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Principles of Distinction, Proportionality and Precautions under the Geneva Conventions: the Perspective of Islamic Law

Mohd Htsham Mohd Kamal

1 Introduction

The Geneva Conventions contain the principles of distinction, proportionality and precautions which are also part of the Customary International Humanitarian Law. The main purpose of these principles is to provide protection to individuals who are not or no longer taking direct part in hostilities. These principles have become more important today when the vast majority of victims in armed conflicts throughout the world are civilians.

The Geneva Conventions are binding on States Parties to it, including Muslim States. In addition, Customary IHL is binding on all States in the world, including Muslim States. Unfortunately, there have been cases of violations of these principles including by Muslim States Parties to the Geneva Conventions, for example, the flattening of Aleppo in October 2016 and of East Ghouta in March 2018 by Syria.

A bigger concern is Muslim armed groups (non-state actors) who may consider themselves as having no obligation under the Geneva Conventions and Customary IHL.¹ Although commission of war crimes or crimes against humanity may lead to an individual facing charges, a member of a Muslim armed group may not be deterred by such possibility. There have been cases of violations of the IHL principles by these armed groups; for example, Boko Haram, though established in Nigeria, have killed thousands of civilians there as well as in Cameroon, Chad and Niger. The group has targeted places of worship, villages, schools, and markets, and has abducted hundreds of girls. Certain Muslim armed groups may deem violations of IHL to be justified on the basis of Islamic law as they understand it.² Thus with regard to Muslims, whose religious belief includes that Allah Knows, Sees and Hears every single act or

¹ Olivier Bangerter, 'Reasons Why Armed Groups Choose to Respect International Humanitarian Law or Not,' *International Review of the Red Cross* 93, no. 882 (2011): 367.

² *Ibid* 370.

omission, and that there are paradise and hell in the hereafter as reward and punishment respectively, the issue of the compatibility of the three principles with the Islamic law becomes important. This is especially the case when certain Muslim armed groups claim that they are fighting in the cause of Allah. Even if they may not consider themselves to be bound by the IHL, their religious conviction with regard to the Qur'an and the *Sunnah* may lead them to observe the three principles.

For this purpose, reference is made to the two main and divine sources of Islamic law identified above. The Qur'an is the Book containing the words of Allah revealed to Prophet Muhammad in Arabic through Gabriel.³ The *Sunnah* means the sayings (also known as *hadith*), deeds and approvals of the Prophet who received divine inspiration.⁴ Obeying the Qur'an and the *Sunnah* is obligatory on Muslims.⁵ In addition, the methodology of *qiyas* or analogical deduction is also resorted to herein.

2 Principle of Distinction

The principle of distinction means that belligerents must at all times distinguish between combatants who may be targeted and civilians who are protected because they do not take a direct part in hostilities. Article 51 of the Additional Protocol I provides, *inter alia*, that the civilian population, as well as individual civilians, shall not be the object of attack. In addition, belligerents must also distinguish between military objectives⁶ that may be targeted and

3 Qur'an, 26:192-195:

Verily, this (the Qur'an) is a revelation from the Lord of the worlds: (192)

With it came down the Spirit of faith and truth (Gabriel) - (193)

To your heart and mind, that you may admonish (194)

In the perspicuous Arabic tongue. (195)

4 Qur'an, 53:3-4:

Nor does he (the Prophet) say (anything) of (his own) desire. (3)

It is no less than inspiration sent down to him. (4)

5 Qur'an, 33:36:

It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and His Messenger, he has indeed strayed in a plain error.

Qur'an, 24:51:

The only saying of the faithful believers, when they are called to Allah and His Messenger, to judge between them, is that they say: "We hear and we obey". And such are the prosperous ones.

6 Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial