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# ISLAM

Human Rights and Palestinian Situation

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## **ISLAM, Human Rights and Palestinian Situation**

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## **Abstract**

The thesis, tackles the human rights from an Islamic perspective. As a case study, the human rights in Palestine are discussed.

The thesis shows the importance of human rights and how it arises from the main sources of Islam, Qur'an and Sunna .from this respect the human rights in Islam differs from the west where they are derived from nature law .

The thesis makes the distinction between terrorism and jihad, and it denies that Islam is terrorism and terrorism is Islam. Islam bans all the acts of terrorism.

As for human rights, in perspective in the Middle East, this paper talks about human rights in Palestine.

It shows the obvious Israeli violations of the Palestinian human rights. These violations are happening in front of the entire world without any help to the Palestinian people.

## Abbreviations

CEC	Central Elections Commission
CPT	Christian Peacemaker Team
EAPPI	Ecumenical Accompaniment Programme for Palestine and Israel
GSS	Israeli General Security Services
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICJ	International Court of Justice
IOF	Israeli Occupying Forces
ISM	International Solidarity Movement
OPT	Occupied Palestinian Territory
PCHR	Palestinian Centre for Human Rights
PLC	Palestinian Legislative Council
PLO	Palestine Liberation Organisation
PNA	Palestinian National Authority
PRCS	Palestinian Red Crescent Society
PSS	Palestinian Security Service
RSF	Reporters sans Frontiers MSF <i>Medicines sans Frontierès</i>
UDHR	Universal Declaration of Human Rights
UNRPR	United Nations Relief for Palestine Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

## INTRODUCTION

One of the most important things in our life is our human rights. They must be without any discrimination because all human beings are born free and equal in dignity and rights. Humans are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

The purpose of my thesis is to find out the position of human rights in the Islam and the Middle East world, and to explain them both theoretically and practically. As the starting point, there are the teachings and practices of Islam as expressed mainly in the holy Qur'an and Sunna.

In the world of Islam people have to follow and obey the laws (Sharia) given by ALLAH through his prophet in the secular rule humans should undertake to fulfill the will of the people on the other government and the people have to fulfill the will of ALLAH.

The idea and definition of human rights in Islam is different from the western concept. In Islam, the starting point is that every thing comes from ALLAH and in the western thought; the human rights are based on laws. And international declarations.

As Muslims believe in as follows:

- ◆ In ALLAH, the Beneficent and Merciful, the Creator, the Sustainer, the Sovereign, the sole Guide of humankind and the Source of all Law.
- ◆ In the Caliphate of man who has been created to fulfill the Will of ALLAH on earth.
- ◆ In the wisdom of Divine guidance brought to humans by the Prophets, whose mission found its culmination in the final Divine message that was conveyed by the Prophet Muhammad (Peace be upon him) to all humankind.
- ◆ The human rights in Islam are firmly rooted in the belief that Allah and Allah alone is the law-giver and the source of all human rights. Due to their divine origin, no rule of government or assembly or authority can curtail or violate in any way the human rights conferred by ALLAH.

- ◆ In many countries like Palestine and Iraq there exist some counter-terrorist measures that violate human rights. Abuses include prolonged, incommunicado detention without judicial review; risk of subjecting to torture during the transfer, return and extradition of persons between or within countries; and the adoption of security measures that restrain the rights or freedoms of citizens and breach the principal of non-discrimination. I want to illuminate some Islamic sources like the holy Qur'an, the Sunna, the life of Prophet, and his Caliphs. The positions of Islam regarding the human rights are arising from the sources. Furthermore, the perspective of forbidden (Haram) things will be tackled. Unfortunately, more and more often, Islam has lately been associated with terrorism and violence due to the actions of a few extreme individuals who have taken it upon themselves to do the most heinous crimes in the name of Islam.

To understand Islam's stance on terrorism, one must refer to its original sources, the Quran and the teachings of Prophet Muhammad (peace be upon him), which are explicit in the prohibition of any form of injustice including that of wanton violence which seeks to instill fear, injury or death to civilians.

In Palestine case study, we will describe the situation in Palestine; the case can be simply defined as right that has been stolen from a nation and given to another.

The reason to take Palestine as a case study is to show the real violations of the human rights. Since the crimes, destruction, imprisonment, genocide and the restrictions of liberty of moving are parts of the daily life of the Palestinian people, consequently, there is a variety of violations of the human right in Palestine.

# Chapter one

## Universal Human Right

### 1.1.1 What are human rights?

In order to put the concept and practice of human rights in Islam in a perspective, we have to take a short look of the present global (sometimes also called the western) understanding of human rights.

Human rights refers to the concept of human beings as having universal rights, or status, regardless of legal jurisdiction, and likewise other localizing factors, such as ethnicity and nationality. The existence, validity and the content of human rights continue to be the subject to debate in philosophy and political science. However human rights are defined in international law and covenants, and further, in the domestic laws of many states. Yet there is a great deal of variance between how human rights norms are defined in these multiple contexts and how they are upheld in different local jurisdictions.

Within particular states, “human rights” refer to safeguards for the individual against arbitrary use of power by the government regarding:

- 1) The wellbeing of individuals.
- 2) The freedom and autonomy of individuals.
- 3) The representation of the human interest in government.

These rights commonly include the right to life, the right to an adequate standard of living, freedom from torture and other mistreatment, freedom of expression, freedom of movement, the right to self-determination, the right to education, and the right to participation in cultural and political life. These norms are based on the legal and political traditions of United Nations member states and are incorporated into international human rights instruments.<sup>1</sup>

As we know all the shapes of freedom and autonomy for individuals in Islamic world comes from many sources. First and above of all \_there is

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1 From Wikipedia, the free encyclopedia, available on: [http://en.wikipedia.org/wiki/Human\\_rights](http://en.wikipedia.org/wiki/Human_rights). visited on 26-10-2005.

the revelation of allah as expressed in the Quran and the sunna , which we will talk about in the second chapter.

### **1.1.2 Historical Background**

Especially the ancient Greeks stressed the position of an individual person and his freedom in the society ,The best-known histories of the human rights movement tend to begin with the ancient religions and societies and show the evolution of concepts and institutions of human rights across civilizations. The roots of the notion of Human Rights can be drawn as far back as the ancient time (the role of the individual in the state) but the idea of civil and political rights stems from liberal freedoms advocated by John Stuart Mill in his book *On Liberty*. The concepts of economic, social and cultural Rights can be traced back to Hegel's *Elements of the Philosophy of Right*.

The origin of modern positive rights in international law may be traced to the creation of the International Labour Organization in 1919 as a Western response to the socialist ideology of the Russian Revolution of 1917.<sup>2</sup>

The modern concept of human rights can be traced back to the American (1776) and French (1789) revolutions in the late eighteenth century which both reflect the ideas of the philosophy Enlightenment. The 'rights of man' were asserted and justified by reference to principles of liberty and equality. Though sometimes distorted, the concept can be traced through subsequent history in the emancipation movement and the abolition of the slave trade through to the developments of 20<sup>th</sup> century, including the founding of the United Nations and the formulation of international legal standards based on the principles set out in the Universal Declaration of Human Rights of 1948.<sup>3</sup>

### **1.1.3 Establishing international standards of Human Rights**

In 1948, the Universal Declaration of Human Rights resolution was adopted virtually unanimously by the United Nations General Assembly. While not legally binding, it urged member nations to promote a number

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2 Stanford University, Stanford Encyclopedia of Philosophy, available on <http://plato.stanford.edu/entries/rights-human/>. Visited in 23-10-2005.

3 Darcy James,' *Human rights and International legal Standards*', Relief and Rehabilitation Network, Overseas Development Institute, London, 1997. p 7.

of human, civil, economic and social rights, asserting that these rights are part of the “foundation of freedom, justice and peace in the world”. The declaration limits the behavior of the state, which now has duties to the citizen (rights-duty duality). Efforts to create a legally binding form of the charter led to disagreements between various states over which rights were acceptable. Thus, two different covenants, the International Covenant on Civil and Political Rights (opened for signature 1966, entered into force March 23, 1976) and the International Covenant on Economic, Social and Cultural Rights (opened for signature 1966, entered into force January 3, 1976) were created which bind those states that ratify them to protect the rights listed in the respective covenant. Together these three documents constitute the International Bill of Human Rights.<sup>4</sup> There have also been a number of other conventions regarding particular rights, including:

- ◆ Convention on the Prevention and Punishment of the Crime of Genocide (entry into force: 1951)
- ◆ Convention against Torture (entry into force: 1984)
- ◆ Convention on the Elimination of All Forms of Racial Discrimination (entry into force: 1969)
- ◆ Convention on the Elimination of All Forms of Discrimination Against Women (entry into force: 1981)
- ◆ Convention on the Rights of the Child (entry into force: 1989)
- ◆ Rome Statute of the International Criminal Court (entry into force: 2002)

A modern interpretation of the original Declaration of Human Rights was made in the Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights in 1993. The degree of unanimity over these conventions, in terms of how many and which countries have ratified them vary, as does the degree to which they are respected by various states. The UN has set up a number of bodies to monitor and study human rights, under the leadership of the UN High Commissioner for Human Rights (HCHR).<sup>5</sup>

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4 University of Minnesota, Human Rights Library. Available on <http://www1.umn.edu/humanrts>. Visited in 23-10-2005.

5 available on: [http://en.wikipedia.org/wiki/Human\\_rights](http://en.wikipedia.org/wiki/Human_rights). visited in 26-10-2005.

In 1995, The UN Convention on the Rights of the Child came into force. Article 37(a) prohibits the death penalty for persons under 18 at the time of the crime.

In 1999, The Council of Europe's Committee of Ministers adopted Protocol 13 to the European Convention on Human Rights, which is the first legally binding international treaty to abolish the death penalty in all circumstances with no exceptions. It went into effect on July 1, 2003.

In 2001, The UN Commission on Human Rights (UNCHR) passed a resolution calling on all states that maintain the death penalty to restrict the number of offenses punishable by death.

In 2002, The UNCHR approved a motion by the European Union asking countries to halt executions as a step towards abolishing the death penalty.<sup>6</sup>

## **1.2 The idea of universal human rights**

Human rights can be described as rights one has simply because one is human rights<sup>7</sup>they are the rights to especially basic freedom and security, democracy without which a person's existence would be considered less than human.

Human rights are universal, and as such they have predominance over other rights given to people for other different reasons. Human rights are hold equally by all humans because being human cannot be renounced lost or forfeited, human rights are inalienable.<sup>8</sup> This of course does not apply in reality.

As we know not all people enjoy the same human rights in practice, but the basic idea is that they still have the same human rights and hold them equally and inalienably. Rights can generally be seeing as the relationship between the right-holder and the duty-bearer. This relationship is largely under the control of the right-holder, since his right is inalienable, independent of obligation and can be exercised after his will.<sup>9</sup>

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6 Amnesty International, Amnesty International USA - Program to Abolish the Death Penalty Updated July 2005, available on [www.amnestyusa.org/abolish](http://www.amnestyusa.org/abolish), visited 26-10-2005.

7 Donally Jack, *International Human Rights*, West view Press 1998, Second edition p.18.

8 Donally ,p.18.

9 Anil Cecen,"*Insan Haklari*" published in 1999 Istanbul p 12

### 1.3 Human Rights in theory

The principle of individual Human Rights can be traced to primarily two lines of Western philosophical and political thought; natural law and the Enlightenment.<sup>10</sup> The idea of natural law - a higher law that stands over the laws made by man and is binding on our conscience can be found as early as in Sophocles's *Antigone*. The idea was fully established by the Stoic philosophers in the Hellenistic period.<sup>11</sup> They introduced the concept that there were rights and obligations, which belonged to the individual because of his virtue as being human rather than being a member of the city-state. Similar thoughts are found in the medieval Christianity, in particular by Thomas Aquinas. His definition of natural law, however, emphasized the individual's participation in divine law and was a guide to morality and ethics.<sup>12</sup>

The rights of the individual and the human, as we understand them today, emerged with the Enlightenment. The earlier ideas of natural law didn't have a political content. They didn't determine the relationship between the individual and the state, i.e. the right-bearer and the duty-holder. The Enlightenment put the individual in centre and divorced knowledge from revelation.<sup>13</sup> During this period in Western history, beginning in the 17th century, we can see the start of what is going to develop into the secularized society that now is what separates us from most other parts of the world, where religion still plays a greater part in people's lives.<sup>14</sup>

The idea of a natural law without a base in religion started with the English philosopher John Locke, probably the most important natural law theorist in modern times. Locke argued in detail that some rights self-evidently pertain to individuals as human beings. The most important rights were the rights to life, liberty and property, but the individual has given up the right to enforce this through the state (however not given up the right itself...)<sup>15</sup>

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10 9 Dalacoura, p. 6.

11 Ibid.

12 Ibid.

13 Ibid, p .7.

14 Michael Akehurst "A Modern Introduction to International Law", sixth edition, published in 1987, London p 211.

15 Steiner & Alston, *International Human Rights in Context*, Oxford University Press 2000, Second Ed, p. 324.

The ideas of individualism and the rights of humans could also be found later in the works of other philosophers of the Enlightenment, such as Rousseau, and Voltaire. It was also these liberal ideas that were to become the ideological foundation both of the English, American and French revolutions, and the different declarations and new constitutions that followed them.

The ideas of natural rights overthrew ideas such as the divine rights of kings, since no political regime was justified unless it satisfied the natural rights of its citizens. The connection between these new ideas and the revolutions of the people was obvious. The debate over human rights as a universal concept rooted in natural law and rationalism did however have many critics, also in the Western sphere. In England, for example, conservatives such as Burke and Hume condemned the doctrine partly in fear of that a public affirmation of natural rights would lead to social upheaval, or natural rights becoming a substitute for effective legislation.<sup>16</sup> One of the founders of Utilitarianism claimed that natural law could only be the root of “imaginary rights”, as itself is an imaginary law. Real rights, he said, could only come from real laws.

The utilitarian idea of the greatest happiness principle can lead to sacrificing the rights of some individuals to gain happiness for a larger group of others.<sup>17</sup> According to this theory human rights do not have an independent moral status or force. Even John Stuart Mill, one of the greatest defenders of liberalism, claimed that rights are ultimately founded on utility.<sup>18</sup>

In this issue one problem in the justification of human rights based in the ideas of the Enlightenment is the separation of nature law from God and revelation. Without being able to justify the rights of man as given by God and therefore absolute, the moral foundation of the theory gets more vulnerable and is an easy target for criticism. This disadvantage, as we will see later, is especially relevant in the discourse with those critics of human rights who claim them to have no validity in a multi-cultural world, or that a system of rights given by God, such as the

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16 Steiner & Alston p. 325-326.

17 Ibid ,p .326.

18 Ibid, p.326.

Sharía - the Islamic law, can't possibly be inferior to a man-made set of moral rules.

#### **1.4 Human Rights in practice**

Even though the concept of human rights is no novelty in western sphere of ideas, it was not until after the systematic murders of innocent during the Second World War that human rights became an issue in international politics. Before that most states systematically violated these rights, for example the racial discrimination in the US or the violations the colonial empires brought about for the indigenous people of the colonies. Human rights were<sup>19</sup>, however, considered a domestic political matter and intervention from other states was not an option. In international relations during the past three centuries the principle of sovereignty has been dominating. The principle has its origin in the creation of nation-states, basically during the Enlightenment. The duty correlative to sovereignty is non-intervention, and there was consequently no possibility for one state to have opinions on another state's violation of human rights. The discussions of humanitarian law in the beginning of the 20th century, such as the Laws of War expressed in the 1907 Hague Conventions, were limited to the rights of foreign nationals and did not limit what a state could do to its own citizens, or people in its colonies. There has however been a change in this during the past fifty years. The catalyst for human rights as a topic of international action, was as mentioned above, the Holocaust – the genocidal massacre of millions of innocent, mainly Jews ,but also Gypsies, Communists, Social Democrats, homosexuals and other dissidents.<sup>20</sup> During the war there was very little effort made, even among the Allied, to do something to stop the massacre this lead to common feeling of guilt after the war, which in its turn led to an increased concern for human rights. The first step was the Nuremberg War Crimes Trials (1945-46), where leading Nazis where prosecuted for their crimes against humanity. In 1948, on December 9, the Convention on the prevention and Punishment of the Crime of Genocide was open for signature. After that, December 10 the UN General Assembly adopted the Universal Declaration of Human Rights, which still today

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19 Alan James, "Peacekeeping in International Policies" first published 1990 in UK ,S b p81 ,S e p201.

20 Donally , p. 4.

is the most authoritative statement of international human rights norms. The Universal Declaration of Human Rights was a resolution and not a treaty; it is therefore not per se legally binding. Its drafters intended to let the resolution be followed by a covenant (treaty), but due to ideological rivalry, mainly over the status of economic and social rights, the covenant was tabled for more than a decade. In 1966 the codification was finally completed. It was called the International Rights Covenants and had been, as consequence of the earlier indifferences, broken in two; the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These two Covenants together with the Universal Declaration are collectively referred to as the International Bill of Human Rights.<sup>21</sup>

It is however important to remember that when the UN was founded in 1945, and when the UDHR first was separated, most parts of Asia and Africa were still under Western colonial rule. In the mid-1960: s the UN members had doubled in less than a decade and the Afro- Asian states founded the largest voting bloc. Let's take a brief look at the Islamic countries, since the later discussion is concentrating on the dilemmas that the practical human rights implementation has led to in the Islamic parts of the world. In 1948 only five states of the twenty-two actual members of the Arab State (Egypt, Iraq, Lebanon, Saudi Arabia and Syria) and only seven out of today's forty-five members of the Islamic World Conference (adding Turkey and Iran).<sup>22</sup> There was also a debate among the existing countries on whether approving the UDHR and thereby endorsing international human rights would be for Muslims to betray Islamic law and submit to Western cultural domination. In the end, when it came time to vote on the UDHR, Saudi-Arabia among the Muslim countries was alone in abstaining, joined only by South Africa and various East Bloc countries.<sup>23</sup> The lack of other than western influence on the drafting of declaration of 1948 is often used as an argument by advocates of cultural relativism as an example of the ignorance of other standpoints than the western. The fact that some Muslim states actually

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21 Ibid , p. 9.

22 Tabet Koraytem , Arabic Islamic Developments on Human Rights , Arab Law Quarterly 2001, Kluwer Law International Netherlands. P. 256.

23 Mayer Ann Elizabeth, *Islam and Human Rights – Politics and traditions*, West view Press 1999 Third edition,p. 11.

took part in the drafting is on the other hand used as an argument for the opposite side. They point out that most states didn't protest during the making and did ratify not only the first two covenants, but also later conventions on human rights. Mayer does for example mean that it on this basis should be difficult to maintain that Muslim Countries are outsiders to the present system of international law.<sup>24</sup> Muslim countries can neither be said to have a poorer record of ratification than non-Muslim countries. Countries like Algeria, Egypt, Iran, and Iraq, on the contrary have favorable records in comparison to the USA.<sup>25</sup>

After the UN had established the standards for international human rights in the International Bill of Human Rights, it was followed by the quest of implementation and monitoring the implementation. Several conventions have followed upon the initial ones, some of them well known such as the CEDAW (Convention of Elimination of Discrimination against Women), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on Rights of the Child. The development of human rights has also advanced on a non-governmental level, with the creation of NGOs such as Amnesty International and Human Rights Watch, putting pressure on governments and other potential human rights violators. They also produce alternative reports on the human rights situation in different countries.<sup>26</sup> The existence of NGOs has been of great importance since the UN, despite monitoring, reports and now in later year's even armed interventions, hasn't always been entirely successful. After the first two generations of rights; the political and civil, and the economic and social rights, the development of a third and fourth generation has begun. With the focus changed to a more collective view, these are rights to for example peace and development. Third world countries often consider these rights more important to put focus on, then the political and civil rights that according to them gets all the attention. The same critic is also valid for the economic and social rights and a changed focus to these rights soften mentioned as a way of increasing the interest of universal human rights at a grass-root level in the third world.

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24 Ibid , p.10.

25 Mayer, p.11.

26 Joshua S, Goldstein "International Relations" fourth edition ,published 2001 UK ,CH 1 P 69,87.

## 1.5 Islam and Cultural diversity

There is diversity in culture , values and moral in the debate on whether ethnical traditions, culture or religion have an impact on human rights, both in theory and practice, The Islamic culture is often referred to as being opposite to the western ideas. Different reasons can be found for this focus. The fact that Islam is the second largest religion in the world, and is the fastest growing religion today is of course a contributing reason like the question of civilization and the question of terrorism in this world . If there should be discrepancies between the attitudes to human rights among Muslims in general, and the rights that have been declared as universal by the UN, it would mean that more than a fifth of humanity could question the legitimacy of these rules.

According to Bassam Tibi <sup>27</sup>, professor of International Relations at the University of Göttingen and author of several books about the clash of cultures between the west and the Muslim world, another reason is that,

“ Islamic and Western worldview is not only different, but also raises the same claims. A politicization of these worldviews and the related claims lead to a conflict that could result in a Clash of Civilizations.”

The common roots of Islam Christianity and Judaism Ancient are in Greek philosophy. all three big monotheistic religions are from the Middle East.

What Tibi refers to is that Islam raises claims to be universal, just like Christianity. Other civilizations such as Hinduism, Buddhism and Confucianism do not lay these claims. Christianity has however, unlike Islam, undergone secularization in the course of the Renaissance and Enlightenment, but the western civilization has kept its universal outlook. Islam still bases the claims of universality on religion.

I think the focus on the relations between the Muslim world and the West as a source of conflict also is due to the picture that media and sometimes even politicians give of Islam as a religion closely connected with fundamentalism and after September 11th 2001 even terrorism. The fear created by a simplified view is a serious obstacle in any kind of dialogue between different cultures, and it also helps fundamentalist

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27 Tibi Bassam, *Islam between Culture and Politics*, 2001 Palgrave, p. 214.

regimes to stay in power helped by anti-western currents. It further maintains a general belief that the two cultures stand much further apart than maybe they in reality do. The debate concerning human rights among Muslim scholars is of course as divided as that among western. On one side there are those who believe that human rights is a completely western idea, and any attempt to force it upon the non-western parts of the world is just a new form of colonization - an attempt to "westernize" the world. On the very opposite side there are scholars who have the will to go as far as to reinterpreting the religious rules to get closer to western human rights standards.

Bassam Tibi is one of these reformists. He strongly advocates the importance of a dialogue between cultures, but stresses the importance for western human rights advocates to not compromise their opinion on what are basic human rights, and to keep trying to spread them to other cultures. The fact that human rights the way the UN states them might be an idea based in the western society doesn't mean they are wrong for other cultures. To start compromising the rights in themselves would, according to him, be crucial to the doctrine as such.<sup>28</sup>

Ahmed An-Na'im, another Muslim scholar who advocates Islamic reform, claims that the only way to resolve the conflict between Islam and the theory of human rights is by a new interpretation of Islam.<sup>29</sup>

Both of these scholars are however strongly influenced by western ideas and live in exile in the West. Although they are important names in the human rights discourse in the West, their influence in the Muslim world is very small. The problem with a reinterpretation of Islam, which maybe is to be seen as the strongest possibility to conciliate Islam with modern realities, is that it seeks to reform the scriptural Islam as comprised in Sharía, rather than the popular Islam dominating most parts of the Islamic world. This Islam is more based in cultural behavior and tradition than actual scripture.<sup>30</sup> Reinterpretation also meets strong resistance among many Muslims, some even claiming it to be blasphemy.

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28 Tibi Bassam, *Islam between Culture and Politics*.

29 Tergel Alf, *Human Rights in Cultural and Religious Traditions*, Acta Universitatis Upsaliensis, Uppsala 1998.p. 94.

30 Abdelmoula Adam M, *The Fundamentalistic agenda for human rights – The Sudan and Algeri*, Arab Studies Quarterly, Winter 96, Vol 18 issue 1, p2.

In the Muslim countries, but not all of them, the development in later years has not been in the direction towards secularization or reformism. Instead the fundamentalist movements have grown stronger in many places, and the call for a “reislamisation” has gained increased support. This process probably is due to different reasons, but it’s difficult to not see the connection between this and the anti-western currents that have been the consequence of among other things the way the conflict in Palestine has been handled, and the treatment of Iraq and Afghanistan and Iran in the way in the USA-led war on terrorism, in which one can may question the use (or abuse..) of International Law.

Trying to find out the opinions on cultural relativism among conservative Muslim scholars is a difficult task. Much of the literature available is written by Muslims working at European or American universities, and doesn’t give a just picture of a general stand of the Islamic scholars. On the other hand, documents by not westerly-educated Muslims are arguing from such a different perspective from what we are used to that they are hard to use in a comparative study with a legal perspective.

Abu’l A’la Mawdudi, a conservative Sunni Muslim from Pakistan, is internationally known and was active in Pakistani politics, leading a political group committed to reinstate an Islamic state. Mawdudi, who was a firm critic to the Western society and culture, died in 1979. Having written much about the application of Islam to contemporary problems, he is still often quoted in the debate on Islam and human right, and his work has been widely translated. He basically considers the Western culture as decadent and inferior to the Islamic culture.<sup>31</sup> Universal human rights, as established by the UN, are according to him a Western idea not needed in an Islamic society. The perfect Islamic society, which should be what all good Muslims strive for, does automatically give humans all the liberty and freedom they need. His document “Human Rights in Islam”, which will be included in my later analyze starts out with his explanation of the Western approach:

“ The people in the West have the habit of attributing every good thing to themselves and try to prove that it is because of them

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31 Tergel ,p. 90.

that the world got this blessing, otherwise the world was stepped in ignorance and completely unaware of all these benefits.”

The Islamic approach, he continues, is that all human rights necessary are granted by God and as such they can't be withdrawn by a legislative assembly, as the rights granted by man can. He also claims that Western human rights are based on philosophical concepts, without any sanctions behind them.

In Iran, cultural relativism has been a popular way of justifying a record of poor adherence to international human rights standards. In 1995, the Iranian ayatollah.<sup>32</sup> Ali Khamenei, the supreme leader of the Islamic Republic, urged his foreign affairs functionaries to reject the Western notion of human rights. He claimed that they were part of a civilization coming to its end, and that the system would be replaced by a universalism based on Islam:

“Today the Islamic system is questioning the identity, goal and capability of the Western system, and the most superior Western thinkers are gradually realizing the tediousness of the Western system. Thus, the civilization that began with the Renaissance is coming close to its finale. Human beings today are searching for a substitute for the Western system, and the inclination toward Islam in the United States, Europe and Africa emanates from this situation.<sup>33</sup>

Also President Khatami has expressed similar opinions, although he was elected as being a popular reformist.

From the fundamentalist movements it is hard to find any theoretical writings. This is possibly a chosen strategy for these movements, with

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32 Khomeini is sometimes referred to as ayatollah, and other times as Imam. Ayatollah is an honorific title for high-ranking Shi'ite authorities in Iran that came into being only this century. After the revolution in '79 he himself gave up using the title and adopted the title of Imam. The word Imam has several different meanings in Islam. The leader of the congregational prayer is an Imam, but it is also the title used for the founders of the madhahab (the Sunna schools). For the Shi'ites the word Imam has a special significance of an intercessor, unique and predestined to the age that has to be recognized and followed. The so called Twelve-Imam Shi'ites believe in a hidden Imam will return – Khomeini not being him. (The concise encyclopedia of Islam, Cyril Glassé, Revised ed. 2001, Stacey International, London )

33 Afshari Reza, Human Rights in Iran –the abuse of Cultural Relativism, University of Pennsylvania Press ,Philadelphia, p 4

the aim to give the leaders a stronger position, leaving the members under their authority.<sup>34</sup> Hassan al-Turabi, leader of the National Islamic Front in Sudan has however written about the ideology of his movement. He openly rejects human rights as being a product of positivist and materialist Western jurisprudence. He talks about a Islamic society where loyalty to God is going to free the people from all chains of materialism. In such a society invoking freedoms or rights could never be a problem.

Cultural relativism, in the discourse of human rights in the Islamic world, is often used as an argument for compromising the existing rules of human rights, or even creating a new set of rules based in the moral values of the Islamic religion. Examples of that are the different Islamic human right documents that I later will describe and analyz

### **1.6 Western and Cultural Diversity in a perspective**

The Cultural Relativism originated in the western world in the 1920s and 1930s, as a reaction to the arrogance of western position towards other societies. Some western anthropologists felt there was a need of a counterpart to the beliefs that non-western societies were inferior to western societies, and that they would eventually evolve along similar lines. These ideas were a reaction to the spread of a new system like imperialism and evolutionism in the western world during the 19<sup>th</sup> century.<sup>35</sup>

The relativist position is asserted to the empirical matter that the world contains an impressive diversity in views about right and wrong in our world, linked to diverse underlying cultures. To proponents of relativism, instruments with a pretension to universality, such as the UN documents and conventions on human rights, may be seen as cultural imperialism attempting to universalize western values by making them the standard of what is right what is not right for us. The cultural relativist approach was first introduced in American anthropology by Franz Boas. The “Boasians” were skeptic about the universal laws of evolution, claiming that culture and not biology makes for us.<sup>36</sup> From our perspective is

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34 Abdelmoula, p. 3.

35 Dalacoura Katerina *Islam, liberalism and human rights* , I.B Tauris Publishers, New York ,1998, p.24.

36 Steiner & Alston, *International Human Rights in Context*, Oxford University Press 2000, Second Ed, p 379 (Adam Kuper; Culture: The anthropologist’s approach).

important to understand that according to culture relativism no absolute and universally acceptable set of rallies does not exist – not ever the (western) set of human rights. <sup>37</sup>

Since the theory claimed that concepts like race and sex are cultural constructions, this became a rather attractive idea in the 20th century America, where racial problems were very prominent. The problem with a strictly relativist approach, where all moral values are connected to a certain culture, is the potentiality of a culture where no support of human rights exists. Something missing and Later theories such as Rawl’s theory on “overlapping consensus” <sup>38</sup>

However there are claims that all cultures have some basic moral values in common. One can consequently find these cross-cultural universals and through them establish culturally sensitive rules on for example human rights. One example of a cross- of cultural value is the universal aversion to death and injury, also called the principle of “retribution tied to proportionality” <sup>39</sup>.

The problem with theories based on finding a lowest common denominator is that some basic rights would have to be sacrificed, such as the rights of women. But the cultural relativist think those are the downsides we have to live with since we don’t have the right to decide for other cultures what values are right or wrong in our world. Critics of the relativist view mean that this kind of thinking would undermine the whole idea of human rights. The doctrine of human rights should be a doctrine on a superior (or at least different) level and used to set the rules for how to deal with conflicts between other doctrines. <sup>40</sup>

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37 Peter ,Calvocoressi “World Politics Since” sixth edition ,published 1991 in US ,ch 1,p 121,146.

38 Jones Peter, *Human Rights and Diverse Cultures* , p .34.

39 Dalacoura , p. 28.

40 Jones, p .41.

## **Chapter two**

### **Islam and Sharia in Islam world**

#### **2. Islam and Sharía in the Islam system**

Firstly I will try to compare the Islamic law with international human rights law, it is essential to try to point out and explain some of the basic differences between Islam as a religion, and for example Christianity. I will also briefly describe the history of Muslim culture and politics. In his book "Islam in the world"<sup>41</sup> Malise Ruthven describes the essential difference, between Christianity and Islam, the former is primarily the religion of love, Islam is rather the religion of justice. This should of course not be taken literally; Christians do of course not generally more love than Muslims and Muslims not more just than others. But Islam sets up rules for everyday life and behavior Christianity-orthodoxies Islam – orthopraxia in a way Christianity doesn't. With the Sharía, Islam has a legal system closely linked to religion – a legal system of purely divine source, not to be change by man. To understand how Islam can be so closely connected to society and politics still today, one needs to consider the nature of the religion during its early years of formation the first definition of Sharia is the Arabic word for Islamic law. In the Islamic state sharia controls both public and private lives of those living within the state. Sharia governs many aspects of dayly life: politics, economics, banking, business law, contract law, and social issues. The term Sharia refers to the body of Islamic law. Some accept Sharia as the body of precedent and legal theory before the 19th century, while other scholars view Sharia as a changing body, and include reform Islamic legal theory from the contemporary period.<sup>42</sup>

#### **2.1 The history of Islamic world**

##### **2.1.1 The Prophet (Muhammad) (PBUH)**

To fully understand the concept of human rights in Islam we have to examine the historical roots and development of Islam.

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41 Ruthven Malise, Islam in the World, Oxford Press 1999, Second edition p 219

42 [www.\ Sharia - Wikipedia, the free encyclopedia.htm](http://www.\ Sharia - Wikipedia, the free encyclopedia.htm), visited in 24/4/2006.

As we know in the Islamic world the history of Islam starts with Muhammad ibn `Abdullah of the Banu Hashim of Quraish, who was born into one of Makka's best families. Not much is known about his early years. What we do know is that his father was a merchant who died before Muhammad was born. According to his family's customs he spent his first years with a Bedouin tribe. The pure air of the desert was considered to be good for the health of children. This made him familiar with the special elliptical quality of speech which characterizes the style of the Qur'an. When Muhammad was six years old his mother Amina died, leaving Muhammad an orphan. He was then taken into the household of his paternal Uncle Abu Talib. Then Muhammad started working in the merchant caravan of Makka. He was a very serious and respected young man and earned the nickname al-Amin, the trusty one. At twenty-five he got married with a rich Quarishi widow, Khadija bint Khuwailid, who according to tradition was about forty and already the mother of several children. Despite this, she is said to have borne him four daughters and several sons. All his sons died in infancy. They stayed married for fifteen years and appear to have had a happy marriage, even though the loss of all sons must have been a considerable blow in a society where a man's prestige to some extent depended on the number of his sons. Muhammad remained monogamous in his relation to Khadija, something very rare in a time where temporary marriages were not only permissible but socially accepted. After Khadija's death he did however, according to tradition, marry eleven or even more women. He was said to have an exception from God from the rule in the Qur'an in which four wives per man is the upper limit. Most of his marriages had political significance, such as enhancing the alliance with a Bedouin tribe by marrying a daughter of the chief. In his forties Muhammad began spending an increasing amount of time in solitary contemplation in a cave in the hill of Hira, a few miles north of Makka. It was in this cave he first received his "call" to prophethood, and the first of the revelations on what by the Muslims is called the Night of Power, the night of 26-7 Ramadan. An angel sent by God said to Muhammad: "Read!" to which he twice answered "What shall I read?". Finally the words of what by a great majority of scholars are regarded as the first Qur'anic revelation came to him;

## Chapter of the holy Qoran (al alk)<sup>43</sup>

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

إقرأ باسم ربك الذي خلق (1) خلق الإنسان من علق (2) إقرأ و ربك الأكرم (3) الذي علم بالقلم (4)  
علم الإنسان ما لم يعلم (5) كلا إن الإنسان ليطغى (6) إن رآه استغنى (7) إن إلى ربك الرجعى (8)

صدق الله العظيم

Read in the name of thy Sustainer who has created –Created man out of a germ-cell

Read, for thy Sustainer is the Most Bountiful One

Who has taught (man) the use of pen-?

Taught man what he did not know! (The Qur'an 2006:4-24)

Muhammad kept receiving divine revelations during a period of twenty-two years (610-632), which later were collected and written down in the Qur'an, the Holy Scripture of Islam. Muhammad fought for almost ten years to spread the word of God in Makka. It became increasingly harder, especially after the death of his protector Abu Talib, in 619. When the resistance turned from verbal harassment and mockery to physical persecution, Muhammad and two hundred of his followers emigrated to Madina. This migration; the so-called Hijra, was to become an important turning point in the history of Islam. The Umma, the Islamic community, was founded during the Madina-period and Islam took a political form. The Hijra took place in 622 and the Muslims chose to start their calendar from there and not from the birth of Muhammad, or the date of the first revelation. One important change from then on was that Muhammad not only held the role of a Prophet. However, he also became a political leader for the religious-political community of Madina. The Hijra was followed by years of fighting between the Muslims of Madina and Makka, where the Muslims step by step grew stronger due to Muhammad's political and diplomatic skills.

At his death in 632 (63 years), Muhammad had not only managed to conquer Makka, but also to unit all of Arabia under the banner of Islam.

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43 (The holy Qur'an 2006:4-24)

Islam is the way of life for those who believe in God and want to live a life in worship and obedience to none but God. So the reward is forgiveness from God and an everlasting life in the Heaven. There are over one billion Muslims spread across the globe in all nationalities, languages and ethnic backgrounds. Islam was the religion of the first couple, Adam and Eve. It was also the religion of messengers of God like Noah, Abraham, Moses and Jesus. The essence of their message was the same.<sup>44</sup>

(Believe and obey the one true God and obey His messengers).

**Belief in Islam means:** <sup>45</sup>

1. Belief in One God
2. Belief in all of God's messengers
3. Belief in all the books sent down to prophets of God. These books include Torah and Gospel. Only the Holy Quran exists in its original form, however.
4. Belief in the existence of angels
5. Belief in the Day of Judgement, Life after Death, Heaven and Hell.
6. Belief in the Divine Decree or Predestination, it's good and it's bad.

Finally Muhammad (PBUH) wants to illustrate what does the human right in Islam, to till the entire world if any one he or she wants to know the human rights, justices, equality, freedom, and democracy, he or she must refer to the holy book and Sharía to understand every thing in our world.

**2.1.2 The` Rightly guided` caliphs (Khalīfah):**

The years between 632 and 661 are known as the era of the "Rightly Guided"- caliphs. This was a very turbulent time for the still young Muslim State We have to remember that Islam was born the came time both as a religion and as a state. Non-Muslims may find it interesting that this time of continuous conquest, violence and civil war is referred to by Muslims

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44 Www. Prophet Muhammad. htm, I visited in 27/4/2006.

45 <http://www.islam101.com/> , I visited in 26/4/2006.

as a golden age. It was during this time the foundation of the new religion was laid down, both normatively and geographically. It is also from this era that all sources of the Sharīa derive, and all Islamic renewal and reform, traditional as well as modernistic, has to find its references there.

The first caliph Abu Bakr was the father of Muhammad's favorite wife Aisha and one of the first converts to Islam. He had been chosen by the Prophet to lead the pilgrimage of 631 and also to act as Imam (or leader of the congregational prayer) during his final illness. He seems to have been the obvious choice as Muhammad's successor (Khalīfah), but according to most Sunni Muslims Muhammad himself died without determining anyone to take over his position as leader. Abu Bakr managed to keep the Islamic State together, despite the problems in the repercussions of Muhammad's death. Among other things some of the Bedouin tribes wanted to break free, claiming that their alliances with the Islamic state were political pacts with the Prophet personally. Abu Bakr reigned for only two years, and before his death in 634 he had designated Umar ibn al-Khattab his successor. During the reign of Umar the sporadic raids against revolting tribes turned into a full-scale war of conquest. At the time of his death in 644 the Arab raiders were reaching as far as Barqa in the West, to the central Iranian highlands in the East. Umar was murdered by a Persian captive, and as he lay dying he appointed a committee of six men of the Quraishis to choose his successor. The leading candidates were Uthman ibn 'Affan of the Umayyad clan, husband to one of the prophet's daughters and an early convert and companion of Muhammad, and Ali the prophet's first cousin and husband of his daughter Fatima. Ali had been raised in the prophet's household and had been closer to him than any other male relative.<sup>46</sup> Uthman was chosen, probably because the committee wanted to make sure that the conquest of Umar would continue. Ali had already voiced some opinions against these policies; because he wasn't convinced it was in accordance with the Qur'an. Uthman turned out to be a less talented leader, lacking some of his predecessor's authority and political skills. The period leading to his death by murder in 656 was a turbulent time, where the Islamic State faced its first major internal crises. His death was followed by five years of civil war known as the first fitna.

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46 Esposito John L. *Islam - den raka vägen*, Studentlitteratur 2001, p.25.

Ali did however become the last of the four "Rightly Guided"-caliphs. He was a charismatic and energetic person, and had the support of those who had believed the caliphate should have stayed within the family of the prophet after his death. These Muslims, who later would be called the Shia-muslim, were very content when Ali finally received what was rightly his to start with. Their satisfaction and prospects didn't last long. During the six years Ali was caliph, two major civil wars took place. The first opposition movement was led by Aisha, Muhammad's widow. With Ali's death in 661, the era of the rightly guided caliphs ended.

Muhammad's strength, both as a prophet and a statesman, and the way in how Islam was not just a religion but also a state-like community in its early years, are probably parts of the reason to why Islam more than maybe any other religion claim to regulate all parts of the life of its adherents – including legal and political aspects.

The Muslims try to find their guidance in life in the example of Muhammad.<sup>47</sup> When the Qur'an, Muhammad's revelations, does not give an answer on how to act in a certain situation, the answer should be searched in the tradition and life of the prophet. Among the early Muslim scholars, law was not an independent, empirical study, but rather the practical aspect of the religious and social preaching of Mohammad. Little or no distinction was made between legal and religious terminology.

### **this map explains the area of caliphs** <sup>48</sup>

source [http://upload.wikimedia.org/wikipedia/en/1/10/Age\\_of\\_Caliphs.gif](http://upload.wikimedia.org/wikipedia/en/1/10/Age_of_Caliphs.gif),

- ◆ as we know most academic scholars and thinkers agree that Muhammad had not explicitly established how the Muslim community was to be governed after his death. Two questions faced these early Muslims: who was to succeed Muhammad, and what sort of authority he was to exercise.

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47 ibid p.35.

48 [http://upload.wikimedia.org/wikipedia/en/1/10/Age\\_of\\_Caliphs.gif](http://upload.wikimedia.org/wikipedia/en/1/10/Age_of_Caliphs.gif), visited in 27/4/2006.

## 2.2 The Islamic law <sup>49</sup>

### 2.2.1 Primary sources in Islamic world

When we want to talk about “Islamic law”, we usually mean what in Arabic is called the *Sharía*. *Sharía* means “the right way”, and it is a religiously based system of rules with its roots in the Qur’an, the Muslim’s holy book. The *Sharía* also includes the *Sunna*, a collection of the traditions of Muhammad. The Qur’an and the *Sunna* are accepted as infallible sources, since they are directly derived from the prophet’s words and actions.

Islamic legal theory has considered Qur’an and *sunna*, that is, the model behavior of the Prophet, to be the two main sources of Islamic law, with analogy and juristic consensus providing a means to extend the rulings of these sources to cases not directly addressed by them.<sup>50</sup> Sounds simple enough, but this neat framework is far more complex in its application. A classroom exercise or writing assignment designed to familiarize students with traditional methodology while illustrating the possibilities for diverse interpretations would begin with passages from the Qur’an and *hadith* (the literature that records the *sunna*).

#### 2.2.1.1 The Qur’an (the holy book)

We learn from the following verses of the Quran that the Quran is detailed in religious law. A worshiper of God alone will not seek an outside source for religious law.

To understand the human rights in Islamic world you have to refer to holy book .The Qur’an is considered to be based on divine revelation of God’s word, made by the Angel Gabriel to Muhammad between the years 610 and 632. The Qur’anic texts were compiled a couple of years after the death of Muhammad. Since the Muslims believe the

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49 Sources for basic information about Islamic law;

K. Zweigert & H. Kötz, *An Introduction to Comparative law*, Third edition, , 1998 Oxford University Press Bogdan Michael, *Komparativ Rättskunskap*, , 1996 Nordsteds Juridik Ruthven Malise, *Islam in the world*, second edition 2000, Oxford University Press, NY Nordberg Michael, *Profetens folk*, Tidens förlag, Stockholm 1988 H.A.R Gibb ”The Shari’a” ([www.answering-islam.org](http://www.answering-islam.org)) [ikipedia Encyclopedia \(www.wikipedia.org/wiki\)](http://wikipedia.org/wiki)

50 For a far more detailed exploration of these methods, see Kamali, *Principles of Islamic Jurisprudence*.

Qur'an to be divine, it is the highest and most important source of Islamic law. The Qur'an however does not contain many statements that constitute rules of law capable of direct application. Out of the Qur'an's about 6236 verses, which are divided in 114 chapters in 30 main parts, only about three percent are dealing with questions that from Western point of view are of legal nature. There are about seventy sura regulating matters of family law, about seventy on other civil law issues, thirty sura on penal law, twenty on public and taxation law and finally about twenty that has some kind of relevance in the field of international law.

The Quran is God's Final Testament to the world, and He has pledged to protect it from the slightest distortion. Thus, the Quran is surrounded by invisible forces that guard it and serve it. Unlike any other book, the Quran is taught by God; He teaches us what we need at the time we need it. This is why we read the Quran hundreds of times without getting bored. We can read a novel, for example, only once. But the Quran can be read an infinite number of times, and we derive new and valuable information from it every time. On the other hand, the insincere readers - those who read the Quran to find fault with it - are diverted from the Quran <sup>51</sup>. In fact, God's invisible forces help them find the faults they seek. Since the Quran is perfect, such "faults" serve only to reveal the stupidity of God's enemies.

### **2.2.1.2 The Sunna in Islam**

The sunna coming the second source in the Islamic world after the holy book. The most important source of law in the Sharīa is called the Sunna. The Sunna is the tradition of Prophet Mohammad, written down in the so-called Hadith by some Muslim writers in the 7th century. The Hadith is said to have its origin in stories about the prophet's actions and the traditions of his followers. Using the Hadith as a starting point, one tries to imagine how the prophet would have solved a certain problem. The Hadith continued to develop during the time of the first four caliphs. After the death of the fourth caliph Ali in 661, no one was considered to have any authoritative right of interpretation of Hadith or Sunna.

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51 <http://www.submission.org/islam/faq3.html> I visited in ,5/5/2006

In the 8th century, four main Sunni schools of jurisprudence established themselves in different parts of the Islamic world, the so-called madhahibs, and the Arabic expression for “ways”:

- 1- The Hanafi in the near and Middle East was founded by Abu Hanifa and developed in Iraq. It is based on the Hadith, but have rather wide possibilities for interpretation based on ”common sense” and analogies. The Hanafi School was the official doctrine of the Abbasid caliphate.
- 2- The Maliki in North, West and Central Africa is considered of many to be the most liberal school. It has its roots in Medina and the Syrian schools of interpretation and was founded by Malik ibn Abas. It attaches great weight to vox populi( the voice of people), the living tradition, rather than what formally is considered the Hadith. In that way the link between law and society is kept alive. Among other things, the Maliki School gives women more individual rights than the others. Countries with the intention to change their laws in a liberal way often seek their support in this school.
- 3- The Shafi’i in east Africa, Malaysia and Indonesia, was founded by the famous theorist Muhammad al Shafi’i (Egypt d. 820), and is a strictly formalistic way of interpreting the Sunna. According al Shafi’i any tradition that isn’t directly traceable back to the prophet himself is inadmissible. To be able to know exactly how to solve a problem the way Mohammad did, al Shafi’i developed a complicated system of “links of tradition” so called isnâd. The isnads have different values, but all have to be satisfactory to not break the chain back to the tradition of the prophet. Every link has to be an approved intermediary of the Islamic tradition, such as a companion of Muhammad or some other approved legal authority. Hadiths with the first link unknown, so called mursal isnâd, are permitted in for example Malaki, but not in the Shafi’i.

These three where the three original Sunni schools of interpretation, and in spite of their formal differences and divergences in details, they grew into agreement on more important matters. They all in practice recognized the same

sources; Qur'an, Sunna, Ijima and some form of analogical reason. They all recognize each other's systems as equally orthodox. These three schools were followed by several other schools, often developed as a strong traditionalist reaction to the speculative "innovations" of the previous schools<sup>52</sup>. Most of them never gained a wide following, and only one is recognized by the other three as the fourth orthodox school:

- 4- The Hanbali-school, founded by the Baghdad doctor Ahmad ibn Hanbal. It had strong following in Iraq and Syria until the Ottoman conquest. It was revived (under the name of Wahhabi) in Central Arabia, and is nowadays dominant in Saudi-Arabia. It developed from the Shafi'i school, and is often referred to as orthodox extremism<sup>53</sup>. There also exist two shi'istic schools of interpretation. Only 8 % of the world's Muslims are Shi'a-muslims, most of them resident in Iran. The division between Sunni and Shi'a Muslims is the one most familiar to us in the non-Muslim parts of the world. The division was made after the death of Ali, the last of the rightly guided caliphs. The Shi'a Muslims puts less weight at the Hadith. They do acknowledge it, but the interpretation of the Hadith must be made by an authorized Imam.<sup>54</sup> The Shi'a Muslims believe in the return of the twelfths Imam.

It is however important to note that Khomeini and his successors are not this kind of Imams, even if they often in Western media are mistaken for that.<sup>55</sup> The religious leader of the country does however have a very strong position in interpreting the Sharía.

#### **2.2.2.2 Secondary Sources of Law. (In the Islamic world)**

In the Islamic system, not only the holy book and sunna explain everything in our life but there is also secondary sources like science fiqh and a lot of scholar explain that. Neither the Qur'an nor the Sunna offers a system of legal provisions, they only supply the material from which a system could be constructed. In the construction of such a system a

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52 H.A.R Gibb "The Shari'a" ([www.answering-islam.org](http://www.answering-islam.org)).

53 Theutenberg Bo J, Folkkrätt och säkerhetspolitik, Nordstedt 1986, p.562.

54 Theutenberg , p.562.

55 See footnote p.34.

science of interpretation was created. The science of fiqh, the Islamic jurisprudence, has apart from the Qur'an and the Sunna two other roots (usul); Ijima – consensus among scholar jurists, opinio juris. Ijima as a principle was enshrined in the Hadith in which the prophet is said to have declared that "never will God make my community agree upon a wrong course"<sup>56</sup> Quias – systematic analogical reasoning. This is the technique in which legal experts sought to incorporate new situations within the divine system

There is also a third source, which sometimes is mentioned as a part of the Sharía and at other times not accepted: It jihad – independent legal reasoning, is by many reformists seen as the only way to reinterpret Islamic law to better adjust to modern ideas and society. Conservatives does however claim that the "gate to It jihad", and there by all possibility of re-interpretation, was closed after the tenth century.<sup>57</sup>

The science of fiqh started in the second century after Hijrah, when the Islamic state expanded and faced several issues which were not explicitly covered in the Qur'an or the Sunna. Rulings based on the unanimity of Muslim scholars and direct analogy is generally considered to be binding. The four Sunni schools of thought, Hanafi, Maliki, Shafi'i and Hanbali, are identical in approximately 75% of their legal conclusions. Variances in the remaining questions are traceable to methodological differences in understanding or authentication of the primary textual evidence. Differing viewpoints sometimes exist even within a single school of thought.

The Sharía has never been erected into a formal code, but it has been said to be a discussion about the duties of Muslims. Human actions are graded according to a scale of moral valuation. There are five main categories:<sup>58</sup>

1. Fard, obligatory acts, omission of which constitutes a sin.
2. Haram, forbidden acts, commission of which constitutes a sin.
3. Mandub, recommended acts, where there is merit in doing them but no sin in omission.

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56 Ruthven p 139

57 Ibid p 143

58 Ruthven, p149

4. Makruh, undesirable acts, where there is merit in abstaining from but no sin in commission.
5. Mubah, unspecified acts, neither meritorious nor sinful, whether omitted or committed.

Some actions lead to punishment according to Islamic law. These so called hudúd-crimes are given much attention in the Western media, since the punishments prescribed for them in the Qur'an are criticized as being cruel and inhuman. The hudúd crimes include theft and adultery, and are punished by flogging, cutting of hands or in some case death. The hudúd also include gambling and drinking alcohol, but for these crimes no punishment is settled in the Qur'an, and they have been judged differently in various times and places.

In reality there are many countries in the Middle East and North Africa maintaining a dual system of secular courts and religious courts. The religious courts mainly regulate marriage and inheritance. Saudi Arabia and Iran maintain religious courts for all aspects of jurisprudence.

Sharía is also used in Sudan and Libya, and Palestine some states in northern Nigeria has reintroduced Sharía courts.

# Chapter three

## Islam and terrorism

### 3- Islam and Terrorism

#### 3.1 definition of terrorism in general

- ◆ The unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives (FBI).
- ◆ The calculated use of violence or the threat of violence to inculcate fear, intended to coerce or intimidate governments or societies as to the pursuit of goals that are generally political, religious or ideological (US department of defense.)
- ◆ Premeditated politically motivated violence perpetuated against noncombatant targets by sub national groups or clandestine agents, usually intended to influence an audience (US state department).<sup>59</sup>

In this list of definitions, the common ground is evident but there are differences of emphasis. The first four (official) definitions reflect institutional positions. The FBI, for instance, stresses coercion and unlawfulness, and offences against property, in furtherance of social as well as political objectives. The US state department lays stress on premeditation. The potential political motivation of (sub national groups) is noted. There is no reference to spontaneous violence or to the psychological significance of threatened action.<sup>60</sup> More comprehensively the US department of defense gives equal prominence to actual or threatened violence, cites a wider range of objectives, and includes as possible targets not only governments but also whole societies.

The term is often used to assert that the political violence of an enemy is immoral, wanton, and unjustified; and terrorist attacks are commonly characterized as “indiscriminate”, or executed “with disregard for human life”. According to the definition of terrorism typically used by states,

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59 David J. Whittaker, *The terrorism Reader*, ED Routledge 2001 , p.5.

60 *ibid* .p.8.

academics, counter-terrorism experts, and non-governmental organizations, terrorists are actors who don't belong to any recognized armed forces, or who don't adhere to their rules, and who are therefore regarded as «rogue actors».<sup>61</sup> Because of this connotation, those accused of being terrorists rarely identify themselves as such, and instead typically use terms that refer to their ideological or ethnic struggle, such as: separatist, freedom fighter, liberator, revolutionary, militant, paramilitary, guerrilla (Spanish for «small war»), rebel, jihadi or mujaheddin («one engaged in holy war»), or fedayeen («prepared for martyrdom»).

In the United States, academic and political defenders and advocates of (or apologists for) terrorism emphasize that in its unconventional warfare (Guerrilla tactics) toward a political goal, the methods used by American colonists in the American revolution meet the definition of terrorism. This observation, particularly when applied to questions of a people's sovereignty or independence, is often expressed in the statement «One man's terrorist is another man's freedom fighter.» However, historically, neither the term «insurgency» nor «terrorism» was used by Colonial England to describe the behavior of its American colonies during the Revolutionary War. The comparison is further complicated by the complex legal framework within which the American Revolution was framed and international aid and acknowledgment.<sup>62</sup>

In response to the September 11 attacks, political leaders from Europe, North America, Asia, and the Middle East have placed the phenomenon of terrorism within the context of a global battle against systems of government perceived by those accused of using terrorist tactics as harmful to their interests. The European Union includes in its 2002 definition of «terrorism» the aim of «destabilising or destroying the fundamental political, constitutional, economic or social structures of a country.»

### 3.1.1 The **US** defines “international terrorism” as activities that <sup>63</sup>

1. involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any

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61 *ibid.* p.22.

62 [F:\definition of terror\State-sponsored terrorism](#) - Wikipedia, the free encyclopedia. htm, visited on 25/5/2006.

63 John Baylis & Steve, 'The Globalization of World Policies', An introduction to international relations, Oxford University Press 2005, third Ed, p. 480-481.

State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

2. appear to be intended:
  - a- to intimidate or coerce a civilian population .
  - b- to influence the policy of a government by intimidation or coercion.
  - c- to affect the conduct of a government by assassination or kidnapping.
3. occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

In a landmark roundtable of strategic thinkers from the Middle East, North America, Europe and Asia organised by Strategic Foresight Group in New Delhi in June 2004, it was proposed to make a distinction between terrorism and acts of terror. While terrorism refers to both motives and acts of terror by a group or an individual for a political or ideological reason, the act of terror is a crime under the jurisdiction of most countries in the world as well as various United Nations protocols. Also, in 2004, UN High Level Panel proposed that acts of terror should be defined as those which are executed with an intention to cause bodily harm to non-combatants for the objective of influencing public policy. Thus, these developments have clarified the definition of terrorism, though its formal acceptance by the UN General Assembly still remains illusive.<sup>64</sup>

### **3.1.2 Islamic Definition of Terrorism**

In this definition, there are connection between Islam and human rights and how the Islam tries to respect all the rights in all aspects in the life according to this definition.

This is the definition of terrorism according to Islam prepared by the Islamic Jurisprudence Council of Muslim World League Makkah, Saudi Arabia:

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<sup>64</sup> Adam Roberts & Benedical Kingsbury “ United Nations Divided World” published in US.P 183,240.

Terrorism is aggression perpetrated by individuals, groups or states in a spirit of oppression against man's religion, blood, reason, wealth or honour. It comprises all types of striking terror, harm, threat or killing without right including armed burglary, spreading fear among travellers and highway robbery. It covers all acts of violence or threats to implement any individual or group crimes for the sake of striking fear among people or terrifying them through threats of causing harm to them or endangering their lives, freedom, security or general conditions.

Also causing harm to environment, public utilities or public or private properties are all types of terrorism in addition to endangering national or natural resources. All the above are types of mischief on earth which God Almighty prohibited Muslims to commit when He said in the Quran:

*“And seek not mischief on earth for God loves not mischief mongers”*  
(Chap. 28, V 77)<sup>65</sup>.

Hoffman's understanding of terrorism is that it is inherently political and that it is a calculated process. Like Crenshaw, in regard to understanding what terrorism is and is not, writes of the search for objectivity in addressing the concept and the contexts in which it takes place. For her, terrorism is highly symbolic and perceptual: it is difficult to be neutral in the task of definition. Labeling activity as terrorist may relate to policies for dealing with it together with moral judgment. Where the context within which a terrorist group operates is that of an organized military force, namely an (army) or resort to (warfare), then Crenshaw like Hoffman acknowledges the difficulty of deciding what terrorism really is and how its forceful myths, images and messages may be countered.<sup>66</sup>

So we cannot determine a unambiguous definition for terrorism, because it differs from country to country, and from religion to religion, every formulates the definition according to his interests .

### **3.2 The impact of terrorism on Human Rights**

- ◆ In many countries like palestine,Iraq there exist some counter-terrorist measures that violate human rights. Abuses include prolonged, incommunicado detention without judicial review; risk

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65 F:\definition of terror\Islamic Defenition of Terrorisem.htm, visited on 25/5/2006

66 David j. Whittaker , the terrorism reader,p.11-12 .

of subjecting to torture during the transfer, return and extradition of persons between or within countries; and the adoption of security measures that restrain the rights or freedoms of citizens and breach the principal of non-discrimination.<sup>67</sup> Example include:

- ◆ Images of torture and ill-treatment of detainees in US custody in Iraq and other locations illustrated how the US government has disregarded human rights and fundamental freedoms in the name of security and “war on terror”. also how the human rights violate in palestine from, Israeal ,america government .
- ◆ Hundreds of foreign nationals remain in prolonged indefinite detention without charge or trial in Guantánamo Bay, in blatant contravention of international and US constitutional standards and a lot of events .

We can add also the Terrorist and acts, both committed by States or non-State actors, may affect the right to life, the right to freedom from torture and arbitrary detention, women’s rights, children’s rights, health, subsistence, democratic order, peace and security, the right to non-discrimination, and any number of other protected human rights norms.<sup>68</sup>In addition, there is probably not a single human right exempt from the impact of terrorism.

In this (COMMISSION ON HUMAN RIGHTS/Sub-Commission on the Promotion and Protection of Human Rights /Fifty-third session Item 6 of the provisional agenda) resolutions 1999/27 of 26 April 1999 and 2000/30 of 20 April 2000, the Commission requested the Special Rapporteur to give attention to the questions presented in these resolutions: certain human rights, concern for the victims, concern that counter-terrorist action may not fully comply with international human rights standards, and special concern about hostage-taking, kidnapping and extortion.

It is also worth noting in this context that during the preceding debates many statements by Governments as well as non-governmental organizations drew particular attention to the curtailment of procedural rights provided

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67 See, for instance, E/CN.4/Sub.2/1997/28, Para. 13.

68 In her preliminary report, the Special Rapporteur aligns the human rights implications of terrorism into three conceptual clusters: (i) the right to life, liberty and dignity of the individual; (ii) issues relating to the right to a democratic society; and (iii) rights relating to social peace and public order.

in international human rights instruments in cases of persons being charged under national anti-terrorism laws. As usual, there was a large divergence of views expressed regarding the issue of non-State actors. Accordingly, the Special Reporter will now attempt to address some of these questions, although, regrettably, briefly owing to the size constraints on reports.

### **3.2.1 Direct impact (General concerns)**

In her review of terrorist hostage-taking, kidnapping and extortion carried out by terrorist groups, the Special Reporter has found that these acts are mostly carried out by known groups who predominate in only a few areas. The political issues involved in these areas are also well known. In the context of a study on terrorism and human rights, it is difficult to know what the Commission wishes of the Special Rapporteur regarding these acts except to note again that there has been little new suggestion of new groups engaging in them. This does not mean that such acts may not be committed in the future in other areas by new groups, but it is difficult if not impossible to predict where they might occur. Criminal liability for these acts remains a concern of national and existing international law, including the requirement of international cooperation in apprehending persons alleged to have engaged in such acts.

We can see the Commission has also expressed its concern about rape by terrorist groups. In this connection, the Special Rapporteur draws attention not only to the work of the Commission regarding violence against women and the work of the Commission's Special Rapporteur on violence against women, its causes and consequences, but also to the relevant work of the Sub-Commission and of its Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict.<sup>69</sup> The Commission has already resolved that rape by non-State actors constitutes a violation of the rights of women.<sup>70</sup>

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69 For instance, see the preliminary report submitted by Ms. Radhika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences (E/CN.4/1995/42, especially paras. 99-101), and the update to the final report submitted by Ms. Gay J. McDougall, Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict (E/CN.4/Sub.2/2000/21, para. 20). E/CN.4/Sub.2/2001/31 page 51

70 See, for example, Commission resolution 2000/45 of 20 April 2000, paragraphs 3 and 4, which affirm that violence against women, whether in public or private life, is a violation of the rights and fundamental freedoms of women.

The states have an affirmative duty to promote and protect the human rights of all persons under their jurisdictions. While this is a basic tenet of human rights law, it is important to recall it here as both the Commission and the Sub-Commission have stressed this point in the context also of terrorism.<sup>71</sup> States that resort to State terrorism, whether international or internal, grossly violate the basic concepts of human rights. Such States should be subjected to both international condemnation and international action in the light of instruments and mechanisms of human rights and, where applicable, humanitarian law. Such action, if effective, would greatly diminish incidence of terrorism today.

When terrorist acts or threats of terrorist acts by non-State actors threaten the lives and safety of persons under a State's jurisdiction, it is the responsibility and the duty of the State to protect those persons. A State's minimum response should not be limited to proscribing terrorist acts in its criminal law system or in the training of local and national law enforcement or military personnel. Such a response would be, in the Special Rapporteur's view, too narrow and limited, and would not result in meaningful protection from terrorist acts. A State must also undertake a thorough study of all aspects of terrorism, including causal factors and the implications of its foreign and domestic policies in the light of international law (especially in terms of human rights) that have generated a risk of terrorist acts being committed against its citizens or persons under its jurisdiction.<sup>72</sup> Were all States to do this in an unbiased way, and then adopt meaningful responses - which may or may not require changes in policies - the incidence of terrorist acts by non-State actors would also dramatically decline?

Unfortunately, some States consider that to focus any attention on the causes of terrorism has the undesired effect of generating sympathy for, if not the terrorist acts, at least, the context in which they arise. Public opinion may then be rallied to pressure a State to change a policy that it

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71 See, for example, Commission resolution 2000/30, seventeenth preambular paragraph: "Reiterating that all States have an obligation to promote and protect human rights and fundamental freedoms ...", and paragraph 5: "Urges States to fulfil their obligations under the Charter of the United Nations and other provisions of international law, in strict conformity with international law, including human rights standards, to prevent, combat and eliminate terrorism in all its forms and manifestations ...".

72 13 The need to address root causes of terrorism has also been raised at the Commission and Sub-Commission by both Governments and non-governmental organizations.

does not want to change, even at the cost of increased fear of terrorism. Additionally, some are of the opinion that focus on the causes that might result in changes of policy could be viewed as giving in to terrorist demands. Even so, States are sometimes obliged to change policies that contravene international law. Yet this is not viewed as giving in to terrorist demands, in spite of the fact that a terrorist group may seek those very changes.

Also, a State may utterly fail to protect its people in an effective way from acts of terrorism. In these situations, one could say that the State is either unable or unwilling - or both - to control those acts. The State, then, has effectively reneged on its affirmative duty to protect its own people. Such a State, in these situations, can itself be liable for acts carried out by non-State actors.<sup>73</sup>

On the other hand, a State's over-response to terrorism can also affect human rights. Thus, the Commission has repeatedly expressed concern over counter-terrorist measures, as evinced in its latest resolutions on human rights and terrorism that state yet again that measures to counter terrorism must be in strict conformity with international human rights law.<sup>74</sup>

In this context, the rights to freedom of speech, association, belief, religion and movement, and the rights of refugees are particularly vulnerable to undue suspension in the guise of anti-terrorist measures. This may sometimes occur when individuals or groups in a State express support for a political position that is in opposition to the government's position but conforms to that espoused by a group labelled as terrorist.

It should, finally, be noted that a number of States either have or are in the process of enacting anti-terrorism legislation which is frequently criticized by legal scholars and human rights defenders.<sup>75</sup> Some of this

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73 For State responsibility if the State fails to protect an alien or if it fails to take appropriate action to pursue and punish those responsible for certain terrorist acts, see for instance, J.J. Paust, "The Link Between Human Rights and Terrorism and Its Implications for the Law of State Responsibility", *Hastings International and Comparative Law Review*, vol. 11, No. 1 (1987), pp. 53-54.

74 See Commission resolution 2000/30, twentieth preambular paragraph and paragraphs 5 and 6, and Commission resolution 2001/37, twenty-second preambular paragraph and paragraphs 5 and 6.

75 See, for instance, M. Gerber, "The Anti-Terrorism Act of 1987: sabotaging the United Nations and holding the Constitution hostage", *New York University Law Review*, vol. 65 (1990), at pp. 364-402; *Coordinadora Nacional de Derechos Humanos, Grupo de*

legislation contains no definition of terrorism, while some contains lists of certain acts. Some of it includes provisions in which groups are put on an official terrorist list, frequently with no analysis of the particulars of the situation or the nature of the group. Those groups and others espousing similar views but uninvolved with the groups concerned may face severe consequences. As will be set out below, judicial proceedings to challenge this false labelling or to defend a person charged with an offence under such anti-terrorism legislation may leave room for serious negation of a wide range of procedural rights.

### 3.2.2 Is There a Link between Terrorism and Human Rights

- ◆ All the debate and discussion on human rights focuses in the firstly on human rights concerns associated with the response of states to activities of nonstate actors. However, we must not ignore the impact of nonstate actors on human rights. As Kalliopi K. Koufa, the UN Special Rapporteur on Terrorism, states in her progress report on human rights and terrorism, “There is probably not a single human right exempt from the impact of terrorism.”<sup>76</sup>
- ◆ Sadly, it is only in the aftermath of September 11<sup>th</sup> that the cynosure of world attention is on how terrorism can affect rights, freedoms, democracy, civil society, rule of law, and economic and social development. Attention the world over is on Camp X-Ray (Guantanamo Bay), the stifling of civil liberties, the harassment of human rights activists and organisations by state and nonstate actors, and the introduction of draconian emergency regulations that undermine civil liberties and human rights.<sup>77</sup> These however we can see that in Palestine, Syria, Iraq, Sri Lanka, Afghanistan and a lot of countries in this world. Has had to contend and grapple with in its post-independence history.
- ◆ I think the conceptual linkage between human rights and terrorism on the one hand and human rights and conflict resolution and transformation on the other, is an important one to make. The UN Commission on Human Rights Resolution 2001/37 condemns all acts, methods, and practices of terrorism:

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76 Kalliopi K. Koufa, *Human Rights and Terrorism: Progress Report.*, June 27, 2001, p. 29

77 *ibid.*, p.30.

Finally, as acts aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and the rule of law and having adverse consequences for the economic and social development of the State.

### **3.3 What do the Qran and the suna say about terrorism?**

First of all I want to illuminate some Islamic sources like the holy Quran, the Suna, the life of prophet, and his Caliphs they clarify the position of Islam regarding the human rights and how to deal with the others and the perspective on forbidden (haram) things. Unfortunately, more and more often, Islam has lately been associated with terrorism and violence due to the actions of a few extreme individuals who have taken it upon themselves to do the most heinous crimes in the name of Islam.

To understand Islam's stance on terrorism, one must refer to its original sources, the Quran and the teachings of Prophet Muhammad,( peace be upon him), which are explicit in the prohibition of any form of injustice including that of wanton violence which seeks to instill fear, injury or death to civilians, which I have been talked about before.

According Islam means, terrorism the slaughter or terrorizing of the innocent. As such it is categorically forbidden, since it is in direct opposition to Islam, a name that is derived from the Arabic word Slma - one meaning of which is Peace. No other faith carries the meaning of peace within its name. The word Muslim can be translated as the meaning one who spreads peace. those aspects are so heavily stressed in Islam that across the Muslim world people are always greeting each other with the words of Salam: "Peace on you". It is worth of noticing the similarity between the words Islam and Salam.

- ◆ The blessed Prophet, may peace be upon him (pbuh), has:
- ◆ "In the name of one in whose Hand is my soul, you will not enter Heaven until you believe, and you will not believe until you love one another. Shall I tell you what will lead you to love one another? Spread peace (salam) among yourselves".<sup>78</sup>

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78 An authentic statement recorded in Arabic in the collection of Muslim

Tragic events such as the attack on the twin towers in New York, the bombings of Bali, Madrid and London are assumed to be justified by Islam in the minds of some people. This idea has been fuelled further by many media channels which defame Islam by portraying these bombers as ‘Islamists’ or ‘Jihadists’, as though they were sanctioned by Islam, or had any legitimate on behalf of Muslims. The actions of a few fanatical individuals who happen to have Muslim names or ascribe themselves to the Muslim faith should not be a yardstick by which Islam is judged.

- ◆ Islam takes very seriously the killing of even one innocent person, whatever the situation. In fact the sentence for murder under the Islamic legal system (or Shariah) after a properly conducted trial in legitimate courts, can be the death penalty.<sup>79</sup>
- ◆ This is because life is absolutely sacred - a gift granted by God - and no one has the right to take it except God.
- ◆ “..if anyone slays a human being, unless it be (in legalised punishment) for murder or for spreading corruption on earth, it shall be as though that person had slain the whole of humanity; whereas, if anyone saves a life, it shall be as though one had saved the lives of all humanity.”<sup>80</sup>
- ◆ Islam goes further than just prohibiting oppression and safeguarding rights, it commands its faithful to deal kindly and compassionately to all those who seek to live in peace and harmony
- ◆ “Allah forbids you not, with regard to those who fight you not for your faith, nor drive you out of your homes, from dealing kindly and justly with them: For Allah loves those who are just” (60:8)
- ◆ Prophet Muhammad (pbuh) taught: “A believer remains within the scope of their religion as long as he or she does not kill another person illegally”.<sup>81</sup>

Centuries before the Geneva Convention was drawn up, Muslims were bound by a code of conduct which the Prophet Muhammad,( peace be

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79 [Www. F:\islam tt\Islam Guide What Does Islam Say about Terrorism.htm](http://www.F:\islam\Islam Guide What Does Islam Say about Terrorism.htm) ,I visited on 30/5/2006

80 from the Qur’an at 5: 32

81 An authentic statement recorded in Arabic in the collection of Bukhari

upon him), set. He forbade the killing of women, children and elderly in war. In an authentic narration the Prophet (pbuh) warned that he who kills anyone who has a covenant of peace with the Muslims will not smell the scent of Paradise. In fact, he taught that justice is not only for humans but must be shown to animals and all living things. In a narration the Prophet (pbuh) informed us about how a lady was sent to hell because of a cat she had locked up until it starved and died. If such is the sanctity which Islam places on the soul of an animal, how much graver is the killing of hundreds of innocent humans?!<sup>82</sup> Also in the Islamic system clear not only the human rights but also the animals' rights.

Abu Bakr, the first Caliph of the Muslims, reflected these prophetic teachings when he advised his general Yazid, who was confronting Roman armies, he gave all the armies ten advices.

- ◆ “I advise you ten things; do not kill women or children or an aged, infirm person. Do not cut down fruit-bearing trees. Do not destroy an inhabited place. Do not slaughter sheep or camels except for food. Do not burn bees and do not scatter them. Do not steal from the booty, and do not be cowardly.”<sup>83</sup> here important thing to do connection between Jihad and human rights .
- ◆ The message of the Quran is clear as we have seen the sanctity of any human life is to be respected and any violation in that regard is paramount to the worst crime. Mercy is at the heart of the Islamic call, “We sent thee (O Muhammad) not save as a mercy for the peoples”<sup>84</sup> a totally different message to what the terrorists are sadly imparting to humanity.

### **3.4 The meaning of jihad in Islam and jihad in the context of human rights**

Jihad, sometimes spelled Jahad, Jehad or Djehad, is an Islamic term, from the Arabic root (to exert utmost effort, to strive, struggle), which connotes a wide range of meanings: anything from an inward spiritual struggle to attain perfect faith to a political or military struggle

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82 **What does Islam say about terrorism,** [F:\islmtt\Islam\\_Way.htm](F:\islmtt\Islam_Way.htm), I visited on 30/5/2006

83 Narrated in *Saheeh Al-Bukhari*, #6871, and *Saheeh Muslim*, #88.

84 From the Qur'an at, (21-107).

to further the Islamic cause. Individuals involved in the political or military forms of Jihad are often labeled with the neologism “jihadist”.<sup>85</sup>

Another definition of Jihad is an Arabic word that means literally a struggle, and accordingly Jihad is a “holy war.” Or, more precisely: It means the legal, compulsory, communal effort to expand the territories ruled by Muslims at the expense of territories ruled by non-Muslims.”<sup>86</sup>It corresponds the Islamic view that the world is divided into dar\_Islam (abode of Islam) and dar al\_Harb (abode of war).

In Islam, the word stands for all forms of striving and struggle done to enhance good and remove harm for the sake of God (and not for one’s personal ego or glory). It requires knowing the acts that God loves, and what God dislikes. The aim or purpose of Jihad is Justice. Anyone striving to remove injustices in society, or promote neighborliness, in other faith carries the meaning of “peace” within its name) to eradicate drugs, to provide for the homeless, to combat crime, or to even remove litter from the street, can be in a state of Jihad.

This also applies to a struggle within oneself, against one’s negative influences and temptations. Struggling against the hate or jealousy or pride inside oneself is Jihad. Correct Jihad therefore requires one to possess, deep down inside, honesty, integrity and courage.

The blessed Prophet (pbuh) taught: “The best Jihad is saying a word of truth in the court of a tyrant ruler”<sup>87</sup>.

Jihad can be carried out through writing, speech, lobbying or picketing. Jihad can also be performed ‘though the Qur’an’ (Muslim scripture), by inviting people to the Islamic faith through living and sharing the teachings of the Qur’an.

### **Classification of Jihad**

There are many meaning to Jihad and, it is classified as follows : it is either **Jihad al-akbar** (the greater jihad), the struggle against one’s

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85 F:\islm tt\Jihad - Wikipedia, the free encyclopedia.htm, I visited on 30/6/2006

86 F:\islm tt\Re “What does the Arabic word “Jihad” mean” - Reader comments at DanielPipes\_org.htm, I visited on 2/6/2006.

87 An authentic statement recorded in Arabic in the collection of Abu Dawud

soul (**nafs**), or **jihad al-asgar** (the lesser jihad), the external, physical effort, often implying physical fighting.<sup>88</sup>

On the other hand many Muslim scholars have explained the Jihad, and they say that there are five kinds of jihad fi sabilillah (struggle in the cause of God):<sup>89</sup>

- ◆ Jihad of the heart/soul (Jihad bin nafs/qalb) is an inner struggle of good against evil in the mind, through concepts such as tawhid.
- ◆ Jihad by the tongue (Jihad bil lisan) is a struggle of good against evil waged by writing and speech, such as in the form of dawah (proselytizing), Khutbas (sermons), and political or military propaganda.
- ◆ Jihad by the pen and knowledge (Jihad bil qalam/ilm) is a struggle for good against evil through scholarly study of Islam, ijthad (legal reasoning), and through sciences (such as military and medical sciences).
- ◆ Jihad by the hand (Jihad bil yad) refers to a struggle of good against evil waged by actions or with one's wealth, such as going on the Hajj pilgrimage (seen as the best jihad for women), taking care of elderly parents, providing funding for jihad, political activity for furthering the cause of Islam, stopping evil by force, or espionage.
- ◆ Jihad by the sword (Jihad bis saif) refers to qital fi sabilillah (armed fighting in the way of God, or holy war).

Also some of the great thinkers of Islam have elaborated the essence of the jihad, for example Sayyid Qutb, The well-known Egyptian scholar, (Sayyid Qutb, Milestones, Revised Edition, chapter. 4, "Jihad in the Cause of God") notes four stages in the development of Jihad:

1. While the earliest Muslims remained in Mecca before fleeing to Medina, God did not allow them to fight;
2. Permission is given to Muslims to fight against their oppressors;
3. God commands Muslims to fight those fighting them;

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88 The Biography of Muhammad and the Wars (Maghazi) Ibn Isaac, Dr. Sohaul Zakkar, dar Al Fekr .

89 The Road to *Jihad*, [http://members.nbci.com/\\_XMCM/jihadroad/index.html](http://members.nbci.com/_XMCM/jihadroad/index.html), I visited on 2/6/2006.

#### 4. God commands the Muslims to fight against all polytheists.

Sayyid Qutb views each stage to be replaced by the next stage in this order, the fourth stage to remain permanent). To justify the universal and permanent dimensions of Jihad he cites the following Qur'anic passages: <sup>90</sup>

- ◆ Quran: 4:74-32: They ought to fight in the way of God who has sold the life of this world for the life of the Hereafter; and whoever fights in the way of God and is killed or becomes victorious; to him shall We (God) give a great reward...
- ◆ Quran: 8:38-40: and fight them until there is no oppression and the religion is wholly for God...
- ◆ Quran: 9:29-32: Fight against those among the People of the Book (Jews and Christians) who do not believe in God and the Last Day, who do not forbid what God and His messenger have forbidden, until they are subdued and pay jizyah (tax on non-Muslims) ...

Sayyid Qutb, however, pours scorn upon those who view jihad as solely defensive:

They are ignorant of the nature of Islam and of its function, and that it has a right to take the initiative for human freedom. Thus wherever an Islamic community exists which is a concrete example of the Divinely-ordained system of life, it has a God-given right to step forward and take control of the political authority so that it may establish the Divine system on earth, while it leaves the matter of belief to individual conscience.

We can conclude the chapter as follows. One might ask what is the relations between the Jihad and the Human Rights .first of all, as we have stressed before Caliph Omar spoke about the duties of Muslims to his soldiers in general and even during the war :the behavior must be always based on the respect of human life ,which , of course ,includes as such also the Human Rights . Secondly ,when we look at the core of the Jihad .the Greater Jihad is to a great length a concept of good life and there is again the in build idea of human rights :the Muslims who has

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90 The Holy Qur'an, Translated by A. Yousuf Ali, Published by Amana Corporation, Brentwood, Maryland, 1983

been successful in his Greater Jihad does not violate the other people and their rights .thirdly the lesser Jihad (war against the infidels) might look controversial to the human rights . Here we face the question of justified war. Without going any further in the depths of this issue, we can claim that the aim of the lesser Jihad is not to violate the rights of other people, but bring about the system in the world, which, according to the principles of Islam, guarantees universal Human Rights to everybody in side the dar-ul Islam.

### **3.5 The sanctity of all human life in Islam.**

- ◆ When we talk of the sanctity of life, we mean that life is not to be treated badly or discarded thoughtlessly. In terms of human life this often relates to our views on abortion, euthanasia and war etc. Some people believe that human life is to be respected above all other forms of life whilst others believe that all life (both human and non-human species) is to be given equal respect and treated as special.
- ◆ Most religions believe humans are special. For instance, they teach that we have a soul (a part of us that lives on after death), and that we have been given an opportunity to have a relationship with God. Some religions, such as Judaism and Christianity, also teach that humans have been created in ‘God’s image’. This means that humans have certain qualities and characteristics that God has (E.g. they can make things, they have the ability to reason things, they were created good).<sup>91</sup> It is also believed that humans have been given a responsibility to look after the world God created.
- ◆ As of the Islamic way of life, Islam provides definite guidelines for all people to follow in all lifestyles. The guidance it gives is comprehensive and includes the social, economic, political, moral and spiritual aspects of life. The Qur’an reminds man of the purpose of his life on earth, of his duties and obligations towards himself, his kith and kin, his community, his fellow human beings and his Creator. Man is given fundamental guidelines about a purposeful life and then he is left with the challenge of human

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91 Downie R, Calman K. Healthy respect. Oxford: Oxford University Press ch 3 ; 204.

existence before him so that he might put these high ideals into practice.<sup>92</sup> In Islam, man's life is a wholesome, integrated unit and not a collection of fragmented, competitive parts. The sacred and secular are not separate parts of man: they are united in the nature of being human.

- ◆ According to the Islamic concept of justice, absolutely no one is above the law, for all men are equal. This point was made in a very dramatic fashion by the Prophet (pbuh) himself. One day, a woman belonging to a high and noble family was arrested in connection with a theft. The case was brought to the Prophet (pbuh) with the recommendation that she be spared the mandated punishment for theft (amputation of the hand). The Prophet (pbuh) replied: "The nations that lived before you were destroyed by God (Allah) because they punished the common man for their offenses and let their dignitaries go unpunished for their crimes. I swear by Him who holds my life in His hand that even if Fatima, the daughter of Muhammad (pbuh), had committed this crime, I would have amputated her hand."<sup>93</sup> That means all of them equals in all aspects in the life with out discrimination.

In Islam, human rights are granted by God (Allah), not by kings or legislative assemblies, and therefore they can never be taken away or changed, even temporarily, for any reason. They are meant to be put into practice and lived, not to stay on paper or in the realm of unenforceable philosophical concepts or United Nation declarations. Every Muslim is required to accept them and recognize the people's right to have them enforced and obeyed. God (Allah) states in the Qur'an that:

- ◆ If any do fail to judge by (the light of) what God (Allah hath revealed, they are (no better than) unbelievers. (Qur'an 5:44)

**(Sanctity):** Supporters of the sanctity of life ethic dismiss considerations about quality and quantity because, they assert:

- All life is worth living under any condition because of the inherent value of life.

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92 Weber LJ. Who shall live? In: Walter J, Shannon T, eds. Quality of life: the new medical dilemma. New York: Paulist Press; 1990:111–118.

93 Ibid.

However, religious arguments are not required to defend sanctity beliefs. It is enough simply to say that all human lives are deserving equal respect not because of what they have to offer or have offered or potentially will offer, but because they exist.

The notion of inalienable human rights attributes force to the value of human life with the assertion that it needs no justification. This is the primary merit of the sanctity of life ethics – that a life requires no justification – but justification *is* required for the premature termination of that life. In this sense, the principle acts as a forceful bulwark against devaluing human life.

### **United Nations Declaration of Human rights asserts simply that:**

Everyone has the right to life, liberty and security of person.<sup>94</sup> No argument is made to justify this claim because no argument is necessary. However, it will be necessary to justify any violation of this right.

The sanctity of life criterion is appealing because it appears to resolve a number of ethical quandaries. To accept it would entail rejection of so many of the problematic issues faced by practitioners and ethicists.

For instance, it will mean rejecting abortion at any stage of pregnancy because of the inherent value of the life of the fetus. This seems like an easy solution to the problem of abortion, except in cases where a pregnancy might be terminated to save the life of the mother. In such cases, sanctity of life cannot inform the decision of which life should be saved. On the one hand, we might choose to save the mother's life because she is already viable and independent and she might have responsibilities that give her life added value. On the other hand, we could save the fetus which, although only a potential life, has not had the opportunity to live that the mother has had, and so deserves a chance. The list of reasons can be given on behalf of either life, but this is no solution.

In fact, all it does is present us with reasons to use quality and quantity criteria for resolving the dilemma. This is a serious practical shortcoming of the sanctity criterion.

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94 United Nations High Commissioner for Human Rights: Universal Declaration of Human Rights. Available: <http://www.unhchr.ch/udhr/lang/eng.htm>, I visited on 3/6/2006.

## Chapter Four

### ‘Palestine as case study (human rights in practice)’

- ◆ Often we hear claims in the west that:
  - 1- universal human rights are not respected in the Islamic world
  - 2- Islam and the (western) concept of human rights are incompatible.
- ◆ The aim of this chapter is to tackle one aspect of human rights situation in the Middle East and show how the human rights of the Muslims are gravely violated there.
- ◆ To talk about the Palestinian issue in depth takes a big book. Yet simply we can define it as right that has been stolen from a nation and given to another. To begin with, I want to mention Palestine as a case study to show the real violation for the human rights.
- ◆ Since the crimes, destruction, imprisonment, genocides and the restrictions of moving liberty are parts of the daily life of the Palestinian people, so we can say that there is a variety of violation of the human right in Palestine.
- ◆ Although many countries have put laws to protect the human rights, these countries support Israel obviously, despite Israeli violations of the Palestinians human rights, This is what I am going to talk about later. At the beginning, I want to give a brief background about Palestine to give a clear image about the Palestinian issue since 1942 until this moment. I want to show you that there are Israeli violations for the Palestinian human rights, and here are the details.
- ◆ In this map it is clear how Palestine was and how it becomes now, from (1946- 2000)<sup>95</sup>

#### 4.1 Palestinian issue in brief from 1917-2000

- ◆ **In (1917-1947)** The Palestine problem became an international issue towards the end of the First World War with the

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95 [www:\palestine\A brief background to the modern conflict - Global Issues .htm](http://www:\palestine\A brief background to the modern conflict - Global Issues .htm),I visited on 8/6/2006

disintegration of the Turkish Ottoman Empire. Palestine was among the several former Ottoman Arab territories that were placed under the administration of Britain under the Mandates System adopted by the League of Nations pursuant to the League's Covenant. However, one of these Mandated Territories became fully independent States, as anticipated. The exception was Palestine where, instead of being limited to «the rendering of administrative assistance and advice» the Mandate had as a primary objective the implementation of the «Balfour Declaration»<sup>96</sup> issued by the British Government in 1917, expressing support for «the establishment in Palestine of a national home for the Jewish people».

- ◆ During the years of the Palestine Mandate, from 1922 to 1947, large-scale Jewish immigration from abroad, mainly from Eastern Europe took place, the numbers swelling in the 1930s with the notorious Nazi persecution of Jewish populations. Palestinian demands for independence and resistance to Jewish immigration led to a rebellion in 1937, followed by continuing terrorism and violence from both sides during and immediately after World War II. Great Britain tried to implement various formulas to bring independence to a land ravaged by violence.<sup>97</sup> In 1947, Great Britain in frustration turned the problem over to the United Nations.

**Also in 1947-1977** after many problems, the UN proposed the partitioning of Palestine into two independent States, one Palestinian Arab and the other Jewish, with Jerusalem internationalized (Resolution 181 (II) of 1947). One of the two States envisaged in the partition plan proclaimed its independence as Israel and in the 1948 war expanded to occupy 77 percent of the territory of Palestine. Israel also occupied the larger part of Jerusalem. Over half the indigenous Palestinian populations fled or were expelled. Jordan and Egypt occupied the other parts of the territory assigned by the partition resolution to the Palestinian Arab State, which did not come into being. After that happened ,in the 1967

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96 Hurewitz, J. C., Diplomacy in the Near and Middle East (Princeton: Van Nostrand, 1956), vol. II, p. xvi.

97 Robert John and Sami Hadawi, The Palestine Diary, vol. I (1914-1945), (New World Press, New York, 1970), p. xiv.

war, Israel occupied the remaining territory of Palestine, <sup>98</sup>until then under Jordanian and Egyptian control (the West Bank and Gaza Strip). This included the remaining part of Jerusalem, which was subsequently annexed by Israel. The war brought about a second exodus of Palestinians, estimated at half a million. Security Council resolution 242 (1967) of 22 November 1967 called on Israel to withdraw from territories it had occupied in the 1967 conflict.

- ◆ **In 1974**, the General Assembly reaffirmed the inalienable rights of the Palestinian people to self-determination, national independence and sovereignty, and to return. The following year, the General Assembly established the Committee on the Exercise of the Inalienable Rights of the Palestinian People. The General Assembly conferred on the PLO the status of observer in the Assembly and in other international conferences held under United Nations auspices
- ◆ **In (1977-1990)** Events on the ground, however, remained on a negative course. In June 1982, Israel invaded Lebanon with the declared intention to eliminate the PLO. A cease-fire was arranged. PLO troops withdrew from Beirut and were transferred to neighboring countries after guarantees of safety were provided for thousands of Palestinian refugees left behind. Subsequently, a large-scale massacre of refugees took place in the camps of Sabra and Shatila. Also In September 1983, the International Conference on the Question of Palestine, which was widely attended, adopted the Geneva Declaration containing the following principles: the need to oppose and reject the establishment of settlements in the occupied territory and actions taken by Israel to change the status of Jerusalem, the right of all States in the region to existence within secure and internationally recognized boundaries, with justice and security for all the people, and the attainment of the legitimate, inalienable rights of the Palestinian people.<sup>99</sup>
- ◆ In December 1987, a mass uprising against the Israeli occupation

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98 *ibid.*

99 British Government, Correspondence between Sir Henry McMahon and the Sherif Hussein of Mecca, Parliamentary Papers - Cmd. 5957 (1939).

began in the occupied Palestinian territory (the first *intifadah*). Methods used by the Israeli forces during the uprising resulted in mass injuries and heavy loss of life among the civilian Palestinian population.

- ◆ After that happened The Peace Process , Peace Conference on the Middle East was convened in Madrid on 30 October 1991, with the aim of achieving a just, lasting and comprehensive peace settlement through direct negotiations along two tracks: between Israel and the Arab States, and between Israel and the Palestinians, based on Security Council resolutions 242 (1967) and 338 (1973) (the «land for peace» formula). A series of subsequent negotiations culminated in the mutual recognition between the Government of the State of Israel and the Palestine Liberation Organization, the representative of the Palestinian People, and the signing by the two parties of the Declaration of Principles on Interim Self-Government Arrangements in Washington, D.C., on 13 September 1993, as well as the subsequent implementation agreements, which led to several other positive developments, such as the partial withdrawal of Israeli forces, the elections to the Palestinian Council and the presidency of the Palestinian Authority, the partial release of prisoners and the establishment of a functioning administration in the areas under Palestinian self-rule. The involvement of the United Nations has been essential to the peace process, both as the guardian of international legitimacy and in the mobilization and provision of international assistance.
- ◆ **In 1993** saw the Oslo Peace Accord, where by Israel recognized the PLO and gave them limited autonomy in return for peace and an end to Palestinian claims on Israeli territory. This has been largely criticized as a one-sided accord, that benefits only Israel, not the Palestinian people. It resulted in Israeli control of land, water, roads and other resources.**In 1994**, Israel withdrew from Gaza Strip and Jericho, ending twenty seven years of occupation. A Palestinian police force replaced them.**In 1995**, then Israeli Prime Minister, Yitzhak Rabin, who had been involved in the latest peace processes, was assassinated by a Jewish extremist.

**In April 1996**, Israeli forces bombed Lebanon for 17 days, with Hezbollah retaliating by firing upon populated areas of Northern Israel. Israel also shelled a UN shelter killing about 100 out of 800 civilians sheltering there. The UN claimed it was intentional. **October 1998** sees the Wye River Memorandum outlining some Israeli withdrawal from the West Bank but Israel suspends **it in January 1999** due to internal disagreements on its implementation. Further attempts through to the beginning of 2000 are made at continuing the Wye River accord,<sup>100</sup> but keep breaking down due to Palestinian protests of continued new Israeli settlements.

- ◆ Some treatments took place like Camp David summit **in 2000**, but they failed to come up with solutions on Jerusalem. Ariel Sharon's visit to the Al-Aqsa mosque (Mount Temple sparked) of the current round of protests and violence. In all this time then, the Palestinian people have been without any nation, and have had limited rights, while suffering from poverty at the same time. Israel continued to increase and expand their settlements giving up less and less land compared to what was promised. Many Palestinians (that are not Israeli Arabs since 1948) do not have the right to vote, or have limited rights, while paying full taxes.
- ◆ For over three decades, the Palestinian people have been living under a military occupation and a from here intifada arises till these days.

## **4.2 Israel's Violations all the rights of International Humanitarian and Human Rights Law in the Occupied Palestinian Territories<sup>101</sup>**

Since 1967, Israel has exercised effective control over the Occupied Palestinian Territories (OPT) of Gaza and the West Bank, including East Jerusalem. The occupation has resulted in numerous violations of customary international law, international human rights law, and

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100 [www.\palestine\palestine Detail.htm](http://www.\palestine\palestine Detail.htm) I visited on 9/6/2006.

101 Some information from This Chapter basically was prepared by the Arab Association for Human Rights (HRA). Al-Haq, the Palestinian Center for Human Rights in Gaza and the Public Committee against Torture in Israel provided their research and expert knowledge. Some of the material used in the following sections will be published in al-Haq's Annual Report 2004.

international humanitarian law, as expressed in instruments such as the Fourth Geneva Convention, the ICCPR, and the ICESCR, among others. These violations have occurred at an increased rate since the beginning of the second Intifada in 2000, and have continued at an elevated level during the period relevant to this report, July 2004-July 2005. This section will highlight and summarise Israel's human rights violations in the OPT during this period, using international humanitarian and human rights law as an analytical benchmark. These violations will be divided into five sections: Israel's settlement policy in the OPT, the separation wall, movement restrictions, the humanitarian situation in Gaza, and other violations. In each section, specific examples of human rights violations will be discussed in detail.

Two points must be clarified before proceeding. The first is the question of applicable legal standards. Israel claims that neither the Fourth Geneva Convention nor human rights conventions to which it is a party apply to its behavior in the OPT. Almost the entire international community, however, including the United Nations (UN), the International Court of Justice (ICJ), the International Committee of the Red Cross (ICRC), and many international law experts, have consistently held that these agreements do in fact apply to Israel's effective control over its extra-territorial holdings in the OPT.<sup>102</sup> The second point is that during the period relevant to this report, Israel has promised to cease some practices, such as the extra-judicial killing of militants and the demolition of houses belonging to people who have committed acts of violence against Israel, that have in the past resulted in human rights violations. Gross human rights violations such as killings of civilians and punitive house demolitions have indeed decreased in the first half of 2005. In June 2005, however, Israel officially readopted the policy of targeted killings. The UN

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102 Since 1967, the UN Security Council and General Assembly have issued hundreds of resolutions upholding the applicability of the Fourth Geneva Conventions. In 2004 the ICJ held that the Fourth Geneva Conventions, as well as the ICCPR and the ICESCR, apply to the OPT, *International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, available at [http://www.icj-cij.org/icjwww/idocket/imwp/imwp\\_advisory\\_opinion\\_20040709.pdf](http://www.icj-cij.org/icjwww/idocket/imwp/imwp_advisory_opinion_20040709.pdf). The UN General Assembly issued a resolution shortly thereafter upholding this position, ES-10/15. See also Ardi Imseis, *On the Fourth Geneva Convention and the Occupied Palestinian Territory*, 44 *Harvard Int'l Law Journal*. 65, 95-100 (2003).

Special Rapporteur John Dugard concurs, noting his most recent report on the situation of human rights in the OPT (March 2005) that “important as these changes or reforms may be, they fail to address the principal institutions and instruments that violate human rights and humanitarian law in the Occupied Palestinian Territory - settlements, the Wall, checkpoints and roadblocks, the imprisonment of Gaza and the continued incarceration of over 9,000 Palestinians.”<sup>103</sup>

#### 4.2.1 Settlement policy in Israel

Settlements first appeared in the OPT in September 1967, a few months after the six-day war. The initial official justification for the settlements was to make Israel’s borders easier to defend. Within a few years, however, settlements were set up throughout the OPT in order to control and take over the land. From the beginning, East Jerusalem received separate treatment via *de facto* annexation, intense colonization, and separation from the rest of the West Bank. Every Israeli government since 1967 has actively encouraged settlement in the OPT, including during the period of July 2004 to July 2005.

Israel’s settlement policy violates article 49 of the Fourth Geneva Convention, which states that «the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.»<sup>104</sup> Nonetheless, Israel continued to expand its settlements during 2004 and 2005.<sup>105</sup> According to the most recent UN data, there are currently 400,000 settlers living in over 100 settlements in the OPT, including East Jerusalem.<sup>106</sup> In August 2004, the Ministry of Defence announced the approval of 600 new housing units in the Ma’ale Adumim settlement, and the Ministry of Housing published tenders to build approximately 1,000 new homes in Betar Ilit, Ma’ale Adumim, Ariel, and Karne Shomron. There is reason to believe that these figures

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103 E/CN.4/2005/29/Add.1 Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine.

104 Fourth Geneva Convention, article 49, para. 6.

105 The sources in this section, unless otherwise indicated, are from FMEP, “Report on Israeli Settlement in the Occupied Territories,” from volume 14, no. 3, May 2004, until Volume 15, no. 2, April 2005. Available at <http://www.fmep.org/reports>.

106 E/CN.4/2005/29/Add.1, at 2.

are not comprehensive, because not all-new construction is announced so publicly.<sup>107</sup>

The settlements also threaten the Palestinian people's right to self-determination as guaranteed in article 1 of the ICCPR and ICESCR. As a de facto annexation of Palestinian territory, they may preclude the Palestinians from freely negotiating the borders of their future state. This is exacerbated by the planned route of the separation wall, which currently places 76% of the settler population on the Israeli side of the wall.<sup>108</sup>

Another effect of the settlement process is the long pattern of settler violence against Palestinians in the OPT that often goes unpunished by Israeli authorities, continuing in 2004-2005 at the high level that has marked the current Intifada. During the fall olive harvesting season, for example, settlers prevented Palestinians from accessing their crops,<sup>109</sup> in at least one case through the use of gunfire.<sup>110</sup> Settlers also killed two Palestinians in September and October 2004, respectively. In neither case were criminal charges brought against the settlers involved.<sup>111</sup> Since it exercises effective control over the OPT, Israel is responsible for ensuring the respect of international human rights law in this territory, including the right to life promised in Art. 6 and the right to security of person in article 9 of the ICCPR. As the UN Special Rapporteur on the situation of human rights in the OPT wrote in 2005, «as settlers are present in the OPT with the Government's approval and as inadequate steps are taken to curb their actions, the Government of Israel must accept responsibility for their actions.»<sup>112</sup> Israel's failure to adequately punish settler assailants, especially in light of its treatment of Palestinians accused of violence against Israelis, violates article 5(b) of the International Convention on the Elimination of All Forms of Racial Discrimination in two ways. First, Palestinians accused of violence

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107 In 2004, for example, Ariel Sharon's government attempted to suppress reports of a new settlement being planned between Ma'ale Adumim and Jerusalem. See Conal Urquhart, "Israel flouts road map with new settlement," *The Guardian*, 6 August 2004, available at <http://www.guardian.co.uk/print/0,3858,4987147-103552,00.html>.

108 UN, *The Human Report*.

109 E/CN.4/2005/29, at 14.

110 Al-Haq affidavit.

111 Al-Haq affidavit.

112 E/CN.4/2005/29, at 14.

against Israelis do not enjoy «equality before the law» as compared to their Jewish counterparts. Second, because settler assailants are not pursued as intensely as Palestinian assailants are, Palestinian victims of settler violence do not enjoy the same «right to security of person and protection by the State against violence of bodily harm.» Settler security is also the underlying rationale for many restrictions on Palestinian movement. Human rights violations arising from these policies will be discussed in the section below on movement restrictions.

#### **4.2.2 The Separation Wall (The West Bank Wall)**

In June 2002, Israel began constructing a barrier, referred to in this report as the separation wall, to physically separate it from the West Bank. Described as a temporary measure to protect Israeli citizens from further Palestinian suicide attacks, 209 km of the wall has been constructed as of February 2005. If built as currently planned, the wall will be 670 km long, leaving 10% of the West Bank and East Jerusalem trapped between the Green Line and the wall.<sup>113</sup> The construction of this structure violates numerous provisions of international humanitarian and human rights law, many of which were discussed in the International Court of Justice's (ICJ) July 2004 advisory opinion that declared the wall illegal.

In July 2004, the ICJ delivered an advisory opinion on the legal status of the wall in the West Bank. After concluding that it did have jurisdiction to hear the case, the court «reached the conclusion that the construction of the wall by Israel in the Occupied Palestinian Territory is contrary to international law.»<sup>114</sup> The court particularly noted that the Israeli settlements around which the wall was being built violated article 49 of the Fourth Geneva Conventions prohibiting the Occupying Power from transferring its civilian population into occupied territory,<sup>115</sup> and that the wall itself threatened the Palestinian right of self-determination.<sup>116</sup> With respect to the wall's impact on Palestinian life, the court noted that it impeded Palestinian freedom of movement, and access to health, work, education

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113 United Nations Office for Coordination of Humanitarian Affairs (OCHA), *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities*, March 2005, at 3.

114 ICJ Advisory Opinion of 9 July 2004, at 152.

115 *Id.* at 112.

116 *Id.* at 115.

and an adequate standard of living, which are guaranteed in the ICCPR and ICESCR, respectively.<sup>117</sup> In reaching these conclusions, the court also took note of Israel's justification for the wall, that it is a necessary measure to protect the security of Israel, and concluded that "the wall, along with the route chosen, and its associated regime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order."<sup>118</sup>

Although Israel claims that the wall is only a temporary measure and does not represent formal annexation of territory, the ICJ has declared that because the route of the way may "prejudge the future frontier between Israel and Palestine and... create a "fait accompli" on the ground that could well become permanent," and it "thus severely impedes the exercise by the Palestinian people of its right to self determination, and is therefore a breach of Israel's obligation in that respect."<sup>119</sup> This violates the right to self-determination articulated in Article 1 of the ICCPR and ICESCR. It also violates the Fourth Geneva Convention's prohibition of annexation of territory acquired through war.

Because most of the wall is built inside Palestinian territory, its construction requires the confiscation of Palestinian land and destruction of the property on it, violating Article 17 of the Universal Declaration of Human Rights, which states that no one shall be arbitrarily deprived of his property, and Article 53 of the Fourth Geneva Convention, which forbids an Occupying Power from destroying any property, unless "rendered absolutely necessary by military operations." From January to May 2005 alone over 1900 acres of Palestinian land were requisitioned for the wall's construction.<sup>120</sup> The World Bank estimated in December 2004 that economic losses resulting from land confiscations, as well as property access problems described in the paragraph below, resulted in the loss of US\$320 million of agricultural production.<sup>121</sup>

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117 Id. at 131-32.

118 Id. at 136.

119 ICJ, at 114.

120 UN Consolidated Appeals Process, Occupied Palestinian Territory: 2005 Mid-Year Report, at 5.

121 World Bank, Stagnation or Revival? Israeli Disengagement and Palestinian Economic Prospects, December 2004.

Approximately 49,000 Palestinians living in 38 villages and towns will be trapped, if the wall is built as currently planned, between it and the Green Line.<sup>122</sup> Movement in and out of this area, known as the seam zone, is severely restricted, limited mostly to 55 agricultural gates, only 21 of which are open to Palestinians.<sup>123</sup> Seam zone residents are thus prevented from freely accessing health care, education, employment, their families, and property on the other side of the wall. This situation is responsible for numerous human rights violations, including the right to work, articulated in article 6 of the ICESCR, freedom of movement guaranteed in article 12 of the ICCPR, and the right to education protected by article 23 of the ICESCR. The same human rights violations affect non-seam zone residents of the West Bank, who similarly have trouble accessing any property or employment they may have on the other side of the wall, whether in the seam zone or inside Israel.

The ICJ opinion also emphasized that these human rights and humanitarian law violations created legal obligations for third-party states as well. The court held that the right to self-determination violated by the wall's construction is so important that all states have an interest in its protection, especially as it is rooted in the UN Charter and UN practice.<sup>124</sup> The court also argued, echoing the language of one of its earlier advisory opinions, that international humanitarian law constitutes "intransgressible principles of international customary law" that all states have an interest in upholding. The Fourth Geneva Convention further holds, in Article 1, that all parties to the Convention are obliged to "undertake to respect and to ensure respect for the present Convention in all circumstances."<sup>125</sup> The court thus held that all States are obliged "not to recognize the illegal situation resulting from the construction of the wall... [And] not to render aid or assistance in maintaining the situation created by such construction," as well as "to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end."<sup>126</sup>

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122 OCHA, *The Humanitarian Impact of the West Bank Barrier*, at 3.

123 E.CN.4/2005/29/Add.1, at 8.

124 *Id.* at 148.

125 *Id.* at 149-50.

126 *Id.* at 150.

Israel's construction of the separation wall has thus not only created serious humanitarian problems in the West Bank and violated numerous provisions of international human rights and humanitarian law, but has given rise to a situation in response to which the international community is clearly required to act. Third party obligations have been explicitly articulated in the recent ICJ opinion.

#### **4.2.3 The Restrictions and the complexity on Movement**

An intricate system of checkpoints, permit requirements, roadblocks, and curfews greatly restricts Palestinian movement within, between, and in and out of the OPT. Israel justifies these measures as necessary for protecting its security, but these restrictions have a devastating affect of the Palestinian economy and have been identified by the United Nations as one of the major sources of human rights violations in the OPT.<sup>127</sup>

Israeli restrictions on Palestinian movement in the OPT violate article 12 of the ICCPR, which guarantees “the right of liberty of movement.” At the end of 2004 in the West Bank, closures consisted of a combination of approximately 700 checkpoints and physical obstacles across roads. In the Gaza Strip, Palestinian movement was tightly restricted at all border crossings and within the Gaza Strip by checkpoints and other military infrastructure. On 31 August 2004, Gaza's Erez crossing was closed for almost four months. These restrictions thus turn freedom of movement for Palestinians into a privilege, rather than a right subject to reasonable limits, something that the General Comment on the Implementation of Article 12 expressly forbids: “States should always be guided by the principle that the restrictions must not impair the essence of the right; the relation between the rights and the restriction, between norm and exception, must not be reversed.”

Movement restrictions also prevent Palestinians in the OPT from exercising their right to access and freely choose a source of employment, guaranteed in Article 6 of the ICESCR. Unemployment and poverty have been increasing in the OPT since the beginning of the 2000 Intifada and the subsequent increase in movement restrictions. At the end of 2004, the unemployment rate in the OPT was 27% and poverty rates in

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127 E/CN.4/2005/29/Add.1 at 9.

the West Bank and Gaza Strip were 38% and 65%, respectively.<sup>128</sup> The World Bank cites movement restrictions as a major contributor to this situation, and notes “recovery depends above all on a comprehensive Israeli approach to lifting closure,” and recommends dismantling the checkpoint systems and facilitating easier transportation between the West Bank and Gaza.<sup>129</sup>

Access to health and educational services is also compromised by these restrictions, violating Articles 12 and 13 of the ICESCR. Ambulances are often delayed, and the phenomenon of women giving birth at checkpoints (which in some cases has resulted in the death of the infant and/or the mother) is common enough that a July 2005 UN Human Rights Resolution requested the High Commission for Human Rights to address the issue “with a view to ending this inhumane Israeli practice.”<sup>130</sup> The Palestinian Central Bureau of Statistics revealed that between October and December 2004, 53% of Palestinian households’ access to healthcare was limited by movement restrictions.<sup>131</sup> CEDAW also recently indicated that its provisions are applicable to Israel’s occupation of the Palestinian Territories and called upon Israel to ensure the access to health-care services for pregnant women at checkpoints (CEDAW/C/ISR/3 from 6 July 2005).

The manners in which movement restrictions are implemented violate further provisions of international humanitarian and human rights law. Article 27 of the Fourth Geneva Convention requires respect for the person and his honor. The often hostile and degrading treatment Palestinians have reported receiving at the checkpoints violates this guarantee. As the Special Rapporteur for Human Rights in the OPT noted after facing difficulties at many checkpoints, “if privileged travellers receive such treatment...it is difficult to imagine the humiliation, frustration and agony caused to ordinary Palestinians in their daily lives. [The Sharm al-Sheik peace accord] will have little impact on Palestinian

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128 World Bank, *Stagnation and Revival: Israeli Disengagement and Palestinian Economic Prospects*, December 2004, at 3.

129 World Bank, at X, 26-27.

130 Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, Human Rights Resolution 2005/7, at 3.

131 “PCBS: 53.6% of the households have access problem to health services,” from <http://www.healthforum.net/modules.php?name=news&file=article&sid=401>.

life until restrictions on the freedom of movement of Palestinians are addressed.”<sup>132</sup>

Finally these movement restrictions also only apply to Palestinian residents of the OPT, and not their Israeli counterparts. This violates numerous human rights instruments that require non-discrimination, including the ICCPR, the ICESCR, CERD, and the Fourth Geneva Convention. The fact that they are applied to the entire Palestinian population of the OPT, rather than to individuals who represent an actual threat to security, violates the prohibition of collective punishment in Article 33 of the Fourth Geneva Convention.

### **4.3 The Disengagement Plan: The Reality behind Disengagement**

Israeli Prime Minister Sharon issued a disengagement plan on 6 June 2004. The core component of this Plan was a unilateral withdrawal from the Gaza Strip and the northern part of the West Bank, and its declared objective was to allow a more effective deployment of Israeli military forces and reduce the friction with the Palestinian population. However, the exact contents of the disengagement plan and the way Israel pursued its policy of settlement expansion in the meantime suggest that the disengagement initiative has not put an end to occupation. It is clear from the details provided in the disengagement plan that, the Gaza Strip will remain under Israel’s effective control through an ongoing presence internally and in all border areas. The plan specifically provided that:

“Israel will evacuate the Gaza Strip, including all the Israeli settlements currently existing there, and will redeploy outside the territory of the Strip. This, apart from military deployment along the borderline between the Gaza Strip and Egypt,<sup>133</sup> will be detailed below.

Upon completion of the move, no permanent Israeli civilian or military presence in the areas that are evacuated in the continental expanse of the Gaza Strip has remained. As a result, there is no basis for the claim that the Gaza Strip is occupied territory.

Israel supervises and guards the external envelope on land, maintains exclusive control in the air space of Gaza, and continues to conduct

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132 E/CN.4/2005/29/Add.1 at 9.

133 Commission on Human Rights, E/CN.4/2005/29 (Dec. 7, 2004), p. 10.

military activities in the sea space of the Gaza Strip. The Gaza Strip will be demilitarized and devoid of armaments, the presence of which is not in accordance with the existing agreements between the sides.

The decision by the Israeli authorities to prevent the reopening of Rafah International Airport indicates their intention to prevent free movement of people, services and goods in and out of the Gaza Strip. Further, Palestinian fishermen are still restricted from fishing outside of an 8-10 km area along the coast of Gaza, which is patrolled by the Israeli navy. Fishermen are also prevented from moving more than half way down the coastal waters of the Gaza strip. This also denies the Palestinians access to resources of natural gas in their territorial waters.

Though disengagement from Gaza is a positive development, close attention needs to be paid to the way it is implemented, does it really end Israel's effective control over Gaza, and to the issues it does not touch, i.e. the separation wall, the closure regime, the settlement policy and excessive violence against civilians. For instance, while announcing its withdrawal from Gaza, Israel maintains its claims to parts of the West Bank. The disengagement plan provides that:

“In any future final-status agreement, there will be no Israeli settlement in the Gaza Strip. However, it is clear that in Judea and Samaria, some areas will remain part of the state of Israel, among them civilian settlements, military zones and places where Israel has additional interests. Israel will continue to build the security fence, in accordance with the relevant government decisions”.<sup>134</sup>

#### **4.4 Other human rights Violations**

Palestinian residents of the OPT are subjected to numerous other severe human rights violations, resulting from administrative detention without trial, the detention of Palestinian children, torture and inhuman treatment, targeted killings and house demolitions. These actions constitute gross breaches of international customary law such as the principle of proportionality, humanitarian law and human rights law and may in some cases amount to crimes evoking universal jurisdiction.

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134 Full text of the Disengagement Plan available at Miftah: The Palestinian Initiative for Global Dialogue and Democracy: <http://www.miftah.org/Display.cfm?DocId=3655&CategoryId=10>

The Fourth Geneva Convention prohibits extrajudicial killings, torture, willfully causing great suffering and collective punishment. The ICCPR guarantees the freedom of movement and the all right to a fair trial. The right to own property is enshrined in the ICESCR. Other international instruments such as CRC, CERD, and CEDAW do apply as well.

#### **4.4.1 Palestinian Prisoners and Detainees in the prisons Israel**

Since the beginning of the second Intifada in September 2000 until the end of 2004, 50,000 Palestinians were arrested or detained by the Israeli Forces (IDF) and border police. At the end of 2004, there were more than 6,500 residents of the OPT held as “security prisoners” in Israeli Prison Service (IPS) facilities inside Israel, and more than 4,000 Palestinians were kept in military detention camps. 480 prisoners are children.<sup>135</sup> According to the UN Special Rapporteur on the OPT John Dugard in March 2005, over 850 of the 7,000 Palestinian prisoners were administrative detainees, that is, they are held without trial.<sup>136</sup>

Israel as an occupying power breaches international law by detaining residents of the OPT inside Israel, while Article 47 of the Fourth Geneva Convention provides that “protected persons accused of offenses shall be detained in the occupied country, and if convicted, they shall serve their sentences there in”. By detaining children, Israel gravely violates the Convention on the Rights of the Child. According to the

Military Order 1500 put in place during the British Mandate period in Palestine, children in the OPT aged 12 and older can be tried in military courts, and a child over the age of 16 is considered as an adult. Article 1 of the Convention on the Rights of the Child stipulates, “A child means every human being below the age of eighteen years.” It must be noted that Israel keeps to the internationally recognized definition of a child among its own citizens but applies a different standard to Palestinian minors in the OPT. Keeping people in prolonged administrative detention without trial contradicts the Fourth Geneva Convention and the ICCPR which guarantees everyone the right to a fair trial.

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135 Statistics are taken from: Addameer, [http://www.addameer.org/detention/current\\_stats.html](http://www.addameer.org/detention/current_stats.html) (I visited on 13,5, 2006).

136 In February 2005, Israel released 500 Palestinian prisoners as part of the cease-fire agreement. However, The UN Special Reporter notes in his report that these were mainly short-term prisoners or prisoners who had almost completed their sentence.

#### 4.4.2 Torture, killing and Inhuman Treatment

The Israeli Supreme Court ruled in September 1999 that the use of even “moderate physical pressure” during interrogation is prohibited, except in extreme “ticking time bomb” situations. Nonetheless, the Public Committee against Torture in Israel (PCATI) documented many cases of torture and ill-treatment of Palestinian detainees since the ruling. According to PCATI, ill-treatment of Palestinian detainees by IDF soldiers and other detaining forces is manifested mainly in the following forms:

- ◆ Ill-treatment of relatives of the detainee, including threats and cursing, and destructive house searches.
- ◆ Violence during arrest and on the way to the detention facility including beatings (sometimes with rifle butts), slapping, kicking, and seating the detainee on the floor of the vehicle and stepping on him.
- ◆ Shackling with “azikonim”: this is the only method of ill-treatment that is ‘legal’ in the IDF – “azikonim” are disposable shackles, made of flexible but hard plastic; they can be tightened but not loosened.
- ◆ Inhuman conditions of detention, including under the open sky, with exposure to heat or cold and rain, and with no provisions, i.e. blankets, being kept for days on asphalt, being held in a ‘cage,’ being held in a trash dump, poor food and hygiene.<sup>137</sup>
- ◆ Other means of ill-treatment, including being suspended with legs up, engaging in a contest of throwing stones at the detainee, forcing the detainee to run blindfolded and tripping him, stripping (sometimes to complete nakedness), intimidation using a dog, cocking a weapon – as if intending a summary execution, and more.<sup>138</sup>

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137 Public Committee against Torture in Israel (PCATI), *Back to a Routine of Torture: Torture and Ill-Treatment of Palestinian Detainees during Arrest, Detention and Interrogation*, September 2001-April 2003,

<http://www.stoptorture.org.il/eng/images/uploaded/publications/58.pdf> , iv visited on 15,6,2006.

138 Ibid.

In August 2004, Palestinian political prisoners went on a hunger strike in order to press for more humane prison conditions and the right to receive visits. In response to the prisoners' demands, then the Public Security Minister Zachi Hanegbi said that if it was for him the prisoners could "starve to death".<sup>139</sup>

#### 4.4.3 The Targeted Killings

During the Second Intifada, Israel formally adopted a policy of assassinating Palestinians suspected of membership in armed organizations. According to B'Tselem's figures from May 2005,<sup>140</sup> since the beginning of 2004 Israeli forces have killed 89 Palestinians and more during operations referred to as arrest operations. At least 47 of the persons killed were not wanted by Israel, but were civilians who were not suspected of committing any offense. In addition, at least 43 of those killed were unarmed, or were not attempting to use their arms against Israeli forces at the time they were killed. The Military Police investigation unit investigated none of these cases. The assassination policy has been sharply criticized by international bodies and human rights organizations. Israel argues that its assassination victims are, as members of armed organizations, combatants and therefore legitimate targets of attack. However, when Israel captures members of such organizations alive, it does not grant them the rights given to combatants by international humanitarian law, such as the right to be recognised as a prisoner of war when captured, which entails immunity from criminal prosecution.

Israel's policy of targeted assassinations violates a number of fundamental rights such as the right to a fair trial outlined in international human rights instruments to which Israel is a state party. Even if Israel was not a state party to these instruments, fundamental rights such as the right to life and the prohibition on cruel, inhuman and or degrading treatment or punishment constitute customary international law. According to international human rights instruments, such as the ICCPR, the prohibition on the arbitrary deprivation of life cannot be derogated from,

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139 Arab Association for Human Rights (HRA), «Let Them Starve to Death»: Official Reactions to the Hunger Strike of Security Prisoners Reveal that Israel's Security Needs Clash with the Palestinians' Right to Life», press release (August 23, 2004),

140 B'Tselem, «Take No Prisoners: The Fatal Shooting of Palestinians by Israeli Security Forces during "Arrest Operations"», May 2005.

even “in time of public emergency which threatens the life of the nation”. Therefore, Israel may not justify its targeted assassination policy in the name of security or counter-terrorism measures. In addition, willful killing of this nature is a war crime, and constitutes a grave breach of the Fourth Geneva Convention, which mandates universal jurisdiction.<sup>141</sup>

#### **4.4.4 The Demolition of Houses by Israeli forces**

You just cannot imagine it unless you see it - and even then you are always well aware that your experience of it is not at all the reality: what with the difficulties the Israeli army would face if they shot an unarmed US citizen, and with the fact that I have money to buy water when the army destroys wells. – Rachel Corrie (One of the victims from the Israel Violations)

According to the UN Humanitarian Information Fact Sheet from January 2005, more than 12,000 homes were either demolished completely or damaged in the West Bank since 2000, and more than 24,000 Gazans were made homeless during that same period. In the first nine months of 2004, the IDF demolished an average of 120 residential buildings per month.<sup>142</sup>

60% of houses were destroyed in the course of clearing operations to meet Israel’s military needs, 25% of houses were demolished for lacking a building license’ and 15% of homes were knocked down as collective punishment for the families and neighbours of Palestinians who allegedly have carried out attacks against Israelis or are suspected thereof. In 40% of these cases, no Israeli was killed in the incidents giving rise to the demolition.<sup>143</sup>

The UN Special Rapporteur notes, “it is difficult to resist the conclusion that punitive house demolitions constitute serious war crimes. Article 53 of the Fourth Geneva Convention prohibits the occupying state from destroying the property of civilians”<sup>144</sup> without absolute necessity.

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141 The assassination Policy of the State of Israel, November 2000-January 2002, the Public Committee Against Torture in Israel (PCATI) and Law – the Palestinian Society for the Protection of Human Rights and the Environment, June 2002, p. 80.

142 United Nations, Humanitarian Information Fact Sheet, January 2005, [http://www.humanitarianinfo.org/opt/OCHA\\_Body- ASP\\_Files/Doc-Cntr\\_Sec/Doc-Cntr\\_K\\_Issues/OCHAoPt\\_Fact-Sheet04\\_Web\\_pg1-2.pdf](http://www.humanitarianinfo.org/opt/OCHA_Body- ASP_Files/Doc-Cntr_Sec/Doc-Cntr_K_Issues/OCHAoPt_Fact-Sheet04_Web_pg1-2.pdf) (I visited on 12,5,2006).

143 Commission on Human Rights, E/CN.4/2005/29 (Dec. 7, 2004), p. 11.

144 Ibid., p. 12.

#### 4.5 Nationality and Entry into Israel Law (Temporary Order)

On 31 July 2003, the Knesset enacted the Nationality and Entry into Israel Law (Temporary Order). This law prevents family unification of Israeli citizens married to residents of the OPT (including separating Palestinians in the OPT (excluding East Jerusalem) from their families inside East Jerusalem and Israel) through the prohibition of granting any residency or citizenship status to spouses from the West Bank and Gaza. It should be noted that the Law explicitly excludes “resident[s] of an Israeli settlement in the region”,<sup>145</sup> thus making a clear ethnic distinction between Palestinian and Jewish residents of the OPT. In practice, the law affects only Palestinian citizens of Israel and their spouses from the OPT, and it gravely violates the basic human rights to equality, privacy and family life. Furthermore, the ability of Palestinians to seek effective remedy is undermined by the repeated renewal of this law by the Knesset, facilitated by the refusal of the Israeli High Court of Justice to consider the matter due to the “temporary” nature of the law.

International bodies have criticized the discriminatory nature of the Law and called upon Israel to revoke it. In 2003, the UN Human Rights Committee’s Concluding Observations on Israel held that Israel “should revoke the Nationality and Entry into Israel Law (Temporary Order) of 31 July 2003, which raises serious issues under articles 17, 23 and 26 of the Covenant.”<sup>146</sup> The European Parliament, in its Resolution on Human Rights in the World in 2002 and European Union’s Human Rights Policy stated that it “condemns the approval by the Knesset of a draft law prohibiting Palestinians from obtaining Israeli citizenship by marriage; calls on the Israeli government not to ratify or apply this discriminatory and racist law.”<sup>147</sup>

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145 The full text of the Nationality and Entry into Israel Law (Temporary Order) in both its original and the proposed amended version is available at the website of Adalah, the Legal Center for Arab Minority Rights in Israel, at: <http://www.adalah.org/features/famuni/lawBill.pdf>

146 The UN Human Rights Committee, Concluding Observations on Israel, 2003 [CCPR/CO/78/ISR], paragraph 21. Full text at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.78.ISR.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.78.ISR.En?Opendocument) (I visited on 14,5,2006).

147 European Parliament, «Resolution on Human Rights in the World in 2002 and European Union’s Human Rights Policy (2002/2011(INI)),» paragraph 40.

## Conclusion

When I started writing about human rights in Islam, I illustrated that there are vivid and steady rights in the Islamic religion. In Islam there is no difference or variances between humans or from man to another. There is no difference if she/he is Muslim or not, or black or white, every one has his rights without any distinction.

I wanted to show that these rights in Islam come from celestial sources that we can't argue or change. These sources are the holy Qur'an, Sunna, and the Hadeeth. In addition we have some doctrines, which indicate the human rights in Islam, and how was the life of the prophet (B.P.U.H) and how the prophet and the Calipha applied the human rights. Islam argues on respecting human rights, and sanctity of life, in spite of that there are some international treaties about the human rights; yet, these treaties take their instructions from Qur'an and Sunna.

You should mention here also the international regime of human rights and the relation of Islam with it.

As for terrorism, I wanted to give a clear definition for it. In fact, Islam casts off all terrorism forms and actions despite of people who commit these actions in the name of Islam. All these actions are nothing else but a defamation of Islam and its teaching and practice which seek for mercy and not to discriminate people.

In respect of Jihad, It is a duty of every Muslim to defend his rights, honor, dignity and his land, without any violation for human rights. We can learn what jihad means by looking at the way how Muslims deal in their wars, and how they don't intercept the disarmed people. None of these merits of human rights can be connected with terrorism, terrorism is not Islam and there is no Islam terrorism.

Another important issue in this thesis is the last chapter, which tackles the Israeli violations of human rights in Palestine. The occupational force (or what have been called "Israel") is the source of killing, imprisonment, and destruction of the Palestinians. It is the source of every violation, which affects every child, woman, and old person in Palestine. All these violations take place under a real universal silence, although there are

many of agreements to protect human rights. Rules of these agreements are applied under the presence of fear of Israel because it is one of the main dominant powers in the world, and Palestinian people are staying under the daily violations of human rights.

What is going on these days is to maintain the Israeli power in a high level to deal with the Palestinians to make them to give up. However, history bears witness that this will never happen, and a day will come in which the scent of jasmine comes from the Palestinian farms, which are full of blood scent now. We are here and we will never go.

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- 4- Mayer Ann Elizabeth, ‘*Islam and Human Rights – Politics and traditions*’, West view Press 1999 Third edition, ch 1 p. 11.
- 5- Tibi Bassam, ‘*Islam between Culture and Politics*’, 2001 Palgrave, p. 214
- 6- Tergel Alf, ‘*Human Rights in Cultural and Religious Traditions*’, Acta Universitatis Upsaliensis, Uppsala 1998.p. 94.
- 7- Abdelmoula Adam M, ’ *The Fundamentalist Agenda for Human Rights*’ – The Sudan and Algeri, Arab Studies Quarterly, Winter 96, Vol 18 issue 1, p2.
- 8- Afshari Reza, ‘*Human Rights in Iran –the abuse of Cultural Relativism*’, University of Pennsylvania Press ,Philadelphia, p 4
- 9- Dalacoura Katerina ,’*Islam, liberalism and human Rright’s* , I.B Tauris Publishers, New York ,1998, p.24.
- 10- Steiner & Alston, ‘*International Human Rights in Context*’, Oxford University Press 2000, Second Ed, p 379
- 11- Ruthven Malise, *Islam in the World*, Oxford Press 1999, Second edition p 219
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- 13- David J. Whittaker, *The’ Terrorism Reader*’, ED Routledge 2001 , p.5.
- 14- John Baylis & Steve ,’*The Globalization of World Policies ,An introduction to international relations*, Oxford University Press 2005, third Ed, p. 480-481.
- 15- Downie R, Calman K. ‘*Healthy Respect*’. Oxford University Press;ch 3,p 204.
- 16- Hurewitz, J. C., ‘*Diplomacy In The Near And Middle East*’, Princeton: Van Nostrand, 1956, vol. II, p. xvi.
- 17- Anil Cecen, ”*Insan Haklari*” published in 1999 Istanbul , p 12.

- 18- Michael Akehurst "A Modern Introduction to International Law", sixth edition, published in 1987, London p 211.
- 19- Alan James, "Peacekeeping in International Policies" first published 1990 in UK, S b p81, S e p201.
- 20- Joshua S, Goldstein "International Relations" fourth edition, published 2001 UK, CH 1 P 69,87.
- 21- Peter, Calvocoressi "World Politics Since" sixth edition, published 1991 in US, ch 1, p 121,146.
- 22- Adam Roberts & Benedical Kingsbury "United Nations Divided World" published in US. P 183,240

## **Journals and reports**

- 1- In her preliminary report, the Special Rapporteur aligns the human rights implications of terrorism into three conceptual clusters: (i) the right to life, liberty and dignity of the individual; (ii) issues relating to the right to a democratic society; and (iii) rights relating to social peace and public order.
- 2- For instance, see the preliminary report submitted by Ms. Radhika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences (E/CN.4/1995/42, especially paras. 99-101), and the update to the final report submitted by Ms. Gay J. McDougall, Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict (E/CN.4/Sub.2/2000/21, para. 20). E/CN.4/Sub.2/2001/31 page 51
- 3- See, for example, Commission resolution 2000/45 of 20 April 2000, paragraphs 3 and 4, which affirm that violence against women, whether in public or private life, is a violation of the rights and fundamental freedoms of women.
- 4- See, for example, Commission resolution 2000/30, seventeenth preambular paragraph:  

“Reiterating that all States have an obligation to promote and protect human rights and fundamental freedoms ...”, and paragraph 5: “Urges States to fulfil their obligations under the Charter of the United Nations and other provisions of international law, in strict conformity with international law, including human rights standards, to prevent, combat and eliminate terrorism in all its forms and manifestations ..
- 5- The need to address root causes of terrorism has also been raised at the Commission and Sub-Commission by both Governments and non-governmental organizations.
- 6- For State responsibility if the State fails to protect an alien or if it fails to take appropriate action to pursue and punish those responsible for

- certain terrorist acts, see for instance, J.J. Paust, “The Link Between Human Rights and Terrorism and Its Implications for the Law of State Responsibility”, *Hastings International and Comparative Law Review*, vol. 11, No. 1 (1987), pp. 53-54.
- 7- See Commission resolution 2000/30, twentieth preambular paragraph and paragraphs 5 and 6, and Commission resolution 2001/37, twenty-second preambular paragraph and paragraphs 5 and 6.
  - 8- See, for instance, M. Gerber, “The Anti-Terrorism Act of 1987: sabotaging the United Nations and holding the Constitution hostage”, *New York University Law Review*, vol. 65 (1990), at pp. 364-402; Coordinadora Nacional de Derechos Humanos, Grupo de
  - 9- Kalliopi K. Koufa, *Human Rights and Terrorism: Progress Report*., June 27, 2001, p. 29
  - 10- An authentic statement recorded in Arabic in the collection of Muslim .available on .www.islam .net
  - 11- United Nations High Commissioner for Human Rights: Universal Declaration of Human Rights. Available: <http://www.unhchr.ch/udhr/lang/eng.htm>, I visited on 3/6/2006.
  - 12- The Biography of Muhammad and the Wars (Maghazy) Ibn Isaac, Dr. Sohaul Zakkar, dar Al Fekr .
  - 13- Robert John and Sami Hadawi, *The Palestine Diary*, vol. I (1914-1945), (New World Press, New York, 1970), p. xiv. Available at [www.usalibray .com](http://www.usalibray.com)
  - 14- British Government, *Correspondence between Sir Henry McMahon and the Sherif Hussein of Mecca*, Parliamentary Papers - Cmd. 5957 (1939).
  - 15- Some information from This Chapter basically was prepared by the Arab Association for Human Rights (HRA). Al-Haq, the Palestinian Center for Human Rights in Gaza and the Public Committee against Torture in Israel provided their research and expert knowledge. Some of the material used in the following sections will be published in al-Haq’s Annual Report 2004.
  - 16- Since 1967, the UN Security Council and General Assembly have issued hundreds of resolutions upholding the applicability of the Fourth Geneva Conventions. In 2004 the ICJ held that the Fourth Geneva Conventions, as well as the ICCPR and the ICESCR, apply to the OPT, International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, available at [http://www.icj-cij.org/icjwww/idocket/imwp/imwp\\_advisory\\_opinion\\_20040709. pdf](http://www.icj-cij.org/icjwww/idocket/imwp/imwp_advisory_opinion_20040709.pdf). The UN General Assembly issued a resolution shortly thereafter upholding this position, ES-10/15. See also Ardi Imseis, *On the Fourth Geneva Convention and the Occupied Palestinian Territory*, 44 *Harvard Int’l Law Journal*. 65, 95-100 (2003).

- 17- The sources in this section, unless otherwise indicated, are from FMEP, "Report on Israeli Settlement in the Occupied Territories," from volume 14, no. 3, May 2004, until Volume 15, no. 2, April 2005. Available at <http://www.fmep.org/reports>
- 18- In 2004, for example, Ariel Sharon's attempt to suppress reports of a new settlement being planned between Ma'ale Adumim and Jerusalem. See Conal Urquhart, "Israel flouts road map with new settlement," *The Guardian*, 6 August 2004, available at <http://www.guardian.co.uk/print/0,3858,4987147-103552,00.html>.
- 19- United Nations Office for Coordination of Humanitarian Affairs (OCHA), *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities*, March 2005, at 3.
- 20- UN Consolidated Appeals Process, *Occupied Palestinian Territory: 2005 Mid-Year Report*, at 5.
- 21- Full text of the Disengagement Plan available at Miftah: The Palestinian Initiative for Global Dialogue and Democracy: <http://www.miftah.org/Display.cfm?DocId=3655&CategoryId=10>
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- 25- *The assassination Policy of the State of Israel, November 2000-January 2002*, the Public Committee Against Torture in Israel (PCATI) and Law – the Palestinian Society for the Protection of Human Rights and the Environment, June 2002, p. 80.
- 26- United Nations, *Humanitarian Information Fact Sheet, January 2005*, [http://www.humanitarianinfo.org/opt/OCHA\\_Body-ASP\\_Files/Doc-Cntr\\_Sec/Doc-Cntr\\_K\\_Issues/OCHAoPt\\_Fact-Sheet04\\_Web\\_pg1-2.pdf](http://www.humanitarianinfo.org/opt/OCHA_Body-ASP_Files/Doc-Cntr_Sec/Doc-Cntr_K_Issues/OCHAoPt_Fact-Sheet04_Web_pg1-2.pdf) (I visited on 12,5,2006)

- 27- The full text of the Nationality and Entry into Israel Law (Temporary Order) in both its original and the proposed amended version is available at the website of Adalah, the Legal Center for Arab Minority Rights in Israel, available at: <http://www.adalah.org/features/famuni/lawBill.pdf>
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