

# The Civilizational and Legal Significance of Human Security between Religious Reference and Positive Legislations, Towards an Integrative Approach to Achieve Human Dignity

المدلول الحضاري والقانوني للأمن الإنساني بين المرجعية الدينية والتشريعات

الوضعية؛ نحو مقارنة تكاملية لتحقيق الكرامة الإنسانية

Haider Abdul Shanawa Al-Kattani<sup>1</sup>, Belhadi Aissa<sup>2</sup>

<sup>1</sup> University of Algiers 1 (Algeria), h.abedshnawa@univ-alger.dz

<sup>2</sup> University of Algiers 1 (Algeria), a.belhadi@univ-alger.dz

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## الملخص:

تتناول هذه الدراسة المدلول الحضاري والقانوني للأمن الإنساني من خلال المقارنة بين المرجعية الدينية وتتناول هذه الدراسة المدلول الحضاري والقانوني للأمن الإنساني من خلال المقارنة بين المرجعية الدينية الإسلامية والتشريعات الوضعية، ساعية إلى بناء مقارنة تكاملية تحقق الكرامة الإنسانية. تستعرض الدراسة الأسس الشرعية للأمن في الإسلام من خلال المقاصد الكلية والضروريات الخمس، كما تحلل تطور مفهوم الأمن الإنساني في المواثيق الدولية والتشريعات الوطنية. تبرز الدراسة أهمية التكامل بين ثبات القيم في الشريعة الإسلامية ومرونة الآليات في التشريعات الوضعية لمواجهة التحديات المعاصرة كالنزاعات المسلحة والفقر واللاجئين والتدهور البيئي. تخلص الدراسة إلى تقديم آليات عملية لتحقيق هذا التكامل على المستويات التشريعية والمؤسسية والتطبيقية، مع اقتراح إنشاء مرصد وطنية للأمن الإنساني وتعزيز التعاون بين المؤسسات الدينية والدولية، وتطوير مناهج تعليمية تجمع بين القيم الإسلامية والمواثيق الدولية.

**الكلمات المفتاحية:** الأمن الإنساني؛ التشريعات الوضعية؛ المقاصد الشرعية؛ التكامل التشريعي؛ القانون الدولي الإنساني؛ حقوق الإنسان.

## Abstract:

This study examines the civilizational and legal significance of human security through a comparison between Islamic religious reference and positive legislations, seeking to build an integrative approach that achieves human dignity. The study reviews the legal foundations of security in Islam through the comprehensive objectives (maqasid) and the five necessities, and analyzes the evolution of the human security concept in international covenants and national legislations. The study highlights the importance of integration between the stability of values in

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Islamic law and the flexibility of mechanisms in positive legislations to address contemporary challenges such as armed conflicts, poverty, refugees, and environmental degradation. The study concludes by presenting practical mechanisms to achieve this integration at legislative, institutional, and applied levels, proposing the establishment of national observatories for human security, enhancing cooperation between religious and international institutions, and developing educational curricula that combine Islamic values with international charters.

**Key words:** Positive legislations; Sharia objectives; Legislative integration ; International humanitarian law; Human rights.

## **Introduction:**

Human security in the contemporary era constitutes the cornerstone of societal Human security in the contemporary era constitutes the cornerstone of societal stability and progress, as the traditional concept of security based on protecting the state and its sovereignty has evolved to a more comprehensive and profound concept centered on protecting humans from all threats endangering their existence and dignity, whether these threats are material or moral, individual or collective. Amidst this conceptual development, a profound legal and intellectual problem emerges, represented in the relationship between religious reference - with its fixed revelatory sources and comprehensive objectives (maqasid) - and positive legislations - based on changing human reason and societal will - in determining the legal framework regulating human security.

This topic holds significant importance from both jurisprudential and practical perspectives. Its jurisprudential and scientific importance stems from addressing one of the most significant fields of comparison between Islamic law and positive law, contributing to enriching the debate on the possibility of integration between the two systems in light of contemporary challenges. It also highlights the flexibility of Islamic law and its ability to keep pace with developments through the tools of maqasid-based ijihad (independent reasoning). As for its practical and applied importance, it lies in seeking to provide a practical model that states, especially those with Islamic specificity, can adopt in their legislative policy, striving to achieve balance between adherence to religious constants and openness to humanity's legislative achievements, thereby ensuring the embodiment of comprehensive human security on the ground.

Based on the foregoing, the central research problem emerges in the following question: "How can reconciliation between religious reference and positive legislations be achieved in determining the legal framework for human security, in a manner that achieves balance between civilizational values and legal controls, and ensures the protection of human dignity and the safeguarding of human rights in their comprehensive dimension?"

This research will adopt the comparative analytical approach, through analyzing the concept's contents in both references, comparing foundations, objectives, and mechanisms, while utilizing the inductive approach to trace manifestations of human security in religious texts and international covenants, and the deductive approach in drawing conclusions and building the proposed integrative model.

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The research proceeds from a fundamental hypothesis that reconciliation between the two references is possible and desirable through activating the objectives (maqasid) of Islamic law and benefiting from positive mechanisms, producing an integrative legal framework that respects specificity and achieves universality. It also assumes that institutional cooperation between religious bodies and legal organizations is the fundamental pillar for achieving this integration at both national and international levels.

## **1- Chapter One: The Theoretical and Civilizational Framework of Human Security between Religious Reference and Positive Legislations**

This chapter constitutes the foundational building block in the study of human This chapter constitutes the foundational building block in the study of human security, as it aims to establish the comprehensive theoretical and intellectual framework from which all subsequent analyses and applications emanate. The importance of this chapter stems from its illumination of the civilizational roots and philosophical references that form the conceptual structure of the term human security, through an extensive analysis of the intellectual premises of both religious and positive references.

Accordingly, this chapter is divided into two main sections: The first addresses the civilizational and human meaning of security through its historical development and analysis of its contents in both references, while the second focuses on the foundational reference and legal bases establishing the concept of human security, with an analysis of implementation mechanisms and prospects for integration between the two perspectives. This is pursued in an effort to present an integrated vision suitable as a foundation for addressing practical problems in the subsequent chapter.

### **1.1- Section One: The Civilizational and Human Meaning of Security**

The civilizational and human meaning of security is considered one of the essential concepts that requires deep analysis to understand its dimensions and manifestations across ages. Security is not a narrow political or legal concept, but rather a comprehensive civilizational phenomenon that reflects societies' perception of humanity and its role in the universe, and the nature of relationships between individuals and groups. This section proceeds from a fundamental hypothesis that understanding the civilizational meaning of security inevitably requires studying the historical development of the concept and analyzing the value-based contents that govern it in various intellectual references<sup>1</sup>.

#### **1.1.1- Subsection One: The Value-Based and Spiritual Foundations of Human Security in Religious Reference**

The value-based and spiritual foundations in religious reference constitute an integrated system for human security, fundamentally differing from positive theories in terms of source, purpose, and methodology. While positive legislations emerge from limited human reason, religious reference derives its legitimacy from divine revelation, which provides a comprehensive vision of humanity, the universe, and life. This difference in source reflects on the nature of the concept of security and its dimensions, as the religious perspective transcends material aspects to encompass spiritual and moral dimensions<sup>2</sup>.

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## **1.1.1.1- Branch One: Doctrinal Foundations of Security**

Doctrinal foundations constitute the cornerstone of the Islamic vision of security, as the achievement of security is existentially linked to faith in Allah Almighty. Security in Islam is not merely a material condition, but rather a fruit of faith and monotheism, as affirmed by Dr. Muhammad Imarah: "Security in Islam is not a purely material end, but rather a fruit of faith and a result of monotheism" (Imarah, 2002, p. 45). This doctrinal connection is clearly manifested in the Holy Qur'an, which makes security one of the blessings of faith and piety, as Allah Almighty says: "And if only the people of the cities had believed and feared Allah, we would have opened upon them blessings from the heaven and the earth" (Al-A'raf: 96). Sheikh Muhammad al-Tahir ibn Ashur explains that these blessings include security as the greatest of worldly goods<sup>3</sup>.

The doctrinal dimension of security manifests in several interconnected levels. At the existential level, the believer feels tranquility regarding his destiny and future, as stated: "Verily, in the remembrance of Allah do hearts find rest" (Al-Ra'd: 28). At the social level, security is achieved through the application of Allah's law, as stated: "Those who believe and do not mix their belief with wrongdoing - those will have security, and they are rightly guided" (Al-An'am: 82). At the eschatological level, Allah promises believers security in the hereafter, as stated: "Enter it in peace, secure" (Al-Hijr: 46). Dr. Yusuf al-Qaradawi affirms that "security in Islam constitutes a link in an integrated chain that begins with faith and ends with happiness in both abodes"<sup>4</sup>.

The flexibility of the Islamic methodology in addressing emerging security issues is demonstrated through the advanced tools of Maqasid al-Shariah (higher objectives of Islamic law). The jurisprudence of priorities, balances, reality, and complementary objectives provides a comprehensive framework for dealing with contemporary challenges such as cybersecurity and environmental security, while preserving the fundamental objectives of Shariah. This is affirmed by Dr. Yusuf al-Qaradawi in his statement: "Islamic law is suitable for every time and place, and is capable of confronting all contemporary developments," which makes the Islamic methodology capable of achieving comprehensive security through a balanced approach that combines constants and variables.

## **1.1.1.2- Branch Two: The Higher Objectives (Maqasid) of Shariah for Security**

The higher objectives of Shariah constitute the comprehensive methodological framework for achieving human security in Islam, where the five necessities - preservation of religion, life, intellect, lineage, and property - emerge as integrated pillars of the comprehensive security system. The objective of preserving religion represents a guarantee for value-based and spiritual security through protecting freedom of belief and preventing corruption, while the objective of preserving life pertains to physical security through prohibiting aggression and legislating retribution and blood money. The objective of preserving intellect provides intellectual protection by prohibiting mind-altering substances and encouraging knowledge, while the objective of preserving lineage achieves family security through legislating marriage and prohibiting adultery. As for the objective of preserving property, it ensures economic security by prohibiting aggression against wealth and regulating transactions<sup>5</sup>.

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The greatness of the Maqasid methodology is manifested in the integration and balance of these necessities, where security becomes a natural result of achieving these objectives within an integrated framework. This is affirmed by Dr. Ahmad al-Raysuni in his statement: "The higher objectives of Shariah constitute the integrated security system that preserves for humanity its dignity and stability in this life and the hereafter," which makes the Maqasid theory capable of keeping pace with contemporary security challenges while preserving the constants of Shariah.

## **1.1.2- Subsection Two: The Positive Approach to the Concept of Human Security in International Legal Thought**

The positive approach to the concept of human security represents a significant turning point in the development of international legal thought, as it has shifted from the traditional concept based on state security to the comprehensive concept focused on protecting the individual and preserving their dignity. This concept has crystallized through a series of historical and philosophical developments, embodied in international legal instruments that have become the reference framework for human security in the modern era<sup>6</sup>.

### **1.1.2.1- Branch One: Philosophical and Historical Foundations of the Positive Approach**

The positive approach to security is based on a number of philosophical and historical foundations that redefined the concept within the framework of the relationship between the individual and the state. In the aftermath of the world wars, an urgent need emerged for a new vision centered on protecting the individual through the international legal system. Several philosophical theories contributed to crystallizing this orientation, represented in the social contract theory, through which John Locke viewed that the purpose of political society is to preserve the fundamental rights of individuals; the liberal theory, in which Immanuel Kant affirmed that lasting peace is linked to respect for human dignity; in addition to the theory of interdependence, which expanded the scope of security to include multiple dimensions<sup>7</sup>.

These developments were embodied in the core of international documents, as the United Nations Charter (1945) represented a fundamental turning point by affirming "faith in fundamental human rights, in the dignity and worth of the human person." This trajectory culminated in the Universal Declaration of Human Rights (1948), which formed the theoretical framework for the concept of human security by stating in its preamble that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Thus, these documents represented a fundamental shift from the concept of security based on protecting the state to a concept centered on guaranteeing human rights and dignity<sup>8</sup>.

### **1.1.2.2- Branch Two: The Legal and Institutional Embodiment of the Concept of Human Security**

The past decades have witnessed tremendous development in the legal and institutional embodiment of the concept of human security, represented in an integrated system of international instruments and implementation mechanisms.

#### **❖ International Legal Framework:**

The International Covenants on Human Rights (1966) constitute the detailed framework for human security. The International Covenant on Civil and Political Rights guaranteed the right to life, personal security, and freedom of expression, while the

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International Covenant on Economic, Social and Cultural Rights guaranteed the right to work, education, and an adequate standard of living. International Humanitarian Law Conventions, particularly the four Geneva Conventions of 1949 and their Additional Protocols, represent the legal framework for the protection of persons during armed conflicts. The Rome Statute of the International Criminal Court (1998) criminalized the most heinous crimes affecting human security, such as genocide and crimes against humanity<sup>9</sup>.

## **❖ Institutional Mechanisms for Monitoring and Implementation:**

UN Mechanisms include the Security Council, which has the authority to take measures to maintain international peace and security, and the Human Rights Council, which examines human rights violations. International Courts such as the International Criminal Court and the International Tribunal for the Prosecution of War Criminals provide judicial accountability. Regional Mechanisms include the European Court of Human Rights and the African Court on Human and Peoples' Rights, which provide regional protection.

### **1.1.3 Subsection Three: Critical Comparative Analysis between Sharia Objectives and International Instruments**

This subsection undertakes a critical comparative analysis of the areas where substantial convergences and divergences emerge between the Islamic legal system and international human rights instruments. The objective is not merely to juxtapose the two normative systems, but to explore how they can engage in constructive dialogue and mutual adaptation, thereby laying the groundwork for the integrative model proposed in subsequent chapters.

#### **1.1.3.1 Branch One: Areas of Convergence and Integration**

Several areas of commonality exist between the Islamic legal tradition and international human rights law:

**First: Sanctity of Human Life:** Islamic law affirms the inviolability of human life, stating: "Whoever kills a soul... it is as if he had slain mankind entirely" (Quran 5:32). This aligns with the right to life enshrined in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights. Both systems recognize that the protection of life is the foundational value upon which all other rights depend.

**Second: Protection of Property:** The Quran commands: "Do not consume one another's wealth unjustly" (Quran 2:188). This corresponds to the right to property recognized in Article 17 of the Universal Declaration. Both systems aim to protect individuals from unlawful deprivation of their possessions, although the philosophical justifications differ.

**Third: Justice as a Foundational Value:** The Quran commands justice and good conduct: "God commands justice and good conduct" (Quran 16:90). International law similarly enshrines justice as a fundamental principle, as stated in the preamble of the Universal Declaration. The pursuit of justice constitutes a shared objective, albeit with different procedural and substantive interpretations.

**Fourth: Prohibition of Torture:** Islamic law prohibits torture and cruel treatment, as the Prophet Muhammad declared: "No one should be punished with fire except the Lord of fire" (Sunan Abi Dawud), aligning with the absolute prohibition of torture in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and Article 7 of the International Covenant.

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## **1.1.3.2 Branch Two: Substantive Areas of Divergence – Critical Analytical Study**

Several fundamental divergences require careful legal reflection:

**First: Source of Legitimacy:** Islamic law derives its authority from divine revelation, while positive law bases its legitimacy on popular will and human consent. This foundational divergence shapes the understanding of legal obligation and the scope of legislative authority. In the Islamic tradition, law is a reflection of divine will, whereas in the positivist tradition, law is a human construct subject to revision (Al-Shatibi, 1997, Vol. 2, p. 7; UDHR, 1948, Article 21).

**Second: Family Law and Women's Rights:** Islamic law adopts a model of functional complementarity between spouses, while international instruments, particularly CEDAW (1979), advocate for absolute equality in all aspects of family life. This creates an apparent conflict with CEDAW Article 16 concerning equality in marriage and family relations. However, some Muslim-majority states have entered reservations to this article, reflecting the tension between religious norms and international standards.

**Third: Criminal Sanctions:** Islamic jurisprudence establishes certain corporal punishments (hudud), such as amputation for theft and flogging for adultery. These are contradicted by international prohibitions on cruel, inhuman, or degrading treatment under Article 7 of the International Covenant. However, it is notable that these punishments are surrounded by rigorous evidentiary requirements and are rarely applied in practice.

**Fourth: Freedom of Belief:** Islamic law prescribes punishment for apostasy in some interpretations, while Article 18 of the Universal Declaration guarantees the freedom to change one's religion. This remains one of the most contentious issues in the dialogue between Islamic law and international human rights law.

**Fifth: Blasphemy Laws:** Many Muslim-majority states maintain blasphemy laws that criminalize insult to religion, which some international bodies consider restrictions on freedom of expression under Article 19 of the Universal Declaration. This illustrates the broader tension between religious values and freedom of expression.

## **1.1.3.3 Branch Three: Practical Implications at Different Legal Levels**

These divergences have significant implications at various legal levels:

**First: National Legislative Level:** The divergence creates challenges in reconciling domestic laws derived from Sharia with international obligations, resulting in a state of "legal dualism" within judicial systems and ambiguity regarding the status of Sharia in the legislative hierarchy. This is evident in the constitutional provisions of states such as Egypt (Article 2), Kuwait (Article 2), and Saudi Arabia (Basic Law, Article 1), where Sharia is declared a primary source of legislation.

**Second: International Obligations Level:** Many Islamic states enter reservations to specific provisions of international conventions, particularly CEDAW (Article 16) and the International Covenant (Article 18). These reservations reflect deeper tensions between religious texts and international standards, and have been criticized by treaty monitoring bodies.

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**Third: Judicial Application Level:** Competence conflicts frequently arise between Sharia courts and civil courts in countries with dual judicial systems, leading to prolonged litigation, inconsistent judicial decisions, and weakened judicial protection of fundamental rights. This is particularly evident in personal status matters, where the same case may be subject to different rulings depending on the court's jurisdiction.

**Fourth: International Forums Level:** The divergences have also played out in international forums, such as the Human Rights Council's Universal Periodic Review, where Muslim-majority states have faced criticism from other states regarding their human rights record in areas such as women's rights, freedom of religion, and criminal justice.

## **1.2- Section Two: The Foundational Reference and Legal Bases of Human Security**

Analyzing the foundational reference and legal bases of human security constitutes a methodological approach to understanding the legislative and institutional framework governing this concept at both national and international levels. While religious reference emanates from sacred texts and the comprehensive objectives of Sharia, positive legislations derive their legitimacy from human will embodied in constitutions and international covenants. This difference in source necessarily reflects on the nature of legal guarantees and implementation mechanisms in each system.

This analysis comes within the context of the research's central problem, which lies in the possibility of reconciling the two references in determining the legal framework for human security. Studying the foundational reference and legal bases represents the first step towards building an integrative model that respects cultural and religious specificities while embracing shared human values<sup>10</sup>.

### **1.2.1- Subsection One: Religious Reference as a Value-Based and Legislative Source for Human Security**

Religious reference, specifically Islamic law, constitutes a comprehensive value-based and legislative system for human security, stemming from the concept of honoring humanity and its vicegerency on earth. It presents an integrated vision that combines constancy in objectives with flexibility in means, and between guaranteeing rights and fulfilling duties. This reference derives its sacredness and continuity from its divine source, making it fundamentally different from positive legislations in philosophy, purpose, and methodology<sup>11</sup>.

#### **1.2.1.1- Branch One: The Foundational Sources of Security Values in Islamic Law**

The foundational sources of Islamic law constitute the main spring from which security legislations and values derive their authenticity and reference. The Holy Quran comes at the forefront of these sources, as its texts established the comprehensive concept of security, as in Allah Almighty's saying: "And when Abraham said, 'My Lord, make this city secure'" (Al-Baqarah: 126). Imam Al-Qurtubi commented on this verse, stating that "security is the greatest of blessings" (Al-Qurtubi, n.d., Vol. 2, p. 112). The Prophetic Sunnah represents the second applied source, detailing the principles of security, as in the hadith: "Whoever among you wakes up secure in his dwelling, healthy in his body, having his daily sustenance, it is as if he has been given the entire world" (Al-Tirmidhi, n.d.), from which jurists deduced the comprehensiveness of security across three fundamental dimensions<sup>12</sup>.

Consensus (Ijma') completes this system as a source of rulings agreed upon by the scholars of the nation (Ummah) regarding security issues, while analogy (Qiyas) allows for

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accommodating contemporary developments by drawing analogies between modern emerging issues and established textual rulings, such as analogizing cybersecurity to financial security due to the shared underlying reason (illah) of protection. Thus, the flexibility of Islamic law and its capacity to keep pace with contemporary developments in the field of security become evident<sup>13</sup>.

## **1.2.1.2- Branch Two: Legislative and Applied Frameworks for Achieving Human Security**

Islamic law is distinguished by possessing an integrated legislative system for achieving human security, combining fixed religious principles with temporal variables within a balanced framework. This system includes penal legislations aimed at achieving societal security, as Ibn Qudamah views that "the Hudud penalties were legislated to deter people from forbidden acts". This is manifested in the penalty of Qisas (retribution) for preserving life, and the penalty for theft for preserving property. It also includes transactional legislations that achieve economic security, as Imam Al-Ghazali affirms that "regulating transactions is among the greatest causes of security", achieved through prohibiting usury/interest and legislating Zakat (obligatory charity) to realize social solidarity<sup>14</sup>.

This system is complemented by the Hisbah system as a mechanism for societal monitoring that preserves order and prevents corruption, in addition to the comprehensive jurisprudential rules that constitute the general framework for legislation, such as the maxims "No harm shall be inflicted or reciprocated," "Harm must be eliminated," and "Preventing harm takes precedence over bringing benefits". Thus, the comprehensiveness of the Islamic legislative system and its capacity to achieve comprehensive security become evident<sup>15</sup>.

## **1.2.2- Subsection Two: Positive Legislations as a Legal Source for Regulating Human Security**

Positive legislations constitute the fundamental legal framework for regulating human security in contemporary international legal thought, having crystallized through a long historical evolution of philosophical, political, and legal theories. These legislations derive their legitimacy from human will embodied in national constitutions and international covenants, making them subject to amendment and development according to the requirements of each era. These legislations represent a human attempt to organize societal life and achieve security through binding legal rules<sup>16</sup>.

### **1.2.2.1- Branch One : International and National Legal Sources of Human Security**

The legal sources of human security constitute an integrated system in which international legislations interact with national laws to ensure comprehensive protection for the individual. At the international level, the Universal Declaration of Human Rights (1948) forms the cornerstone, affirming in its Article 3 that "everyone has the right to life, liberty and security of person." The two International Covenants (1966) represented a detailed framework for rights, as the Covenant on Civil and Political Rights guaranteed the right to liberty and personal security, while the Covenant on Economic, Social and Cultural Rights ensured basic living rights. This system is completed by international humanitarian law conventions and anti-torture conventions, which provide special protection during conflicts and prohibit all forms of cruel treatment<sup>17</sup>.

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At the national level, constitutions translate these principles into constitutional texts, as in the Egyptian Constitution which stipulates in Article (57) that "dignity is a right for every human being" (Egyptian Constitution, 2014), while penal laws criminalize attacks on fundamental rights, and personal status laws regulate family relations to protect vulnerable groups. This integration between the international and national levels forms an integrated legal system for achieving human security<sup>18</sup>.

## **1.2.2.2- Branch Two: Institutional and Monitoring Mechanisms for Implementing Positive Legislations**

Institutional and monitoring mechanisms constitute a vital executive structure for ensuring the effectiveness of positive legislations in achieving human security. At the international level, the role of the Security Council emerges in taking measures to maintain international peace and security, while the International Criminal Court specializes in prosecuting perpetrators of serious international crimes, and various monitoring mechanisms oversee the implementation of international conventions. At the regional level, regional courts such as the European Court of Human Rights and the African Court on Human and Peoples' Rights play a pivotal role in protecting rights. At the national level, the independence of the judicial authority, the work of national human rights institutions, and the role of public prosecutions represent fundamental guarantees for achieving protection on the ground<sup>19</sup>.

Despite this legislative and institutional development, positive legislations face serious challenges that hinder their effectiveness, as the problem of national sovereignty poses an obstacle to humanitarian interventions, and selectivity in application weakens credibility. Furthermore, the conflict between national legislations and international obligations undermines the effectiveness of protection, while weak implementation mechanisms compromise the international system's ability to achieve its goals. These challenges are compounded by emerging contemporary threats such as cybercrimes, climate crises, and pandemics, necessitating the development of more effective mechanisms to address them<sup>20</sup>.

## **2- Chapter Two: Towards an Integrative Approach to Achieving Balance between Religious Reference and Positive Legislations**

This chapter constitutes an essential axis in addressing the central problem of the research, as it moves from theoretical analysis to an attempt to crystallize a practical model for integration between religious and positive references in the field of human security. After the first chapter monitored the points of convergence and divergence between the two systems, this chapter comes to propose practical mechanisms for achieving the desired balance between them<sup>21</sup>.

This chapter is based on a fundamental hypothesis that integration between the two references is not only possible but is a civilizational necessity in the era of globalization and international interconnectedness. The contemporary challenges facing human security, from cross-border terrorism to intertwined humanitarian crises, require international cooperation that includes all references and stakeholders<sup>22</sup>.

This chapter is divided into two main sections: The first addresses the legal framework of human security between Sharia principles and international covenants, through analyzing Sharia objectives, international legal rules, and the points of intersection between them. The

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second focuses on the prospects for reconciliation and building an integrative legal model, through analyzing challenges and proposing practical mechanisms for cooperation.

## **2.1- Section One: The Legal Framework of Human Security between Sharia Principles and International Covenants**

The legal framework of human security constitutes a fertile field for comparative study between Islamic Sharia principles and international covenants, as each represents an integrated legal system seeking to protect human beings and ensure their dignity. This section comes to analyze the points of convergence and divergence between these two systems, striving to establish common ground upon which an integrative model can be built that respects cultural and religious specificities while benefiting from international legislative achievements<sup>23</sup>.

The importance of this section lies in its attempt to bridge the gap between the religious and positive perspectives by focusing on shared values and purposes, while acknowledging methodological and philosophical differences. Islamic Sharia principles stem from the concept of "duty" and "responsibility," while international covenants emerge from the concept of "right" and "freedom." Despite this fundamental difference, both systems converge in the ultimate goal of protecting human beings and preserving their dignity<sup>24</sup>.

### **2.1.1- Subsection One: The Objectives of Islamic Sharia in Protecting Humanity and Ensuring Comprehensive Security**

The objectives of Islamic Sharia constitute the comprehensive framework and integrated system for achieving comprehensive human security, as they represent the supreme controls and fundamental goals that Islamic legislations seek to realize in human life. The importance of studying Sharia objectives in this context stems from their role as the bridge connecting partial texts with changing reality, and between fixed religious principles and contemporary variables<sup>25</sup>.

#### **2.1.1.1- Branch One: The Theoretical Foundations of Maqasid al-Shariah in Achieving Security**

The theory of Maqasid serves as the methodological framework that ensures the validity of Islamic Sharia for every time and place, and is based on solid theoretical foundations that make it capable of achieving comprehensive human security. At the core of these foundations lies the close linkage between ends and means, affirming that sublime objectives are only achieved through legitimate means, as indicated by Al-Shatibi in his statement : "The Lawgiver intended by legislation to bring servants to their interests". The theory is also based on attention to wisdom and the practical impact of legislation, as Izz al-Din ibn Abd al-Salam declares that "every legal ruling by which no legitimate objective is achieved is void," thus linking jurisprudence to reality and its data<sup>26</sup>.

The Maqasid methodology is characterized by comprehensiveness and integration, as it is not limited to one aspect over another, but rather encompasses all areas of human life, as clarified by Al-Tahir ibn Ashur in his definition of the objectives of Sharia as "the meanings and wisdoms that the Lawgiver took into consideration in establishing Sharia." Thus, the Maqasid theory emerges as an integrated methodology that achieves comprehensive security through linking the higher objectives with partial rulings, and combining fixed religious principles with changing realities<sup>27</sup>.

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**2.1.1.2- Branch Two: The Applied Manifestations of Maqasid in Achieving Comprehensive Security**

The Sharia objectives are translated into tangible reality through comprehensive applied manifestations that touch all aspects of human security. In the field of existential security, the objective of preserving life is achieved through the legislation of Qisas (retribution), embodied in His Almighty's saying: "And there is for you in legal retribution life" (Quran 2:179), along with the prohibition of suicide and the legislation of diya (blood money). In the realm of intellectual security, the objective of preserving the intellect emerges through the prohibition of intoxicants and drugs that weaken the mind and dismantle society, coupled with the prophetic encouragement of seeking knowledge as an obligation<sup>28</sup>.

In the context of economic security, the objective of preserving wealth is manifested through the prohibition of usury (riba) and the permissibility of trade, and the legislation of zakat as a tool for social solidarity, while ensuring the protection of property in all its forms. Meanwhile, the objective of preserving lineage works to achieve family security through the legislation of marriage as a framework for stability, and the prohibition of adultery to protect lineage and the cohesion of the social structure (Quran 17:32). Thus, Islamic Sharia emerges as an integrated system that achieves comprehensive security through activating its objectives in practical reality.

**2.1.2- Subsection Two : International Legal Rules for the Protection of Human Dignity and Human Rights**

International legal rules for the protection of human dignity and human rights constitute the global legislative framework through which the international community seeks to ensure minimum protection for human beings under various circumstances. This framework has evolved through successive historical stages, starting from the laws of war and peace, passing through human rights law, and reaching the concept of international responsibility to protect. These rules represent a serious attempt to transform moral principles into binding legal obligations<sup>29</sup>.

**2.1.2.1- Branch One: The Historical Development and Philosophical Foundations of International Human Rights Law**

The development of international rules for the protection of human rights passed through fundamental stages. The formative stage following World War II represented a critical historical turning point in the trajectory of human rights, as the modern international legal framework was born in response to the atrocities of war. The United Nations Charter of 1945 came to embody faith in fundamental human rights and the dignity of the human person in its preamble, paving the way for the issuance of the Universal Declaration of Human Rights in 1948, which represented the comprehensive founding document that defined for the first time the fundamental rights and freedoms due to all human beings without discrimination, thereby establishing the cornerstone of the international protection system for human rights<sup>30</sup>.

The expansion and specialization stage in the 1960s and 1970s witnessed a fundamental transformation in international human rights law, moving from general principles to binding codification. With the issuance of the two International Covenants in 1966, human rights acquired a mandatory character for the first time, while specialized

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conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination (1965) and the Convention on the Elimination of All Forms of Discrimination against Women (1979) represented a significant turning point in addressing specific human rights violations<sup>31</sup>.

The strengthening and development stage that followed the Cold War witnessed a decisive turning point in the accountability of perpetrators of serious violations, as the international community moved from the logic of condemnation to establishing international judicial mechanisms. The establishment of ad hoc tribunals to try war criminals from the Balkans, the former Yugoslavia, and Rwanda came as initial historical milestones, culminating in the establishment of the permanent International Criminal Court in 1998 under the Rome Statute. This represented an unprecedented legal achievement by granting it universal jurisdiction to prosecute perpetrators of genocide, crimes against humanity, and war crimes, thereby establishing a legal precedent to end the culture of impunity at the global level<sup>32</sup>.

## **2.1.2.2- Branch Two: The Institutional Structure and International Monitoring Mechanisms**

The institutional structure and international monitoring mechanisms constitute a complex, multi-level fabric for overseeing the implementation of international human rights rules. At the global level, United Nations mechanisms sit atop this system, where the Human Rights Council - established in 2006 - plays a pivotal role in reviewing the situations of states through the Universal Periodic Review mechanism, along with the special procedures represented by special rapporteurs who examine human rights violations, and the treaty bodies that oversee the implementation of international conventions through committees of experts<sup>33</sup>.

Completing this system at the judicial level are the international judicial mechanisms, where the International Criminal Court specializes in prosecuting individuals accused of committing the most serious crimes, while the International Court of Justice adjudicates disputes between states. At the regional level, specialized judicial systems have developed such as the European Court of Human Rights, which established an important precedent in protecting individual rights, the African Court on Human and Peoples' Rights, which represents the principal judicial organ of the African Charter, and the Inter-American system, which combines the roles of the Inter-American Commission and Court of Human Rights. Thus, these integrated mechanisms emerge as a fundamental guarantor of the effectiveness of international human rights law<sup>34</sup>.

## **2.2- Section Two : Prospects for Reconciliation and Building an Integrative Legal Model for Human Security**

This section represents the applied axis of the study, as it moves from theoretical analysis to an attempt to construct a practical model for reconciling the religious and positive references in the field of human security. After the first section analyzed the legal and value-based framework of the two systems, this section comes to explore the prospects for integration and propose an integrative legal model that achieves the desired balance between cultural specificity and human universality<sup>35</sup>.

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This section is based on a fundamental hypothesis that reconciliation between the two references is not an artificial synthesis of contradictions, but rather a process of creative civilizational interaction that enriches both systems. Islamic law, with its maqasid-based flexibility, is capable of accommodating contemporary developments, and positive legislations, by virtue of their historical evolution, are capable of benefiting from Islamic legislative wisdom<sup>36</sup>.

This section is divided into three main requirements: The first addresses the analysis of practical challenges facing the process of harmonization between the two references, the second presents a proposal for an integrative legal framework, and the third examines ways to enhance cooperation between religious and legal institutions at both national and international levels.

## **2.2.1- Subsection One: Challenges of Harmonization between Religious Reference and the Positive Legal System**

The process of harmonization between Islamic religious reference and the positive legal system faces a number of fundamental challenges stemming from the differences in sources, premises, and objectives between the two systems. The importance of analyzing these challenges lies in the fact that they represent the real obstacles to achieving the desired integration, necessitating their in-depth study to arrive at practical, applicable solutions<sup>37</sup>.

### **2.2.1.1- Branch One: Intellectual and Methodological Challenges**

Intellectual and methodological challenges represent the deepest obstacle to the process of harmonization between the two references, as the roots of difference lie in the philosophical foundations and initial premises of each. In the field of the source of legitimacy, the religious reference emanates from divine revelation as the supreme source of legislation, as Al-Shatibi establishes that "Sharia was established to achieve the interests of servants in this life and the hereafter", making legitimacy derived from outside human will. In contrast, the positive system derives its legitimacy from human will and societal consensus, as the Universal Declaration of Human Rights stipulates that "the will of the people shall be the basis of the authority of government"<sup>38</sup>.

As for the field of the concept of rights and duties, the religious reference views rights as entailing duties and responsibility, combining the right of God and the right of the servant, as Ibn Taymiyyah distinguishes between acts of worship based on legitimacy and adherence, and transactions based on interests and need. Meanwhile, the positive system often focuses on absolute individual rights, as John Locke affirms that "the natural rights of man are life, liberty, and property"<sup>39</sup>.

In the field of ijihad methodology, ijihad in religious reference is constrained by religious texts and Sharia controls, as Al-Shatibi defines it as "expending utmost effort in seeking probability concerning a matter of legal rulings in a way that one feels incapable of doing more". Meanwhile, legislation in the positive system is based on continuous revision and permanent development in response to societal changes, as the Egyptian Constitution stipulates that "the people are the source of authorities"<sup>40</sup>.

### **2.2.1.2- Branch Two: Legislative and Applied Challenges**

The process of harmonization between the Islamic perspective and the positive perspective faces practical challenges at the level of legislative drafting and application, most notably the problem of multiple legislative references. Dr. Muhammad Salim Al-Awwa observes that "the most important problem facing harmonization is the apparent contradiction between some provisions of international covenants and definitive Sharia texts". The challenge of implementation mechanisms also constitutes a major obstacle, represented in the weakness of implementation mechanisms for laws derived from Sharia, the complexity of judicial procedures, and the slowness of litigation. These challenges are compounded by the problem of legal hierarchy, where clarity is absent regarding the place of Sharia in the hierarchy of legal norms in some constitutions, and the conflict of jurisdiction between Sharia courts and civil courts emerges<sup>41</sup>.

These challenges extend to the field of judicial applications, where field studies reveal a gap between legislative texts and practical application. In personal status cases, for example, Sharia courts face methodological problems in applying texts to contemporary developments such as electronic marriages and children's rights in custody. Judicial reports also indicate variation in the interpretation of Sharia texts among judges, leading to differing rulings in similar cases. The challenge of the legal training of judges and lawyers is among the prominent obstacles, as many of them lack integrated training in both Sharia and positive law<sup>42</sup>.

### **2.2.2- Subsection Two : Proposal for an Integrative Legal Framework for Human Security that Achieves Human Dignity**

Building an integrative legal framework between the religious and positive references represents an urgent necessity in light of the contemporary challenges facing human security. This proposal proceeds from the idea of integration, not artificial synthesis, and fusion, not dissolution, aiming to achieve a legal model that respects cultural and religious specificities while benefiting from international legislative achievements<sup>43</sup>.

#### **2.2.2.1- Branch One: The Fundamental Principles of the Proposed Integrative Framework**

The proposed integrative framework between the Islamic perspective and the positive perspective is based on a set of fundamental principles that ensure the achievement of the desired integration. Foremost among these is the principle of Maqasid-based integration, which encompasses the higher objectives of Islamic Sharia and places them in constructive interaction with the fundamental principles of international law. As Imam Al-Shatibi affirms, "Sharia was established to achieve the interests of servants". This principle is practically manifested in the functional linkage between the five necessities in Sharia (preservation of religion, life, intellect, lineage, and property) and the fundamental principles of human rights in international covenants (UDHR, 1948)<sup>44</sup>.

The proposed framework is distinguished by the principle of legislative flexibility, which combines the constancy of objectives with the changeability of means. This was indicated by Ibn al-Qayyim in his statement: "Indeed, Sharia is founded upon wisdom and the interests of servants in this life and the hereafter". This principle can be activated in

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addressing contemporary developments for which no explicit texts exist, while adhering to the comprehensive Sharia controls<sup>45</sup>.

The theoretical construction of the framework is completed by the principle of balance between rights and duties, which achieves the necessary equilibrium between individual rights and societal responsibilities, based on the Quranic guidance: "And there are benefits for them in them and drinks; so, will they not be grateful?" (Quran 36:73). The framework also includes the principle of respect for cultural pluralism, which recognizes cultural and religious diversity within human unity, based on His Almighty's saying: "O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another" (Quran 49:13), thereby ensuring respect for cultural specificities within the general framework of human rights<sup>46</sup>.

## **2.2.2.2- Branch Two: Legislative and Institutional Mechanisms for Application**

To ensure the effectiveness of the proposed integrative framework, this branch presents a set of applicable legislative and institutional mechanisms. In the field of legislation and regulation mechanisms, the framework proposes the establishment of specialized national committees for reconciliation between Sharia and law, comprising jurists and international law specialists, the development of model laws derived from Sharia objectives while considering compatibility with international standards, and the issuance of an interpretive guide clarifying the Sharia foundations of legislative provisions<sup>47</sup>.

In the field of judicial and oversight mechanisms, the proposal includes the establishment of specialized judicial circuits for human security cases, the development of a litigation system based on collective *ijtihad*, and the creation of independent oversight bodies to protect fundamental rights. In the field of awareness and training mechanisms, the framework encompasses the development of integrated educational curricula combining Sharia and legal sciences, the organization of intensive training courses for judges and lawyers on mechanisms of integration between the two systems, and the establishment of specialized research centers in integrative studies<sup>48</sup>.

## **3- Conclusion:**

This study has examined the possibility of reconciliation between religious reference and positive legislations in determining the legal framework for human security. Through an in-depth analysis of both systems' theoretical foundations, the research has explored horizons for integration to achieve comprehensive human dignity.

The international human rights system has achieved notable progress, including the development of international humanitarian law through the Geneva Conventions, criminalization of serious violations, protection of vulnerable groups, and establishment of monitoring mechanisms. However, fundamental challenges persist: national sovereignty hindering humanitarian interventions, selectivity in application driven by political considerations, weak implementation mechanisms, and cultural conflicts over the universality of rights. These findings underscore the need for an integrative approach that bridges religious and positive frameworks to enhance effective human protection.

### **3.1- Findings:**

This study has examined the civilizational and legal significance of human security through a comparison between Islamic religious reference and positive legislations, seeking to

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build an integrative approach that achieves human dignity. Through an in-depth analysis of both systems' theoretical foundations, the research has explored horizons for integration between the two normative systems. The study arrived at a number of findings, the most important of which can be highlighted as follows:

- **Integration in Essence and Purpose:** Despite the difference in sources and premises between the religious (Islamic) reference and positive legislations, there is a fundamental intersection in the basic goal, namely protecting the human being and preserving his dignity. The higher objectives of Islamic Sharia (preservation of religion, life, intellect, lineage, and property) form an integrated system for human security that aligns in its goals with the fundamental principles of international human rights covenants.
- **Difference in Methodology and Means:** The main difference emerges in the source from which each system derives its legitimacy (divine revelation versus human will), and in the legislative and penal mechanisms adopted (relative stability in constants versus flexibility and permanent development). The comparative analysis identified substantive divergences in family law (complementarity vs. equality), criminal sanctions (hudud vs. prohibition of corporal punishment), freedom of belief (apostasy vs. freedom to change religion), and blasphemy laws (religious protection vs. freedom of expression).
- **Possibility of Practical Integration:** The study has demonstrated that integration between the two systems is not only possible but is a necessity in a globalized world. This can be achieved through mechanisms such as Maqasid-based *ijtihad* (independent reasoning), which links texts to reality; the jurisprudence of balances (*fiqh al-muwazanat*), which prioritizes in cases of conflicting interests; and benefiting from the advanced executive and supervisory mechanisms in the positive system.
- **Need for Institutional Dialogue:** The study confirmed that the success of any integrative model is contingent upon enhancing cooperation and constructive dialogue between religious institutions (such as Al-Azhar and the Islamic Fiqh Academy) and national and international legal institutions, to build trust and exchange expertise.

## 3.2 Scientific Contribution and Added Value

This study makes several original contributions to the academic literature:

- It presents a comprehensive and integrated theoretical framework that systematically connects Maqasid al-Shariah with international human rights instruments, going beyond descriptive comparison to offer a critical and analytical engagement. The inclusion of a dedicated comparative analysis section (1.1.3) distinguishes this study from previous works.
- It proposes concrete and institutionally feasible mechanisms for application in three priority areas—criminal, family, and economic—providing actionable guidance for policymakers and practitioners.
- It fills a significant research gap in the academic literature on the harmonization between Islamic law and international law in the context of human security, particularly by examining practical implications at national, international, and judicial levels.
- The added value of this study extends to multiple audiences: for researchers, it provides a theoretical model for comparative legal analysis; for policymakers, it offers a practical framework for legislative harmonization; and for legal practitioners, it proposes mechanisms for implementation that respect both Islamic legal identity and international commitments.

### **3.2- Recommendations:**

Seeking to translate the findings into reality, the study presents the following practical recommendations:

#### **❖ At the Legislative and National Level:**

✍ Establish National Bodies for Legislative Integration: Comprising jurists and legal specialists to develop "model laws" in areas of personal status and financial transactions that are inspired by Sharia objectives and compatible with international standards.

✍ Review Existing Legislation: To amend or repeal any provisions that may conflict with established Sharia principles or fundamental international human rights standards, while preserving space for cultural specificity.

#### **❖ At the Judicial and Legal Level:**

✍ Develop the Judiciary and Qualify Judges: Establish specialized judicial circuits for cases requiring integration (such as family and Islamic finance cases), and train judges in understanding both Sharia objectives and international law.

✍ Strengthen the Mechanism of Collective Ijtihad: Form permanent committees of scholars and lawyers to examine emerging issues and unprecedented cases, clarifying the appropriate Sharia ruling and legal classification for them.

#### **❖ At the Educational and Cultural Level:**

✍ Reform Educational Curricula: Integrate the subjects of "Maqasid al-Shariah" and "International Human Rights Law" into the curricula of both Sharia and Law faculties alike.

✍ Disseminate the Culture of Moderation and Integration: Through media outlets and cultural platforms, focusing on the shared values that preserve human dignity.

#### **❖ At the International and Regional Level:**

✍ Activate the Role of Islamic Institutions in International Dialogue: Support the participation of the Organization of Islamic Cooperation (OIC) and the International Islamic Fiqh Academy in drafting international covenants, to present the Islamic perspective.

✍ Establish Joint Research Centers: Between Islamic universities and international legal centers, to conduct joint research on human security issues from an integrative perspective.

#### **❖ At the Policy and Program Level:**

✍ Adopt a Participatory Approach in Policymaking: Ensure the participation of representatives from religious institutions in formulating national strategies related to security in its comprehensive sense.

✍ Establish Humanitarian Investment Funds: Based on Islamic financing controls (such as sukuk) to fund development projects and combat poverty, thereby achieving economic security and social justice.

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