INTERNATIONAL HUMANITARIAN LAW: IS IT A TWIN OF HUMAN RIGHTS LAW?

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ABSTRACT

International Humanitarian Law has been defined as a branch of International Law (IL). It should not be regarded as a soft law as the conventions and protocols of ICRC. All these relevant international legal instrument have been signed and ratified by all kinds of players of international politics and relations. Unlike the ICJ, ICC, CTBTO or many other international organizations, ICRC and Red Crescent have organized themselves as an international order of the day to be reckoned with all the time. As a result, IHL has been culminated to reflect the progress of entire mankind for its respect to peace and human dignity. The so-called Laws of War that is now practically a full blown branch of IHL. Since the Iraq-Iran war (1980-88), Muslim countries have increasingly becoming the war zones around the world. After the end of Soviet occupation of Afghanistan in 1988, many more Muslim countries have been engulfed by too many serious and complicated armed conflicts in the Muslim World and beyond. By waging an ideological war against the Soviet invention in Afghanistan, many Western and Muslim governments have created different types of mercenaries to fight Jihad against the communist regimes led by Kremlin, which has been taking revenge against Western powers in different hot-spots of the Middle Eastern countries. Russia, Iran and Syria have become a natural ally with Palestine and Hijbullah groups fighting against DAEAS (so-called IS). All these armed conflicts participated by many countries and non-state actors have made the Middle East a big inferno about which many Muslim and western leaders are not fully aware of. Ideological elements of these armed conflicts are now very blurred, but national interests of many states are undeniable. The fact is that ongoing many armed conflicts are quite out of control of any big power and government is indeed very alarming for all of us as a mankind.

Key Words: International Humanitarian Law, International Human Rights law, ICRC and Red CRESENT, NIACs, POWs, Non-State Actors, Muslim Culture and Values

INTRODUCTION

If we take International Humanitarian Law (IHL) as the Laws of War or regulations that primarily deal with rights and duties of parties involved in armed conflicts, then its root goes back to the early human civilization. Recently International Commitee of Red Cross (ICRC) has undertaken a number of serious of research works on the Rules and Regulations about war and peace found in the

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tenets of Islam and in the history of the survival of Muslim countries around the world. These efforts have been acclaimed by many Muslim countries, which were reluctant to engage in such dialogue and joint projects before. This paper will try to examine how the Muslim values are practically so supportive to the principles and objectives of ICRC and Red Crescent, which are always standing by the side of civilians, wounded, sick, women and children who are the worst victims of all kinds of armed conflicts, including National Iranian American Council (NIACs).

How far do IHL still regulate the rules and regulation of wars and armed conflicts of all kinds? Is it now too difficult to differentiate international armed conflicts from NIAC? Can we take IHL a completely independent branch of International law? What are the major differences between IHL and Human Rights Law? Why are international human rights laws are not enough to deal with the issues of IHL? Can ICRC and Red Crescent work effectively as an umbrella organization to protect the victims of wars and civil strifes? How important is the role of some UN agencies to protect the victims of wars and armed conflicts? Is United Nation High Commission for Refugees (UNHCR) doing enough to protect the rights of refugees those who suffer most as the victims of wars and armed conflicts? How relevant is the work of UN peacekeeping force in regard to the scope of IHL? Does the ICC play a crucial role in protecting the rights of POWs and punish the perpetrators?

These are just a few pertinent issues we will be dealing with here in this article. Apart from examining the international customs, laws, instruments and precedents, we will analyze the recent realities on the ground. Non-State actors cannot survive for long without some sponsor-States, which have been maintaining a double standard against which ICRC has been continuing a genuine Jihad about which we will focus our attention in this paper.

This article will try to figure out how we can stop all kinds of non-State actors to wage any war against any State authorities, which should be more sensitive in restoring and maintaining peace and security for the wider masses irrespective of their affiliation to any ideology, creed, culture and religion living within their jurisdiction and beyond. In this regard, cooperation and collaboration between the States and their relations with ICRC and Red Crescent will be given special attention.

This paper will be a comparative and critical study rather than depicting existing mechanisms as sufficient and dynamic to face the challenge of the day. Apart from comparative method of study, I will try to apply dialectical method of research to juxtapose to carry out a qualitative quest for the purpose of revealing
various nuances to find the underlying gaps of legality and morality in implying the rules and regulations that could be more effective to restrain parties involved in long term armed battles.

**CAN NATURAL LAWS GLOSS OVER IHL AND HRL?: FROM GOOD THOUGHTS TO HUMANITARIAN ACTIONS**

We had born on earth and will leave the planet as apparently dictated by the Natural Laws. In Islamic terminologies or Muslim theological perceptions these are called Din-al fitrah, which can be termed as Natural law theory or just Divine Law. The underlying philosophies and legal theories tend to argue that various kinds of ethical, moral, and sound political and pro-people economic doctrines create the founding stones of civility, universal decency, humility, and human rights for all human beings, who can claim rights as their inalienable and inherent substance to be protected. Religious moral doctrines and non-religious perceptions of human rights subscribe almost the same essence when it comes to the implementation of universal human dignity.

However, terming any Aristotelian teleology as a natural law, we may run into risk of making HRL related views too narrowly applied in real material life. The ‘natural law theory’ some time can be termed as a combination of all kinds of ethical postulates that may or may not be applied in any given period of legal history. Thomas Aquinas is a big name in theorizing Christian moral values as ethical foundation for State agencies. For Aquinas, natural laws are eternal in character, but human interaction with and participation to them makes the issues alive in terms of ethical applications.

Thus natural laws with their underlying ethical and legal connotations can dictate or create perceptions of right and wrong, good or bad, just and unjust, innocent and criminal. These are not the province of speculation about divinity, but very specific injunctions that dictate human being to behave within some concrete boundaries of legality. Divorcing the practical rationality from the principles and norms of universality we may turned into a pattern of behavior that might not only barbaric and irrational, but that may be too unjustified and unreasonable that may threat our existence on earth.

We might not be able to read the Mind or Will of God any time soon. Nobody is aware of God's eternal plan that may put the entire humanity at rest for ever. But that cannot justify our unruly behavior detrimental to the existence of fellow human beings or any other living entities. We have to take it for granted that as a super-natural force, God is taking care of all of us and all of our surroundings.
From that assumption we must have to find our areas of capabilities and responsibilities in this regard.

Our religious or ethical thoughts must be put into action for the benefits of others, who are just as good as we are as the most important catalysts of protecting humanity and environment. Like one of the major essence of the God Almighty, we as human being can acquire a free will in our thought and actions. The fundamental and universal normative principles must be compatible with the ideas of practical reasonableness without which the issues of legality and morality would never be justified.

The fundamental normative character of Natural Law cannot betray us as human beings, who are the agents of the same dynamic of creativity and innovation. The healthy legal ideas can be recognized with full certainty. We as rational beings must act in some kind of orderly manner; otherwise we cannot even survive here in any society. Complete isolation from human societies might be suicidal. Perfect human beings may not be found, but perfect human actions can be determined for the time being. Without having any deeper knowledge about ourselves and our surroundings, we may perfectly acknowledge and enjoy the fruits of many Natural Laws necessary for our own existence. Strong emotional persuasion or evil dispositions in our psychological world is so apparent that they don’t need much explanations.

“If Aquinas’s view is paradigmatic of the natural law position, and these two theses — that from the God’s-eye point of view, it is law through its place in the scheme of divine providence, and from the human’s-eye point of view, it constitutes a set of naturally binding and knowable precepts of practical reason — are the basic features of the natural law as Aquinas understands it, then it follows that paradigmatic natural law theory is incompatible with several views in metaphysics and moral philosophy. On the side of metaphysics, it is clear that the natural law view is incompatible with atheism…”

From the perspective of paradigmatic natural and legal views recognition of or refusal to the God’s existence or nonexistence do us not really matter to become humanistic. Many relativist and conventionalist legal views lead us to believe that we need rational natural and legal boundaries and that are necessary to make our claim of being human as genuine and worthy. The ideas of nihilism cannot serve any good interest for anybody or anything we adore or like and dislike. Specific skepticism might be good or bad for the time being, but nihilism is deplorable all the time.
For any human being, it is natural to do some good works and avoid some evil deeds. But none of the principles of rationality and intelligibility of actions can predict human actions under pressure, duress, and compulsive situations. Individual human inclination and drive may vary from time to time too dramatically that cannot ensure predictable human behavior with legal prescriptions that cannot be sustained and maintained under all circumstances.

Determination and identification of some human actions as intrinsically good or flawed is not an easy task to accomplish. A human action may sound or appear good for the time being, but it might be detrimental for many others and our surrounding in the long run. Killing an enemy combatant at the time when s/he was disarmed, may send a shock wave to the enemy camp and that may influence even the outcome of a war or armed conflict, but in the long run that may ruin the future of parties concerned.

Taking it as an action of God to save the lives of disarmed enemy combatants; we may accelerate the end of wars and ensure peace and security between the conflicting parties. Most of our immediate actions and their consequences are short-lived, but persuasion of any greater goals must lead us to many good consequences for our constituencies and for the adversaries of all kinds. It is like seeking friendship with God’s essences or attributes that must bring some good to our physical and mental health. But persuasion of some gravely flawed ideas and unreasonable or irrational acts cannot bring any good results to anybody. Proportionality and accuracy of any action is also very important. In this regard, religious or atheistic connotations of events cannot make much difference if we can think and act as normal human beings.

The core of Aristotelian moral and intellectual virtues almost remains the same in the Kantian views. Only difference is that Aristotle was driven by his religious perception and Kant was neutral to all kinds of religious values. But the universal morality they had been talking about virtually identical in their insight when it’s come to the rule of law and protection of human freedom and dignity. History put them apart for about two millenniums that make their articulation very different in terms of legality. [https://plato.stanford.edu/entries/aristotle-ethics/]

As rational minds with so much of potential of creativity we may not always discover some universal list of absolutely forbidden actions for all the time. But some kind of legally forbidden actions at war fronts need to be articulated in legal terms that cannot be violated. Otherwise our human essence would be in deep crisis leading to many disastrous consequences.
Many utilitarian and consequentialist ideas and perceptions we can easily find for our own good across the board. But Aquinas and Kant may not agree on many issues of universality that had been postulated by Plato or Aristotle. The same thesis might be equally true for any other famous philosophers all of whom are certainly bound by a definitive time and societal framework. They are also the products of their historical time. Only difference is that they all foresee many things ahead of their time. [https://www.nd.edu/~areimers/Proofs%20w%20index.pdf]

Aristotle did not accept the citizenship of Greece and wished to be respected as academic of neutral mind that tended to reveal the future of democracy and good governance, but ultimately had to flee from Athens to save his own life. Kant had to seek apology from king for his warning that the Kings and rulers willing to occupy other nations’ territory and wealth would ultimately succumb to wars and hostility of others. [http://www.historyguide.org/ancient/lecture8b.html]

Thus we can observe that the general principles of right and wrong or just and unjust maintain many historical and universal reality and legal nuances. The essence of philosophical and paradigmatic legal positions in regard to the rights of human beings in the battle fields cannot be altered that much as human existence and survivalist reality with dignity touched the core of universal humanness. Reactive response to any warfare or crime is indeed a complicated issue to be dealt with. Still finding similarity in physiological disposition in enemy camps as well is not that hard job as we all have a craving to survive on this earth as long as we can.

Even as a combative and rational animal, none of the human soul is exception to this rule unless s/he is really under some compulsive situation. Different variation of human desire to live and survive may be found, but that does not change the fundamental truth of our universality that we share together.

Aristotelian universality might be quite different from the Christian or Islamic understanding of globalization. The lines between objectivity and subjectivity cannot be curbed in a similar fashion. Desire to dominate others might also vary in terms of their legal and moral justification, but creation of universally acceptable ideas of superiority is not fundamentally different. Platonic ideas sounds too different from the Aristotelian view of natural justice, but in the final analysis there are also too many similarities in terms of their ultimate goals. It is obvious simply because that our human nature is very close to each other.

The acceptance or rejection to some particular views of objectivity and subjectivism may not change our nature at the time of war or peace. The possibilities of achieving peace are ingrained in human nature. We all ultimately admire peace,
wisdom, knowledge, tranquility, serenity and beauty. On the other hand, our creativity has no limits and that potential may be very dangerous as well, if we don’t control that rationally.²

“The Platonic version of the view has struck many as both too metaphysically ornate to be defensible, on one hand, and as not fitting very well with a conception of ethics grounded in nature, on the other. While the Aristotelian version of the view has also been charged with some of the metaphysical excesses that the Platonist view allegedly countenances, most contemporary natural law theory is Aristotelian in its orientation, holding that there is still good reason to hold to an understanding of flourishing in nature and that none of the advances of modern science has called this part of the Aristotelian view into question.”³

Problem with idealism is that its objective cannot be achieved immediately. For example, we may wish to see the world free from all nuclear, chemical and biological weapons. That goal or objective cannot be materialized immediately. May be it is not possible at all. But still idealistically we can pursue that dream for the well being of the entire human race. There are some universal good ideas that we all need. We may not reach any consensus about those basic humane ideals.

Whatever is the nature of our ideological conflicts over those basic or fundamental goods, we have to agree that we need to preserve the life, knowledge, friendship and beautiful destinations together. Fascism is bad for anybody. There should not be any quarrel or argument about this thesis. Whether Winston Churchill was a good or bad anti-thesis of Hitler might a complicated question.

Brutal attitude and inclination of doing horrific atrocities can be found in many world leaders. That does not make all leaders Hitler. Love and hatred, or attraction and repulsion are very nature in human mind and behavior. Ultimate truth is that virtues will always be the winners, if the right kinds of catalysts could be organized for some definitive good objective or goals. We cannot achieve all good and fundamentally humane values at the same time and with the help of same people.

“Many of his colleagues thought Churchill was driven by a deep loathing of democracy for anyone other than the British and a tiny clique of supposedly superior races. This was clearest in his attitude to India. When Mahatma Gandhi launched his campaign of peaceful resistance, Churchill raged that he “ought to be lain bound hand and foot at the gates of Delhi, and then trampled on by an enormous elephant with the new Viceroy seated on its back.” As the resistance swelled, he announced: "I hate Indians. They are a beastly people with a beastly religion." This hatred killed.
To give just one, major, example, in 1943 a famine broke out in Bengal, caused – as the Nobel Prize-winning economist Amartya Sen has proved – by the imperial policies of the British. Up to 3 million people starved to death while British officials begged Churchill to direct food supplies to the region. He bluntly refused. He raged that it was their own fault for "breeding like rabbits".4

Churchill, Stalin and Hitler could make their friendship lasting, if their ambitious plan of empire-building did not collide between themselves. Here hypothetical truth may not help us for long to pursue relatively a better and peaceful path. Reality is that Stalin and Churchill had created a unified war front against Hitler, while PM Chamberlin had been trying to appease Hitler by giving some territories of Czechoslovakia to Germany.[http://www.historytoday.com/john-erickson/unholy-alliance-stalins-pact-hitler-roosevelt-and-stalin]

Czechoslovakia was an independent sovereign European country with a province named Sudetenland where about three million Germans used to live. Like Stalin, PM Chamberlin also believed that by accommodating German ambition to have bigger territories in Europe under the direct control would be able to keep World War II (WWII) at bay.

"Chamberlain’s appeasement policy made war more likely because Hitler thought he could get away with anything. Chamberlain’s appeasement policy bought a valuable year for Britain to get ready for the war which was bound to come. Chamberlain believed that Hitler was a man of his word."5

PM Chamberlin was aware that the Treaty of Versailles had failed to bring peace and security in Europe and there was a deep sense of regret in the minds millions of Europeans that even WWI could not make their leaders to follow the instincts of peace and reconciliation. While Chamberlain was signing the Munich Agreement on September 30th 1938, in secret he was trying to know whether the British army was ready to fight Germans in the battle field. There was a wide speculation that PM Chamberlin had been trying to buy more time to get the preparation for war against Germany. London did not care much about the sovereignty of Germany, Austria or Czechoslovakia. Austrian national language is German and almost half of the population of Pre-WWII Czechoslovakia was Germans. It is absolutely right to think the English People did not want another WW and apparently their leaders were doing everything possible to avoid war in Europe. But their civilian and military leaders were getting ready to fight against Germans.6

Neither the Soviet nor the German leaders could put trust on London that its diplomacy would be conducive to prevent war and establish peace in Europe.
Stalin and Hitler decided to make the Treaty of Non-aggression between Germany and the Union of Soviet Socialist Republics signed by their foreign minister Ribbentrop and Molotov on behalf of their respective countries. In English literature this treaty was named as the Nazi-Soviet Pact and popularly it is known as the German-Soviet Non-aggression or Molotov-Ribbentrop Pact. The treaty was signed August 23, 1939 in Moscow. By adhering to this non-aggression treaty, both Stalin and Hitler could emerge as peace-makers rather than warmongers. [http://www.traces.org/BerlinAirlift.html]

Neither Stalin nor Hitler could emerge as a synthesis of the War World II. Defeat of Hitler’s army and the fall of the British Empire are the different components of the final outcome of the wars between colonial powers, which wanted to divide the world between them. Natural laws do not allow such unholy alliances to go for even.

Human beings as a whole cannot be satisfied with only necessary evils; pursuance of some higher goals in life is very natural and inherent inclination in human minds and their effort to achieve certain big goals in their individual and collective endeavors. Driving force toward those goals or ends might be wicked as well as holy. Explicit and implicit grasp of power and property might be the underlying cause of conflict between the competing parties. Still rational and logical justification is necessary to win the game.

In nature or in terms of natural laws, nothing is completely exclusive or inclusive; everything is relative. However, relativism alone cannot explain many good or bad phenomena in life. To understand those phenomena, relativism need to be analyzed through the prisms of ‘inclinationism and derivationism’ as distinct methods of reaching to the truth.

Different spheres of knowledge are out there for a continuous corrective process that many may consider as selective method adopted by the survivalists themselves and their agents. Hitlerism, Stalinism or any other empire-building tendencies may not die down completely. But we cannot support any of those coercive methods of justice or injustice, if we support some kind of natural laws of human creativity and decency.

Merely speculative ideas or point of views may not be helpful either. Definitive justice system must be there to handle the issues of war and peace to bring them some conclusive end, even if it is for a temporarily period of time. In-built human nature and the potentialities we derive from the natural laws cannot be ignored under any circumstances.
Realistic and practical point of views also need theoretical justification, otherwise public opinion for some common or public goods cannot be built. Engagement in various peaceful efforts is the best way to avoid wars and arm race that we have been witnessing all over the world.

Skepticism may not be that helpful if we really wish to engage ourselves in some good works in view of avoiding or averting wars and armed conflicts. Possibility or impossibly, and certainty or uncertainty cannot be counted in any mathematical or absolute terms. Objectively good and bad attitude, efforts and phenomena are the criteria to be used by all concerned parties.

“Indeed, by connecting nature and the human good so tightly, the natural law view requires that an account of the good reconcile these points of view…. In particular, they need to deal with the fact that, even if they are not in the business of deriving goods from inclinations or identifying the goods precisely with what we tend to pursue, they take as their starting point human directedness. It has been rightly noted that human directedness is not always a lovely thing. Power and prestige seem to be a matter of human directedness — at least as much so as, say, aesthetic enjoyment and speculative knowledge — but they do not make it to the natural law theorist’s catalog of goods…. While these difficulties persist for inclinationist and derivationist accounts of knowledge of the basic goods, they may well be eased if one affirms both accounts: one might be able to use inclinationist knowledge to provide some basis for bridge principles between knowledge of human nature and knowledge of human goods, and one might be able to use derivationist knowledge to modify, in a non-ad-hoc way, the objectionable elements of the account that one might be bound to give if proceeding on an inclinationist basis alone.”

Distributive and corrective nature in legal and cultural matters may not proceed hand in hand at all. Gaps between them are very apparent. But they should not be unbearable. If the gaps between powerful and powerless people or states become unbearable, then no system may work for any good for the society at large. Authority is needed to keep peace. Negotiation process is even more important to ensure and sustain the peace process. This is kind of a never ending process with corrective measures in making or unfolding.

Nothing is granted for the long time as competing parties are in constant race for their excellence and superiority. Rise and fall of state Powers are like the natural birth and death. Material and military superiority alone cannot ensure any nation or state to prosper for a longer period of time as moral leadership is needed to
persuade others to follow their curve in road mapping efforts of civilization building. Big military showdown by any formidable State machinery may scare small powers for the time being, but it cannot intimidate many vibrant nations in the long run. National and religious strength ultimately rely on the moral fabric of the concerned societies.

Most of the time State authorities do not acknowledge the strength of moral leadership; they tend to assert their dominance with the help of military or any other type of coercive methods, which doom to fail to attract people’s hearts and minds. Instead of getting natural allegiance and habitual obedience, dictators of all kind, democratic or otherwise, receive the support of hipper-activists, whose main reliance is populism. Populism makes war-mongering leaders popular and destructive even for their own national and racial interests.

“The intrinsic moral authority of the natural law has been a matter of debate since Aquinas: it was a central issue dividing Aquinas’s view from those of Scotus, Ockham, and Suarez. It continues to be an issue between natural law theorists like Grisez (1983) and Finnis (1980) on one hand and theological voluntarists like Adams (1999) and Hare (2001) on the other. Natural law theorists have several options: they can argue against any meaningful distinction between morality and the reasonable more generally (Foot 2000, pp. 66-80); or they can embrace the distinction, but hold that on the clearest conception of the moral that we possess, the natural law account of reasonableness in action adequately satisfies that conception (Murphy 2001, pp. 222-227); or they can hold that the notion of ‘morally right’ is so muddled that it should be jettisoned, leaving in its stead the notion of the reasonable (cf. Anscombe 1958). It is at present far from clear which of these avenues of response the natural law theorist has most reason to embrace.”

Absence of war or peace should not be an issue of hypothetical discussion. Not only the wars or armed conflicts, even the threat of war is enough to take away the peace and security continuously. For god’s sake we cannot really fight at all, until we are deliberately and unjustly attacked by a military, which is solely interested in killing people. Extinction of many pieces on earth has been caused by too many natural or confrontational causes either through in-built weakness of the system or by some interventions from the outside known or unknown to us.

“The vast majority of organizations that have ever lived on earth have left absolutely no trace of their existence, since fossils arise only in highly unusual circumstances....asteroid collision is a tantalizing event. It may have been the only possible means by which the dinosaurs could have become extinct and mammals could have flourished. We probably wouldn’t be here if that asteroid had not hit Mexico.”

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WHICH ONE IS OLDER AND FAIRER: IHL VIS-A-VIS HRL

The Catalog of War and Objectively Good and Evil Phenomena

Philosophically there is nothing absolutely good or bad on Earth where we live an imperfect life in a very uncertain and for time being only. From this perspective, no incident of birth or death is of any absolute character. Yearning for Basic Goods in life is eternal and understandable. Logically we can see that the concept of Basic Goods is always changing. But the idea of being Good to others hardly change in any time of human history. In this regard avoidance of war and armed conflicts is of paramount importance. Problem is that the mightiest powers do not want to stop the wars and warmongers have always been taken as patriots until miserable consequence fall upon their constituencies.

Human Rights as inalienable Natural Laws were better understood by masses because of the universal character of those laws and their manifestation in human societies. Many of the concepts of the Universal Human Rights have been taken as an imposition of artificial rights by the former imperial powers over the colonized people around the world. It took more than half a century to make the Third and Muslim Worlds to appreciate that we as humankind needs the universal principles of human rights to be implemented in our own political, economic, social, cultural, and religious contexts. The trajectory from the right kind of conceptualization to appropriate attention and implementation of human rights is complex, complicated and multi-dimentional.

Violation of IHL automatically leads to gross violation of all kinds of human rights of all people who are directly and indirectly become parties and victims of warfare. This connectivity has better been understood by the Europeans or Japanese because of their suffering after the two World Wars. They all wanted to be the direct and indirect agents of peace and security at least in their respective countries. Thus the universal human rights have remained as a Euro-centric phenomenon rather a global egalitarian system of exercising State-powers for the betterment of the masses. The ongoing progress cannot be denied in many parts of the world, especially industrialized world. The side-effects of globalization and industrialization in the advanced countries were less pitiful than the so-called Third World.

These complex legal problems are intertwined with many cultural, religious and ethical issues that we tend to ignore in many occasions of our mundane interactions. Here social, cultural and ethical values either cannot be conceptualized correctly or contextualization processes suffer many setbacks that get little attention from the powerful and resourceful segments of the States and societies. A
long catalog of fundamental goods is to be articulated not just for political reasons, but for the implementation of many civil, political, cultural and religious rights at grass root levels.

Most of the basic human values need to be nurtured with a view to addressing real or burning societal issues and their impact on the realization of the rights of individuals in isolation and in collective. We need to create more and more common and public goods to be distributed among the citizens. But we are not to be readily reformed as our societies may need to see in ourselves.

We have serious inclination to be deviated from the virtuous paths. The inclinationist lines in our behavior are too many to be corrected so easily. As human beings we are combating animals as well. We don’t like to be faithful to the natural law ideas that may be helpful for our peaceful co-existence. The acquired know-how or knowledge we like to share voluntarily with the parties, which are ready to serve our own vested interest. Prosperous and generous life cannot be built without cooperative and collaborative spirit in the societies at large. In many cases we need great sacrifices of one generation to make successive generations successful. When war or armed confrontations are taken as tools or avenues for greater prosperity, then we have to bear the consequences of that wrong and flawed strategy or policy.

To make the good and humane policies adoptable by the stronger political, social and religious forces and leaders is indeed a difficult task to be accomplished. Most of the basic goods needed for the welfare of States and societies cannot trade off only for the sake of direct financial benefits just for the time being.

If we invest heavily in the areas of education, health, technology and infrastructure in one generation, then next generations can use them frequently and widely for the greater good of the societies as well. Many human inclinations toward certain ends cannot be characterized just by their commercial benefits. Many explicit and implicit virtues and knowledge can be distributed only through our actions with gesture of good wills.

Natural Law theorists may explain, rightly or wrongly, the necessity of the quest for implicit knowledge and its dissemination for greater good of human societies. Acquiring the techniques to fight the real or perceived enemies may constitute an integral part of that imagination and endeavor. To make or find an exhaustive catalog of basic goods may not be possible.
Natural law theorists may agree or disagree about a catalog of basic goods in general and avoidance of war may not find a definite position in that catalog. Intrinsically good human behavior may face less controversy in regard to making a healthy sense of our inclinations. Conceptual formulation of the propositionally good human behavior and the quality of good leaders might not be that difficult task. But temptation of resorting violent means to achieve political and economic goals cannot be deterred so easily.

From Aquinas to post-modern theorists of basic goods might not see too many theoretical controversies. But real world has been dominated by the military interventions and adventures of the Western powers in Asian, African and Latin American countries. In the areas of legal discourse many issues such as reasonableness, logical justification, legitimacy, authenticity, justice and fraternity, good friendship, sensible religiosity, public health concern, quest for and knowledge of truth, appreciation for tranquility and of natural beauty, and playful activities without obsessive indulgence for a longer period of time.

All material gains cannot ensure happy and creative life for all, but it greatly helps to try successfully to get rid of various kinds of frustration and depression at individual and collective life. General sense of pleasure and satisfaction in fulfilling professional duties is very important that can remove unnecessary painful situation on daily basis. Any humanitarian action is capable of doing some good in relieving pain from human body, brain and mind.

On the other hand, war and confrontational policies bring too much pain and agony in the psyche of public and individual life. It leads to a situation where harboring violent and terrorist activities become a norm rather than exception. Inner peace in human soul plays a very crucial role in creating decent and humane environment in society at large.

Based on some particular religious and ideological pursuits we cannot create any kind of consensus to formulate a workable list of public and common goods. Intellectually and politically it is a challenge to bring together humane values from different sources of knowledge and experience. At a deeper level of spiritual and philosophical discourse here we are facing a question all the time. Is pleasure and pain in life instrumentally good or is it intrinsically a good phenomenon?

FROM GOOD THOUGHTS TO CORRECT HUMANE ACTIONS

A thief or robber may collect resources to be distributed among the need and poor. We can’t exactly know with full specificity his motivation of doing ‘illegal
charitable work. He can claim that behind all big philanthropic activities he can sense a deception, so his apparent illegal and immoral actions cannot be punishable. A war criminal also can argue in a similar fashion. If everything is only relatively good, then we cannot punish even the most heinous criminals.

Aung San Suu Kyi is a Nobel Peace Prize winner in 1991 who simply denied that in Myanmar no ethnic cleansing took place as Muslims are also killing Muslims in her country. Rohingya Muslims have been regarded as ethnic minority of Bengali descent in the province of Arakan (Rakhaine) in her country. Is it morally or legally justified that a government would declare that even all evidences of genocide should not be regarded as war crimes, even not a simple violation of humanitarian and human rights laws? What natural goodness can we expect from such denial of truth of mass murders and massive atrocities that going on for few decades?

Rationally, legally and morally, we cannot find any defensible good grounds to support ethnic cleansing in any state or country, but politically, even ideologically or religiously, you may claim that there are enough fundamentally good reasons to kill people for some patriotic reasons. Religious people or Muslims are potentially terrorists so you can physically eliminate them on any suspicious reasons. And that would bring some natural good to your enlightened people. Theoretically or conceptually it is absolutely morally wrong argument. Can it be absolutely legally wrong argument as well?

Minimal rational action may not require any serious moral or legal justification. Taking away human life is not a trivial issue to be considered as way. But none of the legal choices might be absolutely right. Governmental agencies may argue that extra-judicial killing are also good provision to save the societies from heinous crimes. Governmental agencies always promise to realize some good for the people under their jurisdiction. How can we find some guidelines to which we should adhere all the time in order to show some of these choices superior to others?

President Rodrigo Duterte articulated and executed his extreme policy of fighting drug-addicts in Philippine. He as an elected president of the country (since June 2016) thinks that his government has every right to kill drug-addicts by considering them as extreme lawbreakers. He declared extra-judicial killing is a lawful means to save his country and people from criminals. In his word: “These sons of whores are destroying our children. I warn you, don’t go into that, even if you’re a policeman, because I will really kill you.” Jurisprudentially one can easily sense a hate speech here that was even falsely directed to the former American President Barak Obama.
These kinds of hate speeches may serve as the causes of many hate crimes. When Aung San Suu Kyi was jailed for her human rights voices that had earned for her the Noble Prize for Peace, Muslims of Myanmar fought for her and they became the target of the military regime there. Later on Aung San Suu Kyi became the Foreign Minister based on the result of the national elections. In the elections also Muslim citizens supported Aung San Suu Kyi, who betrayed them and allowed the Buddhist monks to kill Rohingya Muslims with all kinds of impunity. How can this happen in the second decade of the 21st century?

Promises of doing good deeds by the political and religious leaders by themselves cannot create any concrete legal obligation. Many natural law theorists argue that we cannot simply make morally wrong thing to be considered as legally sound. Moral soundness is a deeper understanding and bears deeper impact in the society for a longer period of time than the legally right or wrong issues. According to them we cannot change morally wrong deeds into legally or ethically right things.

“[P]aradigmatic natural law view holds that there are some general rules of right that govern our pursuit of the various goods, and that these rules of right exclude those actions that are in some way defective responses to the various basic goods. How, though, are we to determine what counts as a defective response to the goods?”

Thus there must be some Master Rule behind all rules and regulations applicable to some particular area of human behavior and interaction. This indicates that legal and moral standard based on which we tend to argue and formulate laws is more important than the combination of legal rules we adopt for ourselves. Thus laws might be essentially virtuous and fundamentally flawed.

There are at least three possibilities. One might appeal to a master rule of right that can be used to generate further rules; call this the master rule approach. One might appeal to a methodological principle by which particular rules can be generated; call this the method approach. Or one might appeal to some standard for distinguishing correct and incorrect moral rules that is not understandable as a method; call this the virtue approach. According to the perceptions of natural law theories right kind of moral prescription to legal issue is the diagnosis of our legal and moral problems need to be tackled from the primary levels of our interaction. moral norms from the primary precepts of the natural law
Finding and articulating Master Rules might not be that difficult, but applying it is more challenging. Good and loving attitude to others as a basis of all humane actions can easily be propagated, but materialize that through legal avenues is a very long and complicated process. There are too many consequences and possibilities of the implication of a set of rules adopted by any author. Legal approaches have numerous ramifications for all concerned parties, who may or may not be prepared to accept good or bad consequences of the application of those laws.

In many cases Master Rules or Principles simply tell us what is morally right or wrong and do not dictate us any norms to be adopted as legal rules. A primary task of any Master Rule is to distinguish correct and sound moral rules from immoral and incorrect ones. Defective legal rules will always bring harm to the societies at large. Some individuals may reap some benefits for the time being by using those faulty legal norms. Lasting benefits for a large group of people cannot be expected by applying morally unsound laws.

For any Buddhist, a Master Rule is not to kill any kind of animals, which have been taken as the extension of human race or soul. Muslims and Buddhists have been maintaining very good relation in the greater South Asian region. Muslims used to save the lives of Buddhist people in the greater Arakan or Burmese region. Now Buddhists monks with the help of their autocratic army and silent endorsement of the Foreign Minister (possibly future PM) Aung San Suu Kyi, have been killing unaccounted number of children, women, sick, wounded and regular civilians of kinds, simply because they are Muslims. It has been happening on daily basis for many years now, and has been intensified with the emergence of MsSuu Kyi at the helm of State power in Myanmar.

Mr. Rodrigo Duterte is the President of Philippine, which has a very strong Catholic culture of saving human lives under any circumstances. However, what we are now witnessing is that people are killed in the streets of Manila and other important cities. Both in Myanmar and Philippine people have been becoming the victims of State-sponsored, wide-spread, and systemic violence that should not have any place in anywhere in the world. State agencies are legally obliged to protect and save the lives of people in their homes, streets, and work places. It does not matter who they are, and what is their religious, ethnic, gender and other identities. People working in the disciplinary forces cannot put a blind eye to the atrocities committed against some particular groups of people living and working in their countries.

The paradigmatic natural law view is not working in many countries now and that is a great alarming situation for the entire human race. Natural law commands that it should be obeyed simply because of its intrinsic moral values.
without which we cannot claim ourselves as human beings. As human beings we are obligated to obey the Natural laws that are essential for our own survival and others. This thesis is now applied to all universal human rights and IHL about which we will discuss below.

A Brief Introduction to the Material Sources of IHL

All important religions in their scriptures try to put emphasis on the rules of war not because followers need to wage wars very often, rather they need to stop wars and make it harder for themselves to start a war. In religious and ethical perceptions, there is no scope to start war based on some lame excuses. Being the youngest world religion, Islam provides detailed rules and regulations that must be followed strictly before, during and after each and every armed conflict.\(^\text{17}\)

Unfortunately, Islamic legal doctrines have been taken as a source of violence, war and terrorism. In the annals of history the Crusade-wars against Muslims by the Christians have played a significant role in shaping the psyche of these two important religions. All kinds of Christians and Muslims constitute about two-third of world population. And their share to the world population would rise dramatically by the middle of the 21st century. By the middle of the nineteenth century Christian world has started to appreciate that war for religious objectives are completely outdated philosophy and country productive for the European and Western peoples in particular and human race in general.

Peace-makers Henry Dunant and Francis Leiber could foresee the danger of wars in the European horizon and enthusiastically dedicated their lives to create forces against wars and armed conflicts. Many analysts believe that their works for peace had been inspired by the The Social Contract of Jean-Jacques Rousseau.\(^\text{18}\) This famous book appeared in 1762 and subsequently shaped many ideas of the French Revolution. Many of the achievements of the French revolution were marred by the Napoleonic military adventures in Africa and Europe and consolidation of the British military grips over vast colonial territories of many ancient civilizations of Asia and Africa. The Tsarist and the Ottoman Empires were falling with a significant speed and the Treaty of Paris signed on March 30, 1856 put to an end of the Crimean War (1853-1856).\(^\text{19}\)

During the 20th century none of the big and devastating wars was for any religious causes; wars were mainly created and fought by imperial militaries. Two World Wars (WW) were fought between the mightiest colonial and imperial powers. Before the UN Charter was adopted in 1945, we can find that the modern IHL had already completed its century-long journey.
The "Lieber Instructions" can be considered as the founding stone of modern codified IHL. It represents the first attempt to codify the laws of war. American Professor Francis Lieber had articulated a legal instrument to be applied in the American Civil Wars. President Lincoln did endorse the "Lieber Instructions"; which played a strong role to give a boost to the development of IHL. The Brussels Conference in 1874 was a continuation of that process.

Russian circular of 30 December 1898 claimed that the purpose the First Hague Peace Conference of 1899 was "the revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified." Convention on land warfare to which Regulations are annexed was a great success of the Conference of 1899. The Second International Peace Conference in 1907 was also very successful in revising the first one. These two versions of Hague Regulations are almost of same kind and domain that respect the Laws and Customs of War on Land. These laws produced very specific legal norms about the conduct of military operations and the rights of Prisoners Of Wars (POW).

The 1899 Convention was ratified by a good number of States despite the fact that too many direct military interventions of big powers to the smaller countries was still a common phenomenon in late years of nineteenth century. Diplomatic gestures by big powers like the United States (US), United Kingdom (UK) and France were taken seriously by smaller States around the world. Weaker and smaller States wanted to put trust in the words of the influential political leaders of the west that the human race would be better served by an international institutional arrangement that will keep peace and security at global levels. A peaceful mechanism of settling disputes of all kinds was an urgent need. The Hague Peace Conference of 1899 has also created a Permanent Court of Arbitration. American President William Howard Taft was very enthusiastic to make global system peaceful.

American politicians did not follow a kind of serious isolationist policy, but they were by and large unilateralists, who believed that Washington would be able to dictate the world order for a long time to come as the European colonies were in the process of decline. As a result, many American policymakers became gradually more aggressive and interventionist than before. This had been manifested in their contribution to wars and military conflicts within and abroad.

We may consider the war between the United States and Mexico as having the most devastating and lasting impact on the psyche of the majority of the Mexicans, who have genuinely believed that more than half of their country’s territory (about 55%), was conquered by Washington. Mexico not only lost Texas, but also
vast territories of the States of California, New Mexico, Arizona, Utah, and parts of Colorado and Wyoming. Americans could forgot those historical events because of their own success stories such as the Treaty of Guadalupe Hidalgo, California Gold Rush and booming American economy. The scar left on the Mexican history, economy and psyche took a deep toll continuing till today.

The consensus about to be built over the issues of global peace and securities was caught by serious suspicious and Seventeen States did not ratify the 1907 Hague Convention. No big military or colonial powers did use any inquisitive mind to know why the 1907 Hague Convention was not signed by so many countries despite the fact it was just a replacement of The 1899 Convention. The Convention of 1899 did raise a high hope for peaceful resolutions of many conflicts between the States. The US-Mexican conflicts had taken as just reality of the fast and liberal migration policy adopted by some American governments tends to heal the wounds between Americans and Mexicans.

However, aggressive American military interventions in so many Latin American countries upset the balance of power in North and South American continents. That has been seriously reflected in the foreign policies of many countries, which decided not to be the parties of the 1907 Hague Conventions. Like the 1899 Hague Convention, this later version was also a serious embodiment of the rules of customary international law about war and international peace. These Rules were not only for the signing States, any state may willingly try to become a party or any warring Sates can be considered as formal parties to them according to their explicit and implicit desire.

The Hague Conventions on land warfare of 1899 and 1907 made sure that the codification of IHL goes further with specificity and clarity. This codification of the laws of war and peace maintained a good number of similarities with the Islamic Rules and Regulations about war and armed conflicts. Like the UN Charter, Islamic legal doctrines are very unambiguous that except self-defense no State even can start any war.

The adoption of similar types of rules and regulations by international and national authorities should not be difficult at this stage of globalization. The profound projects of modern international conventions on the laws of war have created a history of trust building between the nations. Nation-States by themselves maintain many hostile identities and national interests, and thus wars are not that unexpected either. Many positive contributions of IHL have been acclaimed by all kind of national and international bodies. Some of the major codified instruments of IHL are as follows:
Convention (III) relative to the Opening of Hostilities, The Hague, 18 October 1907; Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 29 July 1899; Convention (III) relative to the Opening of Hostilities. The Hague, 18 October 1907; Hague Convention (IV) on War on Land and its Annexed Regulations, 1907 (18.10.1907); Hague Convention (V) on Neutral Powers in case of War on Land, 1907, (18.10.1907); Hague Convention (VI) on Enemy Merchant Ships, 1907 (18.10.1907); Hague Convention (VII) on Conversion of Merchant Ships, 1907, (18.10.1907); Hague Convention (VIII) on Submarine Mines, 1907, (18.10.1907); Hague Convention (IX) on Bombardment by Naval Forces, 1907, (18.10.1907); Hague Convention (XI) on Restrictions of the Right of Capture, 1907, (18.10.1907); Hague Convention (XIII) on Neutral Powers in Naval War, 1907, (18.10.1907); Hague Declaration (XIV) on Explosives from Balloons, 1907, (18.10.1907); Geneva Protocol on Asphyxiating or Poisonous Gases, and of Bacteriological Methods, 1925, (17.06.1925); Additional Protocol (II) to the Geneva Conventions, 1977; Statute of the International Criminal Court, 1998; Additional Protocol (III) to the Geneva Conventions, 2005 (08.12.2005); Convention for the Protection of all Persons from Enforced Disappearance, 2006, (20.12.2006); Convention on Cluster Munitions, 2008, (30.05.2008); Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law; Amendment to the Statute of the International Criminal Court, amended article 8, 2010, (10.06.2010); Amendment to the Statute of the International Criminal Court, (articles 8bis, 15bis and 15ter, 2010; (11.06.2010); Arms Trade Treaty, 2013.

The 20th century had witnessed an undeclared war between Russia and Japan who did fight in 1904. Similarly, in 2003 President Bush declared war against Iraq and violated all major rules and regulations created by the IHL. Russian-Japan war during the early 20th century was ended rather quickly and written rules on the commencement of war were created as a significant development of IHL. The 1907 Convention was at the Second Hague Conference. This Convention mainly regulates the ius ad bellum and left other instruments to deal with ius in bello.

IHL, an independent branch of public international law tries to keep different nation and States to maintain peaceful and friendly relations instead of being at war-footing all the time. A common query is why IHL does not try to declare war as an illegal act. The question of legality of any war ends up with endless controversies that can entangle the IHL in a similar fashion of the League of Nations, which embarrassed its premature natural demise. Though the UN Charter has stipulated war between Nations illegal, but UN also keeps the provisions for legitimate war
endorsed by its organs of fighting war for the purpose of self-defense. Thus here dilemma is not to declare or not to declare war as an illegal act on behalf of any State or government; question is how to bring an end to any war or armed conflict.

Maintenance of peace and security is the prime objective of IHL, which alone cannot accomplish that prime goal. IHL continuously needs cooperation and collaboration of warring parties and States and their supporters at regional and global levels. That is why support from other international organizations is so important for ICRC and Red Cross.

“[IHL] aims to prevent – or at least to hinder – mankind’s decline to a state of complete barbarity. From this point of view, respect for [IHL] helps lay the foundations on which a peaceful settlement can be built once the conflict is over. The chances for a lasting peace are much better if a feeling of mutual trust can be maintained between the belligerents during the war.”

Thus containing the warring parties and reconciliation between them and limiting their distraction only to the military capabilities gets priority by IHL and its major catalysts, including ICRC, Red Cross, and so forth. During the war-time, one of the major objectives to be achieved is to containment of war-destruction limited to military targets instead of speeding the act of hostilities to the civilians indiscriminately. Thus respecting basic human rights and preserving human dignity at the time of war and its aftermath must remain at the center of IHL jurisprudence and jurisdiction.

At present IHL by and large consists of the four Geneva Conventions of 1949. These have emerged as universal international laws because of the UN endorsement and support of all the States around the world. The Conventions saw some significant further development with the help of the Additional Protocols I and Additional Protocols II of 1977, relating to the protection of victims of armed conflicts, and the 2005 Additional Protocol III, relating to the adoption of an additional distinctive emblem. More than 175 States are directly parties to these conventions and protocols by virtue of being the signatories of these international instruments.

HOW MAY A CRIME TURN INTO A WAR CRIME?: RAPE

In the past, international law and institutions had serious jurisprudential problem in recognizing rape as a war crime despite that fact that the endemic character of rape by enemy armies was not at all a new phenomenon. During 1930s Japanese soldiers in China were blamed for such a heinous crime. However, legal issues
involved in the systematic use of raping women (even children) as a means or weapon of ethnic conflicts or war could not be resolved categorically. Otherwise, as Bangladeshi we could use that against Pakistani soldiers who were committing rapes systematically during our nine-month long liberation war in 1971.

At the initial stage, Serbian attack on Muslim communities during 1990s had been taken as an ordinary conflict between two ethnic groups living in the same country. For some religious and historical reasons Serbians were taken as enemy of Bosnian Muslims, who were rather quite accommodative to and friendly with non-Muslim population in the Balkan region. In jurisprudential studies or international legal discourses, rape had been treated as just any other serious crime, but not as a crime against humanity. This has put the jurist and judge communities around the world in a serious dilemma to recognize that rape should be considered as a war crime if that can be found as an offence committed systematically.

Mass rapes during World War II were also ignored. Many Russians, Germans, and Japanese committed those crimes during World War II. Those heinous crimes received very limited attention simply because many influential forces of international politics thought that those rapes are part and parcel of war time reality. As a result, we found that mass rapes have remained a common occurrence during war time. “[T]he rapes by soldiers during the Vietnam War, and by the Pakistanis against Bangladeshi women in 1971 were also ignored.”

Crimes against Bosnian women also might have been ignored if some victims of that ethnic cleansing could not come forward to testify in the tribunal after 16 years of the end of the conflict. A major problem with any ethnic cleansing is that most of the outsiders believe that it is like a civil war and warring parties are just killing each other. Reality is that only people of one side is getting killed and raped. For example, only Bosnian Muslims were killed and only Muslim women were raped in Bosnia and Myanmar. In the past problem was that such systematic rape was not even recognized as war crime despite the fact that this kind of crime indeed violates Article 27 of the Fourth Geneva Convention.

In 2008, the Resolution 1820 of the UN Security Council has recognized that "rape and other forms of sexual violence can constitute war crimes, crimes against humanity, or a constitutive act with respect to genocide.” Even that was not enough. Now it has been recognized as a war crime because of the evidence proved in ICC.

In 1993, when the Yugoslavia Tribunal was created, it is important to understand that the Yugoslav statute was only based on customary international law. The
UN-created tribunal was drafted to apply the customary law that already binds
nations. Therefore, no prolonged negotiation was required to issue the state, as was
the case with the International Criminal Court’s Rome Statute—which is a combina-
tion of codified customary law and newly negotiated crimes. In the Yugoslav and
Rwanda statutes, rape is included as a crime against humanity.

“A young judge, Nusreta Sivac, was one of 37 women raped by guards at a
concentration camp in Bosnia. They never discussed the nightly traumas—their
pained glances were enough to communicate their suffering. She also witnessed
murder and torture by Bosnian Serb guards—and was forced to clean blood from
walls and floors of the interrogation room. She told herself to memorize the names
and faces of the tormentors so that one day she might bring them to justice. Today,
it's partly thanks to Ms. Sivac's efforts to gather testimony from women across
Bosnia that rape has been categorized as a war crime under international law. Thirty
people have been convicted at the international war crimes tribunal in the Hague
and another 30 cases are ongoing. She personally helped put the man who raped her
repeatedly during her two months in captivity behind bars. "Most of the strength I
took from the idea that one day this evil would be over," she told The Associated
Press this week ahead of International Women's Day on March 8 [2017]. The United
Nations Special Representative on sexual violence in conflict said Sivac and other
victims are helping to make sure wartime rapists pay for their crimes."  

After all these we find that mass rapes have been used in many countries in
Africa and Asia. For example in Myanmar Buddhists people and their army have
been raping Muslim women during last thirty years. They systematically use rape
as a weapon of war to drive them out from their homeland, Arakan (Rakhaine prov-
ince of Burma) where their forefathers were the settlers more than three centuries
ago. Unfortunately when Muslim women are the victims of rape, then we tend to
give little attention or try to ignore it as a matter of internal conflicts. However,
neither IHL nor IHL would tell you that we can do such kind of discrimination
against any rape victim.

"[B]ased on interviews with 220 Rohingya among 75,000 who have fled to
Bangladesh since October, [2016, a UN report] accused Burma’s security forces of
having committed mass killings and gang rapes in a campaign that “very likely”
amounts to crimes against humanity and possibly ethnic cleansing. [to defy that UN
reptl] A commission set up by Burma’s government issued an interim report in
January that said it had found no evidence of what some have labelled potential
genocide, dismissing allegations of rape. [A] commission chaired by former UN
Secretary-General Kofi Annan, created at the behest of Ms Suu Kyi, presented inter-
im recommendations to the government about long-term solutions to tensions
between Rohingya and Rakhine Buddhists in Arakan. The recommendations included allowing journalists free access to the western part of the country.”

SIMILARITIES AND DISSIMILARITIES BETWEEN UNIVERSAL HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

We can take international law as supranational regulative mechanism that was bound to produce IHL and UHR (Universal human Rights) as separate branches of Law. Which branch should come first? If we take IHL as the Law of war, then maybe we could wait for that for a while until we learn how to survive in the first place in a world where the Earth was not that densely populated as it is now. If we take war just as an outbreak of violence between two human beings, then both the branches of Law were to be born at the same time and in the same place.

Human mind is capable of being the most intelligible, rational, peaceful and wise on earth. It is not something granted or given automatically. All these qualities need to be cultivated individually as well as collectively. On the other hand combative feature of human being is spontaneous and instinctual. As a result we need Human Rights Laws along with the IHL, which is keen to make the possibility of war and confrontational politics as less as possible. IHL cannot completely eradicate the wars and their devastating consequences on human societies and psyche. Intensive and comprehensive endeavor to implement all kinds of Human Rights law can also be helpful to deter many armed conflicts and their consequence to make them somehow bearable and repairable.

With the age of nuclear weapon rivalry, chemical and biological weapons with all kinds of Weapons of Mass Destruction (WMD) we are in fact in a disarray where to go from here. In 1996 most of the States around the world had agreed to ban the test of nuclear weapons. The treaty was named as the Comprehensive Nuclear-Test-Ban Treaty (CTBT) signed by 183 States to be enforced as a legally binding treaty for all States assigned and ratified within three years. The proposed global comprehensive ban on nuclear explosion for testing bombs or missiles could not be implemented. Was it a violation of Human Right laws or IHL that we could not even ban the testing of nuclear weapons?

Answer to this question is very clear. No one violated any law because the Treaty did not come into force. American experts and historians would tell you that the late American President John F. Kennedy (1961-1963) visualized a treaty like the CTBT long fifty years ago. In fact in 1992 the US unilaterally declared a moratorium on nuclear explosion for testing more nuclear weapon because governmental agencies determined that the US has enough nuclear weapon for self-defense. Was the
dropping the nuclear bombs on Hiroshima and Nagasaki illegal? No one would tell you that it was illegal or it did violate any international law as at that time Japanese were the enemies of Americans, who were yet to declare that the World War II ended. Thus we can observe that this kind of situation can make any barbaric or atrocities quite legal if that is supported by any strong military power at regional and global levels.

From this legal technicality nothing has changed in any international institutional mechanism to implement human rights or IHL for the purposes of giving remedies to the victims of war. But from many conceptual perspectives there is a sea change in every formulation of law and their views of legality. The document of the UDHR (Universal Declaration of Human Rights (UDHR) was a text of immense political importance as on 10 December 1948 the United Nations General Assembly (UNGA) had adopted the text at the Palais de Chaillot, Paris. Can we call that a binding legal text as an international law to be enforced within the state boundaries and beyond? Answer to this question is negative simply because United Nation Security Council (UNSC) could not make it a law binding for all states. This is just one way of looking to it. Others would tell that as it is a legal text of soft-law character so no court in the world will be able to enforce it.

In 1966 the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, (ICESCR) were adopted as independent treaties. But they are regarded as the extension of UDHR. Moreover, these instruments gave a stronger legal force to the Universal Declaration of Human Rights. Despite the fact that many counties and regions of the world have been failing miserably to uphold and materially realize many important human rights, some European countries have been trying to achieve the objectives of UNDU collectively. It was surprising to observe that the UK took ten years to ratify ICCPR. If the UK did not join the EU in 1973, London might not ratify ICCPR in 1976 either.  

Most of the EU legislations have shown their determination to face the challenges of implementing human rights as a whole under some-kind of uniform social, political, economic and cultural system. This might be one of the reasons why the UK has decided to withdraw from all EU legal mechanism. Along ago before all that happened in the annals of the EU history that France had declared that it would not participate in any military actions in anywhere in the world as that contradict many legal issues we have been trying to address.

French President Charles de Gaulle (1959-1969) on June 21, 1966 unilaterally declared that his country would not contribute anything to North Atlantic Treaty
Organization (NATO) either financially or militarily. Since then we did not find any French soldiers in the NATO missions or military operations in anywhere. But prior to that secretly Paris did everything for Israel to acquire nuclear weapons. Until now Israel did not declare that it has or has not any nuclear weapons at its disposal. What kind of legal paradox or moral dilemma is it?

“What would distinguish different employments of the method approach is their accounts of what features of a choice we appeal to in order to determine whether it is defective. The knowledge that we have to go on here is our knowledge of the basic goods. If a certain choice presupposes something false about the basic goods, then it responds defectively to them. So a moral rule can be justified by showing that it rules out only choices that presuppose something false about the basic goods.”

If we take war as absolute evil then we should be prohibiting all kinds of warfare and make the world completely demilitarized zone. As we cannot do that so we have taken war as a necessary evil. Then, how, to compare Rules regulating the warfare and differentiate them from the Laws regulating the human rights regimes under the State Laws? At global levels, only UNSC can declare war with an absolute kind of legality. But all States and their governments can easily declare war based on the constitutional provision written or interpreted by the people in power. More importantly, Heads of the States and Governments can find many ways of making any military attack as illegal and thus a valid reason of staring war for “National Security Interests.”

“While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country”.

This concept of preemptive war is indeed a threat like terrorism. Only difference is that one is State-sponsored and another may be non-State-Actors. As there is no universally accepted definition of terrorism so we cannot differentiate between State-terrorism from non-State terrorism. There are some areas where Human Rights Laws and IHL overlap their areas of action and relevance. They are like twin brother, but not identical twins. They allow each other to cooperate and collaborate to help all people, especially innocent civilians, to lead their life without fear of terror and persecutions.

The UN Charter in fact prohibits war as a form of aggression and then allows States to fight battles to protect their territorial integrity. This creates a lot
dilemmas and dichotomies that IHL alone cannot solve; it needs help from all branches of international law. This does not mean that IHL is not an independent branch of international law; it is an independent branch of international law with its own legal texts and resources. But it keeps very close relations with diplomatic laws and the laws directly related to the human rights issues all over the world.

“The decolonization of Africa and Asia was often achieved through violent clashes. In the struggle between the (materially) weak and the (militarily) strong, refuge was taken in methods of fighting which were hardly compatible with the traditional manner of waging war (guerrilla warfare). At the same time, unlimited arms race led to the development of arsenals with weapon systems based on the latest technology.”

Bangladesh has achieved it & independence from the brutal Pakistani military forces through guerrilla warfare, which could not be considered as illegal means of fighting. On the other hand, Pakistani army committed all kinds of war crimes in Bangladesh as a means of suppressing the freedom-loving people of Bangladesh. Both India and Pakistan have engaged in arms race of all kinds, including the development of latest versions of nuclear weapons that cannot be used in any legal or meaningful ways. However, when it comes to the peace and security issues of smaller countries like our Bangladesh, we naturally feel vulnerable as a neighbor of nuclear-bomb producing States.

**ILLEGAL OR PROHIBITED WAYS AND MEANS OF WAR**

In 1882 the US has accepted the 1864 Convention that could make war almost illegal military adventure. Why was joining of the US to major European powers in their concerted efforts to stop the wars so important that long ago? At the beginning of 1870s for the first time in history the size of American economy and its capability as an international trade partner acceded the volume of the British empire, which still could boast that the Sun never sets from the horizon of English colonial domination on earth. American leaders had been expressing their willingness to provoke war for colonial purposes. Moreover, they were telling the world that the lessons of their Civil War had taught them not to go for war, but to engage in trade and business with all states.

This sense of pride of doing commerce and business was so deep in the minds of American leaders that on March 30, 1867, Washington signed a treaty with Russia for the Purchase of Alaska at a price of $7.2 million. This treaty or business deal between these two emerging World Powers was so unpopular to the Americans, who called it as “Seward’s Folly” or “Seward’s Icebox.”
In another development, we can see that Russians were also interested to play some important role as peacemakers rather than keep their image of warmongers and troublemakers for international peace and security. The 1868 Declaration of St. Petersburg is a glaring example of those peace efforts.

Cabinet of Russia with its own initiative had assembled most of the potential powers of global repute and organized a very important meeting called the International Military Commission. In the Russian capital at St. Petersburg many leaders wanted to tell the world communities that human civilization had entered into a new phase where destructive capabilities had been increasing too fast with the discoveries of more technological know-how. All parties had agreed that they need to forbid some of the ways and means of war. Some limits should be put on everybody when they will be at war with enemy-state. Limitation was visualized both in terms of substance and technology.

Indiscriminate killing of human beings was taken as a violation of the fundamental Rule of War-engagement. This provision we can find in all religious scriptures and legal documents of all ancient civilization.\textsuperscript{36} International Military Commission at St. Petersburg in 1868 wanted to make this customary law into a mandatory rule to be obeyed by all warring parties and States at the time of wars. Voices were heard that deployment of army with an intention to destroy other lands and people should be considered as barbaric and must be stopped at the very outset of the war and none of the newly invented ammunitions should be used that “unnecessarily or uselessly aggravate the sufferings” of even soldiers before death.

It was discussed that even the military or naval forces should restrain themselves from using excessive force at the time of hostility and attacks. Neutral vassals in the sea should not be attacked at all. Some heavy explosives should not be used at all. These provisions were obligatory if participating States agree to sign the document willingly and stay with the agreement until it participate in any armed conflict directly or some body’s behalf. It could not really make itself a strong law of war. To make those provisions as binding rules of war another Project of an International Declaration Concerning the Laws and Customs was adopted on August 27, 1874. However, \textit{The St. Petersburg Declaration}\textsuperscript{37} has remained as the first mile-stone of the journey of endeavour to determine the illegal and prohibited ways and means of war that still needs to be enforced.

In fact public safety and social order maintained by the societies around the world came into focus as a common interest for all people irrespective of their loyalty to State or religious authorities. Even after the occupation of a country and people
it was considered a duty for occupying military to keep the public safety and social order of the defeated country. It was told that the moment armed hostility ceases to exist occupying military cannot go for any destruction in the defeated country or people. All kinds of reconciliation process needs to take place immediately under IHL and/or any laws of humanity acceptable to the warring parties and their sponsors and promoters.

Occupying forces cannot persecute people of the occupied land or adopt summary trials or punishment to terrorize civilians, who usually become the worst victims of any war or armed conflicts between enemy armies. As per the body of IHL, Illegal or prohibited acts during war time now can be categorized rather easily. In this respect “Hague law,” developed under The Hague Conventions of 1899 and 1907 are not at all ambiguous; they are as good as any other codified legal text. The perpetrators who commit the prohibited acts or adopt the illegal means or methods of warfare can also be identified without many difficulties. Still perpetrators can easily find many vicious and heinous ways to violate laws that need to be thoroughly followed to protect people with sickness and wounds from the acts of armed conflict, especially in and around the war-inflicting regions.

The Geneva Conventions of 1949 was a great achievement for IHL. Rules formulated under these conventions seeking all kinds of limitation to the effects of war and armed conflicts. IHL as the law of war and regulations applicable to all kinds of armed conflicts is very keen to save as many people as it can in any given situation. Apart from civilians, wounded and sick and all children and women, IHL extends its hands to specific people who are no longer ready to fight. In other words, if some combatants are no more willing to participate in armed or otherwise direct hostilities, the IHL is interested in allowing them to be away from war or to help them to be in safe sides from the attack of enemy.

For these purposes above mentioned Conventions stipulate specific rules to safeguard all kinds of combatants, especially wounded, sick or shipwrecked soldiers or any personnel of the armed forces. Illegal acts are quite easy to recognize and determine the seriousness of those illegal actions or grave breaches of Rules of IHL. These violations of IHL are not similar to the grave breaches of laws of other fields or nature. These crimes are of universal jurisdiction, and criminal can be persecuted in any courts of any country, including all kinds of international tribunals.

In 1925, the League of Nations adopted a protocol prohibiting the use of poisonous gases and bacteriological methods of warfare. IHL made those rules very concrete and made them up-dated. The Swiss Confederation invited 48 States on August 12,
1949 to Geneva where they adopted four new conventions. These conventions were intended mainly to protect the victims of war.

“The Fourth Geneva Convention is evidence that the international community had learned from failure, since it is common knowledge that the worst crimes during the Second World War were committed against civilian persons in occupied territory. The 1949 treaties also led to a further, extremely important development: the extension of the protection under humanitarian law to the victims of civil wars.”

Hitler had produced 12,000 tons of sarin gas and it is believed that “if Hitler used sarin on the battlefield, Churchill likely would have retaliated with his own chemical weapons.” Obvious question is to be asked: What is the use of the prohibition of chemical weapons? Who and how can we prohibit the use of nuclear weapons? Why even the medical personnel, military chaplains, prisoners of war, and civilians including women, children, sick and wounded are also not safe in the hands of captors or warmonger with huge military arsenals, both nuclear and conventional, at their disposal.

Very recently Syrian government was accused of using sarin gas in the battlefield (enemy-held Idlib Province) against the so-called Islamic State orchestrated by anti-Islamic forces of all kinds. Here both sides can easily be accused of war crimes and crimes against humanity. Western powers, particularly US and UK wanted to make Syria another Iraq or Libya. The so-called IS or DAES fighters are unlawful enemy-combatants, which rights under IHL might be questionable. But no governmental or lawful combatant also can use chemical weapons against enemy-fighters. France and Turkey have been assuring the world that the Syrian sitting government used those sarin gas against the so-called Islamic State (IS) army. As a retaliation Washington attacked Syrian military base of the al-Shayrat air base in Homs province on April 6, 2017, with 59 Tomahawk missiles.

That unilateral American military attacked on Syria was followed by Israeli attack on Syrian air-base near the Damascus International Airport on April 26, 2017. Tel Aviv is very loud and clear about the intention of these military attacks, which are in fact direct threat to Iran. Tehran may not be getting the signals as it had already concluded the 2015 nuclear deal with the P5+1 group of countries. What Iranians are not taking seriously is that the Trump administration wishes to abandon this treaty. President Trump has described the 2015 nuclear deal between Iran and the P5+1 group of countries as the worst treaty ever signed by the US. This treaty was the best achievement Barak Obama could be proud of for his eight years of the US Presidency as his initiative to establish Trans-Pacific Partnership (TPP) as a free trade zone of 12 Trans-Pacific countries has already become a lost history.
How would this kind of trade war and military retaliation be helpful to bring peace in the Middle East, Korean Peninsula or elsewhere? Still we are not looking into the issues of Illegal acts of using of prohibited means and methods of warfare, including poison or other chemical weapons, which are definitely war crimes and crimes against humanity. U.S. forces have dropped what is known as the "mother of all bombs" in Afghanistan just after they attacked Syrian air-base in Homs. The US dropping of the so-called mother-bomb in Nangarhar Province of Afghanistan was declared an attack against IS combatants. As the mother-bomb is the largest non-nuclear device so we cannot technically call such attack as illegal.42

The same logic is applicable to the Tomahawk missile attack on Syria. But American attack on Syria would definitely empower the IS combatants in Syria and Iraq, which are trying to save their countries from civil wars. Afghans really don't care about any big imperial military powers for which Afghan soils are like great graveyards. The imperial military powers such as the British and Russian had to abandon their military adventures of capturing and dominating Afghan combatants, who have been prone to any kind of military attacks against their occupant-army. Thus it has been proved beyond any doubt that war and immense unnecessary and brutal suffering of enemy-combatants cannot be a cause for waging wars. Moreover, using of all kinds of arms and immunizations against enemies discriminately can backfire to the ultimate goal of winning over the most deadly enemies on earth.

The most unjustified destruction of civilian targets, “attack or bombardment of undefended towns, dwellings, or buildings; seizure of or willful damage done to certain cultural institutions, e.g., those dedicated to religion, education, charity, arts, sciences, or historic monuments and works of art; reprisals against protected persons or objects,” and any kind of indiscriminate attack on any people or territory should be brought under the definition of war crimes more precisely and comprehensively. And any breach of that kind need to be dealt with all seriousness on behalf of the international institutions and their sponsors. This is one of the reasons why the emblems or uniforms of neutral institutions and countries, and uniform of any legal combatant and passages of humanitarian aid shipments must get a universal protection and their abuse need to be stopped in any corner of the world.

This is a kind of pre-condition for the fulfillment of international obligation that needs to be followed by all parties concerned. It must be regarded as punishable offence and punishment resulted from such a violation need to be imposed on him or her by some international authority of credible and impartial nature. The accusation against a number of Muslim countries (Iraq, Iran, Syria, Libya, and
IHL are as follows:

The Hague Conventions on land warfare of 1899 and 1907 made sure that the rules of complete barbarity. From this point of view, respect for [IHL] helps lay the foundation of peace and security is the prime objective of IHL, which is the branch of international law.
potential terrorist of worst kind. The IS terrorists in Iraq, Syria and Libya also did the same to their armed adversaries and against civilians by naming them as the enemies of Islam. What a terrible degrading human history we have been creating even in the twenty-first century?

Additional Protocol I defines a mercenary as a person who:

a) is specially recruited locally or abroad in order to fight in an armed conflict;

b) does, in fact, take a direct part in the hostilities;

c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;

d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;

e) is not a member of the armed forces of a Party to the conflict; and

f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.\textsuperscript{44}

The Rule 108 of the Additional Protocol I declares that the mercenaries in the battle fields should not have the rights of POWS who fought against their enemies under a conventional military units or armed groups like militia organized or recognized some kind of state authorities. When President G. W. Bush invaded Iraq in 2003 without any endorsement of the UN, international communities could easily recognize that was illegal under international law. Unconventional fighters employed by VP Dick Cheney (2001-2009) or Rumsfeld (2001-2006) hired from private mercenary groups in Iraq could or could not get the status of POWS. That was not the fundamental issue; main legal issue was fair trials of people caught in the war or even after the war. More importantly, both the conventional combatants as prisoners-of-war and mercenaries as human beings should be treated under the respective laws rather than the arbitrary use of force against the former enemies.

“The vast and detailed Islamic legal literature concerned with regulating armed conflict reveals that classical Muslim jurists had in mind more or less the same philosophy and principles that inform modern IHL... The Islamic law of war sought to humanize armed conflict by protecting the lives of non-combatants, respecting the dignity of enemy combatants, and forbidding damage to an adversary’s property except when absolutely required by military necessity or when it happens unintentionally, as collateral damage. Islamic law makes it abundantly clear that all fighting on the battlefield must be directed solely against enemy combatants. Civilians and non-combatants must not be deliberately harmed during the course of hostilities...five categories of people who are afforded non-combatant immunity under Islamic law: women, children, the elderly, the clergy, and, significantly, the ‘usafī’
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(slaves or people hired to perform certain services for the enemy on the battlefield, but who take no part in actual hostilities).”

Here author’s comparison is not in the line of any kind of jurisprudential theory as the analysis has talked about the legality and acceptability of the concepts such as “slaves”, clergy as non-combatants, ‘non-combatant immunity under Islamic law’ ‘humanize armed conflict’ collateral damage of wars and so forth. The Muslim jurists and authors who still subscribe to or articulate these concepts in the prisms of both IHL and Islamic Law in a way that as if these legal postulates are virtually the same or completely different make a series of deep-rooted philosophical and jurisprudential mistakes of colossal degrees.

In Islamic concepts of warfare there cannot be any concept of immunity of combatant or non-combatant in killing civilians or attacking or destroying water resources or even cities and villages as making them collateral damages. In fact, modern urban warfare is completely prohibited under the theories of Islamic jurisprudence as any wholesale destruction of any township or ‘civilians village’ is tantamount to war crimes such as genocide and crimes against humanity. In December 1971, the 93 thousand defeated Pakistani army and their military government sitting in Rawalpindi knew very well that all commanding officers of Pakistani army committed war crimes in Bangladesh, which was fighting for its independence. That way instead of surrendering to Bangladesh government, the entire defeated army surrender to the Indian army.

“Even in times of war, Muslims are not allowed to kill anybody save the one who is indulged in face-to-face confrontation with them.” He added that they are not allowed to kill women, old persons, or children, and that haphazard killing is totally forbidden in Islam. … Grand Shaykh of Islam’s highest institution of learning, the University of Al-Azh, has said that attacks against women and children are “not accepted by Islamic law.” ….This ruling does not change based on geographical locality. The Prophet said:....Whoever fights under the banner of a people whose cause is not clear, who gets flared up with family pride, calls people to fight in the cause of their family honor or fights to support his kith and kin, and is killed, then he dies in a state of jahiliyyah. Whoever indiscriminately attacks my Ummah, killing the righteous and wicked among them, sparing not even those firm in faith, and fulfilling not a pledge made with whoever was given a promise of security, has nothing to do with me and I have nothing to do with him.”

What we Muslims hardly realize that Islamic Law is a strong anti-thesis of all kinds of slavery and wars, and thus Muslims can try to follow every rule prescribed by IHL and push it further to make all national and international mecha-
nisms to avoid all kinds of armed conflicts and deal with any fall outs of armed conflicts anywhere on earth. Islamic law is not keen to have too many issues technically right or wrong. Its ethical principles and values are as strong as legal instruments, which could be applied generously to stop the violence and armed conflicts may it be in the name of Islam or capitalism and socialism. Even the most barbaric IS commanders and their supporters could be brought to justice without degrading their essence being human beings. Thus Islamic Law is more interested in doing justice fairly rather than indulging in various nuances of combatants or non-combatants and State-sponsored mercenaries or ideology-driven unconventional fighters.

CONCLUSION

Universal concepts of human rights are very closely intertwined with the basic concepts of Natural Laws, which are interested in protecting life on Earth with heavenly essences that have been distorted mainly because of bloody wars and conflicts of interests over power and resources. Indoctrination of natural laws by any particular set of religious beliefs and state-laws is detrimental to the appropriate and comprehensive conceptualization of the fundamental ethical concepts of human Rights.

Wars and armed conflicts are possibly the biggest threat to the application of human rights. Poverty, hunger, illiteracy, unemployment, diseases and natural disaster can also equally hinder the progress of human rights situation. Political instability and the rise of all kinds of terrorists’ activities may also threaten not only the enjoyments of human rights, but also lead to a situation of constant absence of peace, social harmony and tranquility. Intolerable or unbearable gap between rich and poor may also lead to a chronic danger to all in the society at large.

IHL is an area of legal regulation that intends to deal with human rights and humanitarian situations during wars, all consequences of wars and their predictable and unpredictable fall outs, which directly affect the lives, liberty and dignity of people of all walks of life of any society directly or indirectly caught by the consequences of armed conflicts. IHL is a kind of well structured regulative tool that can be applied to any situation of civil wars and armed conflicts of national, regional and international character. Like IAC, Non-international Armed Conflict (NIAC) has been posing many serious threats to all agenda of human rights in many nations, particularly in many Muslim Nations.

Most Muslims are still tending to see human rights and IHL either in prisms of Islamic law and Muslim culture or euro-centric realities of post-WW II dominated
by formidable players of international politics and global trade or arms. Thus it is obvious that we have been missing the core essence of many conceptualized ideals of human rights and IHL. Moreover, in many cases fundamental and universal standards of legitimacy and legality of HR and IHL are overshadowed by the dynamics of power politics imposed by dominant powers within and outside of NATO. As a result, partial views make the universal values of HR and IHL blurred and even unacceptable to various conflicting political and religious forces of the Muslim World, which has never maintained any kind of monolithic character perceived by too many Western quarters.

Universal features of human race, humanity, human dignity and their sustainability on Earth, only planet and Mother Nature, we have to live are so unique that they demand and deserve some strong universal legitimacy and legal to be kept above of all kinds of nationalistic, imperialistic, ethnic, sexual and ideological indoctrinations. Conceptualization of any decent formulas of HR and IHL that can be idealized through Islamic and Muslim values and culture need to be contextualized as well. Here both Muslims and their Western counterparts are in fact in loggerheads that has been hindering the progress and further development of HR situations around the globe.

How IHL can be strengthened in terms of its contextualization, especially in the context of the rise of Muslim Nations fighting for their own stakes and places in many areas of global politics, economy, trade and commerce? We have tried to shed some lights on the underlying issues in global and Muslim perspectives because we found that after half a century all kinds of friendly and reactionary Muslim taken together would possibly constitute half of the mankind. Neither the Westerners nor Easterners simply can afford to ignore this vital fact of human life on this planet. Moreover, about 70% of mankind will inhabit in Asian soil, which maintain or retain very little in-build hostility against universal values of Islam many of which had been distorted by different politicized Muslim segments of populations.

What many Muslim hyper-activated Muslim political parties and groups yet to fully realize that religious and ideological battles cannot be won in armed conflicts or wars anymore. All kind of cutting edged technological know-how and many kinds of communication revolutions have already made wars irrelevant to the prospect of winning wars for religious or ideological purposes. It is too naive to believe that the ICRC and NATO can join hands together to make Muslim countries defeated by military means. More importantly, the days of protectionism has gone forever. Globalization is now a reality as well as an eventuality. In terms of modus operandi and military aspects of modern statehood, Nation-States have increasingly becoming closer in their purposes and pattern of activities. For example, hardly
there are any fundamental differences between the Statehood of Israel and Pakistan, both of which possess nuclear weapon. Only difference is that Israel still does not want to disclose that it posses the devastating nuclear weapons and WMD which were not under the possession of Saddam or Gaddafi.

Preventive diplomatic avenues against nuclear weapons and all kinds of wars need to explore fully to prevent potential armed conflicts and to stop the ongoing wars to make sure that we all can serve the causes of humanity, HR and IHL. Muslim Nations and people need to redouble their anti-war activities in every corner of the world by using all possible ways and means to keep peace in all hot-spots of the planet.

IHL has increasingly becoming a branch of international law with specific codification endorsed by state-authorities and international institutions, including the UN itself and its agencies. Without the appropriate application of IHL, human rights situations may go out of hands in many countries. In regard to Muslim countries, there are some deep-seated jurisprudential issues that we need to address. Unlike IHL, Islamic Laws are not codified in nature, but normative in character. Many complicated legal rulings under Islamic Laws are primarily based on individual interpretations rather than on ijma (consensus) laden decisions. In fact, in the absence of ijtihad (structured reasoning with innovative ideas), ijma had become a history in most part of Islamic jurisprudence, which still rely on Arab customs to receive its vitality or rejuvenation.

“He [Ibn Taymiyah] disapproved of non-Arabs leading Arabs in governments or even collective prayers, prescribed Arabic attires for all Muslims and made non-Arabic styles ‘detested’ favored Arabs in government allowances (al-ata) and rendered non-Arab men ‘incompetent’ (aqallu kafaah) to marry Arab women. These views are obviously contrary to the maqasid of equality of human beings expressed in numerous scripts.... [T]he "jurist’s worldwide" is proposed here as an expansion to al-‘urf method for accommodating changes from ‘default Arabic customs’ (of the first Islamic centuries).”

What many Muslim jurists claim as the revealed or god-given laws are practically nothing more than their personal opinion based on some literary interpretation of the scripts, which maintain deep-rooted mystical, mythological, spiritual and multi-dimensional ideo-centric dichotomist extrapolations that cannot be limited to a particular time and space. Neither the IHL nor HRL can wait for any State or nation to live up to their commitment without setting their pursuit for peace in a world where any armed conflicts may erupt for their own causal factors or spiral affects of many worldly desires and misconceptions.
However, putting a blind eye to many immensely important scriptures, though religiously and culturally biased, directly related to the issues of war and peace would be a narrow-mindedness, if not a total foolishness, on the parts of any kind of peacemakers and activists working for the better implications of IHL and HRL. The most important issue here is that we need to really decry all kinds of protectionisms and promote genuine global ideals of a universalized world where peace and generosity would always be a norm, and wars and armed conflicts must be condemned either to be halted or totally stopped for good.

Endnotes

12. Former lawyer and mayor of Davao city, President of Philippines Rodrigo Duterte was sworn in June 2016 and within a year killed many thousands of suspected drug traffickers.
14. “Barack Obama cancels meeting after Philippines president calls him 'son of a whore”, At: https://www.theguardian.com/world/2016/sep/05/philip-
pines-president-rodrigo-duterte-barack-obama-son-whore.


16. In Myanmar it is already a clear genocide and ethnic clinging and definitely war crimes, in Philippines yet to be seen.

17. You may fight in the cause of GOD against those who attack you, but do not aggress. GOD does not love the aggressors. From the Quran, [2:190]
You may kill those who wage war against you, and you may evict them whence they evicted you. Oppression is worse than murder. Do not fight them at the Sacred Masjid, unless they attack you therein. If they attack you, you may kill them. This is the just retribution for those disbelievers. [2:191]
If they refrain, then GOD is Forgiver, Most Merciful. [2:192]
You may also fight them to eliminate oppression, and to worship GOD freely. If they refrain, you shall not aggress; aggression is permitted only against the aggressors. [2:193]

All fighting is regulated by the basic rule in 60:8-9. Fighting is allowed strictly in self-defense, while aggression and oppression are strongly condemned throughout the Quran. [2:190]
O you who believe, do not prohibit good things that are made lawful by GOD, and do not aggress; GOD dislikes the aggressors. [5:87]
If they resort to peace, so shall you, and put your trust in GOD. He is the Hearer, the Omniscient. [8:61]
... if they leave you alone, refrain from fighting you, and offer you peace, then GOD gives you no excuse to fight them. [4:90]
The Quran also reminds the submitters (muslims in Arabic) that they should not be provoked by past animosity into committing acts of aggression (5:2). Additionally, God insists that submitters (muslims) must be absolutely sure before striking in the cause of God (4:94). Anyone who offers one peace, cannot be attacked.
O you who believe, if you strike in the cause of GOD, you shall be absolutely sure. Do not say to one who offers you peace, "You are not a believer," seeking the spoils of this world. For GOD possesses infinite spoils. Remember that you used to be like them, and GOD blessed you. Therefore, you shall be absolutely sure (before you strike). GOD is fully Cognizant of everything you do. [4:94].

18. Among his much important articulations the following one is relevant here.
"War is in no way a relationship of man with man but a relationship between States, in which individuals are only enemies by accident, not as men, but as soldiers." In: A Treatise on the Social Contract, Book 1, Chap. IV.

19. The Paris Treaty of 1856 had declared the Black Sea a demilitarized zone. No warship could enter in the black sea. It was a direct blow to the Russians, who occupied Crimea in 1914 from Ukraine. His has probably a sign of second Cold
War after a quarter of century that marked the end of the first Cold War in 1990.

20. He is the only American President who also served as the Chief Justice of the USA.

21. The Treaty of Guadalupe Hidalgo (gwah-dah-loop-ay ee-dahl-go), which brought an official end to the Mexican-American War (1846-1848) was signed on February 2, 1848, at Guadalupe Hidalgo, a city north of the capital where the Mexican government had fled with the advance of U.S. forces. See for details, at: https://www.archives.gov/education/lessons/guadalupe-hidalgo.

22. California became the 31st State (1850) of the US and because of Gold Rush population in the State had increased dramatically. At that time San Francisco city was populated by only one thousand people where newly arrived migrate were estimated over 20,000. In fact, influx migrates in California crossed over 300,000. They were called “49ers” coming from all over the US. All this had happened within two years of the signing the Treaty of Guadalupe Hidalgo (1848).

23. Following seventeen countries Argentina, Bulgaria, Chile, Columbia, Ecuador, Greece, Italy, Korea, Montenegro, Paraguay, Persia, Peru, Serbia, Spain, Turkey, Uruguay, and Venezuela did not ratify 1907 Hague Convention, but The 1899 Convention was ratified by all these countries. This had happened simply because of a reaction to the European imperial or American military intervention in these countries. See for details, at: https://www.yachana.org/teaching/resources/interventions.html.


25. After six years of comprehensive expert-discussions and intensive research, the ICRC has published this very important document to address the challenges of contemporary armed conflicts.


32. “Britain eschewed EU membership in the late 1950s but changed its mind in the early 1960s, only to be rebuffed by Charles de Gaulle. Membership came only in the early 1970s. ....Britain joined the EU as a way to avoid its economic decline. The UK’s per capita GDP relative to the EU founding members’ declined steadily from 1945 to 1972.” At : http://voxeu.org/article/britain-s-eu-membership-new-insight-economic-history.


37. November 29 (December 11), 1868.


41. The President Trump administration is keen to block the activities of Joint Comprehensive Plan of Action (JCPOA). In December 2016, the US Congress voted to extend Iran Sanctions Act (ISA) for another 10 years. The US president now can re-impose the bans that came into force in 1996. . The JCPOA met for sixth time in Vienna on January 10, 2017. Many quarters thought that President Trump would abandon the JCPOA meeting, but his administration also joined in the seventh meeting in Vienna on April 25, 2017 to prove that it has been adhering to its international obligations based on international treaties.

42. It is a 21,000-pound non-nuclear bomb used for the first time to demonstrate the ordinance power of the Trump administration.


44. Additional Protocol I, Article 47(2) (adopted by consensus).


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2. 1977 Additional Protocol I.
3. 1977 Additional Protocol II.
4. 2005 Additional Protocol III.