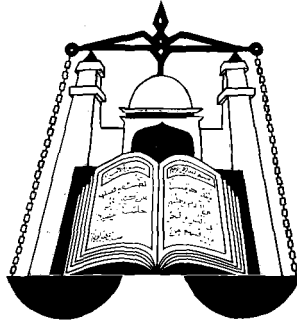


MASTER



# **HUMAN RIGHTS IN ISLAM**

**INTERNATIONAL COMMISSION OF JURISTS  
KUWAIT UNIVERSITY  
UNION OF ARAB LAWYERS**

BOOK 13

**HUMAN RIGHTS  
IN  
ISLAM**

**Report of a seminar  
held in Kuwait, December 1980**

organised by the  
**INTERNATIONAL COMMISSION OF JURISTS  
UNIVERSITY OF KUWAIT and  
UNION OF ARAB LAWYERS**

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## PREFACE

In recent years a number of conferences and seminars have been held in Europe and elsewhere with moslem and non-moslem participants in order to explain to non-moslems the concepts of human rights in Islam and, in particular, in Islamic law (Shari'a).

The Seminar on Human Rights in Islam organised by the International Commission of Jurists, together with the University of Kuwait and the Union of Arab Lawyers, in December 1980 was of a different character. As the title indicates, its purpose was to provide a forum for moslem lawyers and scholars from all parts of the Islamic world to discuss among themselves some of the subjects of critical importance to them both in Islamic states and in secular states. After many vigorous and learned debates the participants agreed upon a detailed statement of conclusions and recommendations.

A full report of the seminar is to be published in arabic by the University of Kuwait. The International Commission of Jurists is publishing this short report in english and french, in which the working papers are briefly summarised. The Conclusions and Recommendations, which are of particular interest and relevance to problems in Islamic countries and countries with Islamic minorities, are published in full.

The International Commission of Jurists hopes that this publication may be of value not only to moslems, but to a wider public interested in the problems facing the world of Islam. The western reader will find in the third part of Dr. Brohi's keynote speech, reproduced in Annex II, a clear statement by a distinguished moslem of the differences between Islamic and Christian concepts of morality and justice.

The International Commission of Jurists wishes to express its gratitude to the University of Kuwait and to the Union of Arab Lawyers for their generous cooperation which made possible the seminar and this resulting publication.

Niall MacDermot  
*Secretary-General*

Geneva, February 1982

## INTRODUCTION

### Purposes and Aims of the Seminar

At this stage in the evolution of human rights into universal legal obligations, millions of human beings are still deprived of their basic political, economic and social rights and are subject to various forms of violence, both overt and hidden. Thus, despite the continuing development of human rights through the valiant efforts of people driven by high ideals and moral values, man still lives in a world that is brutal in its political dealings and doctrinal conflicts.

Man today stands in dire need both of safeguards for his human personality and of means to perfect his temporal, material and spiritual well-being, by balancing his scientific and technological advancement on the one hand, and his moral and spiritual advancement on the other.

The time has come to refute the idea that the initiation and continued development of the concept of human rights must be attributed exclusively to Western culture.

Islam honours man, stating that he is the only one of God's creatures to be given the intelligence, strength and will necessary to be God's *Khalif* (representative) in this troubled world and to carry out this divine mission by working under His guidance and with fairness and justice for the well-being and prosperity of all. Islam, which has confirmed the messages of all previous religions, considers the coexistence of peoples of different creeds, races, colours and tongues to be a manifestation of the wisdom and providence of the Creator. It considers its message to be one of guidance and compassion to all mankind and it repudiates racial discrimination. Because of the depth and spread of its knowledge of human existence, Islam can find effective solutions to current problems and is a continuously growing influence in this world of diverse peoples, cultures, races and languages. Islam is continuously developing and replenishing its vitality in harmony with its own aesthetic values and moral ideals.

In the light of the above concepts and from an objective, rational and scientific viewpoint, the Seminar investigated Islam's stance on a number of vital issues concerning human rights in the economic,

social, cultural, civil and political spheres, with a view to future improvements.

The convening of this Seminar was sponsored by the University of Kuwait, the International Commission of Jurists and the Union of Arab Lawyers. The inaugural address of His Highness the Emir of Kuwait, patron of the Seminar, was delivered on his behalf by the Minister of Education, Mr. Jassem Al-Marzouq, at the Seminar's inaugural session in the Faculty of Law and Shari'a of the University of Kuwait.

Addresses were also delivered at the inaugural session by:

Dr Abdul-Razzaq Al-Adwani:

Rector of the University of Kuwait;

Dr Badria Al-Awadhi:

Dean of the Faculty of Law at the University of Kuwait;

Mr Niall MacDermot:

Secretary-General of the International Commission of Jurists;

Mr Zouheir Al-Midani:

Secretary-General of the Union of Arab Lawyers;

Mr Dramé Bakary:

Assistant Secretary-General of the Islamic Conference Organisation;

Dr Al-Touhami Nagrah:

Representative of the Secretary-General of the Arab League and

Dr A.K. Brohi:

Former Minister of Legal and Religious Affairs and advocate of the Supreme Court in Pakistan

Dr Brohi delivered a key-note address, the third part of which will be found in Annex I.

The Seminar continued at the Hotel Meridien in Kuwait from 9 to 14 December, 1980, with the participation of sixty-five experts and scholars of various disciplines.

The topics discussed by the Seminar were divided among the following committees:

The First Committee on Economic, Cultural and Social Rights in Islam discussed the following papers:



1. *Economic Freedom and the Equity in Taxation in Islam* by Dr. Abdul Hadi Ali El-Naggar,
2. *Economics of Human Rights: an Islamic Perspective* by Syed Nawab Haider Naqui,
3. *Development, Property and Distribution of Wealth* by Dr. Hatem A.S. Karanshawi.

The Second Committee on the Concept of Education in Islam and Contemporary Society discussed a paper prepared by Dr. Syed Ali Ashraf.

The Third Committee on the Right to Work and Social and Legal Problems of Moslem Minorities in Secular States discussed two papers:

1. *The Right to Work and the Right to Life in Islam* by Dr. Sadek Mahdi El-Sa'id,
2. *Muslim Minorities and Human Rights* by Dr. Abu Bakr Ahmad Bagader.

The Fourth Committee on Treatment of Non-Moslem Minorities and Freedom of Opinion and Expression discussed two papers:

1. *Freedom of Opinion, Expression and Association* by Dr. Mümtaz Soysal,
2. *Treatment of Non-Moslem Minorities and Foreigners in Islamic Law* by Dr. Abdul Karim Zaydari.

The Fifth Committee on Individual Security Rights in Islam and Safeguards of Human Rights in Judicial Proceedings discussed three papers:

1. *The Right to Individual Security in Islam (a comparative study with positive law)* by Dr. Othman Abdul Malek Al-Saleh,
2. *Human Rights and Judicial Safeguards in Islam* by Dr. Salah Eddin El-Nahi,
3. *Personal Security and the Rights of Defence* by Dr. Ihsan Kayali.

The Sixth Committee on the Legal Status of Woman in Islam discussed three papers:

1. *The Position and Role of Women in Islam* by Dr. Ali Abdul Munem Abdul Hamid,

2. *The Status of Women in Islam* by Dr. Ma'rouf Dawalibi,
3. *The Legal Status of Women in Islam* by Dr. Shahzanan Shakarchi.

These six committees held successive morning and evening sessions from 9 to 13 December, 1980, during which discussions were conducted in a scholarly atmosphere of objectivity, free from prejudice and bias.

Following the discussion of the reports formulated by the six committees at its concluding plenary session on 14 December, 1980, the Seminar arrived at the following conclusions and adopted the following recommendations.

## CHAPTER ONE

### Conclusions by the Seminar

The Seminar arrived at a number of conclusions which it hopes will receive due consideration:

1. It is unfair to judge Islamic law (Shari'a) by the political systems which prevailed in various periods of Islamic history. It ought to be judged by the general principles which are derived from its sources: the Holy Koran; the Sunna (the traditional teachings of the Prophet); general consensus (*ijma'a*); analogy (*qiyas*); and personal endeavour (*ijtihad*). Regrettably enough, contemporary Islamic practice cannot be said to conform in many aspects with the true principles of Islam. Further, it is wrong to abuse Islam by seeking to justify certain political systems in the face of obvious contradictions between those systems and Islamic law.

2. Islam regards mankind as forming one community and man's life as one integral whole. As defined in the Koran and the Sunna, Islam represents a complete system encompassing all aspects of life and guaranteeing the freedoms and rights of the individual in accordance with the principles of social responsibility and solidarity as stipulated by Islamic law.

3. While the Koran and the Sunna comprise the basic principles that govern and regulate human rights, they also permit the Islamic community, in conformity with the provisions of Islamic law, to devise ways and means of enforcing those principles which relate to actual conditions in a particular society at a particular time. Thus, there is nothing to stop the Islamic community from dealing with its current problems and fulfilling its existing needs in a flexible and constructive way.

4. Islam accepts and guarantees the rights and duties of non-Moslem minorities and foreigners on the basis of equity, tolerance and respect. It guarantees their security and property, for example, and the Islamic state considers itself under an obligation to protect them, by war if necessary. Islam also recognises the right of non-Moslems to practise their religious beliefs, conduct their ceremonies, pursue their professions, vocations and other activities and benefit like everyone

else from public revenues such as state assistance and aid. Furthermore, the status of non-Moslems in the Islamic community is carefully defined in Islamic law so that they are not subject to the arbitrary whims of the ruling Moslem majority.

5. Islamic law was one of the first legal systems to acknowledge the financial independence of women, putting them on an equal footing with men, so that the well-being of society may be guaranteed on the basis of the solidarity of its members.

6. Islam has recognised the special importance of scholarship and scholars in society and has made it the duty of every Moslem man and woman to continue the search for knowledge, and of the Islamic state to spread education among Moslems.

7. Islam has emphasized the right of citizens to freedom of thought and expression. The Koran has thrown open the door to intellectual freedom and many of its verses emphasize the importance of exercising this freedom, because it is considered to be one of the essential functions of the intelligence granted us by God. Indeed, the entire Islamic intellectual heritage may be said to have resulted from the proper functioning of intelligence according to known rules and procedures.

8. Islamic jurisprudence provides for the establishment of a fully integrated economic system founded on principles of social justice and on the prohibition of exploitation, manipulation and any activity that goes against these principles. It respects hard work, discourages idleness and apathy, prohibits ill-gotten wealth, warns against despotic rule and practice, and acknowledges the rights of private ownership and capital investment, both being held important in view of the social functions they perform.

9. Islam has numerous provisions for eliminating various discriminatory practices against women, basing these provisions on principles that only recently have been recognised within the framework of human rights. If a large gap remains today between these principles and actual practice in the majority of Islamic states, it is because these states have not truly abided by Islam's instructions about the status of women. Other factors that help create this gap include the spread of illiteracy, women's ignorance of their legal rights in Islam, and economic, social and cultural factors making it difficult for women to exercise these rights.

10. Islam was the first to recognise basic human rights and almost 14 centuries ago it set up guarantees and safeguards that have only recently been incorporated in universal declarations of human rights. In the Islamic concept, human rights and freedoms are not attributed to Nature but are considered to be gifts of God in accordance with the Islamic faith. This confers on them an added measure of veneration, prestige and sanctity to protect them from inroads by the ruling authorities, lends them the qualities of completeness and universality, and renders them inalienable and irrevocable.

11. Islam has the merit of having been the first to recognise the legitimacy and sovereignty of the law, establishing the Islamic state as the precursor and predecessor of contemporary political systems, — as a state subject to the Rule of Law from the moment of its birth, whose governing bodies act at all levels in conformity with the provisions laid down by the All-Wise Legislator.

12. Islamic jurisprudence has also provided comprehensive principles and procedures pertaining to criminal law with a view to safeguarding individual security and balancing the welfare of society against that of the individual in matters of crime and punishment. The following three basic principles were recognised by Islamic jurisprudence but had to wait till the 18th century to be incorporated into modern jurisprudence:

- (1) The principle of personal liability, so that none but the culprit, not even his closest kin, shall be held responsible for the crime he perpetrates.
- (2) The principle that crime and punishment must be defined by law, so that law alone draws the dividing line between what is prohibited and what is licensed.
- (3) The principle that criminal law is not retroactive. The provisions of criminal law apply only to acts committed after the law in question came into force, except where the enforcement of such provisions would be in the interests of the defendant.

13. Islam also has the merit of being the first to achieve the necessary balance between the rights of the individual to freedom and security and the right of society to prohibit crime and to bring criminals to justice. The defendant is guaranteed certain essential rights and safeguards, both at the stage of preliminary questioning and investigation and during trial.

The following are examples of these guarantees and safeguards:

- (1) In Islamic law, the defendant is considered innocent until he is proved guilty, with the result that the onus of proof falls upon the prosecution, and the defendant must be given the benefit of any doubt.
- (2) During investigation, the defendant's privacy is respected, except where this would conflict with the interests of society.
- (3) During interrogation the defendant is provided with numerous safeguards, even including some that are intended to protect him from his own lapses or slips of the tongue. Some of these safeguards, which are sometimes lacking in secular codes, are that:
  - a defendant must not be tortured or subjected to any cruel or inhuman treatment;
  - a defendant must not be forced to take the oath in cases subject to corporal or capital punishment;
  - a defendant's refusal to respond to questioning must not be used as evidence against him;
  - a defendant must not be compelled to give evidence against himself; and
  - a defendant has the right to withdraw any confession made by him, even after the pronouncement of a court's sentence.
- (4) Arbitrary arrest and imprisonment are prohibited by Islamic law, and it provides certain controls and safeguards for defendants detained in custody, which ensure the necessary balance between personal freedom and the requirements of the investigation.
- (5) Islamic law guarantees the defendant's right to appear before a competent and independent court of law, prohibits any form of exceptional or emergency jurisdiction, and adheres to the principles of the hierarchy of the judiciary.
- (6) Islamic law also guarantees the defendant's right to have a fair trial.
- (7) An accused person is guaranteed the right to defend himself or to obtain the assistance of a legal counsel to establish his innocence or limit his culpability. For serious crimes, a counsel must be appointed to defend the accused; this is not a violation of the principles of Islamic law, for the independence of the legal profession is guaranteed.
- (8) Islamic law also recognises the defendant's right to compensa-

tion for any error made by the court to his detriment.

- (9) Moreover, under Islamic law, the trial takes place in accordance with procedures that provide substantial safeguards for the defence, of which the most important are that the trial is in public, by an oral hearing, with full argument on both sides.
- (10) In adopting the principle of strict legal proof for offences subject to corporal punishment, Islam has restricted the powers of the court in the interest of the defendant, by providing that before a person can be convicted of such an offence the evidentiary requirements which the law considers necessary to establish guilt must be met.

14. Islam has provided more rights and safeguards protecting the dignity and humanity of the defendant than have many contemporary codes. Thus, it has prohibited beatings, torture or shackling, and has even gone to the extent of ordering monthly stipends to be paid to needy prisoners, whether men or women.

15. Capital crimes are limited and carefully defined by Islamic law. Political offences that are punishable by death in some states are dealt with differently under Islamic law, which does not allow the death penalty for such offences.

16. The practice in certain states of appointing judges on the basis of their political affiliations is considered to be against the principles of Islam and at variance with its conditions and constraints in the choice of judges.

17. The practice of torture, kidnapping, and murder by the authorities, or with their explicit or tacit approvals, is prohibited by Islam and considered to be a flagrant violation of its principles.

18. Islam was the first to safeguard personal rights and freedoms for religious minorities. Thus, it sets an example for contemporary political systems to follow.

19. Islam's codification of human rights, and its provision of political, legal, social and economic safeguards, constitute a solid foundation for an effective exercise of human rights and freedoms and protection against any infringement of them.

## CHAPTER TWO

### Recommendations of the Seminar

#### Economic, Social and Cultural Rights

In the economic sphere:

1. Fresh efforts are needed to replace the present economic system, considered to be a remnant of colonial times, with one applying Islam principles. Islam is man's only hope of salvation from social and economic exploitation, and at the same time it enables Islamic states to relate to the rest of the world from a position of equality and justice.

2. National constitutions and covenants must include provisions for safeguarding economic rights in conformity with Islamic principles.

3. Ways and means should be provided for bringing help and relief to needy, deprived and oppressed groups at the local and regional level as well as at the national and international level.

4. Islamic states are called upon to provide adequate guarantees for the social and economic rights provided for in local and universal legal instruments.

5. The Seminar recommends that Islamic states work out economic development plans inspired by the principles of Islamic law, and also provide for economic programmes aimed at raising their level of self-sufficiency and ensuring social justice.

6. Every Islamic state is called upon to reform its economic system to achieve social justice and guarantee human dignity. With these ends in view, the Seminar recommends consideration of the following measures:

- (1) Conservation and careful use of natural resources while taking account of the requirements of state security and the national economy;
- (2) Redistribution of income and wealth on an equitable basis in conformity with the principles of Islam;



- (3) Revision of wages policies to meet the needs of the individual and guarantee him a decent life;
- (4) A reappraisal of private ownership with a view to serving the interests of the community and guaranteeing proprietor's rights;
- (5) Cooperation between private and public enterprise to promote economic development, increase production, raise living standards, and promote the well-being of all citizens;
- (6) Combatting monopolies and imposing duties on capital, so as to promote state and public interests;
- (7) Increase of governmental expenditure on public services, such as education and health, so that they are made available to all; and
- (8) Enhancement of social security and realisation of social and economic justice.

In the socio-cultural sphere:

*Education:*

7. As the quest for knowledge is the duty of every Moslem and its spread is the responsibility of the state, the Seminar recommends that education become compulsory in Islamic states at the primary stage and free of charge at all levels.

8. Islamic states are called upon to pay special attention to the physical, moral and mental health of youth, to prescribe religious education as a basic course in all curricula, to instruct Moslems in all the duties they are expected to perform in Islam, and to teach the life of the Prophet and his four successors (*the Caliphs named Al-Rashideen*) at all stages of education.

9. The Seminar affirms the role of education in forming the human personality and developing it on the basis of the moral values of Islam, so as to enable the individual to confront the threats and hazards of contemporary scientific materialism. Thus, it calls upon Islamic states to lay down a solid educational foundation derived from Islamic values and principles, and to use as their models the pioneering programmes recommended by the Islamic conferences of Mecca in 1977, Dakar in 1978 and Islamabad in 1980.

10. In recognition of the important connection between religious education and those who teach it, the Seminar recommends that the teaching of topics pertaining to Islam be entrusted exclusively to

Moslem teachers whose religious background and culture make them better fitted for the task.

11. Islamic states are called upon to take all measures necessary to give women the opportunity to pursue their studies in any field they wish in accordance with Islamic principles. In this respect curricula must be laid down aimed at the full development of women within the framework of these principles.

12. The Seminar draws the attention of Islamic states to the grave consequences of constructing their education systems on a secular basis and calls upon the Islamic Conference Organisation and the Islamic Education Centre to attach the greatest importance to encouraging scholarly research aimed at explaining Islamic attitudes to and concepts of various fields of knowledge.

13. Islamic states are called upon to institute Islamic universities to teach all branches of knowledge in accordance with the Islamic spirit, so that these universities may be emulated in multinational communities and set an example for regional and international organisations entrusted with the task of developing education at a regional or world level.

14. Islamic states are called upon to ratify international conventions on education and economic, social and cultural rights in as far as these conventions conform to Islamic principles.

15. The Seminar recommends that the study of human rights in Islam be a compulsory part of school curricula.

16. The Seminar recommends that an Islamic Human Rights Committee be set up to study the theory underlying these rights and practical means of implementing them in Islamic countries and countries with Moslem minorities.

17. The Seminar recommends that foreign and missionary schools in Islamic states should provide opportunities for Moslem students to be educated in their religion by specialised Moslem teachers.

18. The Seminar recommends that minorities in Islamic states should have the right to educate their children in their respective faiths in accordance with The Universal Declaration of Human Rights.

*The right to work:*

19. Islamic states are called upon to guarantee to every citizen the right to work and to choose the kind of work which suits his capabilities and potentials, and to ensure that their legislation includes provisions which both prohibit and eliminate all forms of debt bondage and forced labour, except where compulsory labour is established to meet national needs and is justly remunerated.

20. Realising that the guarantee of the right to work recognised by Islam makes it necessary to provide appropriate vocational training and qualification opportunities, the Seminar recommends that policies and programmes be laid down to provide adequate training in technical fields that require certain minimum standards of skill.

21. In pursuance of Islamic principles of justice and equality, the Seminar recommends for all workers, both men and women, the enforcement of the principle of equal pay for equal work and, also, of a guaranteed minimum wage.

22. In recognition of Islam's concern to safeguard human dignity and of the need to compensate workers fairly and without delay for their labour, and with a view to preserving the productive human resources in Islamic society, the Seminar calls upon the governments of Islamic states to regulate the right to work on a sound economic basis. This, while taking into account the rules of social justice in the relationship between workers and employers, should guarantee a minimum wage, limited working hours, suitable working conditions and right to leave of absence, to leisure time and to retirement payments, all of which would also provide a strong incentive to increase production. The Seminar also recommends that employment of children be prohibited and that no women be employed in types of work that are not suited to their nature and physical capacities.

23. In consideration of the important economic and social roles of professional organisations, the Seminar calls upon Islamic states to guarantee to employers and employees alike the right to form their own organisations and unions and become voluntarily affiliated to them. It recommends that such organisations should not be in danger of being dissolved or suspended by the administrative authorities, provided they abide by the law, and that they be allowed to carry out their proper functions to raise the economic, cultural and social standards of their members.

24. The Seminar calls on Islamic states to ratify international labour agreements, including the International Labour Organisation's Convention on Child Labour, in so far as they do not conflict with Islamic principles.

*The rights of minorities:*

25. It is incumbent upon Islamic states to include provisions in their respective constitutions for the safeguards ordered by Islam for non-Moslem minorities, so that these minorities may enjoy their basic rights and freedoms on an equal footing with Moslems. The emphasis laid so strongly by Islam on the need to protect the rights and freedoms of non-Moslems itself provides a refutation of the allegations unjustly levelled against Islam in this respect and also obligates Islamic states to enforce the relevant provisions of Islam concerning non-Moslems.

26. In consideration of the fact that Article 27 of the International Covenant on Civil and Political Rights of 1966, which prohibits the denial to ethnic, religious or linguistic minorities of the right to enjoy their own culture, practice their own religion and express themselves in their native tongue, does not conflict with the principles of Islamic law but indeed represents a minimum of the human rights guaranteed to minorities by Islam, the Seminar recommends that this covenant be ratified by all Islamic states, a step which would also assist Islamic minorities in non-Islamic states to regain the freedom to exercise their traditions and rites.

27. Islamic states should provide Moslem minorities in other states with material and moral support to strengthen their bonds with Islam in the face of modern materialism, to further their right to educate their children in accordance with their national and Islamic traditions, to help them in the free exercise of their religion and to assist them in teaching their members their basic religious duties and in studying the lives of the Prophet and his four successors.

28. The Seminar calls upon all nations not only to respect the rights of minorities to follow their cultural traditions and their religious convictions, and to be guided by them in their personal affairs, but also to provide the necessary support for all initiatives which encourage this spirit and strengthen this orientation and outlook.

## Civil and Political Rights

### *Freedom of opinion, thought, expression and assembly:*

29. The necessary effort should be exerted at all levels to explain the rules and principles of Islamic law in a way that makes them understandable to everyone, particularly to ordinary people.

30. The constitutions and legislation of Islamic states should incorporate provisions on the rights and freedoms recognised by Islam and the necessary organs should be created to ensure the implementation of these rights and to fend off any encroachments upon them.

31. Political and legal rights and rights to information capable of protecting basic rights and freedoms in Islam should be assured.

32. A comparative study should be made of the provisions of international documents on basic rights and freedoms and their counterparts in Islamic law, with a view to adopting those considered concordant with the spirit of Islam.

33. Islamic states should allow their citizens to exercise their freedom of opinion and expression in accordance with the teachings of Islam, since the exercise of these freedoms is a duty, and failure to exercise them is considered a sin. Similarly, Islamic states should provide the necessary safeguards to free people from fear and establish a proper climate to strengthen their faith by constructive debate and respect for freedom of opinion and expression. Islamic states are also called upon to guarantee freedom of assembly as an indispensable element in the exercise of the freedom of opinion and expression.

### *Legal protection of human rights:*

34. Those states whose judges are selected on the strength of their party affiliations are called upon to abandon this wrong practice which is contrary to the rules and conditions stipulated by Islam concerning the appointment of judges.

35. Special courts and courts of exception of any kind should be prohibited and legislation should be passed to prevent an accused person being deprived of his right to have his case tried by an ordinary court of law.

36. Capital punishment for political offences should be abolished in Islamic states as it is contrary to the true principles of Islamic jurisprudence.

37. Islamic states are called upon to include a provision in their penal codes making it a crime for the authorities to resort to torture or kidnapping, and stating that no period of limitation would absolve culprits of their guilt during their lifetime. Islamic states are also urged to take action to put an end to any such malpractices perpetrated in violation of Islamic principles.

38. Islamic governments are requested to support the UN Draft Convention against Torture and also the draft optional protocol thereto, provided that their provisions are found to be in agreement with Islamic jurisprudence.

*Women's rights and status:*

39. Islamic states are called upon to include provisions in their legislation ensuring the political rights of women as guaranteed by Islam, notably their right to vote, to nominate themselves for election, to be appointed to public posts, and to participate in decision-making.

40. Islamic states are recommended to adapt their legislation and the training of their judges so as to ensure the protection of women's rights as recognised by Islam.

41. Commissions should be created to study all factors pertaining to the status of women and in particular the situation of women in education, employment and personal status, and to ensure that women's rights are respected in conformity with the principles of Islamic jurisprudence.

42. As women's rights will be safeguarded to a considerable degree through respect for human rights in general, Islamic and Arab governments are called upon to ratify international conventions on human rights, especially as they do not conflict with Islam's attitude to woman. Such ratification would, on the contrary, enhance international respect for these rights and emphasize Islam's vanguard role in the promotion of human rights.

## General Recommendations

43. Islamic states are recommended to take all necessary measures, legislative or otherwise, to implement within their territories the principles and recommendations adopted by the Seminar on political, civil, economic, social and cultural rights, as recognised by Islam.

44. The need is emphasized to revive the tradition of Islamic jurisprudence, through concerted efforts of the universities and other institutes of learning and through the material and moral support of governments, to provide the necessary safeguards for the exercise of human rights. The importance is also emphasized of individual endeavour (*ijtihad*), as a source of Islamic jurisprudence to deal with issues that have not been dealt with elsewhere in Islamic law, especially those issues that relate to our contemporary way of life. In this respect, cooperation between Moslems must be intensified at both governmental and non-governmental levels.

45. Enlightened members of the various Islamic states are called upon to assume their role of informing public opinion and making the people aware of their rights as recognised by Islam. Governments are similarly called upon to inform and educate the public objectively, stressing the leading role of Islam in the establishment both of human rights and their means of protection. At the same time, steps should be taken to create and promote a common awareness, in the spirit of Islamic legislation, as this would lead to a mobilisation of the forces of social change.

46. Islamic states are recommended to adopt effective policies and measures to guarantee the participation of all members of the public at all levels of the decision-making process.

47. An Islamic charter of human rights should be established, in keeping with Islam's vanguard role in this respect, as a contribution to the endeavours to preserve and develop human rights in the world and to guarantee a better future.

48. The Seminar appeals to the heads of Islamic governments to ensure that the above recommendations are discussed and put into effect, especially at the Islamic Summit Conference, when the present topic will be considered.

## Final Resolution

49. The participants in the Seminar affirm their full solidarity with those Islamic peoples who continue to suffer from the yoke of colonialism, and declare:

- (a) Their full support for the legitimate rights of the Palestinian people in their armed struggle, their right to self-determination, their right to return to their country and to establish an independent state under the leadership of the Palestine Liberation Organisation, their sole lawful representative;
- (b) Their absolute solidarity with the two peoples of Western Somalia (Ogaden) and Eritrea in their heroic struggle against colonialism, and their demand that they be given the right to determine their own future, and that all foreign troops be withdrawn from their territories;
- (c) Their backing for the holy war (*Al Jihad*) waged by the Moslem Afghan people, their condemnation of armed foreign intervention in this Islamic country, and their insistence that all foreign forces be immediately withdrawn from Afghanistan to enable its people freely to determine their own future;
- (d) Their support for the struggle of Moslems in the Southern Philippines and for the struggle of other minorities who seek to obtain their lawful rights; and
- (e) Their appeal to the two Islamic states, Iran and Iraq, to put an end on equitable terms to the war which divides them.

50. The Seminar expresses its deep appreciation to the sponsoring organisations for their exceptional work of preparation, and its gratitude to the government and people of Kuwait for their generous hospitality, mentioning in particular the contribution of the Faculty of Law and Shari'a of the University of Kuwait towards the success of the seminar.

51. The Seminar finally addressed itself to Almighty God in a fervent prayer that all Moslems be brought together in justice and goodness, and that this humanitarian effort be pursued until the dignity of man is assured, the foundations of his rights and his life firmly established and consolidated, and the roots of arbitrariness and injustice eradicated from the world.



This summary of the Conclusions and Recommendations of the Seminar was prepared in Arabic by Dr Othman Abdul Malek Al-Saleh, Assistant Professor of Public Law in the Faculty of Law and Shari'a in the University of Kuwait, assisted by Dr Hassan Ahmed Ali, Director of Legal Affairs at the Ministry of Education and Mr Zouheir Al-Midani, Secretary-General of the Arab Lawyers' Union.

**ANNEX I**

**Addresses Delivered at the Opening of the  
Seminar**

**Inaugural Address of  
His Highness The Sovereign Emir  
at the opening of the  
Seminar on Human Rights in Islam,  
delivered on his behalf by  
H.E. Jassim Al-Marzouk,  
Minister of Education**

In the Name of God the Merciful and Compassionate,

Brothers,

It is my pleasure to welcome you all to Kuwait and to wish you a pleasant stay and a successful Seminar.

Your present meeting on the subject of Human Rights in Islam comes as the Islamic world is celebrating the advent of the 15th century in the Hejira calendar, marking the lapse of 15 centuries since the Prophet, may God bless his name, and his followers took refuge in Medina and set up a community where the exercise of human rights, previously a mere aspiration and hope, became a reality.

This became possible because of Islam's primary belief in human dignity, as emphasized by God, the Almighty, in the Koran where He says:

“and we have edified the progeny of Adam”

To preserve the dignity of man, it is necessary that society guarantees him food, drink, lodging, clothing, education and employment as well as his right to express his opinion, participate in the political life of his country and to be assured of his own security and that of his kin.

For such rights to be instituted, the community must acquire the competence to fulfill them, which indeed is one of its important duties.

Duties, in this way, are seen as another aspect of rights, as though rights and duties form the twin wings which enable society to soar to the horizons of its aspired future.

This explains the special importance attached by Islam to labour and production and the respect due to them in society, and to achieving a happy balance between the rights and the duties of the younger generations in the course of their quest for knowledge, attaching special importance to their ability to innovate, and to the training required to enable them to shoulder their proper responsibilities and develop the competence to put forth judicious opinions, make their own decisions, enrich their life, and spread justice throughout their nation and the world.

Honourable Scholars:

As you assemble here to discuss the subject of Human Rights in Islam, you will no doubt remember those peoples whose rights to their lands, to their home country and to a secure life have been usurped.

You will remember that you have brothers in Jerusalem and Palestine who are still under the yoke of Israeli aggression.

You will remember your brothers in Africa and Asia who still suffer from racial discrimination and oppression in their homelands.

Your discussions at the Seminar will certainly be inspired by justice, will carry the hope that usurped rights will be restored and will stress the need for a more equitable cooperation between developing and developed peoples based on the safeguard of their rights and mutual respect and gratitude. In this there will be the realisation of Man's dignity and honour and of the conditions that will enable him to regain his rights and perform his duties in accordance with the teachings of Islam.

Peace and the compassion and blessings of God be with you.

Address delivered by  
the Rector of the University of Kuwait,  
Dr. Abdul Razzaq Al-Adwani,

In the Name of God the Merciful and Compassionate,

It is a privilege for the University of Kuwait to host this Seminar on Human Rights in Islam, bringing together a distinguished assembly of experts and scholars who are eminent both at the national and international level.

The issues of human rights date back to ancient times, but have started to assume major international importance, as manifested by the international conferences held to discuss them and the resulting treaties.

With the growth of inter-state relations and transactions and the breaches of human rights committed by some states in defiance of their charters, it has become necessary to emphasize human rights in Islam and to promote them in Islamic states, so that Moslems may form one united body whose members would be bound to one another in brotherhood. These noble goals give the present Seminar its special significance.

And so, I wish you every success in your work and hope your meeting will be able to realise its important objectives and will issue recommendations for promoting human rights throughout the world, and the Islamic world in particular.

Peace and the compassion and blessings of God be with you.

Address delivered by  
Dr. Badria Al-Awadhi,  
Dean of the Faculty of Law and Shari'a  
in the University of Kuwait

In the Name of God the Merciful and Compassionate,

This is a proud day in Kuwait, where the Seminar on Human Rights in Islam has brought together the cream of Arab and Moslem intellectuals and scholars, who have understood the message of Islam and have defended it and upheld its message of benevolence and peace.

It is also propitious that the Seminar is taking place at this time as we enter the 15th century of the Hejira. Thus, it was 14 centuries ago that the Prophet declared the world's first human rights manifesto and laid the foundation for a religious canon bringing together all peoples who believe in One God and uniting their hearts in love, brotherhood, and equality among all men, who are only to be distinguished from each other by their good deeds.

The choice of Kuwait to host the Seminar must be seen as a recognition of the fact that this country, through its judicious policy, has been able to perform an effective role in the political sphere and has succeeded in occupying a prestigious position in Arab and international society.

The convening of this Seminar has been possible thanks to the initiative of the Faculty of Law and Shari'a, the cooperation of the International Commission of Jurists and the support of the University of Kuwait. All these bodies are convinced of the extreme importance and relevance of the issue of human rights to contemporary international society and of the need to give due prominence to Islam's role in this respect, by virtue of the principles it upholds to safeguard these rights, in particular the right to life, freedom, justice and dignity as well as those rights that protect Man from injustice and domination.

These rights which were proclaimed by Islam and by which man was liberated from the shackles of bondage are enshrined in the eternal values which characterised Islamic civilisation. This civilisation was built on a universal call for a Shari'a (Islamic law) governing

humanity in justice and equality without any distinction or discrimination.

Kuwait, which attaches great importance to the right to be free, is happy to welcome these enlightened thinkers, who are performing a key role in the service of Islam and in the revival of its heritage, by their researches and studies on human rights in Islam, derived from its sources and applications. These researches and studies have provided a solid foundation for a general declaration on human rights in the Arab and Islamic homeland.

In conclusion, on behalf of the Faculty of Law and Shari'a, I wish to welcome you all, and I hope your efforts in furthering the objectives of this Seminar will be fruitful.

Peace and the compassion and blessings of God be with you.

**Address delivered by  
Mr. Niall MacDermot, Secretary-General  
of the International Commission of Jurists**

It is a great honour to be able to address such a distinguished assembly upon the opening of this seminar.

The International Commission of Jurists has sought for nearly 30 years to promote the rule of law and the legal protection of human rights in all parts of the world. Our activities embrace the whole field of human rights, economic, social and cultural, as well as civil and political. Although we have recently been awarded a European human rights prize, the main thrust of our work is in Africa, Asia, Latin America and the Caribbean.

Like our colleagues in the Union of Arab Lawyers, in addition to undertaking promotional work for the greater respect for human rights, we have drawn attention to some of the violations of human rights which occur, and have done what we can to help the victims.

In earlier years we organised large congresses of lawyers in the different continents, which elaborated in some detail the principles of the rule of law and the legal procedures needed to defend them.

Such is the political sensitivity of the subject of human rights in our changing world that in recent years we have found it more fruitful to hold high-level private seminars on a regional basis, where people with a similar culture and background can discuss freely their common problems. Thus we have organised in the last four years seminars in East Africa on 'Human Rights in a One-Party State', in the Caribbean and in West Africa on 'Human Rights and Development', and in South America on 'Human Rights in the Rural Areas of the Andes Region'. Reports have been published on all these seminars. We hope to hold further ones in South-East Asia and in the Indian Sub-Continent.

This year, however, in view of the crucial importance of the great arc of Islamic countries from Indonesia to Senegal, my Executive Committee instructed me to try to organise a seminar in and for the world of Islam.



I confess that I approached the task with trepidation and humility. We would not have presumed to embark upon this programme without the cooperation of organisations within the Islamic countries. We are, therefore, immensely grateful to our hosts the University of Kuwait and to the Union of Arab Lawyers for having agreed to co-sponsor this seminar, and share with us the responsibility for planning and organising it.

As all the participants know from the terms of their invitations, we have not come here to speak of human rights situations in particular countries, nor to provoke a discussion between the moslem and western worlds. This is an Islamic seminar to discuss issues within the field of human rights which appear to be of importance to moslems, and some of which confront moslems with a serious challenge. Virtually all the participants are moslems. With the exception of my Chairman and myself, the few non-moslems are all serious and respected scholars of the Shari'a and Islamic affairs.

The subjects for discussion in our committees, decided after prolonged consultations, include the relevance of Islamic concepts of economics and of education in the modern world, problems facing muslims as minorities or as citizens in secular states, the right to work, equality before the law, freedom of expression, security of the person, rights of defence, the role of judges, jurisconsults and lawyers, and the role and status of women.

The task of the organisers is now largely completed. The seminar is in your hands and we hope that it may make a useful contribution to questions which concern you.

In preparing the seminar I have already been richly rewarded by having my eyes opened to a different concept of human rights to that developed in the west. Many of the conclusions and principles are the same, but they are arrived at by a different route. The western dichotomy between economic, social and cultural rights and the classical civil and political rights does not exist for you. All human rights are part of a single whole, and include or perhaps we should say are derived from our duties to our fellow men and women. All are united in the concept of the self-realisation and fulfilment of each person in and through a community dedicated to the service of God. The rights of the individual are not opposed to those of the community, since it is only through caring for the community that the individual can develop his full potentiality.

These are not merely abstract notions. I have learned to appreciate something of the courtesy, sensitivity and consideration, the sense of justice and equality, and the deep social concern which spring from Islam. I hope in this seminar to learn more.

Unhappily, as we know in this war-torn region, the Islamic world does not escape the economic, social and political conflicts which threaten man's peace and security throughout the world. But though these conflicts present a threat, they can also find a creative solution, offering prospects of greater justice, equality, freedom and humanity, in short of a greater realisation of human rights. In this process, I am sure, the doctrines of Islam have an essential and vital contribution to make.

In conclusion, may I say that our organisation wishes you every success in your labours, and will be ready to assist in any way it can in the implementation of your conclusions and recommendations.

Address delivered by  
**Mr Zouheir Al-Midani, Secretary-General**  
**of the Arab Lawyers' Union**

This Seminar on Human Rights in Islam is convening in the shadow of grave international events in which the defence of human rights and freedoms is used as a pretext for engaging the sympathy and attention of nations, especially those of the so-called Third World, to lure them into this or that ideology. This conflict is bound to persist between the various world blocs and will continue on this course until the Third World War, which in a sense may be said to have started when Western capitalism came face to face with world socialism in the wake of the armed victories the Second World War.

Would it be possible for us, as Moslems, to find our refuge in the spiritual values of Islam and escape being pulled right or left by embracing its concepts on human rights, basic freedoms, justice and equity, while upholding them as themes for our age, and by adhering to these fundamental doctrines of Islam which Moslems have constantly upheld?

Where exactly are Islam's provisions on human rights to be found? Human rights in Islam constitute certain basic principles that are derived from the Koran and the Sunna. These general principles distinguish between good and evil, and on them can be built whatever is required to provide for the needs of every environment and every age, in such a way as to protect society from deterioration and frustration in face of conflicting ideologies and strong personal ambitions.

It is essential to try to point out the concordance between those general principles and the structure of our present-day civilisation: To deal with this concordance Arabs and Moslems need

- first, faith that this common spiritual heritage constitutes a basic pillar for Arab nationalism and one of the strong links in the chain which binds the Arab nation together in our vast Arab fatherland;
- second, faith that every nation, in order to advance and assume its proper position in history must bind itself to its past, its present and the future to which it aspires.

These general principles will for ever continue to form the central

core of our spiritual heritage, although their application and details can be adapted to the needs of every particular age by making use of other nations' experiences.

Since its beginning when the whole world still lived in the shadow of bondage and oppression, Islam has consistently stood for freedom. Islam then declared its famous axiom, filled with noble meaning, which became the golden rule: "How did you permit yourselves to enslave men, who were free?"

Long before the United Nations Charter, the drafting of famous constitutions and the outbreak of epoch-making revolutions, Islam's appeal for man's freedom was heard and was able to prove its worth and its effectiveness because it was addressed to all human beings without distinction as to race, sex, colour, or creed. Islam's human message may be summed up by this Koranic passage: "I have honoured the sons of Adam, and supported them on land and sea and given them an abundance of good things, because I have ranked them over many of my other creatures."

If this is the nature of man's freedom, it is natural that other concepts shall flow from it, such as:

– *Political freedom*

One of the caliphs said: "Power has been given to me, though I am not better than any of you. If I act rightly, support me; and if I act wrongly, give me your help." Another saying is: "They shall reach their decisions after deliberation and advice."

– *Social freedom*

The Prophet said: "All men are equal, like the teeth of a comb." And the Koran, addressing the Prophet, commanded: "Preach, for you are only a preacher, and have not power over these people," and added: "Will you force people to become believers?"

– *Equality between men and women*

The Koran says on this subject: "All believers, male and female, are responsible for each other: they preach what is right and forbid what is evil."

Thus, God himself has asserted the responsibility of women, side by side with that of men. Those who are familiar with the history of the

period ruled by the Prophet's first four successors (*Al-Khulafa'a Al-Rashideen*) will recall that women had a distinctive role to play in public life: taking part in wars, attending prayers in the mosques, listening to the speeches of the caliphs and participating in public debates, for or against the questions discussed.

– *Freedom of opinion and expression*

Almighty God states in the Koran: "Those who follow the Jewish or the Christian religion must not be perverted but must pay a duty (*Al-Djizia*)." This means that no-one is forced to abandon his religion.

– *The protection of man, and right of defence*

Almighty God says in the Koran: "Should two factions among the faithful war with each other, make peace between them; if one of them oppresses the other, fight the oppressor until he desists and abides by God's commandments; when he does, reconcile the two together in all fairness and justice, for God loves the fair and the just."

This link between the concept of freedom in all its aspects and all its forms, and the sanctity accorded to it in order to raise it above a simple principle affirmed in constitutions or mentioned in national charters, is a distinctive feature of the Islamic spirit. These concepts of freedom occupy a like place to obedience in the dogma of the adoration of God in Islam, and Islam proclaimed them at a time when the world was plunged in a profound sleep.

A scholar may insist on investigating why Moslem and Arab Peoples are not as advanced as would be expected, given all the above qualities of Islam. The answer to this may be summed up by saying that the relative backwardness of Moslem and Arab peoples has been caused by the violations in Arab and Islamic countries of the principles of equity and justice. These violations are the primordial, essential and unique factor in the social, political, moral and economic backwardness and decadence in the Arab and Islamic world.

On this occasion, dear brothers, it is imperative for us to remember our brothers in Islam who continue to suffer from injustice inflicted upon them by the Zionist enemy, who have been deprived of their basic human rights, whose dignity and honour has been downtrodden and who are prevented from expressing their opinions, all that in conflict with the most rudimentary rights stipulated in the Universal

Declaration of Human Rights; but the Koran warns against such injustices, saying: "A most severe punishment awaits wrongdoers."

In conclusion, dear colleagues, I wish to express our great esteem for His Highness Prince Jaber Al-Ahmad Al-Jaber for having given his patronage to this Seminar and our cordial thanks to the University of Kuwait, in particular to its Dean, Dr. Badria Al-Awadhi, for her great efforts in making the Seminar a success, as well as to Mr Niall MacDermot, the Secretary-General of the International Commission of Jurists.

Peace and the compassion and blessings of God be with you.

Address delivered by  
Dr. Al-Touhami Nagrah,  
Representative of the Secretary-General  
of the Arab League

In the Name of God the Merciful and Compassionate.

It is my privilege to greet this respected assembly personally and on behalf of Mr Al-Shazli Quleibi, the Secretary-General of the Arab League, who would have attended the Seminar were it not for his many pressing engagements.

Greetings are also due to the International Commission of Jurists and its Secretary-General, Mr MacDermot, to the Faculty of Law and Shari'a in the University of Kuwait and its Dean and Deputy-Chairman of the Preparatory Committee, Dr. Badria Al-Awadhi, and to the Union of Arab Lawyers and its Secretary-General, Dr. Zouheir Al-Midani. They have all shared in the preparation for this Seminar and worked for its success.

It was a happy choice that the State of Kuwait was decided upon to host this Seminar, for, under the leadership of His Excellency the Emir, it has distinguished itself in the Arab and Islamic world for its untiring cultural activities, and for its genuine interest in issues that concern the present and future of the Islamic world.

The General Secretariat of the Arab League, which is participating in the activities of this Seminar on Human Rights in Islam, gladly acknowledges the support and hard work of the International Commission of Jurists, which we consider to be one of the fundamental links in the Arab-European dialogue. The Commission has continued to work toward promoting and encouraging this kind of dialogue to help Arab and Islamic peoples to obtain support for their just and basic cause (the cause of Jerusalem, Palestine and the Middle East) on the basis of our commonly held principles of equity and the dignity of man, and with a view to bringing this honest and genuine cooperation to a fruitful conclusion in all spheres.

One of the most important aims of this Seminar is to develop a general sense of human rights, clear up uncertainties about the subject of equality between men and women, for instance in connection

with the rights that are supposed to accrue from marriage and inheritance, and consequently clearly define and elucidate the various civil, political, social, and cultural rights that mankind is supposed to have established in the course of its history. Meanwhile, any controversy that may arise about certain points on which the Koran happens to have its own rulings should not be a reason to disrupt or prevent the dialogue from continuing, for such dialogue is of essential value to human rights.

I have had an opportunity to peruse what has been published on the seminars which have been held on this subject since the first one took place in Riyadh in 1972, with the participation of such eminent personages as Dr. Marouf Dawalibi; the succeeding ones took place in Paris, the Vatican, Geneva (the World Council of Churches), and Strasbourg (the European Council).

The two basic sources of Islam, the Koran and the Sunna, contain general provisions on the fundamentals of the principles of human rights, for it would be completely inconceivable for these principles to be provided for in detail. These two sources continue, however, to be man's unfailing guide in his quest for the fulfilment of his moral, spiritual and material needs, and in his progress in the various fields of science, culture and civilisation.

Human rights in Islam are based on the premise that man acts as God's *khalif* (representative) on earth, given the standing and prestige granted him by God, who gave him of His own spirit so as to render him closer to heaven and protect him from falling victim to his earthly instincts and desires and thus being reduced to no better than a beast that only knows the law of the jungle. Islam has provided Man with a sanctuary in religion and sanctified his right to live in safety and security, to possess money and property, and to secure protection for his family and household. Islam proclaimed that all humanity constitutes one family, as pointed out by the Prophet when he said: "All men are God's children and the most beloved by Him are those who are the most useful to his children."

The fundamental principles of Islam must be considered in any legislation. Otherwise, if a law is drafted in conflict with one or other of these fundamental principles amendments to all previous laws and bylaws based on these principles will be required.

Thus, to assume equality between men and women in rights of inher-



itance in all cases would, for example, entail the abolition of the obligation of responsibility which the religion imposes upon the husband.

However, there are other areas of human rights dealt with by Islam that are capable of being moulded to fit different circumstances, and that may be developed in harmony with man's progress in science, culture, education and civilisation in his constant search for perfection.

It is hardly sufficient, though, to focus all our energies on explaining the importance of these rights or their fulfillment and implementation. We must also emphasize the need to raise man's conscientiousness and promote his willingness to perform his duties, understand his responsibilities and put his acquired rights to better use.

Islam has called upon us to institute a good system of education to teach us to make our efforts more methodical and objective. It is high time we made a big effort to end the duality in the Islamic personality which results from the discrepancy between Islam's noble theories and principles and the actual practice in the Islamic world. Colonialism, which has held us back for so long, may be said to have blighted the Islamic world because of this conflict between theory and practice in our lives.

The call to implement human rights in Arab and Islamic countries and in the Third World, by incorporating provisions for them in our constitutions and laws and by practicing them in our daily lives, may be acted upon in stages. The important thing is to start to make good lost time.

In a letter dispatched to Abu Mousa Al-Asha'ari, Omar Ibn El-Khat-tab wrote: "Understand what is presented to you, reach your judgment, and make sure to carry it out, for what is the use of a right that remains unimplemented."

In the same vein, what is the use of a declaration of rights for which one cannot guarantee respect and the enforcement of which is prevented?

We hear daily of Israel's inroads on the rights of the Palestinian Arabs in defiance of international organisations. Israel continues to deprive them of their property rights, to slaughter innocent and unarmed citi-

zens, to resort to brutal methods of repression such as no civilized society can condone, to violate all their sanctities and sacred values and to plant settlements on lands it has usurped from them by force of arms.

Man's true worth is measured by the extent of his observance of what is right, his demolition of what is wrong, by the good he does and the evil he fights, the rights he safeguards and the vices he fends off. It is worthy of Moslems to enjoy and exercise such rights as conform with God's will and are respected by human conscience, and to practice the freedom that the prophets, and after them the reformers, have striven to establish, freedoms that continue to embody the hope of a better future, and to represent a great pillar in the edifice of every good government. These freedoms must necessarily therefore be one of our principal objectives in our endeavours to guarantee Islam, and indeed all humanity, a better future.

Your good efforts, your valuable studies and your objective recommendations will no doubt bring the most propitious results on both the governmental and popular levels. God be with you in your endeavours to raise the word of Islam and elevate the standing of man in the universe.

May God lead you into the path of justice and crown your endeavours to raise higher the word of Islam and the value of man.

**ANNEX II**

**Key-Note Address  
on**

**THE NATURE OF ISLAMIC LAW AND THE CONCEPT  
OF HUMAN RIGHTS**

**by**

**Mr. A.K. Brohi**

## The Nature of Islamic Law and the Concept of Human Rights

I propose to set forth what I regard as the essence of Islamic Law in relation to its concept of Human Rights. As a result of considerable thought spread now over a period of 30 years or so that I must have devoted to the study of the character of Islamic Law and its relevance to the Modern World, I should be able to present from the Islamic point of view the specifically unrivalled contribution our Law has made to Human Rights for the relief and redemption of man. But in order to do this effectively it is necessary to expound the most important concept of jurisprudence viz., *justice* as Islam understands it.

“When will justice,” the Prophet was asked, “be realised on Earth?” “Not until he who sees injustice being done to another suffers from the sight of injustice being perpetrated as much as its victim,” replied the Prophet. “A country can be governed by *Kufar* (heretical beliefs) for some time but with *injustice* not for long,” said Hazarat Ali, the fourth Khalif of Islam. (*Al-mulku yabqa ma'al Kufr Wala ma'al zulm.*)

The condition for the establishment of a just order in Islam is that injustice should be exposed, it should be ruthlessly fought and its victim compensated. Islam considers evil as real on its own plane and takes a serious view of wrong-doing. It, therefore, insists upon there being a party of people in the *Ummah* who should make it their duty to uphold the good and prevent the evil from taking place.

The end-product of all great religions in the last resort is the sublime morality they teach, as also the sanctions they provide for its enforcement. As Schopenhauer used to say, it is no doubt easy to talk about morality but without religion you cannot make it effective. *The only real sanction of morality in the last resort is in Religion.* The moral values are supreme — in the sense that they are not subservient to any other value. All strength is durable only on a moral basis. What is acquired by resort to immoral means cannot be retained for long. He who acts contrary to moral law is therefore acting against the Law of Human Evolution. This is precisely what Plato meant when, in the hierarchy of ideas, he placed the idea of the good at the highest rung of the ladder — at the apex of the pyramid of ideas. It was for him the highest value. It is the function of morality to tell us what is right and proper to do, and *it is the function of law*

to enforce such moral matters as have a direct bearing on the regulation of the life of man in relation to his fellowmen. Of course, if the law is secular the enforcement of it is possible only on the secular plane, and if the law is religious its enforcement takes notice of the deleterious consequences of the acts not only in this life but also in the life to come.

The moral progress of man has in almost every case consisted in the development of rational thought. It is the rational evolution that has preceded and brought about the ethical evolution. The intellectual development and moral development go hand-in-hand. 'What is the good of being good in the world' is a question that has been asked by a long line of thinkers from Tolstoy down to our own day. 'What can a moral man do to save himself in an immoral society' is yet another question that has been frequently asked. The answers to these questions are possible only if in a moral situation we regard the claim of 'Humanity' to be of higher value than that of the mere individual. The unit which one has steadily to keep in mind in order to understand accurately the process in the case of morality is *humanity as a whole* and not merely the individual man or woman, although in the case of intellectual development it is the individual who alone is the bearer of value and it is through him that humanity as a whole is redeemed. Ethical thought *per se* has to deal with the total life of the human organism of which we, as individuals, are but a part, although a necessary part. Once the focus of attention is shifted from the human organism to its cell, or, in other words, from humanity to individual man, or from human relations in general which pose a social question to the exclusive consideration of the value of a personal and individual character, morality ceases to be true to its vocation and becomes stultified and sterilized.

The Greek thinkers who had reached the highest pinnacle of rational thought, when they were loyal to the best of which they were capable, invariably considered the question of *right conduct* in the terms of *justice* — and their ideal always was a just man. Now you cannot consider a just man in the abstract, for justice at its irreducible minimum is a *relationship between man and man*. There has to be a wider reference to human relationships in which a just man can be expected to give full scope to this ideal of justice. Of course, the Quran goes much further. It even considers a man unjust to himself if he is unjust to others. And this is because by inflicting injustice on a wider synthesis in which we live, move and have our being he in reality is proving injurious to himself, if only because he is himself an

integral part of it. Whole Humanity has, according to the Quran, been created as "Ka-nafsin Wahidatan" — like one single indivisible self. And if you murder a man it is as if you have murdered whole Humanity!

Later on, in the twilight time of Greek thought in the Mediterranean world Greek rationalism suffered a serious set-back and was corrupted by alien influences with the result that the *ideal of the just man gave way under the Stoics and Epicureans to that of a wise man* — that is, a man who knew all the contrivances with which to arm and protect himself by all manner of influences, mentally included, against the *hardships and sufferings of life*. The two actual religions, says an eminent Anthropologist, of the cultivated Roman and Hellenic world, were *stoicism and epicureanism*. Both of them tended to think of their aim, not as a regulation of relations between man and man so much as to seek the formation of individual character in such a way that *the individual might enjoy a comparative degree of immunity from the effects of the trials and vicissitudes of life*. Morality thus began to focus its attention not on regulations of relations between man and man but by taking man as though he constituted a world by himself, it proceeded to *comfort* him, to *console* him. The process was carried a step further and the ideal of current philosophical religions, the wise man, eventually developed into that of a *saint*, viz. as one who felt inwardly so much at peace within himself, so much comforted whenever any sufferings overtook others or even himself! The design now was not any more *to remove the cause of sufferings but to see that man was anchored in a sort of optical illusion that this was the best possible world where even sufferings had to be endured by one to be qualified to gain a passport to secure admission to a state of eternal Bliss*. Thus the human sufferings, even oppression and tyrannies were not so much opposed, combated and man redeemed from their grip, but instead he was sought to be reconciled with it — in a word *comforted*. He was given plenty of the consolations of religion and asked to put up with whatever was happening with good conscience since such was the plan, that it is the meed and the humble who shall, in the end, be admitted to the kingdom of Heaven. The original purpose of morality viz., the regulation of relations between men and men, the elimination of wrong and the establishment of right was entirely lost sight of and forgotten. As just man gave place to wise man and then to saint, so far as the notion of wrong itself was concerned it was made equivalent to sin, and thus quest for justice which was regarded as a mere species of moral good and moral excellence came to be associated with the

notions of certain exalted conditions of feelings and emotions — the possession of which became the be-all and end-all of life.

The result of this perversion of ideas was that morality, right conduct, *justice* between man and man, ceased to promote the actual good of mankind. It became shorn of its real function which was somehow not identified with the individual's own good, but with his salvation which was to take place on another plane of existence.

The function of morality is the right relation to the vast human organism of which man is an integral part, and of that actual moral relation the essential foundation is justice. The anthropologist I have quoted above, goes on to add: "Justice is not an ethereal ideal, it is not a constructive conception, the created product of some sublime vision. *It is simply the negation of wrong, of injustice.* It demands that there shall be no despotic oppression, no arbitrary violence done by man to man, no gratuitous abuse and cruelty; that, in his life, his activity, his thought, man shall not be tyrannized over by man, by virtue of mere power, privilege, factitious and false authority. Those things are wrong, purely and wholly wrong, in whatever light we look at them, so long as we attach any meaning whatever to the word 'wrong'. In demanding immunity from them, man demands only, as he puts it, his right. That right, although not founded on the sanction of any contract, not demonstrable by any legal formula, although, if you will, quite an arbitrary claim — regarded as a claim — constitutes the fundamental demand, the root and essence of the significance of morality. It is right, as distinguished from wrong. The elimination of wrong is the irreducible minimum of morality. Whatever lofty superstructure of ideal ethical emotion be reared above that irreducible minimum, it counts for nothing *so long as the primary essentials of right are not secure, so long as wrong is upheld.* Such a superstructure is not moral at all. In order that a man or a society of men should have any claim to be regarded as moral, they must cease to do wrong. It is of no avail that they should entertain sublime emotions, that they should live in a sustained ecstasy of exalted feeling, if they do not fulfil the primary condition of foregoing wrong doing, of ceasing to be unjust."

It is this fallacious species of reasoning denounced by the anthropologist I have quoted, namely, that somehow morality does not any more consist in combating the wrong but merely in fostering in the heart and soul of the victim of injustice, ecstasies of exalted feeling, which is responsible for the startling result that humanity has witnes-

sed the onset of an age in which *the object of morality is 'not to resist evil' but 'to submit to it'; not to 'advance justice' but 'to bow to and ignore injustice'*. Here the basic function of all morality becomes inverted. It actually tends to support the idea of not resisting evil and, through such a perverted effect of ethical emotion, instead of being able to promote the development of the race it comes to achieve its exact opposite. It loses all concern for the human future. It is some such mode of inverted thinking, of managing to comfort the down-trodden even by resort to organised lying, which must have been responsible for the following withering denunciation by Dr. Falta de Gracia of the way of looking at things which somehow exhibits them as though they were upside down: says he, "The notion of justice is as entirely foreign to the spirit of Christianity as is that of intellectual honesty. It lies wholly outside the field of its ethical vision. Christianity — I am not referring to interpretations which may be disclaimed as corruptions or applications which may be set down to frailty and error, but to the most idealized conception of its substance and the most exalted manifestations of its spirit — Christianity has offered comfort and consolation to men who suffered under injustice, but of that injustice itself it has remained absolutely incognizant. It has called upon the weary and heavy laden, upon the suffering and the afflicted it has proclaimed to them the law of love, the duty of mercy and forgiveness, the Fatherhood of God; but in that torrent of religious and ethical emotion which has impressed men as the summit of the sublime, and been held to transcend all other ethical ideals, common justice, common honesty have no place. The ideal Christian, the saint, is seen descending like an angel from heaven amid the welter of human misery, among the victims of ruthless oppression and injustice bringing to them the comfort and consolation of the Paraclete, of the Religion of Sorrow. But the cause of that misery lies wholly outside the range of his consciousness; no glimmer of any notion of right and wrong enters into his view of it. It is the established order of things, the divinely appointed government of the world, the trial laid upon sinners by divine ordinance."

In Islam although the quality of mercy is an attribute of Divine, the *stress* on the demand for doing *justice*, as the phrase goes 'even if the heavens fall', is paramount. The one concept which may be treated as a fulcrum on which the whole superstructure of Islam's ethical system is firmly fixed is *justice*. Quranic emphasis on the need to do justice in respect of *Hudoods* (offences) mentioned in the Quran is so well-known that I would not go over it. In chapter 4, verse 105 the Prophet is asked to *judge* between people by means of what revela-



tion has come to him. And he is admonished "And be not one preaching the cause of dishonesty". In the 135th verse of the same chapter, we have the following: "O' you who believe, *be maintainers of justice, bearers of witness of Allah even if it be against yourselves or your parents or near relatives – whether he be rich or poor Allah has better right over them both...*" And then concern for justice reaches its highest level of manifestation in Chapter 6, verse 153 – where it is said: "Approach not the property of the orphan except in the best manner, until he attains his maturity. *And give full measure and weigh with equity... and when you speak be just though it be against a relative. And fulfill Allah's covenants...*" Divinely ordained punishments have to be inflicted and there is very little option for the judge called upon to impose *Hadd* if facts and circumstances are established that the *Hadd* in question has been transgressed to refuse to inflict the punishment. *The Human duties and rights have been rigorously defined* and their orderly enforcement is the duty of the whole of organized communities and the task is specifically entrusted to the law enforcement organs of the state. The individual if necessary has to be sacrificed in order that the life of the organism be saved. Collectivity has a special sanctity attached to it in Islam. All Quranic prayers are in the plural and the value of prayer offered by an individual is greater if he goes out of his way to join a bigger gathering of his brethren when they are engaged in a congregational prayer.

One has even noticed that there are many immoral individuals who perpetrate all manner of infamies and degradations on their fellow men, but they themselves do not seem to suffer from any consequences of their evil deeds as long as they live. Although this is so and the perpetrator of the wrong often gets away with the injury he inflicts on his fellow men, but then society of which he is a part, the social organism in which he is to be considered as the Cell, suffers inevitably – it progressively gets atrophied, its growth is stunted and inevitably it ceases to be. Wages of sin is always death. The religious law is inexorable and so if not here, then elsewhere, the accounts will be audited with merciless severity, specially when some one has been wronged by us.

It would take me too long and far afield if I ventured to survey, in an address like this one, the course of Moslem History in terms which would explain the tactical principle which makes for the *intellectual* and *moral* ascendancy of the culture of Islam. But I would let my Anthropologist friend, Dr. Robert Briffault, the writer I have extensively quoted from so far, tell you his view of the moral greatness,

intellectual originality, and creative vigour of the culture of Islam: "To the intellectual culture of Islam, which has been fraught with consequences of such moment, corresponded an ethical development no less notable in the influence which it has exercised. The fierce intolerance of Christian Europe was indeed more enraged than humiliated by the spectacle of the broad tolerance which made no distinction of creed and bestowed honour and position on Christian and Jew alike, and whose principles are symbolized in the well-known apologue of the Three Rings popularized by Boccaccio and Lessing. It was, however, not without far-reaching influence on the more thoughtful minds of those who came in contact with Moorish civilization. But barbaric Europe confessed itself impressed and was stung to emulation by the lofty magnanimity and the ideals of chivalrous honour presented to it by the knights of Spain, by gentlemen like the fierce soldier Al-Mansur who claimed that, though he had slain many enemies in battle, he had never offered an insult to any — an ideal of knightly demeanour and dignity which twentieth-century England might with profit emulate. The ruffianly Crusaders were shamed by the grandeur of conduct and generosity of Saladin and his chivalry. The ideal of knightly virtue was adopted, the tradition of *noblesse oblige* was established. Poetry and romances deeply tinged with Arabian ideas formed the only popular imagination; and a new conception of the place and dignity of woman passed into Europe through the courts of Provence from the Moorish world, where she shared the intellectual interests and pleasures of man." (See his Making of Humanity.)

In the ideas that have been presented upon the Nature of morality, justice, it would appear that it is intellectual honesty that is considered as the breeding ground for the flourishing of those virtues. That incidentally also explains how, of late, the European intellectuals, particularly the orientalists and the Arabicists, have been busy in the name of scholarship and learning in sneering against sacred things of life and in presenting, thanks to their intellectual arrogance and crookedness, a view of Human history in which the Divine Presence, Principle of Purpose somehow has played no part whatever in influencing the course of human development. This is not so much a criticism of the claim of Islam to be a God-inspired religion as a desecration of all that is good and great in the life of man. All light and Grace ultimately flow into the human mould from a source which is much higher than the one which, on his own, can at all be scaled by man. In the last resort, such is the teaching of Islam that, it is the *divine touch* that has transformed the clay model that otherwise is

man and given to his creation, to his law, his culture and to his civilization, a celestial dimension. Only when the spirit breathes on clay is man born! For some time Europe acknowledged this miracle of the divine touch making man out of clay as in the image reflected on frescoes of the Sistine Chapel drawn by Michelangelo showing 'The Creation of Man'. It is God's touch that transforms man into becoming an expression of the Divine. The European reached high vistas of human attainments as long as he was loyal to the presence of the Divine element in man. But then, in the name of so-called rationalism displayed by the Deist philosophers of the Eighteenth Century Europe, first rejected the Heavenly Presence which hovers *above* man, and afterwards came the Psycho-analyst Freud and his followers of the 19th century who unleashed the gates of hell by tapping man's unconscious – thus letting loose dark and dangerous forces that had hitherto been held in check by the sway of heavenly control on them from above. The result of this exercise has been that the post-marxist period of European History has been barren and bleak precisely for that reason. And no wonder, humanity is now fast slipping into a cess-pool of nitwittism. Its original aspiration which was to enable man to raise himself above himself, upwards and heavenwards, seems to have been scoffed at by the pseudo-scientists of our time and no wonder the time has arrived when there is nothing to which the son of man can cling any more. He is floating rudderless, an orphan in the universe!

Now it is not Islam that European scholarship is wishing to devalue so much as humanity itself. But in this diabolical age so many counter-initiatory forces are raising their heads that the very attempt to combat the forces of evil, that we witness are being considered at war with the harmony of human life, seems to evoke a cynical response. The combined forces of Atheism, Secularism and Nihilism seem to be on the ascendancy. It is against this background that the contribution made by Islam fourteen hundred years ago can be seen as representing the manifestation of the Divine Element that somehow will not let man devalue man.

Having emphasized the supreme importance of the concept of justice and what it means in realistic terms quite apart from the mystifying, wooly, empty and jejune conceptions of the term as one encounters them in the writings of most of the Western publicists, the task of enforcing justice in the sense implied in the foregoing observations is one of paramount importance, and human rights are only an aspect of that large and liberal concept of justice of which we have been

speaking in this context. There are a number of qualifications that must be kept in view before human rights can be meaningfully talked about. There is no such thing as human right in the abstract. First we have to locate the human being in a given social cosmos, view him against the background of a certain economico-political and socio-cultural conditioning before we can meaningfully talk about his rights.

In Islam all rights are sanctioned by the Divine Law and even the rights of our fellowmen are derived from Divine Law, not directly but through the law of God. The *Haqooallah* and *Haqooqunnas* of which we have spoken earlier in another section of this address were binding on the *Khalifas* themselves as much as if they were like any other believer who was a member of the Muslim Community. The *Khalifa* himself was directly accountable to God and in his own right he had no privileges, no extra-status, no special position. He was accountable in courts and could be summoned there as an ordinary party and his authority was binding as long as it was in keeping with the Book of God and the practice of the Prophet. This accountability in the last resort was owed by him to the Maker, the fountain source of all sovereignty, and every believer knew that even if he disobeyed the order of the *Khalifa* and escaped earthly punishment prescribed for such disobedience, he would eventually be punished on the Day of Judgment when his account would be audited with merciless severity, specially in respect of those aspects of his conduct which affected injuriously the rights of others. Thus it would appear there is a sense in which man as such has no rights within a theocentric perspective where God, the only reality, is in the centre: he has only *duties* to his Maker. But these duties in their turn give rise to all the rights, human rights in the modern sense included. The Quran is full of numerous guidelines in terms of which a believer is expected to conduct himself. As a sample, the following verses from *Surah Bani-Israel* are cited to illustrate the sublime morality and legal precepts of the Quran:

23. And thy Lord has decreed that you serve none but Him, and do good to parents. If either or both of them reach old age with thee, say not "Fie" to them, nor chide them, and speak to them a generous word.
24. And lower to them the wing of humility out of mercy, and say: My Lord, have mercy on them, as they brought me up (when I was) little.

25. Your Lord knows best what is in your minds. If you are righteous, He is surely Forgiving to those who turn (to Him).
26. And give to the near of kin his due and (to) the needy and the wayfarer, and squander not wastefully.
27. Surely the squanderers are the devil's brethren. And the devil is ever ungrateful to his Lord.
28. And if thou turn away from them to seek mercy from thy Lord, which thou hopest for, speak to them a gentle word.
29. And make not thy hand to be shackled to thy neck, nor stretch it forth to the utmost (limit) of its stretching forth, lest thou sit down blamed, stripped off.
30. Surely thy Lord makes plentiful the means of subsistence for whom He pleases, and He straightens. Surely He is ever Aware, Seer, of His servants.
31. And kill not your children for fear of poverty — We provide for them and for you. Surely the killing of them is a great wrong.
32. And go not nigh to fornication: surely it is an obscenity. And evil is the way.
33. And kill not the soul which Allah has forbidden except for a just cause. And whoever is slain unjustly, We have indeed given to his heir authority — but let him not exceed the limit in slaying. Surely he will be helped.
34. And draw not nigh to the orphan's property, except in a goodly way, till he attains his maturity. And fulfil the promise; surely the promise will be enquired into.
35. And give full measure when you measure out, and weigh with a true balance. This is fair and better in the end.
36. And follow not that of which thou hast no knowledge. Surely the hearing and the sight and the heart, of all of these it will be asked.
37. And go not about in the land exultingly, for thou canst not rend the earth, nor reach the mountains in height.
38. All this, the evil thereof, is hateful in the sight of thy Lord.
39. This is of the Wisdom which thy Lord has revealed to thee. And associate not any other god with Allah lest thou be thrown into hell, blamed, cast away.
40. Has then your Lord preferred to give you sons, and (for Himself) taken daughters from among the angels? Surely you utter a grievous saying.

The best statement of the human rights is also to be found in the address delivered by the Prophet so often described as his last address delivered on the parting pilgrimage. Following is the extract from Life of Mohammad in which appears that portion of the address dealing with human rights as it has been translated by Professor A. Guillaume:

“Then the apostle continued his pilgrimage and showed the men the rites and taught them the customs of their *Hajj*. He made a speech in which he made things clear. He praised and glorified God, then he said: “O men, listen to my words, I do not know whether I shall ever meet you in this place again after this year. *Your blood and your property are sacrosanct until you meet your Lord, as this day and this month are Holy. You will surely meet your Lord and He will ask you of your works.* He who has a pledge let him return it to him who entrusted him with it; *all usury is abolished*, but you have your capital, *Wrong not and you shall not be wronged.* God has decreed that there is to be no usury and the usury of Abbas. b. Abdul Muttalib is abolished, all of it. *All blood feud in the pagan period is to be left unavenged.* The first claim on blood I abolish is that of b. Rabia b. al-Harith b. Abdul Muttalib (who was fostered among the B. Layth and whom Hudayl killed). It is the first blood shed in the pagan period which I deal with...

*“You have rights over your wives and they have rights over you. You have the right that they should not defile your bed and that they should not behave with open unseemliness.* If they do, God allows you to put them in separate rooms and to beat them but not with severity. If they refrain from these things they have the right to their good and clothing with kindness. *Lay injunctions on women kindly for they are prisoners with you having no control of their persons. You have taken them only as a trust from God (bi amanatillah) and you have the enjoyment of their persons by the words of God,* so understand my words, O men, for I have told you. I have left with you something which if you will hold fast to it you will never fall into error – a plain indication, the Book of God and the Practice of His Prophet, so give good heed to what I say.

“Know that every Muslim is a Muslim’s brother, and that the Muslims are brethren. It is only lawful to take from a brother what he gives you willingly, so wrong not yourselves.”

Talking about the sum and substance of the various human rights and the fundamental freedoms which have been incorporated in the "Universal Declaration of Human Rights" of 1948, Syed Abdul Latif sums up the position as follows:

"The twin aim of this Declaration is on the one hand to equip the individual to live a free life considered successively as (i) a physical organism; (ii) a moral personality; (iii) a worker; (iv) an intelligent being and (v) a member of a community and of a polity, and on the other to help the individual so equipped to make his contribution to international amity or the peace of the world."

He then goes on to remark: "To the student of the Qur'an not one word, in the preamble or in the objectives of the Charter and not a single article in the text of the "Universal Declaration of Human Rights" will seem unfamiliar. Under a creed which places man next to God, and brushes aside all distinctions of race, colour and birth and calls upon all mankind to live together as a family of God, or as a 'fold every member of which shall be a shepherd or keeper unto every other and be accountable for its welfare', the "Universal Declaration of Human Rights" must follow as a basic corollary, or an extension of the Qur'anic programme. But a mere declaration of them will not carry humanity far. Several questions call for attention from the Qur'anic point of view." He raised the following questions:

Firstly, what is the impulse underlying the 'Charter of the United Nations' and the 'Universal Declaration of Human Rights', adopted in pursuance thereof? In other words, is the scheme in the interest of or for the good of humanity as a whole or is it a practice to subserve the interest of any country or group of countries.

Secondly, looking at the list of rights covered by the 'Universal Declaration' is it possible for any country claiming to be civilised at the present hour to say with confidence that all the rights are observed by it or that it may serve as a pattern for the rest? It is obvious that the initiative for implementing them must come from the government or legislature of each country. Is the system of political life in every country such as may place in high offices the type of men who may have the urge and the high-mindedness to respect the Declaration and implement its provisions.

Lastly, the world order which is the aim of the two documents argues a common purpose acceptable to all the countries of the world. As

things stand, the world is divided, broadly speaking, into two camps — the Soviet and the American. A world arrangement, whatever its form, will be possible only on the basis of some sort of a reconciliation at first between the two contending ideologies or by building a half-way house for mutual cooperation. Is such a reconciliation possible. (See “The Mind that Al-Quran Builds” p. 83.)

Syed Abdul Latif surveys possible answers to these disturbing questions and records as his opinion that *there is a great deal of discord between the provision of these rights contained in the Universal Declaration and the actual practices of the people of the modern West. In the words of Professor Hitti:*

“Unfortunately during the last decade or two, in particular, the impact of the West has not been all for the good. There is a striking contrast between the humanitarian ideas professed by Western missionaries, teachers, and preachers, and the disregard of human values by European and American politicians and warriors; disparity between word and deed; an overemphasis on economic and nationalistic values. The behaviour of the so-called advanced nations during the last two wars waged on a scale unknown in history, the ability of Western man to let loose these diabolic forces which are the product of his science and his machine and which now threaten the world with destruction; and, with particular relation to the Near East, the handling of the Palestine problem by America, England, France, and other nations — all these have worked together to disillusion this man of the Near East who has been trying to establish an intellectual reproachment with the West. It is these actions of the West which alienate him and shake his belief in the character of the Western man and his morality on both the private and the public levels.”

In the context of the cynical evaluation offered by Syed Abdul Latif of the impact that the “Universal Declaration of Human Rights” has made on present day conditions of Man, it is necessary to make some additional points with a view to showing the excellence of the strategy with which Islam has enjoined upon its votaries the obligation to acknowledge and implement the Human Rights.

The Western world somehow believes that mechanical conformity to the pattern of conduct, prescribed by the law of the State or by some such authority, is sufficient to secure public order and universal peace. In other words, its procedure is to proceed to influence from



outside the inner condition of man and somehow it believes that institutions, social, economic, political etc., have a way of influencing the individual character. It is submitted that this is a fallacious approach, only *slaves* can be thus handled but not *free* people. Islam, on the other hand, begins by inviting man to accept the paramountcy of the power of the Lord, his own servitude and bondage to the will of his Master who is the Sovereign Ruler of the universe; in the last resort it redeems him by prescribing upon him norms of behaviour by which he is to regulate his life.

In the words of Professor D. De Santillana:

“We may agree with the Muslim jurists, when they teach that the fundamental rule of law is liberty... God has set a bound to human activity in order to make legitimate liberty possible for all; without the ‘bounds of God’, liberty would degenerate into licence, destroying the perpetrator himself along with the social fabric. This ‘bound’ is precisely what is called law which restrains human action within certain limits, forbidding some acts and enjoining others, and thus restraining the primitive liberty of man, so as to make it as beneficial as possible either to the individual or to society. Whatever their form, these rules tend to the same end and have the same purpose, that is the public weal (*maslahah*). Accordingly, law, divine in its origin, human in its subject-matter, has no other end but the welfare of man, even if this end may not at first sight be apparent: for God can do nothing which does not express the wisdom and mercy of which He is the supreme source.” (See his article on “Law and Society” in *The Legacy of Islam*.)

Let us make the main thesis of this approach clear with reference to one of the *Surahs* of *Quran* entitled “*Al-Balad*”: the following is the English reading of it (chapter 90).

“(In the name of Allah, the Beneficent, the Merciful).

“Nay, I call to witness this City. And thou wilt be made free from obligation in this City — And the begetter and he whom he begot, We have certainly created man to face difficulties; Does he think that no one has power over him? Have We not given him two eyes, And a tongue and two lips, And pointed out to him the two conspicuous ways? But he attempts not the uphill road; And what will make these comprehend what the uphill road is? (It is) to free a slave, Or to feed in a day of hunger, An orphan nearly related, Or

the poor man lying in the dust; Then he is of those who believe and exhort one another to mercy. These are the people of the right hand, And those who disbelieve in Our messages, they are the people of the left hand. On them is Fire closed over.”

The title of the *Surah* is '*Al-Balad*' that is the '*City*' and, in the considered opinion of the present writer, it represents the condensed essence of the wisdom upon what may be called the subject of civic rights in the context of the development of monotheistic religion. By the word '*City*', by which the verse begins, is meant '*Mecca*'. A thousand years before the advent of the Prophet of Islam (p.b.u.h.), Hazarat Ibrahim (a.s.) prayed for a city being raised in that wilderness where he had left one branch of his descendants (Chap. 14: V. 37), and for a prophet to be raised amongst them (Chap. 12: V. 129). The verse is in the nature of a '*charter of freedom*' given to man after the prayer of Ibrahim had been answered in one of his descendants, namely, the Prophet of Islam. This is an allusion to the Founder of the City, the travail through which the progeny had to go, till the last liberator appeared in the city who was made free from doubt and distress in that very city. It draws attention to the evolution of religion and Man from Abraham to Mohammad — the entire period of Semitic civilization in Mecca as its place of birth and completion.

Man has been created to face difficulties and in order to help him to tide over these difficulties and face with fortitude the trials and tests with which life confronts him, he has been reminded that there is some '*Power*' that is an overseer of his deeds, namely, his Lord and Master who sees him through and through. The Chapter goes on to recount the Grace of God to man as is evidenced by the conferment of power of sight, power of speech (a tongue) and the power to control that tongue by means of two lips — if only because there are many thoughts which the tongue is not allowed to utter and, when it does, there is no way of getting rid of their consequences. Furthermore, man has been pointed out two conspicuous ways and now the choice is his, to elect either to negotiate the way of truth or of falsehood, to choose to be the doer of good or evil deeds. Of these two possible choices the path of righteousness consists in siding with the *truth* and of doing good deeds. This is the uphill or higher way and the highest thing available to the believer to do is to '*free a slave*'. This constitutes not only the physical freedom, but moral, mental and spiritual freedom as much from other human beings as from one's lower self. It is this freedom from necessity that "*freeing the slave*" expresses. This virtually amounts to securing the emancipation

of man from all manners of servitude. He should feed a hungry orphan, thus saving him from hunger, or help the poor, who are described as 'the man who is lying in the dust'. These are social duties: freeing the slave, helping the 'Orphan', the uncared for, and the unprotected ones, as even to help the man who, economically considered, is poor and is lying low in the dust. These duties give rise to corresponding rights to the Orphans, the unprotected ones. Over and above these, is the duty to believe and exhort one another to patience and to mercy. Man must believe in the 'Unseen! he must believe' in all the Prophets, in 'the Angels', in all the 'revealed Books' including those that have preceded the *Quran*. Man's ultimate return is to God who is his Creator and his liability to account is absolute. While facing the tests and trials of life, a believer is called upon to be 'patient and to pray' as even to show 'compassion and mercy to others'. Those who can adhere to this way of life, and exercise their power of choice in conformity with the tenets of the Divine law, are declared to be the 'people of the right hand' and those who disbelieve are characterised to be the 'people of the left hand'. And it is this distinction which is vital.

Islam, it will be seen, presents to man a "Charter of Human Liberty", and at the same time emphasises the necessity of his being aware of his responsibility and accountability. In the earlier forms of religious belief and practice, the injunctions prescribed to regulate man's conduct were couched as 'absolute commandments' e.g. the Ten Commandments given by the Law of Moses. In those cases the obedience of a believer was complete if he conducted himself in conformity with the law; thus even mechanical conformity to the law was enough. But the *Quran* is also the *Furqan*. That is to say, it is a book that makes exercise of discretion and discrimination possible for man — in that it outlines for him the possible courses of conduct that are open to him as a free agent and invites him to choose the uphill way which is the difficult way — he is to choose the 'right', to side with 'truth' and to stand steadfastly against all odds. Islam makes the believer his brother's keeper, particularly if the brother is helpless and is uncared for or is an unprotected one. It extends the sphere of his responsibility by commissioning him to believe because, without proper belief, there is no proper conduct. He is, therefore, asked to base his conduct on right belief that has been taught to him through the revealed Word of God contained in the *Quran*. He is also invited to be a missionary in the cause of Islam, to become a diligent crusader in the cause of inviting his fellow man to the way of patience, of showing fortitude and compassion so long as his earthly life lasts. Should he

do all this, he is rightly guided and would be duly rewarded by the grant of Eternal Life, which is real life as opposed to *this* life which is only the seedplot of the *Hereafter*. That life which is to come, is better and eternal and this life provides only the opportunity to win the reward of that life. If properly availed of, this opportunity, which life on Earth provides, would enable a believer to have success on Earth but also enable him to win the reward of the Eternal life in the *Hereafter*.

If the life of man is to be located in the conceptual framework which results from the close study of the Holy Book, the position of man in the scheme of things must be viewed not as though he were a finished product; instead he is to be regarded as an evolving being; he is to be considered in a state of transition. More or less, Man is to be regarded as one who is here on earth to spend his time as though it constituted a transitional phase which will one day be brought to an end by the most certain of all events, namely, his death. During this interim phase he cannot, on his own, hope to know the path he should pursue in order to enable himself to reach higher levels of his being. No evolving organism could possibly have a clear conception of the final phase into which he is fated to reach his highest expression. No one could have conceivably predicted that the rose plant, which is fed by filthy manure and which at one stage of its development consisted only of green leaves, stems and thorns, will one day put on a red rose. In any case the plant itself can and does not know this. The strange thing is that what is fed by filthy manure ultimately, through process of evolution, produces 'perfume' — the fragrance coming out of its flowers. Although the plant is rooted upon earth and cannot move about, not having the power of locomotion, all the same, when the miracle occurs it produces perfume that in some sense walks away from the plant and reaches furlongs away from the point of its origin and announces the existence of flower to persons that stand at a considerable distance from it. And what is more, the Gardiner insists on pruning the rose plant, thereby cutting away its superficial branches and leaves, — thus enabling the energy inherent in the plant to produce less leaves and twigs but to grow more and better roses. This pruning process corresponds to '*Taqwa*' in the life of the believer. He is told not to abandon himself completely to the animal impulses within himself but must learn to acquire self-control — so that the energy available within him does not spend itself out at the animal plane of his existence but gets transmuted into higher forms of being that are capable of surviving the ravages of death and of enjoying the reward of higher, better and eternal life.

Human Rights conceived from the anthropocentric perspective are treated by Western thinkers as though they were no more than expedient modes of protecting the individual from the assaults that are likely to be made upon him by the authority of the state's coercive power – by the unjust laws that may be imposed by that authority to deny man the possibility of self-development, through the law-making power of the brute majorities. Islam, on the other hand, formulates, defines and protects these very rights by inducing in the believers the disposition to obey the law of God, the Practice of his Last Prophet, and show obedience to those “constituted authorities” within the realm who themselves are bound to obey the law of God and the practice of the Prophet and conduct man's affairs according to the Book of God and the Practice of the Prophet. Furthermore, affirmation of these rights is to enable man not only to secure the establishment of those conditions in terms of which the development of man as an individual on earth may be possible, but also to enable man so to conduct himself, inwardly as well as outwardly, as to be able to obey the Divine Law – that is, that Law that only his Maker is qualified to impose on him. By accepting to live in Bondage to this Divine Law, man learns to be free. Islam terminates the era of revealed religions; declares man free by telling him that no other Prophet hereafter would come, that the road to be traversed by him is straight, and the Holy Book contains enough guidance to enable him to choose – it is, therefore, now for him to choose. The road he chooses will lead him either to Heaven or to Hell, depending on the choice he makes.

**ANNEX III**

**Synopses  
Of Papers Presented To The Seminar Committees**

**Papers presented to the First Committee  
on Economic, Cultural and  
Social Rights in Islam**

**First Paper: Economic Freedom and the Equity in Taxation in Islam**  
by *Dr. Abdul Hadi Ali El-Naggar*

The paper begins with an introduction concerning the broad aspects of the philosophies of various economic systems, starting in the period prior to the Middle Ages when economic activity depended on slaves. It goes on to survey the doctrines of the advocates of Nature and the Guardian State and ends up by discussing the doctrines of contemporary state interference.

The paper consists of two chapters, the first on economic doctrine in Islam, and the second on the concept of equitable taxation in Islam.

In the first chapter, the paper surveys Islam's economic doctrine, explaining that this is founded on the Islamic faith, which constitutes a system in which economic principles are bound to religion. This bond necessitates that economic freedom be made subject to certain lawful restrictions alongside the state's right of interference. The author goes on to point out that the idea of economic freedom is based on the *laissez-faire* concept, although state interference is recognised as lawful by the sources of Islamic legislation and is manifested in the practice of the Prophet's four successors (*Al-Khulafa'a Al-Rashideen*). They emphasize Islam's recognition of private property rights and of inevitable income differences, although private ownership of property is held to be superficial rather than real because the poor are entitled by Islam to possess a rightful share in the property of the rich. The author concludes this chapter by surveying the manner in which the various market elements are organised in Islam.

In the second chapter, the author surveys the basic rules of equitable taxation in Islam through emphasis on individual and public ownership rights as an incentive for promoting development. He afterwards explains the various forms of taxes, such as *Zakat* (a form of income tax), *Kharaj* (land tax), *Ushour* (tithes), *Djiziah* (levies on followers of

the holy books, that is Christians and Jews) and points out that their amount is decided proportionally to the ability of the respective taxpayer to pay. Dr. El-Naggar concludes his paper by underlining the justice of the principles of taxation in Islam and the universal manner by which taxes are levied on heads and possessions in a manner comparable to the manner nowadays adopted in progressive systems of taxation. Thus, Islam may be said to have realised the principle of equitable taxation adopted in modern legislation.



**Second Paper: Economics of Human Rights: an Islamic Perspective**  
*by Syed Nawab Haider Naqvi*

The author starts with the concept of human rights in Islam in general and focuses on their economic aspects, pointing out that Islam's economic principles stem from its overall outlook and are governed by rules of equity and justice. He goes on to discuss the principles that underlie production, saying the needs of the community are defined, and the economy is shaped, in a manner which emphasizes collective obligation and justice rather than individual selfishness and the needs of special interest groups. Thus, a balance is achieved between the interests of the individual and that of society.

The author reaches the conclusion that Islam guarantees individual freedom on the basis of religious faith and that this element protects it from attempts either to take advantage of it or to impose undue restrictions upon it. Such freedom, the author argues, is governed by certain constraints which, while protecting the fabric of society, still permit the individual to enjoy its benefits and also provide safeguards to protect him from want.

**Third Paper: Development, Property and Distribution of Wealth**  
*by Dr. Hatem A.S. Karanshawy*

The purpose of this paper is to explain certain aspects of the economic model in Islam, especially in so far as it has to do with development issues. It points out that development in general is one of the biggest challenges facing over a third of the states of the world. The author notes that the relationship between Islam and development is seen in two different ways: from one viewpoint, Islam handicaps development, while from the other, the non-observance of Islamic rules is the cause of all the lack of development that troubles certain Islamic states today.

In the first section of the paper, the author deals with the problem of defining the concept of development and explains why it is difficult to adopt an accepted criterion for the definition. However, from a number of definitions of economic development, he adopts one which considers development to be a progressive movement of the social system. The author goes on to explain that Islam's concept of development is based on the axiom that all natural resources are there to serve man, who has to work to free himself and his society from the danger of want. It is this obligation that sets economic development in motion and provides it with the necessary dynamism for controlling the exploitation of natural resources.

The author then tackles the concept of self-sufficiency, pointing out that Islam's concept of it is not a geographical one, but one which is oriented to the need to provide a decent minimum of society's basic requirements.

In the second section of the paper, the author deals with the concept of property and controls over it in Islam. He shows that the concept of property is based on two fundamental tenets. The first confirms the social function of private property. The second guarantees that any resource capable of becoming private property will be utilized in a manner that serves the interests both of the individual and of society, by means of imposing controls and constraints to preclude any harm to society, to curb monopolies, to guarantee that the poor will have their rightful share in the money and property of the rich, and to delineate the economic and social functions of the *Zakat* tax (a form of income tax).

In the third and last section, the author deals with production and distribution relations and the part played by the state in Islamic society, because Islam was not satisfied with laying down constraints and controls on public and private property but also formulated general network of production relations.

Dr. Karanshawy then discusses the relationship between man and his resources and points out that man must utilize them in a rational manner. He goes on to discuss the relationship between the workers and the owners of the means of production, emphasizing the importance of ensuring fair wages.

The author concludes by explaining the part performed by the state in Islamic society in connection with problems of development and wealth distribution. He notes that the state acts on behalf of society to guarantee the rights of its members as determined by law, and is responsible for utilizing, both directly and indirectly, the country's natural resources, whether they are owned privately or collectively. The state is further under an obligation to guarantee a decent minimum standard of living, and not just a subsistence existence, to all members of the Islamic community.

Paper presented to the Second Committee  
on the Concept of Education  
and Contemporary Society

**Education: Islamic Concepts and Modern Society**  
*by Dr. Syed Ali Ashraf*

This paper stresses that the building of a well-integrated human personality cannot be based on furnishing the individual with empirical sensory knowledge alone, and warns that the predominance of scientific materialism poses a real threat to mankind.

It emphasizes the growing need for a concept which would assure man's prosperity and progress and at the same time furnish him with values and ethics that would help him towards self-fulfillment. Dr. Ashraf also emphasizes the need to rescue humanity in general and Moslems in particular from the misrepresentations of modern technology and the materialistic interpretation of life. He points out that to do this it will be necessary to reconsider the uses of modern technology by viewing man as God's *Khalif* (representative) on earth and by recognising that knowledge is a gift granted him by God, that part of this knowledge is left to man to acquire according to his abilities and that the remaining part comes in the form of God's revelation to man.

Dr. Ashraf finally outlines the efforts exerted by the Islamic world through a number of conferences to lay the foundations of Islamic education concepts in modern society.

Papers presented to the Third Committee  
on the Right to Work and Social and Legal Problems  
of Moslem Minorities in Secular States

**First Paper: The Right to Work and the Right to Life in Islam**  
*by Dr. Sadek Mahdi El-Sa'id*

The author discusses the position of labour in Islam's property system, explaining that it constitutes the principal source of livelihood for every person capable of work. He also surveys the rules and procedures of transactions and behaviour patterns in the social, economic and political walks of life.

He explains that Islam has an integrated approach, based on economic, social, cultural and other conditions, which recognises work and social solidarity as the means to ensure for man a dignified life and freedom from fear and poverty.

Dr. El-Sa'id stresses that Islam has elevated the position of labour in society, so much so that labour has come to be regarded on an equal footing with *jihad* (the holy struggle to spread the cause of Islam). Furthermore, Islam makes it incumbent upon the state to provide work for all able-bodied persons, a duty which implies that vocational training must be provided along with the necessary tools. The author also emphasizes that Islam insists that transactions be concluded by means of contracts and that fair wages be paid. The author concludes by explaining the meaning of social security in Islam, saying it has two bases:

1. A sense of solidarity among people in search of a livelihood, between individuals, within the family, and within the community as a whole; and
2. Security in the form of financial relief extended by the state to disabled persons unable to earn a living, and to those bereft of some relative who used to provide for them.

**Second Paper: Muslim Minorities and Human Rights**  
*by Dr. Abu Bakr Ahmad Bagader*

The author in defining the term 'religious minority', adopts the numerical ratio of demographic distribution as a criterion and points out that the aim of his paper is to seek ways and means of protecting groups whose rights are suppressed by the majority. Thus, any act would be prohibited if it caused individuals or groups to be deprived of the right to be treated on an equal footing with the dominant majority.

The author surveys cases of the persecution of religious minorities, such as the exterminations of Jews, Poles, and Ukrainians, and remarks that the drive in the League of Nations to provide protection for minorities was more for political than humanitarian ends.

The author then surveys the situation of religious minorities, especially Moslems, in the world and explains the standpoint of various religions and ancient civilisations on this subject. He makes special reference to the standpoints of Christianity, Judaism, Buddhism, and Hinduism, and explains the different attitude of Islam, which was the first to provide genuine protection for religious minorities. This Islamic standpoint, the author explains, was based on three factors: Islam's concept of the unity of mankind, the universal character of its religious doctrine, and its acknowledgement of all prophets and apostles who preceded Islam and who must be venerated by Moslems.

Protection of non-Moslems, the author points out, is manifested in a number of ways: they are permitted to perform their religious rites and to enter into trade transactions freely and without restrictions, non-Moslem women are permitted to marry Moslem men, and all civil rights are guaranteed to them, in return for the *Djiziah* (a levy payable to the treasury of the Islamic state they live in).

The author afterwards surveys the situation of oppressed Moslem minorities in such countries as the Soviet Union, the Philippines and Eritrea where they are repressed on account of their religious convictions alone.

The author concludes by appealing to human rights organisations to shoulder their moral responsibility by providing the necessary protec-

tion for Moslem minorities and guaranteeing their fair treatment, but he also stresses the importance of the assistance rendered by Islamic states in this respect.

**Papers presented to the Fourth Committee  
on Treatment of Non-Moslem Minorities  
and Freedom of Opinion and Expression**

**First Paper: Freedom of Opinion, Expression and Association**  
*by Dr. Mümtaz Soysal*

The purpose of this paper is to stress the importance attached to freedom of opinion and its safeguards in Islam. The author, after both considering the relationship between the individual and society and evaluating the West's experience, reaches the conclusion that these may form a basis from which several principles in accord with the fundamental principles of Islam may be introduced into Islamic communities, with a view to modernising their political systems and providing them with further guarantees for their freedom of opinion.

The author stresses that in the absence of awareness of the importance of abstract ideas for building and modernising society, Islamic societies suffer from the evil of fanaticism. He remarks that Koranic verses which call for obedience and other virtues have often been abused to justify dictatorial rule.

Dr. Soysal then discusses the need to reconstruct freedom, emphasising that the West's declarations of human rights and its constitutional institutions have proved effective in safeguarding freedom of opinion. He concludes by stressing the need to modernise the Islamic system by means of declarations and institutions comparable to their counterparts in the West.



**Second Paper: Treatment of Non-Moslem Minorities and Foreigners  
in Islamic Law (Shari'a)**  
*by Dr. Abdul Karim Zaydan*

In this paper, Dr. Zaydan points out that Islam did not confine itself to pure theology, but elaborated an entire system of rules and procedures governing civic relations and dealings, including those that pertain to various categories of non-Moslem minorities, whether belonging to religions of the Holy Book (ie Judaism and Christianity) or being the subject of a special agreement.

This system of rules and procedures is elaborately explained in three chapters.

In the first chapter Dr. Zaydan discusses the rights and duties of Christian and Jewish subjects in Islamic countries, with particular reference to their political rights and their religious and civil freedoms, and explains their personal status and rights and the duties expected from them in return, such as payments in the form of tributes and poll taxes to the state coffers.

In the second chapter, the author discusses the legal provisions to be applied in litigation arising between Moslems and non-Moslems, in war or peace and in cases of agreement or disagreement between the provisions of Islamic law and those pertaining to the religion of the non-Moslem litigants.

The author concludes by explaining the procedure of litigation according to Islamic law and showing which law court is empowered to hear cases arising between members of non-Moslem minorities or between them and Moslems.

**Papers presented to the Fifth Committee  
on Individual Security Rights in Islam  
and Safeguards of Human Rights in Judicial Proceedings**

**First Paper: The Right to Individual Security in Islam (a comparative study with positive law)**

*by Dr. Othman Abdul Malek Al-Saleh*

Dr. Al-Saleh presented a paper in three parts. In his introduction, he defines the right to individual security as that which guarantees a measure of reassurance to the individual which, together with the prevailing system of government, would enable him to regulate his affairs and build for his future. Such security, the author points out, implies that all necessary safeguards should be provided to protect the individual from arbitrary measures and despotism.

The author points out that his plan of inquiry consists of three parts.

In the course of his discussion of the subject of the first part of his paper, the author touches upon the Islamic theory of crime and punishment and its relation to individual security rights. The right to individual security, the author points out, is guaranteed by Islamic law to regulate relations between individuals and protect one from falling victim to the encroachment by others on his rights. What is more, the author points out, Islamic law seeks to guarantee the individual's right to security by organising relations between him and the state and defining exactly the kind of relation which would arise between him and the state in the case of his being charged with perpetrating a crime. The purpose of defining this kind of relation, Dr. Al-Saleh points out, is to create a balance between the community's interest in bringing criminals to justice and the interest of the individual in safeguarding his basic rights to security and a peaceful life. Islamic law may thus be said to have preceded all other legislation in establishing three principles which have only relatively recently been established by positive law:

- a) The principle that no person shall be answerable for the offences of others;

- b) The principle of the legitimacy of bringing offenders to justice; and
- c) The principle that prohibits any retroactive action of criminal law.

In the second parts of his paper, the author notes that Islamic law has granted defendants certain rights and guarantees against all arbitrary or despotic measures or penalties, whether during the stage of primary investigation, trial or execution of the court's sentence.

Thus an accused person is assumed to be innocent, the onus of proof is laid on the prosecution, and every doubt is interpreted in favour of the accused, who is also provided with safeguards during his personal search and in the course of his interrogation. These safeguards sometimes extend to protecting the accused from his own lapses and slips of the tongue. In addition, remanding a person in custody is made subject to certain controls, the aim of which is to bring about a balance between personal freedom and the requirements of the investigation.

The author stresses that the accused is guaranteed a number of rights at his trial such as his right to be tried by an integral, just and specialised court of law, his right to employ an attorney, and his right to compensation in the case of any errors committed by his judges. The author further points out that Islamic law has stipulated that a trial must take place in accordance with the doctrine of individual prosecution, which clothes the defendant with a number of essential safeguards, notably those stipulating that the proceedings must take place in public, orally and in the presence of the defendant. By adopting a system of strict requirements of proof in criminal cases, Islamic law, the author remarks, has limited the judge's discretion in the defendant's interest.

Finally, Dr. Al-Saleh points out that Islamic law provides for generous treatment of and care for convicts who have served their terms of imprisonment, even to the extent of ordering monthly stipends to be paid to those of them who stand in need of such assistance.

In the third part of this paper, the author points out that the principle of legality is a first pillar or guarantee of the individual right to security, and he concludes that the Islamic state preceded contemporary systems in being a legal state from the moment of its birth

and that the governing institutions, from the highest to the lowest, had to act in accordance with the rules of the Shari'a. The author underlines that Islam was in the vanguard in establishing the principle of legality and the hierarchy of the legal order, which ensures the submission of the lower legal rules to the higher ones. He adds that Islamic law did not confine itself to the imposition of penalties upon an authority that transgresses the principles of the rule of law, but required a reward for governors who respected these principles. The reward is embodied in the people's obedience and loyalty to such a governor.

The author's 68-page study also draws a comparison between Islamic and positive law.

**Second Paper: Human Rights and Judicial Safeguards in Islam**  
 by Dr. Salah Eddin El Nahi,  
 a former Professor of Baghdad University

The paper underlines the original and unique character of the Islamic judicial system in providing effective protection of human rights, as compared with contemporary systems prevailing in the Islamic States which are characterized, for the most part, by imitation and formalism motivated by historical considerations. The paper deals with the different aspects of the subject in two parts.

Part I describes the legal and judicial safeguards, and underscores the philosophy and objectives of Islamic law, and the means it has worked out to secure its appropriate implementation, such as the judicial system, *Ifta*<sup>1</sup> and *Hisba*<sup>2</sup>.

Part II deals with the judicial safeguards under the Islamic system which jurists have instituted in the shape of requirements: personal requirements pertaining to *Ijtihad*<sup>3</sup> and justice, as well as objective requirements relating to dispositions of general jurisdiction (*Al-Walaya al-Amma*), to the method it lays down for examining and settling cases, and to the powers it confers with regard to supervision of prisons.

The paper concludes with a detailed account of the requirements relating to the appointment of judges and the measures taken to ensure execution of their sentences and judgments against all concerned, and to provide them with such safeguards as are considered necessary to reassure the parties and keep justice above suspicion, namely judicial control over the staff of the law courts, the duty of the judge to examine Islamic jurisprudence and to apply those principles which best serve the interests of the case, and the separation of the executive and judicial powers.

In conclusion the paper states that the judicial system is based upon Islamic principles and is supported by measures to educate people about right action, justice and *Ifta*, and to inform people about the impartial institutions of the judiciary.

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1) Legal opinions based on the sources of Islamic law.

2) The right to initiate administrative or court actions in the public interest.

3) *Ijtihad*, or "jurisprudence", that is the counsel of judges and jurisconsults, when called upon to pronounce on a particular case.

### Third Paper: Personal Security and the Rights of Defence

*by Mr Ihsan Kayali,*

*advocate and former Vice-President of the Syrian Bar*

The paper draws a comparison between the right of personal security and the rights of defence under international instruments, on the one hand, and under Islamic Law, on the other. It is divided into five chapters:

- Chapter I describes the current concept of personal security and the rights of the accused in international instruments and lays stress upon the principle of equality before the law.
- Chapters II and III enumerate the sources and foundations of Islamic Law in broad terms, and seek to establish the same concepts and principle from the Koran, the Sunna<sup>1</sup> and Ijma'<sup>2</sup>. In conclusion a reference is made to intellectual, religious and social freedoms.
- In the last two chapters the paper deals with the rights of the accused and of the defence in general, and points out that they are secured in Islam by a wide range of safeguards beginning with the principle of equality before the law and the courts, assertion of the right of individuals to personal security, prohibition of arrest or detention without legal authority and punishment of anyone doing so. Finally, the rules relating to the organisation of the judiciary are set out. These ensure free access to the courts and impartial judges.

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1) Sayings and decisions pronounced by the Prophet, for the interpretation of Koranic verses.

2) The consensus of opinion of the Ulema (judges and jurisconsults) which they render inspired by Koranic law and its principles, when they have to specify the law in particular cases.

**Papers presented to the Sixth Committee  
on the Legal Status of Woman in Islam**

**First Paper: The Position and Role of Women in Islam**  
*by Dr. Ali Abdul Munem Abdul Hamid,  
Professor of Islamic Law and Islamic Studies, Faculty  
of Law, Kuwait University*

The paper emphasises Islam's comprehensive and balanced view of the family as a social institution ensuring the good of society itself. The author makes a detailed study of married life based on verses from the Koran. It then explains how Islam treats men and women on an equal footing as far as their duties and responsibilities are concerned.

The paper goes on to illustrate the part played by women throughout Islamic history from the days of the Caliphate. As an example of woman's role as a wife, supporting the Prophet's message, it evokes Khadija, "Mother of the Believers", and the role of those other venerable women who were among the companions of the Prophet in time of war, as well as the *Bai'a* (a pact between the Prophet and the converts to Islam). It deals more specifically with the position of women in Islam in their capacities as mother, wife, daughter and sister.

The paper sums up by stating that, where there is no Islamic provision or rule to the contrary, women are entitled to all the rights recognized to men in matters such as education, contracts, obligations, the right to ownership, trade, and civil law in general. An exception is that she is not allowed to be head of state, but she can assume other public functions. The paper concludes by underlining the spirit of tenderness and kindness when permeates the family as a social and affective unit.

**Second Paper: The Status of Women in Islam**

*by Dr. Ma'rouf Dawalibi,*

*Counsellor to the Royal Diwan at Riyadh, former  
Minister of Foreign Affairs of Syria*

The paper begins with a brief account of the efforts being made by the international community to attain universality, and the special emphasis it lays on matters relating to woman and her right to equality with men. This serves as an introduction to the question of the attitude of Islam to human rights in general and to woman in particular.

In Part I the paper points out that the new human world order called for by the United Nations was advocated, centuries ago, by Islam, which makes no discrimination between the sexes as to their rights and duties, both sexes having, between them, engendered the population of the earth.

In Part II the paper sets out in detail Islam's vision of woman. After reviewing the status of woman in the old legal systems, especially those of India, Rome and the Arabian Peninsula, up to the Middle Ages, it explains that Islam started by applying the same treatment to both sexes on the basis of absolute justice. Further, it secured women's rights in conformity with the Prophet's Hadith "Women are men's partners", it being understood that this view is part of a wider perception, i.e. the way Islam conceives of God, the universe and man.

It is on this basis that the Prophet's call for equality in Islam between man and woman was founded. The verses of the Koran leave no doubt about the mutual commitment of believers — men and women alike — to each other, a commitment also to be found in the Hadith "You are, all of you, shepherds responsible for your respective herds."

The paper concludes by discussing many of the issues raised by those who claim that Islam practices sex discrimination in legal provisions relating to succession, testimony, divorce, polygamy, etc.



**Third Paper: The Legal Status of Women in Islam**

*by Dr. Shahzanan Shakarchi,  
Research worker in Islamic Sciences, former lecturer  
in the Social Sciences Department, Baghdad University*

The paper begins with an Introduction on woman's rights in Islam, mainly her economic and social rights. It considers the obvious fact that Islam is not only a faith but also a code of conduct regulating all aspects of human activity, the basis on which rests the status of woman in keeping with the spirit of Islam, and the requirements of technological progress and economic development.

Then it describes the condition of woman before Islam. She was submitted to her father's and her husband's arbitrary power, with no political organization, juridical system or proclaimed constitution to protect her rights until the advent of Islam. With the Koran came the first assertion of woman's legal status and on this basis woman inaugurated a new era in which she was called upon to support man and assume responsibility for the faith, even with respect to *Jihad*<sup>1</sup>. She was thus emancipated from the subjection imposed on her in pre-Islamic periods.

The paper also deals with the rights recognized to women in Islam in matters relating, for example, to marriage, divorce, succession and polygamy, and draws a comparison with her condition before Islam.

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1) Striving to implement the teachings of Islam.

**ANNEX IV**

**List of Participants**

- |                             |   |   |
|-----------------------------|---|---|
| 1. Hussein Albaharna        | Ministry of Legal Affairs<br>Bahrain  | Minister of Legal Affairs   |
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**ANNEX V**

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## **Reports of ICJ Conferences and Seminars**

Reports of ICJ conferences and seminars containing the working papers, keynote speeches, summaries of discussions, the conclusions and recommendations, and a list of participants have been published as follows (in the language of the title):

### **Human Rights in a One-Party State**

Search Press, London, January 1978, 130 pp. Swiss Francs 10, plus postage.

Report of an East and Central African seminar, in Dar-es-Salaam.

### **Human Rights and Development**

Cedar Press, Barbados, May 1978, 208 pp. Swiss Francs 15, plus postage.

Report of a Caribbean seminar, in Barbados.

### **Le Développement et les Droits de l'Homme**

Numéro spécial de la Revue Sénégalaise de Droit, 1978, 255 pp. Francs suisses 16, plus frais d'envoi.

Rapport d'un colloque africain francophone, à Dakar.

### **Derechos Humanos en las Zonas Rurales, Bolivia, Colombia, Chile, Ecuador, Perú, Venezuela**

Ediciones Internacionales, Bogotá, 1980, 306 pp. Francos suizos 10, más franqueo postal.

Informe del seminario de la región andina, en Bogotá.

### **Development, Human Rights and the Rule of Law**

Pergamon Press, Oxford, 1981, 244 pp. Swiss Francs 15 or US\$ 7.50.

Report of an international conference of human rights lawyers and development experts, at The Hague.

### *In preparation:*

### **Rural Development and Human Rights in South East Asia**

Report of a seminar in Penang in December 1981.

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