
Aggression and Individual Criminal Responsibility in the perspective of Islamic Law

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ABSTRACT

Under international Islamic criminal law, the crime of aggression may define as inaction or action that indirectly or directly jeopardizes another state's security utilizing ideological conflicts, independence jurisdiction, and military invasions. This article will discuss the individual responsibility for their crimes under international Islamic criminal law and how individuals will be held responsible for their criminal activities prohibited by Islamic law. The article will also attempt to discuss the Quranic verses and Hadith Nabawi (Saw) regarding the crime of aggression, protection of non-combatants, and particularly where an illegal war, i.e., an aggressive war, has been conducted against other state territories. The qualitative research methodology has been applied to the following article.

Keywords: the crime of aggression, individual criminal responsibility, Islamic Law.

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INTRODUCTION

Among the main concepts of the Islamic penal structure is protecting society from crimes and other dangers. Societies must be safeguarded from all kinds of hoodlums and crimes. The social lifecycle must be free of insecurity and peaceful. Furthermore, a rigorous Islamic justice system is intended to deter criminal behavior. Suppose the criminals are aware of the pain and anguish. In that situation, he/she will bring to himself/herself the ability to refrain from committing the crimes. After enduring the agony of the judicial procedure, the convicted criminal may be

unwilling to engage in any criminal activity. Herein ,where the deterrence theory is found in the Islamic penal system.

Under international Islamic criminal law, the crime of aggression may define as inaction or action that indirectly or directly jeopardizes another state's security utilizing ideological conflicts, independence jurisdiction, and military invasions. The war is conducted for economic, or glory gains unquestionably deemed an aggressive conflict in some form. In certain circumstances, International Islamic criminal law allows war for the sake of human rights or brotherhood against unlawful acts of aggression. Consequently, any war that lacks these objectives or is combined with luxury objectives is deemed illegal. If a war is conducted to seize, colonialize, and occupy territories, reducing the territories to trusteeship status is also deemed aggressive war, which is prohibited under the international Islamic criminal law (Surah Al-Baqarah 190-193).

In international Islamic criminal law, aggression has a broader scope than the international criminal law framework. This is because the former recognizes two significant kinds of aggression: ideological and military aggression. By the 1974 resolution, aggression is confined to the use of military force in international criminal law-if the Security Council of the United Nations does not deem other conduct to constitute aggression.

Nevertheless, it cannot be denied that the Assembly of States Parties has the authority to declare aggression an international crime under the International Criminal Court Statute.

In the Islamic framework for criminal law, the following actions constitute an act of aggression. However, it is noteworthy that the term "*Muslim state*" used in the following section does not distinguish among (i) a state governed primarily by Sharia law, (ii) a state dominated by Muslims, and (iii) a state whose constitution includes a significant number of Islamic laws. Aggression can be defined as any of the following:

- A grave breach of the treaty's obligations that could jeopardize the security of a Muslim state either internationally or domestically.
- An attack on the territorial sovereignty of a Muslim state by a state.
- Any action taken by a state that colonizes, occupies, invades, or isolates a portion of a Muslim state's territory.
- A state's ideological assaults on a Muslim state have the potential to substantially disrupt its political control.
- A planned and premeditated attack against the non-muslim or muslim residents of a muslim state living in another state. The assaults may be conducted with the help of the host state's authorities, either directly or indirectly.
- A deliberate and planned assault by a third country on the citizens of a Muslim country who are residents of another country's territory.
- Attacks by the military forces of one country on refugee camps on the territory of another.

This article will discuss the responsibility of criminals under international criminal law and how individuals will be held accountable for their criminal activities prohibited by Islamic law. The article will also attempt to discuss the Quranic verses and Hadith Nabawi (Saw) regarding the crime of aggression, protection of non-combatants, and international crimes, particularly where an illegal war, i.e., an aggressive war, has been conducted against the territory of another state.

The qualitative research approach has been deployed, focusing mainly on publications related to the Crime of Aggression, books, and articles written by distinguished writers, Islamic scholars, and lawyers. These research approaches were used since the study is based on the

Quran and Hadith and numerous publications, articles, worldwide journals, reviews, and published articles. Internet sites and international books derived from web pages are the key sources of data acquisition.

THE ISLAMIC LAW NORMS REGARDING INDIVIDUAL CRIMINAL ACCOUNTABILITY

The Islamic framework is a comprehensive way of life, and its rules and regulations establish comprehensive norms for relations among Islamic and non-Muslim states. It contains both domestic and international provisions regarding the law governing an individual's criminal culpability, as well as practical clarifications concerning the use of force, the rules governing agreements, and the law of war. In civil law, there is a codification of law or common law practice based on enforceable judicial practices, whereas Islamic norms are quite different from other legal systems. Islamic criminal norms have a distinctive idea of individual criminal responsibility, peace, and defence. All persons are prohibited by the Maqasid-ul-Shariah (five basics) from violating the law or harming someone unlawfully. It ensures the security of all citizens and prohibits the state from violating them without justification (Malekian, 2011). Understanding Shariah requires understanding the fundamental characteristics of international Islamic criminal law as inherited from the Quran and the Sunnah (MA, 2018). The fundamental principle of Islamic criminal law is individual responsibility, which means that every person is responsible for their actions. However, in exceptional circumstances, such as per the Hanafi school concept of Qasama, the occupants of a home or town may be held accountable for the economic consequences of murder committed in the house or town by an unknown criminal (Ahmed, 2018). Sharia's principle is to establish the connection between individuals and states when criminal activity is committed:

“(a) the principle of individuality of the criminal liability; (b) the legality principle and (c) the non-retroactivity principle of criminal law” (Christelow, 1992).

In international Islamic criminal law develops its notion of individual criminal responsibility from several Quranic verses, the most significant of which is quoted below;

“Say, O Prophet, Should I seek a lord other than Allah while He is the Lord of everything? No one will reap except what they sow. No soul burdened with sin will bear the burden of another. Then to your Lord is your return, and He will inform you of your differences.” (Surah an' am 6:164).

In other words, Say,

“Is it other than Allah I should desire as a lord while He is the Lord of all things? And every soul earns not [blame] except against itself, and no bearer of burdens will bear the burden of another. Then to your Lord is your return, and He will inform you concerning that over which you used to differ (Khattab, 1970).”

International Islamic criminal law focuses primarily on an individual's protection and the extent to which their activities are permitted or restricted. Every individual bears a significant obligation to carry out his or her responsibilities, not to break laws or harm other individuals. Under international Islamic criminal law, crimes are divided into the following categories:

- Hudud is a violation against ALLAH, and its punishment is prescribed in the Quranic verses and the Prophet's teachings (SAW). As explained within the distinct beliefs of the Islamic States, the Hudud crime constitutes breaches of "natural law." As breaches of ALLAH's rights, hudud offences must incur divine wrath. Proclaimed war on an Islamic state is regarded as an act of aggression against Almighty ALLAH and his messenger, the Prophet (SAW) (Okon, 2014).

The Holy Quran explains this very well

"Indeed, the penalty for those who wage war against Allah and His Messenger and spread mischief in the land is death, crucifixion, cutting off their hands and feet on opposite sides, or exile from the land. This [penalty] is a disgrace for them in this world, and they will suffer a tremendous punishment in the Hereafter." (Surah Al-Ma'idah 5:33).

In other words,

"Indeed, the penalty¹ for those who wage war² against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment" (Khattab, 1970).

Revolt against a constituted agency, whether a politician or a financial structure, is defined as "corruption on earth" and is the penalty of death. The sentenced person may be assassinated by military or police intervention or by a punishment imposed by the competent court by jurisdictions. The Islamic legal system punishes those who reject Islam with death. A believer who doubts the presence of Almighty ALLAH, angels, or all messengers of ALLAH, or who refuses to accept any passage of the Holy Qur'an, may face this punishment. Apostasy is the renunciation of the Islamic religion. In Sahih al-Bukhari hadith, 6935 records the Prophet Muhammad (SAW) saying:

"The blood of a Muslim may not be legally spilt other than in one of three (instances): the married person who commits adultery; a life for a life; and one who forsakes his religion (of Islam) and abandons the community" (Sahih al-Bukhari: 6935).

Additionally, Prophet Muhammad (SAW) stated: "whoever changes his religion (of Islam) kill him" (Sahih al-Bukhari: 2854). The refusal of the Islam religion discourages young people from converting to the religion, and this refusal promotes acts of blasphemy and criminality with immunity. Under Shariah norms, general unbelief and disobedience against almighty Allah and the Ummah are prohibited. The general understanding of an

apostate's repudiation of Islam referred to as "*High Treason*" in international Islamic criminal law is that the renegade was merely exploring Islam without dedication to it. In this sense, rejection represents a premeditated attack and inner rebellion. The apostate poses a significant threat to the unbeliever. Apostasy also includes openly and publically assaulting Islam with blasphemy and treachery, endangering the moral and social fabric of society, and initiating internal revolutions capable of destabilizing the Islamic States (al-Sheha, 2007: 130-135).

The convicted renegade is given three days of mercy in order to reconcile with Islam. Qualified religious jurists will inform him of the seriousness of his offence against his conscience, family, and society. If the convicted individual reintroduces himself to the Muslim faith, he will be released. The apostate's execution greatly relieves the larger societies, mutually safeguarded from the malevolence and brutality that unbelief and blasphemy might make. When penalizing the perpetrator, Islam does not include the offender's family members. Due to the seriousness of the penalty for apostasy crime, Abdul-Rahman al-Sheha has explained that people do not use dishonesty or duplicity when converting to Islam religion.

"Any potential convert must take time to study, research, evaluate and examine all the aspects of Islam as a way of life prior to joining it and committing its rules and regulations. Such a severe punishment will not give any slim chance to those who would like Islam to play around, experiment with Islam, and act treacherously in the ultimate treason" (al-Sheha, 2007: 131).

- *Tazir*: The ruler or Qadi decides the punishment for *Tazir* crimes that are not specified in the holy Quran or in the Hadiths of Prophet Muhammad (SAW). Some include *Siyasah* (offences against the state) in the fourth category, whereas others include it in *hudud* or *Tazir* crimes.

Furthermore, the Quran and the Sunnah do not specify punishments for all crimes. According to Islamic criminal law, minor crimes can be punished with *Tazir* (discretionary sanctions). *Ta'zir* is applicable to refer to either *qisas* offence or *hudud* offences, like the robbery of an article value less than *nisab* or sex assaults that cannot be defined as intercourse. *Ta'zir* is commonly defined as dubious and plausible situations and a lack of reliable proof or assurance. (Okon, 2014).

Ta'zir includes behaviours prohibited by the holy Quran, or the Muhammad (SAW) Hadith and actions that violate public welfare. Furthermore, morality is not classified as *qisas* as well as *hudud*, including usury or misappropriation, enticement, wrong evidence, pork consumption, and betrayal of trust by a public official. *Ta'zir* is used to adjudicate any act that intentionally breaches Islamic principles, like nakedness, sexy clothing, or the disobedient wife to her husband. The *Ta'zir* punishes individuals in various ways, including beatings, ostracism, widespread criticism, and reproach. In some case scenarios, the *Ta'zir* punishment could be a warning, while it is a death punishment in others. Death is punished if a person is sentenced to spying for the foe, homosexual acts, heresies, or prophecy (Okon, 2014).

- *qisas*: *qisas* is an Arabic word that means "*equality*." *qisas* offences such as killing, deliberate and unintentional murder, and intended and unintended physical harm. Killing

is the most serious crime under international Islamic criminal law. According to surah 17:33-35, the Quran prohibits murder

“Do not kill the person God has forbidden, (to kill), except with justification” (Surah Al-Isra: 17:33-35).

In another surah 06:151, it is also declared: *“take not life which Allah hath made sacred, except by way of justice and law”* (Surah an’ am 6:151). Mass murder, or deliberate murder (Qate al-'amd), is prohibited because life is precious and can only be taken away by a death sentence imposed by the Islamic state judiciary. According to Sunan Abi Dawud hadith no.4352 say that:

“Abd Allah (b. Mas`ud) reported the Messenger of Allah (peace be upon him) as saying: The blood of a Muslim man who testifies that there is no god but Allah and that I am the Messenger of Allah should not be lawfully shed but only for one of three reasons: married fornicator, soul for soul, and one who deserts his religion separating himself from the community” (Sunan Abi Dawud 4352).

The act of manslaughter or accidental killing (Qate al-khat'a) is not included in *qisas* and is not punishable by death sentence. According to the holy Quran, Muslims are forbidden from murdering another Muslim, excluding unintentionally. According to Surah 4:92,

“It is not for a believer (Muslim) to kill any believer, except by mistake. Whoever kills a believer by mistake, then, a believing slave has to be freed, and the blood-money must be paid to his family, unless they forgo it. If he (the victim) belongs to a people hostile to you and is a believer, then, a believing slave has to be freed. If he (the victim) belongs to a people between whom and you there is treaty, then, blood money is to be paid to his family, and a believing slave to be freed. Whoever does not find one has to fast for two consecutive months. This is repentance prescribed from Allah’s side. Allah is All-Knowing, All-Wise.” (Surah An-Nisa – 92).

Now, we will examine the point of international Islamic criminal law in the event that a Muslim murders a Kafir (non-Muslim). In Arabic, the term *“kasfir”* is non-Muslim. Kafir is also known *“concealer,”* as one who hides Islam’s reality. Muslims may not be executed for assassinating a Kafir who belonging to a non-Muslim state that engages in war with the Islamic states;

“So, when you encounter those who disbelieve, then (aim at) smiting the necks, until when you have broken their strength thoroughly, then tie fast the bond, (by making them captives). Then choose (to release them) either (as) a favour (shown to them,) or (after receiving) ransom, until the war throws down its load of arms. That (is Our command.) If Allah willed, He would have (Himself) subjected them to retribution, but (Allah ordered you to fight,) so that He may test some of you through some

others. And those who are killed in Allah's way, He will never let their deeds go to waste" (Surah Muhammad 47:4).

It is mentioned in surah 8:12 that: *"When your Lord revealed to the angels: I am with you. So, make firm the feet of those who believe. I shall cast awe into the hearts of those who disbelieve. So, strike at the necks, and strike at every finger-joint of theirs"* (Surat Al-'Anfal 8:12).

According to surah (33:60), kafirs are cursed, apprehended, and killed wherever they are discovered. The killing of a non-Muslim who is a citizen of a non-Muslim state that has entered into an agreement with an Islamic state is prohibited for a Muslim (referred to as a Mu'ahid). In this instance, the penalty is death punishment. Suppose the death of kafir was a dhimmi (a kafir who pays taxes in a Muslim country). In that case, the Islamic court should consider the opinions of Muslim experts in deciding the dispute. The Muslim murderer should not be executed, according to the Shafii, Maliki, and Hanbali schools of thought. The Hanafi School of thought approves the death sentence for a Muslim who kills a dhimmi. According to Ahmad, Abu Da'ud, and An-Nasa, Caliph Ali stated the following:

"A Muslim should not be killed for a kafir (non-believer), nor should one who has been given a covenant be killed while his covenant holds".

However, Abdur-Rahman bin Al-Bailamani recounted how the Holy Prophet (SAW) killed a Muslim for murdering a man who was protected by a covenant and claimed that *"I am the most worthy of those who guarantee their protection"*.

In Islam, there are numerous forms of murder. Deliberate murder with intentional intent, referred to as (Qatl al'Amd), is homicide done with a weapon including a keen and penetrating tool, pebble, club, or flame. An act of negligent homicide (Qat'a shibu'l - Amd) is a murder committed with a non-lethal weapon. The punishments range from religious penance, including fasting, almsgiving, slave releasing, and blood money, to capital punishment. The killer is not permitted to inherit the property of his victims. Killing by accident (Qatt al-khata) is a violent action that results in murder by mistake.

"Error in act occurs...when an individual shoots at a target and inadvertently kills a bystander. Error in intention occurs when an individual shoots at what he, or she believes to be an animal, but which turns out to be an individual" (Lippman, 1989:43).

The convicted must fast for two months, release a Muslim slave, and pay restitution as a sentence.

A murder may occur due to an unrelated cause, such as a collapsed wall or someone falling into a hole. The owner is held strictly accountable in both circumstances and must pay penalties. Infliction of serious injury or battery is considered intentional murder and is punishable by reprisal if it results in permanent bodily harm.

“And therein we prescribed for them: a life for a life, an eye for eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds retaliation” (Surah Al-Ma’idah 5:45).

Consequently, when a person or group commits a crime, the Shariah focuses exclusively on the intentions, or *Mens rea*, typically characterized as: “culpable state of mind of the accused when committing an offence under Islamic criminal law and rebellion intent” under international Islamic criminal law. It argues that purposeful crimes have a rebellious intent. It involves the purpose of committing unlawful conduct or refraining from performing a compulsory act despite being aware of their restriction or responsibility, respectively (Thani & Syahrin, 2021). Thus, under the criminal culpability regulations, there is a distinction between a criminal who conducts an offence on purpose and an offender who conducts a crime as a result of their negligence. An aggravation of accountability occurs in the event of a criminal because he or she has rebellious intentions in their heart and therefore is ultimately responsible for the crime. The offender’s responsibility is diminished since, while a kind of rebellion happens as a result of his/her conduct, there is no rebellious purpose in their hearts. It is straightforward to deduce from the maxim that; “*Actions are to be judged by the intention behind them, and everybody shall have what he intends*” illustrates that a person cannot be sentenced for merely thinking because a positive thought is documented as an act of piousness in Islam, whereas an immoral thought is not noted at all (Thani & Syahrin, 2021).

Thus, anytime an individual commits an act that is punishable under International sharia norms, the sharia emphasizes the following rules:

Mens rea: Most Muslim legal experts follow norms when deciding intent in cases involving murder or other common defences, including coercion and special instructions. They sum that sharia law is not necessarily at odds with Western legal practices. Its flexibility, particularly the conceptual nature of its legal maxims, positions it to play a key role in the prospective codification of new crimes (Muhammad Roy Purwanto, 2021).

Actus reus: The maxim “*actus non facit reum nisi Mens sit rea*” has been entrenched in the common legal system, although Islamic criminal law, like its western counterpart, derives the same from a reading of the precise principles of fiqh on numerous subjects. Crimes consist of all of the components of a crime and can be traced back to the perpetrator. It must occasionally be considered legal due to a justifiable context, like self-defense (Muhammad Roy Purwanto, 2021).

Duress (Ikrah): Even if an individual commits an offence, he will not be prosecuted or held legally liable if he was coerced into doing so by threats of death or serious bodily organ loss if he resists.

Uncertainty (Shubha): Under international Islamic criminal law, the concept of uncertainty pertains to the majority of offences. It can relate to either facts or regulations. Prophet Muhammad (SAW) declares:

“Ward off the fixed punishments from the Muslims on the strength of shubha as much as you can” (‘Alī, et al., 2017).

CRIME OF AGGRESSION

International law, in general, and international criminal law, in particular, emerged from the international humanitarian law, often known as *Jus in Bello*. Additionally, Imam Abu-Al Hassan Ashaibani R.A., one of the most distinguished and important scholars of Hanafi thought, codified international Islamic criminal law (Siyar). In times of war and relations with other states, Shaibani developed the idea of international Islamic criminal law from the Quran, the Prophet's teachings, and the conduct of his companions (non-Muslim polities and communities) (Muhammad, 2012). His research on Siyar impacted Western scholars such as Gentile, Suarez, and Ayala. Siyar is one of the components of external relations between a Muslim ruler and his Muslim adherents. It is in contact with various states, and one of its responsibilities is to cope with military jihad. It considers the norms and principles for waging hostilities throughout times of conflict. The novel of Siyar omits the essence of warfare, whether the conflict is an aggressive or defensive attitude in nature. Aggressive warfare is an act of aggression that was incorporated into international Islamic criminal law for the first time thirteen centuries later.

On the other hand, similar provisions were incorporated into international criminal law around the turn of the twentieth century. Aggression has a far broader definition in international Islamic criminal law than it has in modern international criminal law. Hostility towards others, regardless of whether it is personal or collective, is categorically forbidden as a general principle in the Quran. According to the Quran, there should be no disobedience except against the lawbreakers. Additionally, to defend the persecuted community against a powerful aggressor. Thus, the condition was established that fighting would cease immediately upon the cessation of persecution (Surah Al-Baqarah 190–191). Several other verses illustrate the Quran's overall attitude toward aggressiveness and violent behaviour.

“And if they tilt towards peace, you too should tilt towards it, and place your trust in Allah. Surely, He is the All-Hearing, the All-Knowing” (Surah Al-'Anfal 61).

According to the renowned Islamic researcher, Fakhr Al-Din Al-Razi (d. 606/1210), the essential celestial element in holy Quran verse in Surah Al Baqarah (2:190) is only produced against definite combatant. Accordingly, the holy verse permits attacking only those that have already begun combat, but not those who are capable and prepared for war but have not yet employed violent means (Fazl Allah, 1999). In conclusion, it appears that the Quranic verses on non-aggression have left their indelible mark on the legal works of the third/ninth centuries, primarily in the form of preserving civilian immunity. Moreover, prohibiting the demolition of property and more humanistic acts during a time of war (*Jus in Bello*) (Ahmad, 2010).

Additionally, later Shafii jurists clearly expressed this notion of aggressive Jihad (Aggression) in their lawful compilation entitled the *Al-Hawi Al-Kabir* authored Abu Al-Hasan Al-Mawardi (d. 450/1058). Which declares that: Do the Quranic verses allow all-out warfare, that is, combating both those who instigate conflict and those that do not? Al-Mawardi expresses the viewpoint of the early exegete and scholar Ata Ibn Abi Rabah (d. 115/733), who maintained that it is not lawful to combat those who do not combat. Al-Maward, on the other hand,

disagrees with this view, asserting that the Qur'an expression of aggressive jihad reaches its peak in Surah Al-Baqarah verses 193, 191, which, according to him, encode an order to battle equally those who wage war and those who do not (Gray, 2018).

Moreover, he interprets the Qur'an command "wa-la ta-tadu" ('do not perpetrate aggression') as prohibiting Muslims from initiating hostilities and attempting to attack traditional non-combatants including such females, kids, the aged people, the infirm, and "those who proffer you peace," in addition to prohibiting crop and property destruction. Aggression is a core rule. Whether individual or group, aggression and violence are strictly prohibited under Shari'ah principles. Many more verses in the holy Quran reaffirm the Quran's stance on aggression and violence (Surah Al-Anfal, 61). Other notable jurists, such as "Ata" Ibn-Abi Rabah, Mujahid Ibn-Jabr, Muqatil-Ibn-Suleman, and also later researchers including Fakhr Al-Din Al-Razi, maintain unequivocally that the verses of Surah Al-Baqarah prohibit the beginning of armed conflict and that armed activity may be initiated only against actual, not possibilities, attackers.

As a result, Islamic international law prohibits aggression unless exceptional circumstances exist, as the Quran expressly forbids directly or indirectly jeopardizing another state's jurisdictional autonomy and security without legal justification. International Islamic criminal law allows for the use of force in exceptional circumstances, like the humanitarian protection of another human or state from an unfounded act of aggression, as envisioned in the United Nations Charter. Unjust or illegal conflicts are forbidden for glory, territorial expansion, or financial enrichment. International Islamic criminal law's jurisprudence requires that state parties settle disputes peacefully through arbitral proceedings, reconciliation, intervention, or negotiation. Ali bin abi-Talib accepted the arbitration organization from Muawiyat bin Abu-Sufyan in order to avoid bloodshed and offensive war actions. Muawiyat had refused to acknowledge Ali's right to the Caliph (Leadership) (Malekian, 2011).

ACCOUNTABILITY FOR THE AGGRESSION UNDER ISLAMIC LAW

The sources and subjects of international law differ greatly from international Islamic law. The former arose after the Treaty of Westphalia in 1648 when the state became a legal entity. As a result, the primary subject revolves around states (Castellino, 2021). On the other hand, international Islamic criminal law is obtained from the same references as Sharia municipal law, namely the holy Quran and Hadith. It is an outgrowth of Shariah, with the individual as its primary recognized subject instead of the state. Because Shariah law does not acknowledge the state, it is a man-made entity that lacks the characteristic features of a legal person. Individuals are prioritized because international Islamic criminal law seeks to establish particular regulations to execute its provisions, which rely significantly on the subject and seek to achieve equality amongst individuals. This principle is clearly drawn from Quranic verses prohibiting believers from taking the life Allah has forbidden (Surah Al-Furqan, 25). Assume an individual commits conduct that is prohibited by Islamic law or kills another individual or individuals knowingly and unjustifiably. In that situation, he is legally responsible for the act. Additionally, the Quran forbids purposefully killing another person, stating that murdering a single individual without legal grounds is equivalent to killing the entire human race (Surah

Al-Ma'idah, 32). As a result, any act prohibited by Shariah is a crime, whether it is killing a person, the wage of war, or any other activity without legal reason.

Moreover, under international Islamic criminal law, war (Jihad) is classified as either protective (Legitimate War) or offensive (Aggressive War) by the majority of Islamic researchers. Nevertheless, some of them deny the concept of aggressive war, claiming that no everlasting battle exists between Muslims and non-Muslims. According to these opponents, all Quranic verses pertaining to jihad and conflicts (Jihad) waged by the Prophet (SAW) were purely defensive. They cite the Quranic passage (Surah Al-Baqarah 190) "*Do not transgress, for Allah does not like transgressors,*" as well as the Prophet's traditions. According to Al-Zuhayli, a famous scholar, the Quran verses pertaining to jihad were revealed in order to defend the state or person against intimidation and assault by enemies. In terms of legitimate Warfare in Sharia laws, he identifies three distinct categories replicated as;

In Islam, there are three types of war: War against those who stop the expounding of Islam and cause internal confusion and dispute; War in defense of those who are persecuted, such as the Muslim brotherhood; and war to protect oneself and one's country from physical attacks (Gray, 2018).

As Al-Zuhali mentioned previously, self-defense (Jihad) and humanitarian intervention are somehow consistent with contemporary international law principles. In comparison, a war motivated by ideology, i.e., the pontificating of Islam, has no precedent in international law and is unquestionably outside the scope of a state-right state's self-defense. Dr. Muhammad Hamidullah, another contemporary Islamic researcher in international Islamic criminal law, claims. That the Holy Qur'an and hadith govern all aspects of a Muslim's life and that fighting in the way of Allah or going to war must fall within the scope of the Prophet's revealed verses and teachings. As a consequence, Hamidullah believes that a reasonable reason for Muslims to launch an attack must include the following;

- The resumption of an ongoing war; the resumption of a war that has been suspended for one reason or another.
- Defending wars; Either an adversary invades Islamic territory or behaves consistently with such an invasion.
- Sympathy wars; to assist Muslims of other denominations in enlisting the Islamic state's assistance in combating their (administration).
- Punitive wars; other states' breaking of covenants or duplicity, etc., in brief, to become kharijit.
- Idealism wars; the purpose of uprooting godlessness and associating with ALLAH in his theology, that is, in Divine path (Hamidullah, 2011).

Hamidullah's conception of the second and third types of war is consistent with the notion embodied in modern international law. The fourth and fifth types of conflict, on the other hand, do not exist in the present era. Additionally, Hamidullah believes that: "*No one is to be forced to embrace Islamic faith yet Islamic rule is to be established. Whereas the so-called*

continuation of existing war” the majority of Islamic scholars consider the first category to be defensive Warfare (Hamidullah, 2011).

According to Abu-ala Al-Mawdudi, the notion of offensively or defensively conflict cannot apply to the Shariah principle of jihad. Sharia's concept of jihad, he suggested, cannot be appropriately divided into defensive and offensive warfare. He divides the notion of jihad into two categories: reformatory and protective. The previous type of jihad is undertaken in response to global corruption (Fitnah) and persecution (Fasad); the latter is waged in response to direct physical attack or assault (A'la, 1974). Besides the opinions of contemporary and postmodern Muslim researchers on how war should be fought, Siyar, as per Abdul Karim Zaydan, is the standards and regulations of international Islamic criminal law that are enforceable on the Islamic state in their relations with another state. The well-known notion “*Pacta Sunt Seervenda*” emphasizes that the laws and principles that nature prescribes or the consent of the country institutes are binding. Since the Prophet Muhammad (SAW), adhering to international obligations and refraining from violating them has been a key international Islamic criminal law concept.

Furthermore, some researchers assert that when a war is to be fought, it must be fought by a responsible government; Hanafi jurists hold this belief “*No expedition shall be without the permission of the head of the state or authority.*” The expert/monarch must not launch a conflict for the sake of capital, unlawful territorial expansion, grandeur, or any other intent for which Shairah has ordered another channel. As can be inferred from the Qur’an orders, which states that if the adversary is disposed toward peace terms, incline toward arbitration and trust in Allah (Surah Al-Anfal, 61). Thus, any act committed by the ruler in violation of Shariah principles can be referred to as unjust management (Siyasah Zalima) (Ahmad, 2013). The person who triggered the trigger for war will be responsible for conducting an aggressive war under Islamic law.

CONCLUSION

A reasonable method to both lawful frameworks requires that the study questionably need to enhance international criminal jurisdiction legislation criminalization war, crime against humanity, and beginning of aggressions. Siyar and Islamic law bear striking similarities to the Nuremberg concept of international criminal accountability. Comparing the two legal codes indicates the need for improving international criminal jurisdiction rules that prohibit war, crimes against humanity, and the initiating of hostilities. Additionally, the Qur’an concept of non-aggression leaves a clear imprint on the legal framework of international Islamic criminal law. Most notably, during the conduct of armed conflict, there is non-combatant protection, a prohibition on malicious obliteration of culturally, religiously, or otherwise significant property, as well as other examples of humane conduct (Jus in Bello). Furthermore, since Sharia law was written for individuals rather than abstract entities, an individual or entity initiating an aggressive war would be liable for the offense of aggression under Islamic law.

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