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## BALANCING THE SCALES: AN ATTEMPT TO MEASURE THE GRIEVANCES OF WAR VICTIMS

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**ABSTRACT:** The whole notion of warfare is of a primordial origin and has developed throughout the epochs from an '**abstract**' concept to an '**absolute**' concept. The history of Wars and Warfare are evident to show how they have been subjected to continuous transformation. One way to catalogue warfare is by differentiation between **conventional** versus **unconventional**, where conventional warfare involves well-identified, armed forces fighting one another in a relatively open and candid way without weapons of mass destruction. "**Unconventional**" refers to other types of war which can involve raiding, guerrilla, insurgency, and terrorist tactics or alternatively can include nuclear, chemical, biological warfare or using propaganda with pressure groups etc.

**KEYWORDS:** *absolute, conventional, unconventional, advent, Prophet Mohammed (PBUH), Additional protocol III*

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### 1. INTRODUCTION

This is an epoch of extensive blogging, tweeting and connecting with each other through social media. But at the same time this is a well-accepted fact that the world is a "global village"<sup>1</sup> which today is polarised by the mind-set of the people at large. It is presumed by the author that today we all have "access" to the world's most blooming **Parallel Civilisation** i.e. the Internet. It all started when I was going through some updates on a social media; I had a glance over an extremely intruding as well as a very narrow approach of a group of persons towards some particular section of society. At that very moment I thought of compiling this whole conception of my study in to an engrained Research Paper.

### 2. OBJECT

My basic aim to develop a consensus on the continuing injustice and partiality towards the war victims. Many of us imbibe that Scholarly asset of producing things in writings, so do I have awakened my asset to produce before the World at large a more magnified approach towards the sensitive subject '**Religion and War**', therefore co relating the two. The basic perception of the people lies in the fact that a particular religion ought to promote violent activities, simply because it used this particular method to expand its outreach to the World at initial levels. The So – called "Civilised Societies" promote such a baseless thought thus undermining the beauty of a

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<sup>1</sup> In the book by McLuhan, Marshall. , (1962) *The Gutenberg Galaxy: The Making of Typographic Man*, the term Global Village is closely associated with and popularized in his books. McLuhan described how the globe has been contracted into a village by electric technology and the instantaneous movement of information from every quarter to every point at the same time.

particular section. At the end the sufferers i.e. the victims of war become the fodder to the tussle of this mind-set, resulting in an infringement towards their rights.

## THE STUDY

My approach is to make you understand the fact that Religious Wars are not restricted to one particular religion and it's Prophet, because War is older than the institution of Religion. People who generally accuse Prophet Mohammad (PBUH) of being barbaric must make an analytical study to understand that why most of the people still see him as a role model? And as to how he dealt with the Prisoners of War, Women, Children, Victims of War and his enemies. For this purpose the Author has presented the graphical analysis of casualties at that time.

At a rudimentary stage, first let us discuss what the Political Thinkers of different era actually perceive war as. For the said purpose, the author would like to present a chronological assortment of the most venerated authors and their opinion on "War".

### 4. Political Thinkers (Classical)

#### A. Plato<sup>2</sup> -

Although Plato has written less about war, especially considering the fact that his dialogues are historically set during the Peloponnesian War<sup>3</sup>. Although his work gives an explicit description of Ideal State<sup>4</sup> and therefore the right conduct of war constitutes a vital concern for him. The rightful conduct of war is linked to the practice of virtue. Neither a good statesman nor a good military man can ignore this link, which joins military pursuits not only to courage, but to the whole of virtue, counting justice. In 'The Republic'<sup>5</sup>, he very artistically forms a link from a luxurious city to a well-ordered and virtuous city by simply highlighting the necessity of proper education of the city's military guardians. Finally, in the Laws, peace, not war, is presented as the true aim of good laws, and the importance of legitimate authority in war-making is duly emphasized.<sup>6</sup>

#### B. Aristotle<sup>7</sup> -

'We make war that we may live in peace'. – Aristotle.

Aristotle believed that conflict between human beings in social life and politics is inexorable. This theory influenced the theologian in the Middle Ages, St. Thomas Aquinas. In relation, Aristotle

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<sup>2</sup> Plato was a philosopher, as well as mathematician, in Classical Greece and an influential figure in philosophy, central in Western philosophy. He was Socrates' student, and founded the Academy in Athens.

<sup>3</sup> The Peloponnesian War (431–404 BC) was an ancient Greek war fought by Athens and its empire against the Peloponnesian League led by Sparta.

<sup>4</sup> Liam, Marcus. ,(2005), *Plato's Theories On The Ideal State*, (online), Available From - <https://www.fictionpress.com/s/2064277/1/Plato-s-Theories-On-The-Ideal-State> Accessed on 4.08.2014.

<sup>5</sup> Plato, (380 BC), *The Republic*.

<sup>6</sup> Syse, Henrik. (2002), *Plato: The Necessity of War, the Quest for Peace*, *Journal of Military Ethics*, 1, 36-44.

<sup>7</sup> Aristotle (384–322 BCE) was a Greek philosopher and scientist born in Stagirus, northern Greece, in 384 BCE.

also believed that while strife and conflict are perpetual features of communal life, he believed the political community has the accountability to act in accordance with the welfare of every human being not just its citizens. He did not think it suitable to conquer and rule other regimes, because it is refuting other human beings their freedom and status as fellow humans. He did however believe that defensive war was perfectly permissible.

## 5. Political thinkers (Roman Era Philosophers) –

### A. Cicero –

The great Roman orator, statesman, and philosopher, Marcus Tullius Cicero is a *father of the theory of "just war"*. For Cicero, war has a clear purpose which determines when to fight and how each enemy should be fought. Quoting the 'De Officiis'<sup>8</sup>:

*"The only excuse, therefore, for going to war is that we may live in peace unharmed; and when the victory is won, we should spare those who have not been blood-thirsty and barbarous in their warfare. instance, our forefathers actually admitted to full rights of citizenship the Tusculans, Acquiens, Volscians, Sabines, and Hernicians, but they razed Carthage [in the 3rd Punic War] and Numantia [in Spain, 134 BC] to the ground."*

For Cicero, the nature of the enemy determines the means to bring about a lasting peace. For e.g. – A barbarian enemy is fought to the death. Rome was created by a process of conquest and integration. The outcome was a sturdy union that endured conquests by the most forbidding enemies. Cicero appreciates the discipline obligatory for a powerful military and the necessity to subject the military to the rule of law.<sup>9</sup>

## 6. Medieval Philosophers –

### A. Thomas Aquinas<sup>10</sup> –

The great Aristotelian philosopher Thomas Aquinas discusses in the 2nd part of '*Summa Theologica*'<sup>11</sup> talks of the 3 conditions for a just war. There are three requisites for a war to be just.

The first thing is '*the authority of the Prince*' by whose expertise the war is to be waged. It does not belong to a private person to start a war, for he can impeach his entitlement in the court of his Superior. In like manner the congregating of the people, that has to be done in wars, does not belong to a private person. But since the care of the commonwealth is entrusted to Princes, to them belongs the fortification of the common mark of the city.

The second requisite is a '*just cause*', so that they who are assailed should deserve to be assailed for some fault that they have committed.

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<sup>8</sup> De Officiis (On Duties or On Obligations) is an essay by Marcus Tullius Cicero divided into three books, in which Cicero expounds his conception of the best way to live, behave, and observe moral obligations.

<sup>9</sup> <http://libertyandculture.blogspot.in/2006/12/cicero-on-just-war.html> Accessed on 3.07.2014 at 11:35pm IST

<sup>10</sup> Thomas Aquinas, (1225 – 7 March 1274), also Thomas of Aquin or Aquino, was an Italian, Dominican friar and priest and an immensely influential philosopher and theologian in the tradition of scholasticism, within which he is also known as the "Doctor Angelicus" and "Doctor Communis".

<sup>11</sup> Aquinas, Thomas. , (1265–1274), *The Summa Theologiae*.

The third thing requisite is a 'or right intention of promoting good avoiding evil'.

## 7. Early Modern Philosophers –

### A. Thomas Hobbes<sup>12</sup> –

Conflict will be further fuelled by disagreement in religious views, in moral judgments, and over matters as mundane as what goods one actually needs, and what respect one properly merits. Hobbes imagines a state of nature in which each person is free to decide for herself what she needs, what she's owed, what's respectful, right, pious, prudent, and also free to decide all of these questions for the behaviour of everyone else as well, and to act on her judgments as she thinks best, enforcing her views where she can. In this situation where there is no common authority to resolve these many and serious disputes, we can easily imagine with Hobbes that the state of nature would become a "state of war", even worse, a war of "all against all".<sup>13</sup>

## 8. Modern Philosophers –

### A. Margaret Meads<sup>14</sup> –

War is an ill-fated and seemingly obstinate aspect of human existence that is often ascribed to human nature - i.e. our innate aggressiveness and/or abstracted social forces such as the Hobbesian competition for resources or glory. But, as the anthropologist Margaret Mead pointed out in a celebrated essay<sup>15</sup> ("Warfare Is Only an Invention - Not a Biological Necessity") the facts tell otherwise. The key idea of organised group violence essential to the 'war package' is absent from some more did not isolate parts of the world, nor does its presence correlate with levels of inter-personal aggression or material/organisational sophistication.

In her essay Mead argued that war should be understood as an invention that has wrapped itself round us, bringing immediate gains to those who pick it up and master it, and immediate losses to those in their proximity who fail to do so.

## B. ANALYSIS –

The Author evaluates that there has been a remarkable drift in the definition of the term 'War'. The concept has evolved from a mere vague notion into an absolute conception. Starting from Plato to Margaret Meads we see that there exists a common linkage in the view of all i.e. they all were firm believers to Right Conduct of War (fair play). Although the other side of the story is that there has always been a complete validation to the idea of War, its origination is therefore sought to be embedded with the actual culmination of Civilizations. Highlighting the epitome of change is by quoting that where the historic civilizations promote and establish war as a

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<sup>12</sup> Thomas Hobbes (5 April 1588 – 4 December 1679). In 1651 his book *Leviathan* established social contract theory, the foundation of most later Western political philosophy.

<sup>13</sup> Zagorin, P. (1990), Hobbes on Our Mind; *Journal of the History of Ideas*, 51(2).

<sup>14</sup> Margaret Mead (December 16, 1901 – November 15, 1978) was an American cultural anthropologist, who was frequently a featured author and speaker in the mass media throughout the 1960s and 1970s

<sup>15</sup> González, Roberto J. (ed.) (2004), *Anthropologists in Public Sphere: speaking out on war, peace and American Power*, University Of Texas Press.

mandatory functionary to establish security whereas the progressing civilisation negates the excessive use of war.

**C. The Modern Approach - Article 3 of United Nations General Assembly Resolution 3314 (XXIX)<sup>16</sup>**

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof,

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

According to Hall, "when differences between State reach a point at which both parties resort to force, or one of them does act of violence which the other choose to look upon as a breach of peace, the relation of war is set up, in which the combatants may use regulated violation against each other, until one of the two has been brought to accept such terms as his enemy is willing to grant."<sup>17</sup>

Starke has also pointed out that "war in its most generally understand sense was a contest between two or more States primarily through their armed forces, the ultimate purpose of each contestant or contestant group being to vanquish the other or others and impose its own conditions of peace."<sup>18</sup>

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<sup>16</sup> United Nations General Assembly Resolution 3314 (XXIX), (December 14, 1974).

<sup>17</sup> This definition was approved in *Driefontin Consolidated Gold Mines v. Janson* (1900) 2 Q.B. 339 at p.343.

<sup>18</sup> Starke, G. J. (1989), *Introduction to International Law*, (10<sup>th</sup> ed.), 527.

According to Oppenheim, the chief objective of war is to overwhelm the enemy and to impose conditions upon it.<sup>19</sup>

Thus the reason behind quoting these Western Scholars is to bring to light what is the General perspective of the so – called 'Civilised' World about the most ignored and untouched concept War in this Technological era.

#### **D. ANALYSIS -**

According to the old definition of war, is mainly a contest between the armed forces of the belligerent States. But in the modern period it is often seen that war takes place not only between the armed forces of the belligerent States, but also affects the citizens of the States concerned. The most important example of this is the dropping of atom bombs at Hiroshima and Nagasaki, during the Second World War which caused devastation. It may be analysed that these definitions of war do not conform to the modern warfare system. The proposed definition have thus turned out to be -

1. Obsolete in nature.
2. As no war can be fought in isolation, such that completely undermining the civilian population as well as the public properties, hence no war can be fought without causing some degree of destruction to these set of people and things.

#### **9. WAR AND RELIGION –**

##### **A. HISTORY OF WAR –**

Efforts to describe and regulate the conduct of individuals, nations, and other agents in war and to mitigate the worst effects of war have a long history.

The initial known instances are found in the Mahabharata<sup>20</sup> and the Hebrew Bible (Old Testament). In the Indian subcontinent, the Mahabharata describes a discussion between ruling brothers concerning what institutes adequate behaviour on a battlefield.

An example from the Deuteronomy<sup>21</sup> (20:19–20) limits the amount of acceptable collateral and environmental damage:

*"When thou shalt besiege a city a long time, in making war against it to take it, thou shalt not destroy the trees thereof by forcing an axe against them: for thou mayest eat of them, and thou shalt not cut them down (for the tree of the field is man's life) to employ them in the siege: Only the trees which thou knowest that they be not trees for meat, thou shalt destroy and cut them down; and thou shalt build bulwarks against the city that maketh war with thee, until it be subdued."*

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<sup>19</sup> Oppenheim, L., *International Law*, Vol. II. 7<sup>th</sup> Edition, (ed.) (1963), 202. In his words, "War is a contention between two or more States, through their Armed Forces, for the purposes of overpowering each other and imposing such conditions of peace as the victor pleases."

<sup>20</sup> The Mahabharata is one of the two major Sanskrit epics of ancient India, the other being the Ramayana.

<sup>21</sup> The Book of Deuteronomy is the fifth book of the Hebrew Bible, and of the Jewish Torah.

In the early 7th century, the first Caliph, Abu Bakr, whilst instructing his Muslim army, laid down the rules concerning warfare:

"Stop, O people, that I may give you ten rules for your guidance in the battlefield. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies. Neither kills a child, nor a woman, nor an aged man. Bring no harm to the trees, nor burn them with fire, especially those which are fruitful. Slay not any of the enemy's flock, save for your food. You are likely to pass by people who have devoted their lives to monastic services; leave them alone."<sup>22,23</sup>

Furthermore, Surah Al-Baqara (2:190-193) of the Quran requires that in combat Muslims are only allowed to strike back in self-defence against those who strike against them, but, on the other hand, once the enemies cease to attack, Muslims are then commanded to stop attacking.

In medieval Europe, the Roman Catholic Church also began promulgating teachings on just war, reflected to some extent in movements such as the Peace and Truce of God. The impulse to restrict the extent of warfare, and especially protect the lives and property of non-combatants continued with Hugo Grotius<sup>24</sup> and his attempts to write laws of war.

## B. CHRISTIANITY ON WAR –

There are two dominant positions on war that meticulous Christians have embraced throughout Christian history. The two main views and explain them in general terms: Pacifism<sup>25</sup> versus Just War Theory<sup>26</sup>.

### i. The Pacifist Tradition

**Definition:** A pacifist is someone who believes that under no circumstances is war justified.

This position has a long history in America and as well as throughout the Church. It dominated Christianity during the Church's first 300 years. Early Christians perceived two roadblocks that prohibited a devout believer from joining the military, voluntarily or involuntarily.

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<sup>22</sup> Al-Muwatta; Book 21, Number 21.3.10.

<sup>23</sup> Enein, Aboul. , Yousuf, H. , Zuhur, Sherifa, *Islamic Rulings on Warfare*, Strategic Studies Institute, US Army War College, Diane Publishing Co., Darby PA, ISBN 1-4289-1039-5.

<sup>24</sup> Hugo Grotius, (10 April 1583 – 28 August 1645), also known as Huig de Groot, Hugo Grocio or Hugo de Groot, was a jurist in the Dutch Republic. With Francisco de Vitoria and Alberico Gentili he laid the foundations for international law, based on natural law. He was also a philosopher, theologian, Christian apologist, playwright, historiographer, poet, statesman and diplomat.

<sup>25</sup> Christian pacifism is the theological and ethical position that any form of violence is incompatible with the Christian faith. Christian pacifists state that Jesus himself was a pacifist who taught and practiced pacifism, and that his followers must do likewise.

<sup>26</sup> Just war theory (jus bellum iustum) is a doctrine, also referred to as a tradition, of military ethics studied by theologians, ethicists, policy makers and military leaders. The purpose of the doctrine is to ensure war is morally justifiable through a series of criteria, all of which must be met for a war to be considered just.

**Main Enthusiasts** - There have been innumerable prominent Christian Pacifists, including Martin Luther King, Jr.<sup>27</sup>, Leo Tolstoy<sup>28</sup>, and Ammon Hennacy<sup>29</sup>.

The pacifist tradition is based on its interpretation of part of the Sermon on the Mount. Jesus said:

*"You have heard that it was said, 'An eye for an eye, and a tooth for a tooth.' But I say to you, do not resist an evil person; but whoever slaps you on your right cheek, turn the other to him also."*<sup>30</sup>

**The Belief** - This is the "law of non-resistance." Following Christ's command to turn the other cheek, many pacifists believe that it is better to suffer violence than it is to commit violence.

They believe this was taught by Jesus, and modelled by Him in the words of Peter:

*"For you have been called for this purpose, since Christ also suffered for you, leaving you an example for you to follow in His steps."*<sup>31</sup>

Pacifists have said that our obligation as believers is to follow the example of Jesus who turned the other cheek—and did not return evil for evil. They say we are to "resist not evil."<sup>32</sup> They interpret this to mean that we are never to resist evil under any circumstances or under any conditions. Just as Christ did not retaliate against violence, but rather he suffered on the cross taking suffering to Himself and snuffing it out. The pacifist sees the death of Christ (an innocent victim in the face of injustice) as a pattern for all Christians to follow. Pacifists believe that war is inconsistent with the ethic of love.

### **The Just War Theory**

**Definition:** Just War Theory is the other dominant position held by many Christians. The purpose of the doctrine is to ensure war is morally justifiable through a series of criteria, all of which must be met for a war to be considered just. The criteria are split into two groups: "the right to go to war" (Jus ad Bellum) and "right conduct in war" (Jus in Bello).

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<sup>27</sup> Martin Luther King, Jr. (January 15, 1929 – April 4, 1968) was an American pastor, activist, humanitarian, and leader in the African-American Civil Rights Movement. He is best known for his role in the advancement of civil rights using nonviolent civil disobedience based on his Christian beliefs.

<sup>28</sup>Count Lev Nikolayevich Tolstoy also known as Leo Tolstoy was a Russian writer, philosopher and political thinker who primarily wrote novels and short stories. Tolstoy was a master of realistic fiction and is widely considered one of the world's greatest novelists. He is best known for two long novels, War and Peace (1869) and Anna Karenina (1877).

<sup>29</sup> Ammon Ashford Hennacy (July 24, 1893 – January 14, 1970) was an Irish American pacifist, Christian anarchist, social activist, member of the Catholic Worker Movement and a Wobbly. He established the "Joe Hill House of Hospitality" in Salt Lake City, Utah and practiced tax resistance.

<sup>30</sup> Matthew 5:38-39.

<sup>31</sup> I Peter 2:21.

<sup>32</sup> Matthew 5:39.



**Main Enthusiasts** - This position was first formulated by Augustine of Hippo<sup>33</sup> and later refined by Thomas Aquinas<sup>34</sup>.

**The Assumptions - It is based on the following assumptions:**

1. War is never good. But it is sometimes necessary. Why? Because sin is an ever present reality that has to be dealt with.
2. Necessary wars are to be conducted within the limits of justice.

The purpose of Just War Theory is to give us a common terminology, so that nations that wage war will operate within certain parameters that are just. When it comes to war, there is rarely pure good versus pure bad. There are usually gray hats versus gray hats, with different shades of gray. We are all guilty sinners. The hope of Just War Theory is that by applying just principles we can be as righteous as one can be when it comes to waging war.

3. Only governments, and not individuals, have the right under God to carry out retribution. This rule out terrorists. They have no authority to do what they do.<sup>35</sup>

**C. ISLAM ON WAR-**

The long shadow of Muhammad (PBUH) stretches across countries in west to east. Today an estimated 1.4 billion Muslims around the globe follow his teachings—the word of God as revealed to Muhammad and set down in the Quran—making Islam the world's second-largest religion behind Christianity. Muhammad's (PBUH) belief in Islam and his own role as the "Messenger of God" revolutionized Arabian warfare and resulted in the creation of the ancient world's first army motivated by a coherent system of ideological belief.

**The Ideology** - The philosophy of holy war (jihad) and martyrdom (shahada) for the faith was transmitted to the West during the wars between Muslims and Christians in Spain and France, where it transformed traditional Christian pacifistic thinking on war, and provided the Catholic Church with its ideological justification for the Crusades. Ideology whether religious or secular has remained a principal module of military endeavours ever since.

Most scholars agree that the first verses to permit fighting were:

*"Truly God defends those who believe. Truly God loves not every disbelieving traitor. Permission is given to those who are fought because they have been wronged. Surely, God is Able to give*

<sup>33</sup> Augustine of Hippo (13 November 354 – 28 August 430), also known as Saint Augustine or Saint Austin, was an early Christian theologian and philosopher whose writings were very influential in the development of Western Christianity and Western philosophy.

<sup>34</sup> Thomas Aquinas also known as Thomas of Aquin or Aquino, was an Italian Dominican friar and priest and an immensely influential philosopher and theologian in the tradition of scholasticism, within which he is also known as the "Doctor Angelicus" and "Doctor Communis".

<sup>35</sup> <http://christiananswers.net/q-faith/fc-warperspectives.html> Author: John Salvatore, Faith Church of the Valley. The Just War Theory section of this article was adapted from an article by Commander Timothy J. Demy, Th.D. and Th.M. (Dallas Theological Seminary), Chaplain Corps, U.S. Navy.

them victory—those who have been expelled from their homes unjustly only because they said: "Our Lord Is God." And if it were not that God repelled some people by Means of others, then monasteries, churches, synagogues, and Mosques, wherein the Name of God is mentioned much would surely have been pulled down. Verily, God will help Those who help Him. Truly, God is powerful and mighty— Those who, if we give them power in the land, establish Worship and pay the poor-due and enjoin kindness and forbid iniquity. And to God belongs the outcome of [all] affairs."

- (Al-Hajj22:38-41)

**Five Basic rights of Islamic law** – The question of guarding religion in war is a fundamental one, for indeed the law of war in Islam is a subset of all Islamic law (the Shari'ah). Jurists of the orthodox tradition have, in codifying the law, identified those fundamentals which the law must protect and which Muslims cannot violate. These are usually called "*The Aims of the Law*", but in effect they amount to the Five Basic Rights. They are:(1)Religion;(2)Life;(3)Mind;(4)Honour;(5)Property.<sup>36</sup>

**Relationship of war with the Five Basic Rights of Islamic Law** -Muslims has always under stood the worth the human being's relationship with Almighty; hence the traditional place of religion is always counterbalanced with the laws given to Mankind. It is one reason why Prophet (PBUH) placed remembrance of God above all other acts.

- i. **The Right to Life** includes safety from murder, torture, terror, and starvation.
- ii. **The Right to Mind** encompasses the Islamic prohibition of intoxication, and more generally can be extended to those things which hinder human objectivity, such as misinformation, miseducation and lying in broad-spectrum.
- iii. **The Right to Honour** exists in what has come to be acknowledged in the modern world as "*human dignity*", which in the Islamic context begins from the integrity of the family and extends to the fortification of one's good name and an environment of mutual respect in society.
- iv. **The Right to Property** protects against theft, destruction, and dispossession.

These Five Basic Rights all pertain to the conduct of war, treasuring the principle that the material is ultimately justified in the light of the spiritual and that spiritual must guide the conduct of the material. In other words, morality and ethics apply to war, equally and according to the same principles, as they apply to economic transactions, marriage and sexuality, and government.

#### **D. ALLEGATIONS BY WESTERN SCHOLARS –**

European criticism seems to have lost its sense of justice in dealing with the Prophet. All the rates of that criticism seem to be subject to the one consideration that whatever is unfavourable and damaging to the Prophet's reputation must be accepted as true. As an example of this trend of

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<sup>36</sup> *JIHAD AND THE ISLAMIC LAW OF WAR*, (2009), Book 3, The Royal Aal al-Bayt Institute for Islamic Thought, Jordan, ISBN 978-9957-428-30-3.

criticism, we take Cash's "Expansion of Islam"<sup>37</sup> to which the author has attached an appendix of four pages in which he has collected examples of what he calls "assassinations," carded out at the Prophet's instigation and for which he calls the Prophet "cruel, treacherous and relentless" (p. 29).

#### **"Only Combatants could be killed"-**

In fact, as the Hidayah has put it clearly, a person's life, unless he is a murderer, cannot be taken on any ground other than that he is a combatant: "And they should not kill a woman, nor a child, nor an aged person, nor one who does not take part in a war, nor a blind man, because what makes it lawful to take a man's life, according to us, is his being a combatant, and this is not true in their case" (Ch. Kaifiyyat al-Qital). In fact, this conclusion, which is the basic principle of the Hanifite law, is based on the express words of the Holy Prophet himself.

**10. THE THEORITICAL EXPLANATION** - As Abu Dawud<sup>38</sup> reports on the authority of Rabah, son of Rabi': "We were with the Prophet in a certain battle, and he saw the people gather together in one place. So he sent a man to make an inquiry as to why the people had gathered together. The messenger came back and said, "There is a woman killed." The Holy Prophet said, "She was not Fighting". The reporter says that Khalid was leading at the time. So the Prophet sent a man to Khalid and asked him to tell Khalid that he should not kill a woman or a hireling (Ch. Qatl al-Nisa')". By remarking that "she was not fighting", the Holy Prophet made it plain that even in battle only such persons could be killed as actually took part in fighting, and along with women he excepted hirelings, because they were only hired for other work and did not take part in actual fighting.

It is on this basis that the Hanifite law accepts, along with women, children and old men, all such persons as cannot take part in fighting. And the conclusion is inevitable that according to the Holy Prophet's own injunctions the killing of a person was not lawful unless he took part in fighting, and any report to the effect that a person was killed though he was not a combatant is either untrue or defective, even if it is met with in a reliable collection of traditions.

#### **11. BATTLES OF PROPHET (PBUH): THE STATISTICAL VERIFICATION –**

##### **i. Battle of Badr -**

*Part of the Muslim-Quraish Wars*

**Date-** 13 March 624 CE/17 Ramadan, 2 AH

**Location-** At the wells of Badr, 80 mi (130 km) southwest of Medina

**Result-** Decisive Muslim victory

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<sup>37</sup> Cash, Wilson., (1928), *The expansion of Islam: an Arab religion in the non-Arab world*, London, Edinburgh House Press.

<sup>38</sup> Abu Dawud Sulaymān ibn al-Ash'ath al-Azdi as-Sijistani commonly known as Abu Dawud, was a noted PERSIAN collector of prophetic hadith, and compiled the third of the six "canonical" hadith collections recognized by Sunni Muslims, the Sunan Abī Dāwūd.

**Belligerents**- Muslims of Medina vs. Quraish of Mecca

**Strength** – 313 vs. 950

**Casualties and losses** - 14 killed vs. 70 killed, 43 - 70 captured.<sup>39</sup>

**Consequences** - The battle of Badr had far-reaching consequences. Till then, the Muslims were harassed bands avoiding any major conflict. This victory gave them confidence in their physical power. They could now meet force with force. They were soon recognized as a power to be reckoned with and smaller tribes were cautioned against joining forces against them.

## ii. **Battle of Uhud –**

**Part of the Muslim–Quraish Wars**

**Date**- March 19, 625 AD (3 Shawwal, 3 AH)

**Location** -Valley by Mount Uhud

**Result**- Failure of siege; Muslims retreated

**Belligerents** - Muslims of Medina vs. Quraish of Mecca

**Strength** - 700 vs. 3,000

**Casualties and losses** – Heavy losses (approx. 70 men); whereas the other side faced slight destruction.<sup>40</sup>

**Consequences** - Muhammad and the Muslims buried the dead on the battlefield, returning home that evening. According to Watt, Muhammad realized that a show of force was required to speed the Meccans away from Medinan territory. The Meccans, not wanting to be perceived as being chased away, remained nearby for a few days before leaving.<sup>41</sup>

## iii. **Battle of the Trench or the Battle of Khandaq.**

*Part of the Muslim–Quraish Wars*

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<sup>39</sup> Sahih Al- Bukhari, Vol. 4, Book 52, Number 276.

<sup>40</sup> Montgomery, W., (1974), *Muhammad: Prophet and Statesman*, United Kingdom: Oxford University Press; ISBN 0-19-881078-4.

<sup>41</sup> An early Muslim historian, al-Waqidi, records 'Amr ibn al-'As (a Meccan commander) as saying: When we renewed the attack against them, we smote a certain number of them, and they scattered in every direction, but later a party of them rallied. Quraysh then took counsel together and said, the victory is ours, let us depart. For we had heard that Ibn Ubayy had retired with a third of the force, and some of the Aws and the Khazraj had stayed away from the battle, and we were not sure that they would not attack us. Moreover we had a number of wounded, and all our horses had been wounded by the arrows. So they set off. We had not reached ar-Rawha until a number of them came against us and we continued on our way. Cited in - Peters, F.E (1994), *Muhammad and the Origins of Islam*, 219.

**Date** March 31 – April 627 AD<sup>42</sup>

**Location**- Surrounding perimeter of Medina

**Result** - Failure of siege; Decisive Muslim victory Belligerents

**Belligerents** - Muslims vs. Confederates including the Pagan Quraysh of Mecca the Jewish/Arab tribes of Banu Qaynuqa, and Banu Nadir Other Pagan Arab tribes such as Banu Murra, Khaybar, Huyyay ibn Auf Murri, Banu Ghatafan, Bani Assad, Banu Shuja; etc.

**Strength**- 3,000 vs.10, 000<sup>43</sup>

**Casualties and losses** – Light vs. Extremely Heavy<sup>44</sup>

**Consequences** - The failure of the siege marked the beginning of Muhammad's undoubted political ascendancy in the city of Medina. The Meccans had exerted their utmost strength to dislodge Muhammad from Medina, and this defeat caused them to lose their trade with Syria and much of their prestige with it. Watt conjectures that the Meccans at this point began to contemplate that conversion to Islam would be the most prudent option.<sup>45</sup>

#### iv. **Battle of Khaybar**

*Part of Campaigns of Muhammad (PBUH)*

**Date** – 629 AD

**Location**- Khaybar

**Result** -Muslim victory.

**Belligerents** - Muslim army vs. Jews of Khaybar oasis.

**Strength**- 1,600(approx.), Khaybar - 10,000 and Banu Ghatafan - 4,000<sup>46</sup>

**Casualties and losses** - Less than 20 killed<sup>47</sup> and 50 wounded vs. 93 killed

**Consequences** - The victory in Khaybar greatly raised the status of Muhammad among his followers and local Bedouin tribes, who, seeing his power, swore allegiance to Muhammad and converted to Islam. The captured booty and weapons strengthened his army, and he captured Mecca just 18 months after Khaybar.<sup>48</sup>

#### v. **Battle of Mu'tah**

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<sup>42</sup> Watt, William M., (1956), *Muhammad at Medina*, Oxford University Press, ISBN 0-19-577307-1.

<sup>43</sup> Rodinson, Maxime (2002), *Muhammad: Prophet of Islam*, Tauris Parke Paperbacks, ISBN 1-86064-827-4.

<sup>44</sup> See, ref. 40

<sup>45</sup> See, ref. 40

<sup>46</sup> Lings, Martin. , (1983), *Muhammad: his life based on the earliest sources*, 264.

<sup>47</sup> See, Ref. 46, 255-6.

<sup>48</sup> Stillman, Norman. , (1979), *The Jews of Arab Lands: A History and Source Book*, Philadelphia: Jewish Publication Society of America, ISBN 0-8276-0198-0, 18.

**Date** - September 629 AD<sup>49</sup>

*Part of the Arab-Byzantine Wars*

**Location** - Mu'tah in Kerak Governorate, Jordan

**Result** - Byzantine victory<sup>50</sup>

**Belligerents** - Muslim Arabs Byzantine Empire, Ghassanids

**Strength**- 3,000<sup>51,52</sup> vs. Unknown but 100,000-200,000 according to Islamic tradition<sup>53,54</sup>

**Casualties and losses** - 12 soldiers vs. 3,000 soldiers according to Islamic tradition<sup>55</sup>

**Consequences** - It is reported that when the Muslim force arrived at Medina, they were berated for apparently withdrawing and accused of fleeing. Muhammad ordered them to stop, saying that they would return to fight the Byzantines again and bestowed upon Khalid the title of 'Saifullah' meaning 'The Sword of Allah'.

#### vi. **The Battle of Hunain –**

**Date**- 630 (8 AH)

**Location** - Hunain, near al-Ta'if in south-western Arabia

**Result** - Muslim victory 24,000 camels captured as booty.<sup>56</sup>

**Belligerents** - Muslims, Quraysh vs. Hawazin, Thaqif.

**Strength** - 12,000 vs. 20,000

**Casualties and losses** - 70 killed, 6,000 soldiers, women and children taken prisoner<sup>57</sup>

#### **Chart no. 1 - Chart Showing an Approximate sum of Casualties.**

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<sup>49</sup> Kaegi, W., *Emperor of Byzantium*, 231.

<sup>50</sup> Peterson, Daniel C. (2007), *Muhammad, Prophet of God*, Wm. B. Eerdmans Publishing, ISBN 9780802807540, 142.

<sup>51</sup> Akram, I.A, General. , *The Sword of Allah: Khalid bin Al-Waleed*, Chapter 6.

<sup>52</sup> Ar-Raheeq al-Makhtoom, Saif-ur-Rahman Mubarakpuri, *The Sealed Nectar*; Islamic University of Medina, Dar-us-Salam Publishers ISBN 1-59144-071-8.

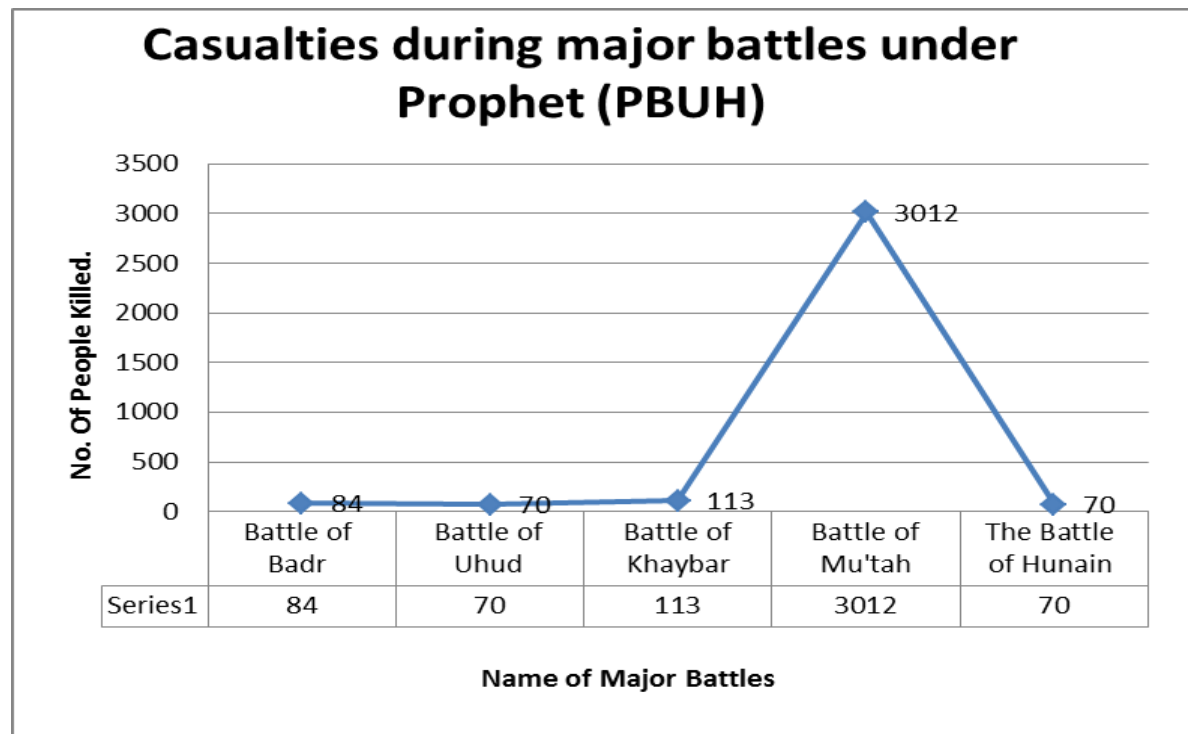
<sup>53</sup> General A. I. Akram, *The Sword of Allah: Khalid bin Al-Waleed*, Chapter 6, p. 2

<sup>54</sup> Nuhl, F., *Encyclopaedia of Islam*, Vol. 7, (2<sup>nd</sup> Ed.); (Online), 756–757.

<sup>55</sup> Saif-ur-Rahman Mubarakpuri, ar-Raheeq al-Makhtoom, "The Sealed Nectar", Islamic University of Medina, Dar-us-Salam publishers ISBN 1-59144-071-8

<sup>56</sup> Muir, William., *The life of Mahomet and history of Islam*, Volume 4, 142.

<sup>57</sup> See, ref. 56.



## 12. ANALYSIS –

The allegations put forward by various commentators fall absolutely flat, as the graphical analysis (approximate figures) clearly establish the fact that the maximum death tolls reached during the wars under the reign of Prophet (PBUH) is not even in tens of thousands. The mere amount of death toll establishes the fact in consonance with Hanifite law that Prophet (PBUH) was not a Great Law Giver but also a visionary leader. The wars fought by him were to establish the roots of Islam but there are no explicit evidences to establish he was either of the ways involved in any massacre. Indeed there are substantial evidences to prove that he treated his opponents and those captured by him at par with his own men. The rules that are proposed by the so – called Modern Society were revealed to Mankind much before the Man himself has realized.

## 13. MAJOR WARS AFTER THE REIGN OF PROPHET (PBUH) –

### i. ACCORDING TO DEATH TOLL – (755 A.D. -1945)

As discussed by John Keegan in his 'A History of Warfare'<sup>58</sup>, war is a widespread phenomenon whose form and scope is defined by the society that wages it. Another argument suggests that since there are human societies in which warfare does not exist, humans may not be certainly disposed for warfare, which emerges under specific circumstances. The deadliest war in history, in terms of the cumulative number of deaths since its start, is the Second World War, with 60–85

<sup>58</sup> Keegan, John., (1993), *A History of Warfare*, Random House.

million deaths. Proportionally speaking, the most destructive war in modern history is the War of the Triple Alliance, which took the lives of over 60% of Paraguay's population. In 2003, Richard Smalley identified war as the sixth (of ten) biggest problems facing humanity for the next fifty years.<sup>59</sup>

RANKING	Deaths (millions)	Date	War
1	72.65	1939–1945	World War II <sup>60,61</sup>
2	60	13th century	Mongol Conquests <sup>62</sup>
3	40	1850–1864	Taiping Rebellion <sup>63</sup>
4	39	1914–1918	World War I <sup>64</sup>
5	36	755–763	An Shi Rebellion <sup>65</sup>
6	20	1937–1945	Second Sino-Japanese War <sup>66</sup>
7	20	1370–1405	Conquests of Tamerlane <sup>67</sup>
8	16	1862–1877	Dungan revolt
9	7	1917–1922	Russian Civil War and Foreign Intervention <sup>68</sup>

**Chart no. 2 - Chart Showing an Approximate sum of Casualties.**

<sup>59</sup> Smalley E, R., (2003), Top Ten Problems of Humanity for Next 50 Years, Energy & Nanotechnology Conference, Rice University.

<sup>60</sup> Wallinsky, David, (1996), *David Wallechinsky's Twentieth Century: History with the Boring Parts Left Out*, Little Brown & Co., ISBN 0-316-92056-8.

<sup>61</sup> Brzezinski, Zbigniew, (1994), *Out of Control: Global Turmoil on the Eve of the Twenty-first Century*, Prentice Hall & IBD; ASIN B00008PVJI.

<sup>62</sup> Ping-ti Ho, (1970), *An Estimate of the Total Population of Sung-Chin China*, in *Études Song*, Series 1, No 1.

<sup>63</sup> "Taiping Rebellion – Britannica Concise", Britannica, Accessed on 2014-07-26

<sup>64</sup> Duffy, Michael. , (2009); *Military Casualties of World War One*, ([www.Firstworldwar.com](http://www.Firstworldwar.com)) ; Accessed on 26.07.2014.

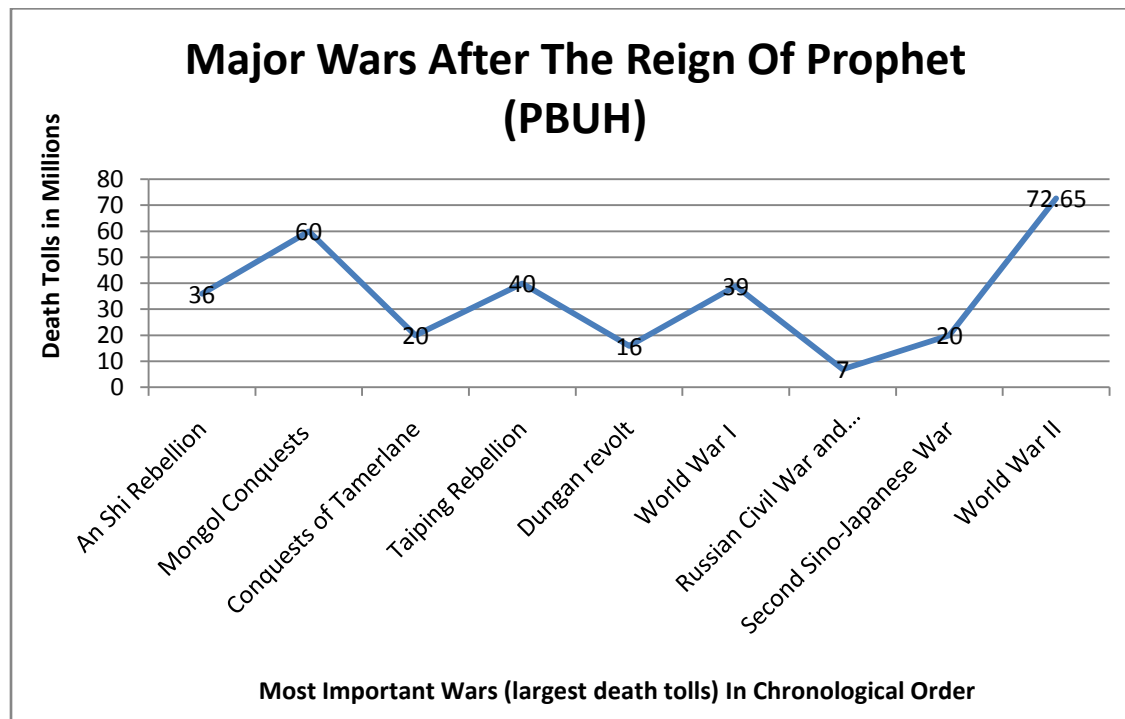
<sup>65</sup> White, Michael (2012), *Selected Death Tolls for Wars, Massacres and Atrocities Before the 20th Century*, <http://necrometrics.com/maildrop.htm> , Accessed on 26.07.2014.

<sup>66</sup> Anderson, Duncan (2011), *Nuclear Power: The End of the War Against Japan*, [http://www.bbc.co.uk/history/worldwars/wwtwo/nuclear\\_01.shtml](http://www.bbc.co.uk/history/worldwars/wwtwo/nuclear_01.shtml) ; Accessed on 26.07.2014.

<sup>67</sup> See, ref. 65.

<sup>68</sup> Simkin, John. , (updated 2014), *The Russian Civil War*, <http://spartacus-educational.com/RUScivilwar.htm> , Accessed on 26.07.2014.





ii. **ANALYSIS –**

The above mentioned battles were fought after the reign of Prophet (PBUH) and before the formation of United Nations. The graphical analysis (approximate figures) narrates the story of these wars and their ferocity. The death tolls are an eye-opener to those who accuse Religious wars as the main sources of Destruction to Mankind. This slot of period is that phase when the World Powers displayed and immense showcase of their Power, Wealth, and Domination. But a few (mostly the countries forced to make alliances) fell easy prey to the Destruction process.

**14. THE FORMATION OF THE UNITED NATIONS ORGANISATION (1945)–**

The United Nations (UN) is an intergovernmental organization established on 24 October 1945 to promote international co-operation. A replacement for the ineffective League of Nations, the organization was created following the Second World War to prevent another such conflict. At its founding, the UN had 51 member states; there are now 193. The UN Headquarters is situated in Manhattan, New York City and enjoys extraterritoriality. Further main offices are situated in Geneva, Nairobi and Vienna.

The organization is financed by assessed and voluntary contributions from its member states<sup>69</sup>. Its objectives include maintaining international peace and security, promoting human rights, fostering social and economic development, protecting the environment, and providing humanitarian aid in cases of famine, natural disaster, and armed conflict.

<sup>69</sup> There are 193 United Nations (UN) member states, and each of them is a member of the United Nations General Assembly.

During the Second World War, US President Franklin D. Roosevelt<sup>70</sup> initiated talks on a successor agency to the League of Nations, and the United Nations Charter was drafted at a conference in April–June 1945; this charter took effect on 24 October 1945, and the UN began operation. The UN's mission to preserve world peace was complicated in its early decades by the Cold War between the US and Soviet Union and their respective allies.

The organization's membership grew significantly following widespread decolonization in the 1960s, and by the 1970s its budget for economic and social development programmes far outstripped its spending on peacekeeping. After the end of the Cold War, the UN took on major military and peacekeeping missions across the world with varying degrees of success.

The organization won the Nobel Peace Prize in 2001, and a number of its officers and agencies have also been awarded the prize. Other evaluations of the UN's effectiveness have been mixed. Some commentators believe the organization to be an important force for peace and human development, while others have called the organization ineffective, corrupt, or biased.

### iii. ACCORDING TO DEATH TOLL – (1945 – 2005)

RANKING	Deaths (sum total)	Date	War
1	54,00,000	1955-1975	Vietnam War <sup>71</sup>
2	25,00,000	1950-1953	Korean War <sup>72,73</sup>
3	11,75,000	1979–1989	Soviet war in Afghanistan <sup>74,75</sup>
4	8,00,000	1980-1988	Iran–Iraq War <sup>76</sup>
5	6,13,465	2003-2011	Iraq War <sup>77,78</sup>

<sup>70</sup> Franklin Delano Roosevelt (January 30, 1882 – April 12, 1945), commonly known by his initials FDR, was an American statesman and political leader who served as the 32nd President of the United States.

<sup>71</sup> Hickey, Michael. , *The Korean War: An Overview*, [http://www.bbc.co.uk/history/worldwars/coldwar/korea\\_hickey\\_01.shtml#four](http://www.bbc.co.uk/history/worldwars/coldwar/korea_hickey_01.shtml#four) Accessed on 27.07.2014.

<sup>72</sup> Heuveline, Patrick (2001). , *The Demographic Analysis of Mortality in Cambodia*, In *Forced Migration and Mortality*, (eds.) Reed, Holly E., and Keely, Charles. , Washington, D.C.: National Academy Press.

<sup>73</sup> *Fifty years of violent war deaths: data analysis from the world health survey program*, Accessed on 27 July 2014, (From 1955 to 2002, data from the surveys indicated an estimated 5.4 million violent war deaths ... 3.8 million in Vietnam), <http://dx.doi.org/10.1136/bmj.a137> (Published 26 June 2008).

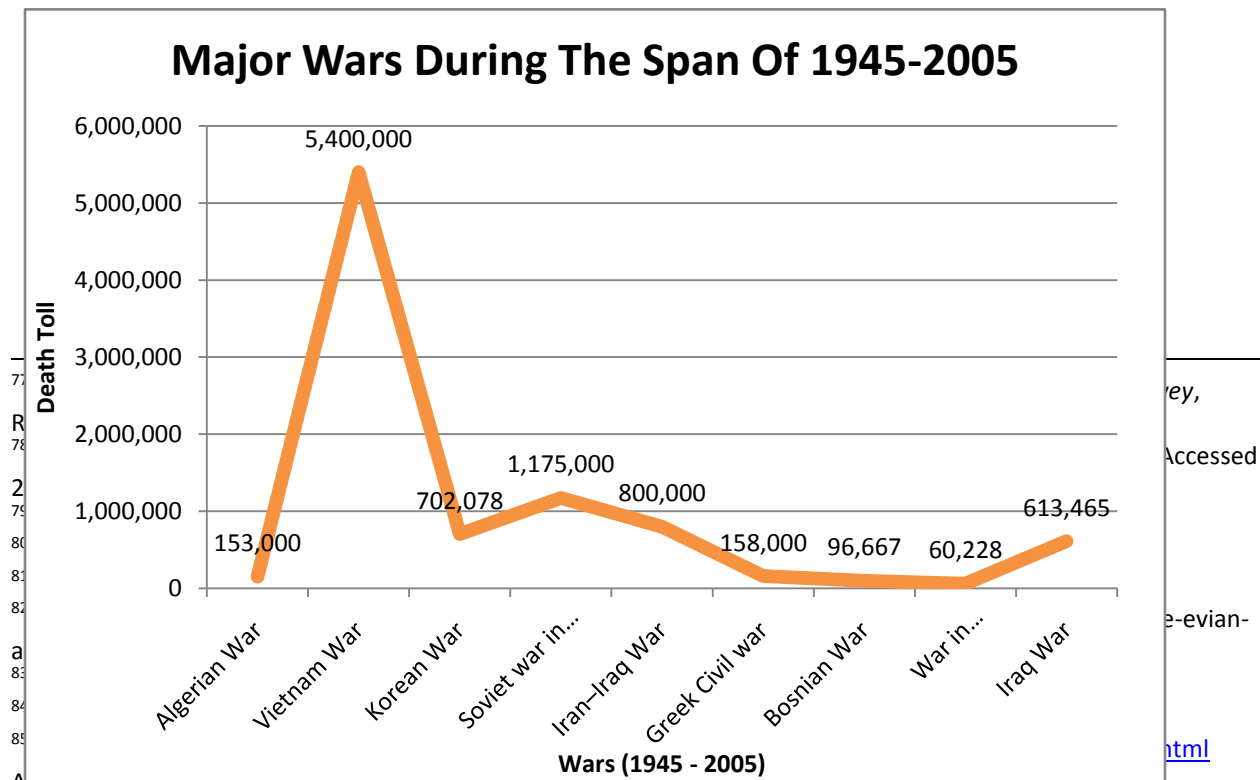
<sup>74</sup> Khalid, Ahmad, Noor. , (1991), *Afghanistan: Demographic Consequences of War: 1978-87*, *Central Asian Survey*, vol. 10, no. 3,101–126.

<sup>75</sup> Sliwinski, Marek. , (1989), *Afghanistan: The Decimation of a People*, 39.

<sup>76</sup> Hiro, Dilip (1991), *The Longest War: The Iran-Iraq Military Conflict*, New York: Routledge, ISBN 9780415904063, OCLC 22347651.

6	1,58,000	1946–1949	Greek Civil war <sup>79, 80, 81</sup>
7	1,53,000	1954–1962	Algerian War <sup>82</sup>
8	96,667	1992–1995	Bosnian War <sup>83, 84</sup>
9	45,369	2001-Present	War in Afghanistan <sup>85, 86</sup>

Chart no. 3- Chart Showing an Approximate sum of Casualties.



Accessed 27.07.2014

<sup>86</sup> <http://costsofwar.org/article/afghan-civilians> Accessed 27.07.2014

**Approximate cumulative sum –**

Deaths (sum total)	Date	War	
7,02,078	1950-1953	Korean War	40,000 of its servicemen died (American Department of Defence), British casualties - 1,078 killed in action, 46,000 South Korean soldiers were killed ,Chinese are estimated by the Pentagon as having lost over 400,000 killed (including Mao Tse-tung's son) and North Koreans lost about 215,000 soldiers.
54,00,000	1955-1975	Vietnam War	Vietnamese civilian dead: 245,000–2,000,000 and Cambodian Civil War dead: 200,000–300,000
11,75,000	1979–1989	Soviet war in Afghanistan	Civilians (Afghan): 850,000–1,500,000 killed
8,00,000	1980-1988	Iran–Iraq War	800,000 killed (Iraqi claim)
6,13,465	2003-2011	Iraq War	Lancet survey (March 2003 – July 2006): 601,027 and 12,438 new deaths added from the Iraq War Logs
1,58,000	1946–1949	Greek Civil war	Total: 158,000 killed and 1,000,000 people were relocated temporarily
1,53,000	1954–1962	Algerian War	153,000 total dead
96,667	1992–1995	Bosnian War	57,358 soldiers killed and 39,309 civilians killed (inclusive of all sides)
45,369	2001-Present	War in Afghanistan	Insurgent Groups: 20,000–35,000 Killed, Civilians killed: 16,725–19,013 (2001–2013)

**15. ANALYSIS –**

The graph displays an unavoidable and disturbing fact that – "THE UNITED NATIONS HAS FAILED TO PROVIDE AN IMPACTFUL PROTECTION AT LARGE." This describes that stage when the newly formed United Nations bloomed into a whole developed International Body. But even after 1945 there has been no decline in the rates of wars or genocides. The organisation has at various stages shown a very tactful approach towards the war victims and civilians of war struck areas,

such that - There has been delay in the process of scrutiny. The time slots of war depict that there have been uncontrollable situation such that it took a lot of time to effectively calm the whole situation. Such delayed processes show that there are either some technical problems or there have been other facts which have hindered the United Nations to provide an impactful support. An immediate need to amend laws is foreseeable.

## 16. EFFECT OF WAR –

Nations customarily measure the 'costs of war' in dollars, lost production, or the number of soldiers killed or wounded. Rarely do military establishments attempt to measure the costs of war in terms of individual human suffering. Psychiatric breakdown remains one of the most costly items of war when expressed in human terms. —No More Heroes, Richard Gabriel<sup>87</sup>

## 17. EFFORTS TO LIMIT OR STOP WARS –

Religious groups have long formally opposed or sought to limit war as in the Second Vatican Council document *Gaudium et Spes*: "Any act of war aimed indiscriminately at the destruction of entire cities of extensive areas along with their population is a crime against God and man himself. It merits unequivocal and unhesitating condemnation."<sup>88</sup>

Anti-war movements have existed for every major war in the 20th century, including, most prominently, World War I, World War II, and the Vietnam War. In the 21st century, worldwide anti-war movements occurred ever since the United States invaded Afghanistan and Iraq. In 2001, the US government decided to invade Afghanistan to fight against international terrorism that triggered the September 11 attacks. Protests opposing the War in Afghanistan occurred in cities in Europe, Asia, and all over the United States.

Organizations like Stop the War Coalition, based in the United Kingdom, work on campaigning against the war. They raise consciousness of the war, organize demonstrations, and lobby the governments. Significant worldwide opposition to the Iraq War also exists. Critics oppose the war based on the argument of violation of sovereignty, absence of the UN approval, and perceived illegitimacy.

The Mexican Drug War, with estimated casualties of 40,000 since December 2006, has been recently facing a fundamental opposition.<sup>89</sup> In 2011, the movement for peace and justice has started a general middle-class movement against the war. It has won the recognition of President Calderon, who started the war, but has not ended it.<sup>90</sup> Governments also use the method of disarmament to stop and prevent the cost of war.

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<sup>87</sup> Audoin-Rouzeau, Stéphane. , *World War One – A New Kind of War | Part II*.

<sup>88</sup> PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD GAUDIUM ET SPES PROMULGATED BY HIS HOLINESS, POPE PAUL VI ON DECEMBER 7, 1965"

<sup>89</sup> "How many have died in Mexico's drug war?". <http://latimesblogs.latimes.com/laplaza/2011/06/mexico-war-dead-update-figures-40000.html> retrieved on 25th of July 2014 at 12:43 pm

<sup>90</sup> "Calderon apologises to drug war victims".

<http://www.aljazeera.com/news/americas/2011/06/20116244495608277.html> retrieved on 25th of July 2014 at 12:43 pm

Indeed, it is an abuse of good sense to understand that a civilization which developed a highly sophisticated law and System of justice, an international system of trade and credit, peaks of art and philosophy, and major developments in science and technology –all within a world view formed by The Qur'an and the teachings of the Prophet—could somehow have mislaid to address justice, synchronization and equality when it came to the question of war and peace.<sup>91</sup>

## **18. NEED FOR AMENDMENT OF THE LAWS OF WAR –**

By the establishment of the United Nations Charter in 1945 the legal regulation of war reached its zenith. The United Nations Charter contains the following provisions restricting and even prohibiting war by the States:

- (1) Preamble of the Charter says "that armed force shall not be used, save in the common interest."
- (2) It is an important principle of the United Nations that the States shall settle their disputes peacefully. Article 2, paragraph 4 provides that all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the U.N. Thus instead of the word 'war', the Charter mentions the word 'threat or use of force'.

Analysis – The scope of the charter is thus wide enough because it prohibits not only war but the use of force or threat thereof.

- (3) Chapter VI provides certain methods for the peaceful settlement of international disputes. They include negotiations, good offices, conciliation, judicial settlement, inquiry or any other peaceful means of choice.<sup>92</sup>
- (4) Under Chapter VII, Security Council is empowered to take collective action against the State which has committed aggression or has otherwise committed a breach of international peace.<sup>93</sup>

It is clear from the above set of rules that in the modern times, there is sufficient legal regulation of war. It cannot, however, be denied that the above mentioned rules are frequently violated. The violation, however, does not mean that the rules do not exist or there is no legal regulation over war.

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<sup>91</sup> Isbn 978-9957-428-30-3 english series - book 3 'JIHAD AND THE ISLAMIC LAW OF WAR' the royal aal al-bayt institute for islamic thought 2009 • Jordan

<sup>92</sup> Articles 33-38

<sup>93</sup> Article 39-50

**The epic change** – the principles of International Law enunciated in the NEUREMBERG TRIAL have brought about a revolutionary change in the laws of war in general and war crimes in particular. The principles of International law enunciated in the Neuremberg judgement have been summarised in the Report of the International Law Commission in its second session in 1950. The Neuremberg Trial classifies the crimes punishable under international law into the three categories:

- (1) Crimes against Peace;
- (2) War Crimes;
- (3) Crimes against humanity;

**The Truth** – Even though this broad spectrum was enacted and formulated as an outreach to heal the scars of the war victims yet the failure of all such laws are visible by the graphical analysis of wars which continued even after that period.

According to Judge Nagendra Singh<sup>94</sup>, in view of

- change in the methods of war of development of devastating weapons,
- particularly nuclear weapons,
- It has become necessary to bring about changes in the laws of war.<sup>95</sup>

Besides this, following are the reasons which have necessitated changes in the laws of war:

- i. *Development of the concept of total war;*
- ii. *Expansion of the world community as a result of the independence of new States;*
- iii. *Development of human rights;*
- iv. *Need for protecting the civilian population from the scourge of war;*
- v. *Need for enforcement of human rights during war;*
- vi. *The laws of war were codified long ago; since then revolutionary changes have taken place.*

*They should, therefore, be revised and re-codified. The first and Second World Wars exhibited the inadequacy of the existing laws of war.*

Josef L. Kunz has, therefore rightly remarked, "That the Laws of War are actually in chaotic state and urgently need revision, is a fact which cannot be challenged."<sup>96</sup>

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<sup>94</sup> Maharaj Sri Nagendra Singh (Dungarpur, 18 March 1914 - The Hague, 11 December 1988) was an Indian lawyer and administrator who served as President of the International Court of Justice from 1985 to 1988.

<sup>95</sup> Recent Trends in the Development of International Law and Organisation Promoting Inter – State Co-operation and World Peace (1966), p. 108-127.

<sup>96</sup> Josef L. Kunz "The Chaotic Status of the Laws of War and the Urgent Necessity for their Revision." A.J.I.L. Vol. 45 (1951) p. 37 at p. 53.

Regardless of the imperative need for the amendment in the laws of war, there is no possibility of genuine efforts to amend them for the obvious reason that war, nay even use of force has been proscribed under the charter for the settlement of international disputes. It is feared, and rightly too, that if laws of war are amended they may put the existing position of outlawry of war to the reverse gear.

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*"Harmonising Law and Social Norms"*

**International Conference on Law, Policy and Social Justice (ICLAPS 2014)**

**10 - 11 September 2014**

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