



# Protection of the Environment during War in Islamic Law Literature<sup>1</sup>

**Asst. Prof. Dr. Veysel NARGÜL**

Former Faculty Member of Yozgat Bozok University Faculty of Divinity Department of Fiqh -  
[v.nargul@gmail.com](mailto:v.nargul@gmail.com) ORCID: 0009-0007-4533-7394

## Abstract

Human-centered environmental issues are a phenomena as old as human history. In the earlier periods, it was not regarded as a common problem because environmental damage was not at a level that would negatively affect the ecosystem and living beings. In the modern period, especially after the industrial revolution, some solutions have been developed at national and international levels after taking into consideration the damage of environmental problems to living beings and the ecosystem on a global scale. Although some countries that were experiencing these problems on a national scale made some progress individually, the 1972 Stockholm Declaration was the first time environmental issues were placed at the forefront of international concerns, and marked the start of a dialogue at the international level to protect the environment.

The Qur'an does not approve any illegitimate war against a state or a community. There is no recorded war by Prophet Muhammad against a community without a legitimate reason. Islamic law proposes maximum legality and morality during a legitimate war. It is also seen that this Islamic perspective is grasped in terms of protecting the environment. When analyzing the opinion of jurists of Islamic Law, it is seen that unnecessary destruction of the environmental values such as houses, trees and green spaces is prohibited, as a basic principle. Therefore, Islamic jurists' perspectives on provisions concerning the destruction of environmental elements like trees, buildings, and green spaces are constrained by military necessity only. Consequently, environmental damage during warfare is deemed permissible solely for defensive purposes. However, this legitimacy is contingent upon avoiding unnecessary demolition.

**Keywords:** Islamic Law, Law, War, Environment, Environmental Protection.

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## 1. INTRODUCTION

Human-centered environmental issues are a phenomena as old as human history. In the earlier periods, it was not regarded as a common problem because environmental damage was not at a level that would negatively affect the ecosystem and living beings. In the modern period, especially after the industrial revolution, some solutions have been developed at national and international levels after taking into consideration the damage of environmental problems to living beings and the ecosystem on a global scale. Although some countries that were experiencing these problems on a national scale made some progress individually, the 1972 Stockholm Declaration was the first time environmental issues were placed at the forefront of international concerns, and marked the start of a dialogue at the international level to protect the environment.<sup>2</sup> Subsequent progress has been made in environmental protection efforts, primarily during times of peace. However, environmental destruction resulting from harmful activities and negligence during peacetime can be particularly severe.<sup>3</sup>

Armed conflicts threatening the natural environment have caused destructive results on the natural environment directly or indirectly. Modern warfare techniques driven by technological advancements further intensifies the potential for environmental destruction. This heightened threat posed by armed conflicts to the sustainability of the natural environment has underscored the importance of international law in addressing these issues.<sup>4</sup>

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<sup>2</sup> It is the final declaration of the meeting hold on 16 June 1972 in Stockholm regarding the issue of environment. Stockholm Declaration is one of the most important documents in which world countries took the decision of performing common action on the protection of the environment. It was stated in the final declaration that protection of natural environment and artifacts deemed as cultural heritage of mankind was the requirement of living under better conditions and human rights. It was focused on the compulsion of protection of the environment for sustainable development and providing better living conditions for the future generations. Countries decided to act together in preventing increasing environmental destruction. An action plan was prepared within a wide scope such as prevention of marine pollution, protection of endangered animals, restoration and maintenance of historical structures accepted as cultural heritage. It was specified that protection of the environment was the human duty and it was aimed at preparing laws and entering international laws into force in order to protect the environment (Marc Pallemarts, “*Stockholm'den Rio'ya Uluslararası Çevre Hukuku: Geleceğe Doğru Geri Adım Mı?*”, translated by Bülent Duru, Ankara Üniversitesi SBF Dergisi, 1997, Cilt: 52 Sayı: 01, , p. 614. <https://dergipark.org.tr/tr/pub/ausbf/issue/3109/43040> (22.10.2023); Selim Kılıç, “*Uluslararası Çevre Hukukunun Gelişimi Üzerine Bir İnceleme*”, Cumhuriyet Üniversitesi İktisadi ve İdari Bilimler Dergisi, Volume 2, Issue 2, (2001), p. 136-138.

<sup>3</sup> Hüseyin Pazarıcı, “*Uluslararası Hukuka Göre Çevrenin Savaş Sırasında Korunması*”, Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi, Gündüz Ökçün'e Armağan, (January-June 1992), Issue. 1-2, p. 103.

<sup>4</sup> Ahmet Hamdi Topal, “*Silahlı Çatışmalarda Doğal Çevrenin Korunması*”, Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni, MHB year 29, issue 1-2, (2009), p. 214-215.

Conflicts and violent uprisings in different parts of the world, particularly the Middle East in recent decades, have resulted in the loss or degradation of numerous environmental values and biodiversity. This has emphasized the importance of protecting the environment during times of war.<sup>5</sup> Thus, within the framework of this current issue, which we have decided to explore from an Islamic law perspective, our aim is to systematically organize the scattered information found in Islamic law resources concerning the protection of the environment during wartime, ultimately arriving at a scientifically informed conclusion.

## **2. PROTECTION OF THE ENVIRONMENT DURING WARTIME IN ISLAMIC LAW**

Although war is an undesired phenomenon in Islamic law, some regulations have been made by acknowledging historical experience and social reality. In both the Qur'an and Sunnah, the two main sources of Islamic law, there are provisions regarding the conduct of war.<sup>6</sup> Within this framework, the use of barbaric methods in warfare, targeting non-combatants such as women, children, the elderly, the blind, and clergy, as well as mutilating enemy corpses, are strictly prohibited. All forms of violence and brutality are forbidden. While the general principle prohibits violence, in extent circumstances, it is permissible to respond to violence with an equivalent level of force, limited to what is necessary.<sup>7</sup>

In Islamic law, actions such as killing, injuring, pursuing, capturing, intimidating, demoralizing enemies during war, and manipulating them to adopt incorrect tactics and strategies are permissible. Furthermore, all forms of preparation for war, including engaging in cold war tactics, propaganda, as well as destroying fortifications or flooding enemies, are permitted. Additionally, tactics such as night raids and ambushes are considered allowable means of managing and controlling warfare. Just as in the Battle of Badr, actions such as intercepting water sources to render them unusable, engaging in maritime and aerial warfare, are permissible. According to

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<sup>5</sup> Iraq's setting fire in oil-wells of Kuwait and pouring some amount of oil into the sea in the Gulf War in 1990-1991, destruction of historical artifacts along with Baghdad and other cities in the occupation of Iraq and movements of violence being experienced in Syria show that the environment is under threat.

<sup>6</sup> See. Bakara, 2/190-194; Maide, 5/2; Enfal, 8/61.

<sup>7</sup> Muhammed b. Ahmed b. Muhammed İbn Rüşd, *Bidayetü'l-Müctehid ve Nihâyetü'l-Muktesid*, İstanbul 1985, 1/310-311; Ebu Abdillah Muhammed b. İsmail Buhari, *Sahihu'l-Buhari*, (İstanbul: 1992), Cihad, 146; Süleyman b. Eş'as Ebu Davud, *Sünenü Ebi Davud*, İstanbul 1992, Cihad, 110.

Islamic law, attacking enemies with all necessary weapons for battle is permitted, except for the use of poisonous weapons, which is prohibited.<sup>8</sup>

While regulations concerning Islamic war law prioritize protecting humans, attention is also given to safeguarding other living creatures and the natural environment. Thus, during wartime, actions that cause harm to both humans and the environment, such as cutting down trees, burning orchards and residential areas, destroying agricultural produce, killing animals, and poisoning water sources, are prohibited. These provisions aim to prevent threats to the lives of all living beings, maintain ecological balance, and mitigate environmental crises.<sup>9</sup>

Recognizing the need to protect the environment during wartime is inherently linked to understanding the fundamental principles and legitimacy of war in Islamic law. It is important to emphasize that war is permissible only under legitimate circumstances and for justifiable reasons. Therefore, according to Islamic law, a war lacking legitimate justification cannot be deemed permissible.<sup>10</sup> One of the principles that an army must adhere to during wartime is refraining from cutting down trees to avoid causing damage to the environment.<sup>11</sup> Additionally, within Islamic law, it is permissible as a war tactic to psychologically discourage the enemy, and in cases of necessity, to cut and burn trees and crops on enemy lands to compel them to agree to a ceasefire.<sup>12</sup> Indeed, while Islamic law prohibits the destruction of properties in both peacetime and wartime, there are exceptional circumstances during war where actions against environmental assets belonging to the enemy are permissible. It is allowable to demolish buildings, cut down trees, and

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<sup>8</sup> İbrahim b. Muhammed Halebi, *Mülteka'l-Ebhur*, İstanbul 1309, p. 86-87; Damat Efendi, *Mecmeu'l-Enhur fi Şerh-i Mülteka'l-Ebhur*, Beyrut 1998, 2/412-413; Ahmet Reşid Turnagil, *İslamiyet ve Milletler Hukuku*, İstanbul 1972, 216.

<sup>9</sup> Rum, 30/41.

<sup>10</sup> War is the topic of a separate study in Islamic law. In brief, war in Islamic law is conducted in cases when protecting rights of Muslims, helping agreement and neighbor countries, solving problems which are impossible to solve with peaceful relationships (Bakara, 2/216; Bakara, 2/190; Bakara, 2/194; War deemed as bad depending on its structure in Islamic law and depending on the principle of “compulsions make prohibitions allowable” (*Mecelle-i Ahkam-ı Adliyye*, Edited by Ali Himmet Berki, İstanbul, 1985, article 21) is legitimated in order to withstand against invasions. This legitimacy is validated in a way that will counteract against damage and cruelty with the principle of “compulsions are assessed within their own amounts” (*Mecelle*, article 22) and framework of the legitimacy area is determined (Ahmet Yaman, *İslam Devletler Hukukunda Savaş*, İstanbul 1998.

<sup>11</sup> Hemmam es-San'ani Abdurraezzak, *el-Musanef*, thk. Habiburrahman el-Azami, Beyrut 1983, V, 220, 201.

<sup>12</sup> Buhari, Megazi, 14, Tefsir-i Haşr, 2, Hars, 6, Cihad, 154; İbn Haccac Ebu'l-Hüseyn Kuşeyri Müslim, *Sahihu Müslim*, Cihad, 29; Ebu Davud, Cihad, 83. See Macit, Yunus, *H. Peygamber'in Sünnetinde Çevre*, Trabzon 2000, p. 78-79.

destroy agricultural products of the enemy, provided that it is justified by compelling circumstances and adheres to exceptional principles specific to wartime.<sup>13</sup>

Throughout history, parties engaged in wars have targeted each other's manpower and natural resources. This has inevitably led to widespread destruction, including the loss of many living creatures and damage to the natural environment. Actions such as demolishing herds, destroying forests, vineyards, orchards, and cultivated areas, as well as causing casualties among humans, have been common during wartime. It is noted that even in the pre-Islamic period, armies killed civilians who were not directly involved in the conflicts, demolished crops, and burned residential areas.<sup>14</sup> These kinds of practices are deemed as *conspiracy* in the Qur'an, and they are prohibited.<sup>15</sup> Accordingly, Islamic law forbids the destruction of agricultural areas, trees, sanctuaries and built-up places during war.<sup>16</sup>

Furthermore, it is prohibited in Islamic law to target civilian population or cause harm to plants and other living creatures during wartime. Any action that may harm the environment is permissible only as a matter of military necessity/compulsion. The directive issued by Prophet Muhammad to refrain from killing women and children, avoiding attacks on civilians, abstaining from burning trees, and not demolishing built-up areas or residential areas during the Mute war<sup>17</sup> served as a foundational basis for the establishment of a general principle on this issue. In the order of Abu Bakr during his caliphate period that he circulated to the army commanders as "...do not uproot date palms and do not burn them, do not cut any fruit tree, do not kill any sheep, any cow and even any camel except for the necessary situations...",<sup>18</sup> three of the ten articles were dedicated to safeguarding the environment during war. In this order, it is emphasized that protection of environmental assets such as animals and plants as well as innocent people is a major principle in wartime. In Islamic law, it is explicitly stated that the protection of the natural

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<sup>13</sup> Halebi, *Mülteka'l-Ebhur*, p. 86; Damat Efendi, *Mecmeu'l-Enhur*, 2/412-413; Turnagil, *İslamiyet ve Milletler Hukuku*, p. 218-219.

<sup>14</sup> In Pre-Islamic age of ignorance, armies gave harm to the environment with practices such as demolishing products, destructing fields, killing people, setting fires in the places they entered. (See. Mevdûdî, *Cihad, İslam'da Savaş Hukuku*, translated by Beşir Eryarsoy, İstanbul 1992, p. 205- 249; Philip K. Hitti, *Siyasi ve Kültürel İslam Tarihi*, translated by Salih Tuğ, İstanbul 1980, 1/134.

<sup>15</sup> Bakara, 2/205; Buhârî, *Tefsîr*, 33.

<sup>16</sup> İbn Rüşd, *Bidayetü'l-Müctehid*, I, 311; Buhari, *Cihad*, 146.

<sup>17</sup> Hattab, Muhammed Şîr, *er-Rasûlü'l-Kâidu*, Bağdat 1960, p. 204.

<sup>18</sup> Muhammed b. Hasan eş-Şeybani, *Şerhu Kitabi's-Siyeri'l-Kebir*, İmla: Muhammed b. Ahmed es-Serahsi, thk. Hasan İsmail eş-Şafii, Beyrut 1997, 1/31-32; Ebu Cafer Muhammed b. Cerir et-Taberi, *Târîhu'r-Rusul ve'l-Müluk*, Mısır ts., 3/226-227.

environment is a principle to be upheld not only in peacetime but also during extraordinary circumstances such as wartime. Therefore, issuing such orders as the head of the state can be seen as a legitimization of principles of war aimed at safeguarding the environment.

When considering the negative environmental practices during the Pre-Islamic period, the principles established by Abu Bakr should be regarded as a significant development in the history of Islamic law. This underscores the comprehensive understanding within Islamic law of protecting the environment, encompassing the entire universe. This protection responsibility places humans at the center, even during times of war, reflecting a broader perspective on environmental preservation.

While the disciplines and practices of the Qur'an, the teachings of Prophet Muhammad, and the principles developed by Abu Bakr underscore the importance of protecting the environment, there are instances where Prophet Muhammad's actions in war caused environmental damage. Although harming the environment in wars is generally prohibited, the presence of such practices by Prophet Muhammad may raise questions about potential contradictions on this issue. While some of the practices attributed to Prophet Muhammad may not align with modern definitions, it is important to understand that his actions were driven based on the conditions of his time and were deemed necessary for military purposes. Before examining these practices within the context of environmental protection, it is crucial to investigate the reasons behind their execution and determine whether they were legitimate or not. This approach aims to contextualize Prophet Muhammad's actions, which may seem contradictory to the general rule of protecting the environment. Three prominent incidents related to this issue are worth examining.

## **2.1. Use of the Environment against Enemy in War: Practices of the Prophet Muhammad**

### **2.1.1. Cutting date palms of Nadir tribe**

The cutting of date palms belonging to the Nadir tribe serves as an example where the environment was directly utilized as a tool of war. The Nadir tribe were expelled from Mecca as they violated their agreement with Prophet Muhammad by failing to pay the blood money demanded and for attempting serious betrayals, including an assassination plot against the Prophet Muhammad.<sup>19</sup>

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<sup>19</sup> Ebu Davud, Harac, 23; Muhammed b. Ömer el-Vakidi, *Kitâbu'l-Megazî*, Oxford University 1966, 1/363-370; Ebu Muhammed Abdülmelik İbn Hişam, *es-Sîretün-Nebeviyye*, thk. Mustafa Sekâ, Kahire ts., 3-4/190-193; Muhammed Hamidullah, *İslam Peygamberi*, translated by Salih Tuğ, Ankara 2003, 1/582.

The Prophet Muhammad had initially made a peace agreement with the Nadir tribe in Medina. However, when Amr b. Umayya mistakenly killed two individuals from the Kilab tribe, the Prophet Muhammad sought assistance from the Nadir tribe to pay the blood money, as per Arab tradition. Despite appearing to accept the demand, the Nadir tribe devised a plan to assassinate the Prophet Muhammad. Upon learning of this treacherous plot, the Prophet Muhammad surrounded the Nadir tribe, who had retreated to their castle in an attempt to protect themselves.<sup>20</sup> When the Nadirogulla tribe refused to respond to peace and agreement proposals, their houses were demolished, and their date palms were cut down.<sup>21</sup> The Nadir tribe responded to this action of the Prophet.<sup>22</sup> The hesitation against reaction was resolved with the verse.<sup>23</sup>

### **2.1.2. Cutting date palms of Khyberians**

Another practice attributed to Prophet Muhammad was the cutting of date palms belonging to the Jews of Khyber around Natat. The holy war of Khyber was initiated to counter the propaganda spread by the Jews against Muslims, neutralize the Jewish threat to the northern outskirts of Madinah, and pacify the region in preparation for future conflicts with the Quraysh tribe.<sup>24</sup> Targeting to counteract against the cold war initiated against the Muslims by the Jews provides evidence that the excursion was undertaken for legitimate reasons.<sup>25</sup> Additionally, Prophet Muhammad's knowledge that the Khyberians were defeated in Madinah and that the fruit trees in Khyber were their primary financial source,<sup>26</sup> explains why targeting these trees was an effective method. The reason for employing this method as a sanction was to maintain peace and prevent further harm. Recognizing that weakening the enemy's financial power would be effective, Prophet Muhammad ordered the cutting of approximately 400 date palms.<sup>27</sup> The practice was further

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<sup>20</sup> See. Haşr, 59/14; Serahsi, *Şerhu Siyeri 'l-Kebir*, 1/40-41.

<sup>21</sup> Serahsî, *Şerhu Siyeri 'l-Kebir*, 1/39-41. Only six date palms were cut. (Muhammed Şükri Ahmed Zâveyti, *Tefsîru 'd-Dahhâk*, Kahire 1999, 2/854).

<sup>22</sup> Serahsi, *Şerhu Siyeri 'l-Kebir*, I, 40-41. For more detailed information, see İbn Hişam, *es-Sîretün-Nebeviyye*, 3-4/191.

<sup>23</sup> Bkz. Haşr, 59/11, 14; Serahsi, *Şerhu Siyeri 'l-Kebir*, 1/40-41; Maverdi, *el-Ahkâmu 's-Sultaniyye*, Beyrut ts., p. 52-53; Buhari, *Tefsir/Haşr*, 462.

<sup>24</sup> Ebu Bekir Ahmed b. Hüseyin Beyhaki, *es-Sünenü 'l-Kübrâ*, thk. Muhammed Abdulkadir Atâ, Beyrut 2003, 9/230-233; Ebu Muhammed Ali b. Ahmed b. Saîd İbn Hazm, *Cevâmiu 's-Sîre*, translated by M. Salih Arı, İstanbul 2004, p. 203-205.

<sup>25</sup> Hattab, *er-Rasûlü 'l-Kâidu*, p. 201-202.

<sup>26</sup> Vakidi, *Kitâbu 'l-Megazî*, 1/375; Ali b. Burhanuddin Halebi, *İnsânu 'l-Uyûn fî Sîreti Emîni 'l-Me'mûn*, Beyrut 1320, 2/565-566.

<sup>27</sup> Serahsi, *Şerhu Siyeri 'l-Kebir*, 2/41; Vakidi, *Kitâbu 'l-Megazî*, 2/640, 642, 643, 644, 645.

justified by the fact that these dense date palms sat between the two parties and provided cover for enemy soldiers to shelter among the trees.<sup>28</sup>

### **2.1.3. Cutting grapevines of Taif**

Cutting grapevines of Taif was another common practice. The Sakifians, who had been defeated in Evtas, sought refuge in Taif. They locked the city gates and began preparing for war<sup>29</sup> by restoring their castle and stocking it with a year's worth of provisions<sup>30</sup>. Two individuals, Urve b. Mes'ud and Gaylan b. Seleme, were sent to learn the craft of making debbabe, catapults and shields in anticipation of the impending conflict.<sup>31</sup>

The active war preparation of Sakifians against Muslims compelled Prophet Muhammad to advance towards Taif. The Taifians, confined within the safety of their castle walls and unwilling to engage in open combat, left the Muslims with no choice but to resort to the strategic tactic of cutting<sup>32</sup> and burning grapevines in order to achieve peace<sup>33</sup>. This practice, aimed at breaking the resistance of the Taifians, involved the specific directive to cut five trees from each variety of fruitless tree<sup>34</sup>, highlighting the deliberate preservation of fruit-bearing trees and the avoidance of unnecessary destruction through the limitation of tree cutting.

As it is seen, reasons behind the Prophet Muhammad's wartime practices concerning the environment are evident. The Prophet aimed to persuade enemies inclined towards war to embrace peace. Environmental damage was acknowledged within the context of seeking to transform the enemy's war efforts into peaceful resolutions through the most moderate means, thereby avoiding extremism. However, the utilization of the environment against the enemy during wartime extends beyond the three practices outlined. Therefore, a comprehensive examination of these practices and their underlying reasons becomes necessary to thoroughly discuss the issue.

These three practices of the Prophet Muhammad can be explained through the principle of *military necessity*, which underscores their fundamental reasons.<sup>35</sup> This principle, aimed to prevent

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<sup>28</sup> Halebi, *İnsânu'l-Uyûn*, 2/731.

<sup>29</sup> Muhammed İbn Sa'd, *Kitabu't-Tabakâti'l-Kebir*, thk. Ali Muhammed Ömer, Kahire 2001, 2/145-146.

<sup>30</sup> İbn Sa'd, *Kitabu't-Tabakâti'l-Kebir*, 2/145; Ebu'l-Feth Muhammed İbn Seyyid, *Uyûnu'l-Eser fi Funûn'l-Meğâzi ve's-Şemâil ve's-Siyer*, Beyrut ts., 2/270-271.

<sup>31</sup> Taberi, *Tarih*, 3/81-82.

<sup>32</sup> İbn Hişam, *es-Sîretün-Nebeviyye*, 3-4/478.

<sup>33</sup> Serahsi, *Şerhu Siyeri'l-Kebir*, 1/41.

<sup>34</sup> Beyhaki, *Sünen*, 9/84.

<sup>35</sup> Pazarıcı, *Çevrenin Savaş Sırasında Korunması*, (dn. 8), p. 112. The principle of military necessity is the basic principle affecting presence and context of international common law in the protection of environment during armed



environmental damage by prohibiting the use of methods and weapons that were harmful in armed conflicts, except in compulsory situations. Destruction and seizure of enemy goods were prohibited outside of necessary wartime circumstances. There was an anticipation to safeguard forests and enemy properties, even within conquered territories.<sup>36</sup> Additionally, except in cases where military operations were necessary on occupied lands during war, demolition of personal and corporate properties was also forbidden.<sup>37</sup> The objective was to protect both personal and state-owned properties during wartime events on occupied lands, with natural resources also falling within the scope of protected properties.<sup>38</sup> Now, the perspectives of Islamic jurists on this issue will be shared.

## **2.2. Protection of the Environment within the Framework of Views of Islamic Jurists**

Information concerning the protection of the environment during wartime in Islamic law offers a perspective for addressing contemporary environmental issues. Jurists have deliberated on matters pertaining to environmental damage, such as tree cutting, destruction of homes, and harming animals. Additionally, there have been attempts to divert attention from the primary focus of these discussions. We will endeavor to evaluate the issue from this standpoint.

### **2.2.1. The Allegation that Orders of the Prophet Muhammad Contradicted with the Orders of Ebu Bekir**

In Islamic law, alongside the prohibition of banishment through killing and enslaving the enemy, there is also prohibition by plundering the resources of the enemy.<sup>39</sup> Differences of opinion on

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conflicts. Accordingly, behaviors which do not provide military benefits and lead to unnecessary destructions and damages are prohibited. (Pazarıcı, (d. 8), p.112). With this principle, it is also prohibited to use methods and weapons which are damaging and do not possess military necessity in armed conflicts (Topal, *Silahlı Çatışmalarda Doğal Çevrenin Korunması*, p. 228-229).

<sup>36</sup> IV Numbered Geneva Convention, Article, 55. See. [http://ceidizleme.org/ekutuphaneresim/dosya/434\\_1.pdf](http://ceidizleme.org/ekutuphaneresim/dosya/434_1.pdf) (22.10.2023). See. *12 Ağustos 1949 Tarihli Cenevre Sözleşmeleri ve Ek Protokolleri*, Yayına hazırlayanlar: Melike Batur Yamaner, A. Emre Öktem, Bleda Kurtarcan, Mehmet C. Uzun, Galatasaray Üniversitesi Hukuk Fakültesi Yayınları: 42, İstanbul, ts., s. 21.

<sup>37</sup> IV Numbered Geneva Convention, Article, 53. See. [http://ceidizleme.org/ekutuphaneresim/dosya/434\\_1.pdf](http://ceidizleme.org/ekutuphaneresim/dosya/434_1.pdf) (22.10.2023). See. *12 Ağustos 1949 Tarihli Cenevre Sözleşmeleri ve Ek Protokolleri*, s. 20.

<sup>38</sup> In the decision made by UN General Assembly with the number of 47/37 and date of 25 November 1992, titled as Protection of the Environment in Armed Conflicts, it is stated that destruction of the environment without any military necessity is against international law (Topal, *Silahlı Çatışmalarda Doğal Çevrenin Korunması*, p. 228).

<sup>39</sup> The word “banishment” which has meanings such as punishing, dismissing, enchaining and hammering means making an example of someone before the public as law term. Banishment is also used to refer as annihilating enemies or harmful individuals altogether (İbn Manzur, *Lisanu'l-Arab*, Kahire ts., 7/4544; Ali Şafak, *Hukuk Terimleri Sözlüğü*, Rehber Yayıncılık, Ankara, 1992, p. 600).

this issue of banishment, categorized into three parts – goods, buildings, animals and crops – are explained through the perceived contradiction between the directive of Ebu Bekir and the practice of Prophet Muhammad. According to the proponents of this perspective, there exists a disparity between the burning of date palms of Nadirogullari<sup>40</sup> and the directive of Ebu Bekir regarding the protection of the environment during war. Recognizing that Ebu Bekir was aware of the importance of adhering to the teachings of Prophet Muhammad, he issued instructions concerning the protection of the environment.

With the instruction of Ebu Bekir to the army commander, which states “... *Do not cut fruit trees and do not demolish standing buildings! Do not kill camels and sheep with a reason except from eating them as a food! Do not ever burn and drown bees!*”<sup>41</sup>, it is asserted that he contradicted the order of the Prophet Muhammad.

When considering Ebu Bekir’s instruction, it is noted that the authority of the Prophet Muhammad’s practices was set aside or disregarded. However, instances like the cutting of date palms belonging to the Nadirogullari were specific occurrences that interfered with the environment during wartime. Therefore, it is acknowledged that Ebu Bekir’s instruction and Prophet Muhammad’s practices do not contradict with each other regarding the cutting of date palms. Both can be considered correct principles in their own right.<sup>42</sup>

Those who argue that it is inconceivable for Ebu Bekir to contradict the Prophet Muhammad and those who attribute the practice to the specific actions of the Nadirogullari tribe have ultimately affirmed Ebu Bekir’s instruction. Conversely, those asserting the absence of evidence against Prophet Muhammad’s practices are of the opinion that it is permissible to burn trees in wartime.<sup>43</sup> Imam Shafii (h.204) assessed the prohibition of the practices that cause harm to the environment during the battles in Damascus by Ebu Bekir, who sent Halid b. Velid to Tuleyha and Temimoğulları, as follows:

*“I think the order of Ebu Bekir regarding prohibition of cutting fruit trees may be caused by his hearing rumor that the city of Damascus was going to be conquered by Muslims. When it*

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<sup>40</sup> Buhârî, Megâzî, 149.

<sup>41</sup> Malik b. Enes, *el-Muvatta*, (Yahya Leysi Rivayeti), thk. Beşşâr Avvâd Ma’ruf, Beyrut 1997, 1/577.

<sup>42</sup> Ebu’l-Fidâ İsmail İbn Kesir, *Tefsiru’l-Kur’âni’l-Azîm*, Beyrut 1987, 4/356.

<sup>43</sup> İbn Rüşd, *Bidayetü’l-Müçtehid*, 1/311-312.

*was allowable to cut or not to cut fruit trees depending on the situation, Ebu Bekir preferred not to cut them by taking the general situation into account”.*<sup>44</sup>

There are also observations suggesting that Ebu Bekir understood the underlying reasons behind the Prophet Muhammad’s practices. In fact, the Nadirogullari, who showed reluctance to pursue peace despite diplomatic efforts, faced consequences with the burning of their date palms due to legitimate reasons that sparked conflict. This action wasn’t aimed at demolishing all date palm gardens; rather, a portion of the date palms was cut until the Nadirogullari emerged from their stronghold. Once they did, the practice was ceased. Cutting some date palms is seen as legitimate for facilitating peace, given that the sanction yielded positive results.<sup>45</sup>

While Ebu Bekir’s instruction indicates that causing harm to the environment is not permissible during wartime, the practices of the Prophet Muhammad suggest that environmental damage may be warranted if deemed necessary. This apparent contradiction between the two principles can be reconciled by considering that burning and demolishing were deemed permissible as requirements of war, just at the use of catapults during the attack on Taif. The prohibition on these actions was explained by the understanding that these lands would eventually be conquered by Muslims.<sup>46</sup>

Consequently, Ebu Bekir’s instruction to army commanders should not be interpreted as a universal practice or principle advocating the destruction of the environment. In this regard, the actions and directives of Prophet Muhammad during wartime and in obligatory circumstances do not conflict with the overarching principles set forth by Ebu Bekir.

### **2.2.2. The Approach specifying that References of Classical Islamic Law are Invalid.**

It is asserted that the Islamic social order lacks inductive-deductive practices in the realm of international relations. Moreover, the formal-legal deliberations concerning the cutting of trees, burning of houses, and demolishing of animals belonging to enemy armies, as evidenced in the practices of Prophet Muhammad, serve as tangible examples of this matter. Presently, with the prevalence of large-scale warfare, it has been contended that environmental destruction becomes

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<sup>44</sup> Ebu Abdilllah Muhammed b. İdris eş-Şafii, *el-Ümm*, thk. Rıfat Fevzi Abdulmuttalib, Dâru’l-Vefâ, 2001, 5/633.

<sup>45</sup> Ebu Bekir Muhammed b. Abdilllah İbnu’l-Arabi, *Ahkamu’l-Kur’an*, tahrir ve ta’lik: Muhammed Abdulkadir Atâ, Beyrut ts., 4/210.

<sup>46</sup> Ahmed b. Ali b İbn Hacer el-Askalani, *Fethu’l-Bari bi Şerhi Sahihi’l-Buhari*, thk. Abdulaziz b. Abdilllah b. Bâz, Beyrut ts., 6/155.

unavoidable, leading some to argue that the principles and provisions outlined by Islamic law regarding environmental protection are rendered obsolete.<sup>47</sup>

The systematic views of Islamic jurists may appear outdated when applied contemporary warfare. The terminology used in classical Islamic jurisprudence may not directly align with modern terms. According to this approach, mass destruction seems inevitable in modern conflicts. However, this perspective overlooks the adaptability and dynamism inherent in Islamic law. The fact that modern warfare technology leads to mass casualties does not justify the current state of affairs. It also does not negate the relevance of the social-reality-based terms set forth by Islamic jurists. Upon examining the practices of Prophet Muhammad and Ebu Bekir, alongside the general principles governing environmental protection during peacetime, it becomes evident that the freedoms granted to statesmen dealing with adversaries is not restricted. They adapt their behavior according to the prevailing circumstances, acting within the parameters dictated by the exigencies of the agenda.<sup>48</sup>

Ebu Bekir supported the Syrian and Iraqi peoples who were under the sovereignty of the Roman and Persian empires, two superpowers of the time, despite not harboring enmity towards them but finding them unlovable. However, the destruction of the means of living of friendly peoples carries risks, as it may be perceived as a political maneuver that could alienate them and push them towards the enemy's side. Islamic jurists' examination of the practices of Prophet Muhammad and Ebu Bekir<sup>49</sup> within their historical contexts demonstrates that the principles of Islamic law regarding environmental protection during wartime remain relevant. They have developed universal principles that can guide the resolution of contemporary environmental challenges.

In the incident involving the Nadirogullari, the Prophet Muhammad encountered a tribe taking refuge in their castles, necessitating the destruction of their date palms, their primary source of livelihood, in order to compel them to leave their stronghold and surrender. This practice represented the most effective deterrent sanction that could be applied without resorting to direct warfare against the enemy. In Islamic war law, certain measures can be implemented during a siege to prevent the escalation of hostilities into actual warfare. The cutting and burning of the date

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<sup>47</sup> Ahmed Ebu Süleyman, *İslam'ın Uluslararası İlişkiler Kuramı*, İnsan Yayınları, İstanbul 1985, p. 95; See. For the characteristics of Islamic law, Vahap Ovacı, *İslam Hukukunun Karakteristik Özellikleri*, Bozok Üniversitesi İlahiyat Fakültesi Dergisi, Volume 7, Issue 7, (2015), pp. 69-80.

<sup>48</sup> Ebu Süleyman, *İslam'ın Uluslararası İlişkiler Kuramı*, p. 94-96.

<sup>49</sup> Ebu Süleyman, *İslam'ın Uluslararası İlişkiler Kuramı*, p. 94-96.

palms, essential for the tribe's sustenance, served as a clear example of such a sanction, aimed at facilitating the surrender of the enemy and achieving a resolution without bloodshed.<sup>50</sup>

Prior to the siege, only those date palms obstructing military operations were selectively cut and burned around the residential area of the Nadirogullari tribe, while the date palms that did not interfere with the operation were left untouched.<sup>51</sup> The destruction carried out during warfare within the parameters of military necessity is perceived as calculated and strategic, rather than indiscriminate. Indeed, subversion can be characterized by an army's unrestrained destruction of everything within enemy territory. In the incident of cutting the date palms of Nadirogullari, the deliberate selection of fruitless date palms<sup>52</sup> indicates that the action was not random but rather calculated. This decision-making process occurred in extraordinary circumstances where striking a balance between logic and empathy was challenging. Moreover, it is noteworthy that trees which could provide benefits to people were left untouched. This discernment highlights the meticulous consideration given to the environment within the framework of Islamic law.

### **2.2.3. Legitimacy of Damaging the Environment in case of Military Necessity**

The view that environmental destruction is permissible as a military necessity during wartime in Islamic law has gained traction. According to Ibn Mesud (h.32), selective cutting of only the trees belonging to the Nadirogullari tribe within the war zone demonstrated that the decision was compelled and confined to the urgent demands of war.<sup>53</sup> The majority of Islamic jurists concur that damaging the environment during wartime is permissible due to military necessity, emphasizing the prohibition of unnecessary tree cutting.

Furthermore, scholars such as Leys b. Sa'd (h.175) and Ebu Sevr el-Evzai, (h.240) were of the opinion that there existed a special term for that particular period, without considering the principle of military necessity, rendering the term non-generalizable. Evzai based his view on the instructions of Ebu Bekir, specifying that damaging the fruits along with the trees was prohibited. He argued that this directive served as irrefutable evidence, as it was inconceivable for Ebu Bekir to give orders which were not based on the terms and principles of the Prophet Muhammad. Indirectly, the instructions of Ebu Bekir were endorsed by the Prophet Muhammad. It should also

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<sup>50</sup> Haşr, 59/5; Vakidi, *Kitâbu'l-Megazî*, 1/372; İbn Hişam, *es-Sîretün-Nebeviyye*, 3-4/191.

<sup>51</sup> İbn Hacer el-Askalani, *Fethu'l-Bâri bi Şerhi Sahihi'l-Buhâri*, 7/333; Ebu Hasen Ali b. Ahmed el-Vâhidî, *Esbâbu'n-Nüzûl*, ta'lik ve tahric: Mustafa Dîp el-Buga, Beyrut 1993, p. 343-345.

<sup>52</sup> Abdurrahman b. Ahmed Süheyli, *Ravdu'l-Unufî Tefsiri's-Sîreti'n-Nebeviyye li İbn Hişam*, Kahire ts., 2/177.

<sup>53</sup> Ebu'l-Hasen Ali b. Ahmed el-Vâhidî en-Neysâbüfî, *el-Vasît fî Tefsir-i Kur'âni'l-Mecîd*, Beyrut 1994, 4/271.

be noted that during the time of Ebu Bekir, there may not have been a necessity to demolish the trees. Evzai believed that compulsory military requirements would override such prohibitions in situations where the enemy strengthened their power and gained an insurmountable advantage with the presence of forests. On the contrary, some Islamic jurists maintain that uprooting trees and burning buildings is permissible.<sup>54</sup>

There are conflicting accounts regarding whether the Prophet Muhammad himself ordered the cutting of the trees or if his companion acted independently and sought the Prophet's approval afterward. According to the account of Ibn Ömer (h.73), trees were cut under the direct order of Prophet Muhammad.<sup>55</sup> However, another version suggests that a companion of the Prophet made the decision to cut the trees based on his own judgement, leading to a difference of opinion among the companions on whether to proceed with the action. Due to this uncertainty, the matter was brought to the Prophet Muhammad for resolution, and it was clarified in a verse that both sides had valid opinions.<sup>56</sup>

Those who interpret the first account from Islamic law jurists argue that the incident occurred after seeking the opinion of Prophet Muhammad and was subsequently endorsed by divine revelation. They state that the Prophet Muhammad's opinion was sought due to the absence of a clear directive in the Qur'an regarding this issue. Conversely, Islamic law jurists deducing from the second account believe that two factions among the companions held differing opinions, and the practices of both sides aligned with the intent of the divine revelation in the verse. According to this perspective, although scholars whose opinions were sought reached different conclusions using different methodologies, the approaches of both groups were consistent with the fundamental principles of the Qur'an and Sunnah. The views regarding the legitimacy of environmental damage practices such as destruction and burning of buildings, and cutting and uprooting fruit trees as war tactics in Islamic law can be categorized into three parts.<sup>57</sup>

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<sup>54</sup> Haşr, 59/5.

<sup>55</sup> Ebu Cafer Muhammed İbn Cerîr et-Taberî, *Câmiu'l-Beyân an Te'vil-i Âyi'l-Kurân*, thk. Abdullah b. Abdilmuhsin et-Turkî, Dâru Hicr, ts.,22/511.

<sup>56</sup> Taberî, *Câmiu'l-Beyân*, 22/507, 510, 511.

<sup>57</sup> İbn Kudame, *Muğni*, 13/146-147.

### **2.2.3.1. Those arguing that it is legitimate to damage the environment during wartime**

Imam Malik (h.179) believed that it was permissible to carry out actions that may damage the environment during wartime.<sup>58</sup> According to his perspective, military operations aimed at gaining the capability to combat enemies who sought refuge in their castles or utilized environmental features such as plants and trees as shields had to be undertaken, even if they resulted in environmental damage, as dictated by military necessity.<sup>59</sup>

### **2.2.3.2. Those arguing that it is illegitimate to damage the environment during wartime**

According to Leys b. Sa'd and el-Evzaî, causing damages to the environment during wartime was deemed illegitimate.<sup>60</sup> They prohibited the destruction of the environment due to concerns that such actions would negatively impact Muslims and create difficulties for soldiers, such as potential retaliation by enemy forces, loss of shade, inability to benefit from fruits, and challenges in producing food for animals.<sup>61</sup> Advocates for the prohibition of damaging environmental resources during wartime argue that such practices are impermissible and some even consider them to be abominable.

Evzai, who argued against the permissibility of destruction during wartime unless deemed a military necessity, cited evidence from a hadith: “ that destruction was unallowable/abominable during wartime in case of military necessity attributed to the evidence in the hadith as “*Do not cut a tree starting to give fruits, do not burn date palms and do not cut grapevine*”<sup>62</sup> He contended that causing destruction during wartime for Muslims was impermissible due to its association with conspiracy. Evzai based his view on the verse “*When he comes into power in the world, he starts to conspire and eradicate crops and bloodstock. Allah does not like conspiracy*”<sup>63</sup> and supported that view with the following hadith:

*“Allah SWT inspired one of his prophets that whoever is inspired by the greatness and reign of the world, they should look at the property of ahlul Âl-i David and Fars. That Prophet said: “My God! David merits the things you glorify. What does ahlul Persian have who are*

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<sup>58</sup> Malik b. Enes, *el-Müdevvenetü'l-Kübrâ* (Mukaddemâtu İbn Rüşd), Beyrut 1994, 1/500; İbnu'l-Arabi, *Ahkamu'l-Kur'an*, 4/209-210.

<sup>59</sup> İbn Kudame, *Muğni*, 13/146-147; Malik, *el-Müdevvenet'ü-Kübra*, 1/513.

<sup>60</sup> Muhyüddin Yahya b. Şeref en-Nevevî, *Sahihu Müslim bi Şerhi'n-Nevevi*, Mısır 1929, 12/50.

<sup>61</sup> İbn Kudame, *Muğni*, 13/146-147; Malik, *el-Müdevvenet'ü-Kübra*, 1/513.

<sup>62</sup> Serahsi, *Şerhu Siyeri'l-Kebir*, 1/32.

<sup>63</sup> Bakara, 2/205.

*Zoroastrian? Allah SWT ordered as: They built up their cities. And my servants lived in those built-up places”.*<sup>64</sup>

When analyzing the meaning of the hadith, it becomes evident that the act of building up the world is praised, while conversely, destruction is criticized. As it is permissible to eliminate individuals who hold higher esteem in order to demoralize polytheists, it follows that demolishing buildings and cutting trees, which hold a lower level of value in the hierarchy of existence, should also be permissible. In our view, the condemnation of destruction without considering the cause of the operation is justified by the aforementioned rationale.

Ebu'l-Hasen el-Kerhî (h.340) interpreted the hadith as advocating for the cutting of trees that hindered the ability to engage in combat and obstructed the fight against the enemy, while those trees that did not impede combat should not be cut. Drawing from principles concerning environmental protection during peacetime, it was emphasized that practices involving demolition and cutting during wartime were deemed abominable. Evzai, referencing Ebu Bekir's instructions during war, maintained that such practices were indeed abominable.<sup>65</sup> According to Evzai, it was considered abominable to demolish buildings and cut fruit trees, regardless of whether they contained a shrine or not. On the other hand, according to Shafii, it was permissible to demolish buildings and cut trees if they hindered combat capabilities and served as a shelter for the enemy.<sup>66</sup> In our view, it is permissible to make decisions based on the rationale behind Imam Shafi'i's understanding of the competence of war.

### **2.2.3.3. Those arguing that it is legitimate to damage the environment in compulsory situations**

If there is no alternative to damaging the environment during wartime in Islamic law, it is considered legitimate to conduct military operations that may result in environmental damage, but it should be done in moderation.<sup>67</sup> In this context, the principle, the principle of “*Compulsions*

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<sup>64</sup> Serahsi, *Şerhu Siyeri 'l-Kebir*, 1/33.

<sup>65</sup> Serahsi, *el-Mebsût*, 10/31-32.

<sup>66</sup> Yakup b. İbrahim Ebu Yusuf, *Kitâbu 'l-Harâc*, Kahire 1396, p. 210-211; İbn Rüşd, *Bidayetü 'l-Müçtehid*, 1/311-312; Şafii, *el-Ümm*, 7/242-243.

<sup>67</sup> İbnu'l-Arabi, *Ahkâmu 'l-Kur'an*, 4/210.



*make prohibitions allowable*”<sup>68</sup> serves as justification. Plants and trees may be demolished in order to inconvenience the enemy and inflict harm upon them.

There are two views regarding whether to demolish plants and natural assets during wartime. Firstly, it is argued that it is not permissible to demolish such plants. Ebu Bekir reportedly forbade his army commander from damaging these kinds of plants. Secondly, according to Malik (h.179), Shafii, Ebu Ishak Shirazi (h.393) and Ibn Münzir (h.319), it is permissible to demolish natural assets. Ishak stated that it was Sunnah to demolish them when there was a potential for greater damage, and it was permissible to use catapults and even burn villages, citing the precedent of Prophet Muhammad’s use of catapults during the siege of Taif.<sup>69</sup>

According to Maverdî (h.450), it is permissible for the commander to use a catapult while attempting to force the surrender of the enemy. He is of the opinion that date palms and other trees belonging to the enemy can be cut when there is a risk of defeat, and if cutting the trees is deemed beneficial, then they should indeed be cut.<sup>70</sup> Additionally, according to Malik, it is permissible to burn and demolish villages and castles of the enemy by throwing into water.<sup>71</sup>

After considering these evaluations, we can clarify the views of most of the Islamic law jurists on this issue. According to the majority of the Islamic law jurists, the decision to cut trees and demolish is contingent upon the statesman’s or commander’s judgment that it is necessary to do so in order to defeat the enemy. This matter has been assessed within the scope of *siyasa al-shar’iyya* and has been linked to the concept of compulsion. Compulsion is deemed valid when there is no alternative means to achieve victory in the war. If intervening through alternative means would result in greater damage than burning and demolishing, then it is permissible to burn and demolish as necessary to prevent greater danger. It is permissible to compensate for damage with a lesser harm.<sup>72</sup> However, the damage inflicted by burning and demolishing the environment should be limited in accordance with the exigencies of the situation.<sup>73</sup>

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<sup>68</sup> Zeynüddin b. İbrahim İbn Nüceym, *el-Eşbah ve’n-Nezâir*, Kahire 1998, p. 94; Ali Haydar, *Dureru’l-Hukkâm Şerhu Mecelleti’l-Ahkam*, Riyad 2003, p. 37-39.

<sup>69</sup> Ebu Abdillâh Muhammed b. İdris eş-Şafii, *Ahkamu’l-Kur’an*, Beyrut 1990, p. 383.

<sup>70</sup> Maverdi, *Ahkamu’s-Sultaniyye*, p. 52.

<sup>71</sup> Malik, *el-Müdevvenet’ü-Kübra*, 1/513.

<sup>72</sup> “*Zarar-ı eşed zarar-ı ehaf ile izale olunur*” (Ali Haydar, *Dureru’l-Hukkâm Şerhu Mecelleti’l-Ahkam*, p. 40-41).

<sup>73</sup> Bakara, 2/173, 178.

## **CONCLUSION**

In Qur'an, it is not sanctioned to initiate a war against a state or community without a legitimate reason. Similarly, the Prophet Muhammad did not engage in warfare against a community without a legitimate justification. In Islamic law, utmost legitimacy and morality are emphasized during wartime, with clear conditions for legitimacy. This perspective holds true for the protection of the environment during wartime as well.

When examining the views of Islamic law jurists, it becomes evident that unnecessary destruction of environmental assets such as homes, trees, agricultural fields and fruits is generally prohibited. Based on this principle, terms related to the legitimacy of destroying environmental elements such as uprooting trees and burning houses are considered valid only when there is no alternative and when it constitutes a military compulsion or necessity. Thus, the issue of causing damage to the environment during wartime arises when the enemy employs the environment and its elements as a shield. The legitimacy of this principle is justified by conducting destruction within the bounds of necessity, without exceeding the limits.

In the age of the Prophet Muhammad, it is inconceivable to discuss elaborate environmental problems that threaten the entire environment as we face today. However, the principles of environmental protection, rooted in the practices of the Qur'an and the Prophet Muhammad, offer valuable insights into addressing contemporary environmental challenges. This underscores the universality and adaptability of Islamic law. The early Islamic period saw the Prophet Muhammad and Ebu Berkir bring attention to environmental protection practices, while the systemic approaches of Islamic law jurists also play a crucial role in Islamic legal history, and should be duly recognized.

In Islamic law, where killing during wartime is permissible, it follows that destroying buildings and cutting trees- entities of lesser importance compared to human life within the hierarchy of existence- should also be permissible. Damage inflicted on the environment to overcome obstacles, such as the enemy's use of environmental shields during wartime, should therefore be considered legitimate.

Because the Prophet Muhammad's actions regarding the destruction of the environment were driven by military necessity, certain practices that are prohibited during peacetime should not be

considered prohibited during wartime, as the military necessity may justify such actions even if they result in environmental damage.

Consequently, from the detailed decisions and comments on the protection of the environment during wartime in Islamic law, it can be inferred that even more attention is given to protecting the environment during peacetime.

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