

Prisoners of War in International Conventions Versus Islamic Law

أسرى الحرب في المعاهدات الدولية مقارنة بالشريعة الإسلامية

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Abstract

Over time, the conception of treatment of war prisoners has been changing. They were cruelly treated and tortured during the Roman and Greek empires (Sage, 2002; Wickham, 2014) but under Islamic law their safety and dignity have to be protected ("IRAQ: TREATMENT OF PRISONERS OF WAR IN ISLAM," 2003). In the Holy Qur'an, many verses in different *Surahs* regulate war prisoners' rights (Munir, 2010). Prophet Muhammad (Peace Be Upon Him) used to enjoin the Muslims to treat prisoners well. Among these rights, a prisoner cannot be compelled to give up his/ her religion to embrace Islam, and also has the right to be fed and clothed. In the modern time, treaties and conventions regarding war prisoners were ratified after the two World Wars (Jones, 2016), namely the Geneva Convention relative to the Treatment of Prisoners of War of 1949. In its 143 articles, the Convention defines the conditions of detention of war prisoners, their food and clothing, hygiene and medical attention, religious intellectual and physical activities. The attempt here concerns examining war prisoners' rights in a comparative study between the Geneva Convention and the Islamic Law while showing the influence of the Islamic law on the international law dealing with the right of the prisoners of war.

Key words: Prisoners of War, Geneva Convention, Islamic law.

ملخص:

شهدت معاملة أسرى الحرب تطورات إيجابية هامة عبر حقبة الزمن المتتالية في مختلف الحضارات التي مرت بها البشرية. كما شهدت تغييرات إيجابية كبيرة مع مجيء الإسلام بفضل تعاليمه من خلال القرآن والسنة؛ التي كانت تصب في مجملها في ضمان سلامة وكرامة أسير الحرب. في القرآن الكريم، هناك العديد من الآيات التي تنص على كيفية معاملة أسرى الحرب، ولعل من أهم ما ورد في هذا السياق من أحكام، عدم إجبار الأسير على ترك ديانته، وحفظ كرامته. وبصورة عامة، تحرم الشريعة الإسلامية أي تعسف أو أي نوع من التعذيب النفسي أو الجسدي في حق أسرى الحرب. وبالنسبة للقانون الدولي، فإن معظم الاتفاقيات والمعاهدات التي تناولت الموضوع تمت المصادقة عليها بعد الحربين العالميتين، في النصف الأول من القرن العشرين، أي بعد حوالي أربعة عشر قرناً من معالجة الإسلام لهذا الموضوع. وتعتبر اتفاقية جنيف لسنة 1949 أحدث معاهدة حول كيفية معاملة أسرى الحرب، حيث تنص في موادها المائة والثلاثة والأربعين على شروط احتجاز أسرى الحرب. سنحاول من خلال المقال تسليط الضوء على حقوق أسرى الحرب في دراسة مقارنة بين القانون الدولي من خلال اتفاقية جنيف الثالثة ومصادر الشريعة الإسلامية. سيتم في هذه الدراسة التركيز على المواد رقم 13، 14، 20، 51، من اتفاقية جنيف والمتعلقة بمعاملة أسرى الحرب وما يقابلها من نصوص تتناول نفس المسائل من الشريعة الإسلامية لتوضيح مدى تأثير الشريعة الإسلامية في المعاهدات الدولية المتعلقة بأسرى الحرب.

الكلمات المفتاحية: أسرى الحرب؛ اتفاقية جنيف؛ الشريعة الإسلامية.

1- Introduction

The treatment of prisoners of war has received much attention over the past few decades due to the rise of armed conflicts in different parts of the world. The research attempts a comparative study of Islamic law (*Shari'a*), and the international law through the third Geneva Convention of 1949. The research begins with different definitions given to the prisoners of war according to both the Islamic law and the international law. Then, we are going to examine, in a historical background the evolution and progressive improvement in

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the treatment of prisoners of war through the different civilizations that marked the history of humanity. In the context, the different charts brought by western civilization during the last five centuries related to this issue, that is, from the *De jure belli ac pacis* initiated by Hugo Grotius in 1625 to the Geneva Conventions in 1949 will be explored. Similarly, the different Islamic texts covering the treatment of prisoners of war: the Qur'an; the Sunnah and the early and contemporary Muslim Scholars who represent the ijma'a (consensus) of the Muslim communities will be examined.

2- Definitions

A prisoner of war, abbreviated to POW or PW, as "any person captured or interned by a belligerent power during war" ("Prisoner of war," 2018)(online), and this person can either be a combatant or non-combatant (Gelb, 1973). International Law defines prisoners of war as the members of the armed forces of one of the parties to a conflict who fall into the hands of the adverse party. In Islam, a prisoner of war is any person captured in the event of war, in other words, a prisoner is a man who falls in the grip of their enemy alive (Munir, 2010). This definition includes unbeliever warriors and enemies of Islam who raise arms against Muslims and fall in the hands of Islamic army. It is worth noting that the first prisoners of war recorded in Islam were the seventy captives of the battle of Badr in 624 AD ("Treatment of prisoners of war in Islam," 2011)

3- Historical background

In the early history of warfare there was no status of prisoners of war, the defeated enemy could expect either to be killed or enslaved by the victor including women and children (Sage, 2002; Wickham, 2014). In Africa, for instance, the intertribal wars constituted the main source of supply of slaves throughout the three centuries of trans-Atlantic slave trade. A Venetian merchant who accompanied the Portuguese to West Africa in the 1450s reported that chiefs in the

black states and kingdoms would readily exchange ten to fifteen captives (slaves) for one horse (Reader, 1998). This practice existed even in Europe during the Middle Ages. Dublin was one of the biggest slave markets in the eleventh century in Europe. Prisoners of war and the civilian captives during the Vikings' raids on the British Isles were usually used to be sold or exchanged for food (Slater, 2009). Stephen Colin and Peter Harbison, in their book, "Dublin: The Story of a City" talked about the frequent raids on the Vikings on the British coasts and the extensive activities in the slave market in Dublin.

4- The Chronology of the Evolution of Prisoners of War's Rights

The first act at the international level in the context of improving the conditions of detention of the prisoners of war was initiated by Hugo Grotius in 1625 in a document entitled *De jure belli ac pacis* (On the Law of War and Peace) in which he states that the victorious power had the right to enslave the defeated one, but he advocated exchange and ransom instead (David, 1998). The aim of this law was generally putting the enemy's power under control and ensuring the prohibition of the destruction of life and property. Twenty-three years later, the Treaty of Westphalia, which brought the eighty years' war between Spain and the Dutch to an end, was ratified. It also ordered to release all the prisoners without ransom and ended the era of widespread enslavement of the prisoners of war.

The 18th century witnessed a new attitude of morality in the law of nations, or international law, with regard to the issue of prisoners of war. In 1784, the French philosopher, Montesquieu, published his book "*De l'Esprit des Lois*" "The Spirit of the Laws" in which he wrote that "the only right in war that the captor had over a prisoner was to prevent him from doing harm. The captive was no longer to be treated as a piece of property to be disposed of at the whim of the victor but was merely to be removed from the fight" .

By the mid-19th century it was clear that a definite body of principles for the treatment of war prisoners was being generally

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recognized in the Western world. In 1874, the Conference of Brussels failed to ratify the first declaration relative to prisoners of war. The world had to wait until the First World War when the number of prisoners of war reached millions on both sides (the Allied Forces and the Axis powers) then the powers involved in the War agreed to meet in Geneva to improve the Convention of 1929.

During World War II millions of persons were taken prisoner under widely varying circumstances and experienced brutal and humanitarian treatment. Determination at revising and improving the 1929 Geneva Convention resulted in the approval and enforcement of the 1949 Geneva Convention on October 21st, 1950. This Convention was the fruit of four months of negotiations and debates between representatives of sixty-three governments (it should be noted that Africa was represented by only 2 countries Egypt and Ethiopia), This Convention comprised four conventions (p.21):

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of August 12, 1949.
- Geneva Convention of the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of August 12, 1949.
- Geneva Convention relative to the Treatment of the Prisoners of War, of August 12, 1949.
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, of August 12, 1949.

The third convention preserved the concept expressed earlier that prisoners were to be removed from the fight and be treated with dignity. It also extended the term prisoner of war to include the militia, the volunteers, the irregulars and members of resistance movements if they form a part of the armed forces, and persons who accompany the armed forces without actually being members.

5- The Treatment of Prisoners of War in the International Law

The treatment of prisoners of war according to the international law is essentially based on the articles: 13, 14, 15, 20 and 51 in the Geneva Convention (*Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 1949) which focus on their rights during detention.

Article 13

‘Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious violation of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity’.

Measures of reprisal against prisoners of war are prohibited (p 97).

Article 14

‘Prisoners of war are entitled in all circumstances to respect for their persons and their honor. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favorable as that granted to men.

Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires’ (p.97).

Article 15

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‘The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.’

The conclusion that can be drawn from the three articles is that they stressed on the respect of the dignity and the moral and physical integrity of the prisoner of war (p.97).

Articles 20 and 51 insist on providing accommodation, food, potable water, clothing and medical attention which shall not be inferior to those enjoyed by nationals of the Detaining Power (pp.99, 111).

6- Islamic Law and Prisoners of War

Prisoners of war in Islam during the conquest era were kindly treated according to Islamic law (*Shari'a*) which preserves their safety and dignity (Munir, 2010). Prophet Muhammad (Peace Be Upon Him) used to instruct his companions before engaging in a battle, ordering them to treat prisoners well, on the day of the Battle of Badr in the Hejaz region (present-day Saudi Arabia) in 624 CE.

In the Holy Qur'an, many verses in different *Sûrahs* regulate war prisoners' rights. Among these rights, a prisoner should not be compelled to abandon his religion so as to embrace Islam. He also has the right to be fed, clothed in dignity and lodged decently.

Just and legitimate warfare is a necessity in order to resist aggression and oppression, to defend against enemies, and to overcome those who repress the truth and forcibly keep people from it. War captives follow as a necessary consequence of war. This is why Allah says in *Sûrah* Muhammad, Verse 4: "If you meet in battle unbelievers, smite their necks." This is quite sensible and evident, since no one would expect anyone to say: "If you meet in battle unbelievers, shower them with roses and aromatic herbs." The situation at hand is one of severity and hostility, but Muslims must not initiate the war (Shah, 2013).

A war should be justified and just, not for the purpose of brutal conquest and imperial expansion, nor for aggression and hatred, then such a war has a positive role to play in preserving civilization and removing from it the blights that seek to bring it down. In the Qur'an, there are two verses that discuss prisoners of war: The first is: "It is not right for a prophet to take captives before he has conquered the battlefield. You [people] desire the transient goods of this world, but God desires the Hereafter [for you] — God is mighty and wise" (8:67-114, 115, Oxford World's Classics Edition).

[مَا كَانَ لِنَبِيٍّ أَنْ يَكُونَ لَهُ أَسْرَى حَتَّى يُفْجِرَ فِي الْأَرْضِ تُرِيدُونَ عَرَصَ الدُّنْيَا وَاللَّهُ يُرِيدُ
الْآخِرَةَ وَاللَّهُ عَزِيزٌ حَكِيمٌ] (كلام الله عز وجل، 8:67-115، رواية ورش دار المعرفة، دمشق).

From the Arabic original version, three remarks can be drawn; the first is that, the discourse is not exclusively destined to Prophet Muhammad (PBUH) but to any prophet. The second remark lies in the use of the word "captives" which means in this context "prisoners of war" and it is explicitly expressed in the Arabic text. The third remark concerns the use of the expression "he hath made slaughter in the land", this should not be interpreted by committing a massive killing among the enemy army but by making the land of the enemy under control.

In fact, this verse was revealed after the battle of Badr when the Muslims had captured seventy unbelievers. In the book of Ibn Kathir, an incident is reported that the Prophet Muhammad (PBUH) asked his companions seeking their opinion about what to do with these prisoners (2005, p.1325).

[أيها الناس، إن الله قد أمكنكم منهم]

Translation: "O people, God has enabled you of them (unbelievers)".

Umar said: "أضرب أعناقهم يا رسول الله"

Translation: "Hit their necks (kill them), O Messenger of God".

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Prophet Muhammad Peace Be Upon Him ignored him, and repeated the question once again. Umar stood and said the same: "Hit their necks, O Messenger of God". Prophet Muhammad ignored him again, and repeated the same question for the third time. Then, Abu Bakr Es-Seddiq stood and said:

"يا رسول الله، نرى أن تعفو عنهم، و أن تقبل منهم الفداء" (p1325).

Translation: "Messenger of God, we see that you forgive them and accept ransom." Prophet Muhammad (PBUH) appreciated Abu Bakr's point of view and ordered to free each prisoner who knew how to read and write in exchange for their teaching the children of Madinah reading and writing as a ransom. It is important to note that the Qur'an interpreters like Ibn Kathir, agree that in this verse Allah blamed Prophet Muhammad Peace Be Upon Him and his companions for accepting ransom instead of killing the prisoners (Ibn Kathir, 2005). It is also very important to mention that this verse was revealed in special circumstances, that is, Islam was at its beginning and Muslims were weaker and fewer than the unbelievers, and if they had not killed the captives and free them for ransom, this would have affected the balance of power between the two belligerents.

Later, when the Muslims outnumbered unbelievers and became stronger a new verse was revealed abrogating Verse 67 in *Sûrah Muhammed* and giving the Muslim ruler the choice between accepting ransom or gracing the captives. Allah says:

"When you meet the disbelievers in battle, strike them in the neck, and once they are defeated, bind any captives firmly—later you can release them by grace or by ransom—until the toils of war have ended. That [is the way]. God could have defeated them Himself if He had willed, but His purpose is to test some of you by means of others. He will not let the deeds of those who are killed for His cause come to

nothing." (4:47-331, Oxford World's Classics Edition) The translation of the Verse:

[فَإِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّىٰ إِذَا أَثْبَثْتُمُوهُمْ فَشُدُّوا الْوَتَاقَ فَإِمَّا مَنًّا بَعْدُ وَإِمَّا فِدَاءً حَتَّىٰ تَضَعَ الْحَرْبُ أَوْزَارَهَا ذَلِكَ وَلَوْ يَشَاءُ اللَّهُ لَانتَصَرَ مِنْهُمْ وَلَكِن لِّيَبْلُوَ بَعْضَكُمْ بِبَعْضٍ وَالَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ فَلَنْ يُضِلَّ أَعْمَالَهُمْ] (كلام الله عز وجل، 507-4:8، رواية ورش دار المعرفة، دمشق).

Some Islamic scholars like Qatadah ibn Di'amah and Mujahid ibn Jabr argue that this Verse itself was abrogated by the fifth Verse in *SûrahEttawba*(Repentance). Allah says:

“When the [four] forbidden months are over, wherever you encounter the idolaters, kill them, seize them, besiege them, wait for them at every lookout post; but if they turn [to God], maintain the prayer, and pay the prescribed alms, let them go on their way, for God is most forgiving and merciful”(9:5-116, Oxford World's Classics Edition).

The translation of the Verse:

[فَإِذَا انْسَلَخَ الْأَشْهُرُ الْحُرْمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَأَحْضُرُوهُمْ وَأَقْعُدُوا لَهُمْ كُلَّ مَرْصِدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ] (كلام الله عز وجل، 187-5:9، رواية ورش دار المعرفة، دمشق).

7- The Rights of Prisoners of War in Islam

In the Islamic law (*Shari'a*), the rights of POW's are regulated through Qur'anic verses, the Prophet's tradition including *hadith* and acts from which legal rulings can be concluded. In addition to *Ijma'a* which means general consensus of the Muslim communities represented by the prominent scholars and jurists whose rulings are based on *ijtihad* (Dien, 2004). The last source of Islamic law is individual *ijtihad* when there is no general consensus upon an issue (Hallaq, 2009).

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- *Sharia'a* does not oblige a prisoner of war to abandon his religion to convert to Islam. In modern terms, this principle is referred to as freedom of religion. Nevertheless, prisoners of war are called to Islam within the context *oddaa'wa* without any pressure upon them. Allah says:

"O Prophet! Say unto those captives who are in your hands: 'If Allah knoweth any good in your hearts, He will give you better than that which hath been taken from you, and will forgive you. Lo! Allah is forgiving Merciful'" (8: 70-114, Oxford World's Classics Edition).

The translation of the Verse:

[يَا أَيُّهَا النَّبِيُّ قُلْ لِمَنْ فِي أَيْدِيكُمْ مِنَ الْأَسْرَىٰ إِنَّ يَعْلَمَ اللَّهُ فِي قُلُوبِكُمْ خَيْرًا يُؤْتِكُمْ خَيْرًا مِّمَّا أُخِذَ مِنْكُمْ وَيَغْفِرَ لَكُمْ وَاللَّهُ غَفُورٌ رَحِيمٌ] (كلام الله عز وجل، 70-8-186، رواية ورش دار المعرفة، دمشق).

- In the book of Maududi *Tafhim al- Qur'an*, it is clearly stated that a prisoner of war has the right to enough food to maintain his health (Maududi, 1977) because Allah says in the Qur'an: "they give food to the poor, the orphan, and the captive, though they love it themselves" (8: 76-401, Oxford World's Classics Edition).

The translation of the Verse:

[وَيُطْعَمُونَ الطَّعَامَ عَلَىٰ حُبِّهِ مَشْكُونًا وَتَيْمًا وَأَسِيرًا] (كلام الله عز وجل، 76-8:70، رواية ورش دار المعرفة، دمشق).

According to Islamic teachings, taking care of prisoners of war is an act of worship that can bring the believer closer to Allah. Moreover, when Allah says: "from what they love for themselves", He is telling us that prisoners of war should not be given only our surplus food, but to prefer them over ourselves and give them the best, even if we have a need for it ourselves.

Conversely, depriving the prisoners of war from food is considered as a major sin in Islam. Prophet Muhammad Peace Be Upon Him ordered his companions to treat the prisoners of war in the Battle of Badr decently. Moreover, they were given a preferential deal, for their meals, they were given bread whereas the Prophet's companions were given dates in accordance with the instructions of Prophet Muhammad Peace Be Upon Him (Ibn Kathir, 2005, p.2986). In Islam, the good treatment recommended for human beings is extended to include animals as well. In this respect, it was narrated in *Sahih Muslim* (2007) from 'Abdullah that the Messenger of Allah Peace Be Upon Him said: "A woman was punished because of a cat which she imprisoned until it died, and she entered Hell because of that. She did not feed it or give it water when she imprisoned it, and she did not let it eat from the vermin of the earth." [5850] 149 (pp. 101,102). In the same context, it was also recounted that the Messenger of Allah Peace Be Upon Him said: "While a man was walking on the road, he became very thirsty. He found a well so he went down into it and drank, then he came out. There he saw a dog that was panting and biting the ground out of thirst. The man said: 'This dog is feeling the same thirst that I felt.' So, he went back down into the well and filled his shoe with water, then he held it in his mouth until he climbed back up, and he gave the water to the dog. Allah appreciated (his action) and forgave him." They said: "O Messenger of Allah, will we have reward with regard to these animals? He said: 'In every living thing there is reward.'" (Muslim, 2007) [5859]153 (pp.102,103). Another story showing the virtue of feeding animals, it was also narrated in the *Sahih Muslim* (2007) that Abu Hurairah said: The Messenger of Allah Peace Be Upon Him said: "While a dog was circling a well, almost dying of thirst, one of the prostitutes of the Children of Israel saw it. And made it drink, and she was forgiven by Allah because of this act." [5861] 155 (p.103). In a second version in the same reference, it was narrated from Abu Huraira from the Prophet Peace Be Upon Him: "A

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prostitute saw a dog on a hot day that was circling a well and its tongue was hanging out because of thirst. She drew some water for it in her shoe, and she was forgiven by Allah.” [5860] 154 (p103).

- Prisoners of war have to be clothed in dignity and according to their social status. Jâbir relates: "after the Battle of Badr, prisoners of war were brought. Among them was al-`Abbâs. He did not have a shirt on, so the Prophet Peace Be Upon Him looked for a shirt for him. It turned out that a shirt of `Abd Allah ibn `Ubayy was the right size, so the Prophet gave it to al-`Abbâs to wear and compensated `Abd Allah ibn `Ubayy with his own shirt." [Al-Bukhârî[3008]] (Muhammad ibn Ismail & Khan, 1980). This Prophetic act shows how Islam guarantees prisoners of war the right to decent clothes. It is worth noting that this principle goes in conformity with articles 20 and 51 in the Geneva Convention.

- Prisoners of war have a right to decent lodgings, whether they are in a prison cell, a mosque, or even a private home. During the time of Prophet Muhammad Peace Be Upon him, formal prisons or detention centres did not exist, therefore, prisoners of war were kept in mosques, and sometimes they were distributed among the Prophet's companions to be kept in their homes. Ibn Kathir, in his book *al-Bidâyahwa al-Nihâyah*, mentions that the Prophet (PBUH) distributed the prisoners from the Battle of Badr on his Companions (5/191) (Ibn Kathir & Publishers, 2014).

The Prophet Peace Be Upon Him would free the prisoners of war who knew reading and writing in exchange for their teaching the children of Madinah reading and writing (al-Ismail, 2007). Such a prisoner would obviously have to be free to move about and not bound. The only reason for restraining a prisoner is to keep him from running away. If preventing him from fleeing can be achieved without tying him up, then there is no need to bind him (al-Ismail, 2007).

- When whole families fell under the control of Muslim army, they have a right not to be separated. Mothers should not be separated from their children, nor should that children be separated from its father. Likewise, brothers should not be separated from each other. In the context, Prophet Muhammad Peace Be Upon Him says: "Whoever separates a mother from her child will be separated from his own loved ones on the Day of Judgment." ([Ahmad 23499], al-Tirmidhî[1283]).

Al-Dârimî relates that AbûAyyûb al-Ansârî was in an army and inadvertently separated a mother from her two children. When he saw them crying, he quickly returned them to their mother, declaring: "The Prophet Peace Be Upon Him says: 'Whoever separates a mother from her child will be separated from his own loved ones on the Day of Judgment.'" This Prophetic saying shows how much mercy, compassion, and justice was observed by the Muslims during war in keeping captives from family members together.

- Abuse and torture are strongly condemned in Islam, Islamic teachings insist on the good treatment of the prisoners of war. During the early time of Islam, prisoners of war were never subjected to any kind physical or psychological torture. This principle is also in conformity with the international law, namely the Universal Declaration of Human Rights in its 5th Article, which says: "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment." (UDHR, 2015) This shows to a large extent the influence of the former on the latter.

The conclusion that can be drawn from the six previously mentioned regulations show that Muslims are commanded to treat prisoners of war kindly and hospitably. They must feed them, clothe them, and keep their family members together. Abuse is completely opposed to the true Islamic regulations with regard to the treatment of prisoners of war.

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The only prisoners of war who were ever executed by the Prophet (PBUH) were people who already had a sentence of death passed upon them for crimes they had previously committed against the Muslims. When the great jurist, Mâlik, was asked whether it was permissible to torture a prisoner of war to reveal information about the enemy's weaknesses, he said that he had never heard of such a thing.

Many of the scholars of the past loathed the idea of killing prisoners of war. Throughout all of the wars and battles that the Prophet Peace Be Upon Him waged, he killed very few prisoners of war. These were all among the worst criminals among the enemy who had previously engaged in atrocities against the Muslims. Many of them would be called war criminals in modern terms.

In consideration of the rights that have been mentioned, it follows that they should have appropriate medical care and have all their needs taken care of that falls under the idea of good treatment. None of them should ever be treated unjustly with respect to his person, his family, or his wealth.

8- Discussion

After examining the already mentioned articles and Qur'anic verses on prisoners of war in both the Geneva Convention and the Islamic law, striking similarities in several points can be noticed. For instance, Articles 20 and 51 from the Geneva Convention related to providing food, clothing, accommodation and health care for war prisoners are mentioned in Islamic sources in *Sûrah al-Insân* or *Eddahr* (The Man or the Time): 8 for food and Al-Bukhârî (3008) for clothing. Concerning accommodation and health care as stated in a paragraph above from the book of Ibn Kathîr *al-Bidâyahwa al-Nihâyah*.

In Islamic law, torture and mistreatment of prisoners of war are strictly prohibited, they have a right not to be subjected to any abuse or torture. Similarly, the Geneva Convention in its Articles:

3,17,87 and 130 forbids collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and, in general, any form of torture or cruelty (*Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 1949). It is worth noting that the Islamic law goes beyond the protection of war prisoners amongst soldiers to the families who fall into the hands of Muslim Power. Families have a right not to be separated, this point had strongly been stressed by Prophet Muhammad Peace Be Upon Him in a *hadith* narrated by (Ahmad [23499], and al-Tirmidhî [1283]). It is also important to note that, about fourteen centuries ago, Islam gave the world the basic rules for the respect of human beings' rights including the prisoners of war regardless their origin, colour or religion. However, according to James Kockayne (2002): "None of the of Islamic law (Qur'an or Sunnah) is mentioned among the sources of International Law. However, Islamic law is one of the legal systems represented in the world civilization, which can also be taken as source from which to derive general principles of law recognized by civilized nations" (p 623).

9- Conclusion

The article concludes by arguing that prisoners of war's rights constituted a major concern in both the international law through the Geneva Convention of 1949 and Islamic law through the Islamic teachings in the Qur'an, *hadith*, *Ijma'a* and *ijtihad*. The analysis of the different articles in the Geneva convention and the Islamic law regarding prisoners of war reveals striking similarities. It has also been confirmed that chronologically, Islamic law had dealt with the treatment of prisoners of war centuries before the international laws. It can be assumed that most of the texts regulating the rights of prisoners of war in International Law are inspired from the Islamic law. However, despite the Islamic precursory in terms the treatment of prisoners of war, the international law did not refer to any of its

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sources. The reasons of this denial may constitute the object of future studies.

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