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THE CONCEPT OF INTERNATIONAL LAW IN ISLAM AS APPLIED IN SAUDI ARABIA.

DR. MOHAMMED OMER MADANI :

Introduction

Distinguished Audience

In the name of God, the merciful, the compassionate, I begin by addressing you by the eternal greeting of Islam, "Peace be upon you."

It gives me great pleasure to initiate my address on "the concept of International Law in Islam as applied in Saudi Arabia."¹

Allow me to start with this citation from a learned American scholar about Islam. "Islamic Law has made a substantial contribution to International Law and Theory. Western scholars, such as Vitoria, Ayala and Gentili came from parts of Spain and Italy where the influence of Islamic Laws was great, great jurists and theologians like Martin Luther, studied Arabic Treaties Law; and even Grotius in his writing on the law of war recognised the humanitarian law of Islam².

It is worth mentioning that the first codification of international law was made by the Muslim Jurist Al Shaybani in his *Siyar* in the eight century, thus preceding similar western works by centuries.³ The European international law owes its origin as a systematised body of rules largely to Grotius whose work provided the formulation of all later development. (4-A) Islam had a great influence on Grotius the father of European Law of nations whose "Laws of war and peace" was published in

1625. (4—B)

One of the outstanding features of greatness in Islam is that it is the message of noble manners; for noble manners spring from faith. (5) One of its message is to cement amicable relations among human brothers under the auspices of a great Muslim Law which derives its force from Heaven. Total equality and justice to all are exercised by Islam, regardless of sex, race or territorial belonging. ⁶ These are not hollow slogans; they are, in actual fact, principles which are implemented practically. ⁷ Islam prohibits indulging in all that does harm to human beings or subverts society. ⁸ It directs Muslims towards exercising mercy, peace and full co-existence. ⁹ All these principles are embodied in the Holy Quran and the Traditions of the Prophet (Peace be upon him).

The primary sources of Muslim International Law are The Quran and The Sunna (Prophet's deeds and sayings). And secondary sources are Ijtihd (legal reasoning) and Ijma' (consensus). Islamic sharia is the constitution of the Kingdom of Saudi Arabia. The educational institutions and establishments seek to preserve Islamic heritage, its study, purification and spreading. They also do their best to establish its origin and its influence on human beings and their progress and prosperity. (10-A) Every year, the Kingdom of Saudi Arabia prepares, holds and participates in international conferences and scientific seminars. Examples of this are the International Conference for Islamic

Economy which was held in Makkah Al Mukaramah in Safar, 1396 A.H. (corresponding to February 1976); the Islamic International Conference held at the Commonwealth Royal Association London in Rabi Al Thani, 1396 A.H. (corresponding to April 1976); the first Islamic Educational Conference held in Makkah Al Mukaramah in Rabi Al Thani, 1397 A.H. (Corresponding to April, 1977); and lastly the International Seminar for the Islamic Youth held in Makkah Al Mukaramah in Dhul-Qida, 1396 A.H. (corresponding to November 1976).

Professor Hamiduallah defined Islamic International Law as "The part of the law and custom of the land and treaty obligations which a Muslim de facto or de jure state observes in its dealings with others de facto or de jure states". (10 -B) The Islamic Law of nations, however, is not a system separate from Islamic Law.

I would like to take this opportunity to explain to the audience, in the light of what has already been mentioned, the attitude of Kingdom of Saudi Arabia with regard to the General International Law.

Let me make it clear that I wish to confine myself to the general principles of the Islamic International Law with special emphasis On human rights supported by evidence from the Holy Quran, being translated into English.

Before doing this, I think it is wise and useful to brief you about what has already been said concerning this subject in the International Seminar held as from Wednesday, Safar 7, 1392 A.H.

(Corresponding to 22 March 1972). In this seminar a team of the Kingdom's Learned Muslim faced learned men and scholars in International Law and Thought in Europe, regarding the Islamic Laws and Human Rights in Islam and their application in the Kingdom of Saudi Arabia.¹¹ It has been firmly established in the minds of all participants that Islam is more unique than the Principles of Human Rights, more universal and intact, because it is from Allah, the creator and Lord of the universe.

Speakers from the European team expressed their support to Islam; and his Excellency the President Mr. Mc Bride was amongst those who expressed their gratitude for the facts they had heard

about the Islamic Law and Human Rights. Then he went on to say: "It's from here, from this Islamic country, and not from any other country that Human Rights must be declared. It's the duty of the Learned muslims to make known those facts which are unknown to International Public Opinion. Those people who are hostile to Islam have taken this point of weakness and exploited it to the utmost and did much harm to both Islam and Muslims.

Mr. Mc Bride insisted that the invaluable knowledge and the replies which refuted all that had been said against Islam should be made available to them in writing so that they could use them as material evidence in defence of Islam.

One of his colleagues thanked the Kingdom of Saudi Arabia for the great benefits which it has bestowed upon man in accordance with Islam. He supported his colleagues regarding the Quranic rules and teachings concerning mankind after he had been acquainted with them and had seen them in practice. Doubtless they supersede the Law of Human Rights.

Human Rights as Adopted in the Kingdom of Saudi Arabia:

Islamic international law set clear rules on asylum, safe conduct, treaties, diplomatic immunity, protection of civilian populations, limitations of belligerent activities, prisoners of war and prize of war.¹²

Islam regards the dignity of the individual as cardinal. The Holy Quran warns against persecution 299 times, affirms the application of justice 22 times, denounces aggression 8 times and warns against human violation 20 times.

I start with a brief knowledge about the principles of human rights as envisaged in Islam and which are adopted by the Kingdom of Saudi Arabia. These principles will be supported by material evidence from Quran, which is, as previously stated, the constitution of the Kingdom.

These proofs and evidences from the Quran have much to do with the Muslims' faith and from which it cannot be separated. In fact it is from all these aspects that our general principals are drawn.¹³

It is well known that human rights in contemporary international society are closely related to, and connected with, the system that governs each society. This led the scholars of international law to pose the following question: Are these human rights or state rights? ¹⁴

This fact has emerged from the obstacles which accompanied the passing of the rules of the United Nations on the Human Rights and which were declared by its General Assembly in 1948. ¹⁵

Accordingly, the European countries, with the exception of France, Switzerland and Malta, have formed an association to protect the human rights as governed by the Treaty of Rome in 1950 for the Protection of Human Rights. ¹⁶ Other countries have joined this association with certain reservations, either to guarantee their safety or for the security of their systems.

On 16th of December, 1966, and as a result of the acute differences between the eastern and western blocks, the United Nations issued two covenants. One of them concerned with civil and political rights, while the other dealt with social cultural and economic rights. Each nation had the ultimate right to ratify one or both of them if that served its rights best. ¹⁷

These differences exist to the present day, and they were often provoked by international courts verdicts on cases of human rights. An example of this is the dissolution of the Communist Party in Germany, and the case of the Irish Republican Army, etc.

Islam is a scientific religion and Presents a philosophy of life which is universal. The most important of human rights, as prescribed by the legal and moral institutions of modern nations were granted by Islam 14 centuries ago.

let us now shed light on some of these human rights:—

1. The Concept of Unity of Mankind:—

Islam has eliminated all aspects of discriminations created by man. The Almighty God Says:

“Mankind! We created you from a single (pair) of a male and a female, and made you into nations

and tribes, that you may know each other (Not that you may despise each other). Verily the most honoured of you in the sight of God is the most righteous of you.”

Hujurat: 13; 140

And He Says:

“Mankind! reverence Your Guardian Lord Who created you from a single Person, Created, o like Nature, His mate, and from them twain Scattered Countless men and women; Reverence God through Whom Ye demand your mutual (rights) And (reverence) the wombs (That bore you).

Nisaa: 1; 178

2. Equality in Rights and Duties:—

Islam imposes equality on society.

The Almighty God says:

“Mankind! We created you from a single (pair) of a male and female, And made you into nations and tribes, that Ye may know each other (Not that you may despise each other). Verily the Most Honoured of you in the sight of God is he who is the most Righteous of you.”

Hujurat: 13; 140

This is confirmed by Prophet Mohammad, (Peace be on him). He says: “All people are as equal as the teeth of the comb.”

He also says:

Islam has abandoned the boast and praise of the Arabs of their fathers and forefathers. “All people are from Adam; Adam is created out of earth. The most honoured of you in sight of God is (he who is) the most righteous.”

3. Freedom:

The most fundamental principle that Islam has recognised regarding the human rights is freedom: freedom of faith, freedom of thought and freedom of speech.

a. About freedom of faith the Almighty God says:

“Let there be no compulsion in religion.”

Baqara: 256; 103

He also says:

"If it had been thy Lord's Will, They would all have believed, All who are on earth! Will thou then compel mankind, Against their will, to believe!"

Yunus: 99; 509

He also says:

"Therefore do thou give admonition, for thou art one to admonish. Thou art not one to manage (men's) affairs."

Ghashiya: 21-22; 1729

He also says:

"The Apostle's duty is only to preach the clear (Message)."

Nur: 54; 914

b. About freedom of thought the Almighty God Says:

"Behold! in the creation of the heavens and the earth; In the alternation of the Night and the Day; In the sailing of the ships through the Ocean for the profit of mankind; In the rain which God sends down from the skies, And the life which He gives therewith to an earth that is dead; In the beasts of all kinds that He scatters through the earth; In the change of the winds; And the clouds which they trail like their slaves; Between the sky earth; (Here) indeed are Signs, for a people that are wise."

Baqara: 164; 64

He also says:

"I do admonish you on one point: that ye do stand up before God, in pairs and singly, And reflect (within yourselves).

Saba': 46; 1148

He also says:

Do they not reflect in their own minds? Not but for just ends And for a term appointed, Did God create the heavens and the earth, and all between them."

Rum: 8; 1052

C. About freedom of speech, Islam made it a right for all people.

It also compels the person to have a say in all matters that affect the public interest and the public discipline.

The Almighty God says:

"Let there arise out of you a band of people inviting all that is good, Enjoining what is right, and forbidding what is wrong." Al-Imran: 104; 149-150

About the adoption of democracy in dealing, The Quran says:—

"Those who hearken to their Lord and establish regular prayer; who conduct their affairs by mutual consultation."
(From surat Al Shura.)

He also says:

"(They are) those who, if we establish them in the land, establish regular prayer and give regular charity, enjoin the right and forbid the wrong."

Hajj: 41; 862

4. Care for honesty and justice in Human Relationship:—

Islam is an ideal Religion which teaches virtue and exemplary behaviour. Prophet Mohammed (Peace be on him) says, "I have been sent by Almighty God to complete the virtues of character.

Islam laid great stress on the principles of justice and honesty. The Almighty God says:

"God doth command you to render back your Trusts to those to whom they are due; And when ye judge between man and man, that you judge with justice. Verily how excellent is the teaching, which He giveth you! For God is He Who heareth and Seeth all things."

Nisaa: 58; 197 — 198

Islam urges for justice in judging and in saying.. and in treatment of enemies and antagonist.

The Almighty God Says:

"Whenever ye speak, speak justly, even if a near relative is concerned."

Anaam: 152; 335 — 336

He also says:

"And let not the hatred of others to you make you swerve to wrong and depart from justice."

Maida: 9; 243

He also says:

"Ye who believe! Stand out firmly for justice as witnesses to God, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor; For God can best

fect both. Follow not the lusts (of your hearts), lest ye
erve, and if you distort Justice or decline to do justice, verily
d is well-acquainted with all that ye do.”

Nisaa: 135; 223

Co-operation and Mercy:

Islam aims at fulfilling co-operation amongst all people for
benefit of all.

he Almighty God says:

“Help ye one another in righteousness and piety, but help
not one another in sin and rancour.”

Maida: 2; 239

In Islam co-operation is not associated with mercy, but is
o dependent upon it.

he Almighty God speaks to his Messenger (Peace be on him)
e Says:

“We sent thee not, but as a Mercy for all Creatures.”

Anbiyaa: 107; 846

he Almighty God also Says:

“But My Mercy extendth to all things.”

A'raf: 156; 388

The Principles of Honesty and Faithful- ness:

Islam insists that Muslims tell the truth and abide by it both
theory and practice.

he Almighty God says:

“Ye who believe! Fear God and be with those who are true
n word and deed).

Tawba: 199; 477

he also says:

“It is those who believe not in the signs of God that forge
lsehood: it is they who lie.”

Nahl:105; 685

he says:

“That God may reward the men of Truth for their Truth,
nd punish the Hypocrites if that be His Will, or turn them in
ercy: for God is oft-Forgiving, Most Merciful.”

Ahzab: 24; 1110 — 111

he also says:

“Ye who believe! why say ye that which ye do not? Griev-
usly odious is it in the sight of God that ye say which ye do
ot.”

7. Islamic attitude towards learning:—

Islam praises education and encourages people to pursue
at all ages. God spoke to his messenger (Peace be on hi
“Proclaim! And their Lord is Most Bountiful, He V
tought (the use of) the Pen, Thought man that which he ki
not.”

Iqraa: 3,4,5; 1761, 176

It is a call for reading and increasing man's knowledge. It
call for civilization. It was God's boast that he preferred n
and offered him the ability of speaking, and intelligence.
God Says:

“He has created man: He has taught him speech (A
intelligence).

Rahman: 3,4; 1

And because of the significance of writing in the spread
knowledge God spoke about the pen.

He says:

“Nun. By the Pen and by the (Record) which (men) write
Qalam: 1; 1

All the learned men reached an agreement that swearing
the pen has a special significance. The pen, after speech
intelligence, is the most invaluable gift, offered by God
man. All religions and types of Knowledge have spread c
becuse of the pen; and had it not been for the pen there wo
have been no religion and no civilization.

After this God swore by the scroll and the writing flui
God says:

“By the Mount (of Revelation); By a decree inscribed: I
scroll unfolded.”

Tur: 1,2,3; 1

Emphasising the importance of knowledge, Islam praised
Muslim scholars.

The Almighty God Says:

“There is no God but He : That is the witness of God,
angels and those endued with knowledge, standing firm
justice.”

Al-Imran: 18;

He also says:

“God will raise up, to (suitable) ranks (and degrees), th
of you who believe and who have been granted (mys
knowledge.

Mujadalah: 11; 1514-1

The Almighty God Says:

“Say: Are those equal, those who know and those who
not know?

Zumur: 9; 1

Almighty God encourages Muslims to learn. He says:
"O ye who realise this not, ask of those who possess the Mes-

Nahl: 43; 667

He says:
"O my lord! advance me in knowledge."

Ta Ha — 814

Observation of Covenants and Performance of vows:

Islam imposed on Muslims the observation of their treaties and covenants and honouring their terms with Islamic and non-Islamic countries.

The Almighty God says:

"And fulfil every engagement, for every engagement will be required into (on the Day of Reckoning).

Al-Isra': 34; 704

In Islam allows Muslims to fight enemies that had violated their oaths.

Says:

"But if they violate their oaths after their covenant, and betray you for your faith, Fight ye the chiefs of Unfaith: For their oaths are nothing to them: that thus they may be gained."

He also adds: "Will you not fight people who violated their oaths, plotted to expel the Apostle, and took the aggressive side being the first (to assault) you? Do ye fear them? Nay, it is whom ye should more justly fear, if ye believe!"

Tawba: 12,13,441 — 442

Elimination of Hostility and Call for Peace:

Islam called on Muslims not to be hostile and not to start fighting others; it urged us to call for peace instead.

The Almighty God Says:

"Fight in the cause of God those who fight you, but do not exceed limits; for God loveth not transgressors."

Baqara: 190;75

He also says:

"But if the enemy inclines towards peace, do thou (also) incline for peace, and trust in God".

Anfal: 61; 430

10. Securing Safety for non-Muslims within the Islamic Borders:

It has already been mentioned that Islam granted the Muslims their rights, especially the freedom of religion.

Islam grants asylum, as well, and imposes on the Imam (rules) to abide by it. Moreover, Islam gives protection and security, not only for himself, but for all his possessions also; even though he is a disbeliever.

The Almighty God Says:

"If one amongst the Pagans ask thee for asylum, grant it to him, grant it to him, so that he may hear the Word of God, and then escort him where he can be secure. That is because they are men without knowledge."

Tawba: 6; 440

It is worth mentioning that the asylum which Islam granted fourteen centuries ago, was only adopted by Geneva Treaty in 1949 when it took care of the civilians' rights in the occupied lands, and by the United Nations Organization in 1967.

11. War:

War is governed by the ideal teachings of Islam. The cardinal principal in Islam is "Peace". War is forbidden for aggressive of territorial aims. It is allowed and becomes a legal necessity to:—

- 1- Stop aggression.
- 2- For self Defence.
- 3- To protect the people from captivity.
- 4— To protect human values.

The Kingdom of Saudi Arabia applies the Islamic rules; at the same times it adopts the rules of international treaties which do not contradict with the Islamic values and principles.²¹

In conclusion, I would like to stress the fact that human rights do exist in Islam and they have been in operation since Mohammad (Peace be upon him) received his message. Enemies of Islam who fail to realise its advantages tend to overlook this fact either deliberately or out of sheer ignorance.

The time has come for non-Muslims friends or otherwise, to

understand its message and principles. We don't call upon them either to adopt the message or accept the principles because there is no compulsion in Islamic heritage but it is only fair that civilised societies should treat other civilised societies rationally. We, Muslims, have been doing so. It rests with others to reciprocate.

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- (2) Charles S. Rhyne, *International Law*, Id Supra No. I, P 23.
- (3) Al Shaibani, M. Bin Hassan, *Al Siyarr*, edited by Dr Salah Al Munjid, op cit. Supra No. I, 1971.
- (4-A) Oppenheim, *International Law*, op. cit., Supra No. 1.P. 6. Wilson George G., *International Law*, 8th Ed., Silver Barclett and Co., New York, 1922, P. 34.
- (4-b) Gilani, *The Reconstruction of Legal Thought in Islam*, Lahore, P. 283
- (5) Mowafi, *The Human Rights in Islam*, op. cit., Supra No. 1. PP. 8 — 10, Bozar, *Humanity of Islam*, op. cit., Supra, No. 1. p. 18.
- (6) Ibid. PP. 16 — 26; Zeidan, *Rules Related to Non-Muslim*, op. cit., Supra No. 1. PP. 86-136, Madani, *The Relationship Between Saudi Domestic Law and International Law : A study of Oil Agreement with foreign companies*, op. cit. cit., Sura No. 1. PP. 73 — 76.
- (7) *The Quran and The Sword* collection of letters, statements and notes of lates King Abdulaziz, op. cit., Supra No. 1. pp 90, 91 Faisal speaks, op. cit., Supra No. 1. pp. 58 — 61; statement of H.M. King Fahad. Ministry of Information, op. cit., Supra No. 1. pp. 130, 131.
- (8) Abu Zahra, *Crime and Punishment in Islamic Jurisprudence*, op. cit., Supra No. 1. pp 34 — 36.
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— T. Al Ghoneimi, *The Muslim conception of International Law the Western approach*, The Hague.

(13) Statement of H.R.H. Prince Saud Al Faisal, Ministry of Foreign Affairs before the General Assembly of the U.N. in its 30 ces (Ministry of Foreign Affairs, Jeddah).

(14) Mowafi, *Human Rights in Islam*, op. cit., Supra No.1. pp. 39

(15) On Human Rights Declaration, see, United Nations Univ Declaration of Human Rights, December 10, 1949 (U.N.Y.B. 1949, p. 5351)

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(16) Bishop, *Ibid*. P. 282.

(17) Starke, J. *Introduction in International Law*, 8th ed, Bu worths 1977, P. 397.

(21) Faisal speaks, op. cit., pp. 104 — 105.

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