

## HUMANITARIAN LAW AND TRADITIONAL AFRICAN LAW

by Yolande Diallo

*We are very pleased to publish this report by Mrs. Diallo on research into the correlations between the principles of international humanitarian law and the humanitarian principles underlying African traditions. In earlier issues of International Review, various authors have drawn attention to the fact that historically, in Islamic countries, in India and elsewhere in the Far East, in a variety of ethical doctrines and in many different types of civilization, thoughts have been expressed which compare with those of the Red Cross—leading to the conclusion that they arise from aspirations common to most of mankind. It is particularly appropriate therefore to disclose certain concordances between them and to discover, in all these different places, a unity of view and of teaching in ethical and social affairs.*

*In this respect, the thinkers, scholars and artists of Africa have a great deal to tell us, as noted recently by Dr. Alioune Diop, president of the African Society of Culture :*

*“ It is up to the élite to shed light upon the encounter between tradition and modernism in the life of the people. This responsibility is not limited to a mere educational activity. It begins indeed with the mastership by the élite of its own abilities, talent and mentality; it must at the outset africanize its own disciplines. The historians, poets, lawyers, theologians and psychiatrists must enrich these disciplines and enable them to express themselves in an African language. . . . In so doing, the elite increases the universality of science and humanism. At the same time, it opens up to its people a world culture in which they will feel at ease, since they will find in that culture the elements for a revalorization of their own heritage.”<sup>1</sup> (Ed.)*

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<sup>1</sup> *Afrique perspectives internationales*, Geneva, December-January 1975-1976, p. 45.

It may be useful to call attention to the starting point for my research. As an African child, I was given a double education. What I was taught in the western school was added to and rounded out by the cultural and historical traditions of my people, handed down by word of mouth from generation to generation. These traditions were a part of my thinking for many years before the need to transcribe them occurred to me. During all of my studies, however, I was naturally inclined to make comparisons between what came to me from the outside and the cultural heritage I received from my own people.

It was not always easy to do so. On the one hand, I was confronted by a collection of precise and codified rules and on the other hand by orally transmitted laws, for in Africa there were no written laws. Law instead was based on custom, an unwritten body of law governing society even in its smallest details.

Law in general derives from the organization of society, a harmonized structure with its statutes and specific rules. Any legal organism is born of its community, with all that this implies in terms of rules, duties, obligations and sanctions. On the basis of this established social order, we can define the unwritten African law as a collection of obligatory rules designed to guarantee the equilibrium and strength of the group as a whole.

Even more than the written law of western society, the oral law of African society is deeply rooted, for it constitutes the very essence of all activity.

Its rules are expressed mainly in the form of proverbs, each of which has the force of law, of dogma. Even the tribal chiefs are bound by these rules. The proverbs are not always anonymous. The Fulani of Fonta cite the names of chiefs who are renowned for the volume and quality of their sayings.

We must acknowledge however that these oral rules are also more fragile, more difficult to record, to enumerate and to classify. It is due to this handicap that they are still little known or misunderstood.

I have therefore tried to gather examples from the traditions of my own ethnic group which it seems to me are interesting to compare with various concepts in western humanitarian law.

In my opinion, this research would benefit through comparison with identical studies undertaken in other African regions.

I refer below to examples which might be classified under three types of rules:

- I. Rules governing personal conduct in the event of conflict.
- II. Rules governing treatment of the vanquished.
- III. Rules which I shall call "jurisdictional means for the settlement of conflicts."

It should be emphasized that Africans are traditionally devoted profoundly to peace; that, contrary to general belief, war to them is not a normal state of affairs, but a last resort.

Hostilities are always preceded by a whole series of discussions and consultations, designed to settle differences. So it is that a Senegalese saying affirms:

"When you begin with discussion, you reach a solution."

During such discussions, the main subject is the suffering that war will bring to both sides.

One important thing that must be borne in mind is that black Africa has always had a problem of underpopulation, due to a hostile environment which was a constant threat to survival.

*I. Rules governing personal conduct in the event of conflict.*

Traditional African society, and especially the Fulani culture, is profoundly hierarchic, with a very strict division of duties. Only the nobility, for example, take up fighting as a trade—and this imposes upon them the obligation of defending the group against any attack from the outside. Among them, there is a highly developed sense of honour, with every member of the group bound to observe certain rules of conduct. If he violates these, he will be abandoned by his friends and ostracized by society.

It was forbidden, for example, in the event of conflict, to attack a woman, a child or an old man. A Fulani warrior would be dishonoured if he were to kill a woman or child.

Whoever encounters the Fulani must invariably be impressed by this sense of honour and the importance they attach to deserving the respect of others. As expressed by a Senegalese saying:

"Honour and good education are the marks of the Fulani".

It is also strictly forbidden to desecrate places which the person himself considers sacred, because, as the saying goes, "My evil-doing is the evil-doing of mankind".

The tombs of chiefs and ancestors, mosques, buildings erected over the tombs of persons regarded as saints; all these must be respected in observance of the adage:

"The dead belong to neither side."

In Senegal, the Ouolofs say:

"God decides the battle with the dead."

The sacred places and their surroundings, having a magico-religious character, soon become recognized as places of asylum. It is believed that the ancestors, or the god, inhabiting a sanctuary take the person seeking refuge under their protection. Among the animist tribes, there is usually a shelter in the heart of the village where protective fetishes are kept. Among agricultural peoples the grain fields are regarded as the homes of the protective spirits of nutrition. They are the ones who safeguard villages against famines, the destruction of crops, etc.

There is something similar among my own people, the Fulani, herdsmen who spread across an area from Senegal to Cameroon. To them, the cow is sacred for it is the source of all wealth. The enclosure in which the cows are kept also has a sacred character which assures peace to anyone who enters it. No man inspired by thoughts of war would dare to venture into it, for fear of drawing down upon himself and his group the anger of the gods.

It is important to bear in mind that such penalties have a spiritual and religious nature, which means that there is no way to escape from them.

## II. *Rules governing treatment of the vanquished.*

When two tribes are engaged in conflict, wounded prisoners are turned over to the women, who treat and care for them. The simple fact that these persons are disarmed and in the camp of their adversaries confers upon them the status of stranger—and we are all aware of the place accorded to the stranger in Africa. However hostile the intertribal

relations may have been, no African would dare to kill a stranger without reason, for fear of the possible consequences.

In Fouta, for example, it is common to hear the expression:

“If you shed the blood of a stranger, do not be surprised if the vultures come.”

Among the Fulani in Mali, it is said:

“There is no water that can wash away a stranger’s blood.”

Under this heading the question arises of household slaves.

Upon the surrender of a village, its inhabitants are usually reduced to slavery. The women and children are attached to a family and become what are called household slaves. Gradually, they become members of the family.

The captured men are assigned to work in the fields. In no case can there be a possibility of cold-blooded massacre of populations.

I must anticipate a question that is certain to arise. How is it possible, in the light of what I have said, to explain certain massacres in Africa, in Rwanda for example. My answer is another Senegalese saying:

“Only man is better than man,  
Only man is worse than man.”

This expression signifies that although man may have noble sentiments, he can sometimes become the worst of enemies for his fellow men. The most striking examples occur in revolt against oppression. After a long period of endurance, there is no doubt that man loses all sense of proportion and all sense of humanity. Unhappily, the history of the world provides all too many illustrations of this.

### III. *Jurisdictional means for the settlement of conflicts.*

I shall consider two procedures under this heading: (1) negotiations and (2) arbitration.

#### (1) *Negotiations*

Between neighbours, the normal procedure for settling disputes consists of negotiations, discussions and endless palavers, carried on with

the participation of the elders of the disputing groups, since, as it is said:

“A house cannot be built of one pillar”.

The system of messengers should be mentioned at this point. These messengers are carefully chosen from respected members of the tribe. In the African Sahel they are mainly iron-smiths or priests—invariably elderly and esteemed men. It is helpful if the messenger has some family relation with members of the tribe to which he is sent, and knows something of its language and traditions.

Healers also serve frequently as messengers because, in the event of conflict, they can move back and forth freely between the two sides, since their persons are considered to be sacred.

As one saying puts it:

“The power of the crocodile is in its tail,  
The power of the healer is in his wisdom.”

Women also often serve as emissaries.

The messengers always carry a distinctive emblem — an official baton, special clothing, face-paint, etc.

## (2) *Arbitration*

When negotiations fail, the parties resort to the arbitration of a third party noted for his wisdom and, as far as possible, one who has connections with both parties to the dispute. In my own region, where this system was widespread, a class of arbitration specialists developed, virtual professionals, with established rules and procedure.

The arbitrator is agreed upon by both parties, who appear before him voluntarily. He always begins with an attempt at conciliation and his only purpose is to achieve justice and peace.

The decision of the arbitrator is enforced only at the discretion of the parties, who have the right to refuse to accept his decision. In this case, a second arbitrator is chosen and then perhaps others. If a new arbitrator considers that the judgement of the first one was correct, he can refuse to make his own pronouncement, saying simply, “The elder has spoken”. This confirms the initial ruling.

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In conclusion, I may say that although these initial studies are modest ones, they offer the prospect for still more interesting discoveries which may be found through a more thorough examination of African traditions. This undertaking is an urgent one, for these traditions are now in the memories of the elders, whose disappearance will make further research impossible forever. The misunderstanding or lack of knowledge of the African traditional background, by making it necessary to resort to entirely foreign ideas, will then make it more difficult to obtain African acceptance of certain principles.

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