

Afghanistan, Code of Conduct for the Mujahideen

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Islamic Emirate of Afghanistan, “Code of Conduct for the Mujahideen”, 9 May 2009, unofficial translation. Original text available at www.alemara.co.cc/]

Islamic Emirate of Afghanistan Code of Conduct for the Mujahideen

[...]

In the name of Allah, the most Gracious and Merciful

[...]

Jihad in the way of Allah is the greatest action and a great duty. Carrying out this duty will bring the Honour of the Islamic Ummah (Global Community / Commonwealth) and will raise prestige of the Allah’s words. [...]

In view of establishing a clearer strategy for Jihad, a comprehensive Code of Conduct or book of principles was awaited by all Mujahideen and Muslims. This Code of Conduct aims to clarifying their mission, in light of the Sharia laws. [...]

Considering these needs, the Leadership of the Islamic Emirate endorsed this Code of Conduct or the book of principles with 13 Chapters and 67 articles, based on advice given by famous religious scholars and specialists of the country, in light of the Mohammedan Sharia. Every Mujahid of the Islamic Emirate should comply with all the rules and regulations while conducting their Jihad. All the Mujahideen and authorities of the Islamic Emirate are bound to all principles and regulations of this Code of Conduct.

Preface

1. In the Code of Conduct “Imam” and “Deputy Imam” refer to Respected Amir ul Momineen Mullah Mohammad Omar Mujahid and his deputy respectively.
2. In the Code of Conduct “punishment” does not include collection of money.
3. In the Code of Conduct the power of decision for punishment may be delegated to a person other than the Imam or the Deputy Imam. However, the power to issue death penalty can not be delegated.
4. In the articles of the Code of Conduct, whenever “taking guarantee” is mentioned, it does not refer to the taking of cash and property.
5. This Code of Conduct was published and enforced on 9 May 2009.

All the bills, orders, and any other material that are contrary to this Code of Conduct and were issued before the above mentioned date are considered invalid. It is compulsory for all Mujahideen and authorities of Islamic Emirate to strictly follow the Code of Conduct.

Chapter One Protection issues

[...]

1. If a Mujahid kills or harms a person who had stopped cooperating with the aggressors and their puppet administration and had received security guarantee from the Mujahideen, this Mujahid will be tried under the Islamic law.

[...]

Chapter Two About the Detainees

1. A local or foreign enemy who is captured shall be immediately handed over to the Provincial authority. After the handover of the captive, the Governor either allows the Mujahideen who captured the enemy to keep him, or orders the transfer of the captive to other people.
2. If an employee, soldier, contractor or other worker of the slavery administration has been captured and punished, the Provincial authority may decide to release them in case of prisoners exchange. Releasing these people for money is prohibited. No one has the authority to give death sentence except the Imam and Deputy Imam. If the captive is a Director (in a governmental office), a Commander, a District Administrator, or a higher ranking official than them, or a foreign Muslim, the Imam and his deputy will decide whether the captive will be punished, executed or released in the framework of prisoners exchange.
3. If an infidel warrior has been captured, his fate (execution, release in prisoner exchange, release following negotiations, or release upon payment in case the Muslims need money) will be decided by the Imam and his deputy. No one else has this power of decision. If the captive becomes Muslim, the Imam and his deputy have the authority to release him in a prisoner exchange, provided that the captive will stay a Muslim after his release.
4. If the Mujahideen who captured the enemy were not able to transfer them to their own centres, if they faced danger outside the centre, or if they could not manage to transfer the captives in secure places, then the Mujahideen can kill them – provided that the captives are prisoners of war or members of the

authority from the other side. If the captives do not fall into these categories, or if they are only suspected to fall into these categories, then the Mujahideen are not allowed to kill them. Eventually, the Mujahideen can leave the captives.

5. If a policeman or soldier surrenders to the Mujahideen, the Mujahideen should not kill him. If the policeman or soldier brought a weapon with him, or if he had participated in courageous fights, the Mujahideen should give him more respect.
6. When spies or other criminals are captured and sentenced to death by a Mujahideen judge in charge of the area: Even if the Provincial Governor or another leader of the Mujahideen considered that the captive deserved death, these authorities are not allowed to kill the captive. From an Islamic Sharia point of view, they haven't been conferred such power. Only the Imam and his deputy have the authority to affirm death sentence.

Chapter Three About the spies

1. When a spy is captured, if evidence of espionage is found, the spy will be considered as a perpetrator of social destruction. The Provincial responsible has the power to punish him, exile him, or to prevent him from spying with appropriate measures. The Imam and his deputy are the only ones who have the power to kill the spy who was arrested. No one else can give him death penalty.
2. A person is identified as a perpetrator of social destruction through four ways, which are mentioned below.
 - A. Two witnesses give testimonies on his espionage.
 - B. The person in question willingly confesses about his espionage, without any pressure or violence
 - C. The person is caught with materials raising strong suspicion, such as specific tools or equipments used for the purpose of spying. Of course not everybody can detect whether the suspect was a perpetrator or not. In case there is a court, the judge will make an assessment. In there is no court, someone with a good observation, a tactful or religious person should assess the weakness and strength of the arguments for making a decision. If the arguments are weak, the perpetrator should be given light punishment. However if the arguments are strong, the punishment should be severe. If the arguments were strong enough and thoroughly examined, the perpetrator can be killed following the Imam and his deputy's approval.
 - D. A person who is eligible to witness is someone who is fair, has no prejudice, keeps himself from major sins, and does not carry out minor sins repeatedly.
3. A crime cannot be proven if a person is forced to confess through beating, threats or other kinds of suffering. There are two types of promises that a Mujahid can make to a person if he confesses. The first type of promises is similar to coercion and violence. As an example, the interrogator may tell the person that if he confesses he will not be killed or beaten, or that he will be released and not detained. In this case, the confession from the accused can be considered as forced confession, because the accused thinks that if he does not confess, he would be killed, beaten or detained. If a person confesses under these circumstances, his confession is not valid. Nevertheless, the interrogator is bound to fulfil the promise he made. The second type of promises is not similar to coercion. As an example, the accused can be told that if he confesses he will receive money or a title / position. If he confesses under these circumstances, his confession is valid. It is necessary to fulfil the promise made. Of course the interrogator should be pious and tactful, and avoid taking forced confessions, because the latter are not valid under the Islamic Sharia. The Mujahideen should not make promises which they have no intention

to fulfil. It is not sufficient to take confession from the spy and testimonies from people. The four ways mentioned in article 14 shall apply. Afterwards, appropriate action should be taken.

[...]

1. If spies, detainees, or other criminals are convicted of murder and already sentenced to death, they should be executed by gun. Taking pictures of the person who was executed is prohibited.

Chapter Four Regarding the individuals carrying out constructions and logistics activities for the enemy

1. It is lawful to burn private cars which supply materials or carry out other services for the Infidels. It is also lawful to let them go after negotiations. However, letting them go against money or using their cars is prohibited.
2. Regarding the drivers who were captured while transferring the Infidels' materials: The Provincial authority has the power to punish them, release them in prisoner exchange, or release them with a solid guarantee (i.e. guarantee is given that no second offence would be committed; the drivers are put on probation). If the Mujahideen were unable to capture the above mentioned persons, then they can shoot at their cars.
3. Regarding the contractors who build military centres for the Infidels and their slavery administration, and supply fuel or other materials to them: If they do not leave their work despite the Mujahideen's warning, and if they are captured, only the Provincial authority can order imprisonment and other punishments. The Provincial authority can also exchange that contractor with other prisoners, or release him following strong guarantees given by people of trust in the relevant area or by his beloved ones (i.e. guarantee is given that no second offence would be committed; the contractor is put on probation). If the contractor deserved to be killed, the death sentence requires the permission of the Imam and his deputy. However, releasing the contractor against payment is prohibited. Contractors can be shot and killed if the elements mentioned above do not prevent them from carrying out their illegal activities, or if the Mujahideen cannot capture them.

Chapter Five Regarding the "Booty"

[...]

1. Booty refers to money or property which was taken following fighting with the foreign aggressors. Money or property taken by the Mujahideen without any fighting are considered as "Fay", and go to the Public Treasury.
2. [...] If they take items without fighting, then in any case these items will go to the Public treasury. Added to this, based on the orders given by the Imam or his deputy, these items may be used for the needs of the Jihad.
3. Regarding the money which was taken from the bank [...], money which has been already delivered to the employees and labourers are owned by the latter. The Imam and the Provincial Authority can give punishment to these individuals but cannot take their money from them. The same applies for wages received by NGO workers.

[...]

Chapter Seven The Mujahideen's internal matters

1. It is compulsory for the Mujahideen to obey their own superior, as long as it is right under the Sharia. The Mujahideen obey their Group leader, their Group leader obeys the district leader, the district leader obeys the provincial leader, the provincial leader obeys the Director of the Organisation, and the Director of the Organisation obeys the Imam and his deputy.

[...]

1. If a Group leader in one province or district wants to carry out Jihad in another province or district, he can. However he needs to get permission from the Authority of the relevant Province or District. The authority of the relevant province or district will be his superior. He should be fully obedient to the authority in charge of the area.

[...]

1. Regarding Martyrdom attacks, the four following points should be considered.
 - A. Martyrdom Mujahid should be well trained prior to the attack.
 - B. Martyrdom attack should be used on important and high targets. The heroic sons of the Islamic Ummah must not be used for low and worthless targets.
 - C. In Martyrdom attacks, much more care should be taken to prevent the deaths and injuries of civilians.
 - D. Except for the Mujahideen who received individual instructions and permission from the Leadership, all other Mujahideen must receive instructions and permission from the Provincial Authority before carrying out Martyrdom attacks.

[...]

Chapter 10 Public/People's Affairs

[...]

1. The Provincial and District authorities, Group leaders and all other Mujahideen should take maximum measures to avoid civilian deaths and injuries, as well as the loss of their vehicles and other properties. In case of carelessness, each one will be held responsible according to their acts and position, and will be punished depending on the nature of their misconduct.
2. If a person or authority tried to harm the people in the name of the Mujahideen, the superior of the perpetrator is obliged to correct that person or authority. In case the superior failed to correct the perpetrator, they should report to the Leadership through the Provincial Authority. Then the Leadership will punish the person or authority according to its judgement. The leadership will fire the perpetrators from the lines of the Mujahideen's command if necessary.

Chapter Eleven Regarding the Prohibitions

1. From the beginning of the Movement until now, weapons were collected at a huge scale. The collection of weapons from the public has provided the Public Treasury with enough weapons. From now on, no

weapon shall be collected by force.

[...]

1. Underage boys without beard on their face are not allowed to live in the Mujahideen's residential places and military bases.
2. In light with the Holy Sharia, cutting parts of the human body (ears, nose, lips) is strictly prohibited. The Mujahideen should strictly avoid this kind of practices.
3. The Mujahideen of the Islamic Emirate must not collect the Tenth ("Ushur" tax), "Zakat" tax and forced donations by the people. The people must be free to voluntary donate or not.
4. The Mujahideen should not search the people's houses. If a search was strictly necessary, then they will get permission of the District authority. The Imam of the Mosque in the village and two village elders should accompany the Mujahideen during the search.
5. Kidnapping people for money under any reason is prohibited. The relevant authority of the area must firmly prevent this. If people committed this kind of act in the name of the Islamic Emirate, the Provincial authority should disarm these criminals, following the instructions given by the Leadership.

Chapter 12 Advices

[...]

1. All staff of the Islamic Emirate should try their best to convince people who are deceived by the opposition to surrender and to put their weapons down. The promises made with them should be fulfilled. As a result the enemy will be weakened, and the problems for our own people will decrease. Added to this, in some cases the Mujahideen can get weapons and ammunitions from the surrenders.
2. The Mujahideen have the duty to behave well with people, and should try to win the normal Muslim's hearts and minds. Good behaviour of one Mujahid can represent the whole Islamic Emirate effectively. All fellow country people will welcome such Mujahid, and be ready to assist and collaborate with him.

[...]

1. Under the Sharia, the Mujahideen should adapt their physical appearance such as hair style, clothes, and shoes according to the local population of the area. It will bring more security for the Mujahideen, and allow them to move freely.

Chapter Thirteen Recommendation regarding the Code of Conduct

[...]

1. The Central Military Commission, the District and Provincial Commission are responsible for delivering this Code of Conduct to the Mujahideen and implementing it.

[...]

1. It is mandatory to comply with the above mentioned articles. If someone violates the rules or oppose them, he should be tried under the Islamic law.

Discussion

1. Which provisions of this code are incompatible with IHL? Which conform to IHL? Which deal with issues not covered by IHL?

I. Qualification and applicable law

1. According to the Code, who are the Mujahideen fighting against? Are they involved in an armed conflict? If yes, in an international or a non-international armed conflict? Does this make a difference for Islamic law? Does IHL apply to all Mujahideen acts?
2. Does the Code of Conduct refer to civilians? Does it distinguish between who may and may not be attacked? According to the Code, who may not be killed or harmed by the Mujahideen? Does this category correspond to that of civilians under IHL? According to the Code, who may be attacked? Does this category correspond to combatants or fighters under IHL? (P I, Art. 52; CIHL, Rules 1, 5-6)

II. Protection of persons

1. (*Arts 7-9*)
 - a. Who do the following categories refer to: “local or foreign enemy”, “employee, soldier, contractor or other worker of the slavery administration”, and “infidel warrior”? Do any of these categories correspond to a category under IHL? Does the Code provide information about when such persons may be arrested and detained? Under IHL, when could such persons be arrested and detained? If the fighting is an international armed conflict? If it is an armed conflict not of an international character?
 - b. What does the Code say about the way these categories of persons are to be treated during detention? Does the Code provide for the fundamental guarantees granted to prisoners of war by IHL? Does it provide for the fundamental guarantees granted to civilians deprived of their liberty? Does it provide for the fundamental guarantees granted to those detained for reasons related to a non-international armed conflict? (GC III, Arts 84-88; GC IV, Arts 43 and 78; P II, Arts 5-6; CIHL, Rules 118-128)
 - c. (*Arts 7-9, 54*) What does the Code say about hostage-taking and kidnapping? Are they prohibited under IHL? Can money be demanded in exchange for someone’s release? (GC I-IV, Art. 3; GC IV, Arts 34 and 147; P I, Art. 75(2)(c); P II, Art. 4(2)(c); CIHL, Rule 96)
2. (*Art. 8*) Under IHL, can “an employee, soldier, contractor or other worker” be punished solely because he is working for the enemy administration? Can soldiers be punished because they are participating in hostilities? For what acts can they be punished? For what acts can civilians be punished? Can anyone be sentenced to death? (GC I-IV, Art. 3; GC III, Arts 99-100; GC IV, Arts 68, 75 and 126)
3. (*Art. 10*) What do you think of Art. 10? Under IHL, can the detaining authorities ever kill a prisoner? What should a party to a conflict do when it is not able to detain captured enemies? (GC I-IV, Art. 3; GC III, Arts 13 and 130; P I, Art. 41(3))
4. (*Art. 11*) What does the Code say about policemen and soldiers who surrender? Does IHL distinguish between forced capture and surrender? Should a person be treated differently according to the way he was made prisoner? Does surrender grant broader protection under IHL?
5. (*Art. 12*) What does the Code say about spies? Does it offer them judicial guarantees when captured? What does IHL say about spies? What protection should they be granted? Can spies be sentenced to

- death? (GC I-IV, Art. 3; HR, Arts 29-31; GC IV, Arts 5 and 68; P I, Arts 45(3), 46 and 75)
6. (*Art. 18*) What do you think of the second sentence of Art. 18? Is there a corresponding provision under IHL? Is taking pictures prohibited only when the person being photographed has been executed? (GC III, Art. 13(2); GC IV, Art. 27(1))
 7. (*Art. 21*) Under IHL, can private contractors be arrested and detained on the grounds that they are supplying material to a party to the conflict? Can all private contractors be considered as participating in hostilities? Does it depend on what kind of material / service they supply to the parties?
 8. (*Art. 50*) What does Art. 50 mean? Can you find a corresponding provision in IHL? (P I, Art. 77(2); P II, Art. 4(3)(c); CIHL, Rules 136-137)
 9. (*Art. 51*) Is there a provision under IHL corresponding to Art. 51 of the Code? What does IHL say about mutilations? Is the prohibition of mutilations limited to cutting certain parts of the body? (GC III, Art. 13; GC IV, Art. 32; P I, Art. 11(2)(a); P II, Art. 4(2)(a); CIHL, Rules 87, 90-92)

III. Protection of property

1. (*Arts 19-21*) Under IHL, may private property be destroyed? May it be destroyed only when it contributes to the military action of the enemy? Is supplying or performing services for the enemy a contribution to military action? (HR, Art. 23(g); GC IV, Art. 53; CIHL, Rules 50-51)
2. (*Arts 23-25, 52-53, 58*) Does the Code distinguish between public property and private property? Does such a distinction exist under IHL? When, if ever, may the public property of a party be taken by the enemy as booty of war? Is it lawful to take the weapons of an enemy who has surrendered or been captured? When, if ever, may private property be taken? Can money ever be taken from private individuals? (HR, Arts 23(g), 46, 53, 56; CIHL, Rules 49-52)

IV. Conduct of hostilities

1. (*Art. 20*) Can someone transporting material for the enemy be considered a legitimate target? Can the cars be shot at? Can they be destroyed when no one is inside? When someone is driving? Does it make a difference whether the driver can be considered as directly participating in hostilities?
2. (*Arts 41(C) and 46*) Does the Code specify how hostilities should be conducted? Could Art. 46 be understood as an obligation to take precautionary measures?
3. (*Art. 41*) Are "Martyrdom attacks" always unlawful? Are they lawful if they do not target civilians? How should the legality of "Martyrdom attacks" be assessed under IHL? (P I, Arts 51(5)(b), 52, 57 and 58; CIHL, Rules 7-24)
4. (*Art. 63*) What do you think of Art. 63 of the Code? Under IHL, is it lawful for fighters to hide among the civilian population? What are the risks if the Mujahideen cannot be distinguished from the civilian population? How else could the Mujahideen fight successfully against government and Western forces? (GC I-IV, Art. 3; P I, Arts 44(3) and 48; CIHL, Rules 1 and 106)

V. Responsibility

1. (*Arts 34-37, 46-47 and 67*) Are the Mujahideen an organized group under a command responsible for the acts of its subordinates? Does the Code provide for sanctions or disciplinary measures if violations are committed? Who may be held responsible for violations of the Code? Can you find similar provisions in IHL? (GC I-IV, Arts 49/50/129/146 respectively; P I, Arts 86-87; P II, Art. 1; CIHL, Rules 152-154)

2. Is this Code preferable to no instructions at all? Is it preferable to a declaration to comply with the Geneva Conventions and Protocol I?

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