

Of date palms and dialogue: Enhancing the protection of the natural environment under international humanitarian law and Islamic law

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Abstract

Conflict-related environmental damage remains a huge challenge. This article provides a brief overview of international humanitarian law (IHL) rules that protect the natural environment in armed conflict and notes some convergences with the rules developed by classical Islamic jurists (those who lived from the seventh century up to the last quarter of the nineteenth century) affording protection to the natural environment. Today, a significant number of

† The views expressed here are those of the authors and do not necessarily reflect the position of the International Committee of the Red Cross. The authors thank Helen Gieseken Obregón, Anne Quintin and the anonymous peer reviewers for their valuable comments on earlier drafts.

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International Committee of the Red Cross operations take place in Muslim-majority countries, and some Muslim interlocutors, in particular Islamic non-State armed groups, use Islamic law as their normative framework. For better respect for IHL in relevant Muslim-majority States or territories, considering an Islamic legal approach to the protection of the natural environment alongside IHL would allow the parties to conflicts in such countries to better understand their obligations and should enhance the protection of the natural environment in armed conflict.

Keywords: conduct of hostilities, enhancing respect, implementation, Islamic law, Islamic contexts, protection of the natural environment.

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Introduction

“There were more than 30 million palms [in Iraq] before the Iran-Iraq war, today there’s less than half that number.”¹ Date palms have come under attack in armed conflict for centuries, causing many indirect effects on the civilian population, including displacement and lack of water and shade for other agriculture and livestock.² The poets Samāk of the Banū al-Naḍīr and Ḥassān ibn Thābit recorded a dialogue on whether date palms should be destroyed in armed conflict as far back as 674 CE.³

There has always been damage to the natural environment in armed conflict. Conflicts create damage to the natural environment⁴ in both rural (conservation areas, wildlife)⁵ and urban settings, resulting from damage and destruction, for example, to “industrial complexes, combustible storage and processing facilities, factories and plants, agricultural facilities, and waste sites”.⁶ In rural areas, an example from the Philippines demonstrates how several armed conflicts have caused a threat to the natural environment. Fighting in the Philippines has damaged water supplies and trees,⁷ including the marshlands in

- 1 International Committee of the Red Cross (ICRC), “Iraq’s Perfect Storm – a Climate and Environmental Crisis Amid the Scars of War”, 19 July 2021, available at: www.icrc.org/en/document/iraqs-perfect-storm-climate-and-environmental-crisis-amid-scars-war (all internet references were accessed in March 2024).
- 2 *Ibid.*; ICRC, *When Rain Turns to Dust: Understanding and Responding to the Combined Impact of Armed Conflicts and the Climate and Environment Crisis on People’s Lives*, July 2020, p. 30, available at: <https://shop.icrc.org/when-rain-turns-to-dust-pdf-en>.
- 3 Ahmed Al-Dawoody and Sarah Gale, “Protecting the Environment during Armed Conflict: IHL and Islamic Law”, *Humanitarian Law and Policy Blog*, 3 June 2021, available at: <https://blogs.icrc.org/law-and-policy/2021/06/03/protecting-environment-armed-conflict-ihl-islamic-law/>.
- 4 ICRC, *Guidelines on the Protection of the Natural Environment in Armed Conflict*, Geneva, 2020 (ICRC Guidelines), paras 1–3, available at: www.icrc.org/en/document/guidelines-protection-natural-environment-armed-conflict-rules-and-recommendations-relating; ICRC, above note 2, p. 16.
- 5 Thor Hanson *et al.*, “Warfare in Biodiversity Hotspots”, *Conservation Biology*, Vol. 23, No. 3, 2009, p. 584.
- 6 Peter Maurer, “Protecting the Natural Environment in Armed Conflicts: An ICRC View”, *Environmental Policy and Law*, 23 February 2021, available at: <https://environmentalpolicyandlaw.com/news-blog/protecting-natural-environment-armed-conflicts-icrc-view>.
- 7 Maria Corazon G. De La Paz and Lisa Colson, *Population, Health, and Environment Issues in the Philippines: A Profile of the Autonomous Region in Muslim Mindanao (ARMM)*, Population Reference

Mindanao, which are “rich in biodiversity and important for the livelihoods of the approximately 278,000 people living around the area”.⁸

In Syria, the continued use of explosive weapons has caused the water buffalo population to decrease by two thirds, as a direct result of shelling but also due to the displacement caused by the armed conflict.⁹ In urban settings in Iraq, as a result of conflict, water treatment is unable to be adequately performed, leaving millions without access to clean water or water for agriculture.¹⁰ Across the Middle East, issues of water access (created by dams being built or destroyed, or lack of or upkeep of water infrastructure) are a problem due to armed conflicts, governance challenges and climate change.¹¹

Although a certain amount of environmental damage may be inherent to armed conflict, international humanitarian law (IHL) contains rules that set limits on the damage that parties to armed conflicts can lawfully cause to the natural environment. The International Committee of the Red Cross’s (ICRC) 2020 *Guidelines on the Protection of the Natural Environment in Armed Conflict* (ICRC Guidelines)¹² outline the existing rules and recommendations relating to the protection of the natural environment in armed conflict under IHL, with a commentary to aid understanding and to clarify their applicability. This article highlights some of these rules.

The article by Helen Obregón Gieseken and Vanessa Murphy published in the previous issue of the *Review* goes into more detail on the IHL rules related to the protection of the natural environment in armed conflict.¹³ The problem is not that the law does not exist, but that it is not being applied and adhered to in order to ensure protection of the natural environment in armed conflict. Sometimes the issue is a lack of understanding of applicable rules in armed conflict and how IHL interacts with other bodies of law. Classical Islamic law also provides protection for the natural environment in armed conflict, and in Muslim-majority countries, but particularly with regard to non-State armed groups which adhere to Islam, engaging with the classical Islamic law protections for the natural environment might assist in strengthening the understanding and application of IHL rules relating to the protection of the natural environment.

This article looks at some of these IHL norms, discusses the need for better compliance with the rules of IHL that protect the natural environment, and asks

Bureau, October 2008, p 4, available at: www.prb.org/wp-content/uploads/2021/01/10222008-pheregionalprofiles_armm.pdf.

8 *Ibid.*, p. 5.

9 Jennifer Dathan and Udit Saha, “Explosive Weapons and Their Impact on Wildlife—a Global Assessment”, Action on Armed Violence, 17 February 2020, available at: <https://aoav.org.uk/2020/explosive-weapons-and-their-impact-on-wildlife-a-global-assessment/>.

10 Red Cross Red Crescent Climate Centre, “Climate Fact Sheet: Iraq”, 2021, available at: www.climatecentre.org/wp-content/uploads/RCCC-ICRC-Country-profiles-Iraq.pdf.

11 Red Cross Red Crescent Climate Centre, “Climate Fact Sheet: Middle East”, 2021, available at: www.climatecentre.org/wp-content/uploads/RCCC-ICRC-Country-profiles-Region_Middle_East.pdf.

12 ICRC Guidelines, above note 4.

13 Helen Obregón Gieseken and Vanessa Murphy, “The Protection of the Natural Environment under International Humanitarian Law: The ICRC’s 2020 Guidelines”, *International Review of the Red Cross*, Vol. 105, No. 924, 2023.

what is needed to strengthen the implementation of those rules. It then considers how Islamic law protects the natural environment in armed conflict. Overall, the article demonstrates how considering the dialogues and interpretations of classical Islamic jurists in relation to the protection of the natural environment in armed conflict can in practice be used to support better compliance with IHL in order to ensure better protection for the natural environment in armed conflicts today.

The protection of the natural environment under IHL

The law

There is no agreed definition in international law of the term “natural environment”. Underpinned by the ICRC’s reading of the drafting history of Additional Protocol I and the rules themselves, the ICRC Guidelines understand the natural environment to constitute “the natural world together with the system of inextricable interrelations between living organisms and their inanimate environment, in the widest sense possible”.¹⁴ The Guidelines go on to state that “[t]he notion of the natural environment under IHL includes everything that exists or occurs naturally, such as the general hydrosphere, biosphere, geosphere and atmosphere (including fauna, flora, oceans and other bodies of water, soil and rocks)”.¹⁵ It also includes natural elements that are or may be the product of human intervention, including drinking water, livestock, foodstuffs and agricultural areas.¹⁶ This wide understanding accords with the fact that the notion of the “natural environment” may evolve over time; nature keeps changing, and our knowledge of it also keeps evolving.

As reflected in State practice, the International Law Commission’s Principles on Protection of the Environment in Relation to Armed Conflicts (PERAC Principles),¹⁷ and other important practice and scholarly work, the natural environment is, by default, civilian in character for the purposes of IHL in armed conflict.¹⁸ This reflects the fact that IHL classifies everything which can be the subject of an attack either as a civilian object or a military objective: civilian objects are all objects that are not military objectives. All parts of the natural environment are protected under the same rules which protect other civilian objects, unless a part of the natural environment becomes a military objective as defined in IHL. The ICRC Guidelines restate, in Rules 5 (distinction),

14 ICRC Guidelines, above note 4, para. 16.

15 *Ibid.*

16 *Ibid.*

17 International Law Commission, *Draft Principles on Protection of the Environment in Relation to Armed Conflicts*, in *Report of the International Law Commission, Seventy-Third Session*, UN Doc. A/77/10, 2022, adopted by the UN General Assembly in UNGA Res. 77/104, 19 December 2022 (PERAC Principles), available at: https://legal.un.org/ilc/reports/2022/english/a_77_10_advance.pdf.

18 ICRC Guidelines, above note 4, para. 18.

6 (prohibition of indiscriminate attacks), 7 (proportionality in attack), 8 (precautions in attack) and 9 (passive precautions), key general principles and rules on the conduct of hostilities that protect the civilian population and civilian objects, including the natural environment.¹⁹ Notably, under these IHL rules, no part of the natural environment may be attacked, unless it is a military objective. A distinct part of the natural environment can lose its protection from attack under IHL when it fulfils the definition of military objective according to the normal rules; in such cases, the part of the natural environment in question – for example, a grove of date palms – must, by its nature, location, purpose or use, make an effective contribution to military action, and its total or partial destruction, capture or neutralization, in the circumstances ruling at the time, must offer a definite military advantage.²⁰ Attacks against a military objective which may be expected to cause disproportionate damage to the natural environment are prohibited. All feasible precautions must be taken to avoid, and in any event minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects, including the natural environment. Concretely, for example, commanders must do everything feasible to cancel or suspend an attack against a military objective if it becomes apparent that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects (including the natural environment), or a combination thereof, that would be disproportionate.²¹ Even if part of the natural environment is considered a military objective in the circumstances ruling at the time, any resulting attack must be directed at the specific part of the natural environment concerned and governed by the principles of proportionality and precautions in attack.

Beyond the principles of distinction, proportionality and precautions, other general rules of IHL protect the natural environment, among other things, without this being their specific purpose.²² This includes, for example, the rules on specially protected objects, such as cultural property (Rule 12 of the ICRC Guidelines) or works and installations containing dangerous forces (Rule 11). The rules on enemy property also afford protection to the natural environment – notably, the destruction of any part of the natural environment is prohibited, unless required by imperative military necessity.²³

Moreover, the rules on specific weapons also provide general protections to the natural environment.²⁴ Furthermore, there are IHL rules that provide specific protection for the natural environment as such. For example, there is the prohibition against using methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment,²⁵ the prohibition against using the destruction of the natural

19 *Ibid.*

20 *Ibid.*, Rule 5 and commentary, in particular paras 101–103.

21 *Ibid.*, commentary on Rule 8, para. 135.

22 *Ibid.*, Part II.

23 *Ibid.*, Rule 13.

24 *Ibid.*, Part III.

25 *Ibid.*, Rule 2.

environment as a weapon,²⁶ and the prohibition against attacking the natural environment by way of reprisal.²⁷

Finally, IHL contains rules related to respect for, implementation of and dissemination of IHL that are also of relevance.²⁸ For instance, States must act in accordance with their obligations to adopt domestic legislation and other measures at the national level in order to ensure that the IHL rules protecting the natural environment in armed conflict are put into practice.

Application of the law

Application of the law means implementation of the law so that it can be enforced, ensuring that persons are properly punished for violations of that law, ensuring responsibility of commanders and promoting an understanding of the law. In terms of implementation, this is not just about enforceable laws, but also about good practices. To advance implementation, the ICRC Guidelines call on States and parties to armed conflict to disseminate IHL rules relating to the protection of the natural environment as reflected in the Guidelines, and to integrate these into the doctrine, education, training and disciplinary systems of armed forces and into national policy and legal frameworks. The Guidelines also encourage States and parties to armed conflict to adopt measures to increase understanding of the effects of war on the natural environment before and during military operations in order to minimize environmental impacts. Furthermore, they recommend the identification and designation of areas of particular environmental importance or fragility as demilitarized zones, as well as the exchange of good practice.²⁹

Dissemination and implementation of the law applicable in times of armed conflict, including IHL, is a key part of the process of protecting the natural environment in times of armed conflict and is especially important before the outbreak of war as part of planning and preparedness efforts. The updated ICRC Commentary on Geneva Convention I notes that “[w]hile it is now recognized that knowledge of the law alone will not prevent violations, spreading knowledge of the law is understood to be an important element of any strategy aimed at creating an environment conducive to lawful behaviour”.³⁰

Under IHL, those employing methods or means of warfare must have due regard for the protection and preservation of the natural environment.³¹ This obligation has been established as a norm of customary international law applicable in international, and arguably also in non-international, armed conflicts.³²

26 *Ibid.*, Rule 3.

27 *Ibid.*, Rule 4.

28 *Ibid.*, Part IV.

29 *Ibid.*, p. 16.

30 ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., Geneva, 2016, para. 2750.

31 ICRC Guidelines, above note 4, Rule 1.

32 Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 44 and commentary, available at: <https://ihl-databases.icrc.org/en/customary-ihl/rules>.

In practical terms, this general standard of due regard is operationalized in IHL in two further obligations with which parties to an armed conflict must also comply. The first of these is the obligation to take constant care to spare the civilian population, civilians and civilian objects, including the natural environment, in the conduct of military operations.³³ Second, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the natural environment. As these obligations require parties to armed conflict to take steps to avoid or minimize environmental damage, they are particularly relevant for military leaders responsible for operational planning.

Those participating in military operations must, for example, take into account the possible negative implications for the natural environment arising from, *inter alia*, the weapons employed. Consequently, they must also consider the specificities of the battlefield terrain in which they are operating.³⁴ For instance, consideration can be given to the location of dams, waterways, livestock and agriculture. For the protection of the natural environment against incidental damage, it is particularly important that proportionality assessments take into account an attack's indirect effects on the civilian population and civilian objects, including parts of the natural environment, that are reasonably foreseeable based on an assessment of information from all sources available to the party at the relevant time.³⁵ For example, is it proportionate to destroy a grove of date palms in order to achieve a military objective when this will cause twenty years or more of soil damage, water diminishment and lack of livelihood for affected people?

Planning military operations also requires deliberation and discussion on the choice of means and methods of warfare; parties to the conflict must take all feasible precautions in so doing with a view to avoiding, and in any case minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.³⁶ Even where a specific weapon is not prohibited, if it is used disproportionately or indiscriminately, thereby damaging the natural environment, its use would be prohibited.

Challenges with compliance

As demonstrated through the examples cited above, there exists significant law that has the potential to better protect the natural environment in times of armed conflict. The most important challenge remains implementation of the law, and compliance. This is not solely related to compliance with IHL; it is also the case for other relevant bodies of law, including international environmental law.³⁷ In 2011, Resolution 1 of the 31st International

33 ICRC Guidelines, above note 4, para. 44.

34 *Ibid.*

35 *Ibid.*, Rule 7 and commentary, paras 117–119.

36 ICRC Customary Law Study, above note 32, Rule 17.

37 James Cameron, "Compliance, Citizens and NGOs", in Jacob Werksman, James Cameron and Peter Roderick (eds), *Improving Compliance with International Environmental Law*, Taylor & Francis, London, 1995, p. 29.

Conference of the Red Cross and Red Crescent stressed that “greater compliance with international humanitarian law is an indispensable prerequisite for improving the situation of victims of armed conflict” and reaffirmed the obligation of all States and all parties to armed conflict to respect and ensure respect for IHL in all circumstances.³⁸ Ultimately, to enhance the protection of the natural environment in armed conflict, there must be greater respect for relevant IHL rules, and this requires more dissemination, implementation and enforcement of the law.³⁹ On compliance, the ICRC has noted that “[t]he main challenge when it comes to protecting victims in [armed conflict] is ... to persuade, or even compel, the parties concerned to comply with the rules by which they are bound”.⁴⁰

Studies on domestic law compliance have found that perceived legitimacy of the law from a moral standpoint strengthens compliance with the law.⁴¹ Similarly, if the law is “self-chosen”,⁴² or there is an “emotional connection based on perceived shared values”,⁴³ we see better compliance. Translated into the IHL domain, where IHL is perceived to be legitimate because it accords with the fundamental values and religious beliefs and tenets of an armed group, there may be better compliance. Moreover, where there is a desire for political legitimacy that can be explained to domestic audiences, there may be better compliance with IHL.⁴⁴ The ICRC has advocated for “creative cooperation” to “fully internaliz[e]” norms, thereby both legitimizing the norms of IHL and ensuring that they are complied with by non-State armed groups that are party to armed conflict.⁴⁵ Engaging in dialogue about the similarities or shared values between IHL and Islamic law could demonstrate the legitimacy of the arguments around protection of the natural environment in a way that better appeals to certain armed actors who may be more inclined to rely on Islamic law rather than IHL. This could lead to better protection of the natural environment in armed conflict.

38 31st International Conference of the Red Cross and Red Crescent, Resolution 1, “Strengthening legal protection for victims of armed conflicts”, 2011, available at: <https://shop.icrc.org/report-of-the-31st-international-conference-of-the-red-cross-and-red-crescent-including-the-summary-report-of-the-2011-council-of-delegates-pdf-en.html>.

39 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions*, Geneva, 2019, p. 68, available at: www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts.

40 ICRC, *Strengthening Legal Protection for Victims of Armed Conflicts*, Doc. 3IIC/11/5.1.1, 2011, p. 13, available at: www.icrc.org/en/doc/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-strengthening-legal-protection-11-5-1-1-en.pdf.

41 Jonathan Jackson *et al.*, “Why Do People Comply with the Law? Legitimacy and the Influence of Legal Institutions”, *British Journal of Criminology*, Vol. 52, No. 6, 2012, p. 1055.

42 Amedeo Cottino, “Crime Prevention and Control: Western Beliefs vs. Traditional Legal Practices”, *International Review of the Red Cross*, Vol. 90, No. 870, 2008, p. 293.

43 J. Jackson *et al.*, above note 41, p. 1063.

44 Hyeran Jo and Catarina P. Thomson, “Legitimacy and Compliance with International Law: Access to Detainees in Civil Conflicts, 1991–2006”, *British Journal of Political Science*, Vol. 44, No. 2, 2013, p. 326.

45 ICRC, *The Roots of Restraint in War*, Geneva, 2020, p. 25, available at: <https://shop.icrc.org/the-roots-of-restraint-in-war-pdf-en.html>.

How does Islamic law protect the natural environment?

The sources of Islamic law and jurisprudence discussed in this article demonstrate efforts to protect the natural environment in armed conflict. At the outset, it is important to note that Islamic law has different sources, addresses pre-modern armed conflict situations and, of course, does not necessarily always reflect IHL logic, nor does it function in the same way as IHL. For example, the Islamic law of armed conflict does not have the distinction that exists in IHL between the rules on the conduct of hostilities and the protection of persons and objects which are in the hands of a party to the conflict. Moreover, the discussion of protection of the natural environment under the Islamic law of armed conflict is not as updated, detailed and advanced as that found under IHL. The Islamic law part of this article studies examples relevant to environmental protection that took place in certain battles during the Prophet Muhammad's lifetime. This is because these specific examples are the ones that are documented in Islamic law, since the Prophet Muhammad's practice is the second primary source of Islamic law.⁴⁶

The nature of the natural environment under Islamic law

As will be explained, the protection of the natural environment surfaces as one of the two major concerns in the Islamic law of war, alongside the protection of civilians. According to the Islamic worldview, everything in this universe is the creation of God,⁴⁷ and human beings are entrusted with the responsibility of preserving and protecting it and contributing to the development of human civilization.⁴⁸ Islamic law prohibits unnecessary damage to the natural environment even if it would not harm humans. Islamic law provides a set of rules for the preservation and protection of the natural environment, as evidenced from the examples given below regarding water, trees and animals.

The phrase "natural environment" was not used by classical Muslim jurists in the rules that they developed to ensure this protection. They regulated and deliberated the prohibition or permissibility of causing damage to parts of the natural environment, including foodstuffs, agricultural areas, drinking water and livestock.

Any damage to the natural environment during armed conflict which is not required by imperative military necessity falls under the criminal act described in the Qur'an (e.g. 2:205, 5:32–33) as *fasād fi al-arḍ* (literally, "destruction/mischief

46 See Farooq A. Hassan, "The Sources of Islamic Law", *Proceedings of the Annual Meeting of the American Society of International Law*, Vol. 76, 1982.

47 Fazlun M. Khalid, "Islam and the Environment, Vol. 5: Social and Economic Dimensions of Global Environmental Change", in Peter Timmerman (ed.), *Encyclopedia of Global Environmental Change*, John Wiley, Chichester, 2002.

48 Qur'an 2:30, 11:61. See also 'Abd Allah Shihātah, *Rū'yah al-Dīn al-Islāmī fī al-Ḥifāz 'alā al-Bī'ah*, Dār al-Shurūq, Cairo, 2001, pp. 13–14, 17–20; Sarie Zaid Al-Kailany, "Tadābir Ri'āyah al-Bī'ah fī al-Sharī'ah al-Islāmiyyah", *Dirāsāt: 'Ulūm al-Sharī'ah wa al-Qānūn*, Vol. 41, No. 2, 2014, p. 1213.

in the land”), which is one of the descriptions of the crime of terrorism under Islamic law.⁴⁹ Under Islamic law, the concept of imperative military necessity means avoiding the defeat of the Muslim army, as understood from the record of battles under discussion in this article and the deliberations of classical Muslim jurists. The renowned Syrian jurist al-Awzā’ī (d. 774) said that “it is prohibited for Muslims to commit any sort of *takhrīb*, wanton destruction, [during the course of hostilities] in enemy territories because that is *fasād*”.⁵⁰ Hence, if damage to the natural environment not justified by imperative military necessity is accompanied by the other elements of the crime of terrorism under Islamic law, such damage will constitute an act of terrorism under Islamic law.⁵¹ The other elements of the crime of terrorism under Islamic law include the unjustified use or intimidation of the use of force against defenceless and helpless victims.⁵²

In fact, in the words of Professor Sohail H. Hashmi, one of the reasons for the prohibition of weapons of mass destruction under Islamic law is that

they cause lasting damage to the natural environment, a result that must be considered in Islamic moral evaluations because all life has worth as God’s creation, quite apart from any utility to human beings: [Qur’an 6:38 reads] “There is not an animal on earth, nor a bird that flies on its wings, but they are communities like you.” Destroying or damaging the natural habitat of species unable to defend themselves against human attack is the height of what the Qur’an labels *fasād fi al-ard*.⁵³

Protection of the natural environment under Islamic law

In examining the Islamic legal position on the protection of the natural environment in armed conflict, there are ongoing debates from the seventh century up to the present day. There are specific instructions prohibiting causing damage to parts of the natural environment, such as the Prophet Muhammad’s prohibition of

49 Ahmed Al-Dawoody, “International Terrorism and the Jurisdiction of Islamic Law”, *International Criminal Law Review*, Vol. 15, No. 3, 2015, p. 580.

50 Muḥammad ibn al-Ḥassan al-Shaybānī, *Sharḥ Kitāb al-Siyar al-Kabīr*, commentary by Muḥammad ibn Aḥmad al-Sarakhsī, ed. Abī Abdullah Muḥammad Ḥassan Muḥammad Hassan Ismā’il al-Shafī’ī, Vol. 4, Dār al-Kutub al-‘Ilmiyyah, Beirut, 1997, pp. 32–33; Ahmed Al-Dawoody, “Islamic Law and International Humanitarian Law: An Introduction to the Main Principles”, *International Review of the Red Cross*, Vol. 99, No. 906, 2017, p. 1007.

51 On *fasād fi al-ard* as one of the elements in the crime of terrorism under Islamic law, see, for example, Ahmed Al-Dawoody, “Terrorism, Religious Violence, and the Shari’ah”, in Khaled Abou El Fadl (ed.), *Routledge Handbook of Islamic Law*, Routledge, New York, 2019; A. Al-Dawoody, above note 49, pp. 572–580.

52 On the elements of the crime of terrorism under Islamic law, see A. Al-Dawoody, above note 49, pp. 573–574; Ahmed Al-Dawoody, “Non-International Armed Conflicts under Islamic Law: The Case of ISIS”, in Tallyn Gray (ed.), *Islam and International Criminal Law and Justice*, Nuremberg Academy Series No. 2, Torkel Opsahl Academic EPublisher, Brussels, 2018, pp. 134–135, Sherman A. Jackson, “Domestic Terrorism in the Islamic Legal Tradition”, *The Muslim World*, Vol. 91, No. 3–4, 2001.

53 Sohail H. Hashmi, “Weapons of Mass Destruction and Islamic Law”, in Ahmed Al-Dawoody (ed.), *IHL and Islamic Law in Contemporary Armed Conflicts – Experts’ Workshop*, Geneva, 29–30 October 2018, ICRC, Geneva, November 2019, p. 33, available at: <https://shop.icrc.org/ihl-and-islamic-law-in-contemporary-armed-conflicts-experts-workshop-geneva-29-30-october-2018-pdf-en-1>.

cutting down trees except those that block the Muslims from engaging in fighting.⁵⁴ Following the same logic, the first caliph Abū Bakr (d. 634) gave the well-known ten instructions to his army commander Yazid ibn Abī Sufyān before the army was sent to fight in the Levant; these included “do not cut down fruit-bearing trees or destroy buildings; do not slaughter a sheep or a camel except for food; do not burn or drown palm trees; do not loot; and do not be cowardly”.⁵⁵

Under Islamic law, the rules on the protection of the natural environment in armed conflict are based on events that took place centuries ago and were reported in Islamic sources, which have evolved to form the Islamic legal reasoning that is used nowadays. The first source comprises reports that the Prophet Muhammad ordered the destruction of some of the small palm trees of the Banū al-Naḍīr in 625 CE and the palm trees and grapes of the adversary in the battle of al-Ṭāʾif in 630 CE. In the former incident, the order to destroy the Banū al-Naḍīr’s palm trees was given either to force them to surrender and come out of their fortifications or because of the location of the palm trees (that is, their location made an effective contribution to military action). In fact, it might be the case that the order was given because of these two reasons combined, particularly if we take into consideration the very small number of palm trees that were reportedly damaged: two according to the historian Muḥammad ibn Ishāq (d. 767) and six according to Qur’an exegetes al-Ḍaḥḥāk (d. 723) and Qatādah (d. 735).⁵⁶ As previously noted by one of the authors of the present article, “[a]lthough the order was not given in the context of armed conflict and no fighting took place, it is relevant in the Islamic law of war”.⁵⁷

Islamic law sources also document a dialogue between the Prophet Muhammad (as the commander of the Muslims) and the enemy leaders for the purpose of avoiding damage to these parts of the natural environment. One of the Banū al-Naḍīr told the Prophet Muhammad that destroying the palm trees would indeed be a *fasād*, “which you [Muhammad] [should] prohibit and condemn its perpetrators”.⁵⁸ Due to the seriousness of the matter and the fact that there was even a discussion among some of the Muslims themselves over the permissibility of causing this damage, Qur’an 59:5 reinforces that such damage is prohibited in principle, but supports it in this incident.⁵⁹ A debate over this incident and the legitimacy of the damage caused to the palm trees is recorded in poems by Samāk of the Banū al-Naḍīr and the renowned Muslim poet Ḥassān ibn Thābit (d. 674).

The second source which is used today to form the Islamic legal reasoning for the protection of the natural environment during armed conflict comes from the

54 See Hadiths 18155 and 18156 in Aḥmad ibn al-Ḥusayn ibn ‘Alī ibn Mūsā al-Bayhaqī, *Sunan al-Bayhaqī al-Kubrā*, ed. Muhammad ‘Abd al-Qādir ‘Atā, Dār al-Kutub al-‘Ilmiyyah, Beirut, 3rd ed., Vol. 9, 2003, pp. 154–155.

55 See, for example, Rudolph Peters, *Islam and Colonialism: The Doctrine of Jihad in Modern History*, Mouton, The Hague, 1979, p. 24; A. Al-Dawoody, above note 50, p. 1003.

56 Muḥammad ibn Aḥmad al-Anṣārī al-Qurṭubī, *Al-Jāmi‘ li-Aḥkām al-Qur’ān*, Vol. 8, Dār al-Fikr, Beirut, 2019, p. 7.

57 A. Al-Dawoody and S. Gale, above note 3.

58 Muḥammad ibn Jarīr al-Ṭabarī, *Tafsīr al-Ṭabarī: Jāmi‘ al-bayān ‘an ta’wīl āy al-Qur’ān*, ed. ‘Abd Allāh ibn ‘Abd al-Muḥsin Turkī, Vol. 22, Hajr, Cairo, 2001, p. 510.

59 *Ibid.*

battle of al-Ṭa'if. The battle of al-Ṭa'if was the last battle in the lifetime of the Prophet Muhammad. In this battle, the adversary fought from behind fortifications, and twelve Muslims were shot dead by arrows and hot iron. The use of mangonels (a catapult used for shooting large stones or fire) was suggested and introduced to the Prophet by Salmān al-Fārisī as follows: “we use mangonels in Persia to shoot at [enemy] fortifications”.⁶⁰ In response, the adversary asked the Prophet Muhammad not to destroy their palm trees and grapes and either to seize them as war booty if the adversary was defeated or just not to destroy them for the sake of God and kinship ties between the warring parties, which the Prophet Muhammad accepted.⁶¹ Some sources indicate that the Prophet Muhammad ordered the destruction of the palm trees and grapes because their location did make an effective contribution to military action.⁶² In the words of Dr Raghīb Al-Sirjani, “the order was never intended to destroy these trees per se, but to force the adversary to come out of their fortification”.⁶³ While the order was given, in the end the attack against the palm trees did not take place; no damage was caused to the palm trees and, therefore, deliberately causing damage *per se* to the palm trees – let alone starvation – was not contemplated. Again, it is important to recall that the intention was not the damage to the palm trees as such.

In addition, there are some Islamic law rules protecting animals as part of the natural environment: for example, the Prophet Muhammad prohibited the torture and mutilation of animals⁶⁴ as well as locking animals up to shoot at them⁶⁵ and/or torture or starve them to death.⁶⁶ By extension, those rules are understood as being applicable during armed conflict. By the same logic, classical Muslim jurists prohibited damage to living creatures such as horses, cows and bees,⁶⁷ but they permitted slaughtering animals belonging to the adversary if the animals were to be used for food, and the killing of horses when enemy belligerents were fighting while riding them.

Prohibition of using certain means and methods of warfare against the natural environment under Islamic law

The seventh-, eighth- and ninth-century war situations reflected in the Islamic law books show that classical Muslim jurists considered the permissibility of the use of

60 Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations*, Palgrave Macmillan, New York: 2011, p. 131.

61 Muḥammad ibn 'Umar al-Wāqidi, *Kitāb al-Maghāzī*, ed. Marsden Jones, 3rd ed., Vol. 3, Dār al-A'ʿalmy, Beirut, 1989, p. 928; M. ibn Al-Ṭabarī, above note 58, pp. 510–512.

62 See Muḥammad ibn Ishḥāq, *Al-Sīrah al-Nabawīyyah*, ed. 'Abd al-Malik ibn Hishām, annotated by Muḥtafā al-Saqqā, Ibrahim al-Ibyārī and 'Abd al-Ḥafīz al-Shalabī, 2nd ed., Vol. 2, Muḥtafā al-Babī al-Ḥalabī, Cairo, 1955, p. 182.

63 Raghīb al-Sirjani, *Al-Sīrah al-Nabawīyyah*, available at: <https://shamela.ws/book/37369/570>.

64 A. Al-Dawoody, above note 60, p. 102.

65 See: <https://tinyurl.com/2bztefjs>.

66 See “Animals’ Rights in Islam”, Islamweb.net, available at: www.islamweb.net/en/fatwa/83830/animals-rights-in-islam.

67 Muftāḥ al-Hudā ibn Munīr al-Manṭiqī, *Al-Mas'ūliyyah al-Jinā'iyah li-Murtakibi Jarā'im al-Ḥarb fī al-Fiqh al-Islāmī*, Dār al-Ma'mūn lil-Nashr wa-al-Tawzī', Amman, 2007, p. 112.

certain indiscriminate means and methods of warfare, despite the capacity of those means and methods to cause damage to parts of the natural environment. Regardless of whether or not mangonels were actually used in the battle of al-Ṭāʾif, the jurists unanimously permitted the use of mangonels against an enemy fortification if required by imperative military necessity. However, opinions differed on whether it was permissible to use incendiary weapons against the enemy: some jurists prohibited it, some disapproved of it, and others permitted it either as a military necessity or in reciprocity.⁶⁸

In the battle of al-Ṭāʾif, the jurists discussed the permissibility of shooting enemy fortifications and strongholds with poison- or fire-tipped arrows, and here also some jurists prohibited the use of poison-tipped arrows while others merely disliked the idea of it, on the basis that the enemy could shoot the arrows back at the Muslims and because there was no precedent for this action in the age of the Prophet.⁶⁹ The Iraqi jurist Al-Shaybānī (d. 805)⁷⁰ prohibited poisoning water sources of the enemy in order to kill them, but he permitted cutting the water supply to enemy fortifications as a weapon or putting poison or blood in the water to spoil it in order to force the enemy to surrender from inside their fortifications. In the war context, these Islamic classical legal opinions address the situation that occurred when weapons tipped with poison, fire or oil were shot at enemy fortifications and strongholds. In particular, one foreseeable consequence is that these weapons might poison water sources and vegetation, which would have life-threatening consequences on the civilian population as well as on the natural environment.

Using an understanding of Islamic law to address the application of IHL

The ICRC's study on *The Roots of Restraint in War* has found that if there is dialogue between or within armed groups, even on social media, about the law, there can be better application of the law.⁷¹ It has been found in the context of the protection of the natural environment that when non-State armed groups "are integrated into the discussions, and their concerns and challenges are recognized and to some extent addressed, they are much more willing to

68 See, for example, A. Al-Dawoody, above note 60, pp. 123–124; Abdulrahman Muhammad Alsumaih, "The Sunni Concept of Jihad in Classical Fiqh and Modern Islamic Thought", PhD thesis, University of Newcastle-upon-Tyne, 1998, pp. 112–113; Hilmi M. Zawati, *Is Jihad a Just War? War, Peace, and Human Rights under Islamic and Public International Law*, Studies in Religion and Society, Vol. 53, Edwin Mellen Press, Lewiston, NY, 2001, p. 41; Sohail Hashmi, "Islamic Ethics and Weapons of Mass Destruction: An Argument for Nonproliferation", in Sohail H. Hashmi and Steven P. Lee (eds), *Ethics and Weapons of Mass Destruction: Religious and Secular Perspectives*, Cambridge University Press, Cambridge, 2004, p. 328; Sohail H. Hashmi, "Islam, Sunni", in Gabriel Palmer-Fernandez (ed.), *Encyclopedia of Religion and War*, Routledge, New York, 2004, p. 219.

69 A. Al-Dawoody, above note 50, pp. 1004–1005.

70 A. Al-Dawoody, above note 60, pp. 124–125.

71 ICRC, above note 45, p. 21.

participate in activities for the protection and wellbeing of the people affected by their actions”.⁷² Among the international legal community of States, there has been a lot of momentum, dialogue and engagement on the protection of the natural environment in armed conflict in the last decade, notably in the context of the PERAC Principles.⁷³

In order to apply the rules that exist, commanders, governments and other leaders need to continue to engage in dialogue around the existing law (including IHL and, where applicable, Islamic law) related to their particular contexts. Engaging Islamic law experts to raise awareness and understanding on how IHL protects the natural environment in contemporary armed conflicts through engaging with them on the IHL norms and principles that resonate with their values and beliefs, such as classical Islamic law, could also help when relevant to enhance acceptance of IHL and may lead to positive environmental protection outcomes in armed conflicts.

As explained above, classical Muslim jurists considered any deliberate harm to the natural environment to be prohibited, except in cases of imperative military necessity. They also had discussions that find similarities with the modern IHL principles of precaution and proportionality, and discussed certain means and methods of warfare, as touched upon in this article. Of course, it is not possible to find enough documentation from the battles that took place in 625 and 630 CE to answer nuanced questions related to proportionality and precautions in attack in today’s modern battlefield, but the inherent protections for and care towards the natural environment displayed in Islamic law can be a starting point for discussion on how IHL provides more in-depth guidance, including on the means and methods of warfare to be deployed in modern conflicts.

Dialogue is also modelled in early examples of Islamic law and practice. In the Islamic law examples explored here, the jurists and commanders entered into a dialogue as to what was permitted against the natural environment and what was prohibited. This dialogue among commanders in these specific Islamic battles shows that there was a deep concern about the protection of the natural environment in armed conflict under Islamic law which also reflects pre-Islamic ethics of war. For Islamic non-State armed groups using Islamic law as their source of reference, they should ensure that the protection of the natural environment is part of their code of conduct and all training. More specifically, once there is acceptance that Islamic law seeks to protect the natural environment, there will be room to expand on how IHL rules, to which parties to armed conflicts remain bound no matter what their fundamental allegiance, protect the natural environment in armed conflict, leading to discussion of how those rules can be promoted and incorporated as part of doctrine and training.

72 Guillaume Charron, Anki Sjöberg and Chloe Thomas, “Environmental Threats or Assets? Exploring the Engagement of Non-State Armed Actors on the Protection of the Environment”, *Ecosystem for Peace*, 2021, available at: www.ecosystemforpeace.org/compendium/environmental-threats-or-assets-exploring-the-engagement-of-non-state-armed-actors-on-the-protection-of-the-environment.

73 PERAC Principles, above note 17.

In conducting operations and implementation of, adherence to and promotion of relevant laws related to the protection of the natural environment in times of armed conflict, States and non-State armed groups can reduce the effects of environmental degradation caused by armed conflict.⁷⁴ States and non-State armed groups, with the support of Islamic law experts and religious leaders, have the ability to improve the protection of the natural environment in armed conflict in their respective contexts through better enforcement of the law by developing their understanding of the law and by promoting the law. Islamic law can provide the fundamental understanding that the natural environment must be protected, while IHL provides the specific details of the rules that apply to protect it in armed conflicts.

Exchanges on examples of good practices and practical measures that can be taken to put IHL rules into practice can also serve to provide further guidance. For example, there are a range of practical steps that States and non-State armed groups can take in this domain to alleviate and mitigate the effects of damage to the natural environment in armed conflict, such as “military maps for troops in training or operations that use special symbols to mark key environmental protected areas”.⁷⁵ IHL of course applies to all armed conflicts and all parties to a conflict, but if Islamic law can support the better enforcement of the obligations under IHL by those who adhere to Islamic law, it is important to recognize this and highlight the overall protection of the natural environment in armed conflict found in both sets of norms.

Conclusion: Towards better protection of the natural environment

The purpose of this article has been to highlight that the protection of the natural environment is a key concern of both IHL and Islamic law. Where States and non-State armed groups adhere to Islam as a religion and a set of norms, there is a similar overall understanding between IHL and Islamic law that the natural environment must be protected in times of armed conflict, and this can be called upon to strengthen compliance with IHL obligations held by both States and non-State armed groups in armed conflict and thereby ensure better protection of the natural environment.

The Islamic law principles were developed in the seventh and eighth centuries, well before IHL, although their general tenets have contributed to the development of greater IHL protections over time. Today, IHL provides substantial protections for the natural environment in armed conflict. These IHL rules, including rules governing the conduct of hostilities, are not replicated or directly reflected in classical Islamic law. This is understandable, as our

74 A. Al-Dawoody, above note 60, p. 17.

75 ICRC and Government of Switzerland, *State Expert Meeting on International Humanitarian Law: Protecting the Environment in Armed Conflicts: Chair's Summary*, 2023, p. 15, available at: www.icrc.org/en/document/chairs-summary-report-state-expert-meeting-ihl-protecting-natural-environment-armed.

understanding of the protections that need to be accorded to the natural environment in armed conflict have adapted over the last century. Nonetheless, the general acceptance that the natural environment needs to be protected in armed conflict is also reflected in Islamic law.

Dialogue on IHL and Islamic law's overall protections is one way to work towards compliance with IHL in the protection of the natural environment. As Cismas and Heffes have said, "[r]eligious leaders ... can be messengers of universal rules, using religious texts and interpretations as a basis for the obligations of the parties".⁷⁶ Sustained dialogue with networks associated with and influential on armed groups has been found to be effective in reducing IHL violations.⁷⁷

Islamic law can be used in several ways: as a legitimizing power for IHL or as a tool for dialogue, as well as demonstrating that dialogue itself is important in Islamic law on the natural environment. The examples studied in this article show that the rules developed by seventh- and eighth-century Islamic jurists in response to various attacks on, proposed attacks on, or destruction of the natural environment can be used to further bolster respect for the specific IHL rules affording protection of the natural environment in armed conflict nowadays, which if properly implemented would result in enhanced environmental protection. Depending on the context, if States and non-State armed groups understand Islamic law as a vector to understanding IHL, there could be better respect for and protection of the natural environment in armed conflict.

76 Ioana Cismas and Ezequiel Heffes, "Can Religious Leaders Play a Role in Enhancing Compliance with IHL?", *Humanitarian Law and Policy Blog*, 20 December 2017, available at: <https://blogs.icrc.org/law-and-policy/2017/12/20/can-religious-leaders-play-a-role-in-enhancing-compliance-with-ihl-2/>.

77 ICRC, above note 45, p. 65.