

## OPINION NOTE

# Is neutral humanitarian action permissible under Islamic law?

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### Abstract

*In this Opinion Note, Mohd Hisham Mohd Kamal examines neutral humanitarian action during armed conflicts from an Islamic perspective. By analyzing the Qur'an and the Sunnah, he finds that it is permissible to recognize a neutral third party. Moreover, Mohd Hisham Mohd Kamal considers siyasah al-Shar'iyyah and maqasid al-Shari'ah and finds that neutrality leads to the protection of lives and dignity and is thus compatible with the two concepts. He concludes that neutrality is permissible from the Islamic perspective.*

**Keywords:** humanitarian action, humanitarian principles, neutrality, Islam.

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Provision of humanitarian assistance to victims of armed conflicts has become more important in recent years. Often, a big challenge in providing humanitarian assistance is a State's sovereignty. Generally speaking, a State has no obligation to admit foreigners to its territory, and its consent must be obtained before foreign humanitarian workers can legally enter a country. Another challenge is that conflicts nowadays involve non-State armed groups, and humanitarian workers

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often need to obtain the permission of a group, though this is not required by the law, before they can enter into its stronghold. In order to overcome this challenge, the International Committee of the Red Cross (ICRC) and wider Red Cross and Red Crescent Movement successfully conducts its humanitarian operations based on seven Fundamental Principles, namely: humanity, impartiality, neutrality, independence, voluntary service, unity and universality.<sup>1</sup>

In this piece, I will discuss the Islamic perspective on taking neutral humanitarian action to assist victims of armed conflicts. What is the view of Islam with regard to the application of the principle of neutrality by the ICRC and wider Red Cross and Crescent Movement and other humanitarian organizations in case of an armed conflict which has been caused by an aggression, which is an evil, by one side against the other? More generally, is it permissible under Islamic law to be neutral with regard to good and evil? The discussion is significant because there are many Muslims who work for humanitarian organizations that operate under the neutrality principle. It is hoped that with this discussion, Muslim humanitarian workers will comprehend the religious basis of their neutral stance.<sup>2</sup> It is also hoped that Muslim governments and armed groups will understand the benefits of neutral humanitarian action so that they will allow medical and other aid to reach victims of armed conflicts. I am using the definition of neutrality used by the Red Cross and Red Crescent Movement as a benchmark, but this definition can be applied to other humanitarian actors as well.

## The ICRC principle of neutrality

At the beginning of the law of nations, neutrality meant the legal status of a nation which had decided not to participate in a war between two or more nations. A neutral State has a duty to abstain from providing military assistance to the belligerents, to prevent its territory from being used for bellicose purposes, and to be impartial to the two sides. Neutrality is a duty to abstain from any act which, in a conflict situation, might be interpreted as furthering or jeopardizing the interests of either party to the conflict.<sup>3</sup> This status is recognized by the warring parties.<sup>4</sup>

Neutrality in humanitarian action has a different meaning. States party to the Geneva Conventions have endowed the ICRC with a neutral status. States in armed conflicts have an interest in ensuring that the humanitarian body that

1 Statutes of the International Red Cross and Red Crescent Movement, October 1986, Preamble, available at [www.icrc.org/eng/resources/documents/misc/statutes-movement-220506.htm](http://www.icrc.org/eng/resources/documents/misc/statutes-movement-220506.htm) (all internet references were accessed in May 2015).

2 There is no literature on the Islamic perspective on whether humanitarian work can be neutral with regard to good and evil; thus, the present work is justified.

3 Denise Plattner, "ICRC Neutrality and Neutrality in Humanitarian Assistance", *International Review of the Red Cross*, No. 311, 1996, available at: [www.icrc.org/eng/resources/documents/misc/57jn2z.htm](http://www.icrc.org/eng/resources/documents/misc/57jn2z.htm).

4 Anke I. Bouzenita, "The Principle of Neutrality and 'Islamic International Law' (Siyar)", *Global Jurist*, Vol. 11, No. 1 (Advances), 2011, Article 4, p. 2.

operates in their territories respects the duty of neutrality.<sup>5</sup> The ICRC has to adopt the same apolitical attitude to all parties to a conflict, so that the interests of the victims continue to be the central focus of relief efforts and so that the trust of others is not undermined.<sup>6</sup>

The ICRC is described by Article 3 common to the four Geneva Conventions as “an impartial humanitarian body” that “may offer its services to the Parties to the conflict”.<sup>7</sup> Its Statutes also describe it as “an independent humanitarian organization”<sup>8</sup> and identify its Fundamental Principles. According to the neutrality principle of the ICRC and the wider Red Cross and Red Crescent Movement, and in order to continue to enjoy the confidence of all, taking sides in hostilities or engaging at any time in controversies of a political, racial, religious or ideological nature is prohibited.<sup>9</sup> Observing the principle of neutrality from the outset and at all times, the ICRC will win the confidence of States.<sup>10</sup> The neutrality of the ICRC gives it the credibility to gain access to victims of conflicts. Neutrality is not an objective for the ICRC but rather a means of carrying out its mandate to assist victims of armed conflicts.<sup>11</sup>

## Neutrality from an Islamic law perspective

In this part, I seek to clarify the concept of neutrality in the Qur’an and the *Sunnah*<sup>12</sup> which are the two main and divine sources of Islamic law. Moreover, I attempt to find an answer to this issue from the perspective of *siyash al-shar’iyyah* (*Shari’ah*-oriented policy) and *maqasid al-Shari’ah* (objectives of *Shari’ah*).<sup>13</sup>

### Neutrality according to the Qur’an and the *Sunnah*

Under Islamic law, it is permissible to render or accept relief work and/or medical services. According to Muhammad Hamidullah, it is permissible for Muslims to

5 D. Plattner, above note 3.

6 For the underlying rationale of the principle of neutrality, see Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, ICRC, Geneva, 1979, available at: [www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm](http://www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm).

7 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950); Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950).

8 Statutes of the ICRC, 3 October 2013, Art. 1, available at: [www.icrc.org/eng/resources/documents/misc/icrc-statutes-080503.htm](http://www.icrc.org/eng/resources/documents/misc/icrc-statutes-080503.htm).

9 J. Pictet, above note 6. This definition also figures in the Preamble to the Statutes of the International Red Cross and Red Crescent Movement, above note 1.

10 D. Plattner, above note 3.

11 *Ibid.*

12 *Sunnah* means sayings, deeds and approvals of Prophet Muhammad.

13 *Shari’ah* means the laws ordained by Allah for His servants through Prophet Muhammad. It is found in the Qur’an and the *Sunnah*.

accept ambulance services and medical help from neutral parties or even non-Muslims.<sup>14</sup> It is also permissible for Muslims to render relief work to non-Muslims. He argues that this is based on verse 5:2 that provides to the effect: “O you who believe! ... Help you one another in righteousness and piety.”<sup>15</sup> Al-Mawardi is quoted to opine that in this verse, Allah has turned to cooperation in righteousness and has connected it with cooperation in piety for Him, because in piety there is pleasure of Allah, and in righteousness there is pleasure of human beings, and whosoever gets both the pleasure of Allah and the pleasure of human beings, he/she is completely successful.<sup>16</sup>

Indeed, it is permissible for Muslims to render relief work to their enemies. This was practiced by Prophet Muhammad. Once, when famine was afflicting the Quraysh (Prophet Muhammad’s tribe) in Mecca, the Prophet sent a contribution of ripe dates and 500 dinars even though in the preceding year, the Quraysh had attacked his stronghold Medina, resulting in the martyrdom of many Muslims in the Battle of Uhud.<sup>17</sup>

However, if one State aggresses against another and systematically violates the law of war by, for instance, directing attacks against the civilians of the latter, committing murder and rape on a massive scale, is it permissible under Islamic law for Muslims who take humanitarian action in the armed conflict to remain neutral? It seems that being neutral with regard to good and evil is incompatible with the principle of justice that Islam enjoins.<sup>18</sup> Justice in this context means establishing a balanced position, without inclining towards or favouring any side and without being swayed by biases or prejudice, and this is achieved by way of fulfilling everyone’s rights and obligations and eliminating excess and disparity.<sup>19</sup> Neutrality in this situation also appears not to be in conformity with the commandment of the Qur’an on Muslims to enjoin good and forbid evil.<sup>20</sup> In

14 Muhammad Hamidullah, *Muslim Conduct of State*, revised ed., Kashmiri Bazar, Lahore, 1945, p. 271.

15 *Ibid.*

16 Abu ’Abd Allah Muhammad ibn Ahmad al-Ansari al-Qurtubi, *Al-Jami’ li-Ahkam al-Qur’an*, Vol. 6, Dar al-Kutub al-’Ilmiyyah, Beirut, n.d., p. 33.

17 Ahmed Zaki Yamanai, “Humanitarian International Law in Islam: A General Outlook”, in Hisham M. Ramadan (ed.), *Understanding Islamic Law: From Classical to Contemporary*, AltaMira Press, Lanham, MD, New York, Toronto and Oxford, 2006, p. 83; M. Hamidullah, above note 14, p. 216.

18 Qur’an, 4:58–59:

Allah commands you to render back your trusts to those to whom they are due; and when you judge between man and man, that you judge with justice: verily how excellent is the teaching which He gives you! For Allah is He Who hears and sees all things. (58)

O you who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If you differ in anything among yourselves, refer it to Allah and His Messenger, if you do believe in Allah and the Last Day: that is best, and most suitable for final determination. (59)

Qur’an, 4:135:

O you who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest you swerve, and if you distort (justice) or decline to do justice, verily Allah is well-acquainted with all that you do.

19 M. Kamal Hassan, *The Need to Understand al-Wasatiyyah as Part of IIUM’s Mission of Islamisation*, Centre for Islamisation, CENTRIS IIUM, Selangor, 2013, p. 13; Mohamad Akram Laldin, *Introduction to Shariah and Islamic Jurisprudence*, CERT Publications, Kuala Lumpur, 2006, p. 33.

20 Qur’an, 3:110 in part:

addition, according to the Qur'an, failure to enjoin good or forbid evil is also an evil.<sup>21</sup> Prophet Muhammad also laid down the principle of forbidding evil.<sup>22</sup>

Muhammad Hamidullah writes that the term *i'tizala*, which means being neutral, was used by nations since before the advent of Prophet Muhammad and continued into his time.<sup>23</sup> Verses 4:88–91 of the Qur'an command the Muslims to fight those who pretend to be Muslims but actually support the Muslims' enemies.<sup>24</sup> However, the verses prohibit the Muslims from fighting a third party who does not want to fight the Muslims nor support the Muslims' enemy.<sup>25</sup> It is submitted that by the prohibition from fighting a genuine third party, the Qur'an, 4:88–91 permits the Muslims to recognize a neutral party.<sup>26</sup> Hamidullah gives examples that show variations of neutrality that occurred during the era of the Prophet. One example that is quite close to the modern concept of neutrality is the stance of Banu 'Abd ibn 'Adi<sup>27</sup> regarding the war between the Muslims and the Quraysh. In the fifth year after the Prophet's Migration to Medina, Banu 'Abd

You are the best of peoples, evolved for humankind, enjoining what is right, forbidding what is wrong, and believing in Allah ...

Qur'an, 3:104 in part:

Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong ...

Qur'an, 9:71 in part:

The Believers, men and women, are protectors, one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His Messenger ...

21 Qur'an, 5:62–63:

Many of them (People of the Book) do you see, racing each other in sin and transgression and their eating of things forbidden. Evil indeed are the things that they do. (62)

Why do not the rabbis and the doctors of law forbid them from their (habit of) uttering sinful words and eating things forbidden? Evil indeed are their works. (63)

22 "Whosoever among you saw an evil should change it with his hands. If he is not able to do so, he should change it with his tongue. If he is not able to do so, he should hate it with his heart, but that is the weakest state of faith." (Sahih Muslim)

23 M. Hamidullah, above note 14, pp. 277–297.

24 Qur'an, 4:88–91:

Why should you be divided into two parties about the hypocrites? Allah has upset them for their (evil) deeds. Would you guide those whom Allah has thrown out of the way? For those whom Allah has thrown out of the way, never shall you find the way. (88)

They but wish that you should reject the faith, as they do, and thus be on the same footing (as they): so take not friends from their ranks until they flee in the way of Allah (from what is forbidden). But if they turn renegades, seize them and slay them wherever you find them; and (in any case) take no friends or helpers from their ranks – (89)

Except those who join a group between whom and you there is a treaty (of peace), or those who approach you with hearts restraining them from fighting you as well as fighting their own people. If Allah had pleased, He could have given them power over you, and they would have fought you: therefore if they withdraw from you but fight you not, and (instead) send you (guarantees of) peace, then Allah has opened no way for you (to fight) against them. (90)

Others you will find that wish to gain your confidence as well as that of their people: every time they are sent back to temptation, they succumb thereto; if they withdraw not from you nor give you (guarantees) of peace besides restraining their hands, seize them and slay them wherever you get them; in their case We have provided you with a clear argument against them. (91)

25 Abu al-Fida Ismail ibn Kathir, *Tafsir Ibn Kathir*, Vol. 2, abridged by Safi-ur-Rahman al-Mubarakpuri, 2nd ed., Darussalam, Riyadh, 2003, pp. 537–542.

26 A. I. Bouzenita, above note 4, pp. 12, 16.

27 Banu 'Abd ibn 'Adi was a clan of the tribe Banu al-Dil, of the Kinanah group.

ibn 'Adi called to the Prophet, "O Muhammad! ... We do not want to fight you. On the other hand, we are prepared to help you in your expeditions, except against the Quraysh of Mecca, for we would not want to fight against the Quraysh."<sup>28</sup> Regarding the war between the Muslims and the Quraysh, the tribe did not want to take a side but wanted to be neutral instead. Although the Quraysh was the aggressor who declared war on the Muslims<sup>29</sup> and had mutilated the dead Muslims' bodies in the Battle of Uhud, the Prophet did not say that the tribe's declaration of neutrality was unjust or tolerating evil. In fact, the Prophet recognized the neutral status of Banu 'Abd ibn 'Adi and did not fight the tribe. As there was no rejection by the Prophet of the declaration of neutrality, it is submitted that being neutral is originally permissible under the Islamic law.

### The relevance of the concepts of *siyasah al-shar'iyah* and *maqasid al-Shari'ah* to neutrality

Neutrality in taking humanitarian action may be justified by the application of *siyasah al-shar'iyah* and *maqasid al-Shari'ah*. *Siyasah al-shar'iyah* (*Shari'ah*-oriented policy) is the science of State administration which is based on Islamic law and systems that brings goodness to the public and protects them from evil.<sup>30</sup> Its scope is very wide, covering politics, economics, and financial and social affairs.<sup>31</sup> Policies must be based on the legal texts from the Qur'an and the *Sunnah*. If there is no legal passage in the Qur'an and no *Sunnah* on the matter, the policy must not be contrary to the basic principles of *Shari'ah*.<sup>32</sup> The exercise of *ijtihad*<sup>33</sup> on numerous fields and sectors shapes government policies,<sup>34</sup> which aim towards *maslahah al-'ammah* (the general welfare).<sup>35</sup>

The objective of *siyasah al-shar'iyah* is to carry out the *maqasid al-Shari'ah* (objectives of *Shari'ah*) in protecting the five human interests, namely: Muslim faith, life, mind, lineage and honour, and property. These five essential interests must be protected because their neglect will lead to total disruption and disorder, and hence an undesirable end.

28 M. Hamidullah, above note 14, p. 289; A. I. Bouzenita, above note 4, p. 17.

29 The first verse of the Qur'an revealed on the subject of fighting shows that it was the Quraysh who had declared war on the Muslims: "To those against whom war is made, permission is given (to fight)" (Qur'an, 22:39 in part).

30 Bharudin Che Pa, Siti Arni Basir and Shukeri Mohamed, "Perlaksanaan *Siyasah Syar'iyah* dalam Pentadbiran di Malaysia", *Jurnal Al-Tamaddun*, Vol. 5, 2010, pp. 57, 60; Shukeri Muhammad, "*Siyasah Syar'iyah* dalam Membentuk Gagasan Fiqh Masyarakat Majmuk", paper presented at Simposium Fiqh Masyarakat Bukan Islam dalam Negara Islam, organized by the Association of Muslim Scholars of Selangor Branch in cooperation with the Department of Islamic Religion of Selangor and the Council of Islamic Religion of Selangor, in Selangor on 23–24 December 2009.

31 B. Che Pa, S. A. Basir and S. Mohamed, above note 30, pp. 57, 60.

32 *Ibid.*, pp. 60–62.

33 *Ijtihad* means the process of inferring rules of *Shari'ah* from its sources or applying rules of *Shari'ah* to a particular issue.

34 B. Che Pa, S. A. Basir and S. Mohamed, above note 30, p. 62.

35 *Ibid.*, pp. 61–62.

Although the classical concept of *siyasaḥ al-sharʿiyyah* relates to the administration of the State, it is submitted that the concept can be extended to an international humanitarian organization that has an international legal personality. This extension is necessary because of the importance of protecting the five essential human interests. In 1999, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) declared in the case of *Prosecutor v. Simić et al.* that the ICRC enjoys a special status under international law, and it stated in a footnote that it “is generally accepted that the ICRC, although a private organization under Swiss law, has an international legal personality”.<sup>36</sup> Although the classical concept of *siyasaḥ al-sharʿiyyah* relates to the administration of a State which is Islamic in its ideology, it is contended that the humanitarian mission of the ICRC is generally and basically compatible with Islamic teaching. The application of the concept can therefore be extended to the ICRC.

The humanitarian mission of the ICRC is to protect the lives and dignity of victims of armed conflicts and to provide them with assistance. This policy leads to the general welfare of the victims and is generally compatible with the *maqasid al-Shariʿah* in the protection of the essential human interests. If the ICRC, for example, was to denounce collected evidence on violations of the law of armed conflict, no belligerent would give access to the ICRC in the future for the purposes of taking humanitarian action.<sup>37</sup> This would lead to an undesirable end.

Nevertheless, it is important that there are Muslims who fight aggressors and war criminals. When jihad is carried out by a group of Muslims, the *fard kifayah* (collective obligation) is considered to be fulfilled. Carrying out jihad is *fard kifayah*, based on the following verses of the Qurʿan:<sup>38</sup>

Not equal are those Muslims who sit (at home), except those who are disabled, and those who strive and fight in the cause of Allah with their goods and their persons. Allah has granted a grade higher to those who strive and fight with their goods and persons than to those who sit (at home). Unto all (in faith) has Allah promised good: but those who strive and fight has He distinguished above those who sit (at home) by a special reward.<sup>39</sup>

...

Nor should the Muslims all go forth together: if a contingent from every expedition remained behind, they could devote themselves to studies in

36 ICTY, *The Prosecutor v. Blagoje Simić, Milan Simić, Miroslav Tadić, Stevan Todorović, Simo Zarić*, Trial Chamber, 27 June 1999, para. 46, fn. 9.

37 For the principle of confidentiality, see Memorandum, “The ICRC’s Privilege of Non-Disclosure of Confidential Information”, in this issue of the *Review*.

38 Fakhr al-Din ʿUthman ibn ʿAli al-Zaylaʿi al-Hanafi, *Tabyin al-Daqaʿiq on the margin of Sharh Kanz al-Daqaʿiq*, ed. al-Shaykh Ahmad ʿAzr ʿInayah, Vol. 4, Dar al-Kutub al-ʿIlmiyyah, Beirut, 2000, p. 80. See also Mohammad Talaat al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach*, Martinus Nijhoff, The Hague, 1968, p. 141.

39 Qurʿan, 4:95.

religion, and admonish the people when they return to them – that thus they (may learn) to guard themselves (against evil).<sup>40</sup>

The first verse provides that Allah distinguishes the Muslims who fight above those who sit in their homes not hindered by disability. The second verse enjoins that there must be Muslims who remain behind to study religion while the others go forth together for a jihad expedition. It means that not every Muslim is obliged to fight. The *fard kifayah* is sufficiently performed when a reasonable number of Muslims join the fight. Thus, relating this to the issue of rendering humanitarian assistance in times of armed conflict, it is submitted that as long as aggressors and war criminals are met with resistance by Muslims, it is permissible for other Muslims to remain neutral so that they can render humanitarian assistance to victims of armed conflict.

### *Pacta sunt servanda*

Finally, many Muslim States are parties to the Geneva Conventions. According to the Qur'an, obligations under a contract or treaty must be fulfilled,<sup>41</sup> and violations thereof will render the violating party responsible.<sup>42</sup> In fact, verse 8:72 provides that even though Muslims are obliged to intervene to help a Muslim minority in another State, the intervention cannot be carried out if the oppressing State has a treaty of mutual alliance with the Muslims.<sup>43</sup> This shows that the legal principle of *pacta sunt servanda* (from Latin, meaning "agreements must be kept") prevails over the principle of justice for the oppressed and over the principle of forbidding evil. Thus, Muslim States who have agreed that the ICRC would be "an impartial humanitarian body"<sup>44</sup> have to accept that provision, because that is what is required by the Qur'an.

40 Qur'an, 9:122.

41 Qur'an, 5:1 in part:

O you who believe! Fulfill (all) obligations ...

Qur'an, 16:91–92 in part:

Fulfill the covenant of Allah when you have entered into it, and break not your oaths after you have confirmed them: indeed you have made Allah your surety; for Allah knows all that you do. (91)

And be not like a woman who breaks into untwisted strands the yarn she has spun after it has become strong. Nor take your oaths to practice deception between yourselves, lest one party should be more numerous than another ... (92)

Qur'an, 2:177 in part:

... But it is righteousness ... to fulfill the contracts which you have made ...

42 Qur'an, 17:34 in part:

... And fulfill (every) engagement, for (every) engagement will be enquired into.

43 Qur'an, 8:72 in part:

... But if they (Muslims who have not come into exile) seek your aid in religion, it is your duty to help them, except against a people with whom you have a treaty of mutual alliance. And Allah sees all that you do.

44 Common Art. 3 to the GC.



## Conclusion

The ICRC successfully conducts its humanitarian operations based on its seven Fundamental Principles, in particular the principle of neutrality. The prohibition in the Qur'an against fighting a third party that does not want to fight against any side in a conflict means that it is permissible from an Islamic perspective to recognize a neutral party. There is also a practice of Prophet Muhammad recognizing the neutral stance of a tribe that did not want to fight him nor support his enemy. It is submitted that by way of analogy, which is a method of deducing Islamic law from its sources, as it is permissible for Muslims to recognize a neutral party, it is also permissible for Muslims to be neutral so that they can provide humanitarian assistance to victims of armed conflicts.

The above discussion requires an effort to reconcile divine sources that appear to be in conflict with each other, based on the understanding that Allah the Law-Giver does not intend repugnancy. There are great benefits to humankind in being neutral while providing humanitarian assistance to victims of armed conflicts, such as protection and saving lives, as can be seen in the successes of the ICRC. Such action can be justified based on the application of *siyasah al-shar'iyah* and *maqasid al-Shari'ah*. Even though there is no legal passage in the Qur'an or the *Sunnah* that directly deals with providing neutral humanitarian assistance, humanitarian operations that have the mission of protecting human lives and dignity can be carried out based on the principle of neutrality because such operations are consistent with the objective of *Shari'ah* to protect the five essential human interests identified above. As long as there are Muslims who carry out the *fard kifayah* of jihad against aggressors and war criminals, it is permissible for Muslim humanitarian workers to remain neutral.

