

LEGAL TRADITIONS OF THE WORLD

The concept of Human Rights and its legal implementation – the Arab experience

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SHARIA AND INTERNATIONAL LAW – THE NEED OF DIALOGUE

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1. Caliphs and ulama – worldly and religious power

When the Caliph Harun Ar Rashid (786 – 809 C E) visited al-Raqqa, his trip coincided with the entry into the town of Abdallah Ibn al-Mubarak, then one of the most distinguished and illustrious legal scholars of Islam. It is reported that the latter attracted larger crowds than did the caliph, a sight which precipitated the comment – made by the caliph’s slave-wife who was present – that ‘true kingship lies in the scholar’s hands and hardly with Harun, who gathers crowds around him by the force of police and palace guards.

This anecdote, whether or not it is authentic, is both illustrative and representative of the locus of legitimacy of religious and moral authority in that era, says professor Wael B. Hallaq in his 2005/06 appearing book *The Origins and Evolution of Islamic law*. A pious and erudite man could attract adulation by virtue of his piety and erudition, whereas a caliph could do so only by coercion. Thoroughly familiar with the ways of earlier caliphs, the likes of Abu Bakr, Umar I and II, the latter Umayyad and early Abbasid caliphs realized that brute power could not yield legitimacy, which they were striving to attain. Legitimacy lay in the preserve of religion, erudition, ascetic piety, moral rectitude and, in short, in the persons of those men who had profound knowledge of, and fashioned their lives after, the example of the Prophet and the exemplary forefathers. It did not take long before the caliphs realized that inasmuch as the pious scholars needed their financial support, they needed the scholar’s cooperation, for the latter were the ruler’s only by means of securing legitimacy in the eyes of the populace.

The growth of religious sentiments among the latter and the enthusiastic support of the religious scholars, left the caliphs no option but to go the same way: namely, to endorse a religious law whose authority depended on the human ability to exercise hermeneutic. Those who perfected this exercise were the jurists, and it was they and their epistemological domain that set restrictions on the absolute powers of the rulers, be they caliphs, provincial governors or their agents. When the Persian secretary Ibn Al-Muqaffa (died 756 CE) suggested to the Abbasid caliph that he, the caliph, should be the supreme legal authority, promulgating laws that would bind his judges, his suggestion was met with total disregard. For while his proposal insinuated that legal authority could have been appropriated by the caliph, the fact that nothing whatsoever came out of this is a strong indication that the jurists’ control over the law was, as before, irreversible. The legal specialists and the popular religious movement that had emerged by the 750s were too well entrenched for any political power to expunge or even replace, for it is precisely this movement and its representatives that gave rise to the wedge between political power and religious authority, professor Hallaq tells us.²

What is said here is of extreme importance for the understanding of the structure of the Sunni Islamic law system, which – as a matter of fact – had nothing to do with the “worldly power”, the caliphs and their successors. The development of the true sharia

² Wael B. Hallaq, *Authority, Continuity and Change in Islamic law*, Cambridge University press 2001, the same author *Islamic Legal Theories, An introduction to Sunni usul al-fiqh*, Cambridge University press 2005; the same author *The Origins and Evolutions of Islamic law*, Cambridge University press 2006.

law was never a “state mechanism”, but rather arose as a private enterprise initiated and developed by pious men who embarked on the study and elaboration of law as a religious activity. Never could the Islamic ruling elite – says professor Hallaq – determine what was the law – i.e. the contents of the law. In other cultures the law was formulated and established from above, by the worldly power – being the source of the legal authority and the legal power – but in Islam this body was largely, if not totally, absent from the legal scene. Instead it was the rise of different personal and doctrinal schools of law that compensated the absent “state mechanism” in this regard. The lack of governmental legal authority and power were made up for by the evolution and full emergence of the *madhhab*, an entity that came to possess even greater legal authority than that produced in other cultures by the worldly powers. While the worldly power in other cultures spoke through political and coercive means, the Islamic *madhhab* came to exercise an even greater legal authority because it spoke on behalf of God (*Sharia* means the Way of God) through his absolute *mujtahids*, those who knew best what God might have in mind for his Muslim people.

Trough different means of interpretation of ‘God’s will’ – through the mechanisms of *ijma* and *ijtihad* and suchlike legal interpretative means – the *mujtahids* (I use here below the general term *ulama*, embracing the different categories of this nature) not only shaped and defined Islamic law throughout twelve centuries of its history, but also replaced the legal authority of the worldly power, which was suspected to harbour different kinds of vices as well as misinterpreting the divine law.

2. The power over the law-system

This is not to say that the worldly power – the caliphs – lacked all influence in the Islamic law system. Even if the political level did not influence in what way the law was determined by the *ulama* and the Law Schools, it did have quite a strong influence in supporting – not only financially – the personal schools and the doctrinal schools that came to develop into the ‘*absolute mujtahids*’ and the famous Law Schools of the 9th and 10th centuries. The jurists constituted the linkage between the political elite and the masses of people.

Also in the sphere of execution of the law the political elite (the caliphs) played an essential role through the so called *proto-qadis*, the *qadis* and other kind of judges working in the court system. The legal might of the *qadi* was seen as an extension of the might and power of the caliph. It should be added that the four first orthodox caliphs were themselves acting as *qadis*. Again I stress that I am here mainly talking about the development of the Sunni legal doctrine. The development of the Shiia legal doctrine was different because of its belief in the Iman as the central political and religious figure.

From this description the conclusion can be drawn that the content of the Sunni Sharia law developed through a special more or less private mechanism (the pious and religious men), while the mighty caliphs were acting as ‘the divine rulers’ or as the ‘Commanders of the Faithful’, which title actually is the base for the title of caliph. As the ruler of the Islamic Empire – because it was really as an empire that Islam came to encounter the “other world”, the “non-Muslim world” – the incumbent of the “worldly throne of Islam”, the caliph, had to carry out the international, or inter-state, affairs of the Islamic Empire. It seems thus that the legal strata that could be

categorised under the concept of *'international law'* or perhaps rather *'inter-state relations'*, fell within the domain of the caliph, the “worldly power of Islam”, not so much within the domain of the “private pious and religious men” (the *ulama*) that otherwise and generally held the development of the Islamic law in a firm grip.

My first question is – is this a correct and true description? Was the “ancient Islamic international law” a category of rules and laws coming under the worldly caliph? And was the caliph – the worldly power of Islam – free to act as he wished in the field of “international law”? Or did he have to take the interpretations and opinions of the *ulama* and the different Law Schools into consideration also in the field of ‘inter-state relations’? Certainly the caliph was bound by the *Quran* and the prophetic *Sunna*, but did he have to consult the *ulama* about the exact content of the rules of behaviour in Islam’s foreign relations? Even if I am jumping over centuries of political and structural develop in the history of Islam – as I am also grossly simplifying it – I find this question a rather interesting one also in relation to present day Islam, insofar as it is important to know which body is today the “steering body” in Muslim states when it comes to the adoption and implementation of the principles of international law, among those the Human rights questions.

Is it – as during the days of the caliphs (which I here define as the “worldly power” even though the function of caliph was an exercise of ‘divine sovereignty’) – that is to say the Government and the Ministers – or is it the pious and religious *ulama* that are to interpret and steer the implementation process of, for instance, the Human rights principles? This is an interesting question, not least in order to determine which is the most important ‘target group’ for the legal dialogue in which we all shall have to engage ourselves in order to steer clear from all rocks and wrecks on the Ocean of International law. Later I will explain in more detail what I am aiming at.

Under the concept of ‘Islamic international law’ essential rules were to be found, mainly pertaining to “war and peace”, “the conduct of the Islamic armed forces”, “how to deal with the civilian population in the occupied or conquered territories”, “the matter of peaceful coexistence with the others”, “the matter of carrying out *jihad* against the others”, “the question whether or not a permanent peace treaty could be concluded with the others”. How Islam should behave towards the civilian population. How Islam was to apply the already then existing ‘humanitarian laws’ and ‘the laws of warfare’. Here we are approaching the theme of the actual seminar here in Alexandria *The concept of Human Rights and its legal implementation – the Arab experience*. To repeat my question again: who is acting as the implementing force? The caliph of today, that is to say the Government, or the religious interpreters of the sharia law? Who should be engaged in the legal Dialogue?

3. Human rights in contemporary International law

As is clearly shown in Appendix 1 enclosed to my intervention “Human rights” is an essential part of the contemporary international law, anchored in several bilateral as well as multilateral declarations, conventions and treaties, namely:

The United Nations Universal Declaration of Human Rights 1948

The European Convention for the Protection of Human Rights and

Fundamental Freedoms, signed in Rome 4 November 1950
(With an enforcement machinery to uphold the rules of the Convention;
The European Court of Human Rights in Strasbourg)

Convention on the Prevention and Punishment of the Crime of Genocide
(1948) (2006: 140 parties)

International Convention on the Elimination of All Forms of Racial
Discrimination (1965) (2006: 185 parties)

International Covenant on Civil and Political Rights (1966) (2006: 160 parties)

International Covenant on Economic, Social and Cultural Rights (1966)
(2006: 155 parties)

Convention on the Elimination of All Forms of Discrimination against
Women (1979) (2006: 185 parties)

Convention against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment (1984) (2006: 143 parties)

Convention on the Rights of the Child (1989) (2006: 193 parties)

It is an interesting fact that almost all Muslim countries since long are parties to several of these international conventions and treaties and thereby, by the force of “treaty law”, are obliged to implement and follow these rules and regulations. It should of course be emphasised that to define a ‘Muslim country’ is as difficult as to define an ‘Islamic state’. However Iran and Pakistan, perhaps some others, should be categorised as ‘Islamic states’. The fact is that the Muslim countries since long are totally integrated parts of the existing international law – as it is defined by the generally applicable doctrine of international law. This follows from the simple fact that Muslim countries are members of the ‘Society of states’, now comprising some 195 states. If one wishes to categorise the traditional public international law it could very well bare the name of ‘the Grotian International law’, after the famous 17th century lawyer and diplomat Hugo Grotius – also called the ‘Father of International law’.

4. The cradle of International law

This is of course a very Eurocentric view on the history of international law, since we know that already in the year 2400 BCE there existed an inter-state treaty in this part of the world, namely a *Treaty of peace and friendship* between the kingdoms of Ebla and Hamazi (present day Syria). This is probably the oldest known treaty in the history of international law. A clay tablet with an interesting inscription was found in the royal library of Ebla, which now is conserved in the Archaeological Museum of Damascus. The treaty was written in cuneiform Eblaitic, a language that belonged to the Paleo-Semitic family from which Arabic and Hebrew have derived. It begins with these words: “You (are my) brother and I (am your) brother; this way (speaks) Ibusu, superintendent of the Royal Household, to the messenger”. It ends with the following wording: “Irkab-Damu, King of Ebla, (is the) brother of Zizi, king of Hamazi, Zizi, king

of Hamazi, (is the) brother of Irkab-Damu, king of Ebla". The rulers of the two neighbouring countries had thus concluded a peace treaty and, as a sign thereof, called themselves brothers. This is, as said, probably the earliest written confirmation of the nowadays fundamental principle of peaceful coexistence!

We also know that a treaty existed between Pharaoh Ramses II and the King of the Hethites Hattusili III, pertaining to the frontiers of the Province of Canaan, done in the year 1284 BCE. There are also – which I believe is appropriate to mention in Alexander the Great's city Alexandria – early Egyptian rules of warfare, prohibiting the poisoning of wells and governing the treatment of prisoners of war, dating back to 1400 BCE. The Persian king Cyrus prohibited his soldiers to loot Babylon when he conquered the site in the year 538 BCE. The same rules are known from Alexander the Great's conquest of Western Asia. Such early rules of warfare are also found in the concept of *jihad*, which originally was an instrument to *hamper* the unlimited kind of warfare that existed during the pre-Islamic period. Thus the Sharia law actually introduced – some two thousand years ago – principles that are part of today's rules of warfare – long before the existence of the modern 'Grotian International law'. This is why I mention to my students at the University in Amman that the cradle of the international law actually was located in this part of the world.

5. The sources of contemporary International law

To return to the traditional international law (the Grotian version so to speak) I should mention that the sources of present day international law traditionally are classified into the following categories:³

- 1) Treaties, Agreements and Conventions (*Treaty Law*),
- 2) Customs or General practice among states accepted as law (*Customary law*),
- 3) General principles of law recognised by civilized nations,
- 4) Judicial decisions of International Tribunals, foremost the *International Court of Justice* at the Hague and the preceding *Permanent Court of International Justice*,
- 5) The *doctrine of international law* or the teachings of the most highly qualified publicists of the various nations.

The contents of agreements and treaties (*Treaty law*) have legal force by the very signature of the parties. One of the fundamental treaties of today is the Charter of the United Nations (1945). The Charter has legal force by the will and the signatures of

³ The Statute of the International Court of Justice, Art 38.1: 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.

almost all existing sovereign nations. The Charter does not stand above the nations but bind the nations together in a certain pattern of rights and obligations. To the Charter is attached *The United Nations of Human Rights 1948*. The 'Human rights' have over the years become an ever increasingly important component in the corpus of international law. This is accomplished not only through international treaties and conventions but also through the fundamental role that the 'customary international law' is playing in the formation of the corpus of international law.

So here we are! Almost all Muslim countries have by their own free will acceded to the most fundamental international law instruments that exist by putting their signatures under the instrument. It is the worldly power (the Government) that has decided to do so, thereby integrating the Muslim countries with the existing corpus of international law, as it is defined in treaties and conventions and by the customary general principles of international law.

Few Islamic states have made reservations when signing the treaties, which give the result that these are valid exactly as they stand. The Muslim countries must honour their signature and implement what they once willingly signed. Those are the obligations of the 'treaty-law'! There is no escape way, so to speak. And, to tell the truth, almost all Muslim countries fulfil their formal legal obligations in accordance with what they once promised to do. I should hasten to say that *all* states are under the legal obligation to fulfil their treaty obligations. This goes for Western, African and Muslim countries alike. Regrettably there have lately been committed gross violations of the rules and principles of international law by major Western states, mainly in relation to Iraq. Also the Palestine-Israeli conflict is characterised by a soon 60-year-long violation of fundamental principles of international law mainly on the part of the occupying power. This must be bluntly declared.⁴

6. Secularism and secular laws

To some extent the Muslim countries resemble the Western *secular* states – no backward glances at any religious laws and regulations. The link between law and religion the Western world abandoned long ago, thus becoming part of the "*secular world*" (however, this link has somehow been reintroduced especially among Christian fundamentalist groups in the US). The word "*secularism*" comes from the Greek word "laikos", which means people who are not part of the clergy or the class of monks. Following, for instance, the establishment by Kemal Atatürk of the Turkish republic in 1923, the word "*secularism*" began to take on the meaning of liberating politics from religious influence and to establish the people's sovereignty over themselves, as Kemal Atatürk put it. It was thus the antithesis of the caliphate, which was a symbol of divine sovereignty. On 17 February 1926 the Turkish parliament passed a civil law that was a step towards replacing the divine law with positive (secular) laws. On 10 April 1928 the Turkish parliament passed an amendment to several articles of the constitution, thereby even deleting the phrase "The religion of the Turkish state is the Islamic religion". Turkey became a secular state, today even a candidate to membership in the European Union (EU).

This step towards secularism was preceded by introducing in Muslim countries French, German and Swiss codifications, which however proved highly inadequate

⁴ See Bo J Theutenberg, *Palestine, Iraq and International Law*, Skara, Sweden 2003 (ISBN 91-631-097-7)

for a society that was fundamentally different from those Western societies for which these codes were originally coded. Within the realm of ‘amalgamated laws’ (*takhayyur*) could be mentioned the Ottoman Law of Family Rights in 1917, the Egyptian Law of Testamentary Dispositions of 1946 and the Sudanese Judicial Circular No 53.

However in spite of all efforts to secularise the Islamic law system the trend of today is no doubt to the contrary – instead of entering the path of secularism Muslim societies seem today to strengthen their links to the religion of Islam and Islam’s religious laws, that is to say the Sharia laws. This happens even in secular Turkey. The concepts of ‘law’ and ‘religion’ seem again to integrate, thus leading the development into quite another direction than what was expected when the positive or secular laws were introduced during the 19th and 20th centuries. Following such an unexpected development – i.e. the strengthening of the religious laws instead of positive and secular laws – it has been argued that the principles of Human rights, as the concept is defined by contemporary international law (based i. a. in the U N Charter and the U N Universal Declaration of Human rights) are *incompatible* with the Sharia laws.

7. The 1990 Cairo Declaration on Human rights in Islam,

Here we are diving into the real difficulties in the implementation process of the laws and principles of Human rights. If ‘modern Human rights’ are considered *incompatible* with the Sharia laws (Man’s law against God’s law) the implementation process may stop. Here it is argued that the principles of Human rights always must be seen in their cultural context – the prevailing culture in specific parts of the world. The implementation of Human rights never takes place in an empty room, but is always surrounded by local habits and conditions, among those religious factors. Women’s rights in New York can never be the same as women’s rights in other parts of the world – the argument goes. Secular habits can never satisfy religious habits – religious habits can never be the same as secular habits.

From such a point of departure it can very well be argued that the Human rights *are* compatible with the Sharia laws and that no contradictions or incompatibilities exist. An important document in this regard is the *Cairo Declaration on Human rights in Islam*, adopted in 1990 by the Nineteenth Islamic Conference of Foreign Ministers (Resolution no 49/19-P; see Appendix 3). The purpose – it is stated – is to issue the Cairo Declaration on Human Rights in Islam, which will serve as a general guidance for Member States in the field of human rights. References are here made to the Sharia:

“Wishing to contribute to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari’ah”

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization and of a self motivating force to guard its rights;

Believing that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in

the Revealed Books of God and were sent through the last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin, and accordingly every person is individually responsible - and the Ummah collectively responsible - for their safeguard.

ARTICLE 1:

(c) The preservation of human life throughout the term of time willed by God is a duty prescribed by Shari'ah

ARTICLE 2:

(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.

(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 Sharia-prescribed reason.

ARTICLE 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 man, 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.

ARTICLE 6:

(a) Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.

(b) The husband is responsible for the support and welfare of the family.

ARTICLE 7:

(b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari'ah

(c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the Shari'ah.

ARTICLE 12:

Every man shall have the right, within the framework of Shari'ah, to free movement and to select his place of residence whether inside or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Shari'ah regards as a crime.

ARTICLE 19:

(d) There shall be no crime or punishment except as provided for in the Shari'ah

ARTICLE 22:

(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.

ARTICLE 24:

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

ARTICLE 25:

The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.

8. The United Nations Universal Declaration of Human Rights (1948)

The 1990 *Cairo Declaration of Human Rights in Islam* could be seen as an 'Islamic parallel' to the *UN Universal Declaration of Human Rights* of 1948, taking the point of departure in the all-embracing religious Sharia law. The religious anchoring of the Cairo Declaration has of course met opposition and counter-arguments: the universal principles of Human rights cannot be "narrowed down" to the 'Human rights'

described in the Cairo Declaration. There is no way of reconciling these two entirely different spheres of thinking and law-making, the argument goes. What to do? One alternative is to entirely set aside Sharia! Another alternative is to introduce new radical interpretations of Sharia. If the content of Sharia can be redefined or reinterpreted it might come within the realm of compatibility with the general principles of Human right.

The situation as described above provokes some fundamental questions as to the responsibility of the 'worldly power' (the Government) to honour and implement the standards of international law (i. a. the Human rights), which standards 'the worldly power' actually is compelled to implement – and if not, it breaks its commitments following the signature of the respective treaty or convention. The problem must have been about the same for the ancient caliphs, which were competent to decide over 'war and peace' and over all inter-state relations between Islam and 'the other world'. But they lacked the competence to carve out and implement the domestic religious law system – the Sharia law – which competence rested with the 'pious and religious men', the *ulama*. Thus, have we somehow returned to the days of the caliphs and their struggle - and their cooperation – with the *ulama*?

Formalistically speaking there is no doubt that the worldly power (the Government) of a Muslim country is 'in command' over the country's inter-state relations. It is on rare occasions – or not all – that Sharia is invoked by 'Muslim governments' on the level of inter-state relations – or at the level of international law. No 'Muslim government' (but for the theocracy of Iran) is formally invoking Sharia principles from the rostrum of the United Nations or at other international levels. Sharia does not materialise itself at the level of international law. So why bother about it? Why is everybody today talking about Sharia and its principles, in particular as no 'Muslim government' invokes Sharia on the level of international law? I am putting this so bluntly in order – again – to demonstrate the different 'levels', the different 'actors' that are involved in the 'law making process' – these being not only the 'worldly power' but – as always - the "pious and religious men", the interpreters of the religious Sharia law. To put this question is important, because of our aim to reach the right 'target group' in our efforts to establish a 'legal dialogue' between Islam and the West. With whom should we talk? With the Government people? With the *ulama*?

9. Sharia as the prevailing law system

Even if 'Muslim governments' do not invoke Sharia laws on the level of international law, they are all the same compelled to watch, observe and analyse the development of Sharia not least because Sharia exercises a strong appeal on politically active groups, even constituting a threat to the present regimes in power. As said earlier, Sharia has – in spite of all secular laws that were introduced in several Muslim countries during the 19th and 20th centuries – gained considerable force. Some Muslim countries have even proclaimed that the domestic law system is, or will be, the Sharia laws. So called fundamentalists and different opposition groups (political Islam) are openly advocating a return to the Sharia laws, a tendency that even may be supported in general elections should such occur. The circumstances described are such that it seems that 'everybody' is expecting that Sharia soon will prevail in most Muslim states. All secularism will be gone? Sharia is about to be the prevailing religious law system. The question is which effects such a development will have on

the general principles of International law, as defined in the UN Charter and the UN Universal Declaration of Human rights. In theory one could imagine two main alternatives:

- 1) the corpus of International law – including the principles of Human rights – will finally influence the development and the interpretation of the Sharia laws in the direction of the nowadays commonly ‘existing Human rights principles’ – including women’s rights and so forth. The total political and military disaster in Iraq and Palestine may, however, prevent such a desired development.
- 2) the Sharia laws will finally – through the way of customary law – influence and eventually alter the nowadays commonly ‘existing Human rights principles’ – including women’s rights and so forth (compare above the Cairo Declaration on Human Rights in Islam of 1990). This is also – by all means – a realistic alternative to count with – at least in the scenarios and theories that we present here.

10. The implementation of Human rights – monism and dualism

From the conceptual point of view – which is the purpose of my intervention – we must be aware of the fact that rules and obligations contained in treaties and conventions pertaining to ‘Human rights’ always must be transformed from the level of international law to the level of domestic or internal laws, i.e. the local system of internal laws governing all states. The transformation process from international to internal laws is a complicated mechanism about which many learned books have been written – the two main mechanisms for transformation from one level to the other are termed *monism* and *dualism*. One alternative is that the rules of international law – written in conventions and treaties – automatically and directly become part of the domestic law-system (if the constitution of the country allows such a direct adoption of the rules of international law into the internal or domestic law-system).

The other alternative is that the rules of international law are made part of the internal/domestic law system by a special act of legislation, initiated by the government of each state concerned. In this way the rules of international law – including ‘Human rights’ - are introduced through a legislation process, which has to make its way through the political and parliamentary system. When it comes to Muslim countries we must again repeat what was said above: which level is acting as the ‘implementing force’ in this regard? Is it the government or ‘the pious and religious men’ – the *ulama*? It seems that nothing can be done as regards the implementation process without the involvement – in some way or another – of the “religious law makers’ – the *ulama*.

Even if the caliphs of our days – the worldly power – is controlling the level of ‘inter-state relations’ the *ulama* must all the same be brought into the picture when it comes to the transformation of the principles of international law into the domestic or internal law system. More and more it becomes evident that the “religious level” of the Muslim societies – as during the days of the caliphs – play an essential role not only for the development of the internal or domestic law system of each state, but also in the implementation process of already existing rules of international law into the domestic

or internal law system. The conclusion is that also the group of 'pious and religious men' (*ulama*) must be brought into the process of dialogue between 'International law experts' and 'Sharia law experts'.

Above I have underlined the crucial role of the *ulama* for the interpretation of the sacred Sharia law. Obviously it is the interpreters of the rules of the Sharia law that are the crucial personalities in the formation of the future Islamic rules of law, both in its domestic as in its international perspectives. It seems to be the *ulama* of the Muslim world that also will contribute to the shaping – and the changing – of the rules of international law. This follows from the earlier description of the nature of the so called *customary law*, i.e. the *de facto acts* by the members of the Society of States. For this reason it is of great importance for scholars rooted in the 'Western Grotian concept of international law' to meet and discuss with the *ulama* of the Muslim world, to try to institute a Dialogue with them. This should be arranged on a regular level.

11. The role of the ulama in developing the Sharia law

Having said this it is also of the utmost importance for "Western scholars" to have a good knowledge of the Islamic law system, which has its base in the religious Sharia law. Which possibilities exist for the *ulama* of our days to alter or change earlier "bad interpretations" so to say. Or to revise ancient interpretations of the Sharia law that nowadays do not harmonize with the principles of the U N Charter of 1945 and the UN Universal Declaration of Human rights of 1948? By putting these questions we penetrate into the real core of the sacred Sharia law and into the technical processes behind the interpretation of the rules of Sharia. Let us, with all due respect, try to penetrate into the corpus of the Sharia law and see what it contains.

The basis of this judicial order is the Quran which notes down the Prophet's revelations. "O ye who believe! Obey God, and obey the Apostle and those in authority amongst you"; says verse 62 of the Quran's fourth Sura. Those who believe in God shall not only obey him but also the Prophet sent by him and those who exercise power and authority in society. The decree applies to all believers. One of the most important principles of Islam is thereby specified, namely the universality.

The teaching was originally based not on the concept of states in the geographic sense but on an ideological-spiritual community (*umma*), embracing all those who profess Islam. Wherever they are located on this earth they are bound by the principles of the Quran. Here, of course, a collision may be anticipated between the judicial systems, at the civil law level but equally at the level of international law. A judicial and social order claiming to ultimately include all, will come into conflict with other existing orders. The result will be the victory or submission of one of the systems, or in the event of an equal relationship, something that may be termed "peaceful co-existence". In a situation of this nature, the systems will exist side by side in more or less good and peaceful coexistence.

Believers must not only obey God – in the form of his Commandments in the Quran – but also the Prophet, says the fourth Sura. The next mainstay of the Islamic religious and judicial order is thereby given. What the Prophet did and said, "*his model behaviour*" and his "*unspoken approval*" are of almost the same distinction as the Quran itself. Consequently, inflexible and archaic legal principles could be developed

in the light of tradition, albeit primarily only on the basis of the tradition deriving from the Prophet himself. It is this that is called *Sunna*.

12. The Quran, the Sunna and the Hadith

The Prophet's *Sunna* is passed on over time via chains of narration (*isnad*) through the *hadith* texts or the *hadith* literature, i.e. texts that can be traced back to the Prophet's own judgments on specific issues. Beside the divine revelations, later noted down in the Quran, the Prophet took decisions on many practical matters from case to case. Thus, there are instructions from the Prophet on important matters that are not of the same canonical character as the revelations of the Quran. *Sunna*, as it has been passed on through *hadith*, is a form of 'standard conduct' or, as it is sometimes called 'Immitatio Muhammadiis'. Together the *Quran* and *Sunna* are the basis of the sacred law or Sharia, which translated literally means "path to the holy well" or "the pure path we should follow". Just as the Catholic Church is governed by the canon law, Sharia may be described as the Islamic canon law. Sharia may also be described as the sum of God's commandments to guide man's conduct.

The death of the Prophet Mohammed in 632 (C. E.) deprived the tribes not only of God's revelations but also of the practical guidance the Prophet had been able to give his followers during his lifetime. The holy commandments of the Quran could not be changed or supplemented since they were sacred and canonical. The issue of divine laws ended with the Prophet's death. The special union between God and his Prophet had come to an end. Although the congregation sought guidance in the *Quran* and *Sunna*, it was not enough. As Islamic world domination grew – through the conquests of the successful caliphs – new problems arose, for which neither the Quran nor the Sunna provided a solution. These had been adapted to the conditions of Arab tribes, where the coming of "modern times" was not envisaged.

After the Prophet's death it was his successors – particularly the early caliphs Abu Bakr, Umar, Uthman and Ali ibn Abi Taleb – who in consultation with the Prophet's followers gave believers continued guidelines. Bearing in mind the short time that had passed since the Prophet's death, there was only the Quran and the Prophet's statements to rest on at this time. This narrow basis for interpretation soon led to a need for the caliphs to expand the interpretations beyond the meaning that the Quran and the Prophet's own statements had originally had. The successors of the Prophet governed an increasingly large and more complex area, including conquered peoples. Therefore they were forced to issue their own laws and ordinances. It has been said that the early caliphs of Islam were not shy of amending the original commandments or even of claiming that their own decrees derived from the Prophet himself. It is said that Abu Bakr (632-634 C.E.) tried to follow the example of the Prophet, but that Uthman (644-655 C.E.) attempted to intervene and change the Prophet's original message, possibly as a result of the foreign influences he was exposed to in connection with the conquest of Iraq, Syria and Egypt. In literature, the Jewish legal influence that had an impact on early Islamic law is also indicated.

13. The Sunni and Shia

The fourth caliph *Ali ibn Abi Taleb* – the cousin of the Prophet and also married to the Prophet's daughter Fatima – was assassinated in 661 (CE) by a Muslim extremist.

He was mourned by Sunnis and Shiis alike. For the Shiis Ali is regarded as the First Iman (or leader) – after the death of his relative and father-in-law the Prophet. Consequently the Shiis do not recognise the three preceding caliphs Abu Bakr, Umar and Uthman as legitimate successors of the Prophet. The caliphate should have gone to the descendants of the Prophet. After the death of Ali in 661 his rival *Moawiyah ibn Abi Sufian* seized the caliphate throne and established the Umayyad caliphate based in Damascus. It was Hussein, the son of Ali, who was slaughtered in Kerbala in 680 by the Umayyad caliph Yazid, the successor of Moawiyah. Thereafter the myth and cult in honour of Hussein developed.

Since the centre of power moved to Damascus, the legal scholars in Medina found themselves distanced from influence over the powers that now came to govern the Islamic society. Instead, the scholars wrote expositions on true Islamic law, starting from the Quran, the Prophet's statements and the followers' recommendations. The view was that if the Prophet's contemporary followers held the same interpretation of a rule, this gave it special authority. All this was recorded in chronicles of traditions and the results were often placed in the Prophet's own mouth – without real confirmation however. At this time, there were no scientific resources to verify that the sources of a certain conception of justice really were in the Prophet's *Sunna*.

In the early 8th century this rather imprecise method came in for criticism. Legal theorists criticised the jurists who were responsible for the formulation and implementation of new legal rules for implanting too many "human and foreign elements" in the law that was expected to have its roots in the unchanging Quran and the Prophet's *Sunna*. The sacred law was disappearing in society's mainly non-religious legislation. It had to be stopped.

New theories and new systems had to be created to preserve the sacred character of Shariah law. The legal scholars tried to give believers more substantial guidance by building up a more systematic scientific apparatus around *hadith*. It would be through true and realistic *hadith* research that the Prophet's real *sunna* could be brought to the congregation with their thirst for knowledge. The Hadith discipline is called *ilm al-hadith*. Through different chains of narration (*isnad*) the scholars found their way step by step back to the Prophet himself. It was important that each chain could be authoritatively substantiated. The scholars built on the statements on authenticity of previous scholars in a specific chain. Was it possible to go back to the Prophet himself, or did they have to be satisfied with one of the early caliphs or followers as the source – who in their turn may have witnessed the Prophet's judgment of a specific matter?

14. Ilm al-hadith and usul al-fiqh

Alongside this scientifically conditioned build-up of tradition, the scholars turned increasingly for guidance to their own *reason* and *common sense* (*ray*). They tried to find the true interpretation of Sharia with the aid of their own view of what was right – where naturally the lodestar was what was in the Quran and *Sunna*. Human intelligence was to be used in the service of interpretation. It was not a matter of slavishly following the formal chains of narration back to the Prophet

During the 8th century – alongside the emergence of *ilm al-hadith* – a profound Islamic legal jurisprudence called *fiqh* or *usul al-fiqh* developed. The word *usul* means “roots” or “principles” and *fiqh* means “intelligence”, “knowledge”, “jurisprudence” or “science”. Here, a system is carved out that transforms the law into a purely scientific discipline. Just as legal jurisprudence pertaining to Roman law sought to find the roots and legal truths of Roman law, *fiqh* had the task of discovering the roots and truths of Sharia by means of different methods of interpretation.

Usul al-fiqh could be more closely defined as the methodology of Islamic jurisprudence, by means of which the interpreters of Islam would achieve the establishment of *universal legal standards*. Under Shariah, man’s whole conduct is governed by these legal standards. As may be seen, *ilm al-hadith* emerged in parallel with *usul al-fiqh*, which originally gave rise to rivalry between the “historic/traditional” and the “rational” schools. One of the schools arrived at the truth by historical research backwards in time (how true and authentic were the chains of narration), while the other school arrived at the truth by several different rational and logical methods of interpreting the Quran and Sunna. Thus, human intelligence helped to interpret the law. Naturally, the basic antagonisms that emerged in Islamic law can already be anticipated here, namely on the one hand rigidity, constance and invariability and, on the other, a brilliantly intelligent passing on of the message of the Quran and Sunna – observing society’s continually growing demand for new adequate guidance.

15. Methodology and mechanisms of Sharia interpretation

Here must be mentioned one of the great legal theorists of Islamic jurisprudence, *Abdullah Muhammed ibn Idris al-Shafii* (767-820 CE), who was not only the founder of his own school of law, the *Shafii school*, but also made use of *usul al-fiqh*. In his book, *Risala (Al Oum)*, Shafii integrates the traditional method of interpretation of his time (*hadith*) with independent conclusions governed by personal intellect on the formulation and meaning of the legal rules (*fiqh*). The four law sources which are usually sorted under *usul al-fiqh* are 1) *the Quran* 2) *Sunna* 3) *Ijma* and 4) *Kiyas*. It is on the basis of these the true legal rules should materialise. Using their own intelligence, wise judgement and general knowledge of the Quran and Sunna, the jurists must reason their way to good decisions. Since the Prophet’s *Sunna* is laid down through *hadith*, that is to say the chain of narration backwards in time, this means that *hadith* is also used in *usul al-fiq*. To be able to establish *Sunna* the jurist must read the *hadith* texts or *hadith* literature carefully. Integration between the more literal review of the chain of narration backwards in time and the more dynamic interpretation for the present day is achieved in this way.

Shafi defines *Sunna* as the Prophet’s own application. He defines *ijma* as the view embraced by a majority of all Muslims. Sometimes this “majority view” is called *vox populi*. He places “the general interest of the community” (called *Al-Maslaha Al Morsala*) as an independent source for the elaboration of new rules. However, there may be recourse to these secondary law sources in cases where neither the Quran nor Sunna provides guidance. Although it may not be said that Shafi invented *kiyas* – that is to say the method of arriving at a conclusion by means of analogy – he further developed this process of interpretation and used it diligently. The concept *kiyas* was

similar to the interpretation processes known as *ijtihad* and *ray* (a form of subjective opinion), where the interpreter simply uses his own intelligence in drawing conclusions. However, interpreters more faithful to the Quran warned against these methods. How do you know the interpreter's own intelligence really reflects a true interpretation of the Quran and Sunna?

It must be stressed that interpretation of the law differed between the two main branches of Islam – *Sunnism and Shiism*. As indicated above the split between the branches dates to the death in 661 of the fourth caliph *Ali Ibn Abi Taleb*, after which the Umayyad caliphate in Damascus was established by his rival *Moawiyah ibn Abi Sufian*. The view of the Shiis is that the legitimate caliphate should have gone to Ali and his descendants, being the grand children of the Prophet himself. The underlying idea is that the legitimacy of power – including the right fully to interpret the sacred Sharia law – has a quasi-religious character requiring to be preserved to persons having such selective hereditary privileges.

16. The Sunni Law Schools

In the Sunni branch there are four main schools of law (*madhhab*), named after their founder (*mujtahid*): Abu Hanifa (*Hanafi school*), Malik ibn Anas (*Maliki school*), Muhammed ibn al-Shafii (*Shafii school*) and Ahmed ibn Hanbal (*Hanbali school*). The different schools of interpretation often gave importance to a type of legal reasoning that became characteristic of that particular school of law.⁵

It was through interpretation processes such as *ijma*, *ijtihad* and *ray* (to mention just a few) that the rational schools of law wanted to control the contents and meaning of Sharia. What do these terms mean? It was mentioned above that Shafii interpreted *ijma* as the common opinion of the Islamic community, a form of collective awareness of the contents of the law (“*the true path of the believers*” or sometimes *vox populi*). But there is also another more limited interpretation of the concept of *ijma*. The word in itself means roughly “*agree on*”. Hence, there must be a *consensus* about the contents of the law. But the question is then – consensus among whom? The answer is – consensus among the jurists (*mujtahid*) and the interpreters (*mufti, ulama*) who on grounds of their knowledge possess the right to formulate an authoritative interpretation of the correct meaning of the law (*fatwa*), a legal opinion. This does not take place through centralized councils and synods, but in an unorganised manner by each of the many interpreters that nowadays operate in the Islamic world. The role played by the regime in Muslim states in the context of *fatwa* should not be forgotten. Obviously, the *ijma* mechanism has a great potential to renew the Islamic law – should the Islamic community go so far as to unite around a specific interpretation of a specific matter – in accordance with the maxim “my people can never be wrong”. If the *vox populi* (or *Al-Maslaha Al Morsala*) expresses itself loud and clear – this can not be considered wrong!

The interpretation mechanism named *ijtihad* means that the interpreter challenges his own intellect to the utmost in order to arrive, on the basis of all the facts, at a correct

⁵ Abu Hanifa 699-767 CE, founded his school in Baghdad. Malek ibn Anas 713-795 CE, founded his school in Hijaz, which then flourished in the Arabian peninsula. Iman Abdullah Mohammed ibn Idris al-Shaafi 767-810 CE, founded his school in Baghdad. Ahmed ibn Hanbal 780-855 CE, adhered strictly to the Quran and the Prophet's sunna.

and true interpretation of how a specific matter should be legally judged. In this context a conclusion by analogy according to the *kiyas* principle can be used. The analogies must be taken from the Quran and Sunna. There are many other interpretation mechanisms such as 'arguments of necessity' which we cannot go into in detail here.

17. The law making process in modern Islam

The rational and dynamic interpretation processes came in time to be thinned out, and during the 10th century, or even later, Sharia became increasingly stuck in static formalism. "One of the most creative and brilliant epochs of all intellectual history came to a sudden end", Fazlur Rahman, a Pakistani expert on Islamic law, establishes. Hence, the originally vibrant legal tradition, represented by the different schools of law, became in rigid form part of the orthodox legal materia. The interpretation work that had been carried out thus far was incorporated into Sharia and changes were in principle not considered possible after that.

How are the requirements of modern society to be reconciled with the sacred and rather static Sharia law? There is a great deal that is crucial in this question. Some Muslim countries, particularly those which were influenced during the 1960s and 1970s by Socialist and Marxist theories, tried to break with the Sharia law, as once the secularised state Turkey did. However, overly radical attempts in the direction of secularisation often aroused genuine resistance among the population, which adhered to the traditional Sharia law rules. It could be said that the attempts made have merely provoked fundamentalist views. The forces for modernisation that would like to see a revision of the Islamic legal system are therefore obliged to stress that what they aspire to is not a total secularisation but a revision of the interpretation of Islamic law.

In modern legislation in Muslim countries, it can, therefore, be seen how secularised factors have been intertwined with the religious Sharia law. The legislator has considered himself allowed to choose fairly freely from among the interpretations of the meaning of the sacred law of the various schools of law. Rational methods of interpretation (like reasoning on the basis of interest and necessity) seem to be allowed to fill an important function when new laws are created.

18. Interpretation mechanisms as *ijma*, *ijtihad* and *kiyas*

Since processes such as *ijma*, *ijtihad* and *kiyas* have played a vital role for the interpretation of Sharia since at least the 8th century, they continue to live on in their own right. Although the legal substance in time was caught in formalism and even scholasticism, the idea of dynamic interpretation processes has been kept alive over the centuries. Many jurists have wished to reintroduce them and give them a new active life in the development of Islamic law. Undesirable results and traditions that are difficult to grasp in the "modern world" could be rectified. The law could be developed. This reasoning reaches, however, the innermost core of the Islamic religion, where religion and law are intimately intertwined. Many consider this would mean a break with much of the sacred nature of the Islamic law.

A question I have repeated to experts in Islamic law is to what extent the ancient mechanisms for interpretation of the Sharia law are still in force. Is the door to these mechanisms of interpretation still open? Or has the door closed forever on these more dynamic interpretation processes? Is it permitted today to fully use the mechanisms of *ijma*, *ijtihad* and *kiyas* (to mention just a few) in order to thereby arrive at an authoritative “new interpretation” of the principles of Sharia law? Can the authorised interpreters of Sharia law, through this type of classical interpretation, adapt the ancient principles of Sharia law to today’s world, not least in the field of International law and Human rights? Is it possible – I have asked – to “redefine” or “clarify” the ancient concepts – to bring them in harmony with present day international law?

Again we have arrived at the door of international law! The most unfortunate thing is that the Islamic law system was not really present when the forceful colonial European powers (the so called *European Concert*) during the 17th and 18th centuries developed the so called “modern international law” or the Grotian International law. At the time Islam was not any longer in a position to exercise influence on the foundation of the “modern international law”. By virtue of its military and colonial strength the “European Concert” established its own rules. The European states decided how to behave towards one another. The “modern international” law was – as said earlier – created within the European framework.⁶

19. The survival of International law – the need of Dialogue

Our days have to take a more multi faceted picture into consideration than existed some hundred years ago, when the foundation was laid to the “modern international law”. The society of states, some 195 states, is now, at long last, universal. Different social, political and legal systems have to coexist. Different historical, religious and cultural systems must interweave with one another. But to be able to do this, all different regions and systems must penetrate deeper into one another’s thinking and traditions. A better understanding of the specific systems will help us to preserve good order and peace.

It goes without saying that Occident must learn more about the ancient law systems of other regions, like the Sharia law of Islam. As it also goes without saying that the interpreters of the Sharia law – the *ulama* – must understand the worry that is created among “Westerners” when words like *Sharia* and *Jihad* are heard! Is the peaceful coexistence broken, they ask themselves? This is the reason why we must promote the idea of Dialogue between international lawyers and religious experts with the

⁶ In time the political and military strength of Islam weakened. The Islamic expansion came to an end. As the Ottoman Empire during the 16th century grew weaker, the Sultans-Caliphs had to abandon their absolute Sharia law principles pertaining to “inter-state relations”. In order to keep the empire together, they were more or less forced to accept dictates from the Christian kings, e.g. in the treaty signed in 1535 (revised 1740) between the Sultan Suleiman I and the French king. In other words, it became impossible for the Islamic rulers fully to apply the *jihad* doctrine. *Dar-al Mukhalifeen* or *dar-al Harb* became the permanent neighbour, a state of affairs that had to be accepted as a fact. The *jihad* doctrine was however not abandoned. This was impossible since it was rooted in the Shariah law. But in the light of reality it was reinterpreted. Already Shafii doubted that Islam could maintain a permanent polarisation between *dar-al Islam* and *dar-al Harb*, based on the *jihad* dogma. This would lead to an eternal and permanent state of war between Islam and surrounding countries. This would be detrimental to Islam. The development showed that Islam could coexist under peaceful conditions with other countries. Thus it was proved already during the 16th century that the upholding of the *jihad* principle was not vital for Islam. Instead an interesting normative development took place in the Islamic legal doctrine in the direction of a *de facto* peaceful coexistence with other nations.

purpose to detect common denominators in international law. Each nation, each region, must be able to detect factors from its own cultural and legal system in the present day corpus of international law. Only so can the rules of international law gain universal applicability and strength to withstand different kinds of attacks. If all states feel familiar with the legal order – and recognise it – it will be strong enough to guide the world community through crises of different kinds – as also to improve the Human rights and the implementation of these rights.

Only through the way of 'Dialogue' can the rules of international law survive the present hostile circumstances in the world, characterized by violence and terror. It is our duty – as international scholars – to contribute to the survival of the universal international law, that is to say rules that are hailed and respected by all nations of the world. The international law is called *ius gentium*, the law of the peoples, the law of the nations, that is to say all nations. Each sovereign nation has a role to play in the shaping and upholding of the rules of international law. This is not an exclusive matter for a few influential powers, but for the whole Society of Nations. It is not least an extremely important task for the Muslim countries to play an active role in this regard. To be active in the field of international law, to try to take advantage of the arguments of international law – not least in relation to the perpetual crisis between Palestine and Israel, the root of the crisis of today.

APPENDIX 1

THE MIDDLE EAST ASSOCIATION FOR INTERNATIONAL LAW / JORDAN UNIVERSITY, AMMAN Professor of International Law, Jur. Dr. Bo Theutenberg

THE STRUCTURE OF INTERNATIONAL LAW

1. The Theory and history of international law

- 1.1 A presentation of the nature of international law
 - Why an international law?
 - Do we need an international law?
 - Reciprocity and reciprocal limitations
 - Common treatment and standards
 - Continuing practical utility of international law
 - Practical to follow similar rules and standards
 - Common Standards for Trade, Banking and other Cooperation
 - To uphold Peace and Order
 - To stop or limit misuse of power
- 1.2 The history of the development of international law
 - 1.2.1. Tribes and kings began to interact with each other
 - 1.2.2. Existence of ancient Treaties - approx 2 400 BCE a Treaty of friendship between the kingdoms of Ebla and Hamazi (present day Syria and Jordan). The eldest treaty known in "international law". Another treaty concerning the borders of the province of Canaan dated 1284 BCE between Pharaoh Ramses II and the King of the Hethites Hattusili III.
 - 1.2.3. The Eurocentric international develops during the 17th century with names like Hugo Grotius and Samuel Pufendorf
 - 1.2.4. After the 30-year-war and the Peace Treaty of Westphalia 1648 national and sovereign independent states appear in Europe – the notion of Sovereignty and the inviolability of the
 - 1.2.5 Notions of international law contained in the sharia-law: dar al Islam, dar al harb and the interpretation of jihad

2. The sources of international law

2.1 Treaties, Agreements and Conventions (Treaty Law)

Multilateral and bilateral treaties

Pacta sunt servanda (treaties should be honoured)

The Vienna Convention on the Law of Treaties 1969

Every state possesses capacity to conclude Treaties

Like a civil contract with binding signatures

The effect of Treaties - binding on the signatories

Amendment, Invalidity and Termination of Treaties

Clausa Rebus sic stantibus (change of circumstances as reason to terminate a Treaty, the existence of those circumstances constituting an essential base for the Treaty and where the change could not be foreseen by the Parties when concluding the Treaty).

Obsolete Treaties and changes through Customary Law

2.2. Customs and Customary law

General practice among states accepted as law

Opinio juris et necessitatis (the sense of a legal obligation to act in a certain way)

2.3. General principles of law recognised by civilized nations

Jus cogens (certain fundamental and overriding principles)

2.4 Judicial decisions

2.4.1. Decisions of International Tribunals, foremost the International Court of Justice and its predecessor The Permanent Court of International Justice

Art 38.1: 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.

2.4.2. Decision by other Tribunals and Courts

Arbitral Tribunals

Ad hoc International Tribunals

Decisions of the Court of Justice of the European Communities

2.5. The doctrine of international law or the Writings of Publicists

3. The relationship between international law and municipal law

Monism and Dualism (how to transform international law into the domestic law system?)

4. The Subjects of international law – the notion of Sovereignty

The Subjects of international law: the States and other subjects of international law

Terra nullius: occupation of territory.

The notion of Sovereignty

Frontiers and the inviolability of State frontiers

The protection in international law of the State sovereignty

The recent “individualization” of the international law

5. The State Territory

5.1 The Land Territory: frontier and border lines.

The importance of historic factors behind frontiers

Provisional and temporal border lines (example: Israel – Palestine)

Historic Claims – the position of international law

5.2. The Sea Territory and the development of the Law of the Sea

The High Seas (the freedoms of the High Seas)

The Territorial Sea (3 – 4 – 12 miles-limit)

The Exclusive Economic Zone (EEZ)

The Continental Shelf

The Law of the Sea Convention of 1982

International Straits

Rights of Passage

5.3. The Air Territory

Sovereignty and rights of passage

Civilian aircrafts

Military and State owned Aircrafts

The extension of the Air Territory towards space

6. State Cooperation - the development of the United Nations system

6.1 The historic development of a system of State Cooperation for the maintenance of Peace and Order in the World

The old right of self-preservation and the old right of intervention

Different kinds of ancient structures of cooperation: Empires, Alliances, Armed Leagues of Nations, the Vienna Congress 1815 after the European Napoleonic Wars. New frontiers and nations.

The League of Nations formed 1919 – at the Versailles Peace Conference after the First World War (The German, Austrian and Ottoman Empires lost the War and broke down. The Ottoman-Turkish Caliphate breaks down – formally 1924. The title of Caliph disappears. Proliferation of “Islamic countries” after the fall of the Caliphate.

1928 the appearance of the Briand-Kellogg Pact, by which the nations renounce all kinds of violence for solving international disputes

The breaking out of the Second World War 1939 and the consequences for the development of international law.

The importance of the Nürnberg Principles for the individual Responsibility for Atrocities and War Crimes

6.2 The establishment in 1945 of the United Nations after the Second World War

The nature and the system of the United Nations Charter of 1945

The prohibition of the use of force to solve international Conflicts. Article 2 of the U N Charter.

The principle of the Collective Responsibility of the Member-States.

The undertakings and the responsibility of the Member-States of the U N. Can Members ignore the U N Charter?

Difference between decisions taken under Chapter VI and Chapter VII of the U N Charter

The different bodies of the United Nations

The Security Council, its construction and functions – the Veto Power

The General Assembly, its construction and functions

Other bodies and the U N Specialized Agencies

Resolutions adopted by the bodies of the United Nation (the Difference between a Security Council Resolution and a General Assembly Resolution).

6.3. The right of Self Defence in accordance with Article 51 of the U N Charter

The interpretation of Article 51 of the U N Charter.

The difference between “the Right of Self-Preservation” and “the Right of Self-Defence”.

The notions of “armed attack”, “anticipated self-defence” and “preemptive strikes”.

Decisions of the Security Council in accordance with Chapter VII (compulsory provisions).

7. The International Human Rights Law

7.1. The Nürnberg Trials after World War II and the development of a Universal Human Rights Law

- a) Crimes against Peace (unlawful aggression and wars)
- b) War Crimes (violations against civilian population)
- c) Crimes against Humanity (inhuman acts against civilians)

7.2 Conventions and Treaties on Human Rights

The United Nations Universal Declaration of Human Rights 1948
(a declaration not legally binding)

The European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome 4 November 1950
(With an enforcement machinery to uphold the rules of the Convention;
The European Court of Human Rights in Strasbourg)

Convention on the Prevention and Punishment of the Crime of Genocide (1948)

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

International Covenant on Civil and Political Rights (1966)

International Covenant on Economic, Social and Cultural Rights (1966)

Convention on the Elimination of All Forms of Discrimination against Women (1979)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

Convention on the Rights of the Child (1989)

8. The Laws of War and the Humanitarian Laws of War

8.1. The development of the Laws of War

8.2. Conventions and international instruments

8.2.1 The Hague Conventions of 1907

- a) Convention (IV) respecting the Laws and Customs of War at Land
- b) Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land
- c) Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War
- d) Convention for the Protection of the Cultural Property in the Event of Armed Conflict (Hague 1954)

8.2.2. The Geneva Conventions of 1949

- a) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (August 12, 1949)
- b) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of Armed Forces at Sea (August 12, 1949)
- c) Geneva Convention Relative to the Treatment of Prisoners of War (August 12, 1949)
- d) Geneva Convention Relative to the Protection of Civilian persons in Time of War (August 12, 1949)
- e) Additional Protocol 1 relating to the Protection of Victims of International Armed Conflicts (1977)
- f) Additional protocol 2 relating to the Protection of Victims of Non-International Armed Conflicts (1977)

9. The Laws of Diplomacy

The Vienna Convention 1961 on Diplomatic Relations

The Vienna Convention 1963 in Consular Relations

Privileges and immunities

Embassies and Consulates

10. International Environmental Law

11. International Trade Law

**12. The Law System of the EU - the European Union
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13. Arbitration and Conflict Solution

14. International Organisations

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APPENDIX 2

UNIVERSAL DECLARATION OF HUMAN RIGHTS

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore,

THE GENERAL ASSEMBLY

proclaims

THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

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.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote

understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

APPENDIX 3

Organization of the Islamic
Conference



منظمة المؤتمر الإسلامي

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THE CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM

The Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), held in Cairo, Arab Republic of Egypt, from 9-14 Muharram 1411H (31 July to 5 August 1990),

Keenly aware of the place of mankind in Islam as vicegerent of Allah on Earth;

Recognizing the importance of issuing a Document on Human Rights in Islam that will serve as a guide for Member States in all aspects of life;

Having examined the stages through which the preparation of this draft Document has, so far, passed and the relevant report of the Secretary General;

Having examined the Report of the Meeting of the Committee of Legal Experts held in Tehran from 26 to 28 December, 1989;

1- Agrees to issue the Cairo Declaration on Human Rights in Islam which will serve as a general guidance for Member States in the field of human rights.

ANNEX TO RES. NO. 49/19-P

THE CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM

The Member States of the Organization of the Islamic Conference,

Reaffirming the civilizing and historical role of the Islamic Ummah which God made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith; and the role that this Ummah should play to guide a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this materialistic civilization.

Wishing to contribute to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization and of a self motivating force to guard its rights;

Believing that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in the Revealed Books of God and were sent through the last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin, and accordingly every person is individually responsible - and the Ummah collectively responsible - for their safeguard.

Proceeding from the above-mentioned principles,

Declare the following:

ARTICLE I:

(a) All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the

grounds of race, color, language, sex, religious belief, political affiliation, social status or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection.

(b) All human beings are God's subjects, and the most loved by Him are those who are most useful to the rest of His subjects, and no one has superiority over another except on the basis of piety and good deeds.

ARTICLE 2:

(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 Sharia-prescribed reason.

ARTICLE 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 man, 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.

ARTICLE 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.

ARTICLE 5:

(a) The family is the foundation of society, and marriage is the basis of its formation. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from enjoying this right.

(b) Society and the State shall remove all obstacles to marriage and shall facilitate marital procedure. They shall ensure family protection and welfare.

ARTICLE 6:

(a) Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.

(b) The husband is responsible for the support and welfare of the family.

ARTICLE 7:

(a) As of the moment of birth, every child has rights due from the parents, society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be protected and accorded special care.

(b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari'ah

(c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the Shari'ah.

ARTICLE 8:

Every human being has the right to enjoy his legal capacity in terms of both obligation and commitment, should this capacity be lost or impaired, he shall be represented by his guardian.

ARTICLE 9:

(a) The question 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.

ARTICLE 10:

Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism.

ARTICLE 11:

(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.

ARTICLE 12:

Every man shall have the right, within the framework of Shari'ah, to free movement and to select his place of residence whether inside or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Shari'ah regards as a crime.

ARTICLE 13:

Work is a right guaranteed by the State and Society for each person able to work. Everyone shall be free to choose the work that suits him best and which serves his interests and those of society. The employee shall have the right to safety and security as well as to all other social guarantees. He may neither be assigned work beyond his capacity nor be subjected to compulsion or exploited or harmed in any way. He shall be entitled - without any discrimination between males and females - to fair wages for his work without delay, as well as to the holidays allowances and promotions which he deserves. For his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.

ARTICLE 14:

Everyone shall have the right to legitimate gains without monopolization, deceit or harm to oneself or to others. Usury (riba) is absolutely prohibited.

ARTICLE 15

(a) Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership, without prejudice to oneself, others or to society in general. Expropriation is not permissible except for the requirements of public interest and upon payment of immediate and fair compensation.

(b) Confiscation and seizure of property is prohibited except for a necessity dictated by law.

ARTICLE 16:

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical production and the right to protect the moral and material interests stemming therefrom, provided that such production is not contrary to the principles of Shari'ah.

ARTICLE 17:

(a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, an environment that would foster his self-development and it is incumbent upon the State and society in general to afford that right.

(b) Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources.

(c) The State shall ensure the right of the individual to a decent living which will enable him to meet all his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.

ARTICLE 18:

(a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honor and his property.

(b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.

(c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

ARTICLE 19:

(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.

ARTICLE 20:

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of humiliation, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experimentation without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

ARTICLE 21:

Taking hostages under any form or for any purpose is expressly forbidden.

ARTICLE 22:

(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.

(b) Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah

(c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.

(d) It is not permitted to arouse nationalistic or doctrinal hatred or to do anything that may be an incitement to any form or racial discrimination.

ARTICLE 23:

(a) Authority is a trust; and abuse or malicious exploitation thereof is absolutely prohibited, so that fundamental human rights may be guaranteed.

(b) Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs. He shall also have the right to assume public office in accordance with the provisions of Shari'ah.

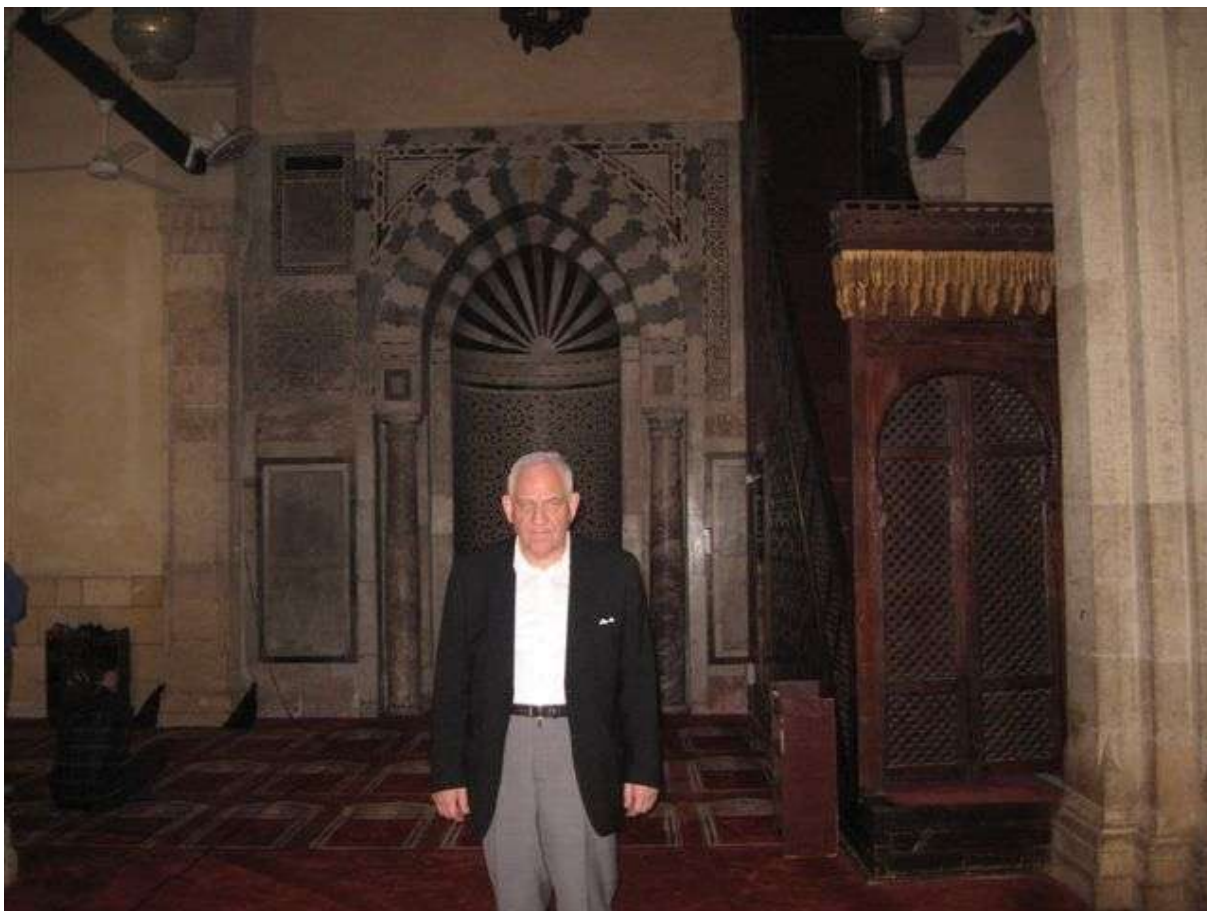
ARTICLE 24:

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

ARTICLE 25:

The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.





Pictures from my visit in November 2006 to the Law Faculty of the famous Al Azhar University in Cairo, the foremost interpretation center of Sunni Islam. The purpose of this visit was the planning of forthcoming meetings and seminars on the topic “the Dialogue with Islam”. The last picture is taken inside the Al Azhar Mosque.

My first visit to the Al Azhar University took place in April 1980, when I visited the university in my capacity as the Chief Legal Adviser of the Swedish Foreign Ministry with the purpose to learn more about the Sharia Law and the interpretation process behind this law system. Since then I have advocated the line of “Dialogue with Islam”.