

Public International Law Principles: An Islamic Sufi Approach

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Abstract

Purpose: Many laws have been derived from the religions' legislations and lots of them have not the capability of uniqueness and publicity, due to variety of reasons, especially at the level of countries. But the spirit of legislations is the same and unique in all religions and it is the *Tariqah* (Sufi path), Sufism, mysticism and ethical beliefs that had been stable and unchangeable for millenniums, and wisdom has accepted and accepts them in all times and locations. Thus, if the international public law to be defined and designed upon the base of the unique religions' spirit, we will reach to a unique law with most publicity.

Design/methodology/approach: We are going to explore the foundation of public international law from the theosophy approach of Islamic Sufism and mysticism.

Findings: By raising 38 principles, we propose basic principles of important public international law subjects to prepare a backbone for recompilation of new law in this subject matter.

Research limitations/implications: Comparative researches in other religions' Gnosticism will be helpful.

Practical implications: These principles can be used for applied debates in the field and be ended to new international law.

Social implications: Delicateness, truthfulness, and righteousness of Islamic Sufism, may turn the attentions of scholars and researchers to this viewpoint, and a new set of laws to be codified.

Originality/value: Public international law scholars have not touched the topic from a Sufi viewpoint. This paper opens new challenging arena for those who are engaged in.

Keywords: Public international law, Sufism, Mysticism, Gnosticism

Paper type: Conceptual paper

Introduction

International law is a branch of law, which regulates the relationship between individuals, nations, and states in international arena. Public international law attempts to regulate and exercise rights over diplomatic and consular relations among states and formal relations of states with international organs, institutions, and entities. But private international law consists of a body of rules and regulations regarding the relations of citizens of different states with others and differences and conflicts of laws of nations and adjustment of these differences and settlement of conflicts among them.

In practice, public international law could not provide the necessary conditions with its current mechanisms. And perhaps one of the reasons that international law and its disciplines have been unable in this provision is that it got away from the law of creature and human nature. Thus, if new mechanisms based on common sense of human nature to be designed in such a way that not to consider the interests of countries unilaterally, might be able to take step into improvement of international relations in this period of human history.

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In this paper, our aim is to survey the subjects of Islamic public international law, and we have tried not to engage ourselves with the subjects of Islamic private international law as far as possible, because the latter needs a completely separate deal. In this paper, we are focusing to extend Islamic jurisprudence decisions from a theosophical point of view over the field of international law. What the theosophy calls for, is that the reasons and secrets behind each order, should be the bases of its enactment. Therefore, by full understanding of reasons and spirit of Islamic laws we are going to extend these rules to the international law level.

The details of reasoning and Qur'anic, exegesis, dialectics and juristic debates of Sufi scholars have been written in a separate book, and in fact, this paper is a summary of its public international law chapter.²

1- Principle of: General authorization for acceptance of "General Principles of Law"

There are several principles that are referred to and enforced in international law. Some of these principles are derived from general principles of law, which are common amongst all states and are recognized by all civilized nation's legal system. According to the Article 38 of The Hague Convention 1907 "... general principle of law which are recognized by civilized nations- i.e. they are parts of valid legal systems, and civilized nations have enforced them- are one of the independent and distinct sources of international law."

Some principles which can be named as parts of general principles of law read as follows: priority of international law over municipal law, priority of international treaties over law of the land, recouring to municipal courts before resorting to international courts, principle of unauthorization of submission of rights in excess of what one has in one's authority, equality of states sovereignties, principle of non-recourse to force, principle of peaceful co-existence, principle of binding force of obligations, principle of impartiality in adjudications, principle of payment of fees by losing party, principle of lack of jurisdiction over the actions brought to another court, principle of freedom of navigation on the high seas, principle of continuation of uncontested possession in establishment of right of sovereignty, principle of non-discrimination or equality of citizens of states in front of law. Some of the said general principles of law, with respect to the relations among the states are often mentioned in treaties and resolutions of international organizations. For example, the followings are a few principles that are invoked while bringing an action or during legal proceedings before judicial authorities, such as: principle of recouring to municipal courts before resorting to the international courts, principle of priority of international treaties to the law of the land, principle of continuation of government (state), principle of independence of states, which are common between municipal and international law.

Although the aforementioned cases are propounded as new legal terms and seems to be novelties in Islamic jurisprudence, but after a careful consideration over the subject we will realize that nearly all of the general principles of law, exist in Islam's legal system; and Islam by approaching delicacy and tacting the said principles has its own special position towards them. As a matter of fact, international law, and public law have been less used and invoked in Islamic countries, than municipal and private laws that is why there is less improvement in these fields of law.

However, while surveying every one of general principles of law, the distinct Islamic viewpoints will be considered as well. Generally, the spirit of law-making in Islam is emanated from the moral perfection of natural law, which is easily deducible by reason and conscience. The individual's interest as egotism is not the objective of Islam, on the contrary, what is propounded is individual's interest as part of "Existence", and by deep thinking over the texts of these pages we will understand this very subject which is highest value in Islamic law. This standpoint is the

² - Bidabad, Bijan, Sufi foundations of Islamic international relations, public international law, foreign policy and diplomacy, a theosophy approach, 2005. <http://www.bidabad.com/doc/mabani-erfani-ravabet-beynolmelal-en.pdf>. This book is translation of the second volume of the Collection of Sufi Social Cosmology. <http://www.bidabad.com>

most essential distinction between statutes of contemporary world and Islamic law.

2- Principle of: Acceptability of statutory international law to the limited extent of conformity with Islamic Law

The statute law and international conventions are acceptable by Islamic legal system as long as they are not in direct contradiction to and/or in conflict with the Muhammedan religious law. There are detailed discussions over this subject, which compare the international law-making viewpoints to the ordinances of Islamic law and consequently makes full assessment of their acceptability or non-acceptability.³ According to article 38 of statute of International Court of Justice, sources and rules of international law consists of international conventions, whether general or particular, establishing rules expressly recognized by the contesting states, and international custom and general principles of law recognized by civilized nations and finally judicial decisions, and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of rules of law.

In Islamic international law, the above-mentioned sources, as a matter of hierarchy, are placed after religious law. At first, the primary Ordinances of Islam, based on Glorious Qur'an and Mohammedan religious law are acceptable sources of adjudication and arbitration. Other sources of law are placed at the next degrees. It is certain that, if secondary sources were not in contradiction to and/or in conflict with Glorious Qur'an, they would be liable to gain acceptability. The main criterion of comparison for sources of statutory international law is conformity with religious law.

As for the new legal institutions/affairs, we ought to take the standpoints of theosophy and apply reason to find out the conformity or contradiction of the subject to the ordinances of Glorious Qur'an. There are many detailed and certain conditions for this reasoning approach (for comparison), which are topics of other books.⁴

3- Principle of: Acceptability of customary international law

Sources of law in different levels and divisions, more or less, consist of statutory (written) law, customs and judicial precedents, and even legal doctrines as well. Custom is set up by people during a long period of time and is recognized as an enforceable precedent by public conscience. Old and protracted usages and binding sense of public conscience in the society, makes definition and distinction of custom as legal term. In other words, custom is voluntary and continuous usage, which gradually is recognized as a binding rule in public minds. International custom also proves applicable by the same definition. It is a rule of law, which the states have enforced and observed in their relations during a long period of time, so that the common conscience of states believes then as enforceable.

Custom is also recognized as a secondary source of law in Islam. One of the distinct examples of acceptability of custom in Islamic law can be noticed in the law of marriage. As it will be pointed out later, there are some similarities between international law and the law of marriage. In both of them, guarantee for performance of contract and lack of guarantee to bind parties to perform their obligations to the conditions of contract are the same. Therefore, similar rules of procedure could be applicable for the said topics.

³ One of the most interesting researches on the subject is the book of "Religious standpoints on Universal Declaration of Human Rights" which presents positions of Islam, whether in agreement or disagreement towards the Universal Declaration of Human Rights. His Excellency Hajj Sultan Hussein Tabandeh Gonabadi. "Salih Library", 2nd ed. (1975).

⁴ For detailed discussion on the subject see: Bidabad, B. and Harsini, A. (2003), Religious-economic analysis of usury in consumption and investment loans and shortages of contemporary jurisprudence in finding the rules of religion legislator. Monetary and Banking Research Academy, Central Bank of Iran, (Farsi). <http://www.bidabad.com/> and also: Bidabad, B. (2004), Economic-juristic analysis of usury in consumption and investment loans and contemporary jurisprudence shortages in exploring legislator commandments. Proceeding of the 2nd International Islamic Banking Conference, Monash University of Malaysia. 9-10 September 2004, (English). <http://www.bidabad.com/>

The aforementioned rule of law includes “custom” as one of the sources of Islamic law. We should admit that accepting “custom” as a rule, is not definite and indisputable, because it varies under conditions of beliefs and behaviors of states and societies. But it always exposes the standing beliefs in the society and at the international level, which this mode of subject is applicable in settlement of legal actions.

4- Principle of: Giving priority to forgiveness, benevolence and conciliation of hearts

Based on the Islamic teachings, in human relationships, whether municipal or international, forgiveness is always preferred to retaliation. As it is mentioned in Qur'an's verse of Retaliation, retaliation is authorized but forgiveness is preferred and has been placed more stress on it.

To find forgiveness preferable to retaliation, this evidence suffices that on the level of international relations, any evil deed that are perpetrated through foolishness or, the perpetrator looks suitably repentant to his action should not be responded. Because such actions will incite wrath power of some of the heads of governments who are weak in their mind and reason, consequently the flame of war starts and some nations will be burnt in it. The outbreak of many wars, throughout the history, was for the same reason, which has horribly affected several nations. It is worth mentioning that forgiveness and connivance should not lead to establishment of a breeding-ground for oppressors, which in this case the act is worse than cruelty. To find forgiveness preferable to retaliation is a kind of meritorious preference, which is not obligatory. The benevolent has his own choice to do it.

5- Principle of: Honoring the treaties

One of the most important subject matters discussed in religious laws of all religions, is “honoring treaties” which its explanation needs a long discussion. But it is sufficient to mention only a paragraph from Zoroaster’s book: “The Avesta” which reads as follows: “**The wicked promise-breaker destroys the whole country ... and his deed is the same as a killer of a pious man. Never break your promise, not a promise with a mendacious nor with a truthful, because both of them are called “promise”, whether made with a liar or a truthful.**”⁵ Concerning the said subject, there are many verses in Old and New Testaments. The Glorious Qur'an also has expressly stressed on the principle of international responsibility. There is an exception in the subject of breach of pledge and covenant, and it is when the adverse party does not honor his/her obligations.

Breach of covenant is also accepted in international law, based on the well-known principle of “*Rebus*” (*La regle rebus sic stantibus*). According to the said principle mentioned by Vienna Convention 1969, if there is a fundamental change of circumstances, upon which the agreement rests, the concerned party may unilaterally abrogate the treaty and consider it as terminated. According to article 64 of Vienna Convention, resorting to principle of “*Rebus*” should meet three requirements: First, the taking places of fundamental changes in the circumstances that the agreement rests upon, should be essential condition to the consent of both parties to the treaty. Second, the said fundamental changes, should lead to an essential change of commitments, and third, the main reasons for revision or abrogation of the treaty must be unpredictable in advance.⁶

From the purport of Qur'an's verse, it is understood that in Islam stipulation of breach of contract (treaty) is based on the non-observance of terms of agreement of the adverse party. Therefore, resorting to the principle of “*Rebus*” and related three requirements is not sufficient for abrogation of a treaty. It means that according to principle of “*Rebus*” if the circumstances for making profit are changed, the breach of contract is acceptable, but Islam does not accept it as a circumstance for breach of contract. Because, as Islam is concerned, there is an implied principle in all treaties, which purports “advancement of humankind” vis-à-vis the unilateral profit. What is

⁵ Doostkhah, J., (1982) *Avesta*, Yashts, Morvarid Publication, Tehran, 3rd ed..

⁶ Ghaem Magham Farahani, A. (1988) *International law to nationalize ...* Pajang Pub., Tehran, pp. 29-32.

important in Islam is the benefit for both sides. In other words, there is a firm conviction in Islam that by changing the circumstances of a contract resulting to the reduction or loss of profit, the contract should not be abrogated and/or the obligations be cancelled.

Some international jurists have interpreted the requirements of principle of “*Rebus*” to definition of “*Force Majeure*”, and believe that by non-observance of principle of “treaties immunity” the world commitment towards the rights of states shall meet with disorders, because those states which don’t want to fulfill their international obligations, by misusing the said principle will bring disorder to the international relations and infringe the rights of the other states.⁷

6- Principle of: Mandatory observation of formalities of contract

There are positive and detailed orders concerning the manner of making contracts in Glorious Qur'an that will suffice us and puts forward this particular idea that, to prevent the international disputes, which emanate from the vagueness and obscurity of various international treaties, we have to make necessary arrangements to predict all disputable and indisputable issues and clearly insert them in the treaties to remove the causes of international differences. On the other hand, such precautions would result to the smooth activities of citizens of nations within the realm of private international law.

7- Principle of: Doing justice

Prior to entering into the detailed discussion of this section, it seems advantageous to have a general analysis over the purport of justice. According to different school of thoughts, justice has various and distinct meanings.⁸ They are so different that justice in one school seems to be cruelty (injustice) in another one. Different ideologies while dividing equal rights among individuals are mostly involved in deviations resulting from their ideological inclinations. This discussion needs a long and detailed description but the general idea of the case is that, whenever the mankind as a whole has become the focus of attention, justice is inclined towards impartiality in ideology, but when the qualities of human beings is taken into consideration, justice is inclined towards the concerned qualities. Justice is generally defined as: "to place things in their right position". This definition is taken from the opposite meaning of cruelty's definition.⁹ In the humanities, the issue of "placing things in their right position" is very complicated problem, which cannot be solved so easily. If the position of justice is fair allocation of economic resources, then justice takes the meaning of "optimum allocation of resources", which is known as "Pareto optimality" in microeconomics, and the well-known Euler equation defines fair distribution. If we were looking for just and fair position in the realm of society, the concept of individual's values and his efficiency would be our concern, which is not known to have unique optimal solution. When justice is discussed as a legal subject, it means exercising the sovereignty of law over all individuals equally. Even if the law were fair one, the application of justice would be ruled only over the subject matter under consideration and would not include all aspects of the right. When the meaning of justice, within the scope of individual and/or social psychology is under consideration, we would find out that there is no basis to adjudge the feelings, affection, and love of humankind. Anyhow, capability of attaining partial justice in all fields of studies depends on "human justice". Whereas, the general and full justice is related to the nature of the creatures and on the basis of their particularities all over the world, which is under the influence of their creator's justice. Therefore, the individual is the basis for understanding and interpretation of partial justice. In order that an individual be capable of adjudging fairly the interpretation of

⁷ See: Abd-el-Kader Boye, Serie "Tiers monde en marche", Tome 3-L'acte de nationalisation, Berger-Levrault, les Nouvelles editions africaines.

⁸ See: Otfried Höffe, Politische Gerechtigkeit, 1995.

⁹ In the exegesis of *Bahrul khezam*, Seyyed Haidar Amoli, vol. 1, (1989) pp. 402-409, this definition has been cited.

partial justice, he should necessarily have obtained "justice" within himself, that is to say, the concept of "The Just" must be stationed in his whole existence. The consequence and result of the aforementioned discussion leads us to this point that just and righteous persons are only prophets, Divine Guardians, and Divine Executors. They are the measuring criterion of justice. Their words are law, and evaluation and adjustment of justice. Justice becomes an objective manifestation through the existence of their Holiness. It is due to the light of their beings that line of justice is determined and demonstrated.

In other schools of thoughts, even in Marxism's points of view, there is always a philosopher imagined who is appointed as the head of society and it is supposed, he can be the criterion for settlement and adjustment of arisen problems within the society. However, in all religions this criterion is the appointed agent of God, who is prophets or Divine Guardians and/or Divine Executors. They are the ones who are criterion, because "The Just" is invested with their beings.

In any case, doing justice is the tasks and missions of Divine Prophets, Guardians, Executors, and their Agents. These tasks and missions can be observed in several Qur'an verses which His Holiness The Prophet is ordered to persevere in his tasks, and even it is emphasized that if his orders were not admired and favored by the parties, however he should observe and do the justice.

The task of adjudication and arbitration with Justice and impartiality, which is the duty and obligation of prophets and divine guardians and divine executors and the believers, is common for all groups and nations and there is no preference between parties to the dispute.

Glorious Qur'an assesses that the objectives and goals of prophets and revelation of the scripture and Balance is that the people behave and deal with equity. There is a general indication to the words "prophets", "scripture" and "Balance" and the word "people" includes all people around the world and comments on the formalities of diplomatic procedures as an illustrative of justice and equity among all nations of the world. It should be added that the principle of "doing justice" will not be even dispensed with while dealing with enemies.

There are numerous topics concerning the delicate attention of Islam to the principles of adjudication and observation of justice and equity while rendering a judgment and also behavior of judge during the trial, in Islamic law books.

Strict observance of principle of "doing justice" in international relations indicates this very fact that sending messengers and appointing prophets have not been for acquiring economic gains. No prophet has been appointed just to improve and enhance the interest of his own folk. Therefore, the purpose of Islam's government would not be only gathering wealth and property,¹⁰ especially acquiring and confiscating other nations' rights. So, contrary to prevailing international attitude that each state is looking for manipulation of others' rights and joining them to its ownership, the Islam's government never follows such an end. The main objective of Islam is spiritual-physical transcendence of individuals of humankind as well as their communities. So that Islam shall pursue continually the principle of "doing justice" in international scene. Because its national interest is bound on the same direction as others' national interests. All states consist of human beings and the final goal of Islam is improvement and guidance of all human beings, no matter if they are living in this side of the border or in the other side.

8- Principle of: Imposition of punishment, based on substantiation of the offence

The imposition of punishment in Islamic religious law will be admissible, just while the commission of unlawful acts is definitely proved. Therefore, punishment of unlawful acts shall be only authorized, if their perpetration is certain.¹¹ As a general rule, and according to clear Quran's

¹⁰ Bidabad, Bijan (2006) Expenditure in Islamic public finance. Monetary and Banking Research Academy.

¹¹ His Excellency Hajj Sultan Hussein Tabandeh Gonabadi, Religious standpoints on Universal Declaration of Human Rights, 2nd ed. (1975), Tehran, pp 53-54.

verses "conjecture" has no room in substantiation of the right.

In the history of Islam while describing the assassination of Commander of the Faithfuls Ali (A) it is written that His Holiness was told Abd-el-Rahman-ibn-Moljam has a criminal intent to kill you, so that let us arrest him. Ali (A) answered: "He has not committed any criminal act yet to be an excuse for his detention". Such a statement and also his conduct after assassination is the best guidance for all Muslims in similar cases.

This rule is thoroughly applicable in many international relations' cases such as: putting forward some excuses for waging war¹² against other states, malevolence against other nations, confiscation of their properties, calling their governments as wicked or terrorists, and making them to go through hardship. Even in some cases, they have attacked an airliner just for a bare suspicion that it might have been a military aircraft or a fighter. This kind of cases, due to their conjectural conditions and uncertainty for perpetrating a criminal action cannot be used as justification for a counter attack. For example, we cannot attack an airplane just for this probability that it might be a fighter. Therefore, the Islam's government has no right, just the same as other aggressors, to propound conjectural excuses, for taking hostile policies at international scene. The Islam's government is only authorized to take such kind of measures when the commission of the crime is proved to be certain.

9- Principle of: Equality in law

Construed from the principle of "unity" and principle of "human beings dignity" it is easily understood that no one of us is superior to the other one. We are all creatures of unique creator and children of one Father. Our nation or tribe is not the reason for our superiority. The only distinction between an exalted person and an ordinary person is performance of pious duty towards Allāh whose criterion rests with Allāh and no other criterion is left for people to measure it. On this basis we can take it that all persons are considered equal by law and there is no difference between an internal accused or criminal or the subject (citizen) of the state and/or foreign accused and criminal having foreign nationality. With regard to the principle of "respecting the guests", it would be preferable if there be a mitigation of punishment for a foreign criminal as compared with the punishment of municipal criminal, because he/she is a guest and respecting a guest is an Islamic as well as Muslims' duty. The equality of municipal and foreign national can be extended to the political considerations, and principle of "truthfulness in international relationships" makes it obligatory to remove all and every political considerations".

From this Qur'an's verse, it is inferred that there is no difference between people and it is meritorious to obey Allāh, and Allāh's ordinances are superior than the interests of one of the parties to the disputes, and no matter, who the parties are, and whoso their relationship is, and how is their wealth, there is no difference between them. Obeying God's ordinances, namely doing justice and equity between the parties is a meritorious conduct and superior than every thing.

Performing this principle shall cancel the principle of capitulation in international law. As it will be discussed later, there is no difference between people in regard to legal aspects, save those cases where the Holy Legislator of Islam has recommended for persuading people to convert to Islam. The spirit of this approach has its own issues in international law that reject and condemn political considerations in international judiciary.

10- Principle of: Continuity of states

This principle indicates that by changing the government of state, there would be no change in sovereignty over territory of the state. Although this principle is accepted by international law and is invoked in practice but there are some defects and shortcomings in it.

¹² For example: the Nazi Germany by designing such a kind of plots attacked Poland and started World War II, which is mentioned in the books of international relations. Look at public diplomatic history.

From Glorious Qur'an it can be inferred that if the previous governments have made unacceptable treaties with other state, then by changing the government these treaties should be ratified again at their validity, be reduced, or be cancelled. Because the acts and thoughts of the people who lived in the past shall not impose any obligation on those who live in the future. An exception to this rule is the debts of a deceased, which shall be transferred by inheritance to the heir. And if the debt of deceased is more than his wealth and property then this debt shall not be transferred to the heir. This ordinance is based on Qur'an and intellectual reasoning.

This matter is propounded as a new subject to be open for discussion. But it should be noted that according to all divine religions as well as Islamic tradition, the successors (subsequent Caliphate) should ratify all enactments of previous one, otherwise they will be considered as invalid. If we extend this subject to the principle of continuation of states at the level of international relations, new discussions would arise from the standpoint of public international law. In this regard, the correctness and validity of treaties, especially those that has change the borders of some states and sovereignty over a specified territory, which is taken from a state and given to another state, shall be the subject of the concerned discussions.

11- Principle of: Prohibition of abusing the rights

Whenever a state causes damage and inflicts injuries to another state, by exercising unlimited power, the international court of justice is able to prevent the actions by taking advantage of the rule of "abuse of right". In other words, the states have no right to invade the other states, especially the powerless states pretending that they are exercising their own rights. This principle is accepted and is in general use (current) in international law. This case is similar to misappropriation of orphan's property, which is stated in Glorious Quran. Because an orphan, being similar to powerless states, is not able to recover his rights and there might be occasions that the guardian of a minor attempts to encroach on property of the orphan, the same as invasion of colonials to colonies, which are under their influence at international level. There are several verses revealed in Glorious Qur'an about this subject that the principle of "prohibition of abusing the rights" can be construed from them.

The resemblance between these two subjects encourages the following method of procedure. If you are decided to exploit a powerless country, so with consent of the said country and in fair and just manner, apply for its annexation. In this condition, what happens is the ownership of the powerless country, consequently the severity and hardship of exploitation will be reduced, and you will not deal with it as colony. Anyhow, due to condition on the ownership, finally, the weak and powerless country gains its strength and economic maturity and in this case, all its authority and power will be returned to it.

There has always been this kind of bribery in the politics and there exists now, and there will also be in future, in such a manner that some countries through subornation of government of weaker countries, take the latter's property into their possession wrongfully. In any case "devouring the property wrongfully" in the national and international scenes is forbidden in Islam

12- Principle of: Prohibition of causing harm

Causing harm in the said principle means to cause a loss, injury or harm to others. There is a well-known rule in Islamic jurisprudence which is called "the rule of prohibition of detriment". According to this rule, an individual has no right to cause harm to others just for recovering his own rights. That is to say, "exercising one's right" shall not be a means for causing harm to others and/or used against others' and public interests. This rule is based on pure reason, although there are also several religious narrations in this respect,¹³ narrated in brief successive transmission (its subject matter is narrated in different wordings). What the reason commands is that the actions of a person for recovering his rights should not be to the detriment of other persons. In Islamic

¹³ Al-Kāfi, 5, 280, chapter "pre-emption" p. 280.

jurisprudence, obscenity of harm and causing harm is based on the rule of “cases independently accepted by reason”. According to this rule, there are some cases that the reason accepts them without argumentation or logical reasoning. Undoubtedly, the cases independently accepted by reason, which is mentioned in Islamic jurisprudence are relative matters, and in different conditions, they might be contradictory to each other. Because “rational decency and obscenity” can be contradictory pertaining to part or whole. For example, sometimes the performance of an action might be of benefit for an individual but against the interest of many other persons. The subject is related to the rule of: "reasoning through exigency" and the rule of “blocking the detrimental means” that we will consider it later on. But general meaning of this principle, which is under consideration, is that, in principle, one, for recovering one's rights should not act in a way that leads to detriment of other persons.

This principle has varieties of applications in international law and relations among states. For instance while a state is at war with another one, it has no right to use the territory of the third state for recovering its rights. And it should not encroach on third state's sovereignty and/or perform any action to be detrimental to the third state. A set of clear examples of this kind of actions can be noticed in World War II. For example, British and Russian armies, from Allied Forces, invaded Iran from south and north to fight against the United Forces.

There are so many problems that can be included in this topic, such as common borders between states whether territorial, sea or aerial borders. This principle is to such an extent in international scene that covers many infringements of rights of powerless countries by different states in their relationship.

13- Principle of: Presumption of innocence

The concept of “presumption of innocence” relates to the cases where there is a doubt about the enforceability of order, and we want to be certain that we are not bound to perform it. The position of “presumption of innocence” and its application is where, there is a doubt in one's duty. “Presumption of innocence” is different from “principle of non-existence”. In this regard, the basic conception is “non-existence” of “things” unless its existence is proved. For example, the rule of “burden of proof rests upon claimant and the oath upon one who denies” is based on this principle. It means anyone who alleges to have a right, he should prove it, and “presumption of innocence” is also different from the “principle of permission”. The basic conception of the latter is, while there is a doubt about permission or prohibition of something, the principle stands on the permission. Doubtfulness, suspicion, and validity of innocence on their applications need profound discussions, which can be found in the books of “the principles”.¹⁴

In the noble book of Salehyeh, it is stated that “principle of non-existence indicates there is no need to prove, but, not to prove the non-existence. And presumption of innocence does not make innocence. Principle of negation negates the essence and cannot prove the existence, and principle of *status quo ante* is executed on the cases where the individuals and conditions are different, and in case of validity, shall bring excuses but cannot confirm a rule”.¹⁵

“Presumption of innocence” can be inferred from several verses of Glorious Qur'an. That is as long as the ordinances are not communicated, their non-performance shall not impose any punishment by the Almighty God. And many verses indicate that obligation will exist after competence and legislation. Although the question of capability is, separate from “presumption of innocence” but capability is its base and foundation, because as long as a person is not capable or competent to be under the coverage of an order, he/she is not able to cast doubt on obligation, which is the way of application of “presumption of innocence” as mentioned above.

¹⁴ Principles such as “principle of permission” and “principle of non-existence” with small differences are similar to “presumption of innocence”. However, we are not going into differential niceties between them, and “presumption of innocence” is our main topic to be discussed here. See Muhammadi, A., (1977) pp. 215-224.

¹⁵ His Excellency Noor Ali-Shah the second, Salihiyeh, 2nd ed. Tehran University Pub. (1967), Haqiqat 379, p. 257.

This principle with respect to religious characteristics of Muslims is very important in the international arena. Since, Muslims always think because of having the blessed name of Reverend Messenger on them, they have special superiority and human dignity over all nations around the world. And sometimes it has been observed that due to foolish fanaticism, they not only have excommunicated followers of the divine religions as well as the followers of other Islamic sects but they have also fought against their fellow brethren. Most of wars between Islamic countries shall confirm this matter. This principle makes the Muslims to understand, if there has been some enactment for them, it should not be the ground for self-glorification with all other nations in the world.¹⁶ Because no obligation has yet been imposed on them and acts or omission are both equal for them. But it is not the same for Muslims. Those who know have heavier burden of performing their duties on them. In other words, there is no room for superiority and self-glorification of Muslims over non-Muslims, on the contrary, Muslims should do their best to perform their obligatory duties.

In international law as well as statute law, the “presumption of innocence” which is based on the principle of “*nulla crimen sine lege*” is capable of being used in the vast majority of cases. According to the principle of “*nulla crimen sine lege*”, no act can be named crime unless, by virtue of law, it is called a crime; and “presumption of innocence” is in accordance with this principle. Therefore, if somebody claims to have a right of claims for a debt, he should prove it otherwise according to this principle the case results to the acquittal of defendant/respondent.

The most important reason of validity of acquittal is the reasonable rule of “shamefulness of punishment without declaration of law”. Reasonable rules do not pertain exclusively to our religion or law or special state or nation. The time and place has no effect on them. For example the reason takes the oppression as an obscene act, and this subject is not exclusive for a special country and the time and place does not either affect on it. For this reason, "presumption of innocence" is the result of a clear understanding of wisdom and can be applied in customary international law.

14- Principle of: Blocking detrimental means in international scene

“Zara’yea” is the plural of “Zar’i-eh” an Arabic word with the meaning of "the means". Some people are of the opinion that every kind of actions, which usually leads to a detrimental situation, should be prohibited and blocked according to the aforementioned principle.¹⁷ For example, freedom of transit and transportation of illicit drugs from a foreign country through a second state for a third country, even though there might be a freedom of transit of goods of second state, nevertheless, because the transit of drugs will cause damage to the third country, therefore the second state has to block it. In other words, the second state should “block detrimental means” namely transit of illicit drugs to the third country.

In addition to this verse, the said principle is also based on other Islamic precepts, and the reason will confirm it as well. As it was mentioned earlier, advancement and elevation of humankind depends upon the advancement of every individual of human beings and if the corruption spreads in a country, other states will also be damaged. It is one of big mistakes of people who always mistakenly have separated their individual interests from the interests of world and humankind.

¹⁶ Some people through interpretation of Quran's verses of “... and Allāh will not give the disbelievers any way (of success) against the believers” Al-Nisā 141. And also others by invoking several verses from Old Testament and New Testament think their nations are superior and preferred from the rest of the world, which is a wrong idea. As we will see in other parts of this paper being related to a religion is not a good cause for superiority and self-glorification. Now we are going to ask a question from those who are related to a special religion: Who are the best people? Are Muslims the best people who killed and maimed the children of their honorable prophet in Karbala? Or Jews and Christians who used to kill the new prophets? Obviously none of them can be considered as the best people. Therefore, there is no glorification and/or superiority over other people.

¹⁷ Mohaqqeq Damad, M., “Principles of Islamic jurisprudence”, vol. 2, 9th ed., (2000) Islamic Sciences Pub. Center.

15- Principle of: Exclusive right of “juristic preference” for The Divine Master of Affairs and Authorization

“Juristic preference” is one of the most disputable arguments in Islamic jurisprudence and statute law, which its validity differs between different Islamic sects and is a case open to altercation. “Juristic preference” means to consider something as being good and admirable, therefore approving it. Islamic jurisprudence in different sects gives different definitions of it. By observing several practical examples of “juristic preference”, the following definition might be briefly presented. “Juristic preference” is issuing a rule, which is approved due to its excellence and practical advisability, by taking its expediency for ourselves and the others into consideration. Those who oppose this definition are of the opinion that if the topic of “juristic preference” be open to act upon, everybody would issue a rule covering his own interest and in accordance with his wishes and desires. Therefore, the base and principle of precepts and laws would be into total confusion.

In Glorious Qur'an,¹⁸ “juristic preference” can be clearly observed in the behaviors and deeds of KHidr (A). None of his deeds as, piercing a hole in the ship, killing a child, and repairing a fallen wall, which belonged to cruel persons, were in accordance with ordinances and laws of any religions. This kind of “juristic preference” exclusively belongs to those who are bestowed foreknowledge. It is not concern of anybody else.

In the event that "juristic preference" not to be under the control of “Master of Affairs”, certainly the individual and national interests make the border line between nations get more intense, therefore instead of taking the mankind’s interest into consideration, with respect to the excellence and admirability of matters, the efforts will be focused on a special nation's or persons' interests. As a matter of fact, in Islam's government all decisions and orders are under the control of “Master of affairs”. This matter was only mentioned here to make it clear that not everybody is entitled to issue rules, juristic opinion and/or make policies. Because, it was due to this claimed entitlement that after demise of our Reverend Prophet, the path of Islam was changed towards the present situation. To describe this subject in detail, suffice it to be noted that even the Reverend Prophet was not entitled to state anything without permission of Allāh, still less to issue a juristic opinion. As it is stated in Glorious Qur'an about the story of cessation of revelation¹⁹ for forty days there was no revelation and after that period time verses of sūrah of Al-Kahf were sent down.

16- Principle of: “Reasoning through exigency” in international relations

Islamic law rules are based on virtue and vice (goodness and corruption). “Istislah” (reasoning through exigency) as an Islamic jurisprudence expression has the meaning of “free virtues” (comparing with controlled virtues). According to this expression, while considering different issues of “The principles”, “Islamic jurisprudence” and “Law” the policy is that decisions taken should be based on free virtues, because there is no specific evidence to their obligatory observance and/or their prohibition.²⁰ On this occasion, the rule of “Istislah” (reasoning through exigency) orders the performance of actions, which are to the interests of humankind. With respect to the most important objectives of religious law, the interests of humankind are summarized into “five goals”, of religion, soul, reason, generation, and property.

¹⁸ Some people believe that the actions and deeds of KHidr (A) are based on knowledge rather than “juristic preference”. This is a correct idea, because KHidr (A) had foreknowledge, and his “juristic preference” was based on his foreknowledge. For this reason, the principle of “juristic preference” exclusively belongs to those who have foreknowledge. They are Divine Authorized persons and “Master of Affairs”.

¹⁹ Although, some commentators believe that this happening is due to not excepting by “If God will” (*Ensha'Allah*) but it can be also used in our present discussion. For interpretation of the said verses, see: His Excellency Hajj Sultan Hussein Tabandeh Gonabadi. Glorious Qur'an and Three Mysterious Mystical Stories.

²⁰ Muhammadi, A. (1977) “Principles of inference in Islamic law”, Tehran University Publications, pp. 104-170.

Therefore, on this basis, the rule of "reasoning through exigency" on the international scene is engaged in issuance of decisions and adoption of policies, which are to the interest of two, or more states engaged consequently and in all, the interest of mankind are taken into consideration with respect to the aforementioned "five goals". Although, the rule of "reasoning through exigency" covers nearly a small amount of decisions in traditional Islamic jurisprudence, but on the international scene and international law shall have a vast range of applications, and Islamic international law rules shall gain a global acceptability, because they will be issued according to the rule of "reasoning through exigency" rather than the basis of their religious jurisprudence in Islamic jurisprudence. That is to say, acceptability of Islamic law rules by other nations and states are not due to their belief in Islam rather to taking their own interests into consideration, the Islamic rules shall be desirable and acceptable.²¹

The aforementioned rule just the same as principle of "juristic preference" is restricted to some limitations, which the most important one is "Authorization". This limitation is for this very reason that by application of the said rule, the virtuous rules not to be changed to the vicious rules and vice versa.

17- Principle of: Observing "International status quo ante" "providing the right is lawful"

The literal meaning of *status quo ante* (Istis'hab as an Arabic term) is to have with oneself and to accompany with. In Sheikh Ansari Treatise "*status quo ante*" is mentioned as "retaining what has been before" which means to assume the existence of what has been previously known to be existed. Therefore, if we are certain that something has been existed previously and now we are in doubt about its existence, on the basis of our previous certainty we will assume it to be in existence. To describe it in legal terms, it should be noted when it was proved that there existed a debt or right on somebody, so that, on the basis of this principle its existence should be assumed unless it is proved to the contrary. The elements of "*status quo ante*", validity, kinds, conflict with other evidences such as acquittal, precaution (indebtedness), right of choice, principle of correctness in acts, principle of irrevocability of contracts, presumption of possession, confession, and/or other kind of "*status quo ante*" they are all important discussions about the said principle that we are not going to consider them in this section.²²

This principle has its special place in Islamic international law. Because introducing the Islamic international law a new set of rules enter to the world's scene and these rules will introduce new approaches to all problems. It is obvious that new approaches cast doubt on most earlier orders, which are under execution. Principle of "*status quo ante*" in case of existing an established right will authorize the existence of what there has been once existed providing that the right is lawful.

18- Principle of: Non-retroactivity of statutes

Legal expression of "non-retroactivity of statutes" signifies that effect of a statute cannot be extended to the previous rights of individuals, organs and states, which have been acquired prior to the enactment of law in question. By non-acceptance of the said principle, the private life and social life of people would be in jeopardy, because it is likely that, at any time, a new law be enacted and consequently people rights being called into question. Therefore, observance of this principle constitutes one of the based and pillars of the legal systems of civilized nations. This principle has also been taken into consideration by Islamic legal system.

The application of this rule to the international relationship will result in the stability and security of legislation in the global scene. And this stability would be an effective means of social

²¹ For example, there was no legal institution of divorce in Christianity, and Roman government always refused to accept it but the said legal institution was finally taken from Islamic law and consequently it was ratified. Due to the newly accepted law, at the same day nearly fourteen thousands Italian couples were divorced.

²² See: Muhammadi, A. (1977). "Principles of inference in Islamic law", Tehran University Publication, pp. 229-245.

and economic growth and development of all nations in the world.

19- Principle of: Continuity of uncontested possession

This principle shall establish the right of sovereignty. For example, when a country has in its possession a special part of a territory for a long period of time and there is no other state to have an allegation over the said territory, this long time uncontested possession establishes the sovereignty of the said country over the possessed territory. This principle is in a way the same as “acquired rights” and/or “*status quo ante*” which leads to the lawfulness of maintaining what is existing. As it was mentioned earlier, lawfulness of the “continuity of uncontested possession” being similar to the principle of “acquired rights” and “*status quo ante*” is based on lawfulness of the rights as well as not to be usurpative possession. In this case, it would be confirmed by Islam.

This principle is an illustrative of this particular subject that Islam's government will recognize the unsurpative sovereignty of the states within their territory. Exceptions of this rule will be discussed in the principle of recognition of the states.

20- Principle of: Remunerating the rightful attorney and punishing untruthful attorney

Attorneyship is one of the most important subject matters and effective means for recovering one's rights or even perversion of the truth. Having a pessimistic view of attorneyship, it is a profession which an attorney in law by receiving the attorney's fees from his client tries to introduce him as rightful and entitled to the case in front of the court, whether his client be in rightful position or having no right at all. This attitude towards attorneyship is most regrettable and Glorious Qur'an rejects this kind of attorneyship. Glorious Qur'an enjoins being helpful and giving assistance in benevolence and pious duty and prohibits assistance in commission of sin and transgression. Untruthful attorneyship, which means an attempt for predominance of untruthfulness over, righteousness, is similar to accessory of a crime (aider and abettor), therefore to bring the legal proceedings towards its righteous path, the accessory should be assumed as partner in the punishment imposed on criminal. We believe that an attorney should not only defend his client's case but he should do his best to cover the rights of the one who is entitled to it. Of course, there are some exceptions to this matter. Because, most of disputes arise from various interpretation of law by parties to the dispute and their attorneys.

Attorneyship which is a type of intercession and mediation, comes under the concepts of this Quran's verse, therefore if an attorney attempts to recover the rights of a righteous person, he would be entitled to receive attorney's fees, but if his efforts concentrated towards winning the untruthfulness, then he has to be punished as an accessory to the crime. It is obvious that, enforcing this procedure will lead the attorneyship to a just adjudication and honestly assistance of the attorney to the court, consequently reducing the corruption in this profession.

Discussion about this subject matter with some exceptions can be extended to international law. But in the international scene, the attorneys are representatives of their related government and punishment of accessory to the crime cannot be easily imposed on them. Because, the punishment is so great that an attorney cannot bear it. Anyhow, for leading the international attorneyship towards honesty we have to innovate new ideas in international law. Consequently, the humankind would be secured from the opportunistic behavior of criminals who by taking advantage of services of attorneys try to infringe the rights of others.

21- Principle of: Ignorance of statute law is a good excuse but ignorance of natural law is no excuse

The legal expression of “Ignorance of law is no excuse” has a vast application in domestic law. On this basis if a criminal claims that his criminal acts are due to ignorance of law, his negligence to get acquainted with law shall not remove his culpability. This principle is adopted to bar criminals abusing “the ignorance of law” as means to their ends, and also to encourage other people to get acquainted with the statute law of the land as well. On the other hand, it results

the infringement of rights of those who have really been unaware of the statute laws. For this reason, we have to draw distinctions between statute law and natural law. Natural laws concern all those crimes, which the conscience of any person will admit them as being a crime, such as, oppression and cruelty, infringement of other's rights, theft, transgression, and so many other cases, which everybody knows them as a fault, or crime. There are many people who do not know that to build a storeroom in the parking area of their houses need to obtain a license from municipality. Or there may be some people who are not aware that in some days of the week they are not allowed to take their cars into a special area of the town. All these regulations are the examples of statute laws. And too many other examples of these two groups of law can be named here. Natural laws are based on general rational rules and do not belong to any especial religion, legal system or state. Time and/or place do have little effect on them. They will be approved by conscience and are enforced in all places. Therefore, a criminal, to exonerate from criminal liability, cannot resort to his ignorance of law and also he cannot recourse to the rule of "shamefulness of punishment without declaration of law". For instance, he cannot claim that he did not know theft, oppression or transgression were vicious acts. But, with respect to the statute law, it is somehow different. The delinquent may argue that he is a stranger in the city and was not aware that traveling into city center by car, during a specific time is prohibited. Therefore, he resorts to the rule of "shamefulness of punishment without declaration of law" as a self-defense. The latter rule is a rational one and rational rules are the basis of distinction between right and wrong. Negation of the said rules results to the negation of rights and/or basically negation of adjudication. So that, it is not rational that a person who is not aware of a crime to be punished accordingly. The order of Glorious Qur'an about natural law is clear and definite. It can be construed that ignorance of natural law is no excuse, but ignorance of statute law is no excuse if the law is not communicated to the criminal. Prohibition of usury is one of the clear examples of the case.

This principle is also extendable to the fields of international law. Because the subjects and nationals of various countries are not fully familiar with the statute law of the other countries. Therefore, by non-observing the statute laws they are entitled to mitigation of punishment. For instance, the main parts of the administrative and civil law of the countries are included in this category which these foreigners who enter a country are not familiar with them, perhaps it is necessary to inform entrants, foreigners and tourists who enter the country. Of course, we have to find a suitable method for explaining these laws to them. Otherwise, most of entrants might be prosecuted for their acts and omission, which are crimes according to the statute laws, whereas they have not really been aware of the said laws and reasonably, they are not liable to punishment. International law has been silent on this subject matter so far. Therefore, to maintain the rights of the persons who are not the native in the place, the case should be open to discussion until governments think it over and make new solutions for their benefit.

22- Principle of: Respecting acquired rights

"Acquired (or verted) rights" are those which is not naturally bestowed to man, but it is acquired through his own efforts. For example, sovereignty right is among the cases of this principle. According to Article 38 of statute of International Court of Justice, the said principle is considered as one of the sources of International law for settlement of disputes. Rights and privileges gained by lapse of time is one of the cases of "acquired rights" which is resulted from this principle. Principle of "*status quo ante*" in Islamic jurisprudence as per definition given by Sheikh Morteza Ansari in his Treatise is "retaining what has been before" which means to believe the existence for what has been existed in a previous time. This definition opens discussion about the "acquired rights". Although the aforementioned definition reveals some differences between "*status quo ante*" and "acquired rights" but since both of them consider the previous privileges liable to be existed, they are in this case similar with one another. The same as "*status quo ante*" which there has been raised doubts about its validity; there are also some doubts about approving

“acquired rights”. In Islamic jurisprudence, these doubts are cast with respect to the unlawfulness of the right and/or usurpative possession of right, which in case of removing all doubts; the said principles will be valid. Anyhow, in the realm of public international law, acquired rights relates to the various problems of sovereignty right, which is the main issue in the international law. There are several examples on this subject matter in Glorious Qur'an.

23- Principle of: Authority of res judicata

The meaning of this principle is that while a matter of dispute is adjudged by competent jurisdiction and final decision is announced, this judgment is final for parties to the dispute, therefore there should not be another prosecution for the same allegations. This principle has also an assured and suitable position in international law. In Islamic legal procedure, examples of the said principle can be found.

It is a rule in domestic legal proceedings that when new evidences are acquired indicating discovery of truth, then it will be a ground for rehearing the case. This rule can also be used in international law.

24- Principle of: International responsibility

One of the clearest cases in international law discussions is international responsibility. That is to say, when damage is caused by actions of a state, it has the liability to compensate it. This subject matter is also extended from public international law to private international law; therefore, liability will be extended to the nationals (citizens) of state. In this case, it will be one of the topics of diplomatic protection, which in regard to present discussion is very important. The range of topics of diplomatic protection develops up to capitulation, which defines other aspects of responsibility in international relations. This kind of responsibility is related to the importance of protection issues, and as a rule, it is different from definition of international responsibility, but because diplomatic protection is within the scope of responsibility's subject matters, therefore this subject is placed under this topic. The topics of international trusteeship are also next to the scopes of this discussion.

The topic of international responsibility within international relations is so developed that if a state authority be contemptuous of or shows lack of respect towards another state he is bound to apologize in public and openly. Even his removal from his position is predictable. The details of these issues are mentioned in international law and the statute of International Court of Justice.

Discussion about the state of responsibility has been ranged from the scope of fault to the domain of culpability. But since, proof of liability within the scope of culpability is very difficult and it is capable of being misused, therefore it is facing some limitations. On the other hand, there are several topics on lawfulness and/or unlawfulness of the actions with respect to the municipal law, injured party's law and international law, which all of them have their own particularities in various subjects.

Sometimes, laws of liability are not capable of being introduced in serious international issues, and even if they be introduced, there would be too many doubts about their sanctions. Too many issues, which are related to the war of aggression, especially those caused by aggression of super powers, are included in this category. On the one hand, the perpetrators of these actions and aggressions are those who are political or military authorities of states. And even if they stand trial for their war crimes at the end of war, they would have only one life to be retaliated. Whereas they might have caused too many people being killed. On the other hand, in cases where damaging state is not prepared to compensate the damages caused, the injured party has no right to resort to force or war for retaliation. We have to mention again that all these occasions depend on the powers of the parties to the dispute.

Crystallization of this principle can be observed in Islamic law under the topic of “blood money”. In Islamic jurisprudence, blood money is used for compensation of damage caused to infringe the others' rights. Since, political borders in Islam have not been so defined to separate

human beings from each other, therefore infringement of rights of individuals and peoples of other nations, are the same as infringement of rights of individuals and peoples of Islamic nations, and blood money can be imposed on them. The vast range of blood money, which covers various infractions and wrong doings, including faults and culpabilities as well. On the basis of Islamic regulations even if the actions of a person frightens another person there exist a blood money for it. And if the frightening of the other persons causes material, spiritual and/or corporeal damages, the blood money changes as the case might be.

If the person adjudged to pay damage (losing party) is not able to pay the imposed blood money, then, Islam's government is bound to recover the rights of both parties, and pay the blood money to the injured party out of public treasury. Topic of "Third party guarantee" which is the promise of a person to accept the damage caused by another one is not included in this subject, because "third party guarantee" is based on optional responsibility, whereas "blood money" is based on obligatory responsibility.

The rule of retaliation is by itself a clear explanation of accepting the responsibility whether national or international. Because in Islam the borders and frontiers do not differentiate the rights of people, therefore all individuals of human societies from the standpoint of race, nationality and domicile are considered equal. Therefore, principle of responsibility in international law is confirmed by the said rule.

Whosoever commits cruelty and oppression shall have responsibility and should recompense the damage sustained. Generalization of this topic extends to the subject of international responsibility of individuals, which is one of the most important topics in international law. Before World War II, the international crimes, on the basis of international subsidiary rules and treaties were, on the one hand, those crimes which had a general aspect such as piracy, slave trading, Traffic in Woman and Children, Traffic in illicit drugs, publishing obscene publications, printing forged bank notes, and mintage of counterfeit coins, and on the other side, were those crimes related to violations of laws and customs of war. After World War II, some other crimes, such as crimes against Humanity, crimes against peace and Genocide were added to the list of international crimes. Therefore, international criminal law gained a significant role, and at the same time, special courts such as Nürenberg Tribunal and Tokyo Tribunal were established for trial of the war criminals. This was unprecedented in the history of international law.

According to the international laws, customs, and conventional rules, the armed forces of belligerent states are justified to use regular arms and weapons to fight against the enemy but they are not authorized to use all kinds of weapons and/or employ all kinds of measures against the enemy. For example plunder of public and private property and killing the unarmed persons are not authorized, those kinds of actions, at the time of war, which in their specific meaning and according to the international customs are not considered as war operations, are called war crimes. Each one of the belligerent states are authorized to punish the perpetrator of the said crimes, according to their municipal criminal law, as they exercise it for their own citizens. According to an old accepted rule in international relations, it is the right of the states to punish the enemy's personnel who are as prisoner of war under their control, on the basis of their criminal law.

In World War II, the subject of international crimes of individuals found a wider concept and meaning. So that, those persons who violated the international conventions and initiated the war of aggression were found guilty as a war criminal and were liable to punishment. For this reason, the Agreement for Establishment of an International Military Tribunal was concluded at London, August 8, 1949, for the trial and punishment of war criminals of European countries. According to the Article 1 of London Agreement, the said Tribunal was established in Germany for the trial of war criminals whose offenses had no particular geographical location. According to the Article 6 of the charter of the Nürenberg Tribunal, the Tribunal shall have the power to try and punish persons who acting in the interests of European countries, whether as individuals or as

members of organizations, committed crimes against peace, war crimes and crimes against Humanity.

Crimes against peace are of those offenses, which had no precedent in international law and quite new legal institution. So that, after the World War II new principles were set up as to the international responsibility of individuals apart from their ranks and positions. According to the Article 6(a) of the charter of Nürenberg Military Tribunal, crimes against peace are: "Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements, assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing".²³

According to the Article 6(b) of the charter of the Nürenberg Military Tribunal, war crimes are: "violations of the laws and customs of war. Such violation shall include, but not limited to, murder, ill-treatment or deportation to slave labor or for any other purposes of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, town or villages, or devastation not justified by military necessity". Therefore, war crimes as to their specific meaning are violations of rules and regulations that according to the text of international treaties the belligerent states and their respective army personnel have to observe at the course of hostilities.²⁴

Crimes against Humanity are also the offenses, which had no precedent or specific title before establishment of Nürenberg Military Tribunal. These offenses according to the Article 6(c) of the charter of the Nürenberg Military Tribunal are: "murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan".²⁵

In addition to the offenses mentioned in the charter of the Nürenberg and Tokyo Tribunals and their judgments, the crime of genocide, whether committed in time of peace or in time of war, is considered as an international crime by Convention on Genocide, December 11, 1948, and the perpetrators, whether ordinary people, officials (statesmen) and/or members of the government

²³ Although the war of aggression and war in violation of treaties are not defined by the charter of the Nürenberg Tribunal, however from the text of indictment presented to the Tribunal and statements of the representatives of Allied states which requested the punishment of the heads of aggressor states and also the text of judgment of the Tribunal, it can be understood that war of aggression and war in violation of Briand-Kellogg pact (pact of Paris, pact of renunciation of war) -which have prohibited war as an instrument of national policy- and also in violation of other treaties such as Versailles and Locarno treaties; the government of Germany in violation of the said treaties waged war against European countries.

²⁴ These treaties which are invoked by Nürenberg Tribunal primarily are the Hague conventions of 1899 and 1907 concerning the rules and customs to be observed on Land Warfare, and 1927 convention about prisoners of War, and London Naval Treaty 1930 and 1936 concerning submarine and Navel Warfare. Secondly, the customs and usages observed in international relations. Although according to the conventions and treaties and on the basis of international customs, the observance of rules and customs of war by belligerent states is a recognized principle but, firstly their violation and non-observance is not clearly recognized as international crime, secondly, since, before establishment of Nürenberg Tribunal the states had no criminal responsibility in international relations, therefore, non-observance of the said rules brought only tortuous liability against them. This subject is mentioned in Articles 3 of the Hague convention that violators should make reparation of such loss and damage caused by their citizens.

²⁵ Crime against humanity is not considered as an independent crime in the charter of Tribunal by the authors of the charter. It is only a subordinate crime, therefore the perpetrators of crimes mentioned in Article 6(a,b) if during commission of those crimes, commit the crimes against Humanity then they will also be responsible for them. In Draft Convention concerning crimes against Humanity and security of Mankind, which was drawn up by International Law Commission, the crimes mentioned in Article 6(c) of the charter of the Nürenberg Tribunal was recognized as an independent crime.

shall be punished according to the said convention. Article II of the convention defines Genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such:

- a) Killing members of group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.

The judgment of Nuremberg International Tribunal contained a new and unprecedented subject, namely, the responsibility and punishment of individuals concerning the violation of international undertakings of the state. It was explicitly stipulated in the judgment of the Tribunal, that it is a long time where international law has imposed duties and liabilities upon natural (unofficial) individuals and the protection of international law in favor of the representative of a state, cannot be applied to the acts, which are condemned as criminal. The authors of these acts cannot shelter themselves behind their official positions, in order to be freed from the punishment in appropriate proceeding.

The principle of individual responsibility due to violation of international treaties is also mentioned and recognized in convention of Genocide. In Article 1 of the “draft convention on crimes against peace and security of mankind” which was prepared on the basis of precedents of charter and judgment of Nuremberg Military Tribunal, and ratified on the sixth session of International Law Commission in 1954, the reference is made to the responsibility and punishment of individuals as follows: "crimes against peace and security of mankind which is defined in this statute is considered as an international crime, and the individuals who are responsible shall be punished". In Article 2 of the said Draft Convention, which has 13 paragraphs, the acts, which are called as crimes against peace and security of humankind, are enumerated. These acts are briefly as follows: “any act of invasion and aggression, planning and preparation for resort to the armed forces, constitution and instigation of armed groups for aggression, all measures taken for initiation of civil war in country, terroristic operations, violation of treaties, intervention with the affairs of other countries, genocide, acts against humanity, acts against laws and customs of war, conspiracy, instigation, assistance, and participating in the foregoing crimes”.²⁶

In section of “honoring the treaties”, it is discussed that all covenants and treaties are binding and obligatory, and impose liability. This liability pertains to any kind of covenant whether with God or the people of God. Concerning the subject in question, it should be noted that by conversion to Islam and content of covenants, Islamic actions and behaviors, implicitly or explicitly, become the requirements of taking oath of allegiance -whether general or special- and consequently they would be obligatory to observe. That is to say, the Islam's country, whether to be one of the parties to the international treaties or not to be, it is bound to observe the Islamic-humanitarian instructions in relation to other nations and states.

25- Principle of: Compensation for unjustified damage

Principle of compensation for unjustified damage or principle of reparation is an accepted legal rule in various legal systems, and rules of procedure and method of redress is also determined in their laws and regulations. According to the general definition of the said legal term, if a person through an action or omission causes damage and injury to another person, he is bound to make compensation for all such losses and damages. Concerning the international law, the reparation is, taking all measures to the interests of a state or an international organization for making reparation for loss and damage done. This principle is mentioned in the Article 37 of the

²⁶ See: Safdari, M., public international law, vol. 3, Tehran University Publication.

Hague Convention 1907 as a general principle recognized by civilized nations.

As to the Islamic law, the said principle is also discussed and accepted in the section of “civil liability” of Islamic jurisprudence. All injuries and damage caused by an individual or a state, whether in a private action or a public action, require restoration to the conditions as were before causing loss and damage. It should be done in a way that makes reparation of the injuries and damage in question. In private international law, as long as the parties are natural persons, the authenticity (originality) of the said principle is less doubtful than public international law where the parties to the disputes are states. In the latter case, a claim for making reparation of loss and damage from the states needs much more discussion in regard to the quality and quantity. Anyhow, this general principle in public international law (without taking the issues in regard to the proof of the correctness of the right into consideration) is also recognized in Islamic law.

In Glorious Qur'an, there are many verses about the penalties. In these verses, the sanction is equal to the committed offense which can be an evidence for national, ethnical, and common liability, which its effects are extendable to international issues.

26- Principle of: Preserving the life in retaliation

One of the most important ordinances in Glorious Qur'an is “retaliation” which has a deterrent effect to prevent humankind from violence and killing each other. Nowadays, some countries in the world hardly accept and do not insert death penalty in their municipal law. That is why the crime of murder is increased so much in most societies.

As it was already mentioned, the ordinance of retaliation was also prescribed for previous religions and it has also been mentioned in Torah. The existence and acceptance of an international law concerning retaliation, and obligation of the states to its enforcement is one of the most important factors to prevent violation and transgression. Legislation of the said law and its enforcement by the states would be a warning to transgressors, to forget about violence and transgression. The retaliation and taking reprisal for those who have been killed during wars is not the subject matter of this section. We have discussed it in the section of international responsibility.

27- Principle of: Prohibition from excessive retaliation

On the basis of this principle, whenever a crime is committed by a foreign national against a citizen of Islam's country, the right of retaliation would be restricted to the limit of prescribed punishment imposed for the said crime. Of course, in the sight of Allāh, it would be much better, the criminal be forgiven. The reprisal and reciprocity is on the most inferior level of moral conduct and is at the low grade of humanity.

Therefore, Islam's country has no right to retaliate or punish in excess of harms sustained while performing reprisal measures. Certainly treating the transgressors with kindness and mercy and forgiveness would be more praised by Allāh. Concerning the aforementioned subject it is said that if the one who has been oppressed tries to retaliate with the like thereof, and at the same time some other persons help the first oppressor, then God will help him. It indicates that, retaliation and reprisal is an indisputable right of people and nobody should interfere with their reactions.

This principle plays an important role in international relations, which its least effect is the prohibition of transgression in excess of harms sustained by the injured party. If the international community recognizes this principle, even at this very level, too many transgressions would be prevented. The contemporary history of international relations reveals that reactions against terroristic operations performed by some groups which were thought to be related to some states, resulted to international transgressions and waging a complete war against those states. If the teachings of the “rule of retaliation” becomes the basis of the reprisal measures in international law and be recognized by international community, the international transgressions and aggressions would decrease gradually.

28- Principle of: Facilitation in Force Majeure (distress and constriction)

The necessary consideration in Force Majeure circumstances and/or state of exigency and of necessity is one of the terms predicted and mentioned in most contracts and treaties. The concept of Force Majeure is existence of some unusual circumstances, which endanger the performance of a treaty or make its performance impracticable. Islam has a thorough attention on this issue and in case of exigency accepts to facilitate the rigidity of rules and regulations. Essentially the said facilitation is decreasing the Rights of Allāh and increasing the Rights of Man. In other words, where there are circumstances which protecting the life of humankind requires violation of divine limits (rules), then Almighty God has authorized to protect the life of human beings through least violation of divine rules. This flexibility might be construed from the verses revealed about food items. Certainly, one of the limitations concerning violations of divine rules, during period of exigency, is to observe having no intention of violation and/or carrying to extremes.

Although the trouble, concerns the famine and hunger but we can interpret the rule to be extendable on similar cases. We may present this interpretation that Islam surely understands and recognizes the circumstances of Force Majeure and state of exigency and of necessity, consequently removes evils resulting from the circumstances in question. To sum up briefly we can say that legal pragmatism of Islam, to strengthen and protect the human life, facilitates the severity, rigidity and hard treatment of previous religions while there exists state of exigency. Certainly, prohibition of transgressing the limits and disinclination to transgression is the main requirements of this violation of rules.

The rule of “distress and contractions” which is used in Islamic jurisprudence could also be invoked in this case. Where there are some unusual hardships in performance of one’s duties or enforcement of rules, the said duties or rules shall not be operative until the impediments of hardships are removed.²⁷

Therefore, the international rule about Force Majeure, which is recognized by international community at this age, could be said as to be in direction of Islamic Laws.

29- Principle of: Freedom of trade in international commercial law

One of the main issues in international law is commercial affairs between countries. Certainly, this topic is more pertinent to private international law than public international law, which the former has been paid little attention to it in this paper. But since international trade is one of the bases of relationship between countries and Islam’s attitudes toward this subject seems to be important, therefore, we are going to have a glance at it briefly.

Contrary to the practices of all different governments, which existed under the name of Islamic government from the early Islam up to the present time, there is no indication that subject to economic policy of our beloved Messenger of God’s Government he has imposed barriers or tariffs over import of goods. Undoubtedly, there have been tithes and customs duties as tariffs on importation during sucessionship of Orthodox (*Rashiden*) caliphs and Omayyad’s and Abbasids’ governments, which seems have been adopted from Iranian and Roman governments of that time rather rules of Islamic Laws.²⁸

Import prohibition, namely, import barriers and/or its partial banning by establishing tariffs and non-tariffs barriers are not in conformity with Islamic laws and regulations. The said circumstances also correspond with the export of goods, because the purchasers of the exporting goods are those who import them and consequently are subject to the imports section.

It can be inferred that if you forbid the use of good things then you would have exceeded

²⁷ See: Gorgi, A. (2001) *Ayat-ol-Ahkam* (Verses of ordinances, civil and criminal). Mizan Publication pp. 57- 60.

²⁸ See: Bidabad, B., Harsini, A. (2003) *Tax rate and tax base in financial law of Islam and establishment of wisdom in dynamic jurisprudence principles of Imamiyah*. Also, Bidabad, B. (2004) *Tithes in financial law of Islam*. Monetary and Banking Research Academy. Tehran. <http://www.bidabad.com/>

the limits and transgressed the rules. So do not do that and consume those goods, which Allāh has made it lawful and good for you. In other words, enactment of commercial laws for the purpose of making barriers to trade among countries is considered to be infringement of the rights of human beings is forbidden.

At present time, the sections of international trade within commercial rules and regulations of the World Trade Organization (WTO), are all so designed to get close to the said Islamic rule, namely elimination of tariffs and non-tariffs barriers in international trade, for removing economic problems in today's world in relation to optimum allocation of resources and attaining efficiency. We hope to discuss about this important subject in a separate book. But we should refer to this principle that it is about fourteen centuries which Islam is trying to setup a world without barriers in international trade and in this connection the legal concepts taken by Islam into consideration is complete freedom of lawful trade in international scene.

30- Principle of: Freedom of seas and space

The section of freedom of seas in international maritime law is one of the important sections of international law which was introduced and propounded as Doctrine of Grotius (from Holland) in 1609 and rapidly drew the attention of the people and was recognized very soon.²⁹ As a general rule when statutory law is not in contradiction with Islamic Laws, it is considered to be lawful. The principle of freedom of seas is one of the statutory laws and is recognized as acceptable rule by world's states. Although this is an agreement contracted by human beings, nevertheless since it is not contradictory to Islamic laws therefore it can be acceptable.

If there be circumstances, which definition of ownership could be extended on surface of the sea and seabed; and seabed or surface and depth of the sea just the same as surface of the land or standing properties could be purchased and sold thorough ownership, then the principle of freedom of the seas might be reviewed. Because on that time the conditions of ownership of seas (would be the same as barren and improved lands). So the users would be obliged to observe the rules of ownership, possession, and usurpation, which are parts of Islamic laws. Anyhow, the principles and rules concerning public roads and highways, which are recognized by Islamic civil Law, on the basis of international conventions, can also be respected and recognized to be used on seas and atmosphere around the earth and outer space.³⁰

31- Principle of: Recognition, on the bases of human beings' dignity rather than government

The topic of "recognition" and its effects on relations among states is one of the important sections of public international law. According to the texts of international law, "recognition" is an act by which a state recognizes another state as a juristic person. The effect of this recognition is establishment of legal and formal relations between both parties. There are other definitions that define recognition as acknowledgment of a political entity to be capable of observing and enforcing the international law within a determined territory.³¹ The practice of granting "recognition" came into practice in eighteenth century. It is nothing but confession of a state of recognizing the legal personality of another state. Certainly, this action shall produce some legal effects. There are several requisite conditions of statehood for granting recognition to the states, namely constituent elements of the state and/or government such as populations, territory, and sovereignty. And the fact that the new born state should not have come into existence on the basis of war of aggression (according to the rules of Kellogg Briand, Pact of Paris 1928) and also the government should be backed by its people and have sovereignty over the claimed territory, and have capability to perform its international obligations and so on. The latter cases have been always propounded in international disputes but they are not necessary and sufficient

²⁹ See: R. Churchill, V. Lowe (1988), *The Law of the sea*. Melland Schill studies in international law.

³⁰ See: Ignaz Seidl-Hohenveldern. *International economic law*, chapter five.

³¹ Safdari, M. (1961). *Public international law*, Tehran Univ. Pub., vol. 2. Latter defined by International Law Institute.

qualifications for granting recognition.

There are two types of recognition, *de facto* or imperfect and *de jure* or perfect. At present time and in international diplomacy, granting recognition is used as a weapon for giving some privileges or making some restrictions. In international sphere, the type of recognition depends on advantages received by recognizing state in relation to recognized state.

Before beginning to deal with Islam's viewpoints on the issue of recognition, we should consider this question that, what is the Islam's standpoint on juristic personality of states. According to Islamic rules, although the agreements and treaties are respected by Islamic government, but the borders and frontiers established on the earth are artificial and Islam does not believe in their genuineness. The kings, rulers have no right of ownership and/or sovereignty, and there is no originality for the borders. Contracts of attributing ownership are based on tacit agreement and mutual respect for the borders and frontiers, which makes the states to be distinct from one another. Contrary to the proverb, which indicated, "the sovereignty belongs to one who has dominated",³² originally the sovereignty belongs to God. In other words, the governments bring territories and their populations under their own domination and sovereignty.

If this viewpoint is approved, then we should say that according to the said rule, nobody has the right to compel other people to leave their homeland and this subject has been cited in glorious Qur'an. Therefore, as a general rule, Islam does not agree that the territory which is in possession of a special state to be as a criterion for granting recognition. On the other hand, Islam respects dwelling of individuals in any place they prefer to live.³³ For this reason and with respect to Islam's viewpoint, the existence of other states that are established through the agreement of their people should be respected which aid: "people souls are sanctified by God". If some people are inclined to live in a special way it would be respected by Islam. Basically, Islam is the religion of freedom. This freedom is only restricted while, in special occasions, the other's rights are going to be infringed. People have the right to live in any manner that they like to live". Certainly, it should be emphasized that the freedom in question is freedom of one's own special life; therefore it should not lead to the encroachment to the rights of society.

In Islam, ethnicity, nationality, race, colour, language, culture, civilization, and other cultural and social particularities shall not be the grounds for political distinction and/or one of the constituent elements of a state. Moreover, citizenship as it is in practice at present time and establishes legal and political relationship between people of different states has no authenticity in Islam and is not the basis of their distinction. In Islam, the parties to be addressed to are human beings rather than governments. There is only one occasion when governments are taken as an opponent party to Islam. That is when a group of human beings who are protectors of government stand at the opposite side and as opponent to Islam. Otherwise, the method and manner of recognition is based on human beings. In Islam, every person possesses humanitarian rights that should be respected, and since Almighty God has honoured children of Adam, therefore Islam also honours human beings and recognizes their rights one by one. With respect to individual recognition, it would be *de jure* recognition.

As it has already been stated, if a government which is established through coalition of individuals, starts challenging with Islam, then it would be subject to the rules of fighting. Even in this case, the Muslims are advised and are under obligation to treat the people of the said government with humanitarian behaviors.

With respect to aforementioned statements, we have to admit that Islam believes that human beings are bondmen of Allāh; therefore, protection of the true rights of God's creatures is

³² Al-Kāfi, 8, 206, the story of the Folk of Salih (A) p. 185

³³ It is narrated from The Reverend Messenger (S) who said: "loving homeland results from faith". If it were true - which is doubtful- it does not seem that the meaning of "homeland" be as country or birth place. Molavi says:

The homeland which we are talking about is neither Egypt nor Iraq and nor Syria,
This homeland is a place, where, there is no name for it.

one of the main tasks of Islam as well as those who are converted to Islam. It so emphasizes on the protection of individuals' rights that makes equal the good deeds with altruism and serving these creatures.

If a group of human beings believed in a government and were satisfied with its policy, Islam would respect the said government because it is respected by its own people. On the contrary, where some people are under oppression of government, then it would be the task of Islam to protect the oppressed ones -we will consider this subject in another section. We may conclude that "recognition" in Islam is an accidental rather than essential phenomenon and as it is discussed in present international law, it is not under consideration by Islam.

32- Principle of: Full recognition of individuals' rights of ownership and de facto recognition of governments' sovereignty

The right of ownership has an important and strong position within Islamic rules. The limits and framework of this right is so firm and definite that forgiveness of people's rights, as far as concerns Almighty God, rests on the consent of the holder of the rights. The said issue has an important role in general diplomacy and foreign policy in such a manner that expropriation of individuals and/or societies without their consent is unlawful and prohibited.

The principle under consideration - which condemns and negates the authorization for expropriation or infringement of individuals or nations' ownership - within the rules of Islamic laws, whether in the smallest level, namely, individuals' rights or the highest form, namely public international law, has the most firm (stable) base, comparing with domestic anarchistic-revolutionistic standpoints and international aggressive policies. It is necessary to mention that as to the Islamic laws and regulation the individuals rights of ownership is a definite right whereas the right of sovereignty over the territories is not considered as the right of ownership, and has less firmness. For example, the right of ownership of an individual over a piece of land cannot be diverted just by changing the sovereignty of the government over the territory where the land is located. In other words, the sovereignty cannot be the cause of dispossession but it will be the cause of the continuity of ownership.

In Islam the absolute ownership and sovereignty belongs to Almighty God. God has bestowed his ownership as a deposit to the humankind but sovereignty is a usurped right by humankind.

It is clearly understood from the Qur'an that sovereignty is peculiar to Almighty God, but this subject requires special theosophical explanations, which is not within the main objects of this paper, for this reason we just give a hint on the subject. Those who are interested to get more information may refer to the Gnostic's works on the subject.³⁴ The Holiest Essence of the Oneness is devoid of any qualifications. The qualifications are dependencies of the concrete nouns and the noun is what which denotes something named. All the beings are His names and the greatest name amongst divine names is the most transcendental being who is the Honorable Prophet (S) and the impeccable (A) and their divine successors (executors/masters) of these Honorables.³⁵ They are God's successors in the earth. And this viceroy, on behalf of God, has the God's sovereignty in the earth in a missionary manner; and not in a genesis way, because all human beings are in charge of this viceroy in genesis way.

³⁴ It is not exaggerated if we say that the basis of discussions of theosophy and theology is within the concept of this subject matter. There are many valuable books on this subject. See:

• His Excellency, Noor Alishah, the second, Salihyeh, 2nd ed., Tehran University Printing House, (1967) 3rd ed. (1972). صالحية. <http://www.sufism.ir>

• حضرت حاج ملا سلطان محمد بيدختي گنابادي، بيان السعادة في مقامات العبادة، نشر الثاني، في اربعة مجلدات رقي بلغة العربية، ١٣٤٤ هجري شمسي، دانشگاه تهران. <http://www.sufism.ir>

³⁵ Al-Kāfi, 1, 223.

Islam is not the only religion who has propounded this very subject. All divine religions follow the same philosophy, and in all religions adherence to the successor of God in the earth is obligatory. In all times and continuously; there has always been a successor of God (caliph) in the earth, which also there exists at present time and will exist in the future. For a time Adam (A) was as successor of God and then consecutively the successorship was bestowed to Seth, Noah, Shem, Abraham, Ishmael, Isaac, Jacob, Joseph, Moses, Joshua, Zachariah, John, Jesus, Peter, Abde-Manaf, Hashim, Abdol-Mottalib, Abu-Talib, Muhammad (S) and his True Twelve successors. After the occult of the twelfth Imam, his deputies - that Joneid was as the first one of them- all have been the successors, which have been continued up to this time and will continue one after one. We are now waiting for the advent of the age Imam from occult to take his apparent and formal successorship in the world – although this caliph always has the uninterrupted spiritual successorship. By minutely scrutinizing the Qur'an, Torah, Gospel, Avesta, the Books of Abraham, the Psalms of David and other divine and narration's books, the aforementioned subject is clearly understood.³⁶

33- Principle of: Granting nationality (naturalization) to applicants

On the basis of this principle, naturalization will be granted to anybody who applies for political and social citizenship of Islam. If the applicant were willing to convert to Islam, then he would enjoy all rights and privileges of Muslims. But if he wants to remain in his religion, namely one of divine religions, then he would be subject to the rules and regulations of poll tax. This principle has an extensive range of application, in a manner that if a person being in fight with Islamic forces, but converts to Islam, he will be granted naturalization. Conversion to Islam will be ascertained just by saying and testifying to the oneness of God and admitting the prophet as His messenger. The principle in question will also include the idolaters who are at the lowest stage of human thinking (cognition). The word "unclean" is used only for idolaters in Glorious Qur'an, but as it is said when they apply for citizenship, the messenger of God is bound to accept it. From the Qur'an verses, it can be inferred that the Honorable Prophet is bounded to give refuge to the idolaters, it can be construed that, Islam's country is a safe place and whoever enters into Islam's country he will be secure from the foreign forces. And the foreign states and nations are not permitted to reach or attack him. He will be under the protection of Islam. If he receives permanent residency and is granted naturalization, then he will also be subject to the domestic laws of Islam. But if he ends his residency, he will be only under protections of Islam, as long as

³⁶ "We are now facing this question that, what is the duty of Muslims and especially the Shiites at this time which they have no access to their Imam? For instance, the spiritual oath of allegiance or devotional oath of allegiance has been one of the pillars of purified religion of Islam. It was prescribed at the time of Messenger of God and there has been no verse or any order to its abrogation. All Imams also used to take oath of allegiance and even the cruel caliphs used to take oath of allegiance. So that, what is the duty of Muslims at the period time of occultation? The successors of prophet, namely, the purified Imams have been always under pressure and repression. There are too many stories about suppression of beliefs at the time of Imams and especially after the time of Imam Riza (A), which are mentioned in the historical books Although the oath of allegiance taken by Imams were not governmental oath of allegiance and/or for gathering the followers, nevertheless, if caliphs knew that Imam would take oath of allegiance, the life of Imam as well as all Shiites would have been in danger. That is why the caliphs were always keeping watchful eyes on Imams. For this reason most of times Imams introduced several delegates and representatives to take oath of allegiance for them. The said representatives were also authorized to appoint new representatives. This sequence and following of authorization of Sheikhs (spiritual leader) and Gnostic instructors is called "Order" in mysticism. The true mystical orders, which were numerous at old times, all connected their chain of authorization to Imam Ali (A). Because the basic rule in mysticism is that, each person should have obtained his authorization from the hand of previous authorized person. According to the belief of true followers of mysticism, this chain and order of Sheikhs (spiritual leaders) shall be continued up to the day of resurrection. But only those mystical orders, which have kept their connection with one of Imams, are considered to be valid. The orders, which have their connection with one of Imams, certainly, shall have their connection with Imam Ali (A). All mystical orders are originated from Ali (A) and Imam Ali has obtained his authorization from the Prophet (S)....". His Excellency Hajj Dr. NoorAli Tabandeh "His Excellency Seyyed Noor-ed-Din Shah Nematollah Vali", Iran Gnosticism (Journal), No. 15, pp. 20. Haqiqat Publication, (2003) Tehran.

he is staying in the country. Therefore, on the basis of the said verse, extradition of refugees to states and nations, which are following them, is not authorized. There is an exception to this rule. It is when there is an infringement of the rights of people in other nations, which is one of the sections of private international law and we are not going to comment on it.

As for the people who live in this age, it seems it, would be several decades early yet, if it be suggested that the “law of citizenship” is an uncivilized legal institution, which human beings have to observe it under the yoke of governments. “Citizenship” is defined as political and legal relationship between an individual and a determined state within a specified territory. On the basis of this definition, if a state through legislation disregards and violates the natural rights of an individual, he is bound to relinquish and dispense with his rights. Whereas, no government has the right to violate the rights of people. Therefore, natural law should be excluded from domestic statute laws, and just special regulations of the region should be made as legal obligations by government and/or political entities. In other words, humankind is not under obligations of states and governments. Human beings are born free and are entitled to enforce their natural rights whether black or white, red or yellow and the governments have no right of sovereignty over natural laws and making distinction between them. Furthermore, the states by drawing some artificial lines on the ground as borderlines have made distinction between people and have defined human beings differently, which reveals the imperfection of the contemporary mankind. It is certain that in future, the perfect mankind would get rid of these kinds of superstitions and would reside in any place in the world that he wishes, in accordance with his nature, desires, and preferences. Consequently, the nationalism superstitions, which are bothersome to humankind, would disappear.

As it was already mentioned, ownership and sovereignty are quite two different subjects. Sovereignty would never be the cause of ownership. It is only the cause of spreading the governmental ordinances throughout the realm of the state. In other words, no government has the right of ownership over the lands of territory under its dominion. Any person in a territory should be entitled to acquire the ownership of the land. This statement is based on the principle that declares ownership just belongs to God. It has been bestowed to humankind to gain benefit out of it.

34- Principle of: Binding to testify truly and/or acknowledgment of faults and prohibition of concealment of truth and/or committing perjury

The task of Islamic diplomacy in international disputes and adjudications is to strengthen the testifying in equity (justice). Forbiddance of concealment of truth comes from the text of Qur'an. Moghaddas Ardebili with reference to the Qura'an verses prohibits concealment of religious knowledges, whether principles of religion or secondary-rules of religion. He also forbids concealment of all other kinds of sciences, which other people are in need of them.³⁷ This subject shall propound important and new ideas in commercial law, especially international trade laws. Therefore, Vienna convention on copyright intellectual rights and trade of services, which is one of the important agreements of World Trade Organization (WTO) would be open to criticism. I hope to discuss about this subject matter in a separate paper.

Some verses also indicate for presenting the sciences and technologies to those people who need them; and one of the qualifications of transcendental human being is rising and upholding the testimony. Several verses have also been revealed about acknowledgment of faults just the same as it was about “testifying truly”. Being bound on these principles in international relation shall confirm the truthfulness of statements and good deeds of Islamic government, and it will establish the necessary grounds for attracting other nations towards Islam. Besides, we are not created to get benefit from other's property by infringement of their rights. All people who live on this planet are the children of one father. In fact, we are all brothers. None of us is superior to

³⁷ Shahabi, M, Periods of jurisprudence vol. 2, Publication Organization of Ministry of Culture, pp 256-257.

other one. The superiority and sovereignty just belongs to the Creator.

Prohibition of committing perjury or giving false evidence is one of the topics to be mentioned in this debate.³⁸

35- Principle of: Acceptance of inquiry for pacific settlement of international disputes

The process of “inquiry” is one of the well-known methods for pacific settlement of international disputes. In this method, through investigation and careful consideration of the facts, which have been the origin of the differences, and after proving the faults committed by a state or states, some required measures will be taken to settle the disputes between the parties. Consequently, the war and aggression or hostile actions would be prevented. This method in contemporary international law was introduced and recommended by Russia at Hague Peace Conference I. Subsequently at Hague Peace Conference II of 1907, the provision concerning the International Commission of Inquiry was drafted.

The process of “inquiry” is exactly confirmed by Islamic international law. The essential aspects of this method in establishment of international justice and settlement of disputes among states can be understood from the concept of several Qur'an's verses. In Islam, there are several instructions for inquiry and investigation before taking any decision or committing any action. There is a general instruction for making inquiry in all affairs happening in the life of the believers.

There are also instructions about conducting investigation into received tidings and new allegations, because without making inquiry no proper reactions could be made. While the result of a thorough investigation is received, it should be accepted. The related verses shall suffice us to accept the process of inquiry for pacific settlement of international disputes.

36- Principle of: Negotiation in settlement of disputes and acceptance of arbitration in international conflicts

With regard to careful consideration of various issues, the best way chosen by Islam is the method of consultation and resort to councils. The exception to this rule is where there is an assignment. The appointments are made upon direct views of the holder of authority. The appointments of divine authorities are specifically done by the authorization of prophets, Divine Guardians and Divine Executors. Under this procedures the authorized person would be regarded as holder of authority and consequently eligible to be obeyed. Glorious Qur'an, as to the other issues says and whose affairs are carried out through consultation amongst themselves.

There are several qualities in consultation, which psychologically the differences and hostilities would end up to unionship and amendment. Consultation is effective to create the required grounds for people's unity. Taking the said subject into consideration, we can conclude that, with regard to the principle of unity and Islam's concern about the unanimity and/or unity of the word, the settlement of differences and disputes through the council is acceptable by Islam. In other words, the method of negotiation is an accepted method in Islam for obtaining different views and opinions, but it should be noted that negotiation does not mean to infringe the rights of opposite or third party by dominion, oppression, or conspiracy. On the contrary, the negotiation is for creating uniformity and accordance for attainment of truth. Therefore, this negotiation and counseling should never impair the equity and justice or eliminate other's rights. There are clear and various verses on this subject, which reprimand those people who follow their passion in doing justice and equity.

Arbitration is the extension of rules of consultation to the settlement of disputes, which has a vast range of applications in public international law. One of the most important problems in public international law is the inadequacy of sanctions, namely compelling the states to accept the International Court's judgments. In other words the states, backed by their powers and strengths,

³⁸ Bahar-el-Anvar, 101, 310, second chapter.

in one way or another, refrain to execute the international judgments and cast doubts on the judge's opinions. The process of arbitration is somewhat different from recourse to the judges. The arbitrators are appointed by both parties to the dispute, which collectively take necessary actions to settle the differences. Moreover, because the arbitrators are chosen by the parties, so that their awards would be more acceptable by their respected states.

The process of Islamic International arbitration could be taken from the civil law and Islamic rules of procedure on marriage disputes. Glorious Qur'an has stipulated recourse to awards of arbitrators in settlement of disputes between husbands and wives. It is too important to adapt the said process in civil procedure with problems engaged in international procedure, concerning the circumstances of making agreements and adherence of the parties to the terms of agreements. In marriage contracts, if one of the parties desires not to continue the contract then it would be automatically suspended. Moreover, none of the parties could be again compelled to perform his marriage obligations. Therefore, there would be no sanctions on this case. Similar conditions also exist in international treaties among the states. Because if one of the parties to the dispute refrains to fulfill its international obligations there would be no dominant sanction to compel the violating state to observe the terms of the treaty. With regard to this similarity, we can use the same arbitration procedure for both issues. In contemporary international law and in various states, arbitration is accepted as a legal institution. Although, there are some differences in statute laws and customary international law on this case. There is also propounded the rules of procedure for arbitration and requirements and qualifications of arbitrators in various legal sources.³⁹ It should be noted that historical precedents of arbitration goes back to the city-states in ancient Greece. In the Hague conference II of 1907 the subject of arbitration was introduced and officially accepted through the endeavors of several states and from that time onwards it was enforced as mandatory arbitration.

37- Principle of: Obligation for mediation and making peace (voluntary mediation)

Mediation and making peace between the nations and folks, is one of the basic tasks of Islamic government, and in this connection, it even retains the right of suppression for itself in cases where after making peace between two parties, one of them again performs act of aggression against other one. This policy is contrary to the current international policy, which, whenever there is a war, all states adopt, the policy of "wait and see", and even sometimes, they get benefit from the fighting, they start to sell equipments and armaments to both hostile parties. Whereas, contrary to the current policy, the Islamic government is bound to mediate and make peace between the parties and even use military force, to some limited conditions.

"Mediation" is one of the various policies proposed by the Hague convention of 1907 concerning pacific settlement of disputes. On the basis of the said convention a third state, as mediator, has the right to interfere for extinguishing the conflagration of war between two other states and settle their disputes pacifically. The parties to the dispute should not take the said measures, against the principles of friendship and good relations among themselves. Prior to mentioning this subject in the Hague convention, the states would take the measures taken by other states, concerning mediation in the settlement of disputes, contrary to the principle of sovereignty and considered it as and hostile measures and even would fight against the mediating state.⁴⁰

"Conciliation" the same as "mediation" is another policy concerning pacific settlement of international disputes. The difference between these two policies is that, in "conciliation" the subject of dispute is referred to a commission composed of experts, lawyers and diplomats whereas in mediation the third state directly would act as a mediator to settle the disputes. The method of conciliation was proposed in Bryan pacts and it was also recommended to the members

³⁹ See: Qaem-Maqam Farahani, A., (1988) International law of nationalization.

⁴⁰ There are evidences to this subject in history of international relations. See: Safari, M. (1963) vol. 3, pp 128-131.

in General Assembly of League of Nations in 1922 and it is also mentioned in article 33 of the Charter of United Nations but regretfully it is not used in settlement of international disputes.

38- Principle of: Conciliation and interference in international wars (compulsory mediation)

According to the abovementioned principle, the basic task of Islamic government in the international scene is interference to bring about reconciliation between the hostile parties. One of the interpretations of the related verses to this subject is, for justification of the issues, using Allāh's Name for one's advantage. It will be performed in this manner that one's indolence and laziness for not doing good and acting piously or making peace among humankind is to be justified through fabricated quasi-legal evidences.

Negotiation even performed secretly, for the purpose of making peace between different peoples and nations is admired and approved by Islam. In cotemporary international law, the covenants are not as progressive as the principle of "compulsory intervention" as it is propounded in Islam. According to the texts of some multilateral treaties, the innovation of "compulsory mediation" could be observed. In this kind of mediation two or more states agree that in case of coming into existence of any dispute and discord among them, resort to a third state which has been chosen as mediating state, for settlement of their disputes. According to Article 8 of Hague convention of 1907, the state may come into an agreement, that in case of discords and disputes, the mediators, which have already been chosen by them, start their negotiation for settlement of disputes. In this particular case and according to a prior agreement the parties to the dispute shall waive a part of their power and sovereignty and bestow it to mediator. Practically this kind of compulsory mediation has not been paid much attention.

As it has been observed, in Islamic international law the compulsory mediation has been propounded in an advanced form and procedure. That is to say, if there be a war among two or more states, other states must fight with the aggressor until it seeks the armistice and then by negotiation, make an equitable peace among them. This principle could have an important role in public international law, to prevent transgression of states towards each other.

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