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CHAPTER EIGHT

HUMAN RIGHTS LAW

1. INTRODUCTION

The subject of human rights is today one of the most motivated and significant subjects of public international law. The subject has, commonly speaking, been developed for the protection of the fundamental rights of individuals in different situations after the establishment of the United Nations Organization. It is on this ground that the Declaration of Human Rights of 1948 constitutes the basic and the most anticipated instrument in the field of human rights in the system of international law.

Islamic international law does not have, however, a separate body like the public international law denoting its human rights law. Contrary to international law, human rights in Islamic international law can be found in every rule of Islamic law which has some connection with social and ethical relations. It is for this reason that although the human rights law in public international law constitutes an integral part of its system, it is almost entirely a separate body of innovated principles gathering the rights of individuals in their social conducts. Human rights in Islamic international law are, however, not an innovation.¹ They are rather a fact which exists within its sources and have today been collected and formulated in a separate international document as the public international law.

In this chapter, we will deal with the norms of the Islamic human rights law constituting an inseparable body of Islamic law since its revelation in AD 610. Some of the most basic provisions of Islamic human rights law are analysed in individual sections in order to express the importance of the relevant principles of the law and emphasize that the human rights law exists in Islam, although these rights have been strongly violated by many Islamic States.

¹ But, this does not necessarily mean that human rights are respected within Islamic nations.

2. HUMAN RIGHTS IN INTERNATIONAL LAW

The creation and development of the principles of human rights in the system of international law are basically the result of the criminal events of the Second World War, especially against the Jewish population of Europe. They were, widely and systematically, raped, tortured, degraded, humiliated, killed and genocided by the new and old generation of Europeans, who, in one way or another, assisted the network of Nazism. The consequence of which was claimed by writers to be the soft or hard Holocaust.² Whether it was the annihilation of a million or millions, it confirmed the extreme race and religious hatred in Europe. The Holocaust would never have been completed without the direct or indirect complicity of a considerable number of European States.³

These maltreatments were partly brought before the jurisdiction of International Military Tribunal in Nuremberg. This is because a large number of people were not prosecuted and punished because they were sheltered by the provisions of the constitution of their home state. There are still lists of names which have not been permitted to be released and are probably top secret. Another aspiration was the formulation of the declaration of human rights. Although the 1948 Declaration of Human Rights is not a law-making treaty, its principles are considered an integral part of international customary law. It is upon the development of the principles of this Declaration that many other direct or indirect international criminal conventions have been regulated under the authority of the United Nations Organization. The most illustrative examples are the 1948 Convention on Genocide, the 1949 Geneva Conventions on the law of armed conflicts, the 1952 Protocol relevant to the 1926 Convention on Slavery, the 1956 Supplementary Convention on the Abolition of Slavery, the Slave trade, and the Institutions and Practices Similar to Slavery, the 1973 Convention on Apartheid, the 1975 Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1977 Protocols addition to the four Geneva Conventions of 1948, the

² This is because some historians have presented another view of the Second World War. See David Irving, Arthur Butz, Ernst Zündel, and Robert Faurisson. For instance consult Arthur R. Butz, *The Hoax of the Twentieth Century: A Case Against the Presumed Extermination of Europe Jewry* (2003).

³ Many original documents are still an integral part of the secret archive of some of the European States.

1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴ and, the 1991 Convention on the Rights of the Child.

All these documents in the field of international human rights represent certain core principles necessary for the security and well being of social structure. Some of them deal especially with those consolidated principles of criminal jurisdiction which should be respected by all legislations. They have not only emphasised the rights of every individual to security and liberty, but also, the fact that all rights integrated in the documents are applied to everyone without distinction to race, colour, sex, language, religion, political or other ethnic background.⁵ Furthermore, they guarantee that no one shall be subjected to arbitrary arrest, detention, exile or retroactive law.⁶ This also means that '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.'⁷

The essence of all these documents in the field of international human rights is that they guarantee certain rights for all and these rights are granted to all irrespective of social or racial status. As we have demonstrated elsewhere, the rights provided by the system of the international human rights law are strongly protected by the provisions of the system of international criminal law. In particular, a number of international criminal conventions are regulated to prevent and prohibit the commission of certain crimes in the national and international conduct

⁴ For a brief examination of most of these conventions see the relevant chapters. Generally speaking, certain principles of the system of international human rights have the effect of customary rules of international law and should therefore be respected in the national and international relations of individuals, groups, governments or states. Some other instruments on human rights are the 1953 Convention on the Political Rights of Women, the 1960 Declaration on the Granting of Independence to Colonial countries and People, the 1966 International Covenant on Economic, Social, and Cultural Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, the 1975 Declaration on Protection from Torture, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1989 United Nations Convention on the Rights of the Child and a number of other international instruments contributed by the International Labour Organization and other international bodies on the principles of human rights.

⁵ Article 2 of the 1948 Universal Declaration of Human Rights.

⁶ *Id.*, Articles 9 and 11.

⁷ *Id.*, Article 10.

of governments or states.⁸ However, we cannot deny the fact that the provisions of the documents on international human rights and the relevant international criminal conventions have often been violated in the official and unofficial conduct of states.⁹ These violations have occurred under the jurisdiction of most states and must be analysed in other volumes.

3. HUMAN RIGHTS IN ISLAMIC INTERNATIONAL LAW

3.1. *Basis*

The whole notion of the Islamic philosophy of jurisdiction rests on the creation and the establishment of a universal or international standard of equality between all races irrespective of any distinction based on race, colour, sex, language, religion, political, economy, or any other ethnical background.¹⁰ Islamic law encourages all men to enter into the Islamic sovereignty of God and understand their ethical duties towards the divine law. Islamic philosophy, contrary to what it is understood by some societies, does not compel a person to enter into its religious or legal region. Such pressure would be contrary to the law of God and is therefore basically prohibited. Islam 'prohibits all compulsion in the matter of religious beliefs; . . . Islam is under the self-imposed religious dogmatic duty of giving autonomy to non-Muslims residing on the soil of the Islamic State.' Furthermore the 'Qur'ān, the *Hadith* and the

⁸ See the first paragraph of this section. See *also* appendix on the Arab Charter.

⁹ As with Islamic international criminal law, many international crimes in the system of international criminal law are today considered crimes against humanity and a number of resolutions of the General Assembly denote this fact. Moreover, an analysis of the system of international criminal law demonstrates that within the system, most crimes including war crimes have, on many occasions, been considered crimes against humanity and this was especially proven by the procedures of the Nuremberg Tribunal, which had great difficulty in distinguishing between war crimes and crimes against humanity as specified in its constitution.

¹⁰ It cannot be denied however that classical Islamic law has distinguished between Muslim and non-Muslim residents under the territorial jurisdiction of Islamic states. This has, historically, occurred for several important reasons, *inter alia* the superiority of divine law and to guarantee the security of the Islamic state against any internal and external intervention. This practice of classical Islamic internal law must be seen from a political perspective, during a time in which all religions were rivals in order to control the political power of a sovereign state(s). One must, however, emphasize that according to Islamic international law, 'the Muslims and non-Muslims are equal (sawa)'. *Publications of Centre Culturel Islamique—Introduction to Islam*, p. 94.

practice of all time demand that non-Muslims should have their own laws, administered in their own tribunals by their own judges, without any interference on the part of the Muslim authorities, whether it be in religious matters or social.¹¹ It is therefore stated that 'Not a single instance can be quoted to show that the Holy Prophet ever brought the pressure of the sword to bear on *one individual, let alone a whole nation*, to embrace Islam. What was not permissible in the case of the Holy Prophet, could not be permissible in that of any one acting in his name and on his behalf.'¹²

Islamic law has therefore promoted its principles, rules, regulations and traditions through the Islamic sources of law and emphasizes that the key principles of co-existence are brotherhood, equality, liberty and justice. Islamic law has also, strongly, encouraged two other important principles for the promotion of human dignity and the development of other related principles; these are the principles of mercy and compassion.

3.2. Functions

One of the chief functions of Islamic law is the protection of people(s) from all types of tyranny and crime which may be committed by individuals, groups, governments or states. Other functions are uniting men and women for common purposes and fairness. It is therefore on the basis of protecting and promoting the principles of brotherhood, equality and justice that the whole philosophy of Islamic international criminal law is built.

The observation of the principles of Islamic human rights under Islamic law is a basic legal and moral duty of the political structure of a state.¹³ The State should not refuse to fulfil these duties, primarily regulated by the universal law, in order to establish the core principles of Islamic philosophy i.e. brotherhood, equality and justice.¹⁴ Human

¹¹ Id., p. 40.

¹² Maulana Muhammad Ali, *The Call of Islam*, 2nd ed. (1926), p. 21.

¹³ *Publications of Centre Culturel Islamique—Introduction to Islam*, p. 87.

¹⁴ One of the strongest reasons for this is that Islamic international law is not necessarily a positive law arising from international human rights conventions, the policies of which are based on acceptance, adherence and ratification by states. Although the automatic legal characterization of Islamic international human rights law is of significant importance, it does not necessarily mean that Islamic human rights or the system of international human rights are superior or inferior to one another. The former is based on moral-legal autonomy while the latter has a conventional ratified characterization. It is

rights must be respected by every individual and this includes self-inflicted abuse also. It is for this reason that suicide is considered an act against the principles of human rights in Islamic jurisprudence.¹⁵ Political authorities are especially responsible in the fulfilment of Islamic human rights concerning all social conduct under their jurisdiction—including criminal ones.¹⁶ Similar protection is also provided for by Islamic law for those who have other religions. Thus, Islamic law does not place any restrictions on the freedoms and practices of other groups and minorities. They can fulfil their religious obligations without restrictions.

According to the classical practices of Islamic law, Islamic state is, not only, responsible for the fulfilment of its own specific duties, but also has a great responsibility for the protection of the life, liberty, property and other social affairs of those who are resident under its jurisdiction.¹⁷

axiomatic that in practice the human rights principles, norms, provisions, rules and other regulations of modern international human rights should be respected entirely and fulfilled by states having been affected by Islamic human rights provisions. For some views on human rights practices in Islamic states see, generally, Ann Elizabeth Mayer, *Islam & Human Rights: Tradition and Politics* (1991).

¹⁵ But for exceptional suicide see the *Qur'ān*, 22:11–22 ‘Suicide is unlawful for those people who cannot bear a slight suffering or confusion and commit suicide; that is a great ... sin.’ *The Glorious Holy Quran*, translated by L.A.A.K. Jullundri (1962), part 17, p. 19, note 15.

¹⁶ But see Lasse A. Warberg, ‘Shari’A: Om den Islamiske Strafferetten (Uqûbât)’, 80 (4) *Nordisk Tidsskrift for Kriminalvidenskab* (1993), pp. 260–283.

¹⁷ The following provisions have been recognised by a number of Islamic jurists (*Ulama*) in 1951 and should be contained within the Constitution of an Islamic State. These principles are considered the Basic Principle of an Islamic State. These are: ... ‘Citizen’s Rights

7. The citizens shall be entitled to all the rights conferred upon them by Islamic law i.e. they shall be assured within the limits of the law, of full security of life, property and honour, freedom of religion and belief, freedom of worship, freedom of person, freedom of expression, freedom of movement, freedom of association, freedom of occupation, equality of opportunity and the right to benefit from public services.

8. No citizen shall, at any time, be deprived of these rights, except under the law and none shall be awarded any punishment of any charge without being given full opportunity for defence and without the decision of a court of law.

9. The recognised Muslim schools of thought shall have, within the limits of the law, complete religious freedom. They shall have the right to impart religious instruction to their adherents and the freedom to propagate their views. Matters coming under the purview of Personal Law shall be administered in accordance with their respective codes of jurisprudence (*fiqh*), and it will be desirable to make provision for the administration of such matters by judges (*Qadis*) belonging to their respective schools of thought.

10. The non-Moslim citizens of the State shall have, within the limits of the law, complete freedom of religion and worship, mode of life, culture and religious education. They shall be entitled to have all their matters concerning Personal Law administered in accordance with their own religious code, usages and customs.

According to the provisions of Islamic human rights, "Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force."¹⁸ Furthermore, "No State party may expel a person who does not hold its nationality but is lawfully in its territory, other than in pursuance of a decision reached in accordance with law and after that person has been allowed to submit a petition to the competent authority, unless compelling reasons of national security preclude it. Collective expulsion is prohibited under all circumstances."¹⁹

As a result, if a Muslim state is attacked by belligerent armed forces, the state must protect all residents irrespective of their religion, political view, colour, language, and other social matters. It must be possible for aliens to benefit from the protection of the state of residence²⁰ and the state in question must also protect the rights of its minorities. The concept of Islamic human rights strongly advocates equal rights and makes no difference between rights which are violated against the majority or minorities under a state sovereignty.

3.3. Sources of Human Rights

Sources of human rights in Islamic international law can be examined within all sources of Islamic law, in particular the *Qur'ān* constituting the basic or the original source of Islamic law.²¹ There is also a declaration on human rights which is written with accordance to the basic principles of Islamic law and with the consideration of Islamic jurists and nations.

In this section, we deal with both of the above sources. It is, however, clear that the Islamic Declaration only has a hortatory effect in the system

11. All obligations assumed by the State, within the limits of the *Shari'ah*, towards the non-Muslim citizens shall be fully honoured. They shall be entitled equally with the Muslim citizens to the rights of citizenship as enunciated in paragraph 7 above.

12. The Head of the State shall always be a male Muslim in whose piety, learning and soundness of judgment the people or their elected representatives have confidence.

13. The responsibility for the administration of the State shall primarily rest on the Head of the State although he may delegate any part of his powers to any individual or body ...” Appendixed in Sayyid Abul A'la Maududi, *Islamic law and Constitution*, 7th ed. (1980), pp. 333–334.

¹⁸ Article 26 (1).

¹⁹ Article 26 (2).

²⁰ Hamidullah, *The Muslim Conduct of State*, p. 128.

²¹ For the sources of the law see chapter four.

of Islamic human rights and should not entirely be compared with the original sources of the international human rights law under the public international law.

3.4. *Principles of Human Rights*

The basic principles of human rights which are presented in the Declaration of Human Rights in public international law in 1948 are similar to those basic principles of human rights which were regulated in Islamic law approximately fourteen hundred years ago. The difference between these two systems of human rights may be said to be that the concept of human rights within the Declaration of Human Rights is not juridically as strong as the concept of human rights in the system of Islamic human rights. This is because the 1948 Declaration has been decorated by numerous aftermath documents and instruments of human rights dealing and developing with different aspects of the declaration, but, violations of their provisions are indeed outsized. However, this does not necessarily mean that human rights in Islam are not violated by Muslims or other communities. On the contrary, violations of Islamic human rights by many of Islamic authorities are indeed frequent and notorious.

The 1948 Declaration of Human Rights is based on an instrument which is juridically not enforceable while human rights within Islam are an integral part of the constitution of Islamic law and Islamic international law. The former must thus be accepted in the constitutional mechanism or municipal procedures while the latter does not need such a procedure. Nevertheless, one cannot disagree with the fact that the enforcement of both systems of human rights ultimately depends on juridical and political consideration of each relevant government and whether or not they are on the favour of the enforcement of the natural or positive rights of their nationals.

3.4.1. *Equality*

One of the most important principles of international human rights concerns the equality of individuals. This principle creates for all human beings the same rights in their social relationships. This right has, more significantly, been defined in the Declaration of human rights in international law. The declaration in one of its articles states two important principles. These are equality in dignity and brotherhood for all human beings. The relevant article reads that 'All human beings are born free and equal in dignity and rights. They are endowed with reason and

conscience and should act towards one another in a spirit of brotherhood.²² Both these principles were, long ago, recognised under Islamic law as constituting two of the chief principles for the consolidation of justice and peace in social relations of mankind.

Islamic law including Islamic international law recognises the principle of absolute equality between all human beings regardless of race, colour, nationality, language, geographical location, sex or religion. Equality between all human beings therefore constitutes a consolidated principle in Islamic law and should not be abrogated and mitigated within any Islamic state/nation for the purpose of priority of Muslims over others. There are several verses in the *Qur'ān* which imply this fact. For instance, it reads that:

O men, We created you from a male and female, and formed you into nations and tribes that you may recognise each other. He who has more integrity has indeed greater honour with God.

The above verse signifies several important facts. Firstly, there is no difference between male and female. Secondly, human beings were formed into various nations in order to be distinguished from one another for the sake of recognition and not to give one tribe or nation more priority over another. Thirdly, all human beings are equal in dignity regardless of race, colour, tribe, nationality and ideological modalities. Fourthly, the noblest among all human beings before God are those who have more integrity. This includes several important facts. These are such factors as the moral values, relations between men and her/his creator and the respect of all human beings on an equal footing.

3.4.2. *Entitlement to All Rights and Freedoms*

Islamic international law constituting an integral part of Islamic law has a number of important principles governing the fact that everyone is entitled to all the rights which are stated by *Shari'ah*. Access to these rights is not limited to Muslims, or a particular race, but is, for every human being, without distinction to the place of birth, colour, race, sex, nationality, language, ideology and religion. The basic source for these freedoms must be examined from the provisions of the *Qur'ān* as well as other sources of Islamic law.

Since there is no compulsion in religion under the Islamic philosophy of law, everyone is entitled to all rights and freedoms because of the

²² Declaration on Human Rights, 1948, Article 1.

prohibition of the use of force on individuals and groups. These rights and freedoms include and do not exclude the right to life, to choose a religion, work, be active in political groups, marriage and divorce and the right to fair and just procedures in all forms of social conducts with the relevant authorities.²³ The 1990 Cairo Declaration on Human Rights in Islam contains some of the most necessary rights of human beings concerning their rights to freedom. The Declaration is even completed with the words of the 2004 Arab Charter on Human Rights. It reads that:

- (a) Man is born free. No inroads shall be made on his right to liberty except under the authority and in due process of the Law.
- (b) Every individual and every people has the inalienable right to freedom in all its forms—physical, cultural, economic and political—and shall be entitled to struggle by all available means against any infringement or abrogation of this right; and every oppressed individual or people has a legitimate claim to the support of other individuals and/or peoples in such a struggle.

The Declaration of Human Rights of 1948 in international law has, similar to Islamic international law, provided rights and freedoms for everyone, but, in different propositions. The Declaration does not, for instance, within its provisions as does the Cairo Declaration on Human Rights in Islam or the 2004 Arab Charter on Human Rights; recognize ‘every oppressed individual or people as having a legitimate claim to the support of other individuals and/or peoples in such a struggle.’ It reads that:

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.²⁴

It is important to emphasise that rights and freedoms stated in the Islamic international human rights law are not limited to Muslims and therefore include non-Muslims too. The reason underplaying this interpretation is that the Islamic philosophy of law does not force other nations and non-Muslims to be limited to Islamic rules. Even non-Muslims under Islamic jurisprudence enjoy a very high value from the principles of Islamic law. For instance, “Far from imposing the Qur’anic law on everybody, Islam admits and even encourages that every group, Christian, Jewish, Magian

²³ See relevant sections below.

²⁴ Article 2.

or other, should have its own tribunals prescribed over by its own judges, in order to have its own laws applied in all branches of law, civil as well as criminal. If the parties to a dispute belong to different communities, a kind of private international law decides the conflict of laws. Instead of seeking the absorption and assimilation of everybody in the 'ruling' community, Islam protects the interests of all its subjects."²⁵

Likewise, since Islamic law and the Islamic international law do not put any weight on the nationality of individuals, their locations and other status, there is not any difference between states and their characterizations under the law. According to the Islamic international law, all categories of divisions of territories are superficial and therefore do not effect the rights and freedoms of individuals.²⁶ This important provision in the Islamic international human rights law can also be examined in the 1948 Declaration of Human Rights. According to this declaration "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."²⁷

One essential difference between the Islamic international law governing human rights and international human rights in public international law is that everyone is entitled to all the rights and freedoms in Islamic human rights on the basis of their benefiting from *spirit of mankind*, while rights in the international human rights law are declared on the basis of preventing unlawful acts of sovereignty imposed on individuals as occurred against the innocent Jews, in particular children, women and the elderly during the Second World War.

3.4.3. *Right to Life*

According to Islamic law and the Islamic international human rights law, the right to life is an integral part of mankind life and therefore the killing of a human without juridical justification is a crime against the whole of mankind. This principle has clearly been stated in the *Qur'ān* and constitutes the most important element for the protection of all human beings. Thus, the right to life is an established principle which should not be modified or mitigated for political, juridical or any other reasons. The *Qur'ān* reads that:

²⁵ *Publications of Centre Culturel Islamique—Introduction to Islam*, pp. 105–106.

²⁶ See chapter one.

²⁷ Article 2.

... whosoever kills a human being, except (as punishment) for murder or for spreading corruption in the land, *it shall be like killing all mankind*.²⁸

The principle of the right to life is one of the most important principles of the Islamic human rights law. This is based on the fact that the principle prevents individuals and legal authorities from killing a person for whatever interests. These interests include also religious interests. It also includes genocide, discrimination, crimes against humanity, slavery and also disappearance. The killing of individuals on any basis is a great sin and constitutes a serious crime against mankind.²⁹ Therefore, the right to life in Islamic international human rights constitutes a form of social and juridical security for a person in order to be saved from prejudices. The words of the Cairo Declaration on Human Rights in Islam also contain this important fact.³⁰ Similar provisions can also be noted in the 2004 Arab Charter on Human Rights. It provides that "1. Every human being has the inherent right to life. 2. This right shall be protected by law. No one shall be arbitrarily deprived of his life."³¹

In any event, Islamic international law strictly prohibits the killing of human beings. It considers the principle of right to life as an integral part of the international legal order and makes it clear that killing or taking of life of a person, if necessary, ought to be in accordance with consolidated national and international procedures. The *Qur'ān* has especially stated that 'do not take a soul which God has forbidden, except through the due process of law.'³² The principle is justified by the fact that it applies to all human beings and does not limit itself to a special race. Human beings are equal before the divine law.³³ This principle also relates to the principle of the appropriate application of law.³⁴ It must also be born in mind that Islamic rules, in certain circumstances which seem necessary, are not limited to the death penalty; even should one be

²⁸ The *Qur'ān*, 5:32.

²⁹ See the next section.

³⁰ The Declaration concerning right to life reads that: "(a) Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law. (b) Just as in life, so also after death, the sanctity of a person's body shall be inviolable. It is the obligation of believers to see that a deceased person's body is handled with due solemnity."

³¹ Article 5.

³² The *Qur'ān*, 6:151.

³³ It is also stated that the original word of soul in Arabic i.e. *nafs* is applicable to all persons without any distinction between various citizens leaving under one territorial jurisdiction. Abul A'la Mawdudi, *Human Rights in Islam* (1990), p. 17.

³⁴ See below.

found guilty. This means that capital punishment can be abolished under the provisions of the Islamic international law due to the provisions of newly adopted provisions of documents in the international human rights law. This is because Islamic law expresses a significant respect to the principle of *pacts sunt servanda* and whenever an international agreement against capital punishment is ratified by an Islamic nation, it has to be implemented by all means.³⁵

The 1948 Declaration of Human Rights has also stated the right to life and this is one of the most important principles of the Declaration. The relevant article of the Declaration reads that “Everyone has the right to life, liberty and security of person.”³⁶ The wording of the Declaration is quite similar to the concept of life and security in the Islamic international human rights law with the major difference that the former is presented in the context of a Declaration while the latter constitutes an integral part of the chief source of Islamic law i.e. the *Qur’ān*.

3.4.4. *Right to Be Saved for Life*

The principle of the right to life has also been strengthened through adherence to another principle which encourages human beings to help, cooperate and assist with one another for the sake of mankind. This principle is considered to prevent, with one way or another, the murdering and killing of individuals. The principle reads that:

... whosoever saves a life, saves the entire human race.³⁷

The above principle also encourages self-security, self-confidence, the individual defence of one another’s lives and also promotes the principle of brotherhood. This principle is especially helpful when one considers that an innocent person may be found guilty of the commission of crimes and be punished according to false evidence. The principle encourages the theory of saving life and its great appreciation under the principles of Islamic international law. Consequently, it serves for all human race and their human rights. While the principle of the abolition of capital punishment is strongly consolidating in the international arena, the principle of “whosoever saves a life” may open a door for the prevention

³⁵ However it is true that the 2004 Arab Charter on Human Rights permits capital punishment. See Articles 6 and 7. This have to be modified and be abolished in all circumstances.

³⁶ Article 3.

³⁷ The *Qur’ān*, 5:32.

of capital punishment under Islamic nations or states. Nevertheless, it is a fact that despite the existence of the principle of “whosoever saves a life” during fourteen centuries within the provisions of the Qur’ān, the principle has strongly been disregarded or misunderstood by Islamic nations or authorities.

The principle of the right to be saved for life is one of the most serious achievements under Islamic international law. The Declaration of 1948 on Human Rights does not own a similar principle. But, the recent documents on the principles of international human rights denote the creation of similar provisions for the protection of human beings from unjustified acts of governments.³⁸

3.4.5. *Rights of Children*

The principle of rights of children to life is one of the very central and significantly established principles of Islamic international human rights for the purpose of protection of children from unjustified and illegal acts of their parents. The principle not only protects children’s rights to life, but also, makes it clear that it is a legal and moral duty of parents to provide the necessity of living for them. One of the verses of the Qur’ān relates to this important principle. It states that:

... Come I will read out what your lord has made binding on you: That you make none the equal of God, ... do not abandon your children out of poverty, for we give you food and we shall provide for them.³⁹

The 1948 Declaration of Human Rights does not have a single provision governing the rights of children. The principle of children’s rights to life and other living necessities has however, today, been entered into a separate international convention under international law and is greatly supported by many states for the protection of children from unjustified and immoral actions of individuals including governments. This is known as the 1989 Convention on the Rights of the Child. It is, however, regrettable that those children’s rights are not respected in national and international conflicts and children are exploited in accordance with different theories for various purposes including waging war, slavery and

³⁸ For instance, see the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, 1998. Farhad Malekian, *Documents on the Principles of International Human Rights* (2007), p. 124.

³⁹ The Qur’ān, 6:151.

trafficking.⁴⁰ In fact, the opponents of both systems of human rights have violated the rights of children for their own private purposes. Some of these are Iran, the United States, the United Kingdom, Somalia, Sierra Leone, Palestinian liberation movements, Israel, Afghanistan, and Rwanda.⁴¹

3.4.6. *Rights of Parents*

The Islamic human rights law has, not only, established rights for children to be protected by their presents, but has also established similar rights for partners in order to have a safe and reliable security served by their children. The principle of parents' rights on their children is a part of the principle of children's rights. This right of parents is especially more tangible when the relevant persons are, due to age or other reasons, incapable of surviving by their own hands or incomes. The *Quran* reads that 'be good to your parents, ... for we give you food and we shall provide for them.'⁴² The principle of the rights of parents and children rights complete one another's intentions with different proposition and for different reasons during the lifespan of a person.

The principle of the rights of parents also has a significant moral effect on the social life of persons and it also diminishes the possibility of the isolation of parents from their social conducts. The principle not only creates moral, but also, legal duties for all individuals to participate and cooperate with social services for a better and more reasonable results. The principle has not, however, been given place in the 1948 Declaration

⁴⁰ Farhad Malekian, *Prohibition Governing Child Soldiers Constituting an Integral Part of Erga Omnes* (2007).

⁴¹ For instance, violations of international human rights and international criminal law have been very grave in Rwanda. These caused some of the population of the region to turn to Islam in order to keep their life safety. "This position that blame lies with individuals, rather the Church as an institution, is still highly controversial, as Rwanda marks the tenth anniversary of the genocide. The Church hierarchy in Rwanda supported the previous regime of President Juvenal Habyarimana. And they failed to denounce ethnic hatred then being disseminated. Some survivors ... have since left the Catholic Church, unable to reconcile the Church's teaching with the actions of its most senior members during the genocide ... because Muslims were seen to have acted differently. 'The roofs of Muslim houses were full of non-Muslims hiding. Muslims are not answerable before God for the blood of innocent people.' But after the genocide, converting to Islam was also seen by some as the safest option. 'For the Hutus, everyone was saying as long as I look like a Muslim everybody will accept that I don't have blood on my hands.' And for the Tutsis they said let me embrace Islam because Muslims in genocide never die. So one was looking for purification, the other was looking for protection." BBC, 1 April, 2004, news.bbc.co.uk/2/hi/africa/3561365.stm. Visited on 2009-10-07.

⁴² The *Qur'ān*, 6:151.

of Human Rights, but it is today, an integral part of some of the regional documents on the principles of international human rights law.⁴³

3.4.7. *Prohibition of Slavery*

The principle of the prohibition of slavery in Islamic international law must be examined from different aspects in order to achieve the essence of the prohibition as a whole. Slavery in Islamic international law has been prohibited in a very significant way and this was due to the fact that in the early times nations were, by their cultural and economic factors, encouraged to keep slaves or servitudes. This cultural policy has slowly been changed for the benefit of all human beings in order to be free from all forms of monopolization.

Islam did not in the early time of its revelation prohibit slavery as a whole. There was a process which had to be followed in order for the social construction not to collapse. For this reason, Islam prohibited slavery by indirect contribution and encouraged some important principles which finally lead to the prohibition of slavery under Islamic international law. Consequently, the Islamic international human rights law on the matter of slavery bases its prohibition on the special technical, juridical, philosophical, moral, economic, theological and historical approaches. In other words, all these constitute *the jurisprudence of prohibition of slavery under Islamic international human rights law*.⁴⁴

In the system of public international law, slavery was not abolished until towards the end of the twentieth century. The institute of slavery was even exercised up until the Second World War. This did not even

⁴³ Malekian, *Documents on the Principles of International Human Rights* (2007). The American Declaration of the Rights and Duties of Man, 1948 in Article XXX concerning the Duties toward children and parents reads that "It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honour their parents always and to aid, support and protect them when they need it." Id., 40; The African Charter on Human and Peoples' Rights of 1981, in Article 29 provides that "The individual shall also have the duty: 1. to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need," Id., 184. The 1990 Cairo Declaration of Human Rights in Islam reads in Article 7 (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."

⁴⁴ The policy of Islamic international human rights for the prohibition of slavery is thus one of the most significant methods for the freedom of human beings from the institute of slavery. The policy does not rest on political dilemma rather on the understanding of the situation of slaves by men themselves and on the fact that freeing slaves is the equivalent to the freeing of human beings from sins or crimes.

include the institute of slavery concerning the prisoners of war. Attention to prisoners of war was given in the Geneva Conventions of 1949. It is since the establishment of the United Nations that many conventions regarding the prohibition of slavery, slave trade and institutions similar to slavery have created strong international rules for the serious protection of mankind. The Declaration of Human Rights also has a separate article on the matter of slavery. It reads that 'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.'⁴⁵

The difference between the prohibition of slavery, slave trade and institutions similar to slavery in the Islamic international human rights law and international human rights law is that the former considers slavery against the moral, legal and spiritual statutes of human beings including the integrity of mankind while the latter principally considers it illegal. But, this is not necessarily based on moral and legal considerations rather on the fact that the institution of slavery does not any longer fit the circumstances of the time being. Moreover, slavery is considered against the modern attitude of different nations towards free labour. But, as we shall see in the part relevant to international criminal law, slavery and institutions similar to slavery are being continued under both legal systems. This is despite the fact that the position has long been prohibited by customary and conventional international law.

3.4.8. *Just Legal Process*

The principle of just legal process in the Islamic international human rights law must be considered the cornerstone for all rights of human beings. The Islamic law and Islamic international law has put a significant value on the level, degree and standard of legal processes which may be set out for an accused. Therefore, according to the *Qur'ān*, a reasonable 'due process of law' is considered of prominent importance in the case of the implementation of whatever punishment on a person. For instance the *Qur'ān* reads that 'do not take a soul which God has forbidden, except through the due process of law.'⁴⁶

Under the Islamic international human rights law, all human beings are equal before Islamic jurisdiction. Thus, parties to a conflict are not only equal before the verdict of the law, but enjoy similar protection before the provisions of the law. These are two of the important principles

⁴⁵ Article 4.

⁴⁶ The *Qur'ān*, 6:151.

of Islamic law provided in the *Qur'ān* and also in the practice of the Prophet of Islam. A very significant verse reads that:

God enjoys that you render to the owners what is held in trust with you, and that when you judge among people do so equitably. Nobles are the counsels of God and God hears all and sees everything.⁴⁷

Certain provisions in the international human rights law are similar to the provisions of the Islamic international human rights law. These are such as things equality before the law, recognition of a person as an integral part of human beings, protection and non-discrimination. For instance, the Declaration of Human Rights reads that “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.”⁴⁸ Similarly, another article of the Universal Declaration on Human Rights reads that “Everyone has the right to recognition everywhere as a person before the law.”⁴⁹

Two of the chief purposes of the principle of just legal process in the Islamic international human rights law are to promote full respect of the law and to prevent discrimination between conflicting parties and accused persons. The principle also prevents, to a great extent, different forms of corruptions within juridical system.

In any event, the principle constitutes one of the legal rights of every person to be claimed under the Islamic international human rights law. The principle is without prejudices to race, colour, nationality, language, religion and any other social ranks.

Similarly, the Cairo Declaration on Human Rights in Islam and the 2004 Arab Charter on Human Rights have taken up several important elements in the case of just and fair legal processes. It lists some of the most important rights of human beings before the law and refers to the right of all persons in particular to protest or deny a procedure when it is seen as being against the content of the law. It reads that:

IV. Right to Justice

- (a) Every person has the right to be treated in accordance with the Law, and only in accordance with the Law.

⁴⁷ The *Qur'ān*, 4:58.

⁴⁸ Article 7.

⁴⁹ Article 6.

- (b) Every person has not only the right but also the obligation to protest against injustice; to recourse to remedies provided by the Law in respect of any unwarranted personal injury or loss; to self-defence against any charges that are preferred against him and to obtain fair adjudication before an independent judicial tribunal in any dispute with public authorities or any other person.
- (c) It is the right and duty of every person to defend the rights of any other person and the community in general (*Hisbah*).
- (d) No person shall be discriminated against while seeking to defend private and public rights.
- (e) It is the right and duty of every Muslim to refuse to obey any command which is contrary to the Law, no matter by whom it may be issued.

Rights which are stated in the above section of the Islamic Declaration of Human Rights have significant values on the promotion and development of justice and settlement of disputes on equal footings. Accordingly, it is a right of a person to refuse orders which are contrary to the law. This is also one of the most important principles of the *Qur'ān*. Due to the source, no one is obliged to fulfil orders which are against justice and denote the violations of the Divine law. Justice and orders must be equivalent to the law. This means that in certain circumstances one may refuse to fulfil a superior order which violates the basic purpose of the law such as torture or the commission of international crimes including war crimes, genocide, and crimes against humanity.

The Islamic international human rights law places an important weight on the fact that no one should be subjected to arbitrary arrest and detention. According to Islamic law no one shall be recognised guilty of commission of a wrongful act, so long as, it is not proved in a just legal process.⁵⁰ The arbitrary imprisonment of a person constitutes, therefore, a violation of one of the principles of the Islamic international human rights law.⁵¹

It is therefore a consolidated principle of Islamic law and that of the international human rights law that an individual should not be arrested or imprisoned for the crimes of another person. The *Qur'ān* reads that 'no man shall bear another's burden.'⁵² This means that a person must

⁵⁰ See above section.

⁵¹ See the Arab Charter on Human Rights in appendix. Many Islamic governments have however contrary practice. A clear example is the governments of Iran and Turkey.

⁵² The *Qur'ān*, 6:164.

not be punished for acts which have not been committed by him. In other words, no bearer of burdens shall be made to bear the burden of another.

The Islamic human rights law recognises the right of a person to protest and avoid injustices subjecting the person to arbitrary arrest and detention. The relevant provisions of human rights in international law governing the question of arbitrary arrest and detention are also similar to Islamic law. There is however a chief difference between these two systems of human rights law. An interpretation of the relevant provision of the human rights law implies the fact that if the exile of a person is not arbitrary it is acceptable by the Declaration. This is because the Declaration of Human Rights reads that 'No one shall be subjected to arbitrary arrest, detention or exile.'⁵³ However, the new documents on the principles of the international human rights law have modified this position and it is the right of every human being to live in his/her place of birth and governments should not force a person to emigrate from his/her own county by force.⁵⁴

3.4.9. *Right to Integrity*

The principle of the right to integrity in the Islamic international human rights law indicates the invaluable nature of human beings before the divine law. It is a prohibited rule in Islamic law to violate, in one way or another, the integrity of man. This is clearly stated in the *Qur'ān*. It reads that 'O you who believe, men should not laugh at other men, for it may be they are better than them; and women should not laugh at other women, for they may perhaps be better than them. Do not defame one another, nor give one another nick-names. After believing, it is bad to give (another) a bad name. Those who do not repent behave wickedly.'⁵⁵

This principle should, not only, be respected in the social relations of all human beings, but also, and more seriously, by the relevant national authorities in order to respect those who for one reason or another come under their jurisdiction. Regarding the principle of right to integrity it is especially important that it be respected in the case of all civil and criminal procedures over a person accused of having violated the relevant orders. This is because, according to the Islamic international human

⁵³ Article 9.

⁵⁴ Malekian, *Documents on the Principles of International Human Rights*.

⁵⁵ The *Qur'ān*, 49:11.

rights law, the violation of the principle of right to integrity is recognised as a crime if it violates the individual rights and justice.⁵⁶

3.4.10. *Rights to Remedy*

Islamic law aims in all circumstances, at the protection of individual rights. This has been considered one of the policies of Islam in the case of the violations of these rights. Thus, according to the Islamic legal system similar to the provisions of 1948 Declaration of Human Rights in international law, all persons are granted an effective remedy in the case of the violation of their rights.⁵⁷

Under the principles of Islamic law, no one shall, in the case of damages, be left out without adequate remedy. This should also be respected in the case of non-Muslims coming for one reason or another under the territorial jurisdiction of an Islamic state. According to pure Islamic law, rights must be respected without due regard to race, colour, nationality, language, ethnic origin, religion or political views.

The principle of the rights to remedy in the Qurʾān has been foreseen in the context of a considerable number of versions. According to Islamic international law including the human rights law, it is a legal order imposed on individuals and courts to take accurate decisions concerning legal remedies and not to violate the principle of justice. It reads that “O you who believe, stand up as witnesses for God in all fairness, and do not let the hatred of a people deviate you from justice. Be just: This is closest to piety; and beware of God. Surely God is aware of all you do.”⁵⁸ In another verse, the *Qurʾān* clearly refers to the important function of justice and

⁵⁶ According to one writer, the Islamic “law is superior to the Western law of defamation. Under Islamic law, if it is proved that someone has attacked the honour of another person, then, irrespective of whether the victim is able to prove himself a respectable and honourable person, the culprit will be punished. The interesting fact about the Western law of defamation is that the person who files suit for defamation has first to prove that he is a man of honour and public esteem and during the interrogation he may be subjected to scurrilous attacks and accusations by the defence counsel—to such an extent that the court hearing may be more damaging than the attack on his reputation which originally led him to the court. In addition, he also has to produce witnesses to testify in court that the defamatory accusations have damaged his reputation in their eyes.” Mawdudi, *Human Rights in Islam*, p. 24.

⁵⁷ ‘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 8.

⁵⁸ The *Qurʾān*, 5:8.

points out that “God has made a promise of forgiveness and the highest reward to those who believe and perform good deeds.”⁵⁹ These versions separately and together imply the momentous function of fair decision and their applicability in universal level.

3.4.11. *Rights Not to Suffer from Deprivation*

The principle of the right not to suffer from deprivation in the Islamic international human rights law indicates the fact that everyone has the right to a basic standard of economy in order not to suffer from deprivation. This is one of the important rights which has solely appeared in the Islamic international human rights law and there is indeed no equivalent right under the Declaration of Human Rights in international law. But, the new developments in the international human rights law provide a large number of rights concerning this matter.⁶⁰

The *Qur’ān* makes it clear that no one shall suffer from deprivation and this principle therefore creates economic rights for all human beings which should not be denied by any person or authority exercising and fulfilling Islamic law and order. The *Qur’ān* reads that ‘And in their wealth there is acknowledged right for the needy and destitute.’⁶¹ At the same time as the above right has been recognised by the Islamic human rights law and many instruments of international human rights law have similar vocabulary, this right has not been respected by legal and political authorities. A large number of Muslims and non-Muslim populations of the world are seriously suffering from economic imperfection and a lack of those preliminary basic standards for life which are necessary for all human beings.

3.4.12. *Rights to Cooperation and Non-Cooperation*

The principle of the right to cooperation and non-cooperation is one of the principles of the Islamic international human rights law which encourages and promotes international peace and security and the consolidation of the fact that all human beings are equal and have duties and responsibilities in national and international relations.⁶² This invaluable principle of the Islamic international human rights law reads that

⁵⁹ The *Qur’ān*, 5:9.

⁶⁰ Malekian, *Documents on the Principles of International Human Rights*.

⁶¹ The *Qur’ān*, 51:12.

⁶² Mawdudi, *Human Rights in Islam*, p. 17.

you should ‘cooperate with one another for virtue and heedfulness and do not cooperate with one another for the purpose of vice and aggression.’⁶³

The Islamic international human rights law places a significant weight on the question of cooperation between individuals and groups for the purpose of goodness and faithfulness. In other words, individuals are encouraged to assist and help those who are struggling for self-protection, including self-cultural protection, self-territorial protection, self-national protection, self-language protection, self-ethnic protection, self-religious protection and also self-evidence protection(s).

Although the Islamic international human rights law encourages and recognises a right to co-operate with those who are struggling or fighting for various forms of protections, it simultaneously makes it clear that the right to cooperate should be given for those whose struggle is just and self-evident and not aggressive. It is for this reason that the *Qur’ān* read that ‘do not cooperate with one another for the purpose of vice and aggression.’⁶⁴ In other words, it is a prohibited principle in Islamic international human rights law that human beings cooperate or help one another for the purpose of aggression, criminal behaviour, discrimination, injustices, and immorality. This means that any assistance that is given for the purpose of helping the commission of a crime is considered to be a violation of the Islamic provisions of human rights and all human beings as a whole.⁶⁵

3.4.13. *Rights to Property*

Islamic law places a significant weight on spiritual values. It also fully respects the individual’s rights to ownership and property with a very effective juridical policy for the division of wealth between individuals.⁶⁶ The principle of the right to property is in fact considered one of the most indispensable principles of the Islamic international human rights law for the protection of individual rights governing property or ownership. The main source of Islam reads that:

... do not consume each other’s wealth in vain, nor offer it to men in authority with intent of usurping unlawfully and knowingly a part of the wealth of others.⁶⁷

⁶³ The *Qur’ān*, 5:2.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ The *Qur’ān*, 2:188.

⁶⁷ The *Qur’ān*, 2:188.

The principle of Islamic human rights on the right to property can also be seen in the 1948 Declaration of Human Rights. The Declaration provides that “Everyone has the right to own property alone as well as in association with others.”⁶⁸ And further that “No one shall be arbitrarily deprived of his property.”⁶⁹

The right to protection of property has also been recognised by the provisions of the Islamic Declaration of Human Rights. It reads that ‘No property may be expropriated except in the public interest and on payment of fair and adequate compensation.’⁷⁰ This means that the right to property is sacred and if the national authority deprives, for one reason or another, someone of his/her property, the owner has a legal right to compensation.

Obviously, both systems of human rights aim at the protection of the rights of individuals for their property. Possession of property by various uses of forces is prohibited and is therefore recognised as being unlawful and unjust.⁷¹ It must be emphasised that the principle of right to property in Islamic international law like its other principles of human rights are not limited to Muslims and should widely apply to all human beings without any due consideration to their race, colour, nationality, language, religion or any other ethnical origin. The principle of right to property in Islamic international law must also be read in conjunction with the principle of right to privacy which complements, in one way or another, the former principle. The reason for this is that both principles deal with the matter of property and other matters of privacy.

3.4.14. *Rights to Privacy*

The principle of the right to privacy is supported by different means in the system of Islamic international human rights law. It denotes the importance of the fact that the privacy of all human beings must be respected and must not, in one way or another, be violated by national, legal and political authorities. The principle has, in particular, been

⁶⁸ Article 17.

⁶⁹ *Id.*

⁷⁰ Section XVI of the Declaration.

⁷¹ “The Women will inherit from the blood-money of her husband and his property; and he will inherit from her blood-money and property; as long as one of them does not kill the other. But if one of them kills the other deliberately, he or she will not inherit anything from his or her blood-money and property; and if one of them kills the other by mistake, he or she will be inheritor of his or her property, and not of his or her blood-money.” Ubaidul Akbar, *The Orations of Muhammad*, p. 40.

emphasised in the *Qur'ān*. It reads that 'do not enter other houses except yours unless you have obtained owner's consent.'⁷² This verse implies the fact that privacy of all human beings must be respected and should not be violated by others. The principle has also been entered into the Islamic Declaration of Human Rights. The relevant section of the Declaration reads that "Every person is entitled to the protection of his privacy."⁷³

Consent appears to be one of the important provisions for the employment of the contrary notion of the principle of the right to privacy. This is because to enter the property of others without permission is the violation of the integrity of the property and violation of the right of the ownership of the owner and simultaneously the violation of the principle of freedom of individuals. In other words, the Islamic international human rights law prohibits any form of arbitrary interference which falls in one way or another under the term privacy.⁷⁴

3.4.15. *Rights Not to Be Spied*

The principle of the right not to be spied on by others is one of the most important cornerstones of the Islamic international human rights law which has not clearly been entered into the 1948 Declaration of Human Rights. This principle of the Islamic human rights law presents some of the most important aspects of the principle of the right to privacy which has developed into another similar principle for the purpose of the protection of all human beings in their social relations.

The principle of the right not to be spied on can, in particular, be examined in one of the verses of the *Qur'ān*. It reads that human beings must:

- i. avoid most suspicions,
- ii. Some suspicions are indeed sins.
- iii. So do not pry into others' secrets and
- iv. do not backbite.

In other words, the principle of the right not to be spied on implies the fact that political or legal authorities should not, in one way or another,

⁷² The *Qur'ān*, 24:27.

⁷³ Section XXII of the Islamic Declaration.

⁷⁴ Similarly, the system of international human right has given special consideration to the matter of privacy and has recognised that '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 12.

violate the principle of privacy and spy on the daily life of others for their own interests. A broader interpretation of this principle concerns also the fact that listening to and filming others without particular permission is also recognised as a violation of the rules of Islamic law. According to the Islamic human rights law reading and photocopying the correspondence of others is also assimilated to the violation of the principle of the right not to be spied on.⁷⁵ A violation of the principle, as can be seen from the above presentation, is a sin/crime under Islamic provisions. Nevertheless, it is a fact that the principle has repeatedly been violated in the practice of Islamic nations/states.

3.4.16. *Rights to Nationality*

The principle of the right to nationality is also one of the key principles of the Islamic international human rights law that has to be respected by the Muslim states. According to this principle, every human being has the right to nationality and his/her right of nationality cannot be refused on the basis of cultural, political, economic, religious, race, language or any other factors.

The principle of the right to nationality is based on the fact that any individual who is born under the territorial jurisdiction of Islamic states has a legal right to nationality, as long as his/her family has the nationality of the place. The nationality is here followed by the nationality of parents.⁷⁶ In the old system of Islamic practice, every person who came under the jurisdiction of Islam could automatically receive nationality whenever he or she entered into the religion of Islam. The Islamic law of human rights law sees, in fact, the concept of nationality as an individual right and not a state. This is because the state is established on the concept of individuals' rights and not the contrary.⁷⁷

4. RIGHTS WITHIN THE *SUNNAH*

The principles of human rights under the second source of Islamic international law i.e. *Sunnah* have indeed the highest degree of philosophical and human rights jurisprudence documented in the earliest traditions of

⁷⁵ Mawdudi, *Human Rights in Islam*, p. 25.

⁷⁶ See the Cairo Declaration of Human Rights in Islam, 1990.

⁷⁷ The principle of right to nationality is very extensive which cannot altogether be discussed over here.

various Islamic nations.⁷⁸ These principles of Islamic human rights can be examined and compared with the principles of the Declaration of Human Rights in the system of international law.⁷⁹ The principles are specially presented in the 'Farewell Sermon of the Prophet' which provides one of the broadest principles of equality between peoples and abolishes all forms of inequality in the social life of men. These are regardless of race, colour, language, religion, sex, culture, ethnic origin, all types of social position, physical ability or disability, and many superficial inequalities, the types of which have no substantive character in the social value of men.⁸⁰

The Farewell Sermon reads that:

O people, listen to my words; verily I do not know, I may not ever meet you after my this year at this place.⁸¹

Behold, no criminal committing a crime is responsible for it but himself. No son is responsible for the crime of his father and no father is responsible for the crime of his son.

Behold, the Muslim is the brother of the Muslim. So nothing is lawful for a man from his brother except what he gives him willingly. So you should not oppress yourselves. O Allah! have I conveyed the message? ...

Take care of your slaves; take care of your slaves. Feed them from what you eat and clothe them from what you wear.

If they commit any crime which you do not like to forgive, then sell the bonds of Allah and do not chastise them.

O people, fear Allah; and (even) if a mangled Abyssinian slave becomes your chief hearken to him and obey as long as he executes the Book of Allah.⁸² ...

O people, verily your Lord is one and your father is one. All of you belong to Adam and Adam is (made) of earth. Behold, there is no superiority for an Arab over a non-Arab and for a non-Arab over an Arab; nor for a

⁷⁸ For some examination see W. Montgomery Watt, *Muhammad, Prophet and Statesman* (1961); Muhammad Ali Mawlawi, *The Religion of Islam* (1936); S. Bukhush Khuda, *Contribution to the History of Islamic Civilization* (1930).

⁷⁹ Sami A. Aldeeb Abu-Sahlieh, 'Muslims Human Rights: Challenges and Perspectives', in Wolfgang Schmale (ed.), *Human Rights and Cultural Diversity: Europe. Arabic-Islamic World. Africa. China* (1993), pp. 239–268, p. 243.

⁸⁰ See below.

⁸¹ Ubaidul Akbar, *The Orations of Muhammad*, p. 90.

⁸² Id., pp. 92–94.

red-coloured over a black-coloured and for a black-skinned over a red-skinned except in piety. Verily the noblest among you is he who is the most pious.⁸³ ...

I recommend you to do good to the First Emigrants and I recommend the Emigrants to do good among themselves.⁸⁴ ...

Then he said: 'There may be some rights which I owe to you and I am nothing but a human being. So if there be any man whose honour I have injured a bit, here is my honour; he may retaliate.

Whosoever he may be if I have wounded a bit of his skin, here is my skin; He may retaliate.

Whosoever he may be, if I have taken anything from his property, here is my property; so he may take. Know that he, among you, is more loyal to me who has got such a thing and takes it or absolves me; then I meet my Lord while I am absolved.⁸⁵

The above principles obviously provide full juridical, theological and human rights support for Muslim and non-Muslim nations in all parts of the world. This is one of the methods of application of the principle of equality for all men regardless of their philosophical, theoretical, theological or political opinions.

⁸³ Id., pp. 96–97.

⁸⁴ Id., p. 102.

⁸⁵ Id., p. 106.