

# THE ORIGINS OF INTERNATIONAL HUMANITARIAN LAW

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## International humanitarian law lies between the Islamic concept and positive international law

by Professor Said El-Dakkak

### Introduction

The starting point of the present study is the clash between the warrior instinct inherent in human nature and Islamic law, the realistic character of which is unanimously acknowledged.

Islam, in fact, cannot tolerate excessive displays of this instinct, which, as Professor Muhammad Taha Badawi points out, is the strongest of all the impulses to which man is inclined. Inseparably linked to all the factors inciting man to make war, and itself at times unleashing war, the warrior instinct, in any case, arouses violence and becomes a reflex action in anyone subjected to the danger of death.<sup>1</sup>

Islamic law has always striven to mitigate the harmful consequences of the warrior instinct and to contain it within the limits of disciplined conduct. The result will be that nobody will kill except in extreme necessity and in accordance with the standards decreed clearly and precisely by Islamic law. When a conflict does break out, Muslim warriors are bound to behave as prescribed by the Koran and the *Sunna*.<sup>2</sup>

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<sup>1</sup> Muhammad Taha Badawi, *Scientific hypotheses on the relations between war and peace*, published by the Arab University of Beirut, 1974, pp. 3 *et seq.* (in Arabic).

<sup>2</sup> The *Sunna*, or Tradition of the Prophet, is the second source for Islamic law. It is based on the words, actions and reactions of the Prophet and is the equivalent, *mutatis mutandis*, of the Christian gospels. The *Sunna* thus contains rules complementing those in the Koran, the first source of Islamic law. A third source of the law is the *Ijtihad*, which consists in the deduction by reasoning of all new rules essential to the living conditions of societies in perpetual evolution. On this point, see: Hamid Sultan, "The Islamic Concept", in *International dimensions of humanitarian law*, Pedone, UNESCO, Paris/Henry Dunant Institute, Geneva, 1986, pp. 47-60.

A good number of rules, in fact, govern the conduct of Muslim combatants; although not embodied in any written work, these rules can nevertheless be deduced from the basic principles forming the foundations of the entire Islamic legal system. According to Professor Hamid Sultan, these principles, five in number, are:

- justice
- equity
- consultation
- respect for commitments made
- reciprocity.<sup>3</sup>

Observation of these principles means, consequently, an attitude of submission to Islam, and infringement of them corresponds to transgression against Islam.

## I. The Islamic concept of humanitarian law

Analysis of the Islamic concept of humanitarian law reveals that the application of its humanitarian rules is subject to the following conditions:

- the existence of a conflict
- the prohibition of aggression
- respect for the dignity of the human person, especially after death
- the prohibition of certain means and methods of combat.

### 1. Existence of a conflict

The Islamic concept of humanitarian law differs in two ways from the classic theory of the law of war which long prevailed within positive international law.

First, the Islamic concept does not postulate as a condition the existence of war in the traditional sense of the term, i.e., implying, apart from the actual use of weapons, the obligation of a declaration of war between two or more parties. According to Professor Salah Amer,<sup>4</sup> the classic theory of the law of war would be able to recognize the existence of a state of war even though none of the parties had had

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<sup>3</sup> Sultan, Hamid, "The Islamic concept of international humanitarian law", *Egyptian Review of International Law*, Vol. 34, 1978, pp. 6,7 (*in Arabic*).

<sup>4</sup> Amer, Salah, *Definition of international humanitarian law*, First Symposium on International Humanitarian Law, Cairo, November 1983; published by the Egyptian International Law Society, p. 160 (*in Arabic*).

recourse to arms. By contrast, the Islamic conception considers that humanitarian rules apply as soon as weapons have been used and armed forces deployed, without a state of war in its proper legal sense having been declared.<sup>5</sup>

There is another difference between the Islamic concept of humanitarian law and the classic theory of the law of war. The former makes no distinction between the various forms of armed conflict, while, under the latter, application of the rules pertaining to the law of war was subject to the existence of an international conflict, the parties to which were two or more member states of the international community. In the event of conflict within a single state, these rules could not apply unless the nature of the conflict was that of civil war, and on condition that the insurgent party had been recognized as having the status of belligerent.

This conception changed with the adoption of the four Geneva Conventions of 1949, the rules of which became applicable to all armed conflicts, namely, "all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them" (Article 2 of the four Geneva Conventions) and "in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties" (Article 3 common to the Geneva Conventions).

The International Committee of the Red Cross adopted the expression "international humanitarian law" to cover the international rules derived from treaties or custom and specifically intended to settle humanitarian problems arising out of conflicts, whether international or not, and which not only protect people and property affected by the conflict, but also restrain the right of the parties to the conflict to use any means or methods of warfare they choose.

It is on this point that international humanitarian law, some thirteen centuries later, aligned itself with the Islamic concept, the rules of which cover all armed conflicts of whatever nature.

The reason that the Islamic concept does not differentiate between international and non-international armed conflicts may well be that, when Islam came into being, the very notion of a state was unknown, or at least was insufficiently defined. Consequently, the Islamic concept of humanitarian law, based as it is on an unlimited belief in divine Authority, can be applied everywhere and in all circumstances;

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<sup>5</sup> Abdul-Hassan Al-Shaybani, *El Seyar Al-Kabir*, Vol. 1, The achievement of Dr. Salah El-Din El Mongued, 1958, p. 110 (*in Arabic*).

the scope of application of its rules extends through time and space to all armed conflicts.

## **2. Prohibition of recourse to aggression**

Among the basic principles of the Islamic concept of international humanitarian law is the prohibition of the recourse to aggression by Muslim warriors, together with the obligation to obey the principles of justice and equity. The Koran says: "Fight in the cause of Allah those who fight you. But do not transgress limits; for Allah loveth not transgressors" (Sura II, verse 190).<sup>6</sup>

If we compare this rule with the current provisions of international humanitarian law, we find that it is reflected in Article 35, paragraph 1, of Protocol I, which stipulates that "in any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited".

## **2. Respect for the dignity of the human person**

Among the fundamental Islamic principles is that of respect for the dignity and integrity of the human person, in particular after death.

The Islamic rules governing war forbid Muslim warriors to torture their enemies or to subject them to treatment contrary to human dignity, also to mutilate their bodies after having killed them.

The Prophet, in fact, forbade mutilation, even of a wounded dog. For example, he ordered that the Infidels killed during the battle of Badr<sup>7</sup> should be given burial.

The caliph Abu Bakr<sup>8</sup> forbade his followers to bring him the heads of the enemy. He wrote to the commanders of his troops: "Do not bring me their heads, for if you do, you commit an outrage: be content to notify me of their death".

Mohammad Ibn Al-Hassan added the following comment: "There is no point in bringing the governors the heads of the vanquished since these are merely carrion; they should be buried to avoid disease.

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<sup>6</sup> *The Glorious Qu'ran*, translation and commentary by Abdullah Yusuf Ali. Published by the Muslim Students' Association of the United States and Canada, 1975.

<sup>7</sup> Victory by the Prophet Mohammed in March 624, before the wells of Badr in Arabia, against his unbelieving compatriots.

<sup>8</sup> Mohammed had not named a successor; therefore, the first Muslims of Medina chose to take charge of the State the Prophet's father-in-law, Abu Bakr. He took the title of Caliph (Khalifa), "successor of God's Messenger".

Decapitation, moreover, is a form of mutilation, and the Prophet has forbidden mutilation, even of a wounded dog”.

Abu Bakr also stated that “such acts were committed by ignorant people before Islam existed; we refuse to be likened to them”.

Article 75, paragraph 2, of Protocol I states that “the following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(a) violence to the life, health, or physical or mental well-being of persons”.

#### **4. Prohibition of certain means and methods of combat (general principles)**

As we have seen above, Paragraph 1 of Article 35 of Protocol I mentions a fundamental rule under which “in any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited”.

Comparison of the Islamic concept of international humanitarian law and the rules of positive law with regard to the means and methods of warfare make the latter appear passive, to the extent that they contain no explicit requirements, nor do they prohibit any specific method of warfare or mention limits beyond which the belligerents must not go. In contrast, the fundamental rules of the Islamic concept adopt a clear and definite position on the subject.<sup>9</sup>

The Prophet Mohammed, for example, taught his troops the conduct of Muslim warriors: “Treat them (the enemy) with patient benevolence and do not attack them as long as you have not invited them to become true believers; for, on this earth, all men are equal, whether they are city-dwellers or nomads. I prefer you to bring them to me when they have submitted, rather than that you take their women and children captive or kill their men”.

The underlying Islamic rule concerning methods of warfare is thus more frank and better defined than the provisions of positive law, at least as they are formulated. At this time when, as has been rightly pointed out, war no longer appears a legitimate or acceptable means of resolving international disputes, and when there is a period of détente in international relations conducive to peace, it would have been helpful had international humanitarian law been more explicit and definite on the subject.

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<sup>9</sup> Sultan, Hamid, *op. cit.*, p. 5.

We will now make a comparative study of the provisions regarding some major issues, those of positive law, on the one hand, and those of Islamic law on the other. The areas chosen are:

- methods and means of war
- protection of an enemy who is *hors de combat*
- protection of civilians and of objects of a civilian character during military operations.

## **II. Rules relating to methods and means of warfare: prohibition of perfidy and authorization of ruses**

Examination of the provisions of positive international humanitarian law and those of Islamic law reveal that they both prohibit perfidy but allow the use of ruses in war.

### **1. Perfidy**

The general principle enunciated by Article 37 of Protocol I is the prohibition of perfidy: "It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy".

Dating from long before the provision quoted, the general principle of Islamic law relating to treachery stipulates, in substance: "If thou fearest treachery from any group, throw back (their covenant to them so as to be) on equal terms: for Allah loveth not the treacherous" (Sura VIII, verse 58).<sup>10</sup> Article 37 of Protocol I also mentions some cases of acts and behaviour considered as perfidy:

- “(a) the feigning of an intent to negotiate under a flag of truce or of a surrender;
- (b) the feigning of an incapacitation by wounds or sickness;
- (c) the feigning of civilian, non-combatant status; and

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<sup>10</sup> *The Glorious Qu'ran*, Sura VIII (Al-Anfal), verse 58.

- (d) the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict”.

The historic precedents constituted by the wars of Islam provide eloquent testimony to the extremely critical judgement applied by Islam to the matter of perfidy, even in the wars that it conducted against its enemies. The following anecdote is a good illustration of this. From time to time, a Muslim warrior, having won the confidence of an enemy by promising to spare his life, killed him when he surrendered. The Caliph Ibn-Al-Khattab, learning that some Muslim warriors had done this during the campaigns against the Persians, sent an emissary to the commander of the Muslim army to tell him: “It has come to my ears that some of your men seek out the barbarians—i.e., the Persians—and harass them to the point where they flee and barricade themselves into refuges in the mountains. The Muslims then tell them not to be afraid; reassured, the Persians surrender; and at that moment the Muslims rush on them and kill them. I swear by God that I will cut the throat of anyone who has done this!”.

Moreover, Islam forbids the killing of anyone who deserts the enemy army. Nor does it allow an adversary to be outwitted by a promise of sparing his life, only to be killed afterwards. The rules of Islamic law relating to fair treatment stipulate, in effect, that if an enemy warrior or group of soldiers surrenders, the Muslims must undertake, if necessary, to guarantee the safety of those who have surrendered and, consequently, to eschew the resort to perfidy for the purpose of killing. Any Muslim who breaks this law therefore becomes an assassin liable to punishment.<sup>11</sup>

The proscription of perfidy is thus a strict and inviolable principle of the divine law which Muslims are bound to respect, in the context of their relations among themselves and with non-Muslims,<sup>12</sup> relations which must be free of all discrimination, whether of persons, gender or beliefs.

Al-Shafi'i comments on this subject: “What Muslims agree is permissible in a Muslim country is so among Infidels also; in the same way, what is not permissible among Muslims is likewise not permis-

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<sup>11</sup> Mansour, Aly, *The Islamic Sharya and public international law*, published by the Supreme Council of Islamic Affairs, Book 1, 1965, pp. 325 *et seq.* (in Arabic).

<sup>12</sup> Abu-Zahra, M., “The theory of war in Islam”, *Egyptian Review of International Law*, 1958, p. 30 (in Arabic).

sible among the others. For this reason, God will punish whoever infringes this code, whether Muslim or Infidel".<sup>13</sup>

## 2. Ruses

Ruses of war, which have already been mentioned, are not forbidden in Islamic law or in positive international law. Indeed, the Prophet said: "War consists of ruses", which nevertheless does not mean that any deception practised to mislead the enemy is to be considered comparable to perfidy or treachery.

Article 37, paragraph 2, of Protocol I, stating that ruses of war are not prohibited, is in agreement on this point with the provisions of Islamic law. The article also states that "ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. The following are examples of such ruses: the use of camouflage, decoys, mock operations and misinformation".

## III. Rules relating to the protection of an enemy *hors de combat*

Articles 40 to 42 of Protocol I include provisions concerning the prohibition of extermination of the enemy and the killing of an enemy *hors de combat*, even if he belonged to a military force before becoming *hors de combat*. Here the Protocol corroborates what had been provided on the subject in the Regulations respecting the Laws and Customs of War on Land, annexed to the Hague Convention of 18 October 1907 (Article 23, paragraph d).

Indeed, in an armed conflict, the purpose of combat is to break the enemy's resistance, not annihilate it. Once the purpose has been achieved, by whatever means, it is forbidden to kill or torture adversaries.

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<sup>13</sup> Quoted by Al-Ghunaimi, Muhammad Tal-At, *A general review of international humanitarian law in Islam, humanitarian law and humanistic law*; first Symposium on International Humanitarian Law, Cairo, November 1983, p. 35 (*in Arabic*).



These principles are in perfect agreement with the essence of the Islamic doctrine of war, as expressed by the Prophet when he declared: "I am the prophet of mercy and the prophet of combat".

The law of Islam contains provisions advocating kindness towards enemy warriors, whether wounded or taken captive. The Koran had defined the way in which prisoners must be treated, in Sura 47, verse 4, for example: "Therefore when you meet the unbelievers (in fight), smite their necks at length when we have thoroughly subdued them, bind a bond firmly (on them); thereafter (is time for) either generosity or ransom until the war lays down its burdens".<sup>14</sup>

The text of the Koran is categorical in limiting the fate of prisoners to one of two alternatives: release without anything in exchange, or returning them for a ransom, which may consist either in the release of an equivalent number of Muslims held by the enemy (corresponding to the process of exchange of prisoners of war, as practised today) or in the payment of a sum of money.

However, historic precedents show that prisoners were executed in the time of the Prophet, and so some legal experts conclude that, according to the *Sunna*, execution of captives was also a possible choice. Other schools of legal thought have a different opinion, corroborating the attitude adopted by some of the Prophet's Companions.

It is related that one day Al-Hadjadj brought one of his captives to the son of Omar and asked him to execute the man. The son of Omar replied that such an act was contrary to divine precepts, which laid down that the prisoner should be freed, either absolutely or for a ransom.

The author of this study agrees with those who claim that captives executed at the time of the Prophet were put to death for crimes that they had committed against Mohammed or against Islam.<sup>15</sup>

Moreover, the Tradition of the Prophet (*Sunna*) as a whole confirms this opinion, considering the attitudes taken by Mohammed with regard to prisoners.

In fact, the Prophet always took one of two possible attitudes: either he freed captives in return for a ransom, or set them free without asking anything in exchange. The latter course is the one he took, for example, with Thamama Ibn Athal, Governor of Jamama, with the son of Hatim Al-Tai or, after Mecca had been conquered,

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<sup>14</sup> Al-Ghunaimi, *op. cit.*, p. 46, *The Glorious Qu'ran*, Sura XLVII, verse 4.

<sup>15</sup> Al-Ghunaimi, *op. cit.*, p. 46.

with its inhabitants, to whom he said, once they were captive, "Go your way, you are free!"

The execution of Ibn Gharra Amru Ibn Abdallah Al-Dhamahi was a special case, which nevertheless accords with our interpretation of the facts: Ibn Gharra had been the only man taken prisoner at the battle of Uhver. The prophet had set him free without ransom after the battle of Badr, on condition that he did not speak calumnies regarding Mohammed. Yet when he returned to Mecca, Ibn Gharra failed to keep his word. The Prophet therefore had him arrested and executed, as a punishment for breaking his commitment.

Under Islam, prisoners of war are granted kindly treatment, which is considered comparable to an act of charity. Verse 8 of Sura 76 gives an illustration of this provision of the law in its description of pious Believers: "And they feed, for the love of Allah, the indigent, the orphan and the captive". The Prophet had said: "Always care for prisoners".<sup>16</sup>

#### **IV. Rules relating to the protection of civilians and objects of a civilian character**

Protocol I (Part IV, Section I, Chapter II) includes provisions relating to the protection of civilian persons, the civilian population and objects of a civilian character in the event of military operations. Article 50, for example, defines as a civilian any person to whom the status of combatant, as defined in the Third Geneva Convention and in Article 43 of Protocol I is inapplicable. Also, Article 51, paragraph 1, states: "The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations". The same article, in paragraph 3, specifies that "civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities".

Civilian objects are those that have no connection with military operations and are not concerned with them. They therefore enjoy protection against the dangers inherent in war.

Article 51, paragraph 4, of Protocol I likewise stresses that "indiscriminate attacks are prohibited", meaning attacks that make no distinction between military objectives and civilian persons or property.

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<sup>16</sup> *The Glorious Qu'ran*, Sura LXXVI, verse 8.

Careful scrutiny of the precepts of Islamic law on the subject throw light on the precursor role it has played in settling the question of protection for all persons and objects unrelated to military activities. Islamic doctrine on the subject stipulates that operations of war must not exceed the limits of military necessity. The civilian population and individual civilians enjoy general protection against the dangers of hostilities and military operations, as long as they take no direct part in such operations.

The Koran text states: "Fight in the cause of Allah those who fight you; but do not transgress limits; for Allah loveth not transgressors"; and later "But they (the enemy) cease (fighting), Allah is oft-forgiving, most merciful": Also in the Koran is the command: "If then anyone transgresses the prohibition against you, transgress ye likewise, against him. But fear Allah! And know that Allah is with those who restrain themselves" (Sura II, verses 190, 192 and 194).<sup>17</sup>

The Prophet, addressing the commanders of his army during one of the battles he led, exhorted them: "Go forth in the name of God and with the blessing of the one He sent, but do not kill old people, children or women; do not commit abuses; do not keep booty for yourselves; be decent and good, for God loves those who do good". To Khalid Ibn Al-Walid he said: "Do not kill children or old people".

Along the same lines of thought, Caliph Abu Bakr Al-Siddiq told the commander of his army: "You will find people who claim that they are safe because they stay inside the mosques. Let them be. ... I give you ten orders: do not kill children, women or old people; do not cut down fruit trees or palm trees and do not burn them; do not destroy crops; do not butcher sheep or cattle, unless for eating; do not be tyrannical towards captives and do not put them in irons".

Islam forbids the killing of *children, women and old people* as long as they take no part in war. The Tradition of the Prophet, moreover, is eloquent on the subject. One day, for instance, Mohammed was looking at the dead on the battlefield after a fight, and found a woman's body among them. He became angry and said: "She should not have been involved in the fighting". He added: "Do not kill old people or children either", with the tacit condition that they took no part in the fighting.

But if they do participate in the fighting, should it be understood that it is then permissible to kill them? The Imam Malek replied in the negative, citing in his support the Prophet's prohibition of killing

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<sup>17</sup> *Ibid*, Sura II (The Cow), verses 190, 192, 194.

women and children.<sup>18</sup> The Imam Al-Awzai claimed that it was never permissible to kill the enemy's women and children, even if the fighting men set them in front of their ranks as a shield, in an attempt to protect themselves by dissuading their attackers from striking.<sup>19</sup>

Islam also extended protection in the event of war to *members of religious orders*, since they are not involved in conflicts. Al-Sarkhasi however modifies this provision, commenting: "There are two types of men of religion: those who keep away from war and consequently testify to their right attitude; and those who openly advocate war and are therefore wholly comparable to fighting men. The conduct of such religious is deplorable".

It is reported of Caliph Omar Ibn Al-Khettab that he once when he was travelling to Jerusalem to make peace with its inhabitants he found a Jewish temple that the Romans had covered with earth. With his army, he then set to work to remove the earth from the temple in order restore it to the Jews for worship.

Islam also forbids the killing of *workmen* going about their occupations without taking part in the course of the war. In the same way, he deplores the murder of those accompanying the army on the march but taking no part in military activities—for example *traders*. The latter, in fact, by carrying on their civilian tasks are virtually the builders of civilization. War, according to Islam, is not aimed at wiping out civilization or at destroying its foundations, but, instead, at eliminating corruption from the earth. According to the sayings attributed to Abu Bakr, it is not permissible for Muslims to carry out destructive acts in enemy country, since such behaviour is derived from corruption, and "God loveth not corruption". The same idea appears in the following verse of the Koran: "When he (the impious man) turns his back, his aim everywhere is to spread mischief through the earth, and destroy crops and cattle. But God loveth not mischief" (Sura II, verse 205).<sup>20</sup>

All these examples demonstrate that Islam sets restrictions on the conduct of Muslim fighting men, so that the violence of combat does not result in injury to non-combatants, since warfare, in Islam, is for the sole purpose of quenching the warlike passions of the enemy and crushing his resistance; it should never exceed these limits to take on

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<sup>18</sup> Al-Ghunaimi, *op. cit.*, p. 35.

<sup>19</sup> Quoted by Mansour, Aly, *op. cit.*, p. 35.

<sup>20</sup> Al-Ghunaimi, M. T., *op. cit.*, p. 41; *The Glorious Qu'ran*, Sura II, verse 205.

the nature of reprisals, nor lead to abuses such as destruction, devastation, or the mutilation of the dead.<sup>21</sup>

With regard to *objects of a civilian character*, Islam also forbids their destruction, and it is certainly in this sense that Abu Bakr's prohibition on the cutting or burning of fruit trees and date palms should be interpreted. As we have seen, he forbade his army commanders to do this except in a case of military necessity—for example, if the trees formed a dense cover that the enemy could use as a strong-point, or as a place to which to retreat. In such a case, the emergency would require lifting of the prohibition.

It would be impossible, moreover, to claim that God had allowed the date palms to be cut by referring only to the literal meaning of the following verse of the Koran: "Whether ye cut down (oye Muslims!) the tender palm-trees, or ye left them standing on their roots, it was by leave of Allah" (Sura 59, verse 5).<sup>22</sup> Some have in fact taken the words "date palm" in their strictest sense. We consider, however, that the allusion is to dates, the fruit, rather than to the tree; this is, as Professor Sheikh Abu Zahra claims, nearer to the original meaning. This interpretation is also corroborated by the behaviour of the Prophet's Companions who, during wars, cut the dates but left the trees standing.

The frequency with which date palms and trees in general are mentioned in Islamic law shows how greatly people at that time tried to protect them, as long as military necessity did not require their destruction. The same concern is reflected in the desire of the Prophet and his successors to forbid all forms of destruction.

All these facts enable us to realize that the rules of positive law coincide with those of the far older Islamic law and that both systems agree in recognizing the necessity, on the one hand, of distinguishing combatants from non-combatants and, on the other hand, of guaranteeing to the latter protection against the dangers inherent in war. Within Islamic law, in addition, there are rules giving special protection to children, women, old people, the sick, and members of religious bodies.

Objects of civilian character, that is, civilian installations and places, are guaranteed protection under the precepts of Islamic law and those of positive law, which forbid that they should be exposed to the dangers associated with military operations.

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<sup>21</sup> Abu-Zahra, M., *op. cit.*, p. 23.

<sup>22</sup> *The Glorious Qu'ran*, Sura LIX, verse 5.

## Conclusion

What conclusions may we draw on completion of this comparative study between the precepts of international humanitarian law and those of Islamic law in the context of war?

From all that has been said above, it may be stated that the Islamic concept of humanitarian law, while not identical with that of positive law, is not in contradiction with it. The Islamic concept, which forms an integral part of humanity's heritage of law, should be an instrument for promoting the standards of international humanitarian law in Muslim countries, standards that are to a great extent reflected in those countries' own legal tradition. Islamic law could—and should—become an essential and effective factor in ensuring the universality of international humanitarian law.

**Said El-Dakkak**

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**Said El-Dakkak**, who was born in Egypt in 1942, studied law in Alexandria, and in 1963 obtained his degree *cum laude*. He made more advanced studies in Italy (Turin) and France (Nancy), specializing in public law. In 1973 he obtained his State Doctorate with a thesis on *The general theory of the decisions of international organizations*. Since then he has held the Chair of International Law in the Law Department of the University of Alexandria, where he is also Director of a Legal Services Centre concerned mainly with human rights. Among his numerous publications on international law and on the international organizations are a number of articles relating to humanitarian law and to human rights.