICRC), as well as specialists from various parts of the world with expertise in this field and its related dimensions, contributed to its development. The document is available in electronic form on the official website of the ICRC. Although its provisions are not legally binding, its normative and interpretive significance is considerable, as it is grounded in the views and recommendations of a broadly constituted body of international experts.
[12] ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities* (Geneva: ICRC, 2009), p. 26.
[13]Ibid., p. 36.
[14]Ibid., p. 40.
[15]bid., p. 45.
[16]Ibid., p. 46.
[17] UN General Assembly, "Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security", UN Doc. A/76/135, 14 July 2021.
[18] International Court of Justice, Legality of the Threat or Use of nuclear weapons, Advisory Opinion, 8 July 1996, para. 86.
[19] Laurent Gisel, Tilman Rodenhäuser and Knut Dörmann, "Twenty years on: International humanitarian law and the protection of civilians against the effects of cyber operations during armed conflicts," International Review of the Red Cross (2020), 102 (913), 287–334 at 301.
[20] ICRC, *Regional Consultation of Central and Eastern European States, 8 December 2021, International Humanitarian Law and Cyber Operations During Armed Conflicts*, (ICRC, Geneva, December 2022), p. 4.
[21] Laurent Gisel, Tilman Rodenhäuser and Knut Doörmann, "Twenty years on: International humanitarian law and the protection of civilians," at 304.
[22] The Martens Clause is a moral principle according to which humanity and considerations of public conscience cannot be disregarded even during armed conflict, and must also be taken into account when new weapons or methods of warfare are employed. Its fundamental purpose is to ensure the protection of civilians who are not participating in hostilities, particularly in situations where legal gaps exist or where no specific rule is applicable, by relying on the principles of humanity and the dictates of public conscience as guiding standards of international conduct.
[23] ICRC, *Regional Consultation of Central and Eastern European States*, p. 6.
[24] Ibid.
[25] ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, p. 46.
[26] Jean-Marie Henckaerts and Louise Doswald-Beck (eds), Customary International Humanitarian Law, Vol. 1: Rules, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 149.
[27] Attribution of proxy conduct to a State under international law is assessed through three principal standards: (1) *Effective Control Test:* Where a State exercises actual, operational control over a group's

specific conduct, the acts of that group are attributable to the State. This standard was articulated by the International Court of Justice in the Nicaragua case. (2) *Overall Control Test:* Where a State plays a role in organizing, financing, equipping, training, or planning the activities of a group, a broader form of control may be sufficient for attribution. This approach was developed by the International Criminal Tribunal for the former Yugoslavia in the Tadić case. (3) *Instruction or Direction*: Article 8 of the International Law Commission's Articles on State Responsibility (2001) provides that where a group acts on the instructions of, or under the direction of, a State, its conduct is attributable to that State.Together, these standards provide the framework for determining when the actions of proxy actors may be legally considered acts of the State under international law.

[28] ICRC, *Interpretive Guidance,* p. 53 (footnote no. 122).

[29] David Turns, "Cyber Warfare and the Notion of Direct Participation in Hostilities," *Journal of Conflict and Security Law* , Vol. 17, No. 2 (2012), pp. 279-297, at 291.

[30]*See:* International Court of Justice, *Reparations for Injuries Case* (1949), where the Court affirmed that only entities possessing international legal personality can bear responsibility.

[31] International Law Commission, ***Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA),*** 2001.

[32] Ibid., Articles 4–8 (Attribution of conduct to a State).

[33] Ibid., Article 5 (Conduct of entities empowered to exercise governmental authority).

[34] Ibid., Article 8 (Conduct directed, instructed, or controlled by the State).

[35] Ibid., Article 11 (Conduct acknowledged and adopted by a State as its own).

[36] See: ICRC–SIPRI Report on *Autonomous Weapon Systems and Meaningful Human Control* (2021).

[37] Further details of these matters, along with their references from classical juristic works, will be presented in the subsequent sections.

[38]Muḥammad ibn al-Ḥasan al-Shaybānī, *al-Siyar al-Kabīr*, with commentary by Muḥammad ibn Aḥmad ibn AbīSahl Shams al-Aʾimmah al-Sarakhsī, *SharḥKitāb al-Siyar al-Kabīr* (Egypt: al-Sharika al-Sharqiyyali'l-Iʿlānāt, n.d.).1808, para. 3608.

[39]AbūMuḥammadʿAlī ibn Aḥmad ibn Saʿīd ibn Ḥazm al-Ẓāhirī, *al-Muḥallābi'l-Āthār* (Beirut: Dār al-Fikr, n.d.), 5:347.

[40]Abū al-Ḥasan Burhān al-DīnʿAlī ibn Abī Bakr al-Marghīnānī, *al-HidāyahfīSharḥ Bidāyat al-Mubtadī* (Beirut: DārIḥyāʾ al-Turāth al-ʿArabī, n.d.), 2:381.

[41] Al-Marghīnānī, *al-Hidāyah,* 2:378, 380.

[42] Al-Shaybānī, *al-Siyar al-Kabīr*, 201, para. 240.

[43] Imam al-Marghīnānī writes: "And a woman is given a discretionary share (*raḍkh*) if she tends to the wounded and cares for the sick, because she is incapable of actual combat." al-Marghīnānī, *al-Hidāyah*, 2:390. This indicates that when women perform supportive medical services such as treating the wounded or caring for the ill, they are not treated as combatants in the strict legal sense. Instead, they are compensated through a discretionary grant from war spoils, as their role does not amount to direct participation in combat due to their lack of capacity for actual fighting.

[44] Al-Sarakhsī, *Sharḥ al-Siyar al-Kabīr, p. 904, para: 1622.*

[45]For further details, see: Al-Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, p.201, para. 240; and ʿAbd al-Malik ibn Hishām ibn Ayyūb al-Ḥimyarī al-Maʿāfirī, *al-Sīrah al-Nabawiyyah li Ibn Hishām*, ed. Muṣṭafā al-Saqqā, Ibrāhīm al-Abyārī, and ʿAbd al-Ḥafīẓ al-Shalabī (Egypt: SharikatMaktabatwaMaṭbaʿatMuṣṭafā al-Bābī al-Ḥalabī, 1955), 2:228.

[46] Al-Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, p.201, para. 240.

[47]Muḥammad ibn Aḥmad ibn AbīSahl Shams al-Aʾimmah al-Sarakhsī, *al-Mabsūṭ* (Beirut: Dār al-Maʿrifah, 1993), 10:69.

[48] Ibid.

[49] For example, Qurʾānic verses 2:190 and 9:5.

[50]Qur'an: 9:5. The English translation is borrowed from: Mawlana Abu al-'A'la al-Mawdudi, *Towards*

Understanding Qur'an, tran., Zafar Ishaq Ansari. Its electronic form can be accessed at: https://islamicstudies.info/tafheem-orig.php?sura=9&verse=1&to=10.

[51] Qur'an 9:6.

[52] Al-Marghīnānī, *al-Hidāyah*, 2:381.

[53]Muḥammad ibn IsmāʿīlAbūʿAbdAllāh al-Bukhārī al-Juʿfī, *Ṣaḥīḥ al-Bukhārī*, [Kitāb al-Maghāzī, "BābGhazwatAwṭās,"] ḥadīth no. 4323.

[54]AbūJaʿfarAḥmad ibn Muḥammad ibn Salāmah al-Azdī al-Miṣrī al-Ṭaḥāwī, *SharḥMaʿānī al-Āthār*, ed. MuḥammadZuhrī al-Najjār and Muḥammad Sayyid Jād al-Ḥaqq (Beirut: ʿĀlam al-Kutub, 1994), 3:224, [Kitāb al-Siyar, "Bāb al-Shaykh al-Kabīr Hal YuqtalufīDār al-Ḥarb Am Lā?,"] ḥadīth no. 5184.

[55]ʿAlīḤaydarKhwājah Amīn Afandī, *Durar al-ḤukkāmfīSharḥMajallat al-Aḥkām* (Beirut: Dār al-Jīl, 1991), 1:91.

[56] For a comprehensive overview of multiple other definitions of "*mubāsharat al-ʿamal,*" see: AḥmadMuḥammad al-Ḥājj Khalīl, *al-Qawāʿid al-Fiqhiyyah al-Mutaʿalliqa bi al-Mubāsharahwa al-TasabbubwaTaṭbīqātuhāfī al-Fiqh al-Islāmī* (Master's thesis, College of Graduate Studies, University of Jordan, 2005), p. 31.

[57] Ibid., pp. 36-37.

[58]Abū al-ʿAbbās Shihāb al-DīnAḥmad ibn Idrīs ibn ʿAbd al-Raḥmān al-Mālikī al-Qarāfī, *al-Furūq = Anwār al-BurūqfīAnwāʾ al-Furūq* (Beirut: ʿĀlam al-Kutub, n.d.), 2:204. Multiple other definitions of tasabbub (causation) are also found in the juristic literature. For a comprehensive overview, see AḥmadMuḥammad al-Ḥājj Khalīl, *al-Qawāʿid al-Fiqhiyyah al-Mutaʿalliqa bi al-Mubāsharahwa al-Tasabbub,* 46–48.

[59]AḥmadMuḥammad al-Ḥājj Khalīl, *al-Qawāʿid al-Fiqhiyyah al-Mutaʿalliqa bi al-Mubāsharahwa al-Tasabbub*, pp. 52–54; and AbūMuḥammadGhānim ibn Muḥammad al-Baghdādī al-Ḥanafī, *Majmaʿ al-Ḍamānāt* (Beirut: Dār al-Kitāb al-Islāmī, n.d.), p. 146.

[60]ʿAbd al-QādirʿAwdah, *al-Tashrīʿ al-Jināʾī al-IslāmīMuqāranan bi-al-Qānūn al-Waḍʿī* (Beirut: Muʾassasat al-Risālah, 1981), 1:463.

[61]ʿAlīḤaydar Efendi, *Durar al-Ḥukkām*, 2:617.

[62]AḥmadMuḥammad al-ḤājKhalīl, *al-Qawāʿid al-Fiqhiyyah al-Mutaʿalliqa bi-al-Mubāsharahwa-al-Tasabbub*, 55–56.

[63] Al-Sarakhsī, *al-Mabsūṭ* (Beirut: Dār al-Maʿrifah, 1993), 10:73-74; Al-Marghīnānī, *al-Hidāyah,* 2:391; and See for further analysis of these four scenarios: Muhammad Mushtaq Ahmad, "Jihad, Jihadi Organizations and Liberation Struggle September", *Hazara Islamicus*, Vol. 6 (2017) (Issue 2), pp. 15-31, at: 25-26.

[64] Shams al-DīnMuḥammad ibn Aḥmad al-Khaṭīb al-Shirbīnī al-Shāfiʿī. *Mughnī al-MuḥtājilāMaʿrifatMaʿānīAlfāẓ al-Minhāj* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1st ed., 1415 AH/1994 CE), 6:359; Muḥammad ibn Ḥusayn ibn Ḥasan al-Jīzānī. *MaʿālimUṣūl al-Fiqh ʿinda Ahl al-Sunnah wa al-Jamāʿah*. (Beirut: Dār Ibn al-Jawzī, 5th ed., 1427 AH), p. 296; and Aḥmad al-Raysūnī. *Naẓariyyat al-Maqāṣidʿinda al-Imām al-Shāṭibī* (Beirut: al-Dār al-ʿĀlamiyyahlil-Kitāb al-Islāmī, 2nd ed., 1412 AH/1992 CE), p. 281.

[65] International jurisprudence similarly supports this approach: in the Corfu Channel Case, the ICJ held Albania liable due to its "knowledge" of mines in its waters; in the Nicaragua Case, responsibility was linked to "effective control" over insurgents; and in the Tadić Case, the ICTY emphasized that the required level of control varies with context. Likewise, in the Namibia Case, responsibility was based on "physical control" of territory rather than legal title, while in the Caire Case, state responsibility extended to officials acting ultra vires when using state authority and resources. Collectively, these cases confirm a broad and flexible doctrine of state responsibility under international law. See for further details on the notion of "state responsibility": Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2003), 694-752.