Annotated Bibliography – June 2012

In line with its mission to advance effective strategies for the protection of civilians during armed conflict, HPCR undertakes a variety of academic and research initiatives to identify the political, economic, and cultural factors that affect the conduct of hostilities and ultimately shape the development of humanitarian law and policy. As part of these initiatives, in 2009, HPCR established a Thematic Working Group on Islamic Law and Protection of Civilians. This Working Group was comprised of legal experts and practitioners working in the humanitarian sphere and associated fields. While not comprehensive, this document seeks to provide a summary of information and analyses concerning Islamic law and its relationship with international law and the regulation of armed conflict.

No	Source	Summary*
1	**The Amman Message**, The Royal Aal al-Bayt Institute for Islamic Thought (2008). Available at http://www.bahaistudies.net/asma/amman_message.pdf	The source is the outcome of a project initiated by King Abdullah of Saudi Arabia to create a consensus amongst the *ummah* (nation) of Islam on three issues: who is a Muslim, whether it is permissible to declare someone an apostate, and the proper authority to declare a *fatwa*. Through collaboration between leading Islamic scholars and endorsement by over 500 scholars, the declaration claims status as a legally binding consensus. The Amman Message recognizes all eight schools of Islamic legal thought. Consequently, it determines that it is illegal to declare any Muslim or groups of Muslims apostates unless they deny belief in God, the five pillars of Islam, or a necessary tenet of the faith. According to the message, only those who have the proper authority granted through their school of thought may issue a *fatwa*. The message specifically rejects "extremism, radicalism, and fanaticism" and declares terrorism illegal, regardless of cause.
2	Nesrine Badawi **Introduction to Islamic Law**: Background Paper, Professional Development Program at the Program on Humanitarian Policy and Conflict Research at Harvard	This paper provides an overview of the elements of Islamic law, including its main texts, key terms, and the four main Sunni schools of thought. Badawi notes that due to the lack of codification, jurists have developed an elaborate system to resolve issues in Islamic law. She states that the 500 legal verses in the Quran and the surviving body of *Sunna* comprise the textual basis for Islamic law, with *qiyas* (analogies) emerging as the preferred manner in which to apply the law to new issues and *naskh* (abrogation) used to clarify law when the Quran, *Sunnas*, or other sources of law were in conflict with each other. The article also discusses certain judicial practices, namely *istihsan* (juristic preference), *istishab* (a condition

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	University (2009) Available at http://ihl.ihlresearch.org/_data/global/images/Intro_Islamic_Law.pdf	is presumed to continue unless change is proven), *al-Masalih al-Mursala* (unregulated benefits) and *Maqasid al-Shari'a* (legal aims) developed to assists jurists in reaching decisions, although these practices are controversial amongst the legal schools of thought.
3	Nesrine Badawi **Islamic Jurisprudence and the Regulation of Armed Conflict**: Background Paper, Professional Development Program at the Program on Humanitarian Policy and Conflict Research at Harvard University (2009) Available at http://ihl.ihlresearch.org/_data/global/images/Islamic_Jurisprudence_Regulation_AC.pdf	The paper argues that distinct theoretical and ideological paradigms create significant differences between IHL and Islamic law. While international law developed to manage relations between states, the author notes that Islamic law regulates conduct between Muslims as well as between Muslims and non-Muslims. Consequently, Badawi states that the character of the interests represented by each body of law differs sharply; while IHL seeks to safeguard both state sovereignty and humanitarian concerns, Islamic law was designed to protect the religion and its adherents, granting legitimacy to armed conflict to protect the faith and offering increased humanitarian protections to believers as opposed to apostates, Christian and Jewish peoples, and all others. The author argues that Islamic law rules on targeting – particularly the prohibition on targeting women and children in conflict – developed to best promote the interest of spreading the Islamic faith. Finally, she writes that the bearer of the legal obligation in Islamic law is not the state, but the individual, whose adherence to the rules of conduct persist even when faced with non-compliance by the opposing side.
4	M. Sherif Bassiouni **Evolving Approaches to Jihad: From Self-defense to Revolutionary and Regime-Change Political Violence**, 8 CHI. J. INT'L L. 119 (2008) Available at	Noting the linguistic ambiguities surrounding interpretation of the Quran, the author notes the evolving (and typically instrumentalist) notion of what constitutes *jihad*. The article states that *jihad* has been understood to mean full devotion to Islam, the use of force in self-defense or in conquest to spread the faith, as a legitimizing tool for those seeking regime change or political legitimacy in the use of violence that would otherwise be illegal under Islamic law. The author also reviews the twenty-four verses of the Quran that mention *jihad* and notes the evolution of the idea from the earlier years, where the usage evokes more of a spiritual, non-violent concept, to the later years, where *jihad* was more closely associated with an armed struggle against non-believers. These later verses may be read as abrogating

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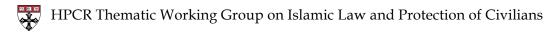
	http://insct.syr.edu/Projects/islam-ihl/research/Bassiouni.Evolving%20Approaches%20to%20Jihad.pdf	the earlier verses, although Bassiouni does not believe this to be a necessary reading of the Quran. While the Quran advocates the use of force in self-defense, the author notes that many Islamic scholars have attempted to expand the notion of *jihad* so as to include preemptive self-defense, aggression, and regime change. Bassiouni argues that the concept is at its most expansive in the context of modern extremists, who – without proper authority – promote indiscriminate violence and justify their actions through *jihad* even when the practice of Islam is not endangered. In spite of opposition by religious establishments, according to the author, these violent groups have gained popular acceptance, including their arguments that violate Islamic law's prohibitions on the use of force and conduct of hostilities.
5	M. Sherif Bassiouni **Protection of Diplomats Under Islamic Law**, 74 AM. J. INT'L L. 609 (1980). Available at http://www.jstor.org/pss/2201651 (subscription required)	Bassiouni examines the seizure of American diplomats in Tehran in the context of Islamic law and Islamic international law, finding the act to be illegal. He first notes that Islamic law allows heads of state to enter into treaties, and that nothing in Islamic law would preclude diplomatic protection. He states that there are also both textual and historical bases for diplomatic protection. The author recalls the Quranic verses acknowledging envoys and outlining expulsion as the only permissible punishment for them. The Quran also contains the concept of *aman*, or safe conduct, for non-Muslims, and Islamic legal immunity for diplomats extends to all but the enumerated *hudud* crimes (which does not include espionage). According to Bassiouni, espionage could be a *taazir* offense, but diplomatic immunity and the failure of the Islamic state to enact a prohibition on espionage prior to the detention of the embassy officials renders the taking of hostages illegal. Bassiouni notes that the Prophet Muhammad also used envoys, and entered into treaties acknowledging their immunity and inviolability. Diplomatic immunity does not dissolve with a declaration of war (at the least, *aman* still applies), both Sunni and Shia traditions adhere to the concept, and the concept of reprisals does not apply. With the 1955 Treaty of Amity between the United States and Iran still in force, according to the author, the United States and its envoys were to be considered *hulafaa* (allies) at the time of the seizure and privileged to the protections of any treaty in force, including the Vienna Conventions.
6	Karima Bennoune	The article lays out the Islamic conception of humanitarian law, noting its contributions to and analogies with IHL. On the use of force, Bennoune notes the ongoing debate over the

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	As-Salamu Alaykum? International Law in Islamic Jurisprudence, 15 MICH. J. INT'L L. 605 (1994). Available at http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/mjil15&div=21&id=&page= (subscription required)	boundaries of *jihad*, with scholars divided over whether it creates essentially a permanent state of belligerency with the non-Islamic world (under which Islamic law would not be compatible with the law of nations) or whether it only permits self-defense in protection of the faith (in which case it would). Regarding the conduct of hostilities, the author notes that Islamic law incorporates humanitarian concerns into the concept of *jihad* and elevates them to a non-derogable status irrespective of the conduct of the other party. Many of the concepts codified in modern IHL may have origins in Islamic law and doctrine, which provides for the protection of women, children, non-combatants, prisoners of war, and the environment while calling for the punishment of war crimes.
7	Christian Caryl **Sheikh to Terrorists: Go To Hell**, FOREIGN POL'Y, Apr. 14, 2010 Available at http://www.foreignpolicy.com/articles/2010/04/14/sheikh_to_terrorists_go_to_hell	This article outlines a *fatwa* issued by Pakistani Islamic scholar Tahir ul-Qadri, which condemned and declared a *jihad* against terrorism. Caryl argues that this particular *fatwa* is noteworthy due to its reliance upon a broad number of classical sources to denounce terrorism, its denouncement of attacks even against invaders (against whom only legal uses of force would be justified if peaceable resistance were not possible), and the targeting of his message towards younger adherents.
8	James Cockayne **Islam and International Humanitarian Law: From a Clash to a Conversation between Civilizations**, 84 INT'L REV. OF THE RED CROSS 597 (2002). Available at	This article traces the interaction between Islamic law and IHL. While Islam is perceived to have had little impact on the development of IHL, the author notes the key role of Islamic actors in providing a benchmark for the developers of IHL to measure against, as well as in providing opportunities for the ICRC to develop operating principles and secularize the discipline. Cockayne writes that Islamic commitment to IHL has increased over time, with Arab states taking a significant role in shaping Additional Protocol I to the Geneva Conventions, in large part due to the Israeli-Palestinian dispute. However, he notes that this convergence between Islamic law and IHL has been challenged in recent years, most notably by the Islamic

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	http://www.icrc.org/eng/resources/documents/misc/5fld2f.htm	Revolution in Iran, where differences in the object of conflict were borne out, and by conflicts over gender issues during the drafting of the Rome Statute.
9	Christopher Dickey **The Taliban's Book of Rules**, Newsweek, Dec. 12, 2006 Available at http://www.newsweek.com/2006/12/11/the-taliban-s-book-of-rules.html	This article relays a list of thirty rules of war disseminated by Mullah Muhammad Omar to his followers, highlighting the Quetta Shura Taliban's attempts to reign in its fighters' conduct. The Taliban's rules permit the killing of Afghans working in concert with international actors only after they decline to cease and/or join the Taliban (singling out teachers for warnings and further punitive action as required), allow only the *shura* to sign contracts with NGOs, associates NGOs with government forces, forbid stealing from civilian populations, establish rules on the recruitment of new members, and provide for regional commanders to try suspected spies and settle local disputes if necessary.
10	Khaled Abdul el Fadl **The Rules of Killing at War: An Inquiry Into Classical Sources**, 89 THE MUSLIM WORLD 144 (1999). Available at http://www3.interscience.wiley.com/journal/119068332/abstract?CRETRY=1&SRETRY=0 (subscription required)	The author compares the Islamic rules of war applicable in situations where the enemy is a fellow Muslim and in situations where the enemy is a non-believer, arguing that in both cases practical and moral considerations balance each other to generate the set of rules. He notes that legal discourse regarding the use of force against fellow Muslims is sparse, as killing Muslims is prohibited, and those who do so are sinners (even if motivated by a good, but obviously erroneous, cause). The article states that such individuals, known as *bugha*, are not held liable for property damage or lost life and are protected from mistreatment as prisoners. However, to maintain order, el Fadl writes that individuals do not receive all of the protections of *bugha* (which necessarily refers to groups of undefined size). Similarly, the majority of scholarship regarding conflict directed at non-believers focuses on *jus in bello*. The author notes that while Muslim interests should be served by going to war, sovereign rulers retain a large degree of discretion. In conflict, he writes that Muslim jurists believed that unbelievers must be given an opportunity to convert or pay a fine before conflict, but that those who chose not to are morally culpable for their acts of belligerency. However, according to el Fadl, the rule that prisoners may be executed for their beliefs has largely been supplanted due to practical considerations and common practice (although the sovereign still has the discretion to execute where the prisoner presents a risk to Islam). The author notes that the balance between moral and practical concerns also shows up in the

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		treatment of captured non-combatants, who classical jurists insisted must be set free if not taken back to Muslim lands, while characterizing the treatment of prisoners as predominately influenced by moral concerns.
11	Bernard K. Freamon **Martyrdom, Suicide, and the Islamic Law of War: A Short Legal History**, 27 FORDHAM INT'L L.J. 299 (2003) Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=597822	This article argues that Islamic law offers weak, if any, support for suicide attacks. The author illustrates how the reinterpretation of Islamic theology by a few theologians (particularly the Iranian Islamic revolutionaries, Muhammad al-Sadr, and Muhammad Fadlallah), which traditionally disfavored self-sacrifice and condemned suicide, in the 1960s and 70s, provided religious sanctioning for suicide attacks against military targets. He notes that the altered perceptions on the propriety of suicide attacks and the preference for a militaristic *jihad* originated within the Shi'a, who were more receptive to the concept due to the deliberate martyrdom of Husayn. Freamon notes that suicide as martyrdom now also gained acceptance within Sunni jihadist ranks, in large part influenced by the work of Sayyid Qutb. Freamon argues that while notions of desperation and anger fuel contemporary terrorists, it was only when the re-teaching of Shi'a theology (and not the growth of Wahhabism), which favored suicide attacks, that the tactic emerged within jihadist ranks. He notes that most interpretations of Islamic law that permit suicide attacks are within the bounds of IHL, as theoretical prohibitions on attacks against non-combatants remain. The author criticizes the acceptance of suicide attacks by Sunni clerics, labeling Sunni justifications as "erroneous" and "uncritical," but nonetheless notes that suicide attacks now represent *fiqh*.
12	Sohail H. Hashmi **Saving and Taking Life in War: Three Modern Muslim Views**, 59 THE MUSLIM WORLD 158 (1999) Available at http://macdonald.hartsem.e	The author seeks to analyze three particularly influential modern concepts of proper conduct in war. Hashmi notes that the selected authors – Abu al-a'la Mawdudi, Muhammad Hamidullah, and Wahba al-Zuhayli – all engage primarily the basic Islamic texts (and not 1300 years of subsequent practice) in the context of the modern international system, and come to similar conclusions on *jus in bello*. After a brief discussion on their respective viewpoints on *jus ad bellum* (noting all three conclude that war is not desirable, but necessary and permissible when brought on by just cause), Hashmi contrasts the three authors' approach to five issues in the conduct of hostilities: the combatant/non-combatant distinction, permissible tactics and weapons, viewpoints on *aman*, the treatment of prisoners

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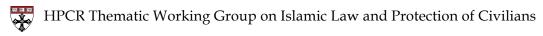
	du/articles/hashmiart1.pdf	of war, and the legal approach to killing. Hashmi finds that all three concur that women, children, and non-combatants cannot be targeted (although Mawdudi sanctions the killing of non-combatant adult males who could ordinarily participate in battle). According to the author, all acknowledge the fairly permissive rules on tactics and weapons (including nuclear weapons, which Mawdudi and al-Zuhayli believe can be used for deterrent purposes), although al-Zuhayli expressly engages the concept of military necessity as a limitation upon attacks where civilians are present. Hashmi states that all three authors believe *aman* must be granted to all those who request it, with *mustamin* – those requesting *aman* – either given permanent protection or removed to their territory if they do not convert. While medieval scholarship largely permits the execution of prisoners of war, Hashmi writes that all three modern authors find execution for acts of belligerency to be illegal, with killing sanctioned only in "special cases under extreme necessity." The author suggests that the scholars have struggled to develop clear guidelines on how military necessity affects general prohibitions on conduct, although all three agree that unnecessary cruelty, killing ambassadors, using human shields, and using treachery or perfidy to kill are impermissible.
13	Sohail H. Hashmi, **Is There an Islamic Ethic of Humanitarian Intervention?**, 7 ETHICS & INT'L AFF. 55 (1993)	The author notes a disconnect between Islamic law and international law on the issue of humanitarian interventions. While in international law the state is the primary rights holder, and those seeking to intervene must overcome notions of sovereignty to justify intervention, the article points out that Islamic law vests the *ummah*, not the state, with moral standing. Hashmi writes that the status of humanitarian interventions in both international and Islamic law remains in flux. The author notes that the Quran calls for universal enforcement of justice; modern applications of this concept justify (or perhaps even require) abrogations of state sovereignty. However, Islamic law may be less supportive of interventions against Islamic governments when the intervening force is non-Muslim. According to Hashmi, there is a strong preference for Islamic intervention alone against Muslim leaders, and the debate over the role of non-Muslim forces has fed the international discussion pushing back on the concept of humanitarian interventions. The author suggests that nothing precludes cooperation between Muslims and non-Muslims in humanitarian interventions, and concludes that the Organization of the Islamic Conference must improve upon its poor record in responding to

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		humanitarian crises in order to provide for a more robust discussion of the role of Islamic law in international security.
14	Masood Hyder **Humanitarianism and the Muslim World**, The J. of Humanitarian Assistance (Aug. 22, 2007) Available at http://reliefweb.int/sites/reliefweb.int/files/resources/58B469CC0587C6E0C125734000431D1E-jha-aug2007.pdf	This article discusses the entanglement between the humanitarian community and disapproved Western regimes. While roughly half of aid recipients are Muslim, Hyder notes that little has been done to determine their specific needs. He notes that food crises have been incorrectly categorized as a security risk and swept up in the trend of "integrated approaches" to humanitarian crises that raise concerns in recipient states about ulterior political motives. Hyder contends that resistance to humanitarian aid could be reduced if the international community spent more effort on developing non-western sources of aid, heading off the risk that the UN and humanitarian agencies would become widely targeted for attacks due to a perceived fundamental connection to the West.
15	Sherman A. Jackson **Domestic Terrorism in the Islamic Legal Tradition**, 91 THE MUSLIM WORLD 293 (2001). Available at http://macdonald.hartsem.edu/articles/jacksonart1.pdf	Jackson addresses the conceptual differences of terrorism in the United States and Islamic law states. He begins by establishing an inverse relationship in the U.S. and Islamic states in criminalizing terrorism (or *hirabah*), based upon degree of political motivation, number of actors, and scope of the crime. He notes that in the United States, the more political the intent and the greater number of people involved, the more likely an act is to fall under narrowly defined terrorism statutes, while the reverse is true for both factors in Islamic law states, which tend to construe terrorism broadly. The author writes that both traditions focus on the spreading of fear as a necessary component of the crime, with *hirabah* incorporating an idea of inability to avoid the terrorizing act. The article then discusses salient features of Islamic law to the prosecution of alleged crimes of *hirabah*. According to Jackson, punishment for terrorism in Islamic law is severe (execution or amputation), with the crime falling under the enumerated *hudud* offenses. As a result, Jackson notes that *hirabah* was sharply distinguished from *baghy* (rebellion), which, when plausibly intended to redress a wrong under Islamic law, provided the defendant with protections and significantly less severe sentences. The article notes a key feature of Islamic

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		law: new interpretations can run in parallel to established ones. In this manner, the author notes Sayyid Qutb was able to challenge the long-standing prosecution of acts against the state under *hirabah* by arguing that the state had departed from the Quran. Through this interpretation of the Quran, Jackson illustrates how Qutb and others were able to create legal cover for violent extremists.
16	**Jihad and the Islamic Law of War**, The Royal Aal al-Bayt Institute for Islamic Thought (2007). Available at http://ammanmessage.com/media/jihad.pdf	This document provides a discussion of the meaning of *jihad*, providing a moderate Islamic viewpoint on what the concept entails. It dismisses the notion of "holy war" as an accurate translation of *jihad*, describing the rules of warfare within the Quran as a recognition of the existence of war and an attempt to place war within certain boundaries (including rules forbidding the targeting of non-combatants or targeting non-Muslims simply due to their beliefs), and emphasizes the spiritual notion of *jihad*. The authors stress that the Quran authorizes only self-defense or preemptive self-defense and acknowledges peaceful co-existence with non-Muslims (further evidenced by the Prophet's treaties with neighbors as well as through the collection of the *jizyah* in a non-humiliating manner). According to the document, populations are only to rebel against their rulers when *kufr* (non-belief) is clearly demonstrated, and are expected to obey a ruler as long as the ruler's commands do not compel the individual to violate *shar'iah*; even then, the Muslim may only take up arms against specifically known unbelievers. It rejects the minority viewpoint that the verses calling for only peaceable spreading of religion have been abrogated by a verse ordering war until the enemy adopted Islam, and notes how mistranslations and abuses of interpretive tools have led to more violent constructions of key verses. The document divides Muslims viewpoints into secular fundamentalists, modernists, traditionalists, puritanical literalist, and *takfiirs*, noting that a vast majority of Muslims fall into the "traditionalist" category, with only a very small percentage falling within the *takfiri* camp (who, along with secular fundamentalists, demonstrate the danger of ignoring tradition in the interpretation of the Quran).
17	Jamal Krafess **The Influence of the Muslim Religion in Humanitarian**	The article explores humanitarian aid, including both compulsory giving (*zakat*), a pillar of Islam, and voluntary assistance. Krafess notes that giving is central to religion, serving to validate one's faith, erase sins, please God and invite mercy, and provide just rewards in the afterlife. He then points to the Quran to illustrate the wide range of charity prompted by the

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	Aid, 87 INT'L REV. OF THE RED CROSS 327 (2005). Available at http://www.icrc.org/eng/resources/documents/article/review/review-858-p327.htm	text, including food aid, sponsorship of orphans, refugee aid, long-lasting projects, and small grants of assistance. Krafess also discusses the different forms of charity. *Zakat* exists not just as an obligation of Muslims, but as a right of the poor beneficiaries of such giving, while *waqf* is an endowment (or any gift with long-term recurring benefits) freely given for religious or public ends. Additionally, the author mentions freeing of slaves, the clearing of minefields, and mediation services as alternative forms of sanctioned charity.
18	Haim Malka **Must Innocents Die? The Islamic Debate Over Suicide Attacks**, 10 MIDDLE EAST QUARTERLY 19 (2003) Available at http://www.meforum.org/530/must-innocents-die-the-islamic-debate-over	The author notes three arguments concerning the legality of suicide attacks, noting one group that finds attacks against Israel permissible but not the September 11 attacks, and groups that either reject or endorse both. While political pressure on Egypt and Saudi Arabia has led to religious declarations forbidding attacks against civilians, Malka states that these arguments have been countered by other religious figures such as Sheikh Yusuf al-Qaradawi, who have supported attacks against all Israelis (as occupiers of Palestine) and place suicide bombers on the martyr side of the distinction between martyrs and those who commit suicide, although many, including al-Qaradawi, disapproved of "martyrdom operations" outside of Israel/Palestine. Malka notes that while Arab states have condemned suicide attacks, many, including Saudi Arabia and Syria, provide funding to the organizations that conduct the attacks and have been unable to rein in groups such as Hamas. The author argues that the governments have struggled in attempts to counter the increasing number of *fatwas* issued by individuals with dubious authority (such as Osama bin Laden), and fear that they may be the next target.
19	Naz K. Modirzadeh **Taking Islamic Law Seriously: INGOs and the Battle for Muslim Hearts and Minds**, 19 HARV. HUM. RTS. J. 191 (2006)	The article notes the difficulty human rights organizations have had in addressing Islamic law and promoting compliance with international standards in Islamic states, particularly given U.S. military operations and concerns about cultural imperialism. Noting the key role played by Amnesty International and Human Rights Watch in promoting international human rights norms, Modirzadeh outlines the pragmatic approach taken by these organizations in promoting human rights (acknowledging the problems posed by a "naming and shaming" approach to Islamic states) and their caution not to give the impression of judging Islamic law or any potential conflicts between *sharia* and international human rights

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		law.
	Available at http://www.law.harvard.edu/students/orgs/hrj/iss19/modirzadeh.pdf	The author argues that this refusal to engage *sharia* results in an incoherent stance, as they frequently make recommendations that effectively state disapproval of Islamic law and its current interpretations without acknowledging *sharia*, or point out conflicts between *sharia* and human rights law without offering potential solutions. This stance may raise problems through suggesting that *sharia* presents an endemic cultural challenge to international human rights, that only certain authorities can engage Islamic law, forcing much of the advocacy work down to the local level, creating significant reactionary responses due to the notion that *sharia* must be discarded, displacing discussion of human rights, harming Islamic and secular reformers, and forcing Muslims to a choice between human rights and God. She offers three potential strategies for these organizations to acknowledge Islamic law: either truly refuse to engage issues of Islamic law, challenge *sharia* on human rights grounds, or fully engage and develop alternative approaches to current interpretations of *sharia*.
20	Muhammad Munir **Suicide Attacks and Islamic Law**, 90 INT'L REV. OF THE RED CROSS 71 (2008). Available at http://www.icrc.org/eng/assets/files/other/irrc-869_munir.pdf	Munir addresses the phenomenon of suicide bombing, arguing that it violates at least five Islamic law principles of *jus in bello*. The article lays out various justifications and rebuttals of the propriety of suicide bombing by Islamic scholars. While martyrdom is permitted in conflict, Munir notes that it must be carried out by soldiers during an ongoing war in an action where there is a chance of survival and where death is caused by the enemy's hand. However, as the author points out, a suicide bomber violates Islamic law by killing civilians, mutilating his or her own body, committing prohibited perfidy by masking oneself as a civilian, destroying civilian property, and committing suicide. Even if an attack is a reprisal against a previous harm, the article asserts that such a reprisal may not violate Islamic law, maintaining the immunity of civilians from targeting.
21	Program on Humanitarian Policy and Conflict Research at Harvard University **Islamic Law and Protection**	This seminar addressed the benefits and drawbacks to the use of Islamic law in IHL issues. The first panelist, Andrew Marsh, addressed the interpretation of Islamic law, noting that *fiqh* rulings necessarily generate a range of opinions that are all legitimate if derived in the proper manner. Mohammad Fadel then addressed the rules governing conduct in war, noting that obligations and limitations differed according to the type of conflict. Noting that

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	of Civilians, Live Seminar Series (June 17, 2009) Available at http://ihl.ihlresearch.org/index.cfm?fuseaction=page.viewPage&pageID=2085	most modern scholars reject the notion of an abode of war, he argues that there can be universal law, although the obligation of defensive *jihad* creates problems with IHL (with analogizing warfare to the law of rebellion instead of international war as a possible solution). James Cockayne discussed how best to engage armed groups to promote compliance with IHL and/or Islamic law, suggesting that the major factors determining how an armed group interacts with international law relates to its motivations (and whether or not the intent is to establish rule over territory) and means and that organizational approaches towards armed groups can encourage the adoption of IHL. Joe Stork discussed efforts to reduce attacks on civilians, noting that there is general agreement on the immunity of civilians from being targeted, with "Palestinian exceptionalism" arising out of a sense of reciprocity towards Israel.
22	Shaheen Sardar Ali **Resurrecting *Siyar* Through *Fatwas*? (Re)Constructing 'Islamic International Law' in a Post-(Iraq) Invasion World**, 14 J. of Conflict & Security L. 115 (2009). Available at http://jcsl.oxfordjournals.org/content/14/1/115.abstract (subscription required)	This article examines *fatwas* issued following the 2003 invasion of Iraq in order to determine the war's impacts upon Islamic understandings of *siyar* (Islamic international law) and *jihad*. The author notes the unique place of *fatwas* in Islamic law, as they represent the intersection of legal theory and practice, and are increasingly important and numerous due to their increasing accessibility. Sardar Ali then notes the ongoing dispute over whether the notion of *siyar* is necessarily in conflict with international law due to its lack of recognition for the state privileges that are at the core of international law, concluding that they can functionally coexist. The article then discusses the impact of the differing interpretations of *jihad* (Islamic just war versus peaceful struggle) on the duties of contemporary Muslims. Sardar Ali's examination of *fatwas* regarding the Iraq War illustrates a variety of approaches towards engaging secular international law and whether or not Islam justifies the use of force against the United States. She concludes that *fatwas* have proliferated, at least in part, because of an increased desire for Muslims to understand and implement Islamic law to the best of their abilities, with the parallel growth in sources of *fatwas* creating a greater danger of the dissemination of incorrect guidance. According to the author, *siyar* increasingly incorporates and engages international legal ideas about the place of the state in the international community, but at the same time the notion of division between the abode of Islam and the abode of war have been revitalized through the U.S.-led war on terror.

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23	Shaheen Sardar Ali & Javaid Rehman **The Concept of *Jihad* in Islamic International Law**, 10 J. OF CONFLICT & SECURITY L. 321 (2005). Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1496327	This article addresses the permissibility of *jihad* under Islamic law and compares the Islamic approach to international law with western norms. The authors argue that in contrast with international law, *siyar* is firmly entrenched, deriving from the same sources (the Quran, *Sunna*, *ijma*, *qiyas*, and *itjihad*) as the balance of Islamic law. While many scholars believe Islamic law to be divine (and hence, unchangeable), the authors note that the majority of legal texts have been devised by human reasoning and are thus capable of being interpreted to conform with modern norms. Sardar Ali and Rehman argue that *jihad* serves as a prominent example of the undesirability of Islamic law as rigid; in the minds of many scholars and western observers, the aggressive notion of *jihad* has gained prominence even while the more peaceful notion enjoys considerable textual support and would facilitate co-existence with the rest of the world. The article then explains an intermediary option, presenting *jihad* in a contextual basis. The intent of *jihad* under this conceptualization is to protect Muslims and the practice of Islam. While much attention is given to the distinction between the abode of Islam and the abode of war, the authors emphasize *Dar-al-sulh*, or abode of peace, which developed as Islamic states forged friendly relations with non-Islamic states. Furthermore, the authors argue that evolving notions of *Dar-al-Islam* place most of the world under this category, largely eliminating a need for violent *jihad*. The authors conclude by outlining the Islamic principles of *jus ad bellum* and *jus in bello*, noting the limitations on conduct of hostilities.
24	Anisseh Van Engeland **The Differences and Similarities Between International Humanitarian Law and Islamic Humanitarian Law: Is There Ground for Reconciliation?**, 10 J. of Islamic L. and Culture 81 (2008). Available at	This article engages the concept of *jihad* as a limiting set of rules regulating warfare. The author notes that a number of Orientalist and Westerners, supported by "classic readings of *jihad*" believe Islamic law to be incompatible with humanitarian principles (due to a perception of *jihad* as an aggressive expansion of Islam). Van Engeland further comments that many believe a distinct conception of Islamic humanitarian law challenges the universality of international humanitarian law, a critical feature to the functioning of IHL. However, the author argues that there are common features to Islamic law and IHL that allow for the coexistence of the two systems of law. She notes the high degree of similarities between Islamic rules of war and the Geneva Conventions and traces the initial cooperation (and subsequent breakdown) between Iran and the ICRC during the former's war with Iraq. Arguing that there is clear competition between the two legal regimes, the article urges

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	http://www.tandfonline.com/doi/pdf/10.1080/15288170701878300	conciliation between IHL and Islamic law. Many Islamic scholars are highly protective of *siyar* as a distinct system from IHL, but the author suggests *ijtihad* as a vehicle for reconciliation and reform of Islamic law to better fit with international law.
25	Mohamed M. el-Zeidy and Ray Murphy **Islamic Law on Prisoners of War and Its Relationship With International Humanitarian Law**, 14 ITALIAN Y.B. OF INT'L L. 53 (2004). Available at http://www.italianyearbook.unisi.it/archives/10/volume-xiv-2004 (subscription required)	This article addresses the evolution of Islamic law regarding the treatment of prisoners of war. The authors note the two main distinctions between Islamic law and classical international law – Islamic law neither requires a declaration of hostilities for humanitarian law to apply (much like modern IHL), nor does it distinguish between types of armed conflict. El-Zeidy and Murphy next note the similarities (or at least lack of conflict) between Islamic law and the Third Geneva Convention on prisoner treatment issues including the legality of captivity, encampment, equality of treatment, prohibitions on torture, responding to escape attempts, and the release or killing of prisoners. The authors thus conclude that Islamic law and IHL can be applied concurrently, although in the event of any incongruity between the two, Islamic law will take precedence in Islamic states (with Islamic law representing the equivalent status of *jus cogens*). The paper concludes by presenting a contrast between the practices of Iran – which claimed to follow Islamic law and the Third Geneva Convention – and Iraq – which ascribed to IHL – during their 1980s war. According to the article, a UN mission determined that the physical treatment of Iraqi prisoners in Iran complied with international norms, but found that the prisoners were subjected to effective "brainwashing." In contrast, the authors note that Iranian prisoners were often subjected to physical abuse, which was justified as reciprocity for Iranian failure to register prisoners. This article finally suggests that maltreatment of prisoners is tied more closely to a failure to monitor and uphold standards rather than any core incompatibility between Islam and IHL.
26	Sheikh Wahbeh al-Zuhili **Islam and International Law**, 87 INT'L REV. OF THE RED CROSS 269 (2005).	This article addresses the compatibility between Islamic law and international law. In laying out the principles of Islamic international law, al-Zuhili emphasizes that only defensive wars are permissible, religious coercion is forbidden, and rules of justice, humanity, and reciprocity establish significant rights and duties upon Muslims. The author stresses that Islam favors peace and cooperation with other peoples, rejecting the viewpoint that the default position between Muslims and non-Muslims is one of war.

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| Available at http://www.icrc.org/eng/resources/documents/article/review/review-858-p269.htm | Al-Zuhili then discusses four main points regarding hostilities. He argues that the division between the abode of Islam and the abode of war is without support from the Quran or Hadith and merely describes a state of being during war. The article states that *jihad* serves only a defensive purpose, is a last resort for when the enemy insists upon war, and does not justify religious coercion on other peoples. According to the author, Islam only justifies war in response to aggression against Muslims, to assist victims of injustice, or in self-defense of one's homeland. Finally, al-Zuhili notes that Islam prescribes a number of guidelines for conduct in war, including prohibitions on the targeting of non-combatants and private property, respect for principles of humanity and virtue, and the issuance of guarantees of safety to bring an end to warfare. |

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