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Child Recruitment and Use during Armed Conflicts by Muslims between International Law and Islamic Law

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Abstract

Child recruitment is an ancient military concept but a modern legal term. The term is defined as a war crime and includes the acts of conscription, enrolment or use of children below the age of 15 during armed conflict. According to the 2018 report of the UN Secretary General, most of the violations documented against children during armed conflicts, in 2017, were perpetrated by Muslims and the majority of the violations were the cases of military recruitment and use. Meanwhile, Islam guarantees the human rights of children and safeguards their protection from military involvement. The Islamic primary and secondary sources entail considerable and substantial evidence according to which people under the age of puberty are exempted from and not allowed to participate in battle. Yet, Muslims have often recruited and used children in deadly political and sectarian conflicts, and Islamic courts have never prosecuted anyone for such a practice. This article, based on comparative and descriptive analysis, argues that the Muslim states and groups that recruit and use children during armed conflicts are in violation of international law and Islamic law. Islamic law works in tandem with international law in the prohibition and criminalization of child recruitment and use.

Keywords: Child recruitment and use, international law, Islamic law, puberty, *ta'zir* crime, the ICC

1. Introduction

“In obedience of the command of God Almighty, and thus the command of the Noble Messenger, Islamic State calls on the youth of Islam [...] to fight, and calls on them to join the convoy of their [*mujahidin*](*jihādi*) brothers in obedience to God and in support of His religion. [So, oh] you who love what is best and desire jihad (*jihād*), get up, hasten, and prepare the forearm of earnestness, perhaps you will be a just brick in the building of this blessed structure.”¹

The historical records include innumerable tragic sorties of children during war. Children have not only been killed, maimed, enslaved, and imprisoned as civilians but also recruited and used during battles throughout history. The phenomenon is not only historical but also actual, besides that international law has prohibited the practice since the last decades of the 20th century. The Additional Protocols of the Geneva Conventions (1977) firstly addressed and outlawed the practice. The Convention on the Rights of the Child (1989), along with its Optional Protocol (2000), the African Charter on the Rights and Welfare of the Child (1999) and the Labour Convention (1999), subsequently reaffirmed the unlawfulness of the act. The Statute of the International Criminal Court (ICC) (1998) included the prohibition of child recruitment and use among the war crimes and defined it as conscripting, enrolling or using children under the age of 15 during armed conflict.

The United Nations (UN) Secretary General published his annual report on children and armed conflict in 2018. The report included the violations committed against children in 2017. Accordingly, 21,000 violations were verified of which 6000 were committed by states' armed forces and the rest were attributed to armed groups. The analysis of the report shows that most of the criminal acts were perpetrated in the Islamic world as well as by Islamic groups fighting against non-Muslim countries. A

¹The announcement of the Islamic State in Iraq and Syria (ISIS) to the youth, in the province of al-Furat which comprised part of the territory of Iraq and part of the territory of Syria, to join its ranks. ISIS, other Islamic groups, and probably states justify the recruitment and use of children with this *Qur'ānic* verse: “[g]o forth, whether light or heavy, and strive with your wealth and souls in the cause of God. That is better for you, if you truly know”. However, the most famous and credible Islamic exegete, Ibn Kathir, has reported that this verse was abrogated by another verse in the same chapter (the verse will be mentioned and interpreted later). Besides the verse, the groups mention an authentic tradition of the Prophet Muhammad which states: “[a]nd when you are called to fight, go forth”. Yet, the tradition is a general order to Muslims and does not specifically refer to children. The Prophet has explicitly prohibited children from partaking in battles in some other traditions (the traditions will also be mentioned and interpreted later) (Benotman & Malik, 2016, 40).

great deal of the violations was the cases of recruitment and use for military purposes. The UN report did not include the age of all the victims but the children were generally aged between 4 and 17. The majority of victims were believed to be males but females also constituted a considerable number. Some of the children were used actively in hostilities while some others were entrusted with activities related to armed conflicts.

Islamic law consists of a set of rules which regulate the life of Muslims. The law is based on numerous references such as the Islamic Holy Scripture, the *Qur'ān*, the traditions of the Prophet Muhammad, scholarly consensus, analogical reasoning and discretion of jurists, public interest and inference, and reason and custom. However, Muslims are only unanimous in accepting the hierarchy of the first three sources and the superiority of the others vary from a jurisprudential school to another one (Zedan, 2001, 196-214; Al-Sais, 1996; Khallaf, 1971; Al-Tarifi, 1997; Mu'ammad, 2012; Musa, 2009; Al-Zakhili, 2001).

Islamic law regulates the life of children from the marriage of their parents.² The law provides children with sufficient rights including the rights to life, family, name, property, proper nutrition, health care, education, and social security (Muslim, 2007, 468- 473; Abu Dāwūd, 2008, 155; Tirmidhī, 2007, 158-159; Ibn Mājjah, 2007, 15, 16, 17, 18; Children in Islam, 2005, 12-24). The law safeguards the protection of children from harmful acts, *inter alia*, discrimination, hard labour, and armed engagement (Children in Islam, 2005, 81-85; Saiful Islam, 2015, 192-196).

War in Islam is defined as defensive and offensive *jihād*. However, the term is narrowly interpreted today and implies only self-defence against aggressive acts by most of the scholars.³ In Islam, self-defence is an individual duty upon Muslims. Yet, the *Qur'ān*, as a general rule, exempts weak, sick, and poor people who cannot afford to arm themselves from going for *jihād*. Scholars have reported some authentic traditions of the Prophet Muhammad according to which the Prophet has not given permission to young Muslims, under 15 years of age, to participate in battles. Although some jurists require everyone, even women and children, to participate in defensive *jihād*, they do not specify an age and the type of participation. The *Qur'ān* includes many verses as to the facilitation of the first principal

²The Prophet encouraged his companions to choose righteous spouses so that they would become righteous mothers (Al-Bukhārī, 1997, 32-33; Muslim, 2007, 119).

³ In Modern era, there have been some scholars who followed the classical categorisation of *jihād* and required Muslims not to abandon the fulfilment of the obligation of offensive *jihād* against non-Muslims. The Egyptian scholar, Sayid Qutb, and the Palestinian scholar, 'Bduallah 'Zzam, have been the most prominent and the ideologues of modern *jihādi* movements. Such scholars exist even today but they are few and almost unknown by the majority of Muslims (Khdir, 2018, 45-46).

obligations in exceptional circumstances and the extension of the religious requirements to only the limits of human capacity. The rules can generally be applicable by analogy as to the exemption and prevention of children from partaking in armed conflict.

However, Muslims have recruited and used children during battles many times in history. The most problematic aspect of Islamic law, as to the act of child recruitment and use, is perhaps the nature and punishment of the offence. The Islamic primary sources do not mention a specific criminal responsibility for committing such an act; thus, the crime is categorized as a *ta'zir* crime. The ruler or judge is alternatively to decide on the responsibility of the perpetrators. Although no court verdict is likely to be found in the history of Islam for recruiting and using children, the nature of the practice remains prohibited under the explicitness of the *Qur'ānic* verses and authenticity of the traditions of the Prophet Muhammad.

The rules of international law regarding the prohibition of child recruitment and use below the age of 15 are not new. They have been derived from the rules and customs of the ancient civilizations and religions, *inter alia*, Islam and codified into international instruments. Therefore, the Muslim states and groups that recruit children into their ranks do not only violate international law instruments but also the Islamic scriptural texts and prophetic traditions.

There might have been a great deal of research regarding the prohibition of child recruitment and use in international law, but there is still a lack of a comprehensive legal analysis of the practice under Islamic law. The objective of this study is to discuss the issue in light of Islamic law. The motivation behind conducting this study is today's prolific practice of child recruitment and use by Muslim states and Islamic groups on the basis of some textual misconceptions and misinterpretations, illustrating the true Islamic law perspective to the issue and attempting to prevent or restrict the practice in the world, particularly in Muslim countries through Islamic rules, ideals, and morals. This research is a comparative and descriptive analytical study that is mostly based on international instruments and principles derived from established customs, the *Qur'ān*, and traditions of the Prophet Muhammad.

The research answers some important questions: What is the concept and term of child recruitment and use? Who refers to the practice of child recruitment and use the most today? What is Islamic law? Does Islamic law allow the recruitment and use of children during armed conflict? Does Islamic law overlap international law in the prohibition and criminalization of the practice?

The research consists of three main arguments: the first argument addresses the concept and term of child recruitment and use in international

law along with the analysis of the report of the UN Secretary General on the violations committed against children during armed conflicts in 2017; the second main argument discusses Islamic law and the protection of children from military involvement under the law; and the third argument is a brief comparative study between international law and Islamic law.

2. The Concept and Term of Child Recruitment and Use

Historically, children have been among the most affected groups during war. They have not only been targeted as part of the civilian populations but have also been part of war and used to realize military aims (Waschefort, 2011, 8; Children and Armed Conflict, 2011, 47-48; Leggiere, 2007, 99–100; Rosen, 2005; Promotion and Protection of the Rights of Children, 1996). It is not possible that the phenomenon of military recruitment and use of children has ever been consistent with the popular morals and ideals of the world cultures, but it has also not been unlawful until late 20th century. Hence, children have not only been the victims of political and economic greed of war actors but also the gap of a comprehensive legal protection from military recruitment and use.

The historical fatal effects of war on children, either as a group of the civilian populations or as recruited soldiers, urged the international community to seriously campaign against the violations of the rights of children during armed conflict from the second half of the 20th century. Consequently, a number of international instruments were adopted in which special protection and scrupulous care for children was recognized. One of the safeguards that the instruments included was the protection of children from military involvement.

Modern international law addresses the issue of child recruitment in international humanitarian law, international human rights law, international labour law, and international criminal law. As most of the rules of these laws have now been articulated into national laws, the prohibition of child recruitment and use is also a rule in the domestic law of most of the world states.

Following the adoption of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) in 1949, children were granted the statutes of civilian (Geneva Convention IV, 1949, Art. 4). Under the Convention, civilians are individuals who belong to neither armed forces or groups of a conflict and do not actively partake in their hostilities (Additional Protocol I, 1977, Arts. 50, 43). Therefore, they enjoy legal protection and are immune from military attacks and armed recruitment (Additional Protocol I 1977, Art. 51). Yet, the Convention does

not explicitly define the child and does not specifically refer to the issue of military recruitment and use of children during armed conflict.⁴

The first explicit reference as to the protection of children from military involvement was made in the 1977 Additional Protocols of the Geneva Conventions. The Additional Protocol I is applicable during international armed conflict and aims to protect the victims of such a conflict. The Protocol regarding the military recruitment and participation of children in combat stated:

The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest (Additional Protocol I, 1977, Art. 77 (2)).

Besides some imperfections, the article is a significant historical development in international humanitarian law. The wording of the article implies that the contracting parties are, to a good extent, obliged to refrain from the practice of child recruitment during and participation in armed conflict.

The Additional Protocol II is considered as the extension and development of article three common to the Geneva Conventions. It is applicable during conflicts of an internal nature with the aim of protecting people who have no direct participation in it. The Protocol similarly includes a provision regarding the protection of children from armed recruitment and participation, as stated: “[c]hildren who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities” (Additional Protocol II, 1977 Art. 4 (3) (c)).

The drafters of the Protocol II formulated this provision more carefully compared to the relevant article of the Protocol I. They avoided using some problematic terms like ‘feasible measures’ and ‘direct participation’ which consequently made the provision stronger in application.

⁴The Geneva Convention IV refers to children below the age of 15 in a number of articles as such (14, 23, 24, and 38). The Convention generally provides such children with a privileged treatment in these articles. Additionally, article (51) of the Convention prohibits the occupying power from compelling protected persons to serve in its ranks but does not specifically address children and their issue of military recruitment and use during armed conflict (Geneva Convention IV 1949, Arts. 14, 23, 24, 38, 51).

It is worth mentioning that both protocols extend the special protection to the time when children are recruited and used in armed conflict in violation of the previous provisions or captured by the adversary party:

If, in exceptional cases, [...] children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war (Additional Protocol I, 1977, Art. 77 (3)).

The special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities [...] and are captured (Additional Protocol II, 1977, Art. 4 (3) (d)).

The prohibition of military recruitment and use of children mentioned by the Protocols has been reproduced in some international human rights instruments and, therefore, the protection of children from such a practice is also part of international human rights law these days.

The 1989 Convention on the Rights of the Child was the compilation of the human rights guaranteed for children in the previous human rights instruments. However, it was the first international human rights document that provided a legal protection for children from military recruitment and use during armed conflict. According to the Convention, “[...] a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (The Convention on the Rights of the Child 1989, Art. 1). The Convention defined the child for the first time and determined a specific age for his or her maturity. The Convention further paid attention to the issue of child recruitment for the first time and stated:

States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities (The Convention on the Rights of the Child, 1989 Art. 38 (2)).

States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest (The Convention on the Rights of the Child, 1989 Art. 38 (3)).

The legal gaps of these provisions, particularly regarding the age limit for the military recruitment and participation of children in armed conflict, raised concerns and criticism. The adoption of the Optional Protocol

to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in 2000 was the reflection of an international consensus as to the need to further develop the relevant provisions of the Convention. The Protocol, in its preamble, confirms the fact that the protection of children from military involvement needs to be increased and thus the minimum age of recruitment and participation in armed conflict needs to be readdressed (Optional Protocol, 2000, Paras. 6, 8).

The Protocol notes the definition of the Convention and refers to the child as a person who is under the age of 18 years unless the national law determines a lower age for him or her (Optional Protocol 2000, Preamble, Para. 7). It raises the minimum age of armed recruitment and participation from 15 to 18 years, as stated:

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities (Optional Protocol, 2000, Art. 1).

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces (Optional Protocol, 2000, Art. 2).

The Protocol also requires the states parties to raise the legal age for voluntary recruitment from the age of 15. Furthermore, the states ought to ensure that the recruitment is absolutely voluntary and accompanied with the consent of parents or legal guardians and the person is completely informed regarding his or her military duties (Optional Protocol, 2000, Art. 3). Another important provision of the Protocol is that irregular armed groups are prohibited from recruiting or using children below the age of 18 in hostilities whether the recruitment is voluntary or compulsory and their participation is direct or indirect (Optional Protocol, 2000, Art. 4 (1)).

Another important document which addresses the issue of military recruitment and use of children is the 1999 African Charter on the Rights and welfare of the Child. The Charter refers to the child as a person who is under 18 years of age (African Charter, 1990, Art. 2). It requires states parties to respect the humanitarian rules applicable during armed conflict regarding children (African Charter, 1990, Art. 22 (1)). In respect of the age limit, the measures that the states ought to take and the prohibited manner of child participation in armed conflict, the Charter stated: “State Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child” (African Charter, 1990, Art. 22 (2)).

The International Labour Organization adopted the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour in 1999. The Convention similarly defines

children as persons who have not reached the age of 18 (The Labour Convention, 1999, Art. 2). It refers to forced or compulsory recruitment of children as one of the worst forms of child labour, as stated: “[a]ll forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict” (The Labour Convention, 1999, Art. 3 (a)).

It should also be mentioned that there are some other significant instruments adopted to prevent or restrict the recruitment and use of children during armed conflict. Some of the instruments are the Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa (1997), the Paris Commitments to protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups (2007), and the Paris Principles and Guidelines on Children associated with Armed Forces or Armed Groups (2007). Hence, this is besides many resolutions of the UN Security Council, *inter alia*, 1261 (1999), 1314 (2000), 1379 (2001), and 1460 (2003).

Although most of the above-mentioned instruments require the formality of state consent to be applicable, their rules on the protection of children from armed recruitment and use are also part of customary international law. Under customary international law, the applicability of the rules is based on the occurrence of the specific situation of armed conflict and the perpetration of the act and not on the states’ consent. The customary rules are not only applicable to states but also to private groups when they are a side of a conflict. In 2004, the Defence Counsel challenged the jurisdiction of the Special Court for Sierra Leone⁵ regarding the prosecution of Sam Hinga Norman and other Sierra Leonean political and military commanders under article (4 (c)) of the Court’s Statute for perpetrating the crime of recruitment and use of children under 15 years of age. The Defence Counsel stated that child recruitment and use was not a crime under neither conventional nor customary international law when the accused committed it. The Court rejected the defence and reaffirmed that even before November 1996, the criminalization of child recruitment and use was clearly evident in many international documents. Additionally, the documents had created prolific state practice and *opinio juris* as to the prohibition of the act and,

⁵The Special Court for Sierra Leone was a hybrid tribunal that was established based on an agreement between the Government of Sierra Leone and the UN on 16 January 2002. The tribunal was mandated to try the crimes that were committed as the result of violations of international humanitarian law and Sierra Leonean law, during the civil war in the country, since 30 November 1996 (Agreement between the United Nations and the Government of Sierra Leone, 2002; The Statute of the Special Court for Sierra Leone (SCSL), 2002).

therefore, it was also an established rule in customary international law (Prosecutor v. Sam Hinga Norman, 2004, Paras. 1, 2, 17).

It is worth mentioning that the UN has considered the crimes against children, as part of the civilian populations, as a threat to international peace and security. It has called upon states to protect children from military involvement and condemned the practice of child recruitment and use. The organisation has established several bodies to guarantee the protection of the rights of children during armed conflict. The bodies are Special Representative of the Secretary-General for Children and Armed Conflict⁶ and Working Group on Children and Armed Conflict⁷.

The recruitment and use of children is also addressed by international criminal law. The ICC Statute recognizes such an act as a serious violation of the laws and customs of war in the context of international and non-international armed conflicts. The Statute states:

Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities (The ICC Statute, 1998, Art.8 (2) (b) (xxvi)).

Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities (The ICC Statute, 1998, Art. 8 (2) (e) (vii)).

Under the Statute, the term of child recruitment and use includes conscription or enlistment or use of children, below the age of 15, by national armed forces⁸ or armed groups⁹ to actively partake in an international or non-international armed conflict.¹⁰

⁶The Special Representative of the Secretary General for Children and Armed Conflict was established by the UN General Assembly Resolution (51/77) in 1996. Although the mandate of the body was temporary and for three years, it has been extended since then due to its significant role. The mission of the body is promoting and protecting the rights of children during armed conflict. The body yearly presents reports to the UN General Assembly and the UN Human Rights Council regarding the impact of armed conflict on children. Additionally, the body informs the UN Security Council and concerned governments about the challenges that children face during armed conflict so that they take appropriate measures to prevent or restrict them.

⁷The Working Group on Children and Armed Conflict is an organ of the UN Security Council. The organ was established by the Council's Resolution (1612) in 2005. The mandate of the organ is reviewing the monitoring reports on the violations against children during armed conflict, reviewing the Council's relevant action plans, recommending the Council appropriate measures as to the promotion and protection of the rights of children during armed conflict, making requests to the other organs of the UN to support the implementation of its mandate.

⁸Article (43) of the Additional Protocol I, defines armed forces as follows:

The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the

3. The Practice of Child Recruitment and Use by Muslims

The reasons, methods, and motivations might have changed over the time but the recruitment and use of children during armed conflict is not a new phenomenon originated from the necessity of modern warfare. Rather, it has been a military practice throughout history. The practice is believed to have been implemented by the ancient peoples and continued through the Middle Ages to modern times. Although child recruitment was mostly practiced by states until World War II, it has been more prolific and regular among armed groups since then.

According to an interview conducted with the UN Special Representative for Children and Armed Conflict, Olara Otunnu, the number of children who were involved in armed conflict in 2005 was estimated to be more than 300,000 (2005 Olara Atunnu on Child Soldiers, 2013). Although

conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict.

The International Committee of the Red Cross in the commentary on the Additional Protocols, stated:

[I]t is perfectly clear that the Protocol has extended its field of application to entities which are not States [...] If they conform to the requirements of the present article, liberation movements fighting against colonial domination [...] and resistance movements representing a pre-existing subject of international law may be “Parties to the conflict” within the meaning of the Conventions and the Protocol. However, the authority which represents them must have certain characteristics of a government, at least in relation to its armed forces [...] the notion of “Party to the conflict”, within the meaning of the Protocol, is fairly wide, involving not only resistance movements representing a pre-existing subject of international law and governments in exile, but also those fighting for conflicts of “self-determination” or “national liberation” (Sandoz & Swinarski *et al.* (eds.), 1987, 507).

⁹Article (1) of the Additional Protocol II refers to armed groups in the context of internal armed conflict as follows:

This Protocol [...] shall apply to all armed conflicts [...] take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

¹⁰The ICC Pre-Trial Chamber, in the case of Lubanga Dyilo, referred to conscription and enlistment as two forms of recruitment. Accordingly, conscription implies forcible recruitment while enlistment signifies voluntary recruitment. The judge of the Special Court for Sierra Leone, Robertson, elucidated the term of ‘using children to participate actively in hostilities’ in his separate opinion appended to the judgment of the Appeals Chamber, as putting the lives of children at the risk of combat after conscripting or enlisting. Thus, the term of child recruitment and use is conscripting or enlisting children to directly take part in combat or actively involve them in combat related duties (Prosecutor v. Lubanga Dyilo, 2007, para. 246; Prosecutor v. Sam Hinga Norman, 2004, para. 5).

the figure has been estimated less and less as a result of the UN efforts (The UN Security Council Action Plans and UN General Assembly relevant campaigns), the number of the recruited children is still estimated to be tens and thousands.

The UN Secretary General, António Guterres, published his annual report on children and armed conflict on 16 May 2018. The report covered the violations committed against children during armed conflicts from January to December 2017. According to the report, the UN verified 21,000 violations of which 6,000 were committed by the states' armed forces and 15,000 were perpetrated by irregular armed groups (Children and Armed Conflict, 2018, 2). The countries in which the violations were reported were Afghanistan, Central African Republic, Colombia, Democratic Republic of Congo, India, Iraq, Israel and the State of Palestine, Lebanon, Libya, Mali, Myanmar, Nigeria, Pakistan, Philippine, Somalia, South Sudan, Sudan, Syria, Thailand, and Yemen. The violations included killing, maiming, imprisoning, subjecting to sexual violence, abducting, recruiting and using children during armed conflicts. A great part of the violations were the cases of military recruitment and use. The cases were attributed to both national armed forces and armed groups fighting with one another. Most of the above-mentioned countries were either Muslim-majority countries or countries that were conflicting with Islamic groups on their territories. The most well-known Islamic groups were Taliban, Islamic State in Iraq and Syria (ISIS), al-Shabab, and Boko Haram (Children and Armed Conflict, 2018, 5-34).

The UN documented 643 cases of child recruitment and use in Afghanistan. The Organisation was able to verify 84 cases of which 23 cases were attributed to the national defence and security forces, 40 to Taliban, 19 to ISIS (Khorasan Province), and 2 to unidentified armed groups (Children and Armed Conflict, 2018, 5).

In the Central African Republic, the UN verified 299 cases of recruitment and use of children. Some of the children were only 8 years old. Except for 41 cases which were attributed to the Christian groups (32 children to the Anti-Balaka elements and 9 to the Lord's Resistance Army), all the cases were attributed to the factions of the Muslim Séléka group. The Union for Peace in the Central African Republic, known as UPC, recruited or used 89 children; the Popular Front for the Rebirth of Central African Republic, known as FPRC, recruited or used 62 children; the Central African Patriotic Movement, known as MPC, recruited or used 53 children; the FPRC and MPC jointly recruited or used 23 children; ex-Séléka Renovéé recruited or used 16 children; The Democratic Front of the Central African People, known as FDPC, recruited or used 14; and the Return, Reclamation,

Rehabilitation, known as 3R, recruited or used 1 child (Children and Armed Conflict, 2018, 7).

The UN reported 523 cases of child recruitment and use in Iraq. It verified 109 cases of which 59 children were recruited or used by ISIS (Children and Armed Conflict, 2018, 12), and the rest of the children were recruited or used by the Kurdish nationalist and unknown groups¹¹ (Children and Armed Conflict, 2018, 12).

The report mentioned three verified and three alleged cases of child recruitment in Lebanon. The verified cases were attributed to ISIS and the alleged ones to Hezbollah. The groups recruited the children from Lebanon into Syria to be used there. The report also referred to the allegations of child recruitment and use by other armed groups in Ain al-Hilweh, Lebanon, although it did not mention any group (Children and Armed Conflict, 2018, 15).

The UN received limited information regarding child recruitment and use by the Libyan armed forces but confirmed that the armed groups operating in the country continued to recruit and use children. It reported that the government released 125 adolescents, who were formerly associated with the armed groups, in the Zintan Municipality (Children and Armed Conflict, 2018, 16).

In Mali, the report mentioned 159 verified cases of child recruitment and use. However, 114 cases had taken place in the previous years but were only documented in 2017. The children were recruited or used by the following groups: 9 by Ansar al-Din, 3 by al-Mourabitoun, 1 by the Movement for Unity and *jihād* in West Africa, 1 by the Macina Liberation Front (Children and Armed Conflict, 2018, 17), and the rest of the children were recruited or used by the nationalist and unidentified groups¹² (Children and Armed Conflict, 2018, 17).

The UN report showed that child recruitment and use was a very prolific practice in Somalia. The Somali National Army and the Somali Police Forces recruited 130 children across the country. Al-Shabaab recruited 1,770, Ahl al-Sunna wal-Jama‘at recruited 66 (Children and Armed Conflict, 2018, 21), and the other autonomous forces of the country and

¹¹According to the UN report, the armed wing of the Kurdistan Workers Party and People's Defence Forces recruited 9 children, the Yazidi Sinjar Resistance Units recruited 4 children, the Protection Force of Ezidkhan recruited 1 child, the Kurdistan Region Zeravani forces recruited 1 child, and the unknown armed groups recruited 35 children.

¹²Based on the UN report, 47 children were recruited by the Coordination of the Azawad Movements, 73 children were recruited by the Platform, 12 children were recruited by the Movement for the Salvation of Azawad, and 13 children were recruited by unknown armed groups.

unknown armed groups recruited 159 children¹³ (Children and Armed Conflict, 2018, 21).

In Sudan, the UN reported 24 cases of child recruitment and use but verified only one case. The report did not mention the parties who perpetrated the recruitment or use except for the case of a 14-year-old boy who was recruited by the Sudan Liberation Army-Abdul Wahid (Children and Armed Conflict, 2018, 24).

Syria is also on the top in the list of the UN report for the practice of child recruitment and use due to the intensity of its conflict in that year. According to the report, 961 children were recruited or used in that country in 2017. The report indicated that 26% of the children were below 15 years of age and 90% actively participated in the conflict. Among the children, 36 were foreign nationals and at least 16 of them lost their lives during that year. The government and its militia allies recruited or used 73 children, ISIS recruited or used 284 children,¹⁴ the other Islamic groups recruited or used 136 children¹⁵, and the nationalist movements recruited or used 468¹⁶ children (Children and Armed Conflict, 2018, 26).

In Yemen, the UN verified 842 cases of recruitment and use of children in the country's on-going conflict. The Houthis perpetrated two-thirds of the violations (534), the Security Belt Forces recruited or used 142 children, the Yemeni Armed Forces recruited or used 105 children, pro-government Popular Resistance recruited or used 50 children, and al-Qaeda in Yemen recruited or used 1 child. Although most of the children were between 15 and 17, some were as young as 11. The parties used 76 of the children actively in the conflict as combatants. Consequently, 31 children were killed and 14 others were maimed (Children and Armed Conflict, 2018, 28).

India is another country in which children are recruited and used during armed conflict including by Islamic groups in Jammu and Kashmir. The UN reported three incidents of child recruitment and use in 2017. Accordingly, one case was attributed to Jaish-e-Mohammed and the two

¹³The Galmudug Forces recruited 40 children, the Jubbaland Forces recruited 40 children, the Southwest Forces recruited 21 children, and the unknown clan militias recruited 58 children.

¹⁴According to the UN report, one of the children whom ISIS recruited was only 4 years old.

¹⁵The recruitments were perpetrated by 'Arakat A'rar al-Sham al-Islamiyyah (The Islamic Movement of the Free Men of the Levant), Jabhat al-Nusrah (al-Nusrah Front), Hai'at Ta'rir al-Sham (the Levant Liberation Committee), and some other unidentified groups.

¹⁶The Free Syrian Army recruited 244 children and the Kurdish armed forces known as the People's Protection Units recruited 224 children.

other cases were attributed to Hizbul Mujahideen¹⁷ (Children and Armed Conflict, 2018, 30).

The UN also reported the recruitment and use of children in the Nigerian situation. Accordingly, besides a substantial decrease in the practice,¹⁸ the verified cases were still 1,092 in 2017. Of the children, 1,051 were recruited or used by Boko Haram and 41 others were recruited or used by the pro-government Civilian Joint Task Force (Children and Armed Conflict, 2018, 31).

In Pakistan, children were continually recruited including from religious schools. Moreover, children were trained and instructed on the commission of suicide attacks. The UN report did not mention the number of the incidents and did not refer to any specific group as to the recruitment practice but attributed the training and instruction of children on the perpetration of suicide attacks to the Tehrik-e-Taliban Pakistan (Children and Armed Conflict, 2018, 32).

Finally, the UN report referred to the situation of Philippine and documented 30 verified cases of recruitment and use of children by the Islamic and other¹⁹ groups in the country. According to the report, the Bangsamoro Islamic Freedom Fighters used 16 children as human shields in an incident and the Maute group recruited or used 8 children (Children and Armed Conflict, 2018, 33).

The total number of the verified cases of military recruitment and use of children by the armed forces of the Muslim countries and the Islamic armed groups in 2017 was 5,661 cases. The list of the countries are as follows: Somalia (2,125), Nigeria (1,092), Syria (961), Yemen (842), Central African Republic (258), Mali (159), Iraq (109), Afghanistan (84), Philippines (24), India (3), Lebanon (3), and Sudan (1). The number of the children who were recruited or used by the states' national forces was 433 (7.6 %), and the number of the recruited or used children by the armed groups was 5,228 (92.4 %). The violations committed through only military recruitment and use against children during armed conflicts by Muslims constituted 27% of the total violations (21,000) verified by the UN in 2017.

¹⁷The report also mentioned unverified claims of child recruitment and use by the Communist Naxalites Party, in Chhattisgarh and Jharkhand, and use of children as informants and spies by the Indian National Security Forces.

¹⁸According to the report, the number of the recruited children in 2016 was 2,122. The figure showed that the practice of child recruitment and use decreased by 50% in 2017. The reasons for the decrease were that Boko Haram lost a large territory and a large number of civilians left the areas under the control of the group, besides the commitment of the Civilian Joint Task Force to the 'UN Action Plan' that the group signed in 2017.

¹⁹The UN report attributed 6 cases of child recruitment and use to the armed wing of the Communist Party of Philippines, New People's Army.

The UN report did not include the age of the victims except in the most extraordinary cases. Most of the children were, however, aged between 15 and 17 and at least one-fourth of them were under 15 years of age (Children and Armed Conflict, 2018, 5-34). The report further determined the sex of 4,845 out of 5,661 children. Accordingly, 4,244 (87.6%) were boys and 601 (12.4%) were girls (Children and Armed Conflict, 2018, 5-34). The UN also did not report the methods of the use of the children in every country and by every armed group but verified that the children were generally used to guard checkpoints, patrol military bases, transport logistics and supplies to military positions, cook, spy, transmit information, manufacture explosive devices, combat on the front lines, and carry out suicide bombing missions. Some of the girls were used for sexual purposes or married the fighters of the groups (Children and Armed Conflict, 2018, 5-34).

Finally, it should be mentioned that the number of the children who were recruited and used during armed conflicts, in 2017, was much more than the figure of the UN report. The UN only reported the verified cases and not all the incidents took place in that year. The number could be estimated ten times more and most of the incidents took place in Asia and Africa, particularly in the situations where Muslims are involved in either as states national forces or irregular armed groups.

4. Islamic Law

Islamic law is a comprehensive legal system which has been derived from various sources.²⁰ The primary sources of the law are known as *sharī'ah*. *Sharī'ah* is literally translated as the path by Islamic scholars (Abdal-Haqq, 2006, 4; Doi, 1981; Weiss, 1998). It is theologically a set of methodological principles and rules to guide Muslims. Islamic *sharī'ah* emerged after the revelations of the *Qur'ānic* verses and the recognition of the prophethood of the Meccan Qurayshi member, Muhammad Ibn Abdullah, in the first three decades of the 7th century. The *Qur'ān* introduced basic principles and the Prophet applied them in *hadīth* (teaching) and *sunnah* (practice). Thus, the first sources of the law were the *Qur'ān*²¹ and

²⁰In this article, we will only mention and rely on the primary sources and the secondary sources that Muslims unanimously or mostly accept.

²¹The Prophet received the Quran as revelations and orally transmitted it to his companions. The early companions were used to memorize it but compiled and wrote it down after the death of the Prophet. The *Qur'ān* includes general principles that are known as 'guidance'. The principles generally regulate the relation of man with God and then the relation of men with one another. The *Qur'ān* is, in other words, a constitution for Muslims (Abdal-Haqq, 2006, 11; Auda, 2007, 77-79; The *Qur'ān*, 2:185, 17:9, 14:1, 3:138, 2:2, 4:105, 16:64, 21:10, 26:2, 39:41).

traditions of the Prophet Muhammad²². Following the growing of Islam and the expansion of the Islamic Caliphate to outside of the Arabian Peninsula, Muslims faced new socio-religious issues which could not be decided by the comprehensive *Qur'ānic* texts and prophetic traditions. They, in other words, needed a much elaborated and detailed legal regime to settle the issues. Therefore, they started to rely on some other sources including *ijma'* (scholarly consensus)²³ and *qiyas* (analogical reasoning)²⁴ (Izzi Dien, 2004, 40-56).

Although Islamic law was not officially codified until late the Ottoman era (Zanki, 2014, 130; Qazi Zada & Qazi Zada, 2016, 160), it governed every aspect of life from the acts of worship (testimony of faith, prayer, fasting, charity and pilgrimage) to human interactions (financial transactions, endowments, inheritance, marriage, divorce, child custody, foods, drinks, criminal punishments, war and peace and judicial issues). It should be mentioned that Islamic law is still in force in some countries and is the primary source of legislation in many other countries.²⁵

²²The *Qur'ānic* principles are very comprehensive in nature. Muslims may not clearly find solutions for every issue that they face and therefore they alternatively refer to the life of the Prophet. Thus, the words and actions of the Prophet are also the second authoritative reference of Islamic law. During the era of the Prophet, Muslims would perform whatever the Prophet commanded and encouraged, and they would refrain from whatever he forbade and discouraged. The death of the Prophet made Muslims afraid of losing his intellectual heritage. As a result, scholars started to compile and write his traditions so that the latter generation would have access to them along with the *Qur'ān*. The traditions were collected by many scholars including Imam Bukhārī, Imam Muslim, Imam Abu Dāwūd, Imam Tirmidhī, Imam al-Nasā'ī, and Imam Ibn Mājjah (Rehmaanee, 2006).

²³The scholarly effort to solve the new socio-religious issues led to the emergence of *fiqh* (scholarly investigation of the *sharī'ah* principles and rules). The emergence of *fiqh* was accompanied with the formation of schools. The most long-lived and followed schools are the four *Sunni* schools of Hanafi, Maliki, Shafi'i, and Hanbali and the *Shiite* schools of Twelver and Zaidi. The schools generally do not revoke the validity of each other and following each makes one to be within the boundaries of the Islamic faith (Auda, 2007, 56-75).

²⁴Analogical reasoning simply means deriving a rule from the *Qur'ān* or the Prophetic traditions for an issue by analogy. Analogical reasoning is, in other words, the extension of the legal effect of the *Qur'ān* or traditions of the prophet from an issue to another issue, not covered by the two, based on the cause that the two issues share. It should be mentioned that analogical reasoning, as the source of law, has been the subject of controversy and debate among scholars and some have rejected it and relied on *Aql* (reason) instead of including the scholars of Twelver *Shiite* School (Izzi Dien, 2004, 52; Al-Salami, 1999, 18-20; Moaddel, 2005, 32-33).

²⁵Saudi Arabia and Iran are the only two countries which enforce Islamic law in all areas of governance these days. The rest of the Muslim countries consider Islam as the main source of legislation within secular political systems or at least retain the Islamic rules that govern personal status.

5. Islamic Law and Child Recruitment and Use during Armed Conflict

Islam generally prohibits Muslims from involving in violence for human material purposes but permits and commands *jihād* in some specific times and circumstances. *Jihād* is known as a violent historical concept that has caused many bloody wars. The argument may not be incorrect if one analyzes *jihād*, based on the common historical and political theories, from only a military perspective. Yet, Muslims believe that *jihād* is much broader than being confined to war. The concept includes any human exertion that benefits mankind or takes humanity out of discomfort for the sake of God (Khadduri, 1955, 55; Maududi, 1980, 5). Some scholars refer to war as only minor *jihād*.²⁶

Scholars classically divide combative *jihād* into defensive and offensive categories: defensive *jihād* is the self-defence of Muslims against the aggression of outsiders, while offensive *jihād* is the military campaign of Muslims to deliver Islam to other people around the world. However, most of the modern scholars prohibit Muslims from directing offensive *jihād* due to the availability of the alternative modern civil and cultural means that can play the same role (Khdir, 2018, 45-46). Additionally, classical scholarship does not consider both categories of *jihād* to be equal in terms of obligation and performance. Accordingly, defensive *jihād* is a compulsory individual obligation, whereas offensive *jihād* is a voluntary collective obligation (Moussalli, 2009, 18).

Defensive *jihād* is the protection of Muslims and Islamic land from actual or imminent military threats. The declaration of *jihād* is generally the primary and independent responsibility of ruler (Kalin & Kamali (eds.), 2013, xvi). Muslims must obey such a commandment at any time and under any circumstance. However, the lack of a legitimate ruler and his permission to *jihād* does not deprive Muslims from defending themselves and their land. Nevertheless, Islam specifies some conditions to Muslims to participate in *jihād*. One of the conditions is that the person must be physically and mentally capable to perform the obligation. God says in the *Qur'ān*: “(there is) not upon the weak, nor upon the sick nor upon those who find no means to spend (on the cause) any blame, if they are sincere (in their duty) to Allah and His messenger [...]”²⁷ (The *Qur'ān*, 9:91). The verse provides general

²⁶Many scholars have reported a tradition of the Prophet Muhammad according to which war is just a minor *jihād* and the greater *jihād* is a *jihād* against desires. Although the tradition does not seem to be technically authentic, it does not contradict the spirit of *jihād*. One cannot fight in the way of God unless he has completely taken control of self and curbed his fleshly desires (Hamid, 2008, 72; Ali & Rehman, 2005, 330).

²⁷As-Suddi states that before the revelation of this verse, Muslims would perform *jihād* according to the following verse: “[m]arch forth, whether you are light or heavy”. Ibn

exemptions from participating in *jihād*. The first person who is allowed not to perform *jihād* is a weak person. Although neither Tabari nor Ibn Kathir mentions or refers to children in the interpretation of the word of ‘weak’ (Ibn Kathir, 1999, 198-199; Al-Tabari, 2001, 623), modern scholarship includes immaturity (Children in Islam, 2005, 84) along with disability such as blindness, lameness, and elderliness. The verse further refers to sickness and poverty as two other excuses for not going for *jihād*. However, illness and financial incapability are temporary exemptions and become invalid following the recovery and returning to the state of normality.

The *Qur’ān* includes many verses which affirm that nothing is required from human beyond his or her physical, psychological, and mental strength, as says: “[a]nd strive for Allah with the striving due to Him. He has chosen you and has not placed upon you in the religion any difficulty” (The *Qur’ān*, 22: 78). The verse requires Muslims to strive hard (perform *jihād*) by any means in the first part but in the second part, confirms that religious obligations do not require strength beyond human capacity. Ibn Kathir gave many examples in the interpretation of this verse. Accordingly, prayer is the first and most important obligation in Islam after the testimony of faith but can be shortened based on the circumstances from four *Rak’has* to two during travelling and even to one *Rak’ha* at time of fear. Prayer may be performed however Muslims can perform it. Muslims may pray without facing the *Qiblah*²⁸ while travelling. A sick Muslim may pray sitting down or lying down (Ibn Kathir, 1999, 455-456).

The *Qur’ān* also says: “Allah does not intend to make difficulty for you but He intends to purify you and complete His favour upon you that you may be grateful” (The *Qur’ān*, 5:6). This verse is part of a longer verse regarding the way of carrying out prayer. Muslims generally must wash their faces and hands (to the elbow), pass lightly their wet hands over their heads and wash their feet up to their ankles. Then, they may stand to perform prayer. However, if one was in a state of ceremonial impurity, he must purify himself by taking a full bath. If he was ill or on a journey or has just relived

Kathir reported many stories of the companions of the Prophet Muhammad according to which Muslims had to fight whether they were young or old, healthy or ill, strong or weak and rich or poor. According to As-Suddi, the performance of *jihād* was very hard on Muslims and therefore God revealed the above-mentioned verse and abrogated this one. However, the verses of chapter nine were revealed before, during, and after the battle of Tabuk (630 AD). Before the aforesaid battle, Muslims had fought many battles and the Prophet had not allowed young Muslims to take part except in one exceptional case that would be mentioned later. Therefore, the phrase ‘whether young ...’ did not refer to children who were younger than 15 but young Muslims who were older than this age (the *Qur’ān*, 9:41; Ibn Kathir, 1999, 155-157).

²⁸*Qiblah* is the direction towards Ka’ba in Mecca, Saudi Arabia, where Muslims face during the performance of prayer.

himself or has had sexual contact and could not find water, he can use pure dust instead: passing it lightly over his face and hands. The reason is that God wants to make the obligation easy for Muslims and not to cause them any difficulty (The *Qur'ān*, 5:6).

The *Qur'ān* further says “Allah intends for you ease; He does not want to make things difficult for you” (The *Qur'ān*, 2:185). The verse is interpreted in the context of the obligation of fasting. It generally requires Muslims to fast during the month of Ramadan. However, if one were sick or on a journey, he may break the fast and make the day up after Ramadan. The implication is similarly that God wants to ease the obligation by allowing Muslims not to fast or break the fast when there is a valid excuse such as the hardship of illness or travelling even though fasting is the second principal obligation after the testimony of faith (The *Qur'ān*, 2:185). Ibn Kathir mentions many traditions of the Prophet Muhammad in the interpretation of this verse. Accordingly, the Prophet has often fasted and often not fasted while travelling. Yet, it is recommended not to fast or break it when the performance of fasting becomes hard on a journey (Ibn Kathir, 1999, 501-505).

The *Qur'ān* says: “Allah does not burden anyone beyond his capacity” (The *Qur'ān*, 2: 286). The verse signifies that God does not require anyone to carry out anything that is more than his physical, psychological, and mental endurance. He indeed lays responsibility on man to the extent of his strength and thus charges him with that within his capacity (Ibn Kathir, 1999, 737). It should be mentioned that there are three other chapters of the *Qur'ān* that include a similar verse (The *Qur'ān*, 6:152, 7:42, 23:62).

The scholars of *hadīth* have reported from the companions of the Prophet Muhammad that the Prophet once said: “[t]he pen has been lifted from three: from the sleeping person until he awakens, from the minor until he grows up, and from the insane person until he comes to his senses” (Ibn Mājjah, 2007, 168-169; Bukhārī, 1997, 130). The interpretation of the *hadīth* is that the bad deeds of these people are not recorded. Thus, children are among the categories of people whose deeds have no religious effect until they reach a certain age which is when they are physically and mentally mature.

Islam defines maturity as the onset of human capability to marriage. Thus, it sets the age of marriage as the age of maturity. The *Qur'ān* says: “[t]est the orphans when they reach the age of marriage. Then if you discern in them maturity, deliver to them their property” (The *Qur'ān*, 4:6). Orphans need guardians to manage their properties. The properties can only be delivered to them once they sexually and mentally become mature (Al-Tabari, 2001, 402-404; Ibn Kathir, 1999, 215). However, one may have

attained sexual maturity but is not yet mature mentally. Nevertheless, the general rule is that maturity begins from the age of marriage.

Islam conditions marriage with the realisation of puberty. Puberty is a biological phenomenon that makes one becomes capable of reproduction and intellectual comprehension (Gazanfari, 2016, 2-3). Human generally experiences the phenomena between the age of 10 and 18 depending on sex and social, cultural, and climate influence on his or her biological development. Islam basically connects puberty to physical development but alternatively refers to it as human age. Accordingly, puberty has been realized when one starts to experience wet dreams or menstruation, finds hair in the genital area or reaches the age of 15²⁹.

Some scholars of *hadīth* have reported from one of the Banu Qurayzah³⁰ survivors that Muslims separated women and children from men. The method that they used to determine maturity was looking at the private parts of the young males to ensure if their pubes had started to grow. The ones who had pubic hair were considered mature while the ones who did not were considered children (Abu Dāwūd, 2008, 45-46).

One of the young companions of the Prophet Muhammad, named al-Barā' Ibn 'Azb, has narrated that he and another companion, named 'Abdulah Ibn 'Umar were considered too young during the battle of Badr (624) and therefore the Prophet did not allow them to participate in it (Bukhārī, 1997,181). Although al-Bara has not reported his age in the year when the battle took place, 'Abdullah has explained his own in another tradition reported by some scholars of *hadīth*. According to the narration of 'Abdullah, he went to the Prophet and asked his permission to take part in battle on the day of Uhud (625). The prophet refused his request as he was very young. One year later during the battle of Trench (626), he approached the Prophet with the same request. The Prophet agreed this time and he

²⁹The Hanafi School presumes that puberty normally occurs at the age of 15. However, females experience it no later than the age of 17 and males no later than 18 years of age. The Hanbali and Shāfi'ī schools determine the age of 15 for both sexes, while the Maliki school sets the age of 18. Most of the *Shiite* scholars also believe that puberty takes place between the age of 9 and 15 depending on the sex (Al-Jaziri, 2003, 313-315; Gazanfari, 2016, 4-5).

³⁰ Banu Qurayzah was a Jewish tribe resided in Medina along with two other Jewish and two Arab tribes. Before, the migration of the Prophet from Mecca to Medina in 622, the tribes were all in conflict with each other. After the Prophet arrived there, he initiated a peace process and reconciled the tribes through mediation and organized peace pacts amongst them. In the battle of Trench (627), Banu Qurayza breached its peace pact and sided the Quraysh-led army against Medina and Muslims. Consequently, Muslims besieged the tribe, after the battle ended with their victory, and killed the male members and spared women and children. The execution of the tribe members was carried out based on the decision of an arbitrator who was appointed by an agreement of both sides. Scholars have reported that the arbitrator was from the Arab tribe of Aws which was the ally of Qurayza (Bukhārī, 1997, 270-271; Muslim, 2007, 59-60; Ibn Ishaq, 2004, 458-464).

fought alongside the adult Muslims. ‘Abdullah has further stated that he was 14 years old when the battle of Uhud occurred and had turned to 15 during the battle of Trench (Muslim, 2007, 201-202; Abu Dāwūd, 2008, 46). According to al-Tabbari, the Prophet sent back dozens of young Muslims home along with ‘Abdullah Ibn ‘Umar and al-Barā’ Ibn ‘Azb on the day of Uhud among whom were his famous companions: Zayd Ibn Thābit, Usayd Ibn Zuhayr, Arabāh Ibn Aws, and Abu Sa’īd al-Khudrī (Tabari, 1987,111). However, he has also reported a funny story of two young companions who were overzealous to participate in the battle. Accordingly, when the Prophet reviewed his troops to return young Muslims home, a young skilful archer named Rafī’ Ibn Khadij “stood on his pair of patched shoes and stretched himself on tiptoe to his full height, and when the messenger of God saw him, he passed him”. Among the young Muslims who were to go back home, there was Rafī’'s rival in wrestling, Samurah Ibn Jundub. When Samurah saw Rafī’ passed, he complained and claimed that he could beat Rafī’ in wrestling. Then, the Prophet asked them to wrestle; Samurah beat and threw Rafī’ and then he was also allowed to stay. Al-Tabari has not mentioned the exact age of the two companions but indicated that they were also considered too young (Tabari, 1987,111).

As we mentioned before, *jihād* is regarded an obligation upon Muslims. Offensive *jihād* was to be based on the parental consent. Yet, defensive *jihād* does not require any permission and Muslims may participate in it with or without the consent of parents. Scholars have reported various traditions of the Prophet Muhammad regarding the significance of parental permission in the participation in *jihād*. Accordingly, many people came to the Prophet and asked his permission to go for *jihād* but the Prophet refused them all and sent them back home to serve their parents or ask permission from them. According to one narration, a man came to the Prophet and sought his permission to go for *jihād*. The Prophet asked him if his parents were alive and the man replied that both were alive. The Prophet then asked him to go back home to serve them (Bukhārī, 1997, 152). According to another narration, a man came to Medina from Yemen. The Prophet asked him if he had any relatives in Yemen and the man replied that he had his parents there. The prophet then asked him if he had sought their permission and the man replied that he had not. The prophet asked him to go back home and ask permission from them. If they accepted, he could go for *jihād*. If they did not, then he would have to stay and serve them (Abu Dāwūd, 2008, 222). Another companion of the Prophet has narrated that he approached the Prophet and requested his permission to take part in *jihād*. The Prophet asked him if his mother was still alive. The companion replied that she was. The Prophet then asked him to go back home and honour her. The companion continued approaching the Prophet from the other side and

in front with the same request but the Prophet refused him every time and finally said: “[g]o back and serve her, for there is Paradise” (Ibn Mājjah, 2007, 57). Imam Ibn Mājjah comments on this tradition and argues that if one was the only family son, serving his parents is more important than taking part in *jihad* (Ibn Mājjah, 2007, 58).

The Islamic jurists similarly divide *jihād* into defensive and offensive categories. They unanimously agree that the obligation of offensive *jihād* is collective and voluntary. It only extends to male Muslims who are free, mature, sane, healthy, and financially able (Al-Sha’rawi, 1998, 44-45; Bin Mar’i, 2003, 62-68; Al-Sa’imi, 2008, 51- 71). Yet, they differ regarding defensive *jihād*. Some believe that everyone, who is capable of fighting, ought to take part in defensive *jihād* including women and children while some are of the opinion that women and children are not required to fight (Al-‘Anafi, 2003, 379-382; Al-Dardir, 1991, 274-276; Al-Gamrawi, 1337 (1919), 540-543; Ibn al-Quddamah, 1997, 33-37; Al-Tusi, 1980, 289). The first group of jurists refer to aggression as the most serious threat to Muslims as a whole. The gravity of the threat makes them derogate from certain humanitarian rules such as the participation of children in battle. However, they do not specify an age and do not mention the way of participation of children.

As far as war is concerned, the story of ‘Abdullah Ibn ‘Umar and the other young Muslims who voluntarily and enthusiastically wanted to participate in battles, alongside the Prophet Muhammad, must be taken as the only true Islamic practices regarding the participation of young people. The battle of Trench, in which ‘Abdullah Ibn ‘Umar took part for the first time, was a defensive war in nature for Muslims. The war took place on the outskirts of Medina. The battle of Trench can militarily be defined as the most important battle in the history of Islam. It was a decisive war and decided on the future of Islam and Muslims. Besides, the adversary party consisted of the alliance of many tribes and their army was much larger than Muslims. According to some accounts, the number of Muslims did not exceed 3,000 while the number of the Quraysh led allies was 10,000 well equipped warriors (Ibn Kathir, 2000, 91). Additionally, the Qurayzah tribe breached its pact with Muslims and sided Quraysh and its allies from the inside of Medina. Thus, the permission of the Prophet on the participation of ‘Abdullah Ibn ‘Umar was probably not only because he was fifteen but also all the critical conditions that Muslims faced during the battle. Nevertheless, scholars have reported that when the Umayyad Caliph, ‘Umar bin ‘Abdul ‘Aziz (680-720) (As-Sallabi, 2011, 54), heard the *hadīth* of Ibn ‘Umar, he said: “[t]hat is the dividing line between child and adult”. He commanded his agents to consider all those who were younger than fifteen as children (Abu Dāwūd, 2008, 46; Muslim, 2007, 201-202).

6. Islamic Law and Criminal Responsibility for Child Recruitment and Use during Armed Conflict

Islamic law introduces a set of rules to characterize the behaviour of Muslims. Accordingly, the acts of Muslims are classified into obligatory, recommended and permitted, and disliked and forbidden (Aroua, 2013, 40). These rules regulate the relation of Muslims with God as well as the interaction of Muslims with one another. Islam does not only promise reward and punishment for the acts in the hereafter but also in this life. These rules, in other words, constitute criminal rules and establish criminal responsibility.

Islam, like the other religions, defines the violation of its law as 'sin'. However, sin is theologically understood to be broader. It may entail acts that do not involve common human criminal responsibility. Nevertheless, Islamic law recognizes the conduct of a prohibited act as a crime but does not mention and specify the punishments of all crimes. Islam, in other words, characterizes the most serious crimes of concern to the Muslim community and specifies their punishments but leaves the lesser grave crimes and their penalties for the discretionary power of the judge or ruler.

Islamic law characterizes criminal acts through their punishments. The crimes that the law recognizes are known as *Hadud*, *Qisas*, and *Ta'zir* Crimes ('Awdah, 1993, 78-81). A culprit is condemned based on his or her confession or the testimony of not fewer than two witnesses (in some cases four witnesses are required). The punishments are imposed based on the gravity of the act and may include fine, imprisonment, lashing, amputation, exile, and execution.

The first category of the crimes is *Hudud* Crimes. The *Hudud* Crimes are defined as trespassing the limitations demarcated by God. The crimes are mentioned in the *Qur'an* and traditions of the Prophet and their punishments are specified as well. The *Hudud* Offences are theft, adultery and fornication, defamation (unfounded accusation of fornication and adultery and impugning the legitimacy of a child), highway robbery, consuming wine and other intoxicants, and according to some jurists, apostasy and rebellion (Al-Mawardi, 1996, 312, 314; Hallaq, 2009, 310-311; 'Awdah, 1993, 79; Bassiouni, 1997, 269). Although these offences are pardoned neither by the victim nor by the state, they are conditioned with strict evidentiary requirements. The offences generally require confession or the testimony of at least two eye witnesses. In case of adultery or fornication, there must be four eyewitnesses to decide on the punishment of stoning to death ('Awdah, 1993, 81-83). A small doubt or a slight ambiguity is sufficient for the judge or ruler to avert the punishment. The punishments for the *Hudud* Crimes are amputation, stoning death and lashing, and imprisonment and beheading (Lippman, 1989, 39-42).

The second category of the crimes is *Qisas* Crimes. The *Qisas* Crimes are known as offences against person and his or her body. The term is linguistically meant as equivalence and theologically understood as similar retaliation. *Qisas* includes all categories of murder as well as battery. It is based on the principle of a soul for a soul and an eye for an eye (The *Qur'ān*, 5:45). Islamic law provides an alternative punishment for *Qisas* Offences which is compensation (blood money or ransom) (The *Qur'ān*, 4:92). The victim or his or her heirs may receive the compensation and forgo the retaliation. Besides the entitlement of the victim or his or her family to retaliation and compensation, Islam encourages pardon for *Qisas* Crimes out of charity. It considers it as a high moral and benevolent act that leads the victim and his or her heirs to expiation (The *Qur'ān*, 16:126, 5: 45, 2: 179, 42: 40, 7: 199, 24: 22, 42: 43).

The third category of the crimes is known as *Ta'zir* Crimes. *Ta'zir* linguistically means chastisement. The *Ta'zir* Crimes do not have specific punishments in the *Qur'ān* and prophetic traditions. Their punishments are rather left to the authority of the ruler or judge ('Awdah, 1993, 80). The *Ta'zir* Crimes consist of the offences qualify not as *Hudud* and *Qisas* Crimes (due to doubt, ambiguity, the lack of sufficient evidence or witnesses or other technical requirements) but offences against public welfare and morality. The examples of the *Ta'zir* Crimes are attempted theft, attempted murder, embezzlement, bribery, usury, false testimony, sodomy, fortune telling, nudity, and not performing religious obligations (Lippman, 1989, 45). The *Ta'zir* Crimes similarly require the confession of the culprit or the testimony of at least two witnesses. The punishment for the *Ta'zir* Crimes entails fine, lashing and imprisonment, and exile and execution (Lippman, 1989, 45).

The recruitment and use of children under the age of 15 during armed conflict is a prohibited act in Islam. The act does violate Islamic law and thus attracts individual criminal responsibility. However, it does not constitute a serious crime and does not have a high-level gravity like theft, murder, etc. The crime can, in other words, be categorized as a *ta'zir* crime and its prosecution and punishment can be based on the discretion of the ruler or judge. Besides that, Islamic law is very explicit in the prohibition of the practice, Muslims have recruited and used children below the age of 15 during armed conflicts throughout the medieval and modern history.³¹ Yet, there is no reference as to the punishment of the perpetrators in the Islamic historical literature. The issue stems not from the fact that Islamic law contains no criminal responsibility and punishment for the crime but from the nature of the crime under the law and irresponsibility and recklessness of

³¹See for example the *Devşirme* System practiced by the Ottoman Empire in Eastern and South-eastern Europe from the fifteenth century to the middle of the seventeenth century (Yilmaz, 2009, 119-134).

Islamic judges in bringing the perpetrators before justice and restore rights for victims. The reasons might have been the sacredness and significance of the concept and campaign of *jihād* in Islam. However, no one could have ever been as eager as the Prophet to spread Islam and protect Muslims but he refrained from and prohibited such a practice. Nevertheless, the lack of previous court decisions and juristic discretions on the crime of child recruitment, and use during armed conflict, is a legal gap in Islamic criminal law. To fill this gap, the countries that enforce Islamic law ought to establish a proper and just practice and the countries which have adopted secular penal codes ought to incorporate relevant criminal rules into their criminal codes.

7. International Law and Islamic Law: Comparison on Child Recruitment and Use during Armed Conflict

International humanitarian law does not explicitly define the child and leaves it to the applicable law of states but prohibits military recruitment and use of children below the age of 15. The law undergoes gaps, shortcomings and loopholes, besides its inconformity with international human rights law and international labour law regarding the minimum age of military involvement of children.

The Geneva Convention IV refers to children as part of the civilian populations. The Convention protects children as long as they have no part in armed conflict but when they participate in a conflict whether internal or international, they will fall outside of the scope of the applicability of the Convention and lose their civilian status and the promised protection (Geneva Convention IV, 1949, Arts. 3, 4, 5). Additionally, the Convention does not specifically refer to the issue of child recruitment and use during armed conflict in none of its articles.

The Additional Protocol I addresses the military recruitment and use of children but the wording of the relevant article is not strong enough to prohibit the practice. The terms ‘feasible measures’, ‘direct participation’, ‘giving priority to the oldest’, and the issue of ‘voluntary enrolment’ make the article incomplete and its protection not effective enough (Additional Protocol I, 1977, Art. 77 (2)). In other words, the Protocol does not require the states to take ‘necessary measures’.³² The type of participation that the Protocol refers to is direct and hence indirect participation, such as gathering intelligence, transmitting information, transporting arms and providing supplies, is not covered by the Protocol (Additional Protocol I, 1977, Art. 77 (2)). Furthermore, voluntary enrolment does not constitute any violation of

³²The International Committee of the Red Cross suggested the term of ‘necessary measures’ during the negotiations on drafting the Protocol but the suggestion was not accepted and the term of ‘feasible measures’ was finally included instead (Sandoz & Swinarski *et al.* (eds.), 1987, 900).

the article. Finally, the Protocol does not prohibit the direct participation of children above 15 but prioritizes those who are the oldest (Additional Protocol I, 1977, Art. 77 (2)).

Although the drafters of the Protocol II avoided using the terms 'feasible measures' and 'direct participation' in order for the article to cover compulsory and voluntary recruitment and direct and indirect participation of children under 15 years of age during armed conflict (Additional Protocol II, 1977, Art. 4 (3) (c)), the effect of the Protocol extends only to the most serious situations and excludes internal disturbances and tensions (Additional Protocol II, 1977, Art. 1 (2); Sandoz & Swinarski *et al.* (eds.), 1987, 1349). Besides, some certain criteria from the side of insurgents as such a responsible command, controlling part of the territory and the possibility to implement the Protocol (Additional Protocol II, 1977, Art. 1 (1); Sandoz & Swinarski *et al.* (eds.), 1987, 1349).

Among dozens of international and regional human rights instruments, there are only the Convention on the Rights of the Child along with its Optional Protocol and the African Charter on the Rights and Welfare of the Child that refer to the issue of child recruitment.

The Convention on the Rights of the Child sets a clause in its definition for the child. The clause is respecting the national law in the determination of a lower age for the child (The Convention on the Rights of the Child, 1989, Art.1). The provisions of the Convention regarding the prohibition of child recruitment and use are the copy of the relevant article of the Additional Protocol I (Additional Protocol I, 1977, Art. 77 (2); The Convention on the Rights of the Child, 1989, Art. 38 (2) (3)). Hence, the Convention becomes the subject of the same criticisms. The Convention redefines the child in the latter provisions and decreases the child's age from 18 to 15 in the process of military recruitment and use during armed conflict (The Convention on the Rights of the Child, 1989, Art. 38 (2) (3)). In other words, the Convention determines 18 years of age as the beginning of maturity in the definition but prohibits only the direct participation of children below the age of 15 in the latter provisions. From a *contrario* reading, the indirect participation under the age of 15 and the recruitment and participation of children from the age of 15 above do not constitute any breach under the Convention. Additionally, the Convention is the subject of many reservations. The states may object some certain provisions and the provisions will have no legal effect on them. Furthermore, the Convention has no specific mechanism to enforce it except the periodic reporting system from the states parties to the UN Committee on the Rights of the Child, regarding the implementation of the Convention, which can only make suggestions on the compliance and not punish them for not adhering to the Convention (Hackenberg, 2000, 429-430).

The Optional Protocol is although stronger in formulation than its Convention, it still includes loopholes and cannot be considered as a comprehensive legal protection for children during armed conflict. The issues of the Protocol are again the terms 'feasible measures', 'direct participation', and 'compulsory and voluntary recruitment' which eventually leave spaces for interpretation and implementation of the provisions of the Protocol (Optional Protocol, 2000, Arts. 1, 2, 3).

The wording of the African Charter on the Rights and Welfare of the Child is probably the strongest among the human rights instruments. Yet, the word 'direct' is a gap in the relevant provision and a *contrario* reading of it signifies that indirect participation is not unlawful (African Charter, 1990, Art. 22 (2)). The Charter's legal effect extends only to those states that have ratified it and its enforcement mechanisms are almost similar to the Convention on the Rights of the Child (Hackenberg, 2000, 431-432). Finally, the implementation of the Charter's provisions could be based on the stipulation of customary, traditional, religious, and cultural consistency (African Charter, 1990, Art. 1 (3)).

The Labour Convention covers only compulsory recruitment of children and not voluntary enrolment. In other words, children who voluntarily participate in armed conflict are not protected under the Convention (The Labour Convention, 1999, Art. 3 (a)).

The military recruitment and use of children below the age of 15 is a war crime under modern international criminal law but the crime has been prosecuted few times. The Special Court for Sierra Leone was the first international criminal body that indicted some political and military commanders and eventually convicted them for committing such a crime (Prosecutor v. Norman, 2003; Prosecutor v. Fofana, 2003; Prosecutor v. Kondewa, 2003; Prosecutor v. Norman, 2004; Prosecutor v. Brima, Kamara *et al.*, 2007; Prosecutor v. Sesay, Kallon *et al.*, 2009; Prosecutor v. Taylor, 2012). The ICC might have also indicted some people (Joseph Kony; Vincent Otti *et al.*, 2005) but has only charged and sentenced the head of the Union of Congolese Patriots, Thomas Lubanga Dyilo, for committing such an act in 2012 (Prosecutor v. Lubanga Dyilo, 2007; Prosecutor v. Lubanga Dyilo, 2012, para. 98).

International law rules governing the protection of children during armed conflict were adopted based on the compilation, combination, and codification of the customs which had initially been established by the ancient religions and civilizations. The law has brought nothing new regarding the prohibition of child recruitment and use during armed conflict except the incorporation of the relevant customs into international conventions. However, it has established individual criminal responsibility

and international and hybrid criminal mechanisms to prosecute the perpetrators.

The history of the Islamic rules, protect children from military involvement, can be traced back to the first three decades of the 7th century. Yet, the wording of the relevant *Qur'ānic* verses and Prophetic traditions is not weaker than the modern international instruments. Although the *Qur'ānic* verses are much more comprehensive than that which can be compared to modern secular rules, the stories of 'Abdullah Ibn 'Umar and other companions entail all the specific elements of the relevant modern international law rules. The stories generally indicate a ban on the military engagement of children in armed conflict. The request of 'Abdullah and others to take part in battles, along with the Prophet under the age of 15, equates to the modern legal terminologies of voluntary enrolment and participation in armed conflict. The refusal of the Prophet implies taking necessary measures to protect children from military recruitment and use. Although the traditions and narrations do not include further details as to the return of children to Medina, there is no evidence to affirm that they carried out activities linked to the battles "such as scouting, spying, sabotage" or they were used "as decoys, couriers or at military checkpoints".³³ Hence, the traditions could be strictly interpreted as 'Abdullah and others did not even partake in the battles indirectly.

Nevertheless, neither international law guarantees complete protection of children from military recruitment and use nor Islamic law does legitimize and justify child involvement in armed conflict. International law may play a greater role these days through raising the minimum age of military recruitment and triggering the jurisdiction of the ICC but the

³³The Preparatory Committee on the Establishment of an International Criminal Court explained the words of "participating" and "using" in the context of the relevant article of the ICC Statute and stated:

The words "using" and "participate" have been adopted in order to cover both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer's married accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology (The Report of the Preparatory Committee on the ICC Establishment, 1998, 21).

The ICC Trial Chamber in the Lubanga Dyilo Case also referred to report of the Preparatory Committee in the interpretation of the article and stated: "Active participation" in hostilities means not only direct participation in hostilities, combat in other words, but also covers active participation in combat-related activities such as scouting, spying, sabotage, and the use of children as decoys, couriers or at military check-points" (Prosecutor v. Lubanga Dyilo, 2007, Para. 261).

relevant Islamic rules are also dynamic and flexible which allow Muslims to reinterpret them in light of modern standards. Besides, Islam does not prevent Muslims from signing and ratifying international instruments and becoming ICC member states as such acts do not violate any core Islamic principle but fill legal gaps and complete legal and judicial systems in Muslim countries (Bsoul, 2009, 19-22; Ibn al-Qaiyem, 1994; Al-Shatbi, 1997; Zarkashi, 1985; Al- Jassas, 1980).

Conclusion

Child recruitment has been a military phenomenon since the ancient periods but it was legally prohibited in late 20th century. Under international law, child recruitment is a legal term these days and is used for the war crimes of conscripting, enrolling, or using children under 15 years of age during armed conflict.

Based on the annual report of the UN Secretary General in 2018, the armed conflicts in the world resulted in 21,000 violations against children in 2017. Most of the violations were perpetrated in either Muslim-majority states or states that were involved in armed conflicts with Islamic groups. The cases of military recruitment and use of children constituted a great part of the violations. The number of such cases committed by Muslims was 5,661. Of the cases, 433 (7.6 %) were reported from national armed forces and 5,228 (92.4 %) were documented from irregular armed groups. These cases made up 27% of the total violations reported and verified by the UN. According to the report, the victims were mostly boys and aged between 4 and 17. The perpetrators used the victims either actively in combat or in activities related to combat. The report demonstrates that the practice of child recruitment and use is very prevalent among Muslims.

However, Islam prohibits its followers from such an act. Islamic law basically consists of the *Qur'ān*, traditions of the Prophet Muhammad, scholarly consensus, and analogical reasoning. The law completely regulates the life of children and grants them sufficient rights. It refers to them as the most vulnerable group and protects them from the effects of warfare, *inter alia*, armed recruitment and use. The *Qur'ān* includes a verse according to which children are exempted from performing the obligation of *jihād*. The Prophet has refused the request of young Muslims below the age of 15 from participating in battles. The Islamic jurists similarly consider immaturity as a valid reason to stay away from battle unless Muslims face aggression that endangers the Muslim community as a whole. Children may further be protected from partaking in battle by the analogy of the *Qur'ānic* verses on the exceptional circumstances of the main obligations like prayer and fasting and the verses that extend Islam to the boundaries of human capacity.

Yet, Muslim politicians and military commanders have often

recruited and used children in violations of these rules and no one has likely been prosecuted in the history of Islam. The issues do not lie in the law itself but rather in the nature of the offence and its punishment and improper administration of criminal and judicial authority. Child recruitment and use during war is classified as a *ta'zir* crime under Islamic law. The punishment of the *Ta'zir* Crimes is not specified in the Islamic primary sources and hence it is alternatively derived from the discretionary authority of the judge or ruler.

Nevertheless, Islamic rules and practices on the prohibition of child recruitment and use are a precedent of modern international law along with the customs of the other religions and civilizations. International law did not innovate none of the rules but just codified them in the late 20th century. However, it, for the first time, defined it as a serious war crime and established criminal mechanisms for its perpetrators. If the responsible Muslim states and groups reject to obey the relevant conventional international law rules, they at least ought to adhere to their own religion and refrain from military involvement of children because Islamic law works completely in conjunction with international law in protecting children from and criminalizing armed recruitment and use below the age of 15 during armed conflict.

Recommendation

1. The Islamic states, Muslim-majority states, and Islamic groups should refrain from the act of child recruitment and use as a moral requirement and obligation of their religion.
2. Islamic scholars and jurists should reinterpret the relevant *Qur'ānic* verses and Prophetic traditions in light of the contemporary sociological needs and obligations and derive humanitarian and criminal rules out of it regarding the act of child recruitment and use.
3. The Islamic *fatwa* committees and unions should exercise their ruling authority on the issue of child recruitment and use and consider the practice as a sin based on the *Qur'ān* and traditions of the Prophet Muhammad.
4. The Islamic states of Iran and Saudi Arabia should incorporate Islamic humanitarian and criminal rules into their relevant laws to prohibit the act of child recruitment and use and punish the perpetrators of such an act based on the Islamic primary references or relevant *fatwas*.
5. The Muslim-majority-states should become states parties to any regional and international instruments and courts on the prohibition and criminalization of child recruitment and use, particularly the Rome Treaty (1998) and the International Criminal Court.

6. The Islamic academia should spread awareness among people and political and military authorities on the issue of child recruitment and use through further researching, debating and meetings.

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References:

1. Abdal-Haqq, I. (2006). Islamic Law: An Overview of its Origin and Elements, In H M Ramadan (ed.) *Understanding Islamic Law: From Classical to Contemporary*. New York et al.: Alta Mira Press.
2. African Charter on the Rights and Welfare of the Child (adopted July 11, 1990, entered into force November 29, 1999) OAU Doc CAB/LEG/24.9/49.
3. Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (signed January 16, 2002, entered into force April 12, 2002) 2178 UNTS 138.
4. Al-'Anafi, 'A. A. (2003). *Badai'u al-Sanai' fi Tartib al-Sharai'*. Vol. 7. Beirut: Dar al-Ktub al-'ilmiyah.
5. Al-Dardir, A. (1991). *Al-Shar'u al-Sagir 'la Aqrab al-Masalak ila Mazhab Imam Malik*. Vol. 2. Cairo: Dar-al Ma'arf.
6. Al-Gamrawi, M. A. 1337 (1919). *Al-Siraj al-Wahhaj 'Shar' Matn al-Manahij'*. Beirut: Daru al-Mahrifah.
7. Ali Shaheen, S. & Rehman, J. (2005). The Concept of Jihad in Islamic International Law. *Journal of Conflict & Security Law*, 10 (3): 321-343.
8. Al-Jassas, A. (1980). *Ahkam al-Qur'an*. Vol. 2. Cairo: Dar al-Fikr.
9. Al-Jawazyah, I. (2003). *Provisionsfor the Hereafter (Mukhtasar Zad Al-Ma'ad)*. Riyadh: Darussalam.
10. Al-Jaziri, 'A. (2003). *Kitab al-Fiqh 'la al-Mazahib al-Araba'a*. Beirut: Dar al-Ktub al-'ilmiya'.
11. Al-Mawardi, A. (1996). *al-Ahkam as-Sultaniyyah: The Laws of Islamic Governance*. Translated by Asadullah Yate. London: Ta-Ha Publishers Ltd.

12. Al-Salami, M. A. (1999). *Al-Qiyas (Analogy) and Its Modern Application*. Translated. by Mohammad Hashim Kamali. Jeddah: Islamic Research and Training Institute.
13. Al-Sa'imi, 'B. (2008). *Al-Jihad fi al-Islam: Ma'fhumahu wa Zawabtahu wa Anwa'ahu wa Ahdafahu*. Medina: Dar al-Nasi'at et al.
14. Al-Shatbi, A. *Al-Muwafaqat fi al-Usul al-Shari'ah*. Vol. 2. Al-Khubar: Dar Ibn 'Ffan.
15. Al-Sha'rawi, M. M. (1998). *Al-Jihad fi al-Islam*. Cairo: Maktabat al-Turath al-Islami.
16. Al-Tabari (2001). *Tafsir al-Tabari: Jamih al-Bayan 'an Ta'wil ai al-Quran*. Vol. 6, 11. Cairo: The Centre for Arabic and Islamic Research and Study in Dar Hijr.
17. Al-Tusi, A. (1980). *Al-Nihayah fi Mujarrad al-Fiqh wa al-Fatawa*. 2 ed. Beirut: Dar al-Kitab al-'Arabi.
18. Aroua, A. (2013). *The Quest for Peace in the Islamic Tradition*. Oslo: Kolofon Press.
19. Auda, J. (2007). *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. London et al.: The International Institute of Islamic Thought.
20. Bashir, S. (2011). Infanticide and Diminished Responsibility-In Conflict with International Human Rights Law and Islamic Legal Norms. *Pakistan Journal of Islamic Research*, 8: 45-60.
21. Bassiouni, C. (1997). Crimes and the Criminal Process. *Arab Law Quarterly*, 12 (3): 269-286.
22. Bennoune, K. (1994). As-Salāmu `Alaykum? Humanitarian Law in Islamic Jurisprudence. *Michigan Journal of International Law*, 15 (2): 605-643.
23. Benotman, N. & Malik, N. (2016). *The Children of Islamic State*. Quilliam. <https://f.hypotheses.org/wp-content/blogs.dir/2725/files/2016/04/the-children-of-islamic-state.pdf>.
24. Bin Mar'i, M. 'A. (2003). *A'kam al-Mujahid bil-Nafs fi Sabil Lillah 'Zza wa Jal fil al-Fiq al-Islami*. Vol.1. Medina et al.: Maktabat al-'lum wa al-'km et al.
25. Bsoul, L. A. (2009). The Concept of Treaty in Islamic Jurisprudence: A Comparative View of The Classical Jurists. *Journal of Islam in Asia*, 6 (2): 1-32.
26. International Bureau for Children's Rights (2011). *Children and Armed Conflict: Guide on International Human Rights and Humanitarian Law on Children in Armed Conflict*. <http://www.ibcr.org/wp-content/uploads/2016/06/Guide-international-law-2010-english-1.pdf>.

27. Children and Armed Conflict (2018). Report of the Secretary General, UN General Assembly. May 16, Doc. A/72/865–S/2018/465.
28. *Children in Islam: Their Care, Upbringing and Protection* (2005). Al-Azhar University in cooperation with the United Nations Children's Fund.
29. Doi, A. (1981). *The Cardinal Principles of Islam*. Zariah: Hudahuda.
30. Gazanfari, A. (2016). Snn Blug al-Mazkur fil al-Quran wa al-Sunnah min Wajhat Nazar al-Fuqaha. *Journal for the Study of Social Sciences*, 23 (1): 1-18.
31. Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) (adopted August 12, 1949, entered into force October 21, 1950) 75 UNTS 287.
32. Hackenberg, M. L. (2000). Can the Optional Protocol for the Convention on the Rights of the Child Protect the Ugandan Child Soldier? *IND. INT'L & COMP. L. REV*, 10 (2): 417-455.
33. Hallaq, W. (2009). *Shari'a: Theory, Practice, Transformations*. Cambridge: Cambridge University Press.
34. Hamid, T. (2008). *Inside Jihad: Understanding and Confronting Radical Islam*, self-published book.
35. Hawdah, 'A. (1993). *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qanun al-Wad'i*. Vol. I. Beirut: Dar al-Kitab al-Arabi.
36. Ibn al-Qaiyem, S. (1994). *Zad Al-Ma'ad Fi hady Khair Al-'Ibad*. Beirut: Mu'assasat al-Resalah.
37. Ibn al-Quddamah (1997). *Al-Mughni*. Vol. 13. Riyadh: Dar 'Alam al-Ktub.
38. Ibn Hazm 1321 (1903). *Al-Fasl fi al-Milal wa al-Ahwa' wa al-Nihal*. Vol. IV. Cairo: A.H.
39. Ibn Ishaq (2004). *The Life of Muhammad*. Translated. by A. Guillaume. Oxford *et al.*: Oxford University Press.
40. Ibn Kathir (1999). *Tafsir al-Quran al-'zim*. Vol. 1, 2, 4. Riyadh: Dar Taibat.
41. Ibn Kathir (2000). *The Battles of the Prophet*. Translated by Wa'il 'Abdul Mut' aal Shihab. Egypt: Dar al-Manarah.
42. Ibn Rushd 1325 (1907). *Al-Muqaddimat al-Mumahhidat*. Vol. 1. Cairo: A.H.
43. International Committee of the Red Cross (1987). *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Convention of 12 August 1949*. In: Sandoz, Yves and Swinarski, Christophe *et al* (eds.). Geneva: Martinus Nijhoff Publishers.
44. Izzi Dien, M. (2004). *Islamic Law: From Historical Foundations to Contemporary Practices*. Edinburgh: Edinburgh University Press.

45. *Jami' At-Tirmidhi*, trans. (2007). Translated by Abu Khalyil. Vol. 2. Riyadh *et al.*: Darussalam.
46. Jihad: A Misunderstood Concept from Islam, A Judicial Ruling (fatwa) Issued by Shaykh Hisham Kabbani (Chairman, Islamic Supreme Council of America) and Shaykh Seraj Hendricks (Mufti, Cape Town, South Africa). *The Islamic Supreme Council of America*. <http://islamicsupremecouncil.org/understanding-islam/legal-rulings/5-jihad-a-misunderstood-concept-from-islam.html>.
47. Kalin, I. & Kamali, M. H. (eds.) (2013). *War and Peace in Islam: Uses and Abuses of Jihad*. Jordan: The Royal Islamic Strategic Studies Centre.
48. Khadduri, M. (1955). *War and Peace in the Law of Islam*. London: The Johns Hopkins Press.
49. Khdir, R. (2018). *Jihād* between Islamic Jurisprudence and Practice of the Islamic State in Iraq and Syria. *European Scientific Journal*, 14 (5): 40-54.
50. Khdir, R. (2017). The Fate of Prisoners of War between the Quran, Traditions of the Prophet Muhammad and Practice of the Islamic State in Iraq and Syria. *European Scientific Journal*, 13 (34): 30-47.
51. Leggiere, M. (2007). *The Fall of Napoleon: The Allied Invasion of France 1813–1814*. Cambridge: Cambridge University Press.
52. Lippman, M. (1989). Islamic Criminal Law and Procedure: Religious Fundamentalism v. Modern Law. *Boston College International and Comparative Law Review*, 12 (1): 29-62.
53. Maududi, A. (1980). *Jihad in Islam*. The Holy Quran Publishing House.
54. Moaddel, M. (2005). *Islamic Modernism, Nationalism, and Fundamentalism: Episode and Discourse*. Chicago: University of Chicago Press.
55. Moussalli, A. (2009). *Wahhabism, Salafism and Islamism: Who is the Enemy?* Beirut *et al.*: Conflict Forum.
56. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (adopted May 25, 2000, entered into force February 12, 2002) 106 UN 37.
57. Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children (1996). The Report of the United Nations General Assembly, August 26.
58. Prosecutor v. Brima (2007). Kamara *et al.*, Case No. SCSL-04-16-T (June 20).
59. Prosecutor v. Fofana (2003). Case No. SCSL-03-11-1 (June 24).
60. Prosecutor v. Kondewa (2003). Case No. SCSL-03-12-1 (June 24).

61. Prosecutor v. Lubanga Dyilo (2007). Case No. ICC-01/04-01/06 (January 29).
62. Prosecutor v. Lubanga Dyilo (2012). Case No. ICC-01/04-01/06 (July 10).
63. Prosecutor v. Norman (2003). Case No. SCSL-03-8-1 (7 March 7).
64. Prosecutor v. Norman (2004). Case No. SCSL-2004-14AR72(E) (May 31).
65. Prosecutor v. Norman Fofana *et al.* (2004). Case No. SCSL-03-14-1 (February 5).
66. Prosecutor v. Sesay Kallon *et al.* (2009). Case No. SCSL-04-15-T (March 2).
67. Prosecutor v. Taylor (2012). Case No. SCSL-03-1-T (April 26).
68. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) (adopted June 8, 1977, entered into force December 7, 1978) 1125 UNTS 3.
69. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II) (adopted June 8, 1977, entered into force December 7, 1978) 1125 UNTS 609.
70. Qazi Zada, S. & Qazi Zada, M. (2016). Codification of Islamic Law in the Muslim World: Trends and Practices, *J. Appl. Environ. Biol. Sci.*, 6 (12): 160-171.
71. Rosen David, M. (2005). *Armies of the Young: Child Soldiers in War and Terrorism*. New Brunswick *et al.*: Rutgers University Press.
72. *Ṣaḥīḥ al-Bukhārī*, trans. (1997). Translated by Muhammad Muhsin Khan. Vol. 4, 5, 7. Riyadh *et al.*: Darussalam.
73. *Saḥīḥ Muslim*, trans. (2007). Translated by Nasiruddin al-Khattab. Vol. 4, 5. Riyadh *et al.*: Darussalam.
74. Saiful Islam, M. (2015). Fundamental Human Rights towards Childhood: Islamic Guidelines are Unique to Protect the Child. *Journal of Asia Pacific Studies*, 4 (2): 177-202.
75. Shehadeh, O. A. & Maaita, R. F. (2011). Infanticide in Pre-Islam Era: Phenomenon Investigation. *International Journal of Academic Research*, 3 (4).
76. *Snun Abu Dawud*, trans. (2008). Translated by Nasiruddin al-Khattab. Vol. 3, 5. Riyadh *et al.*: Darussalam.
77. *Snun Ibn Majjah*, trans. (2007). Translated by Nasiruddin al-Khattab. Vol. 3, 4, 5. Riyadh *et al.*: Darussalam.
78. Tabari, trans. (1987). *The History of Tabari (Ta'riḥ al-rusul wa 'l-muluk)*. Translated by M v McDonald. Vol. VII. New York: State University of New York Press, Albany.

79. Tahir-ul-Qadr, M. (2012). *The Constitution of Medina*. London: Minhaj-ul-Quran Publications.
80. The Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (The Labour Convention) (adopted June 17, 1999, entered into force November 19, 2000) 2133 UNTS 161.
81. The Convention on the Rights of the Child (adopted November 20, 1989, entered into force September 2, 1990) 1577 UNTS 3.
82. The Quran.
83. The Report of the Preparatory Committee on the Establishment of an International Criminal Court (1998). UN Doc. A/CONF.183/2/Add.1 (April 14).
84. The Rome Statute of the ICC (adopted July 17, 1998, entered into force July 1, 2002) 2187 UNTS 90.
85. The Statute of the Special Court for Sierra Leone (adopted January 16, 2002, entered into force April 12, 2002) 2178 UNTS 145.
86. Waschefort, C. (2011). "Child Soldiers and International Law: Progressing Towards 'an Era of Application'". PhD Thesis: University of London.
87. Weiss Bernard, G. (1998). *The Spirit of Islamic Law*. Georgia: University of Georgia Press.
88. Yildirim, Y. (2006). Peace and Conflict Resolution in the Medina Charter. *Peace Review*, 18 (1): 109-117.
89. Zanki, N. K. (2014). Codification of Islamic Law Premises of History and Debates of Contemporary Muslim Scholars. *International Journal of Humanities and Social Science*, 4 (9): 127-137.
90. Zarkashi (1985). *Al-Manthur fi al-Qawahid*. Vol. 3. Kuwait: Wazarat al-Awqaf wa al-Shu'un al-Islamiyah.