

A Short Essay on Islamic Law in the Field of International Relations

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Summary:

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§1. Premises

It is the intention of this work to give a short and clear analysis of Islam in International Humanitarian and Diplomatic Relations. The work will try to prove that Islamic law can play a vital and advantageous role in the field of international law of war, peace and Human Rights irrespective of its different sources from those of generally accepted public International law. It is clear that most Islamic Jurists do not concur with certain notions, allegations and negative opinions of International law experts from the western world that Islamic law in general knows no peace but war. For example a western expert in Islamic studies, BERNARD LEWIS sustains that Islamic religion is exported by force, describing Islam as a “military religion, and its followers as fanatical warriors, engaged in spreading their faith and their law by armed might”¹, but most Islamic jurists refute this notion, maintaining that Islamic religion is a religion of peace and love directly revealed by the Almighty *Allah*.

§2. The Islamic notion of International Law (Siyar)

The concept of Islamic international law is completely based on a divine revelation. There is no Islamic jurisprudence that does not derive its source from the *Koran*² and the *Sunna*³. Islamic jurists maintain that all laws

¹ BERNARD L., *The Political Language of Islam*, Chicago, The University of Chicago Press, 1988, 73; WEERAMANTRY C., *Islamic Jurisprudence: An International Perspective*, the other press, Kuala Lumpur, 2001, 129, «It was no wonder that in these centuries Islam was misrepresented as a force for evil by the media (...) Islam was represented as being wicked, blasphemous and opposed to all civilisation (...)».

² See KAMAIL H. M., *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2003, 17-57.

³ See MASUD K. M., *Islamic Legal Vocabulary*, op. cit., where it is possible to read as follows: «*Sunna* means the practice, custom and precedent rules. It is the model of Prophet Muhammad for Muslims because his practice is termed normative. *Sunna* is generally accepted by Muslims as a primary source of

that do not trace their fundamental origin from *Allah* as was handed down through Prophet MUHAMMAD to his successors are illegitimate, and must not have the force of law in Islamic jurisprudence (*Fiqh*⁴). This is why the Islamic International law falls into the category of monists laws, holding that ethics and law are unique hence they give rise to international jurisprudence in the Islamic point of view. A renowned Islamic Jurist, WEERAMANTRY, affirmed that: «Islamic International law constitutes a vital part of the Islamic heritage»⁵. He maintains that even though modern international law is predominantly western and Christian based, Islam, on its own part plays a fundamental role in the development of modern international law. Many Islamic scholars maintain that the interaction between eastern and western civilisations and the relationship between Islamic law and modern international law appear to be close»⁶.

Islamic International law, as many Muslim jurists have inferred had its origin through the development of a branch of Islamic Law, the *Sharia*⁷, known as “*Siyar*”⁸. *Siyar* deals exclusively with cases regarding to International law. The doctrine of *Siyar* was initiated by one of the first scholars of Islamic law, ABU HANIFA who founded the Hanafita School of jurisprudence in (699-767 A.H.), and later by AL SHAYABANI (749-805 A.H.) who re-elaborated it. AL SHAYABANI is today considered as the father⁹ of Islamic international Law, hence his book on the “*Introduction to the law of Nations*” published towards the late VIII century. Another renowned Islamic Jurist, MAJID KHADDURI under the title “*The Islamic Law of Nations*” in 1966, later translated this elaboration into English. To underscore this point, I hereby refer the readers to the work of Thomas T. S. on Prisoners of war in Islam, where he carefully analysed Islamic law and International law of war, affirming that: «Islamic international law can be loosely defined as those rules and practices the *Sharia* allows in international

Islamic law after the Koran». See also: KAMAIL H. M., *Principles of Islamic Jurisprudence*, op.cit. 59-116; SCHATCH J., *Introduction to Islamic Law*, Oxford 1964;

⁴ See MASUD K. M., *Islamic Legal Vocabulary*, op. cit., «Fiqh means Islamic Jurisprudence known as “the science of Sharia”, the sacred law of Islam. It makes reference to series of literatures written by Muslim jurists on the opinions of different schools of law. Fiqh is divided into two main divisions: Ibadat (rituals, laws relating to relations between God and humans) and Mu’amalat /Adat (laws relating to relations between humans). Human reasoning and experience plays a vital role in case of Mu’amalat. Fiqh is more focused on rituals, marriage, divorce, inheritance, less on public laws, somewhat detailed on commercial laws. The diversity of opinions overtime and among the jurists is quite notable. In modern times fiqh has come to be distinguished from Sharia; the latter is of divine origin but fiqh is human».

⁵ WEERAMANTRY C G., *Islamic Jurisprudence: An International Perspective*, op.cit, 128.

⁶ *Ibid.*, 128-131.

⁷ See MASUD K M., *Islamic Legal Vocabulary*, op. cit., «Sharia literally means Waterhole, drinking place the sacred law of Islam. Its translation as “Islamic law” or sacred law could be misleading. Sharia is closer to ethics as a concept than to law. They are rules and conducts revealed to Prophet Muhammad. Their normative validity is discussed in Islamic legal theory as “The Sharia prior to Islam”». See also CECCARELLI MOROLLI D., *Breve introduzione alla Legge religiosa islamica (Shari’a). Institutiones Academicæ*, (Pontificio Collegio Ucraino S. Giosafat) Roma 1994, passim.

⁸ *Siyar* means a body of Islamic Law regarding international relations. For further studies see: THOMAS T. S., *Jihad’s Captives: Prisoners of War in Islam, elaborated as a US Air force Major* (United States Air Force Academy), George Washington University, Virginia, 2005.

⁹ While Western legal experts consider HUGO GROTIUS as the father of western based International Law, thus: the notion of HUGO GROTIUS on his treatise: “*De jure belli ac pacis libri tres*” (written in 1625). For a detailed study on GROTIUS and International Law, see, BULL H., KINGSBURY B., ADAM R., *Hugo Grotius and International Relations*, Clarendon paperback, Oxford, 1992.

relations. It also pertains to relations between Muslims and non-Muslims and has its origins in the activities of the first Muslim community at Medina in 630. Although it originally pertained to the Prophet MUHAMMAD's conduct in war, *siyar* was later formalized to encompass laws on the conditions for peace and neutrality. The *siyar* manifests from the same sources as the *Sharia*. Its primary sources are the *Koran* and the *Sunna* of the Prophet, which together comprise the scriptural sources. In terms of modern international law, *siyar* conforms to the same standards for development, including authority, custom, reason, and agreement¹⁰.

Before I proceed with this work, I would like to highlight to the readers, the topics that Islamic international law cover. They include the law of wars and peace, the Human Rights laws and the Humanitarian laws. Islamic legal philosophy maintains that the Islamic Jurisprudence "*fiqh*", completely covers all sectors of law, and, in the International arena, there are norms that are not in any way inferior to those of the generally accepted and acceptable ones. Like RHYNE puts it, Islamic International law has considerably contributed towards the rules that discipline the condition of prisoners of war, the conditions and protection of civilians, prohibition of reprisals by either of the belligerent parties, guaranteeing asylums¹¹, pardon, safe conduct, diplomatic immunities and negotiation, enforcement of peace¹².

In order to further understand the full concept of Islamic international law, in the field of international relations, it is worthy to consider in a nutshell, the theory of State division between the territory of peace and the territory of war: *dar al Islam*, the abode of Islam or peace, and *dar al harb*, the abode of war. There is also a third territory, *dar al sulh*, not so much mentioned in the Islamic International studies¹³. This is the covenant territories or such territory that have signed a peace treaty with an Islamic State. The first is such territories that are ruled by Islamic laws and subject to Islamic States. It could be that such State is not ruled by Islamic law, but they are deemed where Muslims can reside safely and freely without being obstructed in their religious lives. The second *dar al harb*, stands as such territories where Islamic laws are not applied, and where the Muslims cannot freely practice their daily cult. This includes States where all the prohibitions of Islamic rules are practised, for example a State where there exists, usury, fornication, adultery, Apostasy, rebellion, gambling etc.

¹⁰ See THOMAS T. S., *Jihad's Captives: Prisoners of War in Islam*, *op. cit.* where he cited the following authors: AL GHUNAIMI A. T., *The Muslim Conception of International Law and the Western Approach* (The Hague, Martinus Nijhoff, 1968), 96; KHOJA A. M., *Elements of Islamic Jurisprudence*, Karachi, Mirror Press^{td}, 1977, 145; KHADDURI M., *War and Peace in the Law of Islam*, Baltimore, Johns Hopkins Press, 1955, 36 where it analyses that «the Qu'ran and hadiths represent authority, the sunna are equivalent to custom, treaties with non-Muslims constitute agreements, and the *fatwas* (religious orders) of Islamic leaders are the application of reason through analogy»; KHOJA A. M., *op. cit.*, 48.

¹¹ *Declaration of Islamic Human Rights*, Paris, 1981, art. 9, on *Right to Asylum*, states that: «a) Every persecuted or oppressed person has the right to seek refuge and asylum. This right is guaranteed to every human being irrespective of race, religion, colour and sex. b) Al Masjid Al Haram (the sacred house of Allah) in Mecca is a sanctuary for all Muslims».

¹² RHYNE C. S., *International Law*, Washington 1971, 23-24.

¹³ For more detailed studies, see KHADDURI M., *The Islamic Law of Nations: Shaynai's Siyar*, Johns Hopkins Press, Baltimore, Maryland, 1966, 12

§2.1. *Islamic International Law of War and Peace*

(a). *Islamic Law of War*

In International law in general, war is defined as armed conflict between two or more belligerent States. In the Islamic perspective, such wars shall be governed by rules established according to Islamic doctrine. There shall be no cruel ways of killing, non combatants shall be spared; Killing of prisoners of war should be prohibited; no human being should be mutilated¹⁴, including all beast found in the vanquished territories, no farming products or even trees should be destroyed, adulteries, fornications and rape should strictly be avoided. No envoys working for peace should be killed, the population of the defeated territories should be spared and no poisonous weapons should be used during battle¹⁵.

In Islam, like denominated in Arabic language, war is called “*jihad*”¹⁶ and can mean war against the enemy. This terminology *jihad* is used worldwide in the field of Islamic Law. *Jihad* is considered lawful in Islam, especially when it comes to the need of self-defence, or defending all for the cause of *Allah*. This is buttressed in the Koran, which states thus: «To those against whom war is made, permission is given (to fight), because they are wronged, and verily, God is Most Powerful for their aid. (They are) those who have been expelled from their homes in defiance of right, (for no cause) except that they say, “Our Lord is God”»¹⁷. This underscores the fact that according to Islamic doctrine no war is considered lawful except if there is a need for it: self-defence. However, Islamic States do normally concede such non Islamic States where war is to be declared, the option of choosing between peace and war. It does this through the sending of emissaries to such States, hence «But if they (the enemy) incline towards peace, do thou (also) incline towards peace»¹⁸ «(...) and say not to any one who offers you a salutation: “Thou art none of a believer”!»¹⁹.

It is fundamental to mention the three factors that could legalise war actions in Islamic law. This include:

- aggression against Muslims, or inducing Muslims to apostasy, since Allah says: «To those against whom war is made, permission is given to

¹⁴ *Declaration of Islamic Human Rights*, 1981, *op. cit.*, art.7 which recites under *Right to Protection Against Torture* that «No person shall be subjected to torture in mind or body, or degraded, or threatened with injury either to himself or to anyone related to or held dear by him, or forcibly made to confess to the commission of a crime, or forced to consent to an act which is injurious to his interests». Also the *Arab League, Arab Human Rights Charter*, Cairo, 1994, emphasizes under art. 4 (c) that: «(...) concerning the prohibition of torture and degrading treatment».

¹⁵ For further reading, see *Declaration of Human Rights in Islam*, Cairo 1990, art.3 (a): «In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to mutilate dead bodies. It is a duty to exchange prisoners of war and to arrange visits or reunions of the families separated by the circumstances of war. (b) It is prohibited to fell trees, to damage crops or livestock, and to destroy the enemy’s civilian buildings and installations by shelling, blasting or any other means».

¹⁶ *Jihad* is sometimes described as Holy War, while others define it as Holy Struggle. Cfr. SACCO L., *Kamikaze e Shaid. Linee Guida per una comparazione storico-religiosa*, Roma 2005.

¹⁷ Koran, 22, 39-40.

¹⁸ *Ibid.*, 8, 61.

¹⁹ *Ibid.*, 4, 94.

fight, because they were wronged (...)» – and – «slay them wherever ye catch them, and turn them out from where they have turned you out, for tumult and oppression are worse than slaughter»²⁰

- assistance of victims of injustice, hence: «And why should ye not fight in the cause of God and 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»²¹.

- self-defence against any attacks in one's nation, hence the Koran admonishes: «Fight in the cause of God those who fight you, but do not transgress limits, for God loves not transgressors.»²²

It is important to point out that whenever war ensues, there are regulations set out for it in the *Sharia* and, this is why the under listed principles have been set up even during the early periods of Islamic existence that:

- no attack should be launched against those who are not taking part in warfare;
- no destruction of property except for a military necessity like forcing open obstacles;
- Humanitarian laws should be respected during and after war;
- no obstacle towards the possibility of putting abrupt end to hostilities whatsoever by guaranteeing peace.

These are in harmony with the provisions of the Koran and the *hadiths*²³; hence «Move forward in the Name of God, by God, and on the religion of God's Prophet. Do not kill an elderly, or a child, or a woman, do not misappropriate booty, gather your spoils, do good for God loves good doers»²⁴. Even the Prophet's first successor, Caliph ABU BAKR ordered: «I prescribe ten commandments to you: do not kill a woman, a child, or an old man, do not cut down fruitful trees, do not destroy inhabited areas, do not slaughter any sheep, cow or camel except for food, do not burn date palms, nor inundate them, do not embezzle»²⁵. Also the Umayyad Caliph OMAR IBN ABDUL AZIZ sent a note to some Caliphates²⁶ indicating thus: «We have

²⁰ *Ibid.*, 2, 191.

²¹ *Ibid.*, 4, 75.

²² *Ibid.*, 2, 190.

²³ See MASUD K M., *Islamic Legal Vocabulary*, op. cit.: «*Hadith* is speech, report, new, modern a formal tradition deriving from the Prophet. *Hadith* is distinguished from *Sunna*, which means normative practice. *Hadith* is a report about what Prophet Muhammad said about something, practiced or approved, or did not disapprove a certain thing. A science of *hadith* criticism was developed to examine the normative value of a *hadith* and about the reliability of a *hadith*. A *hadith* report consists of two parts; first gives a list of narrators of the *hadith* and the second part the text. The jurists and the collectors of *hadith* differed in their criteria about the *hadith* normative».

²⁴ A *hadith* according to MALIK IBN ANAS, related by AL BAYHAQI, see AL-ZUHILI S. W., *Islam and international law*, in *International Review of the Holy Cross*, 87 (858), June, 2005, 282

²⁵ A Command of ABU BAKR (1st successor of the Prophet MUHAMMAD), to his Commander in war, YAZID IBN SUFYAN, related by IMAM MALIK, see AL-ZUHILI S. W., *Islam and international law*, op. cit., 283.

²⁶ Caliphate means *khilāfah* in Arabic. It is an Islamic form of government that represents political unity and leadership of the Muslim world. Caliph is the political leader that administers it while the ruled Muslims are known as *Ummah*: Community. About the forms of governments and constitutional Islamic law, see: CECCARELLI MOROLLI D., *Šari'a e Costituzioni nei paesi musulmani: alcune brevi note e riflessioni*, in *Iura Orientalia* II (2006), 92-109.

been informed that when the Prophet, sent any military company, he used to tell them: Proceed with your expedition in the Name of Allah, and for the sake of Allah, wage war against the disbelievers. Do not be deserters, nor commit perfidy, nor mutilate (your enemy). Do not kill a newborn. Repeat this to your armies and companies, it's God's will, Peace be upon you»²⁷. According to Islamic legal principles, Muslims in general are bound to comply with the above rules. The Koran added that even the captives shall have right to be fed following the dispositions led down by the Koran: «And they feed, for the love of God, the indigent, the orphan and the captive»²⁸.

(b) Islamic Law of Peace

It is important to accord this part of our study an important attention for the fact that Islamic states enjoy international legal personality like all other Sovereign States in the world. The basic principle in both Islamic religion and *fiqh* is that of universality. This principle enjoys a wide recognition within all Islamic States. This is generally understood and proclaimed so that peace should be realised within all Islamic territories and, if possible, within other States that accept Islam. At the same time it assures that “there is no coercion in the Islamic religion, and no compulsion at all in the divulgation of this doctrine”²⁹. This principle is a guideline towards the maintenance of peace both within and without Islamic world. Hence the following led down principle: «And dispute ye not with the People of the Book, except with means better (than mere disputation), unless it be with those of them who inflict wrong (and injury): But say, “We believe in the Revelation which has come down to us and in that which came down to you, our God and your God is One, and it is to Him we bow”³⁰ (...) Ye who believe! Enter into Islam whole heartedly, and follow not the foot-steps of the evil one, for he is to you an avowed enemy³¹» – and – «God forbids (...) those who fight you not for (your) faith nor drive you out of your homes, from dealing kindly and justly with them: for God loves those who are just! God 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 wrong³²». But Islamic law permits the principles of «Join Islam and you will be unharmed, otherwise you would have committed the same sin as the common people (...). O People of the Book! Come to common terms as between us and you: that we worship none but God, that we associate no partners with Him, that we erect not, from among ourselves, lords or patrons other than God (...)»³³. But it becomes spontaneous to ask if the Koran invites the people of the Book to a dialogue as to convert them indirectly to Islam, and at the same time maintaining to

²⁷ A *hadith* according to MALIK IBN ANAS, related by AL BAYHAQI, see AL-ZUHILI S. W., *Islam and international law*, in *International Review*, op. cit., 283.

²⁸ Koran 76, 8.

²⁹ *Ibid.*, 2, 256.

³⁰ *Ibid.*, 3, 64.

³¹ *Ibid.*, 2, 208.

³² *Ibid.*, 60, 8-9.

³³ *Ibid.*, 3, 64.

grant them freedom to profess their religion; why then should proselytising be outlawed in most Islamic countries? One should however believe that dialogue should be the best means to safeguard peace relationship by fulfilling the principle: “no compulsion in Islam”; otherwise there would be need to clarify the verse that states “slay them wherever you meet them” as avoid certain vague interpretations advanced by the International Community.

(c). Islamic International Relations

According to Islamic principle of International Relations, every Sovereign State should be accorded with equal right in exercising its International duties. This also has the goal of enabling every State to enjoy the right to freedom, security and peace as to fulfil its obligations towards its citizens. The invasion of a State against another is illegal in the Islamic point of view because Islam is conscious of its religious and legal policies concerning peace with other States both Islamic and Non-Islamic, since the Koran recites: «And be not like a woman who breaks into untwisted strands the yarn which she has spun, after it has become strong. Nor take your oaths to practise deception between yourselves, lest one party should be more numerous than another (...)»³⁴. This affirms that Islam prohibits the interference in other nations’ domestic affairs, with the intention of destabilizing or weakening the political function of such State. Islam deplores such action and calls on its followers to observe this norm strictly. The principle of peace, human brotherhood and international cooperation is encouraged by Islamic teachings, and this is an outstanding strategy towards the achievement and maintenance of International peace between States. Most Islamic legal scholars maintain that the possible relationship that should exist between Muslim States and others, including non-Muslim States should be peace rather than war. For this the Koran recites thus:

- «Ye who believe! Enter into peace whole-heartedly, and follow not the footsteps of the evil one, for he is to you an avowed enemy»³⁵;
- «O believers! When ye go forth to the fight for the cause of God, be discerning, and say not to everyone who meeteth you with a greeting, ‘Thou art not a believer’ in your greed after the chance good things of this present life!»³⁶;
- «Therefore, if they withdraw from you but fight you not, and (instead) send you (guarantees of) peace, then God hath opened no way for you (to war against them)»³⁷;
- «But if they (the enemy) incline towards peace, do thou (also) incline towards peace, and trust in God: for He is the One that heareth and knoweth (all things)»³⁸.

³⁴ *Ibid.*, 16, 92.

³⁵ *Ibid.*, 2, 208.

³⁶ *Ibid.*, 4, 94.

³⁷ *Ibid.*, 4, 90.

³⁸ *Ibid.*, 8, 61.

It is important to reiterate that according to Islamic doctrine, it is illegal to declare war on people, especially on those who observe the divine laws, or on those who have stipulated a peace accord with Islamic States, or who have reached an accord in order to be protected by Islamic States where they reside (the *dhimmi*³⁹). For example treaties are other fundamental factor for the realisation of International Relations. Honouring treaties is very important in Islamic law, because Islam as a religion encourages Muslims to be faithful in honouring Agreements⁴⁰. Even during the early days of the first Islamic States of Medina, the Prophet Muhammad entered into various peace agreements and these constituted a “body of *Sunna Principles*»⁴¹ in addition to those established in the Holy Koran. The Prophet entered into a fundamental treaty called “*the Treaty of Hudaibia*”, which remains a point of reference to all Muslims as how treaties should be honoured. This is in harmony with the Koran that states: «And fulfil the covenant of Allah when you have made a covenant, and do not break the oaths after making them fast, and you have indeed made Allah a surety for you; surely Allah. knows what you do (...) And be not like her who unravels her yarn, disintegrating it into pieces after she has spun it strongly. You make your oaths to be means of deceit between you because (one) nation is more numerous than (another) nation. *Allah* only tries you by this; and He will most certainly make clear to you on the resurrection day that about which you differed»⁴². To this end, Muslims later reached many treaties. And examples of treaties that followed suit included: the treaty of the Cities of Damascus, Jerusalem, Dabil, Alexandria and Egypt. Then followed by other recent ones like those of Suleiman the Magnificent of the Ottoman Empire with the Christians of King Francis in France in 1535.

Treaties were not the only essential factors for straightening International relation between Muslims States and others because diplomatic relations through the sending of envoys were also used. For example Envoys of Abyssinia who were ceremoniously received by the Prophet remains a significant point of reference. They exchanged gifts as sign of peace and understanding. After the reign of the Prophet, both the Umayyad and the Abbasid Caliphates reached and exchanged diplomatic ties like that of Byzantine Emperors for peace accords with regards to the release of prisoners of war through payments of ransoms and exchange of prisoners⁴³. To this we must include the Islamic doctrine that normally encourages commercial activities between Islamic States or neighbouring States as to ameliorate the International Relations between them⁴⁴. In addition, it is

³⁹ *Dhimmi* means the people of the *dhimma* or pact of protection, non-muslims who were subject of a state governed in accordance with Islamic law with the obligation of paying poll tax (*jizya*) of protection allowing them to profess their religion.

⁴⁰ For honouring agreements see Koran, 2, 177.

⁴¹ WAARENTARY C. G., *Islamic Jurisprudence: An International Perspective*, op cit., 140, that analyses the principle of “*pacta sunt servanda*” which means “Agreements must be respected”.

⁴² Koran, 16, 91, 92

⁴³ For a more elaborated studies, see WAARENTARY C. G., op cit., 135.

⁴⁴ WAARENTARY C. G., *Islamic Jurisprudence: An International Perspective*, op. cit., 139; RAHMAN H. M. A., *Just War, Peace and Human Rights, under Islamic International Law*, Institute of Islamic Studies, McGill University, Montréal, 1997, 89, 101.

worthy to pinpoint that the general theory of Islamic international relations have their basis not only on treaties, but on armistice, pact security reciprocity arbitration, neutrality diplomacy and foreign trade⁴⁵.

Let us not however, ignore the fact that there are some Islamic legal exponents that opine that war is the best answer for an international Relationship between other States. This ideology is more or less terroristic as they are those who do not accept unity and peace between States, especially non Islamic⁴⁶.

§2.2. Human Rights in Islamic International Relations

Human Rights in Islamic International law are based on such rights originally granted by Allah and not by man or by any legislative organ. This is because Islamic law is purely divine since its sources are derived from the *Koran* and *Sunna*. Therefore, no legislative power in the world over has the power to make amendments or rather change the rights that God has sanctioned. Most Islamic legal experts sustain that even the declarations and resolutions of the United Nations cannot be compared with any rights sanctioned by Allah. This is why human rights are the main focus of legal provisions especially during armed conflicts: the protection of civilian rights, especially from torture and inhuman and degrading treatment. Laws guiding these rights are considered immutable. Islamic law as disciplined by Islamic international legal instruments groups Human Rights under the following: Right to life, to Respect, to Justice, to Freedom, to Acquire Knowledge to Work, to Privacy, to Protection from Slander, Backbiting, and Ridicule, to Develop One's Aesthetic Sensibilities and Enjoy the Bounties Created by God, to Leave One's Homeland Under Oppressive Conditions and to "The Good Life".

a). Right to Life – under the right to life, the Koran states that human life is sacred and every individual should be granted the right to life which must be respected: «(...)your Lord has forbidden to you(...)do not slay your children (...), do not kill the soul which Allah has forbidden except for the requirements of justice; this He has enjoined you with that you may understand»⁴⁷. This is very much not far from what the International norms established for the right to life. The only difference is that the Islamic

⁴⁵ For a more elaborated studies on Islamic treaties and diplomatic relations see WAARENTARY C. G., op. cit., 140-142; RAHMAN H. M. A., *Just War, Peace and Human Rights, under Islamic International Law*, op. cit, 60 ff.

⁴⁶ For further studies, see: 30 *Makhtut* (manuscript) *fatawa* IBN AS-SALAH, Dar al-kutub of Cairo, No. 337 (224).

⁴⁷ Koran, 7, 151; *Declaration of Islamic Human Rights*, 1981, op. cit, art. 1 (a-b): «Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law. b) Just as in life, so also after death, the sanctity of a person's body shall be inviolable. It is the obligation of believers to see that a deceased person's body is handled with due solemnity»; see also *Declaration of Human Rights*, Cairo, op. cit., art. 3 «(a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to protect this right from any violation, and it is prohibited to take away life except for a Shari'ah-prescribed reason. (b) It is forbidden to resort to such means as may result in the genocidal annihilation of mankind. (c) The preservation of human life throughout the term of time willed by God is a duty prescribed by Shari'ah. (d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah-prescribed reason».

jurisprudence maintains that life could be taken only through the application of a death sentence⁴⁸.

b). Right to Respect – The Koran maintains that every individual shall have the right to respect. This should be accorded to all without distinction. This is because Allah created all with equal love, respect and dignity. This should be exercised with liberty and respect as it is provided by God. God himself is respectful and this should be so for his creatures since they are superior to other creatures because they possess the faculty of rationality that distinguishes them from others. This is why the Koran stated «And surely We have honoured the children of Adam, and We carry them in the land and the sea, and We have given them of the good things, and We have made them to excel by an appropriate excellence over most of those whom We have created»⁴⁹. For the right on respect, the Islamic International instrument has helped in underscoring its legitimacy.⁵⁰

c). Right to Justice – Justice is another right which Islamic law disciplines as part and parcel of human right norms. It maintains that every individual should be treated on equal footing even before a court of law. As a renowned Islamic scholar may put it !(...) in a Court of Justice the claims of the two parties must be considered evenly, without undue stress being laid upon one side or the other. Justice introduces the balance in the form of scales that are evenly balanced».⁵¹ The Koran on its own part puts it that: «Allah has promised to those who believe and do good deeds (that) they shall have forgiveness and a mighty reward»⁵². It goes further to underscore that: «(...) and fulfil the covenant of Allah when you have made a covenant, and do not break the oaths after making them fast, and you have indeed made Allah a surety for you; surely Allah knows what you do»⁵³. This goes a long way to explain that there should be no discrimination against lineage, sex, wealth, worldly success or religion, but by righteousness, which consists of both right and just action⁵⁴. All actions

⁴⁸ *Ibid.*, art. 1 (a) «(...) except under the authority of the Law».

⁴⁹ Koran, 17, 70.

⁵⁰ *Universal Declaration of Islamic Human Rights*, op. cit., where art. 8 sanctions that: «Every person has the right to protect his honour and reputation against calumnies, groundless charges or deliberate attempts at defamation and blackmail».

⁵¹ ABU HAMID M. AL-GHAZALI, *'Thya' Ulum al-Din* (reprint, MUSTAFA AL-BABI AL-HALABI wa awladuhu, Cairo, 1939), with an authentication of the sayings of the Prophet by Hafiz al-Islam al-Iraqi in the margin, vol. 2, 8; See Also art. 4 of the *Universal Declaration of Islamic Human Rights*, op. cit., where it insists that: «Every person has the right to be treated in accordance with the Law, and only in accordance with the Law. b) Every person has not only the right but also the obligation to protest against injustice; to recourse to remedies provided by the Law in respect of any unwarranted personal injury or loss; to self-defence against any charges that are preferred against him and to obtain fair adjudication before an independent judicial tribunal in any dispute with public authorities or any other person»; see also the *Declaration of Islamic Human Rights*, Cairo, op. cit., art. 1: «(a) All individuals are equal before the law, without distinction between the ruler and the ruled. (b) The right to resort to justice is guaranteed to everyone. (c) Liability is in essence personal. (d) There shall be no crime or punishment except as provided for in the Shari'ah. (e) A defendant is innocent until his guilt is proven in a fair trial in which he shall be given all the guarantees of defence»; while Arab League, *Arab Human Rights Charter*, Cairo, op.cit; under art. 6, adds: «There shall be no crime or punishment except as provided by law and there shall be no punishment in respect of an act preceding the promulgation of that provision. The accused shall benefit from subsequent legislation if it is in his favour».

⁵² Koran, 5, 9.

⁵³ *Ibid.*, 16, 91.

⁵⁴ WAHBAH AL-ZUHAILI, *Al-Fiqh al-Islami wa Addillatuh* (Dar al-Fikr, Damascus, 1984), vol. 7, 331-332.

should be treated with justice: “Just”; for example, a crime should be punished according to the equal and correct measures established for it. This is because the Islamic doctrine provides for identical punishments for every individual irrespective of sex. In addition it is worthy to state that according to Islamic Jurisprudence, God is on the part of every individual. He makes no differences of persons, especially the weak, such as women, orphans, slaves, the poor, the sick, and the minorities.

d). Right to Freedom – Islamic laws ascertain that Human beings should be free, especially from bondage of any type, without any action of dictatorship and despotism whatsoever⁵⁵. This can be read from the Koran: «And serve Allah and (...) be good to the parents and to the near of kin and the orphans and the needy and the neighbour of (your) kin and the alien neighbour, and the companion in a journey (...); surely Allah does not love him who is proud, boastful»⁵⁶. Also the Koran states thus: «(...) do not compel your slave girls to prostitution, when they desire to keep chaste (...)»⁵⁷. A clear example is the Institution of Slavery⁵⁸ and Human Rights which was predominant in the Arab world during the initial stages of Islamic life, but the Koran says that slaves be treated in a just and humane form «(...) We have made equally for all men (...)»⁵⁹. But the Prophet calls for its abolition⁶⁰ and continually urged the freeing of slaves and because the Koran does not explicitly indicate that slavery is abolished. In the Koran, there is no provision that concedes to either the Prophet or any King the power to seek obedience from people whatsoever. This is because only Allah can limit the freedom of individuals and he, alone can establish what is right and what is wrong. In this case no legislative or executive powers can seek obedience, for example even the Prophet who was the depository of the Divine revelation, always consulted his followers in public affairs as *Allah* addressing the Prophet says: «(...) and consult with them upon the conduct of affairs. And (...) when thou art resolved, then put thy trust in Allah». This is

⁵⁵ See the *Universal Declaration of Islamic Human Rights*, op. cit., which in three articles demonstrates the legality of the right to freedom: art. 12: «Right to Freedom of Belief, Thought and Speech a) Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons»; art.13: «Every person has the right to freedom of conscience and worship in accordance with his religious beliefs»; while art. 23, indicates the freedom of movement that: «a) In view of the fact that the World of Islam is veritably Ummah Islamia, every Muslim shall have the right to freely move in and out of any Muslim country. b) No one shall be forced to leave the country of his residence, or be arbitrarily deported there from without recourse to due process of Law».

⁵⁶ Koran, 4, 36.

⁵⁷ *Ibid.*, 24, 33; 4, 92; 2, 40; 2, 256.

⁵⁸ Under *Declaration of Islamic Human Rights*, Cairo, op. cit., the slavery is forbidden under art. 11 which states: «(a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most-High. (b) Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States and peoples to support the struggle of colonized peoples for the liquidation of all forms of colonialism and occupation, and all States and peoples have the right to preserve their independent identity and exercise control over their wealth and natural resources».

⁵⁹ *Ibid.*, 22, 25. See also Koran 23, 12-14.

⁶⁰ The Prophet's Farwell Sermon exhorting Muslims as follows: «And your Slaves see that ye feed them with such food as ye eat yourselves and cloche them with the stuff that ye wear. If they commit a fault which ye are not inclined to forgive, then part with them, for they are the servants of the Lord and are not to be harshly treated», quoted in WEERANTARY C. G., op. cit., 139.

because consultation *Shura*⁶¹, is a given and fundamental right within the Islamic legal provisions. This offers the Islamic people the ample right and responsibility to participate in the decision making within the helm of any Islamic State government.

e). Right to Acquire Knowledge – This is a right which the Islamic population and jurists emphasize much because it is considered as the first revelation received by Prophet Muhammad. This is why Islam underscores that learning or better knowledge is a wherewithal for the maintenance of durable peace in the world. This is underscored by Islamic international Instruments, like the *Universal Declaration of Islamic Human Rights*⁶².

f). Right to Sustenance – The Koran pinpoints that all goods belong to Allah, and that all should be allowed to benefit from common goods, and all those who are rich should put at the disposition of all, their goods in order to allow them partake in its enjoyment as to warrant adequate sustenance, since it is affirmed by the Koran that: «To Allah belongs the domain of heavens and earth and anything in-between»⁶³.

g). Right to Work – The right to work is fundamental, according to the Koran. It is a right that should be granted to all irrespective of sex. The Koran stated thus: «(...) to men, is allotted what they earn, and to women what they earn».⁶⁴

h). Right to Privacy – This is another right that is guaranteed by the Koran. Human beings have the right to a reserved and consolidated private

⁶¹ *Shura* means consultation for this we can refer from the *Universal Declaration of Islamic Human Rights*, op. cit., «Subject to the Law, every individual in the community (*Ummah*) is entitled to assume public office. b) Process of free consultation (*Shura*) is the basis of the administrative relationship between the government and the people. People also have the right to choose and remove their rulers in accordance with this principle». See: CECCARELLI MOROLLI D., *Šari'a e Costituzioni nei paesi musulmani: alcune brevi note e riflessioni* in *Iura Orientalia* II (2006), 92-109; Cfr. UDUGBOR M. O., *Alcune brevi note sul rapporto fra democrazia e giurisprudenza islamica (fiqh)*, in *Iura Orientalia* I (2005), 144-162.

⁶² *Universal Declaration of Islamic Human Rights*, op. cit., art. 21: «Every person is entitled to receive education in accordance with his natural capabilities. b) Every person is entitled to a free choice of profession and career and to the opportunity for the full development of his natural endowments»; See also the *Declaration of Islamic Human Right*, Cairo 1990, op. cit., art. 9: «The quest for knowledge is an obligation, and the provision of education is a duty for society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee educational diversity in the interest of society so as to enable man to be acquainted with the religion of Islam and the facts of the Universe for the benefit of mankind. (b) Every human being has the right to receive both religious and worldly education from the various institutions of education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner as to develop his personality, strengthen his faith in God and promote his respect for and defense of both rights and obligations»; and *The Arab Human Rights Charter*, op. cit., adds under art. 34, that: «The eradication of illiteracy is a binding obligation and every citizen has a right to education. Primary education, at the very least, shall be compulsory and free and both secondary and university education shall be made easily accessible to all».

⁶³ Koran, 5, 120; 3, 26.

⁶⁴ Koran, 4, 32; these rights are well and fully disciplined under art. 17 of the *Universal Declaration of Islamic Human Rights* «(...) honours work and the worker and enjoins Muslims not only to treat the worker justly but also generously. He is not only to be paid his earned wages promptly, but is also entitled to adequate rest and leisure» also *The Arab Human Rights Charter*, op. cit., did not leave any stone unturned but sanctions under artt. 30 and 31, that: «the State guarantees every citizen's right to work in order to secure for himself a standard of living that meets the basic requirements of life. The State also guarantees every citizen's right to comprehensive social security (...) Free choice of work is guaranteed and forced labour is prohibited. Compelling a person to perform work under the terms of a court judgement shall not be deemed to constitute forced labour».

life, and in their respective home against any «intrusion from within or without»⁶⁵.

i). Other Rights – There are other rights like the right to Protection from Slander, Backbiting and Ridicule, to Develop One’s Aesthetic Sensibilities and Enjoy the Bounties Created by God, to Leave One’s Homeland Under Oppressive Conditions and to “The Good Life”. These rights are most times being ignored by various systems of law but the Islamic legislations do address them as fundamental rights, since they are of religious derivation. For example, Islamic law deplors that individuals should be subject to any defamation, sarcasm, offensive nicknames, and backbiting. Islamic law punishes these offences.

It adds that all bounties established by God are at the disposition of every individual for enjoyment and that every individual shall be free to emigrate from one part of a country to another, as was done by the Prophet when he accomplished the “*Hegira*” migrating from Mecca to Medina. In other words: Free movement and free circulation of all Muslims.

The other right that cannot be ignored is that of “good life”, where the Koran holds that all human beings shall have the right to live in a sound environment. This undoubtedly goes a long way in the restoration and maintenance of a lasting justice and peace, warranting sound International Relations between States: Muslims and Non Muslims alike»⁶⁶. The above rights are disciplined by both the Universal Declaration of Islamic Human Rights; the Cairo Declaration on Islamic Human Rights and the Arab league’s Charter on Human Rights stressing on the maintenance of the good names of individuals and avoiding the tainting of such individuals’ character⁶⁷.

All the above mentioned Human Rights are those rights that were also put into evidence by the United Nations in its International instruments concerning Human Rights. For example the most outstanding UN document, the Universal Declaration of Human Rights of 1948, demonstrates that respect to Human Rights on the International scene is imperative and this influences all other Human Rights. It confirms clearly that human beings have the right to life and should not be subjected to any inhuman treatment⁶⁸. This is reinforced by the International Covenant on Civil and Political Rights of 1966⁶⁹.

The UN also emanated a Convention on the Prevention and Punishment of the Crime of Genocide of 1948 which gives a clear definition of genocide, admonishing against ill treatment of persons of various

⁶⁵ For Rights on Privacy it is important to read from *the Universal Declaration of Islamic Human Rights*, op. cit., under art. 22 «Every person is entitled to the protection of his privacy».

⁶⁶ See Koran 2,229; 1; 42-48; 9,17; 67,15.

⁶⁷ *Declaration on Islamic Human Rights*, Cairo, op. cit., art. 4: «Every human being is entitled to inviolability and the protection of his good name and honor during his life and after his death. The state and society shall protect his remains and burial place».

⁶⁸ UN, *Universal Declaration of Human Rights*, 1948, art. 3: «Everyone has the right to life, liberty and security of person».

⁶⁹ UN, *International Covenant on Civil and Political Rights*. 1966, art. 6 (1): «Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life».

ethnicity, including men, women and children⁷⁰. This is in line with the Islamic International law that underscores that the right to life is a basic and fundamental right which all human beings should enjoy irrespective of their race, colour, sex, tongue and creed. This is considered sacred, and no one is authorized to to abuse it hence “we ordained for the children of Israel that if any one slew a person – unless it be for murder or for spreading of mischief on the land – it would be as if he slew the whole people, and if any one saved life, it would be as if he saved the life of the entire people⁷¹”.

§3. Brief Conclusion

This work on Islamic international law would have needed a wider space in order to give it a more exhausting and comprehensive analysis concerning the role of Islamic law in the International arena. However, I believe that with what has been elucidated above, though in a nutshell, the reader could be aware of the outstanding value of Islamic law in general. I think there is no need to be biased⁷² on the existence and studies of Islamic jurisprudence as it could now be clear that International Islamic law especially on war, peace, humanitarian relations and human rights cannot be judged negatively by the western experts. This is because all laws being based on the *Koran* and *Sunna* are ethically based. therefore *Jihad* must not be termed only as a “Holy war”, but as a “Holy struggle”, otherwise this interpretation could be misleading. Jihad has been described and considered a defensive war and Islamic experts do defend all its actions as compatible with the International Humanitarian laws that discipline the conduct of war on persons and properties. Islamic law in general has outlined the importance of treaties and the obligation in honouring them which is fundamental in the Islamic doctrine. Not only, also human rights form the basis of Muslim international legislation in harmony with the westernised system of fundamental rights guiding the human persons. Even most European legal experts today agree with the Islamic systems of laws on basic rights; though ready to attack such areas like the right to change religion or the right to life which could be thwarted through the application of a death sentence. However, most Islamic States may ask: What about such States within the USA where death sentences are currently applied?

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⁷⁰ UN, *Convention on the Prevention and Punishment of the Crime of Genocide*, 1948, art. 3 (1).

⁷¹ Koran 5, 32.

⁷² WAARENTARY C. G., *Islamic Jurisprudence: An International Perspective*, op. cit., 129 where he underscores as follows: «There have been many sympathetic and truly appreciative works by Westerners and Christian researchers into Islam and its ideals (...)».