

## Comparison of International Humanitarian Law And Islamic Law In The Use of Weapons At Sea And On Land

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### ABSTRACT

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#### KEYWORDS

Near regulation, ocean helpful, Islamic conflict regulation

This lawful examination intends to dissect the adequacy of limitations on the utilization of weapons in struggle in the sea by looking at two legitimate points of view to be specific Worldwide Philanthropic Regulation and Islamic Conflict Regulation. The composing technique utilized in this lawful exploration is prescriptive doctrinal or standardizing with a near way to deal with regulation, verifiable methodology and calculated approach. Wellsprings of legitimate materials utilized by specialists are essential and optional legitimate materials.

The consequences of this legitimate examination show that: To start with, the ongoing furnished struggle, particularly in the ocean region, is at this point not ready to safeguard the two warriors and noncombatants in light of the fast improvement of metallurgical and military regulation so casualties experience inordinate and gigantic wounds. Furthermore, despite the fact that Islamic conflict regulations have not been refreshed for quite a while and are focused on land fighting, the components of insurance and limitations on the utilization of their weapons are powerful and are still exceptionally important for use in both land and ocean clashes.

### 1. Introduction

The activities of the Chinese state to make nine scramble line one-sided claims have as of late been causing military strains and upsetting security soundness in the Asia-Pacific locale (Monitoring and Cronin, 2020). This nine scramble line covers the whole South China Ocean (LCS), portions of the East China Ocean (LCT), to a few regions in the Pacific Sea. This strain causing a weapons contest in the oceanic field in the LCS and LCT locales, particularly the nations straightforwardly engaged with the contention like the US, China, Japan, South Korea, Australia, Vietnam, and the ASEAN nations inside its region straightforwardly contiguous the South China Ocean the two its littoral region and the Monetary Zone Selective (EEZ) including Indonesia, where a little piece of the Natuna waters is guaranteed by China. With this weapons contest, it is expected that it will expand and prompt conflict open among China and different nations in the locale.

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The law of ocean combat has to be recharged given how quickly innovation and military doctrine are developing, particularly in the maritime realm. Invention in rocketry, torpedoes, and lasers, Concerns about mass extinction are raised by autonomous cars, etc. across vast, unregulated areas. Modifications to the previous military maxim Sticking to a strictly military strategy has led to a Full-scale battle where defeats from Regular people were regularly referred to as regular people and could never be excluded again. Warriors fight on purpose and occasionally under orders from the highest levels of authority.

## **2. Literature Review**

### **2.1 Comparative Legal Overview**

Toward the finish of the nineteenth hundred years and toward the start of the 20th hundred years French legal counselor Raymond Saleilles and that's what others saw Similar regulation can be utilized as a device to get to the next level homegrown regulation in France and its legitimate tenet, as a method for improving the legitimate methodology established in analytical understanding. Then in the 20th 100 years, numerous researchers in Europe believe similar regulation to be a sort of instrument which is expected to orchestrate the law in European Association regulation. The world's fundamental rules are products of human history. The success of colonization are largely attributable to the purposeful acceptance of general sets of rules and ideas from other general sets of laws. For example, changes in the framework of the laws of the communist nations of Eastern Europe transformed into a framework regulation that adheres to the ideas of Western European regulation during the modernization of the law that was completed in Indonesia by changing from a common regulation overall set of laws to a cross breed arrangement of regulation, the modernization of Japanese and Egyptian regulation taking on the western overall set of laws model.

### **2.2 Overview of Humanitarian Law**

Global Helpful Regulation starts by and by practice in a field that has kept on developing throughout the long term the entire world. The regulations and customs of battle as part of this part of worldwide regulation in the past was not applied by the entire armed force and not every one of the principles are something similar. Yet, that example tracked down something very similar, to be specific the presence of restriction on troop conduct against soldiers and the non military personnel populace, essentially corresponding to fighter honor idea. The items in these guidelines for the most part contain denial of pointless or discourteous way of behaving. this standard perceived composed by military journalists alone, yet in addition frequently impacted by the compositions of strict pioneers.

objectives of global philanthropic regulation is to safeguard the non military personnel populace and certain articles that safeguarded in outfitted struggle. The means are expanding completed in the real changes and advancements that happen at present in the execution of worldwide helpful regulation in struggle present day equipped. This advancement changed the basics regularizing arrangements and all the while or method of policing worldwide helpful regulation both at the public and global levels worldwide.

The concept of differentiation is the cornerstone of international humanitarian law. This is based on the admission made in the explanation of the St. Petersburg Declaration, which states that "weakening the enemy's military strength is the only legitimate object to be sought by the state to be achieved during the war." While civilians will be provided with public protection to help them fend off military operations-related threats to their safety. Therefore, in order to focus activities solely on military goals, the participants to an armed conflict must constantly discriminate between the civilian population and fighters, as well as between civilian items and those used for military reasons.

## **3. Methodology**

Utilizing regularizing legitimate exploration techniques, investigating library materials from essential and optional regulation in this lawful examination to create the most recent speculations or ideas and contentions in settling another issue, this exploration contrasts regulation and a calculated methodology, the legitimate sources utilized by specialists are essential legitimate materials. for example, the standards of the 1949 Geneva Show and other extra principles and analysts utilizing the Al-Quran and Hadith and optional legitimate materials like logical diaries, books, and site pages and other lawful composing connected with the exploration title.

#### **4. Results and Discussion**

##### 4.1 International Legal Arrangements in Restricting the Use of Weapons in Armed Conflicts at Sea.

Global Philanthropic Regulation (IHL) is a bunch of rules what's more, the standards that apply when an outfitted clash happens its principal object is to safeguard the individuals who don't furnished or individuals who are done partaking in fight as well as planning to restrict means and techniques utilization of weapons in furnished struggle. Ways and methods in limiting war in law International is divided into 2 main branches, namely:

- a. The Law of Geneva or the Law of the Red Cross which means to safeguard regular people and non-soldiers. This regulation is utilized on the period when the fight happened.
- b. Hague regulation has a reason to give limitations on the primary means and devices of the framework weapons during military activities. This regulation is in use when equipped clash is going on.

However, in the setting of limitations on the utilization of this weapon as far as the standard of military interests there are deviations and botches that so far have been disregarded and neglected so need improvement. As an illustration from Burrus Carnahan, when during the hour of President Abraham Lincoln requested to the confederate US troops not to obliterate "individual property" on the time warrant there was a nationwide conflict. During the Korean conflict seethed, as a matter of fact, US troops with South Korea and its partners causing harm to the food supply with going after and annihilating the state-claimed water system dams North Korea is essentially not considered as a thing military requirements. With the goal that Burrus Carnahan finished up that :

"military need is generally viewed today as a slippery convention conjured to legitimize practically any shock. Thus, the guideline has not been permitted to assume the imaginative part that it is fit for playing."

Today, inside the furnished associations, there was commotion in the utilization of which tenet there are decisions that make it hard for soldiers to pick between warrior incredible skill and monetary elements battle the board. On the expert side of warriors there is an accentuation on thinking about lawful standards compassionate like the helpful side, recognizes warriors with non-warriors, etc. While on the monetary financial variables of battle the board exist arraignment to limit use and consumption military assets fully expecting the term fight long and extended approach to battling via the most limited, simplest and least spend costs a ton. Recognizing soldiers and noncombatants is one of a misuse of assets military. This is on the grounds that it requires a long investment to recognize it, it takes a ton of staff and military gear to catch him. This can cause takes a chance on the soldier side like the event of troop setbacks Troop compensations expand, fuel costs for military vehicles.

##### 4.2 Comparison of Humanitarian Law and Islamic Law of War

The fundamental standards of the Islamic Law of War use force sparingly (restricted) just to dispose of the adversary's hostility and furthermore just utilize his military against the power or individuals who make battle on Islam, or probably few would hope to do such a demonstration. While the standards There are three sorts of Global Compassionate Regulation, in particular the Standard of Military Interests (Military Need), Standards of Humankind (Humanity), Standards of Valor (Chivalry). Worldwide Philanthropic Regulation and Islamic Conflict regulation have a few likenesses like the presence of political impact, and the rule of constraint or differentiation rule. The presence of political impact causes an extremely key issue inside foundation of philanthropic regulation. Since when the conflict was whenever the conflict first was battled on the substance of this world, all are indistinguishable from political issues and the champ of the conflict which figures out what regulation will apply some other time when the conflicts will come. Personal responsibility or egocentricity is one of the wellsprings of relationship struggle worked between nations, causing an expansion in the requirement for shield the nation with the goal that the country's tactical power likewise increments and triggers social struggle.

The objectives and their inclinations are contained in a the public strategy structure of every nation has a propensity raises the potential for struggle. This is because of the power that is in claimed by a country to give strategies that are political in nature which brings about potential struggle itself. existing compassionate regulation at present shaped based on the experience of nations in the west when the conflict in Europe with the goal that the arrangement of compassionate regulation was impacted by legislative issues on European soil. In the mean time, Islam, since it was shaped on the propensity for the Bedouins, used to battle free ashore.

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According to the differentiation principle, all people who fall under the category of non-combatants must be safeguarded from the repercussions of war, even if the opponent has no real possessions in respect to military hardware. Because there is no compulsion when it comes to matters of heart belief, war and force are prohibited methods for advancing religion (QS. Al-Baqarah / 2: 256). Islamic scholars and jurists thus concur that killing is prohibited. Aren't combatants like women, children, religious leaders, the elderly, mentally sick, farmers, fisherman, workers, slaves, persons with impairments, and so forth, prohibited from murdering.

#### 4.3 The use of weapons during armed conflict in International Humanitarian Law

War or equipped struggle is the last choice settle on choices inside the principles of worldwide regulation. Objective than war is to guarantee the terrible side submits altogether to the side that won the conflict as it were kill and annihilate the military of the opposite side. In spite of the fact that there is a component of cruel killing, yet at the same a number the state attempts to incorporate empathetic components determined to diminish the mercilessness and torment of casualties both from military to non-military components. One way is by restricting and disallowing the utilization of various weapons due to the qualities of these weapons which have high damaging power high over a huge region that is challenging to control.

The first The Hague conference in 1899 introduced a ban on the use of poison gas weapons, a prohibition of the use of expanding bullets like shrapnel bullets, and a release projectile that can inflate like a balloon. This is when prohibitions and restrictions on the use of these weapons started. However, there are now a number of new weapon types that are likewise forbidden from use in armed combat, some of which are utilized by the Naval Navy.

The Saint Petersburg Conference, which also suggested outlawing the use of dum dum bullets, is referenced when commissioning part to commission one The Hague Conference 1899 investigates the dum dum bullet. Delegates felt that the dum dum bullets were akin to explosive projectiles in their effects. Which was the subject of discussion at this conference: a bullet's projectile dum dum destroys nerve tissue, perhaps worsening the pain of the afflicted.

H=Military technology has advanced significantly as a result of the realization that large-scale exterior wounds caused by explosive power are preferable to smaller ones. The Hague Convention aims to eradicate the harm caused by repeated major external wounds. This treaty therefore has a component related to human health as well as humanitarian and military objectives.

Because it was prohibited by international law under the Hague agreement of 1899, sow missiles are no longer used by conventional armed troops. However, that does not imply that the projectile of the bullet has entirely left the firing position. These bullets are still used in specialized military forces during operations like anti-terror surgery. In order to eliminate assailants and prevent more civilian fatalities, law enforcement personnel are typically deployed. With the moniker "shotgun," this projectile has developed into an organic weapon of law enforcement agencies.

## 5. Conclusion

Conclusions that can be drawn based on the entire explanation of regulatory provisions on comparative humanitarian law International and Islamic Law are as follows:

- 1) War incorporates the laws of war and helpful regulation aftereffect of political arrangement. This political strategy was conceived out of war thought or philosophical conflict where the victor of the conflict can b decide the authoritative document of battle as indicated by the triumphant philosophy in order to rebuff the terrible gatherings by the law of the triumphant party.
- 2) Global Philanthropic Regulation and Islamic Regulation don't restrict war, in light of the fact that in Global Philanthropic Regulation conflict is incorporated one final way that is legitimate and can be utilized for take care of an issue. Global Helpful Regulation set to make war more altruistic. Islam is a religion who love harmony. Islamic regulation characterizes battle as the conflict pursued by Muslims to safeguard religion and Muslims from adversary assaults bringing about war in the meaning of Islam is a conflict that is cautious.
- 3) Global Compassionate Regulation confines the utilization of weapons to battling adrift through numerous legitimate principles like Cave shows Haag 1907, Geneva Show 1949 concerning fighting adrift, Convention beneficial 1977, and UNCLOS 1982. These principles are fundamentally is to free each party to utilize all structures weapons during ocean fights.

## **References**

- Ahmed Al-Dawoody.(2019). Hukum Perang Islam.
- Daniati, N. P. E., Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Status Hukum Tentara Bayaran Dalam Sengketa Bersenjata Ditinjau Dari Hukum Humaniter Internasional. *Jurnal Komunitas Yustisia*, 3(3)
- Gunawan, Y., & Pratama, N. B. (2020). Diseminasi Hukum Humaniter Internasional Dalam Upaya Menyebarkan Semangat Perdamaian. *Turast: Jurnal Penelitian dan Pengabdian*
- Putra, I. G. S. Y., Mangku, D. G. S., & Yuliantini, N. P. R. (2022). Perlindungan Hukum Terhadap Anak Korban Perang Dalam Perspektif Hukum Humaniter Internasional (Studi Kasus Tawanan Perang Anak Palestina Oleh Israel). *Jurnal Komunitas Yustisia*, 5(2)
- Sari, I. (2021). Tinjauan Yuridis Hubungan Kejahatan Perang Dan Hukum Humaniter Internasional. *Jurnal Ilmiah Hukum Dirgantara*, 11(2).
- Widayanti, I. G. A. S., Mangku, D. G. S., & Yuliantini, N. P. R. (2022). Penggunaan Tentara Anak Dalam Konflik Bersenjata Ditinjau Dari Perspektif Hukum Humaniter Internasional (Studi Kasus: Konflik Bersenjata di Sri Lanka). *Jurnal Komunitas Yustisia*, 2(2).
- Zayyid bin Abdeel Karem al-zayyid.(2008). Pegantar Hukum Humaniter internasional dalam islam, (ICRC).Indonesia