7461 - Ruling on booty from the wars which Muslims are fighting

the question

In a situation where the muslims are engaged in jihad against an agressor like in bosnia. when the mujahideen are fighting they sometimes capture land and booty: Money, arms, etc..
Islamically speaking it is haram in islam to steal. but is this theft? If it is not then...
1) how must the money be used?
2) who can use it?
3) does it have to be distributed? to who?
4) what is ment by a fifth?

Detailed answer

Praise be to Allah.

Allaah has prescribed jihaad for His sake for great purposes and reasons, such as spreading this religion, telling people about it and about the purpose for which Allaah created them. Other purposes of jihaad include repulsing the aggression of the enemies of this religion, who fight it in order to extinguish its light and are trying to eliminate it and its followers. The basic evidence for this is the aayah (interpretation of the meaning):

“Permission to fight (against disbelievers) is given to those (believers) who are fought against, because they have been wronged; and surely, Allaah is Able to give them (believers) victory Those who have been expelled from their homes unjustly only because they said: Our Lord is Allaah.’” [al-Hajj 22:40]

What is happening in Bosnia, Kosovo, Chechnya and other parts of the Muslim world is that which Allaah has told us about concerning the kuffaar (interpretation of the meaning):

“They wish that you reject Faith, as they have rejected (Faith), and thus that you all become equal

(like one another).” [al-Nisaa’ 4:89]

“and they desire that you should disbelieve” [al-Mumtahanah 60:2]

“Many of the people of the Scripture (Jews and Christians) wish that if they could turn you away as disbelievers after you have believed, out of envy from their ownselves, even after the truth has become manifest unto them” [al-Baqarah 2:109]

“Never will the Jews nor the Christians be pleased with you (O Muhammad) till you follow their religion” [al-Baqarah 2:120].

So the fighting that is taking place between the Muslims and the kuffaar is the checking of one set of people by means of another, which is part of the laws of the universe created by Allaah, which Allaah mentioned when He said (interpretation of the meaning):

“So they routed them by Allaah’s Leave and Dawood (David) killed Jaaloot (Goliath), and Allaah gave him [Dawood (David)] the kingdom [after the death of Taloot (Saul) and Samuel] and Al-Hikmah (Prophethood), and taught him of that which He willed. And if Allaah did not check one set of people by means of another, the earth would indeed be full of mischief. But Allaah is full of bounty to the ‘Aalameen (mankind, jinn and all that exists)” [al-Baqarah 2:251]

“Those who have been expelled from their homes unjustly only because they said: “Our Lord is Allaah.” For had it not been that Allaah checks one set of people by means of another, monasteries, churches, synagogues, and mosques, wherein the Name of Allaah is mentioned much would surely, have been pulled down. Verily, Allaah will help those who help His (Cause). Truly, Allaah is All Strong, All-Mighty” [al-Hajj 22:40]

The Muslims’ fighting nowadays against their enemies among the Serbs, Russians and other kuffaar is no more than the repulsion of aggression, hostility and injustice. It is the kind of jihaad aimed at checking people which is prescribed in Islam, and thus is subject to the Islamic rulings on jihaad. Whatever the Muslims take in these wars – whether it is wealth, weapons, equipment, property, or whatever – in general belongs to the Muslims and it is halaal for them, because Allaah

says (interpretation of the meaning):

“So enjoy what you have gotten of booty in war, lawful and good’ [al-Anfaal 8:69]. What is meant here by booty (ghaneemah) is wealth in the form of money, property and other useful things which the Mujaahideen who are fighting for the sake of Allaah have taken in their battles with the kuffaar. This is not a kind of stealing at all, for a number of reasons:

1.Stealing means taking property by stealth and unlawfully from its proper place. This is something completely different, for the wealth of jihaad, the spoils of war and the booty, are taken from the kuffaar by right. We are given permission to do so by sharee’ah and it is allowed for us to do this as Allaah says (interpretation of the meaning): “So enjoy what you have gotten of booty in war, lawful and good” [al-Anfaal 8:69].. And the Prophet (peace and blessings of Allaah be upon him) used to do this in his wars and his jihaad against the kuffaar, when he confiscated their property and wealth.

2.Stealing applies in the case of property which is protected and is sacrosanct, but the property of the kuffaar who are waging war against Islam is not protected or sacrosanct.

The least that we can say is that this (taking booty) is a means of responding in kind, because the Muslims there have had their wealth taken from them, their rights have been denied and their homes have been confiscated. So this is a means of restoring their rights and giving back that which has been taken from them. It is in the nature of restitution of their rights. For Allaah says (interpretation of the meaning):

“And indeed whosoever takes revenge after he has suffered wrong, for such there is no way (of blame) against them” – i.e., blaming them or declaring them to be sinners – “The way (of blame) is only against those who oppress men and rebel in the earth without justification” [al-Shooraa 42:41-42]

Once this is understood, then all the property which the mujaahideen gain during their wars with the kuffaar is called ghaneemah (booty) or fay’ (spoils of war) in sharee’ah. The difference between them is that the former is that which is taken by fighting, and the latter is that which is

taken without fighting, i.e., what is left behind by the kuffaar when they are routed or when they surrender without a battle or any military action. With regard to ghaneemah (booty), it is obligatory according to sharee'ah for the imaam (leader) or the commander of the mujaahideen or the one who is responsible for them or in charge of them, to gather the booty and divide it into five equal parts, one of which is to be distributed to the groups mentioned by Allaah in the aayah (interpretation of the meaning):

"And know that whatever of war-booty that you may gain, verily, one-fifth (1/5th) of it is assigned to Allaah, and to the Messenger, and to the near relatives [of the Messenger (Muhammad)], (and also) the orphans, Al-Masaakin (the poor) and the wayfarer" [al-Anfaal 8:41]

The other four-fifths are to be shared out among the mujaahideen who took part in the fighting, by giving one share to each foot-soldier and three shares to each horseman (one share for him and two for his horse – this is if horses were used in the fighting). This wealth is permissible and good for the Muslim army, and has been allowed for them by Allaah, as He says (interpretation of the meaning): "So enjoy what you have gotten of booty in war, lawful and good' [al-Anfaal 8:69].

What is meant by al-khums (the one-fifth), is what referred to in the aayah [al-Anfaal 8:41] and this is this first share to be distributed. The way it is to be distributed is as follows:

1.A share for Allaah and His Messenger, which is to be used to serve the common interest of the Muslims, not for any specific person(s). Allaah has stated that this is for Him and for His Messenger (peace and blessings of Allaah be upon him). Allaah and His Messenger have no need of it, therefore we know that it is for the slaves of Allaah. The fact that Allaah did not state that it was for anyone in particular indicates that it should be spent to serve the common interests of all. (Tafseer Ibn Sa'di, 3/169)

2.A share for the relatives of the Prophet (peace and blessings of Allaah be upon him) from Bani Haashim and Bani al-Muttalib. They are all equally entitled to it, rich and poor, male and female.

3.Orphans – those who have lost their fathers whilst they are still young i.e., before the age of puberty.

4.The poor and needy.

5.The wayfarer, i.e. travellers who are cut off and need money in order to get back home.

Some Mufassireen said that the khums (one-fifth) of the war booty should not be given to anyone outside of these categories, and that it need not be shared out equally between these groups, but should be distributed in the manner that best suits the current circumstances. This was the view regarded as most correct by Ibn Sa'di, may Allaah have mercy on him.

For more information, see Tafseer Ibn Katheer, 2/269; Zaad al-Ma'aad by Ibn al-Qayyim, 3/100-105).

And Allaah knows best.