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PREVENTION OF DISPLACEMENT DURING ARMED CONFLICT UNDER THE ISLAMIC LAW

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ABSTRACT

The spate at which armed conflicts occur in different parts of the world is worrisome. It is so disturbing that many of these conflicts are purportedly carried out by extremists to perpetrate criminality in the disguise of jihād thereby giving a negative imputation to Islam. One obvious effect of these conflicts is displacement at its alarming rate. It has thus brought about confusion in the eyes of many advocates of human rights and many experts in the field of humanitarian law on the position of Islamic Law on the prevention of displacement. Upon sampling opinions on the position of Islamic law with respect of the humanitarian affairs of people, this study discovered that many people in the field of humanitarian law do not appreciate that there exists humanitarian law under Islamic law even before the

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development of humanitarian law under conventional international law. In view of that, this paper sets to clear many of the misconceptions accorded to jihād under Islamic law regarding displacement. This discourse shall demonstrate how displacement is controlled and managed under Islamic law. This will exhibit the approach of Islamic law to humanitarian affairs of people and clear misconceptions that it has no provision for humanitarian affairs because of the existence of jihād that purportedly leads to humanitarian problems across the world.

Keywords*: Islamic law, jihād, displacement, humanitarian affairs*

INTRODUCTION

Displacement means 'the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised state borders'.[4] The Islamic law concerning armed conflict has put in place many provisions that can be used to control and manage displacement. It must be said that the only armed conflict permissible under Islamic law is *jihād*.[5] There are two kinds of *jihād*: *farḍ kifāyah* and *farḍ 'ayn*. It is *farḍ 'ayn* when it is obligatory for all persons except minors, women, sick and disabled to participate in the struggle[6] whereas it is *farḍ kifāyah* when only parts of the community are given the responsibility of partaking in the fight on behalf of the generality of the community.[7] It must be stressed that if enemies invade the community, it is *farḍ 'ayn* for all members of the community to defend the community. In a situation where it is *farḍ 'ayn* it is forbidden to flee from battle except military retreat.[8] It is also important to state that war must be declared by the recognised *amīr*

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4 Article 1 (I), African Union Convention for Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention 2009).

5 *Jihād* is taken to mean a situation when a person exerts himself and puts in his energy with endurance to strive against injustice and oppression of his enemies. *Jihād fī Sabīl Allāh* is an act of struggling or striving for cause of Allāh. See Muḥammad Subhi Hasan Haalaq, *Fiqh According to the Qur'ān and Sunnah,* trans. Sameh Strauch (n.p.: Dār-us-salām, 2008), 523-524.

6 Muḥammad Subhi Hasan Haalaq, *Fiqh According to the Qur'ān and Sunnah*, 527.

7 Muḥammad Subhi Hasan Haalaq, *Fiqh According to the Qur'ān and Sunnah*, 527.

8 Qur'ān 8 (Surah al-Anfāl) verse 6.

(i.e. the head of state) publicly before the commencement of the armed conflict. The troops are to be arranged and banners or flags must be carried. Adherence to the principles of *jihād* is very important to all fighters because they operate as rules of engagement. In a situation where these rules are observed during armed conflict, displacement of persons cannot take place. Therefore, this paper shall expose to readers the rules guiding *jihād* to prevent displacement.

JIHĀD IN ISLAMIC LAW

Jihād is struggle or striving in the cause of Allāh.[9] *Jihād* is of two kinds; *farḍ kifāyah* and *farḍ 'ayn*. *Farḍ kifāyah* occurs when part of the community can make struggle on behalf of other members of the community. *Farḍ 'ayn* occurs where everybody must take part in the struggle.[10] Where enemies attack the Muslims land, all the people of the land must come out and fight the aggressors. In this kind of situation, *jihād* is *farḍ 'ayn*. The struggle against aggression is always physical and combatant because the aggressors are also combatant and they are determined to cause the aggression. The Glorious Qur'ān says:

يَا أَيُّهَا الَّذِينَ آمَنُوا قَاتِلُوا الَّذِينَ يَلُونَكُمْ مِنَ الْكُفَّارِ وَ لْيَجِدُوا فِيكُمْ غِلْظَةً وَ اعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ ﴿١٢٣﴾

"O ye who believe! fight the unbelievers who gird you about, and let them find firmness in you: and know that Allāh is with those who fear Him."

(Surah al-Tawbah, 9: 123)

If the leader of Muslims calls upon Muslims to fight against the aggressors, all and sundry except those exempted must fight (the aggressors). The Glorious Qur'ān says:

يَا أَيُّهَا الَّذِينَ آمَنُوا مَا لَكُمْ إِذَا قِيلَ لَكُمُ انْفِرُوا فِي سَبِيلِ اللَّهِ اثَّاقَلْتُمْ إِلَى الْأَرْضِ أَ رَضِيتُمْ بِالْحَيَاةِ الدُّنْيَا مِنَ الْآخِرَةِ فَمَا مَتَاعُ الْحَيَاةِ الدُّنْيَا فِي الْآخِرَةِ إِلاَّ قَلِيلٌ ﴿٣٨﴾

[9] Asma Afsaruddin, *Striving in the Path of God: Jihad and Martydom in Islamic Thought* (USA: Oxford University Press, 2013), 10.

[10] Ramlan, Tengku Erwinsyahbana & Nurul Hakim, 'The Concept of *Jihad* in Islam', *Journal of Humanities and Social Science*, vol. 21/9 (2016): 35-42.

> *"O ye who believe! what is the matter with you, that, when ye are asked to go forth in the cause of Allāh, ye cling heavily to the earth? Do ye prefer the life of this world to the Hereafter? But little is the comfort of this life, as compared with the Hereafter."*
>
> (Surah al-Tawbah, 9: 38)

Jihād is enjoined on the male, matured, sane, healthy Muslims. The Glorious Qur'ān says:

> لَيْسَ عَلَى الضُّعَفَاءِ وَ لاَ عَلَى الْمَرْضَى وَ لاَ عَلَى الَّذِينَ لاَ يَجِدُونَ مَا يُنْفِقُونَ حَرَجٌ إِذَا نَصَحُوا لِلَّهِ وَ رَسُولِهِ مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ وَ اللَّهُ غَفُورٌ رَحِيمٌ ﴿٩١﴾
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> *"There is no blame on those who are infirm, or ill, or who find no resources to spend (on the cause), if they are sincere (in duty) to Allāh and His Messenger: no ground (of complaint) can there be against such as do right: and Allāh is Oft-forgiving, Most Merciful."*
>
> (Surah al-Tawbah, 9: 91)

Blind and lame persons are exempted from the combatant *jihād*. The Glorious Qur'ān says:

> لَقَدْ رَضِيَ اللَّهُ عَنِ الْمُؤْمِنِينَ إِذْ يُبَايِعُونَكَ تَحْتَ الشَّجَرَةِ فَعَلِمَ مَا فِي قُلُوبِهِمْ فَأَنْزَلَ السَّكِينَةَ عَلَيْهِمْ وَ أَثَابَهُمْ فَتْحاً قَرِيباً ﴿١٨﴾
>
> *"Allāh's good pleasure was on the believers when they swore fealty to thee under the Tree: He knew what was in their hearts, and He sent down tranquility to them; and He rewarded them with a speedy victory."*
>
> (Surah al-Fatḥ, 48: 18)

It is desirable that parents give consent to their children to partake in the armed struggle when the *jihād* is *farḍ kifāyah* but the moment *jihād* becomes *farḍ 'ayn*, permission of parents may not be required.[11] Muslims are not to seek help from hypocrites, and infidels except where they are

[11] Al-Bukhārī, *Summarized Sahih Al-Bukhari*, trans. Muḥammad Muḥsin Khān (Sa'ūdī 'Arabiyyah: Dar al-Salām Publisher, 1994), 611, ḥadīth no. 11288.

servants under Muslims.[12] The following conditions must be fulfilled before *jihād* becomes *farḍ 'ayn*:

a) *Al-ikhlāṣ lillāhi*

b) *Al-quwwāt wa al-qudrāt*

c) Declaration of war by the leader

WAR DISPLACEMENT

Displacement has been referred to as an act of involuntary movement of people due to conflicts, natural hazards or environmental disasters, chemical or nuclear disasters, famine, or development project.[13] This is referred to as forced displacement. It is also referred to as forced eviction; these are acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.[14] The notion of forced evictions does not apply to evictions carried out both in accordance with the law and in conformity with the provisions of international human rights treaties. Forced eviction does not automatically mean arbitrary displacement, but can be the first step leading to it.[15]

Internal displacement means 'the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised state borders'.[16] Internally displaced persons (IDPs) refer to 'persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally

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12 Al-Bukhārī, *Summarized Sahih Al-Bukhari*, 584-586, ḥadīth no. 1214-1215.

13 N.a., 'National Policy on Internally Displaced Persons (IDPs) in Nigeria' *Federal Republic of Nigeria*, August 2012, https://www.refworld.org/pdfid/5a7ae2324.pdf, accessed on 04 October 2023.

14 UN Basic Guideline on Development-based Eviction and Displacement.

15 N.a., 'National Policy on Internally Displaced Persons (IDPs) in Nigeria'.

16 Article 1 (I), African Union Convention for Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention 2009).

recognised state border.'[17] Internal displacement is a situation where people are forced to migrate from one settlement to another within the same nation and such movement is coerced, involuntary in order to seek asylum from an unsecured environment. It must be made clear that those that voluntarily move from one place to another for economic, social or political reasons are not fit to be regarded as displaced persons. It is only those that are forced to abandon their places of abode or flee because of armed conflict, human rights abuse and violation, and other natural and human made disasters that are suitable for the situation of internal displacement. It is apparent that IDPs are not refugees because their situation is within their country.

DEVELOPMENT OF LEGAL FRAMEWORK ON DISPLACEMENT

International Humanitarian Law is a law that is put in place to address the humanitarian problems that arise or likely to arise during armed conflict at both international and non international levels.[18] It is also described as principles and rules which set limitations to the use of violence during armed conflicts, in order to:[19]

a) Spare those persons (civilians) not directly involved in hostilities and those who are no longer involved.

b) Limit the effects of violence (even to 'combatants') to the amount necessary for the purpose of war.

c) Protect those who provide aid services during armed conflict.

International Humanitarian Law may betreaties, conventions or customs established particularly to address humanitarian problems that arise directly from international or non-international armed conflicts.[20] On humanitarian grounds, the rules of the International Humanitarian Law set to give

[17] Article 1 (k), Kampala Convention 2009.

[18] Antoine A. Bouvier & Harvey J. Langholtz, *International Humanitarian Law and the Law of Armed Conflict* (Williamsburg, USA: Peace Operation Training Institute, 2012). Definition elaborated by the International Committee of the Red Cross and generally accepted. Source: Commentary on the Additional Protocols of 8 June 1977, ICRC, Geneva, 1987, p. xxvii.

[19] Antoine A. Bouvier, *Introduction to International Humanitarian Law* (IHL), ICRC Geneva.

[20] Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (New York: Cambridge University Press, 2016).

protection to persons and properties that are prone to be affected by the armed conflict by way of limiting the conflicting parties' rights to choose their methods, modes and means to warfare. International Humanitarian Law (IHL) is also called Humanitarian Law and it is regarded in the military parlance as 'Laws of Armed Conflict' (LOAC) or 'Laws of War'.

Laws of war are as old as war itself. Even though not properly codified, in the ancient time, wars were also guided by rules of customs which are todays classified as humanitarian because the said customs were made to serve the same purpose with the humanitarian law. Different states and people spontaneously generated humanitarian standards at their respective places with a limited means of communicating each other thereby bringing about a spectacular phenomenon that lends credence to the argument concerning:

a) The need of rules that would be applicable to armed conflicts.[21]

b) Existence of feelings that in certain circumstances human beings be it friends or foes must be protected and respected.[22]

Scholars generally agree that the advent of modern International Humanitarian Law (IHL) was in 1864 with the adoption of the first Geneva Convention.[23] It must be pointed out that the rules contained in the first Geneva Convention were not totally new, many of the rules were already in existence in the International Customary Law as far back as 1000BC although the rules in the International Customary Law might not be made for the purpose of humanitarian rather economic.[24]

In 1864 in Geneva Convention, as a result of Dunant's proposition, there were 16 states represented. They adopted the 'Geneva Convention of 22nd August 1864 for the Amelioration of the Condition of the Wounded Armies in the Field.'[25] Its result was an international treaty open to universal ratification (i.e., an agreement *not* limited to a specific region or

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[21] Alexander Thurston, *Boko Haram: The History of an African Jihadist Movement* (Princeton, New Jersey: Princeston University Press, 2018).

[22] Alexander Thurston, *Boko Haram: The History of an African Jihadist Movement*.

[23] Lindsey C., Bruno D., Jean-Marie H., La Haye E. and Niebergall-Lackner H., *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)* (Padstow Cornwall, United Kingdom: T.J. International Ltd).

[24] A.A. Kolajo, *Customary Law in Nigeria through the Cases* (Lagos: Spectrum Books, 2000).

[25] A.A. Kolajo, *Customary Law in Nigeria through the Cases*.

conflict, with binding effects on the States that would formally accept it) in which states agreed to voluntarily limit their own power in favour of the individual. For the first time, armed conflict became regulated by a written general law.[26] The effect of the Geneva Convention of 1864 was felt 18 years after its adoption.[27]

The evolution in the 1864 convention is characterized as follows[28]:

a) The constant enlargement of the categories of war victims protected by humanitarian law (military wounded sick and shipwrecked; prisoner of war; civilians in occupied territories; the entire civilian population), as well as the expansion of the situations in which victims are protected (international and non-international armed conflicts);

b) The regular updating and modernisation of the treaties to account for the realities of recent conflicts. For example, the rules protecting the wounded adopted in 1864 were thus revised in 1906, 1929, 1949, and 1977 (critics have therefore accused IHL of being always 'one war behind reality').

c) Two separate legal currents have, up until 1977, contributed to this evolution:

   i) The **Geneva Law**[29], mainly concerned with the protection of the victims of armed conflicts – *i.e.*, the noncombatants and those who no longer take part in the hostilities; and

   ii) The **Hague Law**[30], whose provisions relate to limitations and prohibitions of specific means and methods of warfare.

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[26] Green, Contemporary Law, Chapter 2. See also the Report of the UN Secretary General on the Statute for the International Criminal Tribunal for the former Yugoslavia, Security Council Resolution 808 (1993) and 823 (1993).

[27] Green, Contemporary Law, Chapter 2. See also the Report of the UN Secretary General on the Statute for the International Criminal Tribunal for the former Yugoslavia, Security Council Resolution 808 (1993) and 823 (1993).

[28] Siobhan Wills, 'The Geneva Conventions: Do they Matter in the Context of Peacekeeping Missions?' in *Do the General Conventions Matter?* eds. Mathew Evangelista & Nina Tannenwald (United Kingdom: Oxford University Press, 2017) 303-322.

[29] Yutaka Arai, 'Law-Making and the Judicial Guarantees in Occupied Territories' in *The 1949 Geneva Conventions*, eds. Andrew Clapham, Paola Gaeta & Marco Sassoli (United Kingdom: Oxford University Press, 2015) 1421-1454.

[30] Fausto Pocar & Costanza Honorati, eds., The Hague Preliminary Draft Convention on Jurisdiction and Judgment', *Proceedings of the Round Table*

These two legal currents were practically merged with the adoption of the two Additional Protocols of 1977.[31]

In 1868, the Alexander III, the Tsar of Russia convened a Conference in which the Declaration of St. Petersburg was made and out of which the 'Hague Current'[32] originated. Prohibition of the use of explosive bullets was made and some principles of conduct of hostilities were also spelt out in the declaration.

In 1899, the 'First Peace Conference' [33] was convened in the Netherlands by another Tsar, Nicholas II, in The Hague. The conference among other things prohibited the following:

a) the launching of projectiles from balloons;

b) the use of poisonous gases;

c) the use of dumdum bullets.

It was at the Conference that 'Marten Clause' was made which provides thus:

> *"until a more complete code of law of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as the result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.*[34]*"*

Likewise in the 1899 Conference, the Humanitarian Rules of Geneva Convention of 1864 were extended to the victims of naval conflicts.[35] This

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held at Milan University (Casa Editrice Dott. Antonio Milan, 2005, 15 November 2003).

[31] Fausto Pocar & Costanza Honorati, eds., The Hague Preliminary Draft Convention on Jurisdiction and Judgment'.

[32] Fausto Pocar & Costanza Honorati, eds., The Hague Preliminary Draft Convention on Jurisdiction and Judgment'.

[33] Frits Kalshoven, ed. *The Centennial of the First International Peace Conference: Reports and Conclusions* (Netherlands: Kluwer Law International, 2000).

[34] This is one of the major achievements of the conference. It is named after the initiator of the principle F. Martens, the legal adviser of the Russian Tsar.

[35] Frits Kalshoven, ed. *The Centennial of the First International Peace Conference: Reports and Conclusions*.

adaptation is included at the origin of the present Second Geneva Convention.

In 1906, the Geneva Convention of 1864 that protected the wounded and the sick members of armies in the field was revisited and revised.[36] This offered the Conference the opportunity for expansion of the convention to 33 articles from the original 10, though the principles are the same.[37]

In 1907, a second Peace Conference was convened in The Hague.[38] On this occasion, the Conventions of 1899 were also revisited and revised and some new rules were introduced.[39] These new rules include but not limited to: Rules on Naval Warfare, Definition of Combatants, Rules on the Rights and Duties on Neutral Powers, Rules on Military Occupations, as well as Rules in respect of Prisoners of War (POW).[40] Swiss Confederation also convened a diplomatic conference in Geneva in 1929 the results of which were:[41]

a) The second revision (after 1906) of the 1864 Convention. This Convention was again modified. Among the new provisions, mention should be made of the first official recognition of the emblem of the Red Crescent. Although that emblem had been used as early as 1876, it was only in 1929 that it was authorised by law;

b) The adoption of the 'Convention relative to the treatment of Prisoners of War' (also a result of the First World War). Partially examined during the Peace Conference of 1899 and 1907, this important issue was not deeply studied before 1929.

In 1949, just after the Second World War (note the parallel to World War I and the Conference of 1929), the four current Geneva Conventions

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36 Frits Kalshoven, ed. *The Centennial of the First International Peace Conference: Reports and Conclusions*.

37 Frits Kalshoven, ed. *The Centennial of the First International Peace Conference: Reports and Conclusions*.

38 Frits Kalshoven, ed. *The Centennial of the First International Peace Conference: Reports and Conclusions*.

39 Frits Kalshoven, ed. *The Centennial of the First International Peace Conference: Reports and Conclusions*.

40 Frits Kalshoven, ed. *The Centennial of the First International Peace Conference: Reports and Conclusions*.

41 Frits Kalshoven, ed. *The Centennial of the First International Peace Conference: Reports and Conclusions*.

were adopted.[42] The First (wounded and sick in the field), the Second convention (wounded, sick and shipwrecked at sea) and Third Conventions (prisoners of war), are mainly revised versions of former Conventions.[43] The Fourth Convention, establishing protection for the civilian population, is an entirely new amendment and constitutes the greatest success of the 1949 Conference.[44] Likewise the adoption of the Article 3 which was common to the four Conventions and constitute the 1st international convention application to non-international situations of the armed conflict.[45]

In 1977, after four sessions of diplomatic Conferences, two Additional Protocols to the Geneva Conventions of 1949 were adopted. The First Protocol is related to the protection of victims of international armed conflicts; the second is to the protection of victims of non-international armed conflicts. To some degree, this Second Protocol can be regarded as an enlargement of Article 3 common to the four Geneva Conventions.[46]

In 1980, another important convention was adopted under the UN auspices, the 'Convention on prohibition or restrictions on the use of conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects.'[47] This instrument limits or prohibits the use of mines, booby traps, incendiary weapons, and nondetectable fragments.[48]

In 1993, a comprehensive Convention prohibiting the development, production, stockpiling, and use of chemical weapons was adopted.[49] This

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42 Allan E. Goodman, *The Search for a Negotiated Settlement of the Vietnam War* (The Institute of East Asian Studies, Berkeley: University of California 1986).

43 Allan E. Goodman, *The Search for a Negotiated Settlement of the Vietnam War*.

44 Allan E. Goodman, *The Search for a Negotiated Settlement of the Vietnam War*.

45 Allan E. Goodman, *The Search for a Negotiated Settlement of the Vietnam War*.

46 Allan E. Goodman, *The Search for a Negotiated Settlement of the Vietnam War*.

47 John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention*, ed. Harry M. Flechtner (The Netherlands: Wolters Kluwer Law & Business, 2009).

48 John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention*.

49 John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention*.

treaty supplements the basic prohibition contained in the 1925 Geneva Protocol.[50]

In 1995, a new Protocol, an appendage to the 1980 Convention, was adopted. This new instrument prohibited the use of laser weapons designed to cause permanent blindness.[51] In 1997, a Convention prohibiting the use, stockpiling, production, and transfer of antipersonnel mines was signed in Ottawa.[52]

The statute of the International Criminal Court (ICC) was adopted in Rome in 1998.[53] The mission of establishment of the International Criminal Court (ICC) came to fruition by the collaboratory effort of the international community to ensure that those who commit a crime cannot go without trial by a competent court. The ICC has jurisdiction on the serious international crimes like genocide, war crime, war against humanity, etc.

In 1999, a new Protocol to the 1954 Convention on cultural property was adopted.[54] Protocol II enables the State signatory to the Convention to supplement and reinforce the protection system established in 1954.[55] It clarifies the concepts of safeguarding and respect for cultural property; it spells out new precautions in attacks and against the effects of attacks; and institutes a system of enhanced protection for property.[56]

In 2000, an optional protocol to the 1989 Convention on the rights of the child was adopted.[57] This protocol increases the minimal age for compulsory recruitment from 15 to 18 and directs states to raise the minimum age for voluntary recruitment above 15.[58] The protocol provides

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50 John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention*.

51 John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention*.

52 Williams H. Boothby, *The Law of Targeting* (United Kingdom: Oxford University Press, 2012), 264.

53 Lionel Yee, 'The International Criminal Court and the Security Council' in *The International Criminal Court, The Making of the Rome Statute: Issues, Negotiations and Results*, ed. Roy S. Lee (Boston: Kluwer Law International, 1999) 143-152.

54 Caroline Ehlert, *Prosecuting the Destruction of Cultural Property in International Criminal Law* (Boston: Martinus Nijhoff Publishers, 2014) 54.

55 Caroline Ehlert, *Prosecuting the Destruction of Cultural Property*.

56 Caroline Ehlert, *Prosecuting the Destruction of Cultural Property*.

57 Caroline Ehlert, *Prosecuting the Destruction of Cultural Property*.

58 Caroline Ehlert, *Prosecuting the Destruction of Cultural Property*.

that no armed group should engage the service of any person whose age is below direct state signatories to criminalise same.[59]

In 2003, the international community adopted a treaty to help reduce the human suffering caused by explosive remnants of war and bring rapid assistance to the affected communities.[60] Explosive remnants of war are unexploded weapons such as artillery shells, mortars, grenades, bombs, and rockets left behind after an armed conflict.[61]

In 2005, a diplomatic conference held in Geneva adopted a Third Additional Protocol to the Geneva Conventions.[62] This convention creates additional emblem alongside Red Cross and the Red Crescent. The additional emblem tagged Red Crystal which is free from any religious, political or any other sentiments.[63]

In 2008, governments negotiated and adopted the Convention on Cluster Munitions.[64] The convention prohibits the use, production, stockpiling, and transfer of cluster munitions. The convention directs state signatories to forestall any possible further victims of the use of the weapons.

The United Nations General Assembly adopted a set of guiding principle as an instrument for the prevention and management of internal displacement in 1998.[65] These principles are to be used by all nations all over the world as a guide to all governmental and non-governmental humanitarian bodies on internally displaced persons.

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59 Caroline Ehlert, *Prosecuting the Destruction of Cultural Property.*

60 Robert Kolb & Richard Hyde, *An Introduction to the International Law of Armed Conflicts* (London: Hart Publishing, 2008).

61 Robert Kolb & Richard Hyde, *An Introduction to the International Law*.

62 Robert Kolb & Richard Hyde, *An Introduction to the International Law*.

63 Robert Kolb & Richard Hyde, *An Introduction to the International Law*.

64 Gro Nystuen & Stuart Casey-Maslen, eds. *Oxford Commentaries on International Law: The Convention on Cluster Munitions* (New York: Oxford University Press, 2010).

65 Conor Foley, *U.N. Peacekeeping Operations and the Protection of Civilians: Saving Succeeding Generations* (New York: Cambridge University Press, 2017).

GUIDING PRINCIPLES OF INTERNALLY DISPLACED PERSONS

There are four guiding principles[66] of Internal Displacement as laid down by the UN. The principles are:

1. Equal Rights and Equal Obligation
2. Universal Application
3. Right to seek and enjoy asylum
4. Sovereignty means responsibility

1. Equal Rights and Equal Obligations

This principle emphasises that the IDPs equally have the rights that other people who are not displaced have.[67] They too have criminal and civil liabilities because displacement does not confer immunity on them. They are not to be discriminated against as a result of their displacement. However, the principle identifies four categories of displaced persons[68] that require special attention because they are prone to risk of human rights violations, physical attacks and other protections problems. They are: children, especially unaccompanied minors; women expectant mothers, mothers with young children, and female heads of households; persons with disabilities; and elderly persons.[69]

2. Universal Application

This principle places emphasis on the fact that the existence of the International Customary Law, International Humanitarian Law and International Human Rights Law must be recognised anywhere across the globe by the government, international organisation, humanitarian organisation, all groups including insurgent groups. However, it does not make the insurgent groups lawful or legal. All must provide assistance and protection to the IDPs. The guiding principle does not replace the International Law. It is even derived from the International Instruments on

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66 The principles were postulated by the UN. See p. 9-12 of the guiding principle.

67 Joan Fitzpatrick, ed. *Human Rights Protection for Refugee, Asylum-Seekers, and Internally Displaced Persons: A Guide to International Mechanism and Procedures* (Ardsley NY: Transnational Publishers, 2002).

68 Joan Fitzpatrick, ed. *Human Rights Protection for Refugee*.

69 Chaloka Beyani, 'The Role of Human Right Bodies in Protecting Refugee' in *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers*, ed. Anne Fruma Bayefsky (Boston: Martinus Publishers, 2006) 269-282.

IDPs. Many states make law more extensively on IDPs but such state cannot renege from operation of the international law on IDPs.

3. Rights to Seek and Enjoy Asylum

IDPs have rights to seek asylum somewhere else. States must not restrict the IDPs access to seek and enjoy asylum in the elsewhere countries even if the states comply with the guiding principles.[70] The IDPs have the rights to abandon their countries of residence to other countries.[71] This principle places emphasis on the fact that the existence of the International Customary Law, International Humanitarian Law and International Human Rights Law must be recognised anywhere across the globe by the government, international organisation, humanitarian organisation, all groups including insurgent groups. However, it does not make the insurgent groups lawful or legal. All must provide assistance and protection to the IDPs. The guiding principle does not replace the International Law. It is even derived from the International Instruments on IDPs. Many states make law more extensively on IDPs but such state cannot renege from operation of the international law on IDPs.

4. Sovereignty Means Responsibility

This principle emphasises that every sovereign state has responsibility to ensure that its citizens enjoy good security, welfare and other amenities. The government must ensure that IDPs are protected from human rights abuses and on no account the government should persecute the IDPs on grounds that they (IDPs) demand assistance and protection.[72]

PREVENTION OF DISPLACEMENT

It is said that 'An ounce of prevention is worth a pound of cure'. In the spirit of this, the UN principles on IDPs include it that every state should ensure that it prevents all causes of displacement. This is achievable if government and all institutions and organizations give respect to human rights and humanitarian law. This will make the likelihood of internal

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[70] Article 14 of UDHR states that 'everyone has the rights to seek out to enjoy in other countries asylum from persecution'.

[71] Monette Zard, 'Towards a Comprehensive Approach to Protecting Refugees and the Internally Displaced' in *Human Rights and Refugees, Internally Displaced Persons and Migrants Workers*, ed. Anne Fruma Bayefsky (Boston: Martinus Publishers, 2006) 15-64.

[72] Monette Zard, 'Towards a Comprehensive Approach to Protecting Refugees.

displacement to be reduced.[73] There must be protection against arbitrary displacement as a fundamental human right because it robs people of their right to make choice of where they want to reside. It also deprives them their right to freedom of movement by compelling them to leave their residence.[74] Ethnic rivalry, apartheid and forcible displacement must not be used as a collective punishment against any person.[75] Every state must not subject its people to displacement without a compelling reason which must border on the national security, public order, public health or similar public interest.[76] Protection against arbitrary displacement exists during war.[77] On no account should the warring parties forcibly eject the civilians from their residence except where it can be shown that there is a necessity to that effect.[78] Likewise, natural or manmade disasters must not be used as an excuse for arbitrary displacement except where it is justified by overriding public interest and the people of the affected areas must be contacted beforehand and duly compensated.[79] In such situation the residents' rights must not be violated and the state must ensure that it minimises and controls the adverse effect of the displacement on the people. It must be said that the displaced persons are supposed to return to their residence as soon as normalcy is restored. Another way to guide against arbitrary displacement is to ensure that displacement is made as the last resort after exhausting all other alternatives.[80] Consultation of the people of the affected areas must be one of the steps taken before displacement because most often than not such people have better ideas suitable to them based on their knowledge of the environment.[81] They will also appreciate

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[73] Guy S. Goodwin-Gill, *The Refugee in International Law* (United Kingdom: Clarendon Press, 1983).

[74] Article 13(1) of the Universal Declaration of Human Rights states that 'Everyone has the right to freedom of movement and residence within the border of each state'

[75] See Rule 129 of CIHL and Article 8(2)(e) of the Rome Statutes.

[76] See Articles 2, 3, 4 and 10 of the Kampala Convention.

[77] Sara Pantuliano, ed. *Uncharted Territory: Land, Conflict and Humanitarian Action* (United Kingdom: Practical Action Publishing, 2009).

[78] Sara Pantuliano, ed. *Uncharted Territory: Land, Conflict and Humanitarian Action*.

[79] Francoise Bouchet-Saulnier, *The Practical Guide to Humanitarian Law* (Maryland: Rowman & Littlefield, 2014).

[80] Phil Orchard, *Protecting the Internally Displaced: Rhetoric and Reality* (New York: Taylor & Francis, 2018).

[81] William O'Neill, 'What We Owe to Refugee and IDPs: An Inquiry into the Right of the Forcibly Displaced' in *Refugee Right: Ethics, Advocacy and*

consultation as a way of carrying them along in making of the decision to displace them and as a result they voluntarily submit themselves to displacement without giving the authority any hitch.[82]

PREVENTION OF DISPLACEMENT IN THE RULES OF ENGAGEMENT IN ISLAM

The first rule of engagement is that all fighters must fear Allāh and they should be good to all Muslims. Soldiers must not attack civilians who do not bear arms against them. It is unlawful to kill women,[83] children[84] and old men[85] except if there is a necessity. This shows that where the rules of engagement under Islamic law are observed, internal displacement is impossible because it is a rule that Muslim soldiers shall not attack civilians. The tree should not be cut, the farm should not be destroyed, animals should not be killed and above all, no civilian should be sent out from the place of his residence. These aforementioned rules are indicators that Islam provides preventive measures against the occurrence of displacement.

Another cardinal principle of Islamic law to forestall internal displacement is that, in the Muslim community, cooperation of members of the community is imperative to promote virtue and prevent societal vices. Members of the community have duties to assist one another because it will enhance the development of the community. Cooperation in the Muslim community is as important and equated in a prophetic tradition as a whole human body that feels the pains of other parts of the body.[86] The members of the community must be of assistance to one another to promote virtue and piety and they should not assist to promote the act of

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Africa, ed. David Hollenbach (Washington: Georgetown University Press, 2008) 27-52.

82 William O'Neill, 'What We Owe to Refugee and IDPs'.

83 It is reported on the authority of Abdullahi that Prophet Muḥammad disapproved killing of women and children. This Ḥadīth was in the ruling of *jihād*, Rule 16, Muḥammad Subhi Hasan Haalaq, *Fiqh According to the Qur'ān and Sunnah*, 534

84 Muḥammad Subhi Hasan Haalaq, *Fiqh According to the Qur'ān and Sunnah*, 534.

85 Muḥammad Subhi Hasan Haalaq, *Fiqh According to the Qur'ān and Sunnah*, 534.

86 Al-Hafiz Zakiuddin Abdul-Azim Al-Mundhiri, *The Translation of the Meanings of Summarized Ṣaḥīḥ Muslim*, (Saudi Arabia: Dār-us-salām, 2000), *Book 20 Kitab al-Imara.*

transgression.[87] Cooperation in the Muslim community is commanded in the Glorious Qur'ān[88] that there should be no conspiracy to commit a crime or wrongdoing and disobedience of the Messenger of Allāh (peace be upon him) but it is allowed to make conspiracy for righteousness, piety and virtue.[89] In an Islamic community, brotherhood and unity must be enhanced.[90] This makes the community rise and fight against injustice and oppression together as one.

Therefore, displacement rarely occurs in an Islamic community where there is solid preparation for an attack. Every member of the community must fight to restore normalcy and justice on the land. Both leader and his people have a responsibility to wage war against corruption on the land. The members of the community also act as keepers of their brothers no matter the circumstance may be. They have to support their brothers.[91]

The Islamic state is regarded as *Dār al-Islām*. The entire world is classified into two. One of them is *Dār al-Islām* which is governed by Islamic law. This makes up an Islamic state. The other class is *Dār al-Ḥarb* which is a state of war which is always hostile to the Islamic state. It symbolizes territory controlled by non-believers.[92] The classification of territories in the world as *Dār al-Islām* and *Dār al-Ḥarb* is a product of *ijtihād* (independent reasoning) because the classifications were not specifically mentioned in both Qur'ān and Sunnah as maintained by Sheikh Atiyah Saqr, an erstwhile head of Al-Azhar Fatwa Committee.[93] Muslim scholars agreed that the importance of the classification is to guarantee religious security. It follows, therefore, that, where a Muslim living in a secular or unislamic community enjoys the peaceful practice of his religion without persecution, such environment will be classified as *Dār al-Islām* even though he is in a non-Muslim dominated environment. Sheikh Muḥammad Abū-Zahrah (May Allāh be pleased with him) consider the opinion of Imām Abū Ḥanīfah (May Allāh be pleased with him)

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87 Qur'ān 5 (Surah al-Mā'idah) verse 2, Qur'ān 8 (Surah al-Anfāl) verse 1 and Qur'ān 49 (Surah al-Ḥujurāt) verses 9-10

88 Qur'ān 58 (Surah al-Mujādilah) verse 9.

89 Qur'ān 58 (Surah al-Mujādilah) verse 9.

90 Qur'ān 2 (Surah al-Baqarah) verse 274. See Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 8 (Bayrūt: Dār Ibn Kathir, 1401/1981), 5983, 'Bāb al-Adab', *ḥadīth* no. 12.

91 Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 8 (Bayrūt: Dār Ibn Kathīr, 1401/1981), 5983, 'Bāb al-Adab', *ḥadīth* no. 14 and 16.

92 N.a., 'Concept of Dār al-Islām and Dār al-Ḥarb,' *IslamOnline*, https://fiqh.islamonline.net/en/concept-of-dar-al-islam-and-dar-al-harb/, accessed on 6 March 2023.

93 N.a., 'Concept of Dār al-Islām and Dār al-Ḥarb,'

concerning the classification as a security matter. He (Abū-Zahrah) summarised that if a Muslim is safe and secure to practice Islam in the place where he resides, such place is *Dār al-Islām* to him. However, where the place is not conducive to him practising his religion, such a place will be regarded as *Dār al-Ḥarb* to him. It must be said that a non-Muslim who has an agreement with the Islamic state shall also be protected under the Islamic state.[94]

Another area of preventing displacement under the Islamic state is that security under the Islamic state is a collective responsibility of both leader and his people. This must start by way of sharing common interests, common rights, common institutions, common history and glory, common defences and security of the rights among members of the Ummah – community. All members of the Ummah must always be battle ready against those people in a state of armed conflict against them. The institution of the Islamic state must exist and the arrangement of internal security must be strong in the state. Recourse can be made to the history of the Prophet when the Prophet entered into first[95] and second[96] pacts with the people of Yathrib – Madinah. It is important to make recourse to the Madinah model of prevention of displacement which placed responsibility on both leaders and followers to ensure that displacement is not the best option for the Muslim community to defeat the attack. It must be noted that the expulsion of Banū Qaynuqā‘ by the Prophet for violating the Constitution of Medina particularly when they sexually harassed a woman

[94] Tariq Ramadan, *Islam, The West and The Challenges of Modernity*, trans. Said Amghar (UK: The Islamic Foundation Leicester, 2008), 131.

[95] In the 621 C.E. during the holy month, twelve men from Yathrib met the Prophet at al-‘Aqabah and showed their readiness to follow the Prophet. They enter covenant with Prophet; this is called the first covenant of al-‘Aqabah. The covenant state that the people of Yathrib agree to adhere to the absolute unity of God. They would neither steal nor commit adultery, neither to kill their children nor wittingly to commit any evil and not to disobey God commandment. See Muḥammad Husayn Haykal, *The Life of Muḥammad*, trans. Ismail Raji al-Faruqi (Lagos: Islamic Publication Bureau, 1982), 154.

[96] In the year 622 C.E. 73 men and 2 women from Yathrib came to Makkah and entered another covenant at al-‘Aqabah with the Prophet. The Prophet’s uncle ‘Abbās Ibn ‘Abd al-Muṭālib followed the Prophet to al-‘Aqabah though he had not accepted Islam at that time. He sought the assurance of safety of the Prophet from the people of Yathrib and the guaranteed the Prophet’s safety. See Muḥammad Husayn Haykal, *The Life of Muḥammad*, 156.

in a market place is not a displacement as an offshoot of internal conflict but a punishment and consequence of misdeed of the Jewish clan.[97]

It should be noted that Allāh recommends Muslims to take care of war prisoners and share even food with them as He says in the Glorious Qur'ān:

وَ يُطْعِمُونَ الطَّعَامَ عَلَى حُبِّهِ مِسْكِيناً وَ يَتِيماً وَ أَسِيراً ﴿٨﴾

"And they feed, for the love of Allāh, the indigent, the orphan, and the captive."

(Surah al-Insān, 76: 8)

Moreover, Allāh also directed Muslims to set them free, even without ransom, as soon as the war is over. He says:

فَإِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّى إِذَا أَثْخَنْتُمُوهُمْ فَشُدُّوا الْوَثَاقَ فَإِمَّا مَنّاً بَعْدُ وَ إِمَّا فِدَاءً حَتَّى تَضَعَ الْحَرْبُ أَوْزَارَهَا ذٰلِكَ وَ لَوْ يَشَاءُ اللَّهُ لاَنْتَصَرَ مِنْهُمْ وَ لٰكِنْ لِيَبْلُوَ بَعْضَكُمْ بِبَعْضٍ وَ الَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ فَلَنْ يُضِلَّ أَعْمَالَهُمْ ﴿٨﴾

"Therefore, when ye meet the Unbelievers (in fight), smite at their necks; At length, when ye have thoroughly subdued them, bind a bond firmly (on them): thereafter (is the time for) either generosity or ransom: Until the war lays down its burdens. Thus (are ye commanded): but if it had been Allāh`s Will, He could certainly have exacted retribution from them (Himself); but (He lets you fight) in order to test you, some with others. But those who are slain in the Way of Allāh,- He will never let their deeds be lost."

(Surah Muḥammad, 76: 8)

The Prophet emphasized this attitude as he approved the release of war-prisoners as a good deed amounting to the feeding of those who are hungry and visits to the sick one. On this he said:

"Free the captives, feed the hungry and pay a visit to a sick.[98]"

[97] Muḥammad Ibn Isḥāq, *The Life of Muḥammad: A Translation of Isḥāq's Sīrat Rasūl Allāh,* trans. A. Guillaume (Paksitan: Oxford University Press, 2002), 363.

RESPONSIBILITY OF THE MUSLIM COMMUNITY TO PREVENT DISPLACEMENT ACCORDING TO THE MADINAH MODEL

The hostilities of the people of Makkah against the Prophet precipitated the two pacts which emphasized that the security and safety of Muslims are guaranteed in Yathrib. Recourse should also be made to the Madinah constitution (*Ṣaḥīfah al-Madīnah).* This constitution is the grundnorm for the operation of the people of Madinah. It is the organic law that sets out the security layout of the Islamic state. Major parts of the Madinah constitution[99] center on security and justice among the Ummah. The first clause of the Madinah charter is a clarion call on all the members of the community to be ready to fight in the cause of Allāh and His Prophet.[100] There are many principles developed from this clause. It shows that even though Muslims at that time were the minority, it did not pave way for them to give up their lives and properties to their enemies but it rather made it a law that defence of their lives and property was sacrosanct and on no account they should daunt to the defeat of their enemies. As a matter of Islam, members of the community must be ready to sacrifice their souls and properties in the way of Allāh (SWT). Though, when the Madinah

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98 Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. iv (Bayrūt: Dār Ibn Kathīr, 1401/1981), *Kitāb al-Jihād*, 180.

99 No believer shall take as an ally a freedman of another Muslim without the permission of his previous master. All pious believers shall rise as one man against whosoever rebels or seeks to commit injustice, aggression, sin, or spread mutual enmity between the believers, even though he may be one of their sons. No believer shall slay a believer in retaliation for an unbeliever; neither shall he assist an unbeliever against a believer. Just as God's bond is one and indivisible, all believers shall stand behind the commitment of the least of them. All believers are bonded one to another to the exclusion of other men. Any Jew who follows us is entitled to our assistance and the same rights as any one of us, without injustice or partisanship. No believer shall enter into a separate peace without all other believers whenever there is fighting in the cause of God, but will do so only on the basis of equality and justice to all others. In every military expedition we undertake our members shall be accompanied by others committed to the same objective. All believers shall avenge the blood of one another whenever any one of them falls fighting in the cause of God.

100 Clause 1 of the Madinah charter says that "Those who followed the believers and fought with them shall form one *Ummah* to the exclusion of others". They shall be ready to defend themselves against any aggression or attack from their foes.

charter was made, war had not started in the real sense of it between Makkah and Madinah but the people of Makkah had declared war against Muslims[101]. This made the people of Madinah took defensive measures against the likely hostilities that might come from Makkah. It should be recalled that the two pacts[102] earlier made between the Prophet and the people of Madinah were to guarantee the safety of Muslims in Yathrib because the Yathribites were yearning to accommodate Islam in Yathrib.[103]

This Madinah charter regulated the affairs of the Prophet and people of Yathrib which led to the establishment of the Muslim Ummah. It is an instrument of an alliance which defined the Jews, Christians and others' social, political and economic rights.[104] The Muslim Ummah has no geographical, ethnic or linguistic barrier. All members of the Muslim Ummah are to be united and equal. All of them are given equal status. All are free-born enjoying equality and freedom. They are portrayed by the Glorious Qur'ān as the best community of mankind.[105]

The charter also has provided defence against armed conflict and envisaged possibilities of prisoners of war. It provided that Quraysh emigrants would be entitled to repatriation of their prisoners back to them with kindness and justice upon payment of ransom. This is a principle that states that when Muslims capture their enemies as prisoners of war, they should treat the prisoners with kindness and justice. The prisoners are also entitled to the right of repatriation after the seizure of hostility. Article 3 of the charter says "they will redeem their prisoners with kindness and justice common among believers."[106]

Another clause of the Madinah Charter is that "Believers will not fail to redeem their prisoners or fail to pay blood money on behalf of one of them". The *Ummah* cannot afford to lose a Muslim into the hand of

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[101] Muḥammad Ḥusayn Haykal, *The Life of Muḥammad,* 179 – 216.

[102] 1st and 2nd oaths of 'Aqabah entered into between the Prophet and people of Yathrib wherein they guaranteed the security of life and properties of Prophet Muḥammad. See Muḥammad Ḥusayn Haykal, *The Life of Muḥammad,* 148-162

[103] Muḥammad Ḥusayn Haykal, *The Life of Muḥammad,* 148-162.

[104] Muḥammad Ḥusayn Haykal, *The Life of Muḥammad,* 180.

[105] Qur'ān 3 (Surah Ali 'Imrān) verse 110 says: "You are the best nation produced [as an example] for mankind. You enjoy what is right and forbid what is wrong and believe in Allāh. If only the People of the Scripture had believed, it would have been better for them. Among them are believers, but most of them are defiantly disobedient."

[106] See Article 12 of the Madinah Charter.

unbelievers as a prisoner of armed conflict. The reason is that when a Muslim is captured as an armed conflict prisoner, he would be denied the opportunity to worship the Supreme Being – Allāh.[107] He would not be able to practice his religion and he would be forced to be part of the unbelievers. Where this occurs, all members of the Ummah must stand up for his rescue. It must be remembered that *jihād* will become obligatory upon every Muslim in that community until the Muslim prisoner is rescued.[108] Redeeming prisoners is very important particularly when Al-Qur'ān 2 verse 190 is con sidered where Muslims are commanded to fight in the way of Allāh against those who fight them. Wherever Muslims find themselves, they are in one nation which is the Islamic state.[109] Islamic state places a duty on all the members of the Ummah as well as the institution of state to redeem whoever is captured by their enemies or pay ransom for his freedom. This is an obligatory duty on the shoulders of all Muslims of Ummah the burden of which must be discharged at all costs no matter the situation.

Another clause of Madinah charter is that "protection in the name of Allāh will be common. The weakest among believers may give protection and it will be binding on all believers for the purpose of personal safety guarantee"[110]. No matter how low the position of a believer is, he is allowed to give protection to non-Muslim but such protection should not be given in the name of the Ummah. It must be stressed that non-Muslim cannot give protection to another non-Muslim. It is only Muslim that can give protection to non-Muslim in the Islamic state because though they have some rights, such rights do not include giving protection to a sworn enemy in the name of Allāh.[111] Part of the charter is that "the peace of believers cannot be divided among the Muslim community"[112]. Islamic law emphasises brotherhood and unity among the believers. It states the believers must share the pain and gain together. There is no believer that

[107] Ahmad Uthman Al-Mazyad, *The Guidance of Muḥammad Concerning Worship, Dealings and Manners*, 8th ed. (n.p: Madar al-Watan Publications, 2015), 100-102.

[108] Qur'ān 2 (Surah al-Baqarah) verse 190 provides that: "Fight in the way of Allāh those who fight but do not transgress. Indeed, Allāh does not like transgressors."

[109] Qur'ān 23 (Surah al-Mū'minūn) verse 52 says: "And indeed this, your religion, is one religion, and I am your Lord, so fear Me

[110] See Article 14 of the Madinah Charter.

[111] Arif Ali Khan, *Encyclopaedia of Islamic Law*, vol. 2, ed. Tauqir Mohd. Khan (n.p.: Pentagon Press, 2010), 232.

[112] See Article 19 of the Madinah Charter.

should be comfortable where a fellow believer is suffering. Every believer must ensure that the peace is everywhere. All believers must ensure that the rope of brotherhood and unity among themselves is not cut off. The strength of believers is their brotherhood and unity. Muslim Ummah is one all over the world.[113]

The moment there is a breach of peace in a Muslim community, it is the duty of all other Muslims within and outside that environment to ensure that peace is restored back to the Muslim environment. It is not permissible for a Muslim community to form an allied relationship with an aggressor against the Muslim community. There is no neutrality in this situation; no Muslim community should sit on the fence. They should all join together as one to bring back peace to the concerned Muslim community. It should be remembered that Prophet Muḥammad placed emphasis on this manner of brotherhood in Islam when he was asked: "would he (the Prophet) return to his people and leave people of Madinah after Allāh might have given him victory in Madinah?" The Prophet answered by saying "No!" blood is blood and blood is to be paid for. I am of you and you are of me. I will attack against whoever that attacks you and be at peace with those at peace with you[114]. This is what is regarded as the indivisible peace of Muslims.

It must be stressed that when a Muslim community is attacked by the enemy, it is a duty on the state to protect the lives and properties of the people. However, it will become *Farḍ 'ayn* for all adult male Muslims to defend the attack if they are capable, but if they are incapable, it is not mandatory on them.[115] The Muslim community nearest to the attack has the duty to repel the attack before others who are not close to the attack will come in as helpers. Where the nearest community is capable of tackling the issue themselves, the far Muslims must not ignore the nearest community despite their capability to cope with the situation single-handedly. The far Muslims must send a token force to observe the situation and report back to them.[116] This will enable them to add to their experience. This principle

[113] Qur'ān 2 (Surah al-Baqarah) verse 192 says: "And if they cease, then indeed, Allāh is Forgiving and Merciful". Al-Qur'ān 23 verse 52 says: "And indeed this, your religion, is one religion, and I am your Lord, so fear Me."

[114] This was made at the 2nd Bay'ah 'Aqabah which is the second pact that was entered between the prophet and people of Yathrib before Madinah Charter was made.

[115] Qur'ān 2 (Surah al-Baqarah) verse 190.

[116] Qur'ān 9 (Surah al-Tawbah) verses 122-123 says: "And it is not for the believers to go forth [to battle] all at once. For there should separate from every division of them a group [remaining] to obtain understanding in the religion

of an Islamic law of *Jihād* is not practised by many Muslim communities around the world today. There is an apparent division among Muslims around the world. The implication of the occurrence of the division is that the unity of Muslim community will become weak. The principle of brotherhood and unity among the Muslims has been ignored and the resultant effect is a breach of the peace. The Almighty Allāh reiterates that Muslims should be united by holding the rope of Allāh together and they should not be divided. Allāh enjoined them to remember His favour that He bestowed upon them by bringing their hearts together when they became Muslim brothers whereas they were enemies to one another before their Islam.[117]

Another important clause of Madinah charter is that "No separate peace will be made when believers are fighting in the cause of Allāh".[118] Where Muslims are fighting common enemies, it is not permissible for any Muslim to make separate peace with those enemies. Where a Muslim makes a separate peace with the enemy that other Muslims are fighting, such Muslim will be considered a hypocrite.[119]

It has been stated earlier that peace of the Muslim community is a collective responsibility of all members of Ummah. And where a Muslim is killed by the enemy, the Muslims must defend the attack of their member except where the killer is ready to pay *diyah.*[120]

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and armed conflict [i.e., advise] their people when they return to them that they might be cautious. O you who have believed, fight those adjacent to you of the disbelievers and let them find in you harshness. And know that Allāh is with the righteous."

[117] Qur'ān 3 (Surah Ali 'Imrān) verse 103.

[118] See Qur'ān 8 (Surah al-Anfāl) verse 16 says: "And whoever turns his back to them on such a day – unless it be a stratagem of armed-conflict, or to retreat to a troop (of his own), – he indeed has drawn upon himself wrath from Allāh. And his abode is Hell, and worst indeed is that destination!"

[119] See Qur'ān 49 (Surah al-Ḥujurāt) verse 15. Qur'ān 25 (Surah al-Furqān) verse 52. Qur'ān 9 (Surah al-Tawbah) verse 38.

[120] Muḥammad Ibn Aḥmad al-Sarakhsī, *Kitāb al-Mabsūṭ,* vol. 9 (n.p: Dār al-Ma'arifah, 1993), 152. Imām *Abū Ḥanīfah* is of the opinion that if a Muslim kills an inhabitant of Dār-al-Ḥarb who embraces Islam but continues to live in Dār al-Ḥarb, the killer will not be liable to *Qiṣāṣ,* for notwithstanding the fact the he kills a Muslim, the victim belongs to Dār al-Ḥarb and therefore, his right to protection is doubtful. This is so because he increases the numbers of the infidels by not migrating to Dār al-Islām as the Prophet (S.A.W) says, whoever increases the strength of another community belongs to that community. Although victim in this case does not, on religious grounds, belong to them, yet

On the final note, Muslims are not to be transgressors because those who transgress the divine limits of Allāh are considered worse for the Ummah even than its enemies. Therefore, faith must be well rooted in the Muslims. This will make Muslims when defending the rights of humanity stand firm by incense of *Jihād* because they believe that they are doing the best act as directed by the Law Giver.[121] It is important to note that where Muslims consider it as an obligation to fight in the cause of Allāh, they will not entertain fear to carry out their responsibilities to defend their community and by doing so, it will be hard for any of them to flee during the armed conflict. Though this may involve the loss of lives and properties, it has been propitiated by the Law Giver that whoever loses his life in the process shall be a martyr because he dies in the cause of Allāh. Muslims must obey the commandment of Allāh to fight in His cause because that is the best for them and society.[122]

It must be noted that Islam takes care of the weak and those who lack capacity to fight enemies. Allāh provides a waiver for these two categories of persons. They can flee during the war. It is important to note that where the *jihād* is *jihād al-ṭalab* (i.e., offensive *jihād*), it is not mandatory for all members of the Ummah who are Muslims, adults, male and sane to fight. In case of *jihād daf'* (i.e., defensive *jihād*), all members of the Ummah who are Muslims, adults, male and sane must fight to defend the community. It has been argued that part of the conditions of *jihād* is *al-quwwāt wa al-qudrāt* (i.e., force and capacity) to fight.[123] This is expected to be on ground even when there is no war, because Islam expects Muslim to be ever ready to defend themselves when there is an attack. Part of the preparations is to ensure that they have ordnance-- arms, ammunitions, machines, missiles, tanks, planes, artillery and many more. They are also expected to have enough personnel. The Law Giver commands Muslims to be ready and to

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he is citizen of their country. This very fact gives rise to doubt if two Muslim traders or two Muslim persons in Dār al-Ḥarb kill one another, the killer will not be liable to *Qiṣāṣ*. The other three major Imām hold that *Qiṣāṣ* in any case will have to be enforced, whether the murder is committed in Dār al-Ḥarb or in Dār al-Islām and whether or not the victim migrates to Dār al-Ḥarb.

[121] Qur'ān 3 (Surah Ali 'Imrān) verse 110 provides: "You are the best nation produced [as an example] for mankind. You enjoin what is right and forbid what is wrong and believe in Allāh. If only the People of the Scripture had believed, it would have been better for them. Among them are believers, but most of them are defiantly disobedient."

[122] Qur'ān 9 (Surah al-Tawbah) verse 41.

[123] 'Abd al-Salām bin Sālem bin Rajā' al-Saḥīmī, *Al-Jihād fī al-Islām: Mafhūmuhu wa Ḍawābiṭuhu wa Anwā'uhu wa Ahdāfuhu* (Madīnah al-Munawwarah: Maktab Mulk al-Fuhad, 1430AH), 116-130.

ensure that they have power and force against their enemy. It also makes it a rewardable act whatever expenses incurred to procure the war equipment in the cause of Allāh.[124] It is not a doubt that a community that is well prepared for war may not have reason to flee when the war occurs. It is gathered that Prophet Muḥammad (S.A.W.) learnt the routes of the caravans in the desert from his uncle Abū Ṭālib, and just as he listened to the poets and the orators in the market around Makkah during the holy months, he also learnt how to bear arms.[125] He was reported to have participated in the *al-Fijār War* before his prophethood.[126] It follows that members of Muslim communities must not be timid where they have capacity to defend themselves. It is an obligation for all members of the Ummah to defend the cause of Islam in case of *jihād daf'* (i.e. defensive *jihād*) because they have duty to protect their lives.

It is important to note that Allāh is aware there may be weak persons among the members of the Ummah who has no capacity to fight as a result of lack of training or equipment. Such persons are allowed to flee for their safety because the early Muslims in Makkah who faced persecution from enemies were allowed to migrate to Abyssinia to seek refuge from Negus.[127] The persecution in Makkah persisted against the Muslims who had no corresponding capacity to fight their persecutors. At that time, the Law Giver did not command the Muslims to fight as the Muslims had no power, training or instruments to tackle their enemies. The only way out at that time was for them to emigrate to where their lives would be safe and where they would enjoy the practice of their religion. However, before the emigration, they ensured that arrangements were concretized between them and their hosts. This is what led to the first covenant of 'Aqabah and the second covenant of 'Aqabah.[128] It was after *al-hijrah* (migration) that the Islamic community was established in Yathrib Madinah where political and economic affairs were regulated according to the Law Giver.[129] There were guiding principles laid down according to the Madinah charter. Part of the Madinah charter was that all pious believers should rise as one against whoever rebelled against them whether internally or externally.[130] It was after the Muslim community had acquired enough force and power to

[124] Qur'ān 8 (Surah al-Anfāl) verse 60.
[125] Muḥammad Ḥusayn Haykal, *The Life of Muḥammad,* 56.
[126] Muḥammad Ḥusayn Haykal, *The Life of Muḥammad,* 56.
[127] Muḥammad Ḥusayn Haykal, *The Life of Muḥammad,* 97-100.
[128] Muḥammad Ḥusayn Haykal, *The Life of Muḥammad,* 154-157.
[129] Muḥammad Ḥusayn Haykal, *The Life of Muḥammad,* 321-325.
[130] Muḥammad Ḥusayn Haykal, *The Life of Muḥammad,* 180.

tackle their enemy that Allāh commanded them to wage war against their enemy to defend their lives and properties. The risk of loss of lives and properties would have been too high if the Muslims confronted their enemies in Makkah before *al-hijra* because they did not have the capacity. Allāh condemns people who subject themselves to self-destruction. He places emphasis on spending in the cause of *jihād*. This means that before a Muslim community can be free from displacement, it must spend to procure all the required instruments and if they do not spend in the cause of Allāh or they are unable to procure the needed instrument to fight their enemies, it will be destructive to them to combat the enemies that have the capacity better than them. In this situation, Islam does not encourage Muslims who foresee destruction of their lives by their enemies to throw their lives to the destruction. Where there is an internal crisis within the Muslim community, Islam encourages that all members of the community shall have collective responsibility to fight against rebels among them. There is no offence for Muslims to flee for their safety. According to al-Shawkānī and al-'Uthaymīn,[131] where a community has a foreknowledge that their enemies can destroy them, they can choose to flee for their safety because if they combat their enemies without capacity, it amounts to throwing themselves to destruction which Islam condemns in the Glorious Qur'ān.[132]

The Madinah charter shows that all Muslims are in one nationhood which is Muslim Ummah. Where there is peace in the Muslim Ummah, all members of the Ummah must enjoy the peace and where there is an armed conflict against any member of the Ummah, all and sundry of the Ummah must defend the Ummah.

Defence of lives and properties is an obligatory duty upon every Muslim, particularly in the defensive war. Muslims are not allowed to be nonchallant when their brother is under attack in their community. It must be noted that the Muslims that are not in the affected community also have a role to play like giving support to their Muslim brothers and sisters in the affected community. Supports like financial and moral support are expected from other Muslims in other communities. Muslims are only allowed to enter a pact with people of the books. The duty of defence is a faith rooted in Muslims and every Muslim is duly bound to carry out the duty.

[131] 'Abd al-Salām bin Sālem bin Rajā' al-Saḥīmī, *Al-Jihād fī al-Islām*, 92.
[132] Qur'ān 2 (Surah al-Baqarah) verse 195.

A REVIEW ON THE REALITY OF PREVENTION OF DISPLACEMENT IN MUSLIM COMMUNITY NOWADAYS

It is instructive to note that Islamic countries are the countries whose modes of operations are in accordance with the provisions of Islamic injunction. The political, economic and social systems are practised under Islamic law. It is characterised by three features of the Muslim community, the Islamic law and the Leadership of the Muslim community.[133] It is also a state where Qur'ān and Sunnah are operational as primary sources of law in all affairs of the state.[134] Whereas, Muslim countries are the countries where Muslims are largely populated even their affairs may not be regulated according to Islamic law. It is difficult to conclude that nowadays there is a country in full operation of Islamic law as it was practised in Madinah during the lifetime of the Prophet. However, one can point to the countries where Muslims are largely populated because of the availability of statistics. Among places where Muslims are reportedly largely populated and Islamic law is in operation to a large extent are: Syria (89.0% Muslim population)[135]; Libya (96.6% Muslim population)[136]; Indonesia (87.2% Muslim population)[137]; Pakistan (95.0% Muslim population)[138]; Sudan (70.0% Muslim population)[139] and Palestine (91.0% Muslim population).[140] These countries are facing armed conflict in their respective nation. Many Muslims in these countries have fled their countries and become displaced or refugees elsewhere. For instance, Syria is one of the 10 largest victims of refugee crises and situations in the world.[141] It is reported that not less

[133] Justice Javed Iqbal, 'The Concept of State in Islam,' *American Journal of Islam and Society*, vol. 1/1 (1984): 11-25, https://www.ajis.org/index.php/ajiss/article/download/2818/2632.

[134] Showkat Ahmad Dar, 'Contemporary Discourses on the Possibility of an 'Islamic State': An Overview,' *Contemporary Arab Affairs*, vol. 9/3 (2016): 421–427, https://www.jstor.org/stable/48599981.

[135] N.a., 'Spread of Islam,' *WorldData.info*, https://www.worlddata.info/religions/islam.php, accessed on 11 March 2023.

[136] N.a., 'Spread of Islam,'.

[137] N.a., 'Spread of Islam,'.

[138] N.a., 'Spread of Islam,'.

[139] N.a., 'Spread of Islam,'.

[140] N.a., 'Spread of Islam,'.

[141] N.a., 'The 10 Largest Refugee Crises to Know in 2023,' *Concern Worldwide*, 9 January 2023, https://www.concern.net/news/largest-refugee-crises, accessed on 11 March 2023.

than 6.6 million out of the total population of 27.6 million[142] Syrians have left their country home to seek asylum as refugees in another country or become internally displaced in another settlement within their country.[143] The question now is, have they violated the principle of *jihād* under Islamic law that discourages members of the community to flee where there is an attack? To determine this, it is important to know the conditions that bind members of the Ummah when there is a war under the principle of *jihād*. The conditions that must be fulfilled by Muslims before embarking on *jihād* are as follows:

a. Al ikhlāṣ lillāhi

b. Al-quwwāt wa al-qudrāt

c. Declaration of war by the leader

a) *Al ikhlāṣ lillāhi*: *jihād* is expected to be islamically faith-based because it is an act of worship and an act of obeying the command of Allāh. In all acts of worship, the sincere intention is required. Otherwise, the act will be merely worldly. The Prophet was reported to have said that actions shall be judged according to intention.[144] Therefore, before a *jihād* can be valid under Islamic law, it must be carried out for the sake of Allāh and His messenger and nothing more.[145]

b) *Al-quwwāt wa al-qudrāt*: this is the capability and capacity of Muslims to fight. This includes capacity in the power of arms and ammunition, forces, missiles, tanks, planes, artillery and many more.[146] They should also possess manpower by ensuring that their military personnel are well-trained and equipped. In order to have capacity and capability, all members of the Muslim community whether they are military personnel or not must be trained on how to bear arms and repel attacks because

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142 N.a., 'Syrian Population,' *CEIC*, https://www.ceicdata.com/en/indicator/syria/population#:~:text=What%20was%20Syria's%20Population%20in,table%20below%20for%20more%20data, accessed on 02 September 2023.

143 N.a., 'The 10 Largest Refugee Crises to Know in 2023,'

144 Al-Imām Zayn al-Dīn Aḥmad bin 'Abd al-Laṭīf al-Zubaydī, *The Translation of the Meanings of Summarized Ṣaḥīḥ al-Bukhārī: Arabic – English*, trans. Muḥammad Muḥsin Khān (Riyād, Sa'ūdī 'Arabiyyah: Maktabah Dār-us-salām, 1996/1417H), 49.

145 Al-Imām Zayn al-Dīn Aḥmad bin 'Abd al-Laṭīf al-Zubaydī, *The Translation of the Meanings*, 587.

146 Qur'ān 8 (Surah al-Anfāl) verse 60.

jihād daf' (defensive *jihād*) can graduate to *farḍ 'ayn* which would be compulsory for every Muslim male adult to fight to defend the attack.

c) Declaration of war by the leader: war is declared by the leader and nobody is allowed to declare war except the leader. Once the leader declares war, it becomes *farḍ 'ayn* in defensive *jihād*.[147] It is important to note that the leader is expected to be Muslim, sane, adult, pious, fair, just, upright and considerate. Otherwise, his integrity will be in question and would cause disloyalty to him in the Muslim community. Once a leader who meets up with the aforementioned qualifications declares war, every member of the Muslim community must abide by it because Allāh commands believers to obey Him, His messenger and the leaders.[148] Abū Hurayrah reported that the prophet said that he who that follows him has followed Allāh and he that disobeys him has disobeyed Allāh and he that obeys leader has obeyed him and he that disobeys leader has disobeyed him.[149] It must be mentioned that it is only the leader who is recognised as Imām or Khalīfah of a community that can declare war in the area he governs.[150]

All these above-mentioned conditions must co-exist before *jihād* can be mandatory. These mandatory conditions make fighting for the cause of Allāh an obligation for the state. The Muslim fighters have two obligations; their obligation to Allāh and their obligation to *amīr* or head of state.

1. Obligation of safeguarding Allāh's right during *Jihād*

Muslims have obligation to safeguard Allāh's right in the cause of fighting enemies and to achieve this, they must keep the following actions.

a) They must be steadfast in confronting the enemy and they must not retreat frivolously. Muslim fighters are not expected to be daunted by the numerical strength of the enemy. Qur'ān 8 verse 65 obliges Muslim fighters to fight enemy even if the Muslims are small in number in ratio 1:10 against the disbelievers. Allāh says

[147] 'Abd al-Salām bin Sālem bin Rajā' al-Saḥīmī, *Al-Jihād fī al-Islām*, 94.
[148] Qur'ān 4 (Surah al-Nisā') verse 59.
[149] 'Abd al-Salām bin Sālem bin Rajā' al-Saḥīmī, *Al-Jihād fī al-Islām*, 100.
[150] 'Abd al-Salām bin Sālem bin Rajā' al-Saḥīmī, *Al-Jihād fī al-Islām*, 103-106.

يَا أَيُّهَا النَّبِيُّ حَرِّضِ الْمُؤْمِنِينَ عَلَى الْقِتَالِ إِنْ يَكُنْ مِنْكُمْ عِشْرُونَ صَابِرُونَ يَغْلِبُوا مِائَتَيْنِ وَ إِنْ يَكُنْ مِنْكُمْ مِائَةٌ يَغْلِبُوا أَلْفاً مِنَ الَّذِينَ كَفَرُوا بِأَنَّهُمْ قَوْمٌ لاَ يَفْقَهُونَ ﴿٦٥﴾

"O Prophet, urge the believers to battle. If there are among you twenty [who are] steadfast, they will overcome two hundred. And if there are among you one hundred [who are] steadfast, they will overcome a thousand of those who have disbelieved because they are a people who do not understand."

(Surah al-Anfāl, 8: 65)

According to Ibn-Kathīr[151] Ibn 'Abbās was reported to have said that when this verse was revealed, Muslims felt burdened with the ratio 1:10 of combating the enemies and Allāh instructed them not to retreat from fight if they did not exceed ratio 1:10. This means that one Muslim fighter should be tasked with confronting ten enemies. Thereafter, Allāh gave a waiver to the Muslims from ratio 1:10 to ratio 1:2. Allāh says in Qur'ān 8:66 that:

الْآنَ خَفَّفَ اللَّهُ عَنْكُمْ وَ عَلِمَ أَنَّ فِيكُمْ ضَعْفاً فَإِنْ يَكُنْ مِنْكُمْ مِائَةٌ صَابِرَةٌ يَغْلِبُوا مِائَتَيْنِ وَ إِنْ يَكُنْ مِنْكُمْ أَلْفٌ يَغْلِبُوا أَلْفَيْنِ بِإِذْنِ اللَّهِ وَ اللَّهُ مَعَ الصَّابِرِينَ ﴿٦٦﴾

"Now, Allāh has lightened [the hardship] for you, and He knows that among you is weakness. So if there are from you one hundred [who are] steadfast, they will overcome two hundred. And if there are among you a thousand, they will overcome two thousand by permission of Allāh. And Allāh is with the steadfast."

(Surah al-Anfāl, 8: 66)

Ibn-Kathīr[152] quoting Ibn 'Abbās, said that Muslims are not allowed to flee from the enemies if they do not exceed ratio 1:2. By implication, Muslims are allowed to flee where the enemies outnumber them more than ratio 1:2. However, Muslims can flee even where the ratio does not exceed

[151] Ismāʿīl Ibn-ʿUmar Ibn-Kathīr, *Tafsīr al-Qur'ān al-'Aẓīm*, vol. 2 (Cairo, Egypt: Dār Al-Fajr, 2010), 479.

[152] Ismāʿīl Ibn-ʿUmar Ibn-Kathīr, *Tafsīr al-Qur'ān al-'Aẓīm*, 479.

1:2 in one of the following two situations: when for tactical or strategic reasons, they flee to re-strategise their warfare methods or to join forces with another group to renew the battle. Qur'ān 8:16 says that:

وَ مَنْ يُوَلِّهِمْ يَوْمَئِذٍ دُبُرَهُ إِلاَّ مُتَحَرِّفاً لِقِتَالٍ أَوْ مُتَحَيِّزاً إِلَى فِئَةٍ فَقَدْ بَاءَ بِغَضَبٍ مِنَ اللَّهِ وَ مَأْوَاهُ جَهَنَّمُ وَ بِئْسَ الْمَصِيرُ ﴿١٦﴾

"And whoever turns his back to them on such a day, unless swerving [as a strategy] for war or joining [another] company, has certainly returned with anger [upon him] from Allāh, and his refuge is Hell – and wretched is the destination."

(Surah al-Anfāl, 8: 16)

The school of al-Shāfi'ī and his followers, however, submits that when Muslims are not capable of withstanding a force of the enemy in ratio 1:2 and are threatened by death, they must not flee. The other groups (schools) say that the Muslims may flee as long as they intend to re-strategise to renew their battle. However, anyone who is incapable of resisting the enemy would not be incapable of having the intention of restrategising.[153]

b) They should engage in the battle with the intention of supporting the cause of Islam. They should not fight for the purpose of benefiting from booty. This was established when the Messenger of Allāh (peace be upon him) took ransom from Al-'Abbās when he was captured along with his nephews and confederates. Allāh revealed Qur'ān 8 verse 70 that:

يَا أَيُّهَا النَّبِيُّ قُلْ لِمَنْ فِي أَيْدِيكُمْ مِنَ الْأَسْرَى إِنْ يَعْلَمِ اللَّهُ فِي قُلُوبِكُمْ خَيْراً يُؤْتِكُمْ خَيْراً مِمَّا أُخِذَ مِنْكُمْ وَ يَغْفِرْ لَكُمْ وَ اللَّهُ غَفُورٌ رَحِيمٌ ﴿٧٠﴾

"O Prophet, say to whoever is in your hands of the captives, "If Allāh knows [any] good in your hearts, He will give you [something] better than what was taken from you, and He will forgive you; and Allāh is Forgiving and Merciful."

(Surah al-Anfāl, 8: 70)

[153] Abū al-Ḥasan 'Alī Ibn Muḥammad Ibn Ḥabīb al-Baṣrī, *al-Aḥkām al-Sulṭāniyyah: The Laws of Islamic Governance*, trans. Asadullah Yate, (London: Ta-Ha Publishers Ltd 1416/1966), 69-70.

The Messenger of Allāh (peace be upon him) took ransoms for the captives and the poor from the *Muhājirūn*, Allāh revealed Qur'ān 8 verse 69 as follows:

فَكُلُوا مِمَّا غَنِمْتُمْ حَلاَلاً طَيِّباً وَ اتَّقُوا اللَّهَ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ ﴿٦٩﴾

"So consume what you have taken of war booty [as being] lawful and good, and fear Allāh. Indeed, Allāh is Forgiving and Merciful."

(Surah al-Anfāl, 8: 69)

Despite that Islam allows distribution of booty by fighters, it emphasises it that Allāh knows the intention of fighters and He is ready to forgive and shower His mercy on the fighters who do not intend sharing of booty when he commences the *Jihād.*

c) They should be trustworthy. They should not take any part of the booty except it is shared and given to them. Allāh provides in Qur'ān 3 verse 155 that:

إِنَّ الَّذِينَ تَوَلَّوْا مِنْكُمْ يَوْمَ الْتَقَى الْجَمْعَانِ إِنَّمَا اسْتَزَلَّهُمُ الشَّيْطَانُ بِبَعْضِ مَا كَسَبُوا وَ لَقَدْ عَفَا اللَّهُ عَنْهُمْ إِنَّ اللَّهَ غَفُورٌ حَلِيمٌ ﴿١٥٥﴾

"Indeed, those of you who turned back on the day the two armies met [at Uḥud] – it was Satan who caused them to slip because of some [blame] they had earned. But Allāh has already forgiven them. Indeed, Allāh is Forgiving and Forbearing."

(Surah Ali 'Imrān, 3: 155)

d) Lastly, they should not show preferential treatment towards the enemies. They should not be kind to their allies because Allāh's right is superior to all other rights. Allāh revealed in Qur'ān 60 verse 1 as follows:

يَا أَيُّهَا الَّذِينَ آمَنُوا لاَ تَتَّخِذُوا عَدُوِّي وَ عَدُوَّكُمْ أَوْلِيَاءَ تُلْقُونَ إِلَيْهِمْ بِالْمَوَدَّةِ وَ قَدْ كَفَرُوا بِمَا جَاءَكُمْ مِنَ الْحَقِّ يُخْرِجُونَ الرَّسُولَ وَ إِيَّاكُمْ أَنْ تُؤْمِنُوا بِاللَّهِ رَبِّكُمْ إِنْ كُنْتُمْ خَرَجْتُمْ جِهَاداً فِي سَبِيلِي وَ ابْتِغَاءَ مَرْضَاتِي تُسِرُّونَ إِلَيْهِمْ بِالْمَوَدَّةِ وَ أَنَا أَعْلَمُ بِمَا أَخْفَيْتُمْ وَ مَا أَعْلَنْتُمْ وَ مَنْ يَفْعَلْهُ مِنْكُمْ فَقَدْ ضَلَّ سَوَاءَ السَّبِيلِ ﴿١﴾

> *"O you who have believed, do not take My enemies and your enemies as allies, extending to them affection while they have disbelieved in what came to you of the truth, having driven out the Prophet and yourselves [only] because you believe in Allāh, your Lord. If you have come out for jihād [i.e., fighting or striving] in My cause and seeking means to My approval, [take them not as friends]. You confide to them affection [i.e., instruction], but I am most knowing of what you have concealed and what you have declared. And whoever does it among you has certainly strayed from the soundness of the way."*
>
> (Surah al-Mumtaḥinah, 60: 1)

This verse was revealed in respect of Ḥāṭib Ibn Abī Bilta'ah who wrote a letter informing his relative of the Prophet's preparation for expedition against the people of Makkah. The letter was retrieved from Sārah by 'Alī and Zubayr on the instruction of the Prophet (peace be upon him) having been informed of the secret message by Allāh. They were able to retrieve the letter from a tress of her hair and Prophet called upon Ḥāṭib and asked him why he did what he did. He replied to the Prophet that he believed in Allāh and His messenger and he had not changed to kāfir and he had not changed his religion but he was a man who did not have any roots and relative in Madinah. He said has only informed his family with Quraysh in Makkah about the Prophet's planned expedition. The Prophet (peace be upon him) pardoned him. The Almighty Allāh revealed Qur'ān 60 verse 1 as quoted above.

2. Obligation of Muslim fighters towards the *amīr* or head of state

a) Muslim have the duty to obey the instruction given to them by *amīr*. They must submit themselves to his authority. The Glorious Qur'ān says in Qur'ān 4:59 that:

> يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَ أَطِيعُوا الرَّسُولَ وَ أُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَ الرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَ الْيَوْمِ الْآخِرِ ذٰلِكَ خَيْرٌ وَ أَحْسَنُ تَأْوِيلاً ﴿٥٩﴾
>
> *"O you who have believed, obey Allāh and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allāh and the Messenger, if*

you should believe in Allāh and the Last Day. That is the best [way] and best in result."

(Surah al-Nisā', 4: 59)

However, they do not have the duty to obey his instruction to commit sin against Allāh. The Prophet was reported to have said that it is obligatory for every Muslim to listen and obey the ruler's orders unless these orders involve one in disobedience to Allāh. So, if an act of disobedience to Allāh is imposed, one should not listen to obey.[154]

b) They should surrender their affairs to the judgement of *amīr* or head of state. In Islamic community, Muslims have the duty to entrust their matters to the direction of *amīr* because the *amīr* is the leader of the Muslim community. To achieve unity in the Muslim community, obedience to the ruler must be ensured. Allāh commands Muslims in Qur'ān 4 verse 83 as follows:

وَ إِذَا جَاءَهُمْ أَمْرٌ مِنَ الْأَمْنِ أَوِ الْخَوْفِ أَذَاعُوا بِهِ وَ لَوْ رَدُّوهُ إِلَى الرَّسُولِ وَ إِلَى أُولِي الْأَمْرِ مِنْهُمْ لَعَلِمَهُ الَّذِينَ يَسْتَنْبِطُونَهُ مِنْهُمْ وَ لَوْ لاَ فَضْلُ اللَّهِ عَلَيْكُمْ وَ رَحْمَتُهُ لاَتَّبَعْتُمُ الشَّيْطَانَ إِلاَّ قَلِيلاً ﴿٨٣﴾

"And when there comes to them something [i.e., information] about [public] security or fear, they spread it around. But if they had referred it back to the Messenger or to those of authority among them, then the ones who [can] draw correct conclusions from it would have known about it. And if not for the favor of Allāh upon you and His mercy, you would have followed Satan, except for a few."

(Surah al-Nisā', 4: 83)

c) They should make hay while the sunshine in following *amīr's* instructions. Muslims have duty to give utmost respect and obedient to the leader of the Muslim community. They should restrain themselves from his prohibition and abide by his orders. Where they violate the instruction of *amīr*, he can chastise them but he too is enjoined to temper justice with mercy. Qur'ān 3 verse 159

[154] Al-Imām Zayn al-Dīn Aḥmad bin 'Abd al-Laṭīf al-Zubaydī, *The Translation of the Meanings*, ḥadīth no. 1269, 604.

فَبِمَا رَحْمَةٍ مِنَ اللَّهِ لِنْتَ لَهُمْ وَ لَوْ كُنْتَ فَظّاً غَلِيظَ الْقَلْبِ لاَنْفَضُّوا مِنْ حَوْلِكَ فَاعْفُ عَنْهُمْ وَ اسْتَغْفِرْ لَهُمْ وَ شَاوِرْهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَكِّلِينَ ﴿١٥٩﴾

"So by mercy from Allāh, [O Muḥammad], you were lenient with them. And if you had been rude [in speech] and harsh in heart, they would have disbanded from about you. So pardon them and ask forgiveness for them and consult them in the matter. And when you have decided, then rely upon Allāh. Indeed, Allāh loves those who rely [upon Him]."

(Surah Ali 'Imrān, 3: 159)

d) Muslims should not quarrel with their leader on the distribution of booty. Whatever portion is given to them by their leader, they must accept it with satisfaction. Allāh treats both the weak and the strong equal in distribution of booty. It was narrated by Jābir bin 'Abdullāh (May Allāh be pleased with him) while Allāh's messenger was distributing booty at Al-Ji'rānah, somebody said to him, "Be just (in your distribution)." The Prophet (peace be upon him) replied, "Verily I would be miserable if I did not act justly."[155]

e) Muslim fighters are to give a *Bay'ah* (pledge) not to flee during battle. Muslim fighters have duty to guarantee the leaders that they are ready to end their lives during the struggling for the cause of Islam. They should swear to the oath of allegiance that they would not flee from the battle. However, this obligation does not impose overburden on the Muslims but to guarantee that Muslim fighters are not timid and to show their belief that Allāh's forgiveness and mercy are greater than materials of this world. The Prophet (peace be upon him) was reported to have taken *Bay'ah* (pledge) from Salama bin Al-Akwa' to guarantee the Prophet that he was ready to die in the cause of struggling for Islam.[156]

The obligations of the Muslim fighters to Allāh and *amīr* (head of state) once carried out as discussed above, the act of fleeing the battle is regulated by Islam. This shows that where battle occurs, Muslim fighters

[155] Al-Imām Zayn al-Dīn Aḥmad bin 'Abd al-Laṭīf al-Zubaydī, *The Translation of the Meanings*, ḥadīth no. 1328, 628.

[156] Al-Imām Zayn al-Dīn Aḥmad bin 'Abd al-Laṭīf al-Zubaydī, *The Translation of the Meanings*, ḥadīth no. 1273, 606.

should not be intimidated or frightened by the numerical strength of their enemies so far it does not exceed ratio 1:2. In such situations where they flee within their nation without going outside the boundary of their nation, it becomes displacement.

Where displacement occurs beyond the country's boundary, it becomes refuge and where it occurs within the same country it becomes internal displacement. Where a member of a Muslim community is displaced as a result of a lack of capability, he would not be regarded as betrayer because he chooses to be displaced over the loss of his life. This is in accordance with the provision of the Glorious Qur'ān that says that no one should throw himself into destruction.[157] However, where there is capability and the Imām or leader declares war in a defensive *jihād*, every male adult Muslim in the community must stand firmly against the attack. The Glorious Qur'ān commanded Muslims to fight in the cause of Allāh without transgression those who fight them.[158] This shows that *jihād daf'* (defensive *jihād*) is *farḍ 'ayn* and once there is a declaration, every male adult Muslim must follow the declaration. It is safe to say that many of the Muslim countries in the war zone do not meet up with the conditions laid down for *jihād* under Islamic law. The war in Syria and some other Muslim-dominated countries may not fulfil the conditions stipulated above because *jihād* must be carried out in the cause of Allāh alone and not for selfish political, economic and social reasons. Many people who fled the countries may do so either as a result of a lack of capacity or timidity. It may also be a result of the non-personal conviction that the wars in those countries were carried out to defend the cause of Allāh. Therefore, displacement as a result of lack of capability and non-personal conviction that the war is taking place in the cause of Allāh is justifiable whether the war is offensive or defensive based on the three conditions stipulated above. In the case of displacement as a result of timidity, it is condemned in the defensive *jihād* and discouraged in the offensive *jihād*.

CONCLUSION

It has been mentioned earlier that Islamic law guarantees rights to life and property. Every Muslim has a duty to protect his life and property. One can make a choice to exercise his right or not to do so in other aspects of life, except in the right to life which is a duty to defend. However, the condition is not the same on the term of duty because duty is mandatory and it is not

[157] Qur'ān 2 (Surah al-Baqarah) verse 195.
[158] Qur'ān 2 (Surah al-Baqarah) verse 190.

a matter of choice. As it is a duty for an individual to protect his life and property, so also is a duty for the community and state to ensure that the security of lives and properties is guaranteed. Any corruption-related case is not taken for granted under Islamic law and it must be stamped out through the combined efforts of every individual, community and state. It is *farḍ kifāyah* where it can be handled by an individual or group of individuals and it will be *farḍ ʻayn* where it is beyond the control of the individual level.

It has been mentioned that there are conditions to be satisfied before engaging in fighting combatant *jihād*. Once there is a breakdown of peace in any part of the state, every individual as well as the state must ensure that peace is restored by all means. All of them have the duty to ensure that corruption is not given a chance and they must fix society appropriately as a matter of duty. Everybody has the duty to ensure that every individual or community or state as a whole does not suffer from any aggression. All hands must be on deck to prevent and protect society and individuals from insecurity. In the process of doing this, where a life is lost such death is considered as the death of Martyrdom. There should be no fear of the enemy until either they win or are conquered. Therefore, the three conditions mentioned above will determine the existence of the two obligations mentioned (i.e., obligation to Allāh and obligation to *amīr*). Displacement may not arise where the three conditions for *jihād* discussed above co-exist. Therefore, it is either the enemy conquering the entire Islamic state or conquering no part of it. In order to achieve this, Islamic law put three conditions in place before *jihād* becomes *farḍ ʻayn* (i.e., mandatory). Once *jihād* becomes *farḍ ʻayn*, it is the collective responsibility of the generality of Ummah to fight against attack. One of the conditions is that the war should be in the cause of Allāh (i.e., *fī sabīlillāh*). Allāh says in the Glorious Qur'ān that Muslims should strive hard for the cause of Allāh and His messenger.[159] This responsibility is to be carried out by both leaders and the followers because it is the leader that would make a declaration of war and it is important for the leader to ensure that he makes the declaration to promote the injunction of Allāh. Likewise, the followers have a duty to fight once the leader has made the declaration to fight for the cause of Allāh. This will make the Ummah the best society.[160] By doing this, the leader who makes the declaration and the

[159] Qur'ān 22 (Surah al-Ḥajj) verse 78.

[160] Qur'ān 29 (Surah al-ʻAnkabūt) verse 69 and Qur'ān 5 (Surah al-Mā'idah) verse 8.

followers who obey the declaration shall be qualified as true believers.[161] Where this is done, displacement will rarely occur because the act of fleeing the war will not happen. It is considered that fighting for the cause of Allāh involves mobilising human forces and military strength and it entails the sacrifice of wealth and lives.[162]

Another condition that must be fulfilled under the principle of *jihād* to prevent displacement is that the Muslim community must be prepared by ensuring that they have enough strength to engage their enemies. This involves acquiring war instruments and military skills. In order to achieve this, every male adult in the Muslim community must be trained on how to fight a war. This will prevent displacement when the war occurs. This is regarded as *al-quwwāt wa al-qudrāt* (i.e., force and capacity), particularly in the defensive *jihād*. When this is put in place, it shows that the community is well prepared for any attack that may emerge. This will forestall displacement because it will enable the leader and the followers to fight against attack rather than flee from the war. It is important that the war is declared by the leader of the Muslim community after ensuring that the community is well prepared and has a good quality of *al-quwwāt wa al-qudrāt* (i.e., force and capacity) and after ensuring that the war is to be carried out in the cause of Allāh and promoting Allāh's injunction. This will prevent displacement because whoever partakes in the fight and dies in the cause will be considered a martyr.

It is important to note that though it is argued that fighting in defensive *jihād* is *farḍ 'ayn* is mandatory for every member of the Ummah. It is logical to say that where all members of the Ummah accept defensive *jihād* as a duty on them, displacement will rarely occur. Therefore, many of the Muslim countries in the war zone like Syria, Indonesia, Pakistan, Sudan, Palestine and others should ensure that all the three conditions mentioned above are adequately fulfilled to ensure that displacement is prevented during the armed conflict. To achieve the prevention of displacement, other Muslim countries that are not in the war zone should take the hint that Muslims are expected to get prepared against attack either internally or externally. This can be achieved when the leaders of Muslim countries ensure that they have military instruments and human skills to fight any attack that may arise.

It has been demonstrated that social justice enables people to have their rights guaranteed under Islamic law and the law makes it a duty of

[161] Qur'ān 49 (Surah al-Ḥujurāt) verse 15.
[162] Qur'ān 49 (Surah al-Ḥujurāt) verse 15.

individuals and the government in the Islamic state to defend against attacks from their enemies.

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