

# Role of the General Principles of Islamic Law In the Contemporary International Law

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## Abstract:

According to article 38 (paragraph 1) of the Statute of the International Court of Justice<sup>(1)</sup>, one of the main sources of public international law<sup>(2)</sup> is the general principles of law recognized by civilized nations.

General principles of law recognized by civilized nations include legal principles that are common and recognized by the principal legal systems of the world. One of these systems is Islamic law (Sharia Islamia). Therefore, the aim of this article is to clarify the role of general principles of Islamic law and explore its significance in the contemporary international law.

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- (1) Article 38 of the Statute of The International Court of Justice provides that: "1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. 2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto".
- (2) Public international law has four principal sources. These sources are international treaties, international custom, general principles of law and decisions of international organizations. It is important to note that although decisions of international organizations are not mentioned in Article 38(1) of the Statute of the International Court of Justice, they, particularly decisions of the United Nations, form another source of international law.

### Introduction

International law has existed since the middle Ages. The Peace of Westphalia (1648) is often cited as being the birth of International Law since states were established as sovereign entities. At this time, international law was mainly established to regulate relations among the Christian states of Europe. In this regard, Oppenheim, the famous jurist in international law, wrote:

the predominant strain of modern international law was in its origins largely a product of Western European Christian civilization during the 16th and 17th centuries. The old Christian states of Western Europe constituted the original international community within which international law grew up gradually through custom and treaty. Whenever a new Christian state made its appearance in Europe, it was received into the existing European community of states<sup>(3)</sup>.

The idea that international law had specifically Christian and European characters was supported by many jurists over centuries and according to this idea non-Christian states were not regarded as being governed by international law<sup>(4)</sup>.

However, since the mid-nineteenth century, the international community has started to accept non Christian or European states. This began in 1856 when Turkey was accepted as a member in the international community. In 1905, Japan became a member. After the end of the First World War, the League of Nations was established in 1919 as a universal organization. Also, other International organizations; such as the International Labor Organization (ILO), were established. These new organizations included several non-Christian states.

After the end of the Second World War, the League of Nations was replaced by the United Nations (UN) which intended to include all the

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(3) Robert Jennings and Arthur Watts (eds), Oppenheim's international law (9th edn Longman, London 1992) 87.

(4) Regarding the relation between Europe and international law, see: Alexander Orakhelashvili, 'The Idea of European International Law' (2005) 17 European Journal of International Law 315, 316-28.

states in the world. Indeed, the members of the UN are now 192 states having different religions, cultures and legal systems.

With these new memberships in the international community, the need for taking into consideration the general principles of various legal systems became very urgent. To support that, article 9 of the Statute of the International Court of Justice (ICJ) stated that:

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Judge Weeramantry commented that:

The International Court of Justice, specifically structured to embody a "representation of the main forms of civilization and of the principal legal systems of the world" (see Article 9 of the Statute of the Court), is under a particular obligation to search in all these traditions and legal systems for principles and approaches that enrich the law it administers<sup>(5)</sup>.

In fact, although international law is considered to be established in the 17<sup>th</sup> century, its roots exist in different civilizations. As Judge ad hoc Ahmed Sadek El-Kosheri said, 'this conclusion derives logically and necessarily from the fundamental legal principles, deeply rooted in the legal traditions of the major systems, particularly Islamic law'<sup>(6)</sup>.

To be not just a western system but universal,<sup>(7)</sup> international law

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(5) Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway) [1993] ICJ Rep 38, Separate opinion of Judge Weeramantry, pp. 273-274, para. 234.

(6) Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Order of 14 April 1992, ICJ Rep 114, Dissenting Opinion by Judge ad hoc Ahmed Sadek El-Kosheri, p. 217, para. 64. Judge El-Kosheri said this statement to emphasize the Islamic contribution to the diplomatic law.

(7) Martti Koskenniemi, 'International Law in Europe: Between Tradition and Renewal' (2005) 16 European Journal International Law 113. He noticed that:

International law is a European tradition. Nevertheless, like many other European traditions, it imagines itself as universal. Throughout its history, it has been associated with projects such =

must take into consideration the principles and concepts of all legal systems in the world.

Thus, it is now recognized that general principles of law are not limited to those known by the European States. But they also include the general principles recognized by the main legal systems.

As one of the principal legal systems of the world, Islamic law introduced several principles of law. These rules and principles are mainly stipulated in the Qur'an<sup>(8)</sup> and Sunnah<sup>(9)</sup>. Therefore, this article basically depends on these two main sources<sup>(10)</sup>. The article is not intended to cover all principles of Islamic law. But, it is intended to explore the basic principles. Therefore, it deals with the following principles:

- unity of the human race;
- human cooperation;
- fulfillment of obligations;
- respect of the human dignity;
- peace;
- justice.

### I. Unity of the Human Race

According to the Islamic vision of the beginning of creation, Allah (God) created all human beings from a single male and female. Thus, all people are brothers and sisters and they are equal like the teeth of a comb. Allah says in the holy Qur'an:

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= as Christianity, secular statehood, enlightenment, 'civilization', free trade and human rights. International law's association with particular ideas or preferences does not, however, even slightly undermine it. There are no authentic universals that one could know independently of their particular manifestations.

(8) Qur'an is the holy book of Muslims.

(9) Sunnah is the traditions or known practices of the Prophet Muhammad Peace be upon him (PBUH).

(10) The main sources of Islamic rules are 1- The Qur'an 2- The Sunnah 3- Ijma' (unanimity) 4- Qiyas (analogy).

- O mankind! reverence your Guardian-Lord, who created you from a single Person, created, of like nature, his mate, and from them twain scattered (like seeds) countless men and women<sup>(11)</sup>.

- O mankind! We created you from a single (pair) of a male and a female<sup>(12)</sup>.

Unity of the human race means that individuals and peoples share all human values; including brotherhood, friendship, justice and human rights. This demands that all peoples should cooperate in promoting the common values; particularly the right of diversity.

### **Acceptance of human diversity**

Diversity is a natural matter among human beings. People are naturally different in their characters. They have variety of diversities; including color, sex, language, race, religion, values, etc. The differences between peoples are attributable to political, economic, social, cultural, historical and geographical reasons.

Islam accepts and acknowledges the rights of diversity and pluralism; including cultural pluralism. Allah says: "And if your Lord had willed, He could surely have made mankind one nation; but they will not cease to differ"<sup>(13)</sup>.

According to Islam, people have the right to live as they are and it is not allowed for any person to impose his opinions on the others. Islam accepts this diversity of opinions and viewpoints (ikhtilaf). This is clear from the following incident.

On the day of the Battle of Al-Ahzab (i.e. Clans) the Messenger of Allah - Peace Be Upon Him (PBUH)<sup>(14)</sup> - made an announcement that no one should pray the 'Asr prayer but at Banu Quraiza's place. The 'Asr prayer became due for some of them on the way. Some of those said, "We will not offer it till we reach the place of Banu Quraiza," while some

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(11) Surah 4, An-Nisaa (Women), Verse no. 1.

(12) Surah 49, Al-Hujurat (The Private Apartments, The Inner Apartments), Verse no. 13.

(13) Surah 11. Hud (Hud), verse no. 118.

(14) The prophet Muhammad - (PBUH) - (570 -632).

others said, "No, we will pray at this mark, for the Prophet did not mean that for us." Later on, it was mentioned to the Prophet (PBUH) and he did not blame anyone from the two groups<sup>(15)</sup>.

This story showed that diversity of opinions was tolerated by the Prophet (PBUH). Therefore, Muslim jurists decided that people should accept the existence of different opinions. For this reason, the Islamic doctrine included a lot of individual opinions and collective opinions (schools of doctrine) regarding interpretation of the religious provisions.

Islam accepts the diversity as a fact of nature. It considers the diversity as a grace bestowed from Allah. Consequently, the human differences may not, in any circumstances, justify any discriminatory treatment and any racial theory, that declares some people is superior, is null and against the principles of Islam. In other words, diversity is not a justification to exclude the other. In fact, Islamic Civilization, throughout its long history, respected the plurality and cultural diversity of the people that entered Islam. Islam has not attempted to exterminate any language, race, religion or culture.

It should be noted that the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted a declaration emphasized the principle of unity of the human race. This was in 1987 when UNESCO adopted the Declaration on Race and Racial Prejudice<sup>(16)</sup>. Article 1 of the Declaration states:

1. All human beings belong to a single species and are descended from a common stock. They are born equal in dignity and rights and all form an integral part of humanity. 2. All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such.

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(15) Mustafa Deeb Alboga (ed), Saheeh El Bukhari (5th edn Dar Ibn Katheer, Damascus 1993) vol. 1 (Fear Prayer Sections) p. 321, Number 904.

(16) The Declaration on Race and Racial Prejudice (adopted 27 November 1978 the General Conference of the UNESCO 20th session).

Acceptance of the right of diversity leads to existence of culture of tolerance among the people. It also opens the way to commence an effective dialogue between civilizations.

## Tolerance

Islamic principles promote and encourage tolerance, understanding and friendship among all persons in the society. Important to note that, in Al Madinah, the Prophet Muhammad (PBUH) established a multi-cultural society and when the Islamic army entered Mecca, the Prophet (PBUH) declared the amnesty to all people, although the people of Mecca; particularly Quraish, had used to torture and kill Muslims<sup>(17)</sup>.

According to Islam, tolerance is to be exercised by all sections of the society; including individuals, groups and administrative authorities. Thus, it is the responsibility of the state and individuals to combat intolerance.

In conformity with the Islamic principle regarding tolerance, the Member States of UNESCO adopted, on 16 November 1995, a Declaration of Principles on Tolerance<sup>(18)</sup>. According to it,

Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human."<sup>(19)</sup> The Declaration adds "Without tolerance there can be no peace, and without peace there can be no development or democracy<sup>(20)</sup>.

However, it is important to note that international declarations are not legally binding and they do not have the same legal force as the Islamic rules that are binding upon the Muslims and the Islamic states. In this context, the Member States of the Organization of the Islamic

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(17) Ibn Hisham, Biography of the Prophet (Sirat Ibn Hisham) (Dar Al Feker, Beirut 1994) vol 4, 42-43.

(18) Declaration of Principles on Tolerance (proclaimed 16 November 1995 UNESCO).

(19) Ibid, art 1\1.

(20) Ibid, art 2\3.

Conference (OIC) decided “to foster noble Islamic values concerning moderation, tolerance, [and] respect for diversity.”<sup>(21)</sup>

Today, it is obvious that there is an increase in the number of acts of intolerance, racism, religious prejudice, violence, terrorism, xenophobia, etc. All of these acts threaten international peace and security. The UNESCO Declaration on Tolerance mentioned that:

In the modern world, tolerance is more essential than ever before. It is an age marked by the globalization of the economy and by rapidly increasing mobility, communication, integration and interdependence, large-scale migrations and displacement of populations, urbanization and changing social patterns.<sup>(22)</sup>

Thus, it is essential to recall all the efforts and concepts to combat intolerance and other racist acts. In this regard, Islamic principles concerning the common origin of human beings and tolerance can play a tremendous role in spreading the spirit of brotherhood and friendship among all peoples in the world.

## **II. Human Cooperation**

Islam is universal. The Prophet (PBUH) used to call humanity rather than any particular group of people. The Prophet (PBUH) did not speak exclusively to the Arabs, but he (PBUH) used to call humanity by “O people”, “O mankind” or “O children of Adam”<sup>(23)</sup>. Allah says:

O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that you may know each other (not that you may despise (each other)). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things)<sup>(24)</sup>.

According to this verse, people are invited to live in peace and to cooperate for the advancement of humanity as a whole, irrespective of

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(21) Charter of OIC, The Preamble.

(22) Declaration of Principles on Tolerance (n 18) art 3\1.

(23) Khaled Abou El Fadl, 'Islam and International Law: The Unique and International and the Imperative of Discourse' (2007) 8 Chicago Journal of International Law 43, 52.

(24) Surah 49, Al-Hujurat (The Private Apartments, The Inner Apartments), Verse no. 13.

their religion or origin. The Prophet (PBUH) said: “Wisdom is a lost property of the believer, so wherever he finds it he is most entitled to acquire.” The idea of cooperation in Islam was supported by what had done in Hilf al-Fudul.

### **Hilf al-Fudul**

When he was a youth in early twenties, Muhammad had participated with some people of Mecca in establishing an alliance; called Hilf al-Fudul. The purpose of this alliance was to unite to establish justice. The alliance was open to all people regardless of their tribe or origin. Later on, after prophethood, the prophet (PBUH) was proud of his presence at Hilf al-Fudul and said: “I was present at an alliance which was such that if, in the era of Islam, I am invited to take part in it, I would still accept”<sup>(25)</sup>. This indicates that Muslims are encouraged to join any association or organization aiming to promote peace and welfare in the world.

In reality, Islamic states are members in several international organizations including the UN and all specialized agencies. At the same time, since the middle of the twentieth century, the Islamic states have established some international organizations to promote peace and cooperation. These organizations include OIC and League of Arab States (and all affiliated organizations).

Islam prohibits racial segregation and apartheid and considers human cooperation is not only an important principle, but also a necessity for the development and welfare of life. For this reason, the need for a dialogue between civilizations is very urgent. The Islamic Declaration on Cultural Diversity stated that:

The urge to gear dialogue among peoples and cultures towards serving the universal objectives of the humanity as a whole is strongly felt today more than any other time in the past. It is all the more a pressing need since it is not easy to see why constructive cooperation and actual

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(25) Ibn Hisham (n 17) vol. 1, 119-20.

inter-cultural and inter-civilizational dialogue have any significance in an ever changing world without the principle of cultural diversity being confirmed as a recognizable fact. In order to build up a common future in which peace, solidarity and coexistence prevail, there is no other alternative but to ground people in dialogue along with the respect and preservation of cultural diversity<sup>(26)</sup>.

In Islam, no one is a believer until he desires for others what he desires for himself. Thus, Muslims are ordered to meet and cooperate with non Muslims.

### **The Relation between Muslims and Non Muslims**

Islam acknowledges and respects all the previous prophets and messengers. The Qur'an says: "The Messenger has believed in what was revealed to him from his Lord, and [so have] the believers. All of them have believed in Allah and His angels and His books and His messengers, [saying], "We make no distinction between any of His messengers"<sup>(27)</sup>.

The relationships between Muslims and non Muslims are governed by the following two verses:

Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just. Allah only forbids you, with regard to those who fight you for (your) Faith, and drive you out of your homes, and support (others) in driving you out, from turning to them (for friendship and protection). It is such as turn to them (in these circumstances), that do wrong<sup>(28)</sup>.

Among non Muslims, the "People of the Book" (Christians and Jews) has a special position. Particularly, it is forbidden to argue with them except in good words and in good manner<sup>(29)</sup>. In fact, marginalization of non-Muslim groups, their exclusion from social and political

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(26) The Islamic Declaration on Cultural Diversity (adopted December 2004 by the 4th Islamic Conference of Culture Ministers, Algiers) the introduction, para 2.

(27) Surah 2. Al-Baqara (The Cow), Verse no. 285.

(28) Surah 60, Al-Mumtahana (She That Is To Be Examined, Examining Her), Verses no. 8-9.

(29) Surah 29, Al 'Ankabût (The Spider), Verse no. 46.

participation, forced assimilation or violence and discrimination against them can lead to frustration and hostility inside the Islamic state. One of the main methods to meet and cooperate with non Muslims is diplomatic relations.

### **Diplomatic Relations**

From the beginning, Islamic practices knew sending and receiving of envoys to other nations. The Prophet (PBUH) used to send envoys to the other entities<sup>(30)</sup>.

Muslim jurists talked about the diplomatic principles which have now been acknowledged by the diplomatic law. For example, the treachery committed by the envoy is considered as a treachery committed by his state. This is because the sending state assumes the responsibility of the actions of its envoy. Also, the person of the envoy must be inviolable. He should be treated with due respect. The International Court of Justice mentioned that:

the principle of the inviolability of the persons of diplomatic agents and the premises of diplomatic missions is one of the very foundations of this long-established régime, to the evolution of which the traditions of Islam made a substantial contribution<sup>(31)</sup>.

Judge Tarazi, in his dissenting opinion,<sup>(32)</sup> commented that:

“I entirely concurred in the reasoning of the Judgment on this point. I was pleased to note that the Judgment took particular account of the

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(30) M. Cherif Bassiouni, 'Protection Of Diplomats Under Islamic Law' (1980) 74 American Journal of International Law 609, 609-17.

(31) United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), [1980] ICJ Rep 3, p. 40, para. 86.

(32) Regarding the importance of the separate dissenting opinions of the ICJ, Clark B. Lombardi said:

Since the judgment of the ICJ is as a formal matter only binding on the parties before it, the reasoning proposed in a separate concurring or dissenting opinion might be adopted by later courts. In practice, however, the ICJ tends to obey its own precedents, meaning that its jurisprudence has tended to evolve in a fairly linear fashion.

Clark B. Lombardi, 'Islamic Law in the Jurisprudence of the International Court of Justice: An Analysis, symposium: Islam and international law' (2007) 8 Chicago Journal of International Law 85, 90.

traditions of Islam, which contributed along with others to the elaboration of the rules of contemporary public international law on diplomatic and consular inviolability and immunity. In a course of lectures which he gave in 1937 at the Hague Academy of International Law on the subject of "Islam and jus gentium", Professor Ahmed Rechid of the Istanbul law faculty gave the following account of the inviolability of the envoy in Muslim law: "In Arabia, the person of the ambassador had always been regarded as sacred. Muhammad consecrated this inviolability. Never were ambassadors to Muhammad or to his successors molested. One day, the envoy of a foreign nation, at an audience granted to him by the Prophet, was so bold as to use insulting language. Muhammad said to him: 'If you were not an envoy I would have you put to death.' The author of the 'Siyer' which relates this incident draws from it the conclusion that there is an obligation to respect the person of ambassadors"<sup>(33)</sup>. Ahmed Rechid adds further on: "The Prophet always treated the envoys of foreign nations with consideration and great affability. He used to shower gifts upon them and recommended his companions to follow his example, saying: 'Do the same as I'<sup>(34)</sup>.

The Member States of the OIC determined to adhere their commitment to the principles of the United Nations Charter, the present Charter and International Law and to contribute to international peace and security, understanding and dialogue among civilizations, cultures and religions and promote and encourage friendly relations and good neighbourliness, mutual respect and cooperation<sup>(35)</sup>.

### III. Fulfillment of Obligations

Islamic law introduced a fundamental rule to public international law. This rule is fulfillment of obligations. Allah says in the Quran: "You

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(33) See: United States Diplomatic and Consular Staff in Tehran (n 31) Dissenting opinion of Judge Tarazi, pp. 58-59.

(34) Ahmed Rechid, "L'Islam et le droit des gens", 60 Recueil des cours de l'Academie de droit international. 1937- II, pp. 421 f.

(35) Charter of OIC, The Preamble.

shall fulfill your covenants, for a covenant is a great responsibility"<sup>(36)</sup>. This requires believers to fulfill their commitments and promises.

The rule of fulfillment of obligations means that obligations must be respected and non-fulfillment of obligations is a breach of the agreement. Relating to international agreements, the rule implies that every treaty in force is binding upon the parties to it and must be performed by them in good faith.

The rule of fulfillment of obligations (also known as *pacta sunt servanda*<sup>(37)</sup>) is based on the principle of good faith which is well known in the Islamic doctrine. This principle implies that a party to the treaty cannot invoke domestic law as a justification for a failure to fulfill its obligations under the treaty<sup>(38)</sup>.

It must be noted that the rule of fulfillment of obligations is limited by the peremptory norms<sup>(39)</sup> (also known as *jus cogens*<sup>(40)</sup>) of public international law. This idea was known in the Islamic doctrine which talked about the limits of the agreement with the others<sup>(41)</sup>.

To emphasize the principle of fulfillment of obligations, Muslim jurists wrote several books. One of the famous jurists was Mohammed

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(36) Surah: 17, Al-Isra' (The Night Journey, Children Of Israel), Verse: 34.

(37) *Pacta sunt servanda* is a phrase means "agreements must be kept" or "contracts must be honoured".

(38) International Law Commission, 'Draft Declaration of Rights and Duties of States' (1st Session 1949) art 13 stated that 'Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.'

(39) A peremptory norm of international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. See: Vienna Convention on the Law of Treaties (adopted 22 May 1969, entered into force 27 January 1980) 1155 UNTS 331 art 53.

(40) *jus cogens* is a phrase which means "mandatory norms".

(41) See: Ahmed Abou-el-Wafa, 'Contributions of Islam to the Development of a Global Community based on Rules of International Law' in Ronald St. John Macdonald and Douglas Johnston (eds), *Towards World Constitutionalism: Issues in the Legal Ordering of the World Community* (M. Nijhoff Publishers, Leiden 2005) 318-22.

bin al-Hassan al-Shaybani<sup>(42)</sup>. He wrote Introduction to the Law of Nations (Siyar in Arabic). This was the first study on international law and it was eight centuries before Hugo Grotius wrote the first European study on international law. Following al-Shaybani, other Muslim jurists wrote several studies on the same subject. These early Islamic legal studies were concerned with the application of Islamic ethics and covered several topics of international law; including: the law of treaties; the conduct on the battlefield; the treatment of diplomats; the right of asylum; human rights; etc.

Muslim scholars and jurists laid down several rules regarding treaties and their interpretation. In his separate opinion, Judge Tarazi, stated that:

Islamic law had already provided that "in conventions, one must consider the intention of the parties and not the literal meaning of the words and phrases employed" (in Arabic: "Al ibratou fil 'ouqoud lil makasidi wal ma'ani, la lil alfazi wal mabani")<sup>(43)</sup>

Now, most Islamic states are parties to numerous international conventions, and have thereby agreed to be bound by them<sup>(44)</sup>.

### IV. Respect of Human Dignity

#### Human Rights

People are born equal in dignity and rights. Allah says "We have honoured the sons of Adam"<sup>(45)</sup>. This means that dignity should be

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(42) Imam Muhammad bin al-Hassan al-Shaybani, died in year 189 H., a student of Imam Abu Hanifah (d. 150 H), wrote a relatively brief book, Kitab al-Siyar al-Saghir (the Shorter Book on International Law). Later on, he wrote a more comprehensive book, Kitab al-Siyar al-kabir (the Major Book on International Law).

(43) Aegean Sea Continental Shelf (Greece v. Turkey), [1978] ICJ Rep 3, Separate Opinion of Judge Tarazi, p.56.

(44) Mahmood Ahmad Ghazi, The Islamic Law of International Relations: Origins and Early Development, Policy Perspectives, July 2008, Volume5, Number3 <?tf> [http://ips-pk.org/index.php?option=com\\_zine&view=article&id=183:The%20Islamic%20Law%20of%20International%20Relations:%20Origins%20and%20Early%20Development](http://ips-pk.org/index.php?option=com_zine&view=article&id=183:The%20Islamic%20Law%20of%20International%20Relations:%20Origins%20and%20Early%20Development) > accessed 7 April 2010.

(45) Surah 17. Al-Isra' (The Night Journey, Children Of Israel), Verse no. 70.

inviolable. In this direction, the Universal Declaration of Human Rights (1948) stated that: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”<sup>(46)</sup>.

Islam emphasizes the right of equality. No one is better than other except by good deeds. The Prophet (PBUH) said in his final sermon: “an Arab is no better than a non-Arab, and a non-Arab is no better than an Arab, and a black is no better than a white and a white is no better than a black except in piety and good deeds”. So clearly this shows that no one is better than anyone else except by their piety and good deeds and the superiority of a particular race even the Arabs is a bad notion refused by Islam. Islam also emphasizes that every person has the right of belief according to the Islamic rule: “no coercion in religion”<sup>(47)</sup>.

Rules and principles of human rights have been elaborated and developed by Muslim jurists in the early centuries of Islam<sup>(48)</sup>.

The denial of the principles of dignity and equality may lead to conflicts. So Islam calls to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language, national origin, religion or disability. In this regard, there are two international documents regarding human rights in Islam. These documents are:

- 1 - Cairo Declaration on Human rights in Islam adopted by the Organization of Islamic Conference in 1990.
- 2 - Universal Islamic Declaration of Human Rights adopted by the Islamic Council (a non-governmental organization) in 1981.

Article 1 of the Charter of the OIC states that:

the objectives of the Organization of the Islamic Conference shall be: to promote and to protect human rights and fundamental freedoms including the rights of women, children, youth, elderly and people with special needs

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(46) Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 (III)) art 1.

(47) Surah 2, Al-Baqara (The Cow), Verse no. 256.

(48) See: Muhammad Tal'at Al-Ghunaimi, 'Justice and Human Rights in Islam' (2003) 59 Revue Egyptienne De Droit International 1, 9-19.

as well as the preservation of Islamic family values.” Also, the Member States of the OIC decided “to promote human rights and fundamental freedoms, good governance, rule of law, democracy and accountability<sup>(49)</sup> .

### Humanitarian Law

International humanitarian law is principally consisting of the four Geneva Conventions of 1949 and the two additional Protocols of 1977<sup>(50)</sup>. It includes the following five basic principles:

- 1 - Distinction between civilians and combatants;
- 2 - Prohibition of attack on those combatants who are no more engaged in the war;
- 3 - Prohibition of unnecessary suffering on the population;
- 4 - Principle of necessity; and
- 5 - Principle of proportionality (limiting violence to only what is necessary in fighting).

These principles are very similar to the Islamic principles. In fact, Islam was centuries ahead of Geneva conventions in establishing these principles.

In his dissenting opinion, Judge Weeramantry said:

Humanitarian law and custom have a very ancient lineage. They reach back thousands of years. They were worked out in many civilizations - Chinese, Indian, Greek, Roman, Japanese, Islamic, modern European, among others”<sup>(51)</sup>.

He added

“it is deep-rooted in many cultures Hindu, Buddhist, Chinese, Christian, Islamic and traditional African. These cultures have all given expression to a variety of limitations on the extent to which any means can be used for the purposes of fighting one’s enemy<sup>(52)</sup> .

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(49) Charter of OIC, The Preamble.

(50) The Geneva Conventions have been ratified by almost all states and the two additional Protocols have been ratified by the vast majority of states.

(51) Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, ICJ Rep 226, Dissenting Opinion of Judge Weeramantry, p.443.

(52) Ibid 478.

In Islam, there is a clear distinction between the combatants of the enemy and the non-combatants; i.e. civilians and between military and civilian objects. During a war, the Messenger of Allah Mohammed (PBUH) saw the corpse of a woman lying on the ground and said: "She was not fighting. How then she came to be killed?"<sup>(53)</sup> From this incident, the Muslim jurists have drawn the principle that those who are non-combatants should not be killed during or after the war.

The main rules of Islamic conduct in armed conflict were summarized by Abu Bakr, the first caliph and close companion of the Prophet Mohammed (PBUH), in his instructions to the Islamic army. These instructions were as follows: "Stop, O people, that I may give you ten rules for your guidance in the battlefield. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies. Neither kill a child, nor a woman, nor an aged man. Bring no harm to the trees, nor burn them with fire, especially those which are fruitful. Slay not any of the enemy's flock, save for your food. You are likely to pass by people who have devoted their lives to monastic services; leave them alone"<sup>(54)</sup>.

Therefore, Muslims should follow these principles while in armed conflict regarding their behavior and the treatment of enemy persons and property. Consequently, Muslim fighters are forbidden from the following acts with respect to combatants:

- torturing of prisoners of war;
- killing the wounded;
- mutilating dead bodies;
- treachery;
- using poisoned weapons or weapons of mass destruction,

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(53) It is narrated on the authority of 'Abdullah that a woman was found killed in one of the battles. The Messenger of Allah (PBUH) disapproved of the killing of women and children. Muhammad Fouad Abd El Baky (ed), Saheeh Muslim (Dar Revival of Arab heritage, Beirut 1954) Vol. 3 (Book of Jihad and Siyar) p. 1364, Number 1744.

(54) See: Wahbeh al-Zuhili, 'Islam and international law' (2005) 87 International Review of the Red Cross 269, 269-83.

With respect to civilians, they must not be targets of the fighting and great care must be taken to avoid civilian casualties. Muslims are forbidden from the following acts:

- attacking, and killing non-combatants (including women, old people, children, diplomats and sick and disabled persons);
- attacking religious, medical or cultural institutions;
- rape and sexual abuse;
- massacres and ethnic cleansing;
- reprisals.

These rules were reflected in the practices of Muslims as well. As an example, "Richard the Lion Heart" executed three thousand Muslim prisoners of war who had surrendered to him after having taken his pledge to save their lives. However, "Salah al-Din al- Ayoubi" released a large number of prisoners of war when he did not find enough food for them.

In his dissenting opinion in the case of Legality of the Threat or Use of Nuclear Weapons, Judge Weeramantry said:

In the Islamic tradition, the laws of war forbade the use of poisoned arrows or the application of poison on weapons such as swords or spears. Unnecessarily cruel ways of killing and mutilation were expressly forbidden. Non-combatants, women and children, monks and places of worship were expressly protected. Crops and livestock were not to be destroyed by anyone holding authority over territory. Prisoners were to be treated mercifully in accordance with such Qur'anic passages as "Feed for the love of Allah, the indigent, the orphan and the captive." So well developed was Islamic law in regard to conduct during hostilities that it ordained not merely that prisoners were to be well treated, but that if they made a last will during captivity, the will was to be transmitted to the enemy through some appropriate channel<sup>(55)</sup>.

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(55) Legality of the Threat or Use of Nuclear Weapons (n 50) p. 481.

In this context, the Member States of the OIC “determined to uphold the objectives and principles of international law as well as international humanitarian law.”<sup>(56)</sup>

## V. Peace

Peace is the rule regarding relations between the Islamic state and the other states<sup>(57)</sup>. God says: “O you who believe! Enter into Peace completely.”<sup>(58)</sup> In fact, the word "Islam", in the Arabic language, derives from the same root of the word of “peace”.

Islam respects other state’s sovereignty and the principle of non-intervention in the internal affairs. The Member States of the OIC “determined to uphold the objectives and principles of the present Charter [of OIC], the Charter of the United Nations and international law as well as international humanitarian law while strictly adhering to the principle of non-interference in matters which are essentially within the domestic jurisdiction of any State.”<sup>(59)</sup>

### Dar Al Islam and Dar Al Harb

In the early centuries of Islam, Muslim jurists divided the world into three realms of existence. This division was based on the prevalence or absence of the Islamic law. The division was not a static and geographic division.

The three realms were:

- the territory of Islam (dar al-Islam),
- the territory of the covenant (dar al-'ahd),
- and the territory of war (dar al-harb).

The division was not a result of status of war and was not mentioned in the Qur’an or Sunnah. It was made by Muslim jurists simply to guide

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(56) Charter of OIC, The Preamble.

(57) Wahbeh al-Zuhili said “The principle of peace and security is a firmly rule that should not be violated in any way, except in the case of aggression by others and when the enemy resorts to arms.” Wahbeh al-Zuhili (n 53) p. 271.

(58) Surah 2, Al-Baqara (The Cow), Verse no. 208.

(59) Charter of Organization of Islamic Conference (OIC), The Preamble.

Muslims in how they can treat with others and when Islamic law should apply.

Today, the division does not have any importance; particularly because all Islamic states are members in the United Nations and other international organizations.

### Reasons of war in Islam

In Islam, resorting to war is only for:

- Self-defense: War in Islam is strictly prohibited unless responding to an aggression. The Holy Qur'an states "Fight in the cause of Allah those who fight you, but do not transgress limits; for Allah loveth not transgressors<sup>(60)</sup>. Islam invites all the people to live together in peace. Before the war, Muslims should give the enemy the opportunity to choose between concluding a peace treaty or choosing the war. This means that war should be avoided as much as possible. It can only be the final solution when the peaceful means fail.
- Freedom among all nations and prevention of injustice: According to Islam, it is not permissible to tolerate injustice, oppression or violations of human rights; particularly genocide<sup>(61)</sup>. Allah says in the Qur'an:

And why should ye not fight in the cause of Allah and of those who, being weak, are ill-treated (and oppressed)? Men, women, and children, whose cry is: "Our Lord! rescue us from this town, whose people are oppressors; and raise for us from thee one who will protect; and raise for us from thee one who will help!"<sup>(62)</sup>

Also, the Caliph Umar said when did you enslave people who were born free?! In this case, the purpose of the war is to liberate the oppressed

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(60) Surah 2. Al-Baqara (The Cow), Verse no. 190.

(61) The UNESCO principles on tolerance mentioned:

(1) Consistent with respect for human rights, the practice of tolerance does not mean toleration of social injustice or the abandonment or weakening of one's convictions. It means that one is free to adhere to one's own convictions and accepts that others adhere to theirs. It means accepting the fact that human beings, naturally diverse in their appearance, situation, speech, behavior and values, have the right to live in peace and to be as they are. It also means that one's views are not to be imposed on others.

(62) Surah 4. An-Nisa' (Women), verse no. 75.

people, not to colonize them or to push them towards converting to Islam.

Peace requires respect for diversities among people as well as it establishes a suitable environment where people of diverse characters can live together in peace and harmony<sup>(63)</sup>. This requires condemnation and combating of terrorism.

### **Terrorism**

Terrorism is a global phenomenon<sup>(64)</sup>. It is not connected to any religion, culture or country. It is a universal threat which clearly needs a global action by all states. Individual actions by some states cannot in themselves provide the final solution. Consequently, appropriate scientific analysis should be undertaken to find the root causes and to put the effective countermeasures.

Islam rejects terrorism and in no circumstance can Islamic principles be used to justify terrorist acts. Islam protects the right of life. The Qur'an said:

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(63) Umar Faruq Abd-Allah, 'Islam and The Cultural Imperative' (2003) 8 The Journal of Islamic Law and Culture 89, 95. He mentioned:

The Prophet Muhammad and his Companions were not at war with the world's cultures and ethnicities but entertained an honest, accommodating, and generally positive view of the broad social endowments of other peoples and places. The Prophet and his Companions did not look upon human culture in terms of black and white, nor did they drastically divide human societies into spheres of absolute good and absolute evil. Islam did not impose itself – neither among Arabs or non-Arabs – as an alien, culturally predatory worldview. Rather, the Prophetic message was, from the outset, based on the distinction between what was good, beneficial, and authentically human in other cultures, while seeking to alter only what was clearly detrimental. Prophetic law did not burn and obliterate what was distinctive about other peoples but sought instead to prune, nurture, and nourish, creating a positive Islamic synthesis.

(64) According to art 1/2 of the Convention of the OIC on Combating International Terrorism (adopted 1 July 1999 by The Islamic Conference of Foreign Ministers), "Terrorism" means any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honor, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States."

That is why we decreed for the children of Israel that if anyone killed a person except (as punishment) for murder or for spreading corruption in the land, it would be as if he killed all mankind: and if any one saved a life, it would be as if he saved the life of all mankind<sup>(65)</sup>.

It is important to note that one of the objectives of the OIC is “to cooperate in combating terrorism in all its forms and manifestations, organised crime, illicit drug trafficking, corruption, money laundering and human trafficking”<sup>(66)</sup>. Also, most Islamic states are parties to conventions on the suppression of terrorism and they have thereby agreed to be bound by their requirements; including:

- condemnation of international terrorism;
- taking the appropriate measures to prevent terrorist acts ;
- extradition or prosecution of the suspected terrorists;
- punishment of the guilty.

### **Terrorism and armed resistance**

There is a big difference between terrorism and the armed resistance against foreign occupation. The criteria to differentiate between them are the status of occupation. This means that when there is an occupation, armed resistance shall be permissible and cannot be considered as terrorism<sup>(67)</sup>. For this reason, the Member States of OIC decided:

to support the struggle of the Palestinian people, who are presently under foreign occupation, and to empower them to attain their inalienable rights, including the right to self-determination, and to establish their sovereign state with Al-Quds Al-Sharif as its capital, while safeguarding its historic and Islamic character, and the holy places therein<sup>(68)</sup>.

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(65) Surah 5. Al-Ma’ida (The Table, The Table Spread), Verse no. 32.

(66) Charter of OIC, article 1/18.

(67) According to art 2/A of Convention of the OIC on Combating International Terrorism, Peoples struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.

(68) Charter of OIC, The Preamble.

## VI. Justice

### Meaning of Justice

Justice means giving every person his due. It has several terms in Qur'an such as fairness (adel), equity (qist), balance (mizan) and right (haqq)<sup>(69)</sup>.

It is interesting to note that one of the main purposes of the messengers and prophets was to achieve justice in the world. The Qur'an says: "We sent aforetime our messengers with clear signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in Justice"<sup>(70)</sup>. The Prophet (PBUH) reports that Allah Almighty said: "O my servants! I have forbidden injustice for Myself and forbade it also for you. So avoid being unjust to one another"

Muslims are urged in the Qur'an to live with justice. The Qur'an is full of verses emphasizing the importance of justice; like:

- Allah commands justice<sup>(71)</sup>.
- Allah doth command you to render back your Trusts to those to whom they are due; And when you judge between people, that you judge with justice<sup>(72)</sup>.
- whenever you speak, speak justly, even if a near relative is concerned<sup>(73)</sup>.
- be fair: for Allah loves those who are fair (and just)<sup>(74)</sup>.
- o you who believe! stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety: and fear Allah. For Allah is well-acquainted with all that you do<sup>(75)</sup>.

(69) Muhammad Tal'at Al-Ghunaimi (n 47) p. 1.

(70) Surah 57. Al-Hadid (Iron), verse no. 25

(71) Surah 16. An-Nahl (The Bee), verse no. 90

(72) Surah 4. An-Nisa' (Women), verse no. 58.

(73) Surah 6. Al-An'am (Cattle, Livestock), verse no. 152.

(74) Surah 49. Al-Hujurat (The Private Apartments, The Inner Apartments) verse no. 9.

(75) Surah 5. Al-Ma'ida (The Table, The Table Spread), Verse no. 8.

According to these verses, it is not allowed in Islam to do injustice even when dealing with the enemy.

Judge Fouad Ammoun, in his separate opinion in the case of North Sea Continental Shelf, stated that:

the principle of equity manifests itself... in Muslim law which is placed on the basis of equity (and more particularly on its equivalent, equality) by the Koran and the teaching of the four great jurisconsults of Islam condensed in the Shari'a."<sup>(76)</sup> He added "Equity, as a principle of equality already perceived by the Phoenician-Roman jurisconsults, is to be found even in the terminology of the law of Islam"<sup>(77)</sup>.

In his separate opinion, Judge Weeramantry stated:

The list of sources cited by Judge Ammoun provides a vast resource from which to quarry the elements of the universal sense of justice and fairness that underlies the meaning of equity. Some other important sources should also be mentioned -the fine analyses of justice in Greek and Judaic philosophy; the equity-impregnated concept of "dharma" in Hindu jurisprudence; the elaborately researched concept of fairness and justice in Buddhism; the Christian tradition of justice and conscience as "weightier matters of the law" as opposed to mere legalism; and the Qur'anic injunction :

"If thou judge  
judge in equity between them  
for God loveth those  
who judge in equity"<sup>(78)</sup>

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(76) Case of North Sea Continental Shelf (Federal Republic of Germany/Netherlands) [1969] ICJ Rep 3, p. 139, para. 38.

(77) Ibid 139 footnote 2.

(78) Surah 5, Verse 45, Yusuf Ali's translation. In particular, the technique of legal reasoning called istihsan, referred to by Judge Ammoun, accords an important role to equity. See, also, John Makdisi, "Legal Logic and Equity in Islamic Law", 33 American Journal of Comparative Law (1985), p. 63; H. Afchar, "The Muslim Conception of Law", International Encyclopedia of Comparative Law, Vol. VII, pp. 90-96, and the same author on "Equity in Musulman Law", in Ralph Newman (ed.), Equity in the Worlds Legal Systems, 1973, pp. 11 1-123.

which has been the subject of extensive commentary over the centuries by the jurists of Islam<sup>(79)</sup>.

He added:

The second illustration comes from Islamic law which enshrines another deeply relevant equitable idea -the idea that earth resources such as land cannot be the subject of outright ownership as is the case with movables, but are the subject of trusteeship for the benefit of all future generations. Such a juristic concept dictates the principle that such resources must be treated with the care due to the property of others and that the present must preserve intact for the future the inheritance it has received from the past. In such equitable principles may lie a key to many of the environmental concerns which affect the land, the sea and the air space of the planet<sup>(80)</sup>.

### **The Relation between Justice and Peace**

Establishing justice is the main mission of Islam. Therefore, Muslims are argued to carry on this mission in the world. Consequently, rules of international law should be created on justice. There is a strong relationship between peace and justice. Applying justice is a necessary step towards establishing peace and security in the world. In fact, justice must be considered one of the essential prerequisites of peace. In other words, it is true to say “No Peace Without Justice”. When justice disappears, it becomes no wonder to see oppression and corruption.

In the Islamic history, “the people of Samarqand complained to Caliph Umar Ibn Abdul-Aziz that the Muslim army entered their city without prior warning. Umar appointed a judge who found that their complaint was valid. Consequently Umar ordered the army to leave the city”<sup>(81)</sup>.

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(79) Maritime Delimitation in the Area between Greenland and Jan Mayen (n 3) pp. 275-276, para. 238.

(80) Ibid 278, para 243.

(81) Abu Al Hasan Al baladhuri, *Futuh Al Buldan* (1st edn Dar and library of El Helal, Beirut 1983) 407.

In his dissenting opinion, Judge Shahabuddeen mentioned:

In his critical study of history, Ibn Khaldûn referred to "the explanation that laws have their reason in the purposes they are to serve". Continuing, he noted that "the jurists mention that... injustice invites the destruction of civilization with the necessary consequence that the species will be destroyed", and that the laws "are based upon the effort to preserve civilization"<sup>(82)</sup>. Thus, the preservation of the human species and of civilization constitutes the ultimate purpose of a legal system. In my opinion, that purpose also belongs to international law, as this is understood today<sup>(83)</sup>.

One of the objectives of the Organisation of the Islamic Conference is "to promote inter-state relations based on justice, mutual respect and good neighbourliness to ensure global peace, security and harmony."<sup>(84)</sup>

Applying justice in the society means giving every person the right to live as he/she is. Consequently, forced assimilation and any policy aiming to exterminate the identity of the others are rejected<sup>(85)</sup>.

### Rejection of double standards

Today, in the world, there is a lot of injustice including social injustice, economic injustice and political injustice. One of the most serious examples is the policy of double standards which is the extreme form of international injustice. This policy leads to political conflicts and gravely endangers international peace and security.

Islam refuses the idea of the power creates the right. Instead of that, Islam knows the idea of justice creates and protects the right. This requires just and impartial international standards. So the policy of

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(82) Ibn Khaldûn, *The Muqaddimah, An Introduction to History*, trans. Franz Rosenthal, edited and abridged by N. J. Dawood, 1981, p. 40.

(83) *Legality of the Threat or Use of Nuclear Weapons* (n 50) Dissenting Opinion of Judge Shahabuddeen, p. 381.

(84) Charter of OIC, art 1/6.

(85) See: Ali Ahmed, 'The Role of Islamic Law in the Contemporary World Order' (2001) 6 *The Journal of Islamic Law and Culture* 157, 157-71.

double standards is totally rejected in Islam. This is clear from the following incident.

A'isha reported that the Quraish had been anxious about the Makhzumi woman who had committed theft, and said: Who will speak to Allah's Messenger (PBUH) about her? They said: Who dare it, but Usama, the loved one of Allah's Messenger (PBUH)? So Usama spoke to him. Thereupon Allah's Messenger (PBUH) said: Do you intercede regarding one of the punishments prescribed by Allah?! He then stood up and addressed (people) saying:

O people, those who have gone before you were destroyed, because if any one of high rank committed theft amongst them, they spared him; and if anyone of low rank committed theft, they inflicted the prescribed punishment upon him. By Allah, if Fatima, daughter of Muhammad, were to steal, I would have her hand cut off<sup>(86)</sup>.

### **Economic Sanctions**

Another example of injustice is the policy of economic sanctions. These sanctions may lead to serious consequences and hence violate international law. For example, in Cuba, the United States embargo, combined with the pressure on other countries not to do business with Cuba, has seriously damaged the Cuban economy. The blockade violates human rights, including the right to food, and the sanctions are directed not only against Cuba, but also against other States through the foreign companies with which Cuba trades<sup>(87)</sup>. In Iraq, the sanctions were the most comprehensive total sanctions that have ever been imposed on a country. Concerning the number of deaths, directly attributable to the

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(86) Bukhari (n 15) vol. 6 (Al Hudod Section), p. 2491, Number 6406; Muslim (n 52), vol. 3 (Al Hudod Section), p. 1315, Number 1688.

(87) In 1960, the United States of America imposed unilateral trade embargo against Cuba. In 1996, the Government of the United States reinforced these economic sanctions by adopting the Helms-Burton Act. Under this Act, economic sanctions are imposed not only on Cuba, but on all foreign companies which have commercial dealings with Cuba. See: Marc Bossuyt, The adverse consequences of economic sanctions on the enjoyment of human rights, E/CN.4/Sub.2/2000/33., paras. 58-100.

sanctions, estimates range from half a million to a million and a half, with the majority of the dead being children<sup>(88)</sup>.

Therefore, States participating in economic sanctions<sup>(89)</sup> should ensure that they do not lead to the deprivation of necessary food for the population<sup>(90)</sup>.

Economic Sanctions are rejected in Islam because they are contrary to the principle that "every individual is responsible for his actions. Responsibility for a crime cannot be extended to other members of his family or group, who are not otherwise directly or indirectly involved in the commission of the crime in question."<sup>(91)</sup>

### Conclusions

Based on the previous discussion about the role of general principles of Islamic law in the contemporary international law, the following conclusions may be highlighted:

1) - Contemporary international law includes a group of principles and rules whose roots exist in different civilizations. In this context, Islamic law has greatly contributed to the development of international law. In his dissenting opinion, Judge Tarazi, mentioned that:

In a work entitled International Law, published by the Institute of State and Law of the Academy of Sciences of the USSR, the

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(88) Ibid, para 63.

(89) During the 1990s the Security Council has imposed sanctions in relation to South Africa, Iraq/ Kuwait, parts of the former Yugoslavia, Somalia, the Libyan Arab Jamahiriya, Liberia, Haiti, Angola, Rwanda and the Sudan.

(90) The Committee on Economic, Social and Cultural Rights, in its General Comment 8, states that "While the impact of sanctions varies from one case to another, the Committee is aware that they almost always have a dramatic impact on the rights recognized in the Covenant. Thus, for example, they often cause significant disruption in the distribution of food". General Comment 8, the relationship between economic sanctions and respect for economic, social and cultural rights, U.N. Doc. E/C.12/1997/8 (1997), para. 3. Also, Jean Ziegler (the Special Rapporteur on the right to food) stated "the Security Council, in subjecting the Iraqi people to a harsh economic embargo since 1991, is in clear violation of its obligation to respect the right to food of people in Iraq." Jean Ziegler, The right to food, Report submitted in accordance with Commission on Human Rights, resolution 2001/25,, para. 123.

(91) Universal Islamic Declaration of Human Rights, Art V: e

following is to be read on the conduct in the Middle Ages of the Arabs, the bearers of the Islamic faith: "The Arab States, which played an important part in international relations in the Middle Ages (from the 7th century) had well-developed conceptions regarding the Law of Nations, closely linked with religious precepts. The Arabs recognised the inviolability of Ambassadors and the need for the fulfilment of treaty obligations. They resorted to arbitration to settle international disputes and considered the observance of definite rules of law necessary in time of war ('the blood of women, children and old men shall not besmirch your victory')<sup>(92)</sup>.

- 2 - Muslim jurists have greatly contributed to the progress of the international law. They laid the science of Siyar which is concerned with the relations between the Islamic state and the others. Mohammed bin al-Hassan al-Shaybani<sup>(93)</sup> was the first jurist of international law. He wrote outstanding books on international law<sup>(94)</sup>. More than eight centuries after his death, Hugo Grotius<sup>(95)</sup> (father of international law) wrote his three books titled "On the Law of War and Peace"<sup>(96)</sup>. In his Dissenting Opinion, Judge Weeramantry said:

Grotius' encyclopedic study of literature, from which he drew his principles, did not of course cover the vast mass of Hindu, Buddhist and Islamic literature having a bearing on these matters, and he did not have the benefit of this considerable supplementary source, demonstrating the universality and the extreme antiquity of the branch of law we call the jus in bello"<sup>(97)</sup>.

- 3 - The universal and comprehensive application of international law has not been achieved for the following two reasons:
  - A- The contemporary rules of international law have shown ineffectiveness in dealing with some current problems.

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(92) United States Diplomatic and Consular Staff in Tehran (n 29) Dissenting opinion of Judge Tarazi, p. 59.

(93) Mohammed bin al-Hassan al-Shaybani (750-805)

(94) The famous books of Al-Shaybani are Al Siyar Al Sagher and Al Siyar Al kabir.

(95) Hugo Grotius (10 April 1583 - 28 August 1645).

(96) On the Law of War and Peace" was first published in 1625.

(97) Legality of the Threat or Use of Nuclear Weapons (n 50) Dissenting Opinion of Judge Weeramantry, p.482.

- B- Many states still look to international law and its institutions; particularly the UN, as a western tool designed to observe the western interests and subjugate the world. Indeed, the situation in Palestine may confirm the correctness of this view.
- 4 - To facilitate expanding the universal implementation of international law, the international community should acknowledge and respect the efforts and concepts of all civilizations regarding international law<sup>(98)</sup>. In this context, ignoring or marginalization of Islamic contributions involves religious prejudice<sup>(99)</sup>. In fact, international law is based on equality between states. It does not distinguish in the membership of the international community based on religious, geographical or cultural differences. Consequently, this gives the opportunity to all states and civilizations to continue their efforts and participations in developing and promoting rules of international law.
- 5 - Islam and its scholars introduced several principles and rules regarding international law. The main principles are:
- unity of the human race;
  - international cooperation;
  - fulfillment of obligations;
  - respect of the human dignity;
  - peace;
  - justice.

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(98) Antony Anghie, 'Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law' (1999) 40 *Harvard Law Review* 1, 76. Antony Anghie noticed that: the International Court of Justice may theoretically draw upon 'the general principles of law recognized by civilized nations,' where 'civilized' must now be understood to mean all nations. But an examination of the recent jurisprudence of the Court suggests that little effort has been made to draw upon the legal traditions and systems of non-Western peoples in the administration of international justice. International law remains emphatically European in this respect, regardless of its supposed receptivity to other legal thinking.

(99) In her survey of all articles published in the *American Journal of International Law*, Lori Fisler Damrosch concluded that "Islamic influence on international law has received less attention than it undoubtedly deserves." Lori Fisler Damrosch, 'The "American" and the "International" in the *American Journal of International Law*' (2006)100 *American Journal of International Law* 2, 9-10.

More than fourteen centuries after the emergence of Islam,<sup>(100)</sup> these principles are just as significant as they were when they were declared in the era of the Prophet Muhammad (PBUH). Therefore, it is important to invoke Islamic principles of international law to prevent the international instability and conflicts and to achieve the international peace and security and welfare in the world. Also, these principles may play a constructive role in preventing intolerance and terrorism and contributing to the replacement of the culture of hostility by a culture of peace<sup>(101)</sup>.

- 6 - The general principles of law recognized by the Islamic law form a source of public international law. Hence, states may invoke these principles in the international matters; including judicial settlements.
- 7 - The Islamic principles can provide useful guidelines to the international judge where there is no applicable law. So the judge can avoid non liquet.
- 8 - Taking Islamic principles into consideration will promote the effective participation of Islamic countries in the international affairs.
- 9 - The application of Islamic principles supports the compliance of the Islamic states with contemporary international law.

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(100) The emergence of Islam was in 610.

(101) Ali Ahmed noticed that “even as there is little irreconcilable difference between the U.N. and Islamic law systems, one has noticed lack of engagement of the latter in resolving international issues in places and matters that are most appropriate.”, Ali Ahmed (n 84) p. 160.

