

Fair Peace Lasting Peace

**A Collective of ODW
Articles from the Fair Peace
Lasting Peace Conference
Tehran-Iran**

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INTRODUCTION TO THE ROLE OF INTERNATIONAL LAW IN THE PROVISION OF INTERNATIONAL PEACE AND SECURITY



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Abstract

Instinctively, mankind tends to have a social life, and living in peace and tranquility has always been the wishes of mankind. In internal societies, the tuning of relations between individuals based on rights that are based on justice and fairness is a suitable method to reach the aforementioned wishes. The application of this pattern at the international level, the setting of legal relations between countries in other words, is set up and developed through international law.

In this brief article, the role of international law in the provision of international peace and security, with a stress on their inherent and potential, has been reviewed. For this purpose, first the positive aspects of international law such as the principles being enforced, its relevant similarity to justice and common international discourse are reviewed. Then existing challenges such as the implementation guarantee of international law and the role of the Security Council in the provision of international peace and security have been reviewed. The article comes to an end with a review of existing mechanisms within international law for the establishment of peace, such as peaceful settlement of international disputes, prohibition of war, and the compilation of humanitarian law (the rules of war).

The study comes to the conclusion that international law plays a noticeable role in the provision and preservation of international peace and security. Despite existing challenges on the implementation guarantees of international law, the potential and worthiness of international law in the establishment of international peace cannot be denied. Ultimately the existence of international law, even a weak one, is better than not having it. If this common language and standard is removed, no other common comprehensive aspect can replace it in international interaction.

Keywords: international law; international peace; justice; human rights; the rules of war; peaceful settlement of international disputes, Security Council

Introduction

International law can be defined as a collective of laws and regulations that govern members of the international community. There is no consensus in the evaluation of international law and some politicians and jurists look at it negatively.¹ It seems with the expansion of international relations and the quality and quantity development of international law, particularly over the recent decades, there is no chance to reject it. Thought and logic demands that for the establishment of order and justice in international relations, just like internal societies, laws must be relied upon. The nature of international relations that include the role of power and states' tendencies to preserve their governance, causes the slow growth and development of international law, and even during some sensitive situations, it faces some serious obstacles.

Therefore with regards to the role of international law in securing international peace and security a balance must be established between idealism (establishment of fully just international law) and realism (the role of power and governance in countries). Being fenced up in pure realities will close the door on the strengthening and development of the role of international relations. On the opposite, moving along ideals without having a good understanding of realities will not open the way to anything. In other words, with an understanding of international relations and the evident function of

1-Mohammad Reza Ziaee Bigdeli, general international law, 38th edition (Tehran: Ganj Danesh Publications, 2009), p5

international law on one hand and attention to ideals on the other hand, methods for the gradual development and increase in the role of international law in the establishment of international peace can be identified. Following the aforementioned model, this article tries to while identifying the strong points of international law, to also review and pay attention to existing challenges regarding its role in the establishment of international peace and security.

1. International Law Concessions

Take a look in the past, we see the highlighted role of power at the international level. Now, politics and power have determining and effective roles in the setting of international relations. One of the key messages of international law is the restricting of the power and national governance in the setting of international relations of countries. Through careful study of international law, we discover characteristics and concessions which cannot be replaced with other things in the setting of international relations. These characteristics are as follows:

a) Categorization with justice and fairness

With the expansion of international relations, one of the logical tendencies of the international community is the necessity to set the different dimensions of these relations on the basis of justice and equality. \The Preamble of the Charter of the United Nations includes: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, to practice tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, The interesting point here is in comparison with other relevant elements in international relations, such as power and national interests of countries, international law has closer categorization with justice and fairness. Nevertheless, just like the nature of laws in national societies, it cannot be claimed that the existing international law is completely just and based on fairness. Even though it is obvious that the nature and content of international law is not immune to the influence of power and politics, but on the other hand, it plays a key role in reducing and controlling power for the purpose of the provision of justice and fairness.

The historical developments of the international community are indicative of the balance between politics and laws are tilting towards international law. In other words, the role of justice and fairness is indirectly strengthening. If peace is based on justice and international law, it shall be lasting. In the following debates international crises will be discussed, which due to inattention towards international law principles we have been witness to their failure to get resolved.

b) Contentment of countries in acceptance of international law rules and regulations

International law is based on the agreement and satisfaction of countries. This key word has both positive and negative effects; meaning, countries voluntarily accept commitments those that are rarely violated. Also it can be said that because international principles are observed through the agreement and satisfaction of countries and are not forced upon them, they are closer to justice. On the other hand, in some international relations situations, we are faced with laws and regulations vacuums. Or it could be that some treaties may be adopted at the international levels but only a few countries join them. In this event treaty nonmember countries have no commitments in the observation of these treaties. More explanation shall be given with regards to the existing challenges in the way of international law.

c) Enforceability of international law principles

The enforceability of international law principles is another important keyword. Contrary to moral or political principles which are not enforceable, and cannot force the members of the international community to observe these principles, international law principles are enforceable, and countries are obligated to observe them. The enforceability characteristics of international law result in states to play a positive role in the establishment of peace and security. Of course enforceability must not be confused with implementation guarantee. In other words, one important principle – be it domestic or international – might be enforceable but lack the implementation guarantee and or have a weak implementation guarantee.

With the combination of characteristics based on the satisfaction of international law, and the enforceability of its principles, a new characteristic is created which has significant importance in the international relations scene, and is to do with judgment of the behaviour of countries. This characteristic can be named with one common language and or mutual understanding.

d) Common language of the members of the international community

Due to various aspects such as religion, morality, culture, customs and traditions, race, politics and national interests the international community is very diverse. Only through common language and discourse which is conducted from their own will, is international law. Although it might be that some countries might in practice and certain conditions observe this law, and or violate it, but they cannot exonerate themselves against a legal logic and scientific discourse. A clear example of this is the US led attack against Iraq in 2003, which took place despite America's international commitments, but the war was committed in direct violation of the Charter of the United Nations, in failing not to resort to force. Although the campaign was a successful one but this act was doomed to fail against the conscience of the international legal community.² In instances where international law is grossly violated, public opinion plays a more highlighted role in confronting these violations. The characteristic of common language along with enforceable characteristics based on satisfaction in accepting international

2- Sixteen top British international law university lecturers' letter to then Prime Minister Tony Blair, that stated the US led attack against Iraq was illegitimate and so was Britain's participation in this.

law, prepares a suitable bases for public opinion to bring to attention the criminal actions of countries. The development of mass communication technology such as the Internet play a key role in information dissemination on international developments and mobilisation of public opinion.

2 – Existing Challenges in the Role of International Law

In spite of the abovementioned concessions, the existing challenges in the role of international law in the establishment of international peace and security must not be ignored. Some of these obstacles are due to the nature and structure of international law, and some are due to interests and policies of countries and the role of power in international relations. In this discussion the main challenges such as legal vacuums in some international issues, and the implementation guarantees of international law will be discussed.

A) Principles vacuums in some principles

As mentioned earlier, on principle international law is shaped with the participation and satisfaction of countries. International law is created through the interests of states, therefore the lack of supranational power cannot make states accept international commitments, if they're not interested in accepting them. The agreement principle of states with regards to the setting of international law principles results in instances where states are not interested in them, some principles are not set, or treaties are ratified with few member states. In other words it is possible that numerous principles might be seen as fair and acceptable, but countries do not have the inclination to approve them. For example, in comparison with the growth of the arms industry, the development of international humanitarian law with regards to the restriction of the use of weapons of mass destruction has not been enough. It is interesting to note that despite the dangers of destruction by nuclear weapons, there are no treaties banning the use of these weapons. With regards to the ban on the productions of these weapons, some countries such as India, Pakistan and Israel have not joined the NPT.

Another example is the responsibility of states proposal which entered the UN International Law Commission in 1949, which ultimately was approved by the Commission in 2001, but due the sensitivity of states to this, it has not been adopted as an international convention.

B) Implementation Guarantee

In the view point of most critics, the important challenge of international law is the implementation guarantee. Assuming that necessary and useful principles exist, there aren't enough implementation guarantees for them. But despite numerous legal and political mechanisms with regards to the implementation of international principles, some of the international violations go unpunished. In one general look, if the violation is committed against weak countries, some of these implementation guarantees will not be implemented or be effective. Nevertheless, some jurists such as Akehurst believe that the violation of international law is no more than the violation of domestic laws³. He has a positive view on the role and function of international

3-Michael Barton Akehurst , Modern Introduction to International Law, translated by Mehrab Darabpour, Tehran: Jahan Maaser Publications, 1983, p22.

law at the international level⁴

It must be noted that with the recent international criminal law developments, we have been witnessing improvement and development. For example, the setting up of the International Criminal Court for the prosecution of those charged with war crimes and crimes against humanity and peace, is seen as a positive development. On the other hand due to the speed of communications, public opinion also plays an influential role towards the implementation of international law, particularly in wars and gross violations.

C) Evaluation of the Role of the Security Council

According to the UN Charter, the Security Council has the main task of preservation of international peace and security. But there are numerous challenges in this regard such as the veto power, and or double standards.

The UN Charter was written under the influence of the international community's experiences (post Second World War period). The League of Nations Covenant too even had a number of principles with regards to the preservation of international peace and security, it has not foreseen enough implementation guarantees for them. According to the UN Charter, member states have given the main and primary responsibility for the preservation of international peace and security to the Security Council⁵. For this purpose Chapter 8 of the Charter gives vast amount of duties to the Security Council so that in the event of threats to peace, violation of peace and or acts of aggression such as economic sanctions, weapons and even to take military action.⁶

To evaluate the role of the Security Council in fulfilling the difficult task that its been given by the Charter it is better to review it from the two pre and post Cold War angles. During the Cold War due to the conflict between the West and the East and its reflection among the five permanent members could never come to agreements and function in an ideal way. During the first 45 years of the life of the UN, the Security Council only managed once to endorse military intervention. In 1950 during the Korean War, due to the absence of the Soviet Union from Security Council sessions, a resolution was issued endorsing military intervention against North Korea. If the Soviet Union had been present however, it would have for sure vetoed the notion. In these 45 years there have only been 2 instances of economic and arms embargos against Rhodesia and South Africa. During this period the Soviet Union did not manage to make resolute decisions in many international crises.

In post Cold War period too huge developments took place with regards to the activities of the Security Council, which resulted in its quality and quantity improvement, but also another challenge surfaced. The political atmosphere of the Council shifted from the bipolar situation during the Cold War to mainly a unipolar situation, and the main position taking of the Security Council mainly circles around this pole which is the interests and policies of big western nations, particularly the United States of America. This situation strengthened the double standard practice of the Council. The comparison of the Council's actions with regards to the occupation of Kuwait by Iraq, and the occupation of Palestine and the Golan Heights by Israel is a clear example to

4- *Ibid* 21-34

5- *Article 25 of the Charter*

6- *Articles 39 and 42*

this claim. In the recent Middle East developments also the Security Council's actions with regards to the developments in Libya on one hand, and Egypt, Yemen and Bahrain on the other hand is another example of two complete opposite policies.

Overall due to the lack of attention of the Council to international law principles and regulations, and observation of the principle of justice, through its decision makings and failure to adopt a united policy on similar crises, serious damages have been inflicted to the credibility of the Security Council among world public opinion. Even though the structure of the Security Council and the voting method that includes the vetoing power is based on the Charter, it is necessary to do damage assessment in order to promote the role of the Council for better preservation of international peace and security on the basis of justice and international law.

One of the instances where international law has been ignored is the Iraq-Iran War (1980-88). Big powers and the Security Council preferred their own political interests rather than carrying out justice. The Council did not perform its duty under Article 24 of the Charter in providing international peace and security. Throughout the 8 year war not only the Council took no action against the aggressors, but did not condemn Iraq even verbally. The chemical attack on Halabche in Iraq by Saddam Hussein's regime and the killing of 5000 civilians that included women and children, did not move the Security Council or western countries and they turned a blind eye on the heinous crimes. The damage of this silence and inaction immediately showed itself and this gave Saddam encouragement to attack Kuwait after the war ended, when observing the silence of international community towards his war crimes. On 2 August 1990 in a surprise attack Iraq occupied Kuwait. Then UN Secretary General Javier Pérez de Cuéllar, in his report to the Security Council in 1991, names Iraq as the starter of the war, and states that if Resolution 598 had been implemented, a second invasion would not have taken place in the region.⁷

Another clear example is the Palestinian situation. The West and the Security Council ignore the Palestinians absolute rights, the result of which is the continuation of over six decades of crises in the region. To get a correct understanding of the rights of the Palestinian people it is necessary to point out the history of the Palestine issue. By adopting Resolution 181, in 1947 the UN General Assembly split Palestine between Jews and Palestinians. According to this allotment, 53% of the land was for the Jews and 46% for the Palestinians, and Jerusalem an international city. Arabs saw Resolution 181 as illegitimate and outside of General Assembly jurisdiction, and stressing on the right to self determination of the Palestinian people and the preservation of unity, they disagreed with the splitting of the Palestinian lands. Conflicts took place between Arabs and Israelis in 1948 and 49 which resulted in Israel grabbing a further 20% of lands than foreseen in Resolution 181.

In the next development, after the six day war in 1967, Israel occupied all Palestinian territories. Although some of the lands were returned to the Arabs, but parts of the West Bank and remained occupied by construction of Jewish settlements, construction of roads that link the settlements and setting up of crossing posts, in practice Israel took

7-This report was prepared following the request in Article 6 of Resolution 598 from the Secretary General, on the basis of determination of who is the aggressor, and sent to the Council.

In his message for the Development Conference in Tehran, former UN Secretary General Kofi Anan saw Iraq's aggression against Iran an example of international lawlessness, and clear example of the shortfalls of the Security Council in performing its duties.

control of the West Bank.

In view of the lack of international community's support for the rights of Palestinians, the borders that were allocated by the General Assembly despite the fact that due to legal aspects and existing facts (the proportion of the population and proportion of land at the hands of Jews during allotment was doubtful and unfair) practically was forgotten and in the peace plans proposed by the United States and European countries, only the lands occupied since 1967 were mentioned.

From the legal aspects if the General Assembly resolution lacks legal legitimacy, the establishment of Israel in Palestinian occupied territories will also be illegitimate, and since according to the UN Resolution 181 is legitimate, and the portioning of the lands as stated in the resolution must be adhered to and stressed upon. This is the least help that the United Nations can provide for the Palestinians. If there are doubts in this regard through the General Assembly the International Court of Justice can be asked for a consultative vote.⁸

It is regrettable that in spite of the Security Council's condemnation of the occupation in 1967 in its resolutions, and yet aside from the Iraq's invasion of Kuwait, the Council has not done anything to end the occupation of Palestine. Not a single resolution to put sanctions against Israel has not been adopted by the Security Council over these six decades of Israeli aggression, occupation, violation of international law and nuclear weapons. The fact is that only through a referral to international law and the realization of the rights of the Palestinians can lasting peace be accomplished, because the pressures and efforts of over sixty years have not managed to achieve that. This claim is nothing new, for years a number of law experts have been saying this. For example professor Mallison⁹ states that the reason for the disappointing failure of the methods used in the Palestinian situation, international law is no longer an option, but is the only practical choice for the situation. He believes that the adoption of methods that are only reliant on discussion and talks are only effective for the short time period.¹⁰

If we want to look for a positive example of Security Council's resolute approach for the preservation of international peace and security, the Kuwait crisis is a clear example in this regard. The Security Council's swift decision and action on the basis of international law resulted in the liberation of Kuwait from Iraqi occupation in 1991.

3 – The Direct Role of International Law in the Provision of Peace

By way of the creation of suitable basis for international participation and cooperation international law indirectly plays a major role in the provision of world peace. Furthermore, some international law principles such as the international disputes resolution and the prohibition of war principle go directly back to peace. More shall be said about this in later discussions.

A) Peaceful settlement of disputes

One of the ways to prevent international wars and conflict, is the peaceful settlement of disputes. International documents and treaties, such as the Charter of the United

8-For example the General Assembly can ask the ICJ for a consultative vote on the building of the security barrier by Israel.

9- Professor of law at George Washington University, USA in 1974.

10- W.T Mallison, Jr., and S. V. Mallison, The Role of International Law in Achieving Justice and Peace in Palestine-Israel, Presented at the Conference on "Human Rights in Palestine" of the World Conference of Christians for Palestine, Geneva, Switzerland, January 11-14, 1974, AMEU's Public Affairs Series #3, p5.

Nations, bring about suitable basis for the peaceful settlement of international disputes. According to the Hague Conventions (1899, 1907), the League of Nations Covenant (1919) and The Kellogg–Briand Pact (also called the General Treaty for the Renunciation of War or the World Peace Act 1928), member states committed to settle their disputes in peaceful ways. The UN Charter states that the purpose of the United Nations is as follows: Article 1.1: To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; The Charter also states in Article 2.3: All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. Towards the application of the aforementioned treaties, in several international bilateral and or multilateral treaties, peaceful methods for disputes resolution have been foreseen. In international law a vast part of dispute resolution methods such as talks, arbitration, agreements, and judgments have been foreseen.¹¹ In some treaties, the International Court of Justice has been introduced as the competent body to resolve disputes in a judicial manner. The foreseeing of conflict resolution methods have played a key role in the reduction of tension and the establishment of international peace.

B) The role of international law in resorting to force

The study of the historical path of international law with regards to Jus ad Bellum indicates that the development has been positive and shows the putting of restrictions on resorting to war. Prior to the League of Nations period (before World War One) States resorting to war had not been prohibited in international law, and as well as defending themselves against armed attacks, States in other instances such as for the protection of their own citizens resorted to war. During the League of Nations a restriction was put in place in this regard. According to the Covenant of the League of Nations: The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council. (Paragraph 1 Article 12) The opposite meaning of the aforementioned principle is that following 3 months from the said stages, resorting to war becomes legitimate. In the next developments, the signing member States of the Kellogg-Briand Act banned the resorting to war. It must be said that this ban does not include self-defense as a customary and inherent right.

In the current era it is necessary to review the UN Charter as an inclusive international treaty. The Charter starts as follows:

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

11- Refer to Article 33 of the Charter for example.

- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,

Nevertheless, As well as the endorsement of resorting to war¹², the Charter also foresees military action taken by the Security Council for the preservation of international peace and security.¹³ Therefore, according to contemporary international law, apart from the abovementioned exception, the threat to war or resorting to war is prohibited, and the violation of this principle, is the violation of the state towards the Charter.

c) The role of international law in the creation of humanitarian law (jus in bello)

Despite the principle of the prohibition of resorting to force, in any event the possibility of war exists. In the event of war, be it self-defense or illegitimate war, there are principles that the parties to the armed conflicts must observe. In international law these rules are called the rules of armed conflict and or humanitarian law. The role of international law in the creation and compilation of humanitarian law is very important. These principles have mostly existed from a long time ago in the customary form and in the past decades notable efforts have been made to compile them in the form of thematic principles.

The main pivot of war thematic principles, is the Geneva Four Conventions (1949) and their Additional Protocols (1977). Even during times when resorting to war principle had not been prohibited in international law, there were principles with regards to treatment during war with prisoners and the wounded for example. The fundamental focal points of the rules of war include the distinction between civilians and military targets. Prisoners of war rights, humane treatment of the wounded, the observation of the proportion principle in military actions and the ban on the use of chemical and biological weapons. Over the past decades these laws expanded and several treaties have been adopted in the completion of humanitarian law. It's true that these principles are for the time of conflict, and conflict is set against peace, but the aim of these rules are to limit the effects and negative consequences of war, and the immunity and protection of civilians and non-military targets from war. The existence of these rules are to an extent effective in the establishment of peace.

4 – The Indirect Role of International Law in the Provision of Peace

Through the setting and development of international relations in various aspects of international life such as seafaring, flying, communications, trade, culture, diplomatic and consular, international law brings about the participation and cooperation of states, and indirectly helps towards international peace in general terms. The development of humanitarian law on the basis of the respect to the equality of law and undertaking required measures for the strengthening of international peace are the objectives of the United Nations.¹⁴ The Charter states the following on another one of UN objectives in Article 1.3: To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging

12-Article 51 of the Charter

13- Article 42 of the Charter

14-Article 1.2 of the Charter

respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; The development of human rights over the recent decades plays a similar role, with a difference that the majority of its principles are commitments that states make towards the citizens of their own countries. From these commitments, minorities and ethnic rights, elimination of racism, prepare a suitable basis for the establishment of peace in national societies. The lack of these principles will prepare the basis for tensions and conflicts to occur. In fact the fair setting of international relations in different areas, is deemed a type of prevention of tension and crisis.

Conclusion:

Just as in national societies the rule of law and justice are good for mankind, in the international community too the existence and application of commitments to international law are ideal and will play an effective role in the establishment of international peace and security. The enforceability of international commitment of states and the closeness of international law with fairness and justice, and the characteristics of a common international discourse results in this law to be seen as the best factor for the provision of international peace and security. Although it might be possible that in comparison with domestic laws, the implementation guarantee of international law might seem weaker, but its potential and worthiness in the establishment of international peace must not be denied. Therefore, international law must be seen as an opportunity and must work towards its development and completion. The evolution path of international law in assistance to peace, overall has been positive but not enough. The fundamental problem is the weakness in the implementation guarantee which in view of the nature of international law and the structure of the international community is unavoidable. In spite of these weaknesses, the existence of international law is better than not having it. At least in scientific communities and an atmosphere of logical reasoning, a level exists on the basis of which the actions of states can be assessed and put to judgment, and draw public opinion's attention to states' violations. If this common standard and language is omitted this opportunity will be lost and no other common language and basis will be able to replace it. The interests, policies and beliefs of countries are different, and there is no comprehensive common international culture to replace this void. If international conflict resolutions are not based on international law and justice, lasting peace will not be established. A study of the Middle East conflicts, particularly Palestine is proof to the point. In the Palestinian issue, the lack of attention to the rights of the Palestinian people on the basis of international law principles has resulted in the crisis not being resolved and there is no real hope for it to be resolved in the future either. Unless we see a fundamental turnaround in the policies of the West and the Security Council with regard to application of international law, and application of justice in Palestine.

Sources:

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“JUST PEACE” PARADIGM AND THE SETTLEMENTS CONSTRUCTION IN EAST JERUSALEM ISSUE



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Abstract

Peace is only fair when it is from negotiation and a precursor to the lasting peaceful coexistence and respect of disputing parties. Set against this, unjust peace applies to the end of a conflict through which, one of the parties enforces its expectations and interests upon the other, and on the other hand through fear of further damages, temporarily accepts the unequal conditions and agreements that have come out from the victory of the other side, so that in the future through unexpected incidents or developments in the existing equations to be rid of oppression and to regain its downtrodden rights. One of the best and suitable examples of instances of violation and rejection of just peace is the settlements construction of Israelis on the ancestral lands and homes of Jerusalem's Palestinians, particularly East Jerusalem. According to former mayor of Jerusalem and Benjamin Netanyahu's remarks, the Israeli government is committed to build 50,000 homes in East Jerusalem, and this has been met with the silence of the peace and human rights bodies of the United Nations. This article intends to while scrutinizing just peace principles to shed light on its violation examples with regards to the settlements construction.

Keywords: Settlements construction; just peace; lasting security; right to life; peaceful coexistence; people's rights

Just Peace Pillars

Just peace is an agreement that its fairness is agreed by all parties. In this situation a question arises which is what is justice? and what are the reasons and signs of the fairness of an agreement? To find the answer to this fundamental question it is necessary to determine 3 conventional interpretations of justice so that it becomes clear which our authorized definition of justice is in the term just peace.

One: Justice is an agreement that results in a useful conclusion (Yaacoy, 2010:30)

According to the abovementioned definition, just agreement takes place when the conclusion of a deal is satisfactory for all sides. In other words if in the hope of reaching a conclusion and special benefits representatives of a community reach an agreement with the representatives of another community, then the parties have behaved in a just manner, and their agreement can be called just peace. Although this definition is conventional, but has important faults, its fundamental fault is who decides the benefit, and basically what can be deemed as benefit? Can the thing that is deemed a benefit and accomplishment today still be a benefit in the future? And is the decision of the negotiating group the decision of the whole of the community?

Two: Justice is action according to duty and not conclusion According to this definition, the thing that is important in defining justice is not the reached conclusion, but the moral and human duty of parties at dispute. It's possible that one of the parties may not for various reasons be able to recognize its interests, or the negotiating group might be in a position where it's not able to recognize and pursue distant horizons and the interests of the majority of the community. In this situation does the part have the right to sign an agreement although with the satisfaction of the other party? In this definition, moral duty surpasses on the material conclusion or visible benefit and the evidence of the agreement not satisfaction which is the realization of one of the parties to the agreement.

Three: Justice includes practical doing and confirmation which is accepted by general conscience

The delicate distinction of this definition from the second definition is that this definition firstly has a practical and non-conflicting characteristic, and secondly its arbitration referral in its validity, is not a particular group’s determination, but all can ponder on its judgment.

In this definition the public conscience is the main referral for determination and the reached agreement is not the judgment of a particular group or time and place, but the agreements are reached through morality and also the ability to be realized through arbitration of all in all times and places.

According to the above debates, just peace is a peace that is not solely based on benefit (positive peace), just peace also is not forced either (negative peace), and the guidelines for a just peace are:

First principle: balance of justice/reconciliation

Peace is solely just when its continuation causes for the expansion and deepening of justice, and justice is lasting when its continuation results to further peace. On this basis, a peace that solely results in further benefits and visible interests, is not necessarily just. Because in spite of interests lessen discontent, but it is justice that increases the feeling of satisfaction. (Said, 2006:193)

Second principle: recognition after deliberation

Sudden and compulsive peace is solely to put an end to a crisis which is growing. Just and lasting peace is through deliberation and not compulsion. (Albin,2001:92)

When the disputing parties through deliberation determine that the agreed peace is just, there can then be hope for the sustainability of peace.

Third principle: following negotiation

Negotiation as opposed to debate or dialogue is from listening to the reasoning of the other side, and the proposition of credible reasons is for releasing. (Rummel, 2001:1)

Peace that is established in the absence of negotiation, fundamentally is not peace. But peace that is established as a result of free, equal, and not strained, is a just peace. (Welsh, 1993:21)

Fourth principle: Mutual contentment

Mutual contentment from the signing of the peace treaty or seeing legitimacy of the self and the opposite side’s achievement is one of the conditions and fundamental preparations of just peace. Just peace is never close to ruin, on the contrary the thing that just peace makes is a feeling of contentment, and no reason to ignore the contents of peace. (Allam & Keller, 2006: Introduction)

Fifth principle: Just peace is the precursor to eternal peace.

Just peace or agreement in any event is a precursor to the start of lasting peaceful living. Of course it does not mean that in the peace process, there aren’t any disagreements or different viewpoints. The argument is that in the shadows of just peace, gradually peace can become more beneficial and free from war.

Sixth principle: the nucleus of just peace is the local and visible agreements on worrying subjects.

Just and satisfactory peace is usually an agreement on stopping or repeating acts which result in comfort, respect and improvement. Subjects that are directly, quickly and visibly worrisome are more important than those that are indirect, gradual and speculative.

Seventh principle: Just peace always follows will, skill and well wishing thoughts.

Lasting peace always requires intellectuals who choose to peaceful deliberation. After

the will for peaceful living, the understanding others' demands skills and expression of personal aims, and finally the feel of release and refraining from wanting too much and selfishness is the third pillar which makes just peace, beneficial and lasting.

According to this principle, peace is necessary and vital when its realization one or both parties are provided with a fundamental and vital blessing or prevent the escalation of pressure on the living part of the parties. (Barry, 19)

On this basis, cases such as survival, and the fulfillment of basic needs are more important than cases such as prestige and secondary needs. Overall the eight principles of just peace, prepare and provide the tools for avoiding organized and bare violence. Therefore a review of Israel's actions in the occupied territories draws a picture of the organized violence that is committed against the original dwellers of the occupied territories. One of the most blatant examples of violence against the Palestinians is the subject of settlements construction which is for the purpose of housing migrant Jews from all over the world in the heart of Palestine. What follows in this article is a brief on the Israelis violent actions taken against the Palestinian residents in the occupied territories, especially in East Jerusalem

The Settlements Construction/Making Homeless Policy: Jerusalem

Since the beginning of Islam, Jerusalem has been the first kibla of the faithful (Al Aqsa Mosque), and has always had an identity creating importance. Some regions and cities around the world can bring about the followers of a faith together and give meaning to the popular socio-political life. Very few cities around the world have this identity giving characteristic. For example ----- in Iraq, Istanbul, Kirkuk, Mashhad and Jerusalem have this characteristic where an identity giving incident such as the burial of a sinless (maasoom) in a period in history, which is followed by the establishment of various economic, administrative, and architectural installations; in such way that not only the passage of time has not taken away their importance, but the political and identity reputation of that particular region have increased. The ancient city of Jerusalem is one of these regions the importance of which are not economic or administrative, but the most important reputation of this city is the identity giving aspect and historical memory. Presently by expansion of Jewish settlements and the eviction of the Palestinian residents, the Jews in Israel are trying to drive Muslims away from their identity giving nucleus, and instead house Jewish migrants from around the world in this historic city, and attempt to invent an identity giving history for Jewish migrants. In any event a review of the numerous developments in the world which is the main part of history, over time and is particularly shaped under the influence of power.

Over the last 50 years, taking advantage of Palestinians' misfortune, in front of international organizations' eyes the Zionists have tried to engineer the demography of the population in Jerusalem. Compared to half a century ago, a lot of changes have taken place, most of which are the settlements construction policy.

Factors that behind the settlements construction policy result in the evictions being violent include:

1 – Mass and blatant housing of Jews / clever eviction of Palestinian Arabs

A comparative deliberation on the population and its distribution in Jerusalem shows that over the last fifty years, Jerusalem has slowly been swallowed up by invading Zionists, the population has become Jewish, and its Palestinian residents have become

homeless after years of humiliation and discrimination. In fact the only resistance tool for Palestinian families is the deliberate increase of their population in such way that the Palestinian population growth in East Jerusalem is 2.5 more than the population growth in Jewish settlements. The natural continuation of this trend is violence and bloody measures. (Anwar, 2009)

It must be said that through gradual occupation of Jerusalem the occupiers in the first step intend to eliminate the main unity giving elements of Palestinians, and then by housing ultra conservative Jews, turn the Palestinians into a pariah minority. (Griffiths, 2009)

In the pursuit of this policy, in 1948 when the state of Israel was founded, the Israeli military occupied West Jerusalem, prior to 1948 the Jewish population was a minority and just like the Christian minority, peacefully they continued in their various trade, administrative and social activities. But in 2012 over 210,000 settlers who are mostly ultra conservative Jews – who call the killing of Arabs a worship – have been housed in Jerusalem.

Jerusalem’s mayors have continually expanded the limits of Jerusalem to the destruction of Palestinian homes and farms, and constructed homes for newly arrived Jews. Only till 2001 following the Jewfication of Jerusalem, over 170 km/sq. have been added to the city. Eight large and modern settlements were constructed in East Jerusalem and tens of thousands of Jews moved in. (Ajourloo, 2011:129)

The expansion of settlements is a blatant policy to change the use of land and alter the demography. With each settlement follow trade, transport, welfare, sports and administrative facilities and financial and administrative initiatives policies are prepared for the settlers, the logical and natural outcome of which is the homelessness of tens of thousands of the original dwellers of this region, who are left powerless to provide their basic needs and income.

In the last century Jewish agencies and organizations have through measures such as the purchase of Palestinian homes and farms and lands, intimidation of the Arabs of 1948 region, application of smart discriminations in employment, ownership, marriage, immigration and trade they have tried to put the Palestinians off from living in their ancestral lands.

The “suspension of right to residence” policy is one of the smart and automatic policies that is cleansing Jerusalem from Palestinians. Since 1982, Israel’s Interior Ministry, does not deem Palestinian children whose fathers do not have Jerusalem ID cards as Jerusalem residents, even if their mothers have permits to live in Jerusalem. Furthermore, since 2003, regulations for entry into lands under Israeli control have been set up in such way that if an Israeli citizen or someone that is a permanent resident of the region marries a Palestinian, he or she can not bring his spouse to Israeli lands, and is forced to choose another place to live. But according to these regulations, if a Jewish foreigner marries a Jew Israeli resident, he or she automatically becomes a citizen, and the Israeli government facilitates his or her housing.

This policy alongside dozens of open and hidden policies, are linked to the longsighted population engineering of the occupied territories, in such a way that as a result, this region has been cleansed of Palestinians and taken over by Jews from around the world. Thus the open and hidden policy, presently, Israel has split Jerusalem which is the heart of Palestine into east and west. West Jerusalem is totally in the control of the Jews, and

since 1980 it has been the political-administrative capital city of Israel. But East Jerusalem which has been occupied since 1967 has approximately a population of 250,000 with an Arab population of 160,000. In clear terms in over half a century, the population of Jerusalem has precisely been reversed, meaning the Jews of the city have turned from a neutral minority into an active majority, and the Palestinians have in just half a century become minority and on the verge of homelessness.

Some of the population engineering policies of the occupied territories, are in city developmental forms. For example Jerusalem mayor's decision in 1997, according to which the city turned into a Greater Jerusalem. According to this decision (No. 1604), Jerusalem expands to the East – the same region where half the population is Jewish and half Muslim. Palestinian lands are included in road construction projects. Following the execution of the East Jerusalem ring road project, which connects the south and east of East Jerusalem together, and a large area of Arab lands are declared no living zones. These lands were confiscated and no constructions are allowed.

2 – The elimination of Islamic Arab symbols and signs

Signs and symbols have always been reminders of some identity giving events and nucleus of concentration for groups and nations. In fact the most important tools that connect today's generation is the heritage which was created in past times, and now are the carriers of old values for next generations. (Nasri, 2009)

As well as destroying the heritage that belongs to Muslim Palestinian Arabs, the Israeli regime falsifies things and invents ancient Jewish wrecks and prophets, and denies the clear and absolute rights of Palestinians. The destruction of Palestinian villages, clearing areas in the vicinity of mosques, stealing of Koranic inscriptions and decorations from mosques, converting mosques to synagogues, grabs the shining wall of Al Aqsa Mosque and turns it into the Wailing Wall, archeological digs in Jerusalem (particularly in the southern side of Al Aqsa, are all clear examples of the elimination of Arab/Islamic signs in the Great Holy City, which in spite of deep public sensitivity of more than one billion Muslims, and also in spite of the release of numerous international resolutions and protests, all this still continues. These types of abusive measures, completely destroy any chances of the start of a just peace, and instead they breed, hatred, terror and revenge.

3 – Manifestation called the Security Barrier

The Security Barrier is a wall 720 kilometres long, and 80 to 100 metres wide, and been constructed for the purpose of the clear segregation of Palestinians from Israeli Jews. Israel officially began construction of the wall on 23 June 2002. The first section of the wall is 110 kilometres long which starts from a village in the north west of the West Bank called Salem, and after besieging the towns of Toolkaram and Gholgholieh it ends in Jerusalem. The region behind this wall is a region that despite Israeli efforts, Palestinians have total infiltration there and organize their suicide attacks against the Israelis from there. In the second stage of the construction of the barrier, Jerusalem is surrounded. The barrier which is nicknamed the sheath of Jerusalem, strengthens the Jewfication of Jerusalem, and Jewish installations and institutions with peace of mind. (2011:185)

Contrary to basic human rights, Israeli engineers and security experts claim the reason behind the construction of the barrier as protection of human rights and rights of the child and self-defense. This barrier unlike its name is not just a barrier. The width of the barrier is 80 to 100 metres the further side of which has barbed wire fence, after that there is a trench four metres wide and five metres deep, also there is an asphalt road 12

metres across which is for the facilitation of military vehicles, the fourth barrier is a sand path 4 metres wide which shows the footprints of anyone who walks on it, finally there is the concrete wall which is three metres high and in some areas it's as high as eight metres, which has the most advanced surveillance equipment and early warning sensors. As well as high financial costs, the construction of this long and heavy wall causes the disgust of human rights circles, particularly Muslims towards the Israelis. Furthermore, the Israelis are trying to portray the construction of the wall is towards the observation of the political survival rights of the Palestinians, and as for Israel for its survival an protection there are no limits and bounds in confiscating Arab lands and going after Palestinian fighters. Also in view of the Palestinians and their neighbours unavoidable access to rockets and other missiles, basically there is no need for the security barrier, and with short range rockets, the mental security and the lives of all Israelis are targeted from the other side of the barrier.

In spite of all the abovementioned obstacles, and numerous other reasons, the Israeli government continues its organized iron fist policy. On 23 February 2004, following UN General Assembly's resolution of December 2003, the Hague court condemned Israel's actions in the construction of the security barrier, and while calling for its dismantlement, the court called for Palestinians to be compensated. The Hague called for all countries to deem the situation as illegitimate and not to facilitate the design and completion of this barrier. During the years of the construction of the barrier, which is against all human and humanitarian principles, Israeli officials were trying to participate in conciliation talks.

In numerous meetings, particularly Annapolis, George Walker Bush invited the two parties to talks and to reach a peace deal. But none of the parties, Americans, Israelis and Palestinians (Mahmoud Abbas) did not consider the just peace principles, and the generalities of the talks and the trivial agreements were contrary to the eight just peace principles. To understand the type and level of conflict between the construction of the barrier with the eight just peace principles, we can deliberate the following as the repercussions of the construction of the barrier:

1 – The security barrier covers 58 percent of the area of the West Bank, and splits a large number of Palestinian families.

2 – Following the siege of Jerusalem which took place by setting up Jewish settlements, through the security barrier, the city has been taken away from the rest of the occupied territories.

3 – Most of the drinking water supply for homes, farms and factories in occupied territories is supplied by wells. According to the original map, approximately 31 Palestinian wells fall within the barrier. In fact the route of the barrier has been designed in such way as to include fertile and water resource regions within it.

4 – As well as agricultural and economic repercussions, the racist aspect of the security barrier is notable. According to Israeli policy, those that live within the barrier have various agricultural, educational and economic opportunities, but those that live outside the barrier are deemed and accused as terrorists.

5 – From the original plan for 700 kilometres of the barrier, 362 kilometres – half – has been completed, and the rest is under construction. Over 38% of the residents of West Bank are affected by this barrier, and a population of over a million directly has lost access to basic needs for a simple life.

A review of Israel's policies with regards to settlements construction in, the institutionalized and organized expulsion of Arabs, the removal and damaging of Arabic/Islamic symbols and signs and also the construction of the barrier show that the primary preconditions for just peace and lasting security is violated in this strategic region. (Dehghani, 2010:17)

The question now arises that with the assumption of the failure of the diplomatic mechanism for the prevention of Israelis from continuing their invading policy, what solutions do international and nongovernmental organizations for this problem? And how can millions of Palestinians be free of humiliation, persecution and threat?

Has the shaming method worked in the last decade? What peaceful recommendations can be presented to Palestinian refugees, and despite the confirmation of the majority of nations of the world in the UN General Assembly, which human rights and nonviolent initiative can safeguard the Palestinians right to life and identity? The last part of this article is in the conclusion section a number of future scenarios for the occupied territories and a synoptic reply to these questions.

Conclusion

As said earlier, just peace and lasting security are realized on the condition that firstly, economic and social opportunities are equally and fairly distributed, secondly the environment and the rights of future generations be safeguarded, and finally peacekeeping forces must be more active than forces opposed to peace. If each and everyone of the residents living in a region (like Jerusalem) feel that they are getting more able each day, and their future looks brighter, then war and violence becomes an ugly and unacceptable subject. What is taking place in occupied territories speaks of the fact that settlements construction has become an important part of the survival and identity of the Israeli occupiers, and they have linked the expansion of the settlements and confiscation of a major part of Palestine to their existence. Israeli mayor of Jerusalem announced that according to a ten year plan, 50 thousand new homes will be constructed in Jerusalem. Despite the negative Jewish population growth in Jerusalem, Jews are still faced with not enough homes. We have planned to turn Jerusalem into a tourist attraction, and have asked European and American investors to invest in the City. We are forced to expand the city in response to the entrepreneurs' requests. We shall never leave Jerusalem. This City is Israel's redline, and under no circumstances Israel will back off. We shall never allow the City to be divided. (Dehghani 2010:17)

Despite the Israelis decisions, future developments are moving to Israel's loss, and after the acceptance of two states, Palestinians will have a more balanced situation. Furthermore, with the strengthening of the forces and the core of resistance, and also the appearance of democratic technology, the Israelis will face difficulties in trying to continue their past policies. Meanwhile, violence rejecting organizations and also victims of violence support groups, must urgently work in legal/social/arts procedures in the following manner:

- 1 – Legal solution with the concentration on criminal prosecution of settlements construction and the stealing and destruction of Palestinian water resources.
- 2 – Social/arts solution with a concentration on naming and shaming, and also dealing with things such as the demographic developments in the occupied territories, the governing logic on the construction of the security barrier, the change in population of the Old City, West and East Jerusalem.

PEACE AND JUSTICE IN PERSIAN LITERATURE AND CULTURE



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The literature and culture of each nation is an indication of that nation's intelligence, character and mentality in the human community. Literature and culture is the reflection of all the identity and civilization facets of nations. Important subjects such as peace and justice have roots in the literature and culture of any land which throughout history has shown itself as a civilized nation. On principle literature is seen as a form of conciliation and peace within mankind, so that during his life as well as recognizing his own identity he recognizes society and the world around him. In the definition for literature interaction, reconciliation and friendship within and without or in other words along with the body and soul in the existence of mankind has been referred. And they deem the objective of literature to distance outwardly hopelessness and despair, and when it has been used as a tool to introduce religion, it has taken the gnosis label which has cured the deep inward despairs of mankind. Literature has been unique in creating reconciliation and peace between the body and soul by benefiting from inward and outward tools. His inner tool has been imagination which swiftly has fulfilled the immortal and timeless soul's demands, and guided through the cosmos, and as Rumi says:

We come from above and we go above

We come from the sea and we go to the sea (Masnavi)

And in his outward tools for the body, it is the arts elevate the restricted and unable body to a time and a place, and prepared for the accompaniment of the soul.

Art which originates from imagination endears a collective of language, text and civilization, and has recorded human civilization's history. And researches deem the literature and arts view of religion and theology as mysticism which gives mankind identity, and turns him friendly with himself and ultimately with God.

Anyone who is distanced afar from his origins

Shall again seek the day of his arrival at it (Vol. 1 – V. 4)

The body which is from dust, belongs to it and has a specific weight, form and colour with limitations and understandable weaknesses. On the opposite side the soul does not have weight, form and colour and is limitless and capable. How these two become balanced requires a long debate which is not this article's intention. Suffice to say that our poets have all spoken of reconciliation, mutual understanding and recognition of the body and soul.

The soul which is from the heavens has the power to create and gives the people tools for the body and soul. "Then set your face upright for religion in the right state--the nature made by Allah in which He has made men; there is no altering of Allah's creation; that is the right religion, but most people do not know" Romans Sura, verse 30.

The inner tools of literature are for the harnessing of the inside which is much faster than sound and light, is the same fantasy which takes the inside to flights in the galaxies and skies and to an extent fulfills its needs. The outward literature of the body which can overcome physical inabilities and failures is the precious jewel of art which prepares it to be a companion to the inside, and to a certain extent removes its inabilities and faults for interaction and proportion to the soul. In other words when looking at animals not just to look at the appearance but also look at the details, not just see the hair and light but pay attention to the curls of the hair and the reason for the shining of light. Or for eating it uses tools which come from the arts which have shaped from the imagination.

The reflection of the reconciliation of the inside and outside in Hafez' odes are very beautiful, to the extent where love is the only release from the world, and the soul must both be released from the body's prison with love and reach the destination's home.

Or in another ode Hafez sees being born as both worthy of appreciation for love making and not wanting the world or for getting material and apparent things.

The alienation of the soul in the world and the darkness of the body is a beautiful and sad story which Hafez with sweet words reveals, and with the love chemical tries to manage sadness and separations, and with a hope to reach eternal and heavenly union in a constructive effort in the odes tries to draw a picture of the reconciliation and union of the body and soul in a beautiful way.

In many of Hafez' odes he speaks of the pain of the separation and distance from the world above and his era, and with beautiful examples he deems the relationship between the spiritual and physical world a loving one which has been designed on the basis of the physical need and spiritual pampering, and in this small scale where the inside and outside union which is the same union between two lovers have been formed in the odes.

In the Persian literature texts there are heartfelt stories of being away from the Divine homeland, and the hardships of the earthly world, and each poet and author has presented a plan for the comfort of mankind in the descending path and the ascending path to reach its main status.

Among the great poets Jalaledin Mohammad Molavi or Rumi in his Masnavi Maanavi in the 18 verses has penned the story of the separation and tranquility in the most beautiful way, and has deemed the reconciliation of the inside and outside as comforting the eternal pain, and in the next verses deems frustration and jealousy as two factors that prevent mankind to reach union till the arrival to the destination home.

The history of mankind's civilization is indicative of peace and reconciliation in human societies, which has taken him to heights and advancements and peaks of science and discoveries of the unknown.

A nation that is in peace and tranquility has been so because of the fair and justness of its rulers. The people have moved under the shadows of wisdom of just rulers. Persian literature which formed in post-Islamic Iran, and has continually and fully been handed down to us from generation to generation, carries deep and great human messages which have been given life through the words of greats such as Ferdowsi, Nezami, Attar, Rumi, Saadi and Hafez have taken on life.

This short article is based on two great human culture letters, or Iranian wisdom's culture letter, Ferdowsi's Shanameh and Iranian mysticism culture letter, Rumi's Masnavi on the two subjects of peace and justice. Let us diffuse flower and pour wine in goblets

And pierce the roof of sky and establish a new system (Divan of Hafez)

The body of the text of Ferdowsi and Rumi pay attention to I the human which has no limits or bounds. These greats distance themselves from the personal me which results in selfishness and self-centeredness and ultimately autocracy; and also the group and collective me which has the interests of the minority at heart and result in exploitation. In Shahnameh which truly is the Shahnameh of the identity of Iranian wisdom, peace and justice is always spoken and hates chaos, war and conflict. In Shahnameh's mythology and heroism, Fereydoon is the symbol of peace and forgiveness, who eradicated the

world of his era from evil, oppression and chaos. Ferdowsi sees mankind as Fereydoon for whom justice can raise him to the pinnacle of humanity and greatness.

In a place where Iraj, the grandson of Fereydoon in opposition to brothers enmity raise the science of friendship, peace and justice, and to establish that gives up Shirin Khosh's life.

Peace and friendship has been stressed to such an extent in the Shahnameh which has even been mentioned in Moran

Rostam is introduced in Shahnameh as the symbol of seeker of peace and justice who has never been a warmonger, and calls all to dialogue and thought. The Seven Khan (labours) of Rostam is evidence to the claim of his braveries in Keyghobad, Keykavos and Keykhosro's periods to the period Gashtasb.

Even during the face off with the prince of Iran Esfandiyar, Rostam is not prepared for war and chaos, and is only unwontedly drawn into a war in the defence of the name and honour of Iran.

In the history period both Ashkhan and Sasanid kings pursued the establishment of peace, welfare and justice in the country faced the aggression and looting of foreign enemies and had to defend their country.

In Rumi's Masnavi, the flute is the symbol of a complete human who deals with recognizing himself to reach God, and removes separations and with the language of the parable deems the reconciliation of humanity with himself as the precursor to reconciliation and peace with society, and deems kindness and friendship as the precursor to lasting peace and justice.

Even Hafez has benefited from Rumi's words.

From Rumi's point of view the thing that turns enmity to friendship is the following of a complete human being and a religious leader, because observing Divine commands, guides mankind to happiness, justice and peace.

In the universal culture the pillars of correctness and respect to each other and away from violence and equal human rights and solidarity and fraternity have roots in Shahnameh's and Rumi's Masnavis which were written down centuries before the formation of the League of Nations and United Nations, and have been prescribed to solve mankind's problems.

When we follow this beautiful story in Saadi's Golestan we see how he uses the Prophet of Islam's words in such a beautiful way:

The sons of Adam are limbs of each other, having been created of one essence.

When the calamity of time afflicts one limb, the other limbs can not remain at rest.

If thee hast no sympathy for the troubles of others, thou art unworthy to be called by the name of a man.

In the Gnostic view of Rumi which is based on his arts and cultural views towards religion, he tells the stories in such ways that the basis of enmity and unawareness is in man's distancing from and ignorance towards God. If mankind looks at himself, he shall find God, who invites Mankind to think about its fellow species. In the story of Imam Ali's devotion it is beautifully told that even despite the enemy being ignorant who wages war due to spite, the enemy can be guided towards God with fair behaviour and speech.

In the story of Moses and Shaaban too there is a stress on reconciliation and union rather than separation and union.

**THE DEFINITION
OF INTERNATIONAL
CRIMES
WITHIN THE
CONTEXT OF
INTERNATIONAL
PEACE AND
SECURITY**



Ali-Reza Deihim, PhD

Introduction

Under Article 40 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, the International Law Commission defines international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfill the obligation. Peremptory norm is defined under Article 53 of the 1969 Vienna Convention on the Law of Treaties and has been reiterated in the judicial precedents of the international criminal and non-criminal courts including in the International Court of Justice (ICJ).

Responsibility of States has also been recognized under Article 25 (4) of the Statute of the International Criminal Court as follows;

“No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law”.

Article 41 of the Draft Articles deals with the obligations of other States under such circumstances saying States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40, and that no State shall recognize as lawful a situation created by a serious breach within the meaning of article 40; that is to say, for instance, no State shall recognize as lawful any aggressive incorporation of a territory or the powers and privileges arising from an apartheid system. This is while, Article 42 deals with the invocation of responsibility by an injured State, whether that State individually or a group of States or the international community as a whole are affected including if the obligation breached is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation.

An example which falls under the above classification is the prolonged occupation of a foreign embassy or taking as hostages some internationally protected persons or a systematic targeting of the nuclear scientists of the Islamic Republic of a nation such as Iran. Notwithstanding the above, the Draft Articles on the Responsibility of States fails to answer five questions, as follows: How can one identify the gross or systematic breaches and who has the burden of proof? For instance, is Iran to prove that its nuclear activities are not against the international peace and security or should such States as the United States, the United Kingdom, France or the Occupying Regime (Israel) prove their allegations in this respect? Notwithstanding, Article 44 stipulates that the responsibility of a State may not be invoked if the claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted. On the responsibility of a breaching State concerning the obligation breached owed to the international community as a whole and invocation of responsibility by a State other than an injured State, Article 48 provides that any State entitled to invoke responsibility may claim from the responsible State:

- (a) Cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and
- (b) Performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.

Article 49 deals with the object and limits of countermeasures and that, countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question. It goes on to specify that the injured State may take such urgent countermeasures as are necessary to preserve its rights (Article 52) and that countermeasures shall not affect other obligations under peremptory norms of general international law (Article 50).

Some very clear obligations arising from peremptory norms are the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations; obligations for the protection of fundamental human rights; and obligations of a humanitarian character prohibiting reprisals. The above are obligations which are not affected by countermeasures, obligations with which under all circumstances a State taking countermeasures must comply (such as to offer to negotiate as specified in Article 52) and to observe proportionality (as per Article 51).

Given the above, is there any right recognized under international law for any State to freeze the Iranian Central Bank assets or those of Syria or of Gaddafi government? Is their act of freezing an instance of the aforementioned rights? Or has the immunity of central banks, as a peremptory norm, been violated?

Is the above act an instance of State responsibility or an act of punishment?

Is that an instance of punitive damages?

Which of the international legal regimes justifies the NATO bombing of Gaddafi regime? Has the International Law Commission recognized the criminal responsibility of States?

In its Preamble, the Rome Statute of the International Criminal Court recognizes that there are grave crimes which threaten the peace, security and well-being of the world, and in it Article 5, it further enumerates the crimes within the jurisdiction of the Court limited to the most serious crimes of concern to the international community as a whole; the crimes including genocide, crimes against humanity, war crimes, and aggression. The Statute, of course, has specified, under Article 25 (1) that “The Court shall have jurisdiction over natural persons pursuant to this Statute”.

United Nations Security Council Resolution 418 (ratified in 1977) considered the apartheid (racial discrimination and segregation) in the (former) Union of South Africa a threat against international peace and security and imposed sanctions against that government under Chapter VII of the UN charter. Is the same right recognized for States under the contemporary international law?

Cassese in his theory of “International Crimes of State” considers three basic elements:

1- The existence of a special class of rules that are designed to protect fundamental values of a special class of rules that are designed to protect fundamental interests of the international community and consequently lay obligations erga omnes;

2- The right to claim compliance with those rules not only on the part of the injured State but also by other international subjects;

3- The existence of a “special regime of responsibility” for the breach of those obligations; in other words, the fact that the legal response to breaches is not merely a request for reparation, but may embrace a wide range of “sanctions” or “remedies”.

It requires adding a fourth and fifth element to the above, i.e. which authorities (local or international) have jurisdiction over proceedings and which rules and regulations are binding during the proceedings?

The present article deals, though briefly, with the comments of the ILC members especially in the course of the 1998 sessions and the discussions under Article 19 of the preliminary proposals regarding the Articles on the Responsibility of States for Internationally Wrongful Acts, an article that was finally omitted from the 2001 Articles on “Responsibility of States” (submitted to the UN General Assembly) due to the many disputes arising. It was indeed a doctrine which, if ratified, could have brought about a major change in the traditional regime of State responsibility especially in terms of recognition of the second element, i.e. the right of *actio popularis*.

Ex-Article 19 had stipulated instances of *erga omnes* obligations but had failed to specify the type of sanctions (enforcement mechanisms) in proportion to the severity of the breach and had sufficed with mere distinction between various categories of crimes and the different enforcement measures against them.

International Crimes of a National Nature

In September 2005, World leaders came together at a summit in New York, in which the Secretary General of the United Nations delivered his report under the title “In larger freedom: towards development, security and human rights for all” listing number of threats to global peace and security included among which were international war and conflict, civil violence, organized crime, terrorism and weapons of mass destruction, poverty, and environmental degradation.

In its Preamble, Statute of the International Criminal Court recognizes that there are grave crimes that, while being of a national nature, are of concern to the international community as a whole and threaten the peace, security and well-being of the world. It then recalls that it is the obligation of every State to exercise its criminal jurisdiction over those responsible for international crimes.

The following questions, however, can be posed in this respect:

- 1- Under what circumstances does a national or international crime constitute a threat to the international community?
- 2- Is commission of such crimes possible only by individuals or by States and governmental organs as well? In the case of the latter, is the term “State Crimes” applicable?
- 3- What legal authorities and references are used for the definition and interpretation of such crimes?
- 4- What authorities have criminal jurisdiction over crimes against international community?
- 5- Is there any definition of international crimes against international community in the multilateral treaties, customary international law, decisions of the international courts including the Court of International Justice, and international criminal tribunals (ad hoc and permanent), or their statutes?

International Peace and Security

The Preamble to the Rome Statute of the International Criminal Court emphasizes the national and international jurisdiction over international crimes; however, it reaffirms that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or intervention in an armed conflict or in the internal affairs of any State i.e. punishment of States which can be against

international peace and security. From a human rights perspective, too, there are numerous courts and tribunals engaged in prosecution of human rights violations, among which are:

- The European Court of Human Rights,
- The Inter-American Court of Human Rights, and
- The African Court of Human and Peoples' Rights

The above courts do not offer any definition of national or international security or the cases and circumstances which constitute a threat or breach of international peace; rather, they focus on exceptional conditions under which a temporary suspension of human rights is permitted as a state of emergency (Lawless v. Ireland, Judgment of 1 July 1961).

On the other hand, while certain human rights treaties envisage a system of derogations of human rights obligations under States of emergency which threaten the life of a nation (threat to national security), and while provision of security is a fundamental obligation of every State, security cannot be provided through extensive violations of human rights, and similarly it is not permissible to ignore or pose a threat to international security or under the pretext of protection of human rights. For instance, Article 4 of the International Covenant on Civil and Political rights, Article 15 of the European Convention on Human Rights and Article 27 of the American Convention on Human Rights stipulate that no derogation from certain rights obligations under any circumstances is permissible included among which are prohibition of torture, and cruel, inhuman, or degrading punishment or treatment. Accordingly, the enjoyment of the rights mentioned in the above conventions is stipulated to be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion.

The question which can be posed here is what circumstances constitute a threat to the life of a nation under which the system of derogations of human rights obligations is envisaged? Does that refer to the time when the threat is to the whole population or a considerable part of the territory of a nation?

As a result, naturally no foreign country should be allowed to attack a nation under the pretext of protection of human rights and therefore topple the regime ruling that nation through violation of territorial sovereignty and bombardment of that territory. In other words, no State is allowed, under the pretext of stopping an international crime, say a crime against humanity for instance, to commit a more serious international crime.

In 1996, the ILC drafted "Code of Crimes against the Peace and Security of Mankind 1996, published in page 99 of volume II of the Yearbook of International Law Commission, New York edition (2007).

While in the past, and mainly up to the 19th century, security was an issue of military nature with limited geographical domain, the concept has expanded in a variety of directions nowadays. From the viewpoint of the American Conservatives, the entire world and basically, all the planets within the Solar System are considered as the security boundary of the United States and Israel. They therefore are of the belief that the U.S. forces should be deployed wherever the interests of the United States is endangered. In view of the Republicans, governments are either with or against them; there is no third neutral stance.

National and international security have gained new aspects since the twentieth century: economic-human rights perspectives , criminal (international crimes, terrorism, drug trafficking, organized crime) and new aspects of military security with the development of weapons of mass destruction including nuclear, chemical, biological weapons.

New insights into the issue of security have brought about two major challenges in international relations. On the one hand, providing national security is the major obligation of States in such a way that failure to do so may lead to gross violations of human rights; on the other hand, in the event such violations threaten or endanger international security under the pretext of protection of national security, i.e. when there is an alleged perpetration of international crime, the international community reserves the right to step in by the use of military force.

Surprisingly, the very same Western countries which endorse military intervention under gross violations of human rights such as in crimes against humanity, refrain from holding the continued occupation of the territories captured in war or foreign colonization as international crimes and reject armed conflicts as a justification of the right to self-determination and conversely take them against the principle of prohibition of resort to the use of force. Meanwhile, they define any support of such movements as an act of international terrorism.

What I would like to speak of in this paper is the formation process of international crimes as a concept created by States as a threat to International Community as a whole. Doing so, I intend to make it possible to clarify some ambiguities relating to responsibility of International Community in terms of the gross violations of the rights of people in the Arab Spring campaigns in 2010-11.

This article also deals with the theoretical foundations of the criminal responsibility of States in human rights violations including in the question of “States Crimes” as one of the aspects of development of criminal law discussed in the sessions of the ILC (1998) where I personally attended.

The topic of State responsibility was one of the first 14 areas provisionally selected for the ILC’s attention in 1949, codification of which was not initiated until 1956. At first, emphasis was put on the responsibility of States for injuries to aliens and their property, i.e. on the content of the substantive rules of international law in that field. It also felt that the disagreements over the scope and content of the substantive rules relating to the protection of aliens and their property were such that little progress was likely to be made. Thus the Commission reconsidered its approach to the topic. In 1962, an intercessional subcommittee recommended that the Commission should focus on “the definition of the general rules governing the international responsibility of the State”.

The above issue finds significance as a result of the following points. Many reports were submitted to ILC focusing on the following four areas:

- 1- International crimes (the distinction drawn in article 19 between international crimes and international delicts)
- 2- Countermeasures (designed to ensure the exercise of this right by the injured State)
- 3- Dispute Settlement (inclusion of provisions on dispute settlement)
- 4- Comments provided including on the balance between codification and progressive

development of international law.

On the above, comments made by France, United Kingdom and the United States indicated that the draft articles err on the side of “progressive development”, in a way that is likely to be counterproductive and unacceptable to States.

Other comments took a more positive line (e.g. Italy, Uzbekistan, Czech Republic, and Argentina).

Agreements on the general issues for discussion can be summarized as follows:

- (a) The distinction between “primary” and “secondary” rules of State responsibility;
- (b) Issues excluded from the draft articles or insufficiently developed including international crimes;
- (c) The relationship between the draft articles and other rules of international law;
- (d) The inclusion of detailed provisions on countermeasures and dispute settlement and the omission of the part on the criminal responsibility of States;
- (e) The likely problem with some articles of the Draft and the need for their omission, included among which was States’ reaction to international crimes

Criminal Responsibility of States

Distinction between Primary and Secondary Rules

The Commission initially approached the subject by considering the substantive law of diplomatic protection (protection of the persons and property of aliens abroad). But it became clear that this area was not ripe for codification. A decision to return to certain aspects of the topic, under the rubric of “Diplomatic protection”, was only made in 1997

The initial impression was that the responsibility of States means the responsibility for wrongful acts irrespective of the content of the substantive rule breached in each given case.

The distinction between “primary” and “secondary” rules was formulated by Special Rapporteur Ago as follows:

The Commission agreed on the need to concentrate its study on the determination of the principles which govern the responsibility of States for internationally wrongful acts, maintaining a strict distinction between this task and the task of defining the rules that place obligations on States, the violation of which may generate responsibility. (In other words, breach of what rules may generate responsibility?) Rules and content of the obligation they impose have to be clearly determined (rules governing the obligations).

Primary rules are those governing the gravity of an internationally wrongful act and the criterion for determining the consequences it should have (gross violation of the rules governing an internationally wrongful act). This must not obscure the essential fact that it is one thing to define a rule and the content of the obligation it imposes, and another to determine whether that obligation has been violated and what should be the consequence of the violation. Secondary rules are those which determine what obligation has been violated and their consequences, known in domestic law as rules of procedure and evidence. Only the second aspect of the matter comes within the sphere of responsibility proper.

The distinction between primary and secondary rules has had its critics. It has been said, for example, that the “secondary” rules are mere abstractions, of no practical

use; that the assumption of generally applicable secondary rules overlooks the possibility that particular substantive rules, or substantive rules within a particular field of international law, may generate their own specific secondary rules.

On the other hand, the substantive rules of international law, breach of which may give rise to State responsibility, are innumerable. They include substantive rules contained in treaties as well as in general international law. Given rapid and continuous developments in both custom and treaty, the corpus of primary rules is, practically speaking, beyond the reach of codification, even if that were desirable in principle. For example, there has been an extensive debate about whether State responsibility can exist in the absence of damage or injury to another State or States. What is meant by damage or injury by virtue of which a State finds the right to damages? What damages constitute violations of obligations *erga omnes*?

If by damage or injury is meant economically assessable damages, the answer is clearly that this is not always necessary. (But what if the injured State has suffered special moral damage?)

On the other hand in some situations there is no legal injury to another State unless it has suffered material harm.

The position varies, depending on the substantive or primary rule in question. It is only necessary for the draft articles to be drafted in such a way as to allow for the various possibilities, depending on the applicable primary rule. A similar analysis would apply to the question whether some “mental element” or culpa is required to engage the responsibility of a State, or whether State responsibility is “strict” or even “absolute”, or depends upon “due diligence”.

It is believed that the regime of State responsibility is, after all, not only general but also residual. The issue arises particularly in relation to article 37 of part two (“*Lex specialis*”).

Comments by the United States indicate that the issue of reparation has not been dealt with sufficiently. The example for such issue is obligations *erga omnes*. Since its well-known dictum in the Barcelona Traction case, the International Court has repeatedly referred to the notion of obligations *erga omnes*, most recently in its Order of 17 December 1997 on the admissibility of Yugoslavian counter-claims in the Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (para. 35).

Self-Contained (Special) Regime of State Responsibility

Two issues may be raised here:

- 1- Under what circumstances may all States suffer injury by reason of the breach of an international commitment?
- 2- What is the responsibility of the breaching State? Civil responsibility, cessation of the breach, special regime? Or criminal (reparation)?

As with the definition of the “Injured State” contained in article 40 (linked to the concept of international crimes), under what circumstances may other States suffer damages as a result of an international crime?

Comments of Governments are very varied.

Alain Pellet (France), was generally critical of the notion, while not denying that in special circumstances a State may suffer legal injury merely by reason of the breach

of a commitment.

In the case of a commitment under a multilateral treaty, the supposedly injured State must establish that it has suffered special material or moral damage other than that resulting from a simple violation of a legal rule. This may appear to deny the possibility of obligations erga omnes, whose very effect, presumably, is to establish a legal interest of all States in compliance with certain norms.

Simma (Germany), by contrast, sees in the clarification and elaboration of the concepts of obligations erga omnes and jus cogens, in the field of State responsibility, a solution to the vexed problems presented by article 19. In other words, violations of obligations erga omnes do not necessarily need to be proved to all States.

Rosenstock (the United States) takes an intermediate position, supporting the clarification and in some respects the narrowing of the categories of “injured State” in article 40, especially in relation to breaches of multilateral treaties, while accepting the notion of a general or community interest in relation to defined categories of treaty (e.g. human rights treaties). But the United States denies that injured States acting in the context of obligations erga omnes (or of an actio popularis) should have the right to claim reparation as distinct from cessation.

The United Kingdom likewise raises issues of the definition of “injured State” in the context of multilateral treaty obligations. In particular it questions the consistency of article 40, paragraph 2 (e) (ii), with article 60, paragraph 2 (c), of the Vienna Convention on the Law of Treaties, which allows the parties to multilateral treaties to suspend the operation of the treaty in relation to a defaulting State only if the treaty is of such a character that a material breach of its provisions by one party “radically changes the position of every party with respect to the further performance of its obligations under the treaty”.

The relationship between the draft articles and breach of the obligations under international law has been referred to in the context of the distinction between primary and secondary rules. It is addressed in the introductory articles to part two, in particular articles 37 to 39. Of particular significance is article 37 (“Lex specialis”), which recognizes that States are normally free to regulate issues of responsibility arising between them by special rules, or even by “self-contained regimes”, notwithstanding the general law of responsibility.

A number of Governments suggested that the lex specialis principle should be applied to part one as well. But there remains a question whether the relocation of article 37 would be sufficient to cope with the implications of “soft” obligations, e.g. obligations to consult or to report.

Inclusion of detailed provisions on countermeasures

The International Court of Justice’s decision in the Barcelona Traction case draws a distinction between obligations of a State toward the international community and those towards another State in terms of diplomatic protection, saying that there are obligations erga omnes, whose very effect is to establish a legal interest of all States in compliance with certain norms. Apart from ICJ’s decision above, there was controversy about the inclusion of two other major elements in the draft articles, countermeasures and dispute settlement.

A number of Governments were strongly critical of the inclusion of detailed rules on

countermeasures in the draft articles. Some Governments accepted the need for the inclusion of countermeasures as a circumstance precluding responsibility, at least as against the wrongdoing State (article 30), but denied that the detailed elaboration of a regime of countermeasures in part two was appropriate (e.g. France).

Others accepted that countermeasures should figure in the draft articles not only in article 30, but also in more elaborate form in part two. In some cases, however, they raise questions about the formulation of relevant articles, including questions of a fundamental kind (e.g. the United States, Austria, Germany, Czech Republic, and Nordic countries).

By contrast, a few regarded countermeasures as outside the scope of the draft articles entirely, on the basis that they could not excuse unlawful conduct and that they would tend to exacerbate rather than prevent inter-state disputes (Mexico).

A range of views was also expressed in relation to the issues of dispute settlement and the system of disputed settlement to be given preference.

To compulsory mechanisms or to any other third-party mechanism which the parties may have chosen?

But except in specialized fields, there is no such mechanism for most States in most cases. Some Governments (e.g. Mexico and Italy) regarded this as a reason for supporting and even strengthening part three. Some others (e.g. United States, France) regard it as a reason for deleting it. Still others would welcome some provision for dispute settlement but urged caution in its formulation (e.g. Germany, Czech Republic, and Argentina).

A related question is whether the draft articles should incorporate procedural elements, such as references to the onus (or standard of proof) or certain grounds for challenging the validity of or terminating a treaty (see articles 46, 56, 62 (1)).

Concerning the eventual form of the draft articles, there were a question of considerable strategic importance as to whether the draft articles had to be proposed as a convention or they should take some other form. The views of Governments so far ranged widely. One argument which was particularly stressed was that the process of subsequent debate and the possible non-adoption or non-ratification of a convention would cast doubt on established legal principles. Some Governments (e.g. United States, Czech Republic, Germany, France, and Argentina) took no position at that stage.

Reparation was a different issue. A number of topics were identified which required further treatment included among which were the different types of damages, the burden of proof of damages, and the legitimate measures in response to the injuries and damages.

The criminal features of the responsibility of States were also worth consideration. In view of Italy, for the legal injury to another State, the identification of subjective interest is sufficient.

Affirming that a wrongful act exists and that there is State responsibility only if the breach of the obligation attributable to the State has caused damage to another subject would be tantamount to saying, for example, that the violation by a State of another State's territory, or the adoption by a State of legislation that it had undertaken not to adopt, do not represent wrongful acts if they do not cause material or moral damage.

Italy and Elements of Responsibility

In the Italian Government's view, damage should not serve as a constituent element of an internationally wrongful act. Under international law, the breach of a legal obligation by a State necessarily involves the injury of a corresponding subjective right of another subject (or several other subjects) of international law. This other subject does not have to demonstrate that it has in addition suffered material or moral damage in order to be able to assert that an internationally wrongful act has been committed against it and that the wrongdoing State bears responsibility for that wrongful act. The injury of its subjective right suffices. Naturally, the content of the wrongdoing State's responsibility will be the same only where there has been material or moral damage.

To give an example, application of the above theory can be examined in human rights violations in Bahrain, Libya, Yemen and Egypt; by which we mean attacks by means of firearms against protestors (provided that protestors do not use any firearms).

Those who assert on the material or moral damage for an internationally wrongful act are perhaps concerned with the fact that every State may thus claim responsibility against another without any real damage inflicted on the international community.

Such a concern, however, is uncalled-for because absence of any necessity to the element of damage does not mean that every State can invoke the responsibility of another State for wrongful acts, except for obligations *erga omnes*.

In Italy's view, existing customary law already provides that the violation of certain obligations which protect the fundamental interests of the international community simultaneously infringes the subjective rights of all States and authorizes all of them to invoke the responsibility of the State which violated the obligation: these are what the International Court of Justice has termed "erga omnes obligations". The prohibition against armed aggression is the most important example of this category of obligations; it is not only the State which is the direct victim of the aggression that is injured: all States are injured, and can invoke the responsibility of the State committing the aggression.

The Italian Government was of the view that it is of the utmost importance that the countermeasures regime (for example, conditions relating to resort to countermeasures, and prohibited countermeasures) should be codified. It is particularly important to establish clearly the content of the rules of international law with respect to the consequences of a wrongful act, so as to prevent abuse on the part of States.

Consequences of International Crimes

What reactions are permissible in case of breach of the subjective and/or objective rights of States?

One reaction injured States can adopt is countermeasures or measures of or self-help or self-defense.

It was at first difficult to determine in what circumstances conduct is to be attributed to a State as a subject of international law. The United States, Japan (initially), and China did not approve of the establishment of the International Criminal Court. Especially, the United States disapproved of the ICC's jurisdiction over the crime of aggression, under the excuse that there is no customary international law on this issue. Meanwhile, the existence of some forms of reprisals (not resort to war or

force) is undisputed; an example is self-defence which entails the use of force or claim for compensation.

Judicial decisions, State practice and doctrine confirm the proposition that countermeasures meeting certain substantive and procedural conditions may be legitimate. Recognition of the legitimacy of measures of this kind in certain cases can be found in arbitral decisions, in particular the Air Services award (Arbitral Award of 9 December 1978 in the case concerning the Air Service Agreement of 27 March 1946 between the United States of America and France).

The problem was the absolute or conditional nature of reprisals and the worries on the legitimacy or illegitimacy of reprisal. In particular, the concern was on the general condition that reprisals were subject to the prior recourse, by the injured State, to arbitration or the ICJ.

Certain States including Switzerland doubts the existence or utility of the distinction between crimes and delicts: indeed it describes the distinction as “an attempt to conceal the ineffectiveness of the conventional rules on State responsibility behind an ideological mask” (by inflicting damages and punishments on the whole people of a nation merely for the wrongful act of the State).

The other issue is that the reactions of the international community toward breaches of the obligations towards the international community as a whole (refraining from acts of aggression, the perpetration of genocide, the practice of apartheid etc.) changes in degree with violation of obligations of lesser and less general importance. Certain States including Argentina was of the opinion that it is better to use two different regimes for international responsibility due to the existence of certain binding rules arising from jus cogens and the punishable nature of the conduct of a person empowered exercise elements of the governmental authority, if the conduct constitutes violation of international obligations. Finally, there is the fact the Charter of the United Nations stipulates in its Chapter VII certain consequences of violation of certain rules.

Consequently, it requires that the ILC draw a distinction between the conduct of States according to the gravity and domain of the acts committed, in such a way that it shows the reactions of the international community in proportionate to them. Argentina affirms that “the consequences of an internationally wrongful act cannot be the same where that act impairs the general interests of the international community as where it affects only the particular interests of a State”. On the other hand, now that “the international legal order tends to draw a clear distinction between the international responsibility of the State and the international criminal responsibility of individuals, it does not seem advisable to apply to the former a terminology appropriate to the latter”. It also calls upon the Commission to “elaborate as precisely as possible the different treatment and the different consequences attaching to different violations”. The Statutes of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) or the Draft Code of Crimes Against the Peace and Security of Mankind, and in particular the Preliminary Committee for the Establishment of an International Criminal Court all deal with the responsibility of States in contrast with the criminal responsibility of private individuals under international law.

In short, Argentina rejects the application of the term the criminal responsibility of

States or the terms crime and delict to refer to conduct of States, and accordingly does not support criminalization of States.

Austria judges more explicitly and proposes the deletion of articles 19 and 51. Austria reiterates that the idea of international crimes may, in practice, serve as a pretext to seek recourse to reprisals and sanctions disproportionate to the not so grave violations of international law. In its view, action should be taken within the framework of Chapter VII of the Charter, or against individuals (including State officials) through the development of organs for the enforcement of international criminal law: these mechanisms “may provide a more effective tool against grave violations of basic norms of international law such as human rights and humanitarian standards than the criminalization of State behaviour as such”. On the other hand, the Commission should “concentrate on the regulation of the legal consequences of violations of international law of a particularly grave nature”.

Elements of the national criminal systems are not applicable to the inter-State relations. It is more effective to create an international criminal court than to criminalize State behaviour.

The Czech Republic supports adoption of two different regimes with different consequences. Indeed, it proposes adoption of a specific regime (neither civil nor penal) but rather adopting neutral terms such as wrongful acts.

In view of the Nordic countries, the “systemic” responsibility of States for crimes such as aggression and genocide ought to be recognized “in one forum or another be it through punitive damages or measures affecting the dignity of the State”. On the other hand, some other less “sensitive” terminology, such as “violations” or “serious violations”, might be considered, provided it carries more severe consequences, and that the distinction between the two categories is clear.

France complained that article 19 “gives the unquestionably false impression that the aim is to ‘criminalize’ public international law”, contrary to existing international law which emphasizes reparation and compensation. In the view of the French Government, “State responsibility is neither criminal nor civil” but is sui generis. France stresses that “no legislator, judge or police exists at an international level to impute criminal responsibility to States or ensure compliance with any criminal legislation that might be applicable to them. It

is hard to see who, in a society of over 180 sovereign States, each entitled to impose punishment, could impose a criminal penalty on holders of sovereignty”.

Criminal Responsibility and the Nature of State Crimes

China was of the opinion that according to the maxim *Par in Parem* (an equal has no power over an equal and therefore) no State could call another criminal. Meanwhile, there had been no independent institute or organization to discover any allegations of criminal responsibility, and therefore China proposed the ICC to undertake this responsibility for the future.

A question to be posed here is whether the act of Libya to occupy parts of the Chad land is equal to in importance to stealing some quantity of banana?

Rosenstock: Security Council does not impose criminal measures against any State. It does not ratify penal sanctions against States; neither by virtue of Article 41 nor of Article 43; it does not hold a State responsible. The reason lies in the fact that

the Council is a political organ, even though some believe that the Council has jurisdiction over this. The General Assembly Resolution, too, has recognized, in case of aggression, the perpetration of aggression by States. ILC, in its Draft Code of Crimes Against the Peace and Security of Mankind, has also recognized violation of obligations against international peace and security.

Thiam noted that resolution 3314 (on Aggression) was ratified by consensus and not unanimity of decisions. Meanwhile, the definition offered was political rather than legal.

Economides: Consensus or unanimity of decisions both render the same result and that is recognition of the crimes of States.

Yamada (Japan): it is not right to include issues on crimes of States in State responsibility. Punitive damages are not acceptable in this respect. There is no consensus in international law concerning the crimes of States; there are no rules and mechanisms of procedure and evidence. It is not right to generalize the national criminal systems to international crimes because of the differences between the two and it is not therefore possible to infer penal responsibility of State from the term "State crimes".

Professor Brownlie: States can commit crimes.

Addo: State is an abstract entity which comprises individuals. Therefore, if a crime is committed, it is committed by an individual, and thus "State crime" is meaningless. If the concept has been accepted in the past, this does not mean that we can accept it now; our reaction and stance should be corrective.

Professor Brownlie: Does that mean Mr Addo was prepared to replace the word "State", throughout the draft articles, by, for example, the word "minister",?

Mr. ADDO said that the concept of State crime, though in the making, was not yet fully developed. Consequently, while he was not totally opposed to it, in his opinion, it had no place in the general law of obligations and should be discarded from the draft. So far as corporate liability was concerned, even if a company was wound up, the individuals responsible for, say, fraud could still be charged on that account.

The Russian delegate was of belief that while no legal definition has been proposed for aggression, this does not mean that there is no act of aggression. The Security Council can act under Chapter VII of Charter of the United Nations and decide whether a State has violated its obligations.

Generally, discussions of the ILC was mostly concerned, at this level, with the acceptance or rejection of the idea of State crimes and whether they can be called violation of international obligations by a State against the international community. Additionally important was the distinction between criminal and delictual responsibility in terms of crimes against international peace and security.

The distinction was approved in 1976, yet it was formulated in 1996. Yet again the significance and seriousness of State crimes were mentioned in Article 19, under 51-53. It had thus to be acknowledged that there was no State practice to support the notion of crimes by States. It would be more useful to perceive a continuum in the seriousness of a breach, running from minor to material, from being of little consequence to the two States involved to being breaches of obligations to all States of a much more serious nature.

As the distinction between crimes and delicts was drawn during 1976-80, the nature

of the act is more important than its name. That is to say, it is not the matter of the cause of denomination, or whether to call an act crime or delict, as this would be within the discussions of domestic law.

The important thing is that no State should escape consequences of violation of its obligations or that no court should accept this immunity. It is of vital significance for the States to consider the very breach of obligations as internationally unlawful; that is to say, consequences should not depend on the name of the act only. At last, the focus should be the conceptual aspect of the term.

Article 19, paragraph 4 proclaims a distinction between international crimes and international delicts: “Any internationally wrongful act which is not an international crime in accordance with paragraph 2 constitutes an international delict”. Another issue, also, was the distinction between domestic and internal concept and that whether the gravity of crimes discussed under domestic law is applicable to the terms of international (criminal) law as well.

A general definition is contained in article 19 (2), which defines as “an international crime”: “[a]n internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole”.

The circularity of this definition has often been noted. On the other hand, it is no more circular than the definition of peremptory norms of general international law (*jus cogens*) contained in article 53 of the Vienna Convention on the Law of Treaties of 1969, a definition now widely accepted. But it is possible to define the category of “crimes” in other ways. This might be done, for example, by reference to their distinctive procedural incidents. “Crimes” might be distinguished from “delicts” by reference to the existence of some specific system for investigation and enforcement. Or the distinction might be made by reference to the substantive consequences. Thus “delicts” might be defined as breaches of obligation for which only compensation or restitution is available, as distinct from fines or other sanctions. Article 19, paragraph 2, adopts neither course. The draft articles nowhere specify any distinctive and exclusive consequence of an “international crime”. Nor do they lay down any authoritative procedure for determining that a crime has been committed.

Subject to paragraph 2, and on the basis of the rules of international law in force, an international crime may result, *inter alia*, from:

- A serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression;
- A serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;
- A serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, attacking non-military objectives (crimes against humanity);
- A serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas.

Even supporters of the principle underlying article 19 are strongly critical of paragraph 3. First, it is an illusory definition. A crime merely “may result” from one of the enumerated acts. Secondly, it is wholly lacking in specificity. A crime “may” result but subject to paragraph 2 and to unspecified “rules of international law in force”. The problem is not that paragraph 3 only provides an inclusive list; it could hardly do otherwise. It is rather that it provides no assurance that even the breaches enumerated would constitute crimes, if proven. Whether they “may” do so depends, *inter alia*, on “the rules of international law in force”. No doubt it was not the function of the draft articles, including article 19, paragraph 3, to restate primary rules, but that is no reason to give the appearance of doing so. Thirdly, the various subparagraphs are disparate both in their content and in their relation to existing international law. Having regard to its merely illustrative role and its lack of independent normative content, some of the ILC members proposed that paragraph 3 should be substituted by a more detailed commentary, if the distinction between crimes and delicts is retained in the draft articles.

Paragraph 3 focuses not on the importance of the norms but on the seriousness of their breach: it is only “serious” breaches that are crimes, in some cases further qualified by such phrases as “on a widespread scale” or “massive”, contrary to the belief that international law does not contain a norm which prohibits, for example, “widespread” cases of genocide.

The consequences of international crimes are dealt with in two parts:

1- As per article 40, paragraph 3, all the States, in the entire world are defined as “injured States” with respect to an international crime. The corollary is that all States may seek reparation under articles 42 to 46, and may take countermeasures under articles 47 and 48. However, it is not a distinctive consequence of such crimes, since many or all States may be “injured” by a delict pursuant to articles 40, paragraph 2 (e) or (f), for example by a breach of an obligation under a multilateral treaty or under general international law for the protection of human rights and fundamental freedoms. Article 40, paragraph 2 (e) (iii), does not require that such a breach should have been “serious”, or that the obligation should have been “of essential importance”. Under article 52, certain rather extreme limitations upon the obtaining of restitution or satisfaction do not apply in case of crimes. Thus in the case of crimes an injured State is entitled to insist on restitution even if this seriously and fruitlessly jeopardizes the political independence or economic stability of the “criminal” State;

Under article 53, there is a limited obligation of solidarity in relation to crimes. For example, States are under an obligation “not to recognize as lawful the situation created” by a crime (article 53 (a)). This may suggest, a contrario, that States are entitled to recognize as lawful the situation created by a delict, no matter how serious that delict may be.

2- The draft articles do not provide for “punitive” damages for crimes, let alone fines or other sanctions. Nor do they lay down any special procedure for determining authoritatively whether a crime has been committed, or what consequences should follow. Charter of the United Nations, of course, in Chapter VII have provided for sanctions, even of military nature, against violation of or threats to international peace and security. However, in Draft Articles (inter-State relations) cases, it is left

for each individual State to determine qua “injured State”.

Sanctions, therefore, have been interpreted because the restoration of international peace and security requires them to be effective, and not the responsibility of the infringing State.

Comments by States on State crimes

Comments provided by States on State crimes varied significantly. For instance, the United States of America strongly opposed the provisions dealing with State crimes for which, in its opinion, “there is no support under customary international law and which undermine the effectiveness of the State responsibility regime as a whole”.

France complained that article 19 “gives the unquestionably false impression that the aim is to ‘criminalize’ public international law”, contrary to existing international law which emphasizes reparation and compensation. In the view of the French Government, “State responsibility is neither criminal nor civil” but is sui generis, just as in the Statute of the International Criminal Court, too, the crime cannot be attributed to States. An act can be considered as crime but taking into account the private criminal responsibility of individuals under international law and with an emphasis on reparation or compensation by the injured State, if necessary.

Germany expresses “considerable scepticism regarding the usefulness of the concept” of international crimes, which are in its view “not sustained by international practice”, would tend to weaken the “principle of individual criminal responsibility” and is inconsistent with the principle of the equality of States. By contrast with international crimes, “the concepts of obligations erga omnes and, even stronger, jus cogens have a solid basis in international law”; the Commission is encouraged to develop the implications of these ideas in the field of State responsibility .

The United Kingdom of Great Britain sees “no basis in customary international law for the concept of international crimes” nor any “clear need for it”.

Ireland, and Switzerland likewise, doubt that existing international law recognizes the criminal responsibility of States, as distinct from State responsibility for the criminal acts of individuals.

The Czech Republic supports the distinction between crimes and delicts. It proposes adopting more neutral terms, or even making the distinction by other means, e.g. by differentiating more clearly the consequences of wrongful acts depending on whether they affect particular States or the interests of the international community as a whole. “As a result, the terms used in the articles would be neutral but would leave the necessary room for widely acceptable terms to be developed subsequently in the sphere of State practice and doctrine”.

Italy likewise supports maintaining the distinction.

Rosenstock believes the notion of State crimes does not exist in international law. And what is the use of crimes without punishment?

Hafner noted the fact that States reaction to the crime of aggression committed by other States is not only their right but also their obligation. For instance, in time of Anschluss, States kept silent and only Mexico, which was worried about the aggression by the other State, expressed its concern to the international community. And a few States showed reactions afterwards.

Article 19 deals with public order or public interest. The Convention of the Law

of Treaties does not deal with elements of crimes but discusses the procedures and conditions for treaties.

Russia noted that the important thing is the consequences of State behaviour, whether violation of obligations embrace public order or public interest (*erga omnes*), or violation of *jus cogens*; an intermediate solution has to be found.

Bennouna like it or not certain acts are crimes. The discussion is not to criminalize the State or its organs. Certain crimes, such as occupation of another State, are so grave that are undoubtedly considered as crimes. Crimes are defined by the Security Council and not by States; they must be defined by an independent organ.

Mongolia supported the distinction.

Denmark, notes that it continues to support the distinction. The “systemic” responsibility of States for crimes such as aggression and genocide ought to be recognized. On the other hand, some other less “sensitive” terminology, such as “violations” or “serious violations”, might be considered, provided it carries more severe consequences, and the distinction between the two categories is clear.

Rao: How is it that twenty years before, the notion of State crime was accepted and now since 1998, while we see the bloodiest crises in the world, we retreat and reject it? Let us work (on the Russia’s proposal). The matter is not grave or serious delict.

Yamada notes that the Security Council has failed in its duties and has been selective so far, yet no other organ can replace it. Genocide has the logic of a crime but is not a State crime. Failure to fight with it, of course, constitutes the responsibility of State. State responsibility is neither criminal nor civil but *sui generis*.

Economides was of the belief that the term *erga omnes* is not very clear in terms of crimes. Diplomatic protection, too, is an obligation towards all. Given the above, was the Iraqi bombardment by the US criminal or civil?

The criminal responsibility of States and international disorder

In the domestic domain, if a crime is committed, even without a private complainant, the prosecutor is duty-bound to investigate the affair due to violation of public order. In the international arena, however, how is it possible to fulfill this obligation?! What act or omission constitutes a crime at international level? Who or what authority is to distinguish the crime? What are the consequences and responsibilities arising from such crimes? What punishments are enforceable? What authority has the jurisdiction to enforce the punishments?

The first issue is subjects of international law.

The criminal responsibility of State or the individual arising from the duty of the individual as a government official or in a governmental organization or in his capacity as a military commander means to ask whether it possible to hold the State criminally responsible, and accordingly to hold it responsible for reparation and subject to criminal punishments?

For instance, in the case of Libya, if we assume that the charges of humanitarian rights violations, against Gaddafi or his regime, have been identified by the Security Council as crimes against humanity, such indictments and proceedings should be investigated and heard in an international court.

With the above requirements being satisfied, upon the submission of the case of Gaddafi to ICC by the Security Council, given the hearings and the judgment of

conviction of the Gaddafi's former government or the government formed by the adversaries, who is to be held liable for moral and material damages on people or public property (if such reparation or restitution is not possible from Gaddafi himself or his family)? Are the ICC and NATO in a capacity to impose a punishment such as the change of regime?

If the Islamic Republic of Iran were subject to such allegations, do charges of this kind justify conviction and judgments imposed against the Islamic Republic of Iran and the toppling of the Iranian government? One of the factors to identify crimes against humanity has been contained in Article 7 of the Statute of the International Criminal Court as being the attack directed against any civilian population; while the policy is governmental, it refers to the policies of the officials. The responsibility, therefore, is that of the officials, and it is the individuals who are to be held responsible; adoption of any decisions, in this respect, and implementation of criminal acts and perpetration of international crimes has not to do with the State, and is not a justification to the change of regime. ICC therefore can try the heads of the Gaddafi government in the Court, and not the Gaddafi regime itself.

Elements of State responsibility or internationally wrongful acts

An internationally wrongful act should meet the following conditions:

- 1- The subjective element, i.e. attribution to the State (the party in breach of international obligations);
- 2- The objective element, i.e. the act or omission contrary to an international obligation (what obligation has been violated);
- 3- The injured party

More explicitly, the third element means the damages and harms arising from the acts of a State against the victim.

Is international law subject to damages of its subjective rights? Or in the human rights violations to the Libyan population, is the government of Libya responsible and the Libyan population the injured party? Where is NATO and what rights does it enjoy in this context? No right whatsoever is provided for NATO in terms of military actions against Gaddafi or his regime.

Until the 1960s, State responsibility was defined as protection of the aliens. Diplomatic protection consisted of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.

Writings of Roberto Ago proposed new ideas; as the basis of the theory of international crimes, he held the breach of an obligation by a State against another State or the international community as a whole. An international crime, therefore, is no longer seen from the injury inflicted on an alien, but other States are also a matter. Simply put, to exercise judicial jurisdiction over the accused, a necessary element is to prove the breach of an obligation. Such a proof is not sufficient in domestic system and the complainant should also be the victim of the breach. For instance, to assume responsibility, it requires that there be a relation between the breaching government and the complainant; i.e. the complainant State should also be the victim as far as

damages are concerned.

The classic international law observes a broader range of obligations by States toward their nationals, included among which are the human rights conventions or the ILO Convention.

If, however, such rights are violated, this does not necessarily inflict economic damages on other members of the convention, but is rather some harm to the national reputation of that State and not the other. As Jimenez put it, violations of human rights treaties are perpetration of international crimes which impose a subjective damage upon other member States, even though the nationals of that State are not directly suffering the act or omission of the other. In other words, the international order is thus disrupted.

Hence, when and under what circumstances are such allegations permissible? What legal regime can cover the facts in this regard?

Suffering damages is related to a legal principle which generally means that no one pursues anything without having a legal interest. Damages suffered by a State entitle the State to ask for reparation. Now, what is the goal of Article 19 when it entitles a State to claim for damages for whose crime the State is not a victim?

In response, the difference between ‘crime’ and ‘wrongful act’ should be analyzed from two perspectives: Conceptual, and nominal.

That is to say one question deals, from a conceptual perspective, with the acceptance of a different regime for the manner of dealing with the consequences of the various types of breaches of the rights of peoples (the conceptual aspect);

And the other is it right to use the terms of crimes and delicts which belong to criminal law? (the nominal aspect)

Argentina affirms that “the consequences of an internationally wrongful act cannot be the same where that act impairs the general interests of the international community as where it affects only the particular interests of a State”. That is to say, the consequences of violation of an international obligation are with respect to a State, at times, and to the international community as a whole at the other. If we believe in an international community, we are recognizing an international spirit and the existence of international order; hence, perpetration of an international crime disturbs the global order and creates international responsibility.

A strong opinion posed following the World War II was that the international community recognizes two absolutely different regimes for international responsibility. One applies in the case of a breach by the State of an obligation whose respect is of fundamental importance to the international community as a whole (refraining from acts of aggression, the perpetration of genocide, the practice of apartheid etc.). The second applies, on the other hand, in cases where the State has only failed to fulfill an obligation of lesser and less general importance, which if violated, may inflict damages on one or a few States.

A dual regime of State responsibility (civil and criminal)

- a) Peremptory norms or those arising from jus cogens
- b) The conduct of a person empowered to exercise elements of the governmental authority, if the conduct constitutes violation of international obligations

Now, is it possible to assume criminal responsibility of States if they inflict damages

on the international community?

Argentina doubted the applicability of the term State crimes (penal or criminal) saying that while State responsibility is not similar to the individual civil liability, it is also incomparable with criminal liability. Creation of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) or the Draft Code of Crimes Against the Peace and Security of Mankind, and in particular the preliminary committee for the establishment of an international criminal court indicate the development of criminal law.

The other issue is the nature of reactions in violation of international obligations; reprisals are measures of self-help on the part of the injured State, which embrace the threat or use of force, but which can be deemed unlawful in response to violation of an obligation if the reprisal is conducted by other than the injured State.

With the above in mind, is the NATO's reaction in its air military support of the Libyan insurgents not an illegal measure and violation of Articles 2 and 4 of the Charter?! Is it not an act of aggression?

The ILC was of the opinion that measures of reprisal should be limited to conditions under which reactions to an internationally wrongful act is necessary.

Argentina was of the view that measures of reprisal should be used as the last resort in the peaceful settlement of disputes only after the exhaustion of all the peaceful measures.

Reprisals, therefore, should not be accepted in the international arena as an international legal order but should be deemed an act exceptionally tolerated under certain conditions.

International practice and criminal responsibility of States

The question is can States, similar to individuals, commit crimes? Is the term applicable to States?!

The traditional position of international law on the question of international crimes of States was expressed by the Nuremberg Tribunal, which stated that:

“Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced. The treaties recognizing or establishing international crimes took the same position. Neither Germany nor Japan was treated as “criminal States” by the instruments creating the post war war crimes tribunals, although the London Charter of 1945 specifically provided for the condemnation of a “group or organization” as “criminal”.

The first criminal convention, following World War II (the Genocide Convention) proposed State responsibility, mainly under Article IX, in connection with the crimes of genocide (crimes relating, in their characters, with the conduct of State). Notwithstanding the above, it was clear from the beginning that Article IX does not deal with any reaction in terms of the criminal responsibility of State.

When Article 19 was proposed and further ratified concerning the responsibility of States, there was no agreement which would confirm the criminal responsibility of States.

Commentaries were concerned with lack of an international judicial or arbitration authority to draw a distinction between crimes and violation of obligations; that is to

say, only civil liability was recognized at the time. The question is “what about the right of States in reaction to inter-State offences, or acts of self-help or countermeasures”? Some governments supported the need for making a distinction between countermeasures and acts of reprisal; the argument was that in the Barcelona Traction Case special emphasis was put on such a distinction.

Judicial decisions since 1976 certainly support the idea that international law contains different kinds of norms, and is not limited to the “classical” idea of bilateral norms. On the other hand there is no support in those decisions for a distinct category of international crimes of States, one of the consequences of which is the judgment on punitive damages (compensation).

In *Velásquez Rodríguez v. Honduras (Compensation)*, the Inter American Court of Human Rights was asked to award punitive damages in respect of the “disappearance” of a citizen, one of a large number of persons who had been abducted, possibly tortured and almost certainly executed without trial. The breach was an egregious one but the Court nonetheless rejected the claim to punitive damages. Relying in part on the reference to “fair compensation” in article 63, paragraph 1, of the American Convention on Human Rights, the Court asserted that:

“Although some domestic courts, particularly the Anglo American, award damages in amounts meant to deter or to serve as an example, this principle is not applicable in international law at this time.” The payment was to be made *ex gratia* but was to be assessed “in conformity with the applicable principles of international law, as though liability were established”. The Commission assessed damages in accordance with ordinary principles, taking into account moral damage but not punitive damage: in fact no claim for punitive damages was made.

In the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Yugoslavia (Preliminary Objections)*), the International Court upheld its jurisdiction to hear a claim of State responsibility for genocide under article IX of the Genocide Convention. The Applicant’s primary claim concerned the direct involvement of the respondent State itself, through its high officials, in acts of genocide, although other bases of claim were also alleged. In response to an argument that State responsibility under article IX is limited to responsibility for failure to prevent or punish genocide (as distinct from cases of direct attribution), the Court said: “The reference in article IX to the responsibility of a State for genocide or for any of the other acts enumerated in article III does not exclude any form of State responsibility. Nor is the responsibility of a State for acts of its organs excluded by article IV of the Convention, which contemplates the commission of an act of genocide by ‘rulers’ or ‘public officials’.” The Court’s reference to “any form of State responsibility” is not to be read as referring to State criminal responsibility, but rather to the direct attribution of genocide to a State as such. It may be noted that neither party in that case argued that the responsibility in question would be criminal in character.

In *Prosecutor v Blaskic (Objection to the Issue of Subpoena Duces Tecum)*, the Appeals Chamber of the International Tribunal for the Former Yugoslavia had to consider, *inter alia*, whether the Tribunal could subpoena evidence directly from States pursuant to its Statute and Rules. The evidence in question related to the alleged commission by State agents, including the accused, of crimes within the

jurisdiction of the Tribunal. In other words, it related to alleged crimes imputable to the State. The Appeals Chamber held that no power to issue subpoenas against States existed. It said, *inter alia*:

“The International Tribunal does not possess any power to take enforcement measures against States. Had the drafters of the Statute intended to vest the International Tribunal with such a power, they would have expressly provided for it. In the case of an international judicial body, this is not a power that can be regarded as inherent in its functions. Under current international law States can only be the subject of countermeasures taken by other States or of sanctions visited upon them by the organized international community, i.e., the United Nations or other intergovernmental organizations. Under present international law it is clear that States, by definition, cannot be the subject of criminal sanctions akin to those provided for in national criminal systems.”

Nonetheless the Court held that the Tribunal is not authorized to issue orders termed “subpoenas” to States, although it is clearly authorized by article 29, paragraph 2, of its Statute to issue orders with which States are required to comply.

Other cases which might be cited to similar effect include the various phases of the Rainbow Warrior affair.

The position in State practice as at 1976 was more complex. The language of “crimes” was used from time to time with respect to the conduct of States in such fields as aggression, genocide, apartheid and the maintenance of colonial domination, and there was concerted condemnation of at least some cases of the unlawful use of force, of systematic discrimination on grounds of race or of the maintenance by force of colonial domination.

The Commission concluded from a review of action taken within the framework of the United Nations that:

“In the general opinion, some of these acts genuinely constitute ‘international crimes’, that is to say, international wrongs which are more serious than others and which, as such, should entail more severe legal consequences. This does not, of course, mean that all these crimes are equal – in other words, that they attain the same degree of seriousness and necessarily entail all the more severe consequences incurred, for example, by the supreme international crime, namely, a war of aggression.” State practice in the period from 1976 to 1995 was reviewed in the ILC reports.

Given the above, even the “rebirth” of activity of the Security Council under Chapter VII of the Charter of the United Nations, with vigorous action taken, were concerned with the individual accountability (Saddam must go; Gaddafi must go) not the responsibility of State (substantive punishment against their regimes). A number of features of the practice of this period may be recalled. They include for example, action taken against Iraq in respect of Kuwait, and against the Libyan Arab Jamahiriya in respect of its alleged involvement in the Lockerbie terrorist bombing, the former Yugoslavia, Rwanda, Sudan (Omar al-Bashir), Iran (the nuclear energy issue), and more recently Gaddafi in Libya and the Syrian issue, under the allegation of crimes against humanity, they (all) rely on individual accountability. The progressive development of systems of individual accountability for certain crimes under international law, through the ad hoc Tribunals for the former Yugoslavia and Rwanda and, prospectively, the International Criminal Court; the further development

of substantive international criminal law across a range of topics, including, most recently, the protection of United Nations peacekeeping forces and action against terrorist bombings; Continued development of legal constraints against the use of chemical, biological and bacteriological weapons, and against the further proliferation of nuclear weapons; Convention on the Safety of United Nations and Associated Personnel, General Assembly resolution 49/59 of 9 December 1994; International Convention for the Suppression of Terrorist Bombings, General Assembly resolution 52/164 of 15 December 1997.

On the other hand, this period has been characterized by a degree of inconsistency. No international action was taken, for example, in response to the Cambodian genocide, or to the aggression which initiated the 1980 1988 Iraq Iran War, even though the peremptory norm of prohibition of resort to the use of force had been violated. Perhaps more relevantly, the measures taken by the Security Council since 1990 have not involved “criminalizing” States, even in circumstances of gross violation of basic norms. For example, the two ad hoc tribunals established by the Security Council have jurisdiction only over individual persons in respect of defined crimes against international law, and not over the States which were, *prima facie*, implicated in those crimes.

Iraq has to all intents and purposes been treated as a “criminal State” in the period since its invasion of Kuwait, but the Security Council resolutions relating to Iraq have not used the terminology of article 19.

Chapter VII resolutions passed since 1990 have consistently used the formula “threat to or breach of the peace”, and not “act of aggression”.

The notion of “threat to or breach of the peace” has been gradually extended to cover situations of essentially humanitarian (as distinct from inter State) concern. But those resolutions have not relied on the concept of an “international crime” in the sense of article 19, despite numerous references to the prosecution of crimes under international and national law.

Relations between the international criminal responsibility of States and certain cognate concepts

At the same time, certain basic concepts of international law laid down in the period 1945 1970 have been consolidated, included among which is the individual criminal responsibility. The Nuremberg principles, involving the accountability of individuals, whatever their official position, for crimes against international law, have been reinforced by the development of additional conventional standards and, perhaps more importantly, by new institutions. The two ad hoc tribunals were established under Chapter VII of the Charter of the United Nations. Their creation and operation have added impetus to the movement for a permanent international criminal court. The position was summarized by the Secretary General in 1996 in the following words:

“The actions of the Security Council establishing international tribunals on war crimes committed in the former Yugoslavia and in Rwanda, are important steps towards the effective rule of law in international affairs. The next step must be the further expansion of international jurisdiction.

This momentum must not be lost. The establishment of an international criminal court would be a monumental advance, affording, at last, genuine international

jurisdictional protection to some of the world's major legal achievements. The benefits would be manifold, enforcing fundamental human rights and, through the prospect of enforcing individual criminal responsibility for grave international crimes, deterring their commission.”

In addition, trials and inquiries have been instituted in a number of States in the past decade in respect of crimes under international law.

Peremptory norms of international law (jus cogens)

The Vienna Convention on the Law of Treaties (which came into force in 1980) has been widely accepted as an influential Statement of the law of treaties, including the grounds for the validity and termination of treaties.

Although one or two States have continued to resist the notion of jus cogens as expressed in articles 53 and 64 of the Convention, predictions that the notion would be a destabilizing factor have not been borne out. There has been no case of invocation of article 66 (a) of the Convention, and the International Court has not had to confront the notion of jus cogens directly. It has however taken note of the concept. Indeed, in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the Court stated that “because a great many rules of international humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and ‘elementary considerations of humanity’ ... they constitute intransgressible principles of international customary law”.

Obligations erga omnes and jurisdiction of the International Court of Justice

Most significant for present purposes is the notion of obligations erga omnes, introduced and endorsed by the Court in the Barcelona Traction Case (Second Phase), and heavily relied on by the Commission in its commentary to article 19.

The Court there referred to “an essential distinction between the obligations of a State towards the international community as a whole, and those arising vis à vis another State in the field of diplomatic protection”. Court instanced “the outlawing of acts of aggression, and of genocide” as well as “the basic rights of the human person, including protection from slavery and racial discrimination” as examples of obligations erga omnes. It is true that, in a passage less often cited, it went on to say that “on the universal level, the instruments which embody human rights do not confer on States the capacity to protect the infringements of such rights irrespective of their nationality”. This may imply that the scope of obligations erga omnes is not co extensive with the whole field of human rights, or it may simply be an observation about the actual language of the general human rights treaties.

On a number of subsequent occasions the Court has taken the opportunity to affirm the notion of obligations erga omnes, although it has been cautious in applying it. Thus in the Case concerning East Timor, the Court said:

The principle of self determination ... is one of the essential and irreproachable principles of contemporary international law.

However, the Court considers that the erga omnes character of a norm and the rule of consent to jurisdiction are two different things.

Whatever the nature of the obligations invoked, the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not a party to the case. Where

this is so, the Court cannot act, even if the right in question is a right erga omnes.” In the Genocide Convention case (Preliminary Objections) the Court, after referring to a passage from its judgment in Reservations to the Genocide Convention, said that “the rights and obligations enshrined in the Convention are rights and obligations erga omnes”.

This finding contributed to its conclusion that its temporal jurisdiction over the claim was not limited to the time after which the parties became bound inter se by the Convention.

In other words, mere erga omnes does not entitle the injured State to bind another State, i.e. the State in breach of obligations erga omnes, to submit to jurisdiction of the ICJ. This is confirmed in the South West African case in 1963 (Ethiopia and Liberia v South Africa).

Moreover, it cannot serve as a basis for universal jurisdiction over individual accountability let alone over claims against another State. However, it can be interpreted to authorize the prosecution and punishment by the State having territorial competence or the respective State of the culprit vis-à-vis the international community.

Conclusions

As for the responsibility of States, three issues have been put forth:

1- An international criminal regime (crime v delict)

2- Civil liability of States

3- Sui generis, which is neither civil nor criminal, but of special proceedings.

It is not necessary to analyse these decisions, or to discuss such questions as the relation between “obligations” and “rights” of an erga omnes character. What can be said is that the developments outlined above confirm the view that within the field of general international law there is some hierarchy of norms, and that the importance of at least a few basic substantive norms is recognized as involving a difference not merely of degree but of kind. Such a difference would be expected to have its consequences in the field of State responsibility. On the other hand it does not follow from this conclusion that the difference in the character of certain norms would produce two distinct regimes of responsibility, still less that these should be expressed in terms of a distinction between “international crimes” and “international delicts”.

It is relevant to note here the preliminary, even exploratory, way in which the Commission in 1976 adopted that distinction and that terminology.

As to the distinction between the categories of more and less serious wrongful acts, in the first place, the Commission was rigorous in “resist[ing] the temptation to give any indication ... as to what it thinks should be the regime of responsibility applicable to the most serious internationally wrongful acts”. These issues were left completely open. Secondly, it seemed to deny that all “international crimes” or all “international delicts” would themselves be subject to a uniform regime. In short, not merely was there not a single regime for all internationally wrongful acts; it was doubtful whether there were two such regimes:

“International wrongs assume a multitude of forms and the consequences they should entail in terms of international responsibility are certainly not reducible to one or two uniform provisions.” No doubt there is always the possibility that a particular rule

will prescribe its own special consequences in the event of breach, or will be subject to its own special regime: this is true, in particular, of the paradigm international crime, the crime of aggression.

On the other hand, if the category of international crimes were to fragment in this way (bearing in mind that there are relatively few such crimes), one might ask: (a) what was left of the category itself, (b) how it could be resolved in advance that the category existed, without reference to the consequences attaching to particular crimes, and (c) how that investigation could be concluded without in effect codifying the relevant primary rules.

The Commission denied that the way to proceed in developing the regime of responsibility for crimes was to establish “a single basic regime of international responsibility ... applicable to all internationally wrongful acts ... and ... to add extra consequences to it for wrongful acts constituting international crimes ...”

This “least common denominator” approach to international crimes – it might be called the “delicts plus” approach – was firmly rejected. But it was essentially the approach later adopted by the Commission in determining the consequences of international crimes.

As to the terminology of “crimes” and “delicts”, the Commission was strongly influenced by the use of the term “crime” in relation to the crime of aggression. It is not clear what alternatives were considered. The Commentary says only that:

“in adopting the designation ‘international crime’, the Commission intends only to refer to ‘crimes’ of the State, to acts attributable to the State as such.

Once again it wishes to sound a warning against any confusion between the expression ‘international crime’ as used in this article and similar expressions, such as ‘crime under international law’, ‘war crime’, ‘crime against peace’, ‘crime against humanity’, etc., which are used in a number of conventions and international instruments to designate certain heinous individual crimes ...”

It should be noted that since 1976 the term “international crime” has gained even wider currency as a reference to crimes committed by individuals which are of international concern, including, but not limited to, crimes against international law. A search of the United Nations documentary database (1994-1998) reveals 174 references to the term “international crime”, usually in phrases such as terrorism, international crime and illicit arms transfers, as well as illicit drug production, consumption and trafficking, which jeopardize the friendly relations among States” Thus the risk of terminological confusion has been compounded.

Unfortunately, nowhere all through the above discussions can we find any mention of the stance adopted by the Islamic international law; it therefore requires the Muslim lawyers and jurists to provide answer to the questions put forth and involve in interactions accordingly.

Summarily, it can be said that the idea of erga omnes has been set in the Holy Quran where it says:

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا....

“For this reason did We prescribe to the children of Israel that whoever slays a soul, unless it be for manslaughter or for mischief in the land, it is as though he slew all men; and whoever keeps it alive, it is as though he kept alive all men...”

Humanity, therefore, is a unified entity in which to kill even a single human being or to commit evil and mischief on the part of one is as though all humanity is killed or as though mischief is made by all humanity. Now, does this view support a severer individual criminal responsibility, so that for instance, once the avengers of blood forgive the killer, still the avenge for blood should be taken?

What if the same crime is committed by the State against the civilian population? “Manslaughter” or “keeping alive” may also be interpreted as to call to falsehood or to truth. Another question is whether the word manslaughter also can convey the meaning of burning and drowning. This was put forth by Imam Sadiq (peace be upon him) when he was asked of the referent of the above verse.

Crimes of State and Report of the International Law Commission

Finally, in this section, we will deal in short with a number of disagreements between the ILC members with regard to principles of the criminal responsibility of States. Thiam notes that there is the need for a specific (*sui generis*) regime for genocide and aggression.

Rao quotes Bowet that the Security Council is not a legal organ to be able to impose punishments. Rather it is an organ dealing with the maintenance of peace and security, (even though it acts as a legal authority when it ratifies sanctions).

Article 19 was good in its act of introducing certain violations such as colonial domination, apartheid, etc, which, of course, cannot be called crime. These are notions which have been declared unacceptable; while the Statute to the International Criminal Court calls them international crimes against international peace and security, as Rosenstock, puts it the Security Council is not a legal organ. On the other hand, after many years speaking of the crimes of apartheid and colonial domination, we cannot call them wrongful acts or minor offences at this level.

Economides- Are the elements of criminal law applicable to State responsibility as some universally accepted concepts? No

The Russian delegate: The term crime was used in the Resolution on Aggression, and aggression can be committed only by States not by individuals. Therefore, there is the need for a specific (*sui generis*) regime for such very gross wrongful acts.

Thiam disagrees and says that aggression is an act committed by individuals but through their governmental mechanisms and tools; an example is the conduct of leaders of States and Nuremberg treated them as such.

Simma notes that some solution must be sought; application of two different regimes might be inappropriate; yet the conduct of States cannot be treated equally as minor offences. Therefore, the word wrongful can be a better option for mistake.

The Philippines is of the view that State is an abstract entity; it is the individual who act improperly and tarnish the reputation of the State. In my country, for long a military regime had ruled and no one could resist. It was people who were receiving the injury and there was the need for a reaction.

Pellet (France) believes that sanction is a different regime of punishment in domestic systems.

Rosenstock asks how non-democratic governments can be criminalized and punished under this system.

What is the use of a qualitative distinction between crime and delict? It is a distinction which is neither clear nor right. The correct term for the conduct against

the government of Yugoslavia is revolution which I don't really go for.

Pellet: International community, by itself, is a relative notion, not an absolute one; it therefore needs to be clearly defined taking into consideration the significance of jus cogens and erga omnes obligations.

Rao: International community exists but with different degrees of integration.

Thiam: if a wrongful act occurs, it is conducted by the individual or the organ, not by State. However, it is the State which is responsible for its consequences. Yet, the question is properly posed as whether violation of peace by such acts as aggression, is of similar consequences with violation of a certain rule of commerce law?

Bruno Simma (Germany) was on the effort to propose an intermediary solution and a compromise between the two opinions.

Thiam: The term crime is not correct; one may use the grave wrongful acts of individuals who may even be the leader of a State, as the leader is also responsible and can commit wrongful acts with a variety of consequences.

Ferraro Bravo: The former Yugoslavia was not convicted by the ICC, even though Bosnia Herzegovina expressed its claim against the former Yugoslavia to send the case to ICC.

Rosenstock: The views expressed here cannot establish opinio juris.

Thiam pointed out that the Security Council was a political institution, not a legal.

Mr Pellet said that personally, he had no desire whatsoever to start a revolution, that was why he believed in the resolution on crimes against humanity and speaking of criminal responsibility of States.

Mr Rao noted that State is not a physical entity to be able to receive punishment. It is individuals who commit a crime. If, however, the wrong or the offence relates to a policy, it is not only the issue of individual accountability but also the State's policy. Even if the individual implementing the policy had been personally against it, he should be held responsible because he had implemented the policy of the State.

Appendix

Recommendations and the General Principles of State Responsibility

Article 1: Every internationally wrongful act of a State entails the international responsibility of that State.

Article 2: Any State shall be considered responsible for committing an internationally wrongful act.

Article 3: There is an internationally wrongful act of a State when conduct consisting of an action or omission:

(a) Is attributable to the State under international law; and

(b) Constitutes a breach of an international obligation of the State.

Article 4: The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

Article 5: The conduct of any State organ shall be considered an act of that State under international law, provided the organ is acting in that capacity in the particular instance.

Article 6: The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial

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or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.

Article 7:

7-1- The conduct of an organ or entity which is an organ of the State shall be considered an act of the State under international law, provided the organ or entity is acting in that capacity in the particular instance.

7-2- The conduct of an organ or entity which is not an organ of the State but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the organ or entity is acting in that capacity in the particular instance.

Article 8: The conduct of a person or group of persons shall be considered an act of a State under international law if

(a) The person or group of persons is acting on behalf of a State;

(b) The person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

Article 9: The conduct of an organ placed at the disposal of a State or an international organization by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed.

Article 10: Conduct of an organ with governmental identify is considered as conduct of State.

Article 11: The conduct of a person or group of persons shall not be considered an act of a State under international law if they are not acting on behalf of the State.

Article 12: Conduct of a governmental organ so exercised in the territory of another State or from another territory under its administration shall not be considered an act of the latter State under international law.

Article 13: Conduct of an international organization shall not be considered an act of the State under international law, merely because the act is conducted within the territory of a certain State or in its jurisdiction.

Article 14: The conduct of an insurrectional movement which succeeds in settling in the territory of a pre-existing State or in a territory under its administration shall not be considered an act of the State.

Article 15: The conduct of an insurrectional movement, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.

Article 16: There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation.

Article 17: Conduct of State which constitutes the breach of an international obligation shall be considered an internationally wrongful act, regardless of its origin or character (arising from customary or conventional law).

Article 18: The conduct of a State which is not in conformity with an international obligation shall be considered a breach of the obligation provided that the obligation is binding on the State.

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If the conduct is a series of actions or omissions, with respect to separate issues, the conduct constitutes breach of an international obligation, with respect to acts or omissions over the entire period during which the event continues and remains not in conformity with that obligation.

Article 19:

19-1- There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.

19-2- An international crime is an internationally wrongful act which results from the breach by a State of an obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole.

19-3- On the basis of the rules of international law in force, an international crime may result, inter alia, from:

(a) Aggression;

(b) A serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;

(c) Slavery, apartheid (a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid);

(d) Safeguarding and preservation of the human environment (massive pollution of the atmosphere) or of the seas (a serious breach of an international obligation of essential importance for safeguarding and preservation of the human environment)

19-4- Wrongful acts which are not considered, under paragraph 2, as international crime, shall constitute international delicts.

Article 20- There is a breach of an international obligation by a State when the conduct of that State is not in conformity with an act undertaken by the State necessary in order to fulfill the obligation.

Article 21:

21-1- There is a breach of an obligation when by virtue of the obligation a specific result must be yielded (by choice and decision of the State) and when the result is not produced.

21-2- If a State fails to establish a condition necessary to meet the desired result of an obligation, and yet the obligation permits the replacement of the result through the subsequent conduct of the State, there is a breach of an international obligation merely when the State fails to yield, by its subsequent conduct, the desired result for that obligation.

Article 22: Exhaustion of local remedies

If through the conduct of a State a situation is established which is not in conformity with the desired result of the obligation in terms of the treatment of the aliens (natural or legal persons), yet the obligation permits an equal result through subsequent conduct of the State, there is a breach of the obligation merely where the beneficiaries have previously exhausted all the local remedies available to them in order to achieve the interest in the obligation as long as the equivalent conduct is no more possible.

**ISLAM: HARBINGER OF PEACE
AND FRIENDSHIP
INTERPRETATIONS FROM
ISLAM'S VIEWS ON PEACE
WITH A REFERENCE TO
INTERNATIONAL DOCUMENTS**



By: Dr. Seyed Fazlolah Mousavi

Preface

In view of the daily spread of Islam in the world and the great need of nations and people to be introduced to the concepts and laws of Islam, particularly at scientific and academic levels and also the negative propaganda against Islam which claims “It’s a religion of the past, and not the need for today’s society”, and “Islam is a violent religion”, it is necessary to conduct a deep study on various Islamic subjects with an attention to national and international laws.

As a religion, Islam draws mankind’s path of life, and the observation of its laws, is the provider of blissful life on earth and hereafter. Islam is an all inclusive complete and comprehensive plan for the life of humans throughout all eras, which has been bestowed by the Great Creator God to mankind.

This plan has been designed in vast moral, legal, political, social, economic, individual, family, national and international and international, earth and hereafter levels, and by use of a number of Islamic resources that include the Koran, and the Prophet and Imams’ methods and individual legal reason, is a provider for all matters and issues. One of the important subjects in people’s lives is the subject of “peace”, which has existed in the past and continues today and tomorrow too, a matter which inherently is the wish of all humans. Peace and security is the need of mankind’s living, and is deemed one of its fundamental rights.

It is natural that any school of thought in view of its theoretic view and basis defines the thought the way it views it. On the basis of the same pattern Islam also has a particular view to peace, and determines and defines it, and presents specific concepts of it.

This article attempts to present some interpretations of peace from Islam’s viewpoint.

Introduction

The subject of war and peace has always been together since the beginning of time. Just as peace has individual and collective aspects, war and conflict also has the same aspects, and individually and collectively, from individuals to countries, and international levels have taken place. There was peace between Cain and Abel, and a conflict took place and Cain killed his brother Abel.

Human nature is such that if its not influenced by God and his Prophets’ teachings, even though inherently he might be pure and for the good pursue peace and justice, but he can be drawn to the wrong path, and lead to oppression, autocracy, war and bloodshed. Although based on justice nature, people generally have endeavoured towards peace, which usually throughout history has not fully been realized, several schools including religious and nonreligious, have presented views on war and peace, with attention to various aspects. This article attempts to present interpretations from Islam’s views, and with attention to verses and stories and sources, on the subject of peace. Also in view of the fact that the concept of peace within international documents are mainly referred to today, is important, a small part of the article will be dedicated to peace from international law’s perspective.

One: Peace in word, religious jurisprudence, and Iranian domestic laws

Peace and salam in words

The two words peace and salam both mean reconciliation and peace, which is set

against war and dispute. The word “salam” from another aspect is like a prayer that one person may say to another, which means “be healthy and uninjured”. It is also used in greeting, kindness, a special respect.¹

As the renowned Iranian poet Ferdowsi says:

Only with greetings, messages, and hellos

Two countries can be in peace together

Furthermore, salam means peace and reconciliation.²

The religious jurisprudence and law definition of peace in Iran

The religious jurisprudence definition, peace is a type of contract which means one person reconciles with another who has given him some of his possession and profit, or relinquish what he is owed and his right. Sometimes, it also means for an individual to reconcile differences without getting anything, and give some of his passion and profit to the other or relinquish what he is owed.³

Peace in Iranian domestic laws

The Iranian Civil Code articles 752 to 770 are in Section 17 on Settlement (Compromise). The following is a brief narration of the contents of these articles.

A settlement of account is possible either in the case of the adjustment of an existing dispute, or for avoidance of a possible dispute...(article 752). In order that the settlement may be in proper from the two parties must have capacity for the transaction and must have an interest in the subject of the settlement (article 753). Every settlement is effective, except that which relates to an unlawful matter (article 754). A settlement is also possible even when the claim is denied; therefore, a request for settlement is not to be regarded as a confession of indebtedness (article 755). Civil claims which have arisen as the result of a crime may also become the subject of a settlement (article 756). A settlement without a recompense (consideration) is also lawful (757). A settlement is an irrevocable contract, even though it take the place of revocable contracts: (article 760). If a mistake has occurred in the circumstances during the negotiation of the terms of settlement, or in connection with the object of settlement, the settlement is void (article 762). A settlement based on a void transaction is void; but a settlement in a claim arising out of the cancellation of a transaction is valid (article 765). If the two parties bring to an end, in a general settlement the whole of their mutual claims whether existing or potential, in the form of a settlement, all the claims are accounted as being include in that settlement, even if the cause of claim was unknown when the settlement was made, unless the settlement did not include that claim, in accordance with evidence (article 766).⁴

Two: The concept of peace in Islam

One of the meanings of Islam is to “bring peace about”, which means whoever turns to Islam he or she has entered peace. In the Arabic language the word “salam” is a

1-Dehkhoda, Aliakbar, Aliakbar, Dictionary, Vol. 8, Tehran University Print and Publication Institute p12088

2-Ibid p12088

3-Ayatollah Seyed Ali Sistani, Resaleh Amalieh, Ghom, Office of Ayatollah Sistani, 1426 (Lunar Hejrat), 24 Edition, p423, Mas'ala 2119

4-The Civil Code of Iran, translated by: Fakhreddin Badarian, Barrister at Law

derivation of the word peace, which Arabs today use the word for the meaning of peace. In every country and language when people meet up they use a word to greet each other which usually doesn't mean anything. In the past when people met they used words such as hello, hi, bon jours, etc. and they still use these terms. But when Muslims meet Muslims or non-Muslims they use the words Salam Aleykom, which means peace be upon you, and it means you are safe from me and my tongue. One of God's names in the Koran is Peace. Verse 23 of the Al-Hashr Surah gives some of the names and titles of God "he is allah, besides whom there is no god; the king, the holy, the giver of peace, the granter of security, guardian over all, the mighty, the supreme, the possessor of every greatness glory be to allah from what they set up (with him)". Some also interpret it as healthy and void of any defects, diseases or faults. In Al-Mizan book, Alameh Tabatabaee defines it as harmless: Salam is one whose behaviour with attention to health and is away from loss and evil.⁵

Of course it seems that these definitions can be said in a way that God treats His created beings with peace, and people who turn to Him and Islam, enter inner and outer peace, reconciliation and security, And God invites humans for peace and health.⁶ Therefore some of God's names are to do with peace and security.

From Islam's point of view peace has various dimensions. The peace inside the person, peace and reconciliation between people, coming out of the door of peace and reconciliation with the people, implementation of peace in various family, society and international relations domains, and finally the establishment of peace in the overall concept, which later each one will be discussed.

Three: Importance of peace

The establishment of peace (in different dimensions) in Islam is of particular importance. If peace is established within a person, families, among the people of a society or overall at global level, it will be the foundation of the growth and development of people, which is the main purpose of God and His Creation of Mankind.

The term peace, as mentioned earlier means to settle, which is conciliation and the elimination of hatred from people⁷ which in the Koran is stated with "well meaning" description Al Solh Kheir⁸. Although the term is used for reconciliation between man and woman in the home environment, but undoubtedly the establishment of such a peace in all instances is commendable and pleasant.

The importance of peace and its establishment can be reviewed from various perspectives:

1 – Which is the best peace?

Ali the first Shia Imam says: "From the best good intents, it is recommendation to peace and reconciliation. Of differences the best is good intent.

2 – Its superiority towards some important actions

5-Omid Zanjani, Abasali, Idib, p354

6-Verse 25 Yunus Surah

7-Ragheb Isfahani, Maajam Mofradat Alfaz Alghoran, Almaktabe Almatavieh, November 1972, Peace Article, p292

8-Verse 128 An-Nisa Surah: "and if a woman fears ill usage or desertion on the part of her husband, there is no blame on them, if they effect a reconciliation between them, and reconciliation is better, and avarice has been made to be present in the (people's) minds; and if you do good (to others) and guard (against evil), then surely allah is aware of what you do"

The establishment of peace is so important and precious that in some “hadiths”⁹, its level is deemed higher than “namaz and roozeh”¹⁰.

The Prophet of Islam said: “Do you want me to introduce to something which is more virtuous than namaz, roozeh and sadagheh¹¹? Know that that thing is making peace among people.” We know that it is said about namaz that “namaz is the pillar of religion” and or “with it has been deemed the vessel for the ascension, promotion and attainment of the believers and humans.” But the establishment of peace among people has a greater virtue and value than namaz, roozeh and sadagheh.

3 – Peace is pleasing to God

In the “hadiths” one of the subjects that are talked about which is pleasing to God is: “God likes two things, expression of greetings and peace towards people and giving people food¹².”

As mentioned earlier, when a person says salam to another, it means he has expressed peace and friendship towards the other, and states that “you are safe from my being, and no harm shall come to you from me.” On this basis some of the subjects that God likes, as well as giving people food, is the expression of peace and friendship towards them.

4 – Paying for the establishment of peace

The establishment of peace is so important that it has been stressed that you should pay for it.

On principle, some sacrifices must be made when doing good deeds. The establishment of peace is one of the good deeds that one must pay for. Imam Sadegh (the 6th Shia Imam) told Mafzal: “When you see a dispute and argument between two of our followers, compensate from my property, meaning by making the disputed amount, set peace between them.”¹³

5 – Effort and perseverance in establishment of peace

The establishment of peace is one of the deeds that not only measures should be taken for, but for its fruition, effort, perseverance and resistance must be made to. This is why Imam Ali (first Shia Imam) says: “whatever that causes peace and betterment of the believers and devotees have perseverance towards.”¹⁴

6 – Reconciliation between people is charity

Charity has various dimensions and it’s not just giving possession. With regards to the subject of peace for example it has been said that: “until the establishment of peace among people who are in dispute and have animosity, and bringing them together when they are distanced from each other, is a charity that God likes.”¹⁵ Therefore the establishment of peace is a charity.

7 – The establishment of peace is the happiness of mankind

If peace, reconciliation and kindness are to be established, the basis of the true happiness of mankind, individually and collectively, worldly and hereafter, will be provided. Peace in ourselves means that mankind must defeat his evil temptations,

9- Saying: the tradition of the Prophet and the Imams

10- Prayer and fasting

11-Charity

12- Mohammadi Rey Shahri, Mohammad, Mizan-ol-Hakameh, Vol. 6, Tehran, Darolhadis, 1998, pp2559-2561.

13- Ibid, Vol. 7, p3087

14-Rasooli Mahalati, Seyed Hashem, Ibid, p650, Mohammadi Rey Shahri, Mohammad, Ibid, Vo. 7, p3087

15- Mohammad Rey Shahri, Mohammad Ibid

must not pursue disobedience and selfishness, and always remember and obey God. The outcome of such a peace is tranquility and trust. Usually these types of people are favoured by others and are the establishers of peace on earth. It must be said that initially when peace is established within humans, it will result to other peaces too. Imam Ali says: "From the maturity and happiness of mankind, efforts must be made for the betterment of the conditions of the masses."¹⁶

8 – The spread of peace

Peace is so important and precious that it has been stressed a lot. As mentioned earlier "salam" in Islam means the spread and expression of peace and this is why Islam stresses a lot on saying "salam". Regarding this, the Prophet of Islam says: "Should I not inform you of the best mannered people in the world and hereafter?" They replied: "Yes, O Prophet of God." Then he said: "Spread salam (and peace) around the world."¹⁷ What is interesting that he didn't just say spread such a thing among the Muslim community only, but he said all over the world. In another story he is quoted as saying, since one of the names of God is "salam" meaning peace, therefore because of this you must spread it amongst yourselves.¹⁸

Four: Starter in peace as a higher value

One of the point that not only is of particular importance, but is also seen as a higher value, the starter in peace. If a person or group be forerunners in the start of peace, from Islam's viewpoint from various aspects are commended. Some of these commendations are as follows:

1 – The starter of peace, is the closest person to God and the Prophet

The Prophet of Islam has said: "the closest people to God and the Prophet are those that are starters of "salam" (peace and friendship)."¹⁹

2 – The starters of peace are the most obedient people to God

The person favoured most by God, is the most obedient and humble. One who obeys God and is humble to His commands is of great value.

With this explanation, one that is the starter of salam and expresser of peace, has such a high status that they have been called the most obedient people to God. In this regard, the Prophet of Islam has said: "The most obedient ones of you to God, are those that is to say salam and expressing peace to his friend."²⁰

3 – The position and value of the starter of peace is seventy times than the other

In general individuals that like peace and friendship, are precious and praiseworthy. But if in this regard an individual is the starter expresser of peace and friendship, he is seventy times more valuable than the other. Perhaps it is because if he wasn't the starter, then there would be no peace, friendship and kindness.

In this regard Imam Ali has said: "Salam has seventy rewards, sixty-nine of which are for the starter of salam and one for the respondent."²¹

16-In this regard the political and divine will of Imam Khomeini must be referred to: "With a calm and reassured heart, and a happy spirit, and a hopeful conscience, with help of God, I bid my brothers and sisters farewell, and make my journey to my eternal place."

17-Mohammadi Rey Shahri, Mohammad, Ibid, V. 6, p2561

18-Ibid

19-Mohammadi Rey Shahri, Mohammad, Ibid, Vol. 6, p256

20- Ibid, p2560

21-Ibid, p2560

4 – Expression of salam and peace before the start of talks and negotiations

If a person wishes to speak to another person or a group, or even if he is in dispute with a person or persons, and wishes to hold talks with them, it is better to express salam and peace first.

It is natural that when a conversation or dialogue begins with a message of peace, the conversation process will be without animosity, spite and enmity, and will prepare the basis for peace.

This is why Imam Sadeqh says: “First express salam, then begin the conversation.”²²

5 – Expression of salam and peace to the arriver (stranger)

Islam recommends Muslim and the faithful to express salam and peace to every arriver, even though usually it's the person who enters is the one that must say salam first. Therefore since the arriver may be a stranger and be nervous, it is recommended to say salam to him first, to calm him down.²³

Five: expression of peace to which people?

Has the expression of salam and peace been said to be mandatory? Must all people and groups be treated with them? Should peace-seeking individuals and groups and oppressive, violence seeking, deviant individuals and groups should all be treated equally? Naturally the answer is negative. As the poet says: compassion for the sharp-toothed leopard, is cruelty to the sheep. Thus a categorization must be considered in this regard. Individuals and groups to whom peace must be expressed and those that must not.

a) Individuals and groups that peace must be expressed to them

Overall it seems that the first group is general and includes the majority of human beings. In other words the principle is that one must be peace-seeker and peaceful towards all human beings.

1 – Expression of salam and peace to God's prophets

In the Koran there are numerous verses that mention the expression of greetings, salam and peace upon the prophets. For example Verses 79, 109, 120, 130 and 181 of Az-Saafat Surah state: peace upon Noah among nations; peace upon Abraham; peace upon Moses and Aaron; peace upon Ilyas; and peace be to the messengers. This is why prophets are the practical followers of God. Their message and actions are the establishment of peace, friendship and security among peoples.

2 – Expression of salam and peace upon the righteous servants of God

In his “namaz” which is the pillar of religion and is one of Islamic poems, which while saying salam to the Prophet of God, also says salam to righteous servants, and they do this task from their God and Prophet from whom has come to them, have learned and express them. Therefore expression of peace and friendship must be made towards the servants of God who are righteous, and be their followers, because it is them who endeavour towards the establishment of peace.

3 – Expression of salam and peace upon the guided

The guided are those that are the followers of God and the Prophet and follow a path, which God and the Prophet have told them. Through obedience to God's commands

²²- Mohammadi Rey Shahri, Mohammad, *Ibid*, V6, p2558.

²³-Every arriver is apprehensive therefore you begin the salam. Rasooli, Seyed Hashem, *Ibid*, Vol. 1, p539. Another translation of this hadith is: Every arriver is confused, therefore say salam to him. Mohammadi Rey Shahri, Mohammad, Vol. 6, p2561

they have placed on a path that leads to guidance, fullness and blessedness; the path that God wants for all humans, a path that registers peace and tranquility within humans. A path that prepares peace and tranquility in human societies in the relationship of humans, and ultimately a path that will result in the peace and tranquility in judgment day and hereafter.

4 – Expression of salam and peace towards the patient

From Islam's point of view a patient person has very high status. So high that God says I am with the patient.²⁴ The status of the patient is so important that God's angels address them: "peace be on you because you were constant, how excellent, is then, the issue of the abode"²⁵. And in another part of the Koran it says: "and Allah loves the patient."²⁶ Taking steps towards the path of righteousness which is the faith in God and reaching and taking people to fullness and guidance and establishment of peace inside and outside humans, is very hard and need to fight oppressors and opponents of peace, in the path of which patience and resistance are necessary.

5 – Expression of peace and friendship towards the converted, the avoiders, good doers, protectors of Divine Laws and the repentant

Of the people whose place is in heaven and the Koran mentions them are the converted, the avoiders, good doers, protectors of Divine Laws and the repentant. Below are some verse that specifically mentions these individuals and to whom peace and friendship must be expressed:

1 – Verses 30-32 An-Nahl

2 – Verses 60-62 Maryam

3 – Verse 73 Al-Zumar

4 – Verse 31-34 Qaf

These kind of people have a place in heaven, and the angels of God express peace and friendship to them. Therefore we humans in following them must be like them so that general peace is established within society.

6 – Expression of salam and peace towards the general public

Overall peace and friendship must be expressed to the general public. This expression of peace has levels and degrees where people must observe in their family, social, national and international relations. With regards to expression of peace the main condition for pleasing God and from a humble and meek position, and not a position of arrogance and profit seeking. This is why in Islam the expression of salam and peace rules and principles in Hadiths have been determined and set. For example the expression of salam and peace to children, the weak, a person standing to a person sitting, one entering a house, young to grown up, one person to two or more people etc. therefore this expression and the establishment of peace must not only not be based on force and treat (which is cruel peace), but must be done for the satisfaction of God and with honour, magnanimity and courtesy and observation of all human principles.

7 – Expression of salam and peace towards the unintelligent

Another group of people that salam and peace must be expressed to are the unintelligent and the fools. Perhaps it is that the unintelligent person has not said or done something

²⁴- surely Allah is with the patient (Verses 149 and 153, Al-Baqara; verse 46 Al-Anfal)

²⁵- Verse 24, Al-Rad

²⁶- Verse 146, El-A-Imran

intentionally, and he does not have violent behaviour, unless due to unintelligence and foolishness. Naturally a wise person must not react quickly towards such a fool, and behave just the way the fool has, or else nothing but a fight will occur.

b) Individuals and groups to whom salam and peace must not be expressed to
On principle Islam is based on the establishment of peace and security within human beings and between people and societies. Therefore in general, individuals groups who move in this direction behave with peace and friendship. But certainly opposite these there are other individuals and groups such as lecher who openly commit lechery, the deviant from the path of righteousness, oppressors and tyrants and heathens, who behave differently. Because this group of people are the violators of humanity's rights and cause the depravation and loss of human values. These people overall are not peace seekers. If they talk about peace, tranquility and security their intention is to make people whose rights they have violated to give into submission.

In Islam the principle for the expression of peace towards all, and in instances where there's not peace expression or even a war, it is exceptional and it's in special situations.

1 – Disbelievers (with its specific definition)

The Koran says: “Muslims must have friendship and kindness among them, but act hard against disbelievers.²⁷ Here it must be said just as there are levels and degrees for faithful individuals, there are also levels and degrees for the disbelievers too.

One type of unbeliever is one that he does not believe in God and acts and behaves according to this, and in fact he does not cause any hurt or suffering, and this unbelieving can be called individual unbelieving. But there are instances that a group of people together have chosen the path of sham and cruelty, and to get material and earthly benefits for themselves they oppress the people and violate their rights in different ways. In the world, especially in today's world, there are countries and powers that treat other countries in such ways and want those countries to be subordinates to them, so that they can easily exploit their interests and resources.

Therefore these types of disbelievers are totally different to the first group of disbelievers, God's laws treat each differently. It is clear that the determination and confrontation that Islam says should be done against the disbelievers, is pertinent to the latter group. The Koran names this group with various characteristics one of the important ones of which is: “(as for) those who disbelieve and turn away from allah's way, he shall render their works ineffective.”²⁸

Therefore this group of oppressors and enemies of mankind must be approached in such way that is to remove them from God and human being's path. In fact the establishment of peace and security in these conditions, is warring against them and destroying them; unless there is another method to prevent their activities, insurrections, destructions and oppressions.

2 – Particular characteristics of disbelievers

Disbelievers in general are those that deny God, the Prophet and Judgment Day, and do not accept. Their degree and level of unbelieving and their practice in this world is based on such a belief. Some of their characteristics are as follows:

1 – The disbelievers have reached a mental stage and cruel heartedness that they no

²⁷⁻ Verse 29 Al-Fath

²⁸⁻ Verse 1 Mohammad

longer give up to the righteous.

2 – For disbelievers only living in the materialistic world is important and beautiful.29

3 – Disbelievers are those that mock the believers.30

4 – The disbelievers fight in the way of “shaitan”31

5 – Disbelievers are those who are cruel and conduct cruelty.32

6 – Disbelievers are those that block the path of God and prevent people from being guided.

7 – With all their facilities, particularly their possessions, disbelievers block the path of God33

8 – Disbelievers are bad and corrupt individuals.34

9 – Disbelievers are liars.35

10 – Disbelievers are those that become disbelievers to the words of God, and slay the prophets unjustly.36

11 – Disbelievers are those that that draw the righteous and the path of righteousness to enchantment.37

12 – Disbelievers are those that pay attention to material and short lasting benefits of life.38

13 – Disbelievers are those that prevent the believers from paying pilgrimage to the Al-Haram Mosque which is the place of mankind’s peace and security.39

Six: Peace is principle and war is exception

As noted earlier in this article, in its deep and extensive concept in Islam, peace has been one of the objectives of God and the prophets. And its significant importance in view of various aspects and effects and extensive benefits for people, societies and ultimately the world indicates that peace is a principle. The supreme God, sent His prophets and ultimately Islam as the complete and final religion of the world, are all in pursuit of establishing peace on earth. The development of all people requires a peaceful environment but unfortunately throughout history some individuals have committed crimes against people. These individuals who are enemies of God and mankind, and instead of establishing peace and security within society, are tyrannical and create corruption, war and bloodshed, must be treated in another way.

In any event, even against this group of people, at first Islam does not wage war against, start a war in other words. God’s prophets and their followers at first invite all humans including these types of individuals to obedience to God and his commandments, and forbid them from committing cruelty, injustice and abuse of people’s rights. Even if they have nothing to do with Islam, and sign peace agreements with Muslims, Islam does not permit the violation of a treaty, and states: “except those of the idolaters

29- Verse 212 Al-Baqara

30- Verse 212 Al-Baqara

31-Verse 76 An-Nisa

32- Verse 254 Al-Baqara and verse 168 An-Nisa

33-Verse 36 Al-Anfal

34-Verse 84 Al-Twba

35- Verse 39 An-Nahl

36-Verse Al-E-Imran

37-Verse 43 Saba

38- Verse 12 Mohammad

39-Verse 25 Al-Fath and Verse 25 Al-Hajj

with whom you made an agreement, then they have not failed you in anything and have not backed up any one against you, so fulfill their agreement to the end of their term; surely Allah loves those who are careful (of their duty).”⁴⁰ Islam even warns that Muslims should not wage war and plunder for their worldly interests like in the pagan days, and says if someone made peace with you do not give him a negative reply and do not say that you are not a Muslim, but must review and accept his expression of salam and peace and Islam. Verse 94 of An-Nisa Sura states: “O you who believe! when you go to war in Allah’s way, make investigation, and do not say to any one who offers you peace: you are not a believer. Do you seek goods of this world’s life! but with Allah there are abundant gains; you too were such before, then Allah conferred a benefit on you; therefore make investigation; surely Allah is aware of what you do.”

This verse first of all points out that Muslims must take God’s path, and wage holy war, not for personal and group interests, worldly property or booty, or invading countries and becoming powerful and possessing worldly resources. Secondly it says that the aim is not to wage war but for peace and friendship. If they express peace and say there are Muslims and surrender to you, you must not wage war against them. Thirdly what is natural and wise is that you research in this regard, and do not act out from suspicion and guessing and gullibility, so that your enemies may trick you. If you saw the real intention of the opposite side is Islam and peace, you must accept it. A peace that causes the violation of the rights of people and in other words is silence and neglect of the rights of a nation is an oppressive peace.

This is why Imam Ali states: “I saw peace and conciliation that does not cause the weakening and undermining of Islam as more beneficial than war and slaughter.”⁴¹ Thus it can be seen that the principle is peace and its establishment, unless there are certain conditions where there is no other choice but war. When a peace is established in conditions where the disbelievers do not stick to their pacts, and mock Islam, and in fact it’s a peace that causes the weakening and undermining of Islam, when the oppressed are kept weak (men, women and children) are under pressure and oppression and their screams are loud saying oh God send us assistance for our help and save us from these conditions, in these conditions God has said: “Rush to their assistance, and wage war for their rescue.” In conditions where the enemies have occupied Muslim country, in conditions where the enemy has attacked Muslim country, and it is necessary for self-defence be applied, when it is necessary to retaliate and wage war against the enemy, under these circumstances there is no other choice but war, and must not remain indifferent towards humiliations, oppressions, invasions, occupations, giving assistance to the oppressed and the weak, but war must be waged against aggressors and oppressors and occupiers who have caused the war, until peace and security is established.

Seven: jurisdiction and implementation of peace

Peace in Islam has a vast jurisdiction which shows the extent of the concept of peace. Although peace is more often mentioned in disputes and conflicts between countries at international level and or ultimately within a country between religious, ethnic and

⁴⁰-Verse 4 Al-Tawba

⁴¹- Mohammadi Rey Shahri, *Mohammad, Ibid, Vol. 7, p3083*

racial groups, but in fact peace can be reviewed from five dimensions:

1 – Peace within humans

The main reason of all disputes and wars is human beings who are self-centred, selfish, egotist and arrogant. Because of such arrogance they want to be superior to others, and get everyone to serve and obey them. They ignore other people's rights and violate them. But if mankind sees himself as the servant of God, and only assume greatness in God, then he will not see power, status, wealth, colour, race and ethnicity superior to others. Therefore if mankind wants to be like this he must be nurtured from inside and establish peace within himself.

Due to having the power of lust, temper and choice, humans can do ugly deeds. On the other hand following God and the inner clean nature and power of logic, with the choice that he has can have righteousness in war and confrontation and not surrender himself to lust, temper and devil's temptations. If in this war, which takes place every moment and day within mankind, he comes out the victor, he will reach a level of complete peace and tranquillity will take over his being. The existence of peace inside humans which results in outer peace, people that who have reached tranquillity inside themselves can create a peaceful society.

2 – Peace in the family

After peace and tranquillity within man, another environment that needs to have friendship, kindness, peace and tranquillity within it is the family environment. This environment can be assumed in two parts: one is the main family which include the father, mother and children, and the other is blood and in-law relatives.

a) The family in specific terms

It must be said that the family is one of the most important institutions in Islam, the importance of which has been reiterated. If there is friendly and intimate relationships in it; it will greatly influence every single person of this institution, as well as affecting their character developing and maturing, due to the connection of each one of them to the outside environment, they will have amazing effects on society. With regards to the relationship of husband and wife, parents and children, there are plenty of verses and hadiths, some of which are:

God says: "O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may Take away part of the dower ye have given them,-except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and Allah brings about through it a great deal of good."⁴² "hey are your garments and ye are their garments."⁴³ This means both husband and wife are each others adornments and are duty bound to protect each other.

With regards to children respecting the parents the Koran also says: "And, out of kindness, lower to them the wing of humility, and say: "My Lord! bestow on them thy Mercy even as they cherished me in childhood."⁴⁴ "Serve Allah, and join not any partners with Him; and do good- to parents, kinsfolk, orphans, those in need, neighbours who are near, neighbours who are strangers, the companion by your side,

42-Verse 19 An-Nisa

43-Verse 187 Al-Baqara

44- Verse 24 Al-Isra

the wayfarer (ye meet), and what your right hands possess: For Allah loveth not the arrogant, the vainglorious;-45

b) Relatives (family in general terms)

Relatives whether blood and in-law relatives, make up a vast portion of a family. In this regard too Islam has a special view and reiterates the establishment of amicable and kind relationships with them. These people are referred to “rahm” in Islam, connection with whom has been recommended and ending of relationships has been rejected.

God says in the Koran: “Serve Allah, and join not any partners with Him; and do good to parents, kinsfolk, orphans, those in need, neighbours who are near, neighbours who are strangers, the companion by your side, the wayfarer (ye meet), and what your right hands possess: For Allah loveth not the arrogant, the vainglorious;-“46 or “O mankind! reverence your Guardian-Lord, who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds) countless men and women;- reverence Allah, through whom ye demand your mutual (rights), and (reverence) the wombs (That bore you): for Allah ever watches over you.”47 Also Imam Ali in these regard about family and relatives says: “With relationship “rahm” provide the preservation of God’s given blessings.”48

3 – Peace in society

Peace within the person and peace within the family and relatives can have great influence towards social peace. People raised with inner peace and in a peaceful family environment, with entering society, they will guide society towards peaceful relationships. This role can be reviewed from various angles:

a) How to come out of peace with others

In view of the legal and moral laws and commandments of Islam, Muslims learn in different ways how to behave in society with people for the purpose of establishment of peace.

Teachings and commandments that have been given to the prophets by God such as the starter of salam and expresser of peace towards people has seventy times the value for the starting of salam, and stress on amicability and coming out of peace from others results in people to be way from damages and seditions and their sins forgiven, faults covered, health and safety come about for him, become liked by others and his enemies reduce, all of these are recommendations the certain effects of which amicability and expression of peace with the people.

b) Being go-between for others (reconciliation and establishment of peace and friendship among people)

Being go-between for the elimination of disputes and conflicts between people and or in a vaster lever, even between Muslim and non-Muslim countries is another of Islam’s recommendations. “The Believers are but a single Brotherhood: So make peace and reconciliation between your two (contending) brothers; and fear Allah, that ye may receive Mercy.”49

45- Verse 36 An-Nisa

46- Verse 36 An-Nisa

47- Verse 1 An-Nisa

48- Nilipour, Mehdi, *Heaven of Morals, Vol. 2, Hazrat Valiasr Research Institute Publications, 2006, p533*

49- Verse 10 Al-Hujraat

Imam Sadegh says: "Establishment of peace among people at times cause dispute and enmity and bringing them together at times is also distancing them, is a charity that God likes."⁵⁰ Imam Ali says: "Be resolute in the path of establishing the believers and the pious."⁵¹

c) Existence of a dispute in society

It is natural that despite the plenty of commandments which exist in Islam on the basis of the establishment of social peace and security, but due to human nature and that some laws are not convincing and do not consider others, and some even have two-facedness and pursue their own personal and group interests, disputes, conflicts and even wars may take place even in the Muslim community.

If the dispute is individual, as well as the personal efforts of the parties at dispute, based on peace with a leniency to Islamic laws and commandments, other individuals of society also have the duty to establish peace between them. But if the dispute becomes extensive, and among social groups with particular characteristics such as the waywardly, the corrupt, armed uprisers, opponents of reconciliation seekers, the seditious, organized rebels against the Islamic government in the true meaning of basis on Islamic laws, then for each of these situations different solutions have been considered. The general basis is in verses 9-10 of Al-Hujraat Surastates: "and if two parties of the believers quarrel, make peace between them; but if one of them acts wrongfully towards the other, fight that which acts wrongfully until it returns to Allah's command; then if it returns, make peace between them with justice and act equitably; surely Allah loves those who act equitably (9); the believers are but brethren, therefore make peace between your brethren and be careful of (your duty to) Allah that mercy may be had on you (10)."

4 – Peace in international relations

On principle Islam's view point that the basis of international relations be peace in all countries. Some people who are usually the rich, rulers and power mongers, and as the Koran states, they are the leaders of blasphemy for the preservation of their power, wealth and status, undertake any measure, abuse people's rights, in the name of the protection of interests, they invade countries and kill, injure and maim many human beings, women and children are left without a head of household, men lose their wives and children, and create poverty and homelessness for these nations, and in a more general term they threaten the peace and security of some people.

Naturally Islam and Islamic countries "Dar-ol-Eslam" in real terms are not indifferent towards these treatments and behaviours, and in different forms hurt Muslims and their countries, and cause their political, economic and cultural enslavement, and overall threaten their lives and properties, then it's a God given duty to fight, take pre-emptive and preventive measures in self-defence or war with them.⁵²

Below is a part of the letter that Imam Ali, to Malek Ashtar, the commander appointed by him for Egypt, which deals with Islamic government's foreign policy and international law, particularly peace, as a general rule and legal principle:

"...If your enemy invites you to a Peace Treaty that will be agreeable to Allah, then

⁵⁰- Mohammadi Rey Shahri, *Mohammad*, Vol. 7, *Ibid*, p3087

⁵¹- *Ibid* p3087

⁵²- Imam Khomeini, *Tahvir Alvasileh*, Qom, *Darolmaktab Oltomieh (Matbe Oladab, Najaf)*, 1390H.G., Vol. 1, *Fasl Defa*, p485

never refuse to accept such an offer because peace will bring rest and comfort to your armies, will relieve you of anxieties and worries, and will bring prosperity and affluence to your people. But even after such treaties be very careful of the enemies and do not place too much confidence in their promises because they often resort to Peace Treaty to deceive and delude you and take advantage of your negligence, carelessness and trust. At the same time be very careful, never break your promise with your enemy, never forsake the protection or support that you have offered to him, never go back upon your words, and never violate the terms of the treaty. You must even risk your life to fulfil the promises given and the terms settled because of all the obligations laid by Almighty Allah upon man (in respect to other men) there is none so important as to keep one's promises when made.

Though people may differ in their religions and ideologies and may have divergent views upon various problems of State, yet they all agree that promises when made must be fulfilled. Even the heathens take care to keep the promises made among themselves because they have seen and realised the evil effects of breaking promises. Therefore, take very particular care of promises made, never go back upon the words given, never go into the offensive without previously challenging and giving an ultimatum. Deception and fraud even against your enemy is a deception against Allah and none but a wretched sinner would dare do that.

Allah has given promises and treaties the high rank of being messengers of peace and prosperity and through His Kindness and Mercy has made them a common desire (of keeping promises) in the minds of all men and a common requirement for all human beings. He has made them such a shelter and asylum that everybody desires to be under their protection.

Therefore, there should be no mental reservation, no fraud, no deception and no underlying meanings in between the lines when you make a promise or conclude a treaty. Do not use such words and phrases in your promises and treaties as have possibilities of being translated in more than one way or as may have various interpretations and many explanations, let there be no ambiguity in them, and let them be clear, precise and to the point. And when once a treaty has been finally concluded, do not try to take advantage of any ambiguous word or phrase in it. If you find yourself in a critical situation on account of the treaty made in the cause of Allah, then try to face the situation and bear the consequences bravely and do not try to back out of the terms that account, because to face such perplexing situations as may gain His Rewards and Blessings is better than to break your promises on that account and earn that about which you feel nervous and for which you will have to answer Allah and which may bring down His Wrath upon you in this world and damnation in the next.

Beware of the sin of shedding blood without religious justification and sanction because there is nothing quicker to bring down the Wrath of Allah, to take away His Blessings, to make you more deserving of His Wrath and to reduce the span of your life than to shed innocent blood. On the Day of Judgement Allah will first attend to sins of bloodshed carried out by man against man. Therefore, never try to strengthen your power, position and prestige by shedding innocent blood. Such murders instead of making your position strong will not only considerably weaken it but may also transfer your power totally, taking it away from you and entrusting it to somebody

else.

If you have intentionally murdered a man then no excuse shall be acceptable to Allah or to me because punishment of such a crime is necessary...”⁵³

5 – Peace in a wider area (in general terms)

Peace has a specific meaning which is the lack of war and dispute. This concept, which is a specific concept and old and is used in various domains, at family, society, domestic and international levels. Nowadays peace can be seen in a wider perspective. When in society as well as laws, morals are also governing, and people have amicable relationships with each other, and there is no poverty, hunger, illiteracy and ignorance, discrimination and violence, and human rights are observed, and refugees do not pour from a country into another, crime, exploitation and terrorism do not exist, health and the environment are observed, then it can be said that true peace exists. Since Islam has commandments in all these areas, it can be said that as well as leaning on the specific definition of peace, Islam also considers its general meaning too.

With regards to poverty, there is a hadith that says: “The fear is that poverty might lead to blasphemy.”⁵⁴ With regards to illiteracy and ignorance there are several hadiths, that include: “ignorance is misleading.” “Ignorance in life on earth, damages eternity.” “Ignorance is the origin of all that is bad.” If people who don’t know then would stop, they wouldn’t become disbelievers and be misled.” (All the hadiths are about ignorance towards Imam Ali)⁵⁵ With regards to the disapproval of crimes and improper deeds, in the Koran and hadiths there are plenty of texts. In verse 77 of Qasas Sura God says to Gharoon (a rich man during Moses times): “and seek by means of what Allah has given you the future abode, and do not neglect your portion of this world, and do good (to others) as Allah has done good to you, and do not seek to make mischief in the land, surely Allah does not love the mischief-makers.”

With regards to the observation of others rights, and non-violation of the rights of the people, there are plenty of verses and stories where the damaging and violating of rights has been disapproved. In Islam rights have been split into two general parts: The right of God and the right of people, and it is said that in some instances, God forgives and overlooks His rights, But God does not abandon people’s rights unless it’s with their full consent.

On the other hand there are some moral and legal commandments in Islam which have been stressed extensively. The observation of these commandments can create a kind environment that is full of happiness, closeness and in other words establish peace and the failure to observe these it escalates an atmosphere of spite, hatred, dispute, enmity and war. For example: good behaviour towards others, good thoughts about others, forgiveness towards others, especially when human has the power of revenge, patience and tolerance, humbleness and meekness towards people, sacrifice, giving presents to others, family and relatives and other people included, having dinner guests, observation of others’ rights, good trusteeship, good relations with neighbours, visiting and taking care of the sick, secret keeper for others, being loyal to a pact, forgiving others for their wrong doings, acceptance, good intentions for

⁵³- *Nahj olbalaghe, Translation of Master Vali, Tehran, Asveh Publications, 2008, 4th Edition, pp442-443*

⁵⁴- *Mousavi Seyed Fazlolah, Chapters on Labour Act, Tehran, Islamic Culture Publications, 1998, p81.*

⁵⁵- *Nilipour, Mehdi, Ibid, Vol. 1, p159*

others, honesty and many other good behaviours and moralities such as this can be functional for the establishment of peace and security in the family, society and even the international level.

There are many sources in reference to Koranic verses and hadiths with regards to these principles and moral commandments.⁵⁶

Eight: Fair peace

In view of the topics discussed on peace, it can be understood that from Islam's perspective peace has various dimensions. Therefore a peace that today is referred to as "fair peace" is laying in the heart of the concept of peace. Unfortunately due to selfishness, superiority seeking of some people, in some instances peace is defined in such ways that in fact it can be said that this type of peace is cruel. Thus unreasonable people, groups and governments inside countries, and powerful, cruel, unreasonable and occupying and exploiting governments (at international levels), for their material, economic, and political interests, they stifle any freedom and justice and independence seeking voice that wants peace with other countries, and every day through warmongering, invasions and occupations all over the world, they shed the innocent blood of men women, children, the old, and they name those that fight for independence and the right to self-determine and establish peace, terrorists.

From their views, peace only takes place when nations remain quiet and surrender to their crimes, aggressions and discriminations. From their perspective if a nation is like this, is a peace seeker, if not then it's a terrorist and anti-human rights nation. Yes they speak of peace, but peace in such way that they do whatever they like, and for accomplishment of their illegitimate interests, they violate the rights of nations, and no one speaks a word. It is clear that this sort of peace is not fair, and very doubtful that it will be lasting peace. Not only this type of peace is not peace, but it is a form of corruption and criminality that is wearing the garment of peace.

This is why Imam Ali says: "Peace that comes with corruption and crime, in fact is not peace and conciliation." We must not be content with any condition that is called peace, but we should pursue fair peace. Of course aside from fair peace which is related to war, there is also the existence of discrimination and violence, poverty and injustice, terrorism, trafficking of drugs and humans, ignorance and illiteracy, all of which are in a way oppressive peace, even though there is no war or conflict.⁵⁷

Nine: establishment of real peace at the end of time (the rule of Hazrat Mahdi, the 12th and Final Shia Imam)

56-Nilipour, Mehdi, Ibid, Vols. 1 and 2, Rasooli Mahalati, Seyeh Hashem, Ibid, Vols. 1 and 2, Mohammadi Mehri, Mohammad, Ibid, Vols. 1-15. Imam Khomeini, 40 Hadith, Tehran, Tose Tanzim va Nashr Asar Hazrat Imam Khomeini, 1992, Dastgheib, Seyed Abdolhossein, Gonahan Kabirhe, Vol. 2, Tehran, Kanoon Eblaghe Andishehayeh Eslami, 1982. Naraghi, Molahahmad, Meerajolsadeh, Tehran, Islamieh Bookstore. Bitā. Feizkashani, Molahosseini, Almahjatol Beiza, Qom, Islamic Publications Office, 1382HG, Vols. 1-18, from Imam Sadegh, Mesbaholsharieh va Maftah ol Haghighe, translated by Hassan Mostafavi, Tehran, Hekmat va Falsafe Islamic Association of Iran, 1982.

57-Saed, Nader, Fair Peace Discourse: Basis and Concept, Saed, Mohammad Jaafar, "Peace and Justice: ?Concept, on both Action and Scientific Perspective, Mirdamadi, Abdolmajid, Status of Fair Peace among Monotheist Religions, Najandimanesh, Hemmatollah, Fair Peace in the Reflection of the Function of the ICJ, Sadat Meidani, Seyed Hossein, The ICJ: Justice for the Preservation of International Peace Deadlock, Shafighfard, Rwanda Tribunal in the Search for Peace and Justice: Evaluation of the Decision in the Case of Alfred Mosma in the collective of articles book: Right to Fair Peace, Tehran, Secretariat of the International Conference on the Global Coalition on War on Terror for Fair Peace, 2011.

There are several verses in the Koran and hadiths which refer to the end of time which will result in a government and society that is full of peace and justice, along with blessings and beauties and the rule is in the hands of the worthy. Verses 5 and 6 of the Al-Qasas Sura say: “and we desired to bestow a favor upon those who were deemed weak in the land, and to make them the imams, and to make them the heirs, (5); and to grant them power in the land, and to make firion and haman and their hosts see from them what they feared (6). Also verse 105 of Al-Anbiya says: “and certainly we wrote in the book after the reminder that (as for) the land, my righteous servants shall inherit it (105).”

In view of the several hadiths that exist in the Sunni and Shia faiths, the real examples of the appearance of Hazrat Mahdi are aforementioned verses. According to thought and logic, just as in this world mathematics, law and order and wisdom are dominant, such an order must govern humans and their community, and those that rule over people must be worthy servants of God and their governance must be based on wisdom and justice. If such a thing is possible in history, it's very rare and is incomplete, but in the end of time such justice, security and peace shall be established and this is a promise that the Koran and other Divine books make a reference to.

In view of the contents of existing hadiths, a brief picture of that ideal society can be drawn: Laws and regulations that seem new (true Islam) become based on justice and peace. It covers the security of the whole planet. The fear from disbelievers, and agitators is eliminated, because their faces become recognised. The development and blossoming of science will reach its peak. The conditions of societies from financial and economic aspects become very good and poverty is eradicated. All people's rights are safeguarded. All will become believers in God and obey Him. The rule is in the hands of worthy people who are worthy from scientific, awareness, order and practice aspects. Individuals will reach high levels, bodies become healthy and beautiful. Justice will cover all corners of the universe. Animals will live in tranquillity and not be scared of each other.

Therefore it can be seen that with having said all this, a society will be established based on justice, security, plenitude of blessings, intelligent and atmosphere full of peace, something that good people wish and await for. Waiting means for us to prepare us for that society. We should conform our behaviours and thoughts to those values. Be in the pursuit of establishment of peace and security and any possible and legitimate tool for the appearance of the saviour and its establishment in society.

Ten: the concept of peace from International Law and related documents aspect

a) Introduction and generalities

One of the most important rights in international laws is the right to life, and the necessity for having the right to life requires another set of rights such as freedom, employment, ownership, health, development, justice and peace. Therefore one of the rights of humans is the right to life in a peaceful environment. Today, human rights has been split into three main groups, each one of which is called a generation of human rights. The first group is civil and political rights, the second economic, social and cultural rights, and the third generation is equality and solidarity rights; and the latter group includes four main rights, one of which is the “right to peace”

and three others that include the right to a healthy environment, right to development and the right to a common heritage of mankind. Therefore peace is one of the rights that was not mentioned earlier and would only be fleetingly mentioned.

Proclamation of Tehran, Final Act of the International Human Rights Conference in Tehran (1968), is the first statement that makes a reference to the link between peace and human rights, and recognises “that peace is the universal aspiration of mankind and that peace and justice are indispensable to the full realization of human rights and fundamental freedoms.”⁵⁸

The primary concept of peace throughout history was *Absentia Belli*, meaning that if there is no dispute or war, then peace is established. This concept was the standard in international laws in the not too distant past, and today perhaps it might be the main concept of peace, although new concepts of peace have been presented over the recent decades with vast interpretations.

Today inside countries and at the international level issues such as discrimination, violence, human rights violations, poverty, hunger and famine, refugees, natural disasters, racism, organized crime, colonialism in old and new forms⁵⁹, terrorism, plane hijacking, drugs and human trafficking, and many other instances can all in one way or other endanger mankind's peace and security. Therefore efforts to eliminate these factors or reduce them, are activities towards the establishment of peace in its new and general term.

As stated in the UNESCO General Conference resolution (1974), “Peace cannot just include the lack of armed conflict, but it is mainly a process from advancement, justice and mutual respect among nations. A peace which is established through injustice and violation of human rights, cannot be lasting and inevitably it will result in violence.”⁶⁰

Although it is possible that some may put a distinction between international peace and domestic peace (of course there is a distinction but cannot be said without connection), but it seems that the lack of peace at international level affects the internal peace of countries. Also the lack of internal peace in countries, affects international peace and security. From Islam's viewpoint, levels and jurisdiction of peace affect each other, peace within people affects peace in the family, and peace within families affects peace within society, and at national level, peace within countries, affects international peace or vice versa.

It is said the globalisation of peace requires a collective will, brotherly spirit and solidarity.⁶¹ Of course this statement is very logical. But if all countries want this to be, and see other countries as brothers, and see themselves as a family that are side by

58- Abbasi, Bijan, *Human Rights and Fundamental Freedoms*, Tehran, Dadgostar Publications, 2011, pp401-402

59-Although in the past old colonialism ruled, and their armies and navies, European countries had distant countries under their rule, and these countries had no identity of their own, unless after the anti-colonialism struggles and independence, today's colonialism methods are different however. European countries mainly (of course during the Cold War, the East block did the same practice) supported or installed heads and regimes in other countries who followed their political, economic and cultural policies. Furthermore with the passage of time and the expansion of multi-national giant companies and the economic policies of those (European) countries dominate over the economy of underdeveloped or developing countries and in new developments and with the expansion of news, radio, satellite and internet technology affect the over the culture, economy and policies of these countries, and create changes that are deeper in these countries all of which are deemed as new colonialism, and cause insecurity, war and problems that threat the peace and security in different communities around the world.

60- Abbasi, Bijan, *Ibid* pp402-403

61- *Ibid*, p405

side and understand each other. But with the existing situation where some countries want to be superior and see themselves as bigger than other countries and they say we shall stick by any country that is in line with our interests, and any country that isn't then it's against us and a terrorist state and violator of human rights⁶². This is when collective will and brotherly spirit and solidarity lose their meanings.

For the promotion of the culture of peace in the late 80s UNESCO did some campaigns, such as the holding of the International Peace Congress in 1989 in Ivory Coast, and one in El Salvador in 1993¹. In the 1989 Congress, UNESCO adopted a declaration through which states, governmental and nongovernmental organizations, scientific, educational and cultural communities were invited to expand the culture of peace based on universal values, respect of life, freedom, justice, tolerance, human rights and equality between men and women, with a new concept of peace.

From international law's perspective the right to peace can be split into smaller groups:

1 – The right of individuals and people

The right of individuals and people has more been expressed by general and common sources, such as the Final Document of the Universal Declaration of Human Rights (1948), the Special Session of the General Assembly on Disarmament (S-10/2, 30 June 1978), the preamble to the Outer Space Treaty of 1967, Declaration of the Preparation of Societies for Life in Peace (A/RES/33/73 15 December 1978), have stressed on the right of individuals and people to live in peace, and included the obligations of states in the provision of this right.⁶³

2 – Rights of states

With regards to states the following can be referred to: the Covenant of the League of Nations; the 1924 Geneva Protocol, the Kellogg-Briand Pact of 1928 (also called the General Treaty for the Renunciation of War or the World Peace Act), the Anti-War Treaty of 1933 (also known as the Saavedra-Lamas Treaty), ratifications of various UN technical bodies, regional organizations, various UN General Assembly resolutions, numerous bilateral and multilateral treaties especially regarding the right to peaceful settlement of differences, and decisions of the International Court of Justice.⁶⁴

3 – Right to peace as the right of individuals

As well as these common documents which are mentioned for individuals and people, some of the documents particularly highlight the individuals. References to the right of the individual to peace can be seen in: articles 1, 22, 26 and 28 of the Universal Declaration of Human Rights; articles 12, 19 (3) and 20 (2) of the International Covenant on Civil and Political Rights; article 13 (5) of the American Convention on Human Rights.

4 – Right to peace as the right of people

The African Charter of Human and People's Rights in article 23 (1) states: All peoples shall have the right to national and international peace and security. The UN General Assembly Declaration on the Promotion Among Youth of the Ideals of Peace, Mutual Respect, and Understanding Between People (1965), at the suggest of Romania, can

⁶²- Referring to former US President GW Bush remarks.

⁶³-Abbasi, Bijan, *Ibid*, pp409-410

⁶⁴ *Ibid*, pp406-407

be referred to.⁶⁵

b) The relationship of the right to peace with other human rights

The Commission on Human Rights in its resolution on Human Rights and International Solidarity (71/2002, 25 April 2002) established a link between peace and the right to development. The Commission reaffirmed that all states must establish, protect and strengthen international peace and security. In the Helsinki Final Act (1 August, 1975) the participating states state the global importance of human rights and fundamental freedoms, which the respect of these rights, is the necessary factor for peace, justice and welfare, and is necessary for the provision of development of friendly relations and cooperation between each other and all countries. From this viewpoint, the observation of human rights is a cautious and preventive measure and helps prevent armed conflicts from occurring.⁶⁶

c) Mankind and international community's confusion in relation to the concept of peace

Today peace and its specific concept (the lack of war and dispute) is in a way confusing and does not have a clear definition. As observed, international conventions, covenants and treaties mostly praise and respect peace and deem it a human right in various dimensions, but they do not provide a clear definition of it, and thus peace is defined under political, economic, power issues in different circumstances. The main annotator of international peace and security specifically is the UN Security Council, an institution which is more political than legal, in each period of time, determines and defines peace and security in a particular way towards particular interests. Therefore since there is no index to evaluate the function of Security Council and other UN bodies in pursuing peace, in any period of time and each year, the Council deems one issue as a threat against peace, but remains silent on similar examples. If the definition of peace was clear, it would be possible to criticise the practice of the Council. But from the legal aspects, by not having a definition for peace, the Charter has not created this opportunity. This situation needs criticising. Therefore, albeit we are faced with a big and extensive concept of "international peace and security" which is the core of the UN Charter, but this concept (which determines the functions of this international organization), does not have a description in the Charter, nor in other international law documents.

In any event the UN bodies, all of which are responsible for the pursuit of the preservation of international peace and security (of course the main responsibility in this is with the Security Council), must define peace and use the definition in their functions.⁶⁷ After the establishment of the United Nations, despite the attempts of some countries, international organizations and peace loving people, the international community still has not been able to set a specific definition for peace, therefore it has reached a definition and condition of peace in various forms, which most certainly do not contain the real meaning for peace.

One of the types of peace is "armed peace". This is the safeguarding of peace through balance of weapons of the world. This concept leads to another sensitive concept

⁶⁵ *Ibid*, p409

⁶⁶ *Ibid*, p411

⁶⁷ -Saaed, Nader, "Discourse framework and the confusions in legal solutions", an introduction to the collective of articles on the Right to Just Peace book, *Ibid*, p13

which is “strong deterrent” or “deterrent based on the raising of weapons capability”, which is the basis of some nations foreign and security policies. It is clear that such a definition for today’s world, that searches peace through the elimination of weapons of mass destruction, will cause the undermining of peace and continuous threat against it. The condition, “no war and no peace” is another concept which distances itself from “armed peace”. This concept means the distancing of “principle” of military conflict in foreign relations in which the conditions despite the inactivity of conflict situation, necessary elements for the establishment of non-conflict and lasting restraint conditions do not exist. In fact in this situation, not only is the outbreak of war not impossible but it is very possible and this possibility has a “derivative” condition. It is clear that the “derivation” of the use of resorting to force is not necessarily the establishment of peace. The “no war and no peace” condition in practice it’s not in the interest of peace, but it is in the interest of war. Therefore this concept too cannot give a reassuring order for peace that mankind expects. Another concept of peace as mentioned earlier and is pertinent in the international law system today, is the protection of international peace and security in the UN Charter; a concept that without definition, gives the options of states and the UN in the hands of the Security Council, so that they are in the position of legislator, determiner of peace definition and standards, and also as a judge, with regards to sitting to judgement of the behaviour of international players and issue political sentences, and also as an executive power to implement all the decisions and findings that have been set against countries that have been deemed as disturbers of peace. It is natural that this method, despite the promotion of the pasts dire conditions, will never be able to establish universal peace that is not approved by everyone in the world, and has left the world in a storm of instability and flames under the cinders.⁶⁸

In the literature of peace various names have been used, such as: positive peace, negative peace, eternal peace, lasting peace, future oriented peace, democratic peace, comprehensive peace, visible peace, unconditional peace, single peace, pluralist peace, present oriented peace, mental peace, human peace, state peace, inter cultural and civilisation peace, justice foundation peace, disputed peace, realistic peace, idealistic peace, individual and group peace, inner and out peace and so forth, each of which may possibly consider one aspect of the aspects of real peace, and define a specific view of peace.⁶⁹ With this concept, the peace that is used in practice and or in different schools of thought and from the words of jurists, politicians, sociologists and economists it is again possible to cause confusion within human society and the international law system. Therefore a specific concept of peace that while considering human ideals and values, and dignity be coordinated with the monotheistic order of the world and its origin which is from the will and wisdom of the Great Creator; a peace that can include all the related dimensions. A peace that is comprehensive which includes various domains, such as inside man, family, society, nations and the international community. A peace that is based on justice, a peace its foundation and application factor is the faith and will of people and nations and not just general ideal slogans and enforceable. A peace that its establishment is not due to force and pressure, weapons and power. A peace that is not based on forced

68-RK: Ibid, pp9-10

69- Ibid, p10

silence and oppressive pressure. A peace where its implementers are supporters of peace and friendship and not warmongers and anti-peace. The establishment of a peace which if results in war, the war must be exceptional and humanitarian law must govern it, so that during war not only they protect people but also animals and the environment too. A peace that is not just a concept of the lack of war, but includes the elimination of any factor that create, mental, emotional, economic, political, health, environmental worries and concerns.

Conclusion

Islam's viewpoint on peace is very extensive. As well as its specific concept which is the lack of war and conflict, the concept of peace is determinable from other aspects which is involved in all aspects of life. With this concept it might just perhaps be said that one of the most important objectives of Islam is the establishment of peace. Islam is a religion that its name and its God's name are connected to peace. Islam believes that if the correct concept of peace is established on Earth, the health of the world and eternity, will be distanced from corruptions and seditions, and bring lessening of enmities and increasing of friendships, and will expand good and blessings in all levels. The jurisdiction of peace from Islam's point of view is such that includes all dimensions of the life of mankind. With the commandments that it has, Islam wants to establish peace and tranquillity within mankind, the family, society, country and at international level. Islam sees the creation and establishment of peace as the principle, and deems war as an enforced factor that requires specific necessary as a last resort. Islam does not wage war against people unbeliever and heathen, and only wishes to guide people towards the right path through reasoning and preaching.

Islam protects the oppressed, and the weak so that peace and justice is established throughout the world. Islam accepts peace with justice, and does not deem any kind of silence and tranquillity that is forced upon through threat, and only pursues just peace. This is why Islam pays importance to such kind of peace so that at the end of time which is full of peace and justice, deems the ultimate ideal of this world, and with a belief in the coming of Mahdi (12th Shia Imam) who will call upon the people and Muslims to belief and the principle of waiting. Waiting means waiting for the saviour and his period's society, and for its realisation to endeavour, wait and resist. Despite the second half of last Century's international declarations, conventions, covenants on human rights and humanitarian law, and on the right to peace, but still this concept is vague and indefinable, and its implementing institutions which are influenced by powers and politicians who in practice have not realised the true meaning of peace, and put mankind in a confused situation; and no clear indicator exists for the assessment and determination of its custodian i.e. the Security Council. So while the real meaning of peace, who it should be applied, and how should its violators be punished is not clear for the present international decision making bodies, therefore a new plan for the establishment of peace must be pursued; peace that is based on mankind's ideals and values, and human dignity with a specific definition based on human nature and the world's monotheistic order, and to include all of mankind's jurisdiction; peace that is not based on cruel pressures, power and weapons; peace whose implementers are themselves supporters of peace and friendship; peace that goes beyond protection of humans and also protects animals and the environment.

