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HANDOUT

ISL4803

Islamic and International Humanitarian Law

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ISL4803

Islamic and International Humanitarian Law

Lecture Handouts

Prepared for the students of Virtual University of Pakistan

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1. What Is International Humanitarian Law?

LEARNING OBJECTIVES

- Define international humanitarian law (IHL)
- Distinguish IHL from human rights law
- Explain when IHL applies

International humanitarian law (IHL) is the body of international law that regulates the conduct of **armed conflict** - limiting its effects on those not (or no longer) participating: civilians, the wounded, prisoners. Its two historical branches: **Geneva law** (protecting victims - the four Geneva Conventions of 1949 and their Additional Protocols) and **Hague law** (limiting means and methods of warfare - the 1899/1907 Hague Conventions, now merged with Geneva law into one system).

IHL vs. international human rights law (IHRL): IHRL applies at all times (peace and war) and governs the state-individual relationship; IHL applies **only in armed conflict** (international - IAC - or non-international - NIAC) and binds all parties including non-state armed groups. In war, IHL is the **lex specialis** (specialized law) - e.g. killing combatants is lawful under IHL but would violate the peacetime right to life. Core IHL principles: **distinction, proportionality, precaution, military necessity** and **humanity** (no unnecessary suffering).

Armed conflict threshold

IAC: any resort to armed force between states. NIAC: protracted armed violence between a state and organized armed groups (or between such groups) reaching intensity and organization thresholds (Tadic criteria).

SECTION SUMMARY

IHL = the law of armed conflict (Geneva + Hague traditions). It applies only in war, binds all parties, and balances military necessity against humanity through distinction, proportionality and precaution.

2. Sources and Development of IHL

LEARNING OBJECTIVES

- Trace IHL's historical development
- List the principal treaties
- Explain customary IHL

Milestones: the **Lieber Code** (1863, US Civil War) - first modern codification; **Henri Dunant** and the 1864 Geneva Convention (born at Solferino, 1859) protecting the wounded; the **Hague Conventions** (1899, 1907) on warfare methods; the **four Geneva Conventions of 1949** (I: wounded/sick on land; II: at sea; III: prisoners of war; IV: civilians) - universally ratified;

Additional Protocols I (international conflicts, 1977) and **II** (non-international, 1977); **Protocol III** (2005, Red Crystal emblem). Weapons treaties: Chemical Weapons Convention (1993), Ottawa Mine Ban (1997), Cluster Munitions (2008).

Customary IHL binds even non-parties: the ICRC's 2005 study identified 161 customary rules (e.g. distinction, prohibition of torture). **Martens Clause** (Hague preamble): where treaties are silent, 'populations and belligerents remain under the protection of the principles of humanity and the dictates of public conscience.' The **ICRC** is IHL's guardian - visiting detainees, promoting law, acting as neutral intermediary. Enforcement: grave breaches regimes, ad hoc tribunals (ICTY, ICTR), and the permanent **International Criminal Court** (Rome Statute, 1998; war crimes in Article 8).

SECTION SUMMARY

From the Lieber Code and Dunant to the 1949 Conventions and Protocols, IHL grew treaty by treaty; custom and the Martens Clause fill gaps; the ICRC guards it and the ICC punishes its gravest breaches.

3. The Islamic Law of War: Foundations (Siyar)

LEARNING OBJECTIVES

- Define siyar and its sources
- Explain jihad: greater and lesser
- State who may authorize war in Islam

Al-siyar (singular: sirah) is classical Islam's 'law of nations' - developed by jurists like **al-Shaybani** (d. 805, author of al-Siyar al-Kabir, the earliest systematic international law text) - governing war, peace treaties, diplomats and treatment of non-Muslims. Its sources: the Qur'an, the Prophet's practice (sunnah), the Rashidun caliphs' instructions, and juristic reasoning.

Jihad literally means striving/exertion. The **greater jihad** (jihad al-akbar) is the inner struggle against the self - the hadith returning from battle: 'we have returned from the lesser jihad to the greater jihad' (a contested narration, but the concept is Qur'anic: striving with wealth and selves, 9:41). **Armed jihad** (qital) is strictly regulated: it must be **authorized by legitimate authority** (the ruler/imam - individuals may not declare war), for just cause (defense against aggression, 2:190; ending persecution/fitnah, 2:193; protecting the oppressed, 4:75), with right intention - never for plunder, nationalism or compulsion in religion ('**no compulsion in religion**', 2:256).

■ VERY IMPORTANT

The authority condition is the key exam point: classical Islam vests war-declaration solely in legitimate public authority - private/terrorist violence is rebellion (baghy) or banditry (hirabah), never jihad.

SECTION SUMMARY

Siyar = Islam's international law (al-Shaybani). Jihad = striving, primarily spiritual; armed jihad needs legitimate authority, just cause and right intention - never coercion or plunder.

4. Jus ad Bellum in Islam: When Is War Just?

LEARNING OBJECTIVES

- Explain the Qur'anic justifications for war
- Compare with UN Charter jus ad bellum
- Discuss rebellion and terrorism

Qur'anic permissions for fighting: **defense** - 'Permission is given to those who are fought because they were wronged' (22:39), the first fighting verse; **repelling aggression** - 'fight those who fight you, but do not transgress' (2:190); **ending persecution** - 'fight them until there is no fitnah' (2:193); **rescuing the oppressed** (4:75); and **treaty violation** by hostile parties (9:12-13). War must cease when the enemy inclines to peace: **'if they incline to peace, incline to it'** (8:61) - peace is the default, war the exception.

Comparison with the **UN Charter**: both prohibit aggressive war (Charter Art. 2(4)) and permit self-defense (Art. 51); Islam adds the authority and intention conditions and the explicit peace preference. **Baghy** (armed rebellion against legitimate authority) is condemned and may be fought only to restore order, with reconciliation the goal (49:9). **Hirabah** (terrorizing/waging war against society - 5:33) covers what modern law calls terrorism: classical punishments target those who 'spread corruption' by killing and robbery - mainstream scholars apply hirabah to terrorist atrocities, denying them any jihad claim.

SECTION SUMMARY

Islamic jus ad bellum: defense, repelling aggression, ending persecution, aiding the oppressed - with peace as the standing preference (8:61). Rebellion and terrorism fall under baghy/hirabah, not jihad.

5. Jus in Bello in Islam: Conduct in War

LEARNING OBJECTIVES

- List the Prophet's rules of warfare
- Explain Abu Bakr's ten instructions
- Compare with IHL principles

The Prophet (peace be upon him) forbade killing **women, children, the elderly, monks and non-combatants**; forbade **mutilation** (muthlah); forbade killing **animals** wantonly and

destroying **crops/trees**; forbade **treachery** (ghadr) - 'do not be treacherous' - and killing **emissaries/diplomats**; and commanded **good treatment of captives** ('feed them from what you eat' - the Qur'an praises feeding captives, 76:8). These were battlefield orders, not pious wishes.

Abu Bakr's ten instructions to Usama's army (the locus classicus of Islamic jus in bello): do not kill women, children or the aged; do not cut fruit trees; do not destroy buildings; do not slaughter animals except for food; do not burn date palms; do not be treacherous or cowardly; leave monks in monasteries unharmed; and offer Islam/terms before fighting. **Umar** continued this discipline. The parallels with IHL are striking: **distinction** (non-combatant immunity), **proportionality** (no excess destruction), **prohibition of perfidy**, and **humane treatment of prisoners** - fourteen centuries before Geneva.

SECTION SUMMARY

Prophetic rules + Abu Bakr's ten instructions = Islamic jus in bello: non-combatant immunity, no mutilation/treachery, protected property and worship, humane captives - anticipating Geneva's core.

6. Protection of Civilians and Civilian Objects

LEARNING OBJECTIVES

- Explain the principle of distinction
- Define military objectives
- Discuss proportionality and precautions

Distinction (API Art. 48, customary): parties must **always distinguish** combatants from civilians and military objectives from civilian objects, directing attacks only at the former. **Civilians** are all persons not in the armed forces; they lose protection only **'for such time as they directly participate in hostilities'** (the DPH rule - e.g. firing a weapon, not merely sympathizing). **Military objectives** (API Art. 52): objects making an effective contribution to military action whose destruction offers a definite military advantage - a tank factory yes; a school no (unless misused).

Proportionality (API Art. 51/57): attacks are prohibited where expected civilian harm would be **excessive relative to the concrete military advantage** - the balancing test at every targeting decision's heart. **Precautions**: verify targets, choose means minimizing civilian harm, give effective advance warning where feasible, and cancel/suspend if proportionality fails. **Indiscriminate attacks** (untargeted shelling, bombing whole neighborhoods) are war crimes. Islamic law's civilian immunity and ban on excess destruction map directly onto these rules.

■ VERY IMPORTANT

Distinction-proportionality-precaution is the targeting-law trilogy. Exam questions typically pose a scenario (e.g. bombing a market to kill one fighter) and ask you to apply all three.

SECTION SUMMARY

Distinction: target only combatants/military objectives. Proportionality: civilian harm must not be excessive vs. military advantage. Precautions: verify, warn, choose carefully, abort if needed.

7. Prisoners of War and Detainees

LEARNING OBJECTIVES

- Explain POW status and rights (GC III)
- Discuss detention in NIAC
- Compare Islamic treatment of captives

Geneva Convention III: POWs are captured combatants (plus certain others, Art. 4). Rights: humane treatment always; no torture/coercion for information (only name, rank, number required); adequate food, shelter, medical care; no reprisals; correspondence with families; **release and repatriation without delay after hostilities** (Art. 118). POWs may be interned but not punished for lawful fighting - **combatant immunity**.

In **NIAC**, captured fighters lack POW status (no combatant privilege) but Common Article 3 and AP II guarantee humane treatment minima - the legal basis for ICRC detention visits worldwide. **Islamic law**: captives must be fed, clothed and sheltered decently (76:8; the Prophet's practice at Badr - some captives ransomed, some freed for teaching literacy); the ruler may free graciously, ransom, or (classically) enslave - though modern Muslim states, bound by treaty and consensus against slavery, free or exchange prisoners. Torture and humiliation of captives are categorically forbidden.

SECTION SUMMARY

POWs: humane treatment, no coercion, repatriation after war. NIAC detainees: Common Article 3 minima. Islam: feed and honor captives; ransom or free them - torture never.

8. The Wounded, Medical Personnel and Emblems

LEARNING OBJECTIVES

- Explain protection of the wounded and medical services
- Describe the protective emblems
- Discuss humanitarian access

Geneva Conventions I & II: the wounded, sick and shipwrecked must be **collected and cared for without discrimination**; **medical personnel, units and transports** are protected and must be respected - attacking hospitals is a grave breach. The **emblems** - Red Cross, Red Crescent, and Red Crystal (Protocol III, 2005) - mark protection; **misuse/perfidy** (e.g. faking protected status to attack) is a war crime. Medical ethics continue in war: treat by urgency, not affiliation.

Humanitarian access: parties must allow impartial relief (food, medicine) for civilians in need, subject to control arrangements - starvation of civilians as a method of warfare is prohibited (API Art. 54; Rome Statute war crime). Islamic precedent: the Prophet's care for the wounded of both sides after battles; classical jurists protected physicians and the injured. Modern applications: ICRC/UN aid corridors, deconflicted hospitals in Syria, Gaza and Ukraine - and the legal battles over blockades and siege starvation.

SECTION SUMMARY

Wounded and medical services are inviolable; emblems mark that protection and must never be misused. Starvation as a weapon and blocking relief are prohibited - in Geneva law and Islamic ethics alike.

9. Means and Methods: Weapons Law

LEARNING OBJECTIVES

- Explain the prohibition of unnecessary suffering
- Survey banned/restricted weapons
- Discuss Islamic views on indiscriminate weapons

The **Hague** principle: the right to injure the enemy is **not unlimited** - weapons causing **superfluous injury or unnecessary suffering** are banned (Hague Regulations Art. 23; API Art. 35). Bans/restrictions: **poison and chemical weapons** (1925 Protocol, CWC 1993); **biological weapons** (BWC 1972); **expanding bullets**; **blinding lasers** (1995 Protocol); **anti-personnel mines** (Ottawa 1997); **cluster munitions** (2008). **Nuclear weapons:** the ICJ's 1996 advisory opinion found their use 'generally contrary' to IHL - disarmament remains contested.

Islamic jurisprudence anticipated indiscriminate-weapon concerns: classical scholars debated **hiraq** (incendiary attacks) and **manjaniq** (catapults into fortified towns risking non-combatants) - permitting military necessity but restricting excess, and the Prophet forbade **muthlah** and wanton destruction. Contemporary Muslim scholars overwhelmingly condemn **WMD** (weapons of

mass destruction) as violating distinction and proportionality - e.g. fatwas against nuclear weapons; Pakistan's own doctrine debates occur within this ethical frame. **New technologies** - autonomous weapons, cyber warfare (Tallinn Manual), incendiary drones - test both systems.

SECTION SUMMARY

Weapons law bans what causes superfluous suffering or cannot discriminate. Islamic law's necessity-and-restraint logic converges with modern bans - most clearly in Muslim scholarly condemnation of WMD.

10. Non-International Armed Conflicts

LEARNING OBJECTIVES

- Explain Common Article 3
- Summarize Additional Protocol II
- Apply to internal conflicts

Most modern wars are **NIACs** (civil wars, insurgencies). **Common Article 3** (in all four Conventions) is the 'mini-convention': it requires humane treatment **without adverse distinction** for those not fighting - no murder, torture, hostage-taking, or unfair trials - and care for the wounded. It binds **states and organized armed groups alike** and applies regardless of recognition or reciprocity.

Additional Protocol II (1977) develops CA3 for higher-intensity NIACs (responsible command, territorial control): fair-trial guarantees, protection of medical duties, and prohibitions on forced displacement and collective punishment. Below the NIAC threshold, **internal disturbances** (riots) are governed by human rights law, not IHL. Islamic parallel: the rules of **baghy** - fighting rebels with restraint, no pursuit of the fleeing, no killing the wounded, no looting, and immediate reconciliation (49:9; Ali's practice at the Camel and Siffin) - an indigenous NIAC law of striking modernity.

SECTION SUMMARY

NIACs are governed by Common Article 3's humane-treatment minimum plus AP II. Islam's baghy rules - restraint, no finishing the wounded, swift reconciliation - are its own NIAC law.

11. Implementation, Accountability and Pakistan

LEARNING OBJECTIVES

- Explain IHL enforcement mechanisms
- Describe war crimes and the ICC
- Note Pakistan's IHL position

Enforcement: **state responsibility** (compensation, Art. 91 API); **grave breaches** regimes (universal jurisdiction - any state may try); **fact-finding** (IHFFC); ad hoc tribunals; and the **ICC** (war crimes: Art. 8 - willful killing, torture, targeting civilians, disproportionate attacks, using child soldiers). **Command responsibility**: commanders are liable for subordinates' crimes they knew or should have known of and failed to prevent. **No superior-orders defense** for manifestly unlawful orders.

Pakistan: party to the Geneva Conventions (1951) and AP I/II (with declarations); Geneva Conventions implementing legislation exists; the military's legal branch trains in IHL; Pakistan contributes heavily to **UN peacekeeping** (where IHL/IHRL frame conduct). Domestically, counter-terrorism operations are framed under constitutional and criminal law; scholars debate NIAC characterization of the former FATA conflict. Pakistan has **not** ratified the Rome Statute - like the US, India and others - citing sovereignty concerns, while supporting ad hoc accountability.

SECTION SUMMARY

IHL is enforced via grave breaches, universal jurisdiction, command responsibility and the ICC. Pakistan is a Geneva party and major peacekeeper; ICC membership remains declined.

12. Exam Pointers

High-yield topics

- Definitions: IHL, Geneva vs Hague law, IAC vs NIAC, lex specialis, siyar, jihad (greater/lesser), baghy, hirabah.
- Principles: distinction, proportionality, precaution, military necessity, humanity - with scenario application.
- Islamic jus ad bellum: 22:39, 2:190, 8:61; authority condition; peace as default.
- Islamic jus in bello: Prophetic prohibitions; Abu Bakr's ten instructions - map each to a Geneva rule.
- POW rights (GC III essentials); Common Article 3 text-points; AP II scope.
- Weapons: unnecessary-suffering rule; CWC/BWC/Ottawa/Cluster Munitions; Islamic view of WMD.
- Comparisons: Islamic civilian immunity vs distinction; baghy rules vs CA3/AP II; UN Charter Art. 2(4)/51 vs Qur'anic permissions.

- Pakistan: Geneva party status, peacekeeping, ICC non-ratification.

SECTION SUMMARY

Master the parallel structure: for every IHL rule, know its Islamic counterpart and one verse or precedent. Scenario questions test application of the targeting trilogy and POW rules.