# The Relevance of the Islamic Principle of Humane Treatment of Prisoners of War (POWs) in Contemporary Practice: An Overview.

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In contemporary armed conflicts, the universality of International Humanitarian Law (IHL) faces obstacles as certain Non-State Armed Groups (NSAGs) reject this framework, choosing to only apply Islamic Law. The paper investigates how Islamic Law of Armed Conflict (ILAC), in particular its principle of humane treatment, can play a role in modern conflicts due to its alignment with the same principle provided by IHL. It will demonstrate that minimum guarantees of protection can nevertheless be secured by solely relying on ILAC or by leveraging its commonalities with IHL to recognize the applicability of the latter, underscoring the importance of acknowledging this set of norms as a central tool to promote humane treatment in armed conflict. Lastly, by examining the diverse approaches to ILAC by Al-Qaeda and the MILF, the paper also offers examples of its application in practice.

***Keywords*:** International Humanitarian Law (IHL), Islamic Law of Armed Conflict (ILAC), MILF, Al-Qaeda, humane treatment, detention.

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## I. Introduction

According to the International Committee of the Red Cross (ICRC), "deprivation of liberty is an ordinary and expected occurrence in situations of armed conflict"[1]. This statement is not only true today in the different parts of the world where armed conflicts exist, but it was also a reality throughout the history of warfare and humankind. Indeed, the importance of the treatment of Prisoners of War (POWs) is as ancient as that of armed hostilities, and the use of deprivation of liberty as a method of weakening the enemy was a common feature of past conflicts as well. Evidence of this can be found in different contexts and times, such as in Europe during the Middle Ages, where knights were required not to be cruel towards their prisoners[2] or in the Arab Peninsula during the life of Muhammed, the Prophet. In the latter context, when it comes to POWs, what stands out is that there was an elaborate principle of humane treatment, characterized by minimum standards and a set of behaviors that nowadays would arguably fall within the concepts underpinning the same principle enshrined in the Geneva Conventions. Despite having been formulated hundreds of years ago, the rules of Islamic Law – including Islamic *jus in bello* – can likewise be relevant today, as many Non-State Armed Groups (NSAGs) engaged in armed struggles only refer to this *corpus juris* as the main legal basis governing their actions. This is particularly important because finding common denominators with the universally shared rules of International Humanitarian Law (IHL) could enhance compliance with it, even when certain actors do not feel bound by it.

This paper will delve into the principle of humane treatment of POWs under Islamic law of Armed Conflict (ILAC) to see whether there are common grounds with the universal rules (IHL) governing this occurrence in modern times. Before entering into this discussion, a necessary remark

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[1] ICRC, *Strengthening Legal protection for Persons deprived of their Liberty in relation to Non-International Armed Conflict*, Regional Consultations 2012-13, p. 3.
[2] Henry J. Webb, *Prisoners of War in the Middle Ages*, Military Affairs, Vol. 12, No. 1, 1948, p. 46.

must be made about the use of the term "POW". In the following chapters, this term will generally not be used in the IHL sense, but rather according to its ILAC counterpart. In the latter sense, persons referred to by this term are enemy fighters[3] captured during *Jihad*,[4] and not those falling under the different categories listed in the Third Geneva Convention (GCIII) or Additional Protocol I (API).[5] If translated into modern IHL terms, these individuals would likely be classified as "persons detained for reasons related to the armed conflict", since conflicts involving non-state armed groups applying Islamic rules are perforce of a non-international nature, where IHL specific rules on POWs and its terminology do not apply.

An overview of the practices and laws enacted by selected armed groups applying Islamic Law – especially, Al-Qaeda and the Moro Islamic Liberation Front (MILF) – will be included in order to assess the relevance of this framework today. The aforementioned armed groups have been selected because not only have they invoked *Jihad*,[6] making ILAC rules on POWs applicable in theory, but also because they exemplify two distinct categories in which ILAC has proven its importance and ongoing significance. Al-Qaeda stands out due to its explicit rejection of every other international norm and regulation, only acknowledging and applying Islamic precepts and rules. Conversely, the MILF represents an illustration of how IHL can be upheld and recognized by an armed group, owing to its alignment with the principles of ILAC. While focusing predominantly on Al-Qaeda and the MILF, the paper will also refer to other NSAGs such as the Mouvement National de Libération de l'Azawad, the Islamic State Group and Hezbollah.

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[3] *See*: Khalid Muhammad Z. Al Zamil, *The Legal Status of Prisoners of War in Islamic Law: Assessment of its Compatibility with the 1949 Geneva Convention Relative to the Treatment of Prisoners of War*, Ph. D. diss., University of Hull, 2002, p. 77.

[4] Troy S. Thomas, *Jihad's Captives: Prisoners of War in Islam*, U.S. Air Force Academy Journal of Legal Studies, vol. 12, 2002, pp. 87-93.

[5] The articles of reference are Art. 4 GCIII and Art. 44 API.

[6] For the MILF, *see for instance*: Soliman M. Santos, *Jihad and International Humanitarian Law: Three Moro Rebel Groups in the Philippines*, Asia-Pacific Perspectives on International Humanitarian Law, Cambridge University Press, 18 October 2019, p. 374; for Al-Qaeda, *see*: T. S. Thomas, above note 4, p. 87.

The relevance of this topic not only lies in the fact that recent armed conflicts involving armed groups are often characterized by expressions of interests and demands framed in Islamic terms,[7] but also because it is interconnected with one of the major issues of contemporary conflicts: detention by NSAGs. Indeed, this being one of the least regulated fields of IHL, persons deprived of liberty by a NSAG – including members of the armed forces of a State – may find themselves in a legal vacuum. States' reluctance and unwillingness to regulate this issue, despite being more than aware of the challenges that this lacuna creates, exacerbate an already complex and controversial matter, as it is detention in Non-International Armed Conflicts (NIACs). Consequently, innovative approaches are constantly required in order to guarantee not only basic protective standards, but also a robust set of positive safeguards that every detainee for conflict-related reasons should be entitled to have, regardless of what kind of entity the Detaining Power is. The paper aims to illustrate that for armed groups associated with Islamic beliefs, protection of persons in detention for conflict-related reasons can be achieved – depending on the circumstances of the group under scrutiny – through two avenues: either by directly implementing ILAC, or by leveraging its parallelisms and commonalities with IHL. The latter not only has the potential to result in the acknowledgment of compatibility with the universal framework set forth in IHL, but it may also enable the implementation of a more comprehensive set of rules than those offered in IHL of NIACs.

## II. The principle of humane treatment of POWs under ILAC and IHL: two sides of the same coin

In a world where many armed groups profess adherence only to Islamic Law, there is a growing interest among scholars in exploring the

[7] Isak Svensson, Desirée Nilsson, *Disputes over the Divine: Introducing the Religion and Armed Conflict (RELAC) Data, 1975 to 2015*, Journal of Conflict Resolution, 2018, Vol. 62(5), p. 1127; *See also*: Heba Aly, *Islamic Law and The Rules of War*, The New Humanitarian, 24 April 2014, available at: https://www.thenewhumanitarian.org/2014/04/24/islamic-law-and-rules-war

commonalities between this framework and IHL, especially when the latter is not permitted to exert its restrictive – and humanitarian – influence during hostilities. Before analysing some of these armed groups, it is necessary to conduct a comparison between the rules of ILAC and IHL. This comparison goes beyond a mere scholarly exercise aimed at identifying commonalities between the two frameworks, as, on a more practical level, it also seeks to shed light on how certain principles may influence the behaviour of armed actors in contemporary conflicts. Indeed, it aims to contribute to the ongoing discourse that tries to elucidate rules and principles which – in the words of the ICRC – "induce weapon bearers to observe certain limits when engaging in armed violence and to preserve a minimum of humanity even in the heat of the battle"[8]. Ultimately, the comparative analysis that follows seeks to highlight how the ILAC principle of humane treatment can offer minimum guarantees of protection for individuals who find themselves detained and in the power of an Islamic non-state armed group.

## 1. Founding rules and principles governing the issue of POWs in ILAC

Historically, there is evidence of different civilizations respecting the principle of humane treatment of prisoners. However, it seems correct to affirm that "until the appearance of Islam, there were no warriors with such a subtle sense of compassion for their captives"[9]. The rules regarding this occurrence developed by Islamic jurists – mostly based on the Qur'an, the Sunnah and Hadiths of the Prophet – show a clear intention to respect the lives and the necessities of prisoners regardless of their national belonging or religious belief. Indeed, according to Islamic sources, once enemy warriors have fallen into the power of the Muslim army, they are entitled to basic guarantees of humanity, as they "cannot be killed,

[8] Fiona Terry, Brian McQuinn, *The Roots of Restraint in War*, ICRC, Geneva, December 2008, p. 6.

[9] Senad Ćeman, Amir Mahić, *Principles of Islamic Law of Armed Conflict: Protection of Property, Treatment of Prisoners of War, Providing Refuge and Treatment of Bodies of the Deceased During Hostilities*, in Islamic Law and International Humanitarian Law, Proceedings, ICRC and Faculty of Islamic Studies – University of Sarajevo, Sarajevo, 2000, p. 74.

decapitated, nor burned and should be treated with human dignity and without unnecessary suffering"[10].

While the legal basis for taking prisoners lies in the Qur'an (9:5), which allows the apprehension of hostile combatants by stating to "take them captives and besiege them"[11], the most important Islamic norms regarding the treatment of captives are associated with the Battle of Badr (624 A.D.) when, after the Muslim army succeeded in capturing seventy prisoners, the Prophet instructed his Companions to treat them fairly,[12] or, as one could argue in IHL terms, humanely. Furthermore, this Battle is also relevant because from this event, Islamic jurists extrapolate the purpose of detention – *i.e.,* the military advantage of preventing prisoners to re-join their army to participate again in hostilities – together with the need for their protection from the fact that the Seventy were hosted in the houses of the Companions or Mosques after capture,[13] which were considered "the safest places in Medina at the time"[14].

## 2. The prohibition of killing and torture

Two of the most relevant provisions concerning prisoners for conflict-related reasons under IHL are the prohibition of killing[15] and torture[16], both of which are also found in Islamic sources.

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[10] Matthias Vanhullebusch, *War and Law in the Islamic World*, Brill's Arab and Islamic Laws Series, Leiden, 2015, p. 42.
[11] Omar Mekky, *Islamic Jihadism and the Laws of War: A Conversation in International and Islamic Law Languages*, OUP, Oxford, 2023, p. 99.
[12] Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations*, Palgrave Macmillan, New York, 2011, p. 139.
[13] Ahmed Al-Dawoody, *IHL and Islamic Law in Contemporary Armed Conflict, experts' workshop*, ICRC, Geneva, 2008, p. 52.
[14] O. Mekky, above note 11, p. 99.
[15] The prohibition of killing not only is prohibited by the Geneva Conventions and Additional Protocol I and II, but it is also considered a grave breach when it is carried out in International Armed Conflicts and a war crime, covering both IACs and NIACs, under the Rome Statute. *See*: ICRC, Rule 98 – Violence to life, *Customary International Humanitarian Law (CIHL) Database*, Vol. II, Chapter 32, Section C, para. 1.
[16] Under IHL the prohibition of torture, cruel or inhuman treatment is considered a norm of customary law, protecting civilians and persons *hors de combat*. *See*: ICRC, Rule 90 – Torture

For the prohibition of killing, it seems that not only was there a consensus among the Companions in considering it as forbidden, but the actions of the Prophet also confirm its impermissibility, with the sole exception of POWs found guilty of war crimes.[17] This prohibition, according to the majority of Islamic jurists, is extrapolated from the different possibilities that commanders have while dealing with prisoners. Indeed, the Prophet's precedents suggest that, based on the interest of the Muslims, there are four different events that can unfold: (i) releasing the captives without nothing in return; (ii) exchanging prisoners for money or trading them for Muslim POWs; (iii) enslavement; and (iv) the killing of the prisoners.[18] The latter needs to be contextualized in order to understand why killing *per se* should be considered prohibited. Those that study the *fiqh* base the possibility of ending the life of prisoners on the execution of three individuals[19] shortly after the Battle of Badr and Uhud (625 A.D).[20] However, this happened not because they were captured but because before losing their freedom, they persecuted Muslims and committed war crimes against them.[21] This being the only difference between these three captives and the other sixty-seven who were spared, it seems logical to assume that they were granted this fate because of their previous crimes, and not as a direct result of captivity. Therefore, by interpreting this event, it can be deduced that the Prophet's intention was to consider only the first three options as choices available to the army

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and Cruel, Inhuman or Degrading Treatment, *Customary International Humanitarian Law (CIHL) Database*, Vol. II, Chapter 32, Section D, para. 1; Further, it is commonly shared view that the prohibition of torture forms part of *jus cogens* norms. *See*: Article 23 Annex (g), *Draft Conclusion on Identification and Legal Consequences of Peremptory Norms of General International Law* (jus cogens), International Law Commission (ILC), A/77/10 § 43, 2022, available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_14_2022.pdf.

[17] T. S. Thomas, above note 4, p. 94.

[18] A. Al-Dawoody, above note 12, p. 137.

[19] The prisoners were: Al-Nadi ibn al-Harith, 'Uqbah ibn Mu'ayt and Abu 'Azzah al-Jumanhi.

[20] Ahmed Al-Dawoody, *Islamic Law and International Humanitarian Law: An introduction to the main principles*, International Review of the Red Cross (IRRC), Vol. 99(3), No. 906, Conflict in Syria, 2017, p. 1012.

[21] Troy S. Thomas, *Prisoners of War in Islam: A Legal Inquiry*, The Muslim World, Vol. 87, No. 1, 1997, p. 49.

commander regarding the fate of prisoners of war; while the killing only as the exception to the general rule because of the commission of previous heinous crimes. Consequently, from this reasoning it is possible to extrapolate the prohibition of unjustified killing of POWs.[22]

The prohibition of torture and other cruel, inhuman and degrading treatment seems to be based on one Hadith of the Prophet who said that "God will torture those who torture people on earth"[23]. This makes this imposition absolute and deemed operational even if the potential victim possesses military information, ruling out the use of ill-treatment methods to forcibly extract them.[24] The prohibition also included humiliation, abuses and psychological torture,[25] as, for instance, "prisoners were not to be stripped naked and had to be imprisoned in decent facilities"[26]. Interestingly, an additional guarantee that today is strictly related to this prohibition was acknowledged by Islamic sources as well. Indeed, there is indication that "rape of women in detention is considered as an act of adultery or fornication and Muslim combatants would be liable for such action"[27].

### 3. Management of captives

As regards the management of captives *in concreto*, the main legal basis is likewise the Qur'an, where the righteous are required to give food, in spite

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[22] Mohamed El Zeidy, Ray Murphy, *Islamic Law on Prisoners of War and its Relationship with International Humanitarian Law*, The Italian Yearbook of International Law, Vol. 14, 2004, p. 67.
[23] Muhammad Munir, *Debates on the Rights of Prisoners of War in Islamic Law*, Islamic Studies, Vol. 49, No. 4, 2010, p. 486. *See also*: Sadiq Reza, *Torture and Islamic Law*, Chicago Journal of International Law, Vol. 8, No. 1, Art. 4, 2007, p. 41.
[24] Mohamed E. Badar, *Jus in Bello under Islamic International Law*, International Criminal Law Review, No. 13, 2013, p. 618.
[25] Tahar Abbou, *Prisoners of War in International Conventions Versus Islamic Law*, El-Ihyaa Journal, Vol. 20, No. 25, June 2020, p. 1084.
[26] Mohammed Houmine, *Protection of Civilians and Treatment of Prisoners during War are at Stake: A Comparative Study*, Journal of Current Social and Political Issues (2) (1), 31 May 2024, p. 41.
[27] M. Vanhullebusch, above note 10, p. 40.

of their love for it and even at the cost of fasting, to the indigent, the orphan and the prisoner.[28] This command resulted in the prisoners of the Battle of Badr being given the best food available, eating whenever their captors ate.[29] With due adjustments, it could be argued that this is not so different from the so-called principle of assimilation that has been used since the Hague Conventions of 1899[30] as a starting point for the regulation of the treatment of POWs under IHL, prescribing that members of this category shall "be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them"[31]. These actions under Islamic Law are deemed to be carried out solely "for the sake of pleasing God"[32] and not to obtain something in return from the captives, rendering it a compelling and binding duty for all the Muslim community. Moreover, certain Hadiths require sheltering detainees from adverse weather, especially against the heat of the sun,[33] giving them clothes,[34] and curing them in case of illness or diseases.[35] This has been considered as indirectly implying the obligation to release prisoners when the captors could no longer provide for their care. An illustrative example of this is that of Salah Al-Din Al-Ayubi who, after having managed to capture a relevant number of enemies during the Crusades, released them because he did not have enough food and water for their sustainment and

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[28] Qur'an, 76:8.

[29] A. Al-Dawoody, above note 13, p. 52. Similarly, Mutaqin reports that one of the prisoners recounted that "When they ate their morning and evening meals, they gave bread and ate the date themselves following the orders that the apostle had given about us. If anyone had a morsel of bread, they gave it to me". *See*: Zezen Zaenal Mutaqin, *Restraint in the Classical Islamic Law*, Southwestern Journal of International Law, Vol. XXIX:1, 2023, p. 42.

[30] Art. 7 Hague Convention II 1899.

[31] ICRC, *Commentary to Article 26 to the Third Geneva Convention*, 2020, para. 2106.

[32] A. Al-Dawoody, above note 12, p. 140.

[33] Ibrahim Abdullahi, *Rights and Treatment of Prisoners of War Under Islamic International Humanitarian Law: A Legal Analysis*, Archives of Business Research, Vol. 7, N. 10, p. 69.

[34] For instance: "Following the Battle of Badr, prisoners were taken, including Abbas bin Abdul Muttalib who was not wearing a shirt. The Prophet searched for a suitable shirt for him and found one belonging to Abdullah ibn Ubai that fit him. The Prophet then gave his own shirt to Abdullah ibn Ubai as a gesture of gratitude for his help". *See:* M. Houmine, above note 26, p. 40.

[35] T. S. Thomas, above note 21, p. 50.

this would have probably led to their death.[36] Additional Hadiths provide for the right of POWs to make a will regarding their property and the prohibition of separating members of the same family after capture.[37] The latter is the result of a Hadith originally limited to the general interdiction against separating a mother and her children that was later broadened by jurists to encompass other members of the family.[38] Further, ILAC also "prohibits the use of compelled labor for all captives of war"[39]. Finally, there is also evidence showing that Islamic armies allowed their enemies "to visit prisoners of war for the purpose of counting them"[40]. If expanded through interpretation, such precedent could be considered as an entry point for the modern rules allowing the Protecting Powers and, subsidiarily, the ICRC[41] to carry out their mandates inside detention facilities.

## 4. Other useful commonalities

Both the founding principles and the provisions to be implemented in practice share many common values with the Geneva Conventions, which in modern warfare are typically recognized as representing the minimum standards from which it is not allowed to deviate during armed conflicts. In particular, the most basic and general safeguard is the principle of humane treatment, which entails the prohibition of using violence and outrages upon personal dignity, killing, torture and other inhuman treatments to those who are not taking an active part in the hostilities, including by reason of detention.[42] In addition to this basic and customary

[36] K. M. Z. Al Zamil, above note 3, p. 171.
[37] T. S. Thomas, above note 4, p. 95.
[38] A. Al-Dawoody, above note 13, p. 53.
[39] Miebaka Nabieubu, *Comparitive Study of Islamic and International Humanitarian Law*, Najaha International Journal of Law and Society, Vol. 2, No. 3, 2023, p. 13.
[40] Karima Bennoune, *As-Salamu 'Alaykum? Humanitarian Law in Islamic Jurisprudence*, Michigan Journal of International Law, Vol. 15, No. 2, 1994, p. 633.
[41] Art. 126 GCIII.
[42] Common Article 3 to the Geneva Conventions.

rule,[43] protecting both civilians and persons *hors de combat,*[44] there is a comprehensive set of obligations[45] solely benefitting POWs that arguably resemble the above-mentioned provisions. Indeed, apart from a generic indication that "[p]risoners of war must at all times be humanely treated"[46], an attentive observer can recognize the same concepts and obligations provided by ILAC concerning the healthcare,[47] food,[48] clothing,[49] and communication with the family.[50]

## III. Assessing the relevance of ILAC today through the principle of humane treatment and its modern use

Given the commonalities between ILAC and IHL as established in the previous discussion, it is now necessary to determine whether ILAC, precisely due to its commonalities with IHL, can be used in practice to provide an answer to protect persons afflicted by armed conflicts, including cases involving detention.

It seems correct to affirm that the application of ILAC is more relevant not necessarily in situations where the general recognized law governing

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[43] The customary nature of this principle means that it is equally applicable in both International Armed Conflicts (IACs) and Non-International Armed Conflicts (NIACs). Indeed, even if it was originally limited to NIACs, the International Court of Justice (ICJ) in the famous *Nicaragua Case* recognized that: "Article 3 which is common to all four Geneva Conventions of 12 August 1949 defines certain rules to be applied in the armed conflicts of a non-international character. There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts; and they are rules which, in the Court's opinion, reflect what the Court in 1949 called 'elementary considerations of humanity". *See*: ICJ, *Nicaragua v. United States of America, Case concerning Military and Paramilitary Activities in and against Nicaragua,* Judgment, 27 June 1986, para. 218.

[44] ICRC, Rule 87 – Humane Treatment, *Customary International Humanitarian Law (CIHL) Database*, Vol. II, Chapter 32, Section A.

[45] These rules can be found in Part II and III of the Third Geneva Convention (GCIII), from Article 17 to 121.

[46] Art. 13 GCIII.

[47] Art. 29-32 GCIII.

[48] Art. 26 GCIII.

[49] Art. 27 GCIII.

[50] Art. 71 GCIII.

armed conflict is silent – as, in theory, it would be if we were to apply the *lex specialis* principle in the relationship between two sets of law – but rather when certain actors refuse to apply it, because they reject it and not consider themselves to be bound by it. It goes without saying that if ILAC is the only set of norms recognized and applied by the NSAG during hostilities, its relevance is significantly amplified, as it is the only language that can be used. Nowadays, this is notably the case with a certain typology of NSAGs that blatantly deny the application of all branches of International Law, including IHL, claiming instead that their conduct and actions are based on religious foundations and sources.[51] The majority of these NSAGs rely on Islamic Law to regulate their actions and the daily life of those living under their control, including when they manage to capture members of enemy States' armed forces or other fighters.

It is important to emphasize that this is not the only way in which ILAC can play a role in modern conflicts. Indeed, not all the armed groups with an Islamic identity operating today completely reject International Law, as some of them – for instance, the Mouvement National de Libération de l'Azawad (MNLA)[52] and the MILF[53] – use similar, if not, the same, language as this law and, and in certain instances even recognize

[51] Annyssa Bellal, Pascal Bongard, Ezequiel Heffes, *From Words to Deeds: A Study of Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms, Research and Policy Conclusions*, UK Research and Innovation, 2022, p. 29.

[52] The Mouvement National de Libération de l'Azawad, operating in Mali, recognized in Article 21 of its Statute (Statut et Règlement du MNLA) to respect and adopt humanitarian principles, including treating and protecting POWs in accordance with the principles of Islam and IHL until their release. This implicitly considers both frameworks as compatible. *See*: Pascal Bongard, Annyssa Bellal, *From Words to Deeds: A Research Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms: The National Movement for the Liberation of Azawad*, UK Research and Innovation, 2021, p. 13.

[53] The Moro Islamic Liberation Front (MILF), operating in the Philippines, initially made several references to Islamic Law only, but eventually came to recognise that its armed wing, the Bangsamoro Islamic Armed forces (BIAF), was bound by IHL while fighting. *See*: Chris Rush, Annyssa Bellal, Pascal Bongard, Ezequiel Heffes, *From Words to Deeds: A Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms, Moro Islamic Liberation Front/Bangsamoro Islamic Armed Forces*, UK Research and Innovation, 2022, pp. 17-18.

the binding nature of IHL.[54] As it will be demonstrated, ILAC likewise plays a pivotal role in the case of this typology of groups, since it was only through its formal utilization that commonalities with IHL were recognized, subsequently leading to its application. It seems correct to affirm that without this branch of law, the persons who benefitted from IHL in the conflict in which these groups were operating would not have enjoyed the same treatment. Indeed, as a consequence of such recognition, IHL has been formally applied during the armed conflicts in which the NSAGs belonging to this category were involved, greatly enhancing the protection provided not only to persons in detention for reasons related to the conflict, but also to other categories of people.

1. Accommodating and unaccommodating groups to IHL: a categorization.

For the purpose of the paper, NSAGs with an Islamic trait are divided in two distinct categories based on their use of ILAC in relation to IHL. It has been observed that, in the context of armed conflicts, Islamic Law has been used in mainly two different ways, each representing a different category.

Firstly, certain NSAGs completely refuse the applicability of any binding international rule, including IHL. Consequently, Islamic *jus in bello* becomes the only legal reference applicable and the primary source for a protective regime. This category will henceforth be referred to as the "unaccommodating category to IHL". Secondly, these norms have served as a pathway to establish the recognition of the applicability of IHL. Indeed, for the armed groups falling into the second category, although Islamic Law – and ILAC as its relevant branch during armed conflict – was originally identified as the only applicable and binding legal source, it was later acknowledged that IHL was applicable due to its compatibility with the *dicta* of Islamic Law. This has been solely possible due to

[54] A. Bellal, P. Bongard, E. Heffes, above note 51, p. 29-30.

interpretation and because of the acknowledged similarities with IHL, whose applicability today is mandated to be universal during hostilities. Henceforth, it will be referred to as the "accommodating category to IHL".

Concerning the treatment of prisoners, armed groups belonging to the "accommodating category" often opted to recognize the applicability of comprehensive regulations resembling more those provided for POWs – as intended under IHL – rather than those set forth in IHL of NIACs, when dealing with members of the State's armed forces and other groups they were opposing. This was done despite the conflict being classified as a NIAC, where there is absolutely no obligation to apply such rules under IHL.[55] This may have occurred due to the nature of the conflict in which these groups were involved, where the adoption of terms resembling those of IACs, while not technically correct from a legal point of view, could bring them more recognition, as they often fight for independence. In such cases, the intention is to present itself as a "State" by following the rules that States are required to follow. As a consequence, if the entity perceives itself as a State, it may be more inclined to apply the same rules of IHL regarding conflicts between two or more States, including those for POWs. In spite of the reason why this happened, the implementation of this enhanced protection might not have been possible without the recognition of the similarities between ILAC and IHL. Two positive consequences may derive from this and benefit the group. Firstly, people living under their aegis would enjoy more protection, which potentially facilitates recognition even without imposing themselves with force. Secondly, from the perspective of the group, if this set of rules is implemented in practice and not only formally included in their law, the NSAG could also give the impression of having many of the same capacities of States and thus, capable of applying the more developed rules of IHL of IACs. To represent this point, the role of the MILF and its relationship with ILAC, focusing

[55] Indeed, Common Article 3 solely requires applying its provisions as a "minimum", implying that while there is no obligation to apply more developed and structured frameworks, doing so is certainly not prohibited. This statement is reinforced by the fact that CA3 also encourages parties to a NIACs to make agreements to adopt all or part of the provisions of the GCs.

on their implementation of the principle of humane treatment will be discussed later as an example.

On the other hand, NSAGs with more extremist views, such as the Islamic State Group (ISg) and Al-Qaeda, formally and explicitly reject the applicability of International Law and IHL.[56] More specifically, Al-Qaeda considers that: "Muslim states' acceptance of international legal obligations is evidence of infidelity to Islam"[57], while ISg regards the UN Charter as a "form of disbelief because it entails the acceptance of positive law and placing it on an equal footing with Shari'ah law"[58]. Because of this clear rejection of the global order, these two groups are useful to illustrate the relevance of ILAC and its principle of humane treatment today. Indeed, if, as demonstrated before, "the demands for the humanitarian treatment of POWs are found in both contemporary IHL and in the Shari'ah"[59], one would assume that in contemporary times, even NSAGs that claim to solely adhere to Islamic Law would still respect this principle in practice. In order to ascertain if this is true, the practices and the laws enacted by Al-Qaeda will be assessed to see if their behavior is in line with the Islamic *dictum* of humane treatment. The decision to exclusively focus on this NSAG stems from ISg adopting many of Al-Qaeda's formulations regarding Islamic Law matters, including *Jihad* and its related issues.[60] Furthermore, the rise of ISg in 2014 led Al-Qaeda to assume less radical views and to translate them into written rules in order to distance itself from the new-born group and to remain relevant among

[56] A. Bellal, P. Bongard, E. Heffes, above note 51, p. 29.
[57] American University Cairo Research Team, *From Words to Deeds: A Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms, Al-Qaeda*, UK Research and Innovation, 2022, p. 60.
[58] American University Cairo Research Team, *From Words to Deeds: A Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms, The Islamic State Group (ISg)*, UK Research and Innovation, 2022, p. 26.
[59] Omar Yousaf, "*IHL" as "Islamic Humanitarian Law": A comparative Analysis of International Humanitarian Law and Islamic Military Jurisprudence Amidst Changing Historical Contexts*, Florida Journal of International Law, Vol. 24, issue 2, Article 6, 2012, p. 465.
[60] Omar Suleiman, Elmir Akhmetova, *The expanded usul of violence by ISIS, Al-Qaeda, and other similar extremist groups*, Islam and Civilisational Renewal, Vol. 11, No. 1, 2020, p. 63.

Jihadist groups.[61] Notably, they sought "to avoid the alienation and antagonization of the Muslim masses"[62] by banning certain practices used by ISg, including those carried out against people deprived of liberty, such as enslavement, summary executions, sexual violence and other ill-treatments.[63]

Before discussing these two categories in greater detail, it is worth mentioning another Islamic NSAG which can be included in the unaccommodating category: Hezbollah. This group – through an analogous but nonetheless different approach from the aforementioned groups of the same category – recognizes certain minimum standards of treatment that captives are entitled to have, by solely referring to the Islamic rules of armed conflict.[64] In fact, by relying on Shiite Islam sources and the specificities of Khamenei's Fatwas, they indirectly ruled out from their laws the killing of those they consider as POWs, torture or any other humiliating act against this category, without making explicit references to IHL.[65] The analogies in their approach to the principle of humane treatment stem from the complete lack of reference to IHL, which easily allow to categorize them as members of the "unaccommodating category". However, if compared to other groups in the same category, the differences arise from the fact that, although the prohibition of such acts is rooted in classical Islamic sources, their practical application seems to have been heavily influenced by Khamenei's Fatwas, making their actions highly contextual and dependent on these specific directives. As a result, this armed group will not be covered in detail, as it appears to represent a unicum.

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[61] *See*: "The document aims primarily to establish a hierarchy of authority between jihadi groups in the region and to protect the image of Jihad from ISIS's efforts to distort it". *See*: Tore Refslund Hamming, *Jihadists' code of conduct in the era of ISIS*, Policy Paper, Middle East Institute, Washington D.C., 2019, p. 4.
[62] American University Cairo Research Team, above note 57, p. 8.
[63] American University Cairo Research Team, above note 58, pp. 53-54.
[64] Hiba Mikhail, Hassan Baalbaky, *From Words to Deeds: A Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms, The Hezbollah - Lebanon,* UK Research and Innovation, 2022, p. 21.
[65] *Ibid,* p. 68.

This brief introductory overview sets the stage for the next section, which will examine armed groups, with a focus on those operating in the Asian continent, and their different uses of and approaches to ILAC. The aim is to assess and evaluate the practical relevance of this *corpus juris* in modern conflicts and how it can contribute to improving the protection of the persons deprived of liberty.

## 2. Al-Qaeda as the representative of the "unaccommodating" category

The first category involves NSAGs rejecting the international order and that, as a result of this stance, are labelled as "unaccommodating to IHL" for purposes of this paper. As previously explained, such designation does not stem from an evaluation that IHL lacks similarities with ILAC, but rather because its belonging and origins are not shared by these groups, as they are perceived as originating from their sworn enemies.

A few introductory words about Al-Qaeda and its role today are necessary to understand why they were compelled to regulate their actions through the adoption of a code of conduct. The involvement of Al-Qaeda in the attacks on the World Trade Center at the turn of the millennium, followed by the US-led "war on terror" during the Bush administration, have elevated this group to the status of the most famous of the NSAGs professing adherence to Islamic Law. However, it is argued that it is almost an entirely different organization today compared to what it used to be when it reached its "peak of notoriety", as there is evidence that "it is less centralized, less rigorous in its application of Shari'ah, and less popular"[66]. The primary causes behind such change are the intensified counter-terrorism operations they have had to parry, the death of Bin Laden, and the rise of ISg. Despite these, this group persists through re-organization and continues to have many affiliates around the globe, especially in areas where weak governance and general instability have

[66] Alexey M. Vasiliev, Natalia A. Zherlitsyna, *The Evolution of Al-Qaeda: Between Regional Conflicts and a Globalist Perspective*, Herald of the Russian Academy of Sciences, Vol. 92, suppl. 13, 2022, p. 1244.

grown over the years.[67] These events necessitated the implementation of innovative strategies to maintain relevance, including the formulation – followed by a sort of "codification" – of the rules governing the conflicts in which the Jihadists are engaged.

Such norms have been included in the "*Al-Qaeda in the Indian Subcontinent (AQIS) Code of Conduct*", considered as one of the most elaborate documents regarding the behavior that all Jihadists should respect while engaged in hostilities.[68] It is notable that despite this Code being issued by the "youngest affiliate"[69] of the NSAG and with a clear and specific geographical limitation in the title, experts consider it as a message from Al-Qaeda Core (AQC) – the original and central group – to all Jihadi fighters.[70] For these reasons, the rules and regulations provided by this Code of Conduct can be considered authoritative and will be relied upon in order to assess Al-Qaeda's compliance with ILAC's rules.

In the AQIS' Code of Conduct, Section IX is the most relevant for the topic of this paper, as it concerns "Enemy Captives and Individuals who Surrender"[71]. The most important provision is rule number 2 which offers four alternative options for dealing with a *Kafir*[72] person belonging to an enemy nation at war with the Muslim *Ummah.*[73] According to the rule, the *Amir*[74] can choose between: (i) exchanging the prisoner with Muslim

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[67] For a map with the location of the presence of the main affiliated groups, *see*: K. Zimmerman, N. Vincent, *The State of Al-Qaeda and ISIS in 2023*, in Critical Threats, September 11, 2023, available at https://www.criticalthreats.org/analysis/the-state-of-al-qaeda-and-isis-in-2023.

[68] The Soufan Center, *Diminished, But Not Defeated: The Evolution of Al-Qaeda since September 11, 2001*, September 2021, p. 36.

[69] The Soufan Center, *Al-Qaeda in the Indian Subcontinent (AQIS): The Nucleus of Jihad in South Asia*, April 2019, p. 7.

[70] *Ibid.*, p. 23.

[71] There are six rules in total in Section IX. *See*: AQIS Code of Conduct, June 2017, p. 14.

[72] Kafir means unbeliever. The included non-exhaustive examples in the Rule are the "Hindus, Sikhs, Christians and Jews". *See*: Rule n. 2, Section IX, AQIS Code of Conduct, June 2017, p. 14.

[73] The Muslim Ummah is generally considered to be the Muslim community or the Muslim people.

[74] Rule n. 1 provides that only the Amir (commander) or the Vice-Amir can decide on the cases of enemy captives or surrendering individuals. They must also consult with the Heads

captives; (ii) taking ransom; (iii) releasing the person; or (iv) killing the prisoner.[75] It is fair to consider that those belonging to this category are the same that under IHL would, as a minimum, enjoy the guarantees of Common Article 3 (CA3). Indeed, there are no further indications about the reasons of captivity nor a differentiation between detainees, therefore one could assume that this being the general treatment reserved to detainees, it would also apply to those detained for having participated in hostilities against them. Furthermore, by interpreting the title of the Section literally, one could include both fighters and members of national armed forces, as they are those who generally surrender.

Even if part of this rule appears to be based on certain Islamic sources, the possibility to kill captives is not. Indeed, it is based on the assumption that the Prophet permitted the killing of three captives after the Battles of Badr and Uhud, and thus, the killing must be considered lawful. However, as previously mentioned in the earlier part of this paper, what is missing in this interpretation is that the Prophet's precedents show that those prisoners met this fate because they committed war crimes,[76] consequently, restricting the possibility of killing captives to this single occurrence.[77] Interestingly, there is no indication about the faculty of enslavement, demonstrating their opposition to this practice and, probably, a distancing from the ISg. Rule number 4 deals with the case of arrested "apostates" who can be either exchanged with Muslim prisoners or money or killed as a punishment. The differentiation with the previous rule, the avoidance of limiting the *ratione personae* applicability to someone "belonging to a nation at war", and the use of the word "arrest" may seem to point to the direction of considering this as the general conduct to

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of the Shari'ah Committee and the Military Committee. *See*: Rule 1, Section IX, AQIS Code of Conduct, June 2017, p. 14.

[75] In addition, If the person becomes a Muslim, the option of killing him would not be feasible anymore, while exchange would be possible only if the captive agrees and there is no fear that he would become a Kafir again. *See*: Rule 3, Section IX, AQIS Code of Conduct, June 2017, p. 14.

[76] A. Al-Dawoody, above note 12, p. 138.

[77] *Ibid*, p. 137.

maintain in a non-war situation. However, from the word "apostate" and the nature of the three different courses of actions, it appears to be more the conduct to follow when dealing with a hostage rather than that of an arrested individual. Under IHL, hostage-taking is considered customarily prohibited and to be respected in both IACs and NIACs.[78]

Although torture is not mentioned in the Code of Conduct, the Armed Group's critiques to the US and Egypt for using it suggest that they consider it forbidden.[79] However, it was systematically practiced by the group and its affiliates who not only tortured detainees but also denied them food and medical care, flagrantly violating both IHL and ILAC.[80] The Code of Conduct is silent about the daily treatment during detention; therefore – given the group's adherence to Islamic Law – the specific regulations of Islamic *jus in bello* should be presumably applicable.

From the AQIS' Code of Conduct and its rules, it is possible to extrapolate an interesting conclusion regarding the relevance of ILAC today. It appears that with the creation of such document, there is a clear intent to at least try to abide to certain less extremist interpretations of Islamic Law, including ILAC and its rules on the treatment of POWs. Even if this was probably done to regain the power and the prominence they lost because of ISg, it is progress as, in theory, it should make it easier to use the language of this law. Specifically, when it comes to prisoners detained for conflict-related reasons, even if there is room for improvement, particularly on the point of the permissibility of killings and hostage-taking, they made an attempt to give clear rules along with a consequent absolute prohibition of certain practices. Therefore, the fact

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[78] *See*: ICRC, Rule 96 – Hostage-Taking, *Customary International Humanitarian Law (CIHL) Database*, Vol. II, Chapter 32, Section I.

[79] American University Cairo Research Team, above note 57, p. 54.

[80] In particular, in the Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, it was proved that Jabhat al-Nusra, one of the affiliated groups of Al-Qaeda, used torture, corporal punishment and inhuman and degrading treatment as regards with both prisoners and civilians. Furthermore, they killed prisoners when it was clear that the Syrian government didn't want to make exchanges with captured members of the group. *See*: American University Cairo Research Team, above note 57, p. 54.

that they decided to use the language of Islamic Law and ILAC when they needed to re-obtain relevance and power means that this set of rules is actual. Theoretically, it could be used to persuade even extremist NSAGs in abiding to the minimum standards of humane treatment during armed conflict – without necessarily making reference to IHL – as this principle is an integral and inherent part of this *corpus juris*.

### 3. The MILF as the representative of the "accommodating" category

The MILF is a Non-State armed group that has been active in the Philippines since the 1980s.[81] This armed group – after decades and many attempts to obtain independence – started a peace process with the government of the Philippines, which culminated in the signing of the so-called "Comprehensive Agreement on the Bangsamoro" in 2014 – a peace treaty later incorporated into national law.[82] However, the transitional process is far from over and the government is still occasionally confronted with skirmishes with different armed groups in the area, including with the MILF and groups that split away from it.[83]

As pointed out before, the interest in the MILF is related to their innovative use of Islamic Law during their armed struggle against the government of the Philippines. What stands out about this NSAG is that they decided to establish "a Committee of Islamic scholars from both within the MILF and unaffiliated scholars to study relevant IHL provisions and decide whether each precept was compliant with Sharia'ah"[84]. The Committee ended up in affirming that the universal

[81] The group was created when one of the leaders of the Moro National Liberation Front (MNLF) decided to part away from the "mother" organization because of the disagreements with the MNLF's leader at the time. Such disagreements were mainly based on religious grounds. *See*: Datuan Magon, Dominic Earnshaw, *Engaging Ulama in the Promotion of International Humanitarian Law: A Case Study from Mindanao*, Journal of Human Rights Practice, XX, 1-14, 2024, p. 3.
[82] *Ibid*, p. 2.
[83] International Crisis Group, *Southern Philippines: Making Peace Stick in the Bangsamoro*, Asia Report n. 331, 1 May 2023, p. 16.
[84] D. Magon, D. Earnshaw, above note 81, p. 6.

norms set forth in the Geneva Conventions and the Protocols are compatible with the *dicta* of Islamic Law. Following this acknowledgement, they developed and drafted a Code of Conduct for their fighters, named "*General Order Number 2*", which incorporates an original *mélange* of both ILAC and IHL.[85]

Of particular significance within this document is Article 34, titled "Rules of engagement in Islam"[86], which also governs the treatment of "prisoners of war". In the article, paragraph five, which applies to "surrendered enemy combatants", commands "to maintain and observe justice at all times and avoid blind retaliation. Protect them and treat them humanely". The provision clearly refers to the IHL principle of humane treatment which, among others, must be respected in favor of persons *hors de combat*. Paragraph six is relevant as well, as it requires to "be kind at all times towards POWs and captives and to collect and care for wounded combatants". By analyzing the last paragraph, it is possible to clearly notice a mixture of ILAC and IHL. Indeed, as far as Islamic Law is concerned, the main rule clearly relates to the instructions imparted by the Prophet to his Companions shortly after the Battle of Badr where he told them that their captives were to be treated with fairness.[87] Conversely, the influence of IHL is marked by the inclusion of terms such as "prisoners of war" and "combatants". This document clearly serves as a notable demonstration of the potential cooperation between these two legal systems. Indeed, simply by considering that these two bodies of law are compatible, the MILF created a structured and developed Code of Conduct to be respected by its armed forces in many different situations. Such innovative conceptions led some scholars to affirm that "the MILF

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[85] *Ibid*, pp. 7-8.
[86] *See*: Geneva Call, *Their Words: General Order No 2, Moro Islamic Liberation Front/Bangsamoro Islamic Armed Forces (MILF/BIAF),* available at http://theirwords.org/media/transfer/doc/1_ph_milf_biaf_2006_10-dab1e2f6c0a66ae79efc1ba1f39f6077.pdf.
[87] A. Al-Dawoody, above note 12, p. 139.

has the most conscious, if not the most developed, adherence to both *jihad* and IHL"[88].

Following the recognition of compatibility, two main significant outcomes with the potential to greatly enhance protection during hostilities could arise. The first one relates to compliance with these rules, often cited as one of the most problematic aspects of international law, especially IHL.[89] In this case, it becomes apparent that, as the group is fighting for grievances rooted also in religion rather than solely for independence, considering the rules that fighters must adhere to during the conflict as an expression of the very same religion they are fighting for may bolster the authority of these rules and increase compliance with them. Indeed, failure to comply would not only entail a "human" consequence, such as the punishments outlined in the laws that were violated, but also "divine" consequences.[90]

The second consequence pertains to the treatment of prisoners and involves the utilization of terms such as "prisoners of war" and "combatants" along with the application of a blended framework incorporating ILAC and IHL. This suggests that the rules governing captured members of enemy forces are more likely to align with the comprehensive framework of IHL of IACs rather than of IHL of NIACs. Indeed, under the Geneva Conventions there is no obligation to enforce provisions beyond Common Article 3 during a NIAC, unless the concerned State has ratified Additional Protocol II (APII) and the conflict

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[88] S. M. Santos, above note 6, p. 382.

[89] For instance: "Lack of compliance with IHL is probably the greatest current challenge to this framework of international rules. A body of law, no matter how robust, cannot fulfil its function if it is not – or is only inadequately – respected on the ground". Helen Durham, *Strengthening Compliance with IHL: Disappointment and Hope*, ICRC Humanitarian Law and Policy Blog, December 2018, available at https://blogs.icrc.org/law-and-policy/2018/12/14/strengthening-compliance-with-ihl-disappointment-and-hope/.

[90] This statement is corroborated by one of the interviews that Magon conducted with a MILF/BIAF commander who affirmed that "failure to strictly follow or violation of these prescribed laws will lead us to hellfire". D. Magon, D. Earnshaw, above note 81, p. 8.

meets the requirements outlined in Art. 1 APII.[91] In the case of the MILF, such Protocol is applicable. This is because the Philippines ratified it in 1986, and because – according to the Study From Words to Deeds – "the MILF had an established command structure and controlled a considerable amount of territory, thus falling within the scope of this treaty"[92]. Nevertheless, the standards and treatment in practice that the group decided to afford its detainees seem to exceed even the provisions of the second Protocol.

Several examples can be cited to strengthen the assertion regarding the application of a more protective framework compared to the basic guarantees of IHL of NIACs. For instance, there is evidence of the MILF providing food, first aid and medicines to captured soldiers, in accordance with the Qur'an[93] and Art. 5 APII.[94] Further, individuals identified by the group as "POWs" were held in separate facilities from those detained for reasons unrelated to the conflict.[95] Additionally, when women were deprived of liberty, they were accommodated in separate locations and only assisted by other women.[96] Persons detained for non-conflict related reasons included MILF personnel suspected of or punished for certain offences.[97] One could argue that by being detained in the same modalities and camps of captured enemy soldiers, their type of detention represents the quintessence of the principle of assimilation.[98] Another indication of the commitment to respect the principle of humanity is exemplified by the requirement for personnel in charge of interrogation duties to undergo

[91] Apart from ratification, the other requirements create a high threshold of applicability. These include that it solely applies to conflicts involving a State – never between two armed groups only – and if it takes place in the territory of a High Contracting Party. The latter requirement for some scholars implicitly excludes extraterritorial NIACs.
[92] C. Rush, A. Bellal, P. Bongard, E. Heffes, above note 53, p. 13.
[93] Qur'an, 76:8, above note 28.
[94] C. Rush, A. Bellal, P. Bongard, E. Heffes, above note 53, p. 56.
[95] *Ibid.*
[96] *Ibid,* p. 57.
[97] *Ibid*.
[98] In IACs, Art. 25 GCIII requires that "POWs shall be quartered under conditions as favorable as those for the forces of the Detaining Power who are billeted in the same area".

several trainings in order to prevent any mistreatment or torture of the persons in their power.[99] Furthermore, members of the MILF leadership actively shared information with the opposing government regarding the identity of their captives and engaged in negotiations for their release.[100] Finally, it seems that they put in place a system of regulations to be adhered to within the camps with disciplinary measures, including confinement, in case of transgressions.[101] Although not strictly connected to the conflict, the MILF created a voluntary drug rehabilitation program in response to the escalating issue of drug addiction, which was affecting not only the civilian population residing in their territory, but also members within their ranks. This is pertinent in this context because, while primarily benefiting civilians, it has been noted that a percentage of armed elements were also subjected to this treatment. More importantly, insights from the program's promotion shed light on the overall detention conditions experienced by individuals within MILF's camps.[102] For instance, it is documented that mosques were present within these camps, and the cells were reported to measure 20 x 40 meters with a capacity of accommodating seven persons each.[103] Given that these were the same camps utilized by the MILF for detaining individuals involved in conflicts, it is reasonable to assume that these conditions also applied to those considered as prisoners of war by the group.

While it is noted that certain actions mentioned align with CA3, APII and customary law, not all the measures implemented are explicitly outlined in these sets of rules. For instance, there is no indication about the separation between persons detained for conflict and criminal reasons, regulations about the behavior to follow during detention and punitive measures in case of non-respect, or obligations concerning the sharing of

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[99] C. Rush, A. Bellal, P. Bongard, E. Heffes, above note 53, p. 56.
[100] *Ibid,* p. 56.
[101] *Ibid,* p. 57.
[102] Carolyn O. Arguillas, *Rehabilitating Moro drug dependents: "Islamization" as a cure*, MindaNews, available at https://mindanews.com/top-stories/2019/02/rehabilitating-moro-drug-dependents-islamization-as-cure/.
[103] *Ibid*.

information to the enemy about persons detained in order to facilitate release. Furthermore, it cannot be assumed that these norms are consistently upheld, as despite their applicability, certain NSAGs may lack the motivation or resources to adhere to these provisions. The latter possibility is explicitly recognized by Art. 5 APII, which stipulates that NSAGs are expected to adhere to some of its provisions only "within the limits of their capabilities"[104].

However, what is clear is that all these rules share a "twin" provision in the Third Geneva Convention, which was specifically designed to safeguard the rights of POWs and is typically applied in interstate conflicts. This aspect leads to the conclusion that the MILF endeavored to formally establish a more expansive framework than what is generally foreseen by the law applicable to a situation of NIAC, such as the one they were engaged in. This action is further supported by CA3, which encourages the parties of a NIAC to bring into force all or part of the other provisions of the Geneva Conventions.[105]

Apart from the most basic guarantees of humane treatment of CA3 and its supplementary provisions found in APII, particularly Articles 4 and 5, it is noteworthy to highlight some of the corresponding norms – normally found in the Third Geneva Convention and not in IHL of NIACs – that they have implemented. The first relevant rule is the one regarding the separation between those considered POWs by the group and other persons detained for non-conflict related reasons. IHL of NIACs is silent on the matter, as it aims to refrain from legitimizing NSAGs in any capacity,[106] and because in IHL, POWs' rules and regulations only apply in international conflicts. Another illustrative example is the commitment of the MILF to provide the government of the Philippines with the generalities of the members of the armed forces that they detained. Yet again, the provision of reference is in the GCIII and not in IHL of

[104] Article 5(2) APII.
[105] Common Article 3(2).
[106] For instance, Common Article 3 explicitly affirms that the application of its provisions shall not affect the legal status of the Parties to the conflict.

NIACs.[107] Similarly, a system of rules governing behavior within the detention facility, including confinement as a punitive measure, can be traced back to the GCIII, particularly in Article 89, where an exhaustive list of potential disciplinary sanctions is outlined.[108]

The only reason behind the implementation of this "enhanced" and mixed framework was the decision of the MILF to create the Committee in order to evaluate the compatibility of IHL with ILAC. By simply adhering to a standard causal link criterion, it is possible to affirm that without the previous applicability of Islamic Law, detainees would have benefited from less provisions and, definitely less protection.[109] The protection formally extended to individuals affected by the hostilities, particularly those deprived of liberty in a NIAC and by a NSAG, is significant. Indeed, being this one of the least regulated areas of IHL, they could have decided not to recognize any compatibility or to provide prisoners solely with the basic guarantees of CA3 and APII. Conversely, they decided to pursue a path centered on protection, and they did so by actively incorporating IHL and ILAC in their laws. In doing so, they not only succeeded in establishing a system that did not jeopardize their very own existence or provoke rejection from those living under their control – as it happened with ISg – but they also managed to establish a more protective framework than the one usually applicable in NIACs. Realistically, it is unlikely that States will extend recognition or consideration to their adversaries solely based on this achievement. Nonetheless, it stands as a positive indication that could potentially inspire similar actions by like-minded groups in the future. Ultimately, the armed

[107] In this case, it is possible to find commonalities with Art. 122 GCIII which requires Belligerent Parties to create an official Bureau for POWs who are in their power. The purpose of this Bureau is to forward information to the other Party about the persons fallen into their power and that are detained.

[108] Art. 89 GCIII includes the following measures: a fine, discontinuance of privileges, fatigue duties of maximum two hours and confinement.

[109] It is arguable that the driving factor behind MILF's decision to undergo the process of verifying compatibility with IHL and its subsequent recognition was probably strictly embedded in their political struggle for independence and their desire not to lose legitimacy, as it is often the case with armed groups fighting for independence. However, the underlying reason for this decision is irrelevant in this context, as what matters is the protection afforded in practice.

forces of the belligerent State are the primary beneficiaries of these decisions, as they are the ones facing the risk of detention during the conflict, and they are unlikely to oppose receiving additional guarantees beyond what is typically expected. This could also indirectly influence potential peace agreements, as a prior commitment to afford a certain level of protection to detained members of the armed forces might be perceived favorably, potentially reducing tensions, typically exacerbated by prisoner releases and associated delays.

## IV. Conclusion

The rules of Islamic Law show that this body of law can easily contribute to the discussion concerning the treatment of persons deprived of liberty for conflict-related reasons. Indeed, it is evident that if the same founding principles were applied today, mindful of modifications in their implementation according to contemporary developments, they could prove to be as beneficial as the application of the more modern standards. Considering this assumption as the starting point, a twofold but interrelated outcome may unfold.

Firstly, the rules provided by ILAC could be implemented by NSAGs that only apply Islamic Law and deny the applicability of IHL because they perceive it as a Western product. Consequently, this could ensure some degree of protection also to those that cannot be reached by the safeguards of IHL. Law is just a language and during armed conflicts what matters is the treatment given in practice and the consequent application of minimum guarantees, thus, as long as the safeguards are the same, it does not matter if these are formally granted under the aegis of ILAC or IHL. However, certain NSAGs, such as ISg, would still be excluded, as they rely on minoritarian, and sometimes, distorted interpretations of these rules. Finding a solution that induces them to meet minimum standards of humanity remains an open challenge. Nevertheless, using the language of Islamic Law could make it easier to find a shared solution.

Secondly, it has been demonstrated that Islamic Law can also play a less direct role and nevertheless be beneficial, as shown by the case of the MILF. By analyzing their detention practices and the role played by ILAC in the recognition of the applicability of IHL, it is clear that this framework was essential in enhancing the protection provided to the persons living in the territories controlled by the NSAG. Overall, the detention-framework set forth in their Code of Conduct resulting from a creative combination of IHL and ILAC was even more protective than the one solely included in the rules of IHL typically governing their situation.

Finally, from a theoretical and more general perspective, recognizing the relevance of ILAC, by referring to it or, even, by considering it as an additional source in international tribunals, may play a role in convincing those that are skeptical of the universality of international law. Indeed, it seems legitimate to recognize that if the same core principles have been enunciated, re-affirmed and implemented by different actors in equally different cultures, contexts and ages, it can be assumed that either there has been some sort of cross-fertilization or that they can be considered universally shared.